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**Office of the Inspector General of the Intelligence Community**



**(U) Evaluation of Media Claims Regarding  
Non-Reporting by the National Reconnaissance  
Office of Certain 2010 Admissions of Potential  
Crimes**

**Report Number IO-2013-007**

**February 2014**

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## **(U) EXECUTIVE SUMMARY**

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(U) On 10 July 2012, the McClatchy Company published an article claiming that the National Reconnaissance Office (NRO) had not reported to local law enforcement admissions of child molestation and viewing of child pornography by a contractor and an Air Force officer.<sup>1</sup> According to the newspaper article, the individuals voluntarily made those admissions during polygraph sessions administered by the NRO during 2010.

(U) At the request of the NRO Director, the NRO Office of Inspector General (OIG) conducted a special review of the NRO's polygraph program administration and execution.<sup>2</sup> Subsequently, Senator Charles E. Grassley requested the NRO OIG to review that program as well as the NRO's crimes reporting process. Due to the NRO OIG's role in the crimes reporting process, the NRO OIG recused itself from evaluating the claims of unreported admissions of potential crimes. The NRO OIG requested that the Office of the Inspector General of the Intelligence Community (IC IG) examine this matter on its behalf.

(U) This limited scope review is the first of two planned IC IG reports on the evaluation that we conducted in response to the NRO OIG request and Congressional interest. The objective of this portion of the evaluation was to determine whether the claims made in the McClatchy Company article were accurate.

### **(U) Highlights**

(U) We determined that the NRO reported to the Department of Justice (DOJ), in accordance with Federal reporting requirements, a June 2010 polygraph admission of viewing child pornography and molesting a child that was made by a contractor undergoing a security clearance review for access to classified NRO programs. However, the NRO did not report similar admissions made by an Air Force officer in a May 2010 polygraph examination to appropriate Federal investigative agencies. Instead, the NRO reported those admissions to an Air Force office responsible for adjudicating security clearances and not to the Air Force Office of Special Investigations or DOJ that are responsible for criminal investigations.

(U) We recommend that the NRO document in policy its processes to address the reporting of admissions of potential crimes by military personnel and the reporting of child abuse.

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<sup>1</sup> (U) *National Reconnaissance Office Hasn't Told Police of Crime Confession*, Marisa Taylor, McClatchy Newspapers (McClatchydc.com), July 10, 2012 and Letter from the Ranking Member of the United States Senate Committee on the Judiciary to the NRO Inspector General, August 13, 2012.

<sup>2</sup> (U//~~FOUO~~) NRO OIG. *Special Review of the NRO Polygraph Program*. (Project Number 2012-006 S).

**(U) Management Comments and Our Response**

(U//~~FOUO~~) The NRO Office of General Counsel and Office of Security and Counterintelligence provided a consolidated response to the findings and recommendations in this report. Both offices concurred with the recommendations. However, the OGC stated that it is not obligated by law or otherwise to report violations of state crimes to DOJ even if such crimes could be assimilated into Federal offenses per the Federal Assimilative Crimes Act. The NRO OGC also identified several enhancements it has made to its crimes referral process. Subsequent to completion of our work, the NRO issued guidance that satisfied several recommendations made in this report.

(U) The NRO OIG provided technical comments that we incorporated as appropriate.

(U) See Appendix E for the NRO's official comments and technical comments.

## (U) BACKGROUND

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### (U) Federal Crimes Reporting Requirements

(U) As both a Defense Agency and an Intelligence Community (IC) element, the NRO must comply with Federal requirements for reporting potential Federal crimes, including some violations of the Uniform Code of Military Justice (UCMJ), of which NRO personnel<sup>3</sup> become aware.<sup>4</sup> Under Title 28 United States Code (U.S.C.), Section 535(b)

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

- (1) the responsibility to perform an investigation with respect thereto is specifically assigned otherwise by another provision of law; or
- (2) ...the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.<sup>5</sup>

(U) In addition to an obligation for Federal employees to report potential Federal crimes, provisions in Executive Orders (E.O.) require heads of agencies to report potential Federal crimes to DOJ. For IC elements, E.O. 12333 Section 1.7(a)<sup>6</sup> requires IC senior officials to

report to the Attorney General possible violations of federal criminal laws by employees and of specified federal criminal laws by any other person as provided in procedures agreed upon by the Attorney General and the head of the department or agency concerned, in a manner consistent with the protection of intelligence sources and methods, as specified in those procedures.<sup>7</sup>

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<sup>3</sup> (U) NRO personnel include government civilians, contractors, and military members.

<sup>4</sup> (U) Information regarding a potential Federal crime is required to be reported. In some instances, information of a state crime may also be reported if the violation could be assimilated as a Federal crime under the Federal Assimilative Crimes Act or Article 134 of the UCMJ. See 18 U.S.C. § 13 and 10 U.S.C. § 934. Therefore, in some cases, information of a violation of a state crime is reportable in accordance with Federal criminal reporting requirements.

<sup>5</sup> (U) 28 U.S.C. § 535(b) (2006). Title 18, which is the criminal and penal code of the Federal Government of the United States, codifies Federal crimes. Title 18 outlines the elements of several Federal and criminal procedures including sexual exploitation and other abuses of children; terrorism; and fraud and false statements.

<sup>6</sup> (U) In the revision to E.O.12333, that is cited in the *Memorandum of Understanding: Reporting of Information Concerning Federal Crimes*, paragraph 1.7(a) was renumbered as section 1.6(b).

<sup>7</sup> (U) E.O. 12333, § 1.6 (b), 46 FR 59941 (1981). Also, under E.O. 12968, IC employees who hold security clearances are encouraged, although not obligated, to report any information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with national security interests. Information or allegations of suspected criminal violations would be considered as part of a department's or agency's determination of an employee's continued eligibility for access to classified information. E.O. 12968 § 6.2 (b), *Employee Responsibilities*, 60 FR 151 (1995).

(U) In 1995, the Attorney General (AG) and heads of IC elements issued a *Memorandum of Understanding (MOU): Reporting of Information Concerning Federal Crimes* (hereafter referred to as the “1995 MOU”).<sup>8</sup> The 1995 MOU established procedures by which each IC element shall report to the AG and to Federal investigative agencies information concerning possible Federal crimes committed by IC employees and specified Federal crimes committed by non-employees. The 1995 MOU identifies specific criminal acts that are reportable when an Agency has information that a non-employee has committed, is committing, or will commit them. Under the 1995 MOU, reportable offenses include, but are not limited to, intentional serious physical harm (such as sexual assault), violent crimes, and any offense, that “if committed in the presence of a reasonably prudent and law-abiding person, would cause that person to immediately report the conduct directly to the police.”<sup>9</sup>

(U) Under the 1995 MOU, IC Offices of Generals Counsel (OGC) and OIGs share responsibility for receiving reports of Federal criminal information concerning IC elements. The 1995 MOU delegates authority to an agency’s General Counsel (GC) to determine whether such information must be reported to the National Security Division of DOJ or Federal investigative agencies.

(U) The 1995 MOU also established procedures for the OGC within each IC element to report to the AG and Federal investigative agencies information about possible Federal crimes that was collected while the IC element performed designated intelligence activities, unless specific conditions are met that would exempt reporting the potential crime. Those conditions include information that was:

- collected and disseminated to it by another department, agency, or organization so long as the receiving agency does not uncover additional crimes information during its analysis;
- alleged to have occurred more than 10 years prior to the date when the crimes became known to the agency and are not part of a continuing pattern of behavior, unless the information is related to homicide or espionage;
- received by a Department of Defense (DOD) intelligence component and concerns a Defense intelligence component employee who is subject to the UCMJ or a civilian who is accused of criminal behavior related to his/her duties or position. This exemption applies only when the information is submitted to

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<sup>8</sup> (U) *Memorandum of Understanding: Reporting of Information Concerning Federal Crimes*. 1995. While the NRO is not a signatory of the 1995 MOU, it abides by that MOU.

<sup>9</sup> (U) *Id.*

and investigated by the appropriate Defense Criminal Investigative Organization (DCIO).<sup>10</sup>

- previously reported to an OIG.<sup>11</sup>

(U) DOD Directives and Instructions<sup>12</sup> require DOD organizations—including the NRO — that conduct polygraph examinations to report admissions of serious criminal nature and counterintelligence, law enforcement, or security information developed during the course of a polygraph exam to appropriate authorities.

(U) An NRO instruction also required the NRO GC and IG to report possible violations of Federal criminal laws.<sup>13</sup>

### **(U) Reporting Requirements for Information on Suspected Child Abuse**

(U) Provisions in Federal law identify requirements for “covered professionals” to report credible information of suspected child abuse, to include child pornography and child molestation.<sup>14</sup> While several provisions of Title 18 U.S.C. Chapter 109A, *Sexual Abuse Crimes*, prohibit sexual offenses against children, those provisions are limited to the Federal jurisdiction of the United States. Therefore, unless the allegations provide a basis to apply the Federal jurisdiction of the United States, most suspected child abuse crimes are prosecuted under applicable state laws that do not trigger an affirmative reporting obligation for IC employees under the 1995 MOU.<sup>15</sup> However, certain IC employees known as “covered professionals,” are subject to Federal

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<sup>10</sup> (U) DOD Instruction 5505.3, *Initiation of Investigations by Defense Criminal Investigative Organizations*, (March 24, 2011), defines DCIOs as the U.S. Army Criminal Investigative Command, Air Force Office of Special Investigations, Naval Criminal Investigative Service, and Defense Criminal Investigative Service.

<sup>11</sup> (U) IGs are required to report to the AG whenever there are reasonable grounds to believe there has been a violation of Federal criminal law. See Inspector General Act of 1978, as amended, 5 U.S.C. App. 3 § 4. Nothing in the 1995 MOU alters this reporting requirement nor an employee’s obligations, either by statute or by agency regulation, to report potential criminal behavior to the IG. If an IG determines that the reported information is not subject to its jurisdiction and that the information may be reportable under the 1995 MOU, the IG may forward the information to DOJ or to the Agency’s General Counsel for a determination whether the 1995 MOU requires reporting of the information to DOJ in accordance with the 1995 MOU.

<sup>12</sup> (U) DOD Directive 5210.48, *Polygraph and Credibility Assessment Program*, (25 January 2007) and DOD Instruction 5210.91, *Polygraph and Credibility Assessment Procedures*, (12 August 2010).

<sup>13</sup> (U) *Oversight Corporate Business Process Instruction, Obligation to Report Evidence of Possible Violations of Federal Criminal Law and Illegal Intelligence Activities*, 80-3 (August 2009).

<sup>14</sup> (U) 42 U.S.C. § 13031 *et seq.*

<sup>15</sup> (U) 18 U.S.C. § 7. For example, if the information states that suspected child abuse is conducted on a Federal installation, on Federal property, or by a member of the Armed Services, then Federal jurisdiction may attach. If covered professionals fail to report such suspected child abuse pursuant to 42 U.S.C. § 13031, the failures to make those reports are themselves reportable as Federal crimes under the 1995 MOU. Again, NRO OGC makes determinations about which admissions are reportable under the 1995 MOU.

requirements to report information of suspected child abuse to appropriate state and local authorities.

(U) Under Title 42 U.S.C. § 13031:

A person who, while engaged in a professional capacity or activity described ...on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, shall as soon as possible make a report of the suspected abuse to the...[appropriate agency].<sup>16</sup>

(U) The statute outlines several professions that are “covered” for purposes of this reporting requirement; those professions include psychologists, psychiatrists, and law enforcement personnel.<sup>17</sup> Further, the AG designated local law enforcement agencies or local child protective services agencies to receive and investigate reports of child abuse or to protect child abuse victims in the jurisdiction of the Federal land area or Federal facility in question, provided there are written agreements with such non-Federal agencies to accept such reporting.<sup>18</sup> Where no such written agreement exists, the Federal Bureau of Investigation (FBI) serves as the designated agency to receive and investigate reports of child abuse made pursuant to 42 U.S.C. § 13031.<sup>19</sup> Title 42 also creates training requirements for covered professionals on their reporting obligations, the use of uniform reporting forms, and training on identifying abused and neglected children.<sup>20</sup> As such, if covered IC employees acting in their official capacities were to learn of facts that would give reason for them to suspect that a child has suffered an incident of child abuse, those officials would be required to report the information to the appropriate local law enforcement agencies, local child protective services, or the FBI.

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<sup>16</sup> (U) 42 U.S.C. § 13031(a). “Child abuse” means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child to include sexual molestation and child pornography. See 42 U.S.C. § 13031(c).

<sup>17</sup> (U) 42 U.S.C. § 13031(b)(2) & (6). While each IC element should identify those “covered professionals” within their respective organization, psychologists, psychiatrists, and law enforcement personnel are among the more common professionals within IC elements that are required to meet this reporting requirement. Under the Inspectors General Act of 1978, investigators within the OIG are considered “law enforcement personnel,” and, therefore, are “covered professionals” with an obligation to report suspected information of child abuse to appropriate authorities under 42 § 13031.

<sup>18</sup> (U) 42 U.S.C. § 13031(d); and 28 C.F.R. § 81.2, 61 FR 7706 (1996).

<sup>19</sup> (U) 28 C.F.R. § 81.3, 61 FR 7706 (1996).

<sup>20</sup> (U) 42 U.S.C. § 13031(e) & (h). Ambiguities exist within the provisions of 42 U.S.C. § 13031. The applicability of this section to a Federal facility being used in the IC is not clear as most IC elements, like the NRO, do not have facilities where children are cared for or reside. However, given the nature of the reporting requirement and the severity of the potential crimes, the statutory application of the reporting requirements should be interpreted broadly. See Opinion O.L.C. West Law 5885536 (2012).

(U) A covered professional who is identified in Title 42 and who fails to report suspected child abuse is subject to Federal criminal penalties under 18 U.S.C. § 2258.<sup>21</sup> However, covered professionals reporting information of suspected child abuse have immunity in civil and criminal actions brought against them for carrying out these reporting obligations if such reporting was made in good faith. Finally, if the covered professionals fail to report such suspected child abuse pursuant to 42 U.S.C. §13031, the failures to make those reports are themselves reportable Federal crimes under the 1995 MOU.

(U) Despite these reporting obligations, at the time when NRO officials reviewed the polygraph admissions of suspected child abuse that are the subject of this report, the NRO did not have policies that articulated the reporting requirements for NRO covered professionals to report such information in accordance with 42 U.S.C. § 13031. The lack of policies potentially contributed to failures to report those admissions. Moreover, in 2010, the NRO did not have a policy that encouraged all NRO employees to report information of suspected child abuse to NRO “covered professionals.” Therefore, the only affirmative reporting obligations known to NRO Office of Security or Counterintelligence (OS&CI), OGC, and OIG personnel at that time were for information of violations of Federal crimes, which would not include the majority of child abuse allegations as those are generally state crimes.

### **(U) Crimes Reporting Roles and Responsibilities for NRO Officials**

(U) In 2010, the NRO OS&CI, OGC, and OIG had responsibilities for identifying, referring, and reporting potential criminal acts and violations of Federal criminal laws.<sup>22</sup> NRO policy required the NRO OS&CI to collect and adjudicate polygraph-derived information and refer information about potential violations of criminal law to the NRO OGC, OIG, Counterintelligence Division (CID), or to other government organizations.

(U//~~FOUO~~) Within OS&CI, the Personnel Security Division (PSD) is responsible for personnel security processing and access requests for all NRO-sponsored personnel. Within PSD, the following branches and staff have responsibilities related to crimes reporting:

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<sup>21</sup> (U) 18 U.S.C. § 2258. Failure to report suspected child abuse may result in a criminal fine or imprisonment of less than one year or both.

<sup>22</sup> (U) For purposes of this report, we use the term “refer” when discussing notification of admissions of potential crimes that are shared internally with other NRO components. We use the term “report” when discussing notification made by OGC, OIG, or the Special Actions Staff to external organizations, such as DOJ.

- Polygraph Management Branch (PMB) [REDACTED]
  - Adjudication Branch (AB) [REDACTED]
  - Special Actions Staff (SAS) [REDACTED]
- [REDACTED]

(U) Under NRO Instruction 80-3,<sup>23</sup> the NRO OGC is responsible for reviewing admissions of possible criminal acts and violations of Federal criminal law not related to NRO funds, programs, property, operations, or activities. In accordance with E.O. 12333 crimes reporting procedures and the 1995 MOU, OGC is responsible for reporting potential crimes to DOJ or other law enforcement agencies when the OGC determines that a reasonable basis existed to believe that a Federal crime was, is being, or would be committed.

(U) In 2009, the NRO Director designated the NRO OIG as responsible for conducting preliminary investigative inquiries into potential criminal acts and violations of Federal criminal law that involve NRO funds, programs, property, operations, or activities.<sup>24</sup> At that time, the NRO OIG was not yet subject to reporting requirements in the Inspector General Act of 1978 (IG Act).<sup>25</sup> On 7 October 2010, the NRO OIG became a Designated Federal Entity under the IG Act, and the OIG's authorities and

<sup>23</sup> (U) NRO Instruction, 80-3, *Obligation to Report Evidence of Possible Violations of Federal Criminal Law and Illegal Intelligence Activities*. (August 2009).

<sup>24</sup> (U) *Id.*

<sup>25</sup> (U) 5 U.S.C. Appendix. 3 § 4(d).

responsibilities changed in accordance with the Inspector General Act of 1978, as amended. Since then, the NRO OIG is no longer covered as a reporting entity under the NRO instruction, and the NRO OIG has a statutory obligation to report expeditiously to the AG whenever the IG has reasonable grounds to believe there has been a violation of Federal criminal law.<sup>26</sup>

## **(U) OBJECTIVE, SCOPE AND METHODOLOGY**

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### **(U) Objective**

(U) In response to a request from the NRO OIG and Senator Grassley's concerns, we conducted a limited, focused review of NRO reporting of two admissions of potential criminal activity that a contractor and an Air Force officer voluntarily made during 2010 polygraph sessions administered by the NRO. Those admissions involved viewing child pornography and child molestation.

(U) Our objective was to determine whether media claims that the NRO did not report those admissions of potential crimes to appropriate investigative authorities were accurate.

### **(U) Scope**

(U) We limited the scope of this report to two voluntary admissions of potential crimes and UCMJ violations made by a contractor and an Air Force officer during 2010 polygraphs administered by the NRO. We reviewed those specific admissions because they were identified in a McClatchy Company article, and Senator Grassley requested in a 2012 letter sent to NRO OIG that the NRO OIG determine the veracity of those claims and whether the confessions were reported to proper law enforcement officials for investigation.<sup>27</sup> In addition, we are conducting an ongoing broad-scope review of the NRO crimes reporting process. We expect to issue that report later in 2013.

### **(U) Methodology**

(U) To determine whether the NRO reported those two admissions in accordance with Federal laws and other guidance, we reviewed Federal laws, Executive Orders, Intelligence Community Directives, and NRO and Department of Defense (DOD) policies related to reporting potential criminal acts and violations of Federal criminal law that were in effect in 2010. We also interviewed NRO officials responsible for

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<sup>26</sup> (U) *Id.* See also, 18 U.S.C. § 2285.

<sup>27</sup> (U) The NRO OIG recused itself from reviewing those admissions of potential UCMJ violations or crimes because of the NRO OIG role in the reporting process.

identifying and reporting admissions of potential criminal acts and violations of Federal crimes made by NRO personnel and applicants during polygraph examinations. In addition, we reviewed NRO documentation maintained by the NRO OS&CI, OGC, and OIG for the two individuals identified in the 10 July 2010 McClatchy Company article.

(U) We conducted our work in accordance with Council of Inspectors General on Integrity and Efficiency 2012 Quality Standards for Inspections and Evaluation. Those standards require that we plan and perform our work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

## **(U) FINDINGS**

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### ***(U) Media Claims Regarding Non-Reporting of Two Admissions of Potential Crimes Are Partially Correct***

(U) In July 2012, the McClatchy Company published articles claiming the NRO had not notified local law enforcement authorities of two separate admissions by a contractor and an Air Force officer during NRO-administered polygraph examinations. The admissions involved possession of child pornography and engaging in child molestation. The media claims are partially correct.

(U) The NRO reported to DOJ, in accordance with Federal reporting requirements, a June 2010 polygraph admission of viewing child pornography and engaging in child molestation that a contractor voluntarily made while undergoing a security clearance review for access to classified NRO programs. However, the NRO did not report to Federal investigative organizations admissions of viewing child pornography on a Pentagon computer or child molestation that were made by an Air Force officer during a May 2010 polygraph examination. The NRO reported the admissions to an Air Force office responsible for adjudicating security clearances and not to the Air Force Office of Special Investigations (AFOSI) or DOJ that are responsible for conducting investigations of potential crimes. As a result, neither military nor Federal law

enforcement investigated the Air Force officer's admissions of potential crimes or UCMJ violations.<sup>28</sup>

#### **A. (U) NRO Reported Admission Made by a Contractor**

(U//~~FOUO~~) During an NRO-administered polygraph examination conducted as part of the NRO's process for determining whether to grant security clearance access to classified NRO programs, a contractor admitted to possessing child pornography and engaging in child molestation. Upon notification, NRO OGC reported the admissions of the potential crime to DOJ in August 2010 and notified the OIG. In November 2010, the NRO OIG also referred the admission to the FBI's Innocent Images International Task Force, which includes local law enforcement.<sup>29</sup> The OIG referred cases to the FBI when notified by the NRO OGC that the DOJ has not responded to the initial referral OGC made to DOJ. However, the NRO's internal adjudication process delayed referral of the admission to OGC for about four weeks, and staffing issues within OGC further delayed notification to DOJ by a week.

(U) In accordance with provisions in law and policies, the NRO's reporting responsibilities are fulfilled following submission of admissions of potential crimes to DOJ or other law enforcement organizations. Furthermore, the NRO is not required to, and does not, track actions taken by DOJ or investigative agencies regarding reported admissions. As a result, the NRO was unaware that the FBI did not pursue the case until 2012, following media inquiries. See Appendix B for a detailed timeline describing the NRO's actions related to reporting the admission.

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<sup>28</sup> (U) In this case, the Air Force officer's admission of viewing child pornography on a Government computer involves an activity that is a potential violation of 18 U.S.C. § 2252A, the Child Pornography Prevention Act, and is reportable to DOJ under the 1995 MOU. Child molestation is a potential state crime, and if the admission was made to an NRO covered professional, it would be reportable to state and local child protective services under 42 U.S.C. § 13031. Further, prior to 2012, child molestation may have been a potential violation of UCMJ Article 120, and possibly reportable to DOJ and Federal investigative agencies. Between 2007 and June 2012, UCMJ Article 120 made rape and sexual abuse of a child punishable by court martial. However, amendments to the UCMJ made by the National Defense Authorization Act for Fiscal Year 2012 added a new article to the UCMJ that addresses only child sexual offenses. Those changes replaced or superceded punitive articles applicable to sexual offenses committed during the period 1 October 2008 through 27 June 2012. As of 28 June 2012, the UCMJ contains an Article that is specific to sexual abuse or sexual assault of a child. See Section 541, Pub. L. 112-81, 125 Stat 1298, (31 December 2011); 10 U.S.C. § 920b. Finally, even if Article 120 did not cover child molestation, admissions of such activities may have been assimilated as a Federal crime under the Federal Assimilative Crimes Act, 18 U.S.C. § 13 or the UCMJ, Article 134, 10 U.S.C. § 934. Both provide jurisdictional mechanisms for state offenses to be tried as Federal offenses when a legal determination demonstrates that the requisite jurisdictional criteria are satisfied.

<sup>29</sup> (U) FBI agents and representatives from state, local, and international law enforcement agencies comprise the Task Force that collaborates in online undercover investigations geared toward stopping child exploitation.

**B. (U) NRO Did Not Report Admissions Made by an Air Force Officer to Law Enforcement Organizations**

(U) NRO policy and the 1995 MOU designated the NRO OGC as responsible for immediately reporting to DOJ allegations of evidence concerning possible violations of Federal criminal law.

(U//~~FOUO~~) In 2006, the Air Force granted a clearance to an Air Force officer. He later required access to NRO systems as part of his assignment to the NRO, and the NRO required him to take and pass a polygraph examination to obtain this access. During a polygraph administered by the NRO in May 2010, the Officer voluntarily admitted that he viewed child pornography on both Pentagon and home computers and that he was sexually attracted to his young daughters.<sup>30</sup>

***(U) NRO Reported Admission to Organizations Responsible for Adjudicating Security Clearances, but Not to Law Enforcement***

(U//~~FOUO~~) According to NRO officials, the Air Force officer was not yet assigned to the NRO. Therefore, the Air Force retained responsibility for adjudicating his clearance and for investigating the admissions of potential crimes. However, this did not relieve the NRO from its reporting responsibilities under the 1995 MOU or Title 28.<sup>31</sup> Instead, the former Assistant General Counsel within the NRO OGC advised NRO OS&CI to refer the admissions to the Air Force Central Adjudication Facility (AFCAF). AFCAF had responsibility for granting and rescinding clearances for Air Force personnel.<sup>32</sup> While NRO OS&CI notified AFCAF of the admissions, on advice of the former NRO OGC Assistant General Counsel, the NRO did not notify the Air Force Office of Special Investigations (AFOSI), the Officer's commanding officer, or the DOJ. The Assistant General Counsel within the NRO OGC advised

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<sup>30</sup> (U) Viewing child pornography on a government computer is an activity that violates 18 U.S.C § 2252A. Viewing child pornography and engaging in child molestation also would be conduct of a nature to bring discredit upon the Armed Forces and are punishable under the UCMJ, 10 U.S.C. § 934. See e.g. *United States v. James*, 55 Military Justice Reporter (M.J.) 297 (U.S. Court of Appeals for the Armed Forces (C.A.A.F.) 2001) (possessing child pornography, in violation of 18 U.S.C. § 2252A as assimilated by Article 134, UCMJ 10 USC § 934); *United States v. Mason*, 60 M.J. 15 (C.A.A.F. 2004) (knowingly receiving child pornography in violation of the Child Pornography Prevention Act, assimilated in the UCMJ as "another crime and offense not capital" under clause 3 of the general article; and *United States v. Reeves*, 62 M.J. 88, 92 (C.A.A.F. 2005) (possession of child pornography under Article 134 specifically charged as "clause 3" offenses, with 18 U.S.C. § 2252A(a)(2) as the "crimes and offenses not capital."). Thus, the admissions made by the Air Force officer were reportable under the 1995 MOU as activities that are potential violations of the UCMJ or Federal crimes.

<sup>31</sup> (U) 28 U.S.C. 535 (b) (2006).

<sup>32</sup> (U) The AFCAF is responsible for determining who within the Air Force and among certain contractors is eligible to hold a security clearance and have access to Sensitive Compartmented Information. The AFOSI is a Federal law enforcement and investigative agency and is responsible for conducting criminal investigations of a variety of serious offenses and illegal activities that undermine the mission of the U.S. Air Force or DOD.

NRO officials that, based on his understanding of the reporting of prior criminal admissions made by military personnel, AFCAF would refer the case to AFOSI.

(U//~~FOUO~~) The current OGC Judge Advocate General (JAG) does not believe that AFCAF referred the admission to AFOSI because AFCAF did not revoke the Air Force officer's security clearance. Moreover, the Officer continued to work for the Air Force until his retirement in 2012. This NRO official explained that the NRO OGC reported the Officer's admissions to DOJ in July 2012 after discovering that the Officer retired from the Air Force and was supporting a defense contract.<sup>33</sup>

(U) We determined that the NRO's use of incorrect reporting procedures, in this case, resulted from:

- the lack of documented processes for reporting potential crimes committed by military personnel;
- inaccurate belief by OGC and OS&CI officials that AFCAF would notify AFOSI about potential crimes reported to AFCAF for adjudicative purposes; and
- OGC and OS&CI officials' belief that reporting to AFCAF satisfied Title 28 reporting requirements.

(U//~~FOUO~~) As part of corrective actions implemented by the NRO in February 2013, the NRO OGC developed a process to refer admissions of potential crimes made by military personnel to DOJ and the respective service commander and JAG. The NRO OGC also notifies DOJ if OGC determines that a Federal crime was committed. As of October 2013 when we completed our work, the NRO OGC was finalizing an instruction that includes those practices.<sup>34</sup> The NRO OGC completed and issued the NRO instruction in January 2014.

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<sup>33</sup> (U) According to the NRO OGC JAG, in July 2012 following inquiries by the media, the NRO Air Force Personnel Director confirmed the Officer's retirement in the Air Force Personnel System. To determine whether the Officer continued to hold a clearance, OS&CI conducted a search in Scattered Castles, the IC security clearance repository and authoritative database of individuals in DOD and the IC who hold Top Secret and Sensitive Compartmented Information clearances. OS&CI determined that the Officer was briefed into access as a contractor for the U.S. Army in September 2011.

<sup>34</sup> (U) In October 2013, the IC IG completed its review of the admissions discussed in this report. However, we did not finalize this report for release until the end of January 2014 due to a lapse in appropriations during October 2013 and a request from the NRO to extend the time period for commenting on this report from 30 days to 60 days.

**(U) RECOMMENDATION:**

1. (U) To ensure that the NRO follows its process and to eliminate the potential for future confusion regarding the NRO offices responsible for notifying external agencies when military personnel make admissions of potential crimes, we recommend that:

1A. (U) NRO OGC formally document in NRO guidance a process for reporting admissions of potential crimes and UCMJ violations made by military personnel.

1B. (U) NRO identify in formal guidance the NRO components that are responsible for reporting to Defense Criminal Investigative Organizations, the military commander and JAG, DOJ, or other organizations such as local law enforcement.

**(U) Management Comments:**

(U) The NRO OGC and OS&CI concurred with the recommendation. In its official response to this report, the NRO OGC stated that it is developing an instruction that will delineate the steps required when reviewing and processing potential civilian or military referrals. Subsequently, on 22 January 2014, the NRO OGC issued NRO Instruction 80-2-1, *Federal Crimes Reporting*. The instruction delineates the OGC process for reporting admissions of potential crimes and UCMJ violations made by military personnel. The instruction also identifies the OGC as responsible for notifying DOJ and/or military commanders and JAGs of potential Federal crimes and UCMJ violations. After reviewing the instruction, we believe it satisfies recommendation 1A, and therefore, we consider this recommendation closed. Because the instruction does not require notification to DCIOs when military personnel make admissions of potential crimes or UCMJ violations, we are not closing recommendation 1B. See Appendix E for the NRO's complete comments.

***(U) Notification to NRO OIG Was Delayed***

(U//~~FOUO~~) OS&CI did not notify the NRO OIG of the Air Force officer's admission of viewing child pornography when he made it in 2010. There was no requirement in NRO policy at the time of the admission for OS&CI to notify the NRO OIG.

NRO OGC did not notify the NRO OIG of the admission until 25 July 2012 during a meeting with the new NRO General Counsel. The OIG reported the admission to the FBI and local law enforcement on 27 July 2012.<sup>35</sup>

(U//~~FOUO~~) In September 2010, the National Security Agency OIG peer review of NRO OIG operations identified delayed notification of child pornography cases as a serious information access issue for the NRO OIG. The National Security Agency OIG recommended that the NRO establish a process for NRO OS&CI to notify NRO OIG Investigations of admissions of potential criminal conduct and violations of Federal law involving child pornography simultaneous with OS&CI's notification to OGC.<sup>36</sup>

(U) As part of corrective actions implemented by the NRO in July 2012, the NRO established a process to notify the NRO OIG Investigations concurrently with NRO OGC when personnel and applicants make admissions of potential crimes involving child exploitation. However, as of October 2013 when we completed our work for this report, the NRO had neither formalized the concurrent notification process nor identified the OIG role as the point of contact to report allegations of child abuse offenses, to include molestation, in its guidance or operating procedures. Also, the NRO OIG had not updated its instructions or finalized changes to its investigations manual to reflect its expanded responsibility as the point of contact for DOJ inquiries related to OGC reports about child-related crimes. Therefore, a risk existed that the NRO may stray from following those newly established practices.

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<sup>35</sup> (U) NRO OIG conducts law enforcement activities, and certain positions within OIGs are considered "law enforcement personnel." Therefore, under a broad interpretation of "law enforcement personnel," certain OIG personnel are "covered professionals" and are obligated to report information of suspected child abuse under 42 U.S.C. § 13031. See Opinion O.L.C. West Law 5885536 (2012); Inspector General Act of 1978, as amended, 5 U.S.C. Appendix 3 § 7(a) which authorizes Inspectors General to receive and investigate allegations of violations of law including information of a specific danger to the public health and safety; 28 C.F.R. § 20.3 which authorizes OIGs to receive Federal criminal information as a "criminal justice agency"; and 5 U.S.C. § 552(b)(7)(C) which authorizes a Freedom of Information Act exemption for IG information collected for law enforcement purposes..

<sup>36</sup> (U//~~FOUO~~) National Security Agency Memorandum for Inspector General National Reconnaissance Office, *Letter of Observations: Quality Assessment Review of the Investigative Operations of the Office of Inspector General, National Reconnaissance Office, June 7-11, 2010*. This report was issued on 1 September 2010.

**(U) RECOMMENDATION:**

2. (U) To reinforce recently implemented practices to ensure timely and concurrent notification to the OIG of admissions of crimes related to child abuse and the expanded OIG role and responsibility, we recommend that:
  - 2A. (U) OIG finalize changes to its investigations manual and operating instruction to include incorporating the OIG role as the point of contact for child abuse crimes;
  - 2B. (U) OS&CI update policies and operating procedures to identify the circumstances and processes for concurrent referral of admissions to OGC and OIG; and
  - 2C. (U) OGC formalize in NRO guidance that the OIG is the point of contact for child abuse crimes and that written reports sent to DOJ should identify the OIG as the point of contact for child-related crimes.

**(U) Management Comments:**

(U//~~FOUO~~) The NRO OGC and OS&CI concurred with these recommendations. However, the NRO OGC stated that “it is not obligated by law, or otherwise, to report violations of state crimes to DOJ, even if such crimes could be assimilated into Federal offenses pursuant to the Federal Assimilative Crimes Act.” While we agree that currently there is no legal obligation to report violations of state crimes to DOJ (with a few exceptions), a legal determination as to whether such offenses could be assimilated into Federal offenses should be conducted, and if the requisite jurisdictional criteria are satisfied, such crimes should be reported to DOJ or other appropriate law enforcement officials.

(U) In November 2013, the NRO OS&CI revised its operating procedures to concurrently refer relevant admissions to OGC and OIG. In January 2014, the OGC issued Instruction 80-2-1, *Federal Crimes Reporting*, that also requires concurrent notification of potential Federal crimes to the NRO OGC and OIG. We consider these actions to be responsive to recommendation 2C, and accordingly have closed recommendation 2C.

## (U) SUMMARY OF RECOMMENDATIONS

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1. (U) To ensure that the NRO follows its process, and to eliminate the potential for future confusion regarding the NRO offices responsible for notifying external agencies when military personnel make admissions of potential crimes, we recommend that:
  - 1A. (U) NRO OGC formally document in NRO policy a process for reporting admissions of potential crimes and UCMJ violations by military personnel.
  - 1B. (U) NRO identify in formal policy the NRO components that are responsible for notifying Defense Criminal Investigative Organizations, the military commander and JAG, DOJ, or other organizations such as local law enforcement.
2. (U) To reinforce recently implemented practices to ensure timely and concurrent notification to the OIG of admissions of crimes related to child abuse and the expanded OIG role and responsibility, we recommend that:
  - 2A. (U) OIG finalize changes to its investigations manual and operating instruction to include incorporating the OIG role as the point of contact for child abuse crimes;
  - 2B. (U) OS&CI update policies and operating procedures to identify the circumstances and processes for concurrent referral of admissions to OGC and OIG; and
  - 2C. (U) OGC formalize in NRO guidance that the OIG is the point of contact for child abuse crimes and that written reports sent to DOJ should identify the OIG as the point of contact for child-related crimes.<sup>37</sup>

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<sup>37</sup> (U) Following issuance of the report, we made an administrative change (numbering of recommendations) to align the order of the subparagraphs in recommendation 2 throughout the report.

## **(U) APPENDIX A: LAWS AND GUIDANCE**

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(U) This appendix identifies and summarizes selected laws, executive orders, and other guidance that were in effect when the two admissions of potential crimes or UCMJ violations that are the focus of this report were made in May and June 2010.

### **(U) Laws**

- (U) *Title 18 United States Code (U.S.C.)* is the criminal and penal code of the Federal Government of the United States. It deals with Federal crimes and criminal procedure to include the reporting of child abuse by certain persons who, while engaged in a professional capacity or activity on Federal land or in a Federally operated (or contracted) facility learns of facts that give reason to suspect that a child has suffered an incident of child abuse.
- (U) *Title 28 U.S.C. § 535(b)* requires that the head of a department or agency expeditiously report any information, allegation, or complaint received relating to violations of Title 18 involving government officers and employees to the Attorney General. Exceptions exist when (1) the responsibility to perform an investigation is otherwise assigned by another provision of law; or (2) the Attorney General directs otherwise with respect to a specified class of information, allegation, or complaint.
- (U) *Title 42, Chapter 132, Subchapter IV—The Public Health and Welfare, Victims of Child Abuse Reporting Requirements*, requires certain persons who engage in a professional capacity or activity on Federal land or in a Federally operated or contracted facility and learn of facts that give reason to suspect that a child has suffered an incident of child abuse make a report of the suspected abuse to the designated agency as soon as possible. Those professionals include law enforcement personnel. 42 U.S.C. § 13031(c)(1) (2006) further explains that the term ‘sexual abuse’ includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.
- (U) *The Inspector General Act of 1978, as amended*, requires the Inspector General to report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.
- (U) *Uniform Code of Military Justice, 64 Stat. 109, 10 U.S.C. Chapter 47*, is the foundation of military law in the United States. The UCMJ applies to active duty and reserve military members of the United States Air Force, Army, Coast Guard, Marine Corps, and Navy. Cadets and midshipmen at the States military

academies and retired members of the uniformed services who are entitled to retirement pay are also subject to the UCMJ. General Article 134 (10 U.S.C. § 934, Article 134) states that military personnel are subject to the UCMJ jurisdiction for violations of state and Federal crimes that could prejudice the good order and discipline in the armed forces, bring discredit upon the armed forces, and crimes and offenses not capital.

**(U) Executive Orders**

- (U) *Executive Order (E.O.) 12333, as amended*, requires heads of IC elements to report possible violations of Federal criminal laws by employees, and of specified Federal criminal laws by any other person, to the Attorney General. Crimes are to be reported in compliance with procedures agreed upon by the Attorney General and the head of the department, agency, or establishment concerned and consistent with the protection of intelligence sources and methods.

**(U) Intelligence Community Guidance**

- (U) *Memorandum of Understanding (MOU): Reporting of Information Concerning Federal Crimes (1995)* applies to all organizations and agencies within the Intelligence Community (IC). The MOU requires employees of an IC element to report to the GC or IG facts or circumstances that reasonably indicate that an employee has committed, is committing, or will commit a violation of Federal criminal law. The MOU requires IC elements to report information concerning possible Federal crimes by employees of an intelligence agency or organization or violations of specified Federal criminal laws by any other person, when the information is collected by the IC element during its performance of its designated intelligence activities as defined in E.O. 12333 §§ 1.8-1.13. The MOU also requires IC elements to develop internal procedures and establish initial and continuing training to ensure that its employees engaged in the review and analysis of collected intelligence are knowledgeable and in compliance with the MOU.
- (U//~~FOUO~~) *Memorandum of Agreement (MOA) Between the Secretary of Defense and the Director of National Intelligence Concerning the National Reconnaissance Office (2010)*, identifies the NRO as a defense agency and an element of the IC.

**(U) DOD Guidance**

- (U) *DOD Regulation 5240-R.1, DOD Procedures Governing the Activities of DOD Intelligence Components that Affect United States Persons (December 1982), Chapter 12*, applies to the provision of assistance by DOD intelligence components to law enforcement authorities. It authorizes cooperation with law enforcement authorities to investigate or prevent clandestine intelligence activities by foreign powers, international narcotics activities, or international terrorist activities; to protect DOD employees, information, property, and facilities; and to prevent detect, or investigate other violations of law. It also authorizes DOD intelligence components to provide to law enforcement incidentally acquired information reasonably believed to indicate a violation of Federal, state, local, or international law.
- (U) *DOD Instruction 5525.07, Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DOJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes, (18 June 2007)*, establishes policy for DOJ and DOD with regard to the investigation and prosecution of criminal matters over which the two Departments have jurisdiction. The MOU delineates when certain types of crimes will be investigated by DOJ or DOD. For example, crimes committed on a military installation will be investigated by the DOD investigative agency concerned and, when committed by a person subject to the UCMJ, prosecuted by the Military Department concerned. DOD provides immediate notice to DOJ of significant cases in which an individual subject and/or victim is not a military member or dependent. When a crime occurs on a military installation and there is reasonable basis to believe that it has been committed by a person or persons, some or all of whom are not subject to the UCMJ, the DOD investigative agency provides immediate notice of the matter to the appropriate DOJ investigative agency unless DOJ has relieved DOD of the reporting requirement for that type of class of crime.
- (U) *Directive-Type Memorandum (DTM) 08-052—DOD Guidance for Reporting Questionable Intelligence Activities and Significant or Highly Sensitive Matters (17 June 2009)*, applies to Defense Agencies and all other organizational entities in the DOD. The DTM requires reporting to the Assistant to the Secretary of Defense for Intelligence Oversight (ATSD(IO)) of any intelligence activity that has been or will be reported to the AG, or that must be reported to the AG as required by law or other directive, including the 1995 MOU.

**(U) NRO Guidance**

- (U) *NRO Corporate Business Practice Instruction (CBPI 80-3) Obligation to Report Evidence of Possible Violations of Federal Criminal Law and Illegal Intelligence Activities (August 2009)*, established procedural guidance for NRO personnel to report any possible violations of Federal criminal law or illegal activities that relate to NRO funds, programs, property, operations or activities. Under the CBPI, the NRO OIG was responsible for reporting evidence of possible violations of Federal and criminal law to the DOJ, Defense Criminal Investigative Service, or other appropriate law enforcement agencies. The NRO OGC was responsible for immediately reporting allegations of evidence concerning possible violations of Federal criminal law not related to NRO funds, programs, property, operations, or activities.

## (U) APPENDIX B: REPORTING TIMELINE — CONTRACTOR ADMISSION

(U) This appendix describes the NRO's actions to refer and report to DOJ a contractor's admission of a potential crime. The contractor admitted to viewing child pornography on his personal computer located at his residence in [REDACTED] and molesting a child during a tutoring session at the child's home in [REDACTED].

This table is UNCLASSIFIED//~~FOUO~~

Date	Action
27 April 2010	NRO approved access to classified NRO programs as part of the contractor's employment on an NRO contract with [REDACTED].
23 June 2010	During a polygraph, the contractor made a voluntary admission that he molested a child in 2005 when he was a substitute teacher. He also admitted to viewing "cartoons" of child pornography in 2009 on a personal computer.
28 June to 6 July 2010	The NRO Office of Security and Counterintelligence (OS&CI) reviewed the polygraph examination as part of its quality assurance process.
6 July 2010	Polygraph Management Branch (PMB) provided the polygraph examination report to the Adjudications Branch (AB) for an adjudicative decision regarding the contractor's continued access to classified NRO program information.
12 July 2010	AB informally notified OGC of the admission and its intent to suspend the contractor's access to classified information unless suspension of access would impede or prevent OGC from reporting the case to DOJ. OGC advised AB that suspension of access would not impact the ability of the NRO to refer the admission to DOJ.
14 July 2010	NRO suspended the contractor's clearance.  AB officially referred the admission to OS&CI's Special Action Staff (SAS) for OGC referral.
21 July 2010	SAS referred the case to the NRO OGC. OGC delayed notifying DOJ of the admissions for one week because the NRO OGC official tasked with sending the report was out of the office.

Date	Action
26 July 2010	NRO debriefed the contractor from all classified programs at the NRO.
2 August 2010	OGC reported the admission of the potential violation of criminal law to DOJ and copied the NRO OIG on the notification letter.
7 September 2010	In accordance with NRO process, the NRO OIG opened an investigation into the admission after receiving no response from DOJ indicating whether it planned to pursue the case within 10 days of the OGC notification to DOJ of the potential crime.
23 November 2010	The NRO OIG referred the case to the FBI Innocent Images International Task Force. According to the NRO OIG records, the FBI Innocent Images International Task Force referred the matter to local law enforcement in [REDACTED] where the potential crime of child molestation was reported to have occurred.
5 July 2012	[REDACTED] Police Department requested information from the NRO following a call from a reporter. At the time of the admission, the contractor resided in [REDACTED].
10 July 2012	The McClatchy Company printed an article asserting that the NRO did not report admissions by its personnel of Federal crimes involving children.
7 September 2012	[REDACTED] Police Department contacted the NRO OIG to request information about the case following a call from a reporter.
26 September 2012	NRO OIG provided information on the admission to the [REDACTED] Police Department.

(U) Source: IC IG analysis of NRO documents

## (U) APPENDIX C: REPORTING TIMELINE — AIR FORCE OFFICER ADMISSION

(U) This appendix describes the NRO's actions to refer and report the admission of a potential crime and UCMJ violation made by an Air Force officer who admitted to viewing child pornography on his work computer, personal laptop, and home computer and being sexually attracted to his young daughters.

This table is UNCLASSIFIED//~~FOUO~~.

Date	Action
13 March 2006	The Office of Personnel Management favorably adjudicated a background investigation for the Officer. The Air Force had granted the Officer a clearance. However, he was required to take and pass a polygraph examination to gain access to NRO systems as part of his assignment to the NRO.
17 May 2010	<p>During a NRO polygraph, the Officer voluntarily admitted that he (1) viewed child pornography on his office computer at the Pentagon, (2) viewed child pornography on home computers, and (3) was sexually attracted to children, including his young daughters. He also admitted to inappropriately touching his young daughters.</p> <p>Due to the seriousness of the admissions, the Polygraph Management Branch (PMB) notified the Adjudications Branch (AB) of the admission on the same day as the polygraph exam.</p>
19 May 2010	The NRO Office of Security and Counterintelligence (OS&CI) notified NRO leadership and Special Actions Staff (SAS) about the admission.
20-24 May 2010	OS&CI conducted a quality assurance review of the polygraph examination report, test results, and charts.
25 May 2010	Final polygraph exam report referred to AB.
27 May 2010	AB referred the admission to SAS for its determination on whether to refer the admission to OGC.
28 May 2010	SAS referred the admission to OGC.
2 June 2010	Based on NRO OGC advice, OS&CI forwarded the case to the Air Force Central Adjudications Facility for adjudication with OGC's understanding that it would be investigated.

Date	Action
5 July 2012	<p>DOD notified the NRO that the Officer retired from the Air Force. As a private citizen, he began working on a Department of Army contract that required a clearance for Sensitive Compartmented Information.</p> <p>██████████ Police Department requested information from the NRO following a call from a reporter.</p>
6 July 2012	<p>NRO OGC notified DOJ of the change in the affiliation of the now retired Officer and the new contract on which he was working.</p>
10 July 2012	<p>The McClatchy Company printed an article asserting that the NRO did not report admissions by its personnel of Federal crimes involving children.</p>
24 July 2012	<p>The FBI informally contacted NRO OGC requesting the name of individuals cited in the McClatchy Company article.</p>
25 July 2012	<p>DOJ sent a formal request for the identifying information of those individuals referenced in the McClatchy Company article to the NRO OGC.</p> <p>NRO OGC notified NRO OIG. As of July 2012 the NRO designated the OIG as the official point of contact for admissions involving child crimes.</p>
27 July 2012	<p>NRO OIG opened a case on the retired Officer and provided a summary of the admission to the FBI and ██████████ Police Department.</p>
28 August 2012	<p>NRO OIG coordinated with a special agent from the Pentagon Force Protection Agency.</p>
29 August 2012	<p>NRO OIG provided the file summary and timeline to the Pentagon Force Protection Agency regarding OS&amp;CI processing.</p>

(U) Source: IC IG Analysis of NRO documents



## (U) APPENDIX E: MANAGEMENT COMMENTS



Office of the Director

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**NATIONAL RECONNAISSANCE OFFICE**  
14675 Lee Road  
Chantilly, VA 20151-1715

10 January 2014

MEMORANDUM FOR INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY

**SUBJECT:** (U) Status of Implementation Plans for Recommendations Contained in the Special Review of the National Reconnaissance Office Crimes Reporting Process (IC IG-IO-2013-002)

**REFERENCE:** (U) Evaluation of Media Claims Regarding Non-Reporting by the NRO of Certain 2010 Admissions of Potential Crimes (IO-2013-007)

(U) This memorandum addresses the status of two recommendations found in the Special Review conducted at the National Reconnaissance Office (NRO). The consolidated input from the Office of Security and Counterintelligence (OS&CI) and Office of General Counsel (OGC) are provided below. This supplements the 13 December 2013 NRO Office of Inspector General (OIG) comments provided directly to the Senior Advisor on Intelligence Oversight, Inspector General Intelligence Community. Their comments are provided in the attachment.

1. (U//~~FOUO~~) To ensure that the NRO follows its process and to eliminate the potential for future confusion regarding the NRO offices responsible for notifying external agencies when military personnel make admissions of potential crimes, we recommend that:

1A. (U) NRO OGC formally document in NRO policy a process for reporting admissions of potential crimes and UCMJ violations by military personnel.

1B. (U) NRO identify in formal policy the NRO components that are responsible for notifying Defense Criminal Investigative Organizations, the military commander and JAG, DOJ, or other organizations such as local law enforcement.

(U) Response: Concur with Comment

(U//~~FOUO~~) As part of the overall enhancement to the Crimes Referral process, several changes have been made to include:

a. (U//~~FOUO~~) The creation of an NRO Crimes Referral Working Group e-mail. Members include OGC, OS&CI, OIG & Office of Strategic Human Capital. This e-mail group ensures all stakeholders are concurrently advised of potential federal criminal acts that may

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SUBJECT: (U) Status of Implementation Plans for Recommendations Contained in the Special Review of the National Reconnaissance Office Crimes Reporting Process (IC IG-IO-2013-002)

be referred to Defense Criminal Investigative Organizations, the military commander and Judge Advocate General, Department of Justice (DOJ), or other organizations such as local law enforcement; and

b. (~~U//FOUO~~) The creation of an NRO Instruction (NI) 80-2-1, *Federal Crimes Reporting*. This instruction provides details on the steps required when reviewing and processing either a potential civilian or military referral. Although the NI has not yet been finalized, it has been socialized with the entire NRO Enterprise. The comments received are being adjudicated with an expected execution date of 17 January 2014.

2. (~~U//FOUO~~) To reinforce recently implemented practices to ensure timely and concurrent notification to the OIG of admissions of crimes related to child abuse and the expanded OIG role and responsibility, we recommend that the:

2A. (U) OIG incorporate its role as the point of contact for child abuse crimes in NRO policy and the OIG investigations manual;

2B. (U) OS&CI update policies and operating procedures to identify the circumstances and processes for concurrent referral of admissions to OGC and OIG;

2C. (U) OGC formalize in policy that notification letters to DOJ identify the OIG as the point of contact for child-related crimes.

(U) Response: Concur with Comment

a. (~~U//FOUO~~) The last sentence of Footnote 4 on page 4 reads: *"Therefore, in some cases, information of a violation of a state crime is reportable in accordance with federal criminal reporting requirements."* As a point of clarification, NRO OGC is not obligated by law or otherwise to report violations of state crimes to the DOJ, even if such crimes could be assimilated into federal offenses per the Federal Assimilative Crimes Act (FACA). In other words, while the FACA is a procedural mechanism to assimilate state crimes into federal court, it is a procedural tool only and does not obligate the NRO, legally or otherwise, to report any state crimes to the DOJ.

b. (~~U//FOUO~~) As part of the enhancement to the crimes referral process and continued collaboration with OGC and OIG, the following text is included on all federal referrals relating to children:

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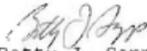
UNCLASSIFIED//~~FOUO~~

SUBJECT: (U) Status of Implementation Plans for Recommendations  
Contained in the Special Review of the National  
Reconnaissance Office Crimes Reporting Process  
(IC IG-IO-2013-002)

(U//~~FOUO~~) "We have designated this case as XX-SUBJECT's Last Name. Information concerning possible violations of State criminal law may be passed to local authorities for lead purposes only, without attribution to NRO. Please contact X with the NRO OIG at [REDACTED] if you require other information regarding this matter."

(U//~~FOUO~~) Additionally, OIG is part of the NRO Crimes Referral Working Group and is therefore concurrently notified of all potential crime referrals. Should the potential crime referral be considered a state crime and not referred by OGC, OIG works directly with local law enforcement agencies to make the referral. I am currently considering whether or not to have OS&CI create a unit similar to Central Intelligence Agency's Special Investigations Branch to handle all NRO non-Counter-Intelligence and non-OIG criminal investigations to liaise with Federal, state, and local law enforcement.

(U) Questions concerning our response may be directed to the NRO/OGC on secure [REDACTED].

  
Betty J. Sapp

Attachment:

(U//~~FOUO~~) National Reconnaissance  
Office, Office Inspector General  
Response to Senior Advisor on  
Intelligence Oversight,  
Inspector General Intelligence  
Community, 13 December 2013

CC:

[REDACTED] Senior Advisor on  
Intelligence Oversight  
National Reconnaissance Office,  
Office of Inspector General  
National Reconnaissance Office,  
Office of Security and  
Counterintelligence

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**NATIONAL RECONNAISSANCE OFFICE**

*Office of Inspector General*  
14675 Lee Road  
Chantilly, VA 20151-1715



13 December 2013

MEMORANDUM FOR SENIOR ADVISOR ON INTELLIGENCE OVERSIGHT, INSPECTOR  
GENERAL INTELLIGENCE COMMUNITY  
GENERAL COUNCIL, NATIONAL RECONNAISSANCE OFFICE

SUBJECT: National Reconnaissance Office, Office of Inspector General  
Comments on the Intelligence Community Inspector General  
Report on Crimes Reporting [REDACTED]

Page 8, last paragraph:

The last paragraph discusses reporting obligations of the Office of Inspector General (OIG) under the National Reconnaissance Office (NRO) policy in 2010. In October 2010, the OIG became a Designated Federal Entity (DFE) and the office's authorities and responsibilities changed in accordance with the Inspector general Act of 1978, as amended. As of October 2010, the OIG is no longer covered as a reporting entity under the NRO policy. Recommend the paragraph read prior to 7 October 2010...

Page 12, (A.), third sentence:

Change "The OIG refers..." to "The OIG referred..." to reflect past tense as this is no longer the process.

Page 16, first paragraph, second to last sentence:

The report should reflect that the OIG is currently in the process of updating its investigation manual and operating instructions.

Page 16, recommendation (2A):

This recommendation should reflect that the Office of General Counsel (OGC) should incorporate the OGC as the point of contact in the NRO policy, not the OIG. The OIG cannot dictate NRO policy.

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SUBJECT: National Reconnaissance Office, Office of Inspector General  
Comments on the Intelligence Community Inspector General  
Report on Crimes Reporting [REDACTED]

Page 17, recommendation (2A):

This recommendation should reflect that the OGC should incorporate the  
OIG as the point of contact in the NRO policy, not OIG. The OIG  
cannot dictate NRO policy.

Page 21, first paragraph, second sentence:

Criminal Investigative Service should be changed to the Defense  
Criminal Investigative Service.



Lanie D'Alessandro  
Inspector General

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