

SNCTC

Fusion Center

Initial Training Program

*Privacy, Civil Rights
& Civil Liberties*

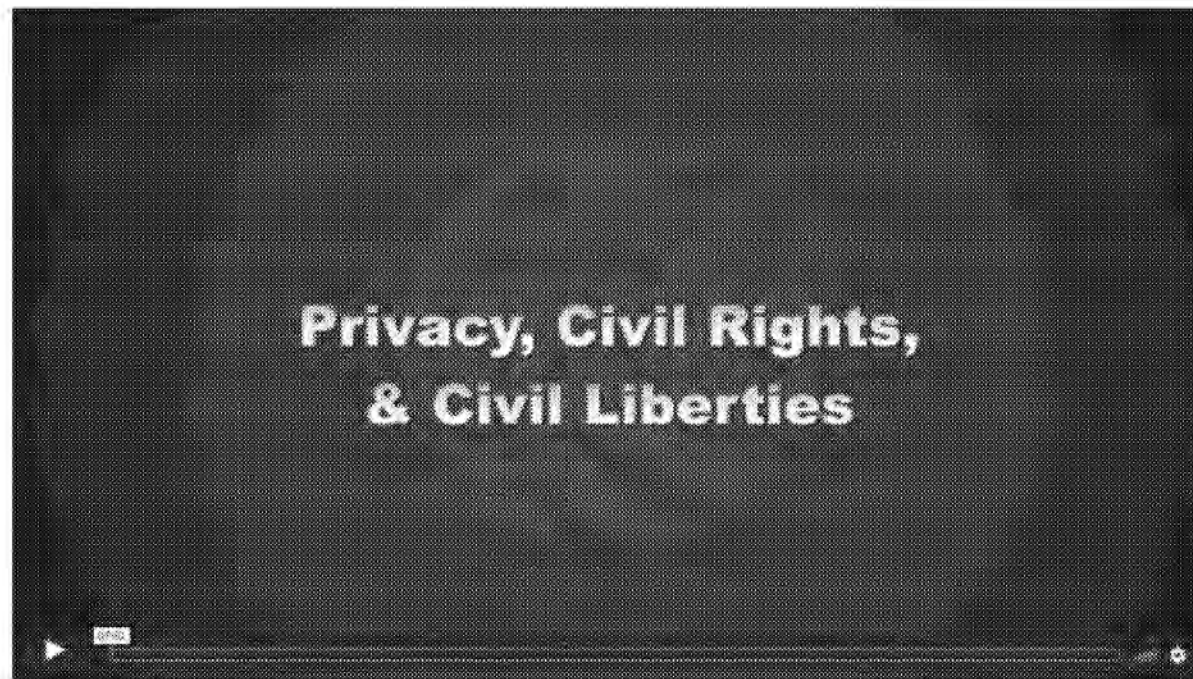
Warning and Issues for IA



Module 10.1

P/CRCL Protection Policies *for Fusion Centers*

P/CRCL Protection Policies Critical to the Fusion Centers Success



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DHS-001-05722-000726

P/CRCL Protection Policies

Handle With Care

The most difficult challenge facing Fusion Centers is the improper handling of 1st Amendment protected activity.

The government may *never collect or disseminate information or conduct investigations based solely on First Amendment protected activities*

FIRST AMENDMENT PROTECTED ACTIVITIES

Religion ★ Speech ★ Press
Assembly ★ Petition

Identify a NEXUS to violence, criminality or another lawful predicate

1st Amendment

Concerns for Fusion Centers

Three 1st Amendment Concerns for Fusion Centers

1. WHO: *Distinguish who is involved in protected activities*

There is a distinction between criminal groups, lawful groups with a few criminal members, and lawful groups with some leaders who are criminals – distinguish them carefully!

3. WHAT: *Develop a proportional and accurate product*

Determine what degree of inquiry is justified by the reason you are investigating.

2. WHY: *Articulate a lawful predicate*

Avoid constructions that can lead readers to think that public safety (or some other predicate) is merely a pretext for your report or activity

✓ Checklist:

Handling 1st Amendment Information

4-Step Framework to Properly Handle Information to Protect 1st Amendment

☐ **Is the activity protected activity?**

Speech, religious expression, free assembly, press, petition government for redress of grievances

☐ **If yes, is there a lawful predicate for using the information?**

For example: Reasonable suspicion a crime is afoot, public safety and order, protection of critical infrastructure

☐ **If there is a lawful predicate, is the report congruent and proportional to the threat posed and justified by police action or reporting?**

Research and product must logically follow from the predicate, and be proportional to it (least intrusive means), staying within the scope of the authorized mission

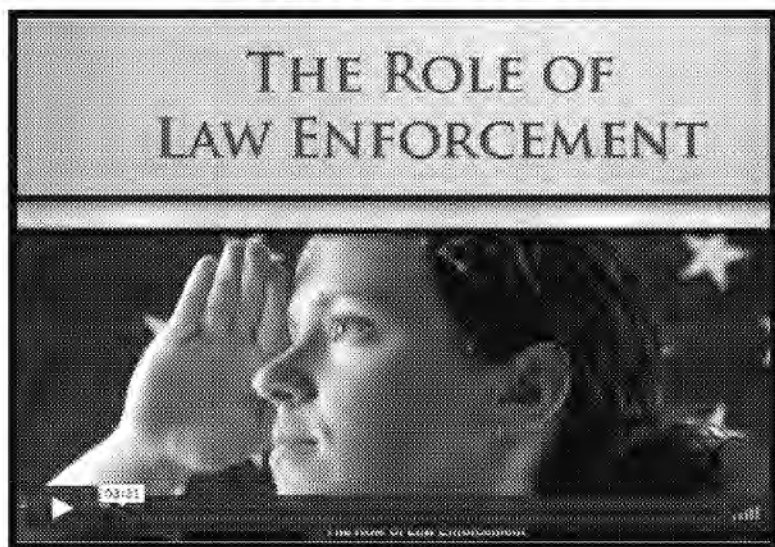
☐ **Is the report an evenhanded response and free of bias?**

Respond objectively and be evenhanded toward similarly situated groups, regardless of their viewpoint

First Amendment

Role of Law Enforcement

*Line Officer Roll Call Video:
First Amendment –
The Role of Law
Enforcement*



Click image to start video

LAW ENFORCEMENT'S PRIMARY MISSION

Public Safety
and
Protection of Property
while ensuring individuals
can freely exercise their
constitutionally protected rights
under the
U.S. Constitution
and
State Constitutions

Proceed with Caution

*What are some topics that
require additional
caution by Intel Analysts?*

Proceed with Caution

TOPICS THAT INVOLVE:

- ★ Heightened Legal Protection
- ★ Intense Public, Legislative or Judicial Scrutiny
- ★ An Area with Particularly Nuanced Policy Issues



Fundamental Rights Activities

Inclusion of constitutionally protected rights activities

- Failure to differentiate between individual actions and group actions in 1st Amendment-protected activity
- Distinguishing between
 - individuals/groups engaged in protected activities *and*
 - groups/individuals engaged in protected activity + *crime*
- Avoid integrating references to protected activities where not necessary
- Use care when selecting language regarding expressive conduct and associations
 - Stay neutral and even-handed
 - Sufficiently tailored to the predicate for the product
- Recognize the right to express different and extreme opinions
- Use religious terms appropriately

Suspect Classifications

- Collection/retention of information or descriptions of individuals perpetuating or relying on racial or ethnic stereotypes
 - Example: Capturing or sharing of targeted demographic information (mapping) as a tool to watch a discrete racial, ethnic or religious group
- **Strict Scrutiny Test** (fact specific)
 - must be justified by a **compelling interest**;
 - that is **narrowly tailored** to achieve that goal or interest; and
 - must be the **least restrictive means** to achieve that interest.



Unvetted Information

Faulty shared information can have “downstream” consequences

- Use of materially inaccurate, misleading or expunged information in later search and seizure
- Due process issues

Are your data integrity and redress procedures sufficient in light of the potential harm?

- Correct information / report incorrect information

Mission Creep

Mission Creep

- Extending the mission of a particular partner agency without ensuring proper authorities, procedures and protections are in place;
- Pushing (or inviting) partner agencies into investigations, operations and data sharing that exceed their legal authorities or skill set.

How to Avoid Mission Creep

- A good rule of thumb is to know your authorities and mission and if you act within those authorities, you generally will not run afoul of constitutional protections.

Other Issues

- Video feeds retained and/or used to identify people
- Requests to vet private sector personnel involved in critical infrastructure
- Tension between federal and state law on what information should be publically available: FOIA, Sunshine Laws