



INTELLIGENCE

UNDER SECRETARY OF DEFENSE
5000 DEFENSE PENTAGON
WASHINGTON, DC 20301-5000

MAY 07 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Notifications Required Upon the Receipt or Development of Unresolved Criminal Conduct Derived During a Personnel Security Investigation, Suitability Investigation, Polygraph Examination, or an Inquiry or Investigation of an Unauthorized Disclosure of Classified Information

This memorandum is to remind all DoD components that admissions or credible allegations of criminal conduct generated by any source shall be referred to component security officials to facilitate the passage of this information to the appropriate DoD or military criminal investigative agency or civilian law enforcement agency. Some exceptions to this requirement apply and are stated at TAB A. Otherwise, component security officials shall take the actions prescribed at TAB B.

The Heads of DoD and Office of the Secretary of Defense Components with authority to conduct personnel screening and adjudications, administer polygraph examinations, and investigate unauthorized disclosures of classified information shall ensure that policy and procedures are in place to inform all component personnel of the requirements noted in this memorandum and attachments. Reporting credible allegations and admissions of criminal conduct to security officials serves to protect the integrity of our workforce. Credible allegations or admissions of criminal conduct, regardless of the source, must be reviewed and properly disposed of by the appropriate agency. Accordingly, I ask addressees to disseminate the attached guidance throughout their Components to remind all personnel of their obligation to notify their security officers when allegations of criminal activity surface or are confirmed through personal admission. My point of contact is Mr. Timothy Davis at (703) 607-0089 or Timothy.Davis@osd.mil.

Michael G. Vickers

Attachments:
As stated



SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
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DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

A

EXCEPTIONS TO THE REPORTING REQUIREMENT FOR ADMISSIONS OR
ALLEGATIONS OF CRIMINAL CONDUCT

The requirement to refer admissions or credible allegations of criminal conduct to the appropriate DoD or military criminal investigative agency or civilian law enforcement agency does *not* apply in the following circumstances:

- Allegations shall not be reported to law enforcement agencies where agreements with the agency, or established past guidance from the agency, indicate that the jurisdiction does not have a substantial interest in prosecuting the offense or in receiving reports of the offense; either due to the type of offense involved or the circumstances under which it occurred.

- Allegations about private consensual sexual acts with adults shall not be reported to law enforcement agencies or to Military Departments for any purpose. Exceptions to this limitation shall be made only with the specific written authorization of the DoD General Counsel, or his or her designee. This specific limitation does not apply to allegations that an individual attempted, solicited, or committed a criminal offense in the following circumstances:
 - By using force, coercion, or intimidation;
 - With a person under 17 years of age;
 - Openly in public view;
 - For compensation or with an offer of compensation to another individual, or;
 - While on active duty in, or on duty in a Reserve component of, the Armed Forces of the United States, and aboard a military vessel or aircraft; or with a subordinate in circumstances that violate customary military superior-subordinate relationships.

B

ACTIONS REQUIRED BY COMPONENT SECURITY OFFICIALS

Upon notification, or self-determination, that unresolved criminal conduct has been credibly alleged or confirmed by admission, component security officials shall take the following actions when unresolved criminal activity or information surfaces during a *personnel security investigation (PSI)*, a *suitability investigation*, a *polygraph examination*, or *during an inquiry or investigation of an unauthorized disclosure of classified information*:

- Cease all inquiry or investigative actions pending coordination with the cognizant Defense Criminal Investigating Organization (DCIO). If the DCIO declines jurisdiction, the investigation shall continue and the report will be annotated to reflect the identity of the official who made the declination decision and his or her organization. If the DCIO accepts jurisdiction, the local investigation shall not be resumed without agreement of the cognizant DCIO. All relevant information shall be released with an annotation in the report that the matter was referred to the specific DCIO. Initial case personnel shall notify the originator and others as appropriate after coordination with the DCIO.
- Advise the Head of the relevant DoD Component that he or she may temporarily suspend an individual's access to classified information and deny the individual assignment or detail that is contingent on such access, based upon a written finding by the component security official, that considering the results of the examination and the extreme sensitivity of the classified information involved, access under the circumstances poses an unacceptable risk to the national security in accordance with DoD 5200.2-R, "Personnel Security Program," January 1987. This suspension, if used, may not form the part of any basis for an adverse administrative action or an adverse personnel action.
- Advise the individual in writing of the pending negative determination, that the determination may be appealed to the Head of the relevant DoD Component, and that his or her final determination is conclusive.
- Notify appropriate adjudication authorities of the reports provided to law enforcement so personnel security or suitability files can be annotated. Adjudications of the criminal allegations or admissions shall not be finalized until any ongoing law enforcement action is completed.
- Notify the Defense Counterintelligence (CI) component if the disclosure event was of a CI nature.
- Obtain and record the DCIO or law enforcement agency case number assigned.
- Provide the individual's immediate commander the investigative report if the individual is subject to the UCMJ.

- If DCIO or the military criminal investigative agency decline jurisdiction, advise the either the supporting Office of the Staff Judge Advocate or General Counsel, as appropriate, of the declination decision.