

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL

SUBJECT: Guidelines for Disclosure of Grand Jury and Electronic, Wire, and Oral Interception Information Identifying United States Persons.

The prevention of terrorist activity is the overriding priority of the Department of Justice, and improved information sharing among federal agencies is a critical component of our overall strategy to protect the security of America and the safety of her people.

Section 203 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272, 278-81, authorizes the sharing of foreign intelligence, counterintelligence, and foreign intelligence information obtained through grand jury proceedings and electronic, wire, and oral interception, with relevant Federal officials to assist in the performance of their duties. This authorization greatly enhances the capacity of law enforcement to share information and coordinate activities with other federal officials in our common effort to prevent and disrupt terrorist activities.

At the same time, the law places special restrictions on the handling of intelligence information concerning United States persons (“U.S. person information”). Executive Order 12333, 46 FR 59941 (Dec. 8, 1981) (“EO 12333”), for example, restricts the type of U.S. person information that agencies within the intelligence community may collect, and requires that the collection, retention, and dissemination of such information must conform with procedures established by the head of the agency concerned and approved by the Attorney General. Section 203(c) of the USA PATRIOT Act, likewise, directs the Attorney General to establish procedures for the disclosure of grand jury and electronic, wire, and oral interception information “that identifies a United States person, as that term is defined in section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801).”

Pursuant to section 203(c), this memorandum specifies the procedures for labeling information that identifies U.S. persons. Information identifying U.S. persons disseminated pursuant to section 203 must be marked to identify that it contains such identifying information prior to disclosure.

Section 101 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. § 1801) provides:

“United States person” means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

Information should be marked as containing U.S. person information if the information identifies any U.S. person. The U.S. person need not be the target or subject of the grand jury investigation or electronic, wire, and oral surveillance; the U.S. person need only be mentioned in the information to be disclosed. However, the U.S. person must be “identified.” That is, the grand jury or electronic, wire, and oral interception information must discuss or refer to the U.S. person by name (or nickname or alias), rather than merely including potentially identifying information such as an address or telephone number that requires additional investigation to associate with a particular person.

Determining whether grand jury or electronic, wire, and oral interception information identifies a U.S. person may not always be easy. Grand jury and electronic, wire, and oral interception information standing alone will usually not establish unequivocally that an identified individual or entity is a U.S. person. In most instances, it will be necessary to use the context and circumstances of the information pertaining to the individual in question to determine whether the individual is a U.S. person. If the person is known to be located in the U.S., or if the location is unknown, he or she should be treated as a U.S. person unless the individual is identified as an alien who has not been admitted for permanent residence or circumstances give rise to the reasonable belief that the individual is not a U.S. person. Similarly, if the individual identified is known or believed to be located outside the U.S., he or she should be treated as a non-U.S. person unless the individual is identified as a U.S. person or circumstances give rise to the reasonable belief that the individual is a U.S. person.

Grand jury and electronic, wire, and oral interception information disclosed under section 203 should be received in the recipient agency by an individual who is designated to be a point of contact for such information for that agency. Grand jury and electronic, wire, and oral interception information identifying U.S. persons is subject to section 2.3 of EO 12333 and the procedures of each intelligence agency implementing EO 12333, each of which place important limitations on the types of U.S. person information that may be retained and disseminated by the United States intelligence community. These provisions require that information identifying a U.S. person be deleted from intelligence information except in limited circumstances. An intelligence agency that, pursuant to section 203, receives from the Department of Justice (or another Federal law enforcement agency) information acquired by electronic, wire, and oral interception techniques should handle such information in accordance with its own procedures implementing EO 12333 that are applicable to information acquired by the agency through such techniques.

In addition, the Justice Department will disclose grand jury and electronic, wire, and oral interception information subject to use restrictions necessary to comply with notice and record keeping requirements and as necessary to protect sensitive law enforcement sources and ongoing criminal investigations. When imposed, use restrictions shall be no more restrictive than necessary to accomplish the desired effect.

These procedures are intended to be simple and minimally burdensome so that information sharing will not be unnecessarily impeded. Nevertheless, where warranted by exigent or unusual circumstances, the procedures may be modified in particular cases by memorandum of the Attorney General, Deputy Attorney General, or their designees, with notification to the Director of Central Intelligence or his designee. These procedures are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

The guidelines in this memorandum shall be effective immediately.