



INTELLIGENCE COMMUNITY POLICY GUIDANCE

107.1

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Requests for Identities of U.S. Persons in Disseminated Intelligence Reports

A. AUTHORITY: The National Security Act of 1947, as amended; Executive Order (EO) 12333, as amended; Presidential Memorandum for the Director of National Intelligence, January 9, 2018; Intelligence Community Directive (ICD) 107, *Civil Liberties and Privacy*; and other applicable provisions of law.

B. PURPOSE

1. This Intelligence Community Policy Guidance (ICPG) establishes guidance for responding to requests for the identities of U.S. persons in disseminated intelligence reports.

2. The Intelligence Community (IC) must continue to provide intelligence to officials who need the information to protect the security of the nation and its allies, and must do so within the framework of protections and oversight that has been established to protect privacy and civil liberties. This ICPG ensures consistency across the IC concerning the release of the identities of U.S. persons that were originally omitted from disseminated intelligence reports.

C. APPLICABILITY

1. This ICPG applies to the IC, as defined by the National Security Act of 1947, as amended, and to such other elements of any 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. The requirements of this ICPG do not affect any minimization procedures established pursuant to the Foreign Intelligence Surveillance Act of 1978, EO 12333, or other provisions of law.

3. This ICPG does not affect the requirements established in Annex A, *Dissemination of Congressional Identity Information* of ICD 112, *Congressional Notification*.

4. This ICPG applies to a request submitted to an IC element for nonpublic identity information with respect to a known unconsenting U.S. person that was omitted from the IC element's disseminated intelligence report (hereinafter "covered request").

D. DEFINITIONS: For the purposes of this ICPG:

1. Disseminating element: An element of the IC that disseminated an intelligence report subject to a covered request.

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2. Originating element: An element of the IC that originated information in a disseminated intelligence report subject to a covered request.

3. Requesting entity: An entity of the U.S. Government or a state, local, tribal, or territorial government that makes a covered request.

4. U.S. person: As defined in section 3.5 of EO 12333 or section 101 of the Foreign Intelligence Surveillance Act of 1978, as appropriate.

5. Identity information: Information that identifies U.S. persons by name or by individually identifying titles or characteristics.

6. Exigent circumstances: Circumstances when there is a reasonable basis to believe that there is imminent danger to a person's life or physical safety or when there are time-critical needs that pose significant risks to important U.S. interests.

E. POLICY

1. The head of each IC element, in consultation with the DNI, the Attorney General (AG), and, for IC elements within the Department of Defense, the Secretary of Defense, shall, within 90 days of signature of this ICPG, develop and maintain procedures to respond to covered requests. These procedures shall, at a minimum, include the following requirements:

a. The disseminating element shall document in writing each covered request received, including:

(1) The name or title of the individual who is making the request in an official capacity on behalf of the requesting entity;

(2) Information that identifies the disseminated intelligence report containing the requested identity information;

(3) The name or title of each individual who will receive the U.S. person identity information sought by the covered request; and

(4) A fact-based justification describing why such U.S. person identity information is required by each individual described in Section E.1.a.(3) to carry out the duties of the individual.

b. A covered request may be approved only by the head of an IC element or a designee to whom the IC element head has delegated such authority in writing. When the disseminating element is not the originating element, the head or designee of the disseminating element shall obtain the concurrence of the head or designee of the originating element before approving a covered request.

c. The disseminating element shall retain records on covered requests, including the disposition of such requests, for not less than 5 years.

d. The records described in Section E.1.c. shall include, with respect to approved and denied covered requests, the name or title of the individual of the disseminating element who approved or denied such requests.

e. In the event of exigent circumstances or where a delay could negatively impact intelligence activities, an immediate disclosure by an individual described in Section E.1.b. to a

requesting entity of U.S. person identity information may be approved based on the rationale provided by the requesting entity. The rationale may be provided orally or in writing. Within 5 business days after such a disclosure, the requesting entity shall provide the basis for making the request, in accordance with Section E.1.a.

f. If a covered request is made during a period beginning on the date of a general election for President and ending on the date on which such President is inaugurated:

(1) The documentation under Section E.1.a. shall include whether:

(a) The individual of a requesting entity who is making the request has conveyed the knowledge or belief that any U.S. person identity information sought by the request is of an individual who is a member of the transition team as identified by the President-elect or Vice President-elect; or

(b) Based on the disseminated intelligence report to which the request pertains, the disseminating or originating IC elements know or reasonably believe that any U.S. person identity information sought by the request is of an individual who is a member of the transition team as identified by the President-elect or Vice President-elect;

(2) The approval made pursuant to Section E.1.b. of a covered request that contains U.S. person identity information described in Section E.1.f.(1) is subject to the concurrence of the General Counsel of the disseminating element (or, in the absence of the General Counsel, the Principal Deputy General Counsel, or, as applicable, the senior Departmental legal officer supporting the IC element) that the dissemination of such identity information is in accordance with the procedures under Section E.1.a.; and

(3) Consistent with due regard for the protection from unauthorized disclosure of classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters, the head of the disseminating element, in consultation with the DNI, shall notify the chairmen and ranking minority members of the congressional intelligence committees of any approval described in Section E.1.f.(2) not later than 14 days after the date of such approval.

2. Reporting Requirements:

a. Not later than March 1 of each year, beginning in 2019, each IC element head shall submit to the DNI, the congressional intelligence committees, and for IC elements within the Department of Defense, the Secretary of Defense, a report documenting the following information with respect to the preceding calendar year:

- (1) The total number of covered requests received;
- (2) Of such total number, the number of requests approved;
- (3) Of such total number, the number of requests denied; and

(4) For each number calculated under paragraphs (1) through (3), the sum total by each requesting entity.

b. Consistent with the IC's Principles of Intelligence Transparency and where permitted by the requirements of EO 13526 to ensure protection of national security information, the DNI will publicly report the total numbers submitted under section E.2.a. (1) through (3) in the annual

Statistical Transparency Report Regarding Use of National Security Authorities. The DNI will report these numbers not later than April 30 of each year, beginning in 2019, with respect to the preceding calendar year.

F. ROLES AND RESPONSIBILITIES

1. Heads of IC elements shall:

- a. Consult with the DNI, the AG, and, for IC elements within the Department of Defense, the Secretary of Defense, on the development and maintenance of procedures to respond to covered requests;
- b. Ensure that documentation for covered requests received from requesting entities includes information required by Section E.1. and is retained for not less than 5 years;
- c. Consider for approval, and approve as appropriate, covered requests that meet the requirements of this ICPG and their implementing procedures as specified in Section E.1.b.;
- d. Ensure that approval of covered requests is subject to General Counsel concurrence, as specified in Section E.1.f.(2);
- e. Notify the congressional intelligence committees of approval of covered requests, as specified in Section E.1.f.(3); and
- f. Annually submit a report to the DNI, the congressional intelligence committees, and for IC elements within the Department of Defense, the Secretary of Defense, on covered requests, as specified in Section E.2.a.

G. EFFECTIVE DATE: This ICPG becomes effective on the date of signature.



Director of National Intelligence

Jan. 11, 2018

Date