

UNCLASSIFIED



OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE
INTELLIGENCE COMMUNITY POLICY MEMORANDUM
NUMBER 2005-100-3

Subject: Reporting of Intelligence Activities to Congress

Authorities: The National Security Act of 1947, as amended; the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004

1. All elements of the Intelligence Community (IC) shall, in a timely manner, keep the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee on Intelligence (HPSCI) fully informed, in writing, of all significant intelligence activities. Whether a matter is significant, as set forth in these guidelines, is at the discretion of the Director of an IC element. As appropriate, IC elements are also responsible for reporting matters that are subject to these procedures to other committees with oversight jurisdiction or appropriations responsibility for the reporting IC element. Nothing in this policy precludes oral notification, when appropriate, in advance of the required written notification. All such reporting shall also be provided to the Director of National Intelligence (DNI) in a timely manner.

2. Each IC element shall:

a. Notify, in a timely manner, the DNI, through the DNI's Office of Legislative Affairs (OLA), of all of the element's reporting to Congress including any related congressional hearings and briefings.

b. Coordinate reports to Congress with appropriate departments and agencies of the IC and/or Executive Branch when such coordination is warranted.

c. Ensure that such reporting is timely, accurate, and complete.

3. Procedures: The DNI's OLA shall provide guidance regarding the application of standards or procedures and the appropriate manner for notifying Congress.

a. Determining Whether a Matter is Significant: Determining whether a matter is significant is a matter of judgment based on all the facts and circumstances known to the IC element and on the nature and extent of congressional knowledge of the matter from prior notification or otherwise. Some general guidelines for determining the types of activities that warrant notification are:

UNCLASSIFIED

UNCLASSIFIED

(1) **Significant Anticipated Intelligence Activities**

(a) An intelligence activity that entails a significant risk of exposure or compromise and could result in the loss of human life.

(b) An intelligence activity that raises or is expected to have a major impact on important foreign policy or national security concerns.

(c) An intelligence element's transfer, to a recipient outside that IC element, of defense articles, personnel services, or "controlled equipment" valued in excess of \$1 million as stated in Section 505 of the National Security Act.

(d) Extensive organizational changes in an IC element

(e) Deployment of new collection techniques that represent a dramatic departure from previous operations or activities or that result from evidence of significant foreign developments.

(f) A significant intelligence action, other than a covert action, undertaken pursuant to specific direction of the President or the National Security Council.

(g) Major budgetary, acquisition, or reprogramming actions that are of significance or likely congressional concern not otherwise reportable under the National Intelligence Program Procedures for Reprogramming and Transfers.

(2) **Significant Intelligence Failures:** Significant intelligence failures are generally extensive in scope, continuing in nature, or likely to have a serious impact on US national security interests and may include:

(a) The loss or compromise of classified intelligence information on such a scale or over such an extended period as to indicate the possibility of a systemic compromise, or a loss or compromise that investigation indicates poses a substantial risk to US national security activities.

(b) A pervasive failure, interruption, or compromise of a collection capability or collection system.

(c) The loss of life in the performance of an intelligence activity.

(d) A conclusion that an intelligence product is the result of foreign deception or denial activity, or otherwise contains major errors in analysis, with a significant impact on US national security policies, programs, or activities.

UNCLASSIFIED

(3) General Matters of Significant Intelligence: General matters of significance may include:

(a) Important programmatic developments likely to be of congressional interest, such as major cost overruns or the termination of a significant contract.

(b) Important developments that affect intelligence programs, projects, or activities and that are likely to be of congressional concern because of their substantial impact on national security or foreign policy.

(c) An intelligence activity believed to be a violation of US law, including any corrective action taken or planned in connection with such activity.

(d) Significant misconduct by an employee of an IC element or asset that is likely to seriously affect intelligence activities or otherwise is of congressional concern, including human rights violations.

(e) Updates on significant developments in, or the resolution of, matters previously reported under these procedures.

(f) Major intelligence activities that pose a substantial risk of appearing in the domestic or foreign public media other than as an official dissemination.

(g) A substantial change in the capabilities or known vulnerabilities of US intelligence operations or intelligence systems.

b. Form and Documentation for Notification

(1) Written notification provided to Congress shall contain a concise statement of any facts pertinent to such a report and an explanation of the significance of the intelligence activity or intelligence failure covered by the report.

(2) Preliminary oral notification may be provided with respect to any matter subsequently reported to Congress in writing. All oral notifications must be documented with a brief synopsis of the pertinent facts and the significance of the reported matter, the date of notification, the office responsible for the subject of the notification, and the congressional members and staff notified. A standard form to be used for documenting oral notification is attached.

(3) For all matters subject to reporting under these procedures, except as noted in paragraph 3.b.(4), the reporting element shall provide to the DNI's OLA a copy of the written notification and documentation of any preliminary oral notification at the same time notification is made to the intelligence committees. In especially sensitive matters, when directed by the DNI, such notifications will be done to the DNI and Principal Deputy DNI directly.

UNCLASSIFIED

(4) For matters where the reporting element considers disclosure of information related to a particular intelligence activity to be of exceptional import (for example, the information could jeopardize sensitive intelligence sources and methods or impair foreign relations, national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties), OLA shall be provided prior notice of the matter to ensure appropriate DNI involvement in the notification decision, including any immediate steps necessary to address the matter.

(5) OLA will provide copies of completed, delivered Congressional Notifications to appropriate DNI elements.

5. Where intelligence information to be provided to a congressional committee relates to a possible crime or may have an impact on ongoing criminal investigations or prosecutions, the IC must be mindful both of its reporting responsibilities under Sections 501 and 502 of the National Security Act of 1947, as amended, and the responsibility of the Executive Branch to ensure the integrity of the criminal process. To meet both responsibilities, IC elements must observe the following policies and procedures:

a. IC elements shall notify the designee of the Attorney General and the Congressional Affairs or General Counsel offices at the headquarters of any federal law enforcement agency involved in an ongoing criminal investigation or prosecution prior to providing to a congressional oversight committee any information relating to an ongoing criminal investigation or prosecution. IC elements shall thereafter coordinate with the Attorney General's designee and the affected Cabinet department to ensure that the information provided to the oversight committee does not adversely affect the criminal investigation or prosecution.

b. IC elements shall immediately notify the Attorney General's designee and the Congressional Affairs or General Counsel offices at the headquarters of any Federal law enforcement agency involved in an ongoing criminal investigation or prosecution when a non-oversight committee of Congress requests any information relating to an ongoing criminal investigation or prosecution. Prior to any response to that request that includes information relating to that criminal matter, IC elements, in coordination with the Department of Justice and the affected Cabinet department, shall notify the SSCI or HPSCI of the request by a non-oversight committee and request advice and assistance in responding to the request. IC elements shall continue to coordinate with the Attorney General's designee and the affected Cabinet department to meet any obligation to a non-oversight committee without adversely affecting the criminal investigation or prosecution.

c. Disagreements between an IC element and the Department of Justice regarding the appropriateness of providing specific information to Congress may be referred for resolution to the Attorney General, the DNI, and the affected Cabinet Department Secretary. The party seeking any such resolution shall notify the other parties in advance of its intent to do so.

6. This policy memorandum supersedes the Director of Central Intelligence (DCI) Memorandum, "Revised Standards and Procedures for Intelligence Community Reporting of Significant Intelligence Activities," 9 September 2003, and DCI Directive 2/13P,

UNCLASSIFIED

“Communications with Congressional Committees Regarding Intelligence Information Relating to Law Enforcement Matters,” 7 November 1995.

7. The content of this policy shall be incorporated into Intelligence Community Directive 103.

Michael V. Hayden
Principal Deputy Director of National Intelligence

10 Jan '06
Date

Attachment:

Record of Oral Notification of Significant Intelligence Activity

**RECORD OF ORAL NOTIFICATION OF
SIGNIFICANT INTELLIGENCE ACTIVITY**

UNCLASSIFIED

DATE OF REPORT:

SUBJECT OF NOTIFICATION:

REPORTING IC ELEMENT:

COMMITTEE PERSONNEL NOTIFIED:

SUBSTANCE OF NOTIFICATION:

FOLLOW-UP WRITTEN NOTIFICATION ANTICIPATED: YES ____ NO ____