



U.S. Department of Justice

Office of the Inspector General

September 6, 2017

MEMORANDUM FOR ROD J. ROSENSTEIN
DEPUTY ATTORNEY GENERAL
OFFICE OF THE DEPUTY ATTORNEY GENERAL

FROM: 
MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT: Recommendation for a Department of Justice Policy
Establishing Standards for its Security Offices to Review
Misconduct Investigations for Security Clearance
Adjudications

In two recent reviews, the Department of Justice (Department or DOJ) Office of the Inspector General (OIG) identified failures by the Drug Enforcement Administration (DEA) to ensure that information regarding employee misconduct investigations implicating security concerns were referred to and adjudicated by the subject matter experts in the DEA Office of Security Programs, the office that adjudicates DEA employee security clearances. See OIG report entitled *The Handling of Sexual Harassment and Misconduct Allegations by the Department's Law Enforcement Components* (March 2015) and OIG report entitled *Report of Investigation of the Actions of Former DEA Leadership in Connection with the Reinstatement of a Security Clearance* (September 2017). As a result, the DEA Office of Security Programs was not made aware of misconduct information that implicated employee security clearances until it learned of the information from another source, in some cases, years after the misconduct occurred.

Similarly, in 2014, we notified the Office of the Deputy Attorney General (ODAG) of our concern that the background reinvestigation of a candidate for a U.S. Marshal position, who was then employed by another DOJ component, failed to include information that the candidate was under OIG investigation for serious administrative misconduct, and potentially criminal conduct.¹

¹ The Office of the Director of National Intelligence (DNI) determines the minimum investigative standards for background investigations.

In light of these experiences, the OIG makes two recommendations in this memorandum to ensure that the Department develops policies to ensure that the DOJ security offices obtain and assess all relevant information related to an employee's misconduct investigations in a timely manner.

Information from misconduct investigations may be highly relevant to an employee's security clearance adjudication. The information may implicate the specific characteristics evaluated as part of a security clearance adjudication such as an employee's "strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment as well as freedom from conflicting allegiances and potential for coercion, and willingness and ability to abide by regulations governing the use, handling, and protection of classified information." Executive Order 12968 at 3.1(b). Even when a misconduct investigation does not result in a substantiated finding of misconduct, the information from that investigation may still be relevant to an employee's security clearance adjudication because it may – in combination with other information – establish "a recent or recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior," which may render the employee ineligible to obtain or maintain a security clearance. See *Adjudicative Guidelines for Determining Eligibility to Classified Information* 32 C.F.R. § 147.2(d).

If the persons responsible for adjudicating the employee's security clearance do not receive this information, they will not be able to evaluate its relevance. If the persons responsible for adjudicating the employee's security clearance do not receive this information in a timely manner, the Department may be subject to avoidable security risks.

Within DOJ, there are several offices responsible for adjudicating security clearances (security offices) and several offices responsible for conducting misconduct investigations (misconduct offices). Security clearance adjudications may be conducted by SEPS or the security office within one of the components (such as the FBI Security Division). Misconduct investigations may be conducted by the OIG, the DOJ Office of Professional Responsibility (OPR), or the Inspection Divisions or other units within the multiple DOJ components. DOJ security offices may receive information from misconduct investigations by at least two different routes: directly from DOJ misconduct offices, or indirectly from an Office of Personnel Management (OPM) background investigation. However, there is no Department-wide policy requiring DOJ misconduct offices to share specific information from a misconduct investigation with DOJ security offices or with OPM.

Therefore, the OIG makes the following recommendations:

1. The Department should issue or clarify policies to require DOJ security offices to routinely request relevant misconduct-related materials from

relevant DOJ misconduct offices for consideration in connection with security clearance adjudications. Such policies should include a clear definition of relevant misconduct-related materials that ensures that security offices receive the necessary and appropriate information to make fully-informed decisions.

2. The Department should issue or clarify policies to require DOJ misconduct offices to provide such relevant misconduct-related materials to DOJ security offices or OPM to ensure timely and informed security clearance adjudications, whether those materials arise as a result of a misconduct investigation or are requested in connection with a security clearance adjudication.

We request that ODAG advise us within 60 days of the date of this memorandum of any actions the Department has taken or intends to take regarding the issues discussed in this memorandum. If you have any questions or would like to discuss the information in the memorandum, please contact me at (202) 514-3435.