



Office of the Attorney General
Washington, D. C. 20530

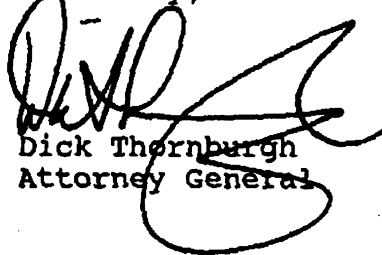
August 15, 1989

Honorable James A. Baker, III
Secretary of State
Department of State
2201 C Street, N.W.
Washington, D.C. 20520

Dear Jim:

Pursuant to Executive Order 12333, I hereby approve the Department of State Guidelines for Intelligence Activities that you established on June 25, 1989. In accord with the Executive Order, these Guidelines by their terms apply only to the activities of the Bureau of Intelligence and Research. I have been advised, however, that other components of the State Department including the Bureau of Diplomatic Security, while not members of the Intelligence Community and thus beyond the literal scope of the Executive Order, are in the process of developing intelligence responsibilities. Accordingly, once those responsibilities are fully established, you should consider extending formally the application of these procedures to their intelligence activities.

Sincerely,



Dick Thornburgh
Attorney General

DEPARTMENT OF STATE GUIDELINES FOR INTELLIGENCE ACTIVITIES

I. E.O. 12333 and 12334

Executive Orders 12333 and 12334 of December 4, 1981, were issued to provide for the effective conduct of intelligence activities and the protection of constitutional and other legal rights. Section 2.3 of E.O. 12333 requires the head of each agency within the Intelligence Community (IC) to establish procedures to govern the collection, retention, and dissemination of information concerning United States persons. In addition, E.O. 12334 establishes the President's Intelligence Oversight Board (PIOB) and delineates the obligations of the members of the IC with respect to the PIOB. The procedures in this section of the Foreign Affairs Manual are issued by the Bureau of Intelligence and Research (INR) in implementation of E.O. 12333 and 12334.

II. Responsibilities of the Department of State with Respect to the National Intelligence Effort

Part 1 of E.O. 12333 defines the duties and responsibilities of various Executive branch agencies and entities with respect to the national intelligence effort. Section 1.9 provides that the Secretary of State shall:

- a. Overtly collect information relevant to US foreign policy concerns;
- b. Produce and disseminate foreign intelligence relating to US foreign policy as required for the execution of the Secretary's responsibilities;
- c. Disseminate, as appropriate, reports received from US diplomatic and consular posts;
- d. Transmit reporting requirements of the Intelligence Community to the Chiefs of Mission abroad; and
- e. Support Chiefs of Mission in discharging their statutory responsibilities for direction and coordination of mission activities.

III. Department of State Participation in the Intelligence Community - Bureau of Intelligence and Research

Section 3.4(f) of E.O. 12333 provides that the Bureau of Intelligence and Research (INR) of the Department of State is a member of the IC. The Assistant Secretary for INR serves as the representative for the Department of State on the National Foreign Intelligence Board (NFIB) and other interdepartmental intelligence groups and committees and insures that all policies and directives relating to intelligence activities

(including dissemination of intelligence relating to foreign policy) are carried out in accordance with the law and E.O. 12333 and 12334.

IV. INR Support for the Performance of Authorized Activities

In coordinating INR support to the IC for the performance of authorized intelligence activities the Assistant Secretary for INR shall:

- a. Coordinate the Department's administrative and support activities, pursuant to section 1.4(e) of E.O. 12333, for the performance of authorized intelligence activities;
- b. Disseminate, as appropriate, reports received from US diplomatic posts;
- c. Transmit reporting requirements of the IC to the chiefs of US missions and otherwise coordinate support for chiefs of mission in discharging their statutory responsibilities for direction and coordination of mission activities;
- d. Coordinate the participation of the Department in any other intelligence activities as the President may direct from time to time; and
- e. Coordinate the role of the Department with respect to all proposals for special activities and all consideration or review of ongoing special activities. The Assistant Secretary shall work closely with regional bureaus and with other affected bureaus of the Department to ensure full consideration of the implications for US foreign policy of such activities. To permit adequate consideration of the legal aspects of proposed special activities, the Assistant Secretary shall ensure that all proposals for special activities or for consideration or review of ongoing special activities are reviewed by the Legal Adviser in a timely fashion and that the views of the Legal Adviser are conveyed in a timely manner to the Department representative to any interagency forum for discussion of such special activities. No representative of the Department shall propose or agree to any special activity unless such special activity has been considered by the Legal Adviser and by the affected regional bureaus and other interested bureaus.

V. Specific Duties and Responsibilities of the Assistant Secretary for Intelligence and Research Under E.O. 12333

As the head of an organization within the IC, the Assistant Secretary for INR shall, in accordance with Section 1.7 of E.O. 12333:

- a. Report as provided in Section XI to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person in a manner consistent with the protection of intelligence sources and methods;
- b. In any case involving serious or continuing breaches of security, recommend as provided in Section XI to the Attorney General that the case be referred to the FBI for further investigation;
- c. Furnish the Director of Central Intelligence (DCI) and the NSC, in accordance with applicable law and these procedures, the information required for the performance of their respective duties;
- d. Report to the PIOB and keep the DCI appropriately informed concerning any intelligence activities of INR that the Assistant Secretary has reason to believe may be unlawful or contrary to Executive Order or Presidential directive;
- e. Protect intelligence and intelligence sources and methods from unauthorized disclosure consistent with guidance from the DCI;
- f. Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the DCI;
- g. Participate where applicable to the Department in the development of procedures approved by the Attorney General governing production and dissemination of intelligence resulting from criminal narcotics activities abroad;
- h. Instruct all INR employees to cooperate fully with the PIOB; and
- i. Ensure that the Legal Adviser and the Inspector General have access to any information necessary to perform their duties under E.O. 12333 and 12334.

In carrying out the specific duties and responsibilities under this section, the Assistant Secretary shall consult closely on law enforcement and legal issues with the Legal Adviser, through the Assistant Legal Adviser for Law Enforcement and Intelligence (L/LEI), and on security issues with the Assistant Secretary for Diplomatic Security.

VI. Collection of Foreign Intelligence by INR

INR shall not collect foreign intelligence or counterintelligence through clandestine means. INR shall receive raw and processed foreign intelligence and counterintelligence from other intelligence agencies and parts of the State Department in fulfillment of its responsibilities under section 1.9(b) of E.O. 12333 to "produce and disseminate foreign intelligence...."

VII. Retention of Foreign Intelligence by INR

INR shall retain all foreign intelligence, counterintelligence and international terrorism records and information in accordance with a retention plan approved by the National Archives and Records Service.

Information about a US person may be retained if it is relevant to INR functions and responsibilities and it falls within one of the following criteria:

- a. The information is publicly available or collected with the consent of the person concerned.
- b. The information is foreign intelligence or counterintelligence; information concerning international terrorist activities; information concerning foreign aspects of international narcotics activities; information needed to protect the safety of persons or organizations; information needed to protect foreign intelligence or counterintelligence sources and methods from unauthorized disclosure; information acquired by overhead reconnaissance not directed at specific US persons.
- c. The information concerns persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility.
- d. The information is incidentally obtained but may indicate involvement in activities that may violate federal, state, local, or foreign laws.

- e. Information arising out of a lawful personnel, physical or communications security investigation;
- f. The information is necessary for administrative purposes, including information:
 - (1) necessary for the purposes of oversight, accountability, or redress;
 - (2) required by law to be retained; or
 - (3) necessary to be retained for the purpose of determining that the requirements of these procedures are satisfied.

VIII. Production of Intelligence Information by INR

In addition to intelligence production for the Department, INR contributes to coordinated intelligence production efforts, under the directives of the NSC, by producing political and sociological intelligence on all countries and economic intelligence on most. "Intelligence production" refers here to "finished intelligence" or collated factual intelligence evaluated or interpreted at least to some degree. INR's principal contribution of finished intelligence to the interagency effort consists of participation in the preparation of National Intelligence Estimates (NIEs) and allied studies.

IX. Dissemination of Intelligence Information by INR

a. General

- (1) All dissemination and use of intelligence and intelligence information marked with specific controls must be handled within the framework of the limitations so imposed. Permission for dissemination must be obtained from the originating office or agency.
- (2) Nothing in this section shall limit or restrict dissemination with the consent of the subject or where necessary to protect life or property from threatened force or violence.
- (3) Information that is publicly available or does not identify US persons may be disseminated for any lawful purpose.

b. Authority for Dissemination Within the Intelligence Community (IC)

Non-publicly available information may be disseminated to appropriate entities within the Intelligence Community, whether or not it identifies US persons, for their determination as to whether the information may be retained.

c. Authority for Dissemination Outside the Intelligence Community (IC)

Information that has been retained in accordance with Section VII may be disseminated within the Department to persons with appropriate security clearances and a need to know, and to other authorities in accordance with the following guidelines:

(1) Dissemination to Federal Authorities

INR may disseminate information to other federal authorities when it:

- (a) relates to a crime or violation of regulation which falls within their investigative jurisdiction;
- (b) relates to their authorized responsibilities;
- (c) is required to be furnished to another federal agency by Executive Order 10450 or its successor; or
- (d) is required to be disseminated by statute, NSC directive, interagency agreement approved by the Secretary, or Presidential directive.

(2) Dissemination to Foreign Governments

- (a) INR may cooperate with foreign intelligence agencies, foreign law enforcement, and foreign security agencies by furnishing information obtained under these guidelines that is relevant to the functions of those foreign agencies if such dissemination is in the interests of US national security and INR considers the effect the dissemination may be expected to have on any identifiable US person. Dissemination must comply with any procedures or arrangements established or agreed to by the DCI.

(b) Information received from a foreign intelligence agency may be disseminated under these guidelines in the same manner as similar information retained by INR.

(3) Dissemination to Congressional Committees

Except for briefings and testimony on matters of general intelligence interest, specific items of foreign intelligence or counterintelligence may be disseminated upon request to appropriate Congressional committees when authorized by the Assistant Secretary for Intelligence and Research, the Under Secretary of State for Political Affairs, the Deputy Secretary, or the Secretary of State.

X. The President's Intelligence Oversight Board (PIOB)

a. General

In E.O. 12334, the President established the PIOB in order to enhance the security of the United States by assuring the legality of the activities of the IC. All employees of the Department shall cooperate fully with the PIOB.

b. Provision of Information to the PIOB

The Assistant Secretary for INR shall provide the PIOB with all information necessary for the PIOB to carry out its responsibilities. The Assistant Secretary shall keep the DCI appropriately informed concerning any intelligence activities of any officer or employee of the Department that the Assistant Secretary has reason to believe may be unlawful or contrary to Executive Order or Presidential directive. The Assistant Secretary shall consult with the Legal Adviser concerning the legality of any such activities before reporting to the PIOB or the DCI.

c. Reports to the PIOB

The Inspector General of the Department and the Legal Adviser shall, to the extent permitted by law, report to the PIOB concerning intelligence activities that they have reason to believe may be unlawful or contrary to Executive Order or Presidential directive. Such reports shall normally be made on a quarterly basis.

XI. Reports to the Attorney General of Possible Criminal Violations

The Legal Adviser shall coordinate the Department's compliance with the procedures agreed upon by the Attorney General and the Acting Secretary of State on June 11, 1982. These procedures were issued pursuant to section 1.7(a) of E.O. 12333, and govern reports to the Attorney General of possible criminal violations of law.

XII. Compliance with Law

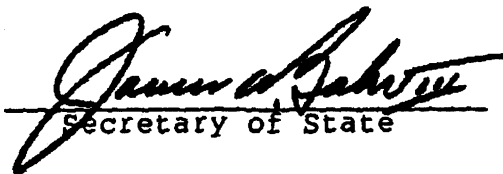
No person employed by the Department shall participate in or request any person to participate in activities forbidden by law, Executive Order, or Presidential directive.

XIII. Definitions

The definitions contained in Section 3.4 of Executive Order 12333 shall apply to this Section.

XIV. Consistency with Other Laws

Nothing in this Section shall be construed to authorize any activity in violation of the Constitution or statutes of the United States.


Secretary of State

6/25/89
Date


Attorney General

8/15/89
Date