



U. S. Department of Justice
Drug Enforcement Administration

www.dea.gov

Springfield, Virginia 22152

JUN 21 2016

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter to Acting Administrator Chuck Rosenberg dated March 14, 2016, regarding the January 7, 2016, release of two reports by the Department of Justice Office of the Inspector General (OIG) regarding the Drug Enforcement Administration's (DEA or the Agency) use of Amtrak and Transportation Security Administration (TSA) personnel as paid cooperating sources.(CS)¹.

In accordance with the recommendations of the OIG report released in July 2015,² and a separate review performed by the Government Accountability Office (GAO) regarding DEA's Cooperating Source (CS) policy,³ DEA management and the DOJ Criminal Division conducted a thorough review of DEA's CS program. As we discussed during a briefing with Committee staff on May 13, 2016, this review resulted in policy changes regarding the oversight and management of CSs, including the proper utilization of Limited Use CSs. The revised DEA Guidelines (Guidelines) were approved by the Assistant Attorney General for the Criminal Division on April 5, 2016, and bring DEA into compliance with the Attorney General's Guidelines regarding the use of confidential sources. Except under narrow circumstances, the revised Guidelines prohibit DEA employees from signing up employees of governmental and quasi-governmental agencies as CSs to provide information gained in the course and scope of their employment. The revised Guidelines also expressly prohibit payment for information DEA could otherwise obtain at no charge to the government. Please note that the OIG also has an ongoing audit of additional CS issues. DEA is

¹ Department of Justice, Office of the Inspector General. *Investigative Summary: Findings Concerning the DEA's Use of a TSA Airport Security Screener as a Paid Confidential Source* (Jan. 7, 2016) and *Investigative Summary: Findings Concerning the DEA's Use of Amtrak Employees as Paid Confidential Sources*. (Jan. 7, 2016). Available at: <https://oig.justice.gov/reports/all.htm>.

² Department of Justice, Office of the Inspector General. *Audit of the Drug Enforcement Administration's Confidential Source Policies and Oversight of Higher-Risk Confidential Sources*. (July 21, 2015). Available at: <https://oig.justice.gov/reports/2015/a1528.pdf#page=1>.

³ U.S. Government Accountability Office. *Confidential Informants: Updates to Policy and Additional Guidance Would Improve Oversight by DOJ and DHS Agencies*. (GAO-15-807; Sep. 15, 2015). Available at: <http://www.gao.gov/products/GAO-15-807>.

cooperating with that audit and is committed to making further revisions to the Guidelines as necessary.

In addition to the revised Guidelines, DEA has taken actions to ensure that CSs approved under various designations, including a Limited Use designation, are being used as such, including updated procedures to ensure compliance. The suitability of an individual to be established and utilized as a CS is initially reviewed by the following DEA personnel: 1) the requesting agents' supervisor (the level of supervisory approval depends on the category of CS being established); 2) the requesting office's Cooperating Source Coordinator; and 3) DEA's Office of Operations Management Section at DEA Headquarters. Twice per year, each of DEA's 21 Field Divisions is required to review and assess the files and usage of each CS under their control. This biannual review involves two levels of review - at the Group Supervisor and Assistant Special Agent in Charge levels. This process looks at the previous six months of activity and is designed to ensure that CS usage during the review period was in compliance with DEA/DOJ policies and procedures, and was in line with their designation (i.e. limited use, regular use, etc.). In addition to these reviews, Controlling Investigators are required annually to review each CS's file and conduct a new risk assessment of the CS's suitability for continued service. These risk assessments are reviewed by the Controlling Investigator's Group Supervisor and Assistant Special Agent in Charge. An additional layer of review by a Sensitive Activities Review Committee exists for CSs active over six years, as well as another DEA Headquarters' review when CSs reach the nine-year mark. Independently, DEA's Office of Inspections also conducts a cyclical inspection process of each office, which includes examining CS establishment, management, and oversight practices within the CS program.

Separate reviews conducted by the OIG and DEA revealed DEA's previous CS policy concerning employees of government and quasi-government agencies was insufficient and resulted in DEA personnel taking actions while under inadequate guidance from the Agency. DEA has examined the employee actions relative to the Amtrak/TSA-related CSs and found that because the DEA policy at that time provided inadequate guidance, no disciplinary action was warranted. The two DEA employees named in the OIG's January 7, 2016 Amtrak Report have retired from the Agency. As noted above, DEA policy pertaining to the use of CSs has been revised and now expressly prohibits the use of governmental and quasi-governmental employees as CSs to provide information obtained in the course of their employment.

Your letter also asked about any other audits or reviews concerning employees utilizing CSs employed by government and quasi-government agencies. As indicated earlier in this letter, the OIG has an ongoing audit of CS-related issues within DEA. The audit limits the information we can provide while it is ongoing. Please note, however, that in March 2016, DEA senior management conducted its own review and identified five current CSs who were Amtrak employees. This review also gathered historical data concerning deactivated Amtrak CSs. All of the Amtrak CSs were established prior to the release of the OIG report. Upon learning this information, DEA took several

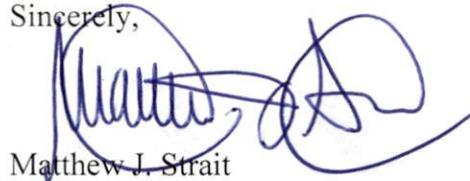
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key steps to educate DEA's workforce and to prevent similar instances in the future, including the following: deactivating the five CSs on March 21, 2016; releasing "interim guidance" on March 24, 2016, regarding government and quasi-government employees during the pendency of the revised Guidelines; and reporting the matter to the OIG. DEA will continue to cooperate with the OIG on its audit, and we will revise our Guidelines further as may become necessary.

Finally, in your letter, you asked what actions DEA has taken to improve its relationship with the Amtrak Police Department to ensure that information is shared between the two entities. DEA works closely and cooperatively with the Amtrak Police Department, while continually striving to improve its relationship with all of our law enforcement partners. These relationships include sharing intelligence related to our mission and that of our partner agencies. DEA currently has Amtrak Police Officers assigned to three DEA task forces in the U.S. DEA's Acting Deputy Administrator has directed all Special Agents in Charge of DEA Field Divisions to ensure that Amtrak personnel assigned to DEA task forces have: access to Amtrak's passenger databases; the skills to utilize those databases in furtherance of our combined operations; and the ability to identify where and when Amtrak facilities and trains are being used to facilitate criminal activity.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Matthew J. Strait
Section Chief
Congressional Affairs Section