

~~UNCLASSIFIED~~

Central Intelligence Agency



Washington, D.C. 20505

Central Intelligence Agency Implementation of Intelligence Community Policy Guidance 107.1
– “Requests for Identities of U.S. Persons in Disseminated Intelligence Reports” Summary

Intelligence Community Policy Guidance.

Intelligence Community Policy Guidance 107.1 (11 Jan. 2018) (ICPG) established guidance for elements of the Intelligence Community (IC) in responding to external requests for the identities of U.S. persons that were originally omitted from disseminated intelligence reports, referred to here as “covered requests.”

The term “covered request” includes any request submitted to an IC element for nonpublic information that identifies a known, unconsenting U.S. person by name or by individually identifying titles or characteristics which the disseminating IC element did not include in its disseminated intelligence report.

The ICPG requires that, within 90 days of its signature, the heads of all IC elements, in consultation with the Director of National Intelligence (DNI) and the Attorney General, develop and maintain procedures to respond to such requests. The Central Intelligence Agency (CIA) developed the required procedures and they are in effect.

CIA’s implementing procedures.

CIA’s procedures, which implement each of the ICPG’s requirements, govern how CIA components process requests from Federal, State, local, tribal, or territorial government officials for information that identifies any U.S. person by name, individually identifying title, or other characteristics (identity) when CIA did not include that identity information, but referred to the U.S. person only generically, in a dissemination to the non-CIA entity that made the request.

CIA’s procedures specify exactly how CIA will process covered requests for the identities of U.S. persons omitted in an original dissemination to the requester, but the procedures do not alter the standard that governs whether CIA may disseminate U.S. person information. CIA disseminations that contain information about a U.S. person will not contain that person’s name or other identifying information unless CIA deems that identifying information necessary in order to ensure that the recipient of the dissemination can understand, assess, or act on the other intelligence information the CIA dissemination contains. That dissemination standard is central to CIA’s Attorney General-approved procedures governing the conduct of CIA intelligence activities, which became effective on 17 March 2017 (Attorney General-approved Procedures). CIA may disseminate U.S. person information to authorized consumers of CIA intelligence, provided that those consumers have a legitimate need for the

~~UNCLASSIFIED~~

information and the dissemination meets the standards set forth in CIA's Attorney General-approved Procedures.

CIA's procedures do not affect the applicability of the Intelligence Community Directive (ICD) on "Dissemination of Congressional Identity Information" (Annex A to ICD 112), but provides that both the ICD and these procedures governing covered requests will apply.

Documentation requirement.

Consistent with the ICPG's requirements, CIA's procedures require CIA components to document all covered requests that they receive including, for each: (a) the name or title of the person who requested the U.S. person's identity in an official capacity; (b) information sufficient to identify the dissemination to which the covered request relates; (c) the name or title of each person the requester says will receive the requested U.S. person identity; (d) a fact-based justification describing why each intended recipient of the U.S. person identity needs the U.S. person identity in order to carry out that recipient's official responsibilities; and (e) the name or title of the CIA officer who approves or denies the covered request. CIA will retain this and any other additional information that relates to the covered request for at least five years.

Consideration of requests – authority – approval and denial.

CIA's procedures limit the authority to approve covered requests to the Director and CIA officers to whom the Director has delegated approval authority in writing by specific reference to the officer's title or official responsibilities. Those designated approving officers may only approve requests directed for action to components that are under their supervisory authority.

CIA's procedures also state that its designated approving officers must not approve any covered request when they have any doubt as to its legitimacy or propriety. CIA officers considering a request may ask the requester to clarify the purpose for which the requester seeks the U.S. person identity, as well as the requester's authority to receive it. If the requester has not provided that additional information within a reasonable time after CIA's reviewing officer has asked the requester to provide it, the CIA officer must deny the request.

Exigent circumstances.

CIA's procedures provide that when there is a reasonable basis for believing 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, or when a delay could have a negative impact on U.S. intelligence activities, any CIA officer to whom the Director has delegated the authority to approve covered requests may approve and disseminate the requested U.S. person identity immediately, based on the rationale that the requester gave CIA and provided that the officer believes that the requester needs or is likely to need the U.S. person identity in order to understand the intelligence CIA disseminated to it previously. In such circumstances, CIA must document the request and its disposition in the manner described above within five business days after providing the identity to the requester.

Presidential Transition Periods.

CIA's procedures require additional documentation and concurrence when outside requesters make covered requests on and from the date of a presidential election through the end of the new President's inauguration day, which the procedures define as a "presidential transition period." During that time, CIA components considering covered requests must also document whether the requester has informed CIA – or CIA (or another IC component that originated the pertinent information in the original CIA dissemination) knows or believes – that the requested U.S. person identity is that of a member of the President- or Vice President-elect's transition team.

CIA's procedures require an additional level of scrutiny when CIA receives, during a "presidential transition period," such a covered request that pertains to someone known or reasonably believed to be a member of the President- or Vice President-elect's transition team. In those instances, in addition to the approvals routinely required (described above), the General Counsel must also concur that the dissemination of the requested U.S. person's identity complies with all of the procedures' requirements described above, including its documentation requirements.

Congressional notification.

During a "presidential transition period," CIA's procedures require that the Director, in consultation with the DNI, notify the chairmen and ranking minority members of the congressional intelligence committees not more than 14 days after CIA has approved the dissemination of the identity of any U.S. person believed to be a member of the President- or Vice President-elect's transition team to an outside requester. The Director, in consultation with the DNI, is to make this notification consistent with due regard for protecting from unauthorized disclosure classified information relating to sensitive intelligence sources and methods or other exceptionally sensitive matters.

When a request relates to a U.S. person member of a presidential transition team who is also a current Member of Congress or member of a congressional staff, CIA's procedures require that CIA follow the congressional notification provisions applicable to any other outside request for the identity of a Member of Congress or congressional staff.

Handling unusual or particularly sensitive requests.

CIA's procedures require that when a CIA officer receives a covered request that seems unusual, particularly sensitive, or for a purpose that is neither clearly permissible nor clearly impermissible, or when the officer cannot establish whether the requester is authorized to have access to the requested U.S. person identity, the officer refer the request to more senior Agency management for guidance, resolution, or further referral for decision or definitive guidance by senior Agency management, in consultation with the Office of General Counsel.

CIA's procedures also require that outside requests to disseminate non-public information that relates to current Members of Congress or congressional staff, as well as requests for non-public information for use in an administrative or judicial proceeding be referred to the Office of General Counsel.

CIA officers considering whether it would be appropriate to approve a dissemination in response to a covered request may ask the requester to clarify the request, if it is unclear or incomplete, but CIA's procedures do not require or authorize CIA components processing such a request to collect additional information about the U.S. person who is the subject of the request.

Responsibilities.

CIA's procedures instruct CIA officers to direct any questions about how to handle U.S. person information in accordance with law and internal CIA regulations to CIA's Office of General Counsel.

CIA's procedures permit CIA components to issue component-specific guidance to assist their officers in considering covered requests, provided that any such guidance or policy conforms fully to the standards set forth in CIA's procedures.

Annual reporting.

CIA's procedures also note the annual reporting obligation contained in the ICPG, which requires that, by 1 March of each year, the Director report the following information to the DNI, the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence: (1) The total number of outside unmasking requests CIA received during the previous year; (2) of that total number of outside requests received, how many CIA approved; (3) of the total number of outside requests received, how many CIA denied; and (4) for each of those three numbers, the subtotals by each requesting entity.