

## Office of the Director of National Intelligence

### Executive Order 12333 Intelligence Activities Procedures Approved by the Attorney General

January 2021

The Office of the Director for National Intelligence (ODNI) is pleased to announce the issuance of procedures governing the conduct of ODNI intelligence activities concerning U.S. person information. Required of each Intelligence Community (IC) element and approved by the Attorney General, these procedures are often referred to as the “Attorney General Guidelines.”

This fact sheet reviews these new procedures in the context of two key ODNI priorities – intelligence integration and the protection of privacy, civil rights, and civil liberties – and summarizes key provisions.

#### Authorities and Mission

The position of Director of National Intelligence (DNI) and its accompanying Office are established under the National Security Act of 1947, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). Pursuant to the National Security Act, the DNI is the head of the Intelligence Community and the principal intelligence advisor to the President and the National Security Council. The DNI provides strategic guidance over intelligence collection and tasking priorities, sets uniform standards for the efficient operation of the Intelligence Community on issues including classification, information security, and information sharing, and exercises budgetary control over the National Intelligence Program. ODNI assists the DNI in carrying out duties and responsibilities established by statute, other applicable law, or as prescribed by the President. Executive Order 12333, *United States Intelligence Activities*, as amended in 2008, further describes and specifies the scope of these authorities.

As the head of the IC, a primary mission of ODNI is to drive intelligence integration across the community. Just as each Intelligence Community element performs a specific mission pursuant to its own authorities and responsibilities, ODNI works to create a policy infrastructure, supported by information technology, to enable all Intelligence Community elements to benefit from each other’s expertise and work collaboratively to deliver the timely, insightful, objective, and relevant intelligence that informs the critical decisions the President and other key policy makers must reach on a wide range of pressing national security issues.

In addition, ODNI operates three national intelligence centers: the National Counterterrorism Center (NCTC), the National Counterintelligence and Security Center (NCSC), and the National Counterproliferation Center (NCPC). These centers integrate and coordinate Intelligence Community activities, and in some instances as appropriate, relevant and related U.S. government initiatives, within their mission areas to ensure that national security threat information is consolidated, assessed, and shared appropriately within the Executive Branch, and with foreign counterparts and state and local authorities.

## **Intelligence Integration, Protecting Privacy and Civil Liberties, and Attorney General Guidelines**

Executive Order 12333 not only provides the framework for intelligence activities, it also requires the procedures, protections, and oversight necessary to protect the privacy and civil liberties of every American in the conduct of these intelligence activities. Specifically, Section 2.3 of Executive Order requires any Intelligence Community element that collects, retains, or disseminates information concerning U.S. persons conduct such activities only in compliance with procedures approved by the Attorney General, in consultation with the Director of National Intelligence. Section 2.9 of the same Executive Order requires comparable procedures for the approval of undisclosed participation in an organization within the United States.

Consistent and complementary Attorney General Guidelines across the Intelligence Community provide a foundation for intelligence integration that is grounded in fundamental protection of the freedoms, civil liberties, and privacy rights guaranteed by the Constitution and the laws of the United States.

The ODNI Attorney General Guidelines are the first set of U.S. person procedures to apply to all ODNI directorates and centers. Previously, within ODNI, NCTC operated with respect to certain activities under its own set of AG-approved procedures, while other aspects of ODNI applied CIA's Attorney General Guidelines. The new ODNI Attorney General Guidelines rescind the prior NCTC procedures.

ODNI's Attorney General Guidelines have been tailored to reflect the ODNI's mission and collection authorities, which are more limited than other agencies, including CIA. In addition to these Guidelines, ODNI intelligence activities must comport with the Constitution and all applicable laws of the United States. These Guidelines do not authorize activities that are otherwise prohibited by U.S. law.

### **Key Provisions of the ODNI Attorney General Guidelines**

The following provides an overview of some key provisions regarding collection, evaluation, retention, and dissemination of U.S. person information, as well as undisclosed participation in U.S. organizations. The following also provides an overview of oversight processes that will be utilized to ensure compliance with the protections found in the ODNI Attorney General Guidelines.

#### **Collection:**

Collection directed against, or that is reasonably anticipated incidentally to include information about, U.S. persons is addressed in Section 3 of the Guidelines. Such collection may only be conducted in the course of a duly authorized intelligence activity when the following three prongs are satisfied: (1) the collection relates to and is consistent with an ODNI authority and responsibility; (2) the information is collected overtly or through publicly available sources; and (3) the collection is conducted in accordance with the Guidelines and is reasonably believed to fall within one or more categories of information set out in section 2.3 of E.O. 12333 (e.g., information that is collected with the consent of the person concerned or that constitutes foreign intelligence). In addition, NCTC may collect terrorism information in performance of its statutorily-authorized functions under IRTPA.

Unlike some other elements of the Intelligence Community, and in accordance with Section 1.7(j) of E.O. 12333, ODNI is only authorized to collect information overtly or through publicly available sources. This means that ODNI is not authorized to engage in clandestine collection activities. When collecting information from publicly available sources, ODNI may purchase commercial data, but only if that commercial data is generally available for purchase (e.g., not just available to government purchasers) and the purchase relates to and is consistent with an ODNI authority and responsibility. ODNI may not purchase commercial data that it otherwise would not have the authority to collect on its own. In addition, ODNI may accept information voluntarily provided to it by an outside individual or entity. However, if ODNI receives recurrent voluntary submissions that could not otherwise be affirmatively collected, it must consult with ODNI's Office of General Counsel (OGC) and Office of Civil Liberties, Privacy, and Transparency (CLPT) to determine the appropriate course of action consistent with obligations to protect national security and privacy, civil rights, and civil liberties.

While ODNI's authorities to collect information in the first instance are limited, ODNI's authorities to access information collected by other government agencies are more expansive. Pursuant to Section 102A of the National Security Act and Section 1.3 of E.O. 12333, the DNI may access information or intelligence possessed by another executive branch department or agency that is relevant to the national security or the DNI's responsibilities, unless such access would otherwise be excluded by law, by the President, or by the Attorney General acting at the President's direction. Under Section 2.3 of Executive Order 12333, ODNI may also receive unevaluated information from other Intelligence Community elements to determine whether such information constitutes foreign intelligence information or otherwise may be retained. In both cases, this means that ODNI may have access to information that ODNI itself could not collect in the first instance, though this information must still be lawfully collected by the other government agency.

Although the ability to access information lawfully collected by other government agencies is more expansive, significant privacy and civil liberties controls govern such access. Specifically:

- All duly authorized ODNI activities subject to the Guidelines, including accessing data, must have a purpose consistent with ODNI's authorities and responsibilities.
- Departments and agencies which provide ODNI access to information or intelligence under this provision must do so in accordance with applicable law, including the Privacy Act of 1974 where access would constitute a disclosure of protected U.S. person information.
- In addition, whether ODNI collects information under its own authorities or obtains information from another element of the Intelligence Community, ODNI must seek to receive only the amount of information reasonably necessary to support the authorized purpose.
- ODNI is also required to use the least intrusive collection methods feasible within the United States or directed against U.S. persons.
- ODNI may never collect, access, obtain, or maintain, information concerning a U.S. person solely for purposes of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States.
- ODNI may never engage in any intelligence activity, including collecting, accessing, or obtaining information, for the purpose of affecting the political process in the United States.

In addition, and as discussed in the next sections, ODNI's subsequent evaluation, retention, and dissemination of information are all governed by a set of restrictions designed to protect privacy and civil liberties regardless of whether ODNI collected the information or it was obtained from another Intelligence Community element.

### **Evaluation:**

Consistent with updates over the last several years to the Attorney General Guidelines of other Intelligence Community elements, ODNI's Attorney General Guidelines are designed to be both technologically neutral and to reflect the digital environment in which the Intelligence Community operates. While some information is evaluated as soon as it is collected for foreign intelligence value, the intelligence value of other information is only discovered at a later date when it is correlated with other data points. Sections 4 and 5 of the Guidelines contain protections for U.S. person information governing the processing and handling of information before it is fully evaluated for intelligence value.

Specifically, Section 4 of the ODNI Attorney General Guidelines contains approval and documentation requirements whenever ODNI collects or obtains information that either cannot be evaluated in its entirety immediately for long term retention or is determined to qualify for retention in its entirety without individualized review. For example, NCTC may obtain a large unevaluated dataset from another Intelligence Community element that it either cannot immediately evaluate for retention in its entirety or that it can determine from the dataset's origin meets the definition of terrorism information and thereby may be retained. In both instances, and preferably prior to obtaining the dataset, a designated senior official must approve documentation that addresses the purpose of the collection activity, how the information was or will be acquired, what steps were or will be taken to limit the collection to the smallest identifiable subset of information necessary to achieve the specific purpose of the collection, and whether, due to the anticipated presence of U.S. person information that is significant in volume, proportion, or sensitivity, the information requires heightened protections regarding access, querying, and retention. Senior officials are to coordinate these reviews with OGC and the ODNI Civil Liberties Protection Officer (CLPO).

Section 5 of the ODNI Attorney General Guidelines provides a number of protections that apply while the unevaluated information is being assessed for intelligence value. Access to such unevaluated information must be limited to ODNI employees who have a need-to-know in the course of their official duties and who have been trained in the handling of unevaluated information. Auditing records, including regarding access to information and queries made of the data, are always required for certain sensitive data sets, and required when practicable for all other unevaluated data sets. Queries of unevaluated information must always be reasonably designed to return information related to a duly authorized activity of ODNI, with additional requirements regarding the documentation and further tailoring of such queries in more sensitive data sets. Additionally, and critically, unevaluated information may not be processed indefinitely. Absent an imminent threat to life or an extension granted by the DNI in limited circumstances, unevaluated information must be destroyed no later than 25 years after it was first made available to ODNI in routine cases, and destroyed no later than 5 years after it was first made available for more sensitive data sets.

## **Retention and Dissemination:**

ODNI may retain information it has collected concerning a U.S. person only if the information falls within one of several categories specified in Section 6 of the ODNI Attorney General Guidelines, such as if the information is disassociated with the U.S. person (by, for example, replacing identifying information with a generic term such as “U.S. person #1”) or if the information concerning the U.S. person constitutes foreign intelligence (for example, because it indicated that the U.S. person is committing espionage on behalf of a foreign government). ODNI may also retain information that another Intelligence Community element has previously evaluated, retained, and disseminated to ODNI in accordance with that Intelligence Community element’s Attorney General Guidelines. Additionally, NCTC may retain terrorism information pursuant to its statutory authorities.

Once information is found to warrant retention, access limitations and other protections ensure that the information is utilized only by authorized individuals for authorized purposes and that queries are reasonably designed to retrieve information related to an ODNI authority and responsibility.

Limitations also apply to the subsequent dissemination of information concerning U.S. persons outside ODNI. As discussed in Section 7 of the ODNI Attorney General Guidelines, ODNI may disseminate information within the Intelligence Community for the purpose of allowing other Intelligence Community elements to evaluate whether the information may be subject to retention consistent with their authorities. Information ODNI has determined to qualify for retention may also be disseminated outside the Intelligence Community to specific types of individuals or organizations or for specified purposes, such as the conduct of legitimate oversight functions. However, to the extent practicable, U.S. person identifying information must be removed prior to disseminating evaluated information outside the Intelligence Community unless it is necessary, or reasonably believed that the information may become necessary, to understand, assess, or act on the disseminated information. While Section 7.2.2 permits dissemination of unevaluated information outside the IC, use of this provision is anticipated to be highly exceptional and requires the DNI or a designated official, with the concurrence of the General Counsel and the CLPO, to assess that certain criteria are met.

## **Undisclosed Participation:**

ODNI is an overt intelligence organization and its employees routinely disclose their affiliation with ODNI as a matter of course when attending events, conferences, or educational and training courses for official purposes. Section 8 permits undisclosed participation in U.S. organizations only when the DNI or a designated official determines such participation is essential to achieving lawful purposes that comport with the ODNI’s authorities and responsibilities. Subject to that determination, Section 8 permits undisclosed participation in U.S. organizations only when the organization is generally open to the public, accepts participants regardless of affiliation, and does not require disclosure of affiliation as a condition of attendance or access. Under this provision, an ODNI employee could attend a foreign policy lecture at a local university without disclosing ODNI affiliation if it is open to the public and does not require attendees to provide employment information. ODNI employees may also participate in online activities under the same general principles. Any other undisclosed participation must be approved in advance by the DNI or designated official with the concurrence of the General Counsel and the CLPO, who must determine that the lack of disclosure is consistent with ODNI’s authorities and the protection of

privacy, civil rights, and civil liberties. When participating in an organization without disclosing their ODNI affiliation, ODNI employees may not participate for the purpose of influencing the activity of the organization or its members.

### **Oversight:**

Every ODNI officer takes a solemn oath to support and defend the Constitution of the United States. In taking that oath, our officers recognize that our national security mission is dependent on protecting the principles on which this country was founded.

This commitment is reflected in the Principles of Professional Ethics for the Intelligence Community. ODNI serves the American people, and we have a duty to comply with the Constitution and the laws of the United States, ensuring that we carry out our mission in a manner that respects privacy, civil liberties, and human rights obligations. ODNI officers are stewards of the public trust, and we remain accountable to ourselves and our oversight institutions, and through those institutions ultimately to the American people.

Through these Guidelines, ODNI has adopted procedures that support an integrated and effective intelligence mission while ensuring that ODNI conducts its activities in accordance with the Constitution and applicable law, and in a manner that safeguards the freedoms, civil liberties, and privacy rights of all U.S. persons.

The ODNI Attorney General Guidelines require appropriate measures to facilitate compliance and oversight, such as designing information systems to facilitate auditing of certain ODNI activities. The Guidelines also assign certain oversight responsibilities to specific ODNI officials. As part of the Inspector General's independent statutory responsibilities, the Office of the Inspector General of the Intelligence Community is required to conduct audits, inspections, and investigations of ODNI programs and operations, including with respect to the Guidelines. The ODNI Civil Liberties Protection Officer is responsible for overseeing compliance with the Guidelines and other applicable laws and regulations as they relate to civil liberties and privacy. The Office of General Counsel supports the implementation and oversight of the Guidelines, providing guidance to ensure all ODNI officers comply with the Constitution, laws of the United States, applicable regulation and policy, and the Guidelines. Additionally, leadership within ODNI is responsible for developing training, establishing oversight mechanisms, and otherwise assisting the oversight mission. Further, all ODNI employees are responsible for understanding and complying with the Guidelines, using information only for lawful and authorized purposes, and appropriately reporting activities that may be unlawful or contrary to policy.

ODNI remains accountable to the American people, in part through our legal obligation to keep Congress fully and currently informed. ODNI regularly engages with Congressional leadership, the Senate Select Committee on Intelligence, and the House Permanent Select Committee on Intelligence. ODNI is also committed to providing appropriate transparency to enhance the public's understanding of our mission and activities. Publicly sharing these Guidelines is part of our affirmative effort to provide such transparency to the American people of our dual missions to support national security and protect privacy, civil rights, and civil liberties.