

~~TOP SECRET//SI//NOFORN~~

**(U) Legal Fact Sheet: Executive Order 12333
19 June 2013**

- (U) FISA only regulates a subset of NSA's signals intelligence activities.
- (U) NSA conducts the majority of its SIGINT activities solely pursuant to the authority provided by Executive Order (EO) 12333.
- (U) Since 1981, EO 12333 has provided the President's authoritative written instruction for the organization and operation of the United States Intelligence Community (IC).
- (U) EO 12333 has its roots in predecessor executive orders that Presidents Ford and Carter issued in response to the results of the Congressional Church and Pike investigations into IC abuses.
- (U) In 2008, President George W. Bush amended EO 12333 extensively to account for the Intelligence Reform and Terrorism Prevention Act's creation of the position of the Director of National Intelligence.
- (U) Although each IC element can point to some other authority as a basis for at least some of its activities (*see, e.g.*, the National Security Act of 1947, CIA Act of 1949, and NSA Act of 1959), EO 12333 provides comprehensive direction to the IC elements and provides the DNI with extensive authority to manage the IC on the President's behalf.
- (U) EO 12333, as amended, designates DIRNSA to serve as the IC's Functional Manager for Signals Intelligence (Section 1.3(b)(12)(A)(i)) and further states (Section 1.7(c)) that DIRNSA shall:
 - 1) Collect (including through clandestine means), process, analyze, produce, and disseminate signals intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;
 - 2) Establish and operate an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other IC elements but no other department or agency may engage in SIGINT activities except pursuant to a delegation by the Secretary of Defense, after coordination with the DNI;
 - 3) Control SIGINT collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;
 - 4) Conduct administrative and technical support activities within and outside the United States as necessary for cover arrangements;

(b) (3) - P.L. 86-36

Classified By:

Derived From: NSA/CSSM 1-52

Dated: 20070108

Declassify On: 20380601

Approved for Release by NSA on 09-19-2014,
FOIA Case # 70809 (Litigation)

~~TOP SECRET//SI//NOFORN~~

- 5) Provide SIGINT support for national and departmental requirements and for support to military operations;
- 6) Act as the National Manager for National Security Systems as established in law and policy, and be responsible to the Secretary of Defense and the DNI;
- 7) Prescribe security regulations covering the operating practices, including the transmission, handling, and distribution of SIGINT and communications security material within and among elements under DIRNSA's control, and exercise necessary supervisory control to ensure compliance with the regulations; and
- 8) Conduct foreign cryptologic liaison relationships consistent with the foreign liaison responsibilities of the DNI, Secretary of Defense, and CIA Director.

- ~~(TS//SI//NF)~~ NSA uses a variety of classified intelligence sources and methods to execute its EO 12333 SIGINT mission, to include:

(b) (1)
 (b) (3) - P.L. 86-36
 (b) (3) - 18 USC 798
 (b) (3) - 50 USC 3024(i)

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

- (U) Given the historical context for the issuance of EO 12333, the order contains a number of restrictions and requirements, to include:
 - IC elements must use the least intrusive means feasible within the United States or directed against US persons abroad necessary to execute their assigned responsibilities (Section 2.4);
 - With limited exception, no IC element other than the FBI may conduct unconsented physical searches inside the United States (Section 2.4(b)); and

~~TOP SECRET//SI//NOFORN~~

- Each IC element must handle US person information in accordance with procedures that have been approved by the Attorney General (Section 2.3).
- (U) NSA's AG-approved procedures for the handling of US person information acquired during the course of activities authorized by EO 12333 are currently contained in Department of Defense Regulation 5240.1-R, its Classified Annex, and the Department of Defense Supplemental Procedures Governing Communications Metadata Analysis (SPCMA).
- ~~(S//SI)~~ The AG-approved minimization procedures in the Classified Annex govern NSA's collection, processing, retention, and dissemination of the *content* of communications collected during NSA's EO 12333 SIGINT operations and include the following key requirements:
 - SIGINT personnel must make "every reasonable effort, through surveys and technical means, to reduce to the maximum extent possible," the incidental interception of non-foreign communications, including those of or concerning US persons. (In general, a "non-foreign communication" is a communication in which the sender and all intended recipients are located inside the United States.)
 - Incidentally acquired US person information contained in foreign communications may not be disseminated unless the information is evidence of a crime or is necessary to understand or assess foreign intelligence; but note that US person information obtained from incidentally intercepted *non-foreign communications* may only be disseminated to the FBI and only "when the information is foreign intelligence or counterintelligence or indicates a threat to the safety of any person."
 - In general, SIGINT personnel may *not* query repositories of unminimized EO 12333 content collection with a US person identifier; but the AG has, on a case-by-case basis, authorized NSA personnel to query EO 12333 content collection with US person identifiers when the AG has concluded there is probable cause to believe the US person is an agent of a foreign power.
 - The Signals Intelligence Director or the Signals Intelligence Director's designee must review annually all selection terms based on content to determine whether there is reasonable cause to believe that foreign intelligence or counterintelligence will be obtained by use of the selection terms.
 - Selection terms based on content that have resulted or that are reasonably likely to result in the interception of communications to or from United States persons "shall be designed to defeat, to the extent practicable under the circumstances, the interception of such communications not containing foreign intelligence."
- ~~(S)~~ The SPCMA procedures governing the analysis of communications *metadata* contain less restrictions on the retention and querying of communications metadata NSA obtains during NSA's EO12333 SIGINT activities but the metadata procedures apply the same dissemination criteria as the Classified Annex' criteria for disseminating the content of communication of or concerning US Persons.

(b) (1)

(b) (3) - P.L. 86-36

~~TOP SECRET//SI//NOFORN~~

~~TOP SECRET//SI//NOFORN~~

[Redacted] (b) (1)
(b) (3) - P.L. 86-36

• (S) [Redacted]
(b) (1)
(b) (3) - P.L. 86-36
(b) (3) - 18 USC 798
(b) (3) - 50 USC 3024 (i)

• (S) [Redacted]

- (U) Although the SIGINT activities that NSA conducts pursuant to EO 12333 are not within the jurisdiction of the Foreign Intelligence Surveillance Court, NSA's SIGINT activities are subject to extensive oversight by the Executive and Legislative Branches of the federal government, to include NSA's Inspector General, the Assistant to the Secretary of Defense for Intelligence Oversight, the President's Intelligence Oversight Board, and the Congressional intelligence committees.

• (U) [Redacted] (b) (3) - P.L. 86-36
(b) (5)

• (S//SI) [Redacted]

[Redacted] DOJ concluded that "the incidental collection and processing of United States person communications, when controlled by the minimization procedures . . . satisfy the constitutional standard of reasonableness."

(b) (1)
(b) (3) - P.L. 86-36
(b) (5)

~~TOP SECRET//SI//NOFORN~~