

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE FEDERAL BUREAU OF INVESTIGATION
AND THE DEPARTMENT OF DEFENSE
GOVERNING INFORMATION SHARING,
OPERATIONAL COORDINATION, AND INVESTIGATIVE RESPONSIBILITIES**

1. **PURPOSE.** This Memorandum of Understanding (MOU) between the Department of Defense (DoD) and the Federal Bureau of Investigation (FBI) [hereinafter the Parties] is designed to promote systemic, standardized, and controlled information sharing, and to clarify operational coordination procedures and investigative responsibilities between DoD and FBI.

2. **SCOPE.**

a. This MOU covers the FBI/DoD sharing of counterintelligence, counterterrorism, foreign intelligence, law enforcement, operational, and other information; and operational coordination, and investigative responsibilities.

b. This MOU applies to all components of FBI and DoD.

c. All future agreements between FBI and DoD regarding information sharing, operational coordination, and investigative responsibilities shall be consistent with this MOU and shall be incorporated as annexes once adopted.

d. This MOU, along with Annexes A (Counterterrorism Information Sharing), B (Counterintelligence Information Sharing), and future annexes covering Counterintelligence and Counterterrorism Jurisdiction and Operational Activities, when approved, supersede the "Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation" (1979) and the 1996 supplement thereto, "MOU Regarding Coordination of Counterintelligence Matters." All other existing agreements and understandings between DoD Components and FBI governing information sharing, operational coordination, or investigative responsibilities will remain in effect except for those provisions that are inconsistent with this MOU and its Annexes. Whenever there is an inconsistency, this MOU and its Annexes will govern. All existing agreements and understandings between DoD Components and FBI will be expeditiously reviewed, updated, or rescinded, and copies forwarded to the FBI Executive Assistant Director, National Security Branch, the FBI Office of General Counsel, and the DoD Under Secretary of Defense for Policy (Office of the Assistant Secretary of Defense (Homeland Defense and Americas' Security Affairs)) as repositories for FBI and DoD, respectively. Those MOUs that have as their primary objective information sharing, operational coordination, or investigative responsibilities for intelligence, counterintelligence, force protection, law enforcement, security, or counterterrorism purposes shall be appended as annexes to this MOU, subject to mutual agreement by the Executive Assistant Director, National Security Branch, and the Assistant Secretary of Defense (Homeland Defense and Americas' Security Affairs), or their designated representatives.

3. REFERENCES.

- a. The USA PATRIOT Act (Public Law 107-56), as amended.
- b. The Homeland Security Act, as amended (Public Law 107-296).
- c. The Intelligence Reform and Terrorism Prevention Act (Public Law 108-458), as amended.
- d. The National Security Act of 1947, as amended.
- e. Executive Order 13388, Further Strengthening the Sharing of Terrorism Information to Protect Americans.
- f. Executive Order 12333, United States Intelligence Activities, as amended.
- g. Executive Order 13526, Classified National Security Information.
- h. Homeland Security Presidential Directive 6, Integration and Use of Screening Information.
- i. Homeland Security Presidential Directive 11, Comprehensive Terrorist Related Screening Procedures.
- j. Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors.
- k. Homeland Security Presidential Directive 15/National Security Presidential Directive 46, U.S. Policy and Strategy in the War on Terror (and Annexes).
- l. Homeland Security Presidential Directive 24/National Security Presidential Directive 59, Biometrics for Identification and Screening to Enhance National Security.
- m. Intelligence Community Directive 710, Classification and Control Markings System.
- n. The Privacy Act of 1974, as amended.

4. DEFINITIONS. (Note: All definitions are for the purposes of this MOU and Annexes.)

- a. Counterintelligence. Information gathered and activities conducted to identify, deceive, exploit, disrupt, or protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations, or persons, or their agents, or international terrorist organizations or activities.
- b. Counterterrorism. Information gathered and operations conducted, including offensive measures, taken to prevent, deter, preempt, or respond to domestic or international terrorism.

c. DoD-Affiliated Personnel. DoD active duty and retired military personnel, civilian employees, contractors and their employees, active and inactive reservists, National Guard members, family members of active duty and civilian personnel, persons residing on or having access to a DoD facility, persons under consideration for DoD employment, and former DoD employees or contractors.

d. DoD Components. The Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense.

e. Force Protection. Protective measures taken to mitigate hostile actions against DoD personnel (including family members), resources, facilities, and critical information.

f. Foreign Intelligence. Information relating to the capabilities, intentions, or activities of foreign governments or elements thereof, foreign organizations, foreign persons, or international terrorists.

g. Information Sharing. A timely two-way flow of information that has an impact on the missions, capabilities, operations, resources, or infrastructure of one or both of the Parties. Information sharing is intended to support the national security of the United States and the missions and capabilities of both Parties, including, but not limited to law enforcement, war fighter operations, intelligence activities, detainee affairs, force protection efforts, anti-terrorism, special operations, stability operations, homeland defense, counterintelligence, critical infrastructure protection, and other national interests.

h. Investigative Responsibilities. The act of fact gathering: 1. pertaining to a criminal act leading to, and including, the submission of evidence to a prosecutive authority; or 2. pertaining to the collection of intelligence.

i. Operational Coordination. The solicitation of inputs prior to undertaking a proposed action, with the understanding that no such action will be taken until any identified objections have been resolved.

5. GENERAL AGREEMENTS AND PROCEDURES.

a. Agreement. The Parties agree to share (consistent with any applicable legal restrictions) all counterintelligence, counterterrorism, foreign intelligence, law enforcement, operational, and other information that reasonably appears relevant to the mission, function, and capability of the other organization. The Parties also agree to coordinate and conduct operations as specified in Annexes to this MOU.

b. Procedures. The Parties will jointly develop understandings and procedures governing the sharing and protection of counterintelligence information, counterterrorism information, foreign

intelligence, law enforcement, operational, and other information. In addition, the parties will jointly develop understandings and procedures governing operational coordination and investigative responsibilities. These understandings and procedures shall be incorporated into individual annexes to this MOU.

6. GENERAL PROVISIONS.

a. Conflict with Current Law, Regulations, or Directives. This MOU is not intended to conflict with current law, executive orders, or regulations (including the directives of the FBI, DOJ, DoD, and the Office of the Director of National Intelligence), or court orders (including court-ordered procedures). If any term or provision of this MOU is inconsistent with such authority, then the term or provision will be invalid, but the remaining terms and conditions of this MOU will remain effective.

b. Non-Fund Obligating Document. This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds. Instead, it establishes a process to ensure mission-essential sharing of information already available, and encourages more efficient and effective sharing of mission-essential information collected in the future. There are no reimbursable expenses associated with the routine sharing of the information covered by this MOU, and each Party shall bear its own costs in relation to the MOU. Expenditures will be subject to Federal and departmental budgetary processes and the availability of funds pursuant to applicable laws, regulations, and policies. The Parties expressly acknowledge that this MOU in no way implies that Congress will appropriate funds for such expenditures.

c. No Private Rights Created. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the Parties, their parent agencies, the U.S. Government, or the officers, employees, agents, or other associated personnel thereof.

d. Privacy Clauses.

(1) The Parties to this MOU will comply with the provisions of the U.S. Constitution and all applicable laws, executive orders, regulations, court orders (including court-ordered procedures) and policies.

(2) The Parties acknowledge that the information covered by this MOU may identify U.S. persons. The sharing of such information may be governed or limited by the Privacy Act of 1974, Executive Order 12333 (or any successor executive order), and/or regulation. All such information must be handled lawfully and in accordance with the provisions thereof, as well as the provisions of all other laws, regulations, and directives that govern the dissemination of U.S. person information.

(3) The Parties further acknowledge that this MOU is subject to guidelines that concern the protection of privacy, civil liberties, and other rights in the Information Sharing Environment

(ISE). The Parties agree to comply with these guidelines to the extent they are applicable.

(4) The Parties agree to review and make appropriate changes, if any, to their privacy compliance documents, including applicable Privacy Act system of records notices and notices required by the Privacy Act (5 U.S.C. 552a(e)(3)), to ensure that the scope and routine uses of such notices permit the collection, maintenance, and sharing of personal information.

(5) Each Party will be responsible for conducting any Privacy Impact Assessment(s) that implementation of this MOU may require under laws, regulations, or policies applicable to the respective Party.

(6) Each Party that discloses Personally Identifying Information (PII) to the other, or that uses PII disclosed by the other Party, will make reasonable efforts to ensure that the information disclosed is accurate, complete, timely, and relevant.

(7) Each Party to this MOU provides access to information from its records with the understanding that in the event the recipient becomes aware of any inaccuracies in the data, the recipient will promptly notify the other Party so that corrective action can be taken.

(8) Section (c) of the Privacy Act (5 U.S.C. 552a(c)) requires that an agency maintain the ability to provide an accounting for covered disclosures made outside the disclosing agency. The accounting must include the date, nature, and purpose of each disclosure and the name and address of the person or agency to which the disclosure is made. The accounting must be maintained for five years after the disclosure for which the accounting is required or for the life of the record, whichever is longer. To the extent that this provision of the Privacy Act is applicable to disclosures of PII made under this MOU, each Party will be responsible for compliance.

(9) Each Party is responsible for ensuring that information it discloses was not knowingly obtained or maintained in violation of any law, regulation, court order (including court-ordered procedures or certain other procedures submitted to courts), or policy applicable to the disclosing Party, and that information is only made available to the receiving Party as may be permitted by laws, regulations, court order (including court-ordered procedures or certain other procedures submitted to courts), policies, or procedures applicable to the disclosing Party.

(10) Each Party will immediately report to the other Party each instance in which data received from the other Party is used, disclosed, or accessed in an unauthorized manner (including any data losses or breaches). Further, the Party responsible for the breach will determine whether or not it is appropriate to notify the individuals involved, and do so if required.

(11) Each Party agrees that it will provide appropriate training regarding the responsibilities under this MOU to individuals whose information sharing activities are covered by the provisions of this MOU.

(12) Any violation of or dispute concerning these provisions shall be resolved through the adjudication process in Part 7.

7. ADJUDICATION PROCEDURES. When there are information sharing disagreements between the Parties related to this MOU, the following procedures will be used to resolve the disagreement rapidly:

a. The Parties will make every effort to resolve the disagreement at the lowest level possible, escalating as necessary through their respective organizations to achieve satisfactory resolution.

b. In the event resolution cannot be reached at lower levels, the Parties shall raise the disagreement to the FBI Executive Assistant Director, National Security Branch, and the Assistant Secretary of Defense (Homeland Defense and Americas' Security Affairs). Within 48 hours of receiving notice of the impasse, these individuals shall communicate to resolve the disagreement.

c. Should a resolution not be reached by the FBI Executive Assistant Director, National Security Branch, and the Assistant Secretary of Defense (Homeland Defense and Americas' Security Affairs), the matter is to be referred within ten working days to the Under Secretary of Defense for Policy (in consultation with the Under Secretary of Defense for Intelligence) and the Director, FBI, for decision.

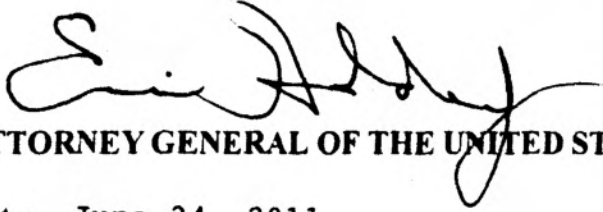
d. Disagreements arising from individual Annexes to this MOU will be governed by adjudication procedures delineated in the specific governing Annex.

8. NEW ANNEXES. DoD Components and FBI elements may enter into new information sharing, operational coordination, or investigative responsibility understandings consistent with their charters and authorities. Prior to signature, these understandings shall be forwarded to the Office of the Under Secretary of Defense for Policy and the FBI National Security Branch for coordination and review for consistency with this MOU, other applicable annexes, and departmental policy. Copies of final signed understandings are to be provided to the Under Secretary of Defense for Policy and the FBI National Security Branch and added as annexes to this MOU.

9. POINTS OF CONTACT. The Parties shall identify their respective points of contact in the Annexes.

10. EFFECTIVE DATE AND TERMINATION. The terms of this MOU become effective on the date on which it is signed by all Parties. Any Party may terminate this MOU upon 30 days written notice to the head of the other Party. All rights, obligations, responsibilities, limitations, and other understandings with respect to the disclosure and use of all information received during a Party's participation in this MOU shall survive any termination or release of a Party. In the event this MOU requires revision, renegotiation, or termination, all annexes will remain in effect unless otherwise agreed to by mutual consent of the Parties.

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ATTORNEY GENERAL OF THE UNITED STATES

Date: June 24, 2011



SECRETARY OF DEFENSE

Date: AUG 2 2011

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