Policy and Oversight Report

General Crimes Directorate

Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements

Report Number PO 97-003 January 28, 1997

Office of the Inspector General
Department of Defense

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Acronyms

AFOSI	Air Force Office of Special Investigations
CFR	Code of Federal Regulations
CPM	Criminal Investigations Policy Memorandum
DCIO	Defense Criminal Investigative Organization
DOJ	Department of Justice
FBI	Federal Bureau of Investigation
HQMC	Headquarters, U. S. Marine Corps
IG	Inspector General
Marine Corps CID	Marine Corps Criminal Investigation Division
MCIO	Military Criminal Investigative Organization
NCIS	Naval Criminal Investigative Service
SJA	Staff Judge Advocate
UCMJ	Uniform Code of Military Justice
USACIDC	U. S. Army Criminal Investigation Command

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

January 28, 1997

MEMORANDUM FOR ASSISTANT SECRETARY OF THE NAVY (FINANCIAL MANAGEMENT AND COMPTROLLER)
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT AND COMPTROLLER)
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Evaluation Report on Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements (Report No. 97-003)

We are providing this evaluation report for review and comment. We performed the evaluation in response to a congressional requirement. We considered management comments on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all evaluation recommendations be resolved promptly. Some Defense Agencies did not respond. The Navy comments are not fully responsive. Therefore, we request the Navy and those Defense Agencies identified in the Executive Summary who did not respond provide a response and final comments on unresolved issues by April 11, 1997.

We appreciate the courtesies extended to our review team. Questions on the evaluation should be directed to Ms. Phyllis M. Brown, Evaluator, at (703) 604-8816 (DSN 664-8816) or Ms. Laura L. Carney, Evaluator, at (703) 604-8818 (DSN 664-8818). See Appendix F for the report distribution. The evaluation team members are listed inside the back cover.

Russell A. Rau
Assistant Inspector General
Policy and Oversight

Office of the Inspector General, DoD

Report No. 96-003
(Project No. 6OF-9040)

January 28, 1997

Evaluation of Compliance With DoD Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements

Executive Summary

Introduction. This evaluation was performed as a result of a requirement in the "National Defense Authorization Act for Fiscal Year 1996." The Secretary of Defense was directed to provide a report to Congress on the consistency with which fingerprint cards and final dispositions are reported by the Defense Criminal Investigative Organizations (DCIOs)[1] to the Federal Bureau of Investigation (FBI) for inclusion in the Bureau's criminal history identification files.

Evaluation Objectives. The primary objective was to evaluate whether the DCIOs are reporting criminal history data to the FBI in compliance with DoD Criminal Investigations Policy Memorandum Number 10 (CPM No. 10), Criminal History Data Reporting Requirements, March 25, 1987. The Defense Criminal Investigation Service (DCIS) was not included in the evaluation because Service members committing offenses reportable to the FBI are in most cases under the jurisdiction of the Military Criminal Investigative Organizations (MCIOs)[2]. Fingerprint submission within the DCIS is limited because most cases involve fraud and white-collar-type crimes. In these types of cases, the U.S. Marshal's Office usually does the fingerprinting and submitting of the final disposition report. Another objective was to evaluate whether or not other law enforcement activities[3] of the Services collect and report information to the FBI and, if not, determine whether they should be reporting.

Evaluation Results. The MCIOs are not consistently submitting criminal history data to the FBI criminal history files. Based on the results of statistical sampling, the Army failed to send FD-249, Suspect Fingerprint Card, to the FBI in approximately 82 percent of its cases; the Navy 83 percent; and the Air Force 38 percent. Failure to submit the R-84, Final Disposition Report, in the Army was 79 percent; the Navy 94 percent; and the Air Force 50 percent. In addition to the MCIOs investigating offenses described in CPM No. 10, other Service law enforcement organizations conduct investigations described in CPM No. 10 and do not consistently report that data.

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[1]The DCIOs are the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the Air Force Office of Special Investigations, and the Defense Criminal Investigative Service (DCIS). The DCIS is the criminal investigative arm of the Inspector General, DoD.
[2]The MCIOs are the U.S. Army Criminal Investigation Command; the Air Force Office of Special Investigations; and the Naval Criminal Investigative Service, which services the Navy and the Marine Corps. The MCIOs are responsible for investigating most major crime in the Military Departments, including general crime and fraud.
[3]Other law enforcement activities include Army Military Police, Air Force and Navy Security Police, and Marine Corps Criminal Investigation Division.

As a result, the lack of reporting to the FBI criminal history files prevents civilian law enforcement agencies from having significant information on military offenders. The evaluation identified two conditions warranting management action.

o DoD CPM No. 10 lacks adequate policy and implementing instructions, and the MCIOs have placed little emphasis on reporting to the FBI criminal history database. Further, oversight with follow-up and validation has not occurred (Finding A).

o Other Service law enforcement organizations conduct criminal investigations that fall under DoD CPM No. 10 reporting criteria. These organizations have no policy or implementing procedures for reporting into the FBI Criminal History Data Files except the Marine Corps Criminal Investigation Division, which implemented an interim policy in January 1996 (Finding B).

Recognizing the high level of noncompliance and the need for other law enforcement organizations to report, this office issued a memorandum to the Secretaries of the Military Departments and the Directors of Department of Defense Agencies recommending suggested reporting procedures while this office develops and issues a new DoD Instruction. The new DoD Instruction will be applicable to all DoD law enforcement organizations conducting investigations meeting requirements for criminal history data reporting.

Summary of Recommendations. We recommend that the Military Departments and Defense Agencies law enforcement organizations investigating serious offenses as described in CPM No. 10 develop interim policies and implementing procedures for reporting to the FBI criminal history data files while awaiting a new DoD Instruction.

Management Comments. The Army and Air Force concurred with Finding A and the recommendation. The Army stated that policy guidance will be established requiring submission of the FD-249 and the R-84 within 10 working days of a triggering event. The Air Force agreed to use the procedural guidance issued in the Inspector General, DoD, memorandum, November 14, 1996, until a new DoD Instruction is developed. The Navy nonconcurred with Finding A and the recommendation, stating that submission numbers for reporting purposes could not be accurately ascertained because of the FBI backlog and the potential for cards being rejected when plain language is used for reporting purposes. Navy also stated that Navy policy adequately addresses procedures for submission and disposition purposes. The Army, Navy, and Air Force concurred with Finding B and the recommendation and agreed to develop procedures for their law enforcement organizations for reporting purposes. A summary of management comments is at the end of each finding. The text of the Army, Navy, and Air Force comments is in Part III.

Concurrences, no comments, negatives, or statements stating that investigations are referred to the cognizant MCIO for action and adjudication were received from Defense Advanced Research Projects Agency, Defense Commissary Agency, Defense Investigative Service, Defense Logistics Agency, Defense Special Weapons Agency, Defense Security Assistance Agency, and the National Security Agency. The Defense Protective Service, Washington Headquarters Services, responded stating it conducts investigations and reports to the FBI Criminal History Data files. Responses were not received from the Directors of the Ballistic Missile Defense Organization, Defense Contract Audit Agency, Defense Finance and Accounting Service, Defense Intelligence Agency, Defense Legal Services Agency, National Imagery and Mapping Agency, National Reconnaissance Office, and the On Site Inspection Agency.

Evaluation Response. The Navy comments to Finding A are not responsive. The Act required a survey for a 24-month period. To ensure having accurate FBI data, our scope was limited to cover an 18-month period without backlog, beginning with 1994. Although Navy policy provides procedures for reporting requirements, the high level of noncompliance indicates procedures were not followed and follow-up and validation did not occur. We request the Navy and the Directors of the Defense Agencies listed in the Management Comments who did not respond to the draft report provide comments to the final report by April 11, 1997.

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Part I - Evaluation Results

Evaluation Background

This evaluation was performed to satisfy a requirement in Public Law 104-106, "National Defense Authorization Act for Fiscal Year 1996" (the Authorization Act). Section, 555, "Report on the Consistency of Reporting of Fingerprint Cards and Final Disposition Forms to the FBI," states:

> (a) REPORT.--The Secretary of Defense shall submit to Congress a Report on the consistency with which fingerprint cards and final disposition forms, as described in Criminal Investigations Policy Memorandum 10 issued by the Defense Inspector General on March 25, 1987, are reported by the Defense Criminal Investigative Organizations to the Federal Bureau of Investigation for inclusion in the Bureau's Criminal history identification files. The report shall be prepared in consultation with the Director of the Federal Bureau of Investigation.
>
> (b) MATTERS TO BE INCLUDED.--In the report, the Secretary shall--
>
> (1) survey fingerprint cards and final disposition forms filled out in the past 24 months by each investigative organization;
>
> (2) compare the fingerprint cards and final disposition forms filled out to all judicial and nonjudicial procedures initiated as a result of actions taken by each investigative service in the past 24 months;
>
> (3) account for any discrepancies between the forms filled out and the judicial and nonjudicial procedures initiated;
>
> (4) compare the fingerprint cards and final disposition forms filled out with the information held by the Federal Bureau of Investigation criminal history identification files;
>
> (5) identify any weaknesses in the collection of fingerprint cards and final disposition forms and in the reporting of that information to the Federal Bureau of Investigation; and
>
> (6) determine whether or not other law enforcement activities of the military services collect and report such information or, if not, should collect and report such information.
>
> (c) SUBMISSION OF REPORT.--The report shall be submitted not later than one year after the date of the enactment of this Act.

United States Code, title 28, section 534, states the Attorney General shall "acquire, collect, classify and preserve" criminal history information and shall "exchange such records and information" with other law enforcement officials. The Criminal Information Services Division, Federal Bureau of Investigation, is designated for compiling and disseminating criminal history record information.

Procedures for reporting criminal history record information are delineated in the Code of Federal Regulations (CFR), at 28 CFR 20.30 et. seq. Agencies use two forms to submit information to the Criminal Information Services Division: FBI Form FD-249, Suspect Fingerprint Card (FD-249), and FBI/Department of Justice Form R-84, Final Disposition Report (R-84).

On March 25, 1987, the Deputy Inspector General, Department of Defense, issued Criminal Investigations Policy Memorandum Number 10 (CPM No. 10), Criminal History Data Reporting Requirements. This memorandum establishes the policies and procedures under which the Defense Criminal Investigative Organizations (DCIOs) within the DoD report offender criminal history data to the Federal Bureau of Investigation (FBI). The memorandum requires that DCIOs submit offender criminal history data to the FBI on all Service members they investigate for commission of any offenses listed in Enclosure 1 of the memorandum (See Appendix B) and who are the subjects of any resultant judicial or nonjudicial military proceeding. Reporting is accomplished through submission of the FD-249 and R-84.

Evaluation Objectives

The overall objective was to evaluate whether the DCIOs were reporting criminal history data to the FBI in compliance with CPM No. 10. Another objective was to evaluate whether or not other law enforcement activities of the Services collect and report information to the FBI and, if not, whether they should be reporting. Appendix A discusses the evaluation scope and methodology, sampling methodology, and summarizes prior coverage related to the Air Force evaluation of missing records that includes reporting criminal history data to the FBI. Results of matters to be included in the report are discussed in Appendix D.

Finding A. Compliance With Requirements for Submission of Fingerprint Cards and Final Disposition Reports

The Military Criminal Investigative Organizations (MCIOs) are not consistently submitting FD-249, Suspect Fingerprint Card, and FBI/DOJ Form R-84, Final Disposition Report, to the FBI criminal history data files. The Army failed to send FD-249s to the FBI in 82.1 percent of its cases; the Navy in 83.3 percent, and the Air Force in 38.3 percent. Failure to submit the R-84 in Army cases was 78.7 percent; in Navy cases 94 percent; and in Air Force cases 50 percent. In addition, implementing procedures on when to take fingerprints and when to submit the forms are not being followed as required by DoD policy and the MCIOs implementing instructions. This level of noncompliance occurs because CPM No. 10 lacks adequate procedural guidance; the MCIOs have placed little emphasis on reporting to the FBI criminal history data files; and oversight with follow-up and validation has not occurred. As a result, the absence of reporting military offenders' records has deprived other federal and state law enforcement personnel of significant information.

MCIOs Policies and Procedures for Implementing DoD CPM No. 10

U.S. Army Criminal Investigative Command (USACIDC). USACIDC Regulation 195-1, "Criminal Investigation Operational Procedures," Chapter 5, October 1, 1994, establishes USACIDC policies and procedures for collecting and reporting criminal history data to the FBI. In 1995, two amendments made to the regulation clarified submitting the FD-249 to the FBI. The regulation requires two sets of fingerprints be taken at the earliest opportunity, normally during the initial interview and processing of the individual. The FD-249 is to be submitted to the FBI when court-martial charge sheets have been served on the individual or non-judicial punishment under Article 15, Uniform Code of Military Justice (UCMJ), has been completed on the individual. A card should also be submitted if a subject accepts an administrative discharge in lieu of a court-martial. For individuals having non-judicial punishment imposed, the FD-249 is not to be submitted until the punishment is announced in writing by the commander. When disposition is reflected on the FD-249, the R-84 is not required. The FD-249 is not to be delayed pending completion of court-martial action. If the disposition is not reported on the FD-249, the R-84 is to be submitted to the FBI as soon as disposition is known.

Naval Criminal Investigative Service (NCIS). SECNAV Instruction 5520.3B, "Criminal and Security Investigations and Related Activities within the Department of the Navy," establishes NCIS policy for implementing CPM No. 10. NCIS Manual, Volume 3, Chapter 6, establishes implementing procedures within the NCIS for collecting and reporting criminal history data to the FBI. Navy policy is to fingerprint the suspect at the time of interrogation for an offense or at the time of initiation of military proceedings by the disciplinary authority of the suspect. The FD-249 is maintained in the investigative case file until the case control agent determines that charges have been made against the suspect. At that time, the FD-249 is sent to the FBI. After a judicial or non-judicial military proceeding, disposition is reported on the R-84 and sent to the FBI. Disposition may be filed on the FD-249 if the disposition is known at the time of that submission.

Air Force Office of Special Investigations (AFOSI). AFOSI Regulation 124-102, "Reporting Criminal History Data to the Federal Bureau of Investigations," August 1987, establishes policies and procedures for collecting and reporting criminal history data to the FBI. In November 1995, Headquarters, AFOSI, issued by electronic message an interim change (95-1) to AFOSI Regulation 124-102 to clarify procedures for submitting fingerprint cards to the FBI. The regulation requires agents to coordinate with the Staff Judge Advocate (SJA) to determine the best time to fingerprint a subject for submitting criminal history data to the FBI. The FD-249 is to be sent to the FBI immediately when the SJA confirms that court-martial charges have been preferred or non-judicial punishment was formally offered. Disposition may be annotated on the FD-249 if known immediately. The FD-249 is not to be held more than 7 days while waiting for disposition. If the disposition is not reported on the FD-249, the R-84 is to be submitted to the FBI as soon as disposition is known.

Reporting Requirements to FBI

Using two statistical samples, our evaluation revealed a high level of noncompliance in MCIO reporting of fingerprint cards and final dispositions to the FBI.

Universe Represented. The Authorization Act specified that DoD review actions taken for a 24-month period. Discussions with FBI personnel revealed that the Bureau had a significant backlog on entering records into the criminal history files database. Although it has had a backlog for some time, the Bureau is in the process of moving the criminal history identification files to new facilities in West Virginia. The move resulted in a loss of personnel and contributed to an even greater backlog. Not having access to all 1995 files submitted by the MCIOs to the FBI, the evaluation was limited to an 18-month period beginning with 1994. To derive the number of individuals for whom reporting to the FBI was required, data were collected from each MCIO. Those data were compared with the FBI criminal history data files.

Sampling Design. The statistical samples estimate the extent of failure by MCIOs in complying with reporting requirements to the FBI. Separate analyses were performed to measure compliance of each MCIO for sending fingerprint cards and reporting of final disposition to the FBI. Stratified samples were designed for each population by calendar year. Each sample size was based on three characteristics: an error probability of 0.5, a 95-percent confidence level, and a desired sample precision of 0.05.

Evaluation Results

Statistical results on the sample data for Army, Navy, and Air Force are shown in Tables 1, 2, and 3, respectively.

Army. The population size for Army soldiers for whom fingerprint cards should have been submitted to the FBI was 3,100 and the population for final disposition reporting was 916 during the 18 months. Our sample sizes were 346 for determining fingerprint card compliance and 272 for final disposition accountability compliance.

Table 1. Army 95-Percent Confidence Interval

	Lower Bound	Point Estimate	Upper Bound
Fingerprint Cards Not Sent To FBI	2,424 78.2%	2,545 82.1%	2,660 85.8%
Final Disposition Not Reported	683 74.6%	721 78.7%	757 82.6%

The evaluation results indicate the Army failed to send fingerprint cards to the FBI in 82.1 percent of its cases and failed to report the final disposition to the FBI in 78.7 percent of its cases.

Navy. The population size for Navy Service members for whom fingerprint cards should have been submitted was 790 and the population for final disposition reporting was 150 during the 18 months. Our sample sizes were 263 for determining fingerprint card compliance and 115 for final disposition accountability compliance.

Table 2. Navy 95-Percent Confidence Interval

	Lower Bound	Point Estimate	Upper Bound
Fingerprint Cards Not Sent To FBI	628 79.5%	658 83.3%	686 86.8%
Final Disposition Not Reported	136 90.9%	139 93.0%	142 94.9%

The evaluation results indicate the Navy failed to send fingerprint cards to the FBI in 83.3 percent of its cases and failed to report the final disposition to the FBI in 93 percent of its cases.

Air Force. The population size for Air Force Service members who should have fingerprint cards was 3,128 and the population for final disposition reporting was 196 during the 18 months. Our sample sizes were 355 for determining fingerprint card compliance and 128 for final disposition accountability compliance.

Table 3. Air Force 95-Percent Confidence Interval

	Lower Bound	Point Estimate	Upper Bound
Fingerprint Cards Not Sent To FBI	1,057 33.8%	1,198 38.3%	1,354 43.3%
Final Disposition Not Reported	89 45.2%	98 50.0%	109 55.4%

The evaluation results indicate the Air Force failed to send fingerprint cards to the FBI in 38.3 percent of its cases and failed to report the final disposition to the FBI in 50 percent of its cases.

With 95-percent confidence, the Army, Navy, and Air Force have not followed criminal reporting requirements with the FBI on Service members from each lower bound to each upper bound range of error, respectively. In addition, the overall confidence level for reporting fingerprint cards and final disposition simultaneously is 90 percent. Still, the point estimate is the most likely value or percent in the analysis.

Policy Gaps

CPM No. 10 was issued by the Deputy Inspector General (IG), DoD, on March 25, 1987. Procedures for DoD reporting requirements are delineated in the Code of Federal Regulations at 28 CFR 20.30 et. seq. The DoD policy to obtain fingerprints when a command determination is made to initiate judicial or non-judicial military proceedings is not always the most effective timing. Field personnel expressed their belief that the DoD policy should allow for flexibility in the timing of taking the fingerprints to provide DoD law enforcement organizations the opportunity to establish operationally efficient implementing guidance.

Submission of the FD-249. The DoD policy does not provide a specific time frame for submitting the FD-249, Fingerprint Card. Inconsistencies in MCIO policies were discovered regarding when the card was submitted. Some agents submitted the FD-249 when the Report of Investigation was given to the Command, whereas others awaited the Command's decision. Review of case files at the installations showed that in many cases the fingerprints had been taken, but cards remained in the files. It was also determined that the announcement of this evaluation initiated a review of the files at the activities we visited, and many 1994 and 1995 cards had recently been submitted to the FBI in anticipation of our visit.

Submission of the R-84. DoD policy on the submission of the R-84 is unclear. It states the R-84 should be sent on "conclusion" of the court-martial, but does not define "conclusion." The memorandum states that final disposition for purposes of the system does not include appellate action. Clarification as to when to submit the R-84 is needed. This evaluation also identified that MCIOs are not consistent in implementing their own policies. For example, the Navy's policy addresses the use of the R-84. It states the R-84 is to be forwarded at the conclusion of the judicial or non-judicial military proceeding. Naval installations we visited, however, preferred to hold the fingerprint card for final disposition and not use the R-84. Although Army and Air Force installations provided policies and procedures for using the R-84, its use was limited. The preferred method for all Services was to hold the FD-249 and provide final disposition on it.

Entries on the FD-249. Discussions with FBI personnel revealed that the FD-249 may be rejected without being processed if not properly filled out. Data fields on the FD-249 that must be completed properly in order for the fingerprint card to be processed include: Name (NAM); Date of Birth (DOB); Originating Agency Identifier (ORI) Number; and Charge/Citation. Of particular note was that the Charge/Citation field must be expressed in literal terms, e.g., murder, rape, robbery, assault, etc. The FBI does not enter criminal code citations; therefore, if only citations are shown, e.g., Article 118 of the UCMJ, the card will be rejected without being processed. Our field visits showed many cards only reflected the UCMJ article for which the Service member was being investigated without literal terms being used. We found that literal terms were not consistently used for disposition on the FD-249 and the

R-84. It is important that criminal history data information is provided in literal terms to ensure that data is processed and available for use by other law enforcement agencies.

MCIOs Implementation

Lack of Emphasis on Fingerprint Submission. Before the IG, DoD, announced the CPM No. 10 compliance evaluation, the MCIOs placed little or no emphasis on submission of fingerprint cards or final disposition reports to the FBI. When asked, MCIO headquarters officials and field agents said a higher priority had not been placed on submitting the required fingerprint cards and final disposition reports to the FBI because, historically, the FBI has been at least a year behind in entering new data into the criminal history data files. Consequently, in their view, little benefit in solving cases is achieved by providing timely information.

Poor Records Maintenance. Review of case files during field visits identified unsatisfactory recordkeeping on submission of the FD-249 and R-84 to the FBI. Each MCIO had procedures in place for recording and submitting fingerprint cards; however, the procedures were not always followed. For example, case files reviewed showed the following problems:

o No record copy (photostatic copy of fingerprint card) to show that fingerprints had been taken and cards sent to the FBI when no other written documentation was shown in the case file.

o Documentation showed fingerprint cards had been sent to the FBI with no record to confirm that final disposition was reported. The absence of final disposition records is significant because command action could result in charges being dropped or the accused being found not guilty. Not submitting a final disposition report to the FBI, in such a case, could result in an innocent military member appearing to have a criminal record.

o Case files showed that investigations had been completed and the case closed for more than a year before the FD-249s were forwarded to the FBI. At one field site, a review of 52 cases closed in 1994 indicated that 49 cases that required fingerprints cards be sent to the FBI were sent following the announcement of our visit.

o Article 112a - Wrongful use, possession, etc., of controlled substances requires reporting under CPM No. 10. This evaluation identified numerous cases of Service members charged with Article 112a; however, case files were annotated indicating that fingerprint cards were not required, with no additional explanation.

Factors Affecting Reporting Requirements. Interviews with agents in the field and officials at the MCIO headquarters identified factors that influence the submission of the fingerprint cards and final disposition reports. These factors include the following:

o Heavy case workload and cutbacks in personnel have resulted in a lack of detailed attention to administrative tasks. Agents expressed their concern over the amount of time they spend on entering data into the computer and accomplishing administrative tasks. The Army and Navy assign case file reviews to their administrative employees, but resource losses have shifted roles and responsibilities, and accountability is lacking. The Air Force assigns those responsibilities first to the case agent and then to the detachment commander or special agent in charge or their designee for a final review. Although all agents interviewed expressed that they have more cases to investigate than in the past, they must accomplish them with less personnel.

o Downsizing has caused restructuring that in some cases has eliminated middle level supervisors and affected the quality of case file reviews.

o Untimely feedback regarding Command decisions contributes to the need for more agent follow-up and consumes time. All MCIOs expressed problems with receiving feedback regarding proposed actions and final dispositions from commanders. Although mechanisms are in place to receive this information, follow-up is usually required.

Oversight Processes

DoD Oversight. This evaluation is the first oversight review by the IG, DoD, to determine compliance on reporting requirements to the FBI criminal history database. Based on the high level of noncompliance identified in this evaluation, the IG, DoD, initiated a memorandum on November 14, 1996 (See Appendix C), to the Secretaries of the Military Departments and the Defense Agencies. The memorandum provides suggested guidance for improving reporting procedures while this office develops and issues a new DoD Instruction applicable to all DoD law enforcement organizations.

MCIOs Oversight. The MCIOs use two different approaches for oversight of their field agencies.

o The Office of the Inspector General, USACIDC, uses compliance inspections that assess investigative standards by measuring timeliness, thoroughness, and timely reporting (the "3Ts"). Inspector General, USACIDC, teams inspect each USACIDC activity annually.

o Inspector General representatives of AFOSI and NCIS validate unit self-assessments to measure field activities. AFOSI Detachments complete a unit self-inspection every 18 months to 2 years, and Headquarters, AFOSI,

inspection teams validate the self-inspection as part of the AFOSI Quality Air Force Assessment every 3 years. The NCIS field offices are required to conduct self-inspections biannually, and Headquarters, NCIS, conducts validation every 3 years.

While each MCIO developed an implementing policy to comply with CPM No. 10, none developed and implemented adequate oversight mechanisms to measure compliance or make the reporting requirements to the FBI a high priority. Only the Air Force had conducted a compliance evaluation to determine whether required documents were missing from investigation case files (See Appendix A).

At each field activity visited, we reviewed the most recent Inspector General, USACIDC reports; Headquarters, NCIS, Command Inspection reports; and AFOSI Quality Air Force Assessments. These reports identified deficiencies in submission of Form FD-249 and R-84 at 8 of the 11 field activities. Although the reports identified noncompliance with reporting requirements, they were not presented as significant findings and did not impact the overall inspection rating. As a result, no requirement for follow-up action to complete and forward the missing criminal history data to the FBI was required or accomplished.

MCIOS Improved Oversight Mechanisms. Based on discussions with representatives of the Inspectors General of the MCIOs, significant progress is being made to place more emphasis on submitting the FD-249 and the R-84 to the FBI. All Inspector General, MCIO, Inspection Guides used to prepare field activities for command inspections have added submitting required FD-249s and R-84s to the FBI to their inspection checklists. The Inspector General, USACIDC, has added submission of the required fingerprint cards and final disposition reports as one measurable standard to determine timely reporting under the "3Ts." To emphasize awareness for reporting purposes, the Air Force has added a data element to its criminal investigations database to validate that fingerprints, if required, have been taken. Implementation of these oversight mechanisms should improve compliance with reporting requirements; however, they have not been in place long enough to assess their effectiveness.

Reporting Accessible to All Law Enforcement. Inclusion of criminal histories for any serious military offender into the FBI criminal history data files is essential and significantly contributes to nationwide law enforcement efforts. Military law enforcement and criminal justice authorities have a responsibility to provide information that is easily and efficiently accessible to civilian counterparts regarding military offenders. Serious crimes* and offenses as identified in CPM No. 10 (including Article 112a, Wrongful use, possession, etc., of controlled substances) are reportable. The timely availability of military criminal offender records to civilian agencies is of significant benefit to law enforcement agencies.

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*The U.S. Department of Justice Uniform Crime Reports identifies seven crime index offenses that are considered serious: murder, robbery, burglary, motor vehicle theft, aggravated assault, forcible rape, and larceny-theft. Four of the offenses (murder, forcible rape, robbery, and aggravated assault) are considered violent crimes.

Summary

The indicated level of the MCIOs noncompliance in the submission of fingerprint cards and final dispositions is high and consistent throughout the MCIOs. Inadequate implementing procedures, lack of emphasis by the MCIOs on reporting, and lack of sufficient oversight focusing on this issue have contributed significantly to the noncompliance. Definitive and comprehensive guidance with management emphasis is needed at all levels to improve reporting. Implementation of the new DoD Instruction should improve reporting compliance.

Recommendation, Management Comments, and Evaluation Response

A. We recommend that the Commander, U.S. Army Criminal Investigation Command; Director, Naval Criminal Investigative Service; and the Commander, Air Force Office of Special Investigations, implement the Inspector General, DoD, suggested procedural guidance as outlined in the November 14, 1996, memorandum to the Military Departments and Defense Agencies while a new DoD Instruction is being developed.

Army Comments. The Army concurred with the recommendation and stated that policy guidance will be established requiring the submission of reporting documents within 10 working days of a triggering event. The Army also stated that compliance on reporting requirements would be an inspected item during assistance visits to all field units. Additionally, training on reporting requirements will be added or emphasized at training courses for all agents and as in-service training at all offices during 1997.

Navy Comments. The Navy nonconcurred with the finding, stating statistical data are questionable because an FBI backlog in data entry exists and the requirement for the use of plain language on the FD-249 may have resulted in the FBI not processing submissions. In addition, the Navy nonconcurred on the recommendation and stated that NCIS has policy and implementing procedures already in place that adequately address CPM No. 10 and reflect the guidance of the IG, DoD, memorandum, November 14, 1996.

Air Force Comments. The Air Force concurred with the recommendation and stated that procedural guidance in the IG, DoD, memorandum of November 14, 1996, would be used until a new DoD Instruction is developed. The AFOSI issued a memorandum December 9, 1996, informing its field units of the suggested IG, DoD, policy and emphasized that reporting requirements are a mandatory inspection item for all AFOSI self-inspections and AFOSI Inspector General inspections.

Evaluation Response. We consider the Army and the Air Force comments fully responsive. The Navy comments are not responsive. The facts in the report correctly present an 18-month timeframe where data entry was current. The Act required a survey for 24 months. In January 1996, our discussions with FBI personnel revealed an 8-week backlog in data entry. Knowing that a backlog existed, we limited the scope by reviewing data for 1994 through the first 6 months of 1995. FBI personnel indicated that plain language should be used on the FD-249 to ensure that cards are entered into the database since not all FBI personnel are familiar with Articles of the UCMJ. The FBI "Guidelines for Preparation of Criminal Justice Information Services Division Fingerprint Cards" has always required literal terms. In publishing a new DoD Instruction, the FBI suggested that we emphasize using literal terms.

Although Navy policy provides procedures for reporting requirements, the high level of noncompliance indicates procedures are not being followed and follow-up with validation is not occurring. The IG, DoD, memorandum, November 14, 1996, provides suggested procedural guidance while a new DoD Instruction is being staffed. The memorandum to the Service Secretaries and the Directors of the Defense Agencies emphasizes DoD policy for reporting requirements while the Instruction is being staffed.

We request the Navy reconsider its position on the finding and recommendation and provide additional comments in its response to the final report.

Finding B. Other Service Law Enforcement Organizations Conduct Criminal Investigations That Have Reportable Outcomes

Service law enforcement organizations, such as the Army Military Police, Navy and Air Force Security Police, and Marine Corps Criminal Investigation Division CID (Marine Corps CID), and Defense Agencies with law enforcement organizations conduct criminal investigations encompassed in the reporting requirements of CPM No. 10. Because CPM No. 10 does not apply to these organizations, they do not always report criminal history data to the FBI. These conditions exist because most of these police organizations have not developed policies and procedures for reporting into the FBI criminal history data files. As a result, another portion of military members who commit serious offenses may not be entered into the FBI criminal history data files. Complete and consistent reporting by all DoD law enforcement organizations is essential to nationwide law enforcement efforts.

Background

National Defense Authorization Act for Fiscal Year 1996. The Authorization Act required DoD to determine whether or not other law enforcement activities of the Services collect and report criminal history record information into the FBI criminal history data files and, if not, should they collect and report such information.

Other Military Law Enforcement Organizations. Each Service has police organizations responsible for law enforcement. These organizations provide investigative support for crimes for which the MCIO has investigative jurisdiction. For the most part, investigative activity of these police organizations is limited to minor or exclusively military offenses (such as, absent without leave, disrespect to a superior, or disobedience of orders). When investigations go beyond the jurisdiction of the police organizations, the case is referred to the Service MCIO. When CPM No. 10 was published, the applicability of the memorandum was limited to DCIOs. Since most police organizations function under the direction of an installation security officer or a military installation commander and not a DCIO, CPM No. 10 does not apply to these organizations.

Criminal Investigations by Other Law Enforcement Organizations

Law Enforcement Organizations. Installation-level Service police organizations were visited during each of the on-site visits made to the MCIOs to determine whether the police organizations also conduct investigations that may fall under the reporting criteria of CPM No. 10. On-site discussions with officials identified the following:

o The Marine Corps Criminal Investigation Division (Marine Corps CID) investigated serious criminal offenses at Marine Corps installations and had already developed an interim policy memorandum for reporting data to the FBI.

o The Army, Navy, and Air Force police organizations conduct criminal investigations of some serious offenses. Some of these offenses meet the reporting criteria of CPM No. 10 and should be reported to the FBI.

Marine Corps CID. The Marine Corps CID reports to the local Provost Marshal who reports to the local chain of command at Marine Corps activities. During deployments, Marine Corps CID investigators take over the entire criminal investigative jurisdiction for Marine Corps personnel. We visited two Marine Corps installations and met with an official at Headquarters, U.S. Marine Corps (HQMC). The Marine Corps CID uses Marine Corps Order P5580.2, Marine Corps Law Enforcement Manual, to implement law enforcement procedures. In July 1995, HQMC issued a policy memorandum directing its Marine Corps CID offices to submit criminal history data to the FBI Identification Division on investigations that fall under DoD policy. The official at the HQMC stated that implementing procedures for submitting criminal history data to the FBI would be in the next revision of Marine Corps Order P5580.2.

At the two Marine Corps installations that were visited, a review of records identified offenses that met reporting requirements. It was verified that reporting of criminal history data began in January 1996.

Lack of Reporting. Police organizations within the Army, the Navy, and the Air Force conduct investigations of military members for offenses that are under the reporting requirements of CPM No. 10. Officials at the different Service police organizations verified they do conduct such investigations and cited robbery, assaults, burglary, housebreaking, and wrongful use of controlled substances as examples. Although the Service police organizations and the MCIOs have policies outlining roles and responsibilities, with specific criteria on investigative jurisdiction, Service police organizations are investigating cases of serious offenses that were previously not within their jurisdiction. After issuance of CPM No. 10, MCIO roles and responsibilities have shifted and certain serious offenses have been delegated to other law enforcement organizations due to organizational restructuring and reduction of resources. Because previous DoD policy did not apply to the Service police organizations, they do not have policy and implementing procedures for reporting into the FBI

criminal history data files. Without policy and implementing instructions, reportable information from cases investigated by the Services police organizations generally is not submitted to the FBI.

Unbalanced Reporting. Submission under reporting requirements in the DoD policy is dependent on which law enforcement organization investigates the offense. For example, CPM No. 10 lists UCMJ Article 112a, Wrongful use, possession, etc., of controlled substances, as an offense requiring reporting into the criminal history data files. Such an offense can be investigated by the MCIOs, Service police organizations, or joint drug teams consisting of military police and MCIO investigators. Since DoD policy applies only to the DCIOs, information concerning drug offenders investigated only by the Service police organizations will not generally be reported. Further, drug testing urinalysis results are referred to commanders and may or may not subsequently be investigated by a military law enforcement organization required to make submissions to the FBI criminal history data files.

Administrative Discharges. Staff Judge Advocates (SJA) were visited to determine what, if any, reporting is accomplished for Service members receiving administrative discharges when offenses have been committed or those who command officials permit to retire, separate, or resign in lieu of court martial. For the most part, the SJAs did not feel administrative discharges were used when serious offenses were committed. They stated that military offenders are not usually given an administrative discharge for a serious offense without an investigation by their MCIOs. Such an investigation would then result in criminal history data reporting by the MCIO. The disposition would then be reported either on the original FD-249 or, depending on timing, on a subsequent R-84. The decision for commanders, with the advice of their SJA, to approve an administrative discharge for a military member is typically based on factors such as seriousness of the offense, prosecution problems, cost of trial, amount of time Service member has served, and the advantage to the Service.

Consistent Reporting. The goal of a criminal reporting system is to have the same information regarding the same offenses reported from all law enforcement organizations. The lack of policy and implementing procedures for Service police organizations has caused the omission of criminal history data on certain military offenders being reported to the FBI. As stated in Finding A of this evaluation, including criminal histories for any serious military offenders in a nationwide system is essential and significantly contributes to nationwide law enforcement efforts.

Summary

This evaluation determined that Service police organizations are investigating some offenses that meet the reporting criteria of CPM No. 10. Not reporting is a result of these organizations not being required to report under CPM No. 10 and not having policies or implementing instructions for reporting into the FBI criminal history data files. This lack of submission is a deficiency that needs correction.

Recommendation, Management Comments, and Evaluation Response

B. We recommend that the Deputy Chief of Staff for Operations and Plans, Department of the Army; the Deputy Assistant Director for Law Enforcement and Physical Security, Department of the Navy; Chief of Security Police for the Air Force; and the Directors of Defense Agencies with law enforcement organizations implement the Inspector General, DoD, suggested procedural guidance outlined in the November 14, 1996, memorandum to the Military Departments and Defense Agencies while a new DoD Instruction is being developed.

Army Comments. The Army concurred with the recommendation and stated it has already implemented this recommendation with regard to individuals who are convicted of serious criminal offenses and sentenced to confinement at the U.S. Disciplinary Barracks and other military corrections facilities. In addition, the Army stated that coordination has been ongoing with the Criminal Justice Information Division, FBI, to develop procedures for Army provost marshals to submit fingerprint cards, maintain written criminal reports required by the Criminal Justice Information Systems and state agencies, and have the record available for use.

Navy Comments. The Navy concurred with the recommendation and stated the NCIS Deputy Assistant Director for Law Enforcement and Physical Security has undertaken measures to implement the Inspector General, DoD, suggested procedural guidance in the Navy Law Enforcement Manual, OPNAVINST 5580.1

Air Force Comments. The Air Force concurred with the recommendation and stated that law enforcement agencies should report offenses meeting CPM No. 10 criteria. The Air Force Chief of Security Police has initiated action to develop procedures to begin fingerprinting in applicable cases. The Air Force

Chief of Security Police will work with the Air Force Security Police Agency and the security police offices at the Air Force's Major Commands to ensure compliance.

Defense Agencies Comments. Concurrences, no comments, negatives, or statements stating that investigations are referred to the cognizant MCIO for action and adjudication were received from the Defense Advanced Research Projects Agency, Defense Commissary Agency, Defense Investigative Service, Defense Logistics Agency, Defense Special Weapons Agency, Defense Security Assistance Agency, and the National Security Agency. The Defense Protective Service, Washington Headquarters Services, responded stating it conducts investigations and reports to the FBI Criminal History Data files.

Evaluation Response. The Army, Air Force, Navy, Defense Protective Service, and the Directors of the Defense Agencies listed under the above Defense Agencies comments are responsive. We request the Directors of the Ballistic Missile Defense Organization, Defense Contract Audit Agency, Defense Finance and Accounting Service, Defense Intelligence Agency, Defense Legal Services Agency, National Imagery and Mapping Agency, National Reconnaissance Office, and the On Site Inspection Agency provide comments on the final report by April 11, 1997.

Part II - Additional Information

Appendix A. Scope and Methodology

Scope and Methodology

Limitations to Evaluation Scope. The scope was limited for two reasons.

o The National Defense Authorization Act for Fiscal Year 1996 required DoD to survey fingerprint cards and final disposition reports for 24 months. The initial plan was to review 1994 and 1995 records. Discussions with FBI personnel revealed a significant backlog on entering records into the criminal history data base. As a result of not having access to all FBI data for 1995, data was reviewed for 18 months, beginning with 1994.

o The Defense Criminal Investigative Service was not included in the evaluation because Service members committing offenses reportable to the FBI are in most cases under the jurisdiction of the MCIOs. Fingerprint submission within the Defense Criminal Investigative Service is limited because most cases involve fraud or other white-collar-type crimes. In these types of cases, the U.S. Marshal's office usually does the fingerprinting and submitting of the final disposition report.

MCIO Processes. MCIO policies and procedures were reviewed for submission of the FD-249, Suspect Fingerprint Card, and R-84, Final Disposition Report. The evaluation selected 11 MCIO field offices for review to determine whether policies and procedures were adequate to comply with requirements to submit fingerprint cards and final disposition reports. In addition, law enforcement personnel and Staff Judge Advocate offices were contacted at those installations to determine whether or not other military law enforcement organizations collect and report such information to the FBI.

Use of Computer-Processed Data. Based on DoD policy criteria for the submission of FD-249s and R-84s, the evaluation gathered computer-generated data from the MCIOs to compare with the FBI data. Using this data, two stratified samplings were conducted: one compared fingerprint cards held by the FBI to the MCIO data runs and the other determined whether final disposition reports had been made by the MCIOs on those fingerprint cards that had been submitted to the FBI. The samplings were performed at the MCIO record centers.

Evaluation Period and Locations. This evaluation was performed from December 1995 through July 1996. Appendix E lists the organizations visited or contacted.

Prior Audits or Other Reviews

During the last 5 years, the only review covering criminal history reporting to the FBI was the Mission Evaluations Office, Headquarters, Air Force Office of Special Investigations, project action team's review of investigative case files to determine whether documents required by AFOSI regulations were in AFOSI Case Files.

Mission Evaluation Office, Headquarters, AFOSI, Evaluation 92-2, "Required Documents in Case Files," March 1993, was conducted to determine whether and to what degree AFOSI had a problem including documents in case files that are required by AFOSI regulations. The evaluation found 84 percent of the investigative case files reviewed were missing at least one required document. The absence rate of required FD-249, Suspect Fingerprint Cards, was 64 percent and the absence rate of FBI/DOJ Form R-84, Final Disposition Reports, was 96 percent.

The evaluation report recommended that Director of Mission, AFOSI: review applicable laws and DoD and Air Force regulations to validate the need for AFOSI required documents; standardize regulatory language; revise AFOSI Regulation 4-2, "Processing and Management of Closed AFOSI Investigative Case Files," to include a list of documents required by AFOSI regulations; incorporate required document accountability into the command's self-inspection process and make the document accountability a command interest item for IG inspections; review AFOSI training curriculum to determine whether emphasis is placed on including required documents in case files; and publish the results of Evaluation 92-2 to AFOSI field offices accompanied by a cover letter from the Commander, AFOSI, emphasizing the significant legal aspects of including required documents in case files.

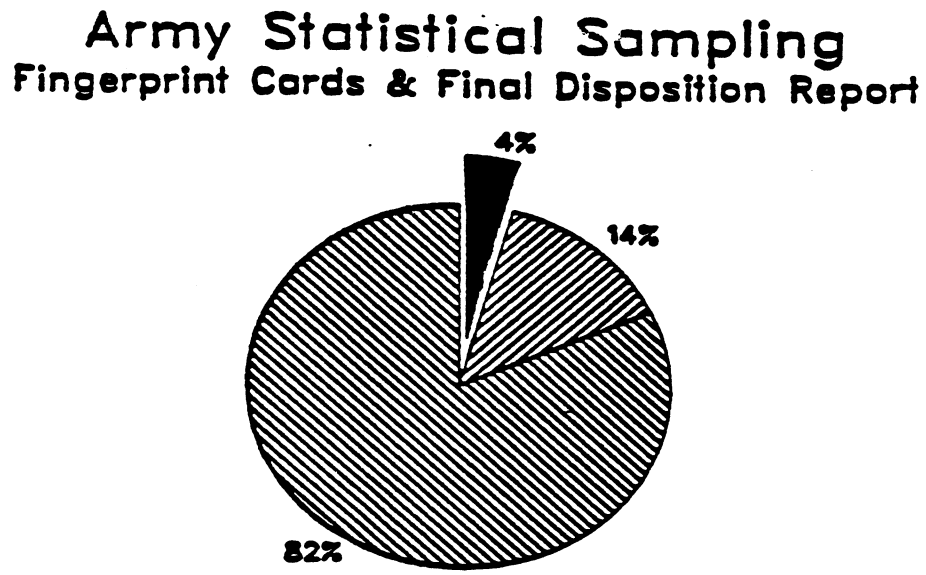
Statistical Sampling Methodology

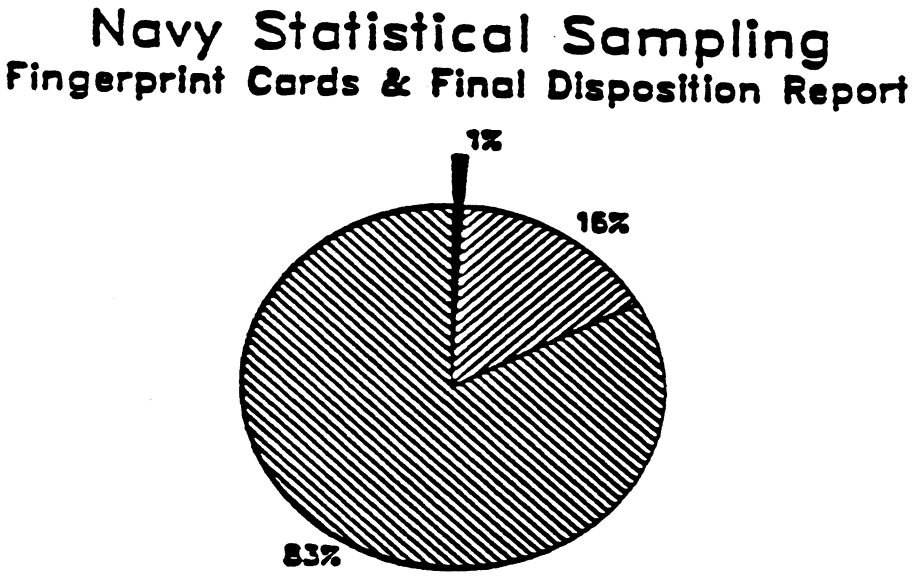
Sampling Purpose. The statistical sampling plan estimates the amount of error of each MCIOs criminal reporting requirements to the FBI. The sample results provide data to evaluate the number and percent of Service members who committed offenses listed under Enclosure 1 of CPM No. 10 and were not reported. Separate analyses were performed to measure each MCIOs compliance in sending fingerprint cards and reporting final disposition reports to the FBI.

Universe Represented. The evaluation consists of Service members who committed serious offenses in the 18 months from January 1994 through June 1995. The population size for each MCIO of those persons who should have fingerprint cards and final disposition reports was received by computer-processed data from each MCIO.

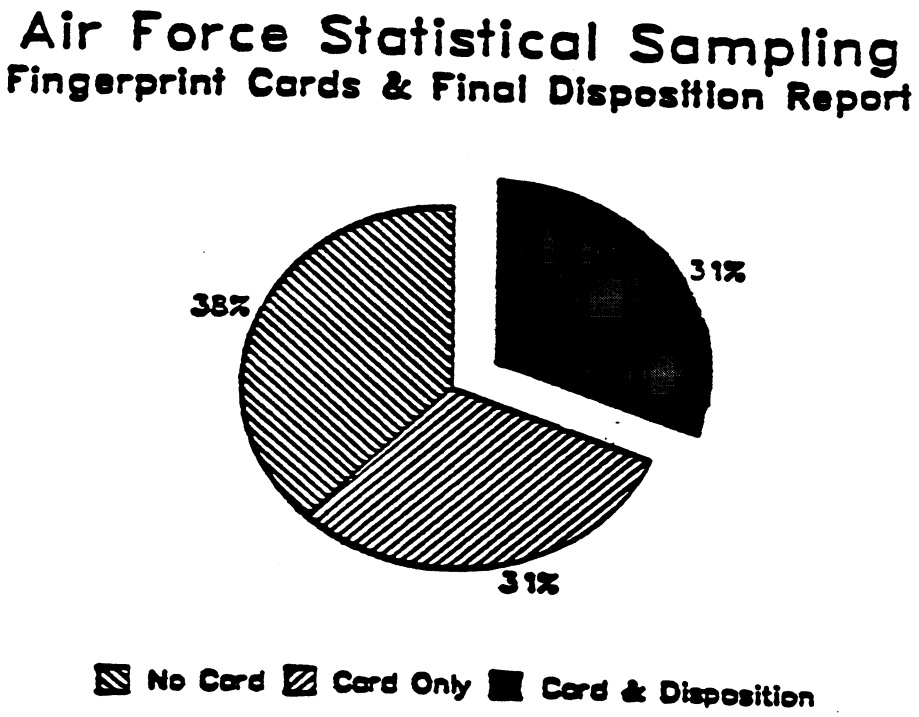
Sampling Design. Stratified samples for each MCIO were designed for each population by calendar year. Each sample size was based on three characteristics: an error probability of 0.5, a 95 percent confidence level, and a desired sample precision of 0.05.

Results. Using the stratified samples, evaluation results for each MCIO submission of fingerprint cards and final dispositions reported are discussed in Finding A of the report. The following charts represent each MCIOs submission of FD-249s and R-84s cards in percentages.





No Card Card Only Card & Disposition


Air Force Statistical Sampling
Fingerprint Cards & Final Disposition Report
31%
38%
31%
No Card
Card Only
Card & Disposition

Appendix B. DoD Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

25 MAR 1987

MEMORANDUM FOR SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: Criminal Investigations Policy Memorandum Number 10 - Criminal History Data Reporting Requirements

References: (a) Public Law 95-452, Inspector General Act of 1978, as amended by P.L. 97-252 (also cited as Title 5, United States Code, Appendix 3)

(b) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983

(c) Uniform Code of Military Justice, Title 10, United States Code, Sections 801-934

A. PURPOSE

This memorandum, issued under the authority of the Inspector General, DoD, establishes policies and procedures for reporting offender criminal history data to the Identification Division, Federal Bureau of Investigation (FBI), by the Defense criminal investigative organizations.

B. APPLICABILITY AND SCOPE

The provisions of this memorandum apply to the United States Army Criminal Investigation Command, the Naval Security and Investigative Command, the Air Force Office of Special Investigations, and the Defense Criminal Investigative Service, herein referred to collectively as the Defense criminal investigative organizations.

C. BACKGROUND

The Identification Division of the FBI maintains an automated system of records of offender criminal history data. The data in the system are gathered from fingerprint cards submitted by Federal, state and local law enforcement and judicial jurisdictions upon arrest or indictment of a serious offender. The data are available to law enforcement agencies through inquiries of the National Crime Information Center. Criminal history data provide neutral, synoptic and readily accessible information about an individual regarding offense and disposition, backed by positive identification through fingerprints. Participation by the Defense criminal investigative organizations will expand and enhance the effectiveness of the system to the DoD, as well as state, local and other Federal law enforcement agencies.

D. DEFINITIONS

1. Judicial or Nonjudicial Military Proceeding. For purposes of this memorandum, the term includes investigation under Article 32, Uniform Code of Military Justice (UCMJ), courts-martial and nonjudicial hearings conducted in accordance with Article 15, UCMJ (reference (c)).

2. "Offender Criminal History Data. For purposes of this memorandum, offender criminal history data are the information, including fingerprints, which is recorded on the front and back of a standard suspect fingerprint card (FBI Form FD 249) and Final Disposition Report (FBI/DOJ Form R-84).

E. POLICY

The Defense criminal investigative organizations will submit to the Identification Division of the FBI offender criminal history data for all Military Service members investigated by them for commission of any of the offenses enumerated in Enclosure 1 and who are the subjects of any resultant judicial or nonjudicial military proceeding.

F. PROCEDURES

1. Offender criminal history data records required under this policy memorandum are to be initiated by preparation and submission of a standard suspect fingerprint card (Enclosure 2) to the Identification Division, FBI.

2. Fingerprints and all additional information required by the standard suspect fingerprint card will be obtained from military suspects under investigation by the Defense criminal investigative organizations for offenses enumerated in Enclosure 1.

a. The fingerprint cards will be obtained when a command determination is made to initiate judicial or nonjudicial military proceedings against the military suspect for the offense being investigated. The local investigative office will submit the suspect's fingerprint card to the Identification Division, FBI, at such time. Submission is required even if charges are for different or a lesser offense (e.g., rape, set aside as conduct unbecoming an officer). The fact that a serious offense is charged and adjudicated as a lesser offense will be reflected in disposition reporting.

b. Submission of fingerprint cards will not be delayed by the local investigative office pending completion of judicial or nonjudicial military proceedings.

3. Disposition information will be reported by the Defense criminal investigative organization on the Final Disposition Report

(Enclosure 3) on conclusion of the judicial or nonjudicial military proceeding. Final disposition for purposes of the system does not include appellate action. Disposition information may be entered on the fingerprint card in cases where the disposition is known almost immediately after the command determination referred to in paragraph 2.a. above (e.g., some nonjudicial military proceedings). Dispositions which are exculpatory in nature (e.g., dismissal of charges, acquittal) must also be filed.

4. Fingerprint cards, disposition forms and preaddressed envelopes for submission will be provided at no cost by the FBI.

G. ACTION REQUIRED

The commanders and directors of the Defense criminal investigative organizations shall develop implementing regulations for this memorandum and shall ensure that:

1. Copies of implementing documents will be forwarded to the Office of the Assistant Inspector General for Criminal Investigations Policy and Oversight (CIPO), Office of the Inspector General, DoD, within 120 days of the issuance of this Policy Memorandum.

2. Sufficient supplies of forms and envelopes necessary to implement this Policy Memorandum will be obtained from the FBI and distributed to field elements for use.

3. Where necessary, Defense criminal investigative organization personnel will be provided training (offered by the FBI at no cost) enabling them to take fingerprints properly and complete the forms required under this Policy Memorandum.

4. The program established by this Policy Memorandum will be fully operational in their respective organizations no later than October 1, 1987.

H. EFFECTIVE DATE

This Criminal Investigation Policy Memorandum is effective immediately and remains in effect until incorporated into a DoD directive, instruction, or other regulation.

Derek J. Vander Schaaf
Deputy Inspector General

Enclosures

OFFENSES UNDER THE UNIFORM CODE OF MILITARY JUSTICE WHICH REQUIRE SUBMISSION OF OFFENDER CRIMINAL HISTORY DATA TO TO THE IDENTIFICATION DIVISION, FBI, BY THE DEFENSE CRIMINAL INVESTIGATI ORGANIZATIONS

1.	Article	78	Accessory after the fact (pertaining to crimes listed in this Enclosure)
2.	Article	80	Attempts (pertaining to crimes listed in this Enclosure)
3.	Article	81	Conspiracy (pertaining to crimes listed in this Enclosure)
4.	Article	107	False Official Statements
5.	Article	108	Military property; loss, damage, destruction, disposition
6.	Article	112A	Wrongful use, possession, etc., of controlled substances
7.	Article	118	Murder
8.	Article	119	Manslaughter
9.	Article	120	Rape, carnal knowledge
10.	Article	121	Larceny
11.	Article	122	Robbery
12.	Article	123	Forgery
13.	Article	124	Maiming
14.	Article	125	Sodomy
15.	Article	126	Arson
16.	Article	127	Extortion
17.	Article	128	Assaults
18.	Article	129	Burglary
19.	Article	130	Housebreaking

-1-

ENCLOSURE 1

20. Article 131 Perjury

21. Article 132 Frauds against the United States

22. The following offenses under Article 134

Assault, indecent
Assault
Bomb threat or hoax
Bribery
Burning with intent to defraud
Escape from correctional custody
False pretenses, obtaining services under (value more than $100)
False swearing
Firearm, discharge willfully to endanger human life
Graft
Homicide, negligent
Indecent act, liberties with child
Indecent acts with another
Kidnapping
Mail, taking, opening, secreting, destroying or stealing
Mails, depositing or causing to be deposited obscene matters in the
Misprison of a serious offense
Obstructing justice
Pandering
Prostitution
Property, destruction, removal or disposal of to prevent seizure
Perjury, subordination of
Public record, altering, concealing, removing, mutilating, obliterating or destroying
Refusing wrongfully to testify
Stolen property, knowingly receiving, buying or concealing (value more than $100)
Threat, communicating
Weapon, concealed, carrying

23. Any offenses under the Federal Assimilative Crimes Act (18 U.S.C. 13), charged as a violation of Article 134, Uniform Code of Military Justice, which has a maximum punishment of one year or more.

-2-

Appendix C. Inspector General, DoD, Memorandum, November 14, 1996

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

NOV 14 1996

MEMORANDUM FOR DISTRIBUTION

SUBJECT: Evaluation of Compliance with DoD Criminal Investigations Policy Memorandum No. 10, Criminal History Data Reporting Requirements

Section 555 of the National Defense Authorization Act for Fiscal Year 1996 (Attachment 1) requires the Secretary of Defense to submit a report by February 10, 1997, to Congress. The report is to address the consistency with which fingerprint cards and final disposition forms, as described in Criminal Investigations Policy Memorandum No. 10 (CPM 10), are reported by the Defense Criminal Investigative Organizations (DCIOs) to the Federal Bureau of Investigation (FBI). The Office of the Inspector General, Department of Defense (DoD), has been conducting an evaluation of compliance with CPM 10 in response to this congressional requirement.

Initial results of the evaluation warrant immediate concerns in two areas. First, there is apparently a high level of noncompliance with the reporting requirements by the Military Criminal Investigative Organizations (MCIOs). Second, while the MCIOs maintain primary responsibility for cases involving the offenses requiring reporting listed in CPM 10, other DoD law enforcement organizations also conduct investigations of some of these offenses.

Title 28, United States Code, Section 534, provides that the Attorney General shall collect and disseminate "criminal identification, crime, and other records." Consistent with the statutory provisions, CPM 10 (Attachment 2) established as DoD policy that DoD would report criminal history data to the Department of Justice. The procedures for reporting this data are delineated in the Code of Federal Regulations (CFR), at 28 CFR 20.30 et. seq. To provide clearer guidance regarding the procedures in the CFR and improve compliance with the DoD reporting requirement, this office will develop and issue a new DoD instruction applicable to DoD law enforcement organizations that investigate crimes for which criminal history data should be reported. Until we issue this DoD instruction, in order to more fully comply with the spirit of the law as well as the policy established in CPM 10, DoD law enforcement organizations conducting investigations of offenses reportable under CPM 10 should report the offender criminal history data. Reports should be made to the Criminal Information Services Division, Federal Bureau of Investigation.

For reporting purposes, we suggest you consider the following: submission of the FD 249, Fingerprint Card, should occur within 10 days of a triggering event (e.g., a command determination to initiate judicial or nonjudicial proceedings against a military suspect based upon actions by a DoD law enforcement organization). If final disposition is anticipated within 60 days of such command determination, the FD 249 may be held and final disposition recorded on the FD 249. If final disposition was not recorded on the FD 249, forward an R-84, Final Disposition Report, within 10 days of final disposition. All command authorities should ensure dispositions are properly provided to the DoD law enforcement organizations so the FD 249 or R-84 can be submitted on a timely basis. Further guidelines and supplies of forms and envelopes necessary to implement reporting requirements may be obtained from the Federal Bureau of Investigation, Personnel Division, Washington, D.C. 20535.

All Military Departments and DoD Agencies with law enforcement components should develop interim reporting mechanisms to meet the requirements of the previously cited statutory and regulatory provisions, including CPM 10, until the new DoD instruction is issued.

If you have questions regarding this issue, please contact Mr. Charles W. Beardall, Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, Office of Assistant Inspector General for Policy and Oversight, at (703) 604-8804.

Eleanor Hill
Inspector General

Attachments

cc: Assistant Secretary of Defense (Command, Control, Communications and Intelligence)
General Counsel, Department of Defense

DISTRIBUTION:

Secretary of the Army
Secretary of the Navy
Secretary of the Air Force
Director, Ballistic Missile Defense Organization
Director, Defense Advanced Research Projects Agency
Director, Defense Commissary Agency
Director, Defense Contract Audit Agency
Director, Defense Finance And Accounting Service
Director, Defense Information Systems Agency
Director, Defense Intelligence Agency
Director, Defense Investigative Service
Director, Defense Legal Services Agency
Director, Defense Logistics Agency
Director, Defense Nuclear Agency
Director, Defense Security Assistance Agency
Director, National Imagery and Mapping Agency
Director, National Reconnaissance Office
Director, National Security Agency
Director, On Site Inspection Agency

Appendix D. Evaluation Results

This evaluation was conducted as a result of a requirement in the "National Defense Authorization Act for Fiscal Year 1996. The Secretary of Defense was directed to report to Congress on the following six matters:

(1) Survey fingerprint cards and final disposition forms filled out in the past 24 months by each investigative organization.

Evaluation Results. The initial plan was to review 1994 and 1995 records. Discussions with FBI personnel revealed a significant backlog on entering records into the criminal history data base. As a result of not having access to all FBI data for 1995, data were reviewed for 18 months, beginning with 1994.

(2) Compare the fingerprint cards and final disposition forms filled out to all judicial and nonjudicial procedures initiated as a result of actions taken by each investigative service in the past 24 months.

Evaluation Results. Computer-generated data was gathered from the MCIOs using the criteria identified in CPM No. 10. The data contained offender's name, offense charged, and social security number. This data was compared with the data held in the Federal Bureau of Investigation criminal history data files.

(3) Account for any discrepancies between the forms filled out and the judicial and nonjudicial procedures initiated.

Evaluation Results. Based on the data kept by the FBI and the data received from the MCIOs, the number of criminal history records not in the Federal Bureau of Investigation criminal history data files was determined and also the number not having a completed final disposition. See matter no. (4), Evaluation Results.

(4) Compare the fingerprint cards and final disposition forms filled out with the information held by the Federal Bureau of Investigation criminal history identification files.

Evaluation Results. The evaluation revealed a high level of noncompliance on the submission of FD-249s and R-84s. The Army failed to send the FD-249 to the FBI in 82.1 percent of its cases; the Navy 83.3 percent; and the Air Force 38.3 percent. Failure to submit the R-84 by the Army was 78.7 percent; the Navy 93 percent; and the Air Force 50 percent.

(5) Identify any weaknesses in the collection of fingerprint cards and final disposition forms and in the reporting of that information to the Federal Bureau of Investigation.

Evaluation Results. Procedures on when to submit the FD-249 and R-84 are were not being followed as required by DoD policy and the MCIOs implementing instructions. CPM No. 10 does not contain specific procedural instructions. The MCIOs have placed little emphasis on reporting to the FBI criminal history files or conducting oversight with follow-up and validation.

(6) Determine whether or not other law enforcement activities of the Services collect and report such information or, if not, should collect and report such information.

Evaluation Results. Service police organizations conduct criminal investigations that fall under some reporting criteria of CPM No. 10. They are not covered by the policy memorandum. Therefore, they have not developed policies and procedures for criminal reporting into the FBI criminal history data files. As a result, not all serious offenses committed by military members are entered into the FBI criminal history data files as they should be.

Appendix E. Organizations Visited or Contacted

Office of the Secretary of Defense

General Counsel, Arlington, VA

Department of the Army

General Counsel, Department of Army, Arlington, VA
Inspector General, Department of Army, Arlington, VA
U.S. Army Criminal Investigation Command, Fort Belvoir, VA
  Fort Bragg Resident Agency/87th Military Police Detachment, Fort Bragg, NC
  Fort Lewis Resident Agency/44th Military Police Detachment, Fort Lewis, WA
  Fort Stewart Resident Agency/30rd Military Police Detachment, Fort Stewart, GA
Staff Judge Advocate Offices
  XVIII Airborne Corps, Fort Bragg, NC
  Headquarters, I Corps and Fort Lewis, Fort Lewis, WA
  Office of the Staff Judge Advocate, Fort Stewart, GA
U.S. Army Military Police Support Agency, Alexandria, VA
Provost Marshal Offices
  16th Military Police Brigade, Fort Bragg, NC
  1st Military Police Brigade, Fort Lewis, WA
  Law Enforcement Command, Fort Stewart, GA
U.S. Army Crime Records Center, Fort Belvoir, VA

Department of the Navy

General Counsel, Department of the Navy, Arlington, VA
Inspector General, Department of the Navy, Washington, DC
  Naval Criminal Investigative Service, Washington, DC
    Naval Criminal Investigative Service Norfolk Field Office, VA
    Naval Criminal Investigative Service Puget Sound Field Office, WA
    Naval Criminal Investigative Service San Diego Field Office, CA
      Naval Western Photo Laboratory, Naval Station, San Diego, CA
Naval Legal Service Office, Norfolk Naval Air Station, VA
Staff Judge Advocate Offices
  Staff Judge Advocate Office, Naval Sub Base, Bangor, WA
  Staff Judge Advocate Office, Naval Station, San Diego, CA

Security Police
- Security Department, Naval Base, Norfolk, VA
- Security Department, Naval Station, San Diego, CA

Department of the Air Force

General Counsel, Department of Air Force, Arlington, VA
Inspector General, Department of Air Force, Arlington, VA
- Air Force Office of Special Investigations, Bolling Air Force Base, DC
- Air Force Office of Special Investigations, Detachment 201, Langley Air Force Base, VA
- Air Force Office of Special Investigations, Detachment 215, Pope Air Force Base, NC
- Air Force Office of Special Investigations, Detachment 305, McChord Air Force Base, WA

Air Force Office of Special Investigations, Investigative Operations Center, Waldorf, MD
Staff Judge Advocate Offices
- 1st Fighter Wing Staff Judge Advocate, Langley Air Force Base, VA
- 62nd Airlift Wing Staff Judge Advocate, McChord Air Force Base, WA
- 23rd Wing Staff Judge Advocate, Pope Air Force Base, NC

Headquarters, U.S. Air Force Security Police, Rosslyn, VA
Security Police
- 1st Security Police Squadron, Langley Air Force Base, VA
- 62nd Security Policy Squadron, McChord Air Force Base, WA
- 23rd Security Police Squadron, Pope Air Force Base, NC

U.S. Marine Corps

General Counsel, Headquarters, Rosslyn, VA
Inspector General, Headquarters, Arlington, VA
Provost Marshal Offices
- Criminal Investigations Division, Camp Lejeune, NC
- Criminal Investigations Division, Camp Pendelton, CA

Staff Judge Advocate Offices
- Staff Judge Advocate, Marine Corps Base, Camp Lejeune, NC
- Staff Judge Advocate, Marine Corps Base, Camp Pendelton, CA

Non-Defense Federal Organizations

Federal Bureau of Investigation, Washington, DC
- West Virginia Field Office, WV

Appendix F. Report Distribution

Office of the Secretary of Defense

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Under Secretary of Defense (Policy)
Under Secretary of Defense (Comptroller)
Under Secretary of Defense (Personnel and Readiness)
Assistant Secretary of Defense for Legislative Affairs
Assistant Secretary of Defense (Command, Control, Communications and Intelligence)
General Counsel, Department of Defense
Defense Criminal Investigative Service

Department of the Army

Secretary of the Army
Assistant Secretary of the Army (Financial Management and Comptroller)
Assistant Secretary of the Army (Manpower and Reserve Affairs)
General Counsel, Department of the Army
Inspector General, Department of the Army
Auditor General, Department of the Army
Deputy Chief of Staff for Operations and Plans
Commander, Criminal Investigation Command
Commander, Intelligence and Security Command

Department of the Navy

Secretary of the Navy
Assistant Secretary of the Navy (Financial Management and Comptroller)
General Counsel, Department of the Navy
  Director, Naval Criminal Investigative Service
Inspector General, Department of the Navy
Counsel for the Commandant (Marine Corps)

Department of the Air Force

Secretary of the Air Force
Assistant Secretary of the Air Force (Financial Management and Comptroller)
General Counsel, Department of the Air Force
Inspector General, Department of the Air Force
  Commander, Office of Special Investigations
Chief of Security Police for the Air Force

U.S. Marine Corps

Deputy Chief of Staff for Plans, Policies and Operations, Headquarters, U.S. Marine Corps
Inspector General, Headquarters U.S. Marine Corps

Other Defense Organizations

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  Chief, Defense Protective Service
Director, Ballistic Missile Defense Organization
Director, Defense Advanced Research Projects Agency
Director, Defense Commissary Agency
Director, Defense Contract Audit Agency
Director, Defense Financing and Accounting Service
Director, Defense Information Systems Agency
Director, Defense Intelligence Agency
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Director, Defense Investigative Service
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Director, Defense Logistics Agency
  General Counsel, Defense Logistics Agency
Director, Defense Special Weapons Agency
Director, Defense Security Assistance Agency
Director, National Imagery and Mapping Agency
Director, National Reconnaissance Office
Director, National Security Agency
  Inspector General, National Security Agency
Director, On Site Inspection Agency

Non-Defense Federal Organizations

Director, Federal Bureau of Investigation
West Virginia Field Office, WV
Chairman and Ranking Minority Member of the Following Congressional Committees and Subcommittees:
Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal Justice, Committee on Government Reform and Oversight
House Committee on National Security

Part III - Management Comments

Department of Army Comments

DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS
400 ARMY PENTAGON
WASHINGTON, DC 20310-0400

REPLY TO ATTENTION OF

DAMO-ODL (25-30i) 30 DEC 1996

MEMORANDUM THRU THE DIRECTOR OF THE ARMY STAFF 31 Dec 96

FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL, AUDITING, WASHINGTON DC 22202

SUBJECT: Draft Evaluation Report on Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements (Project No. 60F-9040)

1. This memorandum provides our concurrence, with comment, with findings concerning subject draft evaluation report. Our comments include the Headquarters, U.S. Army Criminal Investigation Command (USACIDC).

Finding A. Compliance with requirements for submission of fingerprint cards and final disposition reports. The Military Criminal Investigative Organizations are not consistently submitting FD 249, Suspect Fingerprint Cards, and Federal Bureau (FBI)/Department of Justice (DOJ) Form R-84, Final Disposition Report, to the FBI criminal data files.

Comment. The USACIDC concurs with this finding. Field elements are doing a good job of obtaining fingerprints. However, there is a recognized problem with timely submission. The USACIDC has established policy and regulatory guidance for the submission of FD 249 and Form R-84 to the Criminal Justice Information Systems (CJIS), FBI. The guidance does not specify how long the offices have to complete this requirement. Policy guidance will be established requiring the submission of these documents within 10 working days of a triggering event. Compliance with these requests is now an area that will be inspected during assistance visits to all field units. Additionally, training on the requirements will be added or emphasized at the appropriate training course for all agents, and as in-service training at all offices during CY 97.

Finding B. Other service law enforcement organizations conduct criminal investigations that have reportable outcomes. Because CPM does not apply to these organizations, they do not always report criminal history data to the FBI.

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DAMO-ODL
SUBJECT: Draft Evaluation Report on Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements (Project No. 60F-9040)

Comment. Both the USACIDC and this office concur that all Service law enforcement organizations should submit fingerprint cards to CJIS. We have already implemented this recommendation with regard to individuals who are convicted of serious criminal offenses and sentenced to confinement at the U.S. Disciplinary Barracks and other military corrections facilities. Enclosed is an extract from Army Regulation 190-47, The Army Corrections System, which explains the fingerprint policy. We implemented this policy to help ensure that CJIS criminal history files are created and to receive criminal history from CJIS that may not have been previously known on convicted offenders.

A federal liaison officer, for this office, is assigned responsibility to coordinate with CJIS, activities involving the National Crime Information Center (NCIC), and with counter parts at the federal, state, and local levels. We are participants with personnel from the U.S. Army Crime Lab in the development and implementation of the CJIS Program for automated submission of fingerprints cards.

2. Over the past several months coordination has been ongoing with CJIS staff to develop procedures for Army provost marshals to submit fingerprint cards, maintain written criminal reports required by CJIS and state agencies, and have the record available for use. Another factor we are addressing is Army provost marshal offices requesting information and receiving the report back from CJIS. This is especially important for the information to be useful in ongoing investigations, safety of law enforcement and corrections personnel, and the military and civilian communities. Fingerprints are used to link an automated CJIS record to a human being. We are developing a two step process that is consistent with findings in the draft report.

(1) Fingerprints will be submitted by Army Provost Marshals using their assigned Originating Agency Identifier (ORI), as explained in the enclosure, when a NCIC report is received showing a possible link between a suspect and information contained in CJIS files. This will allow positive identification of the individual and automatically link the provost marshal staff to CJIS and other law enforcement agencies to retrieve all available information concerning the individual.

2

DAMO-ODL
SUBJECT: Draft Evaluation Report on Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements (Project No. 60F-9040)

(2) Submit disposition fingerprint cards using the U.S. Army Crime Records Center (CRC) ORI and have the Center serve as the contributing agency. The CRC maintains records for 40 years and is a recognized agency by many civilian law enforcement agencies.

3. On January 7, 1997, we will participate with representatives from the USACIDC and the other Service representatives in a discussion on the proposed Department of Defense guidance for submitting fingerprints to CJIS. We will issue immediate interim guidance based on discussions that take place on January 7. Army provost marshals are aware of our activity in this area as a result of information we convey to them in our "Provost Marshals Areas of Interest Bulletin."

4. Point of contact is Mr. Jeffery Porter, (703) 681-5078.

FOR THE DIRECTOR OF OPERATIONS, READINESS AND MOBILIZATION:

Robert W. Neubert

Encl
as

ROBERT W. NEUBERT
Colonel, GS
Chief, Security, Force
Protection and Law
Enforcement Division

3

Department of the Navy Comments

THE ASSISTANT SECRETARY OF THE NAVY
(MANPOWER AND RESERVE AFFAIRS)
WASHINGTON, D.C. 20350-1000

9 Jan 97

MEMORANDUM FOR DEPARTMENT OF DEFENSE ASSISTANT INSPECTOR GENERAL FOR CRIMINAL INVESTIGATIVE POLICY AND OVERSIGHT

SUBJECT: Draft Evaluation Report on Criminal Investigations Policy Memorandum Number 10, Criminal History Data Reporting Requirements (Project No. 60F-9040)

This memorandum is in response to your memorandum of 29 November 1996 (Attachment 1) which forwarded the subject report for review and comment.

The Department of the Navy (DoN) response is provided at Attachment 2. Although we agree that substantial room exists for improvement in both reporting and record keeping, we have concerns about the manner in which the results are being reported, and therefore non-concur with some of the report findings and recommendations. As outlined in the attached comments, the DoN has taken specific actions to ensure quality assurance of fingerprint card and disposition data submissions and is working toward direct electronic submission of data to the FBI.

Karen S. Heath

KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

Copy to:
NAVINSGEN (00B, 02)
Office of Financial Operations (FMO-31)

Attachments:
1. DAIG for Criminal Investigative Policy and Oversight memo of 29 Nov 96
2. DoN response comments on subject draft report

Department of the Navy Response
to
DODIG Draft Evaluation Report of 29 November 1996
on
Criminal Investigations Policy Memorandum Number 10,
Criminal History Data Reporting Requirements
(Project No. 60F-9040)

Finding A:

Page 7 - "With 95-percent confidence, the Army, Navy, and Air Force have not followed criminal reporting requirements with the FBI on Service members from each lower bound to each upper bound range of error, respectively. In addition the overall confidence level for reporting fingerprint cards and final disposition simultaneously is 90 percent. Still, the point estimate is the most likely value or percent in the analysis."

DoN Position:

Non-concur. Statistical data is questionable because by FBI's own admission, a serious backlog exists in data entry. Additionally, the FBI requirement for entries on the FD-249 to be done in plain language (e.g., murder, rape, possession/use of controlled substances, etc., and not, for instance, indicating the particular UCMJ article violated) has potentially resulted in numerous instances of submissions which were not processed. It is unclear if submissions which were made and not processed by FBI were counted as submissions or non-submissions. Based upon these discrepancies, the reliability of submission numbers cannot accurately be ascertained, and as a result final reporting numbers may be significantly skewed.

Recommendation A:

Page ii - "**Summary of Recommendations.** It is recommended that the Military Departments and Defense Agencies law enforcement organizations investigating serious offenses as described in CPM No. 10 develop interim policies and implementing procedures for reporting to the FBI criminal history data files while awaiting a new DoD Instruction."

and

Page 13 - "We recommend that the Commander, U.S. Army Criminal Investigation Command; Commander, Air Force Office of Special Investigations; and the Director, Naval Criminal Investigative Service, implement the Inspector General, DoD, suggested procedural guidance as outlined in the November 14, 1996, memorandum to the Military Departments and Defense Agencies while a new DoD Instruction is being developed."

DoN Position:

Non-concur. NCIS has policy and implementing procedures already in place (NCIS-3, Manual for Investigations, Chapter 6, sections 21.1 through 21.6) which adequately address CPM No. 10 and reflect the Interim Guidance of the DoD Inspector General's memorandum of November 14, 1996. NCIS has formally instituted procedures to ensure quality assurance of fingerprints taken, their submission, and disposition data submissions. Additionally, NCIS is working toward electronic submission of dispositions data directly to the FBI Identification Division for Interstate Identification Index.

Finding B:

Page 17 - "This evaluation determined that Service police organizations are investigating some offenses that meet the reporting criteria of CPM No. 10. Not reporting is a result of these organizations not being required to report under CPM No. 10 and not having policies or implementing instructions for reporting into the FBI criminal history data files. This lack of submission is a deficiency that needs correction."

Recommendation B:

Page 17 - "We recommend that the Deputy Chief of Staff for Operations and Plans, Department of the Army; Chief of Security Police for the Air Force; the Deputy Assistant Director for Law Enforcement and Physical Security, Department of the Navy; and the Directors of Defense Agencies with law enforcement organizations implement the Inspector General, DoD, suggested procedural guidance as outlined in the November 14, 1996, memorandum to the Military Departments and Defense Agencies while a new DoD Instruction is being developed."

DoN Position:

Concur. The NCIS Deputy Assistant Director for Law Enforcement and Physical Security has undertaken measures to implement the Inspector General, DoD, suggested procedural guidance in the Navy Law Enforcement Manual, OPNAVINST 5580.1.

Department of the Air Force Comments

DEPARTMENT OF THE AIR FORCE
OFFICE OF THE INSPECTOR GENERAL
WASHINGTON DC

7 JAN 1997

MEMORANDUM FOR THE ASSISTANT INSPECTOR GENERAL FOR AUDITING,
OFFICE OF THE INSPECTOR GENERAL, DOD

FROM: SAF/IG
1140 Air Force Pentagon
Washington DC 20330-1140

SUBJECT: Evaluation of Compliance with DoD Criminal Investigations Policy Memorandum Number 10, *Criminal History Data Reporting Requirements*, Project No. 6OF-9040

The Air Force concurs with the findings and recommended actions documented in your draft report dated 29 Nov 96. Comments are attached to this memorandum.

Please direct questions on this matter to Major Nick Psaltakis, 697-5853.

RICHARD T. SWOPE
Lieutenant General, USAF
The Inspector General

Attachment:
Comments and corrective actions

cc:
AFOSI/CC
AF/SP
SAF/GC
AF/JA
SAF/FMPF

EVALUATION OF COMPLIANCE WITH DOD CRIMINAL INVESTIGATIONS POLICY MEMORANDUM NUMBER 10, *CRIMINAL HISTORY DATA REPORTING REQUIREMENTS*, PROJECT NO. 6OF-9040 (DRAFT, 29 NOV 96)

AIR FORCE COMMENTS

FINDING A: Compliance with Requirements for Submission of Fingerprint Cards and Final Disposition Reports

We concur with your findings of noncompliance. The Air Force Office of Special Investigations (AFOSI) has been working on this issue since its March 1993 evaluation of required documentation in AFOSI investigative files. Policy re-emphasis and corrective actions have been implemented since that evaluation and positive trends have been noted. The paragraphs below provide background and further explanation.

AFOSI published AFOSI Regulation 124-102, *Reporting Criminal History Data to the Federal Bureau of Investigation (FBI)*, dated 1 October 1987, to implement the criminal history data reporting requirements of DOD Criminal Investigations Policy Memorandum Number 10 (CPM 10). However, AFOSI did not conduct an evaluation to determine compliance with the policy until 1993.

In March 1993, AFOSI's evaluation of required documents in investigative files disclosed the FBI Form FD-249, *Suspect Fingerprint Card*, was missing in 64 percent of the files reviewed and that FBI/DOJ Form R-84, *Final Disposition Report*, was missing in 96 percent of the files reviewed. A management tool in the form of a case file checklist [containing a list of documents required in investigative files] was developed and sent to AFOSI field units on 11 January 1995. Among the required documents on the checklist were the FD Form 249 and the Form R-84. Field unit commanders or designees were required to ensure these documents, when required, were contained in the record file copies before sending them to the AFOSI files repository.

When you compare the results of AFOSI's 1993 evaluation (noncompliance was 64 percent in fingerprint cards and 96 percent in disposition reports) to the results shown in the recent DoD IG evaluation report (noncompliance was 38.3 percent in fingerprint cards and 50 percent in disposition reports), you see a marked improvement. This positive trend (50 percent reduction in noncompliance thus far) occurred because AFOSI field units were made aware of the deficiencies disclosed by AFOSI's internal evaluation and subsequent development of a checklist.

DoDIG's recent evaluation report found that high noncompliance levels occurred because CPM 10 lacks adequate procedural guidance. AFOSI found a similar problem with its implementing regulation (AFOSI Regulation 124-102). To remedy that problem, HQ AFOSI issued clarifying guidance on 13 Nov 95 requiring AFOSI special agents to coordinate with installation staff judge advocates (SJA) to determine the best time to fingerprint subjects of a criminal investigations. The guidance requires that the FD-249 (fingerprint card) be sent to the FBI as soon as the SJA confirms that court-martial charges have been preferred or non-judicial punishment formally offered. Disposition may be annotated on the FD Form 249 if known

immediately. The FD Form 249 is not to be held more than 7 days while waiting for disposition. If the disposition is not reported on the FD Form 249, the Form R-84 (disposition report) must be submitted to the FBI as soon as disposition is known.

By the time DoD IG's CPM 10 evaluation was being planned in the latter part of 1995, AFOSI had already initiated action to modify its criminal database [by adding two data fields] to ensure compliance with the requirement to report criminal history to the FBI. Since January 1996, AFOSI special agents have been required to enter into the criminal database the fact that fingerprints were taken for the UCMJ offenses listed in CPM 10, and to also enter the date the fingerprints were sent to the FBI. These database entries will facilitate future AFOSI management efforts to examine compliance with criminal history data reporting requirements. AFOSI will initiate another internal evaluation in June 1997 to measure the extent of field unit compliance with the requirement to report criminal history data to the FBI. Additional corrective action will be taken if needed.

EVALUATION REPORT's RECOMMENDATION CONCERNING CORRECTIVE ACTION

We concur with the recommendation that procedural guidance found in DoD IG's 14 Nov 96 memorandum to the Military Departments be used until a new DoD instruction is developed. Please note that AFOSI already has a more restrictive policy implemented than that suggested in the 14 Nov 96 memorandum. We do not believe it prudent at this time to relax or change our requirements which presently appear to be working well.

In a memorandum dated 9 Dec 1996, AFOSI informed its field units of the suggested DoD IG policy but stated that AFOSI's current criminal history data reporting policies would not be relaxed. The memorandum also emphasized that the reporting requirements are a mandatory inspection item for all AFOSI self-inspections that are conducted every 18 months and during AFOSI Inspector General inspections which are conducted every three years. Presently, AFOSI field units and the AFOSI Inspector General Team use a comprehensive self-inspection checklist that contains multiple items validating a unit's compliance with criminal history data reporting requirements.

The Air Force Inspector General's office, AFOSI and the security police have assigned representatives to the DoD IG working group reviewing the draft DOD instruction on reporting criminal history data to the FBI. We will revise procedures as needed to comply with any new requirements which may appear in the new DOD instruction.

FINDING B: Other Service Law Enforcement Organizations Conduct Criminal Investigations that Have Reportable Outcomes

We concur with your finding that service law enforcement agencies, such as our security police, did not report criminal history record information into the FBI criminal history data files. As you correctly point out, CPM 10 does not apply to them and thus led to this void.

EVALUATION REPORT's RECOMMENDATION CONCERNING CORRECTIVE ACTION

We concur that law enforcement agencies should report offenses meeting CPM 10 criteria. Air Force security police investigators often conduct investigations of such offenses and thus should complete fingerprint cards for those matters. The Chief of Security Police, AF/SP, has initiated action to develop procedures to begin fingerprinting in applicable cases. An assessment is currently underway to determine the approximate number of applicable cases, and is expected to be completed by 31 Jan 97. The results of this assessment will then be used to determine manpower and equipment resource requirements, and will also be used to develop appropriate procedures. Following this action, AF/SP will amend Air Force Instruction 31-206, *Security Police Investigations*, to require fingerprinting with the appropriate training and procedural requirements. AF/SP will work with the Air Force Security Police Agency and the security police offices at the Air Force's Major Commands to ensure compliance.

Evaluation Team Members

This report was prepared by the Criminal Investigative Policy and Oversight Directorate, Office of the Assistant Inspector General for Policy and Oversight, DoD.

Phyllis M. Brown
Laura L. Carney