MEMORANDUM

Date: 4/3/2015

Subj: TWITTER PUBLIC TWEETS

Question: Is a Twitter public Tweet considered public information?

Answer: Yes, it's reasonable to assume that public Tweets are public information available for viewing based on highlighted portions of Twitter Privacy Policy and recent judicial determinations.

However, use, beyond viewing, of public Tweets for NPS research must be undertaken in accordance with law and any terms and conditions associated with access. For example, if the researcher is collecting public Tweets through a Twitter user account, the use must be in accordance with Twitter Terms of Service, and law. This is further explained in the section below, “Use of Twitter Account.” Use of Tweets for research purposes may also require additional safeguards. NPS researchers using a Twitter account for research, should also consult with the Privacy Act Subject Matter Expert (SME) regarding data collected, and the Senior Intelligence Officer (SIO) to ensure the observation or collection effort would not be considered intelligence gathering.

Background:

Under the Twitter Privacy Policy, if a user selects a “public” profile setting, the user is agreeing to allow their Tweets to become publicly disseminated in accordance with the Twitter Privacy Policy and the Twitter Terms of Service.

The Twitter Privacy Policy states in part:

(i) “Our Services are primarily designed to help you share information with the world. Most of the information you provide us is information you are asking us to make public. This includes not only the messages you Tweet and the metadata provided with Tweets, such as when you Tweeted, but also the lists you create, the people you follow, the Tweets you mark as favorites or Retweet, and many other bits of information that result from your use of the Services.”

(ii) “Our Services broadly and instantly disseminate your public information to a wide range of users, customers, and services. For instance, your public user profile information and public Tweets are immediately delivered via SMA and our APIs to our partners and other third parties, including search engines, developers, and publishers that integrate Twitter content into their services, and institutions such as university and public health agencies that analyze the information for trends and insights. When you share information or content like photos, videos, and links via the services, you should think carefully about what you are making public.”

(iii) “What you say on Twitter may be viewed all around the world instantly.”

(iv) “When using any of our Services you consent to the collection, transfer, manipulation, storage, disclosure and other uses of your information as described in this Privacy Policy.”
The Twitter Terms of Service states in part:

(i) “This license is you authorizing us to make your Tweets available to the rest of the world and to let others do the same.”

(ii) “You are responsible for your use of the Services, for any Content you post to the Services, and for any consequences thereof. The Content you submit, post, or display will be able to be viewed (emphasis added) by other users of the Services and through third party services and websites….You should only provide Content that you are comfortable sharing with others under these Terms.”

(iii) “What you say on Twitter may be viewed (emphasis added) all around the world instantly. You are what you Tweet!”

Separate from Twitter’s Privacy Policy and Terms of Service, various court opinions hold that there is no reasonable expectation of privacy for public Tweets:

(i) “There is no reasonable expectation of privacy for tweets that the user has made public.” Decision and Order in People of the State of New York v. Malcolm Harris, Docket No. 2011NP00152 (N.Y. Crim Ct. June 30, 2012)


USE OF TWITTER ACCOUNT: Research use of public Tweets, beyond viewing, must be undertaken in accordance with law and any terms and conditions associated with access.

If the NPS researcher has a Twitter account and is accessing the account as a subscribed user of Twitter to collect the public Tweets, then the NPS researcher has agreed to use Twitter in accordance with the Twitter Privacy Policy and Twitter Terms of Service.

The Twitter Terms of Service outline specific permissions and prohibitions as highlighted below. If the NPS researcher is accessing, searching, and collecting public Tweets in a permitted manner utilizing the Twitter API and Twitter published interfaces and/or the Twitter robots.txt file, the NPS researcher is bound by those terms and conditions. If the NPS researcher is accessing, searching and collecting public Tweets in a manner that is not specifically permitted or is prohibited by the Twitter Terms of Service, the NPS researcher will need to obtain the express prior consent of Twitter as outlined in the Twitter Terms of Service, i.e., express permission to access, search, and collect the public Tweets using the researcher’s proposed method(s). See highlighted portions of the Terms of Service below.

Background:

The Twitter Terms of Service states in part:
(i) “You may use the Services only if you can form a binding contract with Twitter and are not a person barred from receiving services under the laws of the United States or other applicable jurisdiction. If you are accepting these Terms and using the Services on behalf of a company organization, government, or other legal entity, you represent and warrant that you are authorized to do so. You may use the Services only in compliance with the Terms and all applicable local, state, national, and international laws, rules and regulations.”

(ii) “Except as permitted through the Services, these Terms, or the terms provided on dev.twitter.com, you have to use the Twitter API if you want to reproduce, modify, create derivative works, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the Content or Services.”

(iii) “We encourage and permit broad re-use of Content. The Twitter API exists to enable this.”

(iv) “You may not do any of the following while accessing or using the Services:...(iii) access or search or attempt to access or search the services by any means (automated or otherwise) other than through our currently available, published interfaces that are provided by Twitter (and only pursuant to those terms and conditions), unless you have been specifically allowed to do so in a separate agreement with Twitter (NOTE: crawling the Services is permissible if done in accordance with the provisions of the robots.txt file however scraping the Services without the prior consent of Twitter is expressly prohibited....”

Conclusion: Public Tweets may reasonably be assumed to be public information. However NPS research using Tweets must be conducted in accordance with Twitter Terms of Service and law. Additional safeguards may be necessary and identified SMEs contacted.