

EFFECTIVE DATE OF 2003 AMENDMENT

Amendment by Pub. L. 108-177 effective Dec. 31, 2003, see section 361(n) of Pub. L. 108-177, set out as a note under section 1611 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104-201, set out as a note under section 193 of Title 10, Armed Forces.

DEPARTMENT OF DEFENSE STRATEGY FOR OPEN-SOURCE INTELLIGENCE

Pub. L. 109-163, div. A, title IX, §931, Jan. 6, 2006, 119 Stat. 3411, provided that:

“(a) FINDINGS.—Congress makes the following findings:

“(1) Open-source intelligence (OSINT) is intelligence that is produced from publicly available information and is collected, exploited, and disseminated in a timely manner to an appropriate audience for the purpose of addressing a specific intelligence requirement.

“(2) With the Information Revolution, the amount, significance, and accessibility of open-source information has expanded significantly, but the intelligence community has not expanded its exploitation efforts and systems to produce open-source intelligence.

“(3) The production of open-source intelligence is a valuable intelligence discipline that must be integrated into intelligence tasking, collection, processing, exploitation, and dissemination to ensure that United States policymakers are fully and completely informed.

“(4) The dissemination and use of validated open-source intelligence inherently enables information sharing since open-source intelligence is produced without the use of sensitive sources and methods. Open-source intelligence products can be shared with the American public and foreign allies because of the unclassified nature of open-source intelligence.

“(5) The National Commission on Terrorist Attacks Upon the United States (popularly referred to as the ‘9/11 Commission’), in its final report released on July 22, 2004, identified shortfalls in the ability of the United States to use all-source intelligence, a large component of which is open-source intelligence.

“(6) In the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) [see Tables for classification], Congress calls for coordination of the collection, analysis, production, and dissemination of open-source intelligence.

“(7) The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, in its report to the President released on March 31, 2005, found that ‘the need for exploiting open-source material is greater now than ever before,’ but that ‘the Intelligence Community’s open source programs have not expanded commensurate with either the increase in available information or with the growing importance of open source data to today’s problems’.

“(b) DEPARTMENT OF DEFENSE STRATEGY FOR OPEN-SOURCE INTELLIGENCE.—

“(1) DEVELOPMENT OF STRATEGY.—The Secretary of Defense shall develop a strategy for the purpose of integrating open-source intelligence into the Defense intelligence process. The strategy shall be known as the ‘Defense Strategy for Open-Source Intelligence’. The strategy shall be incorporated within the larger Defense intelligence strategy.

“(2) SUBMISSION.—The Secretary shall submit to Congress a report setting forth the strategy developed under paragraph (1). The report shall be submitted not later than 180 days after the date of the enactment of this Act [Jan. 6, 2006].

“(c) MATTERS TO BE INCLUDED.—The strategy under subsection (b) shall include the following:

“(1) A plan for providing funds over the period of the future-years defense program for the development

of a robust open-source intelligence capability for the Department of Defense, with particular emphasis on exploitation and dissemination.

“(2) A description of how management of the collection of open-source intelligence is currently conducted within the Department of Defense and how that management can be improved.

“(3) A description of the tools, systems, centers, organizational entities, and procedures to be used within the Department of Defense to perform open-source intelligence tasking, collection, processing, exploitation, and dissemination.

“(4) A description of proven tradecraft for effective exploitation of open-source intelligence, to include consideration of operational security.

“(5) A detailed description on how open-source intelligence will be fused with all other intelligence sources across the Department of Defense.

“(6) A description of—

“(A) a training plan for Department of Defense intelligence personnel with respect to open-source intelligence; and

“(B) open-source intelligence guidance for Department of Defense intelligence personnel.

“(7) A plan to incorporate the function of oversight of open-source intelligence—

“(A) into the Office of the Undersecretary of Defense for Intelligence; and

“(B) into service intelligence organizations.

“(8) A plan to incorporate and identify an open-source intelligence specialty into personnel systems of the Department of Defense, including military personnel systems.

“(9) A plan for the use of intelligence personnel of the reserve components to augment and support the open-source intelligence mission.

“(10) A plan for the use of the Open-Source Information System for the purpose of exploitation and dissemination of open-source intelligence.”

ROLE OF DIRECTOR OF CENTRAL INTELLIGENCE IN EXPERIMENTAL PERSONNEL PROGRAM FOR CERTAIN SCIENTIFIC AND TECHNICAL PERSONNEL

Pub. L. 106-567, title V, §501, Dec. 27, 2000, 114 Stat. 2850, as amended by Pub. L. 108-136, div. A, title IX, §921(g), Nov. 24, 2003, 117 Stat. 1570, provided that: “If the Director of Central Intelligence requests that the Secretary of Defense exercise any authority available to the Secretary under [former] section 1101(b) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261; 5 U.S.C. 3104 note) to carry out a program of special personnel management authority at the National Geospatial-Intelligence Agency and the National Security Agency in order to facilitate recruitment of eminent experts in science and engineering at such agencies, the Secretary shall respond to such request not later than 30 days after the date of such request.”

[Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the intelligence community deemed to be a reference to the Director of National Intelligence. Reference to the Director of Central Intelligence or the Director of the Central Intelligence Agency in the Director’s capacity as the head of the Central Intelligence Agency deemed to be a reference to the Director of the Central Intelligence Agency. See section 1081(a), (b) of Pub. L. 108-458, set out as a note under section 3001 of this title.]

§ 3039. Assistance to United States law enforcement agencies**(a) Authority to provide assistance**

Subject to subsection (b), elements of the intelligence community may, upon the request of a United States law enforcement agency, collect information outside the United States about individuals who are not United States persons.

Such elements may collect such information notwithstanding that the law enforcement agency intends to use the information collected for purposes of a law enforcement investigation or counterintelligence investigation.

(b) Limitation on assistance by elements of Department of Defense

(1) With respect to elements within the Department of Defense, the authority in subsection (a) applies only to the following:

- (A) The National Security Agency.
- (B) The National Reconnaissance Office.
- (C) The National Geospatial-Intelligence Agency.
- (D) The Defense Intelligence Agency.

(2) Assistance provided under this section by elements of the Department of Defense may not include the direct participation of a member of the Army, Navy, Air Force, or Marine Corps in an arrest or similar activity.

(3) Assistance may not be provided under this section by an element of the Department of Defense if the provision of such assistance will adversely affect the military preparedness of the United States.

(4) The Secretary of Defense shall prescribe regulations governing the exercise of authority under this section by elements of the Department of Defense, including regulations relating to the protection of sources and methods in the exercise of such authority.

(c) Definitions

For purposes of subsection (a):

(1) The term “United States law enforcement agency” means any department or agency of the Federal Government that the Attorney General designates as law enforcement agency for purposes of this section.

(2) The term “United States person” means the following:

- (A) A United States citizen.
- (B) An alien known by the intelligence agency concerned to be a permanent resident alien.
- (C) An unincorporated association substantially composed of United States citizens or permanent resident aliens.
- (D) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

(July 26, 1947, ch. 343, title I, §105A, as added Pub. L. 104-293, title VIII, §814(a), Oct. 11, 1996, 110 Stat. 3483; amended Pub. L. 108-136, div. A, title IX, §21(e)(3), Nov. 24, 2003, 117 Stat. 1569.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 403-5a of this title prior to editorial reclassification and renumbering as this section.

AMENDMENTS

2003—Subsec. (b)(1)(C). Pub. L. 108-136 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

§ 3040. Disclosure of foreign intelligence acquired in criminal investigations; notice of criminal investigations of foreign intelligence sources

(a) Disclosure of foreign intelligence

(1) Except as otherwise provided by law and subject to paragraph (2), the Attorney General, or the head of any other department or agency of the Federal Government with law enforcement responsibilities, shall expeditiously disclose to the Director of National Intelligence, pursuant to guidelines developed by the Attorney General in consultation with the Director, foreign intelligence acquired by an element of the Department of Justice or an element of such department or agency, as the case may be, in the course of a criminal investigation.

(2) The Attorney General by regulation and in consultation with the Director may provide for exceptions to the applicability of paragraph (1) for one or more classes of foreign intelligence, or foreign intelligence with respect to one or more targets or matters, if the Attorney General determines that disclosure of such foreign intelligence under that paragraph would jeopardize an ongoing law enforcement investigation or impair other significant law enforcement interests.

(b) Procedures for notice of criminal investigations

Not later than 180 days after October 26, 2001, the Attorney General, in consultation with the Director of National Intelligence, shall develop guidelines to ensure that after receipt of a report from an element of the intelligence community of activity of a foreign intelligence source or potential foreign intelligence source that may warrant investigation as criminal activity, the Attorney General provides notice to the Director, within a reasonable period of time, of his intention to commence, or decline to commence, a criminal investigation of such activity.

(c) Procedures

The Attorney General shall develop procedures for the administration of this section, including the disclosure of foreign intelligence by elements of the Department of Justice, and elements of other departments and agencies of the Federal Government, under subsection (a) and the provision of notice with respect to criminal investigations under subsection (b).

(July 26, 1947, ch. 343, title I, §105B, as added Pub. L. 107-56, title IX, §905(a)(2), Oct. 26, 2001, 115 Stat. 388; amended Pub. L. 108-458, title I, §1071(a)(1)(G), (H), (2)(B), (C), Dec. 17, 2004, 118 Stat. 3689, 3690.)

Editorial Notes

CODIFICATION

Section was formerly classified to section 403-5b of this title prior to editorial reclassification and renumbering as this section.

PRIOR PROVISIONS

A prior section 105B of act July 26, 1947, ch. 343, title I, as added Pub. L. 106-120, title V, §501(a)(1), Dec. 3, 1999, 113 Stat. 1616, which related to protection of operational files of the National Imagery and Mapping