



DoDM 5240.01

Section 3.1 General Provisions (Proc 1)

&

Section 3.2 Collection of USPI (Proc 2)



Agenda

- **Key changes to Sections 3.1 & 3.2**
- **Why changes were made**
- **Application and examples**



Section 3.1 General Provisions

- **Specifies the scope of DoD Manual 5240.01**
- **Follows new OSD format of Section 1 (General Info) and Section 2 (Responsibilities)**
- **Introduces the new concept of ‘Shared Repositories’ in accordance with Director of National Intelligence imperative for IC information sharing**
- **Provides guidance on Interpretation, Exceptions to Policy and Amendments to the Procedures Governing the Conduct of DoD Intelligence Activities**



Key Definition (Section 3.2b) **‘Shared Repository’**

- **A database, environment, or other repository maintained for the use of more than one entity**
- **A database, environment, or other repository that a contractor or other entity maintains for the use of a single Defense Intelligence Component, or those acting on its behalf, is not a shared repository**



Changes in 'Front Matter'

DoD 5240.1-R, December 1982

Draft DoDM 5240.01

Foreward- SecDef & AG signatures

N/A

TOC

TOC

Section 1- General Issuance Information

1.1 Applicabilty- all DoD Components

1.2 Policy-

- * Comply with law, regs, policies per EO 12333**
- * Collect/retain/disseminate USPI IAW Manual**
- * Activities IAW Constitution & 1st Amendment**

1.3 Procedures-

- * 1-10 AG-approved**
- * DoD 5240.1-R P11-P15 in effect until superseded**

1.4 Internal Guidance- applies to DoD only

1.5 Information Collections- DoDM 8910.01

Section 2- Responsibilities

- * USD (I) & DoD Components**



Changes in General Provisions

DoD 5240.1-R, December 1982

Draft DoDM 5240.01

Chapter 1- General Provisions

Section 3.1- General Provisions

C.1.1- Applicability and Scope

(Applicability moved to Section 1.1)

C.1.2- Scope

3.1.a- Scope

3.2.b- Shared Repositories

C.1.3- Interpretation

3.1.c- Interpretation

C.1.4- Exceptions to Policy

3.1.d- Exceptions to Policy

C.1.5- Amendment

3.1.e- Amendments



Section 3.1 - General Provisions (Procedure 1)

a. Scope

- DICs provide info about foreign powers, organizations, persons & agents
- Proc 2-4 govern collection, retention & dissemination of USPI
- Proc 5-10 govern special collection techniques for FI/CI
- **DoD 5240.1-R Proc 5 classified annex in effect until superseded**
- Non-FI/CI missions/functions excluded & conducted IAW applicable policies: **LE, civil disturbance, physical security, FP, DSCA, safety of navigation, National Manager for National Security Systems; other non-FI/CI NGA & NSA missions**
- **No DIC intelligence activity affecting US political process- including dissemination to White House; DoD policy TBP ICW DNI; applicability questions resolved thru Component GC to GC DoD**
- DIC employee Federal criminal law violations reported IAW DoD-DOJ MOU
- **Specific guidance on DIC approval levels & delegation authorities**

Tip: Follow non-FI/CI mission ROE; confirm DIC approval levels



Section 3.1- General Provisions (Procedure 1)

b. Shared Repositories

- **DIC may host or participate in a shared repository IAW laws & policies**
- **DIC as host**
 - **May perform systems support/data-related tasks for itself or others**
 - **Must enable audit access to USPI to extent practicable**
 - **Participant written confirmation to host of compliance w/ law/policy**
- **DIC as participant**
 - **Must ensure access/use complies with USPI laws/policies/procedures**
 - **Must identify USPI access & use limitations to host**
 - **Allowing access = dissemination and must be IAW Proc 4**
 - **Does not include host or IC element USPI access/use for systems support or data-related tasks**

***Tips: New fundamental concept;
share but follow host/participant ROE !***



Section 3.1- General Provisions (Procedure 1)

c. Interpretation / d. Exceptions/ e. Amendments

c. Interpretations: Procedures interpreted IAW stated purpose; questions referred thru **DIC legal office** & Component GC to GC DoD; **consultation with privacy and civil liberties officials as appropriate**

d. Exceptions to Policy: DIC written requests thru legal office to **DoD SIOO**; DoD SIOO consultation with **GC DoD** prior to forwarding to SecDef; requires approval of Asst AG for National Security except in emergencies

e. Amendments: DIC written requests thru legal office to DoD SIOO; should **consult with privacy and civil liberties officials**; **DoD SIOO** consultation with GC DoD prior to forwarding to SecDef; all require AG approval after **DNI consulted**

Tip: involves DoD SIOO (vs USDP) & GCs , Privacy/Civil Liberties; DNI



Section 3.2

Collection of USPI (Procedure 2)

- **Specifies general criteria for collection of USPI**
- **Retains but re-orders & changes 13 categories of intentional USPI collection based on DIC mission**
- **Adds 'Incidentally Collected or Voluntarily Provided USPI' and 'Special Circumstances Collection' types**
- **Scope (Section 3.2.a.) Specifies General Criteria (with special exclusions for information collected under FISA) and places limitations on FI Collection in the U.S.**



Key Definition (Section 3.2.b) 'Collection'

DoD 5240.1-R:

Information shall be considered as "collected" only when it has been *received for use by an employee of a DoD intelligence component in the course of his official duties*. Thus, information volunteered to a DoD intelligence component by a cooperating source would be "collected" under this procedure when an employee of such component officially accepts, in some manner, such information for use within that component. Data acquired by electronic means is "collected" only when it has been processed into intelligible form.

Information is collected when it is received by a Defense Intelligence Component, whether or not it is retained by the Component for intelligence or other purposes.

Collected information includes information obtained or acquired by any means, including information that is volunteered to the Component. Collected information does not include:

- **Information that only momentarily passes through a computer system of the Component;**
- **Information on the Internet or in an electronic forum or repository outside the Component that is simply viewed or accessed by a Component employee but is not copied, saved, supplemented, or used in some manner;**
- **Information disseminated by other Components or elements of the Intelligence Community; or**
- **Information that is maintained on behalf of another U.S. Government agency and to which the Component does not have access for intelligence purposes.**

Tip: Receipt by person or computer = collection !



Key Definition (Section 3.2.b)

'U.S. Person Information (USPI)'

DoD 52409.1-R:

"United States person"

- * A United States citizen;
- * An alien known by the DoD intelligence component concerned to be a permanent resident alien;
- * An unincorporated association substantially composed of United States citizens or permanent resident aliens;
- * A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. A corporation or corporate subsidiary incorporated abroad, even if partially or wholly owned by a corporation incorporated in the United States, is not a United States person.

Information that is reasonably likely to identify one or more specific U.S. persons. USPI may be either a single item of information or information that, when combined with other information, is reasonably likely to identify one or more specific U.S. persons. Determining whether information is reasonably likely to identify one or more specific U.S. persons in a particular context may require a case-by-case assessment by a trained intelligence professional. USPI is not limited to any single category of information or technology. Depending on the context, examples of USPI may include: names or unique titles; government-associated personal or corporate identification numbers; unique biometric records; financial information; and street address, telephone number, and Internet Protocol address information. USPI does not include:

A reference to a product by brand or manufacturer's name or the use of a name in a descriptive sense, as, for example, Ford Mustang or Boeing 737; or

Imagery from overhead reconnaissance or information about conveyances (e.g., vehicles, aircraft, or vessels) without linkage to additional identifying information that ties the information to a specific U.S. person.

Tip: New definition with multiple factors to determine



Key Definition (Section 3.2.b) 'Incidental Collection of USPI'

**Collection of USPI that is not deliberately sought by a Defense Intelligence Component, but is nonetheless collected.
Collection of USPI that is not deliberately sought is considered incidental regardless of whether it is expected or reasonably anticipated to occur.**

Tip: New definition & type of collection



Key Definition (Section 3.2.b) 'Foreign Connection'

foreign connection. A reasonable belief that the U.S. person is or has been in contact with, or has attempted to contact, a foreign person or a representative or agent of a foreign country, for purposes harmful to the national security interests of the United States; or when a reasonable belief exists that the U.S. person is acting or encouraging others to act in furtherance of the goals or objectives of a foreign person or power, or a representative or agent of a foreign power, for purposes harmful to the national security interests of the United States.

Tip: New definition & collection standard !



Key Definition (Section 3.2.b)

'Publicly Available'

DoD 52409.1-R

Available Publicly.

Information that has been published or broadcast for general public consumption, is available on request to a member of the general public, could lawfully be seen or heard by any casual observer, or is made available at a meeting open to the general public. In this context, the "general public" also means general availability to persons in a military community even though the military community is not open to the civilian general public.

Publicly Available Information. Information that has been published or broadcast for public consumption, is available on request to the public, is accessible on-line or otherwise to the public, is available to the public by subscription or purchase, could be seen or heard by any casual observer, is made available at a meeting open to the public, or is obtained by visiting any place or attending any event that is open to the public. Publicly available information includes information generally available to persons in a military community even though the military community is not open to the civilian general public.

Tip: More specific definition; updated to digital age



Key Definition (Section 3.2.b)

'Consent'

DoD 52409.1-R:

Consent. The agreement by a person or organization to permit DoD intelligence components to take particular actions that affect the person or organization. Consent may be oral or written unless a specific form of consent is required by a particular procedure. Consent may be implied if adequate notice is provided that a particular action (such as entering a building) carries with it the presumption of consent to an accompanying action (such as search of briefcases). (Questions regarding what is adequate notice in particular circumstances should be referred to the legal office responsible for advising the DoD intelligence component concerned.)

Consent. An agreement by a person or organization to permit a Defense Intelligence Component to take particular actions affecting that person or organization. Consent should be in written or in electronic form, but may be given orally, unless a specific form of consent is required by law or a particular procedure. Consent may be implied if adequate notice is provided that a particular action carries with it the presumption of consent to an accompanying action. Consent may also be implied where adequate policy has been published or otherwise articulated. The General Counsel or legal advisor of a Defense Intelligence Component will determine whether a notice or policy is adequate and lawful, before the Component takes or refrains from taking action on the basis of implied consent

Tip: Definition updated; example deleted; legal rvw reqd



Procedure 2 (Section 3.2): Changes in Collection of USPI

DoD 5240.1-R, December 1982

Draft DoDM 5240.01

Chapter 2- Collection of Information About United States Persons (USP)

Section 3.2. Collection of USPI

C2.1- Applicability and Scope

3.2.a- Scope

C2.2- Explanation of undefined terms

3.2.b- Definition of terms

C2.3- Types of information that may be collected about USPs

3.2.c- Intentional collection of USPI

3.2.d- Incidentally collected or voluntarily provided USPI

3.2.e- Special Circumstances collection

C2.4- General criteria governing the means used to collect USP information

3.2.f- General criteria governing the means to collect USPI

C2.5- Special limitation on collection of FI within the U.S.

3.2.g- Limitations on collection of FI in the U.S.



Procedure 2 (Section 3.2)

c. Intentional Collection of USPI

(1) *Publicly available - new definition*

(2) *Consent - new definition*

(3) Foreign intelligence - *IAW authorized mission*

(4) CI

(5) *Threats to safety - foreign connection or imminent life/safety danger; maritime & aeronautical navigation safety*

(6) Protection of intelligence sources, methods and activities- DoD affiliated

(7) Current, former, or potential sources of assistance to intelligence activities

(8) *Persons in contact with potential sources (was part of CI category in DoD 5240.1-R)*

(9) Personnel security

(10) *Physical security - foreign connection & threat to DoD personnel/installations/operations/visitors; lawful investigation of physical security inspection/incident*

(11) Communications security investigation

(12) *Overhead and airborne reconnaissance: includes UAVs & commercial imagery; not directed at specific USPs or auth by other category; IAW NGA policies*

(13) Administrative purposes

Tip: International Narcotics now In FI



Procedure 2- Collection of USPI (Section 3.2)

d. Incidentally Collected or Voluntarily Provided USPI

- **DICs may incidentally collect USPI during authorized collection activities**
- **Entities/Individuals may voluntarily provide USPI to DICs**
- **USPI may be temporarily retained & disseminated IAW Procedures 3 & 4**
- **DICs will take appropriate steps to address USPI voluntarily provided on a recurring basis that is not relevant to mission/function**

*Tips: “Incidentally collected” not specified in .1-R Proc 2;
“Voluntarily Provided” new type;
Example- cooperating source offers thumb drive w/o tasking*



Procedure 2- Collection of USPI (Section 3.2)

e. Special Circumstances Collection

- **DICs will consider whether collection opportunities raise ‘special circumstances’ based on...**
 - **Volume, proportion, and sensitivity of USPI**
 - **Intrusiveness of collection methods**
- **If so- Component head/delegee must authorize collection and determine need for enhanced safeguards**
- **If no advance authorization- Component head/delegee must authorize temporary retention IAW Proc 3 in writing to DoD SIOO**
- **Component written implementation guidance required before authorization ICW legal office and privacy/civil liberties officials**
- **Authorizations based on: collection determination IAW 3.2.c; collection ‘reasonable’; and 3.3.g safeguards**

Tip: Special Circumstances collection is the exception; not the rule...



Section 3.2- Collection of USPI (Procedure 2)

f. General Criteria Governing Means to Collect USPI

- May use any lawful means IAW EO 12333 and Manual
- May not monitor activities protected by 1st Amendment and Constitution / laws
- Least intrusive means (in order)-
 - Publicly available, with consent, or cooperating source
 - Other lawful intelligence collection techniques
 - Judicial warrant or AG approval thru GC DoD
- Amount- limit collection of non-publicly available USPI to no more than reasonably necessary for mission

Tip: 'Reasonably necessary' standard applies to each piece of information



Section 3.2- Collection of USPI (Procedure 2)

g. Limitations on Collection of FI in U.S.

- **DICs may only collect FI in U.S. concerning USPI if:**
 - **Publicly available information**
 - **Source advised/aware that info provided to DoD or DIC**
 - **Following conditions for other sources/methods in U.S.**
 - **FI significant & not on USP domestic activities**
 - **FI can't reasonably be obtained from publicly available or consenting sources**
 - **DIC head or single delegee approves techniques with copy to USD(I) and DoD SIOO**

Tip: overt no longer preferred method; FBI coord not always required; USD(I) & DoD SIOO new organizations



DoDM 5240.01 Sections 1 & 2

General Provisions & Collection of USPI

Questions/ Discussion?