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## Fact Sheet

### **Information Sharing and Coordination Provisions Applicable to the IC Elements, the IC Element IGs, and the ICIG under ICD 701, *Unauthorized Disclosures of Classified National Security Information***

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**A. References:** Intelligence Community Directive 701, *Unauthorized Disclosures of Classified National Security Information* (Dec. 22, 2017) (ICD 701); the National Security Act of 1947, as amended; Executive Order 12333, as amended; and other applicable provisions of law.

**B. Purpose:** Intelligence Community (IC) elements have an affirmative responsibility under ICD 701 to notify the Office of the Inspector General of the Intelligence Community (ICIG) of all confirmed unauthorized disclosures of classified information and to share certain information with the ICIG concerning such unauthorized disclosures. In addition, the ICIG and the Inspectors General (IG) of the IC Elements have responsibilities to coordinate, brief, and consult during administrative investigations of confirmed unauthorized disclosures of classified information under ICD 701. This Fact Sheet is designed to assist IC elements and IC element IGs, respectively, in implementing the information sharing and the coordinating/briefing/consulting provisions applicable under ICD 701.

**C. Summary of ICD 701's applicability.**

1. ICD 701 applies to the "Intelligence Community," as defined by the National Security Act of 1947, as amended, and to such elements of any other department or agency as may be designated an element of the IC by the President, or jointly by the Director of National Intelligence (DNI) and the head of the department or agency concerned.

2. ICD 701 applies to unauthorized disclosures of "classified information," as defined in E.O. 13526, including Sensitive Compartmented Information, as defined in ICD 703, *Protection of Classified National Intelligence, Including Sensitive Compartmented Information*.

3. ICD 701 defines an "unauthorized disclosure" as "a communication, acknowledgement, or physical transfer of classified information, including the facilitation of, or actual giving, passing, selling, or publishing of, or in any way making such information available to an unauthorized recipient."

**D. Application of ICD 701's policy to the ICIG's responsibilities.**

1. ICD 701 requires, in accordance with 32 C.F.R. § 2001.48, that "unauthorized disclosures" shall be reported promptly to the originator of the classified information (the "originating IC element"). After the originating IC element conducts a preliminary inquiry under Section E.3. of ICD 701, and there is a finding that the facts warrant the filing of a Crimes Report, confirmed unauthorized disclosures likely to cause damage to national security interests shall be reported by the originating IC element to DoJ, as possible violations of federal criminal law, with

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notification to its IG, the ICIG, and the Director of the National Counterintelligence and Security Center (D/NCSC) at the Office of the Director of National Intelligence.

2. In cases where DoJ has declined prosecution, the ICIG may lead independent administrative investigations of selected unauthorized disclosure cases in consultation with the IG(s) of the involved IC element(s).

3. For all cases investigated by IC elements, those IC elements shall provide copies of case reports to the ICIG for independent review.

**E. Information sharing provisions applicable to the IC elements and the ICIG.**

- 1. Notifying the ICIG of initiating a preliminary inquiry and providing continuous status updates thereafter:** The head(s) of IC element(s) shall, within seven business days of the initiation of the preliminary inquiry of a suspected unauthorized disclosure, notify the ICIG and their IG (and other affected IC elements in unauthorized disclosure cases involving classified information belonging to more than one IC element). The head(s) of IC element(s) shall provide the ICIG with continuous status updates thereafter.
- 2. Providing the ICIG with a copy of Crimes Reports, case reports, and statements of loss or compromise of classified national security intelligence:** If the facts ascertained during a preliminary inquiry warrant the filing of a Crimes Report, the originating IC element shall provide a copy of the Crimes Report and case reports to the ICIG. The head(s) of the originating IC element(s) shall also provide to the DNI, through the ICIG and D/NCSC, notification of any loss or compromise of classified national intelligence concurrent with the Crimes Report to DoJ and reports to Congress, in accordance with ICD 112.
- 3. Notifying the ICIG as to whether DoJ will pursue criminal prosecution:** The head(s) of the originating IC element(s) will notify the DNI, through the ICIG and D/NCSC, upon receipt of a determination by DoJ as to whether DoJ will pursue criminal prosecution.
- 4. Notifying the ICIG of initiating and completing an internal investigation:** The head(s) of the originating IC element(s) may conduct internal investigations following the filing of a Tier 2 Crime Report (after receiving DoJ concurrence) or a Tier 3 Crime Report (provided DoJ has declined prosecution). The head(s) of the originating IC element(s) shall notify the ICIG when an IC element initiates and completes an internal investigation.
- 5. Notifying the ICIG that DoJ's investigation has concluded and whether an administrative action or further investigation is sought:** The head(s) of the originating IC element(s) shall notify the ICIG when DoJ's investigation is concluded and whether an administrative action or further investigation is sought.

6. **Providing continuing status updates of administrative actions and notification of case closures:** The head(s) of the originating IC element(s) shall provide to the DNI, through the ICIG and D/NCSC, continuing status updates of administrative actions and notification of case closures.

**F. Coordinating, briefing, and consulting provisions applicable to the ICIG and the IC element IGs.**

1. **Coordinating review of declined cases between the ICIG and the IC element IGs:** If the FBI decides not to investigate or the FBI investigates but DoJ declines prosecution, the ICIG will review those cases, in coordination with the IG(s) of the IC element(s) involved, to determine whether an IG administrative investigation is warranted.
2. **Coordinating administrative investigations with the ICIG:** If an administrative investigation is warranted, the ICIG and the IG(s) of the IC element(s) involved will coordinate and determine which IG will conduct the investigation, in accordance with the statutory procedures outlined for the IC Inspectors General Forum. The ICIG will, in cases involving one IC element, generally defer the investigation to the IC element IG. For cases outside of IG jurisdiction, the ICIG or the IG(s) of the IC element(s) may refer cases to appropriate law enforcement or security investigating elements.
3. **Briefing the results of administrative investigations with the ICIG:** For cases investigated by an IC element IG, the IC element IG involved will inform the head of their respective IC element of the administrative investigation, and when completed, will brief the results of the investigation to the IC element head and the ICIG.
4. **Consulting with the ICIG in the event additional information of a potential is uncovered:** Should additional information of a potential crime be uncovered during the course of the administrative investigation, the responsible IC element IG, or investigating element, in consultation with the ICIG, shall notify DoJ.

**G. The ICIG's responsibilities.**

1. The ICIG shall coordinate with the IG(s) of the IC element(s) involved to determine, in consultation with DoJ, as appropriate, which Tier 2 and Tier 3 cases may be suitable for administrative investigation.
2. The ICIG shall coordinate with the IG(s) of the IC element(s) involved, or appropriate office, to ensure cases suitable for administrative investigation are reviewed, appropriately investigated, and not closed prematurely.
3. For cases involving multiple IC elements, the ICIG shall inform the DNI, and ensure the IC element head(s) involved and the DoJ, as appropriate, are informed, of the results of administrative investigations of suspected unauthorized disclosures.

4. For any subsequent submissions to DoJ regarding potential crimes discovered in the course of an administrative investigation involving information belonging to more than one IC element, the ICIG shall ensure that such submissions are coordinated with the IG(s) of the IC element(s) involved and provide notice to the ODNI Office of General Counsel.

5. The ICIG shall coordinate with the IG(s) of the IC element(s) involved to conduct independent investigations.

6. The ICIG shall maintain a repository of notifications from IC elements regarding any loss or compromise of classified intelligence, preliminary inquiries and Crimes Reports on unauthorized disclosures submitted by IC elements, and monitor all submissions to final disposition.

#### **H. Crimes Reports definitions:**

1. Tier 1: These are disclosures where the preliminary investigation reveals that further investigation is not warranted or feasible, usually because of extensive dissemination of the disclosed information.

2. Tier 2: These are disclosures where the preliminary investigation indicates that an internal investigation is appropriate.

3. Tier 3: These are disclosures where the preliminary investigation indicates that a criminal investigation should be requested based upon the specific circumstances of the disclosure.

#### **I. ICIG unauthorized disclosure program contact information: ICIG-UD@dni.ic.gov**