
INTELLIGENCE COMMUNITY POLICY GUIDANCE NUMBER 501.2



SENSITIVE REVIEW BOARD AND INFORMATION SHARING DISPUTE RESOLUTION PROCESS (EFFECTIVE: 26 MAY 2009)

A. AUTHORITY: The National Security Act of 1947, as amended; Executive Order 12333, as amended; and other applicable provisions of law.

B. PURPOSE

1. This Intelligence Community Policy Guidance (ICPG):

a. Further defines the process called for in Intelligence Community Directive (ICD) 501, *Discovery and Dissemination or Retrieval of Information Within the Intelligence Community*, to resolve disputes between authorized Intelligence Community (IC) personnel and stewards regarding the dissemination or retrieval of information discovered.

b. Sets forth the implementing procedures for access to information by Sensitive Review Board (SRB) members as required by Section G.3.c of ICD 501; and

c. Delineates specific roles and responsibilities of the Office of the Director of National Intelligence (ODNI), IC element heads, and SRBs.

C. APPLICABILITY

1. This guidance applies to the IC, as defined by the National Security Act of 1947, as amended; and such other elements of any other department or agency that may be designated by the President, or designated jointly by the Director of National Intelligence (DNI) and the head of the department or agency concerned, as an element of the IC.

2. This ICPG does not apply to purely law enforcement information. When law enforcement information also contains intelligence or intelligence-related information, this ICPG shall apply to the intelligence or intelligence-related information.

D. POLICY

1. Authorized IC personnel have a responsibility to request discovered information that has the potential to contribute to their assigned mission need. Discovery alone does not constitute a request for the content of the information. Stewards shall determine whether authorized IC personnel may receive the information, and shall make as much information as possible available for automated retrieval upon discovery. If a dispute arises regarding a request for information, authorized IC personnel, stewards, and their respective SRBs shall use the process in Section E of this ICPG to resolve the disputes.

2. This Guidance applies to authorized IC personnel seeking the content of information discovered with respect to information made discoverable as a result of an IC integrated implementation plan in accordance with Sections D.7 and G.1.a.(1) of ICD 501. This Guidance is in addition to and does not replace an IC employee's ability to seek information under other policies and procedures.

3. SRBs are comprised of members cleared for access to all information in accordance with Section F of this ICPG to facilitate their roles and responsibilities to resolve dissemination or retrieval disputes; and to take proactive measures to help ensure information is made available to authorized IC personnel, as appropriate.

4. An exemption of information from discovery made in accordance with ICPG 501.1, *Exemption of Information from Discovery*, does not apply to SRB members' access to said information, unless otherwise determined by the DNI. SRB members may, on behalf of specific personnel in their element, seek information regardless of whether the information has been made discoverable in accordance with an integrated implementation plan, and shall use the dispute resolution process in Section E of this ICPG, should a steward deny an SRB member's request.

5. The definitions in Appendix A of ICD 501 apply to this ICPG. The term "information" in this ICPG constitutes "information collected or analysis produced" as used in ICD 501.

E. INFORMATION SHARING DISPUTE RESOLUTION PROCESS

1. The process for resolving disputes regarding the dissemination or retrieval of IC information discovered and requested by authorized IC personnel shall include the following steps:

a. Authorized IC personnel ("requestor") shall make a written request to the steward to obtain the content of discovered information that has the potential to contribute to their mission need if the steward has not made the information available. The requestor shall provide the steward with information regarding their role, assigned mission need, and, when established, DNI approved identity attributes. Stewards shall accept the information provided by the requestor as satisfying the "need-to-know" requirement, absent specific information to the contrary. The requestor shall simultaneously provide a copy of the request to the steward, the requestor's SRB, and the steward's SRB.

b. In reviewing requests for the content of information discovered by authorized IC personnel, stewards shall apply the risk management principles of Section F.5 of ICD 501. In denying or partially denying requests, stewards shall provide written justification delineating specific, articulable facts that the requestor's mission need for the information is significantly outweighed by the risk of providing the information to the requestor, or that providing the

information would violate Attorney General approved guidelines or court ordered or statutory restrictions in accordance with Section F.7.d of ICD 501.

c. The steward shall provide the original request and a written explanation of the rationale for a decision to deny or partially deny a request to the requestor's SRB and the steward's SRB within 10 business days of receiving the request. The requestor's SRB shall promptly notify the requestor of the steward's decision and, as appropriate, the rationale.

d. The requestor's SRB shall consult with the requestor within five business days of receipt of the steward's justification for denial or partial denial of a request, and determine whether to dispute the steward's decision. The requestor's SRB shall provide written notice to the steward's SRB of the intent to dispute the steward's decision.

e. Under the direction of the relevant IC element heads, the requestor's SRB and the steward's SRB shall attempt to resolve the dispute by jointly and promptly reviewing the steward's decision to deny the request. SRBs are encouraged to consider multiple options for dispute resolution if providing the full content is not possible, such as providing partial, sanitized, or minimized content. SRBs may contact the requestor and steward for additional information, if needed. Within seven business days after the requestor's SRB initiates a dispute, the respective SRBs shall notify the affected requestor and steward of the outcome of the dispute, along with justification for the decision and disposition of the case.

f. If a dispute cannot be resolved between SRBs within seven business days, the dispute shall be forwarded jointly by the SRBs to the DNI within three business days. The SRBs involved in the dispute must each provide, as applicable, all necessary information to the DNI, through the ODNI Senior Review Group (SRG), including:

- (1) Justifications for the request;
- (2) Specific, articulable facts for the denial based on risk management principles in Section F.5 of ICD 501;
- (3) Reasons for the dispute;
- (4) Content of the information discovered and requested; and
- (5) Any additional details or potential implications that the SRBs believe the DNI should consider.

g. The SRG shall ensure the information regarding the dispute is complete, and shall forward the dispute to the DNI within 15 business days of receipt.

h. The DNI will issue a written decision resolving the dispute. The SRG shall promptly convey the DNI's decision to the relevant SRBs, and oversee implementation of the decision.

2. At any time, the requestor's SRB may withdraw a dispute through written notification to the steward's SRB and the SRG, as applicable.

3. A requestor or requestor's SRB may request expedited review of the dispute based upon exigent circumstances, including the prevention of loss of life or serious bodily injury, significant threats to national security, informing time-critical intelligence collection or policy requirements, or significant input to a case under investigation or litigation. When an expedited request is submitted, SRBs or the DNI, as the case may be, shall make every effort to resolve the dispute as soon as possible.

4. For disputes involving Attorney General approved guidelines, or court-ordered or statutory restrictions on the dissemination of information, such as dissemination of U.S. persons information collected under the Foreign Intelligence Surveillance Act, SRBs shall consult with their respective General Counsel. In such cases, the SRBs shall have an additional 10 business days to obtain and integrate the response provided by their General Counsels. The DNI shall refer a dispute to the Attorney General if it cannot be resolved by the DNI and affected IC element heads, in consultation with their General Counsels.

5. SRB members are responsible for ensuring appropriate personnel within their IC element obtain information that is relevant to their assigned mission need, which may include information exempted by the DNI from discovery by authorized IC personnel. SRB members' access is not limited to information made discoverable as a result of an IC integrated implementation plan. SRB members may submit a request for information on behalf of specific personnel in their IC element to the appropriate steward for consideration, using procedures set forth in Section E.1 of this ICPG. If the SRB member is not satisfied with the steward's decision on the request, the SRB member and the steward's SRB shall use the dispute resolution procedures in Section E.1 of this ICPG to resolve the dispute.

F. SRB MEMBER ACCESS

1. SRB members shall be cleared for access to all information in accordance with instructions issued by the SRG. Appropriate security personnel in each IC element shall clear SRB members for access in accordance with SRG instructions within 15 business days of the SRB member's appointment to the position, and to any new controlled access program within 15 business days of establishment of the program, unless otherwise restricted by the DNI in accordance with this Section.

2. SRB member access to information is based on their assigned roles and responsibilities as SRB members. The SRG shall maintain a record of each IC element's SRB members, and their specific accesses. When an SRB member's assignment to an SRB ends, each IC element's SRB Chair is responsible for notifying the SRG to ensure uniform debriefing in accordance with applicable security procedures.

3. The DNI, in consultation with affected IC element heads, may restrict accesses of SRB members. The DNI may approve a restriction in whole, approve a restriction with conditions, or deny a restriction.

4. IC element heads may recommend the DNI restrict SRB member access to information collected or analysis produced by their element.

a. Such recommendations shall:

- (1) Be submitted to the DNI in the form of Executive Correspondence;
- (2) Include a description of the access to be restricted;
- (3) Provide a compelling justification, including an analysis of whether restricting access detracts from the objectives of the SRB in Section D.3 of this ICPG;
- (4) Identify SRB member(s) subject to the recommended access restriction; and
- (5) Include any additional details or potential implications the IC element head believes the DNI should consider.

b. As stated in Section E.1.d of ICPG 501.1, an IC element head may include, as part of a recommendation to exempt information from discovery by authorized IC personnel, a recommendation to restrict SRB member access to said information, in accordance with Section F.4.a.(1-5) of this ICPG.

c. The DNI will review the recommendation within 15 business days of receipt and will provide a written copy of his decision to the IC element head who submitted the recommendation.

G. ROLES AND RESPONSIBILITIES

1. Office of the Director of National Intelligence

a. The DNI will:

(1) Resolve disputes regarding dissemination or retrieval of information within the IC that cannot be resolved at a lower level, except that disputes described in Section E.4 of this ICPG shall be referred for resolution to the Attorney General, if necessary; and

(2) Make decisions regarding SRB member access restrictions.

b. The SRG shall:

(1) Be chaired by the IC Information Sharing Executive and report to the DNI for matters pertaining to information sharing dispute resolution and SRB member access pursuant to this Guidance;

(2) Maintain records of: all official communications between the DNI and IC element heads, and between the DNI and SRBs; disposition of disputes referred to the DNI for resolution; the names of SRB members and their specific accesses; and the disposition of recommendations to the DNI to restrict SRB member access to information;

(3) Review by 1 July annually SRB member access restrictions; and

(4) Evaluate, in collaboration with IC element SRBs, the effectiveness of the dispute resolution process established by this ICPG, including a review to identify best practices.

2. IC Element Heads shall:

a. Appoint a limited number of SRB members who:

(1) Are a General Schedule 15 or Band 5 officer, or higher; and are cleared for access to information in accordance with Section F of this ICPG; and

(2) Possess, either individually or collectively, a comprehensive understanding of their IC element's collection and analysis missions, as well as knowledge of collection and analysis missions of other IC elements.

b. Provide their SRB member names to the SRG, and keep their SRB membership roster current.

c. Ensure their respective SRB members are adequately informed, supported, and trained to perform their duties.

d. Ensure their SRB or their SRB member addresses disputes regarding dissemination or retrieval of information, and takes proactive measures to help ensure information is made available to appropriate authorized IC personnel.

e. Ensure any internal regulations established by their element for resolving disputes regarding dissemination or retrieval of information are consistent with the intent and objectives of ICD 501, this ICPG, and other policies as appropriate.

3. *Sensitive Review Boards* shall:

a. Attempt to resolve disputes regarding dissemination or retrieval of information with other SRBs in accordance with Section E of this ICPG;

b. Take proactive measures to help ensure information is made available to appropriate authorized IC personnel;

c. Assist the SRG in evaluating the effectiveness of the dispute resolution process in Section E of this ICPG;

d. Respond to SRG requests for information regarding dissemination or retrieval of information;

e. Provide quarterly reports as requested by the SRG, including information about disputes regarding dissemination or retrieval of information; and proactive actions taken by the SRB to ensure information is made available to appropriate authorized IC personnel. Reports should contain all relevant data, including the quantity, disposition, and timelines of all requests and disputes; and

f. Maintain records, including records of all requests raised by authorized IC personnel or the SRBs for dissemination or retrieval of information and the disposition thereof.

H. EFFECTIVE DATE: This Guidance is effective on the date of signature.

David R. Shedd

Deputy Director of National Intelligence
for Policy, Plans, and Requirements

May 26, 2009

Date