

When is it permissible to identify an American in an intelligence report?

Minimizing, Masking, and Unmasking Identities

Section 702 is a foreign intelligence collection program designed to acquire information from foreign targets. But even though Section 702 only permits targeting non-U.S. persons reasonably believed to be located outside the U.S., information about a U.S. person may be lawfully collected. For example, a foreign Section 702 target may talk about, or communicate with, a U.S. person. If an intelligence professional determines that the U.S. person information within that acquired communication contains no foreign intelligence—such as a Section 702 target just talking about an American pop star—that U.S. person information would not be used or shared with anyone. If, however, the intelligence professional determines that the communication contains foreign intelligence—such as a terrorist planning to assassinate a specific U.S. person—the Intelligence Community (IC) would write a report to share this information so that the appropriate Government personnel have the information needed to thwart the attack and protect the U.S. person. Generally, the identity of a U.S. person may only be included in a report if it is necessary for the recipients of the report to understand the foreign intelligence being transmitted, or if the information is evidence of a crime.

The IC applies minimization procedures to limit the retention and reporting of U.S. person information. As a result, in the vast majority of circumstances, U.S. person information acquired pursuant to Section 702 is not included in intelligence reporting. If a Section 702 target discusses irrelevant information about an American, multiple layers of review ensure that such irrelevant information never makes it into a finished intelligence report. In other instances, the identity of the U.S. person may be theoretically relevant but is unnecessary for the intelligence report. For example, an intelligence report discussing the evolution over the last six months of a foreign cyber hacker's techniques may not need to discuss the specific targets of the hacking activities, American or otherwise. In such cases, the information identifying the hacker's victims is omitted.

Sometimes, however, it is necessary to refer to a U.S. person in an intelligence report. In these cases, one way the IC continues to protect U.S. person privacy is by “masking” the U.S. person's identity. Masking means replacing the identity of the U.S. person with a generic phrase such as “named U.S. person #1.” By masking U.S. persons' identities, the IC can report the intelligence regarding the foreign target while still protecting the U.S. person's privacy. If, and only if, a recipient of that report has a need to know the U.S. person's identity, the recipient can come back to the IC element that wrote the report and explain why they actually need to know the identity. Each request to “unmask” the U.S. person is considered carefully and individually under established procedures to ensure that only those who need to know the U.S. person's identity are provided this information.

For example, an intelligence report may state that “a named U.S. general” had his government accounts compromised by a specific foreign government's cyber actors. The Department of Defense would need to know the identity of the general in order to take steps to mitigate the compromise, and therefore would submit a request to unmask the general's identity. Other government departments and agencies, however, may not need the identity of the general, but rather would only need to know that the foreign government is targeting senior military officials, which would provide them insight into that foreign government's cyber behavior. Accordingly, these other departments and agencies would not submit an unmasking request because “a named U.S. general” is sufficient foreign intelligence for their purposes.

