

ANNEX A

Dissemination of Congressional Identity Information

- A. (U) **AUTHORITY:** The National Security Act of 1947, as amended; the Intelligence Reform and Terrorism Prevention Act of 2004; and other applicable provisions of law.
- B. (U) **APPLICABILITY:**
1. (U) This guidance applies to the Intelligence Community (IC), as defined by the National Security Act of 1947, and to elements of any other department or agency as may be designated by the President, or designated jointly by the Director of National Intelligence (DNI) and the head of the department or agency concerned, as an element of the IC.
 2. ~~(U//FOUO)~~ This guidance establishes IC policy for when an IC element seeks to disseminate unmasked or masked congressional identity information within the Executive Branch, regardless of the source of the information, with the exception of those circumstances specifically described below.
 3. ~~(U//FOUO)~~ For purposes of this guidance, dissemination refers to the communication by an IC element of unmasked or masked congressional identity information as accomplished through its original issuance, outside of internal communications within the IC element that has lawfully acquired such information (hereinafter “originating IC element”), to Executive Branch recipients in accordance with that IC element’s policies and Attorney General-approved guidelines.
 4. ~~(U//FOUO)~~ This guidance applies to intelligence reporting containing unmasked or masked congressional identity information. For the purposes of this guidance, “congressional identity information” refers to information that the originating IC element knows identifies Members of Congress or congressional staff by name or by individually identifying titles or characteristics.¹ Masked congressional identity information constitutes the use of phrases or terms which replace the individually identifying information of a member of Congress or congressional staff with a commonly identifiable term such as “Member of U.S. Congress.”

¹ (U) “Members of Congress or Congressional staff” refers to any current Member of the Senate or the House of Representatives; any current staff officer of any Senator or Representative, whether paid or unpaid; and any current staff officer of any Senate or House committee, whether paid or unpaid. For purposes of this reporting the Vice President is excluded.

5. (U) This guidance is an annex to the requirements of Intelligence Community Directive 112, *Congressional Notification*, and replaces and rescinds the procedures contained in E/S 00176, *Dissemination of Congressional Identity Information within the Executive Branch* (commonly known as the “Gates Procedures”).

C. (U) CONGRESSIONAL IDENTITY INFORMATION IN INTELLIGENCE REPORTING:

1. (U) General Provisions:

- a. (U) As with all U.S. Person information, all congressional identity information acquired and identified as such by an IC element shall be reviewed by the acquiring IC element to determine whether the information is appropriate for retention and dissemination under applicable law. Congressional identity information that does not satisfy such requirements shall be handled in accordance with that IC element’s policies and guidelines.
- b. ~~(U//FOUO)~~ Notwithstanding IC element procedures permitting the dissemination of unmasked U.S. person information for enumerated purposes, unless it has received approval to disseminate unmasked congressional identity information pursuant to these procedures, or an exception to prior approval applies, an IC element seeking to disseminate intelligence reporting that identifies a Member of Congress or congressional staff shall mask or delete the congressional identity information before it is disseminated outside of that element within the Executive Branch.

2. (U) Scope of the Procedures:

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

- a. ~~(U//FOUO)~~ The dissemination of congressional identity information (a) that has been collected overtly or through publicly available sources; (b) that relates to the public activities or public statements of Members of Congress or congressional staff, conducted or delivered in their official capacities, where there are no indications that foreign powers or agents of foreign powers intend to influence those activities or statements; or (c) where the Member of Congress or congressional staff has provided consent for that dissemination.
- b. ~~(U//FOUO)~~ The dissemination of congressional identity information when the originating element and the organization to which the information is disseminated are both within the Department of Defense (DoD). The dissemination of congressional identity information in these circumstances must be approved by the Secretary of Defense, or his designee, with a timely notification of such

approval to the Office of the Director of National Intelligence (ODNI) Office of General Counsel (OGC).

- c. ~~(U//FOUO)~~ The dissemination of congressional identity information for law enforcement purposes, when required by law or when such dissemination is necessary for an IC element to fully satisfy its obligation to report possible violations of federal criminal law, consistent with applicable policies and procedures.
 - d. ~~(U//FOUO)~~ The dissemination of congressional identity information to any IC inspector general, general counsel, or official responsible for privacy or civil liberties protection when that information is necessary to perform their official duties.
3. ~~(U//FOUO)~~ Requests for Approval to Disseminate Unmasked Congressional Identity Information:
- a. ~~(U//FOUO)~~ Requests for the Dissemination of Unmasked Congressional Identity Information May Be Made in Two Circumstances:
 - i. ~~(U//FOUO)~~ A recipient of intelligence containing masked congressional identity information believes that the identity of the Member of Congress or congressional staff is necessary to understand and assess the associated intelligence and to further a lawful activity of the recipient's agency, and the recipient requests the congressional identity information from the originating IC element.
 - ii. ~~(U//FOUO)~~ The originating IC element wishes to disseminate unmasked congressional identity information in the absence of a request because the originating IC element believes that the identity of the Member of Congress or congressional staff is necessary for a proposed recipient to understand and assess the associated intelligence and further a lawful activity of the proposed recipient's agency.
 - b. (U) Requests for Approval:
 - i. ~~(U//FOUO)~~ Requests for approval shall be submitted by the originating IC element to the ODNI OGC. In most cases, IC elements should submit requests for approval in writing (including via electronic means). In certain time-sensitive cases where a written request is impractical, IC elements may submit oral requests for approval, provided the request is memorialized in writing as soon as practicable.
 - ii. ~~(U//FOUO)~~ Requests for approval shall include, at a minimum, the intelligence report containing the congressional identity information at

issue; the congressional identity information that the IC element seeks to unmask and disseminate; the officials to whom the element would disseminate that unmasked information; the IC element's reasons for doing so; and any other information that the IC element reasonably believes would assist the ODNI OGC's review.

- iii. (U) Both the IC element submitting the request for approval and the ODNI OGC shall maintain records of all such requests and their disposition.

c. ~~(U//FOUO)~~ Requests to Disseminate Unmasked Congressional Identity Information May Be Approved By:

- i. ~~(U//FOUO)~~ The DNI, upon the recommendation of the ODNI General Counsel, for requests involving sensitive matters. Requests involving sensitive matters are those requests involving: (1) possible violations of law by Members or staff other than disseminations exempted by Section C.2.c; (2) credible threats of physical harm to the Member or staff other than disseminations made under Section C.3.d.iii.1.; or (3) where there are indications of a foreign power's attempt to target the Member or staff for intelligence collection or recruitment.
- ii. (U) The ODNI General Counsel, for requests not involving sensitive matters. If the General Counsel is unavailable, the ODNI Principal Deputy General Counsel may approve requests not involving sensitive matters.

d. (U) Exceptions to the Requirement for Prior Approval:

- i. ~~(U//FOUO)~~ Special Requests: A special request for dissemination is any request to disseminate unmasked congressional identity information directly to the President, Vice President, Secretary of State, Secretary of Defense, Assistant to the President for National Security Affairs, or Director of National Intelligence.² The senior deputies and senior advisors for these named principals may also submit a special request to originating IC elements if and only if the senior deputies or senior advisors are acting on behalf of their named principals. The unmasking of congressional identities to these named principals pursuant to a special request does not authorize further dissemination of that information within the principal's

² ~~(U//FOUO)~~ Individuals briefing one of these principals may request congressional identity information in reasonable anticipation that the principal will request that identity information, for the narrow and exclusive purpose of providing that information directly to the principal in response to such a request. If a principal listed above in fact requests the Congressional identity information, the briefer then may provide the requested information, provided that the briefer subsequently notifies the originating IC element of that fact. Both the briefer's request and the briefer's response to the principal's request, if any, shall be treated as special requests under the procedures outlined in this guidance.

department or agency or otherwise.³ The unmasking of congressional identity information in response to special requests may be approved by officials designated by the originating IC element. While special requests do not require prior ODNI approval, the originating IC element must promptly provide to the ODNI OGC a description of the request and the unmasked congressional identity information disseminated.

- ii. ~~(U//FOUO)~~ Exclusive Disseminations to Congress: The procedures described in this memorandum do not apply to the dissemination of congressional identity information to Congress when there is no dissemination of the congressional identity information within the Executive Branch or through intelligence channels. In those rare cases, IC elements are not required to seek ODNI approval before disseminating congressional identity information to Congress. In these cases, the IC element shall provide advance notification to the ODNI Office of Legislative Affairs (OLA).
- iii. ~~(U//FOUO)~~ Exigent Circumstances: IC elements may, without seeking prior approval from ODNI, disseminate unmasked congressional identity information within the Executive Branch or through intelligence channels when exigent circumstances preclude following these procedures. If an IC element disseminates unmasked congressional identity information under exigent circumstances, the element shall provide timely notification to ODNI OGC that includes an explanation of the exigent circumstance and the underlying intelligence report. The procedures in this section do not supersede or alter an IC element's reporting obligations referenced in Section C.2.c.

(U) Exigent circumstances include:

1. ~~(U//FOUO)~~ Imminent Danger to Life or Physical Safety: Congressional identity information may be provided directly to appropriate Executive Branch or other officials for action if the Director, Deputy Director, chief of the originating IC element's watch office (or equivalent), or any senior official designated by the Director of the originating IC element determines that there is a reasonable basis to believe that a person's life or physical safety is in imminent danger and that the congressional identity information is relevant to help obviate the danger.
2. ~~(U//FOUO)~~ Time-Critical Need: Congressional identity information may be provided directly to appropriate Executive

³ ~~(U//FOUO)~~ A request for further unmasked dissemination shall be submitted to the originating IC element for any further dissemination which must then follow the approval procedures outlined in this guidance.

Branch or other officials if the Director, Deputy Director, chief of the originating IC element's watch office (or equivalent), or any senior official designated by the Director of the originating IC element determines that there is a reasonable basis to believe that delay in disseminating the information to these officials poses a significant risk to important U.S. interests. Examples of time-critical needs that satisfy this requirement include circumstances wherein:

- a. Information concerning a terrorist or foreign intelligence threat if the congressional identity information is immediately necessary for the recipient to take timely action in order to defend against, neutralize, or warn about the threat.
- b. Information concerning a cybersecurity threat or vulnerability (e.g., spear-phishing or malicious code) if the congressional identity information is immediately necessary for the recipient to take timely action in order to defend against, neutralize, or warn about the threat. For example, an originating IC element may disseminate congressional identity information to appropriate computer network defense personnel so that they may take appropriate time-sensitive mitigation measures. Information concerning a cybersecurity threat may also indicate possible violations of federal criminal law. IC elements should consider the provisions of Section C.2.c, as appropriate.

D. (U) CONGRESSIONAL NOTIFICATIONS:

1. ~~(U//FOUO)~~ Notification of the Dissemination of Unmasked Congressional Identity Information: The dissemination of unmasked congressional identity information shall be documented and recorded by IC elements and notifications shall be provided in accordance with this guidance.

~~(U//FOUO)~~ The ODNI OLA will notify appropriate congressional staff that a dissemination of unmasked congressional identity information has taken place as follows:

- a. ~~(U//FOUO)~~ Format: All notifications regarding the dissemination of unmasked congressional identity information shall be provided in writing in coordination with the originating IC element. Oral notifications, provided in the interest of timeliness, will be reduced to writing. All notifications will be made consistent with due regard for the protection of classified information relating to sensitive

intelligence sources and methods or other exceptionally sensitive matters. For a notification of a dissemination by an IC element within the DoD, a copy of the notification will be simultaneously provided to the Under Secretary of Defense for Intelligence (USD[I]).

- b. (U) Possible Violations of Law: For notifications of the dissemination involving misconduct or possible violation of law by a Member or staff person, oral and written notifications will be provided, when practicable, to the congressional leadership staff. The provisions for written notifications does not supersede or alter an IC element's responsibility to report possible violations of federal criminal law, as provided in Section C.2.c.
 - c. ~~(U//FOUO)~~ Other Disseminations: For all other disseminations of unmasked congressional identity information, written notifications will be provided to the congressional leadership staff and to the intelligence committees' staff directors.
2. ~~(U//FOUO)~~ Notification of Masked Congressional Identity Information: The dissemination of intelligence reporting containing masked congressional identity information that is identifiable as such shall be documented and recorded by IC elements and notifications shall be made available in accordance with this guidance.

~~(U//FOUO)~~ The ODNI OLA will notify congressional leadership staff and the staff directors of the intelligence committees of the existence of masked congressional identity information that is identifiable as such in intelligence reporting as follows:

- a. ~~(U//FOUO)~~ Recording: IC elements covered under this guidance shall biannually provide to the ODNI OLA information concerning the dissemination of intelligence reporting known to contain masked congressional identity information. The first report due under this guidance will occur after the second quarter of calendar year (CY) 2017.
- b. ~~(U//FOUO)~~ Format: Notifications of masked congressional identity information in intelligence reporting shall be provided in writing by the ODNI OLA to congressional leadership staff and the intelligence committees' staff directors. Such notices will provide the number, type of intelligence report (finished/unfinished), and topic area of the intelligence report as derived from the National Intelligence Priorities Framework. For a notification of a dissemination by an IC element within the DoD, a copy of the notification will be simultaneously provided to the USD(I).
- c. ~~(U//FOUO)~~ Frequency: Notifications of known masked congressional identity information in intelligence reporting shall be provided biannually by the ODNI OLA, in accordance with this guidance, to congressional leadership staff and the intelligence committees' staff directors. The first report due under this guidance will occur after the second quarter of CY 2017.

E. ~~(U//FOUO)~~ ROLES AND RESPONSIBILITIES

1. The DNI shall serve as approval authority for requests for approval of the dissemination of congressional identity information involving sensitive matters.
2. The ODNI/OGC shall: (1) serve as approval authority for requests for approval involving non-sensitive matters; (2) advise the DNI on requests for approval involving sensitive matters; and (3) provide notification of the contents of this guidance to IC elements and training to IC elements on this guidance as appropriate.
3. The ODNI/OLA shall: (1) provide written notifications of the dissemination of unmasked congressional identity information to congressional leadership staff and/or the staff directors of the intelligence committees in accordance with this guidance; (2) provide written notifications of masked congressional identity information in intelligence reporting congressional leadership staff and the staff directors of the intelligence committees in accordance with this guidance; and (3) maintain records of written notifications provided in accordance with this guidance.
4. IC Element heads shall: (1) ensure that all disseminations of unmasked congressional identity information in intelligence reporting meet the standards outlined in this policy; (2) retain and report disseminated intelligence reporting, as required by this guidance, known to contain unmasked, and masked congressional identity information; and (3) ensure that all employees who may encounter congressional identity information are trained on the contents of this guidance.


James R. Clapper

19 JAN 2017
Date