

MEMORANDUM OF UNDERSTANDING:
REPORTING OF INFORMATION CONCERNING FEDERAL CRIMES

I. Introduction

Section 1.7 (a) of Executive Order (E.O.) 12333 requires senior officials of the Intelligence Community to—

report to the Attorney General possible violations of the federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and Methods, as specified in those procedures.

Title 28, Unites States Code, Section 535 (b) requires that—

[a]ny information, allegation, or complaint received in a department or agency of the executive branch of government relating to violations of title 18 involving Government officers and employees shall be expeditiously reported to the Attorney General by the head of the department or agency, unless—

- (1) the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law; or
- (2) as to any department or agency of the Government, the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.

This Memorandum of Understanding (MOU) sets forth the procedures by which each agency and organization within the Intelligence Community shall report to the Attorney General and to federal investigative agencies information concerning possible federal crimes by employees of an intelligence agency or organization, or violations of specified federal criminal laws by any other person, which information was collected by it during the performance of its designated intelligence activities, as those activities are defines in E.O. 12333, §§1.8-1.13.

II. Definitions

- A. “Agency,” as that term is used herein, refers to those agencies and organizations within the Intelligence Community as defined in E.O. 12333, §3.4(f), but excluding the intelligence elements of the Federal Bureau of Investigation and the Department of Treasury.
- B. “Employee,” as that term is used herein, means:

1. a staff employee, contract employee, asset, or other person or entity providing service to or acting on behalf of any agency within the intelligence community;
 2. a former officer or employee of any agency within the intelligence community for purposes of an offense committed during such person's employment, and for purposes of an offense involving a violation of 18 U.S.C. §207 (Conflict of interest); and
 3. any other Government employee on detail to the Agency.
- C. "General Counsel" means the general counsel of the Agency or of the Department of which it is a component or an oversight person designated by such person to act on his/her behalf, and for purposes of these procedures may include an Inspector General or equivalent official if agency or departmental procedures so require or if designated by the agency or department head.
- D. "Inspector General" or "IG" means the inspector general of the Agency or of the department of which the Agency is a component.
- E. "Reasonable basis" exists when there are facts and circumstances, either personally known or of which knowledge is acquired from a source believed to be reasonably trustworthy, that would cause a person of reasonable caution to believe that a crime has been, is being, or will be committed. The question of which federal law enforcement or judicial entity has jurisdiction over the alleged criminal acts shall have no bearing upon the issue of whether a reasonable basis exists.

III. Scope

- A. This MOU shall not be construed to authorize or require the Agency, or any person or entity acting on behalf of the Agency, to conduct any investigation not otherwise authorized by law, or to collect any information in a manner not authorized by law.
- B. This MOU ordinarily does not require an intelligence agency or organization to report crimes information that was collected and disseminated to it by another department, agency, or organization. Where, however, the receiving agency is the primary or sole recipient of that information, or if analysis by the receiving agency reveals additional crimes information, the receiving agency shall be responsible for reporting all such crimes information in accordance with the provisions of this MOU.
- C. This MOU does not in any way alter or supersede the obligation of an employee of an intelligence agency to report potential criminal behavior by other employees of that agency to an IG, as required either by statute or by agency regulations, nor affect any protections afforded any persons reporting such behavior to an IG. Nor does this MOU affect any crimes

reporting procedures between the IG Offices and the Department of Justice.

- D. This MOU does not in any way alter or supersede any obligation of a department or agency to report to the Attorney General criminal behavior by Government employees not employed by the intelligence community, as required by 28 U.S.C. §535.
- E. This MOU does not affect the obligation to report to the Federal Bureau of Investigation alleged or suspected espionage activities as required under Section 811(c) of the Intelligence Authorization Act of 1995.
- F. The following crimes information is exempted from the application of this memorandum if the specified conditions are met:
 - 1. Crimes information that has been reported to an IG;¹
 - 2. Crimes information received by a Department of Defense intelligence component concerning a Defense intelligence component employee who either is subject to the Uniform Code of Military Justice or is a civilian and has been accused of criminal behavior related to his/her assigned duties or position, if (a) the information is submitted to and investigated by the appropriate Defense Criminal Investigative Organization, and (b) in cases involving crimes committed during the performance of intelligence activities, the General Counsel provides to the Department of Justice a report reflecting the nature of the charges and the disposition thereof;
 - 3. Information regarding non-employee crimes listed in Section VII that is collected by the intelligence component of a Department also having within it a law enforcement organization where (a) the crime is of the type that the Department's law enforcement organization has jurisdiction to investigate; and (b) the Department's intelligence organization submits that crimes information to the Department's law enforcement organization for investigation and further handling in accordance with Department policies and procedures;²
 - 4. Crimes information regarding persons who are not employees of the Agency, as those terms are defined in Section II, that involve crimes against property in an amount of \$1,000 or less, or, in the case of

¹ If, however, the IG determines that the reported information is not properly subject to that office's jurisdiction, but that such information may be reportable pursuant to this MOU, the IG may forward the information to the DOJ in compliance with these procedures. Alternatively, the IG may transmit the information to the Agency's General Counsel for a determination of what response, if any, is required by this MOU.

² This MOU does not affect the crimes reporting obligations of any law enforcement and other non-intelligence components of a department, agency, or organization.

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Agency employees, crimes against property in an amount of \$500 or less. As to other relatively minor offenses to which this MOU would ordinarily apply, but which, in the General Counsel's opinion, do not warrant reporting pursuant to this MOU, the General Counsel may orally contact the Assistant Attorney General, Criminal Division,* or his/her designee. If the Department of Justice concurs with that opinion, no further reporting under these procedures is required. The General Counsel shall maintain an appropriate record of such contacts with the Department. If deemed appropriate by the General Counsel, he/she may take necessary steps to pass such information to the appropriate law enforcement authorities; or

5. Information, other than that relating to homicide or espionage, regarding crimes that were completed more than ten years prior to the date such allegations became known to the agency. If, however, the Agency has a reasonable basis to believe that the alleged criminal activities occurring ten or more years previously relate to, or are a part of, a pattern of criminal activities that continued within that ten year interval, the reporting procedures herein will apply to those activities.
- G. The Procedures set forth herein are not intended to affect whether an intelligence agency reports to state or local authorities activity that appears to constitute a crime under state law. In the event that an intelligence agency considers it appropriate to report to state or local authorities possible criminal activity that may implicate classified information or intelligence sources or methods, it should inform the AAG, or the designated Deputy AAG, Criminal Division, in accordance with paragraph VIII.C, below; the Criminal Division will consult with the intelligence agency regarding appropriate methods for conveying the information to state or local authorities. In the event that an intelligence agency considers it appropriate to report to state or local authorities possible criminal activity that is not expected to implicate classified information or intelligence sources or methods, it should nevertheless provide a copy of such report to the AAG, or to the designated Deputy AAG, Criminal Division.

* [Pursuant to Attorney General Alberto Gonzales's letter of September 14, 2007 to Director of National Intelligence J. Michael McConnell, within this Memorandum of Understanding all referenced functions of the Assistant Attorney General for the Criminal Division or of the Criminal Division, generally, shall be read to refer to the Assistant Attorney General for National Security and the National Security Division, respectively.]

IV. General Considerations: Allegations of Criminal Acts Committed By Agency Employees

- A. This Agreement requires each employee of the Agency to report to the General Counsel or IG facts or circumstances that reasonably indicate to the employee that an employee of an intelligence agency has committed, is committing, or will commit a violation of federal criminal law.³
- B. Except as exempted in Section III, when the General Counsel has received allegations, complaints or information (hereinafter allegations) that an employee of the Agency may have violated, may be violating, or may violate a federal criminal statute, that General Counsel should within a reasonable period of time determine whether there is a reasonable basis to believe that a federal crime has been, is being, or will be committed and that it is a crime which, under this memorandum, must be reported. The General Counsel may, as set forth in Section V, below, conduct a preliminary inquiry for this purpose. If a preliminary inquiry reveals that there is a reasonable basis for the allegations, the General Counsel will follow the reporting procedures set forth in Section VIII, below. If a preliminary inquiry reveals that the allegations are without a reasonable basis, the General Counsel will make a record, as appropriate, of that finding and no reporting under these procedures is required.

V. Preliminary Inquiry Into Allegations Against An Agency Employee

- A. The General Counsel's preliminary inquiry regarding allegations against an Agency employee will ordinarily be limited to the following:
 - 1. review of materials submitted in support of the allegations;
 - 2. review of Agency indices, records, documents, and files;
 - 3. examination of premises occupied by the Agency;
 - 4. examination of publicly available federal, state, and local government records and other publicly available records and information;
 - 5. interview of the complainant; and
 - 6. interview of any Agency employee, other than the accused, who, in the opinion of the General Counsel, may be able to corroborate or refute the allegations.

³ When a General Counsel or IG has received information concerning alleged violations of federal law by an employee of another intelligence community agency, and those violations are not exempted under section III. E. 4, hereof, the General Counsel shall notify in writing the General Counsel of the accused employee's agency. The latter General Counsel must then determine whether this MOU requires the allegations to be reported to the Department of Justice.

- B. Where criminal allegations against an Agency employee are subject to this MOU, an interview of that employee may only be undertaken in compliance with the following conditions:
1. Where the crime alleged against an Agency employee does not pertain to a serious felony offense,⁴ a responsible Agency official may interview the accused employee; however, such interview shall only be conducted with the approval of the General Counsel, the IG, or, as to Defense and military employees, the responsible military Judge Advocate General or the responsible Defense Criminal Investigative Organization.
 2. Where the crime alleged against an Agency employee is a serious felony offense, the Agency shall ordinarily not interview the accused employee, except where, in the opinion of the General Counsel, there are exigent circumstances⁵ which require that the employee be interviewed. If such exigent circumstances exist, the General Counsel or other attorney in the General Counsel's office may interview the accused employee to the extent reasonably necessary to eliminate or substantially reduce the exigency.
 3. In all other cases of alleged serious felonies, the General Counsel, or the General Counsel's designee, may interview the accused employee only after consultation with the Agency's IG, a Defense Criminal Investigative Organization (for Defense and military employees), or with the Department of Justice regarding the procedures to be used during an interview with the accused employee.

Any interview of an accused employee that is undertaken shall be conducted in a manner that does not cause the loss, concealment, destruction, damage or alteration of evidence of the alleged crime, nor result in the immunization of any statements made by the accused employee during that interview. The Agency shall not otherwise be limited by this MOU either as to the techniques it is otherwise authorized to use, or as to its responsibility to provide for its security functions pursuant to E.O. 12333.

⁴ A "serious felony offense" includes any offense listed in Section VII, hereof, violent crimes, and other offenses which, if committed in the presence of a reasonably prudent and law-abiding person, would cause that person immediately to report that conduct directly to the police. For purposes of this MOU, crimes against government property that do not exceed \$5,000 and are not part of a pattern of continuing behavior or of a criminal conspiracy shall not be considered serious felony offenses.

⁵ "Exigent circumstances" are circumstances requiring prompt action by the Agency in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; or to prevent the compromise, loss, concealment, destruction, or alteration of evidence in a crime.

VI. General Considerations: Allegations Of Criminal Acts Committed by Non-Employees

- A. This MOU requires each employee of the Agency to report, to the General Counsel or as otherwise directed by the Department or Agency head, facts or circumstances that reasonably indicate to the employee that a non-employee has committed, is committing, or will commit one or more of the specified crimes in Section VII, below.
- B. When an Agency has received information concerning alleged violations of federal law by a person other than an employee of an intelligence agency, and has determined that the reported information provides a reasonable basis to conclude that a violation of one of the specified crimes in Section VII has occurred, is occurring, or may occur, the Agency shall report that information to the Department of Justice in accordance with Sections VIII or IX, below.

VII. Reportable Offenses by Non-Employees

- A. Unless exempted under Section III, above, allegations concerning criminal activities by non-employees are reportable if they pertain to one or more of the following specified violations of federal criminal law:
 1. Crimes involving intentional infliction or threat of death or serious physical harm. These include but are not limited to homicide, kidnapping, hostage taking, assault (including sexual assault), or threats or attempts to commit such offenses, against any person in the United States or a U.S. national or internationally protected person (as defined in 18 U.S.C. §1116(b)(4)), whether in the United States or abroad.
 2. Crimes, including acts of terrorism, that are likely to affect the national security, defense or foreign relations of the United States. These may include but are not limited to:
 - a. Espionage; sabotage; unauthorized disclosure of classified information; seditious conspiracies to overthrow the government of the United States; fund transfers violating the International Emergency Economic Powers Act; providing material or financial support to terrorists; unauthorized traffic in controlled munitions or technology; or unauthorized traffic in, use of, or contamination by nuclear materials, chemical or biological weapons, or chemical or biological agents; whether in the United States or abroad;
 - b. Fraudulent entry of persons into the United States, the violation of immigration restrictions or the failure to register as a foreign agent or an intelligence trained agent;

- c. Offenses involving interference with foreign governments or interference with the foreign policy of the United States whether occurring in the United States or abroad;
 - d. Acts of terrorism anywhere in the world which target the U.S. government or its property, U.S. persons, or any property in the United States, or in which the perpetrator is a U.S. person; aircraft hijacking; attacks on aircraft or international aviation facilities; or maritime piracy;
 - e. The unauthorized transportation or use of firearms or explosives in interstate or foreign commerce.
3. Crimes involving foreign interference with the integrity of U.S. governmental institutions or processes. Such crimes may include:
 - a. Activities to defraud the U.S. government or any federally protected financial institution, whether occurring in the United States or abroad;
 - b. Obstruction of justice or bribery of U.S. officials or witnesses in U.S. proceedings, whether occurring in the United States or abroad;
 - c. Interference with U.S. election proceedings or illegal contributions by foreign persons to U.S. candidates or election committees;
 - d. Perjury in connection with U.S. proceedings, or false statements made in connection with formal reports or applications to the U.S. government, or in connection with a formal criminal or administrative investigation, whether committed in the United States or abroad;
 - e. Counterfeiting U.S. obligations or any other governmental currency, security or identification documents used in the United States, whether committed in the United States or abroad; transactions involving stolen governmental securities or identification documents or stolen or counterfeit non-governmental securities.
4. Crimes related to unauthorized electronic surveillance in the United States or to tampering with, or unauthorized access to, computer systems.
5. Violations of U.S. drug laws including: the cultivation, production, transportation, importation, sale, or possession (other than possession of user quantities) of controlled substances; the production, transportation, importation, and sale of precursor or essential chemicals.

6. The transmittal, investment and/or laundering of the proceeds of any of the unlawful activities listed in this Section, whether committed in the United States or abroad.
- B. Any conspiracy or attempt to commit a crime reportable under this section shall be reported if the conspiracy or attempt itself meets the applicable reporting criteria.
- C. The Attorney General also encourages the Agency to notify the Department of Justice when the Agency's otherwise routine collection of intelligence in accordance with its authorities results in its acquisition of information about the commission of other serious felony offenses by non-employees, e.g. violations of U.S. environmental laws relating to ocean and inland water discharging or dumping, drinking water contamination, or hazardous waste disposal, and crimes involving interference with the integrity of U.S. governmental institutions or processes that would not otherwise be reportable under section VII.A.3.

VIII. Procedure For Submitting Special Crimes Reports

- A. Where the Agency determines that a matter must be the subject of a special report to the Department of Justice, it may, consistent with paragraphs VIII.B and VIII.C, below, make such a report (1) by letter or other, similar communication from the General Counsel, or (2) by electronic or courier dissemination of information from operational or analytical units, provided that in all cases, the subject line and the text of such communication or dissemination clearly reflects that it is a report of possible criminal activity. The Department of Justice shall maintain a record of all special crimes reports received from the Agency.
- B. Where the Agency determines that a matter must be the subject of a special report to the Department of Justice; and where the Agency further determines that no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligent operations would not be jeopardized thereby, the Agency will report the matter to the federal investigative agency having jurisdiction over the criminal matter. A copy of that report must also be provided to the AAG, or designated Deputy AAG, Criminal Division.
- C. Where the Agency determines that further investigation or prosecution of a matter that must be specifically reported may result in a public disclosure of classified information or intelligence sources or methods or would jeopardize the security of ongoing intelligence operations, the Agency shall report the matter to the AAG or designated Deputy AAG, Criminal Division. A copy of that report must also be provided to the Assistant Director, Criminal Investigations or National Security

Divisions, Federal Bureau of Investigation, or in the event that the principal investigative responsibility resides with a different federal investigative agency, to an appropriately cleared person of equivalent position in such agency. The Agency's report should explain the security or operational problems that would or might arise from a criminal investigation or prosecution.

- D. Written documents associated with the reports submitted pursuant to this section may refer to persons who are the subjects of the reports by non-identifying terms (such as "John Doe # ____"). The Agency shall advise the Department of Justice or relevant federal investigative agency of the true identities of such persons if so requested.
- E. It is agreed that, in acting upon information reported in accordance with these procedures, the Agency, the Department of Justice and the relevant federal investigative agencies will deal with classified information, including sources and methods, in a manner consistent with the provisions of relevant statutes and Executive Orders, including the Classified Information Procedures Act.

IX. When Routine Dissemination May be Used in Lieu Of A Special Crimes Report

- A. Except as set forth in IX.B, below, the Agency may report crimes information regarding non-employees to the Department of Justice by routine dissemination, provided that:
 - 1. the crimes information is of the type that is routinely disseminated by the Agency to headquarters elements of cognizant federal investigative agencies;
 - 2. the criminal activity is of a kind that is normally collected and disseminated to law enforcement by the Agency (e.g., drug trafficking, money laundering, terrorism, or sanctions violations); and
 - 3. the persons or entities involved are members of a class that are routinely the targets or objects of such collection and dissemination.

If all three of these conditions are met, the Agency may satisfy its crimes reporting obligation through routine dissemination to the Department of Justice, Criminal Division, and to all cognizant federal law enforcement agencies, which shall retain primary responsibility for review of disseminated information for evidence of criminal activity. In all other cases, the special reporting procedures in Section VIII shall apply. As requested by the Department of Justice, the Agency will coordinate with the Department to facilitate the Department's analytical capabilities as to the Agency's routine dissemination of crimes information in compliance with this MOU.

- B. Routine dissemination, as discussed in IX.A, above, may not be used in lieu of the special reporting requirements set forth herein as to the following categories of criminal activities:
 - 1. Certain crimes involving the intentional infliction or threat of death or serious physical harm (VII.A.1, above);
 - 2. Espionage; sabotage; unauthorized disclosure of classified information; and seditious conspiracies to overthrow the government of the United States (VII.A.2.a, above); and
 - 3. Certain crimes involving foreign interference with the integrity of U.S. governmental institutions or processes (VII.A.3.b and c, above).

X. Other Agency Responsibilities

- A. The Agency shall develop internal procedures in accordance with the provisions of Sections VIII and IX for the reporting of criminal information by its employees as required under Sections IV.A and VI.A.
- B. The Agency shall also establish initial and continuing training to ensure that its employees engaged in the review and analysis of collected intelligence are knowledgeable of and in compliance with the provisions of this MOU.

XI. Relation to Other Procedures and Agreements

- A. If the Agency desires, for administrative or security reasons, to conduct a more extensive investigation into the activities of an employee relating to any matter reported pursuant to this MOU, it will inform the Department of Justice and the federal investigative agency to which the matter was reported. The Agency may also take appropriate administrative, disciplinary, or other adverse action at any time against any employee whose activities are reported under these procedures. However, such investigations or adverse actions shall be coordinated with the proper investigative or prosecuting officials to avoid prejudice to any criminal investigation or prosecution.
- B. Nothing in these procedures shall be construed to restrict the exchange of information among the Agencies in the Intelligence Community or between those Agencies and law enforcement entities other than the Department of Justice.
- C. This MOU supersedes all prior crimes reporting memoranda of understanding executed pursuant to the requirements of E.O. 12333. To the extent that there exist any conflicts between other Agency policies of directives and the provisions herein, such conflicts shall be resolved in accordance with the provisions of this MOU. However, this MOU shall not be construed to modify in any way the August 1984 Memorandum of

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Understanding between the Department of Defense and the Department of Justice relating to the investigation and prosecution of certain crimes.

- D. The parties understand and agree that nothing herein shall be construed to alter in any way the current routine dissemination by the Agency of intelligence information, including information regarding alleged criminal activities by any person, to the Department of Justice or to federal law enforcement agencies.

XII. Miscellaneous

- A. This MOU shall become effective as to each agency below as of the date signed by the listed representative of that agency.
- B. The Intelligence-Law Enforcement Policy Board, within one year of the date of the effective date hereof, and as it deems appropriate thereafter, will appoint a working group consisting of an equal number of representatives from the intelligence and law enforcement communities, including the Criminal Division. That working group shall do the following:
1. review the Agency's implementation of Sections III.F and IV.B, hereof;
 2. consider whether the crimes reporting requirements of E.O. 12333 and other authorities are being met through the operation of this MOU;
 3. review each of the provisions of this MOU and determine what, if any, modifications thereof should be recommended to the Policy Board, or its successor; and
 4. issue a report to the Policy Board of its finding and recommendations in each of the foregoing categories.
- C. The Policy Board in turn shall make recommendations to the Attorney General, the Director of Central Intelligence, and the heads of the affected agencies concerning any modifications to the MOU that it considers necessary.

-/S/-Janet Reno
Attorney General
Date: August 3, 1995

-/S/-William J. Perry
Secretary of Defense
Date: 11 AUG 1995

-/S/-John Deutch
Director of Central Intelligence
Date: 3 August 1995

-/S/-JM McConnell
Director, National Security Agency
Date: 22 Aug 1995

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-/S/-Michael F. Munson
Director, Defense Intelligence
Intelligence Agency
Date: 2 Aug 1995

-/S/-Toby T. Gati
Assistant Secretary of State,
Intelligence and Research
Date: 8/14/95

-/S/-Kenneth E. Baker
Director, Office Of Non-Proliferation
and National Security,
Department of Energy
Date: 15 Aug 95