



DoD Manual 5240.01

“Procedure 4, Dissemination of U.S. Person Information”



AGENDA

- Key Changes
- Challenges
- Takeaways
- Questions



Key Changes

- Scope
- **Definitions**
- Criteria
- **Special Requirements**

Practitioner Tip: Read the rules



5240.01 M Scope

- Governs dissemination of USPI collected or retained by a Defense Intelligence Component.
- Info may be disseminated only if properly collected or retained IAW Procedures 2 or 3.
- Applies to USPI in any form, including physical and electronic files, databases, websites or in shared repositories accessible outside the Component.
- Does not apply to information collected solely for admin purposes, or pursuant to AG procedures or court order

Practitioner Tip: Dissemination from shared repository happens when permission given to access



Definition

Dissemination –

- transmission, communication, sharing, or passing of information
- outside a DIC
- by any means, including oral, electronic, physical.
- Includes access to information in Component's custody to persons outside the Component

Practitioner Tip: Showing information may constitute dissemination



General Criteria

Subject to the paragraphs of this procedure, USPI may be disseminated by DIC employees who have received training on this procedure and if the information falls into one or more categories

Practitioner Tip: Ensure training specifically covers Proc 4



Categories

- (1) **Any Person or Entity** – Information is publicly available or concerns a USP who has consented to the dissemination
- (2) **Other Intelligence Community Elements** – For the purpose of allowing the recipient to determine relevancy and whether the information can be retained by it in accordance with AG approved procedures, or in the case of DoD Components, this issuance.
- (3) **Other DoD Elements** – The recipient is reasonably believed to have a need to receive such information for the performance of its lawful mission or function



Categories

(4) Other Federal Entities – Dissemination is to any other part of Federal government and recipient is reasonably believed to have a need for performance of its lawful mission or function
(see para 3.4(f))

(5) State, Local, Tribal, or Territorial Governments – Dissemination is to state, local, tribal governments and recipient is reasonably believed to have a need for the performance of its lawful mission or function
(see para 3.4(f))



Categories

(6) Foreign Govts **or Intl Organizations**

(a) to a foreign govt **or intl organization**;

(b) recipient is reasonably believed to have a need for the performance of its lawful mission or functions: and

(c) DIC head or delegee has determined disclosure is consistent w/ applicable intl agreements and foreign policy disclosure policy and directives, including those requiring protection against the misuse or unauthorized dissemination of information, and the analysis of potential harm to any individual.



Categories

(7) Assistance to Component –

- to govt entity, intl entity, or individual or entity not part of a govt
- necessary for limited purpose of assisting DIC in authorized mission or function.
- If to foreign govt or intl organization, must also comply with 3.4.c.(6).
- Component will inform recipient that it should do all the following, except in exceptional circumstances, where providing such information is inconsistent with operational requirements, as determined by the Component Head or a delegee:
 - (a) Only use information for this limited purpose;
 - (b) Properly safeguard the information;
 - (c) Return or destroy the information;
 - (d) Not disseminate further without prior approval.



Categories

(8) **Protective Purposes –**

- dissemination is to govt entity, intl organization, or individual or entity not part of a govt
- necessary to protect against or prevent a crime or threat to the national security
- If to individuals or entities not part of a govt, DIC Head or delegee will:
 - assess the risk associated with such dissemination,
 - consider further restrictions, handling caveats, and
 - comply with foreign disclosure policy.
- If to foreign govt or intl organization, also comply with Para 3.4.c.(6).



Categories

(9) Required Disseminations – Law, EO, Presidential Directive, NSC guidance; AG-approved policy, MOU, or agreement.



Special Requirements

d. Large Amounts of Unevaluated USPI -

- Dissemination under Paras 3.4.c.(3) through 3.4.c.(8)
- Info not evaluated to determine whether it meets standard for permanent retention
- DIC Head or a single delegee must approve, after notifying DoD SIOO:
 - (1) The approving official must find that dissemination complies with other requirements of this procedure and is not reasonably possible to accomplish intended objective with less USPI
 - (2) If recipient is outside Federal govt, the recipient must represent that it has appropriate protections in place, comparable to Para 3.3 f and 3.3 g, to safeguard, monitor, comply with applicable laws, will use, access and retain only for lawful purposes.

Practitioner Tip: Note this does not apply to (1) USPI publicly available or obtained by consent or (2) dissemination to other IC elements



Special Requirements

e. Minimization of Dissemination Content –

- To extent practicable, DIC should not include USPI in a dissemination (other than pursuant to Paragraphs 3.4c.(1) or (2)) if pertinent information can be conveyed in an understandable way without including the identifying Information.
- If a dissemination includes USPI, Component will notify recipient so recipient can protect USPI appropriately.

Practitioner Tip: “practicable” depends heavily on the facts



Special Requirements

f. Disseminations Requiring Approval.

- If dissemination
 - is under para 3.4.c(4)-(6)
 - is not for foreign intelligence, CI, security, law enforcement, cybersecurity, humanitarian assistance, disaster relief, threats to safety, or protective purposes
- DIC head or delegee must approve

g. Dissemination of SIGINT - must also comply with Proc 5



Special Requirements

h. Improper Dissemination of USPI.

- DICs will develop procedures.

i. Disseminations Not Conforming to this Procedure

- approved by DIC Head
- on advice of DIC legal office
- after consultation with GC DoD, DoJ National Security Division, DIC privacy and civil liberties officials
- Based on determination of compliance with applicable laws, EOs, and regulations



Procedure 4

Challenges



Interpreting Consent

- **Any Person or Entity – “Information ... concerns a USP who has consented to the *[that particular]* dissemination”**
 - **Example: employee of a company may consent to monitoring and disclosure of her email on the company's computers "for all lawful purposes" or consent may be limited by union contract**
 - **Org official may help show employee has already given consent, so no absolute requirement to contact employee**
 - **Consent may be express or implied**

Practitioner Tip: DIC legal counsel - gather sufficient facts to show the particular employee consented to the particular dissemination



Who's Burden?

- **Other Intelligence Community Elements**
 - Recipient determines relevancy and [retention per] AG approved procedures
- **Other DoD Elements**
- **State, Local, Tribal, or Territorial govts**
- **Foreign govts or intl Organizations**
 - “recipient is reasonably believed” - disseminator’s burden



Minimization

- To *extent practicable*, DIC should not include USPI in a dissemination (other than pursuant to Paras 3.4c.(1) or (2) if pertinent information can be conveyed in an understandable way without including the identifying Information.
- **Key Questions:**
 - **Has the DIC thought about it and made a decision?**
 - **Has the DIC just passed whatever they had?**



Practitioner Tip: Consider creating procedures or documenting



“Harms Analysis”

- To Foreign Gov'ts or Intl Orgs –
- **disclosure** consistent w/ int'l agreements **and foreign disclosure policy and directives, ... and *analysis of potential harm to any individual***
- **SIOO to PCLOB: DoD will develop guidance and consult**
- **AF would offer that some guidance exists ...**
- **Now moving the workshop from teaching to conversation ...**



“Harms Analysis”

- **DoDD 5230.11, Classified Military Info to Foreign Govts, Intl Orgs**
 - **Category 8 - Military Intelligence.** Info of military character pertaining to foreign nations. Does not include national intel or SCI
 - **Controlled Unclassified Information**
 - **Encl 3. *Disclosure consistent w/ U.S. foreign policy ...***
- **ICD 403 - Foreign Disclosure and Release of Classified Natl Intel**
 - **ICPG 403.1 *Disclosure consistent w/ U.S. foreign policy; may not be disclosed if contrary to treaties; support for lethal action needs special authorization***
 - **ICPG 403.2 *Specify potential impact on privacy and civil liberties***
 - **ICPG 403-3**
 - **ICPG 403.4**
- **DoDD 5530.3, Intl Agreements (DIA and NSA have repositories for intel)**



“Harms Analysis”

- **Ask yourself: If we gave USPI to a foreign gov’t, would cousins disappear?**
- **Harms in Treaties: Civil and Political Rights; Slavery; Genocide; Political Rights of Women; Forced Labor; Racial Discrimination; Status of Refugees; Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**
- **Might want to consider**
 - **Fundamental human rights (from Security Assistance): rights to life, liberty, security; freedom from enslavement, torture, and cruel, inhuman, or degrading punishment; freedom from arbitrary arrest; presumption of innocence; competent and impartial tribunals**
 - **State Dept Annual Country Reports, <http://www.state.gov/j/drl/rls/hrrpt/>**
 - **Talking to your Agency Country Desk**
 - **Good summary in “DISAM Green Book,” Chap 16**
- **DoDM Negotiations w/ DoJ: potential harm to any individual**
 - **Potential: reasonably foreseeable, not remote**
 - **Harm: serious rights protected by intl law; not nuisance or minor economic loss**
 - **Individual: US or not**

Discuss ...



Interface Between (6), (7), and (8)

- **(6) Foreign govts or intl organizations**
 - Benefit to foreign govt or intl org, so tighter procedures
- **(7) Assistance to the Component**
 - Benefit to DIC, so lighter procedures
 - Must also comply w/ (6) if to foreign govt or intl org
- **(8) Protective Purposes**
 - Benefit to safety, security, preventing crime, preventing natl security threat, so lighter procedures
 - Must also comply w/ (6) if to foreign govt or intl org



Improper Dissemination of USPI

- **DoDM requires DIC procedures**
- **Possible AF approach:**
 - **Note wide variety of missions and data**
 - **Squadron CCs or equivalent must promulgate operating instructions (single policy for AFOSI)**
 - **Improper dissemination includes**
 - **inadvertent dissemination of known USPI**
 - **dissemination of information later discovered to be USPI**
 - **intentional, improper dissemination**
 - **Operating instructions must include procedures to notify recipients**
 - **Improper dissemination treated as QIA**

Discuss ...



Takeaways

- **Rules only apply to dissemination of USPI – no USPI? then MOVE ON**
- **Dissemination to IC elements can go fast**
- **Dissemination to others requires conversation, justification**
- **Talk to your FDO and PCLO**
- **Mind the special requirements**
- **Accountability**



Procedure 4

Questions?