



Office of Inspector General


**OFFICE OF CYBER
ASSESSMENTS AND DATA
ANALYTICS**

SPECIAL REPORT

**ACCESS OF EXECUTIVE BRANCH PERSONNEL
RECORDS**

~~CONTROLLED UNCLASSIFIED INFORMATION~~

**DOE-OIG-23-23
JUNE 2023**

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(c)

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Department of Energy
Washington, DC 20585

June 1, 2023

MEMORANDUM FOR THE SECRETARY

SUBJECT: Special Report on Access of Executive Branch Personnel Records

The attached report discusses our review of an allegation that security files for certain Executive Branch officials, including the President and Vice President of the U.S., had been accessed in the Department of Energy's adjudicative information system without explanation. This report contains three recommendations that, if fully implemented, should help ensure that access to personally identifiable information is adequately controlled, and that counterintelligence evaluations are performed on appropriate officials in accordance with applicable Federal guidance. Specifically, we recommended the Department: (1) immediately cease counterintelligence evaluations of the President and Vice President; (2) develop and implement a process to ensure that counterintelligence evaluations are conducted in accordance with the scope of 10 Code of Federal Regulations 709, *Counterintelligence Evaluation Program*, and ensure that the Department's counterintelligence evaluation program is consistent with the exemptions for the President, Vice President, and others in Executive Orders and Security Executive Agent Directive 4; and (3) take administrative or corrective actions, as appropriate, if it is determined that noncompliance has occurred. Management fully concurred with Recommendation 1 and Recommendation 3 and partially concurred with Recommendation 2. Management's proposed corrective actions were responsive to all three recommendations.

We conducted our inspection from April 2022 through December 2022 in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation* (December 2020). We appreciate the cooperation and assistance received during this evaluation.

A handwritten signature in cursive script, appearing to read "Teri L. Donaldson", is positioned above the typed name.

Teri L. Donaldson
Inspector General

cc: Deputy Secretary
Chief of Staff
Administrator, National Nuclear Security Administration
Director, Office of Intelligence and Counterintelligence
Acting Director, Office of Environment, Health, Safety and Security

DOE-OIG-23-23

~~CUI~~



**Department of Energy
Office of Inspector General**
Access of Executive Branch Personnel Records
(DOE-OIG-23-23)

**WHY THE OIG
PERFORMED THIS
REVIEW**

In October 2021, the Office of Inspector General received a request for assistance from the National Nuclear Security Administration, which included an allegation that security files for certain Executive Branch officials, including the President and Vice President of the U.S., had been accessed in the Department of Energy's adjudicative information system without explanation.

We initiated this inspection to determine whether the Department effectively managed security over the Clearance Action Tracking System. However, during our inspection, we noted a lack of processes to prohibit counterintelligence evaluations of certain Executive Branch employees that warrants immediate actions.

What Did the OIG Find?

We substantiated the allegation that records for the President and Vice President were accessed by a Department support contractor although Federal requirements indicate they are not subject to counterintelligence evaluations under 10 Code of Federal Regulations (CFR) 709, *Counterintelligence Evaluation Program*. We also determined that other members within the Executive Branch who are not subject to evaluations under 10 CFR 709, including those in current and prior Administrations, had their records accessed by Department and support contractor personnel.

The inappropriate access occurred after the National Nuclear Security Administration requested that the Office of Intelligence and Counterintelligence perform counterintelligence evaluations to help determine whether access to the National Nuclear Security Administration's Special Access Programs and Sigma programs should be granted according to existing Department guidance. However, the access to records of the President and Vice President was not consistent with 10 CFR 709 and other Federal requirements. Similarly, the access to records of other Executive Branch personnel may have been inappropriate.

What Is the Impact?

Failure to fully adhere to 10 CFR 709 and to the exemptions in other Federal requirements subjects the Department to a higher-than-necessary level of risk that the personally identifiable information of high-ranking Federal executives will be inappropriately accessed and/or compromised.

What Is the Path Forward?

To address the issues identified in this report, we made three recommendations related to immediately stopping evaluations of the President and Vice President, developing and implementing a process to ensure that evaluations are conducted in accordance with applicable Federal requirements, and taking appropriate corrective actions.

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Background and Objective

Background

In June 2019, the Clearance Action Tracking System (CATS) became the Department of Energy's official case management system for clearance processing and adjudication. CATS is an unclassified custom-built web-based case management system that is used to facilitate counterintelligence evaluations and the processing and adjudication of personnel security clearances under 10 Code of Federal Regulations (CFR) 709, *Counterintelligence Evaluation Program* and 10 CFR 710, *Procedures for Determining Eligibility for Access to Classified Matter and Special Nuclear Material*, respectively. CATS contains extensive amounts of personally identifiable information, including social security numbers, names of family members, addresses, personal history, and more.

Counterintelligence evaluations are conducted under 10 CFR 709, which provides requirements that apply only to Department employees, consultants, contractors, agents, assignees, detailees, and applicants.¹ Therefore, the Department's counterintelligence evaluation program under 10 CFR 709 does not apply to the President, Vice President, or senior officials in other Government agencies. Moreover, for the Department's Special Access Programs² (SAPs), Department Order 471.5, *Special Access Programs*, was established to protect the SAPs so that only authorized personnel had access to specified sensitive information. This Order requires counterintelligence evaluations to be conducted under the auspices of 10 CFR 709.

Further, a counterintelligence evaluation is the process used to make recommendations as to whether these individuals should have access to certain types of classified information or materials. Therefore, counterintelligence evaluations under 10 CFR 709 are performed on individuals who are also subject to the personnel security adjudicative process that is used to determine eligibility for access to classified information. Security Executive Agent Directive (SEAD) 4, issued by the Security Executive Agent within the Office of the Director of National Intelligence, establishes common criteria for adjudications for initial or continued eligibility for access to classified information or eligibility to hold a sensitive position that includes access to sensitive compartmented information, restricted data, and controlled or special access program information.

¹ "Covered person" is defined in Section 709.2 to mean "an applicant for employment with DOE or a DOE contractor, a DOE employee, a DOE contractor employee, and an assignee or detailee to DOE from another agency."

² SAPs were established to protect extremely sensitive information and require additional security requirements such as special clearances, special access approvals, and special adjudication or investigative requirements.

Under SEAD 4 and Executive Order 13467, *Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information*, the President, Vice President, and certain members of their staff are exempt from adjudications for access to classified information.³ Because counterintelligence evaluations pursuant to 10 CFR 709 are performed on individuals who are subject to the personnel security adjudication process, the individuals who are exempt from that process would also be exempt from counterintelligence evaluations.

In October 2021, the Office of Inspector General (OIG) was contacted by the National Nuclear Security Administration (NNSA) requesting assistance from the OIG after an internal review identified potential misuse of CATS and its data. In part, the NNSA official alleged that security files for certain Executive Branch officials, including the President and Vice President of the U.S., had been accessed in CATS without explanation.

Report Objective

We initiated this inspection to determine whether the Department effectively managed security over CATS. However, during our inspection, we noted a lack of processes to prohibit counterintelligence evaluations of certain Executive Branch employees that warrants immediate actions and the issuance of this special report. This report will ensure that management is provided with the opportunity to initiate immediate actions to address risks identified within the Department's adjudicative process. We will continue to perform our cybersecurity test work related to CATS and provide the details of our results in a separate report.

³ Covered individuals are defined in SEAD 4 as individuals who: 1) perform work for or on behalf of, or seek to perform work for or on behalf of, the Executive Branch; 2) perform work for or on behalf of a state, local, tribal, or private sector entity requiring access to classified information; 3) work in or for the Legislative or Judicial Branches and require access to classified information where the investigation or determination is conducted by the Executive Branch. SEAD 4 explicitly exempts the President, Vice President, certain members of their staff appointed under 3 United States Code §§ 105–107, members of Congress, Justices of the Supreme Court, and Federal judges appointed by the President as covered individuals. In addition, Executive Order 12968, *Access to Classified Information*, exempts the President and Vice President, while Executive Order 13467 also exempts the President, Vice President, and certain members of their staff from investigations and adjudications for access to classified information within its defined term of a “covered individual.” SEAD 4 also suggests that annual legislative branch appropriations acts may also exempt certain personnel from coverage.

Immediate Concern

Our test work confirmed that records for the President and Vice President were accessed by a Department contractor to support counterintelligence evaluations although Federal requirements indicate they were exempt from such evaluations. We also determined that other members within the Executive Branch, including those in current and prior Administrations, had their records accessed by Department Federal employees and support contractor personnel for counterintelligence evaluations although they were not within the scope of the Department's counterintelligence evaluations program under 10 CFR 709. In particular, NNSA officials had requested that the Office of Intelligence and Counterintelligence (IN) perform counterintelligence evaluations for the current President, Vice President, and other Executive Branch officials to help determine whether access to NNSA's SAPs and Sigma⁴ programs should be granted to them. Evaluations were also requested for individuals in these executive positions in prior Administrations, including the prior President and Vice President.

Access to Records

On January 13, 2021, NNSA requested that IN conduct a counterintelligence evaluation on President-Elect Biden. On August 18, 2021, a similar request was made for Vice President Harris. We confirmed with IN officials that the requested evaluations were conducted on the President-Elect and the Vice President, and their records were accessed on January 15, 2021, and on August 19, 2021, respectively. An IN official confirmed this practice was not limited to the current Administration, and similar evaluations had been performed during prior Administrations.

Additionally, NNSA made requests for counterintelligence evaluations of the following high-ranking Federal executives within the current Administration, which was inconsistent with the scope of the counterintelligence evaluation program in 10 CFR 709:

- Secretary of Defense
- Secretary of State
- Secretary of Homeland Security
- Deputy Secretary of Defense
- Deputy Secretary of State
- Director of the Central Intelligence Agency
- Deputy Attorney General of the U.S.
- Director of National Intelligence
- President's Chief of Staff
- President's Deputy Counsel and National Security Council Legal Advisor
- National Security Advisor
- Deputy National Security Advisor
- Under Secretary of Defense for Policy

⁴ Sigma categories were established to provide additional need-to-know protection of specific types of nuclear weapons data.

(b)(7)(E) Further, we determined that former Secretary of Energy Rick Perry's CATS file was accessed on October 9 and October 13, 2020, and February 1, 2021, although his tenure ended on December 1, 2019. When we questioned an IN official about the access to the former Secretary's CATS file, the official indicated that the access initially occurred because former Secretary Perry was selected for a random counterintelligence evaluation. However, NNSA officials indicated to us that his [REDACTED] expired in early 2020, and there should not have been a reason to access his file. Although IN officials later advised that an individual could be subject to a random counterintelligence evaluation if they continue to hold their security clearance after separating from the Department, Mr. Perry was selected for a counterintelligence evaluation in 2018, prior to his departure, for reasons attributed to his enrollment [REDACTED] (b)(7)(E)

Failure to Follow Federal Requirements

Access to security records of the President, Vice President, and high-ranking Federal executives that are not within the scope of the Department's counterintelligence evaluation regulations in 10 CFR 709 occurred because NNSA and IN officials did not adhere to these requirements. Instead, NNSA officials told us that they followed requirements contained within two different sources issued by the Department.

(b)(7)(E) The first source was a 2012 memorandum from the Director, IN, and approved by former Secretary Steven Chu. The memorandum recommends that [REDACTED] (b)(7)(E)

(b)(7)(E) [REDACTED]. However, the memorandum states that the recommendation was based upon the Department's "Counterintelligence Evaluations Program (CIEP) (10 CFR 709) to [REDACTED]." The (b)(7)(E)

(b)(7)(E) Director, IN, recommends in the memorandum that the Secretary approve [REDACTED] to (b)(7)(E) mandatory counterintelligence evaluation coverage "under the regulatory provisions of the CIEP." These regulations are set forth at 10 CFR 709. Therefore, the memorandum appears to authorize mandatory counterintelligence evaluations only within the scope of 10 CFR 709.

(b)(7)(E) A counterintelligence evaluation under 10 CFR 709 is only authorized for a "covered person," which is defined in 10 CFR 709 as an "applicant for employment with DOE or a DOE contractor, a DOE employee, a DOE contractor employee, and an assignee or detailee to DOE from another agency." (b)(7)(E)

(b)(7)(E) IN officials, however, interpreted the 2012 memorandum approved by the Secretary to require mandatory counterintelligence evaluations of [REDACTED].

(b)(7)(E) IN, therefore, advised NNSA to request counterintelligence evaluations for everyone. This request was inconsistent with the scope of 10 CFR 709 and the 2012 memorandum that cites 10 CFR 709. Further, the 2012 memorandum only authorizes mandatory counterintelligence evaluations for [REDACTED]. Such access for the President, Vice-President, and high-ranking Federal officials that we identified was not for this purpose.

(b) (7)(E) The second source that NNSA officials asserted that they followed was Department Order 471.5,⁵ which states that [REDACTED] are subject to the counterintelligence evaluation regulations required in 10 CFR 709 and 710 to gain access to SAPs.⁶ The Order also, in effect, expands the 10 CFR 709 program, providing in Section 3(a) that the Order applies to [REDACTED] who require access to Department SAPs. [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED].” Even if an expansion of the applicability of 10 CFR 709 through a Departmental directive is appropriate, it is unclear whether this expansion was intended to include access to records of high-ranking Federal officials outside of the Department.⁷ Department Order 471.5 also requires compliance with Executive Order 13467, which exempts the President, Vice President, and their employees under 3 United States Code §§ 105–107 from investigations and adjudications for access to classified information. The lack of specificity regarding who is included also raises questions regarding whether the implementation of this provision may result in potential violations of the Privacy Act of 1974, which prohibits unnecessary use of personal information.

(b) (7)(E) An SAPs Oversight Committee⁸ member interpreted Department Order 471.5 to exclude only [REDACTED]

(b) (7)(E) [REDACTED]. Therefore, it was this committee member’s conclusion that counterintelligence evaluations be conducted on the President and Vice President because he reasoned that the directive did not explicitly exclude them from such evaluations. As explained above, this committee member’s interpretation was inconsistent with the definition of “covered persons” in 10 CFR 709 and was inconsistent with Executive Order 13467, Executive Order 12968, and SEAD 4’s exemptions.

Notably, Department Order 471.5 is more than 11 years old and is undergoing revision. It has not been revised since SEAD 4 became effective in 2017. The SAPs Oversight Committee Secretary advised that SEAD 4 and the individuals exempt from counterintelligence evaluations could be explicitly identified in Department Order 471.5 in the updated version. Whether these changes are incorporated into the final revisions of Department Order 471.5 will depend on input from others participating in the review and its subsequent update. However, regardless of

⁵ Department Order 471.5 requires that the Department abide by all the guidance in Executive Order 13526 and Executive Order 13467. [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED].”

⁶ Although Department Order 471.5 refers to the regulations in 10 CFR 709 and 710 for the counterintelligence evaluation program, the Department advised us that the regulations in Part 710 do not apply to counterintelligence evaluations. We have included references to Part 710 because it is included in Department Order 471.5.

⁷ It is also unclear whether [REDACTED]

(b) (7)(E) [REDACTED], would be consistent with Section 2.4(c) in Executive Order 12968, which precludes the establishment of duplicative investigative or adjudicative procedures for SAPs. For example, Executive Order 12968 does not address situations when a senior official, such as the Director of the Central Intelligence Agency, may have already been cleared for access through other processes.

⁸ [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED]

(b) (7)(E) [REDACTED].

whether the Department updates its internal directive, the Department must implement its counterintelligence program in a manner that is consistent with 10 CFR 709 and the exemptions in SEAD 4, Executive Order 13467, and Executive Order 12968. After we provided IN management with our preliminary results for the counterintelligence evaluations conducted on the President and Vice President, IN requested an opinion from the Department's General Counsel. Based on the advice received, IN informed a member of the Department's SAPs Oversight Committee that it will no longer complete these evaluations of the President and Vice President. However, this direction has not yet been formalized in any policy or procedure.

The Department's counterintelligence evaluations performed on the President, Vice President, and other high-ranking Federal executives were inconsistent with 10 CFR 709, which only applies to "covered persons." These evaluations were also inconsistent with the exemptions for the President and Vice President in Executive Order 13467, Executive Order 12968, and SEAD 4. Failure to implement its counterintelligence evaluation program in a manner that is consistent with these Federal requirements subjects the Department to a higher-than-necessary level of risk that personally identifiable information of high-ranking Federal executives will be compromised, and the requirements of the Privacy Act of 1974 might be violated. While NNSA officials might not have realized exemptions existed for certain officials such as the President and Vice President, IN should have ensured that its counterintelligence evaluations were conducted in accordance with the applicable requirements.

Recommendations

During our inspection, we determined the issues described above require immediate notification to the Secretary. Considering the findings identified during our review, we recommend that the Deputy Secretary direct the Executive Secretary, SAPs Oversight Committee, in coordination with the Administrator, NNSA, and the Director, IN, to:

1. Communicate formally to all relevant stakeholders the need to immediately cease counterintelligence evaluations of the President and Vice President in accordance with 10 CFR 709 and other Federal requirements.
2. Develop and implement effective processes immediately to ensure that counterintelligence evaluations are conducted in accordance with 10 CFR 709 and the exemptions reflected in SEAD 4, Executive Order 13467, and Executive Order 12968 to include:
 - Communicating and fully implementing Federal requirements that incorporate provisions regarding personnel exempt from Department counterintelligence evaluations requirements such as the President and Vice President and identify, by position, the senior officials from other Government agencies that are covered;
 - Establishing policies, procedures, and/or mechanisms to ensure counterintelligence evaluations are not requested or conducted in a manner that is inconsistent with the scope of individuals who are “covered persons” under 10 CFR 709; and
 - Amending Department Order 471.5, so that it is consistent with the scope of the regulations, Executive Orders, and Government-wide policy provisions and specifically identifies the Government officials, by position, who the Department intends to add to the counterintelligence program outside the scope of “covered persons” in 10 CFR 709.
3. Determine whether there is any other noncompliance with laws, regulations, or Government-wide policies, including, but not limited to, the requirements of the Privacy Act of 1974. If noncompliance has occurred, take appropriate remedial or corrective actions, including reporting to the necessary authorities, as appropriate.

Management Comments

Management commented that the inspection was initiated at the request of NNSA for assistance in understanding why records of certain senior officials were accessed in CATS. Management indicated that the records were accessed as part of a good-faith effort to protect national security. Management also recognized that Department policies were insufficiently clear and, while the OIG characterized the access as inappropriate, Department officials who accessed the records reasonably understood that doing so was within the normal course of their duties.

Management fully concurred with Recommendation 1 and Recommendation 3 and partially concurred with Recommendation 2. Specifically, management stated it would end the practice of conducting counterintelligence evaluations on the President and Vice President and would incorporate this guidance into the next iteration of Department Order 471.5. In response to Recommendation 2, management indicated that it intends to address counterintelligence evaluations conducted for access to the Department's SAPs in the next iteration of Department Order 471.5. Management commented that counterintelligence evaluations are not required to be done in accordance with the exemptions identified in Executive Order 12968, Executive Order 13467, and SEAD 4. Management also asserted that the Secretary of Energy has a separate statutory authority to determine, consistent with the interests of national security, the categories of individuals that should be subject to the Department's counterintelligence evaluation program. Nonetheless, management agreed to review the exemptions in Executive Order 12968, Executive Order 13467, and SEAD 4 as part of a review of the applicable policy. In response to Recommendation 3, management advised that the Department's Office of the General Counsel, in coordination with NNSA's General Counsel, will review the OIG's report findings to determine whether the facts reported indicated noncompliance with laws, regulations, or Government-wide policies.

Management's formal comments are included in Appendix 3.

Office of Inspector General Response

Department Order 224.3A, *Audit Coordination, Resolution, and Follow-Up*, requires agreement or disagreement with OIG recommendations. In this matter, NNSA and IN have "partially" concurred with Recommendation 2 in their written management response. However, management's comments and planned actions were responsive to all three recommendations, so in this instance, we are accepting the "partial" concurrence as a concurrence. Going forward, the Department and NNSA will be required to provide either agreement or disagreement, which may be styled as a "concurrence" or "nonconcurrence" with each recommendation within an OIG report. This type of clarity allows for constructive engagement between the OIG and the program office and ensures proper reporting of disagreements. For its part, the OIG will work with the auditees to ensure that all recommendations are clear and, therefore, susceptible to a concurrence or nonconcurrence by the auditee.

With respect to Recommendation 2, although management did not fully agree that the exemptions of Executive Order 12968, Executive Order 13467, and SEAD 4 applied to counterintelligence evaluations, management agreed to consider them in its review of the

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applicable policy. In addition, although management asserted that records were accessed only through good-faith efforts to protect national security, we remain concerned about the loss of data confidentiality caused by accessing the security records of the President, Vice President, and certain high-ranking Federal executives. As such, it remains an issue that the Department relies on outdated Department Order 471.5 that may expose personal information to unnecessary risk.

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Commonly Used Terms

Clearance Action Tracking System	CATS
Code of Federal Regulations	CFR
Department of Energy	Department or DOE
National Nuclear Security Administration	NNSA
Office of Inspector General	OIG
Office of Intelligence and Counterintelligence	IN
Security Executive Agent Directive	SEAD
Special Access Programs	SAPs

Objective, Scope, and Methodology

Objective

We initiated this inspection to determine whether the Department of Energy effectively managed security over the Clearance Action Tracking System. However, during our inspection, we noted a lack of processes to prohibit counterintelligence evaluations of certain Executive Branch employees that warrants immediate actions and the issuance of this special report.

Scope

The inspection was performed from April 2022 through December 2022 at Department Headquarters in Washington, DC, and Germantown, Maryland; and at the National Nuclear Security Administration's (NNSA) Albuquerque Complex in Albuquerque, New Mexico. The scope was initially limited to the facts and circumstances regarding the allegation brought forth by NNSA concerning access of personnel files located within the Clearance Action Tracking System. However, based on our preliminary test work, we expanded the scope to include access to other individuals' information not referred by NNSA. The inspection was conducted under Office of Inspector General Project Number S22TG019.

Methodology

To accomplish our objective, we:

- Reviewed applicable laws, regulations, and directives related to the inspection;
- Interviewed Federal and/or contractor personnel from the Office of Environment, Health, Safety and Security, the Office of Intelligence and Counterintelligence, the Office of the General Counsel, and NNSA;
- Obtained and reviewed Clearance Action Tracking System audit logs to identify individuals that had accessed personnel files of Executive Branch personnel, including high-ranking Federal executives from the Department and other Government agencies; and
- Obtained and reviewed supporting documentation that confirmed counterintelligence evaluations were requested and performed on certain individuals that were identified in our review of audit logs.

We conducted our inspection in accordance with the *Quality Standards for Inspection and Evaluation* (December 2020) as put forth by the Council of the Inspectors General on Integrity and Efficiency. We believe that the work performed provides a reasonable basis for our conclusions.

Appendix 2

NNSA management waived an exit conference on May 17, 2023. Officials from the Office of Intelligence and Counterintelligence did not respond to the Office of Inspector General's inquiry regarding whether it would like an exit conference.

Appendix 3

Management Comments



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Department of Energy
Washington, DC 20585

May 16, 2023

MEMORANDUM FOR TERI DONALDSON
INSPECTOR GENERAL

FROM: JILL HRUBY *Jill H*
UNDER SECRETARY FOR NUCLEAR SECURITY
ADMINISTRATOR, NNSA

STEVEN BLACK *Steven K. Black* Digitally signed by Steven K. Black
Date: 2023.05.09 12:14:30 -0400
DIRECTOR
OFFICE OF INTELLIGENCE AND COUNTERINTELLIGENCE

SUBJECT: Draft Special Report on Access of Executive Branch Personnel
Records, S22TG019

Thank you for the opportunity to review and comment on the subject draft report. The Department of Energy appreciates the Office of Inspector General (OIG)'s willingness to support the request by the Office of Defense Nuclear Security for assistance in understanding why the records of certain senior officials in the Clearance Access Tracking System were accessed.

It is important to note that the records were accessed only as part of a good-faith effort to protect national security, and the OIG review did not identify any loss or compromise of personal information for the affected individuals. The Department agrees with the OIG conclusion that the DOE policies were insufficiently clear with respect to the accessing of the records at issue. While the OIG characterizes the access as inappropriate, the Department officials who accessed those records reasonably understood that doing so was within the normal course of their duties.

The Department concurs or partially concurs with the report recommendations. The attachment to this memorandum details the Department's planned corrective actions and provides comments relating to specific recommendations.

If you have any questions regarding this response, please contact [REDACTED] at 202-586-[REDACTED]

(b)(6), (b)(7)
(C)

Attachments

Controlled by: Steven Black, DOE-IN, 202-586-[REDACTED]

(b)(6), (b)(7)
(C)

Attachment

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Management Response

OIG Draft Special Report on Access of Executive Branch Personnel Records, S22TG019

Recommendation 1:

Communicate formally to all relevant stakeholders the need to immediately cease counterintelligence evaluations of the President and Vice President in accordance with 10 CFR 709 and other Federal requirements.

DOE Response: Concur.

DOE will end this practice and the Executive Secretary, SAPs Oversight Committee, has communicated the need to cease counterintelligence evaluations of the President and Vice President. This guidance will be formally documented by updating DOE Order 471.5, *Special Access Programs*. Consistent with DOE policy, updates to DOE Orders are approved by the Deputy Secretary.

Estimated Completion Date: June 30, 2023

Recommendation 2:

Develop and implement effective processes immediately to ensure that counterintelligence evaluations are conducted in accordance with 10 CFR 709 and the exemptions reflected in SEAD 4, Executive Order 13467, and Executive Order 12968 to include:

- *Communicating and fully implementing Federal requirements that incorporate provisions regarding personnel exempt from Department counterintelligence evaluations requirements such as the President and Vice President and identify, by position, the senior officials from other Government agencies that are covered;*
- *Establishing policies, procedures, and/or mechanisms to ensure counterintelligence evaluations are not requested or conducted in a manner that is inconsistent with the scope of individuals who are "covered persons" under 10 CFR 709; and*
- *Amending Department Order 471.5, Special Access Programs, so that it is consistent with the scope of the regulations, Executive Orders, and Government-wide policy provisions and specifically identifies the Government officials, by position, who the Department intends to add to the counterintelligence program outside the scope of "covered persons" in 10 CFR 709.*

DOE Response: Partially Concur.

This recommendation, with respect to counterintelligence evaluations conducted for access to DOE SAPs, will be addressed by updating DOE Order 471.5, *Special Access Programs*, which will include responsibilities for implementing the Order requirements.

The Executive Secretary of the SAPs Oversight Committee is working with Departmental Elements and appropriate Site Offices to update DOE Order 471.5, *Special Access Programs*. The updated Order will list the high-level government positions exempt from counterintelligence evaluations. In addition, based on OIG's recommendation, the order will specifically identify

Attachment

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Management Response

OIG Draft Special Report on Access of Executive Branch Personnel Records, S22TG019

those who fall outside of the definition for "covered persons" within 10 CFR 709 but who require a counterintelligence evaluation for approval for access to DOE SAPs.

Note that counterintelligence evaluations are not required to be done in accord with the exemptions identified in Executive Order 12968, Executive Order 13467, and SEAD 4. The Secretary has a separate statutory authority to determine, consistent with the interests of national security, the categories of individuals that should be subject to the Department's counterintelligence evaluation program. The Department will, however, review the exemptions identified in Executive Order 12968, Executive Order 13467, and SEAD 4 as part of the Department's review of the applicable policy.

Estimated Completion Date: June 30, 2023

Recommendation 3:

Determine whether there is any other noncompliance with laws, regulations, or Government-wide policies, including, but not limited to, the requirements of the Privacy Act of 1974. If noncompliance has occurred, take appropriate remedial or corrective actions, including reporting to the necessary authorities, as appropriate.

DOE Response: Concur.

The DOE Office of General Counsel, in coordination with the NNSA General Counsel, will review the OIG report findings to determine whether the facts reported indicate noncompliance with laws, regulations, or Government-wide policies, including the provisions of the Privacy Act.

Estimated Completion Date: June 30, 2023