

UNCLASSIFIED

DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

ES 2018-00250

MEMORANDUM FOR: Distribution

SUBJECT: Office of the Director of National Intelligence Procedures for
Unmasking Requests

REFERENCES:

- A. The National Security Act of 1947, as amended
- B. The Foreign Intelligence Surveillance Act of 1978
- C. Executive Order (EO) 12333, as amended
- D. Presidential Memorandum for the Director of National Intelligence, January 9, 2018
- E. Intelligence Community Directive (ICD) 107, *Civil Liberties, Privacy, and Transparency*, February 28, 2018
- F. Intelligence Community Policy Guidance (ICPG) 107.1, *Requests for Identities of U.S. Persons in Disseminated Intelligence Reports*, January 11, 2018
- G. *Central Intelligence Agency Intelligence Activities: Procedures Approved by the Attorney General Pursuant to Executive Order 12333*, January 17, 2017
- H. *Guidelines for Access, Retention, Use, and Dissemination by the National Counterterrorism Center and Other Agencies of Information in Datasets Containing Non-Terrorism Information*, March 22, 2012
- I. ICD 112, Congressional Notification, Annex A, *Dissemination of Congressional Identity Information*, January 19, 2017

I. Purpose and Applicability

A. Purpose

ICPG 107.1, *Requests for Identities of U.S. Persons in Disseminated Intelligence Reports*, establishes guidance for Intelligence Community (IC) elements for responding to requests for the identities of U.S. persons (commonly referred to as “unmasking requests”) in disseminated intelligence reports. This document constitutes the Office of the Director of National Intelligence (ODNI) procedures required by ICPG 107.1.

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B. Scope and Applicability

1. The ODNI is an element of the IC, as defined by the National Security Act of 1947, as amended, and Section 3.5(h) of EO 12333, as amended.
2. Pursuant to ICPG 107.1, the procedures in this document set forth how ODNI, as an IC element, will process requests from Federal, state, local, tribal, or territorial government officials for nonpublic identity information with respect to a known unconsenting U.S. person when ODNI omitted that U.S. person identity information in its disseminated intelligence report (hereinafter "covered request").
3. These procedures apply exclusively to requests for nonpublic U.S. person identity information that was omitted (commonly referred to as "masked") in disseminated ODNI reporting. Nothing in these procedures affects the standards that control whether ODNI may collect, retain and/or disseminate information relating to U.S. persons.
4. The procedures set forth herein do not affect any minimization procedures established pursuant to the Foreign Intelligence Surveillance Act of 1978, EO 12333, or other provisions of law.
5. Nothing in these procedures affects the requirements established in Annex A, *Dissemination of Congressional Identity Information* of ICD 112, *Congressional Notification*.

II. Definitions

- A. Intelligence Community has the meaning given to the term in Section 3.5 of Executive Order 12333.
- B. Disseminating element means an element of the IC that disseminated an intelligence report subject to a covered request.
- C. Originating element means an element of the IC that originated information in a disseminated intelligence report subject to a covered request.
- D. Requesting entity means an entity of the U.S. Government or a state, local, tribal, or territorial government that makes a covered request.

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- E. U.S. person shall have the same meaning it is given under Section 3.5 of EO 12333 or section 101 of the Foreign Intelligence Surveillance Act of 1978, as appropriate.
- F. Identity information means U.S. person identifying information as defined in the 2017 Attorney General-approved procedures applicable to ODNI that implement section 2.3 of EO 12333.
- G. Masked means the use of alternate or generic wording in data subject to dissemination that does not permit the reader to ascertain the identity of a U.S. person.
- H. Exigent circumstances means 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.
- I. General Counsel means the ODNI General Counsel or, in the absence or unavailability of the General Counsel, the Principal Deputy General Counsel.
- J. Presidential transition period means the period beginning on the date of a general election for President and ending on the date on which such President is inaugurated.

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

A. Authority to Approve

Requests covered by these procedures shall be approved only by the Director of National Intelligence (DNI) or a designee to whom the DNI has delegated such authority in writing, pursuant to ICPG 107.1. In cases where ODNI is not the originating element, for information in a disseminated intelligence report that is the subject of a covered request, the DNI or designee shall obtain the concurrence of the head or designee of the originating element before approving a covered request.

B. Notification

Within 48 hours of approving or denying a covered request, the DNI or the designee shall provide notification to ODNI's Office of General Counsel and Office of Civil Liberties, Privacy, and Transparency. Such notification shall include the documentation required below in Section III.C. ODNI's Office of Civil Liberties, Privacy, and Transparency will retain a record of the notification as required below in Section III.D.

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C. Documentation

ODNI components shall document in writing the following information for each covered request received by ODNI for action by a component:

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 U.S. person 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 III.C.3. to carry out the duties of the individual.

D. Records Retention

The ODNI's Office of Civil Liberties, Privacy, and Transparency will retain the records of covered requests for at least five (5) years and include the following information:

1. The disposition of the covered request; and
2. The name or title of the ODNI employee who approved or denied such request.

E. Exigent Circumstances

In the event of exigent circumstances or where a delay could negatively impact intelligence activities, the DNI or a designee under Section III.A. above may immediately disclose the requested identity information, based on the rationale provided to the ODNI 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 having made the request, in accordance with Section III.C. The ODNI component will provide the notification specified in Section III.B. within 48 hours of ODNI approving or denying an exigent circumstance request and shall also provide notification of the referenced basis from the requesting entity once received.

F. Requests Made During Presidential Transition Periods

If ODNI receives a covered request during a presidential transition period, as defined herein, ODNI components shall follow these procedures.

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1. Documentation

The documentation required under Section III.C. shall, in addition, 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, ODNI or the originating IC element knows or reasonably believes 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. Approval

Authority to approve requests for U.S. person identity information during presidential transition periods shall be as described in Section III.A., except that approvals of requests for the release of identity information described in Section III.F.1. shall also require the concurrence of the General Counsel that the dissemination of such identity information is in accordance with the procedures under Section III.C.

3. Congressional Notification

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 DNI shall notify the chairmen and ranking minority members of the congressional intelligence committees of any approval described in Section III.F. not later than 14 days after the date of such approval.

G. Annual Reporting Requirements

Not later than February 1 of each year, beginning in 2019, the ODNI Office of Civil Liberties, Privacy, and Transparency shall provide a draft annual report to the DNI, who will in turn annually submit to the congressional intelligence committees, not later than March 1 of each year, beginning in 2019, a final 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

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

The Office of Civil Liberties, Privacy, and Transparency, in coordination with the Office of General Counsel, shall review the reporting numbers from ODNI components in Section III.G., and consistent with the IC's Principles of Intelligence Transparency and, where appropriate, the requirements of EO 13526 to ensure the protection of national security information, shall publicly report the total numbers submitted by ODNI under Section III.G.1 through 3. for inclusion in the annual DNI 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, consistent with the requirements of Section E.2.b. of ICPG 107.1.



Director of National Intelligence

Jan. 9, 2019
Date

Distribution:
All ODNI Components