

Intelligence Law Division Job Aid 2020-002:
DHS Office of Intelligence & Analysis (I&A) Portland Surge Operation (July 9, 2020)

This job aid is provided in conjunction with the deployment of I&A Field Operations Division (FOD) and Current and Emerging Threat Center (CETC) personnel in support of I&A's "Portland Surge Operation."¹ I&A is supporting federal, state, and local authorities responding to sustained violent attacks by Violent Opportunists (VOs) targeting law enforcement officers (LEOs) and federal buildings, as well as monuments and other statues within the city of Portland, OR. These attacks, seemingly conducted by Violent Opportunist (VO) actors, have been occurring sporadically since May 28, 2020. More recent attempts to incite further attacks, however, signal the near-term continuation/escalation of VO activities. As a result, I&A has decided to surge personnel to Portland immediately. While the scope of this job aid is limited to Portland Surge Operation deployments, it may relate more broadly to I&A intelligence activities undertaken in response to sustained VO activities occurring at other protests.²

Your Reasonable Belief. As a first matter, to engage in any intelligence activity addressed in this job aid, you must have a reasonable belief that it supports a mission described below. Concluding your belief is reasonable is an individual obligation and must be based on information available to you. You yourself are responsible for articulating your conclusion. You establish reasonable belief as follows:

- By supporting your reasonable belief with facts and circumstances you can articulate.
- By avoiding relying on "hunches" and intuitions, which are insufficient.
- By basing your reasonable belief on your own experience, training, and knowledge, while being able to state how you have applied your expertise to the facts before you.

Appropriate Missions. This job aid applies to intelligence activities in furtherance of one or more of the following missions³ **in the context of recent protests:**

1. Threats of or actual violence to law enforcement personnel, facilities, or resources;
2. Threats of or actual violence against other individuals (including lawful protestors); and
3. Threats of or information related to damaging, destroying, or impeding the functions of government facilities.

Appropriate Intelligence Activities: You may access intelligence or information where you reasonably believe that viewing it would further one or more of the missions described above,

¹ See Portland Surge Operation CONOPS, Civil Unrest – Threats to Law Enforcement/Federal Facilities (July 7, 2020).

² In addition to FOD personnel, I&A is also seeking to deploy Open Source Collections Office (OSCO) personnel to Portland. Previous guidance provided to OSCO applies to these individuals' activities (see July 2018 memorandum from the Office of the General Counsel (OGC) Intelligence Law Division (ILD) and the June 2020 job aid). However, should these OSCO personnel be surged to support FOD's efforts, this job aid would apply to their activities.

³ Note this guidance in no way limits how I&A personnel execute other missions in accordance with the Attorney General-approved Office of Intelligence and Analysis Intelligence Oversight Guidelines (IO Guidelines) (Jan. 11, 2017).

and may collect, retain, and report it only in accordance with the sections below. However, you are prohibited from engaging in any intelligence activity for (1) the **sole purpose** of monitoring activities protected by the First Amendment or the lawful exercise of other Constitutional or legal rights, or (2) for the **purpose** of suppressing or burdening criticism or dissent. Following this job aid can help you steer clear of such Constitutional concerns.

1. Collecting, Retaining, and Reporting Information from Law Enforcement Partners

Collection. To proceed from access to collection of information you are required to use the least intrusive collection techniques feasible and may **intentionally** collect United States Persons Information (USPI) only where you reasonably believe it (1) furthers a national or departmental mission **and** (2) will result in permanently retainable USPI.

You may collect from law enforcement partners—state, local, tribal, and territorial (SLTT) as well as Federal LEOs—so long as you do so overtly.

Retention. Any properly collected USPI can be permanently retained so long as it meets one of the standard or supplemental information categories in I&A's IO Guidelines.⁴ Any USPI collected that does not (1) further a national or departmental mission and (2) meet an information category must be purged for operational purposes within 180 days of collection.

*Dissemination.*⁵ Any permanently retained USPI may be disseminated to other elements of DHS, to federal, state, local tribal, or territorial (FSLTT) government entities with law enforcement (LE), counterterrorism (CT), or national or homeland security related functions, or to private sector entities or individuals with responsibilities relating to homeland security **only** where you have a reasonable belief that such a dissemination would assist the recipients in fulfilling one or more of their lawful intelligence, LE, CT, or other homeland security-related functions.

2. Collecting, Retaining, and Reporting Information from Individuals in Custody

Collection. You may also collect from incarcerated, detained, or arrested persons so long as you do so overtly. Overt collection from such sources requires that you disclose at the outset to these individuals that you are employed with the United States Government. I&A policy further requires that you state to them that you are an employee of DHS, and also inform them that their participation is voluntary, that your interview can be terminated by either of you at any time, and that they will receive no preferential treatment in speaking with you and have no right to edit your notes.⁶ These requirements are especially important to remember in the context of

⁴ See IO Guidelines at 11-15. Note that these information categories track with the exemption codes in HOT-R and CHROME.

⁵ The dissemination rules described here and below apply regardless of the format of dissemination, including by email, orally, or informally passing information. Note also that any internal transmission of information (to I&A headquarters) in the form of a Daily Rollup, for instance, would not be considered a dissemination under the IO Guidelines.

⁶ See IA-907-00, Overt Human Collection Program at 9 (June 29, 2016).

interviewing sources who may be facing criminal charges and who might think they could curry favor with law enforcement by engaging voluntarily with I&A.

Retention. Any properly collected USPI can be permanently retained, so long as it meets one of the standard or supplemental information categories in the IO Guidelines.⁷ Any USPI collected that does not (1) further a national or departmental mission and (2) meet an information category must be purged for operational purposes within 180 days of collection.

Dissemination. Any permanently retained USPI may be disseminated to other elements of DHS, to FSLTT government entities with LE, CT, or national or homeland security related functions, or to private sector entities or individuals with responsibilities relating to homeland security **only** where you have a reasonable belief that dissemination would assist these recipients in fulfilling one or more of their lawful intelligence, LE, CT, or other homeland security-related functions.

3.. Additional Support to Law Enforcement Partners and Other Activities

As set forth in the IO Guidelines, assistance to law enforcement and other civil authorities beyond that described above—including the provision of technical support and specialized equipment—requires coordination with and approval in each case by ILD.⁸ Additionally, I&A may not engage in physical surveillance, except for limited counter-intelligence purposes involving other I&A personnel or applicants not relevant to this job aid.⁹

⁷ IO Guidelines at 11-15.

⁸ *See id.* at 26.

⁹ *See id.* at 7.