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Talking Points on AR 2-2 for HPSCI/SSCI Meeting  
November 18 2013

**INTRODUCTION and EO 12333 BACKGROUND**

- The primary basis for protection of U.S. persons' privacy rights within the U.S. Intelligence Community is Executive Order 12333, as amended. EO 12333 describes how the IC will protect the legal rights, including freedoms, civil liberties and privacy rights guaranteed by the Constitution and other Federal law, of all United States persons (a defined terms in the EO) at each stage of the intelligence production cycle – collection, retention, and dissemination of information.<sup>i</sup>
- The discussion today will focus on the last two portions of that production cycle: “retention” – the decision of what US person information CIA will keep – and “dissemination” – the decision of what US person information CIA will share with other parties.
- EO 12333 defines a “United States person”<sup>ii</sup> to include:
  - United States citizens;
  - Permanent resident aliens (lawful permanent residents);
  - Unincorporated associations substantially composed of citizens or PRAs; and
  - Corporations incorporated inside the US.
- Each IC element must implement the EO through AG-approved guidelines that are specific to the national security responsibilities of the element. These guidelines address the collection, retention, and dissemination of USP information, as well as other, related, topics. For CIA, those guidelines are Agency Regulation (AR) 2-2, “Law and Policy Governing the Conduct of Intelligence Activities.”<sup>iii</sup>
- AR 2-2 has a main section with multiple annexes; the first two of these regulate CIA activities (meaning collection, retention, and dissemination) abroad while the second annex regulates activities within the US. For the purposes of collection and retention, the two annexes are fundamentally the same and so I will only refer to a specific annex or location when it make a difference.<sup>iv</sup>
- For purposes of this discussion, which is focused on how the CIA retains and disseminates information that may identify a particular US person, I will assume that the information was lawfully collected in the first place.

**RETENTION OF USP INFORMATION**

- So assuming lawfully collected information, the next consideration is retention of the USP information. This activity must first of all be related to an authorized CIA responsibility. CIA responsibilities are found in both law (the CIA Act of 1949 and the National Security Act of 1947, as amended) and in EO 12333.



(b)(3) NatSecAct

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- If the proposed retention relates to one of those responsibilities, the information must also be retained for one (or more of enumerated) reasons.<sup>v</sup>
- Let me discuss some of the retention categories and what they mean at CIA.
  - The information is **Foreign intelligence or counterintelligence**
  - Publicly available: Any publicly available information that the CIA collects can only be retained if it relates to a mission responsibility – such as CIA's collection of FI.

(b)(1)  
(b)(3) NatSecAct

[Redacted]

[Redacted] In practice, the latter does not allow for the automatic retention of any or all information on a USP that happens to be publicly available – it would still have to relate to a mission responsibility.

- Processed to delete the identity of the U.S. person: [Redacted]

(b)(1)  
(b)(3) NatSecAct

[Redacted]

- CIA may retain USP information for a “reasonable period” of time to determine if the information may be otherwise retained as within the enumerated categories.

- [Redacted]

(b)(1)  
(b)(3) NatSecAct

- Primary approach is to delete all USP PII prior to dissemination, both within and external to CIA.
- But if that is not possible because the identity is necessary, or reasonably believed to become necessary, to understand and assess the information, the PII may be retained and disseminated along with the information if the information is:
- Communications about a USP that do not qualify for retention or dissemination must be destroyed.

### DISSEMINATION OF USP INFORMATION

- CIA may internally disseminate USP information to employees who need to know the information in the course of their official duties. This allows for more targeted retention decisions on the basis of needs and focus of individual offices, vice a monolithic decision for all of CIA. The guiding principle again, is need-to-know; this is intended to promote responsible sharing of information.<sup>vii</sup>
- Additionally, CIA has authority to disseminate USP information to any recipient within the IC for the purpose of allowing the recipient to determine if it may retain the information pursuant to the recipient's own authorities and guidelines. That authority would include disseminating information that CIA collected but cannot, itself, retain.

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- But generally, just as retention builds on collection, so too dissemination builds on both of those processes such that CIA may disseminate only that information it is able to retain. Once CIA has determined that it may lawfully retain USP information, that information may also be disseminated to recipients specified in AR 2-2.
- US person identifying information (“John Q. American” vice “US Person #4”) may be disseminated outside the IC only if it is necessary or if it is reasonably believed that it may become necessary to understand or assess such information.

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<sup>i</sup> EO 12333, 1.1(b); 2.3.

<sup>ii</sup> Id., at 3.5(k).

<sup>iii</sup> Id., at 2.3. AR 2-2, “Law and Policy Governing the Conduct of Intelligence Activities,” December 23, 1987.

<sup>iv</sup> AR 2-2, Annex A, “Guidance for CIA Activities Outside the United States,” December 23, 1987; AR 2-2, Annex B, “Guidance for CIA Activities Within the United States,” July 20, 2005.

<sup>v</sup> Id., at (VI)(A)(1).

<sup>vi</sup> AR 2-2, Appendix D, “Retention and Dissemination of Information Derived from Electronic Surveillance,” July 20, 2005.

<sup>vii</sup> AR 2-2, Annexes A and B, at (VI)(A)(2).

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