



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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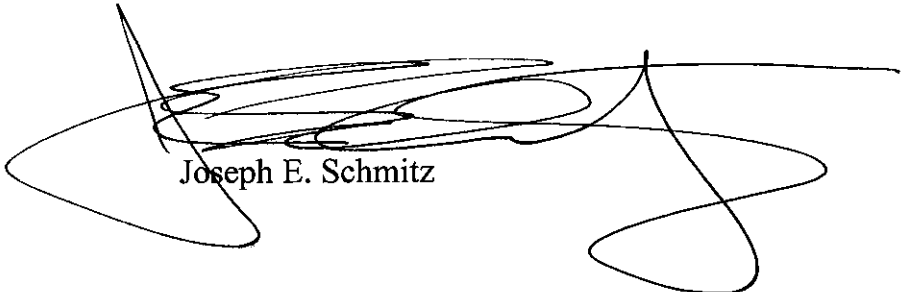
MEMORANDUM FOR CIVILIAN AND MILITARY OFFICERS AND EMPLOYEES
ASSIGNED TO THE OFFICE OF THE INSPECTOR
GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Policy on Use of DoD IG Subpoenas in Support of Non-Fraud Related
Investigations

Purpose: This memorandum establishes policy on the use of DoD IG subpoenas in support of non-fraud related investigations in accordance with the Inspector General Act of 1978, as amended (hereafter "the Act").

Statutory Duty: Section 6(a)(4) of the Act authorizes Inspectors General "to require by subpoena [sic] the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this Act" Section 8(c)(2) of the Act authorizes the Inspector General of the Department of Defense to "initiate, conduct, and supervise such audits and investigations in the Department of Defense (including the military departments) as the Inspector General considers appropriate."

Policy: For a one-year trial period, the IG will consider requests to issue subpoenas in support of DoD non-fraud related (general crimes) criminal investigations that satisfy the criteria under the DoD Nexus Test (attached) and at least one of the criteria under the Particular Crime Test (attached). Additionally, the Assistant Inspector General for Investigative Policy and Oversight shall evaluate the criteria used to identify those DoD general crimes investigations for which DoD IG subpoenas are used and the overall effectiveness/usefulness of IG subpoenas in the investigation DoD-related general crimes.



Joseph E. Schmitz

Attachment:
As stated

DoD Nexus Test

Is there sufficient DoD nexus to the crime at issue to warrant the DoD IG's involvement in the investigation? Criteria: The Defense Criminal Investigation Organization (DCIO) submitting the request has investigative authority¹ for the crime(s) under investigation and, if the investigation is being conducted jointly with another law enforcement organization, the DCIO has also been designated as the "lead investigative organization" for that joint investigation.²

Particular Crimes Test

Is the particular crime at issue of such a nature and/or of such concern to DoD as to warrant the DoD IG's involvement in the investigation? Criteria: At least one of the crimes under investigation is an offense listed in the following table entitled, "Inspector General Subpoenas General Crimes Case Categories."

¹ For the purpose of this memorandum, the phrase "has investigative authority" means the DCIO has the legal authority to conduct the investigation in question pursuant to its own regulations and investigative authority has not been specifically reserved to another agency or entity.

² For example, if a DCIO is supporting local police in an investigation wherein a Service member's car was allegedly stolen from his off-base residence, we would not issue a subpoena for records of the auto dealership where the car was purchased, but would defer to the local police as the "lead" investigative agency.

Inspector General Subpoenas General Crimes Case Categories

Offense	Citation
Murder	18 U.S.C. § 1111, UCMJ Article 118
Attempts to Commit Murder or Manslaughter	18 U.S.C. § 1113, UCMJ Article 80
Manslaughter	18 U.S.C. § 1112, UCMJ Article 119
Negligent Homicide	UCMJ Article 134
Kidnapping	18 U.S.C. § 1201, § 875; UCMJ Articles 133, 134 (Kidnapping)
Peonage, Slavery and Trafficking in Persons	18 U.S.C. Chapter 77, UCMJ Articles 133, 134
Robbery	18 U.S.C. § 2111, ³ UCMJ Article 119
Bomb Threat or Hoax	18 U.S.C. § 875; UCMJ Article 134
Arson or Aggravated Arson	18 U.S.C. § 81; UCMJ Article 126
Unlawful Acts Involving a Firearm	18 U.S.C. Chapter 44
Maiming	8 U.S.C. 114, UCMJ Article 124
Riot	8 U.S.C. 2101, UCMJ Article 116
Assault with intent to commit murder, voluntary manslaughter, rape, robbery, sodomy, arson, burglary, or housebreaking	18 U.S.C. Chapter 7, UCMJ Articles 134
Assault in which grievous bodily harm is intentionally inflicted	18 U.S.C. Chapter 7, UCMJ Articles 128
Firearm, discharging---willfully, under such circumstances as to endanger human life	UCMJ Articles 134
Sexual assault, Abuse, or Exploitation	18 U.S.C. Chapters 109A and 110, UCMJ Articles 120, 125, and 134 (Indecent Acts or liberties with a Child)
Terrorism	18 U.S.C. Chapter 113B
Drugs – Unlawful manufacture of, importation of, or trafficking in, a controlled substance	18 U.S.C. § 841 – 843, Chapter 7, UCMJ Articles 112 ⁴
Other significant offenses at the discretion of the Inspector General following a request by the head of the investigative organization	TBD

³ Only includes offenses where a firearm (as defined in the Commentary, Applicable Notes 1(e) to §1B1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §1B1.1) was used in the commission of the crime. Restrictions apply to both Title 18 and UCMJ offenses.

⁴ Only if the quantity of the controlled substance/drug (defined as a substance identified as a controlled substance in §2D1.1 of the Federal Sentencing Guidelines (18 U.S.C. Appendix §2D1.1) involved is, or is reasonably suspected to be, equal to or in excess of the drug quantity specified for Base Offense Level 16 or the Drug Quantity Table found at §2D1.1 f the Federal Sentencing Guidelines (18 U.S.C. Appendix §2D1.1c)). Restrictions apply to both Title 18 and UCMJ offenses.