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## INTELLIGENCE COMMUNITY POLICY GUIDANCE NUMBER 501.1



### EXEMPTION OF INFORMATION FROM DISCOVERY (EFFECTIVE: 26 MAY 2009)

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

**B. PURPOSE:** This Intelligence Community Policy Guidance (ICPG) sets forth the implementing procedures for exemptions from discovery for information collected or analysis produced, as called for in Sections E.1.c and G.2.d of Intelligence Community Directive (ICD) 501, *Discovery and Dissemination or Retrieval of Information within the Intelligence Community*.

#### **C. APPLICABILITY**

1. This guidance applies to the Intelligence Community (IC), as defined by the National Security Act of 1947, as amended; and such other 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. This ICPG does not apply to purely law enforcement information. When law enforcement information also contains intelligence or intelligence-related information, this ICPG shall apply to the intelligence or intelligence-related information.

#### **D. POLICY**

1. In accordance with ICD 501, information may be exempt from discovery if it is determined that discovery, or the confirmation of the mere existence of such information, will jeopardize the protection of sources, methods, or activities; compromise a criminal or national security investigation; or be inconsistent with the requirements of Section D.6 of ICD 501. The term "information" in this ICPG constitutes "information collected or analysis produced" as used in ICD 501.

2. The definitions in Appendix A of ICD 501 apply to this ICPG.

## E. PROCESS

### 1. Exemptions

a. IC element heads shall submit recommendations to the DNI for the exemption of information from discovery in accordance with timelines established in IC integrated implementation plans. These timelines shall specify that exemption recommendations be submitted no later than 60 days prior to the information in question being made available for discovery, as called for in an IC integrated implementation plan. In recommending an exemption, IC element heads shall provide information in accordance with Section E.1.c.(1-6) of this ICPG.

b. Should an IC element head deem it necessary to exempt information from discovery in advance of a DNI exemption decision, the IC element head shall provide information in accordance with Section E.1.c.(1-6) of this ICPG as soon as possible but no later than 10 business days after the IC element head's action to exempt the information. Information an IC element head has exempted from discovery shall not be discoverable unless and until the DNI makes an exemption decision.

c. Exemptions shall:

(1) Be addressed to the DNI in the form of Executive Correspondence;

(2) Specifically identify and fully describe the information being exempted, to include scope and volume. Exemptions may be submitted for categories of information with common attributes or components, when appropriate;

(3) Include an assessment of the risks to sources, methods, or activities, as well as an assessment of the risks of unauthorized or unintentional disclosure;

(4) Include an assessment of the risks associated with exempting the information from discovery, to include risks to mission performance and risks of incomplete or erroneous analytic judgments informing national security decisions;

(5) Specify the time period over which the exemption should endure; and

(6) Provide any additional information or potential implications the IC element head believes the DNI should consider.

d. Sensitive Review Boards (SRB) shall consist of members cleared for access to all information, as determined by the DNI in consultation with IC element heads. For efficiency, an IC element head may include, as part of a recommendation to exempt information from discovery by authorized IC personnel, a recommendation to restrict SRB member access in accordance with Section F.4 of ICPG 501.2, *Sensitive Review Board and Information Sharing Dispute Resolution Process*.

## 2. DNI Decision

a. The DNI may approve an exemption in whole or in part, or deny the exemption, and will provide a written copy of his decision to the IC element head who recommended the exemption, as well as inform the SRBs, as appropriate.

b. Should the DNI deny an exemption in whole or in part, the relevant IC element head shall make the subject information discoverable immediately but no later than five business days after the relevant IC element head is notified of the DNI's decision, or in accordance with an approved IC integrated implementation plan, whichever is later.

## 3. Information Handling

a. IC element heads shall ensure that all information that is exempted from discovery is marked immediately with control markings unique for discovery exemptions, in accordance with the Controlled Access Program Coordination Office's (CAPCO) *Authorized Classification and Control Markings Register*.

b. CAPCO shall establish control markings for exempted information in accordance with the IC integrated implementation plans.

c. Information exempted from discovery shall adhere to IC metadata standards promulgated by the IC Chief Information Officer.


## 4. The Senior Review Group of the Office of the Director of National Intelligence shall:

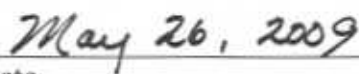
a. Be chaired by the IC Information Sharing Executive and report to the DNI for matters pertaining to the exemption of information from discovery pursuant to this Guidance.

b. Maintain records of all official communications between the DNI and an IC element head as specified in Section E, the disposition of exemptions, and the results of annual reviews; and

c. Review by 1 June annually all exemptions.

**F. EFFECTIVE DATE:** This Guidance is effective on the date of signature.

  
 Deputy Director of National Intelligence  
 for Policy, Plans, and Requirements

  
 Date