

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.

Office of the Director of National Intelligence

Intelligence Activities Procedures Approved by the Attorney General Pursuant to Executive Order 12333

Table of Contents

SECTION 1. INTRODUCTION AND GENERAL PROVISIONS	5
1.1 The Attorney General has approved these Procedures.	5
1.2 Intelligence activities are necessary to the national security.....	5
1.3 Mission of the ODNI.	5
1.4 Scope and applicability.....	6
1.5 General principles.	6
1.6 Alternate procedures.	7
1.7 Information necessary for administrative and oversight purposes.....	7
1.8 Departures.	7
1.9 Obligation to report information to DOJ about potential criminal activity.	7
SECTION 2. AUTHORITIES AND RESPONSIBILITIES	9
2.1 Statutory authorities and responsibilities.	9
2.1.1 DNI authorities and responsibilities.	9
2.2 Authorities and responsibilities under Executive Order 12333.	10
2.2.1 DNI authorities and responsibilities.....	10
2.2.2 ODNI authorities and responsibilities.....	10
2.2.3 Assistance to law enforcement and other civil authorities.....	11
2.2.4 Information concerning U.S. persons that the ODNI may collect, retain, and disseminate.....	11
SECTION 3. COLLECTING, ACCESSING, AND OBTAINING INFORMATION.....	12
3.1 Collection.	12
3.2 Access.	13

3.3 Additional Collection Authority of the NCTC. 13

3.4 Information Obtained from Other IC Elements..... 14

3.5 Voluntarily Provided Information..... 14

SECTION 4. APPROVAL AND DOCUMENTATION REQUIREMENTS..... 15

4.1 Scope of documentation requirement..... 15

4.2 Content of documentation..... 15

4.3 Approval of documentation. 16

SECTION 5. UNEVALUATED INFORMATION 17

5.1 Scope of application..... 17

5.2 Exceptional handling..... 17

5.2.1 Unevaluated information subject to exceptional handling requirements.....17

5.2.2 Exceptional handling requirements.18

5.2.2.1 Auditing.18

5.2.2.2 Destruction requirements.18

5.2.3 Querying of unevaluated information subject to exceptional handling requirements.18

5.3 Routine handling..... 19

5.3.1 Information subject to routine handling requirements.....19

5.3.2 Masking or obfuscating exceptional information to prepare it for routine handling.....19

5.3.3 Routine handling requirements.19

5.3.3.1 Auditing.19

5.3.3.2 Destruction requirements.19

5.3.4 Querying of unevaluated information subject to routine handling requirements.20

SECTION 6. RETENTION OF INFORMATION CONCERNING U.S. PERSONS..... 21

6.1 Standard for retention. 21

6.2 Relationship to other authorities. 22

SECTION 7. DISSEMINATION OF INFORMATION CONCERNING U.S. PERSONS..... 23

7.1 Dissemination inside the Intelligence Community..... 23

7.2 Dissemination outside the Intelligence Community. 23

7.2.1 Dissemination of information concerning U.S. persons that meets the retention criteria of Section 6...23
7.2.2 Dissemination of unevaluated information.24

SECTION 8. PARTICIPATION IN ORGANIZATIONS IN THE UNITED STATES25

8.1 **Applicability** 25

8.2 **Disclosed participation**..... 25

8.3 **Undisclosed participation**..... 25

 8.3.1 Undisclosed participation in general.....26

 8.3.2 Other undisclosed participation.....26

SECTION 9. OVERSIGHT AND COMPLIANCE RESPONSIBILITIES27

9.1 **Compliance** 27

9.2 **Oversight responsibilities** 27

 9.2.1 Principal Deputy Director of National Intelligence (PDDNI).....27

 9.2.2 The Office of the Inspector General of the Intelligence Community27

 9.2.3 The Office of General Counsel.27

 9.2.4 The Office of Civil Liberties, Privacy, and Transparency.....27

 9.2.5 Heads of Directorates and National Intelligence Centers.27

 9.2.6 ODNI Employees.27

SECTION 10. DEFINITIONS29

10.1 **Access** 29

10.2 **Collection** 29

10.3 **Communications security investigation**..... 29

10.4 **Consent**..... 29

10.5 **Counterintelligence** 29

10.6 **Dissemination** 29

10.7 **Employee** 30

10.8 **Evaluation or evaluated information**..... 30

10.9 **Foreign Intelligence**..... 30

10.10 Intelligence Community 30

10.11 Intelligence 30

10.12 National intelligence 30

10.13 Obtain 30

10.14 Overt collection..... 30

10.15 Personnel security investigation 30

10.16 Physical security investigation..... 30

10.17 Publicly available..... 31

10.18 Retention 31

10.19 Terrorism information..... 31

10.20 Unevaluated information 32

10.21 United States 32

10.22 United States person..... 32

10.23 U.S. Person Identifying Information (USPII)..... 33

SECTION 11. ADMINISTRATION AND EFFECTIVE DATE 34

Section 1. Introduction and General Provisions

1.1 The Attorney General has approved these Procedures.

The Director of National Intelligence (DNI) issued these Procedures after receiving the approval of the Attorney General. These Procedures are established in accordance with the requirements for Attorney General-approved guidelines set forth in Sections 1.3(a)(2), 2.3, and 2.9 of Executive Order 12333, United States Intelligence Activities, as amended, and Section 102A(b) of the National Security Act, as amended, and satisfy the requirements of Section 309 (“Procedures for the Retention of Incidentally Acquired Communications”) of the Intelligence Authorization Act for Fiscal Year 2015. Except as otherwise provided, these Procedures supersede all prior Attorney General-approved procedures issued under the above-specified sections of Executive Order 12333 governing the Office of the Director of National Intelligence’s (“ODNI”) handling of information, to include procedures for the ODNI national intelligence centers (“centers”).¹

1.2 Intelligence activities are necessary to the national security.

Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents is essential to informed decisionmaking in the areas of national security, national defense, and foreign relations. The ODNI, including its national intelligence centers, **collects** (overtly or through **publicly available** sources), analyzes, produces, **retains**, and **disseminates** such information to advance its own missions and support other national missions. The ODNI also **accesses** information possessed by other federal government departments and agencies and **obtains** information from other **Intelligence Community** elements. To fulfill its missions, the ODNI must **collect**, **access**, and **obtain** reliable information and **intelligence**, subject to the restrictions imposed by the Constitution and applicable law. The ODNI’s **intelligence** activities must be integrated, agile, resilient, and innovative, and be conducted in a manner that safeguards the freedoms, civil liberties, and privacy rights of all **U.S. persons** guaranteed by the Constitution and the laws of the United States. Set forth below are Procedures that, in addition to and consistent with applicable laws, are intended to achieve the proper balance among mission essential activities, including the acquisition and handling of national security information, and the protection of individual interests. The United States Government, including the ODNI, has a solemn obligation to protect fully the legal rights of all **U.S. persons**, including freedoms, civil liberties, and privacy rights guaranteed by federal law, including in the conduct of intelligence activities.

1.3 Mission of the ODNI.

The ODNI is an **Intelligence Community** element pursuant to Section 3(4) of the National Security Act of 1947, as amended, and Section 3.5(h) of Executive Order 12333. The ODNI includes all ODNI directorates and centers currently existing or subsequently established. Pursuant to Section 103 of the National Security Act, the ODNI assists the DNI in carrying out his or her lawful duties and responsibilities as the head of the **Intelligence Community** and the principal adviser to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to national security.

¹ As of the effective date of these Procedures, ODNI has three national intelligence centers: the National Counterterrorism Center (for which the Attorney General-approved guidelines of March 22, 2012 are rescinded), the National Counterintelligence and Security Center, and the National Counterproliferation Center. These Procedures also apply to any ODNI national intelligence center established after the effective date of these Procedures.

1.4 Scope and applicability.

These Procedures govern **collecting, accessing, and obtaining** information concerning **U.S. persons** (which includes **U.S. Person Identifying Information (USPII)**) by the ODNI, as well as the ODNI's **retention and dissemination** of such information, except for any unminimized or unevaluated signals intelligence information that the ODNI may receive pursuant to the "Raw SIGINT Availability Procedures" approved by the Attorney General on January 3, 2017, or any successor procedures.

ODNI **employees**, including individuals acting on behalf of the ODNI (such as contractors, persons detailed to the ODNI, or, in certain limited circumstances, assignees) must abide by these Procedures when conducting **intelligence** activities. These Procedures do not apply to ODNI **employees** when acting solely under the authority of another agency (e.g., employees detailed to another agency).

1.5 General principles.

All duly authorized ODNI activities subject to these Procedures shall have a purpose consistent with the ODNI's authorities and responsibilities. When the ODNI **collects** or **obtains** information, it shall seek to receive only the amount of information reasonably necessary to support that purpose. The ODNI shall use the least intrusive **collection** methods feasible within the **United States** or directed against **U.S. persons**.

The ODNI shall carry out all activities in accordance with the Constitution and the laws of the United States, executive orders, and other presidential directives. In addition, where Constitutional or other legal requirements, including requirements under the Foreign Intelligence Surveillance Act, as amended, govern the ODNI's activities, those legal requirements supersede the applicable portions of these Procedures. Any questions concerning the applicability of these Procedures or other legal requirements shall be referred to the ODNI Office of General Counsel and the ODNI Civil Liberties Protection Officer. Where appropriate, the ODNI shall consult with the Department of Justice regarding potential enhanced safeguards beyond those specifically set forth in these Procedures. Such safeguards might address, for example, the handling of **U.S. person** information that is significant in volume, proportion, or sensitivity, including information in which a **U.S. person** had a reasonable expectation of privacy under the Fourth Amendment of the United States Constitution at the time of **collection**.

The ODNI is not authorized to and shall not **collect, access, obtain** or maintain information concerning **U.S. persons** solely for the purpose of monitoring (1) activities protected by the First Amendment or (2) the lawful exercise of other rights secured by the Constitution or laws of the United States.

The ODNI is not authorized to and shall not engage in any **intelligence** activity, including **dissemination** of information to the Executive Office of the President, for the purpose of affecting the political process in the United States. Questions about whether a particular activity falls within this prohibition will be resolved in consultation with the Office of General Counsel.

The ODNI shall not request any person or entity, other than an element of the **Intelligence Community** acting in accordance with its authorities and procedures, to undertake any activity that is prohibited by these Procedures, and shall not provide technical equipment, funds, or other assistance in support of such an activity.

1.6 Alternate procedures.

Nothing in these Procedures shall prohibit or regulate the storage, maintenance, processing, or handling of information that is governed by an alternate set of procedures approved by the Attorney General under EO 12333, including information in an ODNI-hosted information system.

1.7 Information necessary for administrative and oversight purposes.

- (a) The ODNI may **access, obtain, collect**, process, handle, **retain**, or **disseminate** information concerning **U.S. persons** necessary for administrative purposes. Information is **accessed, obtained, collected**, processed, handled, **retained**, or **disseminated** for administrative purposes when it is necessary for the administration of the ODNI but is not **accessed, obtained, collected**, processed, handled, **retained**, or **disseminated** directly for **intelligence** purposes. Information necessary for administrative purposes includes, but is not limited to, information about contracting, building maintenance, construction, fiscal matters, internal accounting and auditing procedures, disciplinary matters, systems administration (including querying, processing, and data back-up and recovery as part of systems administration), public affairs and legislative matters (including correspondence files), personnel and training records, training materials, and investigations of alleged crimes or improprieties by ODNI **employees** or by ODNI directorates or centers authorized to perform such investigatory functions. The other provisions of these Procedures do not apply to activities conducted in accordance with this paragraph.
- (b) The ODNI may process, handle, **retain**, or **disseminate** information reasonably necessary to conduct or enable lawful oversight of the ODNI's **intelligence** activities. The requirements of Sections 4 and 5 do not apply to activities conducted in accordance with this paragraph.

1.8 Departures.

Departures from these Procedures are permitted only where and to the extent authorized in advance by both the DNI, in consultation with the General Counsel and the ODNI Civil Liberties Protection Officer, and the Assistant Attorney General for National Security. Authorization of departures from these Procedures shall be documented and describe the circumstances necessitating the departure, the expected duration of the departure, and any permitted actions taken pursuant to the departure. The DNI will provide written notice of any significant departures to appropriate oversight officials where the DNI determines, in consultation with the General Counsel and the ODNI Civil Liberties Protection Officer, that such notice will assist these officials in the performance of their oversight functions or as otherwise required by statute, executive order, or presidential directive. Any activities constituting a departure from these Procedures must be conducted in accordance with the Constitution and the laws of the United States.

1.9 Obligation to report information to DOJ about potential criminal activity.

Title 28, United States Code, Section 535(b) requires the head, or appropriate **employees**, of executive branch agencies to expeditiously report to the Attorney General any information, allegation, matter, or complaint witnessed, discovered, or received by the agency that relates to violations of federal criminal law involving Government officers and **employees**.

Section 1.6(b) of Executive Order 12333 requires that **Intelligence Community** elements “report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department, agency, or establishment concerned, in a manner consistent with the protection of **intelligence** sources and methods, as specified in those procedures.”

To fulfill this obligation, information acquired in the course of the ODNI’s authorized activities that indicate possible violations of federal criminal law must be reported to the Department of Justice (DOJ) in accordance with the August 22, 1995 Memorandum of Understanding on Reporting of Information Concerning Federal Crimes, or successor agreement.

Section 2. Authorities and Responsibilities

All ODNI activities must be related to and consistent with the authorities and responsibilities of the ODNI set forth in the National Security Act, Executive Order 12333, or other applicable provisions of law, executive orders, or presidential directives. These Procedures govern how the ODNI (including its mission centers) will fulfill its responsibilities, and do not confer any new authorities.

2.1 Statutory authorities and responsibilities.

2.1.1 DNI authorities and responsibilities.

Pursuant to Section 102 of the National Security Act, the DNI's principal responsibility is to serve as the head of the Intelligence Community, act as the principal adviser to the President, National Security Council, and Homeland Security Council for intelligence matters related to the national security, and oversee and direct the implementation of the National Intelligence Program.

Section 102A of the National Security Act further identifies the authorities and responsibilities of the DNI. These include:

- (a) Ensuring that national intelligence is provided to the President, the heads of departments and agencies of the executive branch, the Chairman of the Joint Chiefs of Staff and senior military commanders, the Senate and House of Representatives and committees thereof, and to such other persons as the DNI determines to be appropriate.
- (b) Unless otherwise directed by the President, having access to all national intelligence that is collected by any federal department, agency, or other entity, except as otherwise provided by law or, as appropriate, under guidelines agreed upon by the Attorney General and the DNI.
- (c) Establishing objectives, priorities, and guidance for the Intelligence Community to ensure timely and effective collection, processing, analysis, and dissemination of national intelligence.
- (d) Ensuring the maximum availability of and access to intelligence information within the Intelligence Community consistent with national security requirements.
- (e) Performing such other functions as the President may direct.

2.1.2 ODNI authorities and responsibilities.

Pursuant to Section 103 of the National Security Act, the function of the ODNI is to assist the DNI in carrying out his or her duties and responsibilities under that Act, other applicable law, or as prescribed by the President. ODNI **employees** may also exercise authorities and fulfill responsibilities set forth in other federal statutes in accordance with the requirements and limitations of those statutes.

2.1.3 National intelligence centers authorities and responsibilities.

The National Security Act and other applicable law assign additional authorities and responsibilities to particular national intelligence centers, subject to the oversight and control of the DNI. Where relevant to the **collection** of or **access** to information or **intelligence**, or its **retention** and **dissemination**, these provisions are identified in these Procedures.

2.2 Authorities and responsibilities under Executive Order 12333.

2.2.1 DNI authorities and responsibilities.

Pursuant to Section 1.3 of Executive Order 12333, the DNI shall:

- (a) Serve as the head of the Intelligence Community, and as the principal adviser to the President, the National Security Council, and the Homeland Security Council for intelligence matters related to national security, and shall oversee and direct the implementation of the National Intelligence Program.
- (b) Lead a unified, coordinated, and effective intelligence effort.
- (c) Have access to all information and intelligence, from any executive branch department or agency in accordance with Section 1.5(a) of the Executive Order, relevant to the national security or that otherwise is required for the performance of the Director's duties, to include administrative and other management information, except such information excluded by law, by the President, or by the Attorney General acting under Executive Order 12333 at the direction of the President.
- (d) Execute the function prescribed by Section 3(5) of the National Security Act, by determining, as appropriate, that intelligence, regardless of the source from which derived and including information gathered within or outside the United States, pertains to more than one United States Government agency and is national intelligence.
- (e) Ensure that appropriate federal departments and agencies have access to intelligence and receive the support needed to perform independent analysis.

2.2.2 ODNI authorities and responsibilities.

As an element of the **Intelligence Community**, the ODNI possesses the general authorities and responsibilities assigned to all such elements by Section 1.4 of Executive Order 12333. These include the direction in Section 1.4 of Executive Order 12333 that elements shall, consistent with applicable federal law and such Order:

- (a) Collect and provide information needed by the President and, in the performance of executive functions, the Vice President, the National Security Council, the Homeland Security Council, the Chairman of the Joint Chiefs of Staff, senior military commanders, and other executive branch officials, and, as appropriate, the Congress of the United States.
- (b) In accordance with priorities set by the President, collect information concerning, and conduct activities to protect against, international terrorism, proliferation of weapons of mass destruction, intelligence activities directed against the United States, international criminal drug activities, and other hostile activities directed against the United States by foreign powers, organizations, persons, and their agents.
- (c) Conduct administrative, technical, and other support activities within the United States and abroad necessary for the performance of authorized activities, to include providing services of common

concern for the Intelligence Community as designated by the DNI in accordance with Executive Order 12333.

- (d) Conduct research, development, and procurement of technical systems and devices relating to authorized functions and missions or the provision of services of common concern for the Intelligence Community.
- (e) Protect the security of intelligence related activities, information, installations, property, and employees by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the Intelligence Community elements as are necessary.
- (f) Perform such other functions and duties related to intelligence activities as the President may direct.

In addition, Section 1.7(j) of Executive Order 12333 specifies that the ODNI shall have the duty and responsibility to **collect** (overtly or through **publicly available** sources), analyze, produce, and **disseminate** information, **intelligence**, and **counterintelligence** to support the missions of the ODNI and to support other national missions.

2.2.3 Assistance to law enforcement and other civil authorities.

In accordance with Section 2.6 of Executive Order 12333, the ODNI may:

- (a) Cooperate with appropriate law enforcement agencies for the purpose of protecting the employees, information, property, and facilities of any element of the **Intelligence Community**;
- (b) Unless otherwise precluded by law or Executive Order 12333, participate in law enforcement activities to investigate or prevent clandestine **intelligence** activities by foreign powers, or international terrorist or narcotics activities;
- (c) Provide specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency, or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be approved in each case by the General Counsel; and
- (d) Render any other assistance and cooperation to law enforcement or other civil authorities not precluded by applicable law.

2.2.4 Information concerning U.S. persons that the ODNI may collect, retain, and disseminate.

Section 2.3 of Executive Order 12333 permits **collection**, **retention**, and **dissemination** of information concerning **U.S. persons** in accordance with these Procedures. Consistent with this provision, the ODNI may **collect**, **retain**, and **disseminate** certain types of information concerning **U.S. persons** if done in the course of the ODNI's duly authorized **intelligence** activities and in fulfillment of the ODNI's national security responsibilities, as described in these Procedures.

Section 3. Collecting, Accessing, and Obtaining Information

3.1 Collection.

The ODNI is authorized to **collect** information concerning **U.S. persons** to support its missions, including the missions of the national intelligence centers, and to support other national missions. In the course of a duly authorized **intelligence** activity, ODNI may **collect** information concerning **U.S. persons** by any lawful means, provided that the following three conditions are met:

- (a) The **collection** relates to and is consistent with an ODNI authority and responsibility described in Section 2;
- (b) The information is **collected overtly** or through **publicly available** sources; and
- (c) In accordance with Section 2.3 of Executive Order 12333, such **collection** is conducted only in accordance with these Procedures and is reasonably believed to fall within one or more of the following categories:
 - (1) Information that is **publicly available** or collected with the **consent** of the person concerned;
 - (2) Information constituting **foreign intelligence** or **counterintelligence**, including such information concerning corporations or other commercial organizations. **Collection** within the United States of **foreign intelligence** not otherwise obtainable shall be undertaken by the FBI or, when significant **foreign intelligence** is sought, by other authorized elements of the IC, such as the ODNI, provided that no **foreign intelligence collection** may be undertaken for the purpose of acquiring information concerning the domestic activities of **U.S. persons**;
 - (3) Information acquired in the course of a lawful **foreign intelligence, counterintelligence, international drug, or international terrorism** investigation;
 - (4) Information needed to protect the safety of any persons or organizations, including those who are targets, victims, or hostages of international terrorist organizations;
 - (5) Information needed to protect **foreign intelligence** or **counterintelligence** sources, methods, and activities from unauthorized disclosure. **Collection** within the United States shall be undertaken by the FBI except that other elements of the Intelligence Community, such as the ODNI, may also collect such information concerning present or former **employees**, present or former intelligence element contractors or their present or former employees, or applicants for any such employment or contracting;
 - (6) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;
 - (7) Information arising out of a lawful personnel security investigation, physical security investigation, or communications security investigation;

- (8) Information acquired by overhead reconnaissance not directed at specific **U.S. persons**;
- (9) Incidentally acquired information that may indicate involvement in activities that may violate federal, state, local, or foreign laws; or
- (10) Information necessary for administrative purposes.

3.2 Access.

Pursuant to Section 102A of the National Security Act and Section 1.3 of Executive Order 12333, the ODNI is also authorized to **access** any information or intelligence possessed by another executive branch department or agency that is relevant to the national security or the DNI's responsibilities, except for such information excluded by law, by the President, or by the Attorney General acting under the direction of the President or guidelines agreed upon with the DNI. In exercising this authority to **access** information, the ODNI shall not abrogate the statutory or other responsibilities of the heads of departments of the United States Government or the Director of the Central Intelligence Agency. If the ODNI **collects** or **obtains** some portion of the information it **accesses**, it will apply the provisions of these Procedures that apply, respectively, to **collected** or **obtained** information.

3.3 Additional Collection Authority of the NCTC.

In addition to the categories of information listed in Subsection 3.1(c) above, the National Counterterrorism Center (NCTC) may **collect, access, obtain, retain, and disseminate terrorism information**, consistent with its authorities under Section 119 of the National Security Act of 1947, as amended, and these Procedures. To identify **terrorism information** under these authorities, NCTC may **access, collect or obtain**, and continuously review, datasets maintained by other federal government departments and agencies that may constitute or contain terrorism information, datasets pertaining exclusively to domestic terrorism, and other information maintained by executive departments and agencies identified as including non-terrorism information. In addition, under Section 119(e)(1) of the National Security Act of 1947, NCTC may "consistent with applicable law, the direction of the President, and [these Procedures], receive intelligence pertaining exclusively to domestic counterterrorism from any Federal, State, or local government or other source necessary to fulfill its responsibilities and retain and disseminate such intelligence." NCTC shall develop policies and procedures to implement these authorities consistent with the other provisions of these Procedures. Such policies and procedures shall require NCTC, before collecting a new agency dataset, to document the reasons its needs cannot be fully met by **accessing** that dataset without collecting it. These policies and procedures shall be coordinated with the ODNI Office of General Counsel and the ODNI Civil Liberties Protection Officer. Exercise of these authorities by NCTC is subject to the same **collection, retention, and dissemination** requirements that govern the categories of information enumerated in Subsection 3.1(c).

If the DNI and the head of an executive branch department or agency do not agree on the terms by which NCTC will **access, obtain, or collect** a dataset, either party may seek to resolve the dispute through the National Security Council process.

3.4 Information Obtained from Other IC Elements.

Pursuant to Section 2.3 of Executive Order 12333, the ODNI may **obtain** information, except for raw signals intelligence (which is separately governed by the Raw SIGINT Availability Procedures), from other **Intelligence Community** elements in support of its missions so that the ODNI may determine whether the information is relevant to its responsibilities and can be retained by it. The ODNI may **obtain** such information without first applying the requirements for **collection** specified in Subsection 3.1. To the extent that this information has not been evaluated by the other **Intelligence Community** element in accordance with its own procedures and is stored or otherwise maintained on ODNI information systems under the ODNI's control, the ODNI will initially treat that information as **unevaluated information** and apply Sections 4 and Section 5 of these Procedures accordingly.

3.5 Voluntarily Provided Information.

Entities or individuals may on their own initiative voluntarily provide information to the ODNI. All such information may be handled, **retained**, and **disseminated** only in accordance with Sections 4-7 of these Procedures. An ODNI directorate or center that receives recurrent voluntary submissions of **USPII** that it could not otherwise **collect** under Subsection 3.1 will consult with the Office of General Counsel and the Office of Civil Liberties, Privacy, and Transparency to determine the appropriate response to such **collection**.

Section 4. Approval and Documentation Requirements

4.1 Scope of documentation requirement.

The ODNI shall complete specific documentation for any **collected** information (or information **obtained** from another **Intelligence Community** element that is stored or otherwise maintained on ODNI information systems) that:

- (a) Exceeds the ODNI's capacity to **evaluate** the information immediately for **retention** under the criteria of Section 6; or
- (b) Under the criteria of Section 6, is determined to qualify for **retention** in its entirety without individualized review of the data contained within the set of information.

Documentation must be completed and approved as soon as practicable, preferably prior to: **collection; obtaining** data from another IC element; or the addition or substantial modification of a data type or source to an already-established activity. Technical personnel processing information subject to this section shall not make the information available for analytic purposes until this documentation has been approved by an official specified in Subsection 4.3. However, in emergency circumstances, the official specified in Subsection 4.3. may make the information immediately available for analytic purposes under the exceptional handling requirements of Subsection 5.2.2 without prior coordination with the ODNI Office of General Counsel and the ODNI Civil Liberties Protection Officer. In such circumstances the official will provide subsequent notice to the ODNI Office of General Counsel and the ODNI Civil Liberties Protection Officer as soon as possible.

4.2 Content of documentation.

The documentation, which may take different forms for different directorates or centers, shall include:

- (a) The purpose of the activity, including a description of why the information is reasonably believed to be relevant to an ODNI authority and responsibility listed in Section 2;
- (b) An explanation of how information provided to the ODNI by another party was originally acquired by that party;
- (c) The means used to compile the information, including any reasonable steps that were or will be taken to limit use of the information to the smallest separable subset of data containing the information necessary to achieve the authorized purpose. These steps could include the use of filters or similar technology and should be applied as early as practicable in the course of the activity;
- (d) A statement meeting the requirements of either (1) or (2) below. If the data are sorted into multiple subsets, then each subset must be addressed in a separate statement under this paragraph:
 - (1) That any information concerning a **U.S. person**, if found in the data, would meet the retention criteria of Section 6 without individualized review; or
 - (2) That the information (or a subset thereof) will be stored and handled as **unevaluated information** under Section 5. A statement under this paragraph shall state:

- i. which set of Section 5 handling and querying requirements (exceptional or routine) will be applied to such **unevaluated information**;
 - ii. whether such **unevaluated information** is anticipated to include information concerning **U.S. persons** that is significant in volume, proportion, or sensitivity;
 - iii. whether such **unevaluated information** is subject to any statutory requirements, treaty obligations, or intelligence sharing arrangements or whether there are specific civil liberties or privacy sensitivities relating to the information that have been identified to the ODNI by the entity providing the information to the ODNI; and
 - iv. whether any enhanced safeguards beyond those specifically set forth in these Procedures shall be applied to the **unevaluated information** because of the likelihood that it will contain **USPII** that is significant in volume, proportion, or sensitivity. Enhanced safeguards may include measures designed to ensure that the **collection, handling (including querying), retention, and dissemination** of such **USPII** is lawful and furthers substantial government interests that are within the scope of the ODNI's duly authorized activities.
- (e) A description of how the ODNI will manage the information (including the offices responsible for managing it) and how it will implement any applicable handling and querying requirements, such as those required by Section 5.

4.3 Approval of documentation.

All documentation prepared under this section will be approved by an appropriate senior official, as designated by the DNI, responsible for managing the activity and the approval will be made in coordination with the ODNI Office of General Counsel and the ODNI Civil Liberties Protection Officer.

Section 5. Unevaluated Information

The ODNI's national security mission may require it to store or otherwise maintain **unevaluated information** when it is impracticable, infeasible, or detrimental to its mission to determine immediately whether the information qualifies for **retention** under the criteria of Section 6. Any **unevaluated information** that the ODNI **collects** or **obtains** pursuant to Section 3 must be handled in accordance with this section, except for any information that the ODNI receives pursuant to the Raw SIGINT Availability Procedures, which will be handled according to those procedures.

All **unevaluated information** must be stored or otherwise maintained in a manner that ensures that the particular handling requirements assigned to it are met. This may include, for example, the use of segregation or physical or logical separation (i.e., separation through software or other computer logic) of the subject information. **Unevaluated** information may only be made available to those ODNI **employees** who have the requisite security clearance, a need-to-know in the course of their official duties, and who have been trained in the handling of **unevaluated information** under this Section.

5.1 Scope of application.

This section does not apply to:

- (a) Information received pursuant to a court order or similar legal process (which would be governed by the procedures relevant to that legal process);
- (b) Information that does not include any information concerning a **U.S. person** or otherwise qualifies for **retention** under Section 6, including sets of information determined to qualify for **retention** in their entirety, provided that determination has been documented and approved as required by Subsections 4.2(d)(1) and 4.3; or
- (c) Information **accessed** by the ODNI but not stored or otherwise maintained on ODNI systems.

5.2 Exceptional handling.

5.2.1 Unevaluated information subject to exceptional handling requirements.

The following categories of **unevaluated information** are subject to the exceptional handling requirements set forth at Subsection 5.2.2:

- (a) Nonpublic telephone or electronic communications (including communications in electronic storage) acquired without the **consent** of a person who is a party to the communication; and
- (b) **Unevaluated information** reasonably believed to contain information concerning **U.S. persons** that is significant in volume, proportion, or sensitivity, as documented and approved in accordance with Subsections 4.2(d)(2) and 4.3.

Protections or enhanced safeguards beyond these exceptional handling requirements, such as additional access approvals or additional training requirements, may be applied as deemed appropriate by an official designated pursuant to Subsection 4.3 and documented in accordance with Subsection 4.2(d)(2).

5.2.2 Exceptional handling requirements.

5.2.2.1 Auditing.

The ODNI shall maintain and audit records of activity, to include **access**, queries made, and justifications for queries subject to Subsection 5.2.3(b) below (generally, queries designed to retrieve information concerning **U.S. persons**).

5.2.2.2 Destruction requirements.

Unevaluated information that is subject to exceptional handling requirements shall be destroyed no later than five years after the information has been made available to ODNI for analytic use. For any **unevaluated information** that is enciphered or reasonably believed to have a secret meaning, the five-year limitation begins when the **unevaluated information** is processed into intelligible form.

The five-year limitation under this subsection may be extended if necessary to protect against an imminent threat to human life, as determined by the appropriate senior official designated in Subsection 4.3, or upon the approval of the DNI (after consultation with the General Counsel and the ODNI Civil Liberties Protection Officer) based on a written determination that an extended storage period is necessary to protect the national security of the United States. Upon such extension, the DNI shall complete any notifications required by statute, executive order, or other presidential directive.

The five-year limitation under this subsection may also be extended when necessary to **retain** information for technical assurance or compliance purposes (including court orders or litigation obligations) provided such **retention** has been reported as required by statute, executive order, or other presidential directive. Any **unevaluated information** subject to an extension under this paragraph shall be rendered inaccessible for analytic purposes.

Unevaluated information obtained from another element of the **Intelligence Community** and stored or otherwise maintained on ODNI systems must be destroyed no later than the point in time, if any, at which the originating element is required to destroy that information, if such information remains subject to the requirements of this section at that time.

5.2.3 Querying of unevaluated information subject to exceptional handling requirements.

An ODNI **employee** may query **unevaluated information** covered by Subsection 5.2.1 only in the following circumstances:

- (a) A query that is *not* designed to retrieve information concerning a **U.S. person** may be made if the query is reasonably designed to retrieve information related to a duly authorized activity of the ODNI.
- (b) A query designed to retrieve information concerning a **U.S. person** may be made if the query is reasonably designed to retrieve information related to a duly authorized activity of the ODNI, and
 - (1) the subject **U.S. person** has provided **consent**; or
 - (2) to the extent practicable, the query is accompanied by a statement explaining the particular purpose of the query.

- (c) To the extent practicable, ODNI **employees** will tailor queries or other techniques to minimize the return of responsive information concerning **U.S. persons** that is not related to a duly authorized activity of the ODNI.

5.3 Routine handling.

5.3.1 Information subject to routine handling requirements.

All **unevaluated information** not subject to exceptional handling will be subject to the routine handling requirements set forth at Subsection 5.3.3.

Unevaluated information subject to routine handling requirements may, instead, be deemed subject to exceptional handling requirements due to policy or prudential concerns. The official designated pursuant to Subsection 4.3 shall approve and direct the application of exceptional handling requirements as a matter of policy or prudence. That approval shall be documented in accordance with Section 4.

5.3.2 Masking or obfuscating exceptional information to prepare it for routine handling.

Unevaluated information, other than nonpublic telephone or electronic communications specified in Subsection 5.2.1(a), that would be subject to exceptional handling requirements may be treated instead under routine handling requirements in the following circumstances:

- (a) The **unevaluated information** is stored in such a manner that it cannot be retrieved by reference to **USPII**; or
- (b) Any information that would be **USPII** when correlated with the **unevaluated information** is stored separately.

Any **USPII** that has been stored separately under this subsection is subject to exceptional storage and access requirements and to routine (rather than exceptional) destruction requirements. Such information may be unmasked or otherwise retrieved from separate storage only in accordance with the exceptional query requirements of Subsection 5.2.3.

5.3.3 Routine handling requirements.

5.3.3.1 Auditing.

To the extent practicable, the ODNI shall maintain and audit records of activity, which may include the availability of information to ODNI **employees**, queries made in accordance with Subsection 5.3.4, and any justifications for queries.

5.3.3.2 Destruction requirements.

Unevaluated information that is subject to routine handling by the ODNI must be destroyed no later than twenty-five years after the information has been made available to ODNI personnel for analytic use.

For any **unevaluated information** that is enciphered or reasonably believed to have a secret meaning, the twenty-five-year limitation begins when the **unevaluated information** is processed into intelligible form.

The storage period limitation under this subsection may be extended with the approval of the DNI (after consultation with the General Counsel and the Civil Liberties Protection Officer) based on a written determination that an extended storage period is reasonable and necessary to accomplish an authorized mission of the ODNI.

Unevaluated information obtained from another element of the **Intelligence Community** and stored or otherwise maintained on ODNI systems must be destroyed no later than the point in time, if any, at which the originating element is required to destroy that information, if such information remains subject to the requirements of this section at that time.

5.3.4 Querying of unevaluated information subject to routine handling requirements.

An ODNI **employee** may query **unevaluated information** covered by Subsection 5.3.1 if the query is reasonably designed to retrieve information related to a duly authorized activity of the ODNI.

Section 6. Retention of Information Concerning U.S. Persons

6.1 Standard for retention.

The ODNI may **retain** information concerning a **U.S. person** that it has **obtained** from another IC element, if the information has been evaluated and determined to be eligible for permanent retention by that IC element in accordance with its procedures approved by the Attorney General under Executive Order 12333.

The ODNI may also **retain** information concerning a **U.S. person** that it has lawfully **collected** or **obtained** when at least one of the following conditions is met:

- (a) The information is processed to delete **USPII**. In such cases a generic term that does not identify the **U.S. person** in the context of the information, such as “investor,” may be substituted;
- (b) The information is **publicly available**;
- (c) The information is provided to the U.S. Government with **consent** of the subject **U.S. person**;
- (d) The information concerns only corporations or other commercial organizations and is limited to their identities as manufacturers of equipment and related nomenclature or their locations, as, for example, “Ford Mustang” or “Boeing 737;”
- (e) The information is limited to the use of a name in a descriptive sense without linkage to additional information tied to the referenced **U.S. person**, as, for example, “USS Jimmy Carter,” “Rockefeller Center,” or “Amber Alert;”
- (f) The information relates to a U.S. Government official acting in an official capacity;
- (g) The information is **foreign intelligence**;
- (h) The information is **counterintelligence**;
- (i) The information concerns a **United States person** who is or may be, on the basis of that information or other information known to the ODNI:
 - (1) an agent of a foreign power, as defined in 50 U.S.C. § 1801(b)(2);
 - (2) an officer or employee of a foreign power, as foreign power is defined in 50 U.S.C. § 1801(a); or
 - (3) a person or entity acting for, on behalf of, or in collaboration with a foreign power, as foreign power is defined in 50 U.S.C. § 1801(a).
- (j) The information is necessary to protect **foreign intelligence** or **counterintelligence** sources or methods from unauthorized disclosure;
- (k) The information concerns **personnel, physical, or communications security**;

UNCLASSIFIED

- (l) The information is necessary for the purposes of oversight, accountability, or redress;
- (m) The information indicates involvement in activities that may violate federal, state, local, tribal or foreign laws and, if federal, may be required to be reported to the Department of Justice (see Subsection 1.8);
- (n) The information is relevant to an administrative, civil, or criminal proceeding or investigation;
- (o) The information is required by law or court order to be **retained**. Information may be **retained** under this paragraph only for the period of time required by the pertinent law or court order;
- (p) The information is necessary to protect the safety of any persons or organizations;
- (q) The information concerns a person or activity that poses a threat to any facility or personnel of any element of the **Intelligence Community** or any department containing such an element;
- (r) The information is necessary for the maintenance of technical systems or for data integrity purposes, including for the purpose of mitigating inadvertent or mistaken destruction of information, so long as only personnel who are responsible for technical maintenance have access to the information **retained** under this paragraph;
- (s) The information is necessary for an administrative function of the ODNI; or
- (t) The information is necessary to a lawful activity of the United States, and the General Counsel, in consultation with the Department of Justice, determines that such **retention** is lawful.

In addition to the categories listed above, and consistent with its authorities under the National Security Act and the IRTPA, the NCTC may **retain** any information constituting **terrorism information**.

If information concerning a **U.S. person** qualifies for **retention** under this section, **USPII** relating to that person may also be **retained** if the **USPII** is necessary, or if it is reasonably believed that the **USPII** may become necessary, to understand, assess, or act on the information.

Availability and use of **retained** information concerning **U.S. persons** shall be limited to those **employees** with appropriate security clearances, **access** approval, training, and needs related to duly authorized activities. An ODNI **employee** may query **retained** information if the query is reasonably designed to retrieve information related to an ODNI authority and responsibility listed in Section 2.

6.2 Relationship to other authorities.

This section does not apply to information received pursuant to a court order or similar legal process (which would be governed by the procedures relevant to that legal process).

Section 309 of the Intelligence Authorization Act for Fiscal Year 2015 imposes retention limits on certain nonpublic telephone and electronic communications, including communications in electronic storage. To retain communications that are within the scope of Section 309 for more than five years, the ODNI must comply with the requirements of Section 309(b)(3)(B) in addition to the requirements of this section.

Section 7. Dissemination of Information Concerning U.S. Persons

Information concerning a **U.S. person** and **unevaluated information** subject to these Procedures may be **disseminated** both inside and outside of the **Intelligence Community** only in accordance with the criteria below.

Information concerning a **U.S. person** and **unevaluated information** subject to these Procedures may be distributed within the ODNI to **employees** who need to know the information in the course of their duties. Such distribution within the ODNI is not **dissemination** under these Procedures.

This section does not apply to information received pursuant to a court order or similar legal process (which would be governed by the procedures relevant to that legal process).

7.1 Dissemination inside the Intelligence Community.

Information concerning a **U.S. person** and **unevaluated information** subject to these Procedures may be **disseminated** to an appropriate **Intelligence Community** element for purposes of allowing the receiving element to determine whether the information is relevant to its responsibilities and may be **retained** by that element.

7.2 Dissemination outside the Intelligence Community.

To the extent practicable, USPII should be removed prior to **dissemination** outside of the **Intelligence Community** unless it is necessary, or reasonably believed that the information may become necessary, to understand, assess, or act on the information being disseminated.

7.2.1 Dissemination of information concerning U.S. persons that meets the retention criteria of Section 6.

Information concerning a **U.S. person** that has been determined to meet the **retention** requirements of Section 6 may be disseminated outside the **Intelligence Community** to:

- (a) Any recipient, if the information is **publicly available** or concerns a **U.S. person** who has **consented** to the dissemination.
- (b) The President, the Vice President, the National Security Council, and their staffs;
- (c) Federal agencies and military departments that need the information to perform their lawful functions;
- (d) State and local law enforcement agencies having jurisdiction or responsibility for the investigation or prosecution of activities to which the information relates;
- (e) The Senate Select Committee on Intelligence, the House Permanent Select Committee on Intelligence, the Defense Subcommittee of the Senate Committee on Appropriations, and the Defense Subcommittee of the House Committee on Appropriations, and their staffs, when the information is relevant to their oversight responsibilities; the Speaker and minority leader of the House of Representatives and the majority and minority leaders of the Senate, when the information is relevant to their oversight responsibilities; and other members of Congress and their staffs

UNCLASSIFIED

pursuant to procedures determined by the Senate Select Committee on Intelligence or the House Permanent Select Committee on Intelligence, as appropriate;

- (f) Entities of cooperating foreign governments or international or foreign organizations, provided that the receiving entities agree to such further restrictions on use and **dissemination** as may be necessary. **Dissemination** under this paragraph requires the DNI or a designee to make a written assessment of the anticipated benefits of **disseminating** the information and the potential risks (including potential harm to identified individuals) resulting from **dissemination**.
- (g) Other recipients, if the **dissemination** is required by, or in accordance with, an applicable provision of law (including for oversight purposes set forth by law); executive order; presidential directive; National Security Council, Homeland Security Council, or successor organization directive; policy, memorandum of understanding, or agreement approved by the Attorney General; or court order;
- (h) Other recipients, if **dissemination** is for oversight purposes when there is a determination by the ODNI that the **dissemination** will assist these entities in the performance of their oversight functions. Such **dissemination** may be to an executive branch oversight office.
- (i) Other recipients, if the information is reasonably believed to be necessary to prevent harm or injury;
- (j) Other recipients, with DNI or designee approval, General Counsel concurrence (after the Office of General Counsel consults with the National Security Division of the Department of Justice), and Civil Liberties Protection Officer concurrence, if the **dissemination** is necessary to a lawful activity of the United States. **Dissemination** under this paragraph requires a written assessment that the anticipated benefits of disseminating the information outweigh the potential risks resulting from **dissemination** and of whether receiving entities should be subject to further restrictions on use and **dissemination**.

7.2.2 Dissemination of unevaluated information.

Unevaluated information may be **disseminated** outside the **Intelligence Community** to any recipient identified in Subsection 7.2.1, provided that the DNI or designee, with General Counsel and Civil Liberties Protection Officer concurrence, provides a written assessment of the anticipated benefits of **dissemination** and the potential risks resulting from **dissemination**, a statement that it is not reasonably possible to accomplish the intended objective without **disseminating** the information or by **disseminating** a lesser amount of information, and a statement that the receiving entity has provided appropriate assurances regarding its handling of the material with respect to the identified potential risks resulting from **dissemination**.

Section 8. Participation in Organizations in the United States

In the course of conducting duly authorized **intelligence** activities, ODNI **employees** may participate in organizations in the **United States** only in accordance with this section.

8.1 Applicability.

This section applies to participation by ODNI **employees** in any organization in the **United States** and implements Section 2.9 of Executive Order 12333. Any undisclosed participation in an organization in the **United States** shall be authorized only if it is essential to achieving lawful purposes, as determined by the DNI or a designee, that comport with the ODNI's authorities and responsibilities as described in Section 2 of these Procedures. The DNI or a designee may make a general determination that undisclosed participation in a particular kind of organization or event in identified circumstances is essential to achieving a lawful foreign intelligence or counterintelligence purpose within the assigned mission of the ODNI.

This section does not apply to joining or participating in an organization solely for personal purposes (i.e., activities undertaken on the initiative and at the expense of a person for personal benefit).

Participation in an organization does not include the occasional passive attendance at events that are open to the public, including non-members; however, it does include attending or taking part in any meetings or activities – even passively – of an organization that is closed to the public (i.e., meetings or activities exclusive to members and/or invited guests). Participation in an organization also does not include taking part in events outside the organizational structure or framework of an organization, such as infrequent attendance at meetings or occasional social gatherings that involve the organization's members, but that are not functions or activities conducted on behalf of the organization itself.

If there is any question about the nature of the participation, the participant should consult with the Office of General Counsel for appropriate guidance. (Internal ODNI regulations pertaining to outside activities may govern participation in organizations in the **United States** for personal purposes.)

8.2 Disclosed participation.

An ODNI **employee** may join or otherwise participate in an organization in the **United States** if that person's affiliation with the ODNI is disclosed to an official authorized to act on behalf of the organization in relation to the activity in question.

8.3 Undisclosed participation.

An ODNI **employee** may join or otherwise participate in an organization in the **United States** without disclosing his or her ODNI affiliation to the organization in the situations listed below, subject to these Procedures. No undisclosed participation shall be undertaken for the purpose of influencing the activity of the organization or its members.

8.3.1 Undisclosed participation in general.

As part of a duly authorized **intelligence** activity, an ODNI **employee** may join or otherwise participate in an organization in the **United States** in the following circumstances:

- (a) Public Organizations, Conferences, Forums, Online Sites, and Other Public Venues. Without disclosing affiliation, an ODNI **employee** may join or otherwise participate in an organization that is generally open to the public where the organization accepts participants regardless of affiliation and does not require disclosure of affiliation as a condition of attendance or access. This subsection also applies to attendance at any seminar, forum, conference, exhibition, trade fair, workshop, symposium, online forum, or similar event or venue that is generally open to the public and which does not require disclosing affiliation as a condition of attendance or access.

- (b) Certain Activities Conducted Via the Internet or Other Electronic Information Networks. An ODNI **employee** may view, register for, research, join, or otherwise participate in online areas or sites that are available to the public on or via an electronic information network such as the Internet, provided that access to the website, service, or other online area is accomplished using interfaces made available by the online area to any member of the public, and provided that the area does not require disclosure of affiliation as a condition of access.

8.3.2 Other undisclosed participation.

The conduct of any other undisclosed participation as part of a duly authorized **intelligence** activity requires prior consultation with the ODNI Office of General Counsel and the ODNI Civil Liberties Protection Officer.

Section 9. Oversight and Compliance Responsibilities

9.1 Compliance.

ODNI policies and guidance issued to implement these Procedures shall include appropriate measures to facilitate compliance and oversight. ODNI information systems will be designed to facilitate auditing of access to, and queries and **disseminations** of, information subject to Sections 5, 6 and 7 of these Procedures. These systems shall be audited periodically by the appropriate oversight entities described below. Heads of directorates, national intelligence centers, and any other ODNI organizations, in consultation with the ODNI Office of General Counsel, shall be the responsible officials for ensuring that each respective entity complies with these Procedures. The ODNI Civil Liberties Protection Officer shall oversee compliance with these Procedures and compliance with other applicable laws, regulations, guidelines, and instructions as they relate to civil liberties and privacy.

9.2 Oversight responsibilities.

9.2.1 Principal Deputy Director of National Intelligence (PDDNI).

The PDDNI or designee shall establish guidance for the implementation of these Procedures to include development of training, **employee** use of information subject to these Procedures, establishment of oversight mechanisms (such as periodic audit and compliance reviews), and other issues as required.

9.2.2 The Office of the Inspector General of the Intelligence Community.

As part of the Inspector General's independent statutory responsibilities, the Office of the Inspector General shall conduct audits, inspections, and investigations of ODNI programs and operations to determine compliance with applicable statutes and regulations, including these Procedures.

9.2.3 The Office of General Counsel.

The Office of General Counsel shall be responsible for the interpretation of these Procedures, resolve any conflict regarding the application of different provisions of these Procedures, and serve as the primary point of contact with the Department of Justice regarding these Procedures.

9.2.4 The Office of Civil Liberties, Privacy, and Transparency.

The Civil Liberties Protection Officer shall provide advice and assistance to the PDDNI or designee, and other senior ODNI officials regarding privacy and civil liberties in implementing these Procedures and shall serve as the primary point of contact with the Privacy and Civil Liberties Oversight Board regarding these Procedures. The Civil Liberties Protection Officer shall be responsible for overseeing ODNI compliance with these Procedures.

9.2.5 Heads of Directorates and National Intelligence Centers.

Heads of directorates, national intelligence centers, and any other ODNI organizations shall implement these Procedures in coordination with the PDDNI or designee, provide training to personnel who require access in the performance of their duties to information governed by these Procedures, and assist the PDDNI or designee, Inspector General, and Civil Liberties Protection Officer in conducting oversight.

9.2.6 ODNI Employees.

ODNI **employees** are responsible for making themselves familiar and complying with these Procedures and any implementing guidance, using the information that is subject to these Procedures only for lawful and

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authorized purposes, and reporting activities that may be unlawful or contrary to executive order or presidential directive to the appropriate chain of command or to the Inspector General. **Employees** must refer any questions concerning the interpretation of these Procedures to the Office of General Counsel.

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Section 10. Definitions

10.1 Access

Access means the viewing or examining of information by the ODNI for official purposes, where the information viewed or examined is not stored or otherwise maintained under the control of the ODNI. **Access** is distinct from **collecting** or **obtaining** information.

10.2 Collection

Collection means the receipt of information by the ODNI for official purposes, whether or not the information is retained. Collected information does not include: (a) information that is accessed by an ODNI employee but is not stored or otherwise maintained under the control of the ODNI; or (b) information obtained from another element of the Intelligence Community that has been lawfully provided by that element pursuant to its Procedures.

10.3 Communications security investigation

Communications security investigation means an investigation that involves inquiries into or surveys of protective measures taken to deny unauthorized persons information derived from communications of the United States Government related to the national security and to ensure the authenticity of such communications.

10.4 Consent

Consent means an agreement by a person or organization to permit the ODNI to take particular actions affecting the person or organization. **Consent** should be in written or electronic form but may be given orally unless a specific form of **consent** is required by law or a particular provision of these Procedures. **Consent** may be implied if adequate notice has been provided. **Consent** may also be implied where adequate policy has been published or otherwise articulated. Legal counsel will determine whether a notice or policy is adequate and lawful before the ODNI relies on implied **consent** to take or refrain from taking an action on the basis of **consent**.

10.5 Counterintelligence

Counterintelligence means information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other **intelligence** activities, sabotage, or assassinations conducted for or on behalf of **foreign powers**, organizations or persons, or their agents, or international terrorist organizations or activities.

10.6 Dissemination

Dissemination means 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.

10.7 Employee

Employee means a person employed by or acting on behalf of the ODNI, including any contractors, detailees, and, in certain limited circumstances, assignees.

10.8 Evaluation or evaluated information

Evaluation means reviewing **collected** or **obtained** information to determine: whether it relates to an authority and responsibility listed in Section 2; whether it contains any information concerning **U.S. persons**; and whether that information meets **retention** criteria and thus may be **retained**. (See also Subsection 10.20 “**unevaluated information**.”)

10.9 Foreign Intelligence

Foreign intelligence means information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

10.10 Intelligence Community

Intelligence Community and elements of the **Intelligence Community** refer to those agencies described in Section 3.5(h) of Executive Order 12333, or their successors.

10.11 Intelligence

Intelligence includes **foreign intelligence** and **counterintelligence**.

10.12 National intelligence

National intelligence means all **intelligence**, regardless of the source from which derived and including information gathered within or outside the **United States**, that pertains, as determined by the DNI consistent with any guidance issued by the President, to more than one United States Government agency and that involves threats to the **United States**, its people, property, or interests; the development, proliferation, or use of weapons of mass destruction; or any other matter bearing on United States national or homeland security.

10.13 Obtain

Obtain means the receipt by the ODNI for official purposes of information that has been lawfully collected and disseminated by another element of the **Intelligence Community** under its own Procedures.

Obtaining information is distinct from **accessing** or **collecting** information.

10.14 Overt collection

Overt collection means either (i) **collection** that is openly acknowledged by or readily attributable to the United States Government, or (ii) **collection** where no steps are taken to conceal the United States Government **collection** activity and the role of the United States Government would be acknowledged in response to an express inquiry. Acknowledgment may include advising of United States Government affiliation (confirming the collector’s affiliation with an **intelligence** element is not required, so long as United States Government affiliation is acknowledged) or advising of a general **collection** activity applicable to that individual (rather than advising of specific acquisition methods, sites, or processes being used, or other details about the **collection**).

10.15 Personnel security investigation

Personnel security investigation means an investigation that involves inquiries into the activities of a person granted access to intelligence or retained in a position with sensitive duties to develop information pertaining to the suitability, eligibility, and trustworthiness of that individual. These investigations are directed only at present or former ODNI **employees**, present or former employees of ODNI contractors, applicants for such employment, and other individuals who have been granted or who are being considered for security clearances or approvals and other persons with similar associations (such as resettled defectors and their families).

10.16 . Physical security investigation

Physical security investigation means an investigation that involves inquiries into, or surveys of, the effectiveness of security controls or procedures, including controls established around the perimeter of a facility or with respect to equipment or other property and procedures relating to access to and safe storage and disposal of classified information. **Physical security investigations** include the performance of functions and the exercise of powers by ODNI **employees** to protect against unauthorized access, physical damage, or injury, or threats of unauthorized access, physical damage, or injury to ODNI installations, property, or **employees**.

10.17 Publicly available

Publicly available means information that has been published or broadcast for public consumption, is available on request to the public, is accessible online or otherwise to the public, is available to the public by subscription or purchase, could be seen or heard by any casual observer (but not amounting to physical surveillance), is made available at a meeting open to the public, or is observed by visiting any place or attending any event that is open to the public.

Information is **publicly available** only if it is made available to the ODNI under conditions or on terms generally available to the public. For example, certain commercially acquired data may be considered **publicly available** if a non-U.S. government person or corporation could acquire that same data in that same way from that same commercial source; however, other commercial acquisitions of data may be so tailored and specialized for government use, and unavailable to a similarly situated private-sector purchaser, that the data cannot be considered **publicly available**. The ODNI may only acquire **publicly available** information that relates to and is consistent with an ODNI authority and responsibility described in Section 2.

Information that is **publicly available** is still considered **publicly available** if the information is provided in filtered or obfuscated form for government use for purposes of complying with these Procedures or other applicable law, or for the protection of privacy or civil liberties.

10.18 Retention

Retention means the indefinite maintenance of information concerning **U.S. persons** that meets the criteria of Section 6.

10.19 Terrorism information

Terrorism information (A) means all information, whether collected, produced, or distributed by intelligence, law enforcement, military, homeland security, or other activities relating to (i) the existence,

organization, capabilities, plans, intentions, vulnerabilities, means of finance or material support, or activities of foreign or international terrorist groups or individuals, or of domestic groups or individuals involved in transnational terrorism; (ii) threats posed by such groups or individuals to the United States, United States persons, or United States interests, or to those of other nations; (iii) communications of or by such groups or individuals; or (iv) groups or individuals reasonably believed to be assisting or associated with such groups or individuals; and (B) includes weapons of mass destruction information. (Weapons of mass destruction information means information that could reasonably be expected to assist in the development, proliferation, or use of a weapon mass destruction (including a chemical, biological, radiological, or nuclear weapon) that could be used by a terrorist or a terrorist organization against the United States, including information about the location of any stockpile of nuclear materials that could be exploited for use in such a weapon that could be used by a terrorist or a terrorist organization against the United States.).

10.20 Unevaluated information

Unevaluated information means information that has been **collected** or **obtained**, but that has not yet been determined to (1) relate to an authority and responsibility listed in Section 2; (2) contain any information concerning **U.S. persons**; and (3) meet the criteria for **retention** under Section 6. (See also Subsection 10.8 “**Evaluation or evaluated information.**”)

10.21 United States

The term **United States**, when used in a geographic sense, means the land area, internal waters, territorial seas, and airspace of the United States, including United States territories, possessions, and commonwealths.

10.22 United States Person

The term **United States person** or **U.S. person** means any of the following:

- (a) A United States citizen;
- (b) An alien known by the ODNI to be a lawful permanent resident (also known as a permanent resident alien);
- (c) An unincorporated association substantially composed of United States citizens or lawful permanent residents. “Substantially” must be more than insignificant, but a majority is not required; or
- (d) A corporation incorporated in the **United States**, except for a corporation directed and controlled by a foreign government or governments. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the **United States**, is not a **United States person**.

The following guidelines apply when determining whether an individual or entity is a **U.S. person**:

- (a) A person or entity known to be inside the **United States** is presumed to be a **U.S. person**, unless specific information to the contrary is acquired.
- (b) A person or entity outside the **United States**, or whose location is not known to be in the **United States**, is presumed not to be a **U.S. person**, unless specific information to the contrary is acquired.

10.23 U.S. Person Identifying Information (USPII)

United States Person Identifying Information (USPII) is information that is reasonably likely to identify one or more specific **U.S. persons**. **USPII** may be either a single item of information or information that, when combined with other information, is reasonably likely to identify one or more specific **U.S. persons**. Determining whether information is reasonably likely to identify one or more specific **U.S. persons** in a particular context may require a case-by-case assessment by a trained **intelligence** professional. It is not limited to any single category of information or technology.

USPII is a subset of information concerning **U.S. persons**. For purposes of these Procedures, the phrase “information concerning U.S. persons” includes any information concerning a **U.S. person**, whether or not the information is **USPII**.

Section 11. Administration and Effective Date

The General Counsel shall consult with the Assistant Attorney General for National Security regarding significant legal interpretations of these Procedures.

While substantive amendments to these Procedures require the approval of the DNI and the Attorney General, nonsubstantive or clerical amendments, such as correcting typographical errors, updating organizational titles and cross-references, require approval of the DNI or designee, and notice to DOJ.

A person who is officially acting in the absence of an official may exercise the powers of that official.

Authority granted to an **employee**, other than the General Counsel and the Civil Liberties Protection Officer, may be exercised by any person who is senior in the **employee's** chain of command.

Authority granted to the General Counsel may be exercised by a Deputy General Counsel or an attorney in the Office of General Counsel designated by the General Counsel.

Authority granted to the Civil Liberties Protection Officer may be exercised by a Deputy Chief or a civil liberties and privacy official in the Office of Civil Liberties, Privacy, and Transparency designated by the Civil Liberties Protection Officer.

Any designation of a person to exercise authority explicitly permitted by these Procedures includes the designation of multiple persons to serve simultaneously in that capacity.

In the event of any changes to organizational structures or titles such that the official title identified in these Procedures no longer exists, approving authority will transfer to the equivalent official under the reorganization.

These Procedures are not intended to, do not, and may not be relied on to create any substantive or procedural right or benefit enforceable at law or in equity by any party against the United States, its departments, agencies, entities, officers, employees or agents, or any other person.

Within six months of the effective date of these Procedures, the terms and conditions of any ODNI Memorandum of Agreement governing the handling of information concerning **U.S. persons**, either in force at the effective date of these Procedures or subsequently established, shall comply with these Procedures.

These Procedures shall become effective ninety days after signature by the DNI and the Attorney General.

Signatures and Dates Signed

I approve the foregoing Procedures.



John Ratcliffe

Date:

Director of National Intelligence

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I approve the foregoing Procedures.

Handwritten signature of William P. Barr in cursive script.

Attorney General

William P. Barr

Date: December 23, 2020

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