



U.S. Department of Justice
Office of Information Policy
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May 31, 2022

Jason Leopold



Re: FOIA-2021-00799
21-cv-01037 (D.D.C.)
VRB:JMB:SJD

Dear Jason Leopold:

This is our fourth and final response to your Freedom of Information Act (FOIA) request, dated February 20, 2021, and received in this Office on February 22, 2021, in which you requested a copy of the report submitted to Attorney General William Barr by U.S. Attorney John Bash, and various records from the Offices of the Attorney General, Deputy Attorney General, Associate Attorney General, and Public Affairs concerning the report.

Previously, we provided you with three interim responses, most recently on March 25, 2022. We have now completed our work on your request, and I have determined that fifty-two pages containing records responsive to your request are appropriate for release with withholdings made pursuant to Exemptions 1, 3, 6, and 7(E) of the FOIA, 5 U.S.C. § 552(b)(1), (b)(3), (b)(6), and (b)(7)(E). Please note that certain withholdings were made on behalf of the Federal Bureau of Investigation, Central Intelligence Agency, the Office of the Director of National Intelligence, the National Security Agency, the National Security Council, the Department of State, and the Department of the Treasury. Exemption 1 pertains to information that is properly classified in the interest of national security pursuant to Executive Order 13526. Exemption 3 pertains to information exempted from release by statute, in this instance 18 U.S.C. § 798, 50 U.S.C. § 3024(i)(1), 50 U.S.C. § 3507, and/or 50 U.S.C. § 3605. Exemption 6 pertains to information the release of which would constitute a clearly unwarranted invasion of personal privacy. Exemption 7(E) pertains to records or information compiled for law enforcement purposes, the release of which would disclose certain techniques and procedures or guidelines for law enforcement investigations or prosecutions. Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c)

(2018). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you have any questions regarding this response, please contact Kevin Wynosky of the Department's Civil Division, Federal Programs Branch at 202-616-8267.

Sincerely,



Vanessa R. Brinkmann
Senior Counsel

Enclosures

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(U) All portion markings below are provisional and subject to the review of the originating agency as well as the John Bash review team. ODNI, NSA, FBI, and CIA provided preliminary input on the classification markings, and the classification markings in the document reflect that input. ODNI has offered to conduct a global Intelligence Community classification review before wide dissemination. This document is for official and internal use only. Do not disseminate or replicate in any other product without permission from John Bash or his successor.

**(U) Requests for U.S. Person Identities in Intelligence Reports
During the 2016 Presidential-Election Period and the Ensuing
Presidential-Transition Period**

(U) Report for the Attorney General

(U) Submitted by United States Attorney John F. Bash

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(U) On May 21, 2020, the Attorney General directed me to review requests for disclosure of U.S. person identity information in disseminated intelligence reports—informally called “unmasking” requests—during the 2016 presidential-election period and the ensuing presidential-transition period. To conduct the review, I assembled a Texas-based team of two Assistant United States Attorneys, one Supervisory Special Agent of the Federal Bureau of Investigation (FBI), two FBI Special Agents, and one FBI Intelligence Analyst, all of whom specialize in national security matters. With the assistance of this team, I reviewed unmasking requests made between March 1, 2016, and January 31, 2017. This report sets out certain findings and recommendations.

(U) EXECUTIVE SUMMARY

(U) A. I have not found evidence that senior U.S. officials unmasked the identities of U.S. persons contained in intelligence reports for political purposes or other inappropriate reasons during the 2016 election period or the ensuing transition period. Most significantly, the substantial majority of relevant unmasking requests were sought by intelligence professionals in anticipation of daily briefings of senior officials. They were not sought by the senior officials themselves or at their direction. Such anticipatory unmaskings had long been a routine part of preparing intelligence briefings. In fact, many intelligence briefers operated under a standard protocol requiring them to unmask *all* U.S. person identities contained in the intelligence reports that they intended to incorporate into an official’s briefing book.

(U) Moreover, I have found no unmasking requests made before Election Day that sought the identity of an apparent associate of the Trump campaign. The substantial majority of relevant election-related unmasking requests sought information about victims of malicious cyber-activity, including information about organizations that had suffered cyber-attacks. Those requests were consistent with an appropriate effort to understand a threat facing the Nation. Certain other requests sought the identity of one or two of the presidential candidates. But those involved only references to the candidates by foreign individuals, not discussion of the candidates’ own private communications or nonpublic activities.

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(U) Some unmasking requests made during the transition period sought the identities of individuals who may have been associated with President Trump's transition team. In many instances, however, the relevant reports merely recounted the views of other individuals *about* possible transition officials or described foreigners' plans to engage with transition officials. Those reports did not, in other words, describe the private communications of transition officials. Other reports that were subject to unmasking requests did describe the communications of transition officials, albeit vaguely and without quotations. But the content of those reports does not support an inference that the identities were unmasked for improper purposes. Moreover, almost all of those requests were made by intelligence professionals in anticipation of briefings, not by senior officials themselves. In fact, I identified only one transition-related unmasking that was sought by a senior official, and I did not find a sufficient basis to conclude that the request was made for an improper purpose.

(U) Earlier this year, the Acting Director of National Intelligence declassified a list of officials who may have received the identity of Lieutenant General Michael Flynn in response to post-election unmasking requests. Given the significant public interest in those possible disclosures, I examined them closely. I did not find any basis to conclude that the requests were made for improper reasons. Most critically, all but one of the requests that listed a senior official as an authorized recipient of General Flynn's identity were made by an intelligence professional to prepare for a briefing of the official, not at the direction of the official.

(~~S//SI//NF~~) Moreover, those requests related to (b)(1), (b)(3) per NSA

[REDACTED]
[REDACTED]
[REDACTED]. Nothing about the content (b)(1), (b)(3) per NSA suggests that officials were seeking derogatory information about General Flynn or were otherwise inappropriately targeting him.

(U) I also examined whether communications between General Flynn and the Russian Ambassador to the United States that were first reported in the media in mid-January 2017 were the subject of an improper unmasking request. I determined that those communications were not described in an intelligence report in which General Flynn's identity was masked that was disseminated before President Trump's

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inauguration. Accordingly, they could not have been the subject of an unmasking request during the transition period. Rather, according to information that I have reviewed, during the transition period the FBI shared transcripts of the relevant communications with officials outside of the Bureau without masking General Flynn's name. Evaluating that dissemination, and determining how the information was provided to the media, is beyond the scope of this review.

(U) B. I have not identified a sufficient basis to conduct a criminal investigation of any individual involved in the unmasking process. I have found no evidence that any official falsified a document. And I have not found sufficient evidence that any individual lied to Congress. I did identify an arguable, nontrivial discrepancy between the testimony of one former senior official and the recollection of that official's intelligence briefer. But that discrepancy is unrelated to the question of whether the official sought unmaskings for an improper purpose, and I do not believe that sufficient grounds exist to conduct a perjury investigation.

(U) C. Despite finding no evidence of inappropriate unmasking requests, I am troubled by how easy it is for political appointees of the incumbent administration to obtain nonpublic information about individuals associated with a presidential campaign or a transition team. There exists a significant potential for misuse of such information—misuse that could be difficult to detect. For that reason, I recommend that the Intelligence Community consider adopting certain prophylactic safeguards for unmasking requests that relate to presidential campaigns or transitions, including a more demanding substantive standard for granting those requests, special notification requirements, and a centralized approval process. At the same time, I conclude that one change that the Intelligence Community implemented in 2017—prohibiting anticipatory unmaskings for intelligence briefings, even for reports having nothing to do with an election or transition—is unnecessary to protect privacy interests, and I am concerned that it could impede rapid decision-making on important matters of national security.

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(U) BACKGROUND

(U) A. Legal Framework

(U) 1. Elements of the Intelligence Community disseminate the foreign intelligence that they collect to other agencies of the Executive Branch through intelligence reports. “Single-source” reports describe a discrete instance of collection, such as an intercepted phone call. Other reports synthesize multiple sources of intelligence from across the Intelligence Community and provide analysis of the subject matter. Those analytic reports are often called “finished” intelligence reports.

(U) Executive Branch officials consult intelligence reports to inform their decision-making on foreign relations, national security, and economic matters. The most senior policymakers receive intelligence reports through, among other sources, briefings by the staff of the President’s Daily Brief (PDB), a unit within the Office of the Director of National Intelligence (ODNI). See pp.18–21, *infra*. Lower-ranking government officials, including intelligence analysts and FBI agents, can retrieve intelligence reports through various electronic databases.

(U) In the course of their intelligence-collection activities, elements of the Intelligence Community sometimes collect information concerning U.S. persons. In this context, the term “U.S. persons” includes U.S. citizens, lawful permanent residents of the United States, and certain U.S.-linked corporations and associations.¹ Some of that information is “U.S. person identity information”—what I will call “USPII” for ease of reference. USPII comprises all information that is reasonably likely to

¹ (U) See, e.g., 50 U.S.C. 1801(i); *DoD Manual 5240.01, Procedures Governing the Conduct of DoD Intelligence Activities*, p.54 (2016) (*2016 DoD Attorney General Guidelines*); *Classified Annex to Department of Defense Procedures Under Executive Order 12333*, § 2 (1988) (*1988 DoD Classified Annex*); *Central Intelligence Agency Intelligence Activities: Procedures Approved by the Attorney General Pursuant to Executive Order 12333*, p.39, § 12.24 (2017) (*2017 CIA Attorney General Guidelines*); *AR 2-2A Annex A – Guidance for CIA Activities Outside the United States*, § V.A. (1987; rev. 2012; rescinded 2017) (*1987 CIA Annex A*); *AR 2-2A Annex B – Guidance for CIA Activities Within the United States*, § V.A (1987; rev. 2012; rescinded 2017); *The Attorney General’s Guidelines for Domestic FBI Operations*, p.45, § VII.U (2008) (*FBI Domestic Guidelines*).

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identify a U.S. person.² That includes not only names, but also, for example, telephone numbers, mailing addresses, email addresses, financial information, biometric records, government titles, and Internet Protocol (IP) addresses.

(U) Three aspects of the collection of U.S. person information, including USPII, bear special relevance here. First, while some elements of the Intelligence Community intentionally collect foreign intelligence on U.S. persons under appropriate legal authorities, certain elements also “incidentally” collect U.S. person communications while targeting non-U.S. persons. For example, the National Security Agency (NSA) might intercept the emails of a foreign terrorist leader, and one of those emails might contain an exchange with a U.S. citizen. In that situation, the U.S. citizen’s communications are acquired incidentally, not intentionally.

(U) Second, and significantly for this report, collection of U.S. person information does not necessarily involve the acquisition of a U.S. person’s own communications. Rather, U.S. person information also includes communications by other people *about* U.S. persons. For instance, two foreigners might be intercepted discussing a U.S. official by name. That interception qualifies as the acquisition of USPII under the applicable legal rules, even though the agency could not be said to have “spied” on the U.S. official in the conventional sense.

(U) Third, much of the U.S. person information that agencies acquire never ends up in a foreign intelligence report. The reports are drafted to focus on the topic areas outlined in the National Intelligence Priorities Framework. Irrelevant information about U.S. persons must be omitted from reports altogether.

(U) 2. The legal rules for the dissemination of information concerning U.S. persons, including USPII, derive primarily from two sources: Executive Order 12333 and the Foreign Intelligence Surveillance Act (FISA).³ For purposes of this report, “dissemination” connotes sharing

² (U) See *2016 DoD Attorney General Guidelines*, p.54 (definition of “USPI”); *2017 CIA Attorney General Guidelines*, p.40, § 12.25 (definition of “U.S. Person Identifying Information (USPII)”; cf. *FBI Domestic Guidelines*, p.35, § VI.B.1.e.

³ (U) Executive Order 12333, § 2.3 (1981) (amended by Executive Order 13284

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U.S. person information *outside* of the Intelligence Community element that acquired it.⁴

(U) Executive Order 12333 governs the handling of “information concerning United States persons” by all elements of the Intelligence Community.⁵ The order provides that elements may collect, retain, and disseminate such information only under procedures approved by the head of the element (or the head of the element’s department) and the Attorney General.⁶

(U) Certain electronic surveillance conducted to collect foreign intelligence, including the interception of phone calls and emails, is subject to FISA. Two types of FISA collection are most relevant here. First, under Title I of FISA, the government generally may conduct electronic surveillance of persons in the United States, including U.S. persons, if it obtains an order from the Foreign Intelligence Surveillance Court (FISC) based on probable cause to believe that the target of the surveillance is a foreign power or an agent of a foreign power.⁷ Second, under Section 702 of FISA, the government may conduct surveillance on non-U.S. persons reasonably believed to be located outside of the United States for foreign intelligence purposes when the assistance of a U.S. electronic communications service provider is necessary.⁸ Section 702 does not require an individualized order based on probable cause. But the FISC annually reviews the Intelligence Community’s Section 702

(2003), Executive Order 13355 (2004), and Executive Order 13470 (2008)); Foreign Intelligence Surveillance Act, 50 U.S.C. 1801 *et seq.*

⁴ (U) See *2016 DoD Attorney General Guidelines*, p.48; *2017 CIA Attorney General Guidelines*, p.36, § 12.8. Certain disclosures of U.S. person information within the FBI qualify as “disseminations,” but that exception is not relevant to the analysis in this report.

⁵ (U) Executive Order 12333, § 2.3.

⁶ (U) *Ibid.*

⁷ (U) 50 U.S.C. 1805(a)(2)(A).

⁸ (U) 50 U.S.C. 1881a(a).

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procedures—including the procedures governing how targets are selected and how the databases of the acquired communications may be queried.⁹

(U) Both Title I and Section 702 of FISA require the government to comply with “minimization procedures” adopted by the Attorney General and approved by the FISC.¹⁰ As relevant here, the procedures must provide that nonpublic information concerning U.S. persons “shall not be disseminated in a manner that identifies any United States person, without such person’s consent,” unless the identity “is necessary to understand foreign intelligence or assess its importance.”¹¹ That requirement does not apply, however, if the information “is necessary to [] the ability of the United States to protect against” certain serious threats, such as attack, sabotage, terrorism, and the clandestine intelligence activities of a foreign power.¹² The minimization procedures must also permit the dissemination of evidence of a crime for law-enforcement purposes.¹³

(U) 3. My review has focused on the NSA, Central Intelligence Agency (CIA), and FBI because those agencies produce the intelligence reports that are most likely to contain USPII and to be read by senior officials. The rules that those agencies have adopted for the dissemination of USPII generally provide that USPII may be disclosed in a disseminated intelligence report only if it is necessary to understand the intelligence or assess its importance. There are, however, some material variations among the agencies, which are discussed below.

(U) Importantly, these rules apply to both ways that USPII can be disseminated. First, an agency might *proactively* include unconcealed USPII, such as an email address, in the initial dissemination of a report. Second, and most relevant for this review, an agency might “mask” USPII in the initial dissemination of a report through a generic term

⁹ (U) *Ibid.*; see Office of the Director of National Intelligence, *The FISA Amendments Act: Q&A*, pp.3, 9 (2017).

¹⁰ (U) 50 U.S.C. 1801(h) (definition of “minimization procedures”); see 50 U.S.C. 1805(c)(2)(A), 1881a(c)(1)(A) and (e)(1).

¹¹ (U) 50 U.S.C. 1801(h)(2).

¹² (U) 50 U.S.C. 1801(e)(1) and (h)(2).

¹³ (U) 50 U.S.C. 1801(h)(3).

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(such as “U.S. person 1”) and then disclose the masked USPII in response to a request by a recipient of the report. This latter type of USPII disclosure is informally (though widely) called an “unmasking.”

(U) **NSA.** As a component of the Department of Defense, the NSA is governed by the department’s Attorney General-approved guidelines, as well as the agency’s own internal procedures. Under those rules, the NSA may disseminate USPII to other federal agencies that are “reasonably believed to have a need to receive such information for the performance of [their] lawful missions or functions.”¹⁴ The NSA must use a generic term to mask nonpublic USPII in disseminated intelligence reports, however, unless the U.S. person consents or the USPII is necessary to understand the foreign intelligence information or assess its importance.¹⁵

(U) The NSA’s rules deem certain types of information to categorically satisfy that necessity standard. They include information indicating that the U.S. person is either an agent of a foreign power or a target of hostile intelligence activities of a foreign power, as well as information that may be evidence of a crime, so long as it is shared for law-enforcement purposes.¹⁶ But even if the information does not fall within one of the specified categories, the USPII may be disclosed if it meets the general necessity standard.¹⁷

(U) The NSA’s FISC-approved minimization procedures for collection under Section 702 of FISA impose the same basic standard.¹⁸ They

¹⁴ (U) *2016 DoD Attorney General Guidelines*, § 3.4(c)(4); see also *DoD 5240 1-R, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons*, § C4.2.2 (1982).

¹⁵ (U) *1988 DoD Classified Annex*, § 4(A)(4); United States Signals Intelligence Directive SP0018, *Legal Compliance and U.S. Persons Minimization Procedures*, §§ 7.1–7.2 (2011) (*USSID SP0018*).

¹⁶ (U) *1988 DoD Classified Annex*, § 4(A)(4)(d), (f), and (l); *USSID SP0018*, § 7.2(c)(1), (4), and (5).

¹⁷ (U) *1988 DoD Classified Annex*, § 4(A)(4)(m); *USSID SP0018*, § 7.2(c).

¹⁸ (U) *Minimization Procedures Used by the National Security Agency in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, as Amended*, § 7(b) (2019) (*NSA 702 Minimization Procedures*); see also *USSID SP0018*, Annex A, *Standard Minimization Procedures for Electronic Surveillance Conducted by*

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also permit the NSA to share non-minimized Section 702 collection with the CIA or FBI, but those agencies must apply their own FISC-approved minimization procedures before disseminating the information.¹⁹

(U) The NSA's rules contain other privacy safeguards. NSA reports must be written to focus solely on foreign entities and persons and their agents.²⁰ Generally only certain NSA officials may approve the dissemination of USPII, and improper disclosures must be reported internally within 24 hours of discovery.²¹ Employees with access to USPII must undergo annual training on privacy and civil liberties.²² And the NSA may not engage in "dissemination to the White House [] for the purpose of affecting the political process in the United States."²³

(U) The NSA also applies a default rule that plays a critical role in its handling of USPII: Even if USPII meets the legal standard for dissemination, the NSA nevertheless will generally mask the USPII in its initial dissemination of an intelligence report.²⁴ That practice allows for broader dissemination of NSA intelligence.²⁵ As a result of this "overmasking," requests to unmask USPII in disseminated NSA reports often readily satisfy the necessity standard. Perhaps due in part to the default rule, the NSA grants thousands of unmasking requests each year. See pp.14–15, *infra*.

(U) **CIA.** The CIA may disseminate information concerning U.S. persons to federal agencies "that need the information to perform their lawful functions."²⁶ USPII must be removed from disseminated reports

the National Security Agency, § 6(b). This report cites currently operative minimization procedures, but the relevant dissemination standards did not differ during the 2016 election period and the ensuing transition period.

¹⁹ (U) *NSA 702 Minimization Procedures*, § 7(c).

²⁰ (U) *USSID SP0018*, § 7.1.

²¹ (U) *Id.* §§ 7.3, 7.5.

²² (U) *2016 DoD Attorney General Guidelines*, §§ 3.3(f)(1)(f), 3.4(c).

²³ (U) *Id.* § 3.1(a)(4).

²⁴ (U) 6/3/2020 Briefing by NSA Office of General Counsel; 8/4/2020 Interview of Senior Reporting Officer of NSA National Security Operations Center.

²⁵ (U) 6/3/2020 Briefing by NSA Office of General Counsel.

²⁶ (U) *2017 CIA Attorney General Guidelines*, § 8.2.1(b).

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“[t]o the extent practicable” unless the USPII “is necessary or [it is] reasonably believed that the information may become necessary to understand, assess, or act on the information being disseminated.”²⁷ The CIA may, however, disseminate a report with unmasked USPII to another element of the Intelligence Community “for purposes of allowing the receiving element to determine whether the information is relevant to its responsibilities and may be retained by that element.”²⁸

(U) The CIA’s minimization procedures for FISA collection impose a similar standard. If FISA collection containing USPII is properly retained (because, for example, it qualifies as “foreign intelligence information”), the CIA may disseminate unmasked USPII when it “is necessary to understand foreign intelligence information or assess its importance.”²⁹ Unmasked USPII may also be disseminated when there is a reasonable belief that the USPII “may become necessary to understand or assess the importance of foreign intelligence” related to the serious threats specified in FISA.³⁰

(U) Although the CIA and NSA have similar legal standards for USPII disclosure, the CIA disseminates a very small percentage of the USPII that it retains.³¹ When the CIA does disseminate a report that contains USPII, the dissemination is often in response to a request from

²⁷ (U) *Id.* § 8.2. A similar standard applied under the guidelines that were in place in 2016. See *AR 2-2, Law and Policy Governing the Conduct of Intelligence Activities*, § I.1.a.4.b (1987; rev. 2012; rescinded 2017).

²⁸ (U) *2017 CIA Attorney General Guidelines*, § 8.1; *1987 CIA Annex A*, § VI.A.2.

²⁹ ~~(S)~~ *Minimization Procedures Used by the Central Intelligence Agency in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, as Amended*, ¶¶ 3, 5 (2019) (*CIA 702 Minimization Procedures*); *CIA Minimization Procedures for Information from FISA Electronic Surveillance and Physical Search Conducted by the FBI*, § 2 (2002).

³⁰ (U) *CIA 702 Minimization Procedures*, ¶ 5; see 50 U.S.C. 1801(e)(1).

³¹ (U) Central Intelligence Agency Office of Privacy and Civil Liberties, *Review of Procedures and Practices of CIA to Disseminate United States Person Information Acquired Pursuant to Titles I and III and Section 702 of the Foreign Intelligence Surveillance Act (FISA)*, pp.11–12 (2017) (*2017 CIA Dissemination Report*).

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another agency for counterterrorism information about a specific person or information related to a specific national security threat.³² As a result, the USPII is usually not masked from the outset, because it is necessary to understand the intelligence.³³

(U) **FBI.** Unlike the NSA and CIA, the FBI's focus is domestic. Investigating U.S. persons is central to its mission. The Bureau's Attorney General-approved guidelines accordingly impose relatively minor restrictions on sharing USPII. The FBI may share USPII with other federal agencies, as well as state, local, and tribal agencies, if the information is "related to their responsibilities."³⁴ With respect to other elements of the Intelligence Community, moreover, "the determination whether the information is related to the recipient's responsibilities may be left to the recipient."³⁵ There are, however, special restrictions on sharing politically sensitive information with the White House.³⁶

(U) The FBI's FISA minimization procedures impose a similar standard as the procedures for the NSA and CIA. The FBI may disseminate FISA-acquired information to federal, state, local, and tribal agencies if the information "reasonably appears to be foreign intelligence information or is necessary to understand foreign intelligence information or assess its importance."³⁷ But if the information concerns a U.S. person, it may be shared only if it "reasonably appears to be necessary" to meet specified foreign-affairs, national security, and counterintelligence purposes.³⁸ And USPII must be masked unless the information

³² (U) *Id.* at 12–13.

³³ (U) *Id.* at 13.

³⁴ (U) *FBI Domestic Guidelines*, § VI(B)(1)(b).

³⁵ (U) *Ibid.*

³⁶ (U) *Id.* § VI(D)(2).

³⁷ (U) *Minimization Procedures Used by the Federal Bureau of Investigation in Connection with Acquisitions of Foreign Intelligence Information Pursuant to Section 702 of the Foreign Intelligence Surveillance Act of 1978, as Amended*, p.41, § IV.A (2019) (*FBI 702 Minimization Procedures*); *Standard Minimization Procedures for FBI Electronic Surveillance and Physical Search Conducted under the Foreign Intelligence Surveillance Act*, p.42 (2016).

³⁸ (U) *FBI 702 Minimization Procedures*, § IV.A.1–2.

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concerning the U.S. person “reasonably appears to be necessary” to protect against the serious threats listed in FISA or the “person’s identity is necessary to understand foreign intelligence information or to assess its importance.”³⁹ The procedures also permit the disclosure of information containing unmasked USPII if the information “reasonably appears to be evidence of a crime but not foreign intelligence information.”⁴⁰ In addition, the FBI may share non-minimized communications with the NSA and CIA, but those agencies must apply their own minimization procedures before disseminating the information.⁴¹

(U) 4. The Director of National Intelligence has imposed two further sets of restrictions on the dissemination of USPII in intelligence reports.

(U) First, the “Gates procedures,” originally issued in 1992, require additional approvals to disseminate the identity information of Members of Congress or congressional staff.⁴² Such disseminations generally must be approved by the ODNI General Counsel or, if they involve sensitive matters such as possible impropriety by a Member of Congress, the Director of National Intelligence.⁴³ The Gates procedures also provide for congressional notification of these disseminations.⁴⁴

(U) Second, in January 2018, the Director of National Intelligence required each Intelligence Community element to adopt specific procedures for documenting and granting unmasking requests (*i.e.*, requests to disclose USPII that is masked in disseminated intelligence reports).⁴⁵ For every request, the disseminating element must document a “fact-based justification describing why [the] U.S. person identity information is required” by the authorized recipients “to carry out [their]

³⁹ (U) *Ibid.*; see 50 U.S.C. 1801(e)(1).

⁴⁰ (U) *FBI 702 Minimization Procedures*, § IV.B.

⁴¹ (U) *Id.* § IV.E.

⁴² (U) *Intelligence Community Directive 112, Annex A, Dissemination of Congressional Identity Information*, §§ B.2, C.1.b, C.3 (2017).

⁴³ (U) *Id.* § C.3.c.

⁴⁴ (U) *Id.* § D.1.

⁴⁵ (U) Intelligence Community Policy Guidance 107.1, *Requests for Identities of U.S. Persons in Disseminated Intelligence Reports* (Jan. 11, 2018).

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duties.”⁴⁶ Each Intelligence Community element must keep records of every unmasking request for at least five years and must annually report aggregate statistics to the Director of National Intelligence and congressional intelligence committees.⁴⁷

(U) The 2018 directive also imposed new procedures on unmasking requests made during a presidential-transition period. If the requestor conveys the belief that the U.S. person is a member of a presidential-transition team, or if the disseminating Intelligence Community element reasonably believes that the U.S. person is a member of a transition team, then the request must be reviewed by the general counsel of the disseminating element.⁴⁸ In addition, the disseminating element generally must notify the chairs and ranking minority members of the congressional intelligence committees within 14 days of the approval of such a dissemination.⁴⁹

(U) The NSA, CIA, and FBI have each issued procedures implementing the 2018 directive.⁵⁰

(U) 5. The National Security Division of the Department of Justice conducts oversight of the handling of USPII collected under Title I and Section 702 of FISA (jointly with ODNI for Section 702 collection). In that role, the National Security Division analyzes a random subset of disseminations each year to determine whether they satisfied the applicable standard. Those reviews have not uncovered a significant number of intentional violations by the NSA, CIA, or FBI.

(U) In addition, under FISA, the Attorney General must send semi-annual reports to Congress assessing the government’s compliance with Section 702 targeting and minimization procedures, as well as a summary of the compliance reviews conducted by the National Security

⁴⁶ (U) *Id.* § E(1)(a)(4).

⁴⁷ (U) *Id.* § E(1)(c) and (2)(a).

⁴⁸ (U) *Id.* § E(1)(f)(1) and (2).

⁴⁹ (U) *Id.* § E(1)(f)(3).

⁵⁰ (U) *NSA/CSS Policy 2-4, Handling of Requests for Release of U.S. Identities* (2019); *Internal CIA regulation on processing requests for USPII* (2018); Federal Bureau of Investigation Policy Notice, *Procedures for Unmasking Requests in Intelligence Information Reports and BLUEGEM Reports*, Policy Notice 1024N (2020).

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Division and ODNI and a description of any incidents of noncompliance.⁵¹ Congress also receives annual reports from the heads of agencies that collect intelligence under Section 702, copies of certifications submitted to the FISC, and reports from agency inspectors general.⁵²

(U) B. Unmasking Requests in Practice

(U) 1. When an element of the Intelligence Community disseminates a report that contains masked USPII, an official from another agency may request to view the USPII. That request may be granted if the standards for disclosure discussed above are met. That can occur when the agency masked the USPII in the initial dissemination of the report even though disclosure was permissible—as the NSA does as a matter of course. See p.9, *supra*. It can also occur when the requesting official has a unique need to view the USPII. For example, an FBI agent investigating a cyber-attack may need to know the identity of a victim mentioned in a report, even if other officials who received the report do not need to know that information.

(U) Each year, thousands of unmasking requests are sent to the NSA, and additional requests are sent to the CIA and FBI.⁵³ Many of those requests are submitted by lower-ranking officials, such as FBI agents and analysts. They often involve criminal activities—for example, terrorist plots or malicious cyber-intrusions.

(U) The year-to-year fluctuation in the number of unmasking requests can paint a misleading picture of the overall trend. For example, according to ODNI, in 2018 the number unmasking requests that the NSA granted for reports based on Section 702 collection increased significantly—from 9,529 to 16,721.⁵⁴ But a key factor in that increase was

⁵¹ (U) 50 U.S.C. 1881a(m)(1), 1881f(a), (b)(1)(F), and (b)(1)(G).

⁵² (U) 50 U.S.C. 1881a(m)(2) and (3), 1881f(a) and (b)(1)(A).

⁵³ ~~(S//NF)~~ As noted above, the CIA grants relatively few unmasking requests. See pp.10–11, *supra*. Likewise, the FBI grants substantially fewer unmasking requests than the NSA. (b)(1), (b)(3), (b)(7)(E) per FBI

⁵⁴ (U) Office of Director of National Intelligence, *Statistical Transparency Report Regarding Use of National Security Authorities, Calendar Year 2017*, p.24,

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the disclosure of the identities of numerous victims of malicious cyber-activity, which were included in only a handful of intelligence reports.⁵⁵ Moreover, if a report contains multiple types of USPII about the same person—such as a name, email address, and IP address—and they are all disclosed, ODNI's reports account for them as multiple disclosures. Because some reports can contain hundreds or even thousands of discrete pieces of USPII, the annual statistics can fluctuate significantly without reflecting any underlying change in disclosure practices or request trends. And notably, until the report for calendar year 2017, ODNI's annual reports did not include USPII other than names and titles (e.g., email addresses), nor did they include USPII for corporations and associations.⁵⁶

(U) 2. Each agency has adopted a different set of procedures for evaluating unmasking requests.

(U) **NSA.** Government employees seeking disclosure of USPII in a disseminated NSA report use a web-based interface to submit requests.⁵⁷ A requestor enters his or her name and credentials, a due date and the time sensitivity of the request (e.g., “urgent,” “routine”), the serial number of the intelligence report, the authorized recipients of the disclosure, and the justification for the disclosure.⁵⁸ NSA personnel evaluate the request, including whether the justification is sufficient under the necessity standard, whether the urgency of the request is

fig.12 (2018); Office of Director of National Intelligence, *Statistical Transparency Report Regarding the Use of National Security Authorities, Calendar Year 2018*, pp.20–21, fig.12 (2019).

⁵⁵ (U) 7/29/2020 Correspondence from ODNI Office of General Counsel.

⁵⁶ (U) Office of Director of National Intelligence, *Statistical Transparency Report Regarding the Use of National Security Authorities, Calendar Year 2018*, p.20 (2019).

⁵⁷ (U) 6/12/2020 Briefing by NSA Chief of Operations, Intelligence Analysis Group and NSA Section Chief of Publications, Information Sharing, and Collaboration.

⁵⁸ (U) *Ibid.*

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warranted, and whether any special restrictions, such as the Gates procedures, apply.⁵⁹ Approval requires the concurrence of two NSA officials, one of whom is a senior official.⁶⁰

(U) Requests might be denied for lack of an adequate justification or because disclosure of the USPII would compromise sources or methods.⁶¹ Minor issues are often resolved over email with the requestor.⁶² Requests for disclosure of USPII by lower-ranking officials—such as line FBI agents—can take months to grant. If a request is approved, an email containing the USPII is sent to the requestor.⁶³ The email includes a caveat stating that the information may be viewed only by the requestor and any other listed recipients.⁶⁴ The caveat explains that no further sharing of the USPII is permitted without NSA authorization.⁶⁵

(S//NF) CIA. (b)(3) per CIA

⁶⁶ As noted above, the CIA grants such requests much less frequently than the NSA. See pp.10–11, *supra*.

(U//FOUO) (b)(3) per CIA

⁶⁷ (b)(3) per CIA

⁵⁹ (U) *Ibid.*; 8/4/2020 Interview of Senior Reporting Officer of NSA National Security Operations Center.

⁶⁰ (U) 8/4/2020 Interview of Senior Reporting Officer of NSA National Security Operations Center.

⁶¹ (U) 6/12/2020 Briefing by NSA Chief of Operations, Intelligence Analysis Group and NSA Section Chief of Publications, Information Sharing, and Collaboration.

⁶² (U) *Ibid.*

⁶³ (U) *Ibid.*

⁶⁴ (U) *Ibid.*

⁶⁵ (U) *Ibid.*

⁶⁶ (U) 6/11/2020 Briefing by CIA Office of General Counsel and Office of Congressional Affairs.

⁶⁷ (U) *Ibid.*

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(b)(3) per CIA⁶⁸ Before disseminating USPII, the CIA would solicit the input of multiple agency offices, including the Office of the General Counsel and the FISA Program Office, as well as various CIA managers.⁶⁹ (b)(3) per CIA

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(U//~~FOUO~~) In August 2017, the CIA Director instructed the Office of the General Counsel to review the procedures and practices for unmasking requests.⁷¹ (b)(3) per CIA

(b)(3) per CIA

(U//~~FOUO~~) FBI. (b)(3) per CIA, during the period relevant to this review, the FBI did not have a centralized mechanism for processing unmasking requests.⁷⁵ Requests were generally handled by the FBI field office that had disseminated the intelligence report.⁷⁶

(U//~~FOUO~~) The FBI now processes unmasking requests through its Directorate of Intelligence. The FBI's single-source reports contain an email address to make unmasking requests.⁷⁷ When the Directorate of Intelligence receives a request, it coordinates with the relevant FBI

⁶⁸ (U) *Ibid.*

⁶⁹ (U) *2017 CIA Dissemination Report*, p.12.

⁷⁰ (U) 6/11/2020 Briefing by CIA Office of General Counsel and Office of Congressional Affairs.

⁷¹ (U) *Ibid.*

⁷² (U) *Ibid.*

⁷³ (U) *Ibid.*

⁷⁴ (U) *Ibid.*

⁷⁵ (U) 9/11/2020 Correspondence from FBI Office of General Counsel.

⁷⁶ (U) *Ibid.*

⁷⁷ (U) 6/17/2020 Briefing by FBI Directorate of Intelligence and Office of General Counsel.

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field office to determine if granting the request would compromise an investigation or otherwise harm the office's equities.⁷⁸ A denial of an unmasking request is usually prompted by a field office's objection.⁷⁹

(U//~~FOUO~~) If the field office does not object, the Directorate of Intelligence applies the relevant legal standards to determine if disclosure is appropriate. It currently follows the protocol required by the 2018 directive from the Director of National Intelligence and the FBI's implementing procedures, including a requirement that the disclosure be approved by the FBI Director or the Director's designee.⁸⁰ If the request is approved, the requestor is sent a written response that contains the USPII.⁸¹

(U) 3. The process by which senior Executive Branch officials—including certain cabinet secretaries, agency heads, and senior White House staff—request and receive USPII masked in disseminated intelligence reports differs markedly from the typical process described above. In particular, those officials primarily receive USPII disclosures through the staff of the PDB.

(U) a. The PDB has its origins in the Truman Administration.⁸² During the period relevant to this review, more than one hundred officials received some type of PDB briefing regularly.⁸³ Some of those officials were briefed each day by a "PDB briefer"—an experienced intelligence analyst who serves a short-term stint on the PDB staff, usually for about a year.⁸⁴

⁷⁸ (U) *Ibid.*

⁷⁹ (U) *Ibid.*

⁸⁰ (U) *Ibid.*; see Intelligence Community Policy Guidance 107.1, *Requests for Identities of U.S. Persons in Disseminated Intelligence Reports*, § E.2 (2018).

⁸¹ (U) 6/17/2020 Briefing by FBI Directorate of Intelligence and Office of General Counsel.

⁸² (U) See Central Intelligence Agency, *The Evolution of the President's Daily Brief* (2014).

⁸³ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017).

⁸⁴ (U) *Ibid.*

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(U//~~FOUO~~) A briefer typically arrives at the PDB's offices at CIA headquarters between midnight and one A.M. every day but Sunday.⁸⁵ The briefer then proceeds to assemble "the book" that the briefer will use to brief his or her "principals" that morning. Each book is tailored to a principal's responsibilities and interests.⁸⁶ The book typically includes two to four articles written specifically for the daily briefing of the President, as well as other PDB-specific materials—for example, a memorandum responding to a question posed by the President or a senior official.⁸⁷ The book also includes finished intelligence reports from various elements of the Intelligence Community.⁸⁸ Finally, depending on the principal, the book may contain single-source intelligence reports, which are the types of reports most likely to contain USPII.⁸⁹ Most of the single-source reports included in the books are NSA or CIA

⁸⁵ (U//~~FOUO~~) *Ibid.*; 6/15/2020 Interview of Former PDB Director (Aug. 2015 – Mar. 2017).

⁸⁶ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017); 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 8/3/2020 Interview of Substitute PDB Briefer for DOJ Principals (Mar. 2015 – Mar. 2016); 8/5/2020 Interview of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017); 8/12/2020 Interview of Deputy PDB Briefer for Ambassador to the United Nations (Aug. 2013 – Aug. 2016).

⁸⁷ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017).

⁸⁸ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 8/5/2020 Interview of PDB Briefer for Vice President, Vice President's Chief of Staff, and Vice President's National Security Advisor (Late 2015 – Jan. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017).

⁸⁹ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017); 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017).

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reports.⁹⁰ PDB briefers select the reports from “overnight feeds” that contain hundreds of new reports.⁹¹ The completed books are furnished to principals either in hard copy or electronically, unless the principal elects to receive only an oral briefing.⁹²

(U//~~FOUO~~) The PDB briefers usually leave their offices between six and seven A.M. to deliver the books and orally brief their principals.⁹³ The process of briefing principals on the assembled reporting varies widely. Some principals read the briefing book during an oral presentation by the briefer.⁹⁴ Some instead read in silence, while others discuss the material actively with the briefer.⁹⁵ Some principals elect not to receive oral briefings.⁹⁶

(U) During oral briefings, the PDB briefers answer any questions from the principals.⁹⁷ They also attempt to discern the principals’ interests, although some principals rarely reveal preferences.⁹⁸ If they cannot answer a question, PDB briefers seek the answer from the Intelligence Community after the briefing.⁹⁹

(S//NF) (b)(1) per NSC & State

(b)(1), (b)(3) per ODNI & State

⁹⁰ (U//~~FOUO~~) 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016).

⁹¹ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017).

⁹² (U//~~FOUO~~) *Ibid.*

⁹³ (U//~~FOUO~~) 6/15/2020 Interview of Former PDB Director (Aug. 2015 – Mar. 2017).

⁹⁴ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017).

⁹⁵ (U//~~FOUO~~) *Ibid.*

⁹⁶ (U//~~FOUO~~) *Ibid.*

⁹⁷ (U//~~FOUO~~) *Ibid.*

⁹⁸ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017).

⁹⁹ (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director.

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(b)(1), (b)(3) per NSC, ODNI & State .¹⁰⁰ (b)(1) per NSC & State

.¹⁰¹ (b)(1) per State

The materials were selected based on current diplomatic initiatives, the Ambassador's interests, and other factors. The Ambassador's PDB briefer would not orally brief her.¹⁰² (b)(1) per State

¹⁰³

(U) b. In the course of preparing briefing books, PDB briefers may elect to incorporate reports that contain masked USPII. Significantly for this review, until March 2017, PDB briefers understood that they were authorized to "anticipatorily" request disclosure of the USPII in those reports.¹⁰⁴ In other words, before presenting intelligence reports to senior officials, they could request that the USPII contained in the report be unmasked.

(U) In fact, multiple briefers, including the briefers for the Attorney General, FBI Director, CIA Director, and Director of National Intelligence, told me that, as part of their standard operating procedures (passed on in some cases by their predecessors), they anticipatorily unmasked USPII for *all* intelligence reports containing USPII that they intended to incorporate into the daily briefing book, aside from USPII

¹⁰⁰ (S//NF) 7/30/2020 Interview of United Nations (b)(1), (b)(3), (b)(6) per ODNI & State 8/5/2020 and 8/10/2020 Interviews of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017).

¹⁰¹ (U//FOUO) 8/5/2020 and 8/10/2020 Interviews of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017).

¹⁰² (U//FOUO) *Ibid.*

¹⁰³ (U//FOUO) *Ibid.*

¹⁰⁴ (U//FOUO) 6/10/2020 Interview of Current PDB Director (beg. Oct. 2017); 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017).

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subject to the Gates procedures (see p.12, *supra*).¹⁰⁵ Likewise, the intelligence professionals who selected the NSA reports for the United Nations Ambassador were given written protocols for the diplomatic mission by their predecessors requiring that they seek disclosure of USPII before submitting any intelligence reports for inclusion in her book.¹⁰⁶ In contrast, for example, the PDB briefer for the National Security Advisor did not always make anticipatory unmasking requests, but did so only when the briefer determined that the identity was substantially important, although that briefer still averaged a few anticipatory requests per month.¹⁰⁷

(U) One NSA official with 32 years of experience at the Agency who has been closely involved in the unmasking process since 2012 told me that the practice of anticipatory requests by PDB briefers existed at least as early as 2008.¹⁰⁸ The NSA official believed, however, that there were no written procedures codifying the practice.¹⁰⁹

(U//~~FOUO~~) During the period relevant to this review, when PDB briefers sought USPII (primarily from the NSA),¹¹⁰ their requests were treated very differently than requests by other government officials. As

¹⁰⁵ (S//NF) 7/30/2020 Interview of United Nations [REDACTED] (b)(1), (b)(3), (b)(6) per ODNI & State [REDACTED] 8/3/2020 Interview of Substitute PDB Briefer for DOJ Principals (Mar. 2015 – Mar. 2016); 8/5/2020 and 8/10/2020 Interviews of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017); 8/7/2020 Interview of PDB Briefer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/12/2020 Interview of Deputy PDB Briefer for Ambassador to the United Nations (Aug. 2013 – Aug. 2016).

¹⁰⁶ (S//NF) 7/30/2020 Interview of United Nations [REDACTED] (b)(1), (b)(3), (b)(6) per ODNI & State [REDACTED]; 7/30/2020 Interview of United Nations [REDACTED] (b)(1), (b)(3), (b)(6) per ODNI & State [REDACTED]

¹⁰⁷ (U//~~FOUO~~) 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017).

¹⁰⁸ (U) 8/4/2020 Interview of Senior Reporting Officer of NSA National Security Operations Center.

¹⁰⁹ (U) *Ibid.*

¹¹⁰ (U//~~FOUO~~) 6/15/2020 Interview of Former PDB Director (Aug. 2015 – Mar. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017).

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PDB briefers assembled the book overnight, they would at times ask an NSA representative embedded with the PDB staff to submit unmasking requests to the appropriate NSA officials; in other instances they would submit the request themselves.¹¹¹ One PDB briefer, in fact, recalled that the NSA representative would often check in with the briefers to ensure that all of their disclosure requests for that day had been submitted.¹¹² The justification accompanying the request, which sometimes was written by the on-site NSA representative, typically was no more than a boilerplate statement that a PDB briefer needed the USPII for the morning briefing of a particular principal.¹¹³ The request would usually

¹¹¹ ~~(S//NF)~~ 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 7/23/2020 Interview of NSA Representative to the PDB 1 (early 2016 – Oct. 2016); 7/29/2020 Interview of NSA Representative to the PDB 2 (Oct. 2016 – Sept. 2019); 7/29/2020 Interview of NSA Representative to the PDB 3 (June 2016 – Feb. 2018); 7/31/2020 Interview of NSA Representative to the PDB 4 (Feb. 2016 – Feb. 2019); 8/5/2020 and 8/10/2020 Interviews of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017); 8/5/2020 Interview of PDB Briefer for Vice President, Vice President's Chief of Staff, and Vice President's National Security Advisor (late 2015 – Jan. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017); 8/12/2020 Interview of Deputy PDB Briefer for Ambassador to the United Nations (Aug. 2013 – Aug. 2016).

¹¹² (U) 8/3/2020 Interview of Substitute PDB Briefer 1 for DOJ Principals (Mar. 2015 – Mar. 2016).

¹¹³ ~~(S//NF)~~ 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 7/29/2020 Interview of NSA Representative to the PDB 3 (June 2016 – Feb. 2018); 7/30/2020 Interview of United Nations [REDACTED] (b)(1), (b)(3), (b)(6) per ODNI & State 7/30/2020 Interview of United Nations [REDACTED] (b)(1), (b)(3), (b)(6) per ODNI & State [REDACTED]; 7/31/2020 Interview of NSA Representative to the PDB 4 (Feb. 2016 – Feb. 2019); 8/4/2020 Interview of Senior Reporting Officer of NSA National Security Operations Center; 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017).

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then be granted that morning, sometimes in a matter of minutes.¹¹⁴ The requests were rarely denied.¹¹⁵

(U) Similarly, PDB unmasking requests for CIA intelligence reports were submitted to a CIA representative at ODNI.¹¹⁶ Some briefers recalled that such requests usually took a day to process because the CIA representative did not work overnight, while others remembered receiving responses more quickly.¹¹⁷ PDB briefers generally did not recall submitting unmasking requests for FBI reports with any frequency.

(U) Briefers used different methods to make the USPII available to their principals. For example, briefers for the Vice President, Attorney General, FBI Director, and Director of National Intelligence told me that they would use electronic means to insert the USPII into the text of the report.¹¹⁸ Others would simply append a document stating the

¹¹⁴ (S//NF) The NSA provided me with charts of unmasking requests that specified the request and response times. Requests submitted by or on behalf of PDB briefers in the early morning hours often took minutes or hours. (b)(1)
 [REDACTED] per
 State
 [REDACTED]

¹¹⁵ (U//FOUO) 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/29/2020 Interview of NSA Representative to the PDB 3 (June 2016 – Feb. 2018); 8/5/2020 and 8/20/2020 Interviews of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017); 8/5/2020 Interview of PDB Briefer for Vice President, Vice President's Chief of Staff, and Vice President's National Security Advisor (late 2015 – Jan. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017).

¹¹⁶ (U//FOUO) 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017).

¹¹⁷ (U//FOUO) 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017).

¹¹⁸ (U//FOUO) 8/3/2020 Interview of Substitute PDB Briefer for DOJ Principals (Mar. 2015 – Mar. 2016); 8/5/2020 Interview of PDB Briefer for Vice President, Vice President's Chief of Staff, and Vice President's National Security Advisor (late 2015 – Jan. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for CIA Director

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identities that correlated with the generic masks.¹¹⁹ The briefer for the National Security Advisor would incorporate the information into the briefing if the briefer was confident that the National Security Advisor would want to know it, but otherwise would advise the National Security Advisor that the information was available if she wanted to see it.¹²⁰

(U) It is not clear how often the principals actually saw the USPII, especially if they relied primarily on an oral briefing rather than the written material, and I have found no records documenting when USPII was actually viewed by principals.

(~~S//NF~~) Some principals occasionally asked PDB briefers to seek disclosure of masked USPII, but that appears to have been rare.¹²¹ Indeed, some PDB briefers told me that they could not recall ever having received an unmasking request from their principals—which in some cases presumably reflected the fact that the briefers were anticipatorily unmasking all USPII in the briefing books.

(~~S//NF~~) On March 23, 2017, the Director of the PDB instructed the staff to cease making anticipatory unmasking requests.¹²² That change was likely prompted by public discussion of unmaskings.¹²³ (b)(3) per NSA

and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/7/2020 Interview of PDB Briefer for the Director of National Intelligence (Oct. 2015 – Jan. 2017).

¹¹⁹ (~~S//NF~~) 7/30/2020 Interview of United Nations (b)(1), (b)(3), (b)(6) per ODNI & State (b)(1), (b)(3), (b)(6) per ODNI & State; 7/30/2020 Interview of United Nations (b)(1), (b)(3), (b)(6) per ODNI & State

¹²⁰ (U//~~FOUO~~) 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017).

¹²¹ (U//~~FOUO~~) 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 7/24/2020 Interview of Executive Assistant to Deputy NSA Director (Mar. 2016 – Mid-2017); 8/5/2020 Interview of PDB Briefer for Vice President, Vice President's Chief of Staff, and Vice President's National Security Advisor (late 2015 – Jan. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017).

¹²² (U//~~FOUO~~) 6/10/2020 Interview of Current PDB Director (from Oct. 2017); 6/15/2020 Interview of Former PDB Director (Aug. 2015 – Mar. 2017).

¹²³ (U//~~FOUO~~) *Ibid.*

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(U) This review has examined whether any unmasking requests during the 2016 presidential-election period or the ensuing presidential-transition period were made for political purposes or other inappropriate reasons. In conducting the review, I acquired records of unmasking requests and read the relevant underlying intelligence reports; interviewed or received briefings from intelligence professionals and other federal officials; and reviewed classified and unclassified transcripts of congressional testimony by former senior officials.

(U) **Reviewing requested USPII disclosures.** I acquired from the NSA, CIA, and FBI records of unmasking requests made between March 1, 2016, and January 31, 2017.¹²⁶

(U) The substantial majority of those requests were submitted to the NSA. The NSA provided me with a record of every unmasking request made during the relevant time period. The initial set of records included the names of the requestors and the recipients of the reports, as well as the dates of the requests, but generally not the report titles or the documented justifications for the requests. (The only exception was a list of requests that sought disclosure of USPII to either the former CIA Director, the former National Security Advisor, or the former United Nations Ambassador, which had previously been prepared for

¹²⁴ (U) 6/12/2020 Briefing by NSA Chief of Operations, Intelligence Analysis Group and NSA Section Chief of Publications, Information Sharing, and Collaboration.

¹²⁵ (U//~~FOUO~~) 7/31/2020 Interview of NSA Representative to the PDB 4 (Feb. 2016 – Feb. 2019); 8/4/2020 Interview of Senior Reporting Officer of NSA National Security Operations Center.

¹²⁶ (U//~~FOUO~~) The CIA provided records of requests from January 1, 2016, to January 31, 2017. **(b)(3) per CIA**

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the House Permanent Select Committee on Intelligence (HPSCI) and which contained both report titles and justifications.) I identified the records of requests in which relevant senior officials and some relevant lower-ranking officials were listed as authorized recipients of the USPII.¹²⁷ The NSA then furnished a list of report titles and documented justifications corresponding to those requests.

~~(S//NF)~~ From that list and the HPSCI list, I obtained each intelligence report that appeared potentially relevant to my review, including (but not limited to) every report with a title that referred to the presidential election or transition.¹²⁸ I then reviewed each of those reports to determine whether (i) there appeared to be a justifiable basis for the requested disclosure under the rules governing USPII dissemination; and (ii) any pattern of unmaskings by a particular official suggested an inappropriate purpose.

(U) I conducted a similar multi-step process for CIA and FBI unmasking requests, but that process yielded no relevant reports.

~~(U//FOUO)~~ From the CIA I requested a full list of all unmasking requests, along with the documented justifications for the requests, the authorized recipients, and the report numbers. After reviewing the list, I requested copies of potentially relevant reports. Upon reading those reports, I determined that there were likely no unmasking requests for disseminated CIA reports that were related to the campaign or transition.

(U) During the relevant time period, the FBI did not maintain a separate list of unmasking requests. Rather, the records of those requests were contained within a larger set of "requests for information"

¹²⁷ (U) I did not seek records of disclosures in which the President was the requestor or authorized recipient, although certain records of requests made by others listed the President among multiple authorized recipients. Given the constitutional protections and special sensitivities that attend the President's communications and decision-making process, I concluded that it would be inappropriate to seek records related to his personal review of foreign intelligence.

¹²⁸ (U) My team obtained records from the NSA on a rolling basis and thus received a number of charts with relevant data. For convenience, I refer to them collectively.

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submitted to the FBI. In connection with this review, the FBI examined approximately (b)(3), (b)(7)(E) per FBI

My team reviewed that list and winnowed it down to approximately (b)(3), (b)(7) potentially relevant unmasking requests. After reviewing the corresponding report titles and justifications, my team determined that there were likely no relevant unmaskings by the FBI that were related to the campaign or transition.

(U) Three points about this process of reviewing unmasking requests are significant. First, I did not review reports in which non-masked USPII was included in the initial dissemination, rather than in response to a request. The focus of my review was whether senior officials made inappropriate unmasking requests, not whether Intelligence Community elements were properly applying the disclosure standard in proactive disseminations.

(U) Second, in the reports that I reviewed, I did not seek disclosure of the USPII myself (aside from reports that were identified by ODNI as related to the unmasking of Lieutenant General Michael Flynn's identity during the transition period, see pp.42–44, *infra*). The purpose of my review was to determine whether officials who unmasked USPII did so for inappropriate reasons. That inquiry must be answered *ex ante*: whether an official had a legitimate, good faith basis to unmask the USPII before knowing what it was. Especially given that the rules governing unmasking require a need to know the information for official duties, I concluded that it would be inappropriate for me to view the underlying USPII in conducting my analysis.¹²⁹

(U) Finally, my review generally did not encompass channels other than unmasking requests through which a senior official might learn the identity of a U.S. person mentioned in an intelligence report. For example, I did not seek to examine instances in which senior officials within the intelligence-production chain at a given agency viewed

¹²⁹ (U) At one point, the FBI provided my team with a list of unmasking requests that included the underlying USPII. Other than the FBI team member who received the list and noticed the problem, no other member of the team viewed the USPII. I sought and received from the FBI a revised list without the USPII.

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USPII that the agency itself had collected. My focus was on requests from outside of an agency for the disclosure of USPII masked in disseminated intelligence reports.

(U) **Briefings and interviews.** My team received extensive briefings from officials at the NSA, CIA, FBI, ODNI, Department of Justice, Department of State, and Privacy and Civil Liberties Oversight Board. We discussed the legal rules governing USPII disclosure, technical and practical aspects of the unmasking process, and year-to-year trends in USPII disclosures.

(U) I also interviewed a number of government employees involved in the unmasking process during the period relevant to this review. In particular, I interviewed twenty government employees who served either as PDB briefers or as representatives of the NSA responsible for submitting unmasking requests for PDB briefings. That group included the PDB briefers for the former Vice President, White House Chief of Staff, Vice President's Chief of Staff, National Security Advisor, Vice President's National Security Advisor, Secretary of State, Attorney General, Deputy Attorney General, Ambassador to the United Nations, Director of National Intelligence, CIA Director, CIA Deputy Director, FBI Director, and FBI Deputy Director.

(U) **Review of testimony.** My team reviewed classified and unclassified transcripts of 2017 testimony by various former officials before the House Committee on the Judiciary, House Committee on Oversight and Reform, and HPSCI. That included testimony by the former National Security Advisor, FBI Director, Director of National Intelligence, CIA Director, Acting Attorney General, and Ambassador to the United Nations. The Office of Legislative Affairs of the Department of Justice attempted to obtain classified transcripts of testimony before the Senate Select Committee on Intelligence but was unable to do so.

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(U) DISCUSSION

(U) A. I have found no evidence that unmasking requests were made for political purposes or other inappropriate reasons during the 2016 election period or the ensuing transition period.

(U) My review has uncovered no evidence that senior Executive Branch officials sought the disclosure of USPII in disseminated intelligence reports for political purposes or other inappropriate reasons during the 2016 presidential-election period or the ensuing presidential-transition period. Most significantly, the vast majority of relevant disclosures appear to have been requested by intelligence professionals in anticipation of PDB briefings or for defensive cyber-security purposes, not at the direction of senior officials. Moreover, the quantity of requests and the content of the underlying reports does not support an inference that senior officials were targeting the Trump campaign or transition team. I am nevertheless troubled by how easy it is for senior political appointees to obtain the identities of campaign associates or transition officials contained in reports discussing potentially sensitive communications or activities. For that reason, I recommend that the Intelligence Community consider adopting certain prophylactic safeguards discussed in Part C below. See pp.48–49, *infra*.

(U) 1. As a threshold matter, it is important to bear in mind two contextual considerations.

(U) First, it would be exceedingly difficult to *systematically* use unmasking requests to target political opponents. That is because most USPII is sifted out of intelligence reporting as it is processed. At the initial collection stage, the Intelligence Community elements conducting FISA surveillance are restricted in their targeting decisions. The government can use FISA Title I authority to target a U.S. person only if the FISC finds probable cause that the person is an agent of a foreign power. Under FISA Section 702, the NSA is permitted to target only non-U.S. persons reasonably believed to be abroad. The Intelligence Community is also expressly prohibited from conducting “reverse targeting” under Section 702, which means that a non-U.S. person outside the United States cannot be targeted with the true purpose of acquiring

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the communications of a U.S. person or anyone inside the United States.¹³⁰

(U) Once communications are acquired, intelligence professionals will focus on the information that appears relevant to foreign intelligence and national security objectives, not unrelated information about U.S. persons. U.S. person information that does not meet legal standards for retention will ultimately be discarded. And when an analyst writes a report for dissemination, the analyst must include only the U.S. person information that has foreign intelligence value.

(U) It is only at that stage that a senior official might request that masked USPII in a disseminated report be disclosed. But by then, intelligence professionals have already concluded that the report's information concerning a U.S. person has foreign intelligence value (even if the person's USPII may not). Any U.S. person information without foreign intelligence value would have been excluded from the report. As a result, only an extremely limited universe of USPII is even possibly subject to disclosure.

(U) Importantly, the unmasking process does not permit a senior official to go back to the raw intake and pull out information about U.S. persons. Senior officials cannot, in other words, use the unmasking process to train the surveillance powers of the United States Intelligence Community on particular targets. It is, in a sense, mere happenstance when derogatory information about a political opponent makes its way into a disseminated intelligence report. For that reason, although the unmasking process is vulnerable to isolated instances of abuse, it is difficult to see how someone could consistently exploit the process to dig up dirt on political opponents.

(U) The second background consideration to understand is just how hard it might be to uncover any isolated instance of a senior official's abuse of the unmasking process. The legal standard for disclosure of USPII—that the USPII is necessary to understand the intelligence or assess its importance—is relatively easy for the most senior officials to satisfy. The NSA's "overmasking" default rule means that many unmasking requests are clearly justified as an objective matter, even if

¹³⁰ (U) 50 U.S.C. 1881a(b)(2).

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secretly made for inappropriate reasons, and senior national security officials are responsible for numerous areas of policy and foreign relations that will often give them a plausible basis to seek the disclosure. Unless the senior official ultimately takes some improper action with the USPII, such as leaking it to the press, it would be difficult to detect an inappropriate purpose for making a single unmasking request.

(U) The upshot of these two considerations is that while there is little risk that USPII disclosures could be exploited to systematically target political rivals, prophylactic rules are arguably necessary to guard against isolated instances of abuse.

(U) 2. Despite the potential for abuse of the unmasking process, I have found no evidence that any such abuse occurred in connection with the 2016 election or the ensuing transition. Based on the information that I have reviewed, it is very unlikely that senior Executive Branch officials systematically exploited that process to target the Trump campaign or transition team.

(U) a. The most significant factor in my analysis is the manner in which the unmasking requests were made. The vast majority of unmasking requests that were related to the campaign or transition in which senior officials were identified as authorized recipients of the USPII were not made by the officials themselves or at their direction. Rather, consistent with the widespread practice at the time—which likely originated before the Obama Administration—PDB briefers or their associates would anticipatorily unmask USPII before incorporating an intelligence report into an official's morning briefing book. See pp.21–26, *supra*. That was true across the full range of intelligence reports, not only reports related to the campaign or transition. As one veteran NSA official described the practice to me, the briefers wanted to have the USPII on hand “just in case” a principal asked about the identity of a masked U.S. person.¹³¹ While some briefers would actually

¹³¹ (U) 8/4/2020 Interview of Senior Reporting Officer of NSA National Security Operations Center.

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write the USPII onto the reports, either by hand or electronically, others would simply have the USPII available in case the principal asked about it.¹³²

(U) Some briefers sought USPII for every report provided in the morning briefing as a matter of protocol (aside from USPII related to Members of Congress or congressional staff, which is governed by the Gates procedures). That group included the briefers for the Attorney General, Deputy Attorney General, FBI Director, FBI Deputy Director, CIA Director, CIA Deputy Director, and Director of National Intelligence.¹³³ Others, including the breifer for the National Security Advisor, exercised discretion about whether to unmask USPII.¹³⁴ In all events, PDB briefers and other intelligence professionals whom I interviewed told me that the practice of routinely unmasking USPII in anticipation of a briefing was ubiquitous at the time, and some PDB briefers told me that they had been instructed by their predecessors that such anticipatory unmaskings were a standard part of preparing “the book” for their principals.¹³⁵

¹³² (U//~~FOUO~~) 6/30/2020 Interview of PDB Breifer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/7/2020 Interview of PDB Breifer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 8/5/2020 and 8/10/2020 Interviews of PDB Breifer for Ambassador to the United Nations (July 2014 – Aug. 2017); 8/5/2020 Interview of PDB Breifer for Vice President, Vice President’s Chief of Staff, and Vice President’s National Security Advisor (Late 2015 – Jan. 2017); 8/6/2020 Interview of PDB Breifer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Breifer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/7/2020 Interview of PDB Breifer for Director of National Intelligence (Oct. 2015 – Jan. 2017).

¹³³ (U//~~FOUO~~) 8/3/2020 Interview of Substitute PDB Breifer for DOJ Principals (Mar. 2015 – Mar. 2016); 8/6/2020 Interview of PDB Breifer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Breifer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/7/2020 Interview of PDB Breifer for Director of National Intelligence (Oct. 2015 – Jan. 2017).

¹³⁴ (U//~~FOUO~~) 6/30/2020 Interview of PDB Breifer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/7/2020 Interview of PDB Breifer of White House Chief of Staff (Apr. 2016 – Jan. 2017); 8/5/2020 Interview of PDB Breifer for Vice President, Vice President’s Chief of Staff, and Vice President’s National Security Advisor (Late 2015 – Jan. 2017).

¹³⁵ (S//~~NF~~) 7/29/2020 Interview of NSA Representative to the PDB 2 (Oct. 2016 – Sept. 2019); 7/29/2020 Interview of NSA Representative to the PDB 3 (June

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(U) That recollection is confirmed by the records of the requests. The substantial majority of records for USPII disclosures to relevant senior officials identify the PDB briefing as the justification for the request. And they typically reflect a short turnaround time between when the request was submitted and when it was granted, which is consistent with how the PDB briefers described their process of preparing the briefing. The existence of the routine practice of seeking anticipatory disclosure is further confirmed by the fact that the PDB Director expressly prohibited the practice in the spring of 2017.¹³⁶

(U) PDB briefers told me that their principals rarely, if ever, asked for USPII to be unmasked. In some cases, that was presumably because the USPII was always made available to them by the briefers and so there would have been no reason to submit a request for disclosure. But even those briefers who did not always seek disclosure of USPII for the reports in the briefing book told me that an unmasking request by their principals was rare.

(U) I asked PDB briefers and NSA employees whether they had ever sensed that partisan or other improper motives played any part in unmasking requests. They uniformly responded no. I also asked briefers whether their principals had conveyed preferences for reporting

2016 – Feb. 2018); 7/30/2020 Interview of United Nations [REDACTED] (b)(1), (b)(3), (b)(6) per ODNI & State [REDACTED] 7/30/2020 Interview of United Nations [REDACTED] (b)(1), (b)(3), (b)(6) per ODNI & State [REDACTED] 7/31/2020 Interview of NSA Representative to the PDB 4 (Feb. 2016 – Feb. 2019); 8/4/2020 Interview of Senior Reporting Officer of NSA National Security Operations Center; 8/3/2020 Interview of Substitute PDB Briefer for DOJ Principals (Mar. 2015 – Mar. 2016); 8/5/2020 Interview of PDB Briefer for Vice President, Vice President's Chief of Staff, and Vice President's National Security Advisor (late 2015 – Jan. 2017); 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017).

¹³⁶ (U//FOUO) 6/10/2020 Interview of Current PDB Director (from Oct. 2017); 6/15/2020 Interview of Former PDB Director (Aug. 2015 – Mar. 2017); 6/30/2020 Interview of PDB Briefer for National Security Advisor (Jan. 2016 – Jan. 2017); 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 7/29/2020 Interview of NSA Representative to the PDB 3 (June 2016 – Feb. 2018); 7/31/2020 Interview of NSA Representative to the PDB 4 (Feb. 2016 – Feb. 2019).

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that would reveal the activities of Trump campaign associates or transition-team members—in theory a backdoor way to obtain unmasked USPII for those individuals given the widespread practice of anticipatory unmaskings.¹³⁷ Briefers told me that nothing like that had occurred.

(S//NF) (b)(1) per State & NSC

(b)(1) per State & NSC

(b)(1) per State & NSC; (b)(1), (b)(3) per ODNI

(b)(1) per State & NSC

(b)(1) per State & NSC; (b)(1), (b)(3) per ODNI

(b)(1) per State

told me that they

were given written standard operating procedures for the diplomatic mission by their predecessors in 2014 or 2015 requiring them to unmask USPII for every report that contained USPII (although those written procedures could not be located).¹³⁸ Under those procedures, they were not permitted to make an NSA report available for the Ambassador without first obtaining the USPII. That is consistent with the unmasking records that I have reviewed. Those records show that the many unmasking requests submitted by the intelligence professionals corresponded to reports on a wide range of foreign intelligence topics. Although the boilerplate language in the records does not state explicitly that the PDB briefing was the justification for the unmasking, the intelligence professionals assured me that the requests were for anticipatory unmaskings to prepare the Ambassador's briefing book.¹³⁹

¹³⁷ (U//FOUO) E.g., 8/6/2020 Interview of PDB Briefer for DOJ Principals (Jan. 2016 – Feb. 2017); 8/7/2020 Interview of PDB Briefer for CIA Director and Deputy CIA Director (Feb. 2015 – Mar. 2016); 8/7/2020 Interview of PDB Briefer for Director of National Intelligence (Oct. 2015 – Jan. 2017).

¹³⁸ (S//NF) 7/30/2020 Interview of United Nations (b)(1), (b)(3), (b)(6) per ODNI & State

7/30/2020 Interview of United Nations

(b)(1), (b)(3), (b)(6) per ODNI & State A subsequent version of written procedures from 2017 did not include this practice, but that document indicated that it was “new” as of June 2017, and it required that unmaskings be requested only by principals.

¹³⁹ (S//NF) 7/30/2020 Interview of United Nations (b)(1), (b)(3), (b)(6) per ODNI & State

7/30/2020 Interview of United Nations

(b)(1), (b)(3), (b)(6) per ODNI & State

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(U) Because the practice of unmasking all USPII for intelligence reports provided to the Ambassador to the United Nations was in place at least by early 2015, if not earlier, there is no basis to conclude that it was designed to target the Trump campaign or transition.¹⁴⁰ Moreover, the PDB briefer and intelligence professionals told me that they selected the reports for the Ambassador based on their view of what she needed to know to fulfill her responsibilities. The Ambassador, in other words, was not the one deciding which reports would be included in her briefing book and therefore could not have been demanding to read reports related to the election or transition.

(S//NF) Aside from unmaskings in anticipation of PDB briefings, there was another category of unmasking requests that frequently listed senior White House officials, among others, as authorized recipients of the USPII. Those requests related to reports about cyber-attacks by foreign actors. The justification for the requests explained that White House officials who frequently interacted over unclassified email with non-governmental organizations must be aware of cyber-threats to those organizations so that the officials would exercise care in their communications and could take measures to protect United States information and networks. Those unmaskings often included a large list of authorized recipients, from the National Security Advisor to White House information-security professionals. They were plainly justified as defensive measures.

(U) In short, it is unlikely that senior Executive Branch officials abused the unmasking process to target political opponents because, by and large, senior officials were not the ones making the requests and were not otherwise exercising influence over which requests were made.

(U) b. In addition to the manner in which the relevant unmasking requests were made, the quantity of relevant requests and the substance of the underlying intelligence reports makes it unlikely that the unmasking process was systematically abused for political purposes or other inappropriate reasons.

¹⁴⁰ (S//NF) 7/30/2020 Interview of United Nations (b)(1), (b)(3), (b)(6) per ODNI & State [REDACTED]; 8/12/2020 Interview of Deputy PDB Briefer for Ambassador to the United Nations (Aug. 2013 – Aug. 2016).

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(S//NF) i. Only a small percentage of the unmasking requests in which relevant senior officials were authorized recipients of the USPII involved reports related to the campaign or transition. The vast majority concerned typical foreign intelligence reporting about a range of nations, threats, and issues. (b)(1), (b)(3) per NSA

[REDACTED]. I do not see a plausible way in which such (b)(1), (b)(3) per NSA information, even if it had related to persons or entities associated with the Trump campaign or Republican political organizations, could have been weaponized politically. Nor am I aware of any such information being exploited in connection with the 2016 campaign. Rather, the most reasonable explanation for the disclosure of this information was that PDB briefers and other intelligence professionals sought to ensure that high-level officials understood the nature of a threat facing the country.

(U) The Ambassador to the United Nations was authorized to receive a particularly high number of USPII disclosures. But the overwhelming majority had no apparent connection to the campaign or transition. As discussed above, the briefing protocol (b)(1) per State United Nations was to unmask USPII for every report. See p.22, *supra*. The Ambassador's role required her to cover a vast subject-matter area, and she was, as multiple people told me, and as she herself testified, a voracious reader.¹⁴¹ Her PDB briefer described her as a "super user" of intelligence compared to other consumers.¹⁴² Nothing about the pattern of the unmasking requests for the Ambassador suggests a special focus on the election or transition.

¹⁴¹ (U//FOUO) 8/5/2020 and 8/10/2020 Interviews of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017); Transcript of Testimony of Ambassador Samantha Power, Permanent Select Committee on Intelligence of the U.S. House of Representatives, p.29 (Oct. 13, 2017).

¹⁴² (U) 8/5/2020 and 8/10/2020 Interviews of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017).

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(S//NF) ii. I have not found a report that was subject to an unmasking request before the election that appeared to discuss the communications or activities of a masked associate of the Trump campaign.¹⁴³

(b)(1), (b)(3) per NSA

As noted above, even if some of that information had related to the Trump campaign or Republican political organizations, it is not clear how the USPII could have been exploited politically. Moreover, the dissemination of USPII for the target of hostile intelligence activity by a foreign power is categorically permitted by the NSA's rules.¹⁴⁴

(S//NF) Importantly, almost none of these election-related reports that I reviewed appeared on their face to recount communications involving masked U.S. persons. Some of the reports appeared to describe statements by non-U.S. persons *about* U.S. persons, while many reports merely masked identity information (b)(1), (b)(3) per NSA

. To be sure, intelligence reports are often drafted to conceal sources and methods, so a reader cannot know with certainty whether a report was derived from the intercepted communications of a U.S. person. But at least on their face, these reports generally did not convey the contents of communications involving U.S. persons.

(S//NF) (b)(1), (b)(3) per NSA

¹⁴³ (S//SI//NF) (b)(1), (b)(3) per NSA

¹⁴⁴ (S//NF) USSID SP00018 § 7.2(c)(5). Some of the reports that I reviewed listed only a title and a notation that the report had been recalled. According to NSA officials, their systems no longer contain the original reports. But all of those reports that appeared to relate to (b)(1), (b)(3) per NSA

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reports recounted non-U.S. persons' communications (b)(1), (b)(3) per NSA

[REDACTED]

(S//NF) (b)(1), (b)(3) per NSA

[REDACTED]

(S//NF) (b)(1), (b)(3) per NSA

[REDACTED]

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(S//NF) iii. I identified some unmasking requests submitted during the transition period and listing relevant senior officials as authorized recipients in which it would have appeared at least possible to a reader *ex ante* that the USPII in the reports corresponded to Trump transition officials or others involved in transition activities. Some of the reports

¹⁴⁵ (S//NF) (b)(1), (b)(3) per CIA

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merely recounted the views of non-U.S. persons *about* possible transition officials, typically in brief, general terms. Others described non-U.S. persons' plans to engage with individuals who appeared to be in the orbit of the transition, or noted prior meetings.

(~~S//NF~~) Some of these transition-related reports recounted communications involving possible transition officials, usually vaguely and without quotations. Those were typically written in a manner that left it unclear whether the communications themselves had been intercepted or whether instead only a non-U.S. person's after-the-fact descriptions of the communications had been intercepted.

(U) The content of these transition-related reports does not support an inference that senior officials used the unmasking process to systematically target the Trump transition team. A primary goal of foreign intelligence gathering is to understand the views, plans, and objectives of foreign nations. Assessing how a foreign country will approach an incoming U.S. administration—which officials it plans to engage, whether it might delay or expedite certain actions, who it identifies as the most influential advisors, what it thinks it can achieve with new American leadership—undoubtedly falls within the core of foreign intelligence gathering. For example, knowing whether a foreign official is talking about the perceived views of the incoming Secretary of State or instead a minor advisor is significant in predicting how the foreign nation may act on that information.

(U) Although reasonable minds could differ on whether each of the transition-related unmasking requests was truly necessary to understand the foreign intelligence or assess its importance—I have doubts about some of them (see p.45, *infra*)—the overall pattern of requests is consistent with an appropriate effort to understand how foreign nations were reacting to the result of the 2016 election. More to the point, the content of these reports does not seem consistent with an effort to acquire derogatory information about members of the Trump transition team or to otherwise exploit the unmasking process for political ends.

(U//~~FOUO~~) Significantly, nearly all of the disclosures that I reviewed that related to the Trump transition team were requested for PDB briefings in accordance with the standard PDB process described

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above. There was also one request submitted by the FBI. But that request sought disclosure to a large group of FBI recipients, so it was unlikely designed to provide a senior political appointee with damaging information on the transition team.

(~~TS//NF~~) I have identified only one transition-related unmasking request that NSA records indicate was made at the behest of a senior U.S. official (although the same USPII was disclosed for the PDB briefings of other senior officials). That request sought the identity of a person described as a “senior” member of the transition team (b)(1), (b)(3) per NSA [REDACTED]. The report did not quote any communications involving the U.S. person, although the report indicated that (b)(1), (b)(3) per NSA [REDACTED].

(~~TS//NF~~) It is not clear to me from the face of the report why the senior U.S. official needed to know the identity of the transition official. To be sure, the U.S. official had an obvious and substantial interest in the subject matter of the report that related to the official’s duties. (In fact, the U.S. official was mentioned by title in the report.) And it is reasonable to conclude that the knowledge that the transition official was “senior” was significant to understanding the report and assessing its significance. But the transition official’s seniority was expressly noted in the report. It is not readily apparent why the transition official’s name was critical.

(U) Nevertheless, while cognizant of how easy it would be to conceal an improper motivation for a single unmasking request (see pp.31–32, *supra*), I cannot conclude that the U.S. official’s request suggests an improper political motivation. For one, the U.S. official could have had a need to know the identity that is not obvious from the face of the report, based on other information. But even if not, the report was directly related to the official’s duties, and the request does not form part of any broader pattern of suspicious unmasking requests. In addition, the PDB briefer for that official told me the official had never made a request that appeared politically motivated or otherwise unusual. The more likely explanation for the request is that the U.S. official wanted to know as much information as possible about the subject matter of the report—which, as I said, the official had an obvious and significant interest in—and assumed that the unmasking request would be denied by intelligence officials if it did not meet the standard for disclosure.

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(U) 3. Earlier this year, the Acting Director of National Intelligence provided certain Members of Congress with a list of recipients who were authorized to receive the identity of Lieutenant General Michael Flynn in response to unmasking requests processed between November 8, 2016, and January 31, 2017. Given the substantial interest generated by the public release of that list, I closely examined those requests, including the requests naming individuals other than senior officials as the authorized recipients of the USPII. I have not found any basis to conclude that the requests were motivated by an improper purpose.

(~~S//SI//NF~~) The released list identifies 49 instances in which an official was authorized to receive General Flynn's identity and indicates that 39 separate officials, some of whom were senior officials, were authorized recipients. According to the NSA, however, the 49 instances involved only ^{(b)(1), (b)(3)} intelligence reports. (Certain reports prompted multiple requests and certain requests sought authorization for disclosure to multiple recipients.) (b)(1), (b)(3) per NSA

[REDACTED]

[REDACTED]

(~~TS//SI//NF~~) (b)(1), (b)(3) per NSA

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The unmasking requests for that report were made for the (b)(1), (b)(3) per NSA the CIA Director, FBI Director, and Ambassador to the United Nations. Unmasking requests were also made for disclosure to the Ambassadors to Russia and Turkey, as well as to lower-ranking intelligence officials, based on specific, objectively reasonable justifications.

(~~TS//SI//NF~~) (b)(1), (b)(3) per NSA

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The unmasking request for that report was made (b)(1), (b)(3) per NSA

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the Director of National Intelligence and Ambassador to the United Nations. The subject matter of the report clearly related to the responsibilities of those officials. The unmasking request for the other report was made (b)(1), (b)(3) per NSA the Ambassador to the United Nations only, and the contents of that report related to her responsibilities. As explained above, the intelligence professionals (b)(1), (b)(3) per ODNI United Nations operated under a standard protocol of unmasking USPII for all reports containing USPII that were provided to the Ambassador. See p.22, *supra*.

~~(S//SI//NF)~~ As for the other (b)(1), (b)(3) per NSA

(b)(1), (b)(3) per NSA

~~(S//SI//NF)~~ (b)(1), (b)(3) per NSA

The unmasking requests for that report, moreover, were made by intelligence officials for (b)(1), (b)(3) per NSA the Director of National Intelligence and his deputies and for other significant and clearly justified operational purposes. For those reasons, the unmasking of General Flynn's identity in that report does not support an inference that he was inappropriately targeted.

~~(S//NF)~~ In fact, all but one of the unmaskings of General Flynn's identity in which a senior official was an authorized recipient (b)(1), (b)(3) per NSA That group of officials included the Vice President of Intelligence, CIA Director, FBI Director, Secretary of the Treasury, White House Chief of Staff, and Ambassador to the United Nations.

~~(TS//NF)~~ (b)(3) per Treasury

The request included a specific justification tailored to the contents of the report, and unmasking requests for the same report were made for a number of

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other recipients, including officials at the U.S. Mission to North Atlantic Treaty Organization, the Deputy Secretary of Energy, and an ambassador. The reference to General Flynn in that report (b)(1), (b)(3) per NSA

Given that context, it is unlikely that the request was made to politically target General Flynn or the incoming administration.

(~~TS//NF~~) The unmasking requests for disclosure to lower-ranking officials, such as ambassadors and intelligence professionals, each included an objectively reasonable justification (b)(1), (b)(3) per NSA

(U) Accordingly, I find no basis to conclude that the unmaskings of General Flynn's identity during the transition period were politically motivated or were otherwise sought for inappropriate reasons.

(U) 4. In December 2016, General Flynn had communications with the Russian Ambassador to the United States that touched on certain matters of foreign policy.¹⁴⁶ The FBI had transcripts of some of those communications.¹⁴⁷ On January 12, 2017, some of the substance of those communications was reported in the media.¹⁴⁸ I accordingly examined whether any senior officials had obtained General Flynn's identity in connection with those communications through an unmasking request made during the transition period.

(U) The answer is no. According to the FBI, the Bureau did not disseminate an intelligence report discussing those communications and containing masked USPII for General Flynn before President Trump's inauguration.¹⁴⁹ For that reason, the public disclosure of the communications could not have resulted from an unmasking request. That conclusion is consistent with my review of unmasking records, which did

¹⁴⁶ (U) Government's Motion to Dismiss the Criminal Information Against the Defendant Michael T. Flynn, No. 1-17-cr-00232-EGS, p.4 (D.D.C. May 7, 2020).

¹⁴⁷ (U) *Ibid.*

¹⁴⁸ (U) *Id.* at 5.

¹⁴⁹ (U) 7/1/2020 Briefing by FBI Office of General Counsel.

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not reveal any unmasking request corresponding to a report discussing those communications.

(U) The conclusion is also confirmed by other information that I have reviewed. That information shows that during the transition period the FBI shared transcripts of the relevant communications outside of the Bureau without masking General Flynn's name. Evaluating that dissemination, and determining how the information was provided to the media, is beyond the scope of this review.

(U) 5. Although I have found no evidence that senior Executive Branch officials systematically abused the unmasking process to target Trump campaign or transition officials, my review has led me to conclude that a serious potential for abuse exists—particularly in isolated instances in which an improper purpose would be hard to detect. The most obvious means of abuse is leaking nonpublic information about a U.S. person to the media. Although such a leak would likely itself be unlawful, investigating and prosecuting leaks can often be challenging. In addition, upon learning of private conversations involving transition officials, an outgoing administration could take actions that frustrate the policy plans of an incoming administration. That would be an improper use of intelligence collection and would be inconsistent with norms about the transfer of power in a democracy.

(U) Some of the reports that I have reviewed have reinforced my concerns. To be sure, most of the transition-related reports that were subject to unmasking requests did not include politically damaging information. But I am concerned about how easy it was for outgoing political appointees to learn nonpublic information about potential high-level officials of the incoming administration and other members of the transition team. I have already discussed one requested disclosure by a senior official in mid-December 2016. See pp. 41–42, *supra*. But other disclosures of the identities of transition officials, which were sought anticipatorily for PDB briefings rather than by senior officials, did not seem clearly necessary to me. And at least one report contained information that arguably could have been politically damaging if the identities of some of the masked individuals discussed in the report had been made public.

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(U) At the same time, despite the serious risk of abuse, it would be unwise to prohibit officials of an outgoing administration from viewing any information about campaign associates or transition officials. The outgoing officials must continue to perform their duties until Inauguration Day. They cannot blind themselves to intelligence about the views and intentions of foreign nations, even if those views and intentions will naturally be influenced by the composition and policy positions of the incoming administration.

(U) For that reason, I recommend that the Intelligence Community consider reforms to protect against the risk of abuse in the disclosure of the USPII of campaign associates and transition officials. I describe those recommendations in Part C below. See pp. 48–49, *infra*.

(U) B. I have not identified a sufficient basis to conduct a criminal investigation of any individual involved in the unmasking process.

(U) In the course of my review, I have considered whether there is a justifiable basis to conduct a criminal investigation of any individual involved in the unmasking process. I have identified no such basis.

(U) 1. I have not found any evidence that a government official falsified a document in submitting or processing unmasking requests. It was well understood throughout the relevant period that PDB briefers could anticipatorily unmask USPII for their principals. The practice was ubiquitous, and a number of briefers anticipatorily unmasked all USPII in the reports that they incorporated into briefing books. The boilerplate language that was used to make those requests was understood by intelligence officials to typically signify an anticipatory request for a PDB briefing, particularly given the timing and urgency of the requests, even if that might not have been immediately clear to a person unfamiliar with the process. Indeed, NSA representatives embedded with the PDB staff sometimes wrote the justifications.¹⁵⁰ Although the

¹⁵⁰ (S//NF) 7/7/2020 Interview of PDB Briefer for White House Chief of Staff (Apr. 2016 – Jan. 2017); 7/30/2020 Interview of United Nations [REDACTED] (b)(1), (b)(3), (b)(6) per ODNI & State 7/30/2020 Interview of United Nations (b)(1), (b)(3), (b)(6) per ODNI & State [REDACTED] 8/5/2020 and 8/20/2020 Interviews of PDB Briefer for Ambassador to the United Nations (July 2014 – Aug. 2017).

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standard language used by some of the requestors could be read in a vacuum to convey that the principal had personally sought the unmasking, the officials who processed the request would have understood that it was likely an anticipatory request in connection with an intelligence briefing.

(U) 2. I likewise did not find sufficient evidence that any official provided knowingly false testimony to Congress, although I did not have access to transcripts of testimony before the Senate Select Committee on Intelligence in closed sessions (see p.29, *supra*). I did identify an arguable, nontrivial discrepancy between the testimony of one former senior official and the recollection of that official's PDB briefer that related to the unmasking process. But I do not believe that the discrepancy warrants a criminal investigation.

(U) As an initial matter, the discrepancy is unrelated to the question of whether the former senior official unmasked USPII for political purposes or other inappropriate reasons. Both individuals' statements are inconsistent with that kind of misconduct.

(U) The circumstances of the discrepancy do not warrant consideration of criminal charges. The PDB briefer is the only person whom I interviewed who has an evidently different recollection than the former senior official; other relevant interviewees did not have knowledge of the matter. No documents contradict the senior official's testimony. And the alleged event occurred years before the official testified. Given that context, without more, it would be difficult to conclude with any degree of certainty that it was the senior official, rather than the PDB briefer, who made the misstatement.

(U) In any event, even if I were convinced that it was the former senior official who made an inaccurate statement, caution is warranted in assuming that misstatements by exceptionally busy foreign policy officials are attributable to intentional deception rather than faulty memories or miscommunications. That is especially true here, where the discrepancy is not as stark as in the typical perjury prosecution. Without any indications of intentional deception about this matter, or even a substantial motive to lie, a faulty memory or a miscommunication

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tion seems a far more likely explanation for the discrepancy than perjury. Accordingly, absent significant new information, I do not believe further investigative steps are warranted.

(U) C. The Intelligence Community should consider adopting prophylactic rules for unmasking requests related to presidential campaigns or transitions.

(U) 1. As explained above, the unmasking of USPII that relates to associates of a presidential campaign or to transition officials creates a risk of abuse, such as through the leak of politically damaging information to the media. At the same time, senior officials in an outgoing administration must continue to perform their duties until Inauguration Day, and information about campaign associates or transition officials may be relevant to the intentions or actions of foreign nations.

(U) To strike the appropriate balance between preventing the abuse of intelligence reporting and ensuring that outgoing officials have the information that they need to protect the interests of the United States, I recommend that the Intelligence Community consider instituting additional safeguards for unmasking requests related to campaign associates or transition officials, which would build upon the reforms put in place in January 2018. I say “consider” because whether these proposals are ultimately worthwhile will turn in part on the expected cost of their implementation and any risk that they might pose to the Intelligence Community’s effectiveness. Accordingly, I recommend that these proposals, or similar proposals, be carefully vetted through the inter-agency process. The proposals would also raise a host of implementation questions, such as who qualifies as an associate of a presidential campaign, at what point in the electoral process the safeguards attach, how to treat third-party or independent campaigns, and whether directing elements of the Intelligence Community to maintain lists of associates of presidential campaigns would itself raise concern.

(U) First, the Intelligence Community should consider requiring centralized approval for any disclosure of USPII reasonably believed to relate to an associate of a presidential campaign or to a transition official. For example, new rules could require the approval of both the General Counsel of ODNI and the Assistant Attorney General for the National Security Division (or their designees). Under the directive issued

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by the Director of National Intelligence in January 2018, the general counsel of an Intelligence Community element must review any unmasking reasonably believed to relate to a transition official—a welcome reform.¹⁵¹ But requiring centralized approval would promote greater accountability and might make it easier to detect suspicious patterns of unmasking requests. Any new approval mechanism, however, should be designed to avoid undue delay in providing vital information to senior officials.

(U) Second, the Intelligence Community should consider a notification process similar to what is required for USPII disclosures related to Members of Congress and congressional staff under the Gates procedures. In particular, it should consider requiring that the first Director of National Intelligence and Attorney General confirmed by the Senate after a new President takes office be notified of any disclosures of USPII for campaign associates or transition officials during the preceding election and transition periods. The congressional-notification requirement of the January 2018 directive for transition-related unmaskings (see p.13, *supra*) could also be extended to campaign associates.

(U) Third, to facilitate review and accountability, the Intelligence Community should consider requiring all agencies that grant unmasking requests to maintain records of which requests appear related to campaign associates or transition officials.

(U) Finally, the Intelligence Community should consider adopting a more demanding substantive standard for unmasking the USPII of campaign associates or transition officials. For example, a requestor could be required to demonstrate a “substantial” need for the USPII. The Intelligence Community, however, should carefully consider whether a higher standard would continue to ensure that senior officials are adequately informed about important intelligence.

(U) 2. In addition to these four proposals, I also recommend that the Intelligence Community consider discarding one of the changes instituted after the 2016 election. As discussed above, in 2017, both the Director of the PDB and the NSA Director prohibited the practice of

¹⁵¹ (U) Intelligence Community Policy Guidance 107.1, *Requests for Identities of U.S. Persons in Disseminated Intelligence Reports*, § E.1.f (2) (Jan. 11, 2018).

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“anticipatory” requests for USPII disclosures by PDB briefers. From the perspective of protecting the privacy of U.S. persons and the fairness of the political process, I do not think that change was necessary, and I am concerned that it could impede the ability of senior U.S. officials to make rapid decisions.

(U) Senior foreign policy and national security officials are exceptionally busy. I see little benefit in requiring them, upon receiving their intelligence briefing each morning, to make a formal request to unmask USPII and then wait until the next morning to re-review the reports with the disclosed information. Rather, so long as unmasking is legally justified, there is no serious drawback in permitting a PDB briever to anticipatorily obtain the USPII. The vast majority of unmasking requests, after all, have nothing to do with political campaigns or presidential transitions. They concern terrorist suspects, victims of cyber-intrusions or kidnappings, foreign officials who happen to be U.S. persons, and other individuals unrelated to U.S. politics. Especially if the Intelligence Community were to implement more targeted reforms addressing the risk of abuse from the narrow subset of USPII related to campaigns or transitions—which could include barring anticipatory requests for that subset—I see no convincing reason to prohibit PDB briefers from making anticipatory requests for most intelligence reports. At minimum, the Intelligence Community should solicit the views of principals on whether to reinstate the practice.

(U) To be sure, before 2017 anticipatory unmaskings suffered from a significant flaw: PDB briefers could unmask USPII with only a boilerplate justification. But that problem was addressed by the January 2018 reforms, which now require a “fact-based justification” for every unmasking.¹⁵² Provided that a PDB briever can supply an adequate fact-based justification for disclosing the USPII to a senior official, the briever should be permitted to unmask the USPII before the briefing.

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¹⁵² (U) *Id.* § E.1.a(4).

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