



Criminal

Investigative

Policy &

Oversight

**Review of the Implementation of DoD Instruction 5505.7,
“Titling and Indexing Subjects of Criminal Investigations
in the Department of Defense”**

Phase I – The Defense Criminal Investigative Organizations

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**Office of the Inspector General
Department of Defense**

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This report was prepared by the Policy and Programs Directorate, Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, Office of the Inspector General, Department of Defense. If you have questions on this evaluation or want additional copies of the report, contact Mr. Bruce Drucker, Program Director, at (703) 604-8700 (DSN 664-8700) or Mr. Frank Albright, Project Manager, at (703) 604-8768 (DSN 664-8768).

Acronyms Used in This Report

ABCMR	Army Board for the Correction of Military Records
AFOSI	Air Force Office of Special Investigations
AF	Air Force
BOI	Board on Investigations
CAF	Consolidated Adjudication Facility
CID	Shortened version of "USACIDC"
CIPO	Criminal Investigative Policy and Oversight (Office of the IG, DoD)
DAB	Advisory Board on the Investigative Capability of the Department of Defense
DCII	Defense Clearance and Investigations Index
DCIO	Defense Criminal Investigative Organization
DCIS	Defense Criminal Investigative Service
DoD	Department of Defense
DSS	Defense Security Service
FBI	Federal Bureau of Investigation
HASC	House Armed Services Committee
IG	Inspector General
JA	Judge Advocate
MCIO	Military Criminal Investigative Organization
NAPA	National Academy of Public Administration
NCIC	National Crime Information Center
NCIS	Naval Criminal Investigative Service
OIG	Office of Inspector General
OSI	Shortened version of "AFOSI"
PID	Personal Identifying Data
ROI	Report of Investigation
USACIDC	United States Army Criminal Investigation Command
USACRC	United States Army Crime Records Center

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE (COMMAND,
CONTROL, COMMUNICATIONS AND INTELLIGENCE)
ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTORS OF THE DEFENSE AGENCIES
INSPECTOR GENERAL, DEPARTMENT OF THE NAVY
DIRECTOR, ADMINISTRATION AND MANAGEMENT
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Report on the Review of the Implementation of DoD Instruction 5505.7, "Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense," Phase I – The Defense Criminal Investigative Organizations (Project No. 9850019I)

This report is provided for your review and comment. Your comments on the draft report were considered in preparing the final report and are included in the final report as Appendix I. Our responses to your comments are also discussed.

We request your comments on the final report not later than July 28, 2000. We also request your prompt action on our recommendations. Send your comments to the Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, Room 725, 400 Army Navy Drive, Arlington, Virginia 22202-2884. Should you have any questions, please contact Mr. Bruce Drucker, Policy and Programs Director, at (703) 604-8700 (DSN 664-8700) or Mr. Frank Albright, Project Manager, at (703) 604-8768 (DSN 664-8768).

We appreciate the courtesies extended to our evaluation staff throughout this evaluation. The evaluation team members are listed inside the back cover. See Appendix H for the report distribution.

Charles W. Beardall
Deputy Assistant Inspector General
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cc:
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Commander, United States Army Criminal Investigation Command
Director, Naval Criminal Investigative Service
Commander, Air Force Office of Special Investigations

**Review of the Implementation of DoD Instruction 5505.7,
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**Review of the Implementation of DoD Instruction 5505.7,
“Titling and Indexing of Subjects of Criminal Investigations in
the Department of Defense”
Phase I – The Defense Criminal Investigative Organizations**

Executive Summary

Introduction. The Inspector General, Department of Defense, published DoD Instruction 5505.7, “Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense,” in May 1992. DoD Instruction 5505.7 establishes DoD policy for “titling,” i.e., placing the names and other identifying data of subjects (and, to a lesser degree, victims and other significant incidentals) in the title block portion of investigative reports, and “indexing,” i.e., entering the same data into the Defense Clearance and Investigations Index (DCII). The purpose of titling and indexing is to establish an administrative system for the retrieval of criminal investigative files by subject name or other personal identifying data. This review was undertaken to meet the Inspector General, Department of Defense, standing need to review existing policy, and to address issues raised by both the Advisory Board on the Investigative Capability of the Department of Defense (DAB) and a congressionally authorized review by the National Academy of Public Administration (NAPA).

Background. Prior to DoD Instruction 5505.7, there was no common standard among the Defense Criminal Investigative Organizations (DCIOs)¹ for placing the name of an investigated subject in the title block of a criminal investigative report of investigation or in the DCII. The U.S. Army Criminal Investigation Command (USACIDC) titled and indexed subjects upon receipt of a probable cause opinion from a judge advocate. The remaining DCIOs used an operational standard equivalent to credible information to believe a crime was committed. DoD Instruction 5505.7 established the credible information standard in the DoD, and included other requirements such as titling and indexing at the start of an investigation or when a subject is identified.

Review Results. With minor exceptions, DoD Instruction 5505.7 appears to be understood and properly applied by the DCIOs. We found no basis for the recommendations of the DAB and NAPA, but do recommend other actions to improve the titling and indexing process. Specifically, we found that:

- Nearly all criminal investigations are duly titled and indexed by the DCIOs, with the exceptions of some criminal investigations of Air Force Office of

¹ The DCIOs are comprised of the United States Army Criminal Investigation Command, the Naval Criminal Investigative Service, the Air Force office of Special Investigations, and the Defense Criminal Investigative Service.

Special Investigations (AFOSI) personnel, and investigations conducted by Air Force police investigators.

- DoD Instruction 5505.7's credible information standard is understood and has been properly applied.
- Titling is properly applied as an operational rather than a legal decision.
- Concerning the DCIOs, the criminal investigative data in report title blocks and in the DCII has not been improperly used as the sole basis for judicial or adverse administrative action.
- Subjects and victims of investigations are routinely indexed; incidentals and impersonal titles are not.²
- Nearly all indexing properly occurs on case initiation; however, several of the DCIOs have delayed indexing based on operational security concerns. AFOSI does not index subjects of its internal criminal investigations until the employee leaves the organization.
- Privacy Act or similar procedures for the amendment of records have been used by subjects to appeal titling and indexing decisions. These procedures appear to be sufficient.

Summary of Recommendations. We recommended the following actions to improve titling and indexing in the DoD:

- The Commander, Air Force Office of Special Investigations, institute policy to limit matters indexed in the DCII to substantive investigations; implement procedures to ensure subjects of Security Forces criminal investigations (per definitions in DoD Instruction 5505.7) are indexed in the DCII as required by Air Force Instruction 71-101; and take action to ensure that when AFOSI personnel are subjects of criminal investigations, they are indexed in the DCII according to the DoD Instruction.
- The Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight (CIPO), Inspector General, DoD, coordinate with the Defense Security Service regarding the possibility of expanding the number of fields available in the Defense Clearance and Investigations Index to adequately identify business subjects.

² Incidentals are individuals who, while not believed to be subjects or victims at the time, appear to have played a significant enough role in a criminal scenario that retrieval of the file by the individual's name is deemed to be valuable. Impersonal titles are used when personal titles are not yet known, such as, "Andrews Air Force Base, Maryland, Theft of Computer Equipment."

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- CIPO amend DoD Instruction 5505.7 to allow for delayed indexing in the DCII in limited cases where such indexing may reasonably be anticipated to risk compromise of the criminal investigation.
 - The Commanders of the Army Criminal Investigation Command and Air Force Office of Special Investigations, and the Director, Naval Criminal Investigative Service (NCIS), institute written policy addressing authorized reasons for delays in indexing. The policy must also address the requirement to index and the procedures for the subsequent indexing of subjects of such investigations once the reasons for delayed indexing no longer exist.

Management Comments. We received, through their Service Departments, comments from the MCIOs to which recommendations were addressed and from the Defense Criminal Investigative Service (DCIS) (Appendix I). DCIS, USACIDC and NCIS concurred with all recommendations. AFOSI concurred with five of the six recommendations. AFOSI did not concur with our recommendation that DCII entries be limited to actual “investigations” and not include AFOSI “zero” files that do not represent substantive investigations. While we commend the recent AFOSI initiative to remove from the DCII those zero files not reaching the credible information standard, we still conclude that zero files should not be included in an index of investigations. See Part II, Section B, for the complete text addressing this recommendation.

**Review of the Implementation of DoD Instruction 5505.7,
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Part I - Introduction

Introduction

In May 1992, the Inspector General (IG), DoD, published DoD Instruction 5505.7, “Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense” (hereinafter the Instruction) (see Appendix A). The Instruction outlines DoD policy for placing subject names and personal identifying data (PID) in the title block sections of criminal investigative reports and placing them in the Defense Clearance and Investigations Index (DCII).³ Since then, aspects of the policy have been reviewed by the Advisory Board on the Investigative Capability of the Department of Defense (DAB)⁴ and the National Academy of Public Administration (NAPA).⁵ This review was undertaken to address issues raised by those organizations and to meet our standing need to periodically review existing policy.

Background

Prior to the Instruction, the Defense Criminal Investigative Organizations (DCIOs)⁶ accomplished titling and indexing using their own policies and procedures. All were similar, with the exception of USACIDC that used a probable cause standard for titling and subsequent DCII indexing. As such, subjects of USACIDC cases were neither titled nor indexed until a judge advocate (JA) opined that there was probable cause to believe the subject had committed a crime. If, following completion of an investigation wherein a subject was previously titled and indexed, a JA determined that probable cause to believe the subject committed a crime no longer existed, the subject’s PID was removed from the title block of the report, and the DCII record was expunged. That approach treated the DCII as a criminal history database for the purpose of identifying likely criminals, rather than for its intended function as an administrative database for the purpose of identifying the existence of investigative files. The remaining DCIOs titled and indexed subjects using essentially the same principles appearing today in the DoD

³ The DCII is a database maintained by the Defense Security Service (DSS) and used to pool information originated by DoD and other Federal agencies into a central index of clearance and investigative information.

⁴ See Appendix E.

⁵ See Appendix F.

⁶ U.S. Army Criminal Investigation Command (USACIDC), Naval Criminal Investigative Service (NCIS), Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS).

instruction; that is, titling decisions were made by investigators using a standard roughly equivalent to credible information.

Prior Reviews

The IG, DoD, conducted two prior reviews: one in February 1987 that primarily addressed the standardization of DCII use among the DCIOs (Appendix C), and one in May 1991 that addressed titling and highlighted the need for a uniform DoD criminal investigative policy in this area (Appendix D). During 1993 and 1994, the DAB reviewed titling and indexing among many other investigative functions in its broad charter (see Appendix E for a summary of the DAB findings and recommendations affecting titling and indexing). Finally, NAPA commented on titling and indexing in its review of Military Criminal Investigative Organization (MCIO)⁷ policies and procedures in sex crimes investigations (see Appendix F for a summary of NAPA findings and recommendations affecting titling and indexing).

Objectives, Scope, and Methodology

The objectives of this review were to assess compliance with the Instruction, and to respond to the findings of both the DAB and NAPA, with due regard to prior DoD formal responses to those organizations. This report highlights changes to the Instruction, either proposed by DCIO representatives or identified by the review team during fieldwork.

Our assessment of compliance with the Instruction focused on the major tenets of the Instruction and was intended to determine:

1. The extent to which all criminal investigations in the DoD are indexed.
2. Whether credible information is the common standard applied.
3. Whether titling decisions are made as operational rather than legal decisions.
4. Whether there have been instances wherein the fact that an individual was titled or indexed was improperly used as a basis for judicial or adverse administrative action.
5. The categories of individuals indexed (e.g., subjects, victims, incidentals, legal entities, and names of projects or descriptions of incidents where subjects are not known).
6. Whether indexing of an investigation is accomplished upon case initiation, and, if subjects who are identified are promptly indexed once they become known.
7. The basis for instances in which names have been removed from the DCII.

Phases I and II. This evaluation is structured in two phases. This report addresses Phase I, evaluating DCIO compliance with the provisions of the Instruction.

⁷ USACIDC, NCIS, and AFOSI

We examined DCIO written policies and interviewed headquarters personnel, interviewed intermediate supervisors, and met with field agents. We also solicited recommendations for changes to the policy. Phase II, which will be addressed in a separate report, will address implementation of the Instruction by agencies outside of the traditional DCIO community. The Instruction's coverage is not limited to the DCIOs; it addresses the titling and indexing of subjects of all criminal investigations. We will also evaluate the uses of DCII criminal investigative information by anyone holding a DCII password.

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Part II - Results of Evaluation and Recommendations

A. Explanation of Terms

Titling. DoD Instruction 5505.7 (Appendix A) defines titling as the act of “placing the name(s) of a person(s) or corporation(s), or other legal entity, organization(s), or occurrences(s) in the subject block for a criminal investigation.” A subject is defined as “a person, corporation, legal entity, or organization about which credible information exists that would cause a reasonable person to suspect that such subject may have committed a criminal offense, or to otherwise become the object of a criminal investigation.” Criminal investigations refers to “investigations of possible criminal violations of the United States Code, the Uniform Code of Military Justice, or, when appropriate, State or local statutes or ordinances, or foreign law.” The basis, or standard, for titling is credible information, which the Instruction defines as:

information disclosed or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to indicate criminal activity has occurred and would cause a reasonable investigator under similar circumstances to pursue further the facts of the case to determine whether a criminal act occurred or may have occurred.

The Instruction adds that titling is an operational rather than a legal decision, and that the final responsibility for the decision to title an individual or entity rests with investigative officials designated by the DoD Components.⁸

Indexing. Indexing, as it applies to criminal investigations covered by the Instruction, is the recording of information so that an orderly retrieval process may be used to identify and access a particular file. Investigative agencies in DoD accomplish indexing by providing subject identifying data to the Defense Security Service (DSS) for input to the DCII database. While DSS manages the database, criminal investigative information stored therein remains a record of, and is the responsibility of, the

⁸ DoD components are identified collectively as the Office of the Secretary of Defense, the Military Departments, The Chairman of the Joint Chiefs of Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

contributing agency. Criminal investigative data fields residing in the DCII include: agency and agency file number, name, alias(es), Social Security number, date of birth, place of birth, category of the indexed person or entity (subject or victim), year the entry was indexed, and the file retention period. The DCII, when queried, merely identifies the existence of a file and the agency where the file is located. Investigative findings and dispositions are not entered into the DCII, but must be separately obtained following proper procedures to request such information from the contributing agency (i.e., the appropriate DCIO). As its name implies, the DCII is also a repository for DoD security clearance data, indexed by name and other personal identifying data and agency file number and location.

The Instruction further states that “the primary purpose of titling and indexing subjects of criminal investigations is to ensure that information in a report of investigation can be retrieved at some future date for law enforcement and security purposes.” The Instruction declares that “the act of titling and indexing shall not, in and of itself, connote any degree of guilt or innocence.” This is to differentiate the DCII from criminal history indices such as the National Crime Information Center (NCIC) operated by the Federal Bureau of Investigation (FBI). The Instruction also proscribes the imposition of judicial or adverse administrative action based solely on the fact that a person has been titled in an investigation.

B. Extent to which all criminal investigations are indexed

The Instruction does not allow for exceptions. It states that, “The fact that an investigation has started and the identity of a subject when known shall be reported by the investigative agency to the DCII for indexing.” Each DCIO has established implementing procedures calling for the indexing of all investigations. In the AFOSI, indexing has become an automated process. Once authorized field commanders, agents-in-charge, or their designees approve cases for initiation in AFOSI’s internal case information system, an entry is automatically made in the DCII. In the USACIDC, NCIS, and DCIS, DCII data are entered manually by headquarters personnel following receipt of case initiation data from field locations. Except as explained below, all DCIO substantive criminal cases are indexed in the DCII.

Each DCIO uses identification categories that describe matters falling short of the definition of a criminal investigation.⁹ Such matters are variously identified as preliminary inquiries, zero files, operations reports, collections, or information reports. These matters differ from criminal “investigations” in that most merely document an allegation or receipt of information from some source with little or no actual investigative follow-up. AFOSI, NCIS, and DCIS formerly indexed the subjects of these matters in the DCII. Today, with the development of each agency’s own management information system, the agencies in most cases no longer index such data. AFOSI is the last of the

⁹ The Instruction defines criminal investigations as “investigations of possible criminal violations of the United States Code, the Uniform Code of Military Justice, or when appropriate, State or local statutes or ordinances or foreign law.”

DCIOs to restrict such indexing. During this evaluation, AFOSI changed its policy from indexing all zero files to indexing only those zero files where the field commander or agent-in-charge certifies that the credible information standard has been attained. Additionally, AFOSI had undertaken a large project to delete all zero files already indexed in the DCII that fail to meet the credible information standard. While this effort is commendable, it falls short of full compliance with the Instruction, which calls for the indexing of criminal "investigations." Even if AFOSI zero file matters meet the credible information standard, they do not, by definition, constitute substantive investigations since little or no investigative follow-up has been undertaken.

Regarding military police investigative reports, the Army and Navy have centralized the storage of police (non-DCIO) investigative reports with USACIDC and NCIS files. As such, Army and Navy police organizations send police investigative reports to the USACIDC and NCIS file repositories where they are not only filed, but also indexed in the DCII. In the Air Force, however, Air Force Instruction 71-101 calls for Security Forces investigative reports to be provided to AFOSI detachments at the local level where AFOSI accomplishes DCII indexing. Interviews of AFOSI representatives at the headquarters and field levels disclosed that police investigative reports were neither being provided to AFOSI detachments nor being indexed. Further, one detachment commander commented that he was not staffed to accept and enter all Security Forces subject data into the DCII.

Recommendations

Recommendation 1. The Commander, Air Force Office of Special Investigations, institute policy to limit AFOSI matters indexed in the Defense Clearance and Investigations Index to substantive investigations.

Management Comments and Evaluation Response

The Air Force did not concur (see Appendix I for the complete response). Their response indicated that, in addition to substantive investigations, AFOSI has used the DCII as a file retrieval system for "other investigative files of importance such as zero files." Such other files include allegations not warranting a criminal investigation, criminal intelligence, and matters that were referred to other investigative agencies having investigative responsibility over the matters reported. As indicated above, the Air Force response related that in May 1999, AFOSI published policy prohibiting the indexing of zero files not meeting the credible information standard stated in DoD Instruction 5505.7. Over 5,000 zero files previously indexed and not reaching the credible information standard were subsequently removed, and more are currently under review. AFOSI decided to retain in the DCII, however, zero files meeting the credible information standard as determined by the field commander or agent-in-charge. AFOSI based its decision to retain these files on the premise that such information would be beneficial to other federal agency users of the DCII who require such information for suitability and security clearance decisions.

We understand the AFOSI need to retrieve zero files for intelligence value, but disagree that the DCII is the proper repository. DoD Instruction 5505.7 mandates the indexing of subjects of actual investigations. AFOSI zero files, by definition, are not fully investigated matters; they are allegations with little or no investigative follow-up to further corroborate the initial information. AFOSI began indexing zero files years before it developed its own automated management information system. That system has now been developed and is capable of identifying zero files, by subject name, if needed for intelligence purposes. No other DoD investigative agency uses the DCII as a repository for raw intelligence, and DoD Instruction 5505.7 does not allow for it. Further, there is no need to index a complaint that was merely referred to another agency. The agency receiving the referral would index the investigation and maintain the investigative file. We also see no reason to index matters "not warranting a criminal investigation." We ask the Air Force and AFOSI to reconsider their position on the indexing of zero matters in light of the definitions and requirements of DoD Instruction 5505.7, the capability to identify such files through AFOSI's internal management information system, and the limited value of such incomplete data to DCII users or customers.

Recommendation 2. The Commander, Air Force Office of Special Investigations, implement procedures to ensure subjects of Security Forces criminal investigations (per definitions in DoD Instruction 5505.7) are indexed in the Defense Clearance and Investigations Index as required by Air Force Instruction 71-101.

Management Comments and Evaluation Response

The Air Force generally concurred with our recommendation. They pointed out that while policy has been in place, a routine process for Security Forces to provide reports to AFOSI has been lacking. They proposed revising Air Force Instruction 31-206, Security Police Investigations, and working with the Air Force Security Forces Agency to create an automated process to transfer DCII reportable information to AFOSI for indexing. We consider this approach responsive to our recommendation. However, we suggest the consideration of other less challenging approaches should it become apparent that the technological solution will result in lengthy delays.

C. Application of the credible information standard

Each MCIO has written policy reiterating the Instruction's credible information standard for titling. DCIS references the Instruction rather than restating the language in the DCIS Special Agent's Manual. Despite reiterating the Instruction's language, we noted several USACIDC case initiations generated during this evaluation referred to "probable cause" as criteria for opening a case. There is no basis in current USACIDC policy for such a requirement. One USACIDC headquarters representative believed that the apparent confusion might be due to either lingering recollection of pre-1992 USACIDC policy when probable cause was the titling and indexing standard, or the simultaneous USACIDC requirement to annotate each report of investigation (ROI) as

either “founded” or “unfounded.” The founded or unfounded label is added to an ROI based on a JA probable cause opinion after reviewing, at the conclusion of an investigation, all of the evidence collected.

During our interviews, DCIO agents at the headquarters and field levels demonstrated an adequate grasp of the purpose of titling and indexing as a means of providing a system to retrieve investigative files. They also understood and applied the credible information standard. They could differentiate between a probable cause standard for arrest or for data entry into a law enforcement database and the titling standard that is simply the possession of information believed to be sufficiently reliable to cause an investigation to be initiated.

D. Titling as an operational versus legal decision

Prior to the issuance of DoD Instruction 5505.7, USACIDC used probable cause as its standard for titling and indexing subjects of criminal investigations. Probable cause opinions were sought from JAs and reported in case initiation documents and in USACIDC ROIs. The Instruction established a different standard, credible information, as it focused on the threshold of information to support the administrative decision to open an investigation rather than a judicial standard of evidence against a crime suspect. The remaining DCIOs were using credible information as an operational standard without a JA opinion.

During this evaluation we discovered that titling decisions were indeed made by DCIO investigators and supervisors based on investigative criteria. Generally, agents accomplished investigative leads, and then drafted case initiation documents that were later reviewed, modified as necessary, and approved by a supervisory agent or agent-in-charge. The decision-making responsibility was properly confined to the investigative agency and not deferred to other officials.

E. Use of criminal investigative data resulting from titling and indexing as a basis for judicial or adverse administrative action

The essence of titling and subsequent indexing in the DCII is to create an administrative index of investigations, searchable by subject name or other identifying data. Titling and indexing do not create a criminal history database; no judicial process involving the subject has even occurred at the time of titling and indexing. DCII serves only as a tool to locate investigative files. To help ensure that the existence of one’s name in the title block of a criminal investigative report (which is then indexed in the DCII) is not improperly interpreted as derogatory information, the Instruction proscribes taking adverse action against someone solely on the basis of a titling action.

Information obtained during interviews conducted as part of this review confirmed that the Instruction was being followed. All agents were aware of the

administrative nature of titling and indexing in the DCII. Agents used the DCII as an investigative tool to determine the existence of additional files concerning investigated subjects. Field agents indicated they did not provide DCII information to outside officials (who might be in a position to take the adverse action proscribed by the Instruction). None were aware of any instance in which a military commander or civilian supervisor took action against the subject of an investigation based solely on a report title or DCII entry.

The MCIOs acknowledged the use of the DCII as a tool to locate files for review by outside requesters for administrative purposes such as general officer promotions, Army recruiting and drill instructor duty selection, background investigations for security clearances, etc. In each case, however, the actual investigative file is retrieved, reviewed, and either provided in its entirety or summarized. Since decision-makers are not provided the DCII information, but rather the underlying substantive investigative information, their decisions would not be based on the existence of titling or indexing in the DCII alone. In the Army, USACIDC releases files for such purposes only when the allegations investigated were determined to be founded as marked on the ROI.

The treatment of DCII criminal investigative data by non-DCIO individuals with DCII access will be addressed in Phase II of this review.

F. Categories of individuals indexed: subjects, victims, and incidentals

During the review, we observed that subjects (individuals and business entities) were always indexed as were most victims of personal crimes. Incidentals and impersonal titles were rarely indexed.¹⁰ Such practice accomplishes the objective of the Instruction since the primary focus is the titling and indexing of investigated subjects.

Several DCIS interviewees said there were too few fields in the DCII to adequately identify major DoD contractors having multiple divisions or geographically dispersed operating locations. Merely identifying the name of a major contractor, without further details such as division, branch, address, etc., was of little use to the agents since so many DCII entries exist involving such contractors.

Recommendation

Recommendation 3. The Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, IG, DoD, coordinate with DSS regarding the possibility of expanding the number of fields available in the DCII to adequately identify subjects that are business entities.

¹⁰ Incidentals are individuals who, while not believed to be subjects or victims at the time, appear to have played a significant enough role in a criminal scenario that retrieval of the file by the individual's name is deemed to be valuable. Impersonal titles are used when personal titles are not yet known, such as, "Andrews Air Force Base, Maryland, Theft of Computer Equipment."

Management Comments and Evaluation Response

The Army, Navy, Air Force, and DCIS concurred with this recommendation. We will coordinate with DSS by July 31, 2000.

G. Indexing upon case initiation, or when subjects become known

DoD Instruction 5505.7 states, "The fact that an investigation has started and the identity of a subject when known shall be reported by the investigative agency to the DCII for indexing. This reporting shall be made at the start of an investigation...."

Each DCIO has implementing policies and procedures calling for indexing at the start of an investigation, and when a subject is identified. We found these procedures were followed; however, we noted the following exceptions not expressly covered in the Instruction:

1. **AFOSI and the NCIS do not index espionage investigations until after such cases are closed.** AFOSI policy directs agents not to use their automated case management information system to initiate counterintelligence investigations, as an added measure of operational security.¹¹ Since DCII indexing is an automated process in the AFOSI, initiating sensitive counterintelligence investigations¹² outside of the automated process prevents DCII indexing from occurring. Counterintelligence program managers at AFOSI headquarters initiate action to manually index counterintelligence subjects once the cases are closed. The NCIS has a similar policy. Both cite operational security as the reason indexing is delayed.

We recognize the need for strict operational security in cases where national security is the primary focus. We also recognize that other cases, such as some undercover operations, or cases involving DCII password holders or their coworkers as subjects, for example, may also dictate the need to delay indexing until operational security is no longer jeopardized.

2. **AFOSI does not index subjects of internal criminal investigations until or unless subjects are removed from the AFOSI.** While the AFOSI has no written policy addressing it, the PID of AFOSI employees (agents and support personnel) who are subjects of AFOSI criminal investigations historically have not been entered into the DCII unless and until the subject is removed from employment with the AFOSI. If a criminal investigation results in action short of removal from the AFOSI, the case is not separately indexed in the DCII, but the investigative file is stored within the subject's "110" case file."¹³ While reference to the 110 case file appears in the DCII (reflecting the original date the 110 investigation was conducted), in this situation there would be no

¹¹ See AFOSI Instructions 71-105, and 71-119.

¹² AFOSI case types 27 and 28

¹³ Case type used to denote a suitability investigation conducted on each person at the time of the applicant's selection for AFOSI duty.

entry to separately identify that a new criminal case had been opened. The criminal case file is not separately visible to DCII users such as personnel security specialists and investigators, and other criminal investigators.

We contacted representatives from the Air Force security clearance Consolidated Adjudication Facility (CAF)¹⁴ regarding this policy. They advised that such a practice would indeed negatively impact their ability to make the most informed decisions in granting security clearances to AFOSI personnel.¹⁵ They advised that, in assessing an individual's qualification for a security clearance, clearance adjudicators focus on investigative and other activity pertaining to an individual since their last clearance adjudication. They related that to effectively mask a criminal investigative file in the DCII by including it within another file, particularly when the other file could be dated prior to the individual's last clearance adjudication, effectively deprives the adjudicator of information that would highlight the need to retrieve the particular file.

AFOSI representatives responded that 110 files for AFOSI personnel were routinely requested and reviewed, regardless of the age of the file, by background investigators working for, or on behalf of, the DSS. They reasoned, therefore, that such criminal investigative files were always available for review in the background investigation and security clearance adjudication process.

The Air Force group manager at the DSS advised that since 1991, DSS has retained copies of AFOSI 110 files provided for background investigations. She related that a personnel security analyst, when determining the scope of a background investigation involving an AFOSI employee (agent or support), would not request a copy of a 110 file from the AFOSI if the DSS already had one from a previous request. She advised that DSS assumed the 110 file copy previously obtained would be current. She concluded that the AFOSI practice of including criminal case information in a previous 110 file rather than indexing the criminal case separately may have prevented the consideration of relevant information concerning AFOSI personnel in the security clearance investigation and adjudication process.

In assessing the impact of this policy, an AFOSI representative further explained that any negative consequences to the Government's security program would be limited to criminal investigative files concerning AFOSI military members. That is so because the Office of Personnel Management (OPM), rather than the DSS, has assumed responsibility (temporarily) for personnel security investigations concerning civilians. OPM does not rely on retained files, but instead requests from AFOSI all files pertaining to AFOSI personnel. Also, the AFOSI representative contended that while DSS policy may dictate that 110 files in its possession are not again requested, in practice they are often re-requested because the DSS cannot locate the copies of the files.

¹⁴ The acronym "CAF" has various, but similar meanings to include "consolidated" and "central" adjudication facility. "CCF" has also been used, which represents "central clearance facility." The Air Force CAF is responsible for adjudicating clearances for AFOSI personnel.

¹⁵ All AFOSI personnel are required to possess a Top Secret security clearance

After encountering the AFOSI policy with regard to indexing the subjects of internal criminal investigations, the other DCIOs were queried. All reported that subjects of internal criminal investigations were indexed in the DCII just as any other subject.

3. USACIDC does not index subjects of cases wherein special caveats are placed on reports. USACIDC policy allows supervisors to restrict or delay distribution of investigative reports.¹⁶ The reports are annotated "restricted to CID channels only." All subsequent reports must contain the restrictive statement until the distribution restriction is no longer required. When this caveat is used, the U.S. Army Crime Records Center (USACRC) does not index identified subjects in the DCII until notified by field elements. CID Regulation 195-1 warns commanders and supervisors, however, to judiciously use this feature because it "conflicts with the very existence of the DCII." USACIDC policy does not explain in detail the circumstances that would dictate use of the restrictive caveat; however, interviews disclosed operational security to be the primary factor.

Recommendations

Recommendation 4. The Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight amend DoD Instruction 5505.7 to allow for delayed indexing in the Defense Clearance and Investigations Index in limited cases where such indexing may reasonably be anticipated to risk compromise of the criminal investigation.

Management Comments and Evaluation Response

The Army, Navy, Air Force, and DCIS concurred with this recommendation. We will so amend DoD Instruction 5505.7. Estimated completion date for distribution of revised Instruction for comments is December 31, 2000, following completion of Phase II of this evaluation.

Recommendation 5. The Commanders of the United States Army Criminal Investigation Command and the Air Force Office of Special Investigations, and the Director, Naval Criminal Investigative Service, institute written policy authorizing delays in indexing. The policy must identify specific acceptable reasons for delays and procedures for the subsequent indexing of subjects once circumstances warranting a delay no longer exist.

Management Comments and Evaluation Response

The Army, Navy, and Air Force concurred with this recommendation. The Air Force responded that AFOSI did publish such policy in a change to AFOSI Instruction 71-107, issued on December 30, 1999. We reviewed the Instruction and find that it satisfies the requirement identified in this recommendation. We ask that the Commander,

¹⁶ CID Regulation 195-1, para. 8-2.

USACIDC, and the Director, NCIS, advise us of the specific action taken concerning this recommendation and the estimated/actual completion date.

Recommendation 6. The Commander, Air Force Office of Special Investigations, take action to ensure that when AFOSI personnel are subjects of criminal investigations, they are indexed in the Defense Clearance and Investigations Index as any other subject of a criminal investigation in accordance with DoD Instruction 5505.7.

Management Comments and Evaluation Response

The Air Force concurred with this recommendation. We ask that the Commander, AFOSI, advise us of the specific action to be taken concerning this recommendation and the estimated/actual completion date.

H. Basis for removing names from the DCII

When issued in May 1992, DoD Instruction 5505.7 allowed for the removal from the DCII of the names of subjects in a criminal investigation only in cases of mistaken identity. Removal was expressly prohibited even if based on a later finding that the person was found not to have committed the offense or that the offense did not occur (consistent with the fact that the DCII is an index of investigations, not an index of criminals or offenses). Following a request from the USACIDC, on January 7, 1999, the OIG, DoD, issued a memorandum clarifying the Instruction with respect to the removal of subject names. The memorandum stated that, in addition to cases of mistaken identity, names could be removed from the DCII if criminal investigative agency management later determined that the Instruction's credible information standard for titling, with respect to the subject of a particular case, was not met at the time indexing occurred. This memorandum authorized removal for mistaken identity as well as errors in applying the credible information standard stated in the titling policy.

During this evaluation, the DCIOs were asked to provide various data pertaining to external requests for the removal of subject data from the DCII (e.g., from the subject of an investigation wanting his own data expunged). We analyzed the data for three purposes: to determine the reasons why subjects believed their case was treated improperly or unfairly; to assess the DCIO procedures for responding to such requests; and to determine if the criteria in the Instruction were used as a basis for subsequent expungement actions. For the period under review, fiscal years 1996 through 1998, both NCIS and DCIS reported that they received no requests from titled subjects for correction or expungement. AFOSI reported 5 requests, and USACIDC reported 83. It is important to note that while this report focuses solely on titling and indexing, the requests AFOSI and USACIDC received were processed as requests under the correction of records provisions in the Privacy Act.¹⁷ Investigative files and DCII data constitute individual records in a system of records maintained by each investigative agency. Some of the

¹⁷ Or similar provisions if exempt from Privacy Act

requests specifically mentioned titling and indexing (e.g., requested removal of a name from the title block of a report or from the DCII), while others requested action on all records pertaining to the requestor, which, was interpreted to include titling and indexing.

AFOSI expungement requests. Requests made to AFOSI are described in Table 1. As can be seen, neither titling nor indexing was the focus of the first request. The second request was without merit; all AFOSI actions in indexing were proper. The third request came as a result of an NCIC fingerprint record; the DCII record was merely incidental. However, that request also lacked merit because all investigative actions were proper. Only in the fourth and fifth requests were titling or indexing the primary focus, and in each, resolution came through proper application of the DoD policy.

Requests for Expungement/Amendment of Records - AFOSI	
Action Requested	Reason Cited in Request
Action Taken and Rationale Given	
1. Destroy all records pertaining to case	Age of records exceeded file retention period
Records, to include DCII entries, were expunged since the file retention period was exceeded. Retention period at the time was 15 years; the records in question were 18 years old.	
2. Expunge all records	Time has passed and subject is now a good performer
Request was denied. Quoted credible information standard as basis for indexing in DCII.	
3. Expunge all records	Applying for federal job and records check disclosed an arrest. Subject stated he was given only nonjudicial punishment.
Request was denied. This request focused more directly on subject's record in the NCIC based on submission of a fingerprint card with criminal history data. Reported action cited that fingerprints and associated data were properly obtained and recorded, and defended the DCII entry stating that the credible information standard was met.	
4. Expunge DCII record	Spouse applying for family day care license and was informed DCII reflected "negative data"
Request granted. AFOSI judge advocate opined the DoD credible information standard for indexing was never met, and therefore the subject should not have been indexed. NOTE: This is also a good example of a situation where misuse of the DCII database was corrected. There is no "negative data" in the DCII criminal investigative records since dispositions are not reflected.	
5. Expunge DCII record	Spouse applying for family day care license and was informed DCII reflected separate "drug related offenses" on the military member and the spouse.
Request was partially granted. AFOSI determined the "drug related offense" pertaining to the military member was merely an uncorroborated allegation retained as criminal intelligence and never should have been indexed since the DoD credible information standard was not met. Case against the day care applicant was a substantive investigation, however, and DCII was not expunged with respect to that file.	

Table 1

USACIDC expungement requests. USACIDC provided a listing of 83 cases during our three-year review period where outside requesters, most frequently the subjects of investigations, requested amendments that may have affected titling or indexing in some fashion (Table 2). Many of the requests mentioned titling specifically, while others asked generally for the expungement or amendment of a criminal investigative record. In those cases, the USACIDC reviewed titling and indexing decisions as well as the substance of the identified investigative report. While the Department of the Army exempts USACIDC reports from the amendment provisions of the Privacy Act, Army Regulation 195-2 contains procedures that accomplish the same purpose. Amendment requests will be honored if the requester provides new, relevant, and material facts.¹⁸ Of the 83 requests, only 5 resulted in changes to titling or indexing entries. Of those five, three were directed by the Army Board for the Correction of Military Records (ABCMR), one was directed by the District of Columbia Superior Court, and one was changed by USACIDC Headquarters subsequent to a request from a titled subject (subject was titled before the Instruction existed). The majority of requests, 48, were denied. Of the remaining 30 requests, 15 resulted in modifications to report findings rather than to titling or indexing. Each decision made by USACIDC pertaining to titling or indexing was in accordance with the Instruction.

USACIDC Amendment Requests	
Qty	Disposition
48	Denied. Request failed to provide requisite new, relevant, and material facts
15	Partial change of investigative findings
8	Administratively closed after requester failed to provide additional information
6	Referred to military police (did not involve a USACIDC case)
5	Change titling/indexing 3 – Directed by ABCMR 1 – Directed by DC Superior Court 1 – Changed per request by individual (pre-DoDI 5505.7 titling action)
1	Pending at time of CIPO evaluation
83	Total

Table 2

¹⁸ AR 195-2, para. 4.4b

I. Evaluation results pertinent to DAB findings and recommendations

Of the four DAB recommendations dealing with the "DCII system," three concern matters beyond the scope of this review (DAB Recommendations 15a, 15c, and 15d; see Appendix E). We did note during this review that DSS has instituted procedures to restrict access to data involving open criminal cases indexed in the DCII. Access is limited to the DCIOs and the CAFs, thus answering DAB recommendation 15a.

DAB Recommendation 15b, which urged the implementation of appeal procedures for titling and indexing decisions, deals directly with the subject matter of this evaluation. We found that the Privacy Act, or similar departmental and agency policy, applies to each of the DCIOs and carries with it procedures for individuals to request amendment of records they believe to be inaccurate.¹⁹ Service members have added protections provided by their respective boards for correction of military records. We reviewed each of the amendment requests filed during FYs 1996-1998, and found that the procedures worked well (Part II, Section G. above). We conclude that the processes already in place anticipate and satisfy the DAB recommendation.

J. Evaluation results pertinent to NAPA findings and recommendations

NAPA made three recommendations with respect to titling, which are listed at Appendix F. The NAPA report did not include empirical information upon which its recommendations were based, and during our review we found no foundation for these recommendations as they relate to titling and indexing by the DCIOs. Since additional titling and indexing matters regarding other DoD criminal investigative and law enforcement organizations are to be reviewed during Phase II of this evaluation, we recommend no action be taken to adopt the NAPA recommendations at this time.

Phase I of this evaluation found no evidence to support the contention that the credible information standard is misunderstood, or that titling or indexing subjects of investigations under such a standard have, in and of themselves, harmed the subjects of investigations in any way. Similarly, the present policy of titling and indexing at the start of an investigation has not been found to produce unfair results. On the contrary, accomplishing such actions at the beginning of an investigation has benefited the DoD investigative and security community through increased awareness of mutually

¹⁹ The Privacy Act, as implemented by DoD and Air Force policy, applies in the case of the DCIS and AFOSI respectively. Although USACIDC and NCIS records have been exempted from the amendment procedures of the Privacy Act, NCIS policy is that the exemption will be exercised only when it will "jeopardize governmental interest." The NCIS Manual then outlines procedures for individuals to request amendments. Army Regulation 195-2 has similar procedures with respect to USACIDC investigative files.

significant case files. Further, the practice lessens the potential of multiple investigations of the same matter or person.²⁰

When representatives of USACIDC headquarters were interviewed, they voiced concern that the language in DoD Instruction 5505.7 appeared not to allow for the removal of DCII entries made in error, but only in cases of mistaken identity. While the other investigative organizations did not similarly interpret the Instruction, we concluded that the Instruction's language should be clarified. It was never the intent of the Instruction to prohibit the correction of entries obviously made in error. At the request of the USACIDC, the Deputy Assistant Inspector General, CIPO, issued a January 7, 1999, memorandum (Appendix B) clarifying the Instruction, stating that names could in fact be removed from the DCII if it were later discovered that indexing criteria (e.g., existence of credible information) were not properly applied at the time of indexing.

We conclude that there is no systemic problem with respect to the procedures for amending titling and indexing records. The Privacy Act provides the vehicle for such amendments, and where exemptions have been granted, similar procedures have been implemented elsewhere. Neither DCIS nor NCIS experienced any requests during the period under review, and AFOSI experienced only five. USACIDC experienced 83 requests; however, only five resulted in changes to titling or indexing records. In both AFOSI and USACIDC, Privacy Act or similar procedures worked well. As an added safeguard, military members may use the processes afforded by the Service boards for correction of military records, as we witnessed in the three Army cases.

²⁰ As an example we cite the instance of a senior officer subjected to the initiation of three investigations of the same matter by three different investigative organizations prior to the existence of the current Instruction.

Appendix A. DoD Instruction 5505.7



Department of Defense INSTRUCTION

NUMBER 5505.7

May 14, 1992

IG, DoD

SUBJECT: Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense

- References:** (a) Public Law 95-452, "The Inspector General Act of 1978," October 12, 1978, as amended by Public Law 97-252, "Department of Defense Authorization Act," September 8, 1982 (also cited as Appendix 3 of Title 5, United States Code)
- (b) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
- (c) Sections 801-940 of Title 10, United States Code, "Uniform Code of Military Justice" (UCMJ)

1. PURPOSE

This Instruction:

- 1.1. Is issued under the authority of the Inspector General of the Department of Defense, in accordance with references (a) and (b).
- 1.2. Establishes policy, assigns responsibilities, and prescribes procedures to provide a uniform standard for titling and indexing of criminal investigations in the Department of Defense.

2. APPLICABILITY

This Instruction applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as

"the DoD Components").

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 1.

4. POLICY

4.1. The primary purpose for titling and indexing an individual or entity as the subject of a criminal investigation is to ensure that information in a report of investigation can be retrieved at some future time for law enforcement and security purposes.

4.2. The Department of Defense established the Defense Clearance and Investigations Index (DCII) to act as a computerized central index of investigations for all DoD investigative activities.

4.3. The DoD standard that shall be applied when titling and indexing the subjects of criminal investigations is a determination that credible information exists that a person or entity may have committed a criminal offense or is otherwise made the object of a criminal investigation.

4.4. Titling is an operational rather than a legal decision and final responsibility for the decision to title an individual or entity shall rest with the investigative officials designated to do so by the DoD Components.

5. RESPONSIBILITIES

The Heads of the DoD Components shall issue or modify existing regulations to implement this Instruction.

6. PROCEDURES

6.1. The act of titling and indexing shall not, in and of itself, connote any degree of guilt or innocence.

6.2. Judicial or adverse administrative actions shall not be taken SOLELY on the basis of the fact that a person has been titled in an investigation.

6.3. This Instruction does not preclude the titling and indexing of "incidentals" in the DCII when there is valid reason. Some examples of such titling and indexing are:

6.3.1. Using the name of the person, military installation, command or activity against whom a crime has been committed where no suspects have been identified.

6.3.2. Using the name of a project or description of an incident where the focus of an investigation is not a person, corporation or other legal entity or organization.

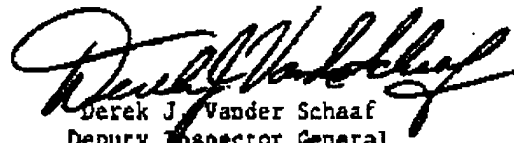
6.4. The fact that an investigation has started and the identity of the subject when known shall be reported by the investigative Agency to the DCII for indexing. This reporting shall be made at the start of the investigation and in accordance with DCII procedures.

6.4.1. Generally, once the subject of an investigation is indexed, the name shall not be removed from the DCII.

6.4.2. Names of subjects in a criminal investigation shall only be removed from the DCII in the case of mistaken identity; i.e., the wrong person's name is entered into the DCII, as opposed to the fact that the person is found not to have committed the offense under investigation or that the offense did not occur.

7. EFFECTIVE DATE AND IMPLEMENTATION

This Instruction is effective immediately. Forward two copies of implementing documents to the Inspector General of the Department of Defense within 120 days.



Derek J. Vander Schaaf
Deputy Inspector General

Enclosures - 1

1. Definitions

E1. ENCLOSURE 1

DEFINITIONS

E1.1.1. Credible Information. Information disclosed or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to indicate criminal activity has occurred and would cause a reasonable investigator under similar circumstances to pursue further the facts of the case to determine whether a criminal act occurred or may have occurred

E1.1.2. Criminal Investigations. Refers to investigations of possible criminal violations of the United States Code, the Uniform Code of Military Justice (reference (c)), or when appropriate, State or local statutes or ordinances or foreign law.

E1.1.3. Incidentals. Any person or entity associated with a matter under investigation and whose identity may be of subsequent value for law enforcement or security purposes.

E1.1.4. Indexing. The recording of information so that an orderly retrieval process may be used to identify and access a particular file or investigation.

E1.1.5. Subject. A person, corporation, other legal entity, or organization about which credible information exists that would cause a reasonable person to suspect the person, corporation, other legal entity, or organization may have committed a criminal offense, or otherwise make a person, corporation, legal entity, or organization the object of a criminal investigation.

E1.1.6. Titling. Placing the name(s) of a person(s), corporation(s), other legal entity, organization(s), or occurrence(s) in the subject block for a criminal investigation.

Appendix B. IG, DoD, Clarifying Memorandum



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202

JAN 7 1999

MEMORANDUM FOR COMMANDER, UNITED STATES ARMY CRIMINAL
INVESTIGATION COMMAND

Subject: Clarification of Department of Defense Titling and
Indexing Policy

References:

- (1) DoD Instruction 5505.7, "Titling and Indexing of
Subjects of Criminal Investigations in the Department
of Defense," May 14, 1992
- (2) 15 December 1998 meeting between USACIDC and IG, DoD,
representatives in support of Deputy Assistant
Inspector General for Criminal Investigative Policy
and Oversight (CIPO) project to review implementation
of DoDI 5505.7

During the meeting at ref. (2), it was brought to our attention that USACIDC is operating under the belief that records pertaining to a criminal suspect may not be removed from the Defense Clearance and Investigations Index (DCII) in cases where it is later determined that the "credible information" criteria outlined in DoD Instruction 5505.7 was never actually met with respect to the individual indexed.¹ The purpose of this memorandum is to clarify that USACIDC management may establish a review process for the titling and indexing decisions made by agents and supervisors. If such a management review process results in a determination that credible information did not originally exist with respect to the individual indexed, the individual's name may be removed from the DCII. We emphasize that such secondary determinations need to be made as soon as possible after a subject is identified in order to preserve the intended operational nature of titling and indexing.

The primary tenets of titling and indexing policy are as follows: First, titling and indexing should be done as soon as possible once the credible information criteria are met

¹ DoD Instruction 5505.7 states, "Names of subjects in a criminal investigation shall only be removed from the DCII in the case of mistaken identity; i.e., the wrong person's name is entered into the DCII, as opposed to the fact that the person is found not to have committed the offense under investigation or that the offense did not occur."

regarding a subject identified in an investigation. Only through prompt indexing can we ensure timely coordination of appropriate investigative and security actions within the greater Defense community. Second, titling and indexing is an operational decision rather than a legal one. The DCII serves merely as a pointer to the location of investigative and clearance files containing the names of indexed individuals. The operational standard - credible information - was developed to help ensure there is some investigative or security value to the DCII record. When the credible information standard is not met with respect to a particular subject, the DCII record either should not be created, or, if it is created prior to the USACIDC management review, should be considered an administrative error and subsequently deleted. Finally, removal of a record, wherein the credible information standard was met, should occur only in cases of mistaken identity. The object is to reflect bona fide investigations concerning individuals, whether or not it is determined the indexed individual was ultimately culpable. If not culpable, the Department still has an index available in the security and investigative community pointing to a file that will show exculpatory information and findings.

While individual records may be later deleted from DCII where credible information did not exist, such actions should be rare. The credibility determination is operational and should be made at the outset of an investigation, or when a subject is initially identified, not after a case is closed. For that reason, investigative organizations must ensure field agents and supervisors are knowledgeable of the credible information criteria to enhance accurate indexing decisions.

If you have any further questions on titling and indexing policy, please contact Lt Colonel Frank Albright at 604-8768.



Charles W. Beardall
Deputy Assistant Inspector General
Criminal Investigative Policy and Oversight

cc:
Director, Naval Criminal Investigative Service
Commander, Air Force Office of Special Investigations
Director, Defense Criminal Investigative Service
Director, Criminal Investigations Activity, Defense Logistics Agency

Appendix C. IG, DoD, Review – February 1987

The IG, DoD, issued its report, number 86FRR005, entitled “Review of Operating Policies and Procedures of the Defense Central Index of Investigations,”²¹ in February, 1987. The primary findings and recommendations (shown in italics) are reported below, accompanied by our commentary (standard type):

1. *Army should discontinue expungement of DCII entries that identify criminal investigations in which the allegations were proven to be unfounded or unsubstantiated.* The report noted that the DCII is an index of all DoD investigations. “The fact that a particular [DCII] contributor refutes or otherwise determines an allegation which is the basis for opening an investigation is unfounded or unsubstantiated does not change the fact that it was a lawfully conducted investigation.” USACIDC responded that such a change would require rewrite of many of their policies.
2. *All DoD investigative organizations should contribute to the DCII.*²² All report recipients concurred with the recommendation.²³
3. *The DCII contributors should verify that input data are correct and complete.* All respondents substantially concurred.
4. *The DCII should remain solely as an index of investigations and not be expanded to serve as a repository of investigative results.* At that time, many DCII users wanted DCII information to be more descriptive by identifying types of investigations, offenses, results of investigations, and dispositions. Others, however, voiced concern over the proliferation of remote terminals and the need to protect sensitive investigative information. The final recommendation was to continue DCII as an index of investigations, and not a repository for substantive investigative information. The only exception was to code entries such that criminal, civil, administrative, and personnel security investigations could be distinguished.

²¹ The DCII was originally created as the “Defense Central Index of Investigations” in February 1966. The name was changed to “Defense Clearance and Investigations Index” circa 1990 to better reflect the actual contents and use of the Index.

²² The report primarily identified that the Defense Logistics Agency, Defense Nuclear Agency, Army/Air Force Exchange Service, Air Force Security Police, and the Marine Corps Criminal Investigation Division did not contribute criminal investigative data to the DCII. It also noted that other organizations not indexing investigations included the Defense Intelligence Agency, and the Director for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense.

²³ The NSIC (Naval Security and Intelligence Command, now known as NCIS) voiced the only exception, stating that it was not necessary for the Marine Corps Criminal Investigation Division (CID) to contribute to the DCII because NSIC at that time reviewed Marine Corps CID and Master at Arms offense reports and entered those that met “appropriate criteria.” The IG, DoD, responded that all investigations must be indexed.

-
5. *Proactive or self-initiated investigative efforts should be indexed in the DCII.* Three of five respondents did not concur with this recommendation, commenting that it would either be nonproductive or too costly.
 6. *DCII participants need to adopt uniform file retention periods for security and criminal investigations.* A wide disparity existed among the major contributors to the DCII. The IG, DoD, recommendation set the criminal investigative file retention period at a minimum of 25 years and maximum of 40 years, and allowed the DCII contributors to designate certain case types for permanent retention. A 15-year minimum period of retention was recommended for personnel security investigations that disclose no “derogatory, unfavorable, or minor derogatory information.”
 7. *The DCII should be expanded to establish a totally integrated central index of personnel security investigations.* The respondents overwhelmingly supported this recommendation, as well as the inclusion of personnel security disposition data.

Appendix D. IG, DoD, Review – May 1991

In May 1991, the IG, DoD, published its report number 91FBD013, “Review of Titling and Indexing Procedures Utilized by the Defense Criminal Investigative Organizations.” The review was prompted by a House Armed Services Committee (HASC) recommendation that the military criminal investigative organizations establish a uniform standard for titling individuals as subjects of investigations. The HASC report recommended that the titling standard should be set as “probable cause to believe the individual had committed the alleged offense.”

After reviewing the policies and procedures of the DCIOs, as well as those of other federal law enforcement agencies,²⁴ the review report included the following findings:

- Federal statutes recognize the need for Federal law enforcement and security agencies to maintain raw intelligence files for criminal law enforcement and security databases.²⁵
- Adoption of a probable cause standard would result in the loss of valuable law enforcement information. This would harm the ability of the DoD to work with Federal law enforcement, security, intelligence and counterintelligence agencies by, in effect, censoring the data which goes [sic] into the DCII.
- A determination of probable cause is too high a standard for titling decisions listing an individual or entity as the subject of an investigation.
- The NIS,²⁶ the [AF]OSI, and the DCIS, which rely on the DCII as their database, would each have to establish separate databases similar to the duplicative system used by the Army.
- The Army system for titling is not effective for law enforcement and investigative purposes.

²⁴ Defense Investigative Service (now the DSS), Department of the Army Deputy Chief of Staff Intelligence – Counterintelligence Central Control Office, Federal Bureau of Investigation, Bureau of Alcohol Tobacco and Firearms, U.S. Customs Service, Internal Revenue Service, and the U.S. Secret Service.

²⁵ This statement should most likely be interpreted to mean that there is investigative value in an index that identifies all investigative matters, over one that simply contains files for which probable cause concerning subjects exists. The criminal investigative data in the DCII constitutes intelligence only insofar as it points to the file of anyone who was ever the subject of a criminal investigation. Investigative findings (true intelligence) are not contained in the DCII, nor is disposition data that would indicate innocence or guilt.

²⁶ Naval Investigative Service, later renamed Naval Criminal Investigative Service.

The report then included the following recommended actions:

- The IG, DoD, should establish a uniform standard for the DCIOs titling individuals as the subject of an investigation. This action will result in uniformity in the information going into the DCII, and will promote efficiency in the criminal investigative program.
- The uniform standard for titling should be established through the issuance of a Department of Defense policy document
- The uniform standard for all titling decisions by the IG, DoD, should be that all titling decisions will be based on a determination that sufficient evidence exists to warrant an investigation. This standard is recommended because it will be the most efficient and is the prevailing titling standard utilized by both DoD and non-DoD law enforcement agencies. Adoption of this standard will require revision of Army CID Regulation 195-1 and Army Regulation 195-2 to remove the probable cause standard for titling, and prevent deletion of names of investigative subjects from the DCII.

This May 1991 review prompted the issuance of DoD Instruction 5505.7.

Appendix E. Summary of Defense Advisory Board Findings and Recommendations

On November 18, 1993, the Secretary of Defense announced the formation of the "Advisory Board on the Investigative Capability of the Department of Defense" based on the urgings of the Congressional Armed Services and Appropriations Committees. The DAB studied a wide variety of issues concerning investigations in the DoD, from organizational structure, to agent personnel matters, to investigative procedures. Among the DAB recommendations was a call for the Secretary of Defense to establish a permanent Board on Investigations (BOI) chaired by the IG, DoD.

The DAB report included the following observations and recommendations that affect titling and indexing:

Observations:

- Policies for the entry of, and access to personal identities in the [DCII] system do not afford sufficient protection to those individuals named in the DCII. (I:43)²⁷
- There is inadequate oversight of the Services' use of the DCII. (I:43)
- "We find the current number of organizations, and thus individuals, with access to the DCII troubling.... We have learned that it is technically feasible to limit the users that have access to the criminal investigation indices in the DCII, while still making the other indices available. We believe this should be considered." (I:45)
- "We are troubled...that the criminal investigative information about [titled] individuals may be released for administrative determinations. We believe that people using criminal investigative information for administrative determinations should have access only to information about subjects for whom it was determined that a preponderance of the evidence exists that the subject committed an offense." (I:46)
- "...the absence of a mechanism for subjects to request removal of their name from the DCII is unfair.... It is not enough to allow a change to the system only in the event of a mistaken identity. Criminal investigative organizations, and subjects, should have the ability to address and correct mistakes." (I:46)
- Only the Army has a working system in place that routinely enters police investigator subjects into the DCII. (I:51)

²⁷ References are to volume and page number of the Report of the Advisory Board on the Investigative Capability of the Department of Defense

The DAB then made the following recommendations concerning the DCII “system”:

Recommendations:

- Establish procedures for information related to open investigations. (15.a.)²⁸
- Establish prompt, effective procedures for individuals to appeal titling and indexing decisions. (15.b.)
- Limit online access to criminal investigation indices. Only those organizations or activities with a substantial law enforcement function, those with national security interests, such as security clearance and adjudicative authority, and the Defense Investigative Service²⁹ should have access to criminal investigation indices. This recommendation is imperative. If it cannot be accomplished, then the standard for indexing criminal investigations in the DCII should be preponderance of evidence. (15.c.)
- Establish a preponderance of the evidence standard [for the release of DCII criminal investigative information] for other than law enforcement or national security purposes. The determination should be made only after an investigative review and an independent legal review. The results of each review should be listed prominently in the report of investigation.³⁰ (15.d.)

Since the DAB issued its two-volume report, the BOI has been tracking progress on report recommendations. As of March 20, 2000, only recommendations 15.b. and 15.d. of those related to titling and indexing remain open. This review determined that appeal procedures already exist in the Privacy Act and implementing departmental policy for the DCIS and AFOSI, in NCIS policy, and in Army and USACIDC policy.

²⁸ References to DAB recommendations track with recommendation numbers listed in the DAB report.

²⁹ Now the DSS.

³⁰ The report recognizes that this may result in an appearance that the record reflects a conclusion about a subject’s guilt or innocence, but states that the DAB believes these procedures will protect more individuals than they will harm.

Appendix F. Summary of National Academy of Public Administration Findings and Recommendations

Section 1072 of the National Defense Authorization Act for Fiscal Year 1998 tasked NAPA³¹ to conduct a study of MCIO policies and procedures in sex crimes investigations. In May 1998, the DoD contracted with NAPA, which studied a variety of investigative issues including titling and indexing. NAPA noted that, "concerns have been expressed about the misuse of titling information, and how it could unfairly harm the military careers of some individuals." The NAPA report stated that the following three issues were examined:

- Is the standard used by the MCIOs for titling crime suspects adequate?
- Are the operational practices related to when individuals are titled appropriate?
- Should there be better procedures for correcting erroneous titling information?

In the text of its report the NAPA made the following observations, among others:

- "...in practice, [raising the titling standard to probable cause] would not be a problem since criminal investigators are aware that the DCII information is not a compilation of detailed crime intelligence."
- "few [MCIO field agents] were aware of DoD's 'credible information' standard, and fewer could define it in operational terms."
- "most agents understood and used the term 'probable cause' and indicated that it should be the basis for the titling standard."
- CID formerly used the probable cause standard in titling.
- "[Because they are required to report sensitive cases to higher officials within 24 hours of the discovery of a crime], CID agents said they felt pressure to identify, and thus title, a suspect...."
- "Several [CID] agents said the annual field office inspection process also pressures them to quickly produce a suspect for any crime because this is one item that is examined as part of the inspection."

³¹ The National Academy of Public Administration is an independent, nonpartisan, nonprofit organization comprised of former legislators, jurists, federal and State executives and scholars that has been contracted to assist government and private agencies and organizations in research and problem solving. NAPA was granted a congressional charter in 1984.

-
- [OSI and NCIS] agents advised they did not feel pressure to title a subject until there was “probable cause.”
 - The decision to place a suspect’s name in a FBI report is made by the case agent when he believes there is “probable cause to determine the identity of a crime suspect.... FBI agents did not recognize the credible information standard as it is used by DoD.”
 - “Federal, state, and local law enforcement agencies indicate there is no single civilian law enforcement “titling” standard, and that the ‘credible information’ standard is not used. Also, common terminology does not appear to apply to the act of placing a person’s name in an investigative report... The most commonly used term to describe the decision point which precedes a law enforcement act is ‘probable cause’.”
 - “Although DoD permits the removal of a subject’s name from the DCII in cases of mistaken identity, it does not consider cases when it is ultimately determined that a crime never occurred.”
 - Entering names at early investigative stages may not account for the later discovery of errors or new information that the alleged crimes did not occur. Consequently, there could be improper titling of persons or entities as “crime suspects.” The “mistaken identity” rule alone cannot remove the names of such persons from the DCII. Thus, they can remain improperly subjected to scrutiny, vulnerable to unwarranted harm to their careers or security status.

Following are the NAPA findings and recommendations with respect to titling and indexing:

- DoD amend the DoD Instruction 5505.7 titling standard, replacing the term “credible information” with the term “probable cause,” as found in Black[’s Law Dictionary]. Titling should be entered into the DCII at the close of each MCIO investigation.
 - DoD amend standards and procedures for the removal of titling information from the DCII to permit removal of a titled person’s name by the head of the submitting [DCIO] when there is reason to believe that the titling is in error or does not serve the interests of justice.
 - DoD establish a common [DCIO] procedure for reviewing applications for untitling, and maintain records of the annual number of applications, their source, and the reasons given for each request. From these records, determine whether there is a systemic problem with the titling process and take corrective action where necessary.
-

Appendix G. Departmental and Agency Policies Reviewed

Department of Defense

DoD Instruction 5505.7, "Titling and Indexing Subjects of Criminal Investigations in the Department of Defense," May 14, 1992
Defense Criminal Investigative Service Special Agent's Manual

Army

Army Regulation 190-45, Interim Change No. I01, "Law Enforcement Reporting,"
3 September 1993
Army Regulation 195-2, Interim Change No. I01, "Criminal Investigation Activities,"
27 September 1993
CID Regulation 195-1, "Criminal Investigation Operational Procedures," CID Intranet,
build date: 1 Jan 2000

Navy

Naval Criminal Investigative Service Online Manual, NCIS-1, Version 3.10, compiled
26 July 1999

Air Force

Air Force Instruction 37-132, "Air Force Privacy Act Program," 11 March 1994
Air Force Instruction 71-101, Volume 1, "Criminal Investigations," 1 August 1997
AFOSI Instruction 71-105, "Investigations," 9 March 1999
AFOSI Instruction 71-107, Interim Change 99-4, "Processing Investigative Matters,"
23 September 1998
AFOSI Instruction 71-119, "Counterintelligence Briefings, Investigations, Sources, and
Related Matters," 26 November 1999
AFOSI Manual 71-121, "Report Writing," 17 May 1999

Appendix H. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense (Personnel and Readiness)
Assistant Secretary of Defense (Command, Control, Communications
and Intelligence)
Assistant Secretary of Defense (Legislative Affairs)
Assistant Secretary of Defense (Public Affairs)
Deputy Under Secretary of Defense (Installations)
General Counsel, Department of Defense
Office of the Inspector General
General Counsel, Defense Logistics Agency
Deputy General Counsel (Inspector General)*
Director, Defense Intelligence Agency
Inspector General, National Security Agency
Director, Washington Headquarters Service
Director, Defense Criminal Investigative Service*
Director, Defense Security Service*
Chief, Defense Protective Service
Office of Congressional Liaison

Department of the Army

Inspector General, Department of the Army
General Counsel, Department of the Army*
Auditor General, Department of the Army*
U.S. Army Criminal Investigation Command*
Deputy Chief of Staff for Operations and Plans, Security, Force Protection and Law
Enforcement Division*

Department of the Navy

Naval Inspector General*
General Counsel, Department of the Navy
Director, Naval Criminal Investigative Service*
Counsel for the Commandant (Marine Corps)
Inspector General, U.S. Marine Corps

Department of the Air Force

Assistant Secretary of the Air Force (Financial Management & Comptroller)*
General Counsel, Department of the Air Force
Inspector General, Department of the Air Force*
Commander, Air Force Office of Special Investigations*
Director of Security Forces*

Non-Defense Federal Organizations

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations

Senate Subcommittee on Defense, Committee on Appropriations

Senate Committee on Armed Services

Senate Committee on Governmental Affairs

House Committee on Appropriations

House Subcommittee on Defense, Committee on Appropriations

House Committee on Armed Services

House Committee on Government Reform

House Subcommittee on Government Management, Information, Technology,
Committee on Government Reform

House Subcommittee on National Security, Veterans Affairs, and International Relations,
Committee on Government Reform

*Recipient of draft report

Appendix I. Management Comments

Army



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS
400 ARMY PENTAGON
WASHINGTON DC 20310-0400

11 MAY 2000

DAMO-ODL

MEMORANDUM FOR THE DEPUTY ASSISTANT INSPECTOR GENERAL,
CRIMINAL INVESTIGATIVE POLICY AND
OVERSIGHT, 400 ARMY NAVY DRIVE,
ARLINGTON VA 22202-2885

SUBJECT: Report on the Review of the Implementation of Department of
Defense Instruction 5505.7 in the Department of Defense, Phase I
The Defense Criminal Investigative Organizations (Project No.
98500191)--INFORMATION MEMORANDUM

1. Army concurs with the subject report.
2. The U.S. Army Criminal Investigation Command (USACIDC) will establish written policy concerning the indexing of individuals in the Defense Clearance and Investigations Index (DCII). Policy will be incorporated into U.S. Army Criminal Investigation Regulation 195-1, Criminal Investigation Operational Procedures, establishing specific acceptable reasons for delays in indexing subjects of investigations in the DCII and procedures for indexing subjects once circumstances warranting a delay no longer exist.
3. This action has been coordinated with Ms. Sajer (Office, Army General Counsel), LTC Mark Shelton (Office, Assistant Secretary of the Army (Manpower and Reserve Affairs)) and LTC Taylor (USACIDC).
4. Point of contact is Mr. Jeffery Porter, (703) 681-4868.

RICHARD A. CODY
Major General, GS
Director of Operations,
Readiness and Mobilization

Navy



DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
WASHINGTON NAVY YARD BLDG 111
716 SICARD STREET SE
WASHINGTON DC 20388-5380

Ser: 006/00U0016
11 MAY 2000

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE
(ATTN: Mr. Frank Albright, Review Project Manager)

SUBJECT: REPORT ON THE REVIEW OF THE IMPLEMENTATION OF DOD
INSTRUCTION 5505.7 IN THE DEPARTMENT OF DEFENSE,
PHASE I - THE DEFENSE CRIMINAL INVESTIGATIVE
ORGANIZATIONS (PROJECT 9850019I)

Ref: (a) DODIG Memorandum dtd March 29, 2000

In response to request for review of draft report forwarded via
reference (a), the following comments are herewith provided for
further action as deemed appropriate.

Recommendation 4. The DOD Instruction 5505.7 should be amended
to allow for delayed indexing in the Defense Clearance and
Investigations Index in limited cases where such indexing may
reasonably be anticipated to risk compromise of the criminal
investigation.

Comments. NCIS concurs and provides following comments:
espionage investigations and/or national security investigations, as
well as criminal investigations involving employees (possibly having
access to DCII), should not be indexed until such time as operational
security is deemed not to be in jeopardy or until investigation is
closed.

Recommendation 5. The Commanders of the United States Army
Criminal Investigation Command and the Air Force Office of Special
Investigations and the Director, Naval Criminal Investigative Service,
should institute written policy authorizing delays in indexing. The
policy must identify specific acceptable reasons for delays and
procedures for the subsequent indexing of subjects once circumstances
warranting a delay no longer exist.

Comments. NCIS concurs and has identified appropriate personnel
responsible for preparing and releasing such guidance. Further, Page
9 of the draft report indicates "AFOSI and the NCIS do not index

espionage investigations until after such cases are closed".
It is recommended this procedure/policy should be standardized
throughout the DCIO(s).

If this office may be of further assistance in this matter, please do
not hesitate to contact Ms. Joyce Morris at (202) 433-9598.



R. B. MCMURDO
Assistant Director for Inspections
Acting

Copy to:
File (DODIG 9850019I)

PAGE 2

Air Force



DEPARTMENT OF THE AIR FORCE
OFFICE OF THE INSPECTOR GENERAL
WASHINGTON, DC

2 May 2000

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL CRIMINAL
INVESTIGATIVE POLICY AND OVERSIGHT

FROM: SAF/IGX
1140 Air Force Pentagon
Washington DC 20330-1140

SUBJECT: Draft Comments on DOD Instruction 5505.7 (Project No. 98500191) (DOD IG
CIPO Memo dated 29 March 2000)

This is in reply to your memorandum requesting Assistant Secretary of the Air Force (Financial Management and Comptroller) to provide Air Force Comments on subject report.

Recommendation 1. The Commander, Air Force Office of Special Investigations, (AFOSI) should institute policy to limit AFOSI matters indexed in the Defense Clearance and Investigations Index to substantive investigations.

Air Force Comment: Non-concur. In addition to indexing substantive investigations in the DCII, AFOSI has also used the DCII as a file retrieval system for other investigative files of importance such as zero files. Zero files have been used as a repository for allegations of criminal activity that did not warrant an investigation, criminal intelligence, and matters that were referred to other agencies having investigative responsibility over the matter reported in the zero file.

In 1999, the AFOSI Commander directed an internal study to determine if the information in zero files had been appropriately indexed in DCII. The study disclosed there were numerous files in DCII containing information that did not meet the credible information standard in DoDI 5505.7. As a result of the review, the following actions have been completed or are still being worked:

- a. Effective 9 May 1999, policy was published which prohibited the indexing of zero files in DCII unless the information met the credible information standard.
- b. A total of 5,671 zero files were immediately removed from DCII. This number did not include zero files for death investigations, sex offenses, assaults, drug offenses, and misconduct matters as it was felt information in these categories was too sensitive to simply delete from the DCII without reviewing the files.

c. An additional 11,389 zero files pertaining to death investigations, sex offenses, assaults, drug offenses, and misconduct matters were reviewed by investigative personnel at the AFOSI field units responsible for the initial indexing. An additional 1,802 zero files have been identified for removal from DCII because they contained information that did not meet the credible information standard. One thousand files still remain to be reviewed before this project can be completed. Upon completion of the file reviews, those files not meeting the credible information standard will be removed from DCII and those meeting the credible information standard will be retained in DCII. We expect to complete the project by 1 August 2000.

d. We believe that we need to index zero files in DCII when they meet the credible information standard. It would be a disservice to our other federal agency customers to not index these files. For example, many federal agencies such as the FBI, DSS, and OPM have access to DCII terminals. These agencies query DCII when they process federal employees and contractor employees for suitability determinations and security clearances. Often, they will find an AFOSI zero file and they make a direct inquiry to our Files Repository to review the file. Those zero files containing credible information are released to authorized customers and the information in them is used in making suitability and security clearance decisions.

Recommendation 2. The Commander, Air Force Office of Special Investigations, should implement procedures to ensure subjects of Security Forces criminal investigations (per definitions in DoD Instruction 5505.7) are indexed in the Defense Clearance and Investigations Index as required by Air Force Instruction 71-101.

Air Force Comment: Concur. There has been Air Force policy requiring Security Forces to provide reports of investigation to AFOSI for indexing in DCII for several years. The problem has been in establishing a routine process for Security Forces to provide those reports. To accomplish this, AFI 31-206, *Security Police Investigations*, will need revision. The office of primary responsibility for AFI 31-206 is the Air Force Security Forces Agency (AFSFA). Currently, both AFSFA and AFOSI are in the process of establishing a worldwide Defense Incident-Based Reporting System (DIBRS) automated process that can facilitate collection of DCII reportable information. AFOSI will work with AFSFA and USAF/XOF to create an automated process to permit transfer of DCII reportable criminal investigative indexing information from SF to AFOSI. If technical challenges can be overcome, we anticipate instituting such a process by 1 Dec 2000.

Recommendation 3. The Office of Criminal Investigative Policy and Oversight (CIPO), IG, DoD, should coordinate with DSS regarding the possibility of expanding the number of fields available in the DCII to adequately identify subjects that are business entities.

Air Force Comment: Concur

Recommendation 4. The DoD Instruction 5505.7 should be amended to allow for delayed indexing in the Defense Clearance and Investigations Index in limited cases where such indexing may reasonably be anticipated to risk compromise of the criminal investigation.

Air Force Comment: Concur.

Recommendation 5: The Commanders of the United States Army Criminal Investigation Command and the Air Force Office of Special Investigations, and the Director, Naval Criminal Investigative Service, should institute written policy authorizing delays in indexing. The policy must identify specific acceptable reasons for delays and procedures for the subsequent indexing of subjects once circumstances warranting a delay no longer exists.

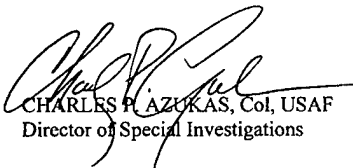
Air Force Comment: Concur. AFOSI already has policy to delay the indexing of criminal investigations when it is necessary to maintain operational security and for the immediate indexing of such investigations when there is no longer a need to maintain operational security. That policy was published in AFOSII 71-107, paragraphs 3.2, on 30 December 1999 and it emphasizes that the practice of delayed indexing should be used infrequently and that commanders and special agents in-charge provide written justification each time this procedure is used. AFOSI uses delayed indexing espionage and sabotage investigations and any investigation when it is necessary to report classified information.

Although we believe it is possible to prepare a list of examples when it would be appropriate to delay indexing, we do not believe it is possible to prepare an all inclusive list and some decisions have to be left up to the on-scene commander and special agent in-charge. This keeps decision making relative to DCII indexing at the operational level where it belongs. We believe any further refinement of our present policy should be held in abeyance pending action by CIPO, IG, and DoD, to address Recommendation 4 in DoD Instruction 5505.7.

Recommendation 6: The Commander, Air Force Office of Special Investigations, should take action to ensure that when AFOSI personnel are subjects of criminal investigations, they are indexed in the Defense Clearance and Investigations Index as any other subject of a criminal investigation in accordance with DoD Instruction 5505.7.

Air Force Comment: Concur. See responses to Recommendations 4 and 5 above.

If we can be of further assistance, please contact the undersigned at 703.697.0411.


CHARLES P. AZUKAS, Col, USAF
Director of Special Investigations

cc:
AFOSI/CC
File

Defense Criminal Investigative Service



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884

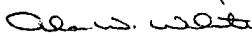
(Investigations)

June 30, 2000

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL FOR
CRIMINAL INVESTIGATIVE POLICY AND OVERSIGHT

SUBJECT: Report on the Review of the Implementation of DoD
Instruction 5505.7 in the Department of Defense.
Phase I - The Defense Criminal Investigative
Organizations (Project No. 9850019I)

We conducted a review of the subject draft proposed
evaluation report and fully concur with the summary of
recommendations.


Alan W. White
Director
Investigative Operations

Evaluation Team Members

Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, Office of the Assistant Inspector General for Investigations, Office of the Inspector General, Department of Defense.

Frank G. Albright
Karen E. Cropper
Laura J. McCarthy
Barbara J. McVay

INTERNET DOCUMENT INFORMATION FORM

A. Report Title: Review of the Implementation of DoD Instruction 5505.7, "Titling and Indexing Subjects of Criminal Investigations in the Department of Defense". Phase 1 – The Defense Criminal Investigative Organizations

B. DATE Report Downloaded From the Internet: 11/06/00

C. Report's Point of Contact: (Name, Organization, Address, Office Symbol, & Ph #): OAIG-AUD (ATTN: AFTS Audit Suggestions)
Inspector General, Department of Defense
400 Army Navy Drive (Room 801)
Arlington, VA 22202-2884

D. Currently Applicable Classification Level: Unclassified

E. Distribution Statement A: Approved for Public Release

F. The foregoing information was compiled and provided by:
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