

(U) Criteria for Foreign Disclosure and Release of Classified National Intelligence

A. (U) **AUTHORITY:** The National Security Act of 1947, as amended; Executive Order (EO) 12333, as amended; EO 13526; and other applicable provisions of law.

B. (U) **PURPOSE**

1. To provide criteria under Intelligence Community Directive (ICD) 403, *Foreign Disclosure and Release of Classified National Intelligence*, for foreign disclosure and release of classified national intelligence, including information disseminated and analysis produced by the Intelligence Community (IC) (hereinafter intelligence) that is eligible for foreign disclosure or release; to characterize intelligence that is ineligible for foreign disclosure or release; and to provide further guidance regarding proper consideration of requests to authorize the foreign disclosure or release of intelligence.

2. This Intelligence Community Policy Guidance (ICPG) rescinds Sections A-C of Attachment A of Director of Central Intelligence Directive 6/7.

C. (U) **APPLICABILITY**

1. This ICPG applies to the IC, as defined by the National Security Act of 1947, as amended; and to such elements of any other department or agency as may be designated an element of the IC by the President, or jointly by the Director of National Intelligence (DNI) and the head of the department or agency concerned.

2. This ICPG does not apply to disclosures or releases of classified military information pursuant to National Disclosure Policy 1 and National Security Decision Memorandum-119.

3. (U) This Guidance does not apply to Restricted Data and Formerly Restricted Data. Such data may only be disclosed or released to foreign governments pursuant to an agreement for cooperation as required by the Atomic Energy Act of 1954, as amended.

4. [REDACTED] This Guidance does not apply to intelligence derived from Foreign Intelligence Surveillance Act (FISA) information, unless the FISA statute or the Foreign Intelligence Surveillance Court permits such information to be disclosed or released to foreign entities and such disclosure or release is not otherwise prohibited by the Privacy Act, 5 USC 552a. Where disclosure or release of this information is not permitted by the statute or the Court, or would be prohibited by the Privacy Act, the FISA-derived information cannot be released or disclosed to foreign entities.



INTELLIGENCE COMMUNITY POLICY GUIDANCE 403.1

D. (U) CRITERIA: In accordance with ICD 403, the following criteria will be used in determining the appropriateness and suitability of foreign disclosures or releases of intelligence:

1. (U) Intelligence may be considered for foreign disclosure or release if:
 - a. (U) [REDACTED] Disclosure or release is consistent with U.S. foreign policy and national security goals and objectives; and
 - b. (U) [REDACTED] Disclosure or release can be expected to result in an identifiable benefit to the U.S., such as:
 - (1) Serving a specific U.S. national purpose in support of diplomatic, political, economic, military, or security policies as determined by senior U.S. Government (USG) policy makers;¹
 - (2) Obtaining commensurate information or services from the proposed recipient;
 - (3) Supporting bilateral or multilateral treaties, alliances, agreements, arrangements or plans; or
 - (4) Aiding U.S. intelligence or counterintelligence activities.
2. [REDACTED] Generally, foreign disclosures and releases are authorized when it is determined that the intelligence to be disclosed or released is likely to be given adequate protection. Guidance in determining a foreign recipient's ability to protect U.S. intelligence may be obtained from a counterintelligence assessment, an assessment of the State Department or relevant U.S. Embassy, a National Disclosure Policy Committee security assessment, or other relevant source of information. Adequate protection includes confidence that:
 - a. (U) The intelligence will not be further disclosed or released to another government or any other party without the approval of the originating IC element;
 - b. (U) The foreign recipient has the capability and intent to provide U.S. intelligence substantially the same degree of protection provided it by the U.S.; and
 - c. (U) The intelligence will not be used for other than the stated purpose without the approval of the originating IC element, and is not likely to be used by the recipient in an unlawful manner or in a manner harmful to U.S. interests.
3. [REDACTED] The following types of intelligence may not be disclosed or released to foreign recipients:
 - a. [REDACTED] Intelligence, the disclosure or release of which would be contrary to U.S. law, or to agreements or treaties between the U.S. and foreign nations;
 - b. [REDACTED] Intelligence, not publicly available, on a U.S. person, unless collection, retention, and dissemination of such information is authorized by EO 12333

¹ (U) [REDACTED] Senior USG policy makers are the President, the Vice President, and the National Security Council.

and implementing procedures and guidelines, and not otherwise prohibited by the Privacy Act, 5 USC 552a;

c. (U) Intelligence derived from Grand Jury Information under Federal Rules of Criminal Procedure Rule 6(e)(3)(D), unless disclosed or released in a manner consistent with Department of Justice Guidelines; and

d. [REDACTED] Intelligence that was obtained through intelligence liaison or through established intelligence relationships from another government or from a combined effort with another government, when that government has not consented to the disclosure or release or has explicitly prohibited the disclosure or release.

4. [REDACTED] In the following circumstances, intelligence information is generally not authorized for foreign disclosure or release. Any disclosures or releases under such circumstances require DNI approval with referral to the National Security Council (NSC), as appropriate. The DNI, when making a determination about such approval, will consult with and take into account the views of the originating IC element head.

a. The disclosure or release would reveal intelligence about the recipient country or its territories, dependencies, or dominions, unless such intelligence was produced jointly or obtained with the assistance, consent, or request of the recipient country, unless there is a clear and overriding benefit to the U.S.

b. The disclosure or release could reasonably be expected to jeopardize U.S. diplomatic, military, or intelligence liaison relationships.

c. The disclosure or release could reasonably be expected to jeopardize ongoing U.S. diplomatic, military, or law enforcement activities known to the IC element disclosing or releasing the intelligence.

d. The disclosure or release would include information that reveals either directly or by inference the existence of specific collection, counterintelligence, or special activities or cover-related activities that would endanger the future of these activities, or jeopardizes the safety, welfare, or reputations of the individuals connected with these intelligence activities, specifically:

(1) Intelligence operations, plans, and targets that identify units or individuals engaged in clandestine collection or collection support activities;

(2) Registration or coding of intelligence sources;

(3) Past, present, or planned clandestine or overt intelligence operations and support activities, including assistance by an IC element to any other U.S. agency, which require protection to ensure that assets, operations, or objectives are not revealed; and

(4) Cover providers, sponsors of cover support, cover support organizations, facilities, and methodologies that require protection to ensure mission integrity.

e. The disclosure or release would identify a specific source, either by name, title, position, or description as the origin of intelligence information.

f. The disclosure or release would reveal specific details of the most sensitive aspects of past, present, or future intelligence collection systems that could reasonably be expected to jeopardize systems capabilities and result in the loss of collection opportunities.

5. [REDACTED] Disclosures and releases that would support or facilitate lethal action require special consideration and authorization, including referral to the NSC and compliance with NSC direction as appropriate.

E. (U) RESPONSIBILITIES: IC element heads, Senior Foreign Disclosure and Release Authorities, Foreign Disclosure and Release Officers, and any other IC personnel charged with foreign disclosure or release responsibilities shall ensure that foreign disclosures and releases of classified intelligence are authorized and performed in a manner consistent with this Guidance.

F. (U) EFFECTIVE DATE: This Policy Guidance becomes effective on the date of signature.



Director of National Intelligence

13 MAR 2013

Date