



Department of Defense INSTRUCTION

NUMBER 3115.08
January 14, 2009

USD(I)

SUBJECT: Collection of Information on Non-U.S. Persons Outside the United States at the Request of U.S. Law Enforcement Agencies (LEAs)

References: See Enclosure 1

1. PURPOSE. This Instruction:

- a. Reissues DoD Directive 3115.8 (Reference (a)) as a DoD Instruction in accordance with the authority in DoD Directive 5143.01 (Reference (b)).
- b. Establishes policy and assigns responsibilities in accordance with section 403-5a of title 50, United States Code, (U.S.C.) (Reference (c)) for DoD collection of information outside the United States as defined in accordance with section 195 of title 50 U.S.C. (Reference (d)) about individuals who are not U.S. persons.

2. APPLICABILITY

a. This Instruction applies to:

(1) OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to as the "DoD Components").

(2) DoD Intelligence Collection Components as defined in the Glossary.

b. This Instruction does not apply to:

(1) And has no effect on, existing cooperative, liaison, coordinative, or jurisdictional relationships between the counterintelligence and criminal investigative components of the Department of Defense and the Federal Bureau of Investigation or other LEAs authorized by law, Executive order, Presidential directive, or interagency agreement.

(2) Foreign intelligence (FI) and counterintelligence activities conducted by the DoD Intelligence Components in accordance with DoD 5240.1-R and DoD Directive 5240.01 (References (e) and (f)), and subject to the limitations of Executive Order 12333 (Reference (g)).

(3) Counternarcotics-related activities as described in DoD Directive 5525.5 (Reference (h)).

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. Subject to certain limitations, the DoD Intelligence Collection Components may, upon the request of an LEA, collect information outside the United States about individuals who are not U.S. persons, notwithstanding that the LEA intends to use information collected for purpose of a law enforcement investigation or counterintelligence investigation (Reference (c)).

b. The DoD Intelligence Collection Components designated herein are authorized to respond to requests from LEAs for intelligence collection and to make a good faith effort to collect such information.

c. The Department of Defense shall only accept requests for collection of information outside the United States about non-U.S. persons and entities from LEAs designated by the Attorney General as eligible to make such requests. Collection must be consistent with Intelligence Community authorities and funding unless procedures set forth in section 414 of Reference (c) or Reference (g) permit otherwise.

d. Nothing herein shall be construed to permit any LEA or DoD Intelligence Collection Component to perform any act that is contrary to or not authorized by U.S. law or Reference (g). In accordance with Reference (c), no member of the Army, Navy, Air Force, or Marine Corps may participate directly in an arrest or similar activity as part of the activities authorized by this Instruction.

e. In the event a DoD Intelligence Collection Component conducts a collection activity pursuant to this Instruction that incidentally obtains information concerning a U.S. person, the DoD Intelligence Collection Component shall process, retain, and disseminate such information in accordance with the same minimization criteria and procedures that apply when the Component obtains information concerning a U.S. person as a result of an FI or foreign counterintelligence (FCI) collection performed in accordance with References (e) or (g), Chapter 36 of Reference (c) (also known as the Foreign Intelligence Surveillance Act), or other authority.

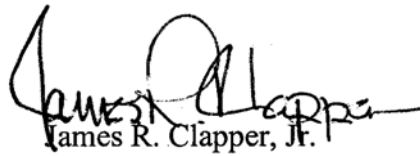
f. The DoD Intelligence Collection Components are the only DoD Components that may participate in the collection activities authorized by Reference (c).

5. RESPONSIBILITIES. See Enclosure 2.

6. INFORMATION REQUIREMENTS. The summary reports of activities pursuant to this Instruction, identified in Enclosure 2 at paragraphs 1.e. and 2.l., are exempt from the review and approval procedures of DoD Directive 3025.1 (Reference (i)), in accordance with Chapter 4, paragraphs C4.4.1. and C4.4.8. of DoD 8910.1-M (Reference (j)).

7. RELEASIBILITY. UNLIMITED. This Instruction is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective immediately.

A handwritten signature in black ink, appearing to read "James R. Clapper, Jr.", is written over a printed name.

James R. Clapper, Jr.
Under Secretary of Defense for Intelligence

Enclosures

1. References
 2. Responsibilities
- Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 3115.8, "Collection of Information on Non-U.S. Persons Outside the United States at Request of U.S. Law Enforcement Agencies (LEAs)," September 7, 1999 (hereby canceled)
- (b) DoD Directive 5143.01, "Under Secretary of Defense for Intelligence (USD(I)),
November 23, 2005
- (c) Sections 403-5a and 414 and chapter 36 of title 50, United States Code
- (d) Section 195 of title 50, United States Code
- (e) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons," December 7, 1982
- (f) DoD Directive 5240.01, "DoD Intelligence Activities," August 27, 2007
- (g) Executive Order 12333, "United States Intelligence Activities," December 4, 1981 as revised
- (h) DoD Directive 5525.5, "DoD Cooperation with Civilian Law Enforcement Officials,"
January 15, 1986
- (i) DoD Directive 3025.1, "Military Support to Civil Authorities (MSCA)," January 15, 1993
- (j) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (k) DoD Instruction 5200.01, "DoD Information Security Program and Protection of Sensitive Compartmented Information," October 9, 2008
- (l) DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations Not Affiliated with the Department of Defense," January 7, 1980

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)). The USD(I), in addition to the responsibilities in paragraph 5 of this enclosure and pursuant to Reference (b), shall:

- a. Oversee implementation of this Instruction by DoD Intelligence Collection Components.
- b. Obtain copies of all LEA written requests for intelligence collection and maintain files of such collection requests, and the resulting reports in appropriate cases.
- c. Provide guidance and assistance, as appropriate, to the Directors of the DoD Intelligence Collection Components, and serve as the DoD point of contact for these Directors on all matters arising in implementation of, and activities conducted under, this Instruction so that collection on these matters is consistent with procedures set forth in statute or References (e), (g), and (h).
- d. Provide direction to the Directors of the DoD Intelligence Collection Components regarding the organization and structure of the annual reports required under the provisions of paragraph 2.m. of this enclosure.
- e. Submit to the Secretary of Defense, by January 31 of each year, a report that summarizes the activities conducted pursuant to this Instruction during the previous calendar year.

2. DIRECTORS OF THE NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE (NSA/CSS), NATIONAL GEOSPATIAL-INTELLIGENCE AGENCY (NGA), AND DEFENSE INTELLIGENCE AGENCY (DIA). The Directors of the NSA/CSS, NGA, and DIA, as Heads of the DoD Intelligence Collection Components and under the authority, direction, and control of the USD(I), in addition to the responsibilities in paragraph 5 of this enclosure shall:

a. Respond to requests from LEAs for collection of information outside the United States on non-U.S. persons within the capabilities of the agency in accordance with the provisions of this Instruction.

(1) Requests from LEAs must be submitted in writing directly to the responding DoD organization.

(2) Requests from LEAs must certify that the target is not, to the requestor's knowledge, a U.S. person.

(3) Time-sensitive verbal requests may be acted upon; however, the verbal request must be followed by a written request within 7 days.

b. Advise requesting LEAs when there is a determination that collection requested may be accomplished pursuant to existing FI or FCI authorities. Process requests in accordance with, and subject to, authorities, criteria, and procedures specifically established for FI and FCI collection. Disseminate information in accordance with References (e), (g), and (i).

c. Promptly disseminate resulting information to the requesting LEA, with restrictions on further use that may be appropriate under existing law or policy to include DoD Instruction 5200.01 (Reference (k)). Consult with the requesting LEA prior to further dissemination of the information so collected for other than its intended LEA purpose.

d. Advise LEAs of determinations not to perform requested collections with rationale. Advise LEAs of unsuccessful collection attempts.

e. Decline collection requests if the collection:

- (1) Cannot be performed without compromising intelligence sources and methods;
- (2) Would adversely affect military preparedness or other high priority national intelligence or military requirements;
- (3) Requires resources that the DoD Intelligence Collection Component does not possess; or
- (4) For any other reason consistent with this Instruction.

f. Forward copies of all requests from LEAs for collection of intelligence information outside the United States on non-U.S. persons to the USD(I).

g. Conduct collection in such a manner that does not adversely affect military preparedness and is consistent with U.S. intelligence priorities.

h. Ensure that collection is accomplished in accordance with References (e) and (g). Ensure that classified information is protected in accordance with classification directives and procedures.

- (1) Protect sources and methods from unnecessary disclosure.
- (2) Determine compelling circumstances and provide security assurances for disclosure consistent with Director of National Intelligence guidelines.

i. Designate a single point of contact within the DoD Intelligence Collection Component to receive and process all requests originating with LEAs for collection outside the United States on non-U.S. persons, and to oversee related collection activities. Keep the USD(I) advised of the identity and location of the point of contact.

j. Ensure that all collection requests from LEAs are subjected to legal review by the Office of the General Counsel of the DoD Intelligence Collection Component.

k. Maintain files of all requests received from LEAs and records on the disposition of such requests.

l. Provide an annual summary report to the USD(I) by December 31 of each calendar year, using the format established by the USD(I), summarizing activities conducted pursuant to this Instruction.

m. Process, retain, and disseminate incidentally obtained information concerning a U.S. person in accordance with minimization criteria and procedures that apply when information concerning a U.S. person is obtained as a result of an FI or FCI collection performed in accordance with References (f), (g), and (h) or other authority.

3. DIRECTOR, NRO. The Director, NRO, under the authority, direction, and control of the USD(I) and in addition to the responsibilities in paragraph 5 of this enclosure, shall forward requests from LEAs to the DoD agency that will be able to accomplish the intelligence collection requirements, and coordinate with the directors of the agencies whose intelligence collection requirements would be affected by the diversion of resources to LEA requirements.

4. GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE (GC, DoD). The GC, DoD, in addition to the responsibilities in paragraph 5 of this enclosure, shall:

a. Serve as the principal legal advisor to the Secretary of Defense, the Deputy Secretary of Defense, and the USD(I) on all matters covered by this Instruction.

b. Obtain from the Attorney General and provide to the USD(I) and the Directors of the DoD Intelligence Collection Components a list of LEAs designated by the Attorney General as eligible to request intelligence collection activities directed outside the United States against non-U.S. persons. Ensure that the list is kept up to date.

5. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:

a. Continue to support, as appropriate, LEAs in accordance with References (h), (i), and DoD Directive 5200.27 (Reference (1)).

b. Refer copies of all requests from LEAs seeking information about non-U.S. persons outside the United States to the appropriate DoD Intelligence Collection Component.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DIA	Defense Intelligence Agency
FI	foreign intelligence
FCI	foreign counterintelligence
GC, DoD	General Counsel of the Department of Defense
LEA	U.S. law enforcement agency
NGA	National Geospatial-Intelligence Agency
NRO	National Reconnaissance Office
NSA/CSS	National Security Agency/Central Security Service
U.S.C.	United States Code
USD(I)	Under Secretary of Defense for Intelligence

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this Instruction.

DoD Intelligence Collection Components. The NSA/CSS, NRO, NGA, and DIA.

non-U.S. person. Any person, unincorporated association, or corporation other than a “United States person” as defined in Reference (f).

U.S. person. Defined as “United States person” in Reference (f).

LEA. Any department or agency of the Federal Government that the Attorney General designates as an LEA for purposes of conducting the activities covered by this Instruction.