

## **INTELLIGENCE OVERSIGHT RELATED TO CONUS ANTITERRORISM / FORCE PROTECTION**

This information is provided to assist commands in determining what role military intelligence can play to support the commander specifically in providing intelligence on the current international terrorism threat to our forces, property and installations within the continental United States (CONUS). But, before we launch into the subject of Intelligence Oversight related to CONUS antiterrorism/force protection a few preliminary questions must be posed and answered.

### **FREQUENTLY ASKED QUESTIONS**

[Q1. What is Intelligence Oversight and what is the purpose of the Department of Defense Intelligence Oversight program?](#)

[Q2. What is the difference between the terms "U.S. persons" used in Intelligence Oversight references and "U.S. citizens?"](#)

[Q3. Do Intelligence Oversight laws and regulations apply today under the current international terrorist conditions with the attacks on U.S. territory?](#)

[Q4. My CONUS commander wants my intelligence unit/section to provide intelligence in support of his antiterrorism/ force protection mission. May I do this?](#)

[Q5. May I disseminate U.S. person information?](#)

[Q6. May my unit circumvent the restrictions imposed by DoD Regulation 5240-1-R by having contractors perform the tasks that we as government personnel are not permitted to do?](#)

[Q7. The FBI has asked me to provide an interpreter to assist in interviewing an alien. May I do so?](#)

[Q8. I'm an intelligence/counterintelligence officer assigned to another Service, a Joint Command, federal agency, or NATO organization. Do Intelligence Oversight rules apply to me?](#)

[Q9. Do other agencies in the Intelligence Community besides DoD have to follow Presidential Executive Order 12333? Do they have Intelligence Oversight programs?](#)

[Q10. Where do I go with other questions on Intelligence Oversight issues?](#)

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### ***Q1. What is Intelligence Oversight and what is the purpose of the Department of Defense Intelligence Oversight program?***

A1. Intelligence Oversight is the process of ensuring that all DoD intelligence, counterintelligence, and intelligence related activities are conducted in accordance with applicable U.S. law, Presidential Executive Orders, and DoD directives and regulations. The DoD Intelligence Oversight program has two main objectives. The program is designed to ensure that the DoD can conduct its intelligence and counterintelligence missions while protecting the statutory and constitutional rights of U.S. persons.

(Basic references: Executive Order 12333, DoD Regulation 5240.1-R, SECNAVINST 3820.3D, and MCO 3800.2A)

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***Q2. What is the difference between the terms "U.S. persons" used in Intelligence Oversight references and "U.S. citizens?"***

A2. The term "U.S. persons" includes U.S. citizens, but is broader. It also includes permanent resident aliens, unincorporated associations substantially composed of U.S. citizens or permanent resident aliens, and corporations incorporated in the U.S. and not directed and controlled by a foreign government.

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***Q3. Do Intelligence Oversight laws and regulations apply today under the current international terrorist conditions with the attacks on U.S. territory?***

A3. Yes. While the Executive and Legislative branches are reported to be reviewing Intelligence Oversight policies, current rules remain in place. We will ensure any changes in policy are disseminated in a timely manner.

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***Q4. My CONUS commander wants my intelligence unit/section to provide intelligence in support of his antiterrorism/ force protection mission. May I do this?***

A4. This question requires a lot of qualifications to any answer. **Generally speaking you may support your commander with foreign intelligence on non-U.S. persons, but not with intelligence on any U.S. persons.** SECDEF message, DTG 181700Z Nov 98 provides further clarification on this particular subject.

1. When **foreign groups or persons** threaten DoD personnel, resources, or activities – whether CONUS or OCONUS – DoD intelligence/ counterintelligence components may intentionally target, collect, retain, and disseminate information on them (unless the groups or persons in question meet the definition of "U.S. persons" provided above). For example, you may collect and retain information on Osama bin Laden and associates whether CONUS or OCONUS if they are not "U.S. persons."

2. **Generally you may not intentionally target, collect, retain, and disseminate information on U.S. persons whether CONUS or OCONUS.** Information pertaining to U.S. persons, which poses a threat to DoD personnel, resources, or activities, falls under the realm of law enforcement and security. As such, DoD law enforcement and security organizations, as opposed to intelligence/counterintelligence components, may legally accept and retain such information for up to 90 days, unless longer retention is required by law or permission is specifically granted by SECDEF (DoDD 5200.27). An S-2 section in a standard infantry battalion may not, for example, collect and retain information (to include publicly available newspaper clippings or internet articles) on Osama bin Laden's relatives or associates whether CONUS or OCONUS if they are "U.S. persons."

3. **Exceptions** exist which allow intelligence/ counterintelligence components to intentionally target, collect, retain, and disseminate information on U.S. persons. For example, if you are assigned to, or in support of, a DoD law enforcement organization or unit with a specific security mission, you may collect information on domestic threats to DoD that are "reasonably believed" (not a "gut feeling" or hunch, but reason that can be articulated) to have a foreign connection. **Even under these circumstances, you are limited to the 13 categories of information laid out in Procedure 2 of DoD Regulation 5240.1-R.**

Under such conditions you should closely coordinate with law enforcement to provide and receive needed information.

With question 4 asked and answered, some further clarification and guidance is necessary. The FBI has the lead when it comes to antiterrorism information INCONUS. NCIS is our Marine Corps main source and support in this arena. This usually occurs via the operational antiterrorism/force protection and/or military law enforcement channels. Commanders should take advantage of law enforcement liaison activities to monitor criminal activity in the vicinity of their installations/activities. Acts of terrorism and threats to harm personnel or destroy Government property are criminal acts.

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***Q5. May I disseminate U.S. person information?***

A5. Any information, which is legally collected and retained, may be disseminated to other government agencies that have a need to know.

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***Q6. May my unit circumvent the restrictions imposed by DoD Regulation 5240-1-R by having contractors perform the tasks that we as government personnel are not permitted to do?***

A6. No. The Government may not hire contractors to do things that are improper or illegal.

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***Q7. The FBI has asked me to provide an interpreter to assist in interviewing an alien. May I do so?***

A7. Provision of expert support by intelligence professionals to law enforcement agencies is permitted (see DoD Regulation 5240.1-R, Procedure 12) **providing** your command structure and general counsel/staff judge advocate concur. Any such requests from any organization outside of the Marine Corps must be routed through proper channels to Headquarters Marine Corps, Manpower and Reserve Affairs. Your interpreter should not bring back to your DoD facility any information obtained in the interview nor should this information be included in any DoD database.

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***Q8. I'm an intelligence/counterintelligence officer assigned to another Service, a Joint Command, federal agency, or NATO organization. Do Intelligence Oversight rules apply to me?***

A8. Yes, they do. Executive Order 12333 and pertinent implementing directives and regulations still apply. You are required to follow all Intelligence Oversight rules.

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***Q9. Do other agencies in the Intelligence Community besides DoD have to follow Presidential Executive Order 12333? Do they have Intelligence Oversight programs?***

A9. Yes. Presidential Executive Order 12333 applies to the entire Executive Branch. All departments and agencies that conduct intelligence or counterintelligence activities must implement Intelligence Oversight programs.

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***Q10. Where do I go with other questions on Intelligence Oversight issues?***

A10. Call the Inspector General of the Marine Corps, Oversight Division at (703) 692-9978, Ext 164 with your questions.