



INTELLIGENCE
COMMUNITY
POLICY
GUIDANCE

403.3

29 April 2014

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Approved for Public Release

Criteria and Conditions for Emergency Foreign Disclosure and Release

A. (U) **AUTHORITY:** The National Security Act of 1947, as amended; Executive Order (EO) 12333, as amended; EO 13526; 32 CFR Part 2001; and other applicable provisions of law.

B. (U) **PURPOSE**

1. (U) To provide criteria and conditions under Intelligence Community Directive (ICD) 403, *Foreign Disclosure and Release of Classified Intelligence Community National Intelligence*, for emergency disclosure and release of classified national intelligence (hereinafter intelligence) to foreign entities.

2. (U) This IC Policy Guidance (ICPG) rescinds Section X of Director of Central Intelligence Directive 6/6, *Security Controls on the Dissemination of Intelligence Information*.

C. (U) **APPLICABILITY**

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

2. (U) This ICPG does not apply to disclosure or release of classified military information pursuant to National Disclosure Policy 1 and National Security Decision Memorandum-119.

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

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

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D. (U) CRITERIA AND CONDITIONS

1. (U) Under normal circumstances, foreign disclosure and release of intelligence is conducted pursuant to ICD 403 and ICPG 403.1, *Criteria for Disclosure and Release of Classified National Intelligence*.

2. (U) An emergency occurs when it is necessary to respond to an imminent threat to life or in defense of the homeland (hereafter, emergency) and when adherence to routine foreign disclosure and release policies and procedures established under ICD 403 would reasonably be expected to preclude timely dissemination, an IC element head or designee may authorize emergency disclosure or release of intelligence related to such an emergency to foreign entities otherwise not eligible to receive such intelligence, notwithstanding any dissemination controls applied to the intelligence being disclosed. Planning for contingency activities or operations not expected to occur within 24 hours does not constitute an emergency.

3. (U) The emergency conditions described in D.2, above, may include a situation or action that is expected to occur within the next 24 hours and could:

- a. Jeopardize the lives of U.S., allied, coalition, or friendly military forces;
- b. Jeopardize the lives of U.S. civilians or noncombatants or allied or coalition civilians or noncombatants;
- c. Damage or destroy U.S. or friendly foreign critical infrastructure, installations, facilities, or equipment; or
- d. Result in compromise or failure of a combined diplomatic, military, or intelligence operation or mission vital to U.S. interests.

4. (U) Although the nature of some emergencies may preclude prior coordination, every attempt should be made to coordinate with affected IC elements, including the originating IC element, the Office of the DNI (ODNI), the Central Intelligence Agency (CIA), and the Department of State, in accordance with ICD 403, prior to emergency foreign disclosure or release of intelligence.

E. (U) PROCEDURES

1. (U) IC elements shall document procedures for making emergency foreign disclosures and releases. These procedures shall be submitted to the DNI through the Assistant DNI for Partner Engagement (ADNI/PE). Procedures shall describe how to:

- a. (U) Limit disclosure or release of intelligence to the duration of the emergency;
- b. (U) Restrict dissemination to persons or entities that need the intelligence to address the threat;
- c. (U) Limit the amount of intelligence disclosed or released to the absolute minimum to achieve the stated purpose;
- d. (U) Sanitize intelligence to the extent practical, to protect sources, methods, and activities. U.S. persons information shall be protected in accordance with EO 12333;
- e. (U) Use a tearline version of the intelligence to be disclosed, if provided;
- f. (U) Ensure intelligence approved for emergency disclosure or release will be transmitted to the intended foreign recipient through government-to-government channels, in the most secure and expeditious method available when time is of the essence;

g. (U) Obtain assurances, via a non-disclosure agreement when practicable, from the foreign recipient that the intelligence will remain classified and protected; and that there will be no subsequent disclosure, release, or inappropriate use by the recipient; and

h. (U) Comply with provisions for protecting the privacy and civil liberties of U.S. persons pursuant to EO 12333 and the Privacy Act of 1974.

2. (U) Intelligence disclosed under emergency conditions shall retain its original classification and dissemination controls. Intelligence shall not be considered permanently declassified or downgraded as a result of such disclosure.

3. (U) When practicable, intelligence disclosed or released shall be retained, returned, or destroyed by the foreign recipient pursuant to instructions from the disseminating IC element.

4. (U) Emergency foreign disclosure or release decisions shall be reported to the originator of the intelligence within 24 hours or as soon as the emergency permits, but no later than 30 days after the disclosure or release. The report shall describe:

a. (U) The intelligence disclosed and any supporting material;

b. (U) To whom the intelligence was disclosed;

c. (U) How the intelligence was disclosed and transmitted;

d. (U) The justification for the determination that the situation fell within the parameters of an imminent threat;

e. (U) How the intelligence is being safeguarded, including a copy of any signed non-disclosure agreements; and

f. (U) The safeguards applied to protect the privacy and civil liberties of U.S. persons, if any.

5. (U) Emergency foreign disclosure and release decisions shall also be reported to the ADNI/PE within 24 hours or as soon as the emergency permits to be reviewed, as necessary, by the ODNI, the CIA, and the Department of State, in accordance with ICD 403.

F. (U) ROLES AND RESPONSIBILITIES

1. (U) The DNI:

a. (U) Is the principal intermediary between the National Security Council and the IC regarding imminent threat and emergency foreign disclosure and release of intelligence to foreign entities; and

b. (U) Ensures the heads of IC elements implement their authority to make decisions on emergency foreign disclosure and release of intelligence consistent with this Guidance and as an exception to the processes defined by ICD 403 and ICPG 403.1.

2. (U) The ADNI/PE shall:

a. (U) Serve as the DNI's designee for matters related to foreign disclosure and release of intelligence, and the implementation of this Guidance;

b. (U) Retain IC element emergency foreign disclosure and release policies, procedures and related documentation and make them available to the IC foreign disclosure and release community; and

c. (U) Share best practices for program effectiveness.

3. (U) Heads of IC elements shall:

a. (U) Disclose and release intelligence to foreign entities under emergency conditions, in accordance with this Policy Guidance, ICD 403, and any IC element procedures published pursuant to this Guidance;

b. (U) Provide to the ADNI/PE any policies and procedures created pursuant to Section E.1; and

c. (U) Indicate if the POCs provided pursuant to ICD 403, Section F.3.b(5) are available for continuous operations.

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


Director of National Intelligence

29 April 2014
Date