

DIRECTOR OF NATIONAL INTELLIGENCE  
WASHINGTON, DC

ES 2023-01189

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Office of the Director of National Intelligence Executive Order  
14086 Policies and Procedures

REFERENCES: A. Executive Order 14086, Enhancing Safeguards for United  
States Signals Intelligence Activities, 7 October 2022  
B. ODNI Memorandum ES 2014-00870, Office of the Director of  
National Intelligence Presidential Policy Directive 28 Policies  
and Procedures, 21 January 2015

I. Introduction

Reference A states that “the United States recognizes that signals intelligence activities must take into account that all persons should be treated with dignity and respect, regardless of their nationality or wherever they might reside, and that all persons have a legitimate privacy interest in the handling of their personal information.” Consistent with this, Executive Order 14086 bolsters the rigorous array of privacy and civil liberties safeguards that apply to U.S. signals intelligence activities.

Specifically, the safeguards in Executive Order 14086 include: requiring signals intelligence activities to be conducted in pursuit of enumerated legitimate objectives; explicitly barring such activities for the purpose of specific prohibited objectives; putting in place novel procedures for ensuring that signals intelligence activities further these legitimate objectives and do not further prohibited objectives; requiring that signals intelligence activities be conducted only following a determination, based on a reasonable assessment of all relevant factors, that the activities are necessary to advance a validated intelligence priority and only to the extent and in a manner that is proportionate to the validated intelligence priority for which they have been authorized; and establishing an independent and binding mechanism enabling individuals in “qualifying states” to seek redress through the submission of a “qualifying complaint” alleging a “covered violation” has occurred pertaining to their personal information they reasonably believe to have been transmitted to the United States, including activities violating the protections found in the Executive Order.<sup>1</sup>

In addition, Section 2(c)(iv) of the Executive Order requires the head of each element of the Intelligence Community (IC) to update policies and procedures issued pursuant to

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<sup>1</sup> The definitions of “qualifying state,” “qualifying complaint,” and “covered violation” are set forth, respectively, in Sections 3(f), 4(k), and 4(d), of Executive Order 14086 and incorporated into these policies and procedures by reference.

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Presidential Policy Directive 28 as necessary to implement the privacy and civil liberties safeguards contained in the Executive Order. This Memorandum constitutes the updated policies and procedures of the Office of the Director of National Intelligence (ODNI), replacing Reference B.

## II. General Provisions, Authorities, and Applicability

ODNI is an element of the IC pursuant to Section 3 of the National Security Act of 1947, as amended, and Section 3.5(h) of Executive Order 12333, “United States Intelligence Activities,” as amended.

Pursuant to Sections 1.3(a), 1.5(a), and 1.7(j) of Executive Order 12333, ODNI “shall have access to all information and intelligence” that is “relevant to the national security or that otherwise is required for the performance of the [Director of National Intelligence’s] duties,” with limited exception, and is authorized to “collect (overtly or through publicly available sources), analyze, produce, and disseminate information, intelligence, and counterintelligence to support the missions of the [ODNI], including the National Counterterrorism Center, and to support other national missions.”

These policies and procedures apply to ODNI’s safeguarding of personal information collected through signals intelligence activities.<sup>2</sup> While ODNI components are not authorized to conduct—and do not conduct—signals intelligence collection activities, they may receive from other IC elements and maintain unevaluated or unminimized signals intelligence.<sup>3</sup> ODNI components also receive from other IC elements signals intelligence information that has been evaluated, minimized, or otherwise included in finished intelligence products subject to, among other requirements, the provisions of Reference A.

## III. Safeguarding Personal Information Collected through Signals Intelligence

The following safeguards fulfill the principles contained in subsections 2.(a)(ii)-(iii) of Executive Order 14086.

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<sup>2</sup> References to signals intelligence and signals intelligence activities in this document apply to Section 702 information. These procedures are not intended to alter the rules applicable to U.S. persons found in the Foreign Intelligence Surveillance Act or orders issued pursuant to the Act, Executive Order 12333, guidelines approved by the Attorney General pursuant to Section 2.3 of Executive Order 12333, or other applicable law.

<sup>3</sup> Currently only the National Counterterrorism Center (NCTC) receives and maintains unevaluated or unminimized Section 702 information. Provisions of these policies and procedures pertaining to unevaluated or unminimized signals intelligence govern the activities of NCTC and would likewise govern the activities of any other ODNI component, if one was to subsequently receive and maintain such information.

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(A) *Minimization*

(i) Dissemination

For purposes of these policies and procedures, “dissemination” shall mean the transmission, communication, sharing, showing, or passing of information outside of the ODNI by any means, including oral, electronic, or physical means or by providing another entity with access to an ODNI information system.

ODNI components shall disseminate personal information of non-U.S. persons collected through signals intelligence activities only if dissemination of comparable information concerning U.S. persons would be permitted under section 2.3 of Executive Order 12333.

If an ODNI component is disseminating personal information of a non-U.S. person because it is foreign intelligence, the information must relate to an authorized intelligence requirement, and cannot be disseminated solely because of nationality or country of residence. Unless they possess specific information to the contrary, ODNI components shall presume that any evaluated or minimized signals intelligence information they receive from other IC elements that have adopted procedures implementing Executive Order 14086 meets this standard.

ODNI components shall disseminate within the U.S. Government such information only if an authorized and appropriately trained individual has a reasonable belief that the personal information will be appropriately protected and that the recipient has a need to know the information.

ODNI components shall take due account of the purpose of the dissemination, the nature and extent of the personal information being disseminated, and the potential for harmful impact on the person or persons concerned before disseminating personal information collected through signals intelligence to recipients outside the U.S. Government, including to a foreign government or international organization.

ODNI components shall disseminate personal information collected through signals intelligence only in accordance with, and never to circumvent, applicable U.S. law, Presidential directives, IC directives, and policies and procedures.

(ii) Retention

For purposes of these policies and procedures, “retention” shall mean the maintenance of personal information in either hard copy or electronic format regardless of how the information was collected.

ODNI components shall retain personal information of non-U.S. persons collected through signals intelligence activities only if retention of comparable information concerning

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U.S. persons would be permitted under applicable U.S. law, Presidential directives, IC directives, and procedures required by section 2.3 of Executive Order 12333, and shall subject such information to the same retention periods that would apply to comparable information concerning U.S. persons. If an ODNI component is retaining personal information of a non-U.S. person because it is foreign intelligence, the information must relate to an authorized intelligence requirement, and cannot be retained solely because of the non-U.S. person's foreign status. ODNI components shall presume, unless they possess specific information to the contrary, that any evaluated or minimized signals intelligence information they receive from other IC elements that have adopted procedures implementing EO 14086 meets these standards.

ODNI components authorized to receive and maintain personal information collected through signals intelligence for which no final retention determination has been made shall subject non-U.S. persons' personal information to the same temporary retention periods that would apply to comparable information concerning U.S. persons.

ODNI components shall delete non-U.S. persons' personal information that may no longer be retained in the same manner that comparable information concerning U.S. persons would be deleted.

*(B) Data Security and Access*

ODNI components will maintain all personal information of non-U.S. persons collected through signals intelligence activities under the same data security and access standards applied to equivalent personal information of U.S. persons.

Personal information collected through signals intelligence will be maintained in secure, certified, and accredited facilities. Within these facilities, the ODNI Chief Information Officer, in consultation with the Civil Liberties Protection Officer (CLPO) and Office of General Counsel (OGC), will ensure that the ODNI's information systems in which such information is stored are certified under and adhere to established standards. Such systems shall comply with all applicable U.S. law, Presidential directives, IC directives, and policies and procedures regarding information security, including with regard to access controls and monitoring.

ODNI components shall ensure that access to personal information collected through signals intelligence activities in electronic or physical form is restricted to those personnel who have a need to access that information in the performance of authorized duties in support of ODNI missions and have completed all required training.

ODNI components authorized to receive and maintain personal information collected through signals intelligence for which no final retention determination has been made shall ensure that such information is accessed only in order to make or support such a determination or to conduct authorized administrative, testing, development, security, or oversight functions.

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(C) *Data Quality*

ODNI components will maintain all personal information of non-U.S. persons collected through signals intelligence activities under the same data quality standard applied to equivalent personal information of U.S. persons.

Personal information collected through signals intelligence activities—where such information can be so identified—shall be included in ODNI intelligence products only as consistent with applicable IC standards of analytic tradecraft, including such standards for accuracy and objectivity, as set forth in relevant directives, including IC Directive 203, *Analytic Standards*. Particular care should be taken to apply standards relating to the relevance, quality, and reliability of the information, consideration of alternative sources of information and interpretations of data, and objectivity in performing analysis.

(D) *Queries of Bulk Collection*

ODNI does not have access to unminimized signals intelligence obtained by bulk collection. To the extent the ODNI may seek and obtain such access, ODNI components will only conduct queries of such intelligence to the extent permitted by applicable procedures prescribed pursuant to section 2.3 of Executive Order 12333 and section 2(c)(iii)(D) of Executive Order 14086.

IV. Oversight and Compliance

The CLPO shall provide advice and assistance to ODNI components regarding privacy and civil liberties in implementing these policies and procedures and shall serve as the primary point of contact with the Privacy and Civil Liberties Oversight Board regarding the same. The CLPO shall be responsible for overseeing ODNI compliance with these policies and procedures. Accordingly, the CLPO shall audit and review implementation of these policies and procedures periodically and report to the Director of National Intelligence (DNI) regarding the application of the safeguards contained herein and in Reference A, as applicable.

All ODNI personnel should report potential instances of non-compliance with these policies and procedures to the CLPO. The CLPO, in coordination with OGC, shall promptly report instances of non-compliance to relevant entities to ensure their remediation, consistent with existing reporting requirements under applicable law, regulation, Presidential direction, and policy. Should the CLPO, in coordination with OGC and other applicable offices, determine that an incident of non-compliance is a “significant incident of non-compliance” as defined in Section 4(l) of the Executive Order, the CLPO shall promptly report it to the DNI, who shall ensure that any necessary actions are taken to remediate it and prevent its recurrence, and shall further ensure that any other relevant officials are notified, as appropriate.

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Consistent with ODNI Instruction, all ODNI personnel are required to report criminal activity, including fraud, waste, and abuse involving IC or ODNI activities, operations, programs, or personnel to the Office of the Inspector General of the IC. ODNI personnel may also report other potential instances of non-compliance with U.S. law, these policies and procedures, or other matters of concern to the IC Inspector General.

V. Assistance Concerning the Signals Intelligence Redress Mechanism

ODNI components shall provide the CLPO with access to information necessary to conduct the reviews described in Section 3(c)(i) and Section 3(d)(i) of Reference A, consistent with the protection of intelligence sources and methods. ODNI personnel shall not take any actions designed to impede or improperly influence the CLPO's review of qualifying complaints or the Data Protection Review Court's (DPRC) review of the CLPO's determination of such pursuant to the Signals Intelligence Redress Mechanism. ODNI shall comply with any CLPO determination to undertake appropriate remediation, subject to any contrary determination of the DPRC, and, further, shall comply with any determination by a DPRC panel to undertake appropriate remediation.

ODNI components shall provide the CLPO, and the CLPO shall provide the Privacy and Civil Liberties Oversight Board, with access to information necessary to conduct the annual review of the signals intelligence redress mechanism described in Section 3(e)(i) of Reference A, consistent with the protection of intelligence sources and methods.

VI. Training

All ODNI personnel who have access to information that is subject to this policy will receive training on applicable requirements. Successful completion of such training is a prerequisite to initial and continued access. ODNI will monitor completion of training requirements to ensure compliance with this provision.

VII. Deviations from these Procedures

The DNI or Principal Deputy Director of National Intelligence (PDDNI), or designee, must approve in advance any departures from these procedures. The General Counsel, following consultation with the Assistant Attorney General for National Security, and the CLPO will advise the DNI or PDDNI on requests to approve such departures. If the DNI or PDDNI, or designee, determines that a departure from these procedures is necessary because of the immediacy or gravity of a threat to the safety of persons or property or to the national security, they may approve a departure from these procedures prior to consultation with the General Counsel and CLPO, but will notify both officials as soon thereafter as possible. The General Counsel will provide prompt written notice of any such departures stating why advance approval was not possible and describing the actions taken to ensure activities were conducted lawfully to the Assistant Attorney General for National Security. Notwithstanding this paragraph, all

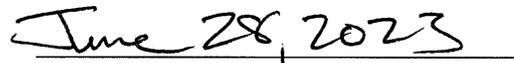
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activities in all circumstances must be carried out in a manner consistent with the Constitution and laws of the United States.

VIII. Internal Guidance and Interpretation

These procedures are set forth solely for internal guidance within ODNI. Questions on the applicability or interpretation of these procedures should be directed to OGC which shall determine such applicability or interpretation, in consultation with the Department of Justice, as appropriate, ensuring that the CLPO is contemporaneously informed of such determinations.

  
Avril D. Haines

  
Date

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