



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

OCT 15 2001

Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510-6050

Dear Mr. Chairman:

The enclosed report details Department of Defense (DoD) actions concerning the titling and indexing of subjects of criminal investigations and complies with the provisions of Section 552, Public Law 106-398, the "Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001," and its related conference report.

The enclosed report describes actions we and the Department have taken to evaluate and improve the titling and indexing process, including changes to the controlling DoD Instruction, as well as procedural modifications to increase employee awareness and understanding. We believe that the process is now more effective and will treat those titled or indexed more fairly.

If you have any questions regarding this matter, please contact me or Mr. John R. Crane, Director, Office of Congressional Liaison, at (703) 604-8324.

Sincerely,

A handwritten signature in black ink that reads "Robert J. Lieberman".

Robert J. Lieberman
Deputy Inspector General

Enclosure

cc: Honorable John Warner
Ranking Minority Member



DEPARTMENT OF DEFENSE POLICY
CONCERNING TITLING AND INDEXING OF INDIVIDUALS
IN THE DEFENSE CLEARANCE AND INVESTIGATIONS INDEX

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INTRODUCTION

In 1993, the Advisory Board on the Investigative Capability of the Department of Defense (DAB) expressed concern regarding the titling¹ and indexing of individuals identified as subjects of a Department of Defense (DoD) criminal investigation into the Defense Clearance and Investigations Index (DCII).² In 1998, the National Academy of Public Administration (NAPA) articulated similar concerns. Most recently, Section 552 of the Fiscal Year 2001 National Defense Authorization Act (FY 2001 NDAA) and its accompanying conference language requested a review of aspects of titling and indexing and directed specific actions aimed at remedying the concerns expressed by the DAB and NAPA.

The DAB voiced concerns about the negative implications for a titled or indexed individual, the lack of an appellate process to seek removal of the individual's name, and the standard for entering persons' names in the DCII. NAPA was similarly interested in ensuring the protection of indexed individuals.

In response to the DAB and NAPA, and to fulfill the standing need to assess existing policy, the Office of Inspector General (OIG), DoD, reviewed the implementation of DoD Instruction 5505.7, "Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense." The initial review, Phase I, focused on the process and procedure for entering personal data into the DCII by the Defense Criminal Investigative Organizations (DCIOs). The follow-on review, Phase II, focused on the use of indexed criminal investigative data by those in the personnel security and criminal investigative communities having access to the DCII (DCII users).

¹ Titling refers to the inclusion of an investigated subject's name and personal identifying data in the title block of a criminal investigative report or similar document.

² The DCII is a DoD index of investigations and security clearance data. Concerning criminal investigations, the Index contains the names and personal identifying data pertaining to investigated subjects, and the file numbers, file retention periods, and organizational identifiers of the criminal investigative organizations. Neither case dispositions nor other investigation details are listed. To determine this information, an authorized requestor must obtain actual case file information directly from the cognizant investigative organization.

PHASE I PROJECT

In the "Review of the Implementation of DoD Instruction 5505.7, Titling and Indexing Subjects of Criminal Investigations in the Department of Defense" Phase I - The Defense Criminal Investigative Organizations," dated July 7, 2000, which has been furnished to the defense committees, the OIG found that the DCIOs were in substantial compliance with the policy. No evidence was found that individuals were unfairly treated as a result of being indexed. Recommendations that were made and have been implemented include the indexing of several classes of investigations that were previously omitted³ and permitting the delay in entering data if necessary for operational security reasons. The use of the credible information standard for entering names in the DCII was validated as essential within the criminal investigative community.⁴

SECTION 552, FY 2001 NDAA

The FY 2001 NDAA required the DoD to establish a uniform process for allowing an individual designated as a subject in an official investigative report to obtain a review of that indexing decision and to have his/her name and other identifying information expunged if that decision is determined to have been made contrary to DoD requirements. To comply with these requirements, the Department of Defense added a new provision to DoD Instruction 5505.7 establishing a review process⁵ within each

³The Air Force Office of Special Investigations (AFOSI) was not indexing subjects of internal investigations until after the subject left the organization. Subjects of Air Force security forces investigations were often not indexed by the local AFOSI detachment as required by Air Force policy.

⁴"Credible information," as it appears in the revised DoD Instruction, means information disclosed or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained investigator to presume that the fact or facts in question are true. The policy requires that credible information that a crime occurred must exist before an investigation is opened, and that credible information that a particular subject committed the offense exists before that subject is titled and indexed.

⁵The revised instruction states that an individual seeking review of a titling and indexing decision must submit a written request to the head of the investigating organization providing reasons for a reversal of the determination. Heads of investigating organizations must then solicit and consider written input from appropriate line and staff functions and obtain a legal review before deciding whether to reverse the previous titling or indexing decision. The standard for such decisions is whether credible information existed, at the time the titling and indexing actions occurred, that the subject committed a crime. The head of the investigating organization will notify the requestor of the decision and provide

organization engaged in the conduct of criminal investigations for individuals desiring to challenge titling and indexing actions. Formal coordination of that Instruction is almost complete, and no substantive objections have been received or are anticipated. Pending coordination and signature of the formal policy, the OIG, DoD, established the requirement for a uniform review process by means of an interim policy memorandum dated March 2, 2001 (attached).

The FY 2001 NDAA Conference Report directed that DoD review: (a) the policies and procedures addressing the degree of evidence or information that must exist before titling and indexing occurs, to include the weight, if any, given to initial allegations; (b) the sufficiency of training provided to individuals with access to the DCII regarding the significance of criminal investigative entries contained therein; (c) the use of criminal investigative data in the DCII to determine if it is being used properly and examine the adequacy of available sanctions for those who improperly use such information.

Our review of policies and procedures as they pertain to the DCIOs concluded that effective policies and procedures exist. DCIO agents were properly trained as to the significance of criminal investigative entries in the DCII and understood the standard to be applied when making a titling and indexing decision. We found no evidence of DCIO employee misuse of the DCII or the information contained therein; furthermore, the DCIO leadership believed that available sanctions were adequate should DCII misuse be identified.

SECTION 552, FY 2001 NDAA, AND PHASE II PROJECT

DCII use by persons employed in organizations other than the DCIOs was a concern expressed in the FY 2001 NDAA and a matter under review by the OIG, DoD, at the time the Act was passed. To assess that use, the OIG employed DCII user identification data provided by the Defense Security Service (DSS), the DCII system administrator, to survey those persons identified as having access to the DCII. The survey results indicated that some users misunderstand the purpose of the DCII and uses of the criminal investigative data contained therein, and that additional training of non-DCIO DCII users is necessary.⁶ The

information on other agency channels from which to seek relief (e.g., boards for the correction of military records). Decisions on whether or not to reverse must be documented and filed.

⁶ Site validation of survey results was deemed unnecessary and immediate implementation of corrective action was undertaken.

OIG review also determined that the same suitable sanctions for misuse available to the DCIOs are available for the non-DCIO community.

To correct these shortcomings, the OIG, DoD, recommended several changes to DCII procedures to ensure that all users are initially, and periodically thereafter, informed of the DCII's purpose as well as the limitations concerning the content and use of criminal investigative data contained therein. First, DSS will add to its annual DCII user revalidation documentation a requirement for Information Systems Security Officers to have users certify that they have read DoD Instruction 5505.7. Further, DSS will place banners explaining the purpose of the DCII and limitations on the use of criminal investigative data on the computer access screens where DCII users must periodically change their passwords. Finally, DSS, in coordination with the Office of the Assistant Secretary of Defense, Command, Control, Communication and Intelligence, will design a computer-based examination for DCII users that will include questions aimed at ensuring proper understanding and use of DCII criminal investigative information. Users' continued access to the DCII will hinge on successful completion of the security exam. The OIG, DoD, will monitor the implementation of the above corrective actions.

CONCLUSION

The review of titling and indexing policy and procedures stemming from OIG, DoD, projects and the FY 2001 NDAA has resulted in improvements that will enhance the effectiveness and fairness of this system and help prevent misuse. The OIG, DoD, will maintain oversight to ensure corrective actions are implemented and functional and to seek other enhancements as the need is identified.