



IC GOVERNANCE FRAMEWORK FACT SHEET

ODNI OFFICE OF CIVIL LIBERTIES, PRIVACY AND TRANSPARENCY

IC GOVERNANCE FRAMEWORK OVERVIEW

The United States has a multi-layered framework of rules and oversight designed to ensure that we exercise our authorities and use our capabilities properly. The rules are intended to authorize – and restrict – intelligence activities. These rules are in place to ensure that intelligence agencies conduct their activities in a manner that complies with the laws and policies established by our democratic institutions.

Intelligence Community (IC) elements must satisfy their duty to uphold the Constitution by abiding by requirements imposed by the Constitution, as well as applicable statutes, executive orders, and presidential directives. Oversight, by all three branches of the government, is designed to ensure the IC’s activities are consistent with our rules and our values.

RULES

As a general matter, the U.S. has rules to ensure that intelligence agencies act within their authorities and missions, while comporting with the requirements of the Constitution and other applicable laws. The rules require a focus on national intelligence, pursuant to priorities established by the nation’s leaders.

Additionally, specific rules exist regarding the collection, retention and dissemination of foreign intelligence information. These rules are derived from different sources. For example:

- **Statutes** – Relevant statutes include the Foreign Intelligence Surveillance Act (FISA), the Privacy Act, and the Freedom of Information Act (FOIA). In turn, these statutes may call for implementing regulations, policies and procedures. For example, FISA requires that the government must have court-approved procedures governing how it will conduct the surveillance of and protect information about “United States persons.” Generally speaking, a United States person is a U.S. citizen, a Lawful Permanent Resident (LPR), a U.S. corporation, or an unincorporated association in the

United States substantially composed of U.S. citizens and LPRs. Under FISA, the government may not intentionally target a U.S. person for electronic surveillance or physical search without an individualized court order, based on probable cause to believe that the target is an agent of a foreign power. If the government incidentally acquires the communications of a U.S. person who is communicating with a FISA target, the government must protect that information in accordance with court-approved “minimization procedures.”

- **Executive Orders (EO)** – EO 12333 has the force of law for intelligence agencies and imposes key restrictions on intelligence activities, including on how information concerning U.S. persons can be collected, retained and disseminated.
- **Presidential Policy Directives (PPD)** – PPDs are another mechanism by which the president establishes rules. PPD-28 regarding Signals Intelligence Activities (SIGINT) is directed at intelligence agencies. It requires that intelligence agencies develop policies to extend certain protections to all people, regardless of nationality, that are comparable to the protections required for information regarding U.S. persons.

IC GOVERNANCE FRAMEWORK HIGHLIGHTS

- Creates a set of rules to ensure that intelligence activities are conducted in a way that upholds intelligence agencies’ duties to the Constitution
- Rules regarding collection, retention, and dissemination of foreign intelligence are derived from statutes, EOs and PPDs
- All three branches of government – executive, judiciary and legislative – are involved in the oversight of intelligence activities

OVERSIGHT

We have a complex system of “many layers with many players,” involving all three branches of government, to ensure that our intelligence agencies conduct their intelligence activities in a manner that complies with the laws and policies established by our democratic institutions.

- **Executive Branch** – There are a range of organizations in the Executive Branch that carry out important advice and oversight functions to protect privacy and civil liberties. Departments and agencies have offices of general counsel to ensure that intelligence activities are conducted lawfully. In addition, offices of the inspector general independently carry out audit, investigation, and related functions to protect against fraud, waste and abuse. Agencies may also have internal compliance offices, intelligence oversight offices, and privacy and civil liberties offices. The Department of Justice also plays a key role in reviewing and approving intelligence agency procedures under EO 12333, and in providing oversight over how agencies implement FISA authorities. Additionally, the Privacy and Civil Liberties Oversight Board (PCLOB), an independent agency within the executive branch, provides advice and oversight of the government’s counterterrorism activities of the government.
- **Congress** – All of our activities are closely overseen by Congress. In particular, the House Perma-

nent Select Committee on Intelligence (HPSCI) and the Senate Select Committee on Intelligence (SSCI) are charged with intelligence oversight. Other congressional committees are also involved, such as the judiciary committees. Congressional oversight is granular, with Congress receiving a broad range of reports pertaining to intelligence activities, including specific reports relating to implementation of FISA authorities. Additionally, Congress frequently requests specific information pertaining to topics of interest by requesting particular reports, answers to written questions, and appearances at hearings by subject matter experts and top officials.

- **Judiciary** – The Foreign Intelligence Surveillance Court strictly supervises the government’s activities concerning FISA. The Court conducts exacting reviews and has the ability to provide judicial oversight regardless of how “secret” the underlying activities may be. Many of the Court’s opinions have been publicly released. Additionally, with the June 2015 passage of the USA FREEDOM Act, the Court has now appointed the required panel of experts who can serve as *amicus curiae* (literally, “friend of the court”), should the Court confront significant or novel interpretations of law. The USA FREEDOM Act also requires the government to declassify or summarize to the public Court opinions that involve significant interpretations of law.