

## **PROC 9 FAQs**

1. Can a DoD counterintelligence (CI) agent, conducting nonconsensual Physical Surveillance (as defined in DoDM 5240.01) on the subject of an open CI investigation in accordance with Procedure 9, surveil a second individual the subject contacts?

**Answer: Subject to the limitations set forth in Procedure 9 of DoDM 5240.01, a DoD CI agent may conduct an approved physical surveillance on a US or non-US person, either inside or outside the U.S., for an authorized CI purpose. While physical surveillance of a second individual may not have been approved, his/her contact with the original target individual raises a legitimate CI interest. As such, casual observation of the second individual may be justified for the purpose of identifying the individual to determine if there is a reasonable CI connection. Such observation should be short in duration and not intended to track the movement or other physical activities of the individual, and also may not include electronic surveillance, concealed monitoring, physical searches, or overhead reconnaissance. Should the CI connection be established or should physical surveillance be required to identify the individual or make a determination of CI interest, the physical surveillance on the second individual must be separately requested and approved in accordance with Procedure 9, DoDM 5240.01. For situations such as this, CI agents should contact their legal advisor and apprise them of the facts on hand to ensure they do not conduct an unauthorized physical surveillance. It is also recommended that the Procedure 9 approving officials address the limitations on casual observation of 3<sup>rd</sup> parties as part of the authorization for a physical surveillance to provide appropriate guidance to Defense Intelligence Component personnel prior to encountering such a situation.**

2. Is it permissible to physically surveil an automobile in the U.S. using an unmanned aircraft system (UAS) as part of a training exercise without the occupant knowing of or consenting to the surveillance?

**Answer: If the UAS flight is conducted pursuant to authorities authorized by Executive Order 12333, then the activities are intelligence activities and must also comply with Procedures in DoD Manual 5240.01. If the UAS flight is not conducted pursuant to E.O. 12333, such activities are not required to comply with DoD Manual 5240.01 requirements. Intelligence training activities are not conducted pursuant to authorities authorized by E.O. 12333. Regardless of whether the UAS is conducting an intelligence activity, all domestic UAS operations must comply with Deputy Secretary of Defense Policy Memorandum 15-002, "Guidance for the Domestic Use of Unmanned Aircraft Systems," dated February 17, 2015.**

**Bottom Line: It is permissible for a UAS on a training mission to physically surveil an automobile in the U.S. without the occupant's consent if the mission is approved in accordance with Deputy Secretary of Defense Policy Memorandum 15-002.**