



U.S. Department of Justice

Office of the Inspector General

September 25, 2017

MANAGEMENT ADVISORY MEMORANDUM FOR:

CHRISTOPHER A. WRAY
DIRECTOR
FEDERAL BUREAU OF INVESTIGATION

FROM:

MICHAEL E. HOROWITZ
INSPECTOR GENERAL

A handwritten signature in blue ink, appearing to read "Michael E. Horowitz", written over the printed name.

SUBJECT:

Referring Alleged Misconduct to the Federal Bureau of Investigation's Inspection Division and the Department of Justice's Office of the Inspector General

The purpose of this memorandum is to advise you of potential systemic issues that the U.S. Department of Justice (Department, DOJ) Office of the Inspector General (OIG) identified during an ongoing review of the Federal Bureau of Investigation's (FBI) investigation and adjudication of unfavorable results from personnel security polygraph examinations of FBI employees. Specifically, as described below, we learned that, contrary to FBI policy, the FBI's Analysis and Investigations Unit (AIU) is not appropriately reporting all allegations of misconduct that it learns about to its Inspection Division (INSD) and to the OIG.

FBI policy instructs the AIU to refer to the INSD any FBI employee misconduct issue that involves "high-risk security concerns." In addition, FBI policy requires all FBI personnel to report allegations of potential employee misconduct or criminal conduct to the INSD in writing, and the INSD is required to forward those allegations to the OIG.

Further, federal regulation and Department policy state that all DOJ employees are required to report to the OIG, to their supervisor, or to their component's internal affairs office for referral to the OIG, any allegation of criminal or serious administrative misconduct on the part of a DOJ employee, except certain allegations of misconduct that are required to be reported to the DOJ Office of Professional Responsibility.¹

¹ 28 C.F.R. § 45.11 (2016) and Attorney General Order No. 2835-2006 (September 11, 2006).

Despite these requirements, we identified several instances in which the FBI could not demonstrate that allegations of employee misconduct were referred either to the INSD or to the OIG. FBI officials told us that these referrals could have been made verbally during regularly scheduled coordination meetings between the AIU and INSD, although we note that FBI policy requires allegations of misconduct to be referred to the INSD in writing and the FBI could not locate any record of written referrals having occurred.

In our ongoing review, we selected and analyzed a judgmental sample of case files for 78 FBI employees whose polygraph examination results were deemed to be "Deception Indicated," "Inconclusive," and/or had suspected or confirmed use of countermeasures.² We requested and obtained documentation from the FBI to assess the steps it took during its investigation and adjudication of each case, from the initiation of the employee's reinvestigation through the final actions related to non-passing results or countermeasures and any related appeals. This included documentation of all polygraph retest examinations and any additional work by FBI personnel based on the polygraph results.

In addition, we queried OIG databases to determine whether potential misconduct identified in our sample was reported to the OIG's Investigations Division. We then cross-checked information listed in the OIG's investigative database with the INSD's database. Our review identified several cases in which AIU investigators became aware of serious allegations of misconduct, which were neither reported to the OIG nor reported in writing to the INSD, as required. We discuss two examples below:

1. During the post-test phase of a polygraph examination, an FBI Information Technology (IT) Specialist admitted to using FBI equipment to view and print photographs of scantily clad adult women, some of which the employee stated depicted partially naked women. Following this admission, the AIU initiated an investigation in part to review the IT Specialist's potential misuse of FBI computer systems. During an interview with the AIU more than a year later, the IT Specialist again admitted to using a standalone FBI computer to download and print photographs of scantily clothed women.³ The IT Specialist also admitted

² The employees in our judgmental sample were subject to a polygraph examination for one of the following reasons: (1) as part of their 5-year personnel security reinvestigation; (2) in response to a specific request from an FBI division or field office; or (3) as required by DOJ's Access Review Committee, which reviews appeals from denials or revocations of the eligibility of DOJ employees and applicants for access to classified information.

³ In closing the investigation, the AIU noted that the Enterprise Security Operations Center's "enhanced analysis of [the employee's] ... use of the FBI IT systems" had determined that the employee had not misused FBI IT systems. While the reasoning for this determination is beyond the scope of the OIG review, the OIG is in the process of obtaining additional information regarding this matter and will follow up as may be appropriate.

to creating a fictitious Facebook account and conversing with a foreign national for approximately 6 months before their communications ended. During a polygraph retest examination, the IT Specialist received a Deception Indicated result. The IT Specialist noted a concern about the question regarding unauthorized foreign contacts, in part because of the exchanges with the foreign national, even though the IT Specialist denied that the foreign national was connected to any intelligence service.

Neither the INSD nor the OIG received any report of allegations involving the misuse of government equipment to view and print inappropriate photographs or the unreported foreign contacts.⁴ Moreover, despite the fact that the IT Specialist unsuccessfully took four polygraph examinations and was debriefed from having access to Sensitive Compartmented Information (SCI), the IT Specialist received no disciplinary action relating to this misconduct and remained employed for more than 2 years after admitting to the misuse of FBI computers and for almost 1 year after admitting to unreported contacts with a foreign national. According to the FBI's Human Resources Division, the IT Specialist was eligible to retire and receive a federal retirement annuity.

2. During the post-test phase of a polygraph examination, a Special Agent admitted to an intimate relationship with a former FBI criminal source of about 6 months duration that had occurred more than 20 years earlier. The Special Agent had formerly managed the criminal source; but, according to the Special Agent, the relationship started after the source was no longer active for the FBI. Prior to the Special Agent's admission, the AIU had initiated an investigation due to a Deception Indicated result for a prior polygraph examination administered several months before the examination resulting in the post-test admission. In closing the investigation, the AIU noted the second polygraph examination but did not mention the Special Agent's post-test admission.

Neither the INSD nor the OIG have any record of receiving information about the Special Agent's relationship with a former FBI criminal source. The Special Agent is still employed by the FBI.

As a result of our analysis of the FBI's case files, we are concerned that the FBI is not consistently reporting allegations of misconduct to the INSD and the OIG as required by FBI and Department policies and federal regulations and that this may hinder the FBI and the OIG from thoroughly and promptly

⁴ In 2003, the OIG separately received information from the FBI's Office of Professional Responsibility alleging that the employee had engaged in unprofessional conduct by making threatening remarks to coworkers, disrupting the office with inappropriate behavior, and making inappropriate comments regarding female employees. The OIG referred the complaint back to the FBI for appropriate handling.

investigating employee misconduct. Our concerns are heightened because all FBI employees have Top Secret clearances, which give them access to classified information when relevant to their work. In the first example, although the FBI eventually debriefed the IT Specialist from access to SCI, the employee had such access for approximately 17 months after the employee's initial admissions, during which time the employee was unable to pass three polygraph examinations. While the INSD and the OIG do not adjudicate security clearances, independent investigations of misconduct allegations against employees with access to SCI are particularly important given the potential risks to U.S. national security.

We are providing this information so that the FBI can consider immediate corrective actions to ensure appropriate reporting of such information to both the INSD and the OIG. Please advise us within 30 days of the date of this memorandum on what actions the FBI has taken or intends to take with regard to these issues. If you have any questions or would like to discuss this information and our concerns, please contact me at (202) 514-3435.

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