(U) Results in Brief

(U) Evaluation of the Defense Threat Reduction Agency's Counterintelligence Program

November 21, 2018

(U) Objective

(U) We determined whether the Defense Threat Reduction Agency's Counterintelligence Office adhered to applicable statutory requirements, policies, guidance, and authorities when conducting counterintelligence (CI) inquiries and supporting CI investigations.

(U) Background

(U) The Defense Threat Reduction Agency (DTRA) was established in 1998 by consolidating several DoD organizations. Its main functions are threat reduction, threat control, combat support, and technology development.

(U) DTRA is one of 11 agencies and activities with organic CI capabilities within the DoD that are not Defense Intelligence Components.[1]

(U) Finding

(U) The DTRA CI Division did not comply with all applicable statutory requirements, policies, guidance, and authorities when conducting CI inquiries and supporting CI investigations. Specifically, we found the following:

- (U) The DTRA CI Inquiries Branch exceeded its authorities by employing investigative techniques such as requesting records from outside agencies and interviewing the subject of an inquiry. These techniques are reserved for Military Department Counterintelligence Organizations (MDCOs) and the Federal Bureau of Investigation by DoD Instruction 5240.1-R, DoD Manual 5240.01, and a 1979 memorandum of agreement between the Department of Justice and the DoD.

(U) Finding (cont'd)

- (U) The DTRA CI Division had no System of Records Notice listed in the Federal Register for information collected on U.S. persons, as required by DoD 5400.11-R and the Privacy Act of 1974, as amended.
- (U) The DTRA Security and Counterintelligence Department did not report questionable intelligence activities to the DTRA Inspector General, the DTRA General Counsel, or the DoD Senior Intelligence Oversight Official, as required by both DoD Directive 5148.13 and DTRA Instruction 5240.1.
- (U) The DTRA CI Inquiries Branch did not coordinate the use of code words and nicknames with the NICKA office, as required by Chairman of the Joint Chiefs of Staff Manual 3150.29E.
- (U) DTRA had no assigned Defense Intelligence Component Head, as authorized by DoD Manual 5240.01, "Procedures Governing the Conduct of DoD Intelligence Activities," and has not been assigned a supporting MDCO.[2]

(U) We determined that these problems occurred because of limited oversight by the DTRA Security and Counterintelligence Department, inadequate management of CI inquiry activities, insufficient policy on CI inquiries, and poor management of the DTRA CI inquiries program. Additionally, definitions for CI inquiries and CI investigations, as currently written, cause confusion regarding the difference between inquiries and investigations, which might have led to the inappropriate actions taken by DTRA. There is no practical difference between the definitions of CI inquiries and CI investigations, and DoD policy concerning CI inquiries

[1] (U) All DoD organizations that perform foreign intelligence or CI missions or functions.

[2] (U) A Defense Intelligence Component Head is an Agency or Component that is a member of the Intelligence Community. DTRA is not considered a Defense Intelligence Component.

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(U) Finding (cont'd)

(U) needs to be clearer. According to policy, MDCOs and the FBI are the only organizations with the authority and jurisdiction to conduct CI investigations.

(U) Furthermore, the Office of the Under Secretary of Defense for Intelligence (OUSD[I]) conducted only limited intelligence oversight inspections of DTRA CI inquiry activities. This occurred because during the past three inspection cycles, which spanned from FY 2011 to FY 2018, the OUSD(I) inspection team neglected to review DTRA CI inquiry case files. If CI inquiry case files had been reviewed, the OUSD(I) might have identified DTRA's non-compliance with DoD policy and violations of intelligence oversight policies.

(U) The lack of compliance by the CI Inquiries Branch and limited oversight of CI inquiry activities by DTRA Security and Counterintelligence Department management and the OUSD(I) led to the conduct of unauthorized inquiries and unauthorized CI investigative procedures on U.S. and non-U.S. persons, as well as questionable intelligence activities not being properly investigated.

(U) Recommendations

(U) We recommend that the Office of the Under Secretary of Defense for Intelligence:

- (U) assign an Intelligence Component Head to the DTRA Security and Counterintelligence Department;
- (U) create a definition for "CI Inquiries" by revising DoDI O-5240.21, "Counterintelligence Inquiries," October 15, 2013;
- (U) issue interim guidance on when a CI inquiry becomes a CI investigation;
- (U) assign an MDCO to DTRA to support DTRA CI inquiries by revising DoDI 5240.10, "Counterintelligence in the Combatant Commands and Other DoD Components," August 8, 2016; and
- (U) conduct a CI inquiry case file review when conducting intelligence oversight inspections.

(U) We recommend that the DTRA CI Division:

- (U) create a System of Records Notice (SORN) and have it published in the Federal Register;
- (U) ensure that DTRA CI personnel are trained on DoD intelligence oversight procedures; and
- (U) coordinate use of all code words and nicknames used for CI inquiry cases with the NICKA office.

(U) Management Comments and Our Response

(U) The Director for Defense Intelligence (Intelligence and Security), OUSD(I) partially agreed with our recommendation to assign an Intelligence Component Head to the DTRA Security and Counterintelligence Department. The Director stated that CI inquiries require enhanced oversight; therefore, the draft revision of DoDI 5240.10, "Counterintelligence in the Combatant Commands and other DoD Components," assigns a supporting MDCO to all DoD Components, including DTRA. This recommendation is considered resolved. It will remain open until the DoDI has been finalized and an MDCO is assigned to DTRA.

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(U) Management Comments (cont'd)

(U) The Director for Defense Intelligence (Intelligence and Security), OUSD(I) agreed with our recommendation to create a definition for CI inquiries. The Director stated that a definition has been added to the draft revision of DoDI 5240.10, which will contain a section covering CI inquiries. The Director also stated that the draft instruction requires closer collaboration between a DoD Component and its supporting MDCO during the conduct of a CI inquiry, and because the draft is in formal coordination, the need to issue interim guidance on when a CI inquiry becomes a CI investigation is not required. This recommendation is considered resolved. It will remain open until the revised DoDI has been finalized.

(U) The Director for Defense Intelligence (Intelligence and Security), OUSD(I) agreed with our recommendation to assign an MDCO to DTRA to support DTRA CI inquiries. He stated that the draft revision of DoDI 5240.10 assigns a supporting MDCO to all DoD Components, including DTRA. This recommendation is considered resolved. It will remain open until the revised DoDI has been finalized.

(U) The Director for Defense Intelligence (Intelligence and Security), OUSD(I) agreed with our recommendation to conduct a CI inquiry case file review when conducting intelligence oversight inspections. He stated that the OUSD(I) recognized the necessity to review DoD Component CI inquiries (as applicable) and MDCO CI investigations as part of its ongoing partnership with the Office of the Senior Intelligence Oversight Official (SIOO). In FY 2018, OUSD(I) reviewed CI inquiry case files during SIOO inspections of the National Geospatial-Intelligence Agency and the National Reconnaissance Office. CI investigations were reviewed during SIOO inspections of the Naval Criminal Investigative Service and Army CI. The OUSD(I) will continue to review CI inquiry case files during all future intelligence oversight inspections as necessary. This recommendation is considered closed.

(U) The Vice Director of DTRA agreed with the recommendation to create a System of Records Notice (SORN) and have it published in the Federal Register. This recommendation is resolved and open. It will be closed once the SORN is published.

(U) In addition, the Vice Director agreed with the recommendation to ensure that DTRA CI personnel are trained on DoD intelligence oversight procedures; and proposed corrective action to ensure all CI personnel receive the training. This recommendation is considered resolved and open. It will be closed once verification is received that the training is completed.

(U) The Vice Director also agreed with the recommendation to coordinate use of all code words and nicknames used for CI inquiry cases with the NICKA office. This recommendation is considered resolved and open. It will be closed once we receive a copy of DTRA's revised CI inquiries standard operating procedure.