

MEMORANDUM FOR HEADS OF ELEMENTS OF THE INTELLIGENCE COMMUNITY

SUBJECT: Policies and Procedures for Requesting Identities of United States Persons in Intelligence Reporting

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Security Act of 1947 (50 U.S.C. 3001, et seq.), as amended, it is hereby ordered as follows:

Section 1. Policy.

My highest priority as President is to protect the United States against threats to our national security. At the same time, I have a solemn duty to protect the constitutional and statutory rights of all Americans. To those ends, my Administration will regularly review our national security policies to ensure that, to the maximum extent possible, they are achieving their objectives while protecting individual rights and privacy interests.

Sec. 2. Requirement for New Procedures.

Within 90 days of this directive, the head of each element of the intelligence community, in consultation with the Director of National Intelligence and the Attorney General, shall develop and maintain procedures for that element to respond to covered requests. These procedures shall, at a minimum, include the following requirements:

- (1) The originating element documents in writing each covered request received by the element, including:
 - (A) the name or title of the individual of the requesting element who is making the request;
 - (B) the name or title of each individual who will receive the United States person identity information sought by the covered request; and
 - (C) a fact-based justification describing why such United States person identity information is required by each individual described in subparagraph (B) to carry out the duties of the individual.
- (2) A covered request may be approved only by the head of the originating element or by officers or employees of such element to whom the head has specifically delegated such authority.
- (3) The originating element retains records on covered requests, including the disposition of such requests, for not less than 5 years.
- (4) The records described in paragraph (3) include, with respect to approved covered requests, the name or title of

the individual of the originating element who approved such request.

(5) The procedures include an exception that--

(A) allows for the immediate disclosure of United States person identity information in the event of exigent circumstances or where a delay could result in the loss of intelligence; and

(B) requires that promptly after such disclosure the requesting element makes a covered request with respect to such information.

(6) If a covered request is 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--

(A) the documentation under paragraph (1) includes whether--

(i) the individual of a requesting element who is making the request has conveyed the knowledge or belief that any United States person identity sought by the request is of an individual who is a member of the transition team of the President-elect and Vice-President-elect; or

(ii) based on the intelligence community report to which the request pertains, the originating element knows or reasonably believes that any United States person identity sought by the request is of an individual who is a member of the transition team of the President-elect and Vice-President-elect;

(B) the approval made pursuant to paragraph (2) of a covered request that contains a United States person identity described in subparagraph (A) of this paragraph is subject to the concurrence of the general counsel of the originating element (or, in the absence of the general counsel, the first assistant general counsel) that the dissemination of such identity information is in accordance with the procedures under subsection (a); and

(C) 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 head of the originating element notifies the chairmen and ranking minority members of the congressional intelligence committees of any approval described in subparagraph (B) of this paragraph not later than 14 days after the date of such approval.

Sec. 3. Reporting Requirements.

(a) Not later than April 30 of each year, the head of each

element of the intelligence community shall submit to the President's Intelligence Oversight Board, the Director of National Intelligence, and the congressional intelligence committees a report documenting, with respect to the calendar year immediately preceding such year covered by the report--

(1) the total number of covered requests received by that element;

(2) of such total number, the number of requests approved;

(3) of such total number, the number of requests denied;

and

(4) for each number calculated under paragraphs (1) through (3), the number listed by each requesting element.

(b) Not later than December 31, 2018, the Director of National Intelligence shall submit to the President's Intelligence Oversight Board and the congressional intelligence committees a report assessing the compliance with the procedures required by Section 2 of this Directive.

Sec. 4. Definitions.

(1) The term "covered request" means a request by a requesting element to an originating element for nonpublic identifying information with respect to a known unconsenting United States person that was omitted from an intelligence community report disseminated by the originating element.

(2) The term "originating element" means an element of the intelligence community that disseminates an intelligence community report that contains a reference to a known unconsenting United States person but omits nonpublic identifying information with respect to such person.

(3) The term "requesting element" means an element of the United States Government that receives an intelligence community report from an originating element and makes a covered request with respect to such report.

(4) The term "United States person" has the meaning given to the term in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).

(5) The term "element of the Intelligence Community" has the meaning given to the term in section 3(4) of the National Security Act of 1947 (50 USC 3003).

Sec. 5. General Provisions.

(a) Nothing in this directive shall be construed to prevent me from exercising my constitutional authority, including as Commander in Chief, Chief Executive, and in the conduct of foreign affairs, as well as my statutory authority. Consistent with this principle, a recipient of this directive may at any time recommend to me, through the Assistant to the President for

National Security Affairs, a change to the policies and procedures contained in this directive.

(b) Nothing in this directive shall be construed to impair or otherwise affect the authority granted by law to an executive department or agency, or the head thereof; or the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This directive shall be implemented consistent with applicable U.S. law and subject to the availability of appropriations.

(d) This directive is intended to supplement existing processes or procedures for reviewing foreign intelligence or counterintelligence activities and should not be read to supersede such processes and procedures unless explicitly stated.

(e) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.