

DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

E/S # 00176

MEMORANDUM FOR: Distribution

SUBJECT: ~~(U//FOUO)~~ Dissemination of Congressional Identity Information within the Executive Branch

REFERENCE: ~~(U//FOUO)~~ Director of Central Intelligence Memorandum to National Foreign Intelligence Board Principals, 31 December 1992

~~(U//FOUO)~~ On occasion, elements of the Intelligence Community (IC) may acquire intelligence that identifies a Member of Congress or Congressional staff.¹ In certain circumstances it may be necessary for those IC elements to disseminate Congressional identity information² referred to in intelligence reports to Executive Branch recipients so that these recipients may fully understand the intelligence. In those circumstances, IC elements have followed procedures established in 1992 by former Director of Central Intelligence Robert Gates (“Gates Procedures”).

~~(U//FOUO)~~ This memorandum re-confirms the Gates Procedures and clarifies how they should be implemented and applied throughout the IC. The procedural requirements described in this memorandum are applicable whenever an IC element seeks to disseminate Congressional identity information within the Executive Branch or through intelligence channels, regardless of the source of the information, with the exception of those circumstances specifically described below. These procedures assume that the originating IC element has already made a determination that the Congressional identity information has been lawfully acquired and may be retained and disseminated consistent with applicable law and that IC element’s Attorney General-approved guidelines implementing Executive Order 12333.

~~(U//FOUO)~~ Each IC element should ensure that its internal guidance governing the dissemination of Congressional identity information is consistent with this memorandum. Questions regarding the applicability of these procedures should be referred to the appropriate Office of General Counsel or to the Office of the Director of National Intelligence (ODNI) Office of General Counsel.

¹ ~~(U//FOUO)~~ “Member of Congress or Congressional staff” refers to any current Member of the Senate or the House of Representatives; any current staff officer of any Senator or Representative, whether paid or unpaid; and any current staff officer of any Senate or House committee, whether paid or unpaid.

² ~~(U//FOUO)~~ For the purposes of this memorandum, “Congressional identity information” refers to information that the originating IC element knows identifies Members of Congress or Congressional staff by name or by individually identifying titles or characteristics.

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(U) Procedures

1. ~~(U//FOUO)~~ Retention of Congressional Identity Information: As with all U.S. Person information, all Congressional identity information acquired by an IC element shall be reviewed by the acquiring IC element to determine whether the information is appropriate for retention and dissemination under applicable law and that IC element's Attorney General-approved guidelines implementing Executive Order 12333. Congressional identity information that does not satisfy such requirements shall be handled in accordance with that IC element's policies and guidelines.
2. ~~(U//FOUO)~~ Masking Congressional Identity Information: Unless it has received approval to unmask Congressional identity information pursuant to these procedures, an IC element seeking to disseminate intelligence that identifies a Member of Congress or Congressional staff shall mask or delete the Congressional identity information before it is disseminated within the Executive Branch. This requirement is in addition to the normal requirements that the information has foreign intelligence value and meets the IC element's standard for dissemination under its Attorney General-approved guidelines.³
3. ~~(U//FOUO)~~ Routine Requests to Disseminate Congressional Identity Information:
 - a. ~~(U//FOUO)~~ Routine requests to disseminate Congressional identity information may take two forms:
 - i. An Executive Branch recipient of intelligence containing masked Congressional identity information believes that the identity of the Member of Congress or Congressional staff is necessary to understand and assess the associated intelligence and further a lawful activity of the recipient's agency, and requests the Congressional identity information from the originating IC element.
 - ii. The originating IC element wishes to disseminate Congressional identity information in the absence of a request for dissemination because the originating IC element believes that the identity of the Member of Congress or Congressional staff is necessary for the proposed Executive Branch recipient to understand and assess the associated intelligence and further a lawful activity of the proposed recipient's agency.
 - b. ~~(U//FOUO)~~ The following guidance applies to routine requests for approval:

³ (U) Under the National Security Act of 1947, as amended, "foreign intelligence" refers to information that relates to the "capabilities, intentions, or activities, of foreign governments or elements thereof, foreign organizations, or foreign persons, or international terrorist activities." 50 U.S.C. § 401a(2).

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- i. Requests for approval shall be submitted by the originating element to the ODNI Office of General Counsel. In most cases, IC elements should submit requests for approval in writing (including via electronic means). However, in certain time-sensitive cases where a written request is impractical, IC elements may submit oral requests for approval that are memorialized in writing as soon as practicable.
 - ii. Requests for approval shall include, at a minimum, the intelligence report containing the masked Congressional identity information, the Congressional identity information that the IC element seeks to unmask and disseminate, the Executive Branch officials to whom the element would disseminate that unmasked information, the IC element's reasons for doing so, the IC element's recommendation regarding whether and to what extent a Congressional notification of the request should be made if the request is approved, and any other information that the IC element reasonably believes would assist the ODNI Office of General Counsel's review.
 - iii. Both the IC element submitting the request for approval and the ODNI Office of General Counsel shall maintain records of all such requests and their disposition.
- c. ~~(U//FOUO)~~ Based upon their review of the relevant facts, and in consultation as necessary with the originating IC element, the following ODNI officials may approve requests for approval:
- i. The DNI, upon the recommendation of the ODNI General Counsel, for requests involving sensitive matters. Requests involving sensitive matters are those requests that involve intelligence either indicating possible impropriety on the part of the Member of Congress or Congressional staff, or relating to or reflecting the targeting for intelligence collection or recruitment of a Member of Congress or Congressional staff by a foreign power or agent of a foreign power.
 - ii. The ODNI General Counsel, for requests not involving sensitive matters.

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(U) Exceptions to the Requirement for Prior ODNI Approval

1. ~~(U//FOUO)~~ **Special Requests:** A special request for dissemination is any request to disseminate Congressional identity information directly to the President, Vice President, Secretary of State, Secretary of Defense, or the Assistant to the President for National Security Affairs.⁴ The senior deputies and senior advisors for these named principals may also submit special requests to originating elements if and only if the senior deputies or senior advisors are acting on behalf of their named principals. The dissemination of Congressional identities to these named principals pursuant to a special request does not authorize further dissemination of that information within the principal's department or agency.⁵ The dissemination of Congressional identity information in response to special requests may be approved by officials designated by the originating IC element. While special requests do not require prior ODNI approval, the originating IC element must promptly provide to the ODNI Office of General Counsel a copy of the request, the disseminated information, and a recommendation regarding whether and to what extent a Congressional notification of the unmasking should be made.
2. ~~(U//FOUO)~~ **Exigent Circumstances:** IC elements may, without seeking prior approval from the ODNI, disseminate Congressional identity information within the Executive Branch when exigent circumstances preclude following these procedures. If an IC element disseminates Congressional identity information under exigent circumstances, the element shall provide timely notification to the ODNI Office of General Counsel that includes an explanation of the exigent circumstance and a recommendation regarding whether and to what extent a Congressional notification of the unmasking should be made. While this list is not exhaustive, exigent circumstances include:
 - a. ~~(U//FOUO)~~ **Imminent Danger to Life or Physical Safety:** Congressional identity information may be provided directly to appropriate Executive Branch officials for action if the Director, Deputy Director, chief of the originating IC element's watch office (or equivalent), or any senior official designated by the Director of the originating IC element determines that there

⁴ ~~(U//FOUO)~~ Individuals briefing one of these principals may request Congressional identity information in reasonable anticipation that the principal will request that identity information, for the narrow and exclusive purpose of providing that information directly to the principal in response to such a request. If a principal listed above in fact makes an oral request for Congressional identity information, the briefer then may provide the requested information, provided that the briefer subsequently notifies the originating IC element of that fact. Both the briefer's request and the briefer's response to the principal's request, if any, shall be treated as special requests under the procedures outlined in this memorandum. As a result, the originating IC element shall promptly notify the ODNI Office of General Counsel pursuant to this paragraph.

⁵ ~~(U//FOUO)~~ A routine request for dissemination should be submitted to the originating IC element for any such further dissemination.

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is a reasonable basis to believe that a person's life or physical safety is in imminent danger and that the Congressional identity information is relevant to help obviate the danger.

- b. ~~(U//FOUO)~~ Time-Critical Need: Congressional identity information may be provided directly to appropriate Executive Branch officials if the Director, Deputy Director, chief of the originating IC element's watch office (or equivalent), or any senior official designated by the Director of the originating IC element determines that there is a reasonable basis to believe that delay in disseminating the information poses a significant risk to important U.S. interests. Examples of time-critical needs that satisfy this requirement include circumstances wherein:
 - i. Information concerning a terrorist or foreign intelligence threat and the Congressional identity information therein is immediately necessary for the Executive Branch recipient to take timely action in order to defend against, neutralize, or warn about the threat.
 - ii. Information concerning a cybersecurity threat or vulnerability (e.g., spear-phishing or malicious code) and the Congressional identity information therein is immediately necessary for the Executive Branch recipient to take timely action in order to defend against, neutralize, or warn about the threat. For example, an originating IC element may disseminate Congressional identity information to appropriate Executive Branch computer network defense personnel so that they may take appropriate time-sensitive mitigation measures.

(U) Congressional Notification

1. ~~(U//FOUO)~~ Notification of Approved Requests: As appropriate, the ODNI Office of Legislative Affairs will notify the appropriate Congressional officials (including the leadership of the Congressional intelligence oversight committees) that a dissemination of Congressional identity information has taken place.
 - a. ~~(U//FOUO)~~ For requests not involving sensitive matters, the ODNI Director of Legislative Affairs shall consult with the ODNI General Counsel regarding whether and to what extent a Congressional notification should be made and whether the Member of Congress or Congressional staff whose Congressional identity information was unmasked should be notified.

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- b. ~~(U//FOUO)~~ For requests involving sensitive matters, the DNI, after consulting with the ODNI General Counsel and the ODNI Director of Legislative Affairs, shall decide whether and to what extent a Congressional notification should be made and whether the Member of Congress or Congressional staff whose Congressional identity information was unmasked should be notified.
 - c. ~~(U//FOUO)~~ The following factors, among others, shall be considered before making a decision to notify Congress or the subject Member of Congress or Congressional staff that Congressional identity information has been provided to a requester: (1) the recommendation provided by the originating IC element; (2) whether the information concerns foreign reactions to Member or staff activities, and whether the foreign reactions present important ramifications for U.S. national security or foreign policy; (3) whether there is a credible threat of harm to the Member or staff; (4) whether there are indications of a foreign power's attempt to target the Member or staff; (5) whether there are any indications of Member or staff impropriety; and (6) whether the notification would be an unwarranted invasion of privacy.
2. ~~(U//FOUO)~~ Exclusive Disseminations to Congress: The procedures described in this memorandum do not apply to the dissemination of Congressional identity information to Congress when there is no dissemination of the Congressional identity information within the Executive Branch. In those rare cases, IC elements are not required to seek ODNI approval before disseminating Congressional identity information to Congress. However, in these cases the IC element shall provide advance notification to the ODNI Office of Legislative Affairs.

(U) Circumstances in Which These Procedures Do Not Apply

~~(U//FOUO)~~ The procedural requirements described in this memorandum do not apply to the dissemination of Congressional identity information in the following circumstances:

- ~~(U//FOUO)~~ The dissemination of Congressional identity information (a) that has been collected overtly or through publicly available sources, (b) that involves the public activities or public statements of Members of Congress or Congressional staff, conducted or delivered in their official capacities, where there are no indications that foreign powers or agents of foreign powers intend to influence those activities or statements, or (c) where the Member of Congress or Congressional staff has provided consent for that dissemination.
- ~~(U//FOUO)~~ The dissemination of Congressional identity information when the originating element and the organization to which the information is disseminated are

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both within the Department of Defense. The dissemination of Congressional identity information in these circumstances may be approved by the Secretary of Defense, or his designee, with a timely notification of such approval to the ODNI Office of General Counsel.

- ~~(U//FOUO)~~ The dissemination of Congressional identity information for law enforcement purposes, when required by law or when such dissemination is necessary for an IC element to fully satisfy its obligation to report possible violations of federal criminal law, consistent with applicable policies and procedures.
- ~~(U//FOUO)~~ The dissemination of Congressional identity information to any IC inspector general, general counsel, or official responsible for privacy or civil liberties protection when that information is necessary to perform their official duties.

(U) My point of contact for this matter is the ODNI General Counsel, who may be reached at (703) 275-2527 or 917-2527 (NSTS).


James R. Clapper

29 MAR 2013
Date

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