

## Office of the Inspector General of the Intelligence Community



# (U) Evaluation of the National Reconnaissance Office Crimes Reporting Process

**Report Number IO-2013-002**

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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 admissions of potential crimes that individuals voluntarily made during NRO-administered polygraph examinations.<sup>1</sup>

(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> 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 is the second of two planned IC IG reports based on a review that examined the NRO crimes reporting process, and that was conducted in response to the NROOIG request, media claims, and Congressional concerns expressed by Senator Charles E. Grassley.<sup>3</sup> The objective of this evaluation was to assess the NRO's compliance with laws, policies, and procedures to identify and report admissions of potential violations of Federal crimes made by contractors, government civilians, and military personnel during polygraph sessions administered by the NRO in Fiscal Years (FYs) 2009 through 2012. During this review, we expanded the scope to also assess how the NRO handled reporting admissions of potential violations of state criminal laws and violations of the Uniform Code of Military Justice (UCMJ) due to the frequency of those types of admissions and because the NRO is a Defense Agency whose workforce includes personnel who are subject to the UCMJ.

### (U) Highlights

- (U) In FYs 2009 through 2012, the NRO reported most, but not all, admissions of potential Federal crimes identified in the 1995 *Memorandum of Understanding: Reporting of Information Concerning Federal Crimes* (hereafter, the "1995 MOU") made during NRO-administered polygraph examinations.

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<sup>1</sup> (U) *National Reconnaissance Office Hasn't Told Police of Crime Confession*, Marisa Taylor, McClatchy Company (McClatchydc.com), July 10, 2012.

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

<sup>3</sup> (U//~~FOUO~~) Letter from the Ranking Member of the United States Senate Committee on the Judiciary to the NRO Inspector General, August 13, 2012. See our related report: *Evaluation of Media Claims Regarding Non-Reporting by the National Reconnaissance Office of Certain 2010 Admissions of Potential Crimes*. February 2014. (IO-2013-007).

Similarly, the NRO reported most, but not all, admissions of potential UCMJ violations.<sup>4</sup>

- (U) Unreported admissions of Federal crimes dealt primarily with possession of child pornography, illicit drug use or possession, and intentional omissions and falsification of *Questionnaires for National Security Positions*.<sup>5</sup> Some unreported admissions, such as prostitution, were UCMJ violations that did not involve Federal crimes identified in the 1995 MOU and did not meet reporting exemptions identified in the 1995 MOU (see Appendix A). Still, other unreported potential crimes, such as illegal drug use, could constitute either a state or a Federal criminal violation.
- (U) With few exceptions, Federal statutes, and IC policies do not create a legal obligation for IC elements, including the NRO, to report to DOJ or law enforcement organizations admissions of potential violations of state criminal laws that involve imminent threat to others, such as child molestation. Separate provisions in Federal law, but not included in the 1995 MOU, require IC employees working in certain professions, to report information about suspected child abuse to appropriate local law enforcement organizations, local child protective services, or the Federal Bureau of Investigation (FBI).<sup>6</sup> However, most suspected child abuse crimes exist under applicable state laws that do not trigger an affirmative reporting obligation for IC employees under the 1995 MOU.

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<sup>4</sup> (U) The 1995 MOU established the procedures for Intelligence Community (IC) elements to report to the Attorney General (AG) and to Federal investigative agencies information concerning possible Federal crimes committed by IC employees and specific Federal crimes committed by non-employees. The 1995 MOU exempts reporting of UCMJ violations when crimes information is received by a Department of Defense (DOD) intelligence component, concerns a Defense intelligence component employee who is either subject to the UCMJ or is a civilian and has been accused of criminal behavior related to assigned duties or position if the information is submitted to and investigated by Defense Criminal Investigative Organization (DCIO) *and*, in cases involving crimes committed during the performance of intelligence activities, the General Counsel (GC) provides a report to DOJ reflecting the nature and disposition of the charges.

<sup>5</sup> (U) The *Questionnaire for National Security Positions* is a standardized form used by the Federal Government to collect information from applicants for national security positions. The information may be used as the basis for future investigations, security clearance determinations, and employment suitability determinations.

<sup>6</sup> (U) Title 42 U.S.C. § 13031 identifies requirements for “covered professionals” to report credible information learned of in their official capacities, that would give reason for them to suspect that a child has suffered an incident of child abuse, including child pornography and child molestation, to appropriate state and local authorities. Professions that are “covered” for purposes of this reporting requirement including psychologists, psychiatrists, and law enforcement personnel. Since becoming a Designated Federal Entity under the Inspector General Act of 1978 in October 2010, the NRO OIG also considers its Investigations staff to be covered professionals who have an obligation to report suspected child abuse to appropriate authorities pursuant to 42 U.S.C. § 13031.

- (U) Still, no Federal statute, IC policy, or NRO guidance precludes IC officials from immediately reporting to law enforcement organizations admissions involving potential violations of state criminal laws or UCMJ violations when those admissions provide reasonable grounds for officials to believe an imminent danger to others may exist. Yet, absent a legal obligation to report such crimes, in FYs 2009 through 2012, the NRO chose not to report to DOJ, law enforcement organizations, or DOD all admissions made during polygraph examinations of potential state criminal laws that involved imminent threats, such as child molestation.
  
- (U) We determined that in FYs 2009 through 2012 the NRO did not report some admissions of potential crimes because:
  - (U) the 1995 MOU that established crimes reporting procedures for IC elements, permitted those GCs to not report Federal crimes that they consider to be relatively minor offenses if DOJ concurs.
  - (U) the 1995 MOU, IC policy, and NRO guidance are silent with regard to reporting non-Federal crimes.
  - (U) the 1995 MOU implies, but does not clearly state that IC elements must report all UCMJ violations to DCIOs. Therefore, the NRO OGC did not routinely report those violations.
  - (U) NRO did not have documented processes to ensure consistent reporting to military commanders and appropriate Department of Defense (DOD) investigative organizations of admissions of potential crimes made by military personnel.
  - (U) the former NRO General Counsel (GC) and former Associate General Counsel (AGC) provided inconsistent and inaccurate advice regarding reportable admissions of potential crimes.
  
- (U) Moreover, internal NRO processes and policies lengthened the time for the NRO OGC to report admissions of potential crimes to DOJ in FYs 2009 through 2012. During that time, notification to the OIG of admissions of potential crimes was delayed or did not consistently occur, thereby limiting the ability of the NRO OIG to report to law enforcement organizations violations of state criminal laws, such as child molestation.
  
- (U) Under the leadership of the current NRO Director, in July 2012, the NRO began to proactively implement corrective actions to address some deficiencies it identified in its policies and processes for reporting admissions of potential Federal crimes. The actions strengthened internal and external coordination and facilitated identification, referral, and reporting of potential crimes. However, the NRO still has not included all of those changes in its internal

guidance to ensure that those corrective actions continue. Therefore, we are making recommendations to strengthen the NRO crimes reporting process.

- (U//~~FOUO~~) Following a March 2014 discussion with IC IG staff, the NRO Director issued a Policy Note, *Reporting of Specified State Criminal Laws*, establishing an internal Special Investigations Activity (SIA) within the NRO Office of Security and Counterintelligence. The SIA's function is to promptly report possible violations of specified state criminal laws, including crimes against children, to local law enforcement authorities and serve as the liaison between the NRO and local law enforcement agencies. The Policy Note directs NRO personnel to report possible crimes involving imminent threat or serious bodily injury to another human being immediately to the activity if the information is obtained in the performance of official duties.
- (U) Discussions with several IC elements identified inconsistent practices within the IC for reporting admissions of non-Federal crimes and UCMJ violations that pose an imminent threat to others, such as sexual molestation. In a separate advisory letter to the DNI, the IC IG suggested—and the DNI concurred—development of an IC-wide policy to address those inconsistencies.<sup>7</sup>

### **(U) Management comments and our response**

(U) The NRO concurred with the 13 recommendations made in this report. In its consolidated response, the NRO Office of General Counsel (OGC), Office of Security and Counterintelligence (OS&CI), and OIG provided additional information to clarify current actions and information contained in the report. We incorporated this information, as appropriate. In addition, based on comments received from the OIG, we revised recommendation number three.

(U) Subsequent to completion of our work, the NRO implemented guidance or made changes to its crimes reporting process, thereby satisfying several recommendations made in this report. In those instances, we incorporated the information in this report and closed the relevant recommendations. See Appendix G for the NRO's official comments.

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<sup>7</sup> (U) *IC-Wide Issues Related to Polygraphs and Crimes Reporting Processes*. IC IG. March 2014. (IO-2014-002).

## (U) Background

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### (U) Federal crimes reporting requirements

(U) As both a Defense Agency and an IC element, the NRO must comply with Federal requirements for reporting potential Federal crimes including some violations of the UCMJ of which NRO personnel<sup>8</sup> become aware while conducting their official duties.<sup>9</sup> Pursuant to 28 U.S.C. § 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>10</sup>

(U) In addition to an obligation for individual 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 1.6(b)<sup>11</sup> also 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

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<sup>8</sup> (U) NRO personnel include government civilians, contractors, and military personnel. In January 2014, the NRO revised its definition of an employee to correspond to the definition in the 1995 MOU. The 1995 MOU defines an “employee” as “(1) a staff employee, contract employee, asset, or other person or entity providing services to or acting on behalf of any agency within the IC; (2) a former officer or employee of any agency within the IC for purposes of an offense committed during such person’s employment, and for purposes of an office involving a violation of 18 U.S.C. § 207 (conflict of interest); and (3) any other Government employee on detail to the Agency.” NRO Instruction-80-2-1, *Federal Crimes Reporting*, 22 January 2014.

<sup>9</sup> (U) IC elements must report information about potential Federal crimes. Only Federal prosecutors in DOJ or DOD may determine whether a state crime may 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. According to the Judge Advocate General (JAG) assigned to the NRO OGC, all violations of the UCMJ are Federal crimes. By extension, therefore, the NRO OGC should report all violations of the UCMJ to the relevant military service, JAG, and DCIO for disposition in accordance with the 2007 *MOU between DOJ and DOD Relating to the Investigation and Prosecution of Certain Crimes* and the UCMJ.

<sup>10</sup> (U) Title 28 U.S.C. § 535(b) (2006). Title 18 of the United States Code is the criminal and penal code of the Federal Government of the United States and codifies Federal crimes. Title 18 outlines the elements of several Federal and criminal procedures including terrorism; fraud; false statements; and sexual exploitation and other abuses of children, such as child pornography.

<sup>11</sup> (U) In a 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).



protection of intelligence sources and methods, as specified in those procedures.<sup>12</sup>

(U) In 1995, the Attorney General (AG) and heads of IC elements issued the 1995 MOU. The 1995 MOU established the procedures for IC elements to report to the AG and to Federal investigative agencies information concerning possible Federal crimes committed by IC employees and specific Federal crimes committed by non-employees. Under the 1995 MOU, IC Offices of General Counsel and Offices of Inspector General share responsibilities for receiving reports of Federal criminal information concerning IC elements. The 1995 MOU delegates authority to the GC to determine information that must be reported to the National Security Division of DOJ or to Federal investigative agencies.

### ***(U) Reportable crimes***

(U) The 1995 MOU identifies and differentiates among reportable offenses committed by IC employees and non-employees. The 1995 MOU requires IC employees to report to the GC or OIG facts or circumstances learned while performing their official duties that indicate that an employee or non-employee of an IC element has committed, is committing, or will commit a violation of Federal criminal law identified in 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.” However, the 1995 MOU is silent with regard to IC employees’ reporting obligations of potential non-Federal state criminal laws. Table 1 summarizes reportable offenses identified in the 1995 MOU.

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<sup>12</sup> (U) E.O. 12333, § 1.7(a), 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. Information or allegations of suspected criminal violations are considered as part of a department’s or agency’s determination of an employee’s continued eligibility for access to classified information. See E.O. 12968 § 6.2 (b), *Employee Responsibilities*, 60 FR § 40245 (1995).

**(U) Table 1: Reportable criminal offenses identified in the 1995 MOU**

This table is Unclassified

<b>Reportable criminal offenses</b>	
<b>Employees</b>	<b>Non-employees</b>
<ul style="list-style-type: none"> <li>• Violent crimes</li> <li>• Any offense “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”</li> <li>• Title 18 violations</li> <li>• Crimes identified as reportable when committed by non-employees</li> </ul>	<ul style="list-style-type: none"> <li>• Intentional infliction or threat of death or serious physical harm</li> <li>• Acts of terrorism and other crimes likely to affect the national security, defense, or foreign relations of the U.S.</li> <li>• Crimes involving foreign interference with the integrity of the U.S. government institutions or processes</li> <li>• Unauthorized electronic surveillance or access to computer systems</li> <li>• Violations of U.S. drug laws</li> <li>• Money laundering</li> <li>• Serious felony offenses 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”</li> <li>• Conspiracy or attempt to commit a reportable crime</li> </ul>

(U) Source: *Memorandum of Understanding: Reporting of Information Concerning Federal Crimes*, 1995

(U) Certain violations of Intelligence Community Directive (ICD) 704 and its associated Intelligence Community Policy Guidance (ICPG), that govern eligibility for access to classified information, may also rise to the level of a Federal crime and therefore would be reportable under the 1995 MOU.<sup>13</sup> Those violations include, but are not limited to:

- sexual behavior of a criminal nature,
- personal conduct involving deliberate concealment, omission, or falsification of relevant facts from any personnel security questionnaire,
- deceptive or illegal financial practices,
- illegal drug possession or distribution, and
- other criminal activity.

<sup>13</sup> (U) ICD 704, *Personnel Security Standards and Procedures Governing Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information*, 1 October 2008 and Intelligence Community Policy Guidance Number 704.2, *Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information*, 2 October 2008. ICD 704 established Director of National Intelligence personnel security policy governing eligibility for access to Sensitive Compartmented Information and information protected within other controlled access programs. ICPG 704.2 identified several factors that are also violations of Federal criminal laws and that Federal agencies consider when evaluating individuals for access to classified information.

(U) In addition to specifying reportable crimes, the 1995 MOU also identifies specific conditions that exempt reporting of potential Federal crimes. See Appendix A for reporting exceptions.

***(U) Reporting requirements for information on suspected child abuse***

(U) Separate provisions in Federal law, but not included in the 1995 MOU, identify requirements for “covered professionals” to report credible information of suspected child abuse including child pornography and child molestation to appropriate state and local authorities.<sup>14</sup> Title 42 U.S.C. § 13031 identifies several professions that are “covered” for purposes of this reporting requirement including psychologists, psychiatrists, and law enforcement personnel.<sup>15</sup>

(U) Under 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].

(U) However, unless crimes information provides 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>16</sup> Title 42 U.S.C. § 13031 also requires covered IC employees who, in their official capacities, learn of facts that would give reason for them to suspect that a child has suffered an incident of child abuse, to report the information to the appropriate local law enforcement organizations, local child protective services, or the FBI. A covered professional who is identified in

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<sup>14</sup> (U) Title 42 U.S.C. § 13031(a) and (c) define “child abuse” as the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child to include sexual molestation and child pornography.

<sup>15</sup> (U) Title 42 U.S.C. § 13031(b)(2) & (6). While each IC element should identify those “covered professionals” within its 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, OIG investigators are considered “law enforcement personnel” and therefore are “covered professionals” with an obligation to report suspected information of child abuse to appropriate authorities pursuant to 42 U.S.C. § 13031.

<sup>16</sup> (U) Title 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. An NRO GC legal determination is required to ensure that appropriate matters are reported.

42 U.S.C. § 13031 and who fails to report suspected child abuse is subject to Federal criminal penalties under 18 U.S.C. § 2258.<sup>17</sup>

**(U) Department of Defense policies and NRO crimes reporting guidance**

(U) DOD guidance<sup>18</sup> requires DOD organizations, including the NRO, that conduct polygraph examinations to report admissions of a serious criminal nature and matters involving counterintelligence, law enforcement, or security information developed during the course of a polygraph examination to appropriate authorities. In addition, Article 134 of the UCMJ identifies conduct that is punishable for military personnel who act in a manner that is prejudicial to good order and discipline or that discredits the Military Services. Such conduct includes patronizing prostitutes, illicit drug use, and child abuse.

(U//~~FOUO~~) As of August 2009, the NRO required its personnel to notify the OGC or OIG of possible violations of Federal criminal laws when such activities related to NRO funds, programs, property, operations, or activities and of which they become aware while performing their official duties.<sup>19</sup> In May 2012, the NRO issued a written instruction that formalized existing practices requiring its security personnel to provide information obtained during the adjudicative process to the NRO OGC, OIG, or Counterintelligence Division (CID) within the Office of Security and Counterintelligence (OS&CI) when it was determined that an individual committed or had knowledge of a Federal crime.<sup>20</sup> In June 2013, the NRO issued a directive formalizing the OGC's responsibility to expeditiously notify the AG whenever the GC has reasonable grounds to believe a violation of Federal criminal law occurred.<sup>21</sup>

(U) Appendix B summarizes selected laws and guidance related to crimes reporting in the IC, DOD, and NRO.

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<sup>17</sup> (U) Title 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>18</sup> (U) DOD Directive 5210.48, *Polygraph and Credibility Assessment Program*, (25 January 2007); DOD Instruction 5210.91, *Polygraph and Credibility Assessment Procedures*, (12 August 2010); and DOD Instruction 5525.07, *Implementation of the Memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, (18 June 2007).

<sup>19</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>20</sup> (U//~~FOUO~~) NRO [REDACTED].

<sup>21</sup> (U) NRO Directive 80-2, *NRO Office of General Counsel Framework*. 18 June 2013.

**(U) Crimes reporting roles and responsibilities for NRO officials**

(U) Within the NRO, the OS&CI, OGC, and OIG have responsibilities for identifying, referring, and reporting potential violations of Federal criminal laws.<sup>22</sup> NRO guidance requires OS&CI to collect and adjudicate polygraph-derived information and to refer information about potential violations of criminal law to the NRO OGC, OIG, or CID, or to report the crimes information to other government organizations.

***(U) Office of Security and Counterintelligence***

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

- (U//~~FOUO~~) Polygraph Management Branch (PMB) [REDACTED]  
[REDACTED]  
[REDACTED]
- (U//~~FOUO~~) Adjudications Branch (AB) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- (U//~~FOUO~~) Special Actions Staff (SAS) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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<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 to external organizations, such as DOJ.

***(U) Office of General Counsel***

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

***(U) Office of Inspector General***

(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 requirements in the Inspector General Act of 1978 (IG Act) that requires expeditious reporting to the AG whenever the IG has reasonable grounds to believe there has been a violation of Federal criminal law.<sup>25</sup> On 7 October 2010, the NRO OIG became a Designated Federal Entity under the IG Act. As a result, as of October 2010, NRO OIG has had a statutory obligation to report violations to the AG and may also report crimes information to DCIOs and other investigative agencies, including those at the state and local levels.<sup>26</sup> In July 2012, the OIG Investigations staff became the NRO point of contact for providing information to DOJ or law enforcement organizations about child abuse allegations, including molestation, that OGC referred to DOJ. The NRO OIG documented this responsibility in its investigations manual in February 2014.

**(U) Reporting process**

(U//~~FOUO~~) During the adjudicative process, if AB determines that an individual committed or had knowledge of an unreported Federal crime, AB forwards the information to SAS, which then prepares a notification letter containing information

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<sup>23</sup> (U) *Id.* and NRO Directive 80-2, *NRO Office of General Counsel Framework*, Business Oversight Function 80, 18 June 2013.

<sup>24</sup> (U) NRO Oversight-80, *Obligation to Report Evidence of Possible Violations of Federal Criminal Law and Illegal Intelligence Activities*, Instruction 80-3. August 2009.

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

<sup>26</sup> (U) DOD Instruction 5505.3, *Initiation of Investigations by Defense Criminal Investigative Organizations*, (24 March 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. A Military Criminal Investigative Organization (MCIO) includes all of the DCIOs with the exception of the Defense Criminal Investigative Service.

about the unreported crime; fraud, waste, or abuse of government resources; or counterintelligence concerns.<sup>27</sup> SAS disseminates the letter to appropriate NRO offices for assessment or possible investigation and may notify external Federal organizations that have an “adjudicative interest” in the individual.

(U//~~FOUO~~) If an admission involves potential danger to another person, risk to national security, or serious criminal offenses and requires action to prevent danger to individuals, facilities, systems, or national security, OS&CI may notify OGC, OIG, and CID via telephone within 24 hours of the admission and prior to completion of the adjudications process.<sup>28</sup> However, in FYs 2009 through 2012, referral to OGC and OIG generally did not occur until the adjudications process was complete.<sup>29</sup> OS&CI officials may notify other authorities, relevant NRO program offices or companies, and consult with the NRO OS&CI staff psychologist or NRO employee assistance program. SAS must notify adjudicative organizations at other government agencies about adverse actions taken by the NRO.

(U) Once notified by OS&CI, OIG and OGC may notify DOJ, law enforcement organizations, or other agency OIGs about the admissions of potential Federal crimes or violations of the UCMJ. Appendix C describes the NRO process for reporting

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<sup>27</sup> (U//~~FOUO~~) In November 2013, OS&CI revised its procedures for referring information about potential Federal crimes to the OGC, OIG, and CID and for reporting information externally. Procedural changes no longer require OS&CI to make referrals when it is determined that an individual only “had knowledge of” an unreported crime. In addition, if it is determined during the adjudicative process that an individual may pose a counterintelligence threat or risk, then AB, not SAS, refers available information to CID. AB also tracks the status of those referrals.

<sup>28</sup> (U//~~FOUO~~) The NRO formalized existing practices in an NRO PSD directive, *Immediate Adjudicative Action* (22 August 2013). Admissions requiring immediate adjudicative action include suicidal thoughts; current child abuse or molestation by the subject or known about by the subject; prior child abuse or molestation by the subject or known about by the subject if a minor child is still accessible to the perpetrator; obstruction of justice or bribery of U.S. officials or witnesses in U.S. proceedings; imminent threat of serious bodily injury or unlawful harassment or intimidation against an individual; denials or violations of civil or human rights; threats to the President of the United States or other U.S. Government officials or candidates for election to national office; disclosures of classified information that endanger ongoing operations and/or those involved in such operations; deliberate unauthorized removal and storage of classified information; and unofficial contact with foreign intelligence officers or crimes, including acts of terrorism, that are likely to affect the national security, defense, or foreign relations of the United States.

<sup>29</sup> (U//~~FOUO~~) In November 2013, OS&CI revised its procedures for referring admissions of potential Federal crimes to the OGC, OIG, and CID, and reporting information externally. The written guidance now includes procedures for referring admissions of potential crimes made by military personnel, use of a group email to refer admissions of potential crimes simultaneously to OGC and OIG, and a requirement to refer all potential criminal activity falling within Federal guidelines within 10 business days after completion of investigative actions. We did not evaluate OS&CI’s compliance with this policy as it was implemented after the timeframe of our evaluation.

admissions made by civilians and military personnel in effect in FYs 2009 through 2012 and new practices implemented in 2012.

### **(U) Admissions of potential crimes made during NRO-administered polygraphs**

(U) In FYs 2009 through 2012, the NRO administered 44,493 polygraph sessions to 31,122 individuals.<sup>30</sup> Sixty-seven percent (21,144) of those individuals did not make admissions of potential Federal criminal acts or violations of ICD 704 and its associated implementing policy guidance.<sup>31</sup>

(U) We used data obtained from the NRO's [REDACTED] database to identify admissions involving potential violations of ICD 704 or Federal criminal laws.<sup>32</sup> We identified 19,830 admissions of potential violations of ICD 704 or of Federal criminal law made in FYs 2009 through 2012 during NRO-administered polygraph examinations. Following completion of polygraph examination sessions, NRO polygraph examiners categorized admissions in [REDACTED] using the 13 guidelines identified in ICPG 704.2, *Annex A of the Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information*. Absent review by OGC of each security file and admission, it is not possible to determine, using [REDACTED] data, the actual number of admissions of potential Federal crimes made in FYs 2009 through 2012. Therefore, the number of admissions shown in Table 2 that are potential Federal crimes and reportable under the 1995 MOU may be over-inclusive.

(U) Table 2 summarizes the number and types of admissions made during polygraphs administered by the NRO in FYs 2009 through 2012.

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<sup>30</sup> (U) The NRO may administer multiple polygraph sessions to a single individual. Therefore, the number of polygraph sessions does not equate to the number of individuals who were administered polygraphs by the NRO.

<sup>31</sup> (U) ICPG 704.2, *Personnel Security Adjudicative Guidelines for Determining Eligibility for Access to Sensitive Compartmented Information and Other Controlled Access Program Information*, 2 October 2008.

<sup>32</sup> (U) [REDACTED] is the NRO's authoritative database used to verify approvals of personnel security accesses. The [REDACTED] database contains personnel, investigative, adjudicative, polygraph, and other security-related information on individuals who had, have, or are currently pending access to NRO programs. The database includes information on admissions made by individuals who voluntarily self-terminated the clearance process. For each completed examination, the polygraph examiner populates the [REDACTED] database to identify the examination dates and session results, among other information.



**(U) Table 2: Admissions made during NRO-administered polygraphs in FYs 2009 through 2012**

This table is unclassified

<b>Type of potential violation</b>	<b>Number of admissions</b>	<b>Percent of all admissions</b>
<b>ICD 704<sup>a</sup></b>	12,399	63
<b>Federal criminal law<sup>b</sup></b>	7,431	37
<b>Total</b>	19,830	100

(U) Source: IC IG analysis of NRO data

(U) Notes: <sup>a</sup> Not all admissions related to potential violations of ICD 704 are reportable crimes under the 1995 MOU. For example, admissions including outside activities; alcohol abuse; psychological conditions; inadvertent removal or disclosure of classified information; financial considerations; and minor security violations such as password misuse are neither crimes nor reportable under the 1995 MOU. However, IC elements consider such admissions when making determinations whether to grant or continue eligibility for a security clearance.

(U)<sup>b</sup> Admissions of potential Federal criminal law include: criminal activity; deliberate damage to government sponsored information systems, deliberate misuse of government defense systems or information systems; deliberate provision of classified information to unauthorized persons; deliberate removal of classified materials to unauthorized locations; fraud to include intentional falsification of documentation; involvement with terrorism; involvement with foreign governments or foreign intelligence services; general or security concerns, sexual misbehavior, and the use, possession, or sale of illegal drugs or narcotics. We calculated the number of admissions that are potential violations of Federal criminal law using the NRO's self-categorization of admissions in [REDACTED] and reportable crimes in the 1995 MOU. However, the number of admissions of potential violations of Federal criminal law may be over-inclusive because not all potential violations are necessarily actual crimes.

(U) According to OS&CI officials, during the first half of Calendar Year (CY) 2013, the NRO administered 3,069 polygraph sessions to 2,709 individuals. Less than one percent of those individuals made admissions of potential Federal crimes or violations of ICD 704.

## **(U) Objective, Scope, and Methodology**

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### **(U) Objective**

(U) The objective of this evaluation was to assess NRO's compliance with laws, policies, and procedures to identify and report admissions of potential violations of Federal crimes made by contractors, government civilians, and military personnel during polygraph examination sessions administered by the NRO in FYs 2009 through 2012. During this review, we expanded the scope to also assess how the NRO handled reporting admissions of violations of state criminal laws and violations of the UCMJ due to the frequency of those types of admissions and because the NRO is a Defense Agency whose workforce includes personnel who are subject to the UCMJ.

**(U) Scope**

(U) We focused on admissions of potential crimes made by contractors, government civilians, and military personnel assigned to the NRO or for whom the NRO was assessing eligibility to access classified information. We limited our analysis to NRO-administered polygraph examinations in FYs 2009 through 2012 and admissions of potential crimes that OS&CI referred to OGC or OIG from 1 January to 17 June 2013. For CY 2013, we reviewed only those security files for individuals whom OS&CI identified as having made admissions of potential crimes. We did not independently verify whether there were additional admissions of potential crimes made during this time that OS&CI did not refer to OGC or OIG.

**(U) Methodology**

(U) To determine whether the NRO reported admissions in accordance with Federal laws and other guidance, we reviewed Federal statutes and regulations, E.O.s, ICDs, and NRO and DOD policies in effect between 2009 and 2013 and related to reporting potential violations of Federal and state criminal laws, as well as violations of ICD 704 and the UCMJ. We also interviewed NRO officials who were responsible for identifying and reporting admissions of potential criminal violations made by NRO personnel and applicants during polygraph examinations.

(U) We analyzed data obtained from [REDACTED]. We supplemented that data with information obtained from the NRO OIG and OGC regarding admissions that OS&CI referred to them in FYs 2009 through 2012. We consulted with NRO officials to resolve discrepancies in the data. Using those data, we selected two samples for analysis. One sample consisted of security information for 269 randomly selected individuals who participated in NRO-administered polygraph examinations in FYs 2009 through 2012. We are 90 percent confident, with a margin of error of +/- 5 percent, that the results of this sample are representative of all polygraph examination sessions administered by the NRO in FYs 2009 through 2012. We also selected and reviewed security files for 106 individuals who made admissions related to “sexual behavior” during NRO-administered polygraph examinations in FYs 2009 through 2012.<sup>33</sup> While the results of this sample should not be considered representative of all admissions of sexual behavior made during that time, the results

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<sup>33</sup> (U) The IC uses 13 guidelines to categorize admissions when determining whether to grant or revoke access to classified information. “Sexual behavior” is one of those guidelines. “Sexual behavior” includes deviant or criminal sexual behavior such as viewing child pornography, child molestation or abuse, rape, bestiality, patronizing prostitutes, and human trafficking. It also includes a pattern of compulsive, self-destructive or high-risk behavior that the person is unable to stop and that may be symptomatic of a personality disorder or that reflects lack of discretion or judgment.

provide insight into how the NRO referred and reported those potential crimes.<sup>34</sup> In addition, we analyzed admissions made by 78 individuals that the NRO OIG and OGC reported to DOJ or law enforcement organizations in FYs 2009 through 2012.

(U//~~FOUO~~) To assess the NRO's compliance with self-identified corrective actions implemented since July 2012 for reporting potential crimes, we reviewed admissions of potential crimes that OS&CI referred to OGC, OIG, or both NRO components during the first half of CY 2013.

(U) See Appendix D for additional information about our scope and methodology.

## **(U) Findings**

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### ***(U) NRO did not report some admissions of potential Federal crimes and UCMJ violations made in FYs 2009 through 2012***

(U) In FYs 2009 through 2012, the NRO reported most, but not all, admissions of potential Federal crimes made during NRO-administered polygraph sessions. During that time, the NRO also did not report all admissions of potential violations of the UCMJ, that according to the NRO JAG, constitute Federal crimes. According to the NRO JAG, UCMJ violations constitute Federal crimes. The lack of documented practices combined with inconsistent and inaccurate advice given by former senior OGC officials resulted in the NRO not reporting some admissions of potential crimes to DOJ or appropriate Federal investigative agencies. In addition, discrepancies between DOJ and UCMJ reporting expectations and practices and reporting requirements under the 1995 MOU created confusion regarding the necessity to report certain crimes and to whom.

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<sup>34</sup> (U) Not all sexual behavior issues involve criminal behavior. Thus, if an individual makes an admission to a polygraph examiner involving sexual behavior that is not a Federal crime, then there is no need to report the information, under the 1995 MOU, to DOJ for action. Although Federal statute, IC policy, and NRO guidance do not preclude the NRO from doing so, NRO OGC officials asserted, "the NRO has no [legal] obligation to report non-Federal crimes to law enforcement authorities." In March 2014, the NRO Director established an internal activity within OS&CI with responsibility for promptly reporting to local law enforcement organizations possible specified violations of state criminal laws specifically involving crimes against children. The NRO Director also instructed all NRO personnel to report possible crimes against children immediately to "the activity" if the information is obtained in the performance of official duties.

**A. (U) NRO did not report some admissions of potential Federal crimes**

(U) In FYs 2009 through 2012, the NRO reported most, but not all, admissions of potential Federal crimes that individuals made during NRO-administered polygraph examinations. The 1995 MOU and NRO guidance require the NRO OGC to report potential violations of Federal criminal law to DOJ. DOD guidance, to which the NRO is subject as a Defense Agency, requires reporting of potential crimes and violations of the UCMJ to DCIOs, military commanders, or JAGs. However, we determined that the NRO did not report three percent of admissions that involved possession of child pornography—a Federal crime—and were made during NRO polygraphs administered during those Fiscal Years.<sup>35</sup>

(U) We also analyzed admissions categorized in ██████ as related to “sexual behavior” that were made by 106 individuals during NRO-administered polygraph examinations in FYs 2009 through 2012.<sup>36</sup> Thirty of those 106 admissions involved child pornography or child abuse. Although the NRO did not report 10 percent (3) of those 30 admissions, OS&CI usually suspended the individuals’ accesses to classified information—and therefore, employment with the IC—as part of the adjudicative process.<sup>37</sup>

(U) Other types of potential Federal crimes that the NRO regularly did not report in FYs 2009 through 2012 included recreational illicit drug use or possession, and intentional falsification of *Questionnaires for National Security Positions*. According to the current NRO AGC, OGC usually does not report personal use of controlled

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<sup>35</sup> (U) We are 90 percent confident, with a margin of error of +/-5 percent, that the results of the sample of 269 individuals is representative of all admissions made by all individuals who participated in NRO-administered polygraph examinations in FYs 2009 through 2012.

<sup>36</sup> (U) We selected this sample for analysis because of the claims in an article published by the McClatchy Company and Congressional concerns that focused on the reporting by the NRO of admissions of potential crimes related to child abuse. Although the findings from this sample are not representative of all admissions of potential crimes involving “sexual behavior” made in FYs 2009 through 2012, the sample provides insight into how the NRO referred and reported those types of admissions and suggests that the NRO did not report all admissions that it potentially should have reported. The 106 cases included both criminal and non-criminal offenses related to “sexual behavior.” Non-criminal behavior includes sexual contact with foreigners and sexual addictions and disorders that could make an individual susceptible to undue influence or coercion. Thirty of the 106 cases involving sexual behavior included admissions involving possession of child pornography or child abuse, which are criminal offenses.

<sup>37</sup> (U) Title 18 U.S.C. § 2258 defines child exploitation as including child pornography and prostitution. Child molestation usually exists as a state crime. While several provisions of Title 18 Chapter 109A, *Sexual Abuse*, prohibit sexual offenses against children, the Federal jurisdiction of the U.S. is limited to the special maritime and territorial jurisdiction of the U.S. Unless there is evidence that meets this jurisdictional requirement for a Federal crime (e.g., abuse occurred in a Federal facility), 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. See 18 U.S.C. § 7.

substances even though use or possession is a reportable Federal crime under the 1995 MOU. The 1995 MOU permits agency GCs to not report “relatively minor offenses” that would normally be reportable under the MOU if DOJ generally concurs with the overall categorization of that type of potential crime. A DOJ official indicated that those types of admissions are common enough that it would be burdensome to prosecute, particularly if the quantities involved are *de minimis*.

(U) Also, in FYs 2009 through 2012, neither OS&CI nor OGC routinely informed the OIG of potential admissions of Federal crimes or crimes involving child abuse under the belief that there was no requirement for OS&CI or OGC to do so. OS&CI and OGC officials usually limited OIG notification to potential crimes involving waste, fraud, or abuse of NRO funds, programs, property, operations, or activities. In addition, according to documentation in NRO security files for individuals who made reportable admissions of child abuse (including child pornography, sexting, and child molestation), in FYs 2009 through 2012, the former NRO AGC and GC declined to notify DOJ of some of those admissions. In one case, those former officials asserted that the NRO was not [legally] obligated to report the admissions of potential crimes because the statute of limitations had expired, and DOJ would not be interested because the potential crimes were dated.<sup>38</sup>

(U//~~FOUO~~) In another case, the former AGC initially declined to report admissions made by a contractor who worked as a Security Officer at an NRO contractor facility. The admissions involved child sexual molestation, sexting, and viewing online nude images of girls whom the contractor believed to be under the age of eighteen. In an email to OS&CI, the former AGC explained his decision not to report the information to DOJ:

...doubt we have enough to interest the FBI, especially since we don't have the last name or address and the alleged victim is fourteen years old and fully capable of calling the police herself.

(U//~~FOUO~~) Despite OGC's initial assessment that it lacked information to make a report to DOJ, OS&CI continued to believe this admission should be formally referred to OGC and reported to DOJ with a copy of the report letter sent to the NRO OIG. Following OGC's decision not to report the admission to DOJ, OS&CI shared the information with the NRO OIG which investigated the admissions in

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<sup>38</sup> (U) When we became aware of admissions that were not reported, we notified the NRO OIG and OGC. Pursuant to 18 U.S.C. § 3283 (2012), the Federal statute of limitations does not exist for crimes involving the sexual abuse of children if the child is still alive. United States Code states “no statute of limitations that would otherwise preclude prosecution for an offense involving the sexual or physical abuse, or kidnapping, of a child under the age of 18 years shall preclude such prosecution during the life of the child, or for ten years after the offense, whichever is longer.”

conjunction with DCIS.<sup>39</sup> OIG and DCIS determined the identity of the victim, that the child molestation was not an isolated incident as the individual had originally claimed, and that the individual maintained continuing contact with the child thereby placing her in potential continued harm. OIG shared this information with the former AGC, who subsequently reversed his decision not to report the potential crimes to DOJ.

(U//~~FOUO~~) At that time, the former AGC stated:

Both of these facts will be critical to a Justice Department determination in this case and should be mentioned in the referral letter. Additionally, these two new facts mean that we should get the letter to the Justice Department as soon as possible so that they can pursue the case before the girl is further victimized by [the subject].

(U) While OGC eventually reported this admission to DOJ, reporting took almost five weeks from the date when OS&CI first informed OGC of the admission. Without OS&CI's initiative to inform the OIG of the admission, OGC would not have reversed its decision to report the admission to DOJ.

(U) In neither case did the former NRO AGC or GC state that the NRO did not have a legal obligation to report to state and local authorities child molestation because that behavior is not a Federal crime.

(U) With few exceptions, Federal statutes and IC policies do not create a legal obligation for IC elements, including the NRO, to report to DOJ or law enforcement organizations admissions of potential violations of state criminal laws, such as child molestation.<sup>40</sup> However, nothing in Federal statute, IC policy, or NRO guidance precludes NRO officials from voluntarily and immediately reporting to law

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<sup>39</sup> (U) DCIS had jurisdiction over criminal matters at the location where the contractor worked.

<sup>40</sup> (U) Title 42 U.S.C. § 13031 identifies requirements for "covered professionals" to report credible information of suspected child abuse including child pornography and child molestation to appropriate state and local authorities. Professions that are "covered" for purposes of this reporting requirement include psychologists, psychiatrists, and law enforcement personnel. In accordance with DOD Instruction 5525.07, *Implementation of the Memorandum of Understanding (MOU) between the Departments of Justice (DOJ) and Defense Relating to Investigations and Prosecution of Certain Crimes* (18 June 2007) most Federal crimes committed outside a military installation by persons subject to the UCMJ that normally are tried by court-martial will be investigated and prosecuted by DOD with immediate notice of significant cases to the appropriate DOJ investigative agency. In some instances, information of a state crime allegedly committed by an individual who is subject to the UCMJ 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.

enforcement organizations admissions involving potential violations of state criminal laws that they have a reasonable basis to believe create an imminent danger to others.

(U) Yet, according to current NRO OGC officials, “OGC has no [legal] obligation to report those crimes to DOJ.” NRO OGC officials emphasized that they were not legally obligated in FYs 2009 through 2012—nor are they currently legally obligated—to report child sexual abuse to DOJ or law enforcement organizations because child abuse is a state crime, not a Federal crime. Therefore, they generally chose not to report those crimes unless the admissions also involved Federal crimes such as possession of child pornography. Furthermore, OGC officials stated that they have no [legal] obligation to inform the OIG of admissions of child sexual abuse because the authority of the OIG is limited to fraud, waste, and abuse involving NRO funds, programs, property, operations, or activities.

(U) OIG officials stated that in the absence of a legal obligation and formal mechanism for NRO OGC to report to law enforcement admissions of potential state criminal laws involving an imminent threat to others, the OIG provisionally assumed the reporting function. However, as we discuss later in this report, the OIG was not consistently informed about all such potential crimes prior to July 2012, and was unable to effectively fulfill this function in FYs 2009 through 2012.

(U) While NRO OGC officials assert that they “have no [legal] obligation to report non-Federal crimes such as those involving child sexual abuse,” current OGC officials recognize that possession of child pornography is a Federal crime and is reportable pursuant to the 1995 MOU. As we previously discussed, in FYs 2009 through 2012, reporting of child pornography was inconsistent. However, as of July 2012 it is the practice of current OGC leadership to report all admissions involving possession of child pornography to DOJ regardless of when the alleged activity occurred. According to a current NRO AGC, OGC made this change to its reporting practices after discussions with DOJ officials. DOJ officials confirmed that no statute of limitations exists for reporting potential crimes involving child pornography. In addition, the NRO OGC and OS&CI implemented a process in December 2012 to simultaneously notify the OIG of potential admissions of all crimes.

(U) Our limited review of admissions referred by OS&CI during CY 2013 indicates that NRO is complying with its new practices and 1995 MOU reporting requirements. However, at the time of our review, neither the NRO OGC nor OIG

had formally documented these practices in written guidance or operating instructions.<sup>41</sup> Unless practices are formally documented and shared with NRO components with responsibility for identifying, referring, or reporting potential Federal crimes, the NRO risks deviation from those practices and admissions of UCMJ violations and potential crimes may not be reported. Furthermore, documenting practices in written guidance and operating instructions provides a formal basis for the OIG to leverage existing relationships with local law enforcement and independently report potential crimes if they believe reporting is necessary, even when OGC declines to report information about a potential crime.

**(U) RECOMMENDATION(S):**

1. (U) We recommend OS&CI review all admissions in its [REDACTED] database that are categorized as “sexual behavior,” and notify both the NRO OIG and OGC of any admissions involving possession of child pornography made in FYs 2009 through 2012 that OGC or OIG did not report. If OS&CI discovers admissions involving child molestation or other violations of state criminal laws that pose an imminent danger to others, we recommend that OS&CI inform both OGC and OIG even though those crimes may not be Federal crimes.
2. (U) We recommend OGC report any admission related to child pornography of which OGC was informed and did not report to DOJ and, when appropriate, to DCIOs and military commanders, regardless of the admission date.
3. (U) We recommend OIG report any subsequent admissions of violations of Federal or state criminal laws that pose an imminent threat to others, including child sexual abuse regardless of the admission date if the allegation has not been otherwise addressed by the OIG.

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<sup>41</sup> (U) On 22 January 2014, the OGC issued NRO Instruction 80-2-1, *Federal Crimes Reporting*, that documents its procedures for reporting admissions of potential Federal crimes allegedly committed by employees, including civilians, contractors, detailees, and military personnel.



**(U) Management Comments:**

(U) The NRO OS&CI, OGC, and OIG concurred with these recommendations, and provided additional clarifying information that is included in this report, as appropriate.

(U) In its official response to this report, the NRO suggested that we overstated the number of cases involving “sexual behavior” that the NRO had not reported yet should have in FYs 2009 through 2012. We agree with the NRO that not all admissions related to “sexual behavior” are reportable crimes even though such admissions may rise to a level where OS&CI would revoke or suspend an individual’s access to classified information. However, the admissions that formed the basis for our assessment were limited to possession of child pornography or child sexual abuse. While our assessment is accurate, we added clarifying language to the report. The NRO did not report 10 percent (3 admissions) of the 30 admissions involving child pornography or child abuse to DOJ or other law enforcement organizations. In some instances, OS&CI had referred the cases to OGC, but OGC officials informed OS&CI that the admissions were not of interest to DOJ or that the statute of limitations had expired. The NRO stated in its official comments that “OGC management has reported all child pornography cases (old and new) which have come to its attention and will continue to do so in the future.” Beginning in July 2012, DOJ informed the NRO OGC that all admissions involving child pornography—regardless of when the alleged activity occurred—should be reported to DOJ. To our knowledge, since then, OGC has reported admissions involving child pornography of which it is aware.

(U) The OIG also commented on recommendation 3 suggesting we revise the recommendation to more accurately reflect that the OIG “does not possess any alleged cases involving threats to children or others that were not properly addressed, nor does OIG have cases where it relied on OS&CI to take action in lieu of OIG.” We revised the recommendation accordingly. See Appendix G for the NRO’s complete comments.

**B. (U) NRO Did Not Report All Admissions of UCMJ Violations**

(U) DOD policies and Military Service-level guidance require the NRO OGC to report potential violations of the UCMJ to DCIOs and military commanders. The 1995 MOU indirectly reinforces this expectation. However, no comparable reporting requirement exists in IC policies and none existed in NRO guidance until January 2014. In FYs 2009 through 2012, the NRO did not report all admissions of UCMJ violations that military personnel made during NRO-administered polygraph examinations. Those admissions included patronizing prostitutes; use or possession of illicit drugs; child molestation; and intentional omissions and falsification of *Questionnaires for National Security Positions*. According to NRO officials, they did not report those potential UCMJ violations because:

- no requirements exist in IC and NRO guidance to do so;
- OS&CI lacked training instructing them to notify OGC of such admissions; and
- confusion existed within OS&CI and OGC about the process to report UCMJ violations.

***(U) IC and NRO Policies Do Not Address Reporting of UCMJ Violations***

(U) DOD policies and Military Service-level guidance require reporting of potential criminal violations to DCIOs as well as military commanders. Specifically, DOD Instruction 5505.3 and the Military Service-level guidance require military commanders to ensure that criminal allegations or suspected criminal allegations involving persons affiliated with the DOD or any property or programs under its control or authority are referred to the appropriate DCIO, MCIO, or law enforcement organization.<sup>42</sup> Moreover, 28 U.S.C. § 535 requires that any information, allegation, or complaint relating to violations of Federal criminal law and involving Government officials and employees be reported expeditiously to DOJ.

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<sup>42</sup> (U) DOD Instruction 5505.03, *Initiation of Investigations by Defense Criminal Investigative Organizations*, (24 March 2011); DOJ-DOD MOU, *Reporting of Information Concerning Federal Crimes*, (August 1995); and Air Force Instruction 71-101 Volume 1 “Criminal Investigative Program” (8 April 2011). Department of the Navy Instruction 5430.107, “Mission and Functions of the Naval Criminal Investigative Service” (28 December 2005) requires Department of the Navy commands and activities to immediately refer to the Naval Criminal Investigative Services any incidents of actual, suspected, or alleged offense punishable under the UCMJ, or similarly framed Federal, state, local, or foreign statutes, by confinement for a term of more than one year. Army Regulation 195-2 “Criminal Investigative Activities” § 1-7(b)(1) (6 September 2011) requires commanders to ensure criminal incidents or allegations are reported whenever an Army interest exists or that involve persons subject to the UCMJ, civilian employees and DOD contractors if related to their assigned duties or position, Government property is under Army jurisdiction, or those incidents occurred in areas under Army control are reported to installation law enforcement activity.

(U) The exception to this requirement occurs when DOD is responsible for investigating the matter under the UCMJ or as otherwise provided by law or agreement such as in DOJ-DOD MOU, *Reporting of Information Concerning Federal Crimes*. The 1995 MOU indirectly reinforces the expectation that IC elements will report information about UCMJ violations by exempting from reporting any crime information received by a DOD intelligence component concerning a DOD intelligence component employee when crimes information is submitted to and investigated by the appropriate DCIO. However, absent a comparable reporting requirement in IC policy or NRO guidance, OS&CI officials did not refer all admissions made by military personnel during NRO-administered polygraph examinations in FYs 2009 through 2012. Those admissions included patronizing prostitutes, illicit drug use or possession, child molestation, and intentional omissions and falsification of information on *Questionnaires for National Security Positions*.

(U) During this review, the NRO OGC began developing an Instruction that, once issued, would require the OGC Judge Advocate General (JAG) to review OS&CI referrals to determine whether a UCMJ violation exists, and if so, to report the information to the appropriate commander and military legal office for disposition by the military. Concurrently, an NRO OGC attorney would evaluate the referral to determine whether a Federal crime may have been committed and should be reported to DOJ.<sup>43</sup> The NRO OGC issued this instruction on 22 January 2014 and incorporated a recommendation we made in a prior report.<sup>44</sup> The recommendation directed the NRO OGC to formally document in NRO guidance a process for reporting admissions of potential crimes and UCMJ violations made by military personnel.

***(U) OGC did not instruct OS&CI officials to report UCMJ violations***

(U//~~FOUO~~) In FYs 2009 through 2012, OGC did not instruct OS&CI to refer to OGC admissions made by military personnel during NRO-administered polygraphs when those admissions may be violations of the UCMJ. During that time, OS&CI's training focused on referring felony crimes, imminent threats, child pornography, child abuse, spouse abuse, tax evasion, and fraud. Each of those potential crimes is reportable as a Federal crime pursuant to the 1995 MOU.

<sup>43</sup> (U) NRO Business Function Instruction 80-2-1, *Federal Crimes Reporting*. 22 January 2014.

<sup>44</sup> (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.

(U) The NRO did not include admissions involving UCMJ violations in its training, in part, because of the differing focus of the 1995 MOU and the UCMJ on actions that constitute reportable crimes. Although admissions related to violations of the UCMJ are not necessarily of interest to DOJ because they are not always Federal crimes, those same admissions may be of interest to DCIOs and military commanders. For example, the current NRO OGC JAG expects OS&CI to refer admissions involving the intentional falsification of *Questionnaires for National Security Positions* by military personnel if the falsifications occurred within the five-year statute of limitations.<sup>45</sup> However, in FYs 2009 through 2012, the former NRO OGC JAG had not instructed OS&CI to report those admissions. As a result, OS&CI generally did not do so unless military personnel also made admissions of other Federal criminal violations.

(U) NRO OGC officials, however, treat similar admissions made by non-military personnel differently. Title 18 U.S.C. § 1001 penalizes individuals for knowingly and willfully making false statements on Federal Government documents, and that crime is reportable to DOJ under the 1995 MOU. Yet, according to NRO OGC officials, DOJ does not expect Federal agencies to report those potential crimes unless admissions of other Federal crimes are also present. Both OGC and OS&CI officials stated that the omission and falsification of information on *Questionnaires for National Security Positions* is a common occurrence. As a result, the NRO OGC exercised its authority under the 1995 MOU, with DOJ concurrence, and advised OS&CI not to refer those admissions to OGC unless admissions of other Federal crimes are also made.

(U) Because the NRO OGC has not provided training or guidelines to OS&CI regarding which admissions of UCMJ violations warrant referral to OGC, the potential exists that OS&CI may not refer certain reportable admissions to OGC or OIG because they are not aware of requirements to do so. In fact, the Chief of AB and some staff were not aware of OGC decisions made in 2013 regarding the types of admissions that OGC wants referred to it when military personnel make admissions of UCMJ violations.

***(U) Reporting requirements for patronizing prostitutes***

(U) According to the current NRO OGC AGC, the NRO does not report to DOJ admissions related to patronizing prostitutes when there is no evidence of ties to human trafficking because patronizing prostitutes generally does not constitute a

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<sup>45</sup> (U) Willfully making false official statements is punishable under Article 107 of the UCMJ.

Federal offense.<sup>46</sup> Yet, under Article 134 of the UCMJ, patronizing prostitutes is a crime whether or not the act involves human trafficking. Also, 18 U.S.C. § 1384 makes engaging in prostitution or soliciting prostitutes a Federal misdemeanor when the activity occurs near a military or Navy establishment.<sup>47</sup> Therefore, the NRO should be reporting to DCIOs and the military chain of command admissions of patronizing prostitutes made by military personnel. We identified eight military personnel in our combined samples<sup>48</sup> who made admissions during NRO-administered polygraph examinations in FYs 2009 through 2012 of patronizing prostitutes. The NRO reported none of those admissions to DCIOs or military commanders.

***(U) Reporting Requirements for illicit drug use, possession, or sales***

(U) Both Article 112(a) of the UCMJ and the 1995 MOU specifically identify illicit drug use, possession, and sales as a reportable Federal crime. Moreover, 50 U.S.C. § 3325 requires any IC employee who has knowledge of a fact or circumstance that reasonably indicates that an employee, agent, or asset of an IC element is involved with the illegal manufacture, purchase, sale, transport, and distribution of drugs to report that information. However, as previously discussed in this report, the NRO typically does not report *de minimus* illicit drug use, possession, or sales because DOJ concurred with the NRO GC determination that *de minimus* illicit drug use, possession, and sales meet the 1995 MOU exceptions for reporting. Therefore, reporting requirements among the 1995 MOU, Federal statute, UCMJ, and actual reporting practices are inconsistent.

***(U) NRO reported admissions to organizations responsible for adjudicating clearances, but not always to law enforcement organizations***

(U) In FYs 2009 through 2012, the NRO reported several admissions of crimes made by military personnel to DOD organizations responsible for adjudicating clearances. The NRO believed the adjudicative organizations would inform the

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<sup>46</sup> (U) See generally, 18 U.S.C. § 1581-1596.

<sup>47</sup> (U) Title 18 U.S.C. § 1384, *Prostitution Near Military and Naval Establishments*, places violations on the same basis as other misdemeanors in violation of the general statutes of the United States and authorizes punishment of persons subject to military or Naval law under such law. In case the military or Naval authorities turn the violator over to the civil authorities, the trial and punishment may be under the general law.

<sup>48</sup> (U) The combined sample consists of 375 individuals and includes 106 individuals from our judgmental sample as well as 269 individuals that comprise our random sample. See Appendix D for information about those samples.

appropriate DCIOs. Because the NRO did not concurrently notify DCIOs or other DOD law enforcement organizations, the DCIOs may not have been aware of or investigated admissions of UCMJ violations. For example:

- (U) The former NRO AGC advised OS&CI in 2010 to refer to the Air Force Central Adjudication Facility (AFCAF) admissions of viewing child pornography and engaging in child molestation made by an Air Force officer.<sup>49</sup> AFCAF is responsible for granting and rescinding clearances for Air Force personnel. However, AFCAF is not a law enforcement organization or investigative entity and does not investigate potential crimes.<sup>50</sup> While OS&CI notified AFCAF of the admissions, the NRO OGC did not notify the Air Force Office of Special Investigations (AFOSI) that conducts criminal investigations, the military officer's commanding officer, or DOJ. A former AGC within the NRO OGC advised NRO OGC and OS&CI officials that, based on his understanding of NRO procedures for reporting prior criminal admissions made by military personnel, AFCAF would refer the case to AFOSI. The Air Force officer who made the admissions continued to service in the Air Force until his retirement, after which he worked as a cleared contractor for the United States Army.
- (U//~~FOUO~~) In 2010, the NRO debriefed an Air Force Technical Sergeant who admitted to deliberately misusing a government-sponsored information system. OS&CI notified the NRO OIG and informed AFCAF of the admission. However, the NRO did not report the crimes information to AFOSI or DOJ. As a result, the Air Force may not have had the opportunity to prosecute the individual or assess the impact on government information systems.
- (U//~~FOUO~~) In May 2010, a contractor admitted to deliberately misusing a government-sponsored system; fraud; use and possession of illegal drugs; and deliberate removal of classified information and transmittal of that information to an unauthorized person. In December 2012, the NRO notified the DOD Central Adjudicative Facility, but did not report the crimes information to DCIOs or DOJ for potential referral to the FBI. Not only did the NRO not comply with 1995 MOU reporting requirements, but the DCIOs and FBI may

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<sup>49</sup> (U) IC IG. *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.

<sup>50</sup> (U) AFCAF is responsible for determining whom within the Air Force and among certain contractors is eligible to hold a security clearance and have access to Sensitive Compartmented Information (SCI). 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 the DOD.

not have had the opportunity to investigate potential crimes and assess or counter potential damage to military operations.

- (U//~~FOUO~~) Four military officers admitted between 2010 and 2012 to patronizing prostitutes overseas. According to OS&CI and OGC officials, the NRO does not routinely notify DOJ or DCIOs of these types of UCMJ violations. Although patronizing prostitutes is not a Federal crime in most cases, and the 1995 MOU does not require reporting of non-Federal crimes, patronizing prostitutes is a violation of the UCMJ, and therefore, reportable to DCIOs.

(U) The lack of documented processes for referring admissions of potential crimes made by military personnel, combined with OGC and OS&CI misunderstandings that the centralized adjudicative facilities would notify the DCIOs, contributed to the NRO use of incorrect reporting procedures in FYs 2009 through 2012.

(U) A draft of this report, shared with the NRO, included recommendations to address the lack of formal NRO guidance documenting the reporting process for admissions and violations of the UCMJ made by military personnel. The lack of guidance posed the risk that NRO officials might deviate from informal reporting practices.<sup>51</sup> After reviewing the draft, on 22 January 2014 the NRO OGC issued NRO Instruction 80-2-1, *Federal Crimes Reporting*. This instruction establishes and implements processes for the NRO OGC to report admissions of potential crimes committed by contractors, civilians, and military personnel (see Appendix C for information on the NRO reporting process). However, this instruction still does not require the NRO to report the crimes information to the relevant DCIO in accordance with Military Service-level policies. According to the NRO JAG, the commanding officer is responsible for addressing the matter based on advice from the Military Service's JAG. Involvement of DCIOs is at the commanding officer's discretion. However, we believe that the NRO should also notify the DCIOs in accordance with Military service directives and instructions discussed earlier in this report.

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<sup>51</sup> (U//~~FOUO~~) We contacted the Central Intelligence Agency (CIA) and National Security Agency (NSA) OGCs to learn how they handle admissions of potential Federal crimes or UCMJ violations made by military personnel. The CIA OGC notifies JAGs, whereas NSA reports admissions via the military chain of command and to DCIOs. Depending on the location of the alleged activity, the NSA OGC may also notify DOJ.

(U) Although the NRO OGC instruction does not require the NRO JAG to notify the DCIO of potential reportable UCMJ violations, overall the NRO instruction addresses the majority of our concerns and mitigates the risk that the NRO may not report UCMJ violations to the appropriate authorities.

**(U) RECOMMENDATION:**

4. (U) We recommend NRO OGC incorporate in Instruction 80-2-1 a requirement for the JAG to report admissions involving UCMJ violations to DCIOs simultaneously with notification to the appropriate commander and serving military legal office for military disposition.

**(U) Management Comments:**

(U) The NRO concurred with this recommendation. See Appendix G for the NRO's complete comments.

**C. (U) NRO did not provide continuous training required by the 1995 crimes reporting memorandum of understanding**

(U) The 1995 MOU requires IC elements to establish initial and continuing training to ensure that employees who are engaged in the review and analysis of collected intelligence are knowledgeable and compliant with the provisions of the MOU. While the NRO provides initial training to its adjudicators, it has not provided mandatory, periodic training in accordance with the 1995 MOU.

(U) When OS&CI updated training documentation in 2013, it did not coordinate the training with the OIG to ensure inclusion of current roles and responsibilities for the crimes reporting process. For example, training materials do not explain that as of July 2012, following OGC notification to DOJ, the OIG acts as the point of contact to respond to DOJ requests for information related to child sexual abuse issues. Training materials also do not discuss the OIG legal obligation under 42 U.S.C. § 13031 to report potential Federal crimes involving child molestation. Because OGC does not have a legal obligation to report those crimes to DOJ, and the 1995 MOU does not require reporting of non-Federal crimes or acknowledge reporting requirements under 42 U.S.C. § 13031, OS&CI officials may not notify the OIG when individuals admit to violating state criminal laws that pose an imminent danger to others, such as child molestation.

(U) The NRO Assistant Inspector General for Investigations believes that mandatory, periodic training allows the OIG to educate adjudicators and polygraph



examiners about changes to referral processes and reportable crimes as well as share the results of their work. Moreover, periodic training would help establish relationships between OIG Investigators and OS&CI polygraph examiners that would encourage polygraph examiners, with the consent of their management, to contact OIG Investigators on those occasions when an individual admits to possessing evidence of a crime or involvement in an ongoing crime that involves imminent harm to others. Neither polygraph examiners nor NRO OIG investigators have custodial authority; therefore, they are unable to detain an individual even if that person admits to a crime. In such cases, it is critical that OS&CI contact the OIG during the polygraph examination to permit the OIG to notify local law enforcement who can act.

(U) As discussed, differences exist between the types of admissions that DOJ and military investigative organizations expect and want to receive. Without mandatory, periodic training that addresses such differences, the potential exists that OS&CI staff may not refer certain reportable admissions to OGC or OIG because they are not aware of requirements to do so. Furthermore, opportunities to thwart recent, ongoing, or planned crimes or collect evidence may be missed if polygraph examiners and adjudicators are unaware of whom to contact to facilitate law enforcement response.

**(U) RECOMMENDATION:**

5. (U) We recommend OGC and OIG provide mandatory, periodic training to OS&CI polygraph examiners and adjudicators. The training should address the broad types of potential crimes and UCMJ violations that OS&CI officials should refer to OGC and OIG and identify points of contact within both NRO components.

**(U) Management Comments:**

(U) The NRO concurred with this recommendation. See Appendix G for the NRO's complete comments.

**D. (U) Notification to NRO OIG was delayed or did not occur in FYs 2009 through 2012**

(U//~~FOUO~~) In September 2010, the National Security Agency (NSA) OIG reviewed NRO OIG operations as part of a routine quality control assessment. The NSA OIG identified delayed notification to the OIG of child pornography cases as a serious information access issue for the NRO OIG. The NSA OIG asserted that prompt

notification allows for immediate referral of the matter to appropriate Federal law enforcement organizations and lessens the likelihood that evidence of crimes against children will be destroyed before law enforcement has an opportunity to respond. At that time, the NSA OIG recommended that the NRO establish a process for OS&CI to notify OGC and the NRO OIG Investigations staff simultaneously of admissions of potential criminal conduct and violations of Federal law involving child pornography.<sup>52</sup> However, the NRO did not change its practices until two years later. The OGC did not document those practices in written guidance until January 2014.

(U//~~FOUO~~) Our work validated the NSA OIG findings. In FYs 2009 through 2012, OS&CI notified the OIG of 68 percent of admissions related to child pornography and molestation that the NRO reported to DOJ. In most cases, OS&CI notified OGC of the admissions before notifying the OIG. Although OS&CI notified the OIG on the same day in some instances, in other instances, the OS&CI either did not notify the OIG or did so after a significant period of time had passed. According to a senior OS&CI official, until approximately 2010, OS&CI was not aware of an internal agreement between the OIG and OGC requiring OS&CI to notify the OIG of admissions related to potential Federal crimes involving children. OS&CI officials began to routinely notify the OIG when the NRO instituted a simultaneous notification process in 2012.

(U) Table 3 summarizes the number of days in FYs 2009 through 2012 that OIG was notified after OGC.

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<sup>52</sup> (U//~~FOUO~~) NSA 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*. NSA issued the report on 1 September 2010.

**(U) Table 3: Number of days for OS&CI to notify NRO OIG about admissions related to child crimes after first notifying OGC in FYs 2009 through 2012**This table is Unclassified//~~For Official Use Only~~

Admission	Not informed	Number of Days										
		Same day	1-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91+
Child pornography	9	4	6	3	1				1	1		1
Child molestation	3		1							1		1
Child molestation and pornography	3	1	3				1					

(U) Source: IC IG analysis of data provided by NRO OGC and OIG

(U) Note: The table does not include data for admissions made in FYs 2009 through 2012 that the NRO OGC should have, but did not, report to DOJ. For example, the data do not include one instance when OS&CI did not notify the NRO OIG until two years after a military officer admitted to viewing child pornography. The OIG reported the admission to the FBI and local law enforcement within 48 hours of notification by the NRO OGC. The table also does not reflect that OS&CI notified the OIG *before* OGC for six admissions related to child pornography and child molestation.

(U) In July 2012, OS&CI implemented a process to notify OGC and OIG simultaneously via email of admissions of potential criminal conduct involving child pornography. The NRO also designated the OIG as the point of contact to respond to external agency and law enforcement requests for information about child pornography admissions. While this arrangement permits the OIG to use existing relationships with law enforcement, both the NRO OIG Counsel and Assistant Inspector General for Investigations stated that another NRO component could also fulfill this role. NRO OGC, OIG, and OS&CI officials stated that they are considering establishing an office within OS&CI that would assume the current OIG liaison function with local law enforcement regarding crimes. However, the NRO does not have the resources or funds to establish or staff this office. Until the NRO establishes this office, the OIG Assistant Inspector General for Investigations plans to continue liaising with local law enforcement and report potential non-Federal crimes, such as child molestation, which the NRO OGC has no legal obligation to report under Federal statutes.

(U) Prior to July 2012, no practice or process existed within the NRO for OGC or OS&CI to notify the NRO OIG of crimes not related to fraud, waste, or abuse of NRO funds, programs, property, operations, or activities. However, since the NRO became a Designated Federal Entity in October 2010, the NRO OIG has had 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>53</sup> Moreover, because OIG investigators are “covered professionals” in their roles as law enforcement officers, they have a legal obligation under 42 U.S.C. § 13031 to report to law enforcement agencies all admissions involving child sexual abuse of which OIG investigators become aware while conducting their official duties.

(U) In the absence of legal obligation or formal process for OGC to report non-Federal crimes to DOJ or law enforcement, the OIG has assumed, with OGC concurrence, the liaison function with law enforcement authorities. Yet, both an OS&CI operating instruction and OGC guidance limit notification to the OIG to potential Federal crimes involving fraud, waste, or abuse of NRO funds, programs, property, operations, or activities.

(U//~~FOUO~~) Our review of 32 admissions that NRO reported during CY 2013 found that since July 2012 the NRO OS&CI is simultaneously referring admissions of potential crimes to OGC and OIG, by email. During the first six months of CY 2013, NRO OIG and OGC reported to appropriate authorities, within four days of notification by OS&CI, 11 of the 14 admissions involving possession of child pornography or engaging in child molestation. OGC and the OIG reported the remaining three admissions within eight days of receiving notification from OS&CI. OS&CI also simultaneously referred to OGC and OIG all 18 admissions of non-child crimes that the NRO OGC reported to DOJ during the first half of CY 2013. In addition, OGC now identifies the OIG in written reports sent to DOJ as the NRO point of contact for additional information on admissions made by NRO employees related to child pornography and child-crimes.

(U) In January 2014, the NRO OGC issued guidance requiring concurrent notification to the NRO OGC and OIG when OS&CI refers potential Federal crimes. However, OGC has not issued standard operating procedures that identify the OIG as the point of contact to respond to DOJ requests for information about potential crimes involving child abuse. Also, when we completed our review, the NRO OIG had not updated its internal operating instructions or finalized changes to its investigations manual to reflect this role. Therefore, the risk exists that these practices will not continue.

(U) Since completion of our review, OGC issued NRO Instruction 80-2-1. The instruction identifies the circumstances and processes for concurrently referring admissions of potential crimes and UCMJ violations to OGC and OIG.

(U) Despite this progress, the OGC has yet to incorporate the OIG responsibility in OGCs standard operating instructions or to make a determination whether the

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<sup>53</sup> (U) 5 U.S.C. Appendix 3 § 4(d).

OGC should report potential crimes to DOJ when the OIG expresses an interest in an admission. Therefore, we are repeating and expanding upon a recommendation that we made in our recent report *Evaluation of Media Claims Regarding Non-Reporting by the National Reconnaissance Office of Certain 2010 Admissions of Potential Crimes*.<sup>54</sup>

**(U) RECOMMENDATIONS:**

6. (U) We recommend that the OGC incorporate the OIG's role as the NRO point of contact for child related crimes reported to DOJ or external law enforcement organizations in its standard operating procedures and clarify the OGC's role for reporting to DOJ potential crimes even when the OIG has expressed an interest in an admission.
7. (U) We recommend that the OIG incorporate into and finalize its investigations manual and operating instructions that address crimes reporting the OIG role as the NRO point of contact for responding to DOJ or external law enforcement organization requests for information about child related crimes.

**(U) Management Comments:**

(U) The NRO concurred with these recommendations. On 4 February 2014, the NRO OIG updated its investigations manual and internal OIG operating procedures for crimes referrals. The OIG documented its legal responsibility to investigate allegations of possible fraud, waste, and abuse in NRO operations and to investigate other matters as directed by the NRO IG. In addition, the manual acknowledges the NRO OIG authority, as a Designated Federal Entity, to investigate matters that may raise questions concerning the possible violation of Federal criminal law that has a nexus to the NRO and is within the NRO OIG's jurisdiction as authorized by the IG Act, as amended. Moreover, the manual identifies the OIG Investigations Staff as the NRO point of contact for providing information about child abuse allegations, including molestation, that OGC has referred to DOJ or to the OIG for investigation. Finally, the OIG stated in its internal policy that even if the "OIG expresses interest, OGC still has an obligation

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<sup>54</sup> (U) February 2014.

to report the matter to DOJ.” These actions satisfy recommendation 7 of this report. We consider this recommendation closed. See Appendix G for the NRO’s complete comments.

**(U) NRO guidance usurped OIG statutory crimes reporting obligations**

(U) Nothing in NRO guidance or the 1995 MOU may usurp the OIG’s statutory obligation under the IG Act for reporting information about Federal crimes.<sup>55</sup> Under the IG Act, to which the NRO OIG has been subject since October 2010, the NRO OIG has a statutory and affirmative 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>56</sup> Moreover, as previously discussed, NRO OIG Investigations staff members are “covered professionals” in their role as law enforcement officers. Therefore, they have a legal obligation under 42 U.S.C. § 13031 to report to law enforcement agencies admissions of potential crimes involving child sexual abuse and of which OIG investigators become aware while performing their official duties.

(U) The IG Act does not limit the OIG’s affirmative reporting obligation to report criminal activity solely to those admissions of potential crimes related to NRO funds, programs, property, operations or activities. Furthermore, the 1995 MOU implies that the OIG should be receiving reports about potential crimes and reporting to DOJ or Federal investigative agencies crimes information of which OIG officials become aware while performing their official duties. Specifically, the 1995 MOU exempts from reporting any criminal information previously reported to the IG based on the understanding that the IG is already reporting such information to the AG. Moreover, the 1995 MOU states that the reporting obligations it creates do not alter any crimes reporting procedures between OIGs and DOJ.

(U) Therefore, the OIG should be informed of any potential Federal crime committed by NRO employees or prospective employees regardless whether the potential crime involved fraud, waste, or abuse of NRO funds, programs, property, operations, or activities. However, both an OS&CI operating instruction and OGC instruction limited notification to the OIG to Federal crimes involving fraud, waste, or abuse of NRO funds, programs, property, operations, or activities. Specifically, NRO Instruction 80-3 limited the OIG’s authority to conduct preliminary investigative inquiries into potential criminal acts and violations of Federal criminal law that involve NRO funds,

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<sup>55</sup> (U) *Manhattan Gen. Equip. Co. v. Comm’r of Internal Revenue*, 297 U.S. 129, 134 (1936) (“A regulation which ... operates to create a rule out of harmony with the statute is a mere nullity.”)

<sup>56</sup> (U) 5 U.S.C. Appendix 3 § 4(d).

programs, property, operations, or activities.<sup>57</sup> Under the instruction, the OGC was responsible for reporting all other violations of Federal criminal law to the AG.

Therefore, NRO guidance erroneously usurped the statutory obligations of the OIG to report crimes to the AG. In June 2013, the NRO issued Directive 80-2, *NRO Office of General Counsel Framework*, that superseded NRO Instruction 80-3 and rectified the erroneous usurping of NRO OIG authority that was in effect until that time.

(U//~~FOUO~~) However, in November 2013, when OS&CI revised an operating instruction that provides guidance for referring information about potential crimes to the OIG, OS&CI continued to limit referrals to the OIG to fraud, waste, and abuse violations against the government. This practice may be inconsistent with the OIG's reporting obligations under the IG Act and 42 U.S.C. §13031. Although the OIG may be made aware of other potential crimes via its inclusion in an email distribution list used by the NRO to concurrently notify OGC and OIG about potential crimes, the operating instruction implies that the OIG may not be consistently informed if the issue is not related to fraud, waste, or abuse of government funds and resources. As a result, the OIG's ability to report Federal crimes, such as child pornography, and non-Federal crimes, such as child molestation, to local law enforcement will be restricted. Also, the operating instruction further inhibits the OIG's ability to fulfill its function as the designated NRO point of contact to provide information to DOJ or other law enforcement agencies that request information following OGC reports of child-related crimes.

(U) To preserve its independence, only the OIG can determine whether reasonable grounds exist that warrant reporting of potential Federal crimes or place restrictions on the types of crime information provided to it. Therefore, ensuring that OS&CI and OGC notify the OIG of admissions of potential crimes is paramount. If the NRO OIG is not notified of potential admissions of Federal crimes or not notified in a timely manner, then the OIG cannot fulfill its responsibilities in accordance with the IG Act or 42 U.S.C. § 13031 and potentially 18 U.S.C. § 2258.

**(U) RECOMMENDATION:**

8. (U) We recommend OS&CI revise its operating instructions and guidance to eliminate restrictions on the types of potential crimes referred to the OIG.

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<sup>57</sup> (U) National Reconnaissance Office Instruction 80-3, *Obligation to Report Evidence of Possible Violations of Federal Criminal Law and Illegal Intelligence Activities*. August 2009.

**(U) Management Comments:**

(U) The NRO concurred with this recommendation. The NRO added that OS&CI is currently referring, via email to the NRO Crimes Referral Working Group, admissions of potential Federal crimes in addition to some violations of state criminal laws involving certain threats to individuals that could result in serious bodily injury or harm. The NRO Crimes Referral Working Group includes OGC and the OIG.

(U) The NRO also commented that 42 U.S.C § 13031 “does not create an obligation on non-covered professionals to report crimes to covered professionals so that the covered professionals’ duty to report is triggered per 42 U.S.C. § 13031. As such, even though OS&CI currently and voluntarily reports violations of state criminal laws involving child abuse to OIG and OGC via the Crimes Referral Working Group email, it is not required to do so per 42 U.S.C. § 13031.”

(U) We agree with the NRO that non-covered professionals are not required to report crimes to covered professionals. Reporting requirements pursuant to 42 U.S.C. § 13031 for covered professionals, such as NRO OIG investigations staff members, activate when those professionals become aware of certain crimes. So long as OS&CI continues its practice to inform the OIG of potential crimes not limited to fraud, waste, or abuse of NRO resources, the OIG should be able to meet its reporting requirements under 42 U.S.C. § 13031. However, OS&CI’s November 2013 operating instruction that provides guidance for referring information about potential crimes to the OIG, limits referrals to the OIG to fraud, waste, and abuse violations against the government. Therefore, the guidance is inconsistent with current NRO referral practices. We believe OS&CI should continue to inform the OIG of admissions of potential crimes not limited to fraud, waste, or abuse of NRO resources, so the OIG is able to meet its reporting requirements under 42 U.S.C. § 13031. The 28 March 2014 NRO Director’s establishment of a Special Investigations Activity within OS&CI, and charge to that activity to promptly report possible violations of state criminal laws involving an imminent threat or serious bodily injury to another human being to local law enforcement agencies, does not negate the responsibility of covered professionals within the OIG who learn of certain crimes to report those crimes pursuant to 42 U.S.C. § 13031. See Appendix G for the NRO’s complete comments.

***(U) NRO processes affected the time to report potential crimes***

(U) In FYs 2009 through 2012, internal NRO processes and personnel leave practices negatively affected the time for the NRO to refer and report admissions of potential crimes. Although 28 U.S.C. § 535(b) and the 1995 MOU require “expeditious” or “timely” reporting of potential crimes, OS&CI usually refrained from formally referring admissions of crimes to OGC, OIG or other Federal agencies



until the adjudications process was complete. Therefore, individuals could continue the criminal activity or tamper with or destroy evidence in the interim. The NRO implemented changes in August 2013 to expedite referrals to OGC and OIG of certain crimes requiring immediate action to prevent danger to individuals, facilities, systems, or national security.

**A. (U) Intertwined adjudications and crimes referral process delays referral and reporting of potential crimes**

(U) Title 28 U.S.C. § 535(b) and the 1995 MOU require “expeditious” or “timely” reporting of possible violations of Federal criminal laws, but do not define what constitutes “timely” or “expeditious.” Excluding “high-interest” admissions that require immediate adjudicative decisions to prevent danger to individuals, facilities, systems, and national security, in FYs 2009 through 2012, OS&CI routinely completed the adjudicative process prior to formally referring an admission of a potential crime to OGC or OIG. The adjudicative process may include:

- multiple polygraph sessions often occurring weeks or months apart for scheduling reasons;
- multiple quality assurance reviews;
- AB review of admissions and supporting evidence; and
- investigations by the NRO CID.

(U) Each of those actions is a necessary aspect of the adjudicative process. Still, those actions took time to complete and ultimately lengthened the time before OS&CI referred admissions of potential crimes to OIG or OGC. However, nothing in NRO policy precluded OS&CI from notifying OGC or OIG of an admission prior to completion of the adjudicative process. In fact, in August 2013 OS&CI formalized guidance on its processes to notify OGC and OIG when action is required to prevent danger to individuals, facilities, systems, or national security. However, in FYs 2009 through 2012 OS&CI took an average of 106 days to refer an admission of a potential crime to OIG and 95 days on average to refer admissions to OGC.

(U//~~FOUO~~) In November 2013, OS&CI updated its referral procedures to require AB to refer all potential criminal activity falling within Federal guidelines within 10 business days after completion of all investigative actions. According to an OS&CI official, this change permits OS&CI to immediately report certain types of admissions prior to completion of the adjudication process. While this change should facilitate more timely referrals to OGC and OIG, it likely will not significantly shorten the overall time for OS&CI to refer admissions of potential crimes because AB must still complete the investigative process prior to recommending referral to OGC, OIG, CID, or other Federal government personnel

security entities that have an “adjudicative interest.” Moreover, OGC and OIG officials advised us that they do not report information to DOJ or law enforcement until OS&CI formally notifies them.

(U//~~FOUO~~) Since 2009, OS&CI PMB has had a goal to notify AB within 24 hours of an individual making a high-interest admission. The goal for referring all other admissions to AB is three days. However, PMB does not track its performance against those internal goals. According to the Director/PMB, tracking timeliness based on data in [REDACTED] would prove inaccurate because PMB may informally notify OGC or OIG via telephone calls and emails that [REDACTED] does not capture.

(U) Once formally notified, both NRO OGC and OIG reported relevant admissions to DOJ or other law enforcement organizations. The average number of days for both OIG and OGC to report admissions of potential crimes decreased significantly from FYs 2009 to 2012. The average number of days for the NRO OIG to report potential crimes decreased from 20 days in FY 2009 to 13 days in FY 2012, while the average number of days for the NRO OGC to report potential crimes decreased from an average of 226 days in FY 2009 to 62 days in FY 2012.

(U//~~FOUO~~) During the first half of CY 2013, the NRO reported admissions in a more timely manner as a result of process changes. During that time, the average number of days for the NRO OGC and OIG to report an admission was three days. (See Appendix E for information on reporting times in FYs 2009 through 2012 and CY 2013.)

**(U) RECOMMENDATION:**

9. (U) We recommend OS&CI, in conjunction with OGC and OIG, separate the crimes referral and adjudications processes to permit OS&CI to formally refer to OGC and OIG, and report to law enforcement organizations admissions prior to completion of the adjudication process, even when that admission is not a high-interest admission.

**(U) Management Comments:**

(U) NRO concurred with this recommendation stating it will update its guidance to require referral of cases prior to final adjudication when admissions involve Federal crimes and certain violations of state criminal laws including imminent threat, danger, or serious bodily injury to another person. See Appendix G for the NRO’s complete comments.

## **B. (U) NRO process gives OS&CI responsibility for legal determinations**

(U) OS&CI's responsibility for determining whether an admission meets criteria for notifying OGC or OIG effectively delegates a legal decision to OS&CI and may conflict with the GC's responsibility for determining when an admission is reportable. Both the 1995 MOU and NRO guidance task OGC with making legal determinations and reporting potential crimes to DOJ. Yet, an OS&CI official told us that based on informal advice by the former AGC, OS&CI does not consult with OGC or OIG on every admission of a potential crime and whether to refer those admissions. According to both OIG and OGC officials, nuances of law and varying county and state criminal laws make establishing specific thresholds that OS&CI can use to determine which admissions of potential crimes OS&CI should refer to OGC and OIG almost impossible.

(U) Although OIG and OGC officials applauded OS&CI's willingness to contact them for guidance on when an admission may be reportable, the potential exists for OS&CI staff to make inaccurate determinations of what constitutes reportable crimes. In fact, OS&CI officials acknowledged that they are not always aware of the types of potential crimes that should be referred to OGC and OIG. We believe that this confusion extends to referring UCMJ violations because OGC has not informed OS&CI about the need to refer those violations for OGC consideration.

(U) The success of the NRO referral and reporting process depends on OS&CI officials correctly identifying admissions of potential crimes and accurately determining when an admission of a potential crime warrants referral to OGC and the OIG.<sup>58</sup> Thus, the NRO has effectively delegated legal determinations to OS&CI staff. When the OGC and OIG are not made aware of admissions involving potential crimes, they cannot report them.

(U) During our review, we observed that in 2013 OS&CI began to refer admissions of potential crimes that were made as early as 2010 to OGC and OIG. The OIG attributed retroactive reporting to improved working relationships between OS&CI,

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<sup>58</sup> (U//~~FOUO~~) The results of polygraph examinations are reported as either "no significant physiological response," "no opinion," or "significant physiological response." Polygraph examiners

OIG, and OGC as well as media and Congressional focus on NRO crimes reporting processes.

(U) NRO officials in the OGC, OIG, and OS&CI agree that involving OGC earlier in the referral process by embedding within OS&CI an attorney with responsibility for reviewing all admissions of potential crimes and UCMJ violations could be beneficial. Potential benefits include:

- (U) mitigating the possibility that OS&CI inadvertently may not refer an admission to OIG or OGC;
- (U) ensuring that certain behaviors are uniformly identified as potential criminal acts or UCMJ violations;
- (U) providing additional assurance that OS&CI refers admissions to all stakeholders with adjudicative and criminal investigative interests;
- (U) ensuring that changes in reporting requirements are expeditiously implemented; and
- (U) reducing the number of days to report potential crimes to DOJ or other law enforcement organizations.

(U) We compared the NRO crimes reporting process with the NSA's process. Notably, the NSA separates the adjudication and crimes reporting processes. According to NSA Security officials, they do not wait to complete the adjudications process before notifying OGC of admissions of potential crimes, especially when admissions involve potential danger to another individual. According to an NSA OGC official, the reporting delay that would likely occur if OGC waited for an adjudicative decision would be too long.<sup>59</sup>

(U) Although OGC has designated an attorney to act as the focal point for OS&CI legal matters, reliance on AB and SAS to determine which admissions are referred to OGC and OIG continues to raise concerns that OS&CI is making *de facto* legal decisions.

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<sup>59</sup> (U) We did not obtain information on the average number of days for NSA to make adjudicative decisions when individuals made admissions of potential crimes.

**(U) RECOMMENDATION:**

10. (U) We recommend OGC embed an attorney within OS&CI. The attorney should be responsible for reviewing admissions of certain behaviors to ensure they are uniformly identified as potential crimes and UCMJ violations for potential reporting separate from the adjudications process.

**(U) Management Comments:**

(U) NRO concurred with this recommendation, and stated that it does not have the resources to devote a full-time attorney to OS&CI at this time. While we agree with the staffing constraint identified by OGC, we continue to believe that reliance on AB and SAS to determine which admissions are referred to OGC and OIG raises concerns that OS&CI is making *de facto* legal decisions. See Appendix G for the NRO's complete comments.

**C. (U) OS&CI practices contributed to lengthier processing times**

(U) OS&CI's Polygraph Management Branch (PMB) administers polygraph examinations to NRO-sponsored individuals. Since 2009, PMB has required polygraph examiners and team chiefs to process polygraph examination reports within five working days for routine cases and within three working days for high-interest admissions or specific interest polygraphs. However, we determined that Quality Assurance (QA) procedures and staffing practices contributed to lengthier processing times for some admissions of potential crimes.

(U//~~FOUO~~) According to the QA Executive Officer, QA officers and team chiefs work four 10-hour days each week. Therefore, no one who can review high-interest admissions that may require attention before the following week, is in the office on Fridays. The QA Executive Officer stated that although PMB implemented this leave policy to accommodate the desire of its staff, the approach has delayed QA reviews. OS&CI officials stated that following discussions with IC IG staff as part of this evaluation, in October 2013, OS&CI eliminated the four 10-hour day schedule and adjusted work schedules so that there is coverage every Friday.

(U//~~FOUO~~) We identified several instances when an individual made a high-interest admission, yet processing was delayed due to staff who were on leave. For example, during a routine NRO polygraph a contractor admitted to molesting a child. According to the QA Executive Officer, PMB notified AB of the admission on

the same day as it was made, however an 11-day delay occurred from the date of admission to the date when QA sent its official report to AB for adjudication and possible referral to OIG and OGC. According to the QA Executive Officer, five days of the delay were due to review by a PMB team chief. QA took another six days to complete its review of the polygraph session. A flex-day, holiday, and an ongoing special investigation further contributed to the delay notifying AB. However, the Executive Officer experienced difficulty identifying the specific reasons for QA delays because this information was not documented in the polygraph technical report or in [REDACTED]. In another instance, an individual made an admission involving child pornography. The QA review took one month, but the Executive Officer was unable to explain the reason for the lengthy review. The day after QA completed its review, QA forwarded the admission to AB. Given that both of those admissions qualified as high-interest reports, in accordance with its policy, PMB should have notified AB within 24 hours of when the admissions were made.

(U//~~FOUO~~) NRO's practice has been for the Executive Officer, who also serves as the Chief of Quality Assurance for PMB, to approve each Specific Issue Polygraph (SIP) that QA reviewed before forwarding the file to AB.<sup>60</sup> The Chief usually does not review polygraph examinations that are not SIPs. Because no staff member is designated to act as a back-up when the Executive Officer is absent, QA does not send admissions made during SIPs to AB until the Executive Officer returns and reviews the files. According to the Executive Officer, past delegation of the review function resulted in problems. Therefore, PMB/QA discontinued the practice of designating a back-up reviewer.

(U) In addition, the PMB quality assurance process caused delays referring some cases. As part of its quality control process, the PMB QA staff randomly selected a two-week period and reviewed all work products submitted during that time by a specific team or field office. During FY 2013, those reviews revealed extensive processing delays resulting from misplaced cases, examiners not processing cases within five working days, not making edits within the required three days, or not completing retesting within twenty-one days. PMB/QA also determined that team chiefs took significant time to conduct required reviews. In one case, it took twelve business days before the team chief conducted the first review and another month after the last polygraph session before QA received the case for processing and was able to forward the case to AB.

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<sup>60</sup> (U) The NRO administers specific interest polygraph examinations to assist in resolving specific ICD 704 issues or concerns. As a general rule, all government and contractor personnel sponsored by the NRO for SCI access or for access to the NRO information systems must complete, or have completed, a counterintelligence security polygraph prior to authorization for access.

(U) According to the PMB/QA Executive Officer, as a result of discussions with IC IG staff during this review, PMB/QA modified how it identifies, tracks, and prioritizes cases to shorten the time before cases are forwarded to AB.

In June 2013, PMB informed its staff via email that each team chief is responsible for directly notifying AB whenever PMB processes certain types of cases regardless of the type of polygraph examination that was conducted. According to NRO officials, this process effectively eliminates time-consuming quality assurance reviews by the Executive Officer at headquarters. Direct notification to AB must occur within 24 hours when:

- High-interest information is obtained. This information includes, but is not limited to, child or spousal abuse, child pornography, felony crimes, imminent threats, tax fraud or evasion, serious criminal offenses, and issues impacting national security such as espionage or compromise of classified information;
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

(U//~~FOUO~~) PMB incorporated those changes into its Case Administration Procedures in November 2013. The intent of this process is to alert AB of incoming cases that may require expedited processing by AB. PMB also expects the process to assist it to track its processing timeliness. We did not evaluate the effectiveness of those changes as they were implemented after we completed our work.

**(U) RECOMMENDATION:**

11. (U) We recommend the Chief/PMB cross-train an individual to act as a backup when the Executive Officer is out of the office for an extended period.

**(U) Management Comments:**

NRO concurred with this recommendation, noting that the June 2013 modifications to its quality assurance process effectively eliminates time consuming quality assurance reviews by the Executive Officer at headquarters.

As a result, we consider this recommendation closed. See Appendix G for the NRO's complete comments.

**D. (U) OGC reporting of potential crimes was lengthy in FYs 2009 through 2012**

(U) OGC also experienced significant delays reporting potential crimes in FYs 2009 through 2012. For those fiscal years, we identified 76 occurrences when it took OGC more than a week to notify DOJ of an admission of a potential Federal crime. During that time, OGC reported to DOJ only one admission in under a week. Lengthy delays in reporting are a concern, particularly when admissions involve serious offenses that pose an imminent threat to others. As mentioned previously in this report, the risk exists that a crime may continue or that individuals may alter or destroy evidence in the interim between an admission and reporting.

(U) Table 4 shows the average, median, and range for the number of days OGC took to report admissions of potential Federal crimes to DOJ in FYs 2009 through 2012.

**(U) Table 4: Average number of days for NRO OGC to report potential Federal crimes in FYs 2009 through 2012**

This table is ~~Unclassified//For Official Use Only~~

Fiscal Year	Number of subjects	Average	Median	Range
		(in days) <sup>a</sup>		
<b>FY 2009</b>	21	226	125	27 to 1,114
<b>FY 2010</b>	26	126	75	24 to 704
<b>FY 2011</b>	21	103	63	5 to 312
<b>FY 2012</b>	9	62	31	12 to 219
<b>Total</b>	77	139	78	5 to 1,114

(U) Source: IC IG analysis of NRO data

(U) Note: <sup>a</sup> Number of days was rounded to the nearest whole number.

(U) During the first half of CY 2013, the average number of days for OGC to report admissions declined to three days, indicating that OGC is more expeditiously reporting potential crimes to DOJ.

***(U) NRO implemented corrective actions to strengthen its crime reporting process***

(U) Under the leadership of the current NRO Director, in July 2012, the NRO began to proactively implement corrective actions to address deficiencies that it discovered in its policies and processes for identifying and reporting admissions of Federal crimes made during polygraph examinations. Congressional interest and



the McClatchy Company claims of non-reporting of certain egregious admissions drove the NRO to focus on strengthening internal and external coordination to facilitate the identification, referral, and reporting of potential crimes as well as improving tracking of reported admissions. In addition, in March 2014 following discussions with IC IG staff, the NRO Director established an internal activity to promptly report possible violations of specified state criminal laws, including crimes against children, to local law enforcement authorities and serve as the liaison between the NRO and local law enforcement agencies.

#### **A. (U) Internal coordination**

(U) Prior to July 2012, the NRO did not have strong processes to facilitate timely communication and sharing of information about admissions of potential crimes among NRO stakeholders involved in the crimes referral and reporting process. The NRO implemented the following changes beginning in 2012:

- (U) OS&CI concurrently refers to NRO OIG and OGC admissions of potential Federal crimes. In January 2013, the NRO implemented the NSA recommendation to establish a process whereby OS&CI notifies NRO OIG/Investigations concurrently with OGC when admissions of potential criminal conduct involve child pornography. The NRO created an email distribution list to facilitate simultaneous notification of OIG and OGC personnel regarding *all* criminal referrals from OS&CI, and did not limit the use of the email notification to admissions involving potential child pornography. In addition, OGC now copies OIG on all notification letters it sends to DOJ. Previously, OGC copied the OIG only when admissions of potential crimes involved child sexual abuse, and notification was not a consistent practice. In November 2013, OS&CI incorporated this change into its referral procedures.
- (U//~~FOUO~~) OGC documents and communicates decisions and reasons not to report admissions of potential crimes. The AGC now informs the GC, OIG, and OS&CI when deciding not to report to DOJ an admission of a potential Federal crime. Previously, the AGC informed only OS&CI that OGC had determined that notification to DOJ was unnecessary. In November 2013, OS&CI updated its written procedures requiring SAS to document when OGC determines that no report to DOJ is necessary.

- (U//~~FOUO~~) OGC tracks OS&CI referrals of admissions. OGC tracks the names of individuals whom OS&CI refers, even when OGC does not report the individuals to DOJ. The sheet includes reasons that OGC declined to report admissions to DOJ. Previously, OGC tracked only information for admissions that it reported to DOJ and did not consistently track reasons for declining to send the information.
  
- (U//~~FOUO~~) OS&CI formalized process to refer high-interest admissions to OGC and OIG immediately. As previously discussed, in August 2013, OS&CI established policies and procedures to refer to OGC and OIG admissions that involve threats to individuals, facilities, systems, and national security within 24 hours as opposed to waiting to complete the adjudicative process.<sup>61</sup> Immediate referrals include, but are not limited to,
  - admissions of current child abuse or molestation by an individual or when known about by the individual;<sup>62</sup>
  - past child abuse or molestation by an individual or when known about by an individual if a minor child is still accessible to the perpetrator;
  - ██████████ that endanger ongoing operations and/or those involved in such operations;
  - ██████████ and
  - ██████████ or crimes that are likely to affect United States national security, defense, or foreign relations.

(U//~~FOUO~~) In November 2013, OS&CI revised its procedures for referring potential crimes information to the OGC, OIG, and CID, and reporting that information externally. The written guidance now includes procedures for referring admissions of potential crimes by military personnel, use of a group email to refer admissions of potential crimes simultaneously to OGC and OIG, and a requirement to refer all potential criminal activity falling within Federal guidelines within ten business days after completion of investigative actions.

(U//~~FOUO~~) Following a March 2014 discussion with IC IG staff, the NRO Director issued a Policy Note, *Reporting of Specified State Criminal Laws*, establishing an internal SIA within OS&CI. The SIA's function is to promptly report possible

<sup>61</sup> (U) NRO Personnel Security Division. *Immediate Adjudicative Actions*. 22 August 2013.

<sup>62</sup> (U) Although OS&CI requires its personnel to immediately refer to OIG and OGC of admissions involving child molestation, Federal law, IC policy, and NRO guidance do not require the OGC to report to DOJ or Federal investigative organizations those referrals that involve violations of state criminal laws such as child molestation. According to the current AGC, OGC may voluntarily report crimes information related to child molestation, although the NRO OGC "has no [legal] obligation to do so."

violations of specified state criminal laws, specifically crimes against children, to local law enforcement authorities and serve as the liaison between the NRO and local law enforcement agencies. The Policy Note also directs NRO personnel to report possible crimes against children immediately to the SIA if the information is obtained in the performance of official duties. However, the new SIA will not necessarily include an embedded attorney who possesses the legal expertise to decode which admissions should be referred to local law enforcement. In addition, officials within the new SIA likely will not be covered professionals under 42 U.S.C. § 13031. Therefore, we, and the NRO OIG, believe it is important that OS&CI and OGC continue to inform the NRO OIG of admissions involving potential violations of state criminal laws involving child abuse and the admissions that the activity decides to report.

(U) We believe those changes will strengthen situational awareness, coordination, oversight, clarify reporting obligations, and expedite reporting of egregious crimes.

### **B. (U) External coordination**

(U) Beginning in July 2012, the NRO implemented several changes to strengthen coordination with DOJ by:

- (U//~~FOUO~~) addressing notification letters to specific recipients. OGC began sending unclassified notification letters via email to specific individuals within the DOJ Criminal and National Security Divisions. This process replaced faxing classified letters to the DOJ Criminal Division without identifying a specified recipient.
- (U//~~FOUO~~) providing personally identifying information about individuals who made admissions in notification letters to DOJ. OGC modified notification letters to include personally identifying information such as the full name, social security number, date of birth, and last known address of the individual who made an admission of a potential Federal crime. Previously, the NRO did not include this information. Previously, OGC used a naming convention that required the recipient to contact the NRO for information about the individual who made the admission.
- (U//~~FOUO~~) designating the NRO OIG as the point of contact to respond to requests from DOJ on all child-related notifications of potential crimes that OGC reports to DOJ. OGC remains the DOJ point of contact for all other types of potential crimes reported by OGC to DOJ.

- (U//~~FOUO~~) incorporating a statement in notification letters to DOJ regarding NRO OIG intent to open investigations if DOJ does not respond to NRO stating its intent to investigate potential crimes. If DOJ does not notify the NRO within ten calendar days of receiving a report from OGC that DOJ intends to pursue the issue, then the NRO OIG may open its own investigation. According to the DOJ attorney who receives NRO reports of potential crimes, the NRO OIG should not wait for a response from DOJ if the OIG feels that it should conduct an investigation.
- (U) including a statement in notification letters alerting DOJ to potential violations of state criminal laws, when applicable. According to NRO officials, in December 2012 OGC began including a statement in notification letters to DOJ stating that admissions included potential violations of state criminal law and may be shared with local authorities for lead purposes. We believe inclusion of this statement facilitates information sharing with local and state law enforcement. Moreover, addressing reporting of potential violations of state criminal laws, although no Federal requirements or ICDs establish requirements for IC elements to report such crimes, is an improvement.

(U) We believe those changes should help to ensure receipt of written reports by the correct DOJ and law enforcement organizations and reduce reliance on DOJ to coordinate or disseminate information internally. Also, the changes should reduce the time needed for DOJ to obtain information for investigation and potential prosecution of potential crimes. The DOJ attorney assigned to receive crimes reports from the NRO supports the changes.

(U) However, the NRO OGC has not similarly incorporated all of the changes made since 2012 in its written operating instructions. For example, OGC has yet to identify the OIG as the point of contact for DOJ inquires following OGC reports of child related potential crimes. Also, OGC guidance does not require inclusion of a statement alerting DOJ to potential violations of state criminal laws in its reports to DOJ. Therefore, the risk exists that the practices will not continue.

**(U) RECOMMENDATION:**

12. (U) We recommend OGC incorporate changes implemented since July 2012 into official operating instructions and guidance.

**(U) Management Comments:**

(U) NRO concurred with this recommendation. Based on prior discussions with the IC IG, both OGC and OIG incorporated changes to NRO Instruction 80-2-1 and the OIG Investigations Manual and Operating Instruction respectively, as noted by the NRO in its official comments to this report. However, as we state in this report, OGC has yet to incorporate all changes in its operating instructions. For example, Instruction 80-2-1 does not identify the OIG as the point of contact for DOJ inquiries following OGC reports of child related potential crimes, or require inclusion of a statement alerting DOJ to potential violations of state criminal laws in its reports to DOJ. Therefore, the risk exists that the practices will not continue. See Appendix G for the NRO's complete comments.

**(U) 1995 MOU provisions do not address reporting violations of some state criminal laws**

(U) The 1995 MOU established procedures by which each IC element is obligated to report to the AG and to Federal investigative agencies information concerning possible Federal crimes committed by IC employees and non-employees.<sup>63</sup> However, the 1995 MOU is silent with regard to the obligation of IC element officials to report potential violations of state criminal laws. The Military Services require reporting of violations of crimes to DCIOs.

**A. (U) Requirements for Federal agencies to report violations of state criminal laws**

(U) The 1995 MOU requires IC employees to report information that reasonably indicates that an IC employee has committed, is committing, or will commit a violation of Federal criminal law.<sup>64</sup> However, while the MOU is silent with regard to IC employees' reporting obligations of potential violations of state criminal laws, the 1995 MOU does allow IC element GCs to use their discretion to report possible criminal activity to state or local authorities in conjunction with reporting to DOJ. While the 1995 MOU does not establish clear requirements for Federal agencies to report violations of state criminal laws, the MOU contains provisions that imply IC elements should report such crimes. Specifically, the 1995 MOU states that its procedures are not intended to affect whether an intelligence agency reports activities that appear to constitute a crime under state law to state or local authorities. If an intelligence agency considers it appropriate to report to state or

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<sup>63</sup> (U) Title 28 U.S.C. § 535(b) (2006).

<sup>64</sup> (U) *Memorandum of Understanding: Reporting of Information Concerning Federal Crimes*. 1995.

local authorities possible criminal activity that may implicate classified information or intelligence sources or methods it should inform DOJ.

(U) According to senior NRO OGC officials, the NRO has no specific written guidance concerning the reporting of admissions of potential violations of state criminal laws. However, under the IG Act, when made aware of any crime, including violations of state criminal laws, the NRO OIG must report imminent threats of harm or injury to another person—including those that fall outside of its jurisdiction—to local law enforcement. Also, the Military Services expect commanders to report to MCIOs, DCIOs, or law enforcement organizations criminal allegations or suspected criminal allegations involving persons affiliated with the DOD or any programs under their control or authority.

(U) In FYs 2009 through 2012, OS&CI usually referred admissions that involved possible violations of both state and Federal criminal laws to OGC and/or OIG. When individuals made admissions that potentially violated only state criminal laws, OS&CI was unlikely to refer those admissions to OGC or OIG. For example, OS&CI did not usually refer admissions involving illicit drug use or possession to OIG or OGC. According to an OS&CI official, the former AGC instructed OS&CI that it was not necessary to refer those types of admissions due to the frequency with which individuals made those admissions. Moreover, the 1995 MOU permits GCs to use their professional judgment not to report relatively minor offenses to which the 1995 MOU normally applies when the DOJ concurs with that opinion. According to OGC and OS&CI officials, admissions of illicit drug use and possession generally involve *de minimus* amounts and, therefore, are addressed *via* the adjudicative process.

(U) In FYs 2009 through 2012, OS&CI did not refer to OGC or OIG all admissions made by military personnel that involved violations of the UCMJ particularly admissions of illicit drug use, patronizing prostitutes, and child abuse. However, OS&CI considers admissions of UCMJ violations when adjudicating security clearances and access to NRO systems and facilities.

(U) In December 2012, OGC began including a statement in some of its notification letters to DOJ advising that “information concerning possible violations of state criminal law may be passed to local authorities for lead purposes only, without attribution to NRO.” However, OGC has not incorporated this statement into its standard operating instruction.

#### **B. (U) Reporting requirements for admissions of suspected child abuse**

(U) Several provisions in law identify requirements for reporting child abuse, including child pornography and child molestation. While 18 U.S.C.

Chapter 109A, *Sexual Abuse Crimes*, prohibits sexual offenses against children, the Federal jurisdiction of the United States is limited to the special maritime and territorial jurisdiction of the United States. Therefore, unless evidence satisfies the jurisdictional requirement for a Federal crime, most suspected child abuse crimes are prosecuted under applicable state laws. Those laws do not trigger an affirmative reporting obligation for IC employees pursuant to the 1995 MOU.<sup>65</sup> However, certain IC employees, known as “covered professionals,” are subject to Federal requirements to report information of suspected child abuse to appropriate authorities. Those professionals include psychologists, psychiatrists, and law enforcement personnel. Pursuant to 42 U.S.C. § 13031,

a person 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, shall as soon as possible make a report of the suspected abuse to the...[appropriate agency...designated by the Attorney General].<sup>66</sup>

(U) Title 42 U.S.C. § 13031 is unclear concerning its applicability to a Federal building that does not have facilities in which children are cared for or reside, such as the NRO. Therefore, admissions of child abuse made during NRO polygraph examinations may not meet Federal reporting requirements. However, given the severity of the potential crimes and potential for harm to others, the statutory application of the reporting requirements should be construed broadly, according to the Office of Legal Counsel.<sup>67</sup>

(U) Despite these reporting obligations, when NRO officials reviewed polygraph admissions of suspected child abuse in FYs 2009 through 2012, the NRO did not have policies articulating 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, the NRO did not have policies encouraging all NRO employees to report information of suspected child abuse to NRO “covered professionals.” According to the NRO OGC, “Federal employees are not [legally] obligated to report suspected child abuse to covered professionals.” Therefore, the only affirmative reporting obligations known to NRO OS&CI, OGC, and OIG personnel prior to 7 October 2010 were for information involving violations of Federal crimes, which would not include the

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<sup>65</sup> (U) Title 18 U.S.C. § 7.

<sup>66</sup> (U) Title 42 U.S.C. § 13031(a).

<sup>67</sup> (U) See Op. O.L.C. WL 5885536 (2012).

majority of child abuse allegations involving sexual molestation, as those generally exist as violations of state criminal laws.

**(U) RECOMMENDATION:**

13. (U) We recommend the Director/NRO issue guidance encouraging all NRO employees to report to the OIG, OGC, and OS&CI crimes committed by NRO employees that pose an imminent threat to others, such as child molestation.

**(U) Management Comments:**

(U//~~FOUO~~) NRO concurred with this recommendation. In an Office of the Director Policy Note, *Reporting of Specified State Criminal Laws*, (28 March 2014), the Director of the NRO established the SIA within OS&CI. The SIA's function is to promptly report possible violations of specified state criminal laws, specifically crimes involving an imminent threat or serious bodily injury to another human being, to the local law enforcement authorities. In addition, the policy note advises NRO personnel to report those crimes immediately to the SIA within OS&CI if the information is obtained in the performance of official duties. For purposes of the policy, NRO personnel include NRO contractors, civilians, and military personnel who support NRO activities.

(U//~~FOUO~~) The Director of National Intelligence plans to issue IC-wide policy regarding reporting of state criminal laws to local law enforcement. The Director of the NRO will amend the policy note as appropriate.

(U//~~FOUO~~) We consider the NRO Director's policy to constitute significant progress to address reporting of violations of state criminal laws that pose an imminent threat to others, particularly children. See Appendix G for the NRO's complete comments.



## **(U) Appendix A: Federal crime reporting exemptions**

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(U) The *Memorandum of Understanding: Reporting of Information Concerning Federal Crimes* (1995) identifies specific exemptions for reporting of potential Federal crimes, including:

- reported to an IG previously<sup>68</sup>;
- alleged to have occurred more than ten 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;
- 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. If the agency has a reasonable basis to believe the alleged criminal activities that occurred more than ten years ago relate to, or are part of, a continuing pattern of criminal activities that continued within that ten-year interval, then the agency must report that information;
- received by a 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 their duties or position. This exemption applies only when the information is submitted to and investigated by the appropriate Defense Criminal Investigative Organization (DCIO). When the crimes were committed during the performance of intelligence activities, the GC must provide information to DOJ explaining the nature and disposition of the charges;
- collected by an intelligence component of a department that also has a law enforcement organization and the information involved non-employee crimes identified in the 1995 MOU. To meet the reporting exemption, the department's law enforcement organization must have jurisdiction to investigate, and the department must submit the information to its law enforcement organization for investigation and handling in accordance with its policies and procedures;
- involves crimes against property in the amount of \$1,000 or less if committed by non-employees, or \$500 or less if committed by an employee; or
- *de minimus* or a relatively minor offense in the opinion of the GC, and the AG concurs that the crimes do not warrant reporting.

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<sup>68</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 IG Act, as amended, 5 U.S.C. App. 3 §4. Nothing in the 1995 MOU may alter 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 GC for a determination whether the 1995 MOU requires reporting of the information to DOJ in accordance with the 1995 MOU.

## **(U) Appendix B: Laws and guidance**

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(U) This appendix identifies and summarizes selected laws, executive orders, and other guidance in effect in FYs 2009 through 2012 and during Calendar Year 2013 and that govern crimes reporting at the NRO.

### **(U) Laws**

- (U) *Title 18 of the United States Code* is the criminal and penal code of the Federal Government of the United States. It deals with Federal crimes and criminal procedures 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 AG. Exceptions exist when (1) the responsibility to perform an investigation is otherwise assigned by another provision of law; or (2) the AG directs otherwise with respect to a specified class of information, allegation, or complaint.
- (U) *Title 42, Chapter 132, § 13031, 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. Title 42 U.S.C. § 13031(c)(1) 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 IG to expeditiously report to the AG whenever the IG 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.A. § 934 ) 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 AG. Crimes are to be reported in compliance with procedures agreed upon by the AG and the head of the department, agency, or establishment concerned and consistent with the protection of intelligence sources and methods.
- (U) *E.O. 12968* encourages employees with access to classified information to report any information that raises doubts as to whether another employee's continued eligibility for access to classified information is clearly consistent with the national security.

**(U) Intelligence community guidance**

- (U) *Memorandum of Understanding: 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 General Counsel 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 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 DOJ or DOD will investigate certain types of crimes. For example, the DOD investigative agency concerned will investigate crimes committed on a military installation or when committed by a person subject to the UCMJ. In those instances, the concerned military department also prosecutes those crimes, and 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 some or all of the individuals who committed the crime are not subject to the UCMJ, then the DOD investigative agency immediately notifies 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 Department of Defense. The DTM requires reporting to the Assistant to the Secretary of Defense for Intelligence Oversight 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) *Air Force Instruction 71-101, Volume 1, Criminal Investigations Program (8 April 2011)* requires commanders and directors at all levels to ensure that criminal allegations or suspected criminal allegations involving persons affiliated with the DOD or any property or programs under their control or authority are referred to the appropriate military criminal investigative or law enforcement organization.
- (U) *SecNavInst 5430.107, Mission and Functions of the Naval Criminal Investigative Service (28 December 2005)* sets forth the authority, responsibilities, mission, and functions of the Naval Criminal Investigative Service (NCIS). The Instruction requires Department of Navy commands and activities to immediately refer to NCIS any incidents of actual, suspected, or alleged offenses that are punishable under the UCMJ or similarly framed federal, state, local, or foreign statutes by confinement for a term of more than one year.
- (U) *Army Regulation 195-2, Criminal Investigative Activities, (15 June 2009)* requires commanders to report known or suspected criminal activity to the U.S. Army Criminal Investigative Command. The regulation cites Title 28 U.S.C. § 535 that requires any information, allegation, or complaint relating to violations of Federal criminal law, involving government officials and employees to be reported expeditiously to DOJ, unless the responsibility to investigate the matter is conferred upon the DOD or as otherwise provided by law or agreement with the Attorney General.

**(U) NRO guidance**

- (U//~~FOUO~~) *NRO Corporate Business Process 80, Oversight (November 2010)* defines the scope, authorities, and responsibilities specific to oversight for the OGC and OIG. The Corporate Business Process instructs the IG to directly report to appropriate law enforcement authorities information concerning violations of Federal criminal laws within the IG's jurisdiction and in accordance with E.O. 12333 and DOD Instruction 5505.02.
- (U) *NRO Corporate Business Practice Instruction (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 Corporate Business Practice Instruction, the NRO OIG is responsible for reporting evidence of possible violations of Federal and criminal law to the Department of Justice, 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//~~FOUO~~) *NRO Business Function 80, Oversight, (April 2012)* supersedes and replaced NRO Corporate Business Process 80 and describes the overarching roles of the OGC and OIG with regard to oversight.
- (U//~~FOUO~~) *NRO Directive 80-2, NRO Office of General Counsel Framework, (June 2013)* defines the scope, authorities, and responsibilities specific to NRO Business Function 80, *Oversight*. This directive designated the NRO GC as the exclusive authority for the expeditious notification to the AG whenever the GC has reasonable grounds to believe there has been a violation of Federal criminal law. The directive also requires all NRO personnel to report to the GC any possible violation of state or Federal criminal laws learned in the course of their official duties in accordance with E.O. 12333 § 1.6(b); DOD 5240.1-R sections C.12.2.2 and 15.3.3.3; and 28 U.S.C. § 535.
- (U//~~FOUO~~) NRO Polygraph Support Division, *Referral Program Procedures, (22 November 2013)* updates existing procedures to include procedures for referring admissions of potential Federal crimes made by military members to OGC for potential reporting to military leadership.
- (U) NRO Instruction 80-2-1, *Federal Crimes Reporting, (22 January 2014)* establishes procedures for reporting potential Federal crimes made by contractors, civilians, and military personnel.
- (U//~~FOUO~~) National Reconnaissance Office Polygraph Management Branch *Case Administration Procedures (20 November 2013)* identifies behaviors requiring immediate reporting by personnel assigned to OS&CI's Polygraph Management Branch to the Polygraph Support Division to prevent danger to individuals, facilities, systems, or national security.
- (U//~~FOUO~~) Office of the Director Policy Note, *Reporting of Specified State Criminal Laws, (March 2014)* establishes an internal activity within OS&CI. The SIA's function is to promptly report possible violations of specified state criminal laws, specifically crimes against children, to local law enforcement authorities and serve as the liaison between the NRO and local law enforcement agencies. The Policy Note directs NRO personnel to report possible crimes against children immediately to the SIA if the information is obtained in the performance of official duties.

## **(U) Appendix C: NRO crimes reporting process**

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(U//~~FOUO~~) Prior to 2013, the NRO had no formal written guidance describing the process for OS&CI to refer and OGC or OIG to report potential crimes to DOJ or other Federal investigative entities. The NRO also lacked written procedures explaining the process to report admissions of potential crimes or UCMJ violations made by military personnel. In November 2013, OS&CI developed written procedures describing the process for referring admissions of potential crimes, including admissions made by military personnel. On 22 January 2014, the NRO OGC issued written guidance specifying those procedures. In February 2014, the NRO OIG updated its investigative manual and operating instructions.

### **(U) *NRO process for reporting admissions of potential crimes by civilians***

#### (U) FYs 2009 to 2012

(U//~~FOUO~~) Prior to 1 May 2012, the NRO had no written guidance describing the process for OS&CI to refer and OGC and OIG to report potential crimes to DOJ or other Federal investigative entities. In practice, OS&CI referred to OGC admissions of potentially reportable crimes usually by email. OGC reviewed those referrals to determine whether a Federal crime may have been committed and whether the crimes information should be reported to DOJ. If OGC determined a reportable Federal crime was committed, OGC assigned a “John Doe” number to the case and used this anonymous identifier to ensure the recipient did not have personally identifying information about the individual who made the admission.<sup>69</sup> OGC then sent a classified fax to DOJ and copied OS&CI on the report. If OGC decided not to report an OS&CI referral, OGC also informed OS&CI of its decision.

(U) During this time, OS&CI did not consistently refer to the OIG all admissions of potential crimes because they were not aware of the requirements to do so. As a result, generally, notification was limited to admissions involving fraud, waste, or abuse of NRO programs, operations, funds, property, or activities.

#### (U) FY 2012 to present

(U) Beginning in July 2012, the NRO implemented new referral and reporting practices that it documented in its written guidance in January 2014. In October 2013, the NRO began drafting an instruction documenting OGC reporting practices OGC has

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<sup>69</sup> (U) The “John Doe” number is a naming convention that consists of “John Doe” in lieu of an individual’s name followed by the year of the report and the number of the referrals made during the calendar year. For example, John Doe 10-03 indicates that the individual made reportable admissions during 2010 and that this was the third report, but first for this individual, that OGC sent to DOJ during 2010.

used since July 2012.<sup>70</sup> Also, in November 2013, OS&CI updated its guidance to reflect its process for referring admissions of potential crimes to OGC and OIG.

(U) Following notification of the potential Federal crime, the AGC reviews the referral to determine whether a Federal crime may have been committed and should be sent to the DOJ for further consideration. If the referral is not reported to DOJ, the AGC notifies OS&CI and OIG via email and documents the rationale for declining to report the crimes information. SAS documents in its security files when OGC determines a report to DOJ is not necessary. If the AGC determines the crimes information should be reported to DOJ, the attorney informs the OIG and OS&CI by email. SAS maintains a copy of the signed written report to DOJ in its security file.

(U) At the time, OGC assigns a unique identifier, consisting of the calendar year and the individual's last name, to the case in lieu of using a John Doe number. The NRO GC reviews and approves the report to DOJ. OGC sends the report via email to the Assistant Attorney General, National Security Division; the Assistant Attorney General, Criminal Division; and to OS&CI. OGC copies the OIG as well to permit the OIG to fulfill its reporting requirements under the IG Act and 42 U.S.C. § 13031.

(U) OGC maintains both an electronic and hard copy of the notification and logs the report in a master OGC Crimes Referral Spreadsheet.

***(U) NRO process for reporting admissions of potential crimes by military personnel***

(U) FYs 2009 to 2012

(U) Between FYs 2009 and 2012, OGC did not have a formal consistent practice to report admissions of potential Federal crimes or UCMJ violations by military personnel. When a military member made an admission of a Federal crime or UCMJ violation, OS&CI and OGC consulted with each other to determine the best approach and points of contact to whom to report the potential crimes or UCMJ violation.

(U) FY 2012 to present

(U) Beginning in July 2012, the NRO OGC established new referral and reporting practices that it documented in official written guidance on 22 January 2014.<sup>71</sup> In November 2013, OS&CI revised its guidance to reflect its process for referring admissions of potential crimes to OGC and OIG. According to the instruction, when a military member makes an admission of a potential Federal crime or reportable UCMJ

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<sup>70</sup> (U) NRO Instruction 80-2-1, *Federal Crimes Reporting*.

<sup>71</sup> (U) *Ibid.*



violation, OS&CI notifies both OGC and the OIG via an email that includes an initial referral letter summarizing the potential Federal crime and UCMJ violation.

(U) Following notification by OS&CI, the OGC Military Judge Advocate General (JAG) reviews the referral to determine whether there is a UCMJ violation necessitating reporting through military command channels. Simultaneously, the AGC reviews the referral to determine whether a Federal crime may have been committed and whether a report should be sent to DOJ. If the JAG or AGC determine the admission does not need to be reported, then OGC notifies the OIG and OS&CI by email and explains its rationale for declining to report the admissions. SAS documents in its files when OGC determines a report to DOJ is not necessary.

(U) However, if the AGC determines the information should be reported to DOJ, then reporting is done in accordance with the NRO process for reporting admissions of potential crimes by civilians previously described in this report. If the JAG determines the information should be reported to the military command, the JAG notifies OS&CI and OIG simultaneously via email. Additionally, the JAG contacts the appropriate NRO military point of contact to coordinate the referral and requests the NRO military point of contact to identify the relevant commander who should receive the report.<sup>72</sup> After the NRO GC reviews the letter, the NRO JAG sends the notification letter to the appropriate commander and serving military legal office to report the matter for military disposition.

(U) Similar to the process used to report admissions of potential crimes made by civilians, the NRO OGC assigns a referral number and also emails a copy of the letter to the Assistant Attorney General, National Security Division; the Assistant Attorney General, Criminal Division; and to OS&CI, which maintains a copy of the signed written report to DOJ in its security file. Additionally, OGC copies the OIG to permit the OIG to fulfill its reporting requirements under the IG Act and 42 U.S.C. § 13031.

(U) OGC maintains both an electronic and hard copy of the notification and logs the letter in its Crimes Referral Spreadsheet.

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<sup>72</sup> (U) At the NRO, the military point of contact is the Air Force or Navy personnel element within the NRO Office of Strategic Human Capital.

## **(U) Appendix D: Objectives, scope & methodology**

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### **(U) Objectives**

(U) The objective of this evaluation was to assess the NRO's compliance with laws, policies, and procedures to identify and report admissions of potential violations of Federal crimes made by contractors, government civilians, and military personnel during polygraph sessions administered by the NRO in FYs 2009 through 2012. We also assessed how the NRO handled reporting of admissions of violations of state criminal laws and violations of the UCMJ due to the frequency of those types of admissions and because the NRO is a defense agency whose workforce includes personnel who are subject to the UCMJ.

### **(U) Scope**

(U) We focused on admissions of potential crimes made by contractors, government civilians, and military personnel during polygraph examinations administered by the NRO in FYs 2009 through 2012, and admissions of potential crimes OS&CI referred to OGC or OIG between 1 January 2013 and 17 June 2013 (CY 2013). For CY 2013, we reviewed only those security files that OS&CI identified as containing admissions. We did not independently verify that those admissions were the only admissions made.

### **(U) Methodology**

(U) To determine whether the NRO reported admissions in accordance with provisions in Federal law and other guidance, we reviewed Federal laws, Executive Orders, ICDs, and NRO and DOD policies governing crimes reporting in effect between CYs 2009 and 2013. We discussed those laws and policies and their application to reporting of crimes with knowledgeable NRO officials and a DOJ attorney who is responsible for receiving NRO crimes reports from OGC. We reviewed previously issued OIG reports related to the NRO polygraph and crimes reporting processes and discussed recommendations made in those reports with NRO officials to learn whether the NRO had implemented changes and to assess the effectiveness of those changes. We also interviewed officials in the Offices of General Counsel, Security, and Inspector General at the Central Intelligence Agency and National Security Agency, as well as the OGC at the Defense Intelligence Agency about their practices and policies for reporting admissions of potential Federal crimes made during polygraph examinations.

(U) Those discussions identified inconsistent practices within the IC for reporting admissions of non-Federal crimes and UCMJ violations that pose an imminent threat to others, such as sexual molestation. In a separate advisory letter to the Director of National Intelligence, the IC IG has suggested that the DNI issue IC-wide policy to address those inconsistencies.<sup>73</sup>

### **(U) Survey**

(U//~~FOUO~~) We designed and administered two surveys focused on OS&CI staff identification, training, and reporting of admissions of potential crimes. We emailed the surveys to ■ NRO polygraph examiners and PMB staff who were responsible for conducting quality assurance of polygraph examinations, and to ■ staff within the Adjudications Branch (AB). In each survey, we asked respondents a series of open and close-ended questions regarding the NRO crimes reporting process, their ability to identify admissions of potential crimes, and their understanding of the OS&CI policies for referring admissions of potential crimes to the NRO OGC and OIG. We also provided respondents with the opportunity to provide their contact information should they want to share additional information about any concerns with the NRO crimes reporting process. Three respondents to the survey sent to polygraph examiners and quality assurance officials asked that we contact them to discuss concerns they had with the crimes reporting process. We obtained response rates of almost 43 percent on the survey sent to PMB personnel and 30 percent on the survey sent to officials in AB. Because these surveys did not use a statistically representative sampling methodology, the results and the comments provided by respondents should not be considered representative of all NRO OS&CI staff who administer or review polygraph examinations or who adjudicate admissions of potential crimes. However, their responses provide insight into OS&CI staff understanding of the NRO crimes referral process.

(U) Adjudicators who responded to the survey indicated that regardless of the length of time they worked in AB, they were confident they could identify a reportable crime if an individual made an admission of a potential crime during a polygraph session. Also, 69 percent of responding adjudicators agreed or strongly agreed that OS&CI is referring admissions obtained during polygraph sessions. Respondents who indicated OS&CI has not always referred admissions to OIG or OGC explained that admissions of potential crimes that were not referred (1) did not meet the OGC reporting requirements in June 2009; (2) the admission of a potential crime was previously developed by another government agency and no new information was developed

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<sup>73</sup> (U) *IC-Wide Issues Related to Polygraphs and Crimes Reporting Processes*. IC IG. March 2014. (IO-2014-002).

during the NRO-administered polygraph examination warranting reporting; or (3) former NRO OGC officials advised the admission was not significant enough to report to DOJ or the potential crime was not ongoing and, therefore, no immediate action was needed.

### **(U) Analysis**

(U//~~FOUO~~) To determine the number of admissions of potential crimes made during NRO polygraph examinations conducted by the NRO in FYs 2009 through 2012, we obtained and analyzed information from the NRO's authoritative [REDACTED].

(U) [REDACTED] data showed that the NRO administered 44,493 polygraph sessions to 31,122 individuals in FYs 2009 through 2012. We removed records for multiple polygraph sessions associated with a single individual. We also removed records for individuals who made admissions of potential crimes other than during polygraph examinations because those records fell outside the scope of this evaluation. We determined that 172 individuals made admissions of potential crimes or ICD-704 violations in FYs 2009 through 2012. The NRO OGC reported 78 of those individuals. The NRO OGC did not report the remaining individuals because those admissions, among other reasons were:

- excluded from reporting under the 1995 MOU (see appendix B);
- not Federal crimes;
- no longer prosecutable because the subject who made the admission died; or
- *de minimus* in scope.

(U) We also analyzed several data samples to determine whether the NRO had identified, referred, and reported all required admissions of potential crimes in FYs 2009 through 2012.

### **(U) Sample One**

(U//~~FOUO~~) To determine whether the NRO identified, referred, and reported all required admissions of potential Federal crimes and UCMJ violations made during NRO-administered polygraph examinations in FYs 2009 through 2012, we randomly selected 269 individuals from a population of 9,979 individuals. This sample included 202 individuals who made no admissions and 67 individuals who made admissions of potential crimes or violations of ICD 704. We reviewed the security files for each of the 269 individuals in our sample. We are 90 percent confident, with a margin of error of +/- 5 percent, that the results of this sample are representative of all NRO-administered polygraph examination in FYs 2009 through 2012.

**(U) Sample Two**

(U//~~FOUO~~) To determine the extent to which the NRO reported admissions involving child sexual abuse, including child pornography and child molestation, we judgmentally selected 106 of 270 individuals who made admissions during NRO-administered polygraph examinations conducted in FYs 2009 through 2012 and during the first half of CY 2013.<sup>74</sup> The NRO categorized in [REDACTED] each of the admissions made by the 106 individuals as involving questionable “sexual behavior.”<sup>75</sup> We focused primarily on this category of admission because the letter from Senator Grassley and claims of non-reporting made in an article published by the McClatchy Company focused on this type of admission. In addition, the types of crimes in this category may pose continued imminent harm to a victim if not reported and, therefore, could constitute high-interest admissions.

(U) When selecting our sample, we considered whether the individual who made the admission was a government civilian, contractor, or member of the military. Table 5 summarizes the affiliation of individuals in the populations from which we selected our sample.

**(U) Table 5: Number of subjects, by affiliation, who made admissions of potential crimes involving sexual behavior in FYs 2009 through 2012**

Table is Unclassified//~~For Official Use Only~~

<b>Affiliation</b>			<b>Total</b>
<b>Contractor/Consultant</b>	<b>Government civilian</b>	<b>Military personnel (officer/enlisted)</b>	
254	5	11	270

(U) Source: IC IG analysis of data provided by NRO.

(U) Note: We do not break out the data by fiscal year since a single individual may have had polygraph examinations that took place in multiple fiscal years. Also, the number of admissions does not correlate to the number of subjects because some subjects made multiple admissions of potential crimes involving sexual behavior during polygraph examinations administered during multiple fiscal years.

(U) Because of the small population, we selected as part of our sample all military personnel and all government civilians who made admissions of potential crimes

<sup>74</sup> (U) Judgmental sampling is a nonprobability sample method in which the researcher selects subjects for the study based on personal judgment about which subjects will be most representative. Judgmental sampling design is used usually when a limited number of individuals possess the trait of interest. It is the only viable sampling technique in obtaining information from a very specific group of people.

<sup>75</sup> (U) The IC uses 13 guidelines to categorize admissions when determining whether to grant or revoke access to classified information. “Sexual behavior” is one of those guidelines. “Sexual behavior” includes deviant or criminal sexual behavior such as viewing adult or child pornography, child molestation or abuse, rape, bestiality, use of prostitutes, or trafficking in humans. It also includes a pattern of compulsive, self-destructive, or high-risk behavior that the person is unable to stop, that may be symptomatic of a personality disorder, or that reflects lack of discretion or judgment.

involving sexual behavior and whom OS&CI did not refer to OGC or OIG. We also selected records for contractors who made an admission involving “sexual behavior” that OS&CI did not refer to OGC or OIG. To determine whether OS&CI, OGC, and OIG records were complete and accurate, we compared OS&CI records of referrals with similar records independently maintained by OGC and OIG.

(U) The level of detail of the [REDACTED] information did not permit us to tell what type of sexual behavior was involved in those admissions or whether the admissions were potential Federal crimes until we reviewed the security files. We do not know whether the population from which we selected the 106 individuals for review was complete because polygraph examiners and adjudicators assign [REDACTED] categories, such as “sexual behavior,” based on their professional judgment and whether the polygraph examination focused on specific issues. Also, the NRO OIG expressed concerns about the accuracy and completeness of data in [REDACTED] because of OS&CI reliance on manual processes and polygraph examiners’ subjective opinions when coding admissions. Therefore, the NRO may not have identified all subjects who made admissions related to “sexual behavior” in [REDACTED]. As a result, our findings from this sample should not be considered representative of all admissions of “sexual behavior” made during NRO-administered polygraph examinations in FYs 2009 through 2012 and during CY 2013. However, our findings provide insight into how the NRO handled those admissions and whether the NRO reported the potential crimes to DOJ and law enforcement organizations.

### **(U) Timeliness of reporting**

(U) To evaluate the time the NRO took to refer and report admissions of potential crimes, we analyzed [REDACTED] data for 78 admissions reported by NRO to DOJ or law enforcement organizations in FYs 2009 through 2012. We calculated the number of business days from the date of each admission to the date that OS&CI referred the admission to OIG or OGC. We also calculated the number of business days that passed between the date when OIG or OGC told us they received notification from OS&CI and the date when OGC or OIG reported the potential violations of Federal crimes to DOJ or other law enforcement organizations.

### **(U) Compliance with corrective actions**

(U//~~FOUO~~) To assess the NRO’s compliance with self-identified corrective actions implemented since July 2012, we asked OS&CI to identify individuals who made admissions during the first half of CY 2013 and who OS&CI referred to OGC, OIG, or both components. According to OS&CI officials, they referred information on 32 individuals who made admissions of potentially reportable crimes. Twenty of those individuals made admissions during prior years, yet OS&CI did not refer those individuals to OGC and the OIG until CY 2013. According to OS&CI officials, OS&CI

directed adjudicators to immediately notify OGC and OIG of potential Federal crimes rather than wait until AB adjudicated the case.

(U) For our analysis, we reviewed the referral memos sent by OS&CI to OGC and/or NRO OIG. We also reviewed email traffic among OS&CI, OGC, and OIG pertaining to the admissions and data obtained by OS&CI from [REDACTED] that shows the key referral and reporting dates. We also reviewed notification letters sent by OGC to DOJ or law enforcement. We compared those records with corrective actions and processes implemented by the NRO since July 2012. However, we did not review [REDACTED] entries to verify independently that OS&CI had identified all individuals who made admissions of potential crimes during this time. We also did not verify that those individuals who OS&CI identified as having not made admissions of potential crimes did not, in fact, make any admissions. Further, we did not review security files for individuals who did not make any admissions of potential criminal acts or violations of the UCMJ during polygraph examinations administered by the NRO during CY 2013.

#### **(U) IC IG investigations**

(U) We referred to IC IG/Investigations seven admissions related to child pornography and molestation made during NRO-administered polygraphs in FYs 2009 through 2012 but that the NRO had not reported. We also referred admissions by one individual involving UCMJ violations including abuse of system administrator privileges, viewing of adult pornography on an unclassified Navy information system, and patronization of prostitutes overseas. We identified those admissions during our review of security files. The IC IG referred the admissions to the NRO OIG for further review and potential reporting to law enforcement organizations. We also informed NRO OGC and OS&CI about the unreported admissions.

#### **(U) Violations of state criminal laws**

(U) Due to the number of admissions of potential violations of state criminal laws made during NRO-administered polygraph sessions in FYs 2009 through 2012, we reviewed legislation and legal opinions governing the reporting of potential violations of state criminal laws by Federal agency personnel. We discussed requirements for reporting possible violations of state criminal laws with senior managers and staff from the NRO OS&CI, OGC, and OIG to determine their understanding of the requirements and NRO policy for reporting those potential crimes.

**(U) Reliability of computer-processed data**

(U) To assess the reliability of [REDACTED] and other data provided by OGC and OIG, we interviewed officials in OS&CI, OGC, and OIG who are responsible for identifying, referring, reporting, and tracking this information. We also reviewed analysis and interviews conducted by the NRO OIG as part of their review of NRO's polygraph process. The NRO OIG expressed concerns about the accuracy and completeness of data in [REDACTED] because of OS&CI reliance on manual processes and polygraph examiners' subjective opinions when coding admissions that resulted in input errors by polygraph examiners and misleading data. To mitigate concerns about the accuracy and completeness of the data, we verified selected dates, subject names, and admissions in [REDACTED] with information contained in OS&CI's security files. We also compared [REDACTED] and security file information with data separately maintained by the NRO OGC and OIG. We discussed discrepancies with NRO officials in OGC, OS&CI, and OIG, and updated our records accordingly. Our testing found the data was sufficiently reliable for our purposes.

**(U) Council of Inspectors General on Integrity and Efficiency 2012 Quality Standards for Inspections and Evaluation**

(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) Appendix E: Reporting timeframes

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(U) This appendix summarizes the average number of business days in FYs 2009 through 2012 for OS&CI to refer admissions of potential crimes to OGC and OIG and for OIG and OGC to report those admissions. This appendix also summarizes the average number of business days for OGC and OIG to report admissions of potential Federal crimes during the first half of CY 2013.

### (U) Table 6: Number of business days from admission to OS&CI notification to OIG in FYs 2009 through 2012

This table is ~~Unclassified//For Official Use Only~~

Fiscal Year	Number of subjects	Average	Median	Range
		(in days)		
<b>FY 2009</b>	6	90	75	17 to 199
<b>FY 2010</b>	15	133	92	21 to 295
<b>FY 2011</b>	12	98	61	20 to 316
<b>FY 2012</b>	4	53	29	19 to 134
<b>Total</b>	37	106	87	17 to 316

(U) Source: IC IG analysis of NRO data.

(U) Notes: Days are rounded to nearest whole number.

(U) Because OS&CI did not refer all admissions of potential crimes made in FYs 2009 through 2012 to the OIG, the total number of individuals in Table 7 does not match with Table 6.

### (U) Table 7: Number of business days from admission to OS&CI notification to OGC in FYs 2009 through 2012

This table is ~~Unclassified//For Official Use Only~~

Fiscal Year	Number of subjects	Average	Median	Range
		(in days)		
<b>FY 2009</b>	21	115	83	18 to 278
<b>FY 2010</b>	26	87	56	16 to 297
<b>FY 2011</b>	22	103	62	1 to 309
<b>FY 2012</b>	9	60	27	12 to 217
<b>Total</b>	78	95	55	1 to 309

(U) Source: IC IG analysis of NRO data

(U) Notes: Days are rounded to the nearest whole number.

(U) Because OS&CI did not refer all admissions of potential crimes made in FYs 2009 through 2012 to the OIG, the total number of individuals in Table 6 does not match with Table 7.

**(U) Table 8: Average number of business days for NRO OIG to report potential Federal crimes in FYs 2009 through 2012**This table is ~~Unclassified//For Official Use Only~~

Fiscal Year	Number of subjects	Average <sup>a</sup>	Median	Range <sup>b</sup>
		(in days) <sup>c</sup>		
<b>FY 2009</b>	18	20	0	0 to 314
<b>FY 2010</b>	22	29	0	0 to 134
<b>FY 2011</b>	20	34	1	0 to 223
<b>FY 2012</b>	8	13	0	0 to 100
<b>Total</b>	68	26	0	0 to 223

(U) Source: IC IG Analysis of NRO data

(U) Notes:

(U) <sup>a</sup> The time to report an admission was calculated as the number of days between the date that OIG was notified of an admission to the date that the OIG reported the admission to DOJ or other law enforcement organization.(U) <sup>b</sup> "0" number of days indicates same day reporting.(U) <sup>c</sup> Number of days was rounded to the nearest whole number.**(U) Table 9: Number of business days for OGC to report admissions in CY 2013**This table is ~~Unclassified//For Official Use Only~~

Number of subjects who made reportable admissions	Average	Median	Range
	(in number of days)		
27	3	2	1 to 9

(U) Source: IC IG analysis of NRO data

(U) Note: The time to report an admission was calculated as the number of days between the date that OS&amp;CI referred an admission to OGC or OIG and the date that OGC or OIG reported the admission to DOJ or other law enforcement organizations.

## **(U) Appendix F: Summary of recommendations**

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(U) This appendix summarizes the report recommendations.

1. (U) We recommend OS&CI review all admissions in its [REDACTED] database that are categorized as “sexual behavior,” and notify both the NRO OIG and OGC of any admissions involving possession of child pornography made in FYs 2009 through 2012 that OGC or OIG did not report. If OS&CI discovers admissions involving child molestation or other violations of state criminal laws that pose an imminent danger to others, we recommend that OS&CI inform both OGC and OIG even though those crimes may not be Federal crimes.
2. (U) We recommend OGC report any admission related to child pornography of which OGC was informed and did not report to DOJ and, when appropriate, to DCIOs and military commanders, regardless of the admission date.
3. (U) We recommend OIG report any subsequent admissions of violations of Federal or state criminal laws that pose an imminent threat to others, including child sexual abuse regardless of the admission date if the allegation has not been otherwise addressed by the OIG.
4. (U) We recommend that the NRO OGC incorporate in Instruction 80-2-1 a requirement for the JAG to report admissions involving UCMJ violations to DCIOs simultaneously with notification to the appropriate commander and serving military legal office for military disposition.
5. (U) We recommend OGC and OIG provide mandatory, periodic training to OS&CI polygraph examiners and adjudicators. The training should address the broad types of potential crimes and UCMJ violations that OS&CI officials should refer to OGC and OIG and identify points of contacts within both NRO components.
6. (U) We recommend that the OGC incorporate the OIG’s role as the NRO point of contact for child related crimes reported to DOJ or external law enforcement organizations in standard operating procedures and clarify the OGC’s role for reporting to DOJ potential crimes even when the OIG has expressed an interest in an admission.
7. (U) We recommend that OIG incorporate into and finalize its investigations manual and operating instructions that address crimes reporting the OIG role as the NRO point of contact for responding to DOJ or external law enforcement organization requests for information about child related crimes.

8. (U) We recommend OS&CI revise its operating instructions and guidance to eliminate restrictions on the types of potential crimes referred to the OIG.
9. (U) We recommend OS&CI, in conjunction with OGC and OIG, separate the crimes referral and adjudications processes to permit OS&CI to formally refer to OGC and OIG, and report to law enforcement organizations admissions prior to completion of the adjudication process, even when that admission is not a high-interest admission.
10. (U) We recommend OGC embed an attorney within OS&CI. The attorney should be responsible for reviewing admissions of certain behaviors to ensure they are uniformly identified as potential crimes and UCMJ violations for potential reporting separate from the adjudications process.
11. (U) We recommend the Chief/PMB cross-train an individual to act as a backup when the Executive Officer is out of the office for an extended period.
12. (U) We recommend OGC incorporate changes implemented since July 2012 into official operating instructions and guidance.
13. (U) We recommend the Director/NRO issue guidance encouraging all NRO employees to report to the OIG, OGC, and OS&CI crimes committed by NRO employees that pose an imminent threat to others, such as child molestation.

## (U) Appendix G: Management comments

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Office of the Director

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### NATIONAL RECONNAISSANCE OFFICE

14675 Lee Road  
Chantilly, VA 20151-1715

28 March 2014

MEMORANDUM FOR INSPECTOR GENERAL OF THE INTELLIGENCE COMMUNITY

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

REFERENCE: (U) Evaluation of the National Reconnaissance Office  
Crimes Reporting Process (IO-2013-002)

(U) This memorandum addresses the status of 13 recommendations found in the subject Special Review conducted at the National Reconnaissance Office (NRO). The consolidated input of the Office of Security and Counterintelligence (OS&CI), the Office of Inspector General (OIG) and Office of General Counsel (OGC) are provided below.

1. (U) We recommend OS&CI review all admissions in its [REDACTED] database that are categorized as "sexual behavior," and notify both the NRO OIG and OGC of any admissions involving possession of child pornography made in FYs 2009 through 2012 that OGC or OIG did not report. If OS&CI discovers admissions involving child molestation or other state crimes that pose an imminent danger to others, we recommend that OS&CI inform both OGC and OIG even though those crimes may not be Federal crimes.

(U) Response: Concur with Comment

(U) The first paragraph on page 20 states although the NRO did not report 10 percent of admissions related to "sexual behavior," OS&CI usually suspended the individuals' accesses to classified information. This makes it sound as if the NRO failed to report certain criminal sexual behavior admissions which is inaccurate.

(U) Not all admissions related to "sexual behavior" are reportable crimes even though such admissions may rise to a level where OS&CI would revoke or suspend an individual's access to classified information. Per Intelligence Community Directive (ICD) 704, Section D, while sexual abuse may involve a criminal offense, it may also indicate a personality or emotional disorder, involve lack of judgment or discretion, or could involve actions that may subject an individual to undue influence or coercion. For example, if an individual has multiple sexual contacts with foreign nationals, OS&CI might suspend the individual's access for sexual behavior due to undue

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SUBJECT: (U) Status of Implementation Plans for Recommendations  
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 Process (IC IG-IO-2013-002)

influence or coercion; however, it would not report this sexual behavior as a crime because having sex with foreign nationals is not a crime. Similarly, sex addictions and disorders are not reportable crimes; however, OS&CI may still revoke or suspend an individual's access to classified information based on sexual behavior per ICD 704. In sum, not all admissions involving "sexual behavior" are reportable crimes which likely contributed to the approximate 10 percent of the admissions not being reported.

**2. (U) We recommend OGC report any admission related to child pornography of which OGC was informed and did not report to DOJ and, when appropriate, to DCIOs and military commanders, regardless of the admission date.**

(U) Response: Concur with Comment

(U) Current OGC management has reported all child pornography cases (old and new) which have come to its attention and will continue to do so in the future.

**3. (U) We recommend OIG report any admissions of Federal or state crimes that pose an imminent threat to others, including child sexual abuse, of which the OIG is aware and did not previously report to appropriate law enforcement authorities, regardless of the admission date. OIG should review its files to ensure that such information is reported regardless whether notification of the potential crimes was made by OS&CI or another source and regardless whether the potential crimes are a Federal or state crime.**

(U) Response: Concur with Comment

(U) This recommendation makes it appear as if OIG received admissions that were not properly addressed. OIG is not in possession of any alleged cases involving threats to children or others that were not properly addressed, nor does OIG have cases where it relied on OS&CI to take action in lieu of OIG. As such, we request that recommendation #3 be rewritten as follows:

"We recommend OIG report any subsequent admissions of Federal or state crimes that pose an imminent threat to others, including child sexual abuse, regardless of the admission date, if the allegation has not been otherwise addressed by the OIG."

**4. (U) We recommend OGC incorporate in Instruction 80-1-2<sup>1</sup> a requirement for the JAG to report admissions involving UCMJ violations**

<sup>1</sup> Reference document is 80-2-1 vs 80-1-2 as reflected in recommendation number 4

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SUBJECT: (U) Status of Implementation Plans for Recommendations  
Contained in the Special Review of National  
Reconnaissance Office Crimes Reporting  
Process (IC IG-10-2013-002)

to DCIOs simultaneously with notification to the appropriate Commander  
and serving military legal office for military disposition.

(U) Response: Concur

5. (U) We recommend OGC and OIG provide mandatory, periodic training to OS&CI polygraph examiners and adjudicators. The training should address the broad types of potential crimes and UCMJ violations that OS&CI officials should refer to OGC and OIG and identify points of contacts within both NRO components.

(U) Response: Concur

6. (U) We recommend OGC incorporate the OIG's role as the NRO point of contact for child related crimes reported to DOJ or external law enforcement organizations in standard operating procedures and clarify the OGC's role for reporting to DOJ potential crimes even when the OIG has expressed an interest in an admission.

(U) Response: Concur

7. (U) We recommend OIG include in its investigations manual and operating instructions that address crimes reporting the OIG role as the NRO point of contact for responding to requests from DOJ or external law enforcement organizations for information about child related crimes.

(U) Response: Concur

8. (U) We recommend OS&CI revise its operating instructions and guidance to eliminate restrictions on the types of potential crimes referred to the OIG.

(U) Response: Concur with Comment

(U) OS&CI is currently reporting Federal crimes, in addition to some state crimes involving certain threats to individuals that could result in serious bodily injury or harm, to the NRO Crimes Referral Working Group via e-mail which includes OGC and members of the OIG. Cases involving fraud, waste, and abuse are forwarded directly to the OIG via an OIG group e-mail address.

(U) Also, 42 U.S.C. § 13031 is a statute that applies to specific "covered professionals" such as doctors, dentists, nurses, and law enforcement personnel. The statute requires these covered individuals to report crimes of child abuse to the appropriate authorities when the covered individual learns of such child abuse "while engaged in a professional capacity or activity . . . on Federal land or in a

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Contained in the Special Review of National  
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Process (IC IG-IO-2013-002)

Federal operated facility." See 42 U.S.C. § 13031(a). If the covered individual fails to make such a report, he/she may be federally prosecuted for failure to report. On page 36, the report indicates that OS&CI's revised operating instruction may be "inconsistent with the OIG's reporting obligations under . . . 42 U.S.C. § 13031." However, 42 U.S.C. § 13031 does not create an obligation on non-covered professionals to report crimes to covered professionals so that the covered professionals' duty to report is triggered per 42 U.S.C. § 13031. As such, even though OS&CI currently and voluntarily reports state crimes involving child abuse to OIG and OGC via the Crimes Referral Working Group e-mail, it is not required to do so per 42 U.S.C. § 13031.

**9. (U) We recommend OS&CI, in conjunction with OGC and OIG, separate the crimes referral and adjudications processes to permit OS&CI to formally refer to OGC and OIG, and report to law enforcement organizations an admission prior to completion of the adjudication process, even when an admission is not a high interest admission.**

(U) Response: Concur with Comment

(U) OS&CI is currently updating its Referral Instruction to require that Federal crimes and certain state crimes involving an imminent threat, danger or serious bodily injury to a person, be referred prior to the final adjudication. However, completion of the investigative process is sometimes critical because it ensures that all reportable information is accurately provided to OGC. Cases meeting the threshold for immediate action will still be completed within 24 hours of the admission and all such cases will be referred prior to the final adjudication.

(U) Also, in November 2013, Personnel Security Division issued updated procedures requiring crime referrals to be completed within 10 days of completion of investigative activity. OS&CI will update the Referral Instruction to require referral of cases prior to final adjudication.

**10. (U) We recommend OGC embed an attorney within OS&CI. The attorney should be responsible for reviewing admissions of behaviors to ensure they are uniformly identified as potential crimes and UCMJ violations for potential reporting separate from the adjudications process.**

(U) Response: Concur with Comment

(U) The NRO currently has just 8 attorneys. As the Intelligence Community IG correctly notes at the top of page 33 in its Special Review, given the size of this staff, the NRO does not have the

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Process (IC IG-IO-2013-002)

resources to devote a full-time attorney to this activity at this time.

**11. (U) We recommend the Chief/PMB cross-train an individual to act as a backup when the Executive Officer is out of the office for an extended period.**

(U) Response: Concur with Comment

(U) In June 2013, the Polygraph Management Branch modified its Quality Assurance (QA) process. All cases are forwarded to Adjudications Branch by the field supervisor. This effectively eliminated the time consuming QA reviews by the Executive Officer at Headquarters.

**12. (U) We recommend OGC incorporate changes implemented since July 2012 into official operating instructions and guidance.**

(U) Response: Concur with Comment

(U) While recommendation 12 pertains solely to OGC, I note both OGC and OIG incorporated changes to NRO Instruction 80-2-1 (OGC) and the Investigations Manual and Operating Instructions (OIG) based on previous consultation and discussions with the Intelligence Community IG during the Special Review.

**13. (U) We recommend the Director/NRO issue guidance encouraging all NRO employees to report to the OIG, OGC, and OS&CI crimes committed by NRO employees that pose an imminent threat to others, such as child molestation.**

(U) Response: Concur with Comment

(U//~~FOUO~~) I issued a Policy Note to the entire NRO workforce to announce the establishment of a Special Investigations Activity (SIA) office within the OS&CI. See Attachment: *Reporting Possible Violations of Specified State Criminal Laws, 28 March 2014*. SIA's function will be to promptly report possible violations of state criminal laws, specifically crimes involving an imminent threat or serious bodily injury to another human being, to local law enforcement authorities. Moreover, this Policy Note advises NRO personnel to report possible crimes, specifically crimes involving an imminent threat or serious bodily injury to another human being to the SIA if the information is obtained in the performance of their official duties. I note that the OIG, in coordination with OS&CI and OGC, has been voluntarily reporting such crimes to local law enforcement in the past.

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SUBJECT: (U) Status of Implementation Plans for Recommendations  
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Reconnaissance Office Crimes Reporting  
Process (IC IG-IO-2013-002)

(U) In closing, while the comments which follow do not correspond specifically with the aforementioned recommendations, I offer them for your consideration:

1. (U) The Special Review alleges the former NRO General Counsel and former Associate General Counsel provided inconsistent and inaccurate advice regarding reportable admissions of potential crimes (e.g., page 6, 19, 20, 21). I note these two individuals served honorably during their tenure here at the NRO and are now retired.

2. (U) Current OGC management has made great strides collaborating with the NRO OIG, OS&CI, and Office of Strategic Human Capital to put crime reporting procedures in place that are compliant with the 1995 Memorandum of Understanding (MOU), "Reporting of Information Concerning Federal Crimes." Additionally, after my 4 March 2014 meeting with you, I directed the OGC, in consultation with the OIG and OS&CI, to draft a Director's Policy Note for me to execute regarding reporting of specified state criminal laws. This Policy Note has been signed, resolving footnote 34.

3. (U) Table 2 on page 17 lists there were 7,431 admissions of Federal criminal law violations. The "source" of this is "IC IG analysis of NRO data." There is no indication that an IC IG attorney conducted a legal review of each admission to confirm that any rose to the level of a Federal criminal offense. Given this, I would request an in-depth legal review be conducted before any such claim is made.

4. (U) Page 21 contains a reference to a 14-year-old victim of a crime against children. Upon further discussion between my OGC and your Senior Advisor on Intelligence Oversight on 27 March 2014, it is my understanding the Special Review will be modified to include additional information clarifying the issue as outlined in the referral, John Doe 09-06, to the Department of Justice made on 19 May 2009.

5. (U) On page 22, it is accurate that NRO OGC has no legal obligation to report non-Federal crimes; however, possession of child pornography is a Federal crime and is therefore reportable pursuant to the 1995 MOU. To imply otherwise makes it sound as if OGC "thought" or was "treating" child pornography like a non-Federal offense which is inaccurate.

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Contained in the Special Review of National  
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Process (IC IG-IO-2013-002)

(U) Questions concerning our response may be directed to NRO OGC  
via its secure phone number [REDACTED].

  
Betty J. Sapp

Attachment:  
(U//~~FOUO~~) Office of the Director  
Policy Note, *Reporting Possible  
Violations of Specified State  
Criminal Laws*, 28 March 2014

cc:  
Senior Advisor on Intelligence  
Oversight  
Office of Inspector General,  
National Reconnaissance Office  
Office of Security and  
Counterintelligence,  
National Reconnaissance Office

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**NATIONAL RECONNAISSANCE OFFICE**

14675 Lee Road  
Chantilly, VA 20151-1715

**Office of the Director Policy Note**

Number 2014-01

28 March 2014

**(U) REPORTING POSSIBLE VIOLATIONS OF SPECIFIED STATE CRIMINAL LAWS**

(U//~~FOUO~~) I am establishing a Special Investigations Activity (SIA) within the Office of Security and Counterintelligence (OS&CI). SIA's function is to promptly report possible violations of state criminal laws, specifically crimes involving an imminent threat or serious bodily injury to another human being, to local law enforcement. The SIA will also serve as the liaison between the National Reconnaissance Office (NRO) and the local law enforcement agency. SIA criminal reports will include details of all allegations, complaints, or information; will be for lead purposes only; and will not be used solely as the basis for a criminal prosecution.

(U//~~FOUO~~) Personnel at the NRO are to report possible crimes involving an imminent threat or serious injury to another human being immediately to OS&CI/SIA, if the information is obtained in the performance of official duties. For purposes of this policy, "NRO personnel" include all NRO contractors, civilians, and military personnel who support NRO activities. The report shall include a brief description of the incident.

(U//~~FOUO~~) All affected internal governance documentation shall be updated in accordance with the above within 30 days.

(U//~~FOUO~~) I anticipate the Office of the Director of National Intelligence will soon publish Intelligence Community (IC)-wide guidance regarding reporting of state criminal laws to local law enforcement. The NRO's policies will be updated in accordance with any such guidance.



Betty J. Sapp  
Director

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**(U) Appendix H: Abbreviations**

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(U) AB	Adjudications Branch
(U) AFCAF	Air Force Central Adjudications Facility
(U) AFOSI	Air Force Office of Special Investigations
(U) AG	Attorney General
(U) AGC	Assistant General Counsel
(U) [REDACTED]	[REDACTED]
(U) C.A.A.F.	U.S. Court of Appeals for the Armed Forces
(U) CID	Counterintelligence Division
(U) CY	Calendar Year
(U) DCIO	Defense Criminal Investigative Organization
(U) DNI	Director of National Intelligence
(U) DOD	Department of Defense
(U) DODCAF	Department of Defense Central Adjudications Facility
(U) DOJ	Department of Justice
(U) E.O.	Executive Order
(U) FBI	Federal Bureau of Investigation
(U) FY	Fiscal Year
(U) GC	General Counsel
(U) IC	Intelligence Community
(U) ICD	Intelligence Community Directive
(U) IC IG	Inspector General of the Intelligence Community
(U) ICPG	Intelligence Community Policy Guidance
(U) IG	Inspector General
(U) JAG	Judge Advocate General

(U) MCIO	Military Criminal Investigative Organizations
(U) MOU	Memorandum of Understanding
(U) NCIS	Naval Criminal Investigative Service
(U) NRO	National Reconnaissance Office
(U) NSA	National Security Agency
(U) OGC	Office of General Counsel
(U) OIG	Office of Inspector General
(U) OLC	Office of Legal Counsel
(U) OS&CI	Office of Security and Counterintelligence
(U) PMB	Polygraph Management Branch
(U) PSD	Personnel Security Division
(U) QA	Quality Assurance
(U) SCI	Sensitive Compartmented Information
(U) SAS	Special Actions Staff
(U) SIA	Special Investigations Activity
(U) SIP	Special Issue Polygraph
(U) UCMJ	Uniform Code of Military Justice
(U) U.S.C.	United States Code