

OFFICE OF INSPECTOR GENERAL

**Oversight Review of the
National Protection and
Programs Directorate, Internal
Affairs Division**



Homeland
Security

**June 19, 2015
OIG-15-108-IQO**



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Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

June 19, 2015

MEMORANDUM FOR: The Honorable Suzanne Spaulding
Under Secretary
National Protection and Programs Directorate

FROM: John Roth *John Roth*
Inspector General

SUBJECT: *Oversight Review of the National Protection and
Programs Directorate, Internal Affairs Division*

Attached for your action is our final report, *Oversight Review of the National Protection and Programs Directorate, Internal Affairs Division*. We incorporated your formal comments in the final report.

The report contains 24 recommendations aimed at improving the National Protection and Programs Directorate's, Internal Affairs Division. Your office concurred with all 24 recommendations. Based on information provided in your response to the draft report, we consider recommendations 23 and 24 open and unresolved. As prescribed by the Department of Homeland Security Directive 077-01, *Follow-Up and Resolutions for the Office of Inspector General Report Recommendations*, within 90 days of the date of this memorandum, please provide our office with a written response that includes your (1) agreement or disagreement, (2) corrective action plan, and (3) target completion date for each recommendation. Also, please include responsible parties and any other supporting documentation necessary to inform us about the current status of the recommendation. Until your response is received and evaluated, the recommendations will be considered open and unresolved.

Based on information provided in your response to the draft report, we consider recommendations 1, 2, 3, 7, 9, 10, 12, 13, 14, 16, 17, 19, 20, 21, and 22 open and resolved. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions.

Recommendations 4, 5, 6, 8, 11, 15, and 18 are resolved and closed.



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Please send your response or closure request to IQO@oig.dhs.gov

Consistent with our responsibility under the Inspector General Act, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact John McCoy, Assistant Inspector General, Office of Integrity and Quality Oversight, at (202) 254-4100.

Attachment



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Abbreviations

AIR	Administrative Inquiry Report
CFR	Code of Federal Regulations
CIGIE	Council of the Inspectors General on Integrity and Efficiency
DHS	Department of Homeland Security
FPS	Federal Protective Service
FY	fiscal year
FYI	For Your Information
IAD	Internal Affairs Division
LEAP	Law Enforcement Availability Pay
NPPD	National Protection and Programs Directorate
OCS	Office of Compliance and Security
OIG	Office of Inspector General
U.S.C.	United States Code



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SUMMARY

The Office of Integrity and Quality Oversight, Investigations Quality Assurance Division conducted an oversight review of the National Protection and Programs Directorate (NPPD), Internal Affairs Division (IAD) from November 2014 to February 2015. The review covered IAD activity from October 1, 2011, to September 30, 2014 (fiscal years 2012 through 2014). We conducted this review as part of the planned periodic review of the Department of Homeland Security (DHS) component internal affairs offices by the DHS Office of Inspector General (OIG) in keeping with the oversight responsibilities mandated by the *Inspector General Act of 1978*, as amended.

The review focused on two primary areas: organizational management and investigative/inquiry management. In conducting the review, we assessed compliance with *DHS Management Directive 0810.1*, the *Office of Compliance and Security's Administrative Inquiry Handbook*, and referenced guidelines established by the Council of the Inspectors General on Integrity and Efficiency, as applicable.

Generally, we found that inquiries conducted and overseen by the Internal Affairs Division were thorough and complete. Our review, however, raised serious concerns about NPPD's authority to conduct criminal investigations. Additionally, we found that criminal investigators assigned to IAD did not meet the minimum legal requirement of spending at least 50 percent of their time on criminal investigative activity to earn Law Enforcement Availability Pay. Lastly, we found particular issues with the written policies and the overall management of inquiries.

We made 24 recommendations, 3 directed at the Under Secretary for the National Protection and Programs Directorate and 21 recommendations to the Internal Affairs Division Director.



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BACKGROUND

NPPD is a component agency within DHS that serves to protect and enhance the resilience of the Nation's physical and cyber infrastructure. NPPD is comprised of six subcomponents: Office of the Under Secretary, Office Cybersecurity and Communications, Office of Infrastructure Protection, Office of Cyber and Infrastructure Analysis, Federal Protective Service (FPS), and Office of Biometric Identity Management. IAD falls under the Office of the Under Secretary's Office of Compliance and Security (OCS).

On April 14, 2011, former Under Secretary of NPPD Rand Beers assigned OCS the responsibility for managing fact-finding activities within the component.¹ Under Secretary Beers' delegation of authority allowed for OSC to implement procedures for intake, tracking, and fact finding for all allegations of serious misconduct, coordinating with the OIG, and providing fact-finding necessary for management action. The delegation allowed FPS's now-defunct Compliance Investigation Division to perform these tasks on a reimbursable basis. OCS subsequently created IAD to investigate allegations of misconduct committed by NPPD employees.

The IAD Division Director supervises a staff of seven criminal investigators and one investigative assistant. All of the Division's employees are on a detail from FPS. The Division Director, the investigative assistant, and two criminal investigators are located in Rosslyn, VA. The remaining staff is located in FPS regional offices around the country (Brunswick, GA; Portsmouth, NH; Philadelphia, PA; and Fort Worth, TX).

Criminal investigators assigned to IAD operate under the authority delegated to FPS by the Secretary of DHS through the provisions of 40 United States Code (U.S.C.) § 1315. NPPD does not have designated law enforcement authority.

IAD follows procedures delineated in the *OCS Administrative Inquiry Handbook* and applicable FPS directives while conducting its work. Additionally, IAD is required to comply with the provisions of *DHS Management Directive 0810.1*, which mandates that DHS internal affairs components advise OIG of allegations of misconduct by DHS employees, contractors, grantees, and "individuals engaged in the operation of DHS programs or operations."

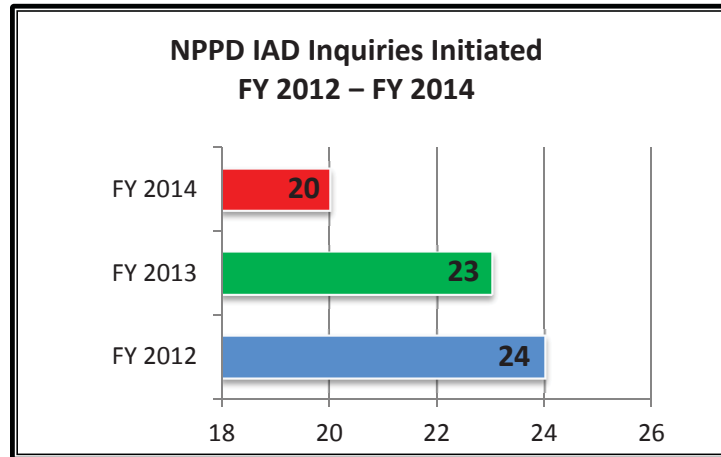
An analysis of information provided by the Division Director revealed that from October 1, 2011, to June 1, 2014, IAD received 400 allegations and initiated 67 administrative inquiries (figure 1). IAD further referred 19 allegations to DHS OIG, referred 50 allegations to the various FPS regions as management inquiries, and forwarded 264 allegations marked For Your Information (FYI) to regional management.

¹ Paul Durette, Office of the Under Secretary, for Rand Beers, Under Secretary for NPPD, Action Memorandum on the Office of Compliance and Security, April 14, 2011.



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Figure 1: Inquiries Initiated



Source: NPPD IAD.

The DHS OIG Intake Division reported receiving 528 NPPD-related complaints from various sources, including IAD, for the period reviewed. DHS OIG initiated investigations on 28 of those complaints.

We determined that for the period reviewed, IAD categorized initial allegations into 104 unique allegation descriptions. For the ease of analysis, the inspection team consolidated the IAD descriptions into 71 general descriptions. Table 1 displays the most prevalent allegation descriptions investigated by IAD for the period inspected. Table 2 depicts the most prevalent allegation descriptions sent to FPS regional offices for management inquiries. Table 3 displays the most prevalent allegation descriptions categorized as FYI.

Table 1. MOST PREVALENT ALLEGATIONS INVESTIGATED FY 2012–FY 2014

ALLEGATION	# INQUIRIES INITIATED
Employee Misconduct	11
Unprofessional Behavior	9
Arrest – Local	7
Abuse of Authority	3
Assault	3
Ethics Violation	3
Misuse of Government-Owned Vehicle	3
Threats	3

Source: NPPD IAD.



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**Table 2. MOST PREVALENT ALLEGATIONS
REFERRED TO FPS REGIONS
FY 2012–FY 2014**

ALLEGATION	# ALLEGATIONS REFERRED
Employee Misconduct	7
Misuse of Government-owned Vehicle	6
Unprofessional Behavior	5
Accidental Discharge of a Weapon	4
Falsifying Documents	4
Unauthorized Vehicle Stop	3

Source: NPPD IAD.

**Table 3. MOST PREVALENT ALLEGATIONS
CATEGORIZED AS FYI
FY 2012–FY 2014**

ALLEGATION	# OF ALLEGATIONS
Unprofessional Behavior	48
Employee Misconduct	26
Abuse of Authority	10
Hostile Work Environment	10
Contract Impropriety	10
Security Breach	9
Misuse of Government-owned Vehicle	9

Source: NPPD IAD.

In the Office of Compliance and Security Annual Report for fiscal year (FY) 2013, OCS reported receiving 156 allegations of misconduct in FY 2013 and that only 4 of the allegations were criminal in nature. IAD officials could not provide any information as to whether any of the allegations were accepted for prosecution. They also were not able to provide any statistical information related to the outcome of the inquiries they conducted (table 1) or the allegations referred to FPS regional offices (table 2).



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RESULTS

Review of Operational Management

Authorities

IAD-assigned criminal investigators operate under the authority delegated to FPS by the Secretary of Homeland Security through the provisions of 40 U.S.C. § 1315. Section 1315 authorizes the Secretary to designate employees as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government, and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and person on the property. Section 1315 also authorizes a designated agent to “carry firearms, make arrests, ... serve warrants, ... [and] conduct investigations ... of offenses that may have been committed against property owned or operated by the Federal Government or persons on the property.” FPS employees detailed to IAD are designated as officers and have both law enforcement and investigative authority within the parameters delineated in the statute.

NPPD itself has not been delegated or assigned authority to conduct criminal investigations. This poses serious concerns about IAD’s authority to conduct internal criminal investigations of NPPD employees who are not FPS employees and of violations that do not involve the protection of property and persons on the property. The conduct of such investigations could expose the agency and employees to liability and prove detrimental to the successful prosecution of wrongdoing.

The inspection team’s analysis of the 400 allegations received in the 3 years reviewed showed that IAD only pursued 4 allegations through a criminal investigation. OCS’s FY 2013 Annual Report notes that of the 156 allegations of misconduct received, only 4 involved potential criminal misconduct. One of the criminal misconduct allegations involved an employee in NPPD’s Office of Infrastructure Protection; the remaining three pertained to FPS employees.

The inspection team discussed its findings with the Division Director who said that the administrative inquiry process best handles the overwhelming majority of allegations received. He expressed some reservation in conducting criminal investigations because NPPD did not have the proper law enforcement authority. The Division Director processed any allegation referred by the DHS OIG as an administrative inquiry due to the issues related to NPPD’s investigative authority. He interpreted the DHS OIG’s decision not to investigate an allegation to mean that the allegation had no merit to investigate criminally. We explained that DHS OIG’s decision not to investigate an allegation does not mean that the allegation has no criminal merit; instead,



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this decision is frequently the result of agency priorities and the availability of resources.

The Division's lack of authority to conduct criminal investigations and the four criminal investigations opened during the 3-year period raises concerns about whether IAD-assigned criminal investigators are meeting the necessary threshold to qualify for the enhanced retirement and pay benefits associated with the positions they hold. Title 5 U.S.C. § 5545a, *Law Enforcement Availability Pay Act of 1994*, allows for the payment of a 25 percent premium to criminal investigators to ensure their availability for unscheduled duty in excess of the 40-hour basic workweek. The statute explains that a criminal investigator is eligible for availability pay only if he/she has an annual average of 2 or more hours of unscheduled duty per regular workday. Title 5 Code of Federal Regulations (CFR) 831.902 and 841.802 require that law enforcement officers in primary positions (nonsupervisory) spend, in general, an average of at least 50 percent of their time investigating, apprehending, or detaining individuals suspected or convicted of violating criminal laws of the United States.

The inspection team and a representative of the DHS OIG Office of Counsel met with a representative of the DHS Office of General Counsel assigned to handle issues related to NPPD to discuss their concerns about the agency's authority to conduct criminal investigations. The Office of General Counsel representative provided several budgetary and organizational explanations for why NPPD has not yet taken steps to acquire the necessary authority.

Recommendations

1. We recommend that the Under Secretary of NPPD determine how allegations of criminal misconduct by NPPD employees will be investigated. If the Under Secretary decides to investigate such allegations through a specialized unit, we recommend that the Under Secretary obtain and delegate the authority to conduct criminal investigations to OCS.
2. We recommend that the Under Secretary of NPPD conduct a workforce analysis of IAD to determine the appropriate composition and classification of assigned positions.
3. We recommend that the Under Secretary of NPPD ensure that criminal investigators assigned to IAD in primary positions meet the minimum legal requirement of spending at least 50 percent of their time on criminal investigative activity.



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Law Enforcement Availability Pay

The Division Director could not provide the inspection team with any documentation showing that his employees worked the mandatory minimum number of Law Enforcement Availability Pay (LEAP) hours required by Title 5 U.S.C. § 5545a. IAD employees and the Division Director reported that they track their LEAP hours through the time and attendance database, WebTA. Similarly, the Division Director could not provide proof that he certifies, on an annual basis, to the head of the agency that all LEAP-earning employees have worked the mandatory minimum number of LEAP hours as required by Title 5 U.S.C. § 5545a(d).

Section 5545a(e) requires “each criminal investigator receiving availability pay under this section and the appropriate supervisory officer ... shall make an annual certification to the head of the agency that the investigator has met, and is expected to meet, the requirements.”

Recommendations

4. We recommend that the Division Director require LEAP-eligible employees to certify on an annual basis that they have met and will continue to meet the minimum LEAP requirements.
5. We recommend that the Division Director certify on an annual basis that he and his employees have met and will continue to meet the minimum LEAP requirements.
6. We recommend that the Division Director maintain copies of all LEAP certification memorandums.

Policy

The *NPPD OCS Administrative Inquiry Handbook* (Handbook) is the only policy written exclusively for IAD operations. The Handbook “serves as the primary resource guide for Fact Finders and Special Agents in preparing for, conducting, and reporting management inquiries referred by ... OCS.”² Agents assigned to IAD use FPS policies when conducting criminal investigations.

In our review of the Handbook, we found that it contains significant errors regarding the administration of rights advisements. The errors stem from a misunderstanding of the Garrity and Kalkines advisements and IAD’s ineffective screening of allegations. According to section 10.1, The Fundamentally Non-Criminal Nature of Inquiries, “The possibility of criminal prosecution will already have been ruled out by the time you undertake an

² *NPPD OCS Administrative Inquiry Handbook*, August 2012, Section 1.0.
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inquiry as a Fact Finder.” We determined that in most instances, no serious consideration of an allegation’s prosecutorial merit is conducted before an allegation is sent to a Fact Finder. Therefore, a Fact Finder may be assigned to investigate a matter with viable criminal allegations and as a result require that rights advisements be given.

Similarly, section 10.5 of the Handbook (Statement of Rights and Obligations Memoranda) cites the wrong rights advisement to use when compelling a subject to provide information. According to this section, “All employees who are the subject of an inquiry must be formally advised of the obligation to provide information and the fact that information they provide cannot be used against them in a criminal proceeding, via the use of the ‘Garrity Warnings.’” As appropriately cited in section 10.6 of the Handbook, the Kalkines warning is actually the rights advisement that notifies subjects of their obligation to provide information and restricts the use of information provided from being used in criminal proceedings.

Additionally, the Handbook does not explain the elements of a Garrity warning and wrongly requires that the Fact Finder issue the warning in certain circumstances. Section 11.8, Non-Bargaining Unit Employee Interviews, of the Handbook states, “the interview of a subject must always be preceded by the issuance of the Garrity Warning.” It also advises that employee witnesses should receive a Garrity warning “if there is a reasonable basis to believe they will not be forthcoming or potentially subject to discipline.” As with the previous example, employees should receive the Kalkines warning in these circumstances and not the Garrity warnings.

Similarly, section 11.8 instructs Fact Finders to issue several documents to subjects before beginning an interview. Some of these documents contain conflicting language and contradict each other. First, the Handbook instructs Fact Finders to give subject interviewees a “Required Appearance and Sworn Testimony” memorandum at least 48 hours in advance of the interview. The form notifies employees that they “must cooperate fully ..., but does not prohibit a subject of a criminal investigation from invoking their rights against self-incrimination.” The form then explains that the subject’s “willful refusal to appear and provide sworn testimony ... may be construed to be insubordination, which in and of itself could result in revocation of any security clearance you may hold and the institution of disciplinary action.” The two sections of the form seem to contradict each other. The employee is free to invoke his/her right against self-incrimination, but if he/she does not provide sworn testimony, his/her employment may be terminated. The conflicting wording could result in the exclusion of necessary evidence during proceedings.

In addition to giving subject interviewees the Garrity warning discussed previously, section 11.8 also dictates that Fact Finders give “Admin Warnings,” which are presumably a form of the Kalkines warnings. As in the prior



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example, the two advisements contradict each other. Kalkines notifies the subject that he/she is compelled to cooperate and that any information provided will not be used against him/her in a criminal proceeding, while Garrity allows the subject to refuse to provide information.

The inspection team discussed the discrepancies found in the Handbook with the Division Director, who agreed to work with the Office of General Counsel to amend the Handbook.

Recommendations

7. We recommend that the Division Director work with Office of General Counsel to correct the discrepancies in sections 10 and 11 of the Handbook.

Employee Personnel Files

The Division Director told the inspection team that he does not maintain personnel folders for his employees. He said that FPS controls the FPS records that are normally maintained in personnel files, and these records are kept in electronic formats controlled by FPS. He claimed to have access to the records if needed. He said that he maintained contact telephone numbers for his employees, should he need to contact them. Typically, personnel files contain relevant training certificates, basic employment information, performance ratings, annual certifications, inventory receipts, and emergency contact information. The Division Director was not able to provide any of the personnel records that the inspection team typically reviews in conducting oversight reviews.

The Division Director provided the inspection team a point of contact within the FPS Specialized and Advanced Training Division. This individual was able to provide training records for IAD employees.

Recommendations

8. We recommend that the Division Director maintain emergency contact information for each of his direct reports.

9. We recommend that the Division Director maintain a file containing, at a minimum, annual LEAP and training certifications, emergency contact information, yearly performance plans and ratings, inventory records for issued equipment, and basic employment information for each of his employees.



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Training

The training records provided by the FPS point of contact showed that all of the IAD criminal investigators completed initial criminal investigator training at the Federal Law Enforcement Training Center or equivalent institution. During the period reviewed, IAD employees received their recurring training through FPS-affiliated programs. The investigators conducted firearms qualification (quarterly handgun, annual shotgun familiarization, annual handgun reduced light, and annual rifle) through FPS regional training coordinators.

In the 12 quarters reviewed, the inspection team found:

- six instances where individual agents did not qualify in a given quarter. The inspection team received no documentation attesting that the agents received a waiver authorizing them to miss the required training;
- eight occurrences (out of 24) where individual employees attended shotgun familiarization training;
- four employees who did not attend training on the use of shotguns during the 3 years reviewed;
- nine occurrences (out of 24) where individual employees qualified on their assigned weapons in reduced light scenario;
- four employees who did not qualify in reduced light;
- eleven instances (out of 24) where agents attended training on the use of force;
- three instances (out of 24) where agents attended defensive tactics training; and
- six of the assigned agents who did not attend defensive tactics training.

The inspection team found no documentation showing that agents received continuing legal education training or Federal Aviation Administration Flying While Armed training during the covered period.³ A failure to receive the required Flying While Armed training will result in agents being prohibited from carrying their assigned firearm on commercial aircraft.

³ Title 49 CFR 1544, *Aircraft Operator Security: Air Carriers and Commercial Operators*.



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Recommendations

10. We recommend that the Division Director implement a training schedule for all required training and ensure that his staff participates in the training.

Law Enforcement Equipment Inventory

The Division Director told the inspection team that FPS maintains an inventory of law enforcement equipment assigned to agents detailed to IAD. He was not able to provide any records showing that an inventory was conducted of agent-assigned law enforcement equipment for the period under review.

Recommendations

11. We recommend that the Division Director ensure that an inventory is conducted, and a record maintained, on an annual basis of all law enforcement equipment issued to agents assigned to IAD.

Evidence Review

The Division Director told the inspection team that IAD did not have any policies governing the collection, storage, and documentation of evidence acquired during investigations/inquiries. He further said that his agents had not collected any evidence that required safeguarding or special handling consistent with the Federal Rules of Evidence during the period reviewed. He said that if IAD agents had collected such evidence, they would secure it in an FPS evidence room. IAD had no evidence secured at any location.

Section 7 of the Handbook defines the different types and forms of evidence that a Fact Finder will encounter during an administrative inquiry. However, it does not address how to properly seize, safeguard, and document physical and documentary evidence. A failure to properly document and secure such evidence acquired through an inquiry or investigation could prove detrimental to the adjudication of a case.

While conducting case file reviews, the inspection team found two case files that contained physical and documentary evidence. In both instances, the evidence was not labeled as evidence and no attempt was made to safeguard it from loss and or manipulation. When brought to his attention, the Division Director explained that since Fact Finders obtained the items during an administrative inquiry, Fact Finders did not need to handle the items with the same care afforded to evidence obtained during a criminal investigation. As an example of a best practice, the *Council of the Inspectors General on Integrity and Efficiency (CIGIE) Quality Standards for Investigations* suggest that while conducting investigations of all types, “evidence should be collected in such a



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way as to ensure that all known or obviously relevant material is obtained, the chain of custody is preserved, and the evidence is admissible in any subsequent proceedings.”⁴

Recommendations

12. We recommend that the Division Director develop policies and procedures specific to IAD on the seizure, safeguarding, and documenting of evidence in criminal and administrative cases investigated by IAD assigned agents and Fact Finders.

Firearms and Ammunition

The Division Director reported that IAD did not maintain weapons or ammunition other than what FPS assigned to individual agents. He stated that FPS maintained all inventory records associated with the assignment of firearms and ammunition.

The inspection teams observed that the Washington, DC, IAD office did not have a bullet trap designed to safely clear firearms and minimize the risk of an unintended discharge. The team brought the issue to the Division Director’s attention who agreed to obtain a bullet trap.

Recommendations

13. We recommend that the Division Director acquire a suitable firearms bullet trap for the office.

Case Management System

The inspection team found that IAD staff did not use a case management database. They instead tracked complaints and investigations using a Microsoft Access database. All IAD employees have access to the database through a common drive on the Agency’s computer server. The information in the database is not protected, and any employee accessing the database can modify any record. The database does not contain an audit feature that allows for tracking edits to individual records. The IAD staff said that the Investigative Assistant backs up the database on a frequent basis.

We found that IAD’s database captured the most relevant information necessary, but there is room for improvement. The *CIGIE Quality Standards for Investigations* provide a good example of the characteristics of an effective case management database. They require information to be stored in a manner that

⁴ *CIGIE Quality Standards for Investigation*, November 2011, p. 14.
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allows for effective retrieval, reference, and analysis, while ensuring the protection of data. They also require that, “among other things, a proper investigative management system allows for accurate complaint handling, provides workload data, identification data, and investigative results, and helps organize the investigative file.”⁵

IAD’s database does not provide contact information for the subject or complainant, such as a phone number, address, or email. Similarly, the database does not capture the complaint narrative, appropriate dates (inquiry/investigation opened and closed, report date, etc.), investigative techniques employed, notes, related cases, or final disposition. It also does not allow for uploading relevant documents or, because of the limited information captured, allow for easy analysis of the data.

The Division Director explained that he recognizes the need for a more comprehensive database, but that funds were not available for such an undertaking.

Recommendations

14. We recommend that the Division Director acquire a case management system that allows for accurate complaint handling, allows for the analysis of entered data, and facilitates the retrieval of investigative results.

Complaint Intake and Processing

IAD receives allegations by telephone, email, and U.S. mail. New NPPD employees receive IAD’s contact information during the orientation process, and the information appears on the OCS intranet web page and on NPPD’s DHSCConnect web page. The Division Director explained that after receiving an allegation, he or his staff first forward it to the DHS OIG for consideration. If the DHS OIG declines to retain the allegation for investigation, IAD processes the allegation in one of three ways. The Division Director will assign the allegation to an IAD special agent for investigation, assign it to a Fact Finder, or forward it to FPS regional management for “information only.” If the allegation is assigned to a Fact Finder, an IAD special agent will also be assigned as a case manager. It is the case manager’s responsibility to monitor the progress of the investigation and provide guidance when needed.

The inspection team found that IAD referred allegations to the DHS OIG, as required by *DHS Management Directive 0810.1*, in 85 percent (34 out of 40) of the sample cases reviewed. On average, IAD took 10 days to process an allegation from receipt to final referral. IAD processed 25 of the 40 allegations

⁵ *CIGIE Quality Standards for Investigation*, November 2011, p. 14.



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reviewed in our case sample within 2 days of receipt. With the data provided, it was not immediately clear what caused the delay in processing allegations from receipt to final referral.

IAD's case management system does not capture all necessary information related to allegations. It does not capture the method by which IAD received the allegation or the agency where the subject works. It also does not allow for further tracking once the allegation is referred to an investigator or Fact Finder.

Recommendations

15. We recommend that the Division Director forward all complaints to the OIG in accordance with the *DHS Management Directive 0810.1*.

16. We recommend that the Division Director assess whether there are ways to reduce the number of days between the receipt and referral of an allegation.

IAD Employee Interviews

As part of our review, we interviewed each employee and gave each the opportunity to discuss morale, best practices, and any other issues they wished to bring to the attention of DHS OIG. All of the employees reported being satisfied with their positions at IAD. They also described being satisfied with the equipment provided for them to do their jobs; however, a couple of employees reported that they needed GPS devices. Employees also reported that they received sufficient training to do their jobs.

Most employees expressed frustration with the fact that they could not access all of the databases they needed from their office. They explained that they access programs on the DHS network from their office, but had to go to an FPS facility to access programs on FPS's network. Some employees also said that they needed a better case management system and up-to-date policy manuals.

The inspection team did not explore issues related to connectivity to DHS computer networks during this review.

Review of Investigations/Inquiries

Case File Management

The inspection team reviewed 40 investigative files as part of the review. Overall, we found the case files to be well organized and complete. Files contained a complete copy of a final report of investigation/inquiry in 35 of the 36 relevant cases. As noted previously, two of the case files contained original evidence, which should have been stored in a separate location.



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Recommendations

17. We recommend that the Division Director ensure that each case file includes a complete copy of the final report of investigation/inquiry.

Investigations/Inquiries

Section 8.2 of the Handbook addresses the issue of planning for an administrative inquiry. Fact Finders are required to begin by preparing a “Chronological Case Worksheet.” The worksheet is designed to help the Fact Finders think through what actions are needed to conduct the inquiry successfully. Among other things, the worksheet identifies the allegation, identifies potential subjects and witnesses, and establishes the sequence in which Fact Finders will conduct interviews. Our review found that only 6 of the 35 cases reviewed contained the worksheet.

In looking at the actual conduct of the investigation/inquiry, we measured our observations against the *CIGIE Quality Standards for Investigations*. The Standards mandate that “investigations must be conducted in a timely, efficient, thorough, and objective manner.”⁶ We assessed the diligence with which the Fact Finders/investigators executed the inquiry and how thorough they were in reporting findings. Not all areas reviewed applied to each case; therefore, our targeted populations varied. For example, only 2 of 40 cases received requests for confidentiality from the complainant.

The inspection team found that Fact Finders conducted investigations/inquiries in a thorough, efficient, and objective manner. We noted that investigators and Fact Finders generally conducted all relevant interviews, addressed all of the relevant parts of an allegation, and conducted investigations/inquiries that were objective. However, we found that Fact Finders did not complete and submit Administrative Inquiry Reports (AIR) to OCS within 60 days of receipt of referral, as required by the Handbook.⁷ Of the 8 reports completed by Fact Finders, only 4 were completed and submitted within 60 days. IAD completed only 2 of 7 reports within 60 days. Investigation/inquiry cases remained open an average of 138 days.

Additionally, the inspection team found that the Division Director adequately maintained and provided oversight of investigations/inquiries assigned to IAD agents to ensure they were progressing in a timely and logical manner. The allegations assigned to the Fact Finders seemed to receive less scrutiny by IAD. The Handbook does not particularly assign or define an oversight role to IAD during the inquiry, but does mention that each referral has an “NPPD OCS

⁶*CIGIE Quality Standards for Investigation*, November 2011, p. 11.

⁷ *NPPD OCS Administrative Inquiry Handbook*, August 2012, section 4.0.



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Special Agent/Supervisory Special Agent Case Manager” who is available to answer questions and troubleshoot problems. The role of the case manager is clearer in the section of the Handbook discussing the submission and approval of AIRs.

IAD staff confirmed that an IAD special agent is assigned as a case manager to each allegation referred to a Fact Finder. There was some confusion among the employees as to their exact responsibility for the case while the inquiry was underway. Some were diligent in attempting to maintain contact with the Fact Finder, while others seemingly had no contact with the Fact Finder until they received the AIR. Some IAD staff complained that Fact Finders often did not respond to their attempts to obtain status updates. The inspection team also found inconsistencies in how case managers documented such contacts. Not all case managers maintained a log inside the case file to document contacts.

Recommendations

18. We recommend that the Division Director ensure that each Fact Finder complete a Chronological Case Worksheet, as mandated by the Handbook, prior to commencing an inquiry.
19. We recommend that the Division Director assess whether the 60 days mandated by the Handbook to complete an inquiry is sufficient time to conduct a thorough inquiry.
20. We recommend that the Division Director implement a process to ensure that assigned agents/Fact Finders complete inquiries within the time allowed by the Handbook.
21. We recommend that the Division Director add language to the Handbook detailing the roles and responsibilities of case managers and directing Fact Finders to update case managers on the progress of an inquiry at predetermined intervals.
22. We recommend that the Division Director standardize the method by which Fact Finders document communication in case files.

Rights Advisements

All of the investigations reviewed contained proof that Fact Finders/ investigators issued rights advisements in accordance with the Handbook. Because of improper guidance in the Handbook, most subjects received conflicting rights advisements or the wrong advisement. Additionally, none of the case files contained evidence that a prosecutor was consulted to assist in determining whether a viable criminal allegation existed before issuing Kalkines warnings.



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As a best practice, the *CIGIE Quality Standards for Investigations* and other applicable standards require investigators to provide appropriate warnings to those individuals suspected of violating law or regulation.⁸ Noncompliance with these policies could result in suppressed evidence in criminal proceedings or challenges in administrative hearings.

Recording Interviews

Section 9 of the Handbook addresses recording interviews. According to this section, a written statement is always the preferred method with which to memorialize an employee interview, but allows Fact Finders to record interviews in rare circumstances with permission from OCS. The Handbook further mandates that Fact Finders transcribe recorded interviews verbatim and provide the original recording to OCS. Our sample included three inquiries involving recorded interviews. IAD agents conducted two of the inquiries and a Fact Finder conducted the other. None of the case files contained evidence that the inquisitors received permission to record the interviews. The inquiry conducted by the Fact Finder did not contain a transcript of the recording.

Recommendations

23. We recommend that the Division Director ensure that Fact Finders receive appropriate permission prior to recording interviews and that said permission is documented in writing.

24. We recommend that the Division Director ensure that transcripts of recorded interviews are maintained with the case file.

Investigative Reports

The inspection team concluded that agents and Fact Finders did a commendable job in documenting the results of investigations/inquiries in AIRs. The team found that the AIRs presented facts in an organized, logical, clear, concise, and objective manner.

NPPD's Comments and OIG Analysis

We obtained written comments on a draft of this report from the Under Secretary. We have included a copy of the comments in their entirety in appendix B. NPPD concurred with all recommendations. We reviewed NPPD's

⁸ *CIGIE Quality Standards for Investigations*, November 2011, pp. 11–12.
www.oig.dhs.gov



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technical comments and made changes throughout our report where appropriate.

1. We recommend that the Under Secretary of NPPD determine how allegations of criminal misconduct by NPPD employees will be investigated. If the Under Secretary decides to investigate such allegations through a specialized unit, we recommend that the Under Secretary obtain and delegate the authority to conduct criminal investigations to OCS.

NPPD Comments to Recommendation 1:

Concur. NPPD senior management will meet with officials in the DHS Office of the General Counsel and OCS to evaluate options for performing appropriate fact finding inquiries into allegations of misconduct where the OIG has referred the matter back to NPPD. The approaches that NPPD will evaluate include: (1) delegating law enforcement to NPPD's OCS, (2) designating FPS the executive agent for NPPD and entering into a Memorandum of Agreement(s) with the other NPPD subcomponents, and (3) exploring the use of other DHS components to conduct criminal investigations. We anticipate presenting options in the 4th quarter of FY 2015 and IAD will provide progress updates to the OIG every 90 days.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that NPPD has evaluated and made a determination on how allegations of criminal misconduct by NPPD employees will be investigated.

2. We recommend that the Under Secretary of NPPD conduct a workforce analysis of IAD to determine the appropriate composition and classification of assigned positions.

NPPD Comments to Recommendation 2:

Concur. At the conclusion of the analysis described in the response to Recommendation 1, the NPPD's Office of Human Resource Management (HRM) will conduct a workforce [sic] analysis and position classification review of the IAD. NPPD will work with HRM to move forward with the work force analysis and will provide progress updates to the OIG every 90 days.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that the work force analysis and position classification review are complete.



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3. We recommend that the Under Secretary of NPPD ensure that criminal investigators assigned to IAD in primary positions meet the minimum legal requirement of spending at least 50 percent of their time on criminal investigative activity.

NPPD Comments to Recommendation 3:

Concur. NPPD's work force analysis and organizational decisions resulting from its responses to recommendations 1 and 2 will ensure that appropriate levels of criminal investigation activity are performed by all law enforcement positions.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that recommendations 1 and 2 have been satisfied.

4. We recommend that the Division Director require LEAP-eligible employees to certify on an annual basis that they have met and will continue to meet the minimum LEAP requirements.

NPPD Comments to Recommendation 4:

Concur. All LEAP-eligible Special Agents have signed a LEAP certification. Signed copies have been provided under separate cover to the OIG inspection team. Leap [sic] hours for Special Agents will continue to be tracked via the WebTA which is the time and attendance program currently in use by FPS.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is closed.

5. We recommend that the Division Director certify on an annual basis that he and his employees have met and will continue to meet the minimum LEAP requirements.

NPPD Comments to Recommendation 5:

Concur. The Division Director has filed a certification for each LEAP-eligible employee. A memorandum along with current LEAP certifications has been placed in the IAD electronic database. Supporting documentation has been provided under separate cover.

OIG Analysis:

NPPD's response meets the intent of this recommendation. We received documentation that the Division Director certified that employees intend to meet the requirement, but we remind NPPD that the Division Director is required to certify that employees met their LEAP requirements in the preceding timeframe. This recommendation is closed.



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6. We recommend that the Division Director maintain copies of all LEAP certification memorandums.

NPPD Comments to Recommendation 6:

Concur. The IAD director has and will continue to maintain copies of all LEAP certifications. Supporting documentation has been provided under separate cover.

OIG Analysis:

NPPD's response meets the intent of this recommendation. We received supporting documentation; however, we encourage the Division Director to review for inaccuracies. This recommendation is closed.

7. We recommend that the Division Director work with Office of General Counsel to correct the discrepancies in sections 10 and 11 of the Handbook.

NPPD Comments to Recommendation 7:

Concur. IAD officials will conduct a complete review of the IAD Investigators [sic] Handbook. In conducting this review, the Director will work with DHS Office of the General Counsel, NPPD HRM, and the Federal Protective Service to review and implement best practices and to correct discrepancies identified by the inspection team. IAD officials anticipate forming this review team by the end of the third quarter of FY 2015 with initial findings and preliminary recommendations made by the end of the fourth quarter of FY 2015.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that the Division Director has corrected the discrepancies.

8. We recommend that the Division Director maintain emergency contact information for each of his direct reports.

NPPD Comments to Recommendation 8:

Concur. Emergency contact information for IAD agents is currently maintained by the FPS at the Mega Centers. IAD officials will establish an Emergency Contact List, which will be distributed to all managers and available to all personnel. Supporting documentation will be provided to the OIG before the fourth quarter of FY 2015.

OIG Analysis:

NPPD's response meets the intent of this recommendation. We encourage the Division Director to restrict access to employees' personally identifiable information to only those with a need. This recommendation is closed.

9. We recommend that the Division Director maintain a file containing, at a minimum, annual LEAP and training certifications, emergency contact



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information, yearly performance plans and ratings, inventory records for issued equipment, and basic employment information for each of his employees.

NPPD Comments to Recommendation 9:

Concur. This information is currently maintained by FPS. IAD will establish duplicate informational files containing the information. IAD personnel also will verify annual inventories with FPS. The estimated completion date is the end of the fourth quarter FY 2015.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that IAD has established the relevant files.

10. We recommend that the Division Director implement a training schedule for all required training and ensure that his staff participates in the training.

NPPD Comments to Recommendation 10:

Concur. IAD Special Agent training is administered by the Federal Protective Service. NPPD is evaluating staffing options that will ensure all IAD personnel attend all required training. The analysis will be done in coordination with the planned work force analysis and organizational decisions mentioned in responses to recommendations 1 and 2.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that they have implemented a training schedule.

11. We recommend that the Division Director ensure that an inventory is conducted, and a record maintained, on an annual basis of all law enforcement equipment issued to agents assigned to IAD.

NPPD Comments to Recommendation 11:

Concur. IAD Special Agents are FPS detailees through a [sic] memorandum of agreement (MOA) between NPPD and FPS. The MOA currently requires that FPS annually inventory equipment. NPPD will verify that an inventory has been conducted and equipment accounted for.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is closed.

12. We recommend that the Division Director develop policies and procedures specific to IAD on the seizure, safeguarding, and documenting of evidence in criminal and administrative cases investigated by IAD assigned agents and Fact Finders.



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NPPD Comments to Recommendation 12:

Concur. IAD positions are currently staffed by FPS detailees. FPS currently has policies for collection, storage, and disposition of physical evidence for FPS employees. The Division Director will develop policies and procedures that ensure compliance derived from, and akin to, FPS's existing policies. IAD personnel currently utilize a GSA approved safe for storage of evidence.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that the Division Director has developed relevant policies and procedures.

13. We recommend that the Division Director acquire a suitable firearms bullet trap for the office.

NPPD Comments to Recommendation 13:

Concur. FPS's Firearms and Training Division will provide IAD a firearms bullet trap for the office. The estimated completion date is the fourth quarter of FY 2015.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that IAD has acquired a suitable firearms bullet trap.

14. We recommend that the Division Director acquire a case management system that allows for accurate complaint handling, allows for the analysis of entered data, and facilitates the retrieval of investigative results.

NPPD Comments to Recommendation 14:

Concur. NPPD entered into an agreement with DHS ICE Office of Professional Responsibility (ICE OPR) to purchase licenses for the Joint Integrity Case Management System (JICMS). The estimated implementation date is the first quarter of FY 2016. A copy of the agreement will be provided under separate cover.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that JICMS has been implemented.

15. We recommend that the Division Director forward all complaints to the OIG in accordance with the *DHS Management Directive 0810.1*.



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NPPD Comments to Recommendation 15:

Concur. The OIG reported that IAD forward allegations in only eighty five percent of the sampled cases to the OIG. IAD believes that appropriate notifications were actually made in the other cases but may not have been in a proper chronological order. The IAD Director has reminded all employees of the requirement to report all complaints to the OIG and will remind them annually. Compliance will be monitored throughout the year.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is closed.

16. We recommend that the Division Director assess whether there are ways to reduce the number of days between the receipt and referral of an allegation.

NPPD Comments to Recommendation 16:

Concur. IAD will conduct a thorough review of all internal IAD operations to evaluate options for reducing time between receipt of an allegation and referral to the OIG. IAD officials plan on forming a review team in the fourth quarter of FY 2015. Initial findings and preliminary recommendations will be provided by the end of the first quarter of FY 2016.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that IAD has conducted the review.

17. We recommend that the Division Director ensure that each case file includes a complete copy of the final report of investigation/inquiry.

NPPD Comments to Recommendation 17:

Concur. The OIG inspection team reviewed 40 investigative files as part of the engagement and found that overall the case files were well organized and complete. Files contained a complete copy of a final report of investigation/inquiry in 35 of the 36 (97.2%) relevant cases. IAD officials will review operations and seek to improve on this rate. The plan is to establish a review team in the fourth quarter of FY 2015 with projected initial findings and preliminary recommendations by the end of the first quarter of FY 2016.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that IAD has conducted the review.

18. We recommend that the Division Director ensure that each Fact Finder complete a Chronological Case Worksheet, as mandated by the Handbook, prior to commencing an inquiry.



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NPPD Comments to Recommendation 18:

Concur. IAD will add a chronological case worksheet to the case file documentation package. Documentation has been provided regarding the response to this recommendation.

OIG Analysis:

NPPD's response meets the intent of the recommendation. This recommendation is closed.

19. We recommend that the Division Director assess whether the 60 days mandated by the Handbook to complete an inquiry is sufficient time to conduct a thorough inquiry.

NPPD Comments to Recommendation 19:

Concur. IAD officials will conduct a complete review of all internal IAD operations that will include an assessment of what will be the benchmark and related process for conducting and completing inquiries within established time frames. The initial creation of the review team is anticipated in the fourth quarter of FY 2015 with projected initial findings and preliminary recommendations by the end of the first quarter of FY 2016.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that IAD has conducted the review.

20. We recommend that the Division Director implement a process to ensure that assigned agents/Fact Finders complete inquiries within the time allowed by the Handbook.

NPPD Comments to Recommendation 20:

Concur. The planned review of all internal IAD operations will include an assessment of processes that best ensure completion of inquiries within the time mentioned in the Handbook. The initial creation of the review team is anticipated in the 4th quarter of FY 2015 with projected initial findings and preliminary recommendations by the end of the first quarter of FY 2016.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that the Division Director has implemented a process for timely inquiry completion.

21. We recommend that the Division Director add language to the Handbook detailing the roles and responsibilities of case managers and directing Fact



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Finders to update case managers on the progress of an inquiry at predetermined intervals.

NPPD Comments to Recommendation 21:

Concur. The planned IAD review will include an evaluation of the responsibilities of case managers and Fact Finders. Projected time frame for creation of the team is the 4th quarter of FY 2015 with preliminary recommendations being made by the end of the first quarter of FY 2016.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that the Division Director has added relevant language to the Handbook.

22. We recommend that the Division Director standardize the method by which Fact Finders document communication in case files.

NPPD Comments to Recommendation 22:

Concur. The IAD planned review will include steps to standardize the method by which Fact Finders document communication in case files. The projected time frame for creation of the team is the fourth quarter of FY 2015 with preliminary recommendations being made by the end of the first quarter of FY 2016.

OIG Analysis:

NPPD's response meets the intent of this recommendation. This recommendation is open and resolved. We will close this recommendation when NPPD provides evidence that the Division Director has standardized the method for documenting communication in case files.

23. We recommend that the Division Director ensure that Fact Finders receive appropriate permission prior to recording interviews and that said permission is documented in writing.

NPPD Comments to Recommendation 23:

Concur. The planned IAD review of all internal IAD operations will determine if it is feasible for IAD to use recorded interviews. In the interim IAD will add a Recorded Statement Preamble worksheet to the case file documentation package. The projected time frame for creation of the team is fourth quarter of FY 2015 with preliminary recommendations being made by the end of the first quarter of FY 2016.

OIG Analysis:

NPPD's response does not meet the intent of the recommendation. The recommendation concerns obtaining and documenting permission. While having the Recorded Statement Preamble worksheet in the case file is helpful,



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it does not demonstrate supervisory permission for recording an interview. We consider this recommendation open and unresolved. We will close the recommendation when we receive evidence that IAD is obtaining and documenting permission for recording interviews.

24. We recommend that the Division Director ensure that transcripts of recorded interviews are maintained with the case file.

NPPD Comments to Recommendation 24:

Concur. The planned IAD review will evaluate the use of recorded interviews. The use of transcripts of such interviews will be evaluated. The projected time frame for creation of the team is fourth quarter of FY 2015 with preliminary recommendations being made by the end of the first quarter of FY 2016.

OIG Analysis:

NPPD's response does not meet the intent of the recommendation. The recommendation concerns compliance with section 9 of the Handbook, maintaining interview transcripts of recorded interviews. This recommendation is open and unresolved. We will close this recommendation when we receive evidence that IAD staff is maintaining transcripts in case files.



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Appendix A: Methodology

The OIG Office of Integrity and Quality Oversight, Investigations Quality Assurance Division, in keeping with the oversight responsibilities mandated by the *Inspector General Act of 1978*, as amended, examined IAD operations to assess overall compliance with relevant DHS and NPPD policies. The OIG reviewed IAD's predecessor, FPS Policy and Compliance Unit, in September 2005, and published a report of their findings in March 2006. We conducted our most recent review from November 2014 through February 2015, and the onsite portion of our review took place on December 16–18, 2014. The review covered IAD activity from October 1, 2011, to September 31, 2014.

Prior to the site visit, the inspection team sent a pre-inspection survey to the Division Director asking for background information and any additional information that he wanted to share with the inspection team. The pre-inspection survey is designed to help the inspection team understand the types of investigations initiated, how IAD handles classified information, the complexity of operations, and collateral duty assignments. The survey also allowed the Division Director to identify any known deficiencies with the office and request a review of particular areas.

Additionally, prior to the site visit, we asked for and obtained policies governing IAD operations, an explanation of the complaint intake process, the number of employees assigned, and operational statistics.

IAD received 400 allegations of various kinds during the covered period. IAD initiated 67 administrative inquiries, referred 19 allegations to the DHS OIG, referred 50 allegations to the various FPS regions as management inquiries, and forwarded 264 allegations to regional management for information only.

We selected a judgmental sample of 40 cases for review. The sample was comprised of approximately 30 percent (21) of the total inquiries initiated, 30 percent (15) of the allegations referred to the regions, and a sample (4) of the allegations categorized as “for your information.”

During our site visit, we reviewed several administrative areas using checklists based on *DHS Management Directive 0810.1*, IAD and FPS policies, and CIGIE standards. The full list of areas reviewed is in appendix C.

The Division Director informed us that IAD had no undercover activities and did not use confidential informants or confidential funds during the covered period. Therefore, we did not look at those areas during the review.

During our site visit, we met with all but two employees either in person or by telephone to give them the opportunity to discuss employee morale, best practices, and any other issues they wished to bring to the attention of the OIG.



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After the site visit, we provided a draft copy of our report to the Division Director and allowed him the opportunity to comment. He questioned the report's findings concerning training deficiencies, and insisted that his agents conducted firearms qualifications through FPS. The Division Director agreed with and implemented recommendation 18, *ensure that each Fact Finder complete a Chronological Case Worksheet*.

We also provided a final copy of the report to the Under Secretary of NPPD and have incorporated final comments in appendix B.



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Appendix B: NPPD Response

*Office of the Under Secretary
National Protection and Programs Directorate
U.S. Department of Homeland Security
Washington, DC 20528*



**Homeland
Security**

MAY 15 2015

Mr. John E. McCoy II
Assistant Inspector General
Office of Integrity and Quality Oversight
Office of the Inspector General
U.S. Department of Homeland Security
Washington, DC 20528

Dear Mr. McCoy,

Re: Office of Inspector General Report "Oversight Review of the National Protection and Programs Directorate, Internal Affairs Division" (IQO Project 15-02)

Thank you for the opportunity to review and comment on this draft report.

The Department is pleased to note the Office of Inspector General's (OIG's) positive recognition of the thoroughness, completeness, and objectivity of inquiries conducted by the Internal Affairs Division (IAD) of the National Protection and Programs Directorate (NPPD) Office of Compliance and Security (OCS). The report mentions that management adequately provided oversight of investigations/ inquiries to ensure they were progressing timely and in a logical manner. Agents and Fact Finders also were doing a commendable job documenting the results of investigations/inquiries in Administrative Inquiry Reports.

Recommendations

The report contains twenty four recommendations, three directed to the Under Secretary responsible for NPPD and twenty one directed to the Director of the IAD. We concur with all of the recommendations included in this report.

Recommendation 1: The Under Secretary of NPPD determine how allegations of criminal misconduct by NPPD employees will be investigated. If the Under Secretary decides to investigate such allegations through a specialized unit, [the OIG inspectors] recommend that the Under Secretary obtain and delegate the authority to conduct criminal investigations to OCS.

Response: Concur. NPPD senior management will meet with officials in the DHS Office of the General Counsel and OCS to evaluate options for performing appropriate fact finding inquiries into allegations of misconduct where the OIG has referred the matter back to NPPD. The approaches that NPPD will evaluate include: (1) delegating law enforcement to NPPD's OCS, (2) designating FPS the executive agent for NPPD and entering into a Memorandum of Agreement(s) with the other NPPD subcomponents, and (3) exploring the use of other DHS



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components to conduct criminal investigations. We anticipate presenting options in the 4th quarter of FY 2015 and IAD will provide progress updates to the OIG every 90 days.

Recommendation 2: The Under Secretary of NPPD conduct a work force analysis of IAD to determine the appropriate composition and classification of assigned positions.

Response: Concur. At the conclusion of the analysis described in the response to Recommendation 1, the NPPD's Office of Human Resource Management (HRM) will conduct a workforce analysis and position classification review of the IAD. NPPD will work with HRM to move forward with the work force analysis and will provide progress updates to the OIG every 90 days.

Recommendation 3: The Under Secretary of NPPD ensure that criminal investigators assigned to IAD in primary positions meet the minimum legal requirement of spending at least 50 percent of their time on criminal investigative activity.

Response: Concur. NPPD's work force analysis and organizational decisions resulting from its responses to recommendations 1 and 2 will ensure that appropriate levels of criminal investigation activity are performed by all law enforcement positions.

Recommendation 4: The Division Director require Law Enforcement Availability Pay (LEAP)-eligible employees to certify on an annual basis that they have met and will continue to meet the minimum LEAP requirements.

Response: Concur. All LEAP-eligible Special Agents have signed a LEAP Certification. Signed copies have been provided under separate cover to the OIG inspection team. Leap hours for Special Agents will continue to be tracked via the WebTA which is the time and attendance program currently in use by FPS.

Recommendation 5: The Division Director certify on an annual basis that he and his employees have met and will continue to meet the minimum LEAP requirements.

Response: Concur. The Division Director has filed a certification for each LEAP-eligible employee. A memorandum along with current LEAP certifications has been placed in the IAD electronic database. Supporting documentation has been provided under separate cover.

Recommendation 6: The Division Director maintain copies of all LEAP certification memorandums.

Response: Concur. The IAD Director has and will continue to maintain copies of all LEAP certifications. Supporting documentation has been provided under separate cover.

Recommendation 7: The Division Director work with Office of [the] General Counsel to correct the discrepancies in sections 10 and 11 of the Handbook.

Response: Concur. IAD officials will conduct a complete review of the IAD Investigators Handbook. In conducting this review, the Director will work with DHS Office of the General Counsel, NPPD HRM, and the Federal Protective Service to review and implement best practices



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and to correct discrepancies identified by the inspection team. IAD officials anticipate forming this review team by the end of the third quarter of FY 2015 with initial findings and preliminary recommendations made by the end of the fourth quarter of FY 2015.

Recommendation 8: The Division Director maintain emergency contact information for each of his direct reports.

Response: Concur. Emergency contact information for IAD agents is currently maintained by the FPS at the Mega Centers. IAD officials will establish an Emergency Contact List which will be distributed to all managers and available to all personnel. Supporting documentation will be provided to the OIG before the fourth quarter of FY 2015.

Recommendation 9: The Division Director maintain a file containing, at a minimum, annual LEAP and training certifications, emergency contact information, yearly performance plans and ratings, inventory records for issued equipment, and basic employment information for each of his employees.

Response: Concur. This information is currently maintained by FPS. IAD will establish duplicate informational files containing the information. IAD personnel also will verify annual inventories with FPS. The estimated completion date is the end of the fourth quarter FY 2015.

Recommendation 10: The Division Director implement a training schedule for all required training and ensure that his staff participates in the training.

Response: Concur. IAD Special Agent training is administrated by the Federal Protective Service. NPPD is evaluating staffing options that will ensure all IAD personnel attend all required training. The analysis will be done in coordination with the planned work force analysis and organizational decisions mentioned in responses to recommendations 1 and 2.

Recommendation 11: The Division Director ensure that an inventory is conducted, and a record maintained, on an annual basis of all law enforcement equipment issued to agents assigned to IAD.

Response: Concur. IAD Special Agents are FPS detailees through at memorandum of agreement (MOA) between NPPD and FPS. The MOA currently requires that FPS annually inventory equipment. NPPD will verify that an inventory has been conducted and equipment accounted for.

Recommendation 12: The Division Director develop policies and procedures specific to IAD on the seizure, safeguarding, and documenting of evidence in criminal and administrative cases investigated by IAD assigned agents and Fact Finders.

Response: Concur. IAD positions are currently staffed by FPS detailees. FPS currently has policies for collection, storage, and disposition of physical evidence for FPS employees. The Division Director will develop policies and procedures that ensure compliance derived from, and akin to, FPS's existing policies. IAD personnel currently utilize a GSA approved safe for storage of evidence.



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Recommendation 13: The Division Director acquire a suitable firearms bullet trap for the office.

Response: Concur. FPS's Firearms and Training Division will provide IAD a firearms bullet trap for the office. The estimated completion date is the fourth quarter FY 2015.

Recommendation 14: The Division Director acquire a case management system that allows for accurate complaint handling, allows for the analysis of entered data, and facilitates the retrieval of investigative results.

Response: Concur. NPPD entered into an agreement with DHS ICE Office of Professional Responsibility (ICE OPR) to purchase licenses for the Joint Integrity Case Management System (JICMS). The estimated implementation date is the first quarter FY 2016. A copy of the agreement will be provided under separate cover.

Recommendation 15: The Division Director forward all complaints to the OIG in accordance with the *DHS Management Directive 0810.1*.

Response: Concur. The OIG reported that IAD forwarded allegations in only eighty five percent of the sampled cases to the OIG. IAD believes that appropriate notifications were actually made in the other cases but may not have been in a proper chronological order. The IAD Director has reminded all employees of the requirement to report all complaints to the OIG and will remind them annually. Compliance will be monitored throughout the year.

Recommendation 16: The Division Director assess whether there are ways to reduce the number of days between the receipt and referral of an allegation.

Response: Concur. IAD will conduct a thorough review of all internal IAD operations to evaluate options for reducing time between receipt of an allegation and referral to the OIG. IAD officials plan on forming a review team in the fourth quarter FY 2015. Initial findings and preliminary recommendations will be provided by the end of the first quarter of FY 2016.

Recommendation 17: The Division Director ensure that each case file includes a complete copy of the final report of investigation/inquiry.

Response: Concur. The OIG inspection team reviewed 40 investigative files as part of the engagement and found that overall the case files were well organized and complete. Files contained a complete copy of a final report of investigation/inquiry in 35 of the 36 (97.2%) relevant cases. IAD officials will review operations and seek to improve on this rate. The plan is to establish a review team in the fourth quarter FY 2015 with projected initial findings and preliminary recommendations by end of the first quarter FY 2016.

Recommendation 18: The Division Director ensure that each Fact Finder complete a Chronological Case Worksheet, as mandated by the Handbook, prior to commencing an inquiry.

Response: Concur. IAD will add a chronological case worksheet to the case file documentation package. Documentation has been provided regarding the response to this recommendation.



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Recommendation 19: The Division Director assess whether the 60 days mandated by the Handbook to complete an inquiry is sufficient time to conduct a thorough inquiry.

Response: Concur. IAD officials will conduct a complete review of all internal IAD operations that will include an assessment of what will be the benchmark and related process for conducting and completing inquiries within established time frames. The initial creation of the review team is anticipated in the fourth quarter FY 2015 with projected initial findings and preliminary recommendations by the end of the first quarter FY 2016.

Recommendation 20: The Division Director implement a process to ensure that assigned agents/Fact Finders complete inquiries within the time allowed by the Handbook.

Response: Concur. The planned review of all internal IAD operations will include an assessment of processes that best ensure completion of inquiries within the time mentioned in the Handbook. The initial creation of the review team is anticipated in the 4th quarter FY 2015 with projected initial findings and preliminary recommendations by the end of the first quarter FY 2016.

Recommendation 21: The Division Director add language to the Handbook detailing the roles and responsibilities of case managers and directing Fact Finders to update case managers on the progress of an inquiry at predetermined intervals.

Response: Concur. The planned IAD review will include an evaluation of the responsibilities of case managers and Fact Finders. Projected time frame for creation of the team is the 4th quarter FY 2015 with preliminary recommendations being made by the end of the first quarter FY 2016.

Recommendation 22: The Division Director standardize the method by which Fact Finders document communication in case files.

Response: Concur. The IAD planned review will include steps to standardize the method by which Fact Finders document communication in case files. The projected time frame for creation of the team is the fourth quarter of FY 2015 with preliminary recommendations being made by the end of the first quarter of FY 2016.

Recommendation 23: The Division Director ensure that Fact Finders receive appropriate permission prior to recording interviews and that said permission is documented in writing.

Response: Concur. The planned IAD review of all internal IAD operations will determine if it is feasible for IAD to use recorded interviews. In the interim IAD will add a Recorded Statement Preamble worksheet to the case file documentation package. The projected time frame for creation of the team is the fourth quarter of FY 2015 with preliminary recommendations being made by the end of the first quarter of FY 2016.

Recommendation 24: The Division Director ensure that transcripts of recorded interviews are maintained with the case file.



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Response: Concur. The planned IAD review will evaluate the use of recorded interviews. The use of transcripts of such interviews will be evaluated. The projected time frame for creation of the team is the fourth quarter of FY 2015 with preliminary recommendations being made by the end of the first quarter of FY 2016.

Again, we thank you for the opportunity to review and provide comment on this draft report. Technical and sensitivity comments on the report have been provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you in the future.

Sincerely,


Suzanne Spaulding
NPPD Under Secretary



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Appendix C: Checklists and Questionnaires

- Case File Review Checklist
- Employee Management Checklist
- Evidence Review Checklist
- Field Office Operations Survey
- Firearms/Ammunition Checklist
- Property Inventory Checklist



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Appendix D: Major Contributors to This Report

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