



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

MANAGEMENT ADVISORY MEMORANDUM

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Notification of Insider Threat Risk
at the Department of Justice and
the Drug Enforcement Administration

INVESTIGATIONS DIVISION



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

February 17, 2021

Management Advisory Memorandum

To: John Carlin
Acting Deputy Attorney General

Darrell C. Evans
Acting Administrator
Drug Enforcement Administration

A handwritten signature in blue ink, appearing to read "Michael E. Horowitz".

From: Michael E. Horowitz
Inspector General

Subject: Notification of Insider Threat Risk at the Department of Justice
and the Drug Enforcement Administration

The purpose of this memorandum is to advise you of an insider threat risk examined by the Department of Justice (DOJ) or the Department) Office of the Inspector General (OIG). The OIG identified this risk in connection with an investigation of a former Drug Enforcement Administration (DEA) contract employee, who had access to DEA law enforcement sensitive (LES) information while also having suspected ties to individuals or entities involved in criminal activity. The OIG found that DEA contracts contain an On-Site Contractor Responsibilities document, which prohibits contract employees from engaging in personal and business associations with persons known to be convicted felons or associated with criminal activity. However, the OIG found that the DEA does not ensure that contract employees review and sign this document. The OIG further found that the On-Site Contractor Responsibilities are not as demanding as the Standards of Conduct that apply to DEA personnel. In addition, during the course of this investigation the OIG learned that applicants for both regular and contract employee positions Department-wide are not routinely asked about associations with individuals known or suspected to be involved in illegal drug trafficking or other criminal activity during background investigations or suitability reviews. In this memorandum, the OIG makes two recommendations to the DEA and one recommendation to the Department to address the concerns we identified.

Relevant Authorities

I. Authorities Related to DEA Standards of Conduct

The DEA Personnel Manual, Chapter 27 – Personnel Relations and Services, Section 2735.12.C.4 states that “all DEA employees” must “[c]ertify that they have read and understand the DEA Standards of Conduct as embodied in Section 2735 of the Personnel Manual by signing the Standards of Conduct Annual Employee

Certification.” New employees are required to certify that they have read and understand the Standards of Conduct during their orientation and are then required to re-certify that they have read and understand the Standards of Conduct annually.

Section 2735.12.C.1 states, “all DEA employees” must “refrain from engaging in any criminal, infamous, dishonest, or notoriously disgraceful conduct or other conduct prejudicial to DEA, to DOJ, or to the Government of the United States. This includes any conduct that indicates that an employee failed to exercise good judgment either on or off duty. DEA personnel shall always conduct themselves in a professional manner and observe the DEA Standards of Conduct, as well as applicable orders, policies, regulations, and laws of DEA, DOJ, and the federal government.”

Section 2735.20.I.2 states, “DEA employees are prohibited from associating with individuals known or suspected to be involved in illegal drug trafficking or other criminal activity in other than a strictly professional capacity.”

Section 2735.20.I.3 states, “Occasionally, an employee may have a family member who has been arrested, charged or convicted for criminal activity. Employees are not required to sever ties with family members and may assist in the rehabilitative process, with supervisory notification. Nevertheless, employees are expected to conduct themselves in a manner that is above reproach when interacting with such family members. This includes taking particular care in safeguarding DEA information and avoiding situations where the DEA employee could be implicated in criminal activity. Employees may not associate with family members who are engaged in or suspected of engaging in ongoing criminal activity.”

Section 2735.21A.5 states, “DEA employees are required to immediately inform their supervisor of any instance in which they have reason to believe that a spouse, domestic partner, or dependent child is suspected of committing any felony or drug related offense. Similarly, a DEA employee must immediately report to their supervisor any instance in which they have reason to believe that someone residing in the same residence as the employee, regardless of relationship, is suspected of committing any felony or drug related offense.”

The DEA Personnel Manual contains a NOTE, which states, “Although contract employees are expected to embody the same ethical standards of conduct as government employees, specific requirements for contract employees are outlined in the On-site Contractor Responsibilities document, and/or incorporated into the applicable security clause within the contract . . . and are also further detailed in the Contracting Officer’s Representative (COR) Handbook.” The On-Site Contractor Responsibilities document contains the following provisions:

Section I: Contractor General Responsibilities states, “The Contractor shall inform all Contractor Personnel of their duties, obligations, and responsibilities under the Contract. The Contractor shall obtain and make available upon request by the Contracting Officer, a signed copy certifying that all Contractor Personnel participating in the performance of the Contract, have reviewed and understand and will comply with all of the provisions contained in the On-Site Contractor Responsibilities document.”

Section II: Contractor Personnel Responsibilities states, “By signing this document, Contractor Personnel whose primary work location is a DEA office and are performing work under the Contract agree to comply with the standards set forth in this document.”

Subsection II.A.2(b), Minimum Standards of Conduct in Performance of Duties, Responsibilities states, “Report any arrest, detentions, holds for an investigation or for

detailed questioning of any person(s) residing in their residence (i.e., family member or significant other). Failure to report any incident to the Contractor's Program Manager and/or the DEA [Contracting Officer Representative (COR)] is a violation of the On-Site Contractor Responsibilities document which may lead to removal from the Contract.

Subsection II.A.5(h), Minimum Standards of Conduct in Performance of Duties, Prohibited Activities states, "Do not engage in personal and business associations with persons known to be convicted felons or persons known to be connected with criminal activities."

Subsection A.5(i), Minimum Standards of Conduct in Performance of Duties, Prohibited Activities states, "Do not engage in criminal, infamous, dishonest, immoral, or disgraceful conduct."

At the bottom of the On-Site Contractor Responsibilities document there is a certification block that states, "I, _____ (Contractor Personnel Printed Name), have read and understood the requirements of the above-listed On-Site Contractor Responsibilities and all the documents attached or referenced herein."

DEA personnel told the OIG that the DEA provides to all contract employees the DEA's Contractor Personnel Quick Guide, which states that DEA contract employees are required to "uphold DEA core values," "comply with On-Site Contractor Responsibilities," and "comply with DEA Rules of Behavior." However, the Quick Guide does not list the specific DEA Rules of Behavior with which the contract employee must comply.

II. Authorities Related to Background Investigations and Fitness or Suitability Assessments

Employees and contract employees who require access to classified information must undergo a background investigation, including completion of an SF-86 background investigation questionnaire. In addition, employees and contract employees must be deemed suitable or fit to perform work on behalf of the federal government. *See* 5 CFR Ch. 1; Executive Order (EO) 13764. Determinations of whether individuals are eligible to access classified information are "separate from suitability determinations with respect to hiring or retention of persons for employment by the government or any other personnel actions." EO 12968. "While the Office of Personnel Management establishes the minimum adjudicative criteria for suitability and fitness determinations for employment in the civil service pursuant to the Civil Service Rules, the heads of agencies retain the discretion to establish adjudicative criteria for determining fitness to perform work as a contract employee." EO 13674; *see* 5 CFR Ch. 1.

DOJ Policy Statement 1700.01, which is applicable to all DOJ components, "establishes security requirements and policies, including minimum investigative requirements, for all contract personnel who require access to" DOJ information, information technology, facilities, or space. According to DOJ Policy Statement 1700.01, Security Programs Managers (SPM) within each component have authority delegated from the Department Security Officer (DSO) to maintain their component contractor security programs. The component decides the appropriate level of background investigation for each contract employee based on a risk designation of the task(s) to be performed by the contact employee. The component may not "establish additional investigative or adjudicative requirements" beyond what is required by the applicable background investigation, with the exception of "unique suitability/fitness considerations based on a component's mission that may require additional, not duplicative, forms or processes such as the Drug Enforcement Administration's drug use statement." If a component believes such an exception is warranted, the component must submit a request to the DSO.

The Issue

The OIG identified concerns in connection with an OIG investigation of a former DEA contract employee. The DEA had referred the matter to the OIG after becoming aware that the former contract employee was suspected of having ties to gang members and being involved in criminal activity. The former contract employee's job responsibilities gave the former contract employee access to LES information that could be useful to gang activities. Thus, the former contract employee posed a potential security risk and insider threat to DEA law enforcement personnel and operations.

The OIG investigation found that, unlike DEA employees, DEA contract employees are not required to sign the DEA Standards of Conduct Annual Employee Certification, which reflects the Standards of Conduct embodied in the DEA Personnel Manual. Instead, DEA contract employees are required to sign the On-Site Contractor Responsibilities document attached to DEA contracts. DEA officials told us they do not obtain or maintain the signed On-Site Contractor Responsibilities document or otherwise ensure that it was completed for each contract employee, because DEA purchase agreements require contractors to maintain the document. In the investigation that led to this memorandum, however, the Contractor told the OIG that it was under the impression that contract personnel sign the document when they report to work at the DEA and the DEA maintains the document. As a result, the contract employee did not sign the On-Site Contractor Responsibilities document, and the DEA located an unsigned copy of the On-Site Contractor Responsibilities document in the contract employee's personnel file.

We also found that the DEA Personnel Standards of Conduct are more demanding than the standards of conduct set forth in the On-Site Contractor Responsibilities document. While DEA personnel are prohibited from associating with individuals "known *or suspected* to be involved in drug trafficking or criminal activity," the On-Site Contractor Responsibilities documents states only that contract employees are prohibited from associating with individuals "known to be convicted felons or persons known to be connected with criminal activities." (Emphasis added.) Similarly, while DEA personnel must "immediately report" any instance in which a spouse, domestic partner, dependent child, or cohabitant is "suspected of committing any felony or drug related offense," the On-Site Contractor Responsibilities document states only that contract employees are required to report "any arrest, detentions, holds for an investigation or for detailed questioning of any person(s) residing in their residence (i.e., family member or significant other)." In addition, while DEA employees must sign an annual certification, we found no requirement that contract employees must sign the On-Site Contractor Responsibilities annually.

Additionally, during the course of our investigation we identified an information gap in the background investigation and suitability process for both regular and contract employees Department-wide. Specifically, the SF-86 background investigation questionnaire does not ask prospective employees and contract employees about associations with individuals or entities known or suspected to be involved in illegal drug trafficking or other criminal activity. In the investigation that led to this memorandum, had the contract employee been asked this question and answered truthfully, the DEA might have identified the security risk before bringing the contract employee on board and thus disapproved the use of the contract employee for assignment to the contract. Had the contract employee been asked the question and failed to disclose the criminal associations, the contract employee potentially could have been prosecuted for false statements in violation of 18 U.S.C. § 1001. When we raised this issue with DEA officials, they told us that they could not add requirements to the background investigation or suitability process without approval from the DSO. They further stated that this information gap applies equally to the DEA as it does to other Department components.

Conclusions

The OIG determined that the failure of the DEA to ensure that its contract employees certify that they will abide by the DEA Personnel Standards of Conduct or On-Site Contractor Responsibilities exposes the DEA to serious security risks. In addition, we found it concerning that the responsibilities listed in the On-Site Contractor Responsibilities document are less demanding than those contained in the DEA Personnel Manual. We further identified a gap in information during the background investigation and suitability process that could be eliminated by asking prospective employees and contract employees questions about their criminal associations.

Recommendations

The OIG recommends that the DEA take the following two measures to address the concerns identified in this memorandum.

1. The DEA should amend the On-Site Contractor Responsibilities document to mirror the relevant provisions from the standards of conduct contained in the DEA Personnel Manual and require contract employees to execute the On-Site Contractor Responsibilities document annually.
2. The DEA should obtain and maintain an annual certification from each contractor with whom it does business attesting that all current contract employees have signed the On-Site Contractor Responsibilities document annually and that each On-Site Contractor Responsibilities document will be retained by the contractor in its files for inspection.

The OIG recommends that the Department take the following measure to address the concerns identified in this memorandum:

Examine the benefits and assess the value of expanding the background investigation and suitability process for both prospective employees and prospective contract employees of all DOJ components to include asking the prospective employee or contract employee questions about associations with individuals known or suspected to be involved in drug trafficking or other criminal activity, in addition to the questions on the SF-86 background questionnaire.

Please advise the OIG within 60 days of the date of this memorandum on what actions the DEA and the Department have taken or intend to take regarding these issues. If you have any questions or would like to discuss the information in this memorandum, please contact Sarah E. Lake, Assistant Inspector General for Investigations, at (202) 616-4730.

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