

# 2009 Information Sharing Issues (2)

Intelligence

**Author:**

Stephen G Serrao

**Date**

December 2009

---

## Debate Surrounds 28CFR23's Proposed Changes – Part 2

*By Captain Stephen G. Serrao, New Jersey State Police (retired)*

*In the previous article, we explored the first and most significant proposed change to Part 28 Section 23 of the Code of Federal Regulations, which contains guidelines for intelligence management system operating policies. The proposed change would lengthen the retention period for which criminal and counter-terrorism intelligence can be kept.*

*Now, let's look at the other two major revisions proposed to 28CFR23 by the Department of Justice. The second major change is the manner in which agencies can disseminate information cross-jurisdictionally.*

Currently, law enforcement adheres to a two-part dissemination test. All information sharing must be based on the evaluation of the recipients' right to know and need to know the information. Only those agencies establishing both can receive intelligence across jurisdictional lines.

This two-pronged test has led to problems in the past: The right to know information is established by the law enforcement officers' employment within a criminal justice agency. However, their "need to know" is evaluated in a very subjective manner which can prevent appropriate disseminations from occurring due to agency rivalry or other non-relevant factors.

The revised code would eliminate "right to know" and "need to know" language, and instead make the dissemination of information and intelligence permissible based on its usefulness. Eliminating the two-part test should enable agencies to more easily obtain information from other agencies across jurisdictional lines.

The third proposed revision involves the deletion of a single word: "imminent."

The current code permits the sharing of information and intelligence to non-law enforcement personnel in cases of a "threat of imminent harm or danger" to people or property. For instance, if intelligence was received pointing to an immediate threat of a bomb at a subway station, police could reveal that data to the civilian operators of the subway system for appropriate action in safeguarding the public.

As proposed, the new code would eliminate the word "imminent" and allow the transfer of information and intelligence upon any hint of harm or danger.

Proponents say removing the word "imminent" will allow information to flow more freely to those "trusted partners" who share in the responsibility for insuring the public's safety, yet who are not law enforcement personnel.

Privacy groups oppose this; they believe this gives agencies the ability to share information anytime, anywhere on potentially innocent people with non-law enforcement entities.

In the final analysis, the necessity of the proper collection, assessment, sharing, and optimal processing of criminal and counter-terrorism intelligence cannot be underestimated.

***Captain Stephen G. Serrao is Director of Product Management, Americas Region, for Memex, Inc., the leading worldwide provider of intelligence management, data integration, and analysis solutions ([www.memex.com](http://www.memex.com)). Serrao can be reached at [steve.serrao@memex.com](mailto:steve.serrao@memex.com).***

## Contact Us

### Memex Technologies Ltd and Memex, Inc

#### UK and International

Memex Technology Ltd  
2 Redwood Court  
Peel Park  
East Kilbride G74 5PF  
Scotland  
**Telephone:** +44 (0)1355 233804  
**Fax:** +44 (0)1355 239676

#### America

Memex, Inc.  
22636 Davis Drive, Suite 130  
Sterling, VA 20164, USA  
Telephone: +1 703 556 4031  
Toll Free: +1 866 MEMEXUS  
Fax: +1 703 556 4282

#### Copyright ©

*No part of the contents of this publication may be reproduced or transmitted in any form or by any means without the written permission of Memex.*

### More Information

For the latest information about our product and services, please visit

***<http://www.memex.com>***