

REQUESTS FOR IDENTITIES OF U.S. PERSONS IN DISSEMINATED INTELLIGENCE REPORTS

I. Purpose

This Instruction implements Department of Homeland Security (DHS) Directive 264-01, "Intelligence Integration & Management" and complies with Intelligence Community Policy Guidance (ICPG) 107.1, "Requests for Identities of U.S. Persons in Disseminated Intelligence Reports." The Instruction establishes the responsibilities, procedures, and standards for responding to requests for the identities of U.S. persons (USPERs) in disseminated intelligence reports within a framework of oversight and protection of privacy and civil liberties for the Department.

II. Scope

A. In accordance with applicable DHS regulations and Intelligence Community Directive (ICD) 107, "Civil Liberties, Privacy, and Transparency" this Instruction applies to all Departmental intelligence functions. This Instruction concerns requests for nonpublic Identity Information with respect to a known unconsenting USPER that was originally omitted from a disseminated DHS intelligence report disseminated by DHS Intelligence and Analysis (I&A) or by DHS Intelligence Enterprise (IE) Components when acting under Title 50 intelligence authorities. This instruction does not apply to DHS Component-disseminated law enforcement intelligence reporting.

B. This Instruction does not affect the requirements established in Annex A, "Dissemination of Congressional Identity Information" of ICD 112, "Congressional Notification," the Foreign Intelligence Surveillance Act of 1978, Executive Order (EO) 12333, or other applicable provisions of law.

C. This instruction does not affect the requirements established in Office of Intelligence and Analysis Intelligence Instruction IA-901, "Production of Finished Intelligence," August 3, 2016.

D. This instruction does not apply to the U.S. Coast Guard, and nothing in it affects (1) the United States Coast Guard when operating under the direct authority of the Secretary of Defense or the Secretary of the Navy pursuant to Title 14, U.S.C. Section 103; (2) the resources provided by or the authority of the

Director of National Intelligence over the Coast Guard as a member of the Intelligence Community; or (3) the authorities and responsibilities of the Commandant of the Coast Guard to command or control the Coast Guard as an armed force or member of the Intelligence Community (IC).

E. This Instruction does not affect or supplant any provisions set forth in the Privacy Act of 1974, the e-Government Act of 2002/Federal Information Security Management Act (FISMA), OMB regulations and guidance implementing these two statutes, or any internal DHS Directives, Instructions or Guidance issued pursuant to the authorities vested in the DHS Office of Privacy and DHS Office of Civil Liberties by the Homeland Security Act.

III. References

- A. Executive Order 12333, "United States Intelligence Activities," as amended
- B. Executive Order 13526, "Classified National Security Information," December 29, 2009
- C. Presidential Memorandum for the Director of National Intelligence, January 9, 2018.
- D. Intelligence Community Directive (ICD) 107, "Civil Liberties, Privacy, and Transparency," February 28, 2018
- E. Intelligence Community Policy Guidance (ICPG) 107.1, "Requests for Identities of U.S. Persons in Disseminated Intelligence Reports," January 11, 2018
- F. Intelligence Community Directive (ICD) 112, "Congressional Notification," Annex A, "Dissemination of Congressional Identity Information," January 19, 2017
- G. DHS Intelligence Enterprise Policy Directive 8310, "Request for Information (RFI)," February 21, 2007
- H. DHS Directive 262-05, "Information Sharing and Safeguarding"
- I. DHS Directive 264-01, "Intelligence Integration & Management"
- J. DHS Instruction 262-05-001, "DHS Information Sharing Environment"
- K. DHS Instruction 264-01-011, "DHS Intelligence Foreign Disclosure and Release Program"

L. Office of Intelligence and Analysis Intelligence Instruction IA-1000, "I&A Intelligence Oversight Program and Guidelines," January 19, 2017

IV. Definitions

Except where defined below, all terms are as defined in the DHS Lexicon. The below definitions are drawn from ICPG 107.1 and EO 12333.

- A. **Disseminating Element**: Any DHS Component responsible for a disseminated intelligence report subject to an Identity Request.
- B. **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 U.S. interests.
- C. **General Election Requests**: An Identity Request made during a period beginning on the date of a general election for President and ending on the date on which the President is inaugurated.
- D. **Identity Information**: Information that identifies USPERs by name or by individually identifying titles or characteristics.
- E. **Identity Request**: A request submitted for nonpublic Identity Information with respect to a known unconsenting USPER that was originally omitted from the Originating Element's disseminated intelligence report.
- F. **Originating Element**: Any element of the Department that originated information in a disseminated intelligence report subject to an Identity Request.
- G. **Requesting Entity**: An entity of the U.S. Government or a state, local, tribal, or territorial (SLTT) government that makes an Identity Request.
- H. **USPER**: As defined in section 3.5 of EO 12333, a United States person (USPER) means a United States citizen, an alien known by the intelligence element concerned to be a permanent resident alien, an unincorporated association substantially composed of United States 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.

V. Responsibilities

- A. **Under Secretary for Intelligence and Analysis (USIA)/Chief Intelligence Officer (CINT)**: Establishes guidelines and procedures for DHS when responding to Identity Requests in accordance with ICPG 107.1.

1. Consults with the Director of National Intelligence (DNI) and the U.S. Attorney General (AG) on the development and maintenance of procedures to respond to Identity Requests;
2. Ensures that documentation for Identity Requests received from Requesting Entities includes information required by Section VI.A.2 of this Instruction and is retained for not less than 5 years;
3. Considers Identity Requests and approves as appropriate;
4. Ensures concurrence with the head or designee of the Originating Element when I&A is the Disseminating Element but not the Originating Element;
5. Ensures that approval of Identity Requests is made with the concurrence of the Associate General Counsel/Intelligence Law Division (AGC/ILD), as specified in Section VI.C;
6. Notifies the congressional intelligence committees of approval of General Election Requests;
7. Annually submits a report on Identity Requests to the DNI and the congressional intelligence committees, as specified in Section VI.D;
8. Hereby delegates approval authority for Identity Requests to the following individuals:
 - a. Principal Deputy Under Secretary for Intelligence and Analysis (PDUSIA);
 - b. Deputy Under Secretary for Intelligence Enterprise Operations (DUSIEO);
 - c. Current and Emerging Threat Center (CETC) Director and Deputy Director;
 - d. In the case of Exigent Circumstances outside of normal duty hours, the CETC Supervisory Team Chief; and
9. Submits a list of any additional delegations of Identity Request approval authority to the I&A Intelligence Oversight Officer and AGC/ILD.

B. I&A Intelligence Oversight Officer.

1. Assists the CINT in preparing notification of approved Identity

Requests to the congressional intelligence committees, as specified in Section VI.D; and

2. Assists the CINT in preparing an annual report to the DNI on Identity Requests, as specified in Section VI.E.

C. **Associate General Counsel for Intelligence Law Division**: Considers General Election Requests, and provides concurrence consistent with section VI.C.

D. **DHS Single Point of Service (DHS-SPS) RFI Managers**: Validate, facilitate, track, and monitor Identity Requests through the lifecycle of each Identity Request (including assigning a unique identifier for each Identity Request received);

1. Ensure Identity Requests include information required by Section VI.A.2.a – g;

2. Ensure Identity Requests are routed to the appropriate authority of the Originating Element for concurrence;

3. Ensure Identity Requests are routed to the Intelligence Oversight Officer, Office of Civil Rights and Civil Liberties (CRCL), DHS Privacy (PRIV) and AGC/ILD for review;

4. Send Identity Requests to the CINT or a designee for decision;

5. Maintain records of all Identity Requests including the disposition of these requests, for not less than 5 years. At a minimum, these records shall include:

a. The name or title of the individual who is making the request in an official capacity on behalf of the Requesting Entity;

b. Information that identifies the disseminated intelligence report containing the requested Identity Information;

c. The name or title of each individual who will receive the Identity Information sought by the Identity Request;

d. A fact-based justification describing why Identity Information is required to carry out the duties of the individuals who will receive the information; and

e. The name or title of the individual of the Disseminating Element who approved or denied such requests.

VI. Content and Procedures

A. Identity Requests are Processed by DHS-SPS:

1. DHS-SPS is a centralized resource responsible for processing Identity Requests within DHS. All pertinent Identity Requests are to be routed through DHS-SPS. The informal sharing of identities of anonymized or minimized USPERs in disseminated intelligence products is not permitted.
2. Upon receipt, DHS-SPS validates Identity Requests to ensure compliance with Departmental standards for submission and/or fulfillment of an RFI and this Instruction. As part of this validation, process DHS-SPS checks DHS historical records for similar requests or responses before fulfilling a request. For DHS-SPS to perform this validation, the Identity Request must clearly articulate the following:
 - a. The name or title of the individual who is making the request in an official capacity on behalf of the Requesting Entity;
 - b. Information that identifies the disseminated intelligence report containing the requested Identity Information;
 - c. The name or title of each individual who will receive the Identity Information sought by the Identity Request;
 - d. The basis for the request (e.g., the agency is investigating associates of known terrorists located in the United States);
 - e. How the basis for the request reasonably supports a national or Departmental mission; and
 - f. Fact-based justification describing why such Identity Information is required by each individual described in the request to carry out the duties of the individual (i.e., the need-to-know of each individual who will receive the Identity Information);
3. All Identity Requests are referred to the Intelligence Oversight Officer, CRCL, PRIV and AGC/ILD for consultation to ensure that submission or fulfillment of the request accords with applicable policy and law.
4. Identity Requests may be approved by the CINT or a designee delegated such authority in writing, such as those listed in Section V.A.8.

5. If I&A is not the Originating Element of the Identity Information sought in the Identity Request, the DHS-SPS RFI manager obtains the concurrence of the head or designee of the Originating Element.

B. **Exigent Requests**: In the event of Exigent Circumstances or where a delay could negatively affect intelligence activities the following procedures apply:

1. The CINT or a designee may be contacted directly by the Requesting Entity to request an immediate disclosure of the identity.
2. The request may be approved based upon the rationale provided by the Requesting Entity. Such rationale may be provided orally or in writing.
3. Within five business days of such a disclosure, the CINT or a designee responding to an exigent request shall provide all information required by Section VI.A.2 in writing to the DHS-SPS for record keeping.

C. **General Election Requests**: General Election Requests are subject to these further requirements:

1. DHS-SPS must document the following with respect to General Election Requests:
 - a. Whether the individual of a Requesting Entity who is making the request knows or believes that any 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. Whether, based on the disseminated intelligence report to which the request pertains, the disseminating or Originating Elements know or reasonably believe that any 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. When either VI.C.1.a or b are answered affirmatively, approval of General Election Requests are subject to the concurrence of the AGC/ILD to ensure that the dissemination of such Identity Information is in accordance with the procedures under section VI.A.3;
3. When either VI.C.1.a or b are answered affirmatively, the CINT, in consultation with the DNI, shall notify the chairmen and ranking minority members of the congressional intelligence committees of any General Election Request approvals not later than 14 days after the date such

approval.

D. **Reporting Requirements:** Not later than March 1 of each year, the Intelligence Oversight Officer shall create an "Unmasking Report." The CINT certifies and submits the Unmasking Report to the Office of the Director of National Intelligence (ODNI), and the congressional intelligence committees, and provides copies to PRIV, OGC, and CRCL. The Unmasking Report contains the information with respect to the preceding calendar year:

1. The total number of Identity Requests received;
2. Of such number, the number of requests approved;
3. Of such number, the number of requests denied; and
4. For each number calculated under (1.) through (3.), the sum total by each Requesting Entity.

VII. Questions

Questions regarding the interpretation of this Instruction should be referred to the AGC/ILD. Questions regarding the execution or implementation of this Instruction should be referred to the Intelligence Oversight Officer. The CINT, acting through the AGC/ILD, consults with the Department Of Justice's National Security Division and ODNI's Office of the General Counsel regarding novel or significant interpretations of this Instruction, as appropriate.

(b) (6)

David J. Glawe

Under Secretary for Intelligence and Analysis
Chief Intelligence Officer

2/24/20

Date