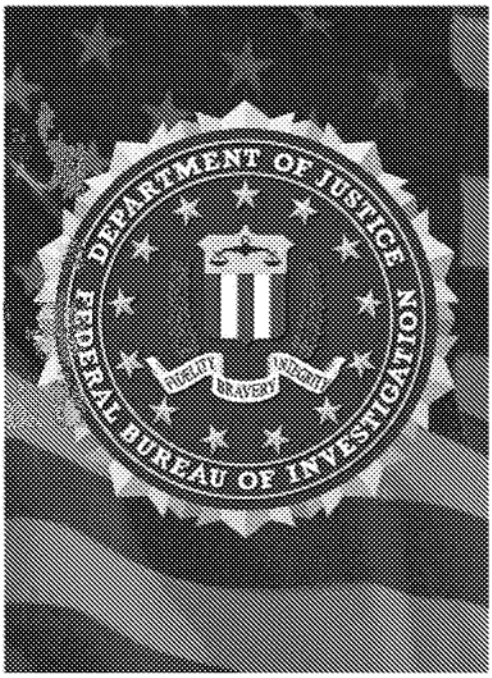
Prepublication Review Policy Guide



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Supersession Information

This document supersedes the *Prepublication Review Policy Guide* (0792PG).

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Revision Log

The revision log documents substantive changes made to the previous version of this policy, the *Prepublication Review Policy Guide*, 0792PG, published on June 4, 2015.

The numbers and titles in the "Revised" column refer to the subsections as they currently appear in this updated policy. "Deleted" subsection numbers refer to those in the previous published version of the policy.

Revised Section Number and Title	Deleted Section Number and Title
1.1 "Background" is now in Section 3	
4.1.2. Extemporaneous Oral Disclosures	
4.1.4. Prohibited Disclosures	
4.2.1. Submission of Prepublication Review Requests	
4.2.4. Submissions Involving Human-Based Research	
4.3.1. IMD Response Time	
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1. Introduction

1.1. Purpose

This policy guide (PG) outlines specific policies and procedures regarding prepublication review and establishes requirements regulating individual conduct.

Under the First Amendment to the United States Constitution, Americans enjoy the right to free speech, which includes a right to publish. However, with regard to public employees, specifically, Federal Bureau of Investigation (FBI) personnel, this right must comport with the FBI's significant law enforcement and national security responsibilities and the FBI's interest in maintaining effective and efficient operations. Accordingly, in matters concerning the use of FBI information, it is necessary for the FBI to protect its information from disclosures that could endanger substantial government interests. This policy sets forth program guidance relating to disclosure of FBI information outside of official use and ensures adequate protections for FBI personnel's constitutionally protected rights as citizens.

1.2. Scope

This PG applies to all FBI personnel.

1.3. Exemptions

There are no exemptions to this PG.

2. Roles and Responsibilities

2.1. Information Management Division (IMD)

IMD is responsible for providing guidance on all prepublication review issues, including those not explicitly covered in this PG.

2.2. IMD Assistant Director (AD)

The IMD AD must:

- Oversee a comprehensive, FBI-wide prepublication review program.
- Serve as the final decision maker on adverse decision appeals, subject to the exceptions in subsection 4.3.2. below.

2.3. Prepublication Review Office, Record/Information Dissemination Section (RIDS), IMD

The Prepublication Review Office must:

- Establish and disseminate policies, procedures, and training relating to the development, coordination, and overall management of the prepublication review program.
- Review and adjudicate prepublication submissions.

2.4. Federal Bureau of Investigation Headquarters (FBIHQ) Division, Field Offices (FO), and Legal Attachés (Legat) Heads

FBIHQ division, FO, and Legat heads, or their designees, must designate subject matter experts (SME) to review prepublication submissions upon request from IMD.

2.5. FBI Personnel

FBI personnel must:

- Comply with prepublication review requirements and with the following agreements:
  - FD 291, "FBI Employment Agreement," signed by all FBI personnel as a condition of employment
  - Analogous forms, such as the FD-868, "Nondisclosure Agreement for Joint Task Force Members, Contractors, Detailees, Assignees, and Interns," signed by task force members, contractors, and the like
  - FD-857, "Sensitive Information Nondisclosure Agreement"
  - Standard Form (SF)-312, "Classified Information Nondisclosure Agreement," signed by all FBI personnel as a condition of being granted access to classified information
  - Form 4414, "Sensitive Compartmented Information Nondisclosure Agreement," signed by all FBI personnel with access to Sensitive Compartmented Information (SCI) information as a condition of this access
- Contact their respective chief division counsel (CDC) or the Office of the General Counsel (OGC), and comply with the *Self-Reporting Requirements Policy Guide* (1037PG), before making any court appearances or responses to subpoenas in a personal

capacity that could require them to divulge FBI information set forth in Title 28 Code of Federal Regulations (CFR) Part 16, Subpart B.

3. Policy Statement

All information created and acquired by current and former FBI personnel in connection with official FBI duties, as well as all official material to which FBI personnel have access, is the property of the United States. FBI personnel must surrender all materials in their possession that contain FBI information upon FBI demand or upon separation from the FBI. Unauthorized disclosure, misuse, or negligent handling of FBI information could adversely affect national security, place human life in jeopardy, result in the denial of due process, obstruct justice, prevent the FBI from effectively discharging its responsibilities, or violate federal law.

Before disclosing FBI information outside of their official duty requirements, FBI personnel must submit the proposed disclosures to the Prepublication Review Office, RIDS, IMD for review. This prepublication review affords the FBI the opportunity to (1) assess whether the proposed disclosure includes prohibited information, (2) advise submitting FBI personnel of any such concerns, and (3) work with the submitter to resolve such concerns.

The legality or propriety of a proposed disclosure will be reviewed during the prepublication review. The FBI prepublication review process does not encompass factual accuracy or grammar checks of the proposed disclosure. Completion of the prepublication review process does not constitute an FBI endorsement of the author or the material disclosed. FBI personnel who fail to comply with the prepublication review process or who make prohibited disclosures are subject to administrative actions, clearance revocations, disciplinary actions, civil suits, and/or criminal sanctions, as appropriate.

Compliance with this PG does not relieve FBI personnel from the obligation to comply with FBI outside employment rules or 5 CFR Part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch), including any applicable limitations on compensation. It is FBI personnel's obligation to seek guidance from IMD and the Office of Integrity and Compliance (OIC) on all prepublication review issues not explicitly covered in this section.

All provisions of this PG are severable. If a court should determine that any provision is unenforceable, that provision would be void, but the remainder would continue in full force.

4. Processes and Procedures

4.1. Scope of Prepublication

4.1.1. Oral, Written, or Electronic Disclosures

This policy applies to any public disclosure by FBI personnel, including oral, written, or electronic, of any information identified in subsection 4.1.4. of this PG. Methods of disclosure include, but are not limited to, résumés, blogs, Web sites, articles, and books. This PG also applies to disclosures of drafts, initial manuscripts, and similar preliminary works to anyone, including non-FBI attorneys, ghost writers, co-authors, and publishers. The only exception to this rule is for disclosures by FBI personnel who are testifying as defendants in criminal cases in the United States. In that limited situation, this policy does not cover disclosures made during testimony or during privileged conversations between FBI personnel and their attorneys.

FBI personnel who wish to make court appearances or respond to subpoenas in their personal capacities, which could require them to divulge FBI information, should contact their CDCs or the OGC for additional guidance. Disclosure of Department of Justice (DOJ)/FBI information in federal or state proceedings is subject to the provisions of 28 CFR Part 16, Subpart B.

4.1.2. Extemporaneous Oral Disclosures

Advance review of contemporaneous oral disclosures in general cannot be done; however, this does not mean that FBI personnel may disregard the requirements of review when making planned oral disclosures. At a minimum, FBI personnel must provide outlines of their presentations. Except in those rare instances in which deferring comment would not be practicable due to unusually compelling circumstances beyond an individual's control, FBI personnel must defer comment until they can comply with this policy by providing an outline prior to public disclosure. If an individual makes a disclosure without the appropriate review, he or she may be subject to post-disclosure administrative action, clearance revocation, disciplinary action, civil suits, and/or criminal sanctions, if warranted by the content of the disclosure.

4.1.3. Disclosures Not Subject to Prepublication Policy

Official speeches, writings, presentations, and publications made in the performance of official duties are outside the scope of this PG. Personnel should consult the *Public Affairs Policy Guide: Media Relations, External Communications, and Personal Use of Social Media* (1002PG) for guidance.

Disclosures that clearly have nothing to do with the FBI or its activities, investigations, missions, or operations and are not otherwise related to any FBI information are not subject to this PG.

Disclosures protected by law include disclosures to Congress (including by members of the military) regarding illegality, waste, fraud, abuse, mismanagement, public health or safety threats that could expose confidential government agents or compromise national security (see Section 5).

4.1.4. Prohibited Disclosures

FBI personnel who fail to comply with the prepublication review process or who make prohibited disclosures are subject to administrative actions, clearance revocations, disciplinary

actions, civil suits, and/or criminal sanctions, as appropriate. FBI personnel must not disclose to unauthorized recipients:

- Information protected from disclosure by the Privacy Act of 1974, as amended.
- Classified information, the disclosure of which could harm national security. To the extent that proposed disclosures involve classified information, prepublication review processing will be conducted in conformance with 28 CFR § 17.18, in addition to 28 CFR Part 16.
- Information that reveals sensitive law enforcement, intelligence, counterintelligence, or counterterrorism techniques, sources, or methods of the FBI or any other governmental entity.
- Information that would reveal grand jury material protected from disclosure by Rule 6(e) of the Federal Rules of Criminal Procedure (FRCP).
- Information that would tend to reveal the identity of a confidential human source (CHS) or the identity of a private institution or a government agency or authority when the information was furnished on a confidential basis.
- Information that relates to any sensitive operational details or the substantive merits of any ongoing or open investigation or case.
- Proprietary information and trade secrets.
- Information pertaining to wiretaps or intercepts, electronic communications (including storage mechanisms), or foreign intelligence protected or regulated by Title III (Title 18 United States Code [U.S.C.] §§ 2510-2520) or the Foreign Intelligence Surveillance Act (FISA) (50 U.S.C. §§ 1801-1862).
- Information pertaining to currency transaction reports regulated or protected by 31 U.S.C. §§ 5313-5319.
- Tax return information regulated or protected by 26 U.S.C. § 6103.
- Information pertaining to contractor bids or proposals or source-selection information before the award of the procurement contract to which the information relates.
- Any other information that is prohibited by executive order (EO), law, statute, or regulation.
- Any other information that the FBI would have discretion to withhold from disclosure pursuant to civil discovery obligations, court orders, the Freedom of Information Act (FOIA), or any other statute, law, or regulation.

4.1.5. Accountability for Permitted Disclosures

Disclosures will not be prohibited, pursuant to this PG, solely because they are critical or disparaging of the FBI, the government, or any individual. Any disclosures by current FBI personnel, however, that adversely affect the ability to effectively and efficiently fulfill their official responsibilities or that interfere with FBI operations may subject the individuals to administrative or disciplinary actions for the consequences of the disclosures. Examples of

disclosures that are not prohibited under this PG, but still may subject FBI personnel to disciplinary actions, are the disclosures of private grievances and disclosures that significantly impair discipline or harmony among coworkers. These types of disclosures could have detrimental effects on close working relationships where personal loyalty or confidence is necessary, impede the performance of the duties of FBI personnel, or interfere with regular FBI operations. In such cases, FBI personnel will not be prohibited from making such disclosures, but they may be held accountable for the consequences of the disclosures. This subsection does not apply to disclosures not subject to the prepublication review policy (see subsection 4.1.3.).

FBI personnel may ordinarily speak or write about matters unrelated to their employment if they are expressing their personal views. However, when expressing such views to an audience that is aware of an individual's FBI employment, FBI personnel must make clear that they are stating their personal opinions, not the opinions of the FBI, and not their official opinions as FBI employees, contractors, or other members of FBI personnel.

Certain matters of significant public concern are so closely related to the responsibilities and missions of the FBI that there is a significant likelihood that any comments on such matters by FBI personnel will be perceived as reflecting an individual's official view in his or her official capacity with the FBI. Therefore, when communicating on matters closely related to the responsibilities, missions, or operations of the FBI, FBI personnel must make absolutely clear that they are expressing their personal opinions. Further, certain personnel may be precluded from publicly communicating their personal opinions on particular matters. For example, it may be inappropriate for a senior FBI official to publicly express his or her personal view regarding matters within the jurisdiction of the FBI. This is because others are likely to perceive the personal views of a senior management employee possessing substantial policy-making authority as indistinguishable from his or her official position as a senior FBI manager.

4.2. Administration and Management of Prepublication

4.2.1. Submission of Prepublication Review Requests

In general, FBI personnel must submit to IMD the full text of all proposed disclosures containing FBI information at least 30 working days in advance of the proposed disclosure. Prepublication review submissions must be made in writing, even if oral disclosure is contemplated. FBI personnel must first submit prepublication requests to their supervisors or the relevant SMEs prior to submitting them to IMD. Approval from the individual's supervisor or SME must be submitted to IMD with the prepublication request. FBI personnel should consult the Prepublication Review Office BUNET page for additional guidance. Material should be submitted either by unclassified e-mail at FBIPREPUB@fbi.gov or by mail addressed to the Prepublication Review Office, Information Management Division, 170 Marcel Drive, Winchester, VA 22602-4842 [redacted] b7E

4.2.2. Submissions That Contain Operational or Intelligence Matters

Submissions that contain operational or intelligence matters by nature require review outside the prepublication review office. Accordingly, submitters should not expect proposed disclosures of such material to be reviewed within 30 working days. Although IMD will endeavor to review materials in a timely manner, the prepublication review requirement will not be satisfied until reviews are complete and FBI personnel have been notified.

4.2.3. Submissions Developed in Pursuit of Academic Degrees

During their FBI employment, FBI personnel occasionally elect to pursue academic degrees that require them to conduct research-based studies, write thesis papers, or create other projects as part of their educational pursuits. To the extent that information contained in an education-related product is the type of FBI information prohibited from disclosure under subsection 4.1.4., that document constitutes an oral, written, or electronic disclosure within the scope of this PG and must be submitted for prepublication review. Because of the nature of academic studies and the deadlines often associated with completing academic work, FBI personnel are highly advised to submit, in accordance with subsection 4.2.1., any abstracts that describe, in sufficient detail, the scope of work to be completed in order to secure preliminary approval of the desired submission's subject, as well as information reasonably foreseen to be contained in any resulting publication. Upon the FBI personnel member's finalization of the submission, he or she must submit the document for final review and approval via the prepublication review process.

4.2.4. Submissions Involving Human-Based Research

FBI personnel seeking publication based on research conducted on human subjects are required to receive approval by the FBI Institutional Review Board [for Human Subject Research] (IRB) prior to conducting the research or submitting any publications for review to IMD. The IRB is responsible for the prior review of all research projects that are conducted or supported by the FBI and that involve human subjects and are not otherwise exempt. Research involves human subjects under FBI regulations even if it only includes the use of nonpublic information about living human beings. For an overview of the IRB, see the "Overview of the Institutional Review Board."

The IRB may approve the project, reject the project, or require modifications in order for the project to be approved. Approved projects involving human-based research are subject to continuing review by the IRB at least once per year. If the IRB determines that an approved project has failed to meet the yearly continued review requirement in a timely manner, has not been conducted in accordance with its requirements, or has resulted in unexpected, serious harm to the subjects, the project may be suspended. IMD will not review any publication that has failed to receive initial IRB approval or any subsequent requisite IRB approvals.

4.3. Information Management Division Prepublication Review

IMD must conduct the prepublication review, answer questions from FBI personnel about the prepublication review process, and review and process all requests as follows:

- IMD may consult or coordinate with FBI personnel who can assist in determining how to proceed with the prepublication review process. This may include seeking assistance to assess the content or potential impact of the proposed disclosure or to initiate appropriate responses to the proposed disclosure. In such instances, the proposed disclosure will be forwarded to the FBIHQ division(s) that has subject matter expertise concerning the proposed disclosure. FBIHQ division heads must designate points of contact (POC) for prepublication review coordination.
- IMD may consult with other government agencies (OGA) as needed.

- IMD should inform the Office of Congressional Affairs (OCA) and the Office of Public Affairs (OPA) of the likely publication so that OCA and OPA may be prepared for subsequent congressional or press inquiries.
- If the proposed disclosure includes material that IMD finds cannot be disclosed, IMD must notify the submitter and propose modifications that would make the material acceptable. IMD must work with the individual and attempt to resolve all concerns.

4.3.1. Information Management Division Response Time

IMD will respond substantively to prepublication review requests within 30 working days from receipt of the written requests, per 28 CFR § 17.18. Additional time may be necessary for outside consultations with specific FBI sections and OGAs, as well as for sensitive, large, or technical submissions. If the review requires additional time, IMD will provide periodic progress reports.

4.3.2. Appealing an Adverse Decision

FBI personnel who receive adverse decisions may appeal those decisions to IMD's AD, who will act pursuant to a delegation of authority from the Director and process the appeals within 15 working days of receipt. The decision of IMD's AD is final, with the exception of decisions relating to the deletion of classified information, which may be appealed to the deputy Attorney General (DAG) pursuant to 28 CFR § 17.18(j)(3).

4.3.3. Post-Disclosure Reviews

Actual disclosures are subject to post-disclosure reviews. As set forth in subsection 4.1.5., an individual may be subject to a post-disclosure administrative or disciplinary action if the disclosure adversely affects the ability of other FBI personnel to effectively and efficiently fulfill their official responsibilities (including disclosures of private grievances or information that impairs discipline or harmony among coworkers) and thus has a detrimental effect on the work environment, impedes the performance of FBI personnel's duties, or interferes with the regular operations of the FBI.

5. Authorities

The following legal summaries pertain to the authorities cited in this PG and provide additional information for understanding the policies and procedures set forth in this PG.

- 28 CFR § 17.18 (Prepublication Review) (Includes provisions governing appeals of prepublication decisions. See subsection 4.3.2.)
- 5 CFR Parts 2635 (Standards of Ethical Conduct for Employees of the Executive Branch)
- 5 CFR Part 3801 (Supplemental Standards of Ethical Conduct for Employees of the Department of Justice)

The following legal authorities provide guidance with respect to certain prohibited disclosures (see subsection 4.1.4.):

- 5 U.S.C. § 552a (Privacy Act of 1974)
- Federal Rules of Criminal Procedure Rule 6(e)
- 18 U.S.C. §§ 2510-2520 (Wire and electronic communications interception and interception of oral communications) and 50 U.S.C. §§ 1801-1862 (FISA)
- 31 U.S.C. §§ 5313-5319 (Reports on domestic coins and currency transactions)
- 26 U.S.C. § 6103 (Confidentiality and disclosure of returns and return information)
- Any other information that the FBI would have discretion to withhold from disclosure pursuant to civil discovery obligations, the Freedom of Information Act (5 U.S.C. § 552), EO 13526 (Classification of National Security Information), or any other statute, law, or regulation.

Disclosures protected by law (see subsection 4.1.3.) include the following:

- 5 U.S.C. § 7211 (governing disclosures to Congress)
- 10 U.S.C. § 1034, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military)
- 5 U.S.C. § 2302(b)(8), as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse, or public health or safety threats)
- 5 U.S.C. § 2303 and 28 CFR Part 27, the FBI Whistleblower Protection Act (governing disclosures of illegality, mismanagement, waste, fraud, abuse, or public health or safety threats)
- 50 U.S.C. § 421, et seq., the Intelligence Identities Protection Act of 1982 (governing disclosures that could expose confidential government agents)
- 18 U.S.C. §§ 641, 793, 794, 798, and 952 and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. § 783(b)) (statutes that protect against disclosure that may compromise national security)

6. Recordkeeping Requirements

The prepublication review files contain a copy of the proposed publication (e.g., manuscript, article, or pamphlet); correspondence between the prepublication review staff and SMEs; notes; and correspondence with the author, including objections to the release of certain information and/or requests to modify portions of the publication.

The prepublication review files are uploaded in Sentinel into a designated case file. A new case file is opened each year.

Appendix A: References

Applicable Policies and Other Guidance:

- *FBI Seal Name Initials and Special Agent Gold Badge Policy Directive* (0625D)
- *Work Schedule Directive and Policy Guide* (0576DPG)
- *FBI Ethics and Integrity Program Policy Directive and Policy Guide* (0754DPG)
- *Safeguarding Classified National Security Information Directive and Policy Guide* (0632DPG)

Applicable Forms:

- FD-291, "FBI Employment Agreement"
- FD-868, "Nondisclosure Agreement for Joint Task Force Members, Contractors, Detailees, Assignees, and Interns"
- FD-857, "Sensitive Information Nondisclosure Agreement"
- SF-312, "Classified Information Nondisclosure Agreement"
- Form 4414, "Sensitive Compartmented Information Nondisclosure Agreement"

Appendix B: Definitions and Acronyms

Definitions

Assignee: any person assigned a task with FBI-related material.

FBI employee: for the purposes of this policy, a full-time equivalent employee of the FBI who is authorized to represent the Bureau in matters involving official government business.

FBI information: any knowledge gained through FBI employment or assignments related to the FBI.

FBI personnel: individuals employed by, detailed, or assigned to the FBI, including task force officers, members, and participants; members of the armed forces; experts and consultants to the FBI; industrial and commercial contractors, licensees, certificate holders, or grantees of the FBI, including all subcontractors; personal service contractors of the FBI; and any other category or person who acts for or on behalf of the FBI, as determined by the FBI Director.

Government contractor employee: an employee of a contractor organization conducting business with the FBI, the DOJ, or an OGA.

Intern: a person working for the FBI under special appointment.

Prepublication review: the process whereby FBI-related information is reviewed for potential approval for distribution to external sources.

Prohibited disclosure: specific information that is not releasable to external sources.

Proposed disclosure: FBI-related information for possible release to external sources.

Task force officer: see the *Domestic Investigations and Operations Guide* (DIOG), subsection 3.3.2.1.

Task force member: see DIOG subsection 3.3.2.2.

Task force participant: see DIOG subsection 3.3.2.3.

Unauthorized recipient: any person without appropriate clearance to review FBI-related information.

(U) Acronyms

AD	assistant director
CDC	chief division counsel
CFR	Code of Federal Regulations
CHS	confidential human source
DAG	deputy Attorney General
DIOG	*Domestic Investigations and Operations Guide*

DOJ	Department of Justice
EO	executive order
FBI	Federal Bureau of Investigation
FBIHQ	Federal Bureau of Investigation Headquarters
FISA	Foreign Intelligence Surveillance Act
FO	field office
FOIA	Freedom of Information Act
FRCP	Federal Rules of Criminal Procedure
IMD	Information Management Division
IRB	Institutional Review Board
Legat	legal attaché
OCA	Office of Congressional Affairs
OGA	other government agency
OGC	Office of the General Counsel
OIC	Office of Integrity and Compliance
OPA	Office of Public Affairs
PG	policy guide
POC	point of contact
RIDS	Record/Information Dissemination Section
SCI	Sensitive Compartmented Information
SF	standard form
SME	subject matter expert
U.S.C.	United States Code