



# Department of Defense DIRECTIVE

NUMBER 3115.8

September 7, 1999

---

---

ASD(C3I)

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

- References:
- (a) Section 814, National Intelligence Authorization Act for Fiscal Year 1997, enacted as Section 105A, National Security Act of 1947 (50 U.S.C. 402 et seq.)
  - (b) Executive Order 12333, "United States Intelligence Activities," December 4, 1981
  - (c) [DoD Directive 5240.1](#), "DoD Intelligence Activities," April 28, 1988
  - (d) [DoD Directive 3025.1](#), "Military Support to Civil Authorities (MSCA)," January 15, 1993
  - (e) through (j), see enclosure 1

## 1. PURPOSE

This Directive:

1.1. Establishes policies and procedures and allocates responsibilities for implementation within the Department of Defense (DoD) of reference (a), which provides that designated Department Intelligence Components may, upon the request of a United States Federal Law Enforcement Agency (LEA), collect information outside the United States about individuals who are not United States persons, for use in law enforcement investigations or counterintelligence investigations.

## 2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, 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").

2.2. This Directive has specific applicability to the National Security Agency/Central Security Service (NSA/CSS), the National Reconnaissance Office (NRO), the National Imagery and Mapping Agency (NIMA), and the Defense Intelligence Agency (DIA), (hereafter referred to as "the DoD Intelligence Collection Components"). These Defense Agencies are identified in reference (a) as the only DoD Components that may participate in the collection activities authorized by reference (a) and are covered by this Directive.

2.3. In accordance with reference (a), no member of the U.S. Armed Services may participate directly in an arrest or similar activity as part of the activities authorized by this Directive.

2.4. This Directive does not apply to, 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 LEA authorized by law, Executive order, Presidential directive, or interagency agreement. This Directive likewise does not apply to foreign intelligence and counterintelligence activities conducted by the DoD Intelligence Components pursuant to references (b), (c), (h), and (i).

### 3. DEFINITIONS

3.1. Non-United States Person. Any person, unincorporated association or corporation other than a "United States person" as defined in reference (a) and paragraph 3.3., below.

3.2. United States Law Enforcement Agency (LEA). Any Department or Agency of the Federal Government that the Attorney General designates as a law enforcement agency for purposes of conducting the activities covered by this Directive.

3.3. United States Person. "United States Person" as defined in reference (a), specifically:

3.3.1. A United States citizen.

3.3.2. An alien known by an intelligence agency concerned to be a permanent resident alien.

3.3.3. An unincorporated association substantially composed of United States citizens or permanent resident aliens.

3.3.4. A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments (references (a) and (b)).

#### 4. POLICY

4.1. The DoD Intelligence Collection Components designated herein are authorized to respond to requests from LEAs for intelligence collection and shall make a good faith effort to collect such information outside the United States about individuals and entities that are not known by the intelligence components to be United States persons, so long as the intelligence collection activities do not adversely affect the military preparedness, are not inconsistent with national intelligence priorities of the United States, and intelligence collection sources and methods are protected at the time of collection and thereafter.

4.2. Requests for collection of information outside the United States about non-U.S. persons and entities will be accepted by the Department of Defense only from LEAs designated by the Attorney General as eligible to make such requests.

4.3. Requests from LEAs for collection of information outside the United States about non-U.S. persons shall be submitted directly to the appropriate DoD Intelligence Collection Component, must be in writing, and must certify that the target is not, to the requestor's knowledge, a U.S. person. When a verbal request is made in time-sensitive situations, the DoD Intelligence Collection Component receiving the request from an LEA may respond, but shall advise the requestor that the verbal request must be promptly followed by a written request. The DoD Collection Component shall promptly disseminate resulting information to the requesting LEA, under whatever restrictions on further use that may be appropriate under existing law or policy. The DoD Collection Component shall consult with the requesting LEA prior to further dissemination of the information so collected.

4.4. The DoD Intelligence Collection Components may decline to perform a collection requested under this Directive if the collection cannot be performed without compromising intelligence sources and methods, collection would adversely affect military preparedness or other high priority national intelligence or military requirements, requires resources that the component does not possess, or for any other reason consistent with this Directive.

4.5. 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 E.O. 12333 (reference (b)).

4.6. If a DoD Intelligence Collection Component determines that a collection requested by an LEA pursuant to this Directive could be accomplished pursuant to existing Foreign Intelligence (FI) or Foreign Counterintelligence (FCI) authorities, the DoD Intelligence Collection Component shall so advise the requesting LEA. The collection request shall then be processed in accordance with, and subject to, authorities, criteria, and procedures specifically established for FI and FCI collection. Dissemination shall be in accordance with references (b) and (c).

4.7. In the event a DoD Intelligence Collection Component conducts a collection activity pursuant to this Directive that incidentally obtains information concerning a U.S. activity, the DoD Intelligence Collection Component shall process, retain, and disseminate such information only in accordance with the same minimization criteria and procedures that apply when the DoD Intelligence Collection Component obtains information concerning a U.S. person as a result of a FI or FCI collection performed in accordance with reference (b), the Foreign Intelligence Surveillance Act (reference (h)), DoD 5240.1-R (reference (i)), or other authority.

4.8. All responsible DoD Intelligence Collection Components shall closely monitor collection activities to ensure that protection of sources and methods is maintained at all times. Information which the collecting agency considers to be classified will be handled in accordance with all relevant classification directives and procedures.

4.9. Requesting LEAs will not be advised as to either the source or method of collection, except in compelling circumstances as determined by the DoD Intelligence Collection Component, such as the necessity to ensure dissemination of responsive information to requesting LEAs, and to deconflict Intelligence Community and LEA efforts, and then only after adequate security assurances, in accordance with guidelines issued by the Director of Central Intelligence, are provided to the DoD Intelligence Collection Component.

4.10. In the event a DoD Intelligence Collection Component determines not to perform a collection sought by an LEA, the Component shall advise the LEA of this determination and of the reasons supporting the determination. In the event a DoD Intelligence Collection Component performs a collection sought by an LEA, but the collection yields no information responsive to the request, the Component shall so advise the LEA.

## 5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense (Command, Control, Communications, and Intelligence (ASD(C3I))) shall:

5.1.1. Oversee implementation of this Directive on all aspects of intelligence collection activities pursuant to reference (a).

5.1.2. Receive copies of all requests from LEAs for intelligence collection to the DoD Intelligence Collection Components and maintain permanent files of such collection requests, and the resulting reports in appropriate cases.

5.1.3. 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 for all matters arising in implementation of, and activities conducted under, this Directive.

5.1.4. 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 subparagraph 5.3.7., below.

5.1.5. Submit to the Secretary of Defense by January 31 of each year, a report that summarizes the activities conducted pursuant to this Directive during the previous calendar year.

5.2. The General Counsel of the Department of Defense shall:

5.2.1. Oversee all legal aspects and issues arising in the implementation of this Directive and serve as the principal legal advisor to the Secretary, Deputy Secretary and the ASD(C3I) on all matters covered by this Directive. Provide to the ASD(C3I), by 31 December of each calendar year, a report summarizing all General Counsel, DoD activities in implementation of this Directive for each calendar year.

5.2.2. Obtain from the Attorney General a listing of U.S. law enforcement agencies designated by the Attorney General as eligible to request intelligence collection activities directed outside the United States against non-U.S. persons.

5.2.3. Provide to the ASD(C3I) and to the Directors of the DoD Intelligence Collection Components a listing of eligible law enforcement agencies having been approved by the Attorney General, and ensure that this listing is kept up to date.

5.3. The Directors of NSA/CSS, NRO, NIMA, and DIA, as Heads of the DoD Intelligence Collection Components, shall:

5.3.1. Respond, as appropriate, to requests from LEAs for collection of information outside the United States on non-United States persons—subject to the provisions of this Directive.

5.3.2. Forward copies of all requests from LEAs for collection of intelligence information outside the United States on non-U.S. persons to the ASD(C3I).

5.3.3. Make a good faith effort to respond, within the capabilities of the Agency, to collection requests originating from LEAs designated by the Attorney General as eligible to make such requests.

5.3.4. Conduct collection in such a manner that does not adversely affect military preparedness, is not inconsistent with national intelligence priorities of the United States, that pays due regard to the protection of intelligence sources and methods, and ensures that collection is accomplished in accordance with DoD Directive 5240.1 (reference (c)).

5.3.5. Provide pertinent information collected directly to the requesting LEA, or as provided by FI and FCI authorities, while ensuring continued compliance with applicable classified information requirements and protection of sources and methods.

5.3.6. 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. Ensure that all collection requests from LEAs are subjected to legal review by the General Counsel of the DoD Intelligence Collection Component. Keep the ASD(C3I) currently advised as to the identity and location of the DoD Intelligence Collection Component's point of contact.

5.3.7. Provide an annual summary report to the ASD(C3I) by December 31 of each calendar year, using the format established by the ASD(C3I), summarizing activities conducted pursuant to this Directive for each calendar year.

5.3.8. The DoD Intelligence Collection Components shall maintain permanent files of all requests received from LEAs, as well as records on the disposition of such requests.

5.4. The Heads of the DoD Components, shall:

5.4.1. Continue to support, as appropriate, U.S. law enforcement agencies in accordance with DoD Directive 3025.1 (reference (d)), DoD Directive 5200.27 (reference (e)), and DoD Directive 5525.5 (reference (f)).

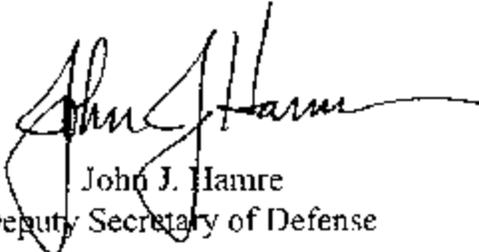
5.4.2. Ensure that copies of all requests from U.S. law enforcement agencies seeking information about non-U.S. persons outside the United States are referred to the appropriate DoD Intelligence Collection Component.

## 6. INFORMATION REQUIREMENTS

The summary reports of activities pursuant to this Directive, identified at subparagraphs 5.1.5. and 5.3.7., are exempt from licensing in accordance with Chapter 4, paragraphs C4.4.1. and C4.4.8. of DoD 8910.1-M (reference (j)).

7. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately.



John J. Hamre  
Deputy Secretary of Defense

Enclosures - 1

E1. References, continued

E1. ENCLOSURE 1

REFERENCES, continued

- (e) [DoD Directive 5200.27](#), "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," January 7, 1980
- (f) [DoD Directive 5525.5](#), "DoD Cooperation with Civilian Law Enforcement Officials," January 15, 1986
- (g) [DoD Directive 3025.15](#), "Military Assistance to Civil Authorities", February 18, 1997
- (h) Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 et seq.
- (i) [DoD 5240.1-R](#), "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982
- (j) [DoD 8910.1-M](#), "DoD Procedures for Management of Information Requirements," June 1998