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Office of Inspector General
Office of Inspections and Special Inquiries

Inspection Report

Inspection of Intelligence Oversight
Activities at Selected Field Sites

INS-O-04-01

August 2004




Department of Energy

Washington, DC 20585

August 31, 2004

MEMORANDUM FOR THE DIRECTOR, OFFICE OF INTELLIGENCE

FROM:


Alfred K. Walter
Acting Assistant Inspector General
For Inspections and Special Inquiries

SUBJECT:

INFORMATION: Report on "Inspection of Intelligence Oversight
Activities at Selected Field Sites"

BACKGROUND

On December 4, 1981, the President issued Executive Order 12333 (E.O. 12333), "United States Intelligence Activities." The purpose of E.O. 12333 is to ensure the effective conduct of United States intelligence and counterintelligence activities, specifically, to protect the rights of "U.S. persons" during the conduct of these activities. In 1992, the Department of Energy (DOE) established guidelines to implement the requirements of E.O. 12333. These guidelines, entitled "Department of Energy Procedures for Intelligence Activities" (Procedures), govern activities such as the collection, retention and dissemination of information about "U.S. persons" by DOE intelligence and counterintelligence elements. Further, the Procedures mandate that conduct that may violate E.O. 12333 be reported to the Director of the Office of Intelligence (IN) and to either the Inspector General or to the General Counsel.

The objective of this inspection was to determine if Federal and contractor personnel affiliated with intelligence and counterintelligence activities at selected DOE and National Nuclear Security Administration (NNSA) field sites were in compliance with pertinent policies and procedures regarding intelligence activities.

RESULTS OF INSPECTION

We interviewed intelligence and counterintelligence analysts at Pacific Northwest National Laboratory and the Lawrence Livermore National Laboratory; and, DOE and NNSA managers at the Richland Operations Office and the Livermore Site Office. We concluded that the Federal and contractor personnel at these sites were generally in compliance with pertinent DOE policies and procedures for intelligence activities. However, we found that:

- Although the Procedures stipulate that IN will ensure that training is conducted so that personnel achieve a "requisite familiarity" with E.O. 12333, only four of the 29 intelligence and counterintelligence analysts we interviewed from the Pacific Northwest and Lawrence Livermore National Laboratories could accurately define a "U.S. person." The "U.S. persons" concept is key to the operation of E.O. 12333; thus, any ambiguity as to the formal "U.S. persons" definition in the Executive Order is of concern.



- While required annual reviews to assess adherence to guidelines regarding retention of information on “U.S. persons” were conducted, the reviews were not always complete. In several instances, not all records were completely reviewed by analysts to ensure adherence with retention restrictions outlined in E.O. 12333.
- None of the analysts we interviewed at Pacific Northwest and Lawrence Livermore National Laboratories could correctly describe the process pursuant to the Procedures for reporting conduct that may violate E.O. 12333.

Additionally, we noted that the Procedures and IN policies were periodically updated to reflect DOE organizational changes. However, the Procedures and two intelligence orders did not specifically address the roles and responsibilities of NNSA, which was established in 2000.

MANAGEMENT REACTION

Management concurred with our recommendations and identified corrective actions to address our concerns. Management’s comments are provided in their entirety in Appendix B of the report.

We found management’s comments to be responsive to our report.

Attachment

cc: Director, Office of Counterintelligence
Chief, Office of Defense Nuclear Counterintelligence
Manager, Richland Operations Office
Manager, Livermore Site Office
Director, Policy and Internal Controls Management (NA-66)
Director, Office of Program Liaison and Financial Analysis (ME-100)

INSPECTION OF INTELLIGENCE OVERSIGHT ACTIVITIES AT SELECTED FIELD SITES

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Overview

INTRODUCTION AND OBJECTIVE

In order to ensure the effective conduct of United States intelligence and counterintelligence activities and the protection of the rights of “U.S. persons” and entities, the President issued Executive Order 12333 (E.O. 12333), “United States Intelligence Activities,” on December 4, 1981. E.O. 12333 establishes Federal government policy and direction for the national intelligence effort “in order to provide for the effective conduct of United States intelligence activities.” To implement E.O. 12333, the Department of Energy (DOE) issued “Department of Energy Procedures for Intelligence Activities” (Procedures) on October 19, 1992. The Procedures, which were supplemented five times through 1999 to reflect organizational and policy changes within DOE, govern activities including the collection, retention and dissemination of information about “U.S. persons” by DOE intelligence elements, and the reporting of conduct that may violate E.O. 12333 to the Director of the Office of Intelligence (IN) and to either the Inspector General or the General Counsel.

Among other things, the Procedures ensure that DOE intelligence activities do not violate the rights of “U.S. persons.” E.O. 12333 and the Procedures define a “U.S. person” as a U.S. citizen, an alien known to be a permanent resident alien, an unincorporated association substantially composed of U.S. citizens or permanent resident aliens, or a corporation in the U.S., except for a corporation directed or controlled by a foreign government. The Procedures stipulate that all collected intelligence information concerning “U.S. persons” must be reviewed annually to ensure that it is retainable in accordance with the Procedures. The Procedures also require that DOE intelligence personnel achieve a “requisite familiarity” with E.O. 12333 and the Procedures. Understanding the definition of a “U.S. person” is important to avoid violating E.O. 12333 and the Procedures. Similarly, the proper reporting of conduct that may violate E.O. 12333 is fundamental to the oversight process.

IN is responsible for establishing DOE intelligence policy, ensuring compliance with this policy, and maintaining intelligence information subject to the provisions of E.O. 12333. The Office of Counterintelligence (OCI) and the National Nuclear Security Administration’s (NNSA) Office of Defense Nuclear Counterintelligence (ODNCI) are responsible for counterintelligence programs to protect DOE facilities against espionage and, therefore, deal with “U.S. persons” information subject to E.O. 12333. OCI and ODNCI utilize IN facilities and must coordinate with IN regarding intelligence oversight.

The objective of this inspection was to determine if Federal and contractor personnel affiliated with intelligence and counterintelligence activities at selected DOE and NNSA field sites are in compliance with pertinent policies and procedures regarding intelligence activities. We interviewed intelligence and counterintelligence analysts at the Pacific Northwest National Laboratory (Pacific Northwest) and the Lawrence Livermore National Laboratory (Livermore); and, DOE and NNSA managers at the Richland Operations Office and the Livermore Site Office. Additionally, pursuant to the “Government Performance and Results Act of 1993” (GPRA), we examined performance measures in the context of the oversight of intelligence activities.

OBSERVATIONS AND CONCLUSIONS

We concluded that, at the sites we visited, the Federal and contractor personnel were generally in compliance with pertinent DOE policies and procedures for intelligence activities. However, we found that:

- Although the Procedures stipulate that the Director, IN, will ensure that training is conducted so that personnel achieve a “requisite familiarity” with E.O. 12333 and the Procedures, only four of the intelligence and counterintelligence analysts we interviewed at Pacific Northwest and Livermore could accurately define a “U.S. person.” Also, none of the analysts we interviewed at those laboratories could correctly explain the process pursuant to the Procedures for reporting conduct that may violate E.O. 12333.
- While required annual reviews to assess adherence to guidelines regarding retention of information on “U.S. persons” were conducted, the reviews were not always thorough. In several instances, not all records were completely reviewed by analysts to ensure adherence with retention restrictions outlined in E.O. 12333 and the Procedures.

Additionally, we noted that although the Procedures and IN policies are periodically updated to reflect changes in DOE organization, the Procedures and two intelligence orders do not specifically address the roles and responsibilities of NNSA, which was established in 2000.

Details of Findings

KNOWLEDGE OF PROCEDURES

We found that intelligence and counterintelligence analysts were not completely knowledgeable regarding the definition of a “U.S. person” and certain reporting requirements of the Procedures. Understanding the definition of a “U.S. person” is important to avoid violating E.O. 12333 and the Procedures, which were established for, among other things, “the protection of constitutional rights.” We asked 29 analysts from Pacific Northwest and Livermore a series of questions designed to assess their knowledge of E.O. 12333 and the Procedures. All of the analysts had received training and demonstrated knowledge of many aspects of E.O. 12333 and the Procedures. However, not all of the analysts at Pacific Northwest and Livermore could accurately define a “U.S. person,” while none of the analysts could correctly explain the process pursuant to the Procedures for reporting conduct that may violate E.O. 12333.

Specifically, only four of the 29 analysts were able to provide the complete definition of a “U.S. person,” which is used to determine how intelligence information is collected, retained, and disseminated. Also, none of the 29 analysts correctly identified the requirement to report conduct that may violate E.O. 12333 to the Director of IN and to either the Inspector General or the General Counsel. Most of those interviewed said that they would report any suspected violations of intelligence guidance to only their supervisor or security representative. One analyst indicated he would report suspected violations to the Inspector General, but did not indicate he would inform the Director of IN.

Following a prior OIG review, *“Intelligence Oversight Inspection of the Special Technologies Laboratory,” (INS-O-96-01, October 1995)*, which found that employees were not knowledgeable of certain provisions of the Procedures, IN Headquarters provided all intelligence and counterintelligence employees with copies of the Procedures. During our current review, we noted that none of the 29 analysts maintained a complete copy of the Procedures, including all five supplements. Only seven analysts could provide us with their individual copy of the Procedures and in each of these seven cases, one or more of the supplements were missing.

ANNUAL RETENTION REVIEW

We determined that required annual reviews to assess adherence to guidelines regarding retention of information on “U.S. persons” were conducted, however, the reviews were not always thorough. In several instances, not all records were completely reviewed by analysts to ensure adherence with retention restrictions, as defined in the Procedures.

The Procedures require reviews to be conducted at least annually to assure that collected and retained intelligence information about “U.S. persons” is relevant, timely, and necessary for the performance of intelligence functions. Supplement Four to the Procedures also states that certain collected information on “U.S. persons,” such as publicly available information, is subject to a minimal annual review to validate content. Supplement Four further specifies that newly received information may be retained for a period not to exceed one year from receipt to determine whether it concerns “U.S. persons” information.

At Pacific Northwest, we determined that a counterintelligence official maintained foreign travel briefing documents that contained information on “U.S. persons.” Although the individual was aware of the requirement for annual reviews, he had not reviewed these documents for retention purposes for approximately 18 months.

At Livermore, we found three instances where officials maintained documents that were not reviewed on an annual basis, as defined in the Procedures:

- Pursuant to his annual review, one intelligence official certified that he had no documents in his possession containing information on “U.S. persons”; however, he maintained a list of the salaries and other data of “U.S. persons” employed by Livermore. We determined that the salary information was publicly available and was not obtained for the performance of his intelligence functions. We were told by an IN Headquarters official, however, that the salary documentation should not be maintained by the intelligence official if there is no job-specific need;
- Another intelligence official had collected and retained the resumes of two U.S. citizens, which were among dozens of resumes of foreign nationals provided to him by a counterintelligence official for other than hiring purposes. The officials were not aware they were in possession of these “U.S. persons” resumes, nor were the two resumes identified by the intelligence official in his required annual review; and
- A third intelligence official had not conducted the required minimal review to validate content, in over a decade, of reference material that contained “U.S. persons” information.

PROCEDURES

In addition to the findings articulated above, we noted that the Procedures, as well as two intelligence orders, do not address the roles and responsibilities of NNSA. Previous supplements to the Procedures address organizational changes, but the latest supplement, dated June 1999, does not address the roles and responsibilities of NNSA, which was established in March 2000.

A January 24, 2003, Memorandum of Understanding (MOU) signed by IN and NNSA establishes their respective intelligence roles and responsibilities, but is not a part of the Procedures. We note that the U.S. Department of Justice's (Justice) Office of Intelligence Policy and Review, pursuant to E.O. 12333, reviewed the Procedures and all five subsequent supplements to the Procedures to determine if they were in compliance with E.O. 12333. An IN official stated that because the MOU is not a supplement to the Procedures, Justice did not have to review the MOU for compliance. We suggest that the Procedures be updated to include the NNSA and that the new Procedures be reviewed by Justice for compliance with E.O. 12333.

The MOU states that the Director of IN will develop, implement, and oversee DOE policies for the protection of classified intelligence information. We noted that the two DOE orders for which IN has assigned responsibilities are outdated. DOE 5639.8A, "Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities," dated July 23, 1993, and DOE 5670.1A, "Management and Control of Foreign Intelligence," dated January 15, 1992, collectively: 1) do not make reference to NNSA; 2) reference superseded Director of Central Intelligence Directives; 3) do not address the counterintelligence responsibilities of OCI and ODNCI; and 4) make references to defunct organizations. We discussed the outdated orders with IN Headquarters officials and were informed that IN is now establishing a process to update intelligence policies and procedures in conjunction with an intelligence community effort to update the Director of Central Intelligence Directives.

RECOMMENDATIONS

We recommend that the Director, Office of Intelligence, in coordination with the Director, Office of Counterintelligence, and the Chief, Office of Defense Nuclear Counterintelligence, ensure that all Federal and contractor intelligence and counterintelligence employees:

1. Receive adequate training to ensure requisite familiarity with Executive Order 12333 and the “Department of Energy Procedures for Intelligence Activities”; and
2. Conduct annual reviews of all documents in their possession for “U.S. persons” information, as required in the “Department of Energy Procedures for Intelligence Activities.”

**MANAGEMENT
COMMENTS**

Management concurred with our recommendations and identified corrective actions to address our concerns. Management’s comments are provided in their entirety in Appendix B.

**INSPECTOR
COMMENTS**

We found management’s comments to be responsive to our report.

Appendix A

SCOPE AND METHODOLOGY

As part of our review, we interviewed DOE and NNSA officials in IN, OCI, and ODNCI. We also interviewed DOE and NNSA officials at the Richland Operations Office and the Livermore Site Office and contractor officials at Pacific Northwest and Livermore. We also reviewed relevant intelligence and counterintelligence policies.

Pursuant to the GPRA, we reviewed IN, OCI, and ODNCI performance measures relevant to intelligence activities. The U.S. Office of Management and Budget (OMB), which develops Federal guidance for performance measures, informed the DOE Office of Management, Budget and Analysis (ME) that IN, OCI, and ODNCI are not required to maintain or track performance measures. An ME official explained that OMB defines IN, OCI, and ODNCI as support offices to DOE and that performance measures from these offices do not need to be tracked for GPRA purposes. None of these three offices had performance measures relating to intelligence oversight. The intelligence oversight activities under consideration in this review are not quantifiable performance objectives for which performance measures are intended.

This inspection was conducted in accordance with the “Quality Standards for Inspections” issued by the President’s Council on Integrity and Efficiency.



Department of Energy
Washington, DC 20585

AUG 05 2004

MEMORANDUM FOR: ALFRED K. WALTER
ACTING ASSISTANT INSPECTOR GENERAL
FOR INSPECTIONS AND SPECIAL INQUIRIES
OFFICE OF INSPECTOR GENERAL

FROM: JOHN A. RUSSACK *John A. Russack*
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SUBJECT: DRAFT REPORT ON "INSPECTION OF
INTELLIGENCE OVERSIGHT ACTIVITIES AT
SELECTED FIELD SITES"

REFERENCE: IG-40 MEMORANDUM, SUBJECT: DRAFT REPORT
ON "INSPECTION OF INTELLIGENCE
OVERSIGHT ACTIVITIES AT SELECTED FIELD
SITES", DATED 9 JULY 2004

The Director, Office of Intelligence (IN), the Director, Office of Counterintelligence (OCI), and the Chief, Office of Defense Nuclear Counterintelligence (ODNCI), concur with the two recommendations contained in the Draft Report referenced above. This coordinated response outlines the steps that will be taken in response to those recommendations and provides comments on the facts, observations and conclusions contained in the draft report.

RECOMMENDATION 1:

That the Director, Office of Intelligence, in coordination with the Director, Office of Counterintelligence, and the



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Chief, Office of Defense Nuclear Counterintelligence ensure that all Federal and Contractor intelligence and counterintelligence employees receive adequate training to ensure requisite familiarity with the "Department of Energy Procedures for Intelligence Activities" and Executive Order 12333.

RESPONSE:

The Office of Intelligence, Counterintelligence and Defense Nuclear Counterintelligence have an effective, ongoing comprehensive training program, and will make a renewed effort to ensure that all employees of intelligence and counterintelligence components achieve the requisite familiarity with the "Department of Energy Procedures for Intelligence Activities" and Executive Order 12333. Additional in-depth training will be provided to all Field Intelligence Element (FIE) Directors and employees and CI officials in the field as to (a) the definition of U.S. Persons and the significance of the restrictions that apply to information concerning U.S. persons; (b) the required annual review of information concerning U.S. Persons; and (c) required reporting procedures.

Training will include (a) providing the currently available video training (updated this year) to all components and requiring that all employees receive the training; and (b) incorporating the training in other courses as appropriate; and (c) providing live training via video-teleconferencing. Development of an interactive, on-line version of the training, which all employees would be required to take and pass, is also under consideration.

In addition, IN, OCI and ODNCI will immediately take steps to ensure that all employees have complete copies of the Intelligence Procedures and Supplements in their immediate work areas. The Intelligence Procedures will also be available on the SEAS Network.

RECOMMENDATION 2:

That the Director, Office of Intelligence, in coordination with the Director, Office of Counterintelligence, and the Chief, Office of Defense Nuclear Counterintelligence,

ensure that all Federal and Contractor intelligence and counterintelligence employees conduct annual reviews of all documents in their possession for "U.S. Persons" information, as required in the "Department of Energy Procedures for Intelligence Activities" and Executive Order 12333.

RESPONSE:

The Director, IN, the Director, OCI, and the Chief, ODNCI, will issue Memoranda reminding all employees of the requirement to annually review all documents. In addition to the annual IN reminder, OCI and ODNCI will, in the future, issue their own memoranda in the first quarter of the fiscal year reminding all components of the requirement that the annual review must be accomplished by December 31 and a statement to that effect included in the quarterly report due January 15.

DISCUSSION OF SPECIFIC OBSERVATIONS AND CONCLUSION:

We are pleased to note that the IG found that personnel at the sites visited were generally in compliance with pertinent DOE policies and procedures for intelligence activities. The principal recommendations and findings relating to U.S. Persons reporting procedures and retention reviews are addressed above. We do note that these topics are all covered in some detail in current training materials; we will take steps to emphasize these aspects of the training and ensure that all employees receive the training.

In addition, the draft report discusses four instances where documents were not reviewed on an annual basis as required, one such instance at PNNL and three at LLNL. The PNNL instance involved a counterintelligence individual who had not reviewed foreign travel briefing documents for approximately 18 months. We agree that the individual--who was aware of the review requirement--should have reviewed the documents for U.S. Persons information. We also note that subsequent to the IG inspection, and as a result of enhancements to the CI-Net System, the records referred to are no longer being retained by the official.

Of the three LLNL instances, the first concerned the retention by an individual of salary information on U.S. persons; the second concerned the retention of resumes of two U.S. persons by a counterintelligence official; and the third concerned an individual who had not included reference materials in the required annual review over a ten year period.

- As for the first instance, we agree that salary information concerning other specific U.S. persons should not be retained by an intelligence employee unless the information is related to the requirements of his position; therefore, if such information had been properly subject to the annual review, further retention would not have been allowed.
- The second instance is not so clear. The resumes in question were collected and retained as a part of an authorized (classified) counterintelligence administrative investigation properly predicated on a foreign nexus. The continued retention was subject to the expanded guidance contained in the memorandum, "Policy-Retention of Information Concerning U.S. Persons In Authorized Investigative Files," dated 23 August 2002, which permits the continued retention of such information properly collected in the first place for as long as it is deemed necessary for counterintelligence purposes. Thus, while the continued retention was likely permissible, we agree that the resumes should have been subject to annual retention review in order to determine whether continued retention was necessary. We do note, however, that while specific documents should be reviewed in such a case, it is not required that employees specifically identify documents so reviewed.
- In the third instance, the employee should have included his reference materials in his annual retention reviews as required. Even though, under Supplement #4, General Guidelines for Annual Review of U.S. Persons Information, reference materials would fall into the category of minimal annual review, that review still must be accomplished.

The IG Report also noted that the current DOE "Procedures for Intelligence Activities" do not address the roles and responsibilities of the National Nuclear Security Administration (NNSA). Those intelligence roles and responsibilities are addressed in the January 24, 2003, Memorandum of Understanding (MOU) signed by IN and NNSA but that MOU is not a part of the Department of Justice approved DOE Intelligence Procedures. In the near term, and pending a longer term process of amending the Procedures, we have already requested that the Office of Intelligence Policy and Review (OIPR) of the Justice Department review and approve the IN/NNSA MOU as a Supplement to the current DOE Intelligence Procedures. If approved by OIPR, we will immediately disseminate the MOU as Supplement #6 to the DOE Intelligence Procedures.

Finally, the Office of Intelligence is in the process of amending and updating the principal intelligence orders, DOE Order 5639.8A, "Security of Foreign Intelligence Information and Sensitive Compartmented Information Facilities," and DOE Order 5670.1A, "Management and Control of Foreign Intelligence." IN is also participating in the ongoing review by the DCI of DCI Directives and policies.

If you have any questions/comments please contact Mike Ortmeier at 202-586-5046.

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