



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-1010

June 17, 2009

Incorporating Change 1, September 10, 2010

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
ASSISTANT SECRETARIES OF DEFENSE
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DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Directive-Type Memorandum (DTM) 08-052 – DoD Guidance for
Reporting Questionable Intelligence Activities and Significant or Highly
Sensitive Matters

References: See Attachment 1

Purpose. This DTM implements recent Executive Branch guidance in Director of National Intelligence and Chairman, Intelligence Oversight Board Memorandum (Reference (a)) concerning the criteria and requirements for reporting intelligence oversight matters and directs compliance with the guidance contained in Attachment 2. It establishes the procedures to ensure complete and standardized reporting by the DoD Intelligence Components and other entities involved in intelligence activities, which include both foreign intelligence and counterintelligence activities. This DTM is effective immediately; it shall be incorporated into DoD 5240.1-R (Reference (b)) ~~within~~ *180 days. This DTM shall expire effective 1 September 2011.* Nothing in this DTM is intended to alter reporting requirements established by statute or departmental policy.

Applicability. This DTM applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the “DoD Components”).

Policy. Questionable intelligence activities and significant or highly sensitive matters involving intelligence activities may have serious implications for the execution of DoD missions. It is DoD policy that senior leaders and policymakers within the Government be made aware of events that may erode the public trust in the conduct of DoD intelligence operations. Reference (b), DoD Directive 5148.11 (Reference (c)), and Executive Order (E.O.) 13462 (Reference (d)) require that such matters be reported to the Intelligence Oversight Board (IOB), a component of the President’s Intelligence Advisory Board, and the Director of National Intelligence (DNI) as appropriate. The Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)) is the principal staff assistant for intelligence oversight matters and shall serve as the conduit for all reporting to the IOB.

Reporting Requirements and Procedures. Reporting guidance is contained in Attachment 2. The quarterly report to the ATSD(IO) is exempt from licensing in accordance with Chapter 4, subparagraphs C4.4.1 and C4.4.8, of DoD 8910.1-M (Reference (e)).

Releasability. UNLIMITED. This DTM is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

A handwritten signature in black ink, appearing to read "William J. Byrne". The signature is written in a cursive, flowing style.

Attachments:
As stated

ATTACHMENT 1

REFERENCES

- (a) Director of National Intelligence and Chairman, Intelligence Oversight Board Memorandum, "Intelligence Oversight Reporting Criteria," July 17, 2008¹
- (b) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons," December 1982
- (c) DoD Directive 5148.11, "Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)), " May 21, 2004
- (d) Executive Order 13462, "President's Intelligence Advisory Board and Intelligence Oversight Board," February 29, 2008
- (e) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (f) Executive Order 12333, "United States Intelligence Activities," as amended
- (g) Department of Justice-DoD Memorandum of Understanding: "Reporting of Information Concerning Federal Crimes," August 1995²

¹ Available at: <http://www.defenselink.mil/atstdio>

² Contact ATSD(IO), 703-275-6550

ATTACHMENT 2

PROCEDURES FOR REPORTING QUESTIONABLE INTELLIGENCE ACTIVITIES
AND SIGNIFICANT OR HIGHLY SENSITIVE MATTERS

1. REPORTING PARAMETERS

a. The DoD Components shall report the following matters to the ATSD(IO) in accordance with References (a) and (d).

(1) Questionable Intelligence Activity. An intelligence activity, as defined in E.O. 12333 (Reference (f)), that may be unlawful or contrary to executive order, Presidential directive, or applicable DoD policy governing that activity.

(2) Significant or Highly Sensitive Matters. A development or circumstance involving an intelligence activity or intelligence personnel that could impugn the reputation or integrity of the DoD Intelligence Community or otherwise call into question the propriety of an intelligence activity. Such matters might be manifested in or by an activity:

(a) Involving congressional inquiries or investigations.

(b) That may result in adverse media coverage.

(c) That may impact on foreign relations or foreign partners.

(d) Related to the unauthorized disclosure of classified or protected information, such as information identifying a sensitive source and method. Reporting under this paragraph does not include reporting of routine security violations.

(3) Crimes Reported to the Attorney General. Any intelligence activity that has been or will be reported to the Attorney General, or that must be reported to the Attorney General as required by law or other directive, including crimes reported to the Attorney General as required by Department of Justice-DoD Memorandum of Understanding (Reference (g)).

b. Unless extenuating circumstances exist, the ATSD(IO) will be notified prior to briefings of any congressional committee or member of Congress concerning intelligence matters identified in paragraphs 1.a.(1), 1.a.(2), and 1.a.(3) of this attachment. Should extenuating circumstances, in fact, delay notification to the ATSD(IO) until after the briefing, then the ATSD(IO) will be notified of the outcome of the briefing at the first opportunity thereafter.

c. The DoD Component assigned to or conducting intelligence activities may establish internal organizational reporting responsibilities pursuant to that Component's internal policies and regulations.

2. SUBMISSION OF REPORTS. DoD Components assigned to conduct intelligence and counterintelligence activities shall submit reports to the ATSD(IO) in accordance with the following guidance.

a. Report questionable intelligence activities of a serious nature and all significant or highly sensitive matters immediately. Such reports may be made by any secure means. Oral reports should be documented with a written report as soon as possible thereafter.

b. Report questionable intelligence activities not of a serious nature quarterly. Reporting periods shall be based on the calendar year. The first report for each calendar year shall cover January 1 through March 31. Succeeding reports shall follow at 3-month intervals. Quarterly reports are due to the ATSD(IO) by the 15th day of the month following the end of the quarter. Quarterly reports will describe all questionable intelligence activities as well as significant or highly sensitive matters identified during the quarter. Quarterly reports are routinely submitted to the ATSD(IO) through normal modes of routing and transmission (e.g., chain of command, hard or soft copy). Quarterly reports are required even if no reportable matters occurred during the reporting period.

c. Reporting DoD Components will format all reports as follows:

(1) Assignment of a Case Number for Each Incident. Except where the volume of incident investigations that have been reported and closed within the same reporting quarter makes the assigning of a case number to each case impracticable, a case number that runs consecutively and identifies the reported incident by reporting agency, Military Department, or Combatant Command and calendar year shall be assigned to each incident. For example: "DIA 2009 - 04" would indicate the fourth incident reported by DIA in calendar year 2009. Use this number each time the incident is mentioned in initial reports, and in update and close-out reports. A case number will be assigned to all reported incidents that, at a minimum, are the subject of an ongoing investigation.

(2) Information to be Included in Each Report. For each incident reported, include the following information as it becomes available.

(a) A narrative describing each incident reported.

(b) An explanation of why the incident is being reported either as a potential violation of law, potentially contrary to executive order or Presidential directive, or a potential violation of Reference (b) and/or agency or Military Department procedures implementing Reference (f). Cite the portions of relevant law, order, policy, or regulation as it is determined.

(c) An explanation of why the incident is considered a significant or highly sensitive matter, if so reported.

(d) An analysis of how or why the incident occurred.

(e) An assessment of the anticipated impact of the reported incident on national security or international relations, as well as any mitigation efforts, including success and failures of such efforts. If there has been no impact or no impact is anticipated, the report should so state.

(f) Remedial action taken or planned to prevent recurrence of the incident.

(g) An assessment of any impact the reported incident may have on civil liberties or protected privacy rights.

(h) A description of actions taken if the incident concerns information improperly acquired, handled, used, or destroyed.

(i) Any additional information considered relevant for purposes of fully informing the Secretary and/or Deputy Secretary of Defense, the IOB, and the DNI and providing context about the incident.

d. Each quarterly report should be organized under the major headings of “New Incidents” and “Updates on Previously Reported Incidents.” The latter heading includes incidents still under inquiry as well as those resolved and closed during the quarter.

e. Additionally, each quarterly report will contain a summary of gravity, frequency, trends and patterns of the questionable intelligence activities, and/or significant or highly sensitive incidents reported during that quarter, to the extent that they can be determined. Otherwise, the summary should be provided, as the information becomes available, in a subsequent quarterly report.

f. The quarterly report shall include a description of any inspection findings or intelligence oversight program developments, such as publication of a revised intelligence oversight regulation, that the reporting DoD Component believes is significant. Neither training reports nor inspection schedules shall be included in the

quarterly report to ATSD(IO). DoD Components shall monitor compliance with training requirements and inspection schedules.

g. Reporting shall not be delayed or postponed pending an investigation, command inquiry, or legal proceeding.

3. **PROHIBITED USE OF THIS ATTACHMENT.** This attachment shall not be used to prepare the Annual Intelligence Oversight Report to Congress, which is signed by the Secretary of Defense. Instructions for preparing the Annual Intelligence Oversight Report to Congress will be issued by the ATSD(IO) in November of each year; the Annual Report will be due to the ATSD(IO) January 31 of each year.