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National Geospatial-Intelligence Agency

INSTRUCTION

NUMBER 5401.2

7 June 2019

MOC

SUBJECT: Requests for US Person Identity Information in Intelligence Reports

References: See Enclosure 1.

1. PURPOSE. This Instruction establishes policy, assigns responsibilities, and provides procedures for responding to requests from an entity other than NGA for the post-publication release and dissemination of US person identity information originally minimized in NGA-derived intelligence reports or products.
2. APPLICABILITY. This Instruction applies to all NGA civilian employees, military service members, other Government agency personnel assigned to NGA, and contractors, hereinafter referred to as *personnel*.
3. DEFINITIONS. See Glossary.
4. POLICY. It is NGA policy that:
 - a. The request for US Person Information (USPI) originally minimized in disseminated NGA intelligence products is conducted in accordance with (IAW) Reference (d).
 - b. This Instruction does not change minimization procedures established pursuant to References (a), (b), (e), (g), or other provisions of law or the requirements established in Reference (c).
5. RESPONSIBILITIES. See Enclosure 2.
6. EFFECTIVE DATE. This Instruction is effective on the date of signature.

A handwritten signature in black ink, appearing to read 'R.D. Sharp', is positioned above the typed name.

Robert D. Sharp
VADM, USN
Director

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Enclosures

1. References
2. Responsibilities
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Glossary

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CHANGE LOG

Change Type	Change Date	Revised By	Pages Affected	Change Description

ENCLOSURE 1

REFERENCES

- (a) Title 50 US Code § 1801, "Foreign Intelligence Surveillance Act [FISA] of 1978," as amended, 25 October 1978
- (b) Executive Order 12333, "United States Intelligence Activities," as amended, 30 July 2008
- (c) Intelligence Community Directive 112, "Congressional Notification," 29 June 2017
- (d) Intelligence Community Policy Guidance 107.1, "Requests for Identities of U.S. Persons in Disseminated Intelligence Reports," 11 January 2018
- (e) Department of Defense (DoD) Manual 5240.01, "Procedures Governing the Conduct of DoD Intelligence Activities," 8 August 2016
- (f) NGA Instruction (NGAI) 8040.2, Volume 1, "Records and Information Lifecycle Management: Records Management Program," 30 March 2016
- (g) NGAI 8900.4, "The Intelligence Oversight Compliance and Awareness Program," 17 January 2018
- (h) Memorandum for Chief Management Officer, DoD, Chief Office of Civil Liberties, Privacy, and Transparency, Office of the Director of National Intelligence, "Designation of NGA Senior Component Official for Privacy and Component Chief Civil Liberties Officer," 19 October 2018

ENCLOSURE 2

RESPONSIBILITIES

1. Director, NGA (D/NGA).

a. Delegates authority to approve Covered Requests to the Associate Director for Operations (ADO) IAW Reference (d).

b. Annually, by 1 March, submits a report on Covered Requests to the Director of National Intelligence (DNI), the Secretary of Defense (SecDef) through the DoD Senior Intelligence Oversight Official, and the congressional intelligence committees IAW Reference (d).

c. In consultation with the DNI, submits reports within 14 days after the date of an NGA Covered Request approval to the Chairmen and Ranking Members of the congressional intelligence committees concerning certain Covered Requests 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 IAW Reference (d).

d. Designates the Senior Component Official for Privacy (SCOP) as the NGA official who facilitates the approval process for Covered Requests IAW Reference (h).

2. ADO.

a. Approves or disapproves Covered Requests.

b. In the event of exigent circumstances or when a delay could negatively impact intelligence activities, approves the Covered Request based on the rationale provided by the Requesting Entity. The rationale may be oral or written.

3. Director, Mission Oversight and Compliance (D/MOC)/SCOP.

a. Coordinates with stakeholders to ensure NGA processes responses to Covered Requests in a timely, efficient, and compliant manner, with assistance from the General Counsel (GC) and other officers as necessary.

b. Assigns responsibility to the Chief, MOC Privacy and Civil Liberties Division (MOCP), to manage the Covered Request process, as shown in Appendix 1 of Enclosure 3.

c. Ensures that requesting entities provide the information necessary to adequately justify the Covered Request IAW Reference (d).

d. Ensures documentation for Covered Requests IAW Reference (d).

e. Creates and retains records of Covered Requests IAW Reference (f).

f. Compiles and provides to D/NGA the information necessary to fulfill the reporting requirement to the SecDef, DNI, and congressional intelligence committees.

g. In the event that the Director's designee approves a Covered Request under exigent circumstances, or where a delay could negatively impact intelligence activities, ensures that the Requesting Entity provides a written basis for making the request within five business days after such a disclosure.

4. General Counsel (GC).

a. Provides GC or, in the absence of the GC, delegee review of Covered Requests when required by paragraph E.1.f. of Reference (d). GC delegation shall extend no further than the Senior Associate GC.

b. Provides legal review of all other requests, and concurrence or non-concurrence to recommendations made to the ADO, including the basis for the decision, as determined by the GC.

5. Directorate Heads and Agency Element Leads.

a. Promptly provide all Covered Requests to the NGA D/MOC for processing.

b. Provide D/MOC with a recommendation of whether to grant the Covered Request.

c. Coordinate on the disclosure of USPI in the Covered Request.

6. Personnel Responsible for Minimization of USPI in an NGA Intelligence Product.

a. Assess the reasoning behind minimization in the subject intelligence product to establish a basis for later revealing USPI.

b. Evaluate whether the justification provided in the Covered Request warrants disclosure of USPI.

c. Provide a recommendation as to disclosure of USPI to Directorate Head or Agency Element Lead.

ENCLOSURE 3

PROCEDURES

1. Covered Requests Submitted to NGA.

a. Directorate Heads or Agency Element Leads forward all Covered Requests to the Chief, MOCP, as shown in Appendix 1 to Enclosure 3.

b. Chief, MOCP, ensures that Covered Requests contain the following written documentation:

(1) The name or title of the individual who is making an official request on behalf of the Requesting Entity.

(2) Information that uniquely identifies the specific NGA-disseminated intelligence report containing the requested USPI.

(3) The name or title of each individual who will receive the US person identity information at the time of release.

(4) A fact-based justification describing why each identified individual requires such USPI to carry out his or her duties.

c. Chief, MOCP, returns Covered Requests that do not contain the information required in paragraph 1.b. to the Requesting Entity for correction and resubmission.

d. For Covered Requests 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, Chief, MOCP, will ensure that the written documentation described in paragraph 1.b. includes:

(1) Whether the individual making the request has knowledge or belief that any US person identity information sought by the request is for an individual who is a member of the transition team as identified by the President-elect or Vice President-elect.

(2) Whether or not there is reasonable belief that the US person identity information sought by the request is an individual who is a member of the transition team as identified by the President-elect or Vice President-elect.

e. Chief, MOCP, forwards Covered Requests that were not originated and minimized by NGA to the originating Intelligence Community element for further action and direct response to the Requesting Entity.

f. Covered Requests containing the required information are forwarded to the appropriate Directorate Head or Agency Element Lead for evaluation.

g. Personnel originally responsible for minimizing USPI in NGA-derived intelligence reports or products IAW Reference (e) review each Covered Request and provide their Directorate Head or Agency Element Lead with a recommendation as to whether a request meets the standards for approval under applicable law and policy, including this Instruction.

(1) Originator reviews the Covered Request justification.

(2) Originator develops approval recommendation.

(3) Directorate Head or Agency Element Lead submits approval/disapproval recommendation to MOCP for processing.

h. Upon receipt of the Directorate Head's or Agency Element Lead's assessment, Chief, MOCP, considers whether a Covered Request meets the standard for approval under applicable law and policy, including this Instruction, and provides an assessment to OGC.

i. Chief, MOCP, retains permanent records with respect to Covered Requests, including the disposition of such requests, as required by Reference (f).

(1) Covered Request records shall be retained for not less than 5 years IAW Reference (d).

(2) Such records include, with respect to approved and denied requests, the name and title of the individual who approved or denied such requests.

j. Annually by 1 February, D/MOC compiles a report of Covered Requests and forwards it to the D/NGA for submission IAW Reference (d).

2. MOCP Review and Evaluation. Chief, MOCP, reviews and evaluates disclosure of USPI recommendations for compliance with Reference (d) prior to forwarding to GC for legal review.

3. GC Review and Evaluation.

a. Reviews Covered Request documentation and recommendations to reveal USPI.

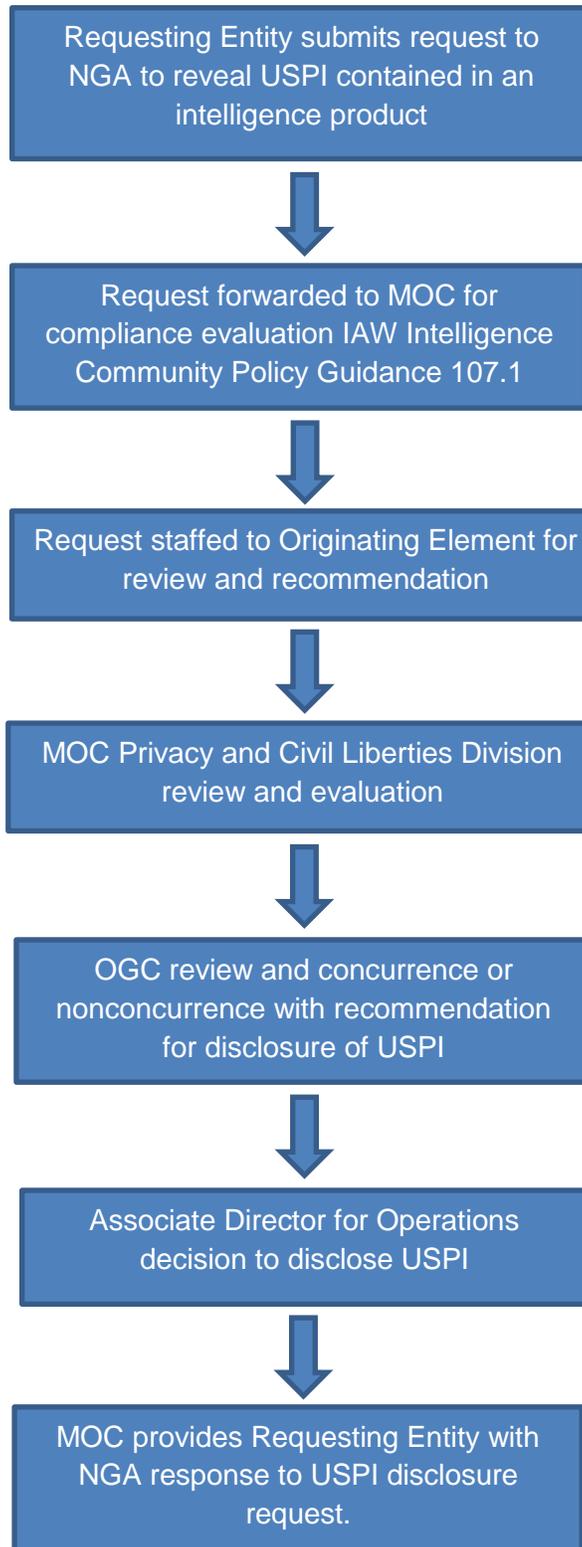
b. Provides concurrence or nonconcurrence with a recommendation to the ADO to reveal USPI previously minimized in an NGA intelligence product based on compliance with the standards for approval under applicable law and policy, including this Instruction.

4. ADO Approval/Disapproval of Covered Request. ADO considers the facts and circumstances of the Covered Request and approves or disapproves the disclosure of USPI originally minimized in NGA intelligence products.

5. D/MOC Covered Request Dissemination. D/MOC provides the Requesting Entity with the NGA response to the disclosure request.

APPENDIX 1

Request to Reveal USPI Process



GLOSSARY

Covered Request	A request from a Requesting Entity for the post-publication release and dissemination of previously minimized, nonpublic identity information of a known unconsenting US person in NGA-derived intelligence reports or products. (Reference (d))
Exigent Circumstances	Circumstances when there is a reasonable basis to believe 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 US interests. (Reference (d))
Identity Information	Information that identifies US persons by name or by individually identifying titles or characteristics. (Reference (d))
Originator	Person who minimizes USPI in an NGA-derived intelligence report or product. (Definition created by NGA for NGA purposes only)
Requesting Entity	An entity of the US Government, or a state, local, tribal, or territorial government, that makes a request subject to this Instruction. (Reference (d))
US Person	A US citizen, an alien known by the intelligence element concerned to be a permanent resident alien, an unincorporated association substantially composed of US citizens or permanent resident aliens, or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. (Reference (b))
US Person Information (USPI)	Information that is reasonably likely to identify one or more specific US persons. USPI may be either a single item of information or information that, when combined with other information, is reasonably likely to identify one or more specific US persons. Determining whether information is reasonably likely to identify one or more specific US persons in a particular context may require a case-by-case assessment by a trained intelligence professional. USPI is not limited to any single category of information or technology. Depending on the context, examples of USPI may include names or unique titles; government-associated personal or corporate identification numbers; unique biometric records; financial information; and street address, telephone number, and Internet Protocol address information. (Reference (e))