

REPORTING AND USE OF INFORMATION  
CONCERNING FEDERAL CRIMES

2 Mar 82

I. Scope. Section 1-7(a) of Executive Order 12333 requires senior officials of the Intelligence Community to:

Report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures.

These procedures govern the reporting of information concerning possible federal crimes to the Attorney General and to federal investigative agencies acquired by agencies within the Intelligence Community in the course of their functions. They also govern the handling and use of such information by the Department of Justice and federal investigative agencies in any subsequent investigations or litigation. These procedures are promulgated under the authority of 28 U.S.C. § 535 and Executive Order 12333, § 1-7(a).

II. Definitions.

- A. "Agency" means those agencies within the Intelligence Community, as defined in Executive Order 12333, § 3-4(f) except for the intelligence elements of the Federal Bureau of Investigation and the Department of the Treasury.
- B. "Department" means the Department of Justice.
- C. "Employee" means:
  - 1. A staff employee or contract employee of an Agency;
  - 2. Former officers or employees of an Agency, for purposes of offenses committed during their employment; and
  - 3. Former officers or employees of an Agency, for offenses involving a violation of 18 U.S.C. § 207.
- D. Except as specifically provided otherwise, "General Counsel" means the general counsel of the Agency or the department of which it is a component or a person designated by him to act on his behalf.

III. General Considerations.

A. These procedures govern the reporting of information which the Agency or its current employees become aware of in the course of performing their functions. They do not authorize the Agency to conduct any investigation or to collect any information not otherwise authorized by law.

B. These procedures require a current employee of the Agency to report to the General Counsel facts or circumstances that appear to the employee to indicate that a criminal offense may have been committed. Reports to the Department of Justice or to a federal investigative agency will be made by the Agency as set forth below.

C. When an Agency has received allegations, complaints or information [hereinafter "allegations"] tending to show that an employee of that agency may have violated any federal criminal statute, or another person may have violated a federal criminal statute contained within one of the categories listed in Section IV below, the Agency shall within a reasonable period of time determine through a preliminary inquiry whether or not there is any basis to the allegations (that is, are clearly not frivolous or false). If the allegations can be established as without basis, the General Counsel will make an appropriate record of his findings and no reporting under these procedures is required. If the allegations cannot be established as without basis, the reporting procedures set forth below will be followed. A preliminary inquiry shall not include interviews with persons other than current employees of the Agency or examination of premises not occupied by the Agency without the prior notification and approval of the Department of Justice, except that the Agency may interview a non-employee for the sole purpose of determining the truth of a report that such non-employee has made an allegation or complaint against an Agency employee. The foregoing provisions shall neither limit the techniques which the Agency may otherwise be authorized to use, nor limit the responsibility of the Agency to provide for its security functions pursuant to Executive Order 12333.

D. Allegations shall be reported pursuant to the procedures in effect at the time the allegations came to the attention of the Agency.

E. Allegations that appear to involve crimes against property and involve less than \$500 need not be reported pursuant to the procedures set forth below. The General Counsel will, however, make an appropriate record of his findings.

F. In lieu of following the procedures set forth below, the General Counsel may orally report periodically, but at least quarterly, to the Department concerning those offenses which, while subject to these reporting requirements, are in the opinion of the General Counsel of such a minor nature that no further investigation or prosecution of the matter is necessary. If an oral report is made, the General Counsel will meet with the Assistant Attorney General or a designated Deputy Assistant Attorney General of the Criminal Division, Department of Justice to obtain his concurrence or nonconcurrence with the General Counsel's opinion. If such concurrence is obtained, no further reporting under these procedures is required. If concurrence is not obtained, the reporting procedures set forth below will be followed.

IV. Non-Employee Reportable Offenses

A. Allegations concerning offenses in the following categories are reportable, if they pertain to a person other than an employee.

1. Crimes involving intentional infliction or threat of death or serious physical harm. Such crimes may include:

Assault -- 18 U.S.C. §§ 111-113(A)

Homicide -- 18 U.S.C. §§ 1111-14, 1116, 2113(e)

Kidnapping -- 18 U.S.C. § 1201

Presidential assassination, assault or kidnapping -- 18 U.S.C. § 1751

Threats against the President and successors to the President -- 18 U.S.C. § 871

2. Crimes likely to impact upon the national security, defense or foreign relations of the United States. Such crimes may include:

Communicating classified information -- 50 U.S.C. § 783(b)

Espionage -- 18 U.S.C. §§ 793-98

Sabotage -- 18 U.S.C. §§ 2151-57

Arms Export Control Act -- 22 U.S.C. § 2778

Atomic Energy Act -- 42 U.S.C. §§ 2077, 2092, 2111, 2122.

Export Administration Act -- 50 U.S.C. App.  
§ 2410

Neutrality offenses -- 18 U.S.C. §§ 956-60

Trading with the Enemy Act -- 50 U.S.C. App.  
§§5(b), 16

Agents of foreign government --18 U.S.C. § 951

Government employee acting for a foreign  
principal -- 18 U.S.C. § 219

Communication, receipt or disclosure of  
restricted data -- 42 U.S.C. § 2274-77

Registration of certain persons trained in  
foreign espionage systems -- 50 U.S.C. §§ 851,  
855.

Foreign Agents Registration Act -- 22 U.S.C. §  
618(a)

Unlawfully entering the United States -- 8 U.S.C.  
§ 1325

Any other offense not heretofore listed which is  
contained within Chapter 45 of Title 18 U.S.C.

3. Crimes involving foreign interference with the  
integrity of United States governmental  
institutions or processes. Such crimes may  
include, when committed by foreign persons:

Bribery of public officials and witnesses -- 18  
U.S.C. §§ 201-208

Conspiracy to injure or impede an officer -- 18  
U.S.C. § 372

Election contributions and expenditures -- 2  
U.S.C. §§ 441a-j, 599-600

4. Crimes which appear to have been committed by or  
on behalf of a foreign power or in connection  
with international terrorist activity. Such  
crimes may include:

Aircraft piracy -- 49 U.S.C. § 1472(i)

Distribution, possession, and use of explosives  
-- 18 U.S.C. §§ 842(a) - (i)

Unlawful electronic surveillance -- 18 U.S.C. §§ 2511(1), 2512(1), 50 U.S.C. §1809

Passport and visa offenses -- 18 U.S.C. §§ 1541-44, 1546

Distribution, possession, transfer, and use of firearms -- 18 U.S.C. § 922, 924; 26 U.S.C. 5861

Transporting explosives on board aircraft -- 49 U.S.C. § 1472(h)

Conspiracy to injure or impede an officer -- 18 U.S.C. § 372

Counterfeiting U.S. obligations -- 18 U.S.C. § 471-74

False statements and false official papers -- 18 U.S.C. §§ 1001-02, 1017-18

Obstruction of justice -- 18 U.S.C. §§ 1503-06, 1508-10

Perjury -- 18 U.S.C. § 1621-23

B. Any conspiracy or attempt to commit a crime reportable under this section shall be reported if the conspiracy or attempt itself meets the applicable reporting criteria.

C. The General Counsel will make an appropriate record of any matter brought to his attention which he determines is not reportable under this section.

D. Notwithstanding any of the provisions above, the General Counsel may report any other possible offense when he believes it should be reported.

V. Reporting Procedures -- Format

The fact that a referral has been made pursuant to these procedures shall be reflected in a letter or memorandum sent by the Agency to the entity designated to receive the referral under these procedures. In each instance that a referral is required, information sufficiently detailed to allow the Department of Justice to make informed judgments concerning the appropriate course of subsequent investigations or litigation shall be transmitted, either orally or in writing, to the Attorney General, the Assistant or a designated Deputy Assistant Attorney General, Criminal Division, Department of Justice, or the Assistant Director, Criminal Investigative or Intelligence

Division, Federal Bureau of Investigation. The Agency shall supplement its referral when any additional information relating to the original referral comes to its attention.

VI. Reporting Procedures -- No Security Considerations Involved

A. Where the Agency determines in accordance with these procedures that a matter must be reported, and where the Agency further determines that no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence operations would not be jeopardized thereby, the Agency will report the matter to the appropriate federal investigative agency, or to the appropriate United States Attorney for an investigative or prosecutive determination. In each such instance, the Agency shall also notify the Department of Justice, Criminal Division of the referral.

B. The Agency will inform the entity receiving such report that, unless notified otherwise by the Agency or by the Department, the security and consulting requirements set forth in Section VII of these procedures need not be followed.

C. A federal investigative agency or United States Attorney receiving information from the Agency pursuant to Section VI of these procedures is required promptly to advise the Agency of the initiation and conclusion of any investigation or prosecution involving such information.

VII. Reporting Procedures -- Security Considerations Involved

A. Where the Agency determines in accordance with these procedures that a matter must be reported, and where the Agency also determines that further investigation or prosecution of the matter would or might result in a public disclosure of classified information or intelligence sources or methods or would jeopardize the security of ongoing intelligence operations, the Agency will report the matter to the Assistant Attorney General or a designated Deputy Assistant Attorney General, Criminal Division, Department of Justice or Assistant Director, Criminal Investigative or Intelligence Division, Federal Bureau of Investigation, in the manner described in section V, above. In any instance in which a matter is reported to the Federal Bureau of Investigation, the Agency shall also notify the Department of Justice, Criminal Division of the referral. Upon request, the Agency will explain the security or

operational problems that would or might arise from a criminal investigation or prosecution.

B. Persons who are the subject of reports made pursuant to this section may be identified as John Doe # \_\_\_\_\_ in any written document associated therewith. The true identities of such persons will be made available when the Department of Justice determines that they are essential to any subsequent investigation or prosecution of the matter reported.

C. Information contained in Agency reports will be disseminated to persons other than the Assistant or Deputy Assistant Attorney General or the Assistant Director, Criminal Investigative or Intelligence Division, FBI, only as follows:

1. No Department or Federal investigative employee will be given access to classified information unless that person has been granted appropriate clearances, including any special access approvals. The Assistant or Deputy Assistant Attorney General or the Assistant Director, Criminal Investigative or Intelligence Division, FBI, will ensure that access by an employee is necessary for the performance of an official function and that access is limited to the minimum number of cleared persons necessary for investigative or prosecutorial purposes. The Department will provide the head of the Agency with a detailed report regarding any disclosure not authorized by these procedures and will take appropriate disciplinary action against any employee who participates in such a disclosure.

2. With regard to information reported to the Criminal Division, Department of Justice, which the general counsel of an Agency designates in writing as particularly sensitive and for which special dissemination controls are requested pursuant to this provision, dissemination will only occur after consultation with the General Counsel of the Agency. The designation of information as particularly sensitive may be made only by the general counsel or acting general counsel of an Agency.

3. Except as permitted by these procedures, classified information which has been received by the Department, the FBI, or other federal investigative agency pursuant to these procedures may not be disseminated outside of that entity without the advance written consent of the General Counsel or the head of the Agency.

D. When it becomes apparent to the Department or federal investigative agency that any investigative or legal action may result in the disclosure of classified information or intelligence sources or methods, the Department or federal investigative agency will, at the earliest possible time, fully advise and consult with the Agency to determine the appropriate course of action and the potential harm to intelligence sources and methods by the contemplated use or disclosure of the classified information. Except in exigent circumstances no investigative or legal action will be taken without such advance notice and consultation.

1. "Exigent circumstances" means situations in which a person's life or physical safety is reasonably believed to be in imminent danger, or information relating to the national security is reasonably believed to be in imminent danger of compromise, or expiration of a statute of limitations is imminent, or loss of essential evidence in any of these cases is imminent, or a crime is about to be committed, or the opportunity to arrest a person is about to be lost where there is probable cause to believe that the person has committed a crime.

2. If, due to exigent circumstances, any investigation or significant contemplated action in any legal proceeding is taken without advance notice or consultation, the Department or federal investigative agency, within twenty-four hours of taking such action, will provide the reporting agency an explanation of the circumstances requiring that action. Thereafter, there will be full adherence to the notification and consultation requirements of these procedures.

3. For purposes of this provision, consultation will include the specific investigative and legal actions the Department or federal investigative agency proposes to take and a specification of legal and investigative issues involved. The purpose of the consultation is to assure an opportunity for the Agency to provide its judgment to the Department or federal investigative agency regarding the potential damage, if any, to the national security of the disclosure or use of the information at issue. During this process, the Agency will promptly provide as detailed an identification and analysis as is possible at the time of the potential consequences for the intelligence sources or methods and for the national security from the contemplated disclosure or use of the classified information. The Agency will also



provide any changes to or elaborations of this analysis as soon as they become evident.

4. If the Agency and the Department or federal investigative agency agree that the risk of the use or disclosure and any resulting consequences are acceptable, the contemplated investigative or legal action may commence or proceed.

5. If the Agency and the Department of Justice or federal investigative agency are unable to agree as to the appropriate use of classified information provided pursuant to these procedures by the Agency, each entity will be responsible for pursuing timely resolution of such issues as may exist through appropriate channels within their respective organizations. Each entity will provide notice to the other entity if it intends to seek a resolution of the issues by a higher authority in the other entity's department or agency. Where issues remain, they shall be referred to the Attorney General for final determination after appropriate consultation with the head of the Agency, and, where appropriate, the Director of Central Intelligence. The decision of the Attorney General may be appealed to the President with prior notice to the Attorney General and the Director of Central Intelligence. While such an appeal is pending, no action will be taken that would render moot the President's decision.

E. When security considerations warrant such action, any matter may be reported directly by the head of the Agency to the Attorney General or the Acting Attorney General, in the manner described in section V above. In considering such reports, the Attorney General or the Acting Attorney General may consult with any person whose advice he considers necessary and who has the required security clearance, provided that the Attorney General or the Acting Attorney General will consult with the head of the reporting agency or the General Counsel thereof concerning dissemination of material designated "Eyes Only."

F. If requested by the Agency, classified information provided by the Agency to the Department or a federal investigative agency will, to the maximum extent possible and consistent with investigative and prosecutive requirements, be stored by the Agency.

#### VIII. Relation to Other Procedures and Agreements

A. If the Agency for administrative or security reasons desires to conduct a more extensive investigation into the

activities of its employees relating to any matter reported pursuant to these procedures, it will inform the Department or federal investigative agency, as is appropriate. The Agency may take appropriate administrative, disciplinary, or other adverse action at any time against any employee whose activities are reported under these procedures. However, such investigations and disciplinary action will be coordinated with the appropriate investigative or prosecuting officials to avoid prejudice to any criminal investigation or prosecution.

B. Nothing in these procedures shall be construed to restrict the exchange of information among the Agencies in the Intelligence Community or between those Agencies and law enforcement entities other than the Department of Justice.

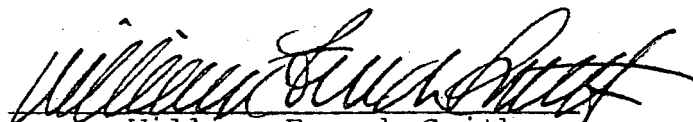
C. If the subject of a referral is an employee of another agency other than a person subject to the Uniform Code of Military Justice, the Criminal Division may refer the matter to that agency for preliminary investigation and possible administrative action. The employing agency will report the results of any such preliminary investigation under the procedures for reporting possible crimes by agency employees.

D. Notwithstanding the November 23, 1955, Memorandum of Understanding between the Department of Defense and the Department of Justice, notice of crimes which violate both federal criminal statutes and the Uniform Code of Military Justice shall be given to the Department of Justice as provided. Thereafter, the handling of matters relating to individuals subject to the Uniform Code of Military Justice shall be coordinated by the Criminal Division with the appropriate military service in accordance with existing agreements between the Departments of Justice and Defense.

2/11/82  
Date

2 MAR 1982

Date

  
William French Smith  
Attorney General

/s/ William J. Casey

William J. Casey  
Director of Central Intelligence