

PROC 3 FAQs

1. How do the procedures in DoDM 5240.01 apply to sets of information in which some of the information is in an intelligible form, but some is not? For encrypted information, Paragraph 3.3.c.(6) notes that the retention periods identified in Paragraph 3.3.c. begin when the information is processed into intelligible form. For information/files which can be pulled apart, for that which remains unintelligible, are there two different retention clocks: (1) one that doesn't begin until the information/file(s) is processed into an intelligible form, and (2) one that begins when the information was first collected? Please note, there could be many different points in time in which intelligible information is made intelligible, thus meaning that, depending on how this information needs to be handled, there could be different age-off points for some set of information. For information that cannot be further separated, does the retention clock not begin until all of the information is in an intelligible form?

Answer: Once unintelligible data becomes intelligible, the retention clock starts. Defense Intelligence Components who routinely handle unintelligible data, should consider establishing implementing guidance that addresses how data sets will be handled throughout the decryption process.

2. What is meant by "reasonable measures" to identify and mark USPI as discussed in paragraph 3.3.f.(2).

Answer: "Reasonable measures" is a subjective term that requires the assessment of many variables. This term was used in the Manual to allow practitioners the flexibility to consider unique factors that apply to their situation and to allow for future capabilities that may ease the burden of compliance. In applying this standard, consider: the number of files, the capabilities of IT applications, the type of media, etc. Also consider use of individual paragraph caveats, document banners, folder names, or file names to indicate USPI.

3. When used for an intelligence or intelligence-related purpose is intentionally collected automated air traffic data on American Airlines Flight 141 (AA141) from London to JFK, a U.S. person which would require marking, retention, and dissemination controls per DoDM 5240.01?

Answer: The air traffic data above is U.S. person information (USPI) because "American Airlines" fits the definition of "U.S. person" in DoDM 5240.01 and linking "American Airlines" to flight data ties that information to a specific U.S. person. The information in this example may be intentionally collected if the information is publicly available and reasonably believed to be necessary for the performance of an authorized intelligence mission or function assigned to the Component. Retention and dissemination rules in Procedures 3 and 4 apply.

4. DoDM 5240.01, paragraph 3.3.c(6), states, "For any information that is not in an intelligible form, the time periods identified in Paragraph 3.3.c. begin when the information is processed into intelligible form. Unintelligible information includes information that a Component cannot

decrypt or understand in the original format.” Is otherwise intelligible information in a non-English language considered “unintelligible” for the purpose of this section?

Answer: No.

5. When preparing an intelligence briefing containing public comments made by a U.S. government official during a press conference, is it permissible to include the official's name in the briefing? One interpretation is that it is okay to use the official's title, but including the name of the official constituted U.S. person information (USPI) and violated DoD Manual 5240.01. Another interpretation is that using the official's name is allowed under Category 2. Which is correct? Does the inclusion of the name require that the briefing be marked as containing USPI?

Answer: In accordance with the definition of USPI in the Glossary of DoDM 5240.01, the title of the U.S. official is identifying information and must be protected in accordance with the Procedures. In the case you cited above, the information is releasable to any person or entity because it is publically available, but should be marked as USPI.

With regard to marking intelligence containing USPI, see DoDM 5240.01, Paragraph 3.3.f.(2): "Marking Electronic and Paper Files. Defense Intelligence Components will use reasonable measures to identify and mark or tag files reasonably believed or known to contain USPI. Marking and tagging will occur regardless of the format or location of the information or the method of storing it. When appropriate and reasonably possible, Components will also mark files and documents containing USPI individually. In the case of certain electronic databases, if it is not reasonably possible to mark individual files containing USPI, Components may use a banner informing users before access that they may encounter USPI."

6. If information is provided to a DoD Component by a Federal agency that is not a member of the Intelligence Community(IC), how is this information evaluated for purposes of Permanent Retention as per Paragraphs 3.3.d. and 3.3.e. of the Manual?

Answer: Information received from any source that is not an IC element is considered to be collected upon receipt and must meet the requirements in Procedure 2 for collection and Procedure 3 for retention.

7. How do retention decisions under DoDM 5240.01 apply for USPI held in a single database comprising data that was not collected with intelligence authorities, but may be accessed by intelligence personnel for an intelligence purpose? In this instance, the intelligence purpose and intent occurs after the collection is done.

Answer: Information collected by a non-intelligence entity for non-intelligence purposes is not considered intelligence information. The information becomes “collected” when a Defense Intelligence Component copies, saves, supplements, or uses the information in some manner. Simply accessing or viewing data on a screen is not considered collection. The life cycle for retention begins when the Defense Intelligence Component receives the

information, unless another intelligence element has already collected the information. In this case, the retention timeline starts upon initial collection for intelligence purpose by the first intelligence element that received the information.

8. May I collect, retain, and disseminate publicly available U.S. person information?

Answer: Since publicly available U.S. person information falls within one of the 13 categories in DoDM 5240.01, paragraph 3.2.c., it may be intentionally collected if the information sought is reasonably believed to be necessary for the performance of an authorized intelligence mission or function. Regardless of whether the information is intentionally or incidentally collected or voluntarily provided, it must be evaluated, after collection, for permanent retention in accordance with DoD Manual 5240.01, paragraph 3.3.e. If the USPI is properly collected and retained, it is eligible for dissemination in accordance with DoD Manual 5240.01, paragraph 3.4.c.

9. Does intentionally collected publicly available information require evaluation for permanent retention?

Answer: Yes. If a Defense Intelligence Component intentionally collects USPI, the Component will evaluate the information promptly. See DoDM 5240.01, paragraph 3.3.c.(1).

10. If a Defense Intelligence Component signs an MOU or MOA with a non-intelligence department or agency for the expressed purpose of information sharing, is that information provided to the Defense Intelligence Component under the MOU or MOA intentionally collected or voluntarily provided?

Answer: The presence of an MOU or MOA does not define the type of collection, necessarily. If, under the provisions of the MOU or MOA, the Defense Intelligence Component collects USPI, that information can be either intentionally collected, incidentally collected, or voluntarily provided. Components should check with their legal advisor and Intelligence Oversight Officer to ensure activities conducted under the provisions of MOUs and MOAs are consistent with DoDM 5240.01.