

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL

SUBJECT: Guidelines Regarding Prompt Handling of Reports of Possible Criminal Activity Involving Foreign Intelligence Sources

Section 905(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272, 389, requires the Attorney General to develop guidelines to ensure that the Department of Justice responds within a reasonable period of time to reports from the intelligence community of possible criminal activity involving foreign intelligence sources or potential foreign intelligence sources. *See* 50 U.S.C. § 403-5b(b). This memorandum establishes procedures to administer the requirements of section 905(b).

Pursuant to section 1.7(a) of Executive Order 12333, 28 U.S.C. § 535(b), and the 1995 *Memorandum of Understanding: Reporting of Information Concerning Federal Crimes* (“1995 MOU”) between the Department of Justice and members of the intelligence community (Attachment A hereto), the intelligence community is required, *inter alia*, to report to the Assistant Attorney General or a designated Deputy Assistant Attorney General of the Criminal Division information that it has collected in the performance of its intelligence activities concerning possible federal crimes by employees of an intelligence agency and violations of specified federal criminal laws by any other person. This reporting requirement extends to matters in which the intelligence community agency determines that investigation or prosecution of the matter “may result in a public disclosure of classified information or intelligence sources or methods or would jeopardize the security of ongoing intelligence operations.” 1995 MOU at 9.

Upon receipt of a report of possible criminal activity pursuant to the 1995 MOU, the designated Deputy Assistant Attorney General shall refer the possible crime report to the appropriate component within the Department of Justice for review, including a determination of whether to commence or decline to commence a criminal investigation.

Section 905(b) reflects a recognition that when the possible criminal activities involve a foreign intelligence source or potential foreign intelligence source, the referring intelligence community agency may have a strong interest in knowing on an expedited basis whether the Department of Justice intends to investigate potential crimes.

Accordingly, I hereby direct that, when an intelligence community agency making such a possible crime report (all of which fall within the scope of and therefore should be made pursuant to the 1995 MOU) to the Criminal Division of the Department:

(1) notifies the Assistant Attorney General or designated Deputy Assistant Attorney General¹ that the possible crime report involves activity of a foreign intelligence source or potential foreign intelligence source; and

(2) requests an expedited determination of the Department of Justice's intent to commence or decline to commence a criminal investigation,

the designated Deputy Assistant Attorney General and/or another attorney within the Criminal Division or other relevant component of the Department shall expeditiously confer with the referring intelligence community agency about the possible criminal activity, the reasons for the time sensitivity, and the nature and extent of the intelligence equities that may be affected by a decision to commence or decline to commence a criminal investigation of the reported activity. Upon receipt of the report, the designated Deputy Assistant Attorney General shall determine whether immediate contact with the referring agency is necessary. If a need for immediate contact is not established, an appropriate Department attorney will be made available for an initial contact with the referring intelligence community agency within seven days of the receipt of the report requesting an expedited determination.

After conferring with the referring agency, receiving any necessary additional information, and consulting with other appropriate Department components, the Assistant Attorney General or the designated Deputy Assistant Attorney General of the Criminal Division or another appropriate Department attorney shall inform the referring agency within a reasonable period of time whether the Department intends to commence or decline to commence a criminal investigation of the conduct described in the crime report. In all cases, Department attorneys shall take into account any special time urgency associated with the intelligence community agency's intelligence equities or the possible criminal activity and, if necessary, provide notice of the prosecutorial decision on a highly expedited basis. Except in extraordinary circumstances, the referring agency should be informed within 30 days. Extraordinary circumstances requiring more than 30 days may include situations where the case is of unusual complexity or where information necessary for a prosecutorial decision is unavailable.

These procedures are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

The guidelines in this memorandum shall be effective immediately.

¹ The notification should be documented in writing, consistent with the procedures set forth in the 1995 Memorandum of Understanding governing the reporting by the intelligence community of possible criminal activity to the Department of Justice.