



INTELLIGENCE COMMUNITY DIRECTIVE

403

(U) Foreign Disclosure and Release of Classified National Intelligence

A. (U) AUTHORITY: The National Security Act of 1947, as amended; Executive Order (EO) 12333, as amended; EO 13526; and other applicable provisions of law.

B. (U) PURPOSE

1. This Directive establishes policy governing the disclosure and release of classified national intelligence (hereinafter intelligence), including analysis produced and information disseminated by Intelligence Community (IC) elements to foreign entities. This Directive also establishes policy for the protection of intelligence sources and methods as pertains to foreign disclosure and release.

2. This Directive rescinds Sections 1-5 and Section E of Attachment A of Director of Central Intelligence Directive (DCID) 6/7, *Intelligence Disclosure Policy*; and Sections VII and VIII of DCID 6/6, *Security Controls on the Dissemination of Intelligence Information*.

C. (U) APPLICABILITY

1. (U) This Directive applies to the IC, 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. (U) This Directive does not apply to disclosures or releases of classified military information pursuant to National Disclosure Policy 1 and National Security Decision Memorandum-119.

3. (U) This Directive does not apply to Restricted Data and Formerly Restricted Data. Such data may only be disclosed or released to foreign governments pursuant to an agreement for cooperation as required by the Atomic Energy Act of 1954, as amended.

4. (U) [REDACTED] This Directive does not apply to intelligence derived from Foreign Intelligence Surveillance Act (FISA) information, unless the FISA statute or the Foreign Intelligence Surveillance Court permits such information to be disclosed or released to foreign entities and such disclosure or release is not otherwise prohibited by the Privacy Act, 5 USC 552a. Where disclosure or release of this information is not permitted by the statute or the Court, or would be prohibited by the Privacy Act, the FISA-derived information cannot be released or disclosed to foreign entities.

13 March 2013

(Administrative Change 07 November 2014:
[REDACTED])

D. (U) DEFINITIONS

1. Foreign Entities: Foreign entities include foreign governments or components thereof; international organizations or coalitions consisting of sovereign states; and others as determined by the DNI. Foreign nationals and foreign contractors not affiliated with sovereign states do not constitute foreign entities for purposes of foreign disclosure or release except as designated by the DNI.

2. Coalition: An arrangement between two or more nations for common action; multi-national action outside the bounds of established alliances, usually for single occasions or for longer periods of cooperation in a narrow sector of common interest; or a force composed of military elements of nations that have formed a temporary alliance for some specific purpose.

3. Disclosure: Displaying or revealing classified intelligence whether orally, in writing, or in any other medium to an authorized foreign recipient without providing the foreign recipient a copy of such information for retention.

4. Release: The provision of classified intelligence, in writing or in any other medium, to authorized foreign recipients for retention.

5. Senior Foreign Disclosure and Release Authority (SFDRA) (formerly Designated Intelligence Disclosure Officer): The senior civilian or military official(s) within an IC element designated in writing by an IC element head as responsible for that element's disclosure and release program, and other U.S. Government officials as may be designated by the DNI. SFDRA's are designated by position (rather than by name).

6. Foreign Disclosure and Release Officer (FDRO): IC element personnel to whom a SFDRA has delegated in writing the authority to approve or deny requests for authorization to disclose and release intelligence under that SFDRA's jurisdiction or as authorized by the disclosure or release markings in accordance with Section F.4.b below.

7. Senior Foreign Official (SFO): Responsible foreign officials or individuals who, by virtue of their positions or access, may directly affect policy making of recipient foreign governments. SFOs include foreign officials of assistant secretary rank and above, ambassadors, chargés d'affaires, and other officials of similar rank. SFOs include officials of finance, defense, and foreign affairs ministries but not senior intelligence officials.

E. (U) POLICY

1. (U/[REDACTED]) U.S. intelligence is a national asset to be conserved and protected and will be shared with foreign entities only when consistent with U.S. national security and foreign policy objectives and when an identifiable benefit can be expected to accrue to the U.S. It is the policy of the U.S. Government to share intelligence with foreign governments whenever it is consistent with U.S. law and clearly in the national interest to do so, and when it is intended for a specific purpose and generally limited in duration.

2. (U/[REDACTED]) Foreign disclosure and release actions can provide crucial support to national security and foreign policy objectives. The production of intelligence reports and products at a level suitable for foreign disclosure and release supports both the IC and U.S. policy makers. IC elements, therefore, in accordance with U.S. national security and foreign policy objectives, should produce intelligence products and reports marked for foreign disclosure or release.

- a. (U/[REDACTED]) IC elements shall limit the use of restrictive dissemination control markings to the minimum necessary.
 - b. (U) All documents considered for foreign disclosure and release shall be marked in accordance with Intelligence Community Directive (ICD) 710, *Classification and Control Markings System*.
 - c. (U) If it is not possible to issue a report or product without restrictive dissemination controls, IC elements shall, consistent with ICD 710, clearly identify those portions not authorized for release to foreign entities.
 - d. (U/[REDACTED]) When feasible, intelligence that cannot be disclosed or released shall be separated by the use of tearlines, portion marking, or segregable annexes from that which may be released.
3. (U/[REDACTED]) The authority within IC elements to make foreign disclosure and release decisions rests with IC element heads, SFDRA's, and FDRO's, consistent with Sections D.5 and D.6 above.
 4. (U/[REDACTED]) Intelligence information originating in one IC element may be disclosed or released to a foreign entity by an authorized recipient without seeking originator approval, when the intelligence information meets one of the following conditions:
 - a. (U/[REDACTED]) The information bears no specific dissemination control marking to preclude such disclosure or release and there has been an affirmative decision by a SFDRA or FDRO.
 - (1) Pursuant to EO 13526, this provision applies to those documents created on or after 28 June 2010. Intelligence information created after that date bearing no specific control marking will be handled in the same manner as those documents that bear the *Releasable by Information Disclosure Officer* (RELIDO) marking.
 - (2) Intelligence information created prior to 28 June 2010 that bears no specific dissemination control marking to preclude foreign disclosure or release to a foreign entity shall require an affirmative decision made by the originating IC element's SFDRA.
 - b. (U) The information is marked in such a manner that allows the information to be disclosed or released to foreign entities consistent with ICD 710 and the Controlled Access Program Coordination Office (CAPCO) Register and Manual (e.g., REL TO).
 5. (U/[REDACTED]) U.S. Government organizations seeking foreign disclosure or release of intelligence information that was marked in a manner that indicates that prior authorization is required for such disclosure or release shall request such authorization from the originating IC element either directly or through another organization acting on the requestor's behalf.
 6. (U/[REDACTED]) Originators shall promptly and fully consider foreign disclosure or release requests. In responding to requests, the originating element shall consider the need to support U.S. national security and foreign policy objectives as well as the protection of intelligence sources, methods, and activities. Decisions regarding such requests must be carefully considered and justified in a manner consistent with this Directive.

a. (U) Affirmative decisions require a determination that the intelligence to be disclosed or released is likely to be given adequate protection and is not likely to be used or disclosed by the recipient in a manner harmful to U.S. interests.

b. (U/[REDACTED]) In exceptional cases, there may be a benefit to U.S. interests to disclose or release intelligence to foreign entities under conditions where the recipient's safeguards are likely to be inadequate. In such cases, the anticipated benefits must outweigh the potential damage of any likely compromise.

c. (U) Generally, originating agencies shall respond to routine foreign disclosure and release authorization requests within seven working days. In exceptional cases, requests may require expedited responses. When an originating agency is not able to meet the general timeframe for response, it shall inform the requesting agency of the reason for the delay and expected resolution date.

d. (U) Denials of requests shall be accompanied by written justification for the denial. Requesters may, in response to a denial, propose alternative language for consideration by the originator to address a particular purpose or the needs of a particular recipient. Originators shall work with requesters to explore ways to accommodate such proposals.

7. (U/[REDACTED]) Disputes related to foreign disclosure and release of classified national intelligence that cannot be resolved at the SFDRA or IC element head levels shall be brought through the Assistant Director of National Intelligence for Partner Engagement (ADNI/PE) to the DNI as the final arbiter.

8. (U/[REDACTED]) Foreign disclosure and release decisions shall be coordinated as appropriate, with special consideration given to requests that may present risks to intelligence activities. Originating IC element heads in receipt of such requests shall ensure that such instances are identified and coordinated with affected IC elements. As required to meet the Director, Central Intelligence Agency (D/CIA)'s statutory responsibilities, coordination of foreign disclosure and release decisions shall include the D/CIA.

9. (U/[REDACTED]) IC elements shall continue to handle original intelligence information that has been approved for foreign disclosure or release in accordance with existing IC policy and procedures including but not limited to bilateral agreements and arrangements; classification and control markings policy and procedures; and requirements for handling, retention and destruction as well as applicable IC element policy and guidance. Classification and control markings applied by originators may not be removed from an intelligence product or report without originator approval.

10. (U/[REDACTED]) Foreign disclosure and release decisions will also be governed by IC element-issued procedures and guidance with respect to the intelligence they originate, insofar as they are consistent with this Directive.

11. (U/[REDACTED]) Existing foreign disclosure or release guidance (for example, memoranda, arrangements, agreements, and IC element policies) shall be reviewed for renewal, update, or cancellation within one year of the effective date of this Directive. Existing issuances remain valid only to the extent that they are consistent with this Directive.

12. (U/[REDACTED]) IC element heads shall provide their foreign disclosure and release policies to the ADNI/PE to be made available to the IC foreign disclosure community.

13. (U/[REDACTED]) To align and synchronize community approaches to foreign disclosures and releases, IC elements may request access to other IC element foreign disclosure and release decisions. These requests may be made to the originating element or through respective Foreign Relations Committee representatives. Denials of such requests may be appealed through the mechanism provided in Section E.7 above.

14. (U) Foreign disclosure or release decisions are inherently U.S. governmental functions. Authority to make foreign disclosure or release decisions shall be delegated only to government officials.

15. (U/[REDACTED]) Disclosures and releases of intelligence to SFOs that, due to the rank or position of the foreign official, could be construed as official foreign policy pronouncements of the U.S. Government shall be conducted with prior coordination with affected departments and agencies, consistent with this Directive and subsequent guidance.

16. (U/[REDACTED]) Criteria for intelligence eligible and ineligible for foreign disclosure and release may be found in Intelligence Community Policy Guidance 403.1, *Criteria for Foreign Disclosure and Release of Classified National Intelligence*.

F. (U) ROLES AND RESPONSIBILITIES

1. (U) The DNI

a. (U) Provides strategic guidance and oversight for the conduct of foreign disclosures and releases of intelligence, and issues specific guidance for the establishment, modifications and terminations of, and exceptions to, IC guidance;

b. (U) Authorizes disclosures or releases of intelligence that represent the establishment, modifications or terminations of, or exceptions to, IC guidance, or that concern matters where DNI guidance is absent;

c. (U/[REDACTED]) Authorizes disclosures or releases of intelligence in response to National Security Council policy direction;

d. (U) Will identify or establish a community forum for oversight of IC foreign disclosure and release issues.

e. (U) Will establish a process for requesting DNI guidance or authorization to disclose and release intelligence under circumstances described in Section F.1.a and b above;

f. (U) Will review IC element foreign disclosure and release decisions and policies as appropriate, to ensure consistent implementation of this Directive across the IC;

g. (U) May establish additional guidance and standards pursuant to this Directive;

h. (U) Will review existing DNI issuances and guidance (for example, memoranda, arrangements, agreements, and IC policies) authorizing or limiting foreign disclosures or releases for renewal, update, or cancellation within one year of the effective date of this Directive;

i. (U/[REDACTED]) May issue Concepts of Operations to provide policy guidance for the disclosure or release of intelligence to support coalition, peacekeeping, or other multi-national operations; and

j. (U) Will consult with heads of IC elements and DNI representatives, as appropriate, in the fulfillment of the above responsibilities.

2. (U) Office of the DNI

a. No later than 120 days from the effective date of this Directive, shall issue the following IC policy guidance:

- (1) Criteria and conditions for emergency disclosure or release;
- (2) Procedures by which authorizations for foreign disclosure or release of intelligence may be obtained in matters requiring DNI approval; and
- (3) Procedures for interagency coordination required prior to disclosures and releases to SFOs and in other appropriate circumstances.

b. The ADNI/PE shall be the DNI designee for matters related to the foreign disclosure and release of intelligence. In this capacity, the ADNI/PE shall:

- (1) Support IC element annual training of SFDRA and FDRO through the development of an annual training module on implementing DNI foreign disclosure and release guidance. That module will be provided to the IC elements for inclusion in their respective foreign disclosure and release training programs;
- (2) Maintain the forum for oversight of IC foreign disclosure and release issues described in Section F.1.d;
- (3) Maintain an IC repository of IC element foreign disclosure and release policies and procedures, positions of SFDRA, and IC element foreign disclosure and release points of contact; and
- (4) Provide the DNI and IC element heads a written report annually on the implementation of this Directive for two years following its effective date. After two years this requirement shall be reviewed for cancellation.

3. (U) [REDACTED] Heads of IC Elements

a. (U) Shall ensure that foreign disclosures and releases of intelligence are conducted in accordance with this Directive and other applicable guidance.

b. (U) [REDACTED] Shall manage IC element disclosure and release activities, including:

- (1) Appointing SFDRA within their IC element, with notification to the DNI. Heads of IC elements may not delegate their foreign disclosure and release authority outside their respective elements;
- (2) Developing IC element-specific disclosure and release policy and guidance consistent with DNI guidance, and providing copies of such to the ADNI/PE;
- (3) Documenting their element's foreign disclosure and release processes, and providing that documentation to the IC repository;
- (4) Developing procedures by which Federal departments and agencies may request disclosure or release of intelligence, and making such procedures available via each respective element's website;
- (5) Identifying responsible points of entry for foreign disclosure and release requests and appeals, and providing contact information for the designated points of entry and their associated areas of responsibility;

(6) Establishing a mechanism by which appeals of their element's denials of foreign disclosure or release requests and denials of requests for access to foreign disclosure and release decisions may be brought to the IC element head or senior designee for resolution;

(7) Appealing denials of their element's foreign disclosure and release requests and their requests for access to IC element foreign disclosure and release decisions;

(8) Maintaining records of their foreign disclosure and release decisions; and

(9) Providing training to SFDRA's and FDRO's on implementing IC element and DNI foreign disclosure and release policies and counterintelligence awareness.

4. (U [REDACTED]) Intelligence Community Disclosure and Release Personnel

a. SFDRA's:

(1) Shall manage their element's foreign disclosure and release program, appoint FDRO's responsible for executing authorizations, and ensure compliance with this Directive and other applicable guidance;

(2) May authorize foreign disclosure or release, by those officials identified in Section E.3 above, of intelligence from their own IC element, or from another IC element pursuant to authorization from the originating agency, or of intelligence information bearing the RELIDO marking;

(3) Shall ensure that requests for foreign disclosures and releases are addressed promptly in a manner consistent with this Directive, and that requesting agencies and departments are provided timely, written notification of the status of their requests;

(4) May request information relating to other IC element foreign disclosure and release decisions as provided in Section E.13 above;

(5) Shall ensure consultation with their element's General Counsel, as necessary, about whether authorization to disclose or release intelligence may result in a violation of U.S. or international law, including those disclosures and releases that may support or facilitate lethal action, and shall notify their IC element head of any such consultation; and

(6) Shall undergo annual training in the application of DNI foreign disclosure and release guidance in accordance with Section F.2.b.(1) above.

b. FDRO's:

(1) Shall execute authorizations for foreign disclosure and release of intelligence from their own IC element, and when provided, from another IC element in accordance with guidance from the DNI, their IC element, and their Senior Foreign Disclosure and Release Authority;

(2) Shall provide the requestor with written justification for denials of foreign disclosure or release requests;

(3) In cases where a foreign disclosure or release request is denied, shall work with the requesting department or agency to assess whether there are other means of accommodating the request;

(4) When requesting authorization for foreign disclosures or releases, identify to the originating IC element any other IC elements with known equities in the disclosure or release decision;

(5) Shall consult with their IC element's General Counsel, as necessary, about whether authorization to disclose or release intelligence may result in a violation of U.S. or international law, including those disclosures and releases that may support or facilitate lethal action, and shall notify their SFDRA of such consultation; and

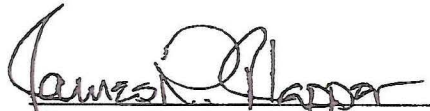
(6) Shall be trained in the application of IC element and DNI foreign disclosure and release guidance and security classification and control markings in accordance with DNI standards and Section F.2.b.(1) above.

5. (U) IC Foreign Disclosure and Release Forum. The forum described in Section F.1.d above shall facilitate foreign disclosure and release community interaction and shall:

a. Serve as a means for the foreign disclosure and release community to exchange information, discuss foreign disclosure issues, and build consensus on matters associated with community disclosure matters; and

b. Serve as a means to formulate recommendations, analysis, and feedback to the IC and the DNI designee regarding IC foreign disclosure and release initiatives and activities.

G. (U) EFFECTIVE DATE: This Directive becomes effective on the date of signature.



Director of National Intelligence

13 MAR 2013
Date