



Department of Defense **INSTRUCTION**

NUMBER O-5240.21

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Incorporating Change 1, November 19, 2010

USD(I)

SUBJECT: Counterintelligence (CI) Inquiries

References: See Enclosure 1

1. **PURPOSE.** This Instruction implements the policy in DoD Directive (DoDD) O-5240.02 (Reference (a)) to assign responsibilities and establish procedures for conducting CI inquiries within the Department of Defense pursuant to the authority in DoDD 5143.01 (Reference (b)).

2. **APPLICABILITY.** This Instruction:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands (CCMDs), the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

b. Does not apply to general security functions such as inquiries, procedures, or personnel security investigations as defined in DoD Instruction (DoDI) 5200.01 (Reference (c)), DoD 5200.1-R (Reference (d)), and DoD 5200.2-R (Reference (e)) or to information assurance (IA) monitoring as defined in DoDD 8500.01E (Reference (f)) and DoDI 8500.2 (Reference (g)).

3. **DEFINITIONS.** Unless otherwise noted, the CI terms used in this Instruction are defined in Reference (a).

a. **CI inquiry.** For the purposes of this Instruction, "CI inquiry" has the same meaning as "CI preliminary inquiry," defined in Reference (a).

b. **reasonable belief.** Defined in DoD 5240.1-R (Reference (h)).

This document contains information exempt from mandatory disclosure under the FOIA. Exemption 2 applies.

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4. POLICY. It is DoD policy (Reference (a)) that the CCMDs and the Defense Agencies with organic CI capabilities may conduct CI inquiries.

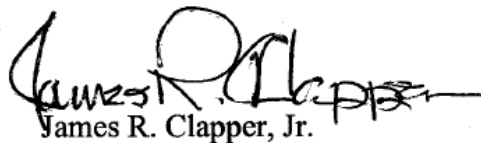
5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosure 3.

7. INFORMATION REQUIREMENTS. The information requirement contained in this Instruction is exempt from licensing in accordance with paragraphs C4.4.1., C4.4.7., and C4.4.8. of DoD 8910.1-M (Reference (i)).

8. RELEASABILITY. RESTRICTED. This Instruction is approved for restricted release. *Authorized users may obtain copies on the ~~SECRET Internet Protocol Network~~ from the DoD Issuances Web Site at <http://www.dtic.smil.mil/whs/directives> It is available to users with Common Access Card authorization on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.*

9. EFFECTIVE DATE. This Instruction is effective immediately.



James R. Clapper, Jr.
Under Secretary of Defense for Intelligence

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive O-5240.02, "Counterintelligence," December 20, 2007
- (b) DoD Directive 5143.01, "Under Secretary of Defense for Intelligence (USD(I)),
November 23, 2005
- (c) DoD Instruction 5200.01, "DoD Information Security Program and Protection of Sensitive
Compartmented Information," October 9, 2008
- (d) DoD 5200.1-R, "Information Security Program," January 14, 1997
- (e) DoD 5200.2-R, "Personnel Security Program," January 16, 1987
- (f) DoD Directive 8500.01E, "Information Assurance," October 24, 2002
- (g) DoD Instruction 8500.2, "Information Assurance Implementation," February 6, 2003
- (h) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that
Affect United States Persons," December 1, 1982
- (i) DoD 8910.1-M, "Department of Defense Procedures for Management of Information
Requirements," June 30, 1998
- (j) Deputy Secretary of Defense Directive-Type Memorandum 08-032, "Establishment of the
Defense Counterintelligence and Human Intelligence Center (DCHC)," July 22, 2008
- (k) DoD Instruction 3305.11, "DoD Counterintelligence (CI) Training," March 19, 2007
- (l) DoD Instruction 5240.04, "Counterintelligence (CI) Investigations," February 02, 2009
- (m) DoD Instruction 5240.6, "Counterintelligence (CI) Awareness, Briefing, and Reporting
Programs," August 7, 2004
- (n) Fifth Amendment to the Constitution of the United States, December 15, 1791
- (o) Chapter 47 of title 10, United States Code
- (p) DoD Instruction S-5240.17, "Counterintelligence Collection (U)," January 12, 2009
- (q) DoD Directive 2000.12, "DoD Antiterrorism (AT) Program," August 18, 2003

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE (USD(I)). The USD(I), in accordance with References (a) and (b), shall develop, coordinate, and oversee the implementation of DoD CI inquiry policy.

2. DEPUTY UNDER SECRETARY OF DEFENSE FOR HUMAN INTELLIGENCE, COUNTERINTELLIGENCE, AND SECURITY (DUSD(HCI&S)). The DUSD(HCI&S), under the authority, direction, and control of the USD(I), shall:

- a. Develop and recommend CI inquiry policy.
- b. Serve as the OSD staff point of contact for CI inquiry-related issues.

3. DIRECTOR, DEFENSE COUNTERINTELLIGENCE AND HUMAN INTELLIGENCE CENTER (DCHC). The Director, DCHC, under the authority, direction, and control of the Director, Defense Intelligence Agency, and in accordance with Deputy Secretary of Defense Directive-Type Memorandum 08-032 (Reference (j)) shall:

- a. Oversee the conduct of CI inquiries.
- b. Serve as the focal point to analyze information gleaned from CI inquiries to identify and report trends, anomalies, and other matters of CI interest.
- c. Provide the CCMDs and Defense Agencies with the guidelines and reporting process for CI inquiries.
- d. Facilitate CCMD and Defense Agency requests for review of CI inquiries referred for investigation when Military Department CI organizations or the Federal Bureau of Investigation (FBI) decline to investigate.
- e. Develop, conduct, and validate training for personnel conducting CI inquiries in accordance with DoDI 3305.11 (Reference (k)).

4. CCMD COMMANDERS (CCDRs) AND HEADS OF THE DEFENSE AGENCIES WITH ORGANIC CI ASSETS. The CCDRs and the Heads of the Defense Agencies with organic CI assets shall:

- a. Conduct CI inquiries in accordance with Enclosure 3.

b. Notify the Director, DCHC, of CI inquiries in accordance with DCHC guidelines and reporting processes.

c. Submit to DCHC requests for review of CI inquiries referred for investigation when Military Department CI organizations or the FBI decline to investigate.

d. Require that all personnel assigned to conduct CI inquiries are appropriately trained to the standards established by the Director, DCHC, prior to participation in any CI inquiry.

5. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments shall:

a. Evaluate CI inquiry referrals and initiate CI investigations in accordance with DoDI 5240.04 (Reference (1)) when warranted.

b. Consider using, as appropriate, the organic CI capabilities of the CCMDs and Defense Agencies to assist with the investigation of referred CI inquiries.

ENCLOSURE 3

PROCEDURES

1. INITIATING CI INQUIRIES

a. The CCMDs and Defense Agencies with organic CI assets shall initiate a CI inquiry upon receipt of information that cannot be resolved through security procedures, such as:

(1) The existence of a clandestine relationship between DoD personnel and agents of a foreign power, or of relationships between DoD personnel and individuals associated with international terrorist organizations.

(2) Failure to report contact with a foreign intelligence service.

(3) Other intelligence and/or international terrorist threats directed against U.S. Government or military facilities, property, information, operations, or personnel that appear to be at the behest of a foreign power or international terrorist organization.

(4) Failure to comply with the reporting requirements of DoDI 5240.6 (Reference (m)).

b. The goal of the CI inquiry is to establish or refute a reasonable belief that a particular person is acting for or on behalf of, or an event is related to, a foreign power engaged in spying or committing espionage, sabotage, treason, sedition, subversion, assassinations, or international terrorist activities.

c. The CCMDs and Defense Agencies shall use DCHC guidelines and reporting processes to document CI inquiries.

d. The CCMDs and Defense Agencies shall not delay the initiation of a CI inquiry for any improper purpose, to include attempts to delay the initiation of a CI inquiry to permit the use of otherwise prohibited techniques through security or other inquiry methods.

2. CONDUCTING CI INQUIRIES

a. CI inquiries shall be conducted in accordance with Reference (h).

b. (FOUO) Within the Department of Defense, only Military Department CI organizations have CI investigative authority and are authorized to use the intrusive techniques identified in Reference (h). The CCMDs and Defense Agencies are not authorized to use procedures 5 through 11 and procedure 13 of Reference (h). Additional prohibited techniques after the initiation of a CI inquiry are:

(1) (FOUO) Examining any information technology system or information within, except information that was gathered during the course of IA monitoring conducted before the CI inquiry began.

(2) (FOUO) Conducting consensual physical searches.

(3) (FOUO) Questioning the subject of a CI inquiry.

(4) (FOUO) Administering oaths, advising of rights pursuant to the Fifth Amendment to the Constitution of the United States (Reference (n)), and taking sworn statements, excluding unsworn official statements, except when an inquiry officer who is subject to chapter 47 of title 10, United States Code, (Reference (o)) is questioning another person who is also subject to Reference (o). In this case the inquiry officer must be familiar with the requirements of Article 31(b) of Reference (o) and, if necessary, consult with the local servicing judge advocate.

(5) (FOUO) Conducting liaison with Federal or military prosecutors unless accompanied by a representative of a CI investigative agency.

(6) (FOUO) Conducting polygraph examinations of subjects of CI inquiries.

(7) (FOUO) Requesting financial information from non-governmental institutions.

(8) (FOUO) Formally recruiting and tasking human sources.

c. CI inquiries need not be opened to:

(1) Review agency files at the request of an intelligence community (IC) member.

(2) Check agency and DoD databases to determine if an individual holds or held a DoD security clearance and has or had access to classified information or material, and provide the results to an IC member.

(3) Report, through an Intelligence Information Report (IIR), information that does not meet the threshold for initiating a CI inquiry but is of intelligence value.

(4) Report information that indicates a violation of Federal, State, or local laws. This information shall be disseminated to Federal, State, or local law enforcement agencies as appropriate and in accordance with Reference (h).

(5) Resolve internal security matters.

3. FOLLOW-UP ACTIVITIES

a. During a CI inquiry, if information establishes a reasonable belief that a clandestine relationship exists between DoD personnel and agents of a foreign power; that DoD personnel

have unreported or unauthorized contact with a foreign intelligence service; or that DoD personnel have relationships with individuals associated with international terrorist organizations, this information shall be reported immediately to DCHC and to the appropriate Military Department CI organization or the FBI.

b. If a CCMD or Defense Agency CI inquiry develops foreign intelligence information or indications of international terrorist threats, this information shall be reported through IIR or directly to the affected organization in accordance with DoDI S-5240.17 (Reference (p)) or DoDD 2000.12 (Reference (q)).

c. Once a matter has been accepted for investigation by the investigative organization, the CCMD or Defense Agency shall terminate its CI inquiry activities, but may continue to document, through the CI inquiry, any assistance provided to the CI investigative organization.

d. CCMD and Defense Agency CI personnel may participate in a CI investigation involving their organization, with the permission and under the direction of the lead investigating Service CI organization or the FBI.