



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-209060

RESTRICTED - Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

OCTOBER 7, 1982

RELEASED

The Honorable Jack Brooks
Chairman, Subcommittee on
Legislation and National Security
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

Subject: Review of Department of Defense Investigation
of Leak of Classified Information to The
Washington Post (GAO/GGD-83-15)

Your August 3, 1982, letter requested that we review a Department of Defense (DOD) investigation of a disclosure of classified information to The Washington Post. The information, which appeared in the Post on January 8, 1982, was from classified documents used in a meeting of DOD's Defense Resources Board on January 7 and from discussions during that meeting.

The following two paragraphs from the August 3 letter highlight the case.

"Shortly after the article appeared, DOD announced that an investigation into the leak was underway and that Deputy Secretary Frank Carlucci and several other members of the Defense Resources Board had taken polygraph tests at their own request. Subsequently, other DOD employees were requested to volunteer to take polygraph examinations.***

In March, news accounts reported that the Department had determined the source of the leak and had decided to dismiss the employee in question. However, when the investigation closed in May, the Department could not prove, by a preponderance of the evidence, who had provided the information to the Post."

Specifically, we were asked to (1) give an opinion on DOD's compliance with its directive on the use of the polygraph; (2) provide assurance that the ability of the

119859

investigators to act in an impartial, professional manner was not compromised by the level at which the investigation was begun; (3) analyze the efficacy of the investigation in removing security risks from positions of trust; and (4) ascertain whether DOD followed procedures and conducted an investigation designed most effectively to ferret out wrongdoers and protect the rights of DOD employees. We were told that the purpose of the review was not to determine the source of the leaks of classified information.

To comply with the request, we interviewed the investigators and polygraph examiners who participated in the investigation. We reviewed the investigative report and supporting documentation; DOD directives on the investigation of the unauthorized disclosure of classified defense information and the use of the polygraph; Army, Navy, and Air Force instructions for investigating the release of classified information through the news media; and nine investigative reports of the three military services and the Defense Investigative Service (DIS) of other leaks to the news media. We did not interview the columnist who wrote the Post article or the DOD employee suspected of supplying information for the article.

We believe that DOD complied with its Directive on the use of the polygraph and that the level of the officials involved did not affect either the impartiality or the professionalism of the investigators. Although no one was removed from a position of trust as a result of the investigation, we believe that the investigation was done in an effective manner and that the rights of the DOD employees involved were protected. The following sections provide a detailed response to your four questions.

DID DOD COMPLY WITH ITS
DIRECTIVE ON USE OF THE POLYGRAPH?

Department of Defense Directive Number 5210.48, "The Conduct of Polygraph Examinations and the Selection, Training and Supervision of DOD Polygraph Examiners," dated October 6, 1975, as amended, establishes policy for the use of polygraphs and assigns authority, responsibilities, and functions.

Of particular concern in the subject investigation is the policy section of that Directive, which states in part as follows:

"Use of Polygraphs. All DOD investigations and interviews shall depend upon relevant evidence secured through skillful investigation and full interrogation. Properly used, the polygraph can be a useful investigative aid in securing and verifying evidence, however, the polygraph shall be

employed only as an aid to support other investigative techniques and be utilized generally only after the investigation by other means has been as thorough as circumstances permit."

This concern is the result of news reports that high level officials were being polygraphed and indications that other investigative techniques such as interviews, were not used or not used before polygraphs were administered. DOD records show that many individuals were interviewed and not given a polygraph. The records also show that investigators checked telephone logs.

At the January 7 meeting of the Defense Resources Board were 24 principals, including the Deputy Secretary of Defense; two Under Secretaries of Defense; the Secretaries of the Army, Navy, and Air Force; various Assistant Secretaries; the Joint Chiefs of Staff; other officials; and four supporting staff-members who assisted in the briefings. Some staff members had had access to the briefing books, or material therein, prior to the Board meeting and some other staff members were debriefed after the meeting.

At our request, DOD provided the following breakdown of the number of individuals interviewed and polygraphed, which we verified to supporting documentation.

"Attendees polygraphed only	- 21
Attendees interviewed prior to polygraph	- 2
Attendees interviewed subsequent to polygraph	- 1
Attendees interviewed only	- 0
Staffers interviewed prior to polygraph	- 3
Staffers interviewed subsequent to polygraph	- 1
Staffers interviewed only	- 34
Staffers polygraphed only	- 5
Hill staffers interviewed only	- 3"

As noted above, 26 individuals were polygraphed without being interviewed. Only five individuals were interviewed before the polygraph was given and two were interviewed after being polygraphed.

In response to your earlier request, the Secretary of Defense, in a March 17, 1982, letter, provided a listing of 68 investigations of leaks of classified material that occurred during the period January 1975 to the present, including the subject case. We reviewed synopses of the 68 investigations conducted by the Army, Navy, Air Force, and DIS. None of the other cases were comparable to the subject case because, where

DOD employees were suspect, the individuals were usually at the lower level. The polygraph was only used in one other case and that involved a contractor employee who agreed to the test after an interview. In that case, the individual was the only suspect and had sworn, under oath, that he was innocent. The subsequent polygraph examination indicated no deception by the individual. On the basis of the lack of other evidence and the polygraph results, the case was closed.

The applicable DOD Directive provides that the polygraph should "be utilized generally only after the investigation by other means has been as thorough as circumstances permit." Although the records show that DOD seldom used the polygraph, either as a primary or supplemental investigative technique, the Directive's use of the term "generally" suggests that the use and timing of the test is not subject to inflexible or rigid criteria. Also, another section of the Directive authorizes the Deputy Under Secretary of Defense for Policy "to approve waivers to the policies enunciated herein on a case-by-case basis." DOD records show that the Deputy Under Secretary of Defense for Policy, on the basis of a request from the Deputy Secretary of Defense, requested the investigation and the use of the polygraph examination on January 8, 1982, and that the Deputy Under Secretary was the first individual to be given a polygraph examination.

On the basis of the above information and that included below, we found no basis for concluding that DOD conducted the subject investigation in a manner inconsistent with the requirements of its Directive on the use of the polygraph.

WERE INVESTIGATORS ABLE TO
MAKE AN INVESTIGATION IN AN
IMPARTIAL AND PROFESSIONAL MANNER?

Because high-level officials were participants in the meeting from which information was leaked to The Washington Post and were subject to the investigation, there was a possibility that they might not have been treated the same as lower level employees in this or other similar investigations.

The investigation was conducted by investigators from DIS and polygraph examiners from the Army, Navy, and Air Force. We interviewed those individuals and examined documentation supporting their interviews and polygraph examinations, including forms signed by the officials showing that they had consented to the polygraph and had been apprised of their rights, as required by the DOD Directive. We were told that no one, including the Deputy Secretary of Defense, was allowed to be polygraphed in his own office. Each individual was taken to what the examiners referred to as a "neutral site" to preclude interruptions and distractions. The results of each

examination were reviewed by an examiner who was not present during the examination.

Our examination of the records showed that polygraph examiners did not conduct examinations of individuals associated with their respective services. For example, the Air Force polygraph examiner did not polygraph any individuals associated with the Air Force.

As already noted in the preceding section, this investigation set a precedent with respect to the level and number of officials involved. Therefore, we were unable to make a valid comparison with any other leak investigation. However, on the basis of our examination of the records and discussions with the investigators and polygraph examiners, we have no reason to believe that the investigation was conducted in other than an impartial and professional manner.

WAS THE INVESTIGATION SUCCESSFUL
IN REMOVING FROM POSITIONS OF
TRUST PERSONS DETERMINED OR
THOUGHT TO BE SECURITY RISKS?

The investigation did not result in the removal of any individuals from positions held at the time of the leak. One individual was given a notice of proposed removal because of his (1) disclosure of official information to unauthorized persons and (2) disregard of DOD regulations and procedures for the protection of classified information. Upon appeal, the proposal was dismissed and the individual was given a letter of reprimand because of his disregard for DOD regulations, but not for "leaking" the official information that appeared in the article. We reviewed the individual's personnel file and saw a copy of the reprimand letter which is to remain in the file for a period not to exceed 2 years.

We reviewed synopses of the investigations of the 68 cases of unauthorized disclosure of classified information (previously mentioned) and the investigative files for 9 of those cases. In no case was there any indication that an individual was removed from a position of trust because of an investigation. In most cases, the sources of the leaks could not be determined because of the wide dissemination of the classified information. In at least one other case, a DOD employee was given a letter of reprimand for passing classified information to an individual who did not have a security clearance and who passed it on to a third party.

We questioned a DOD official about the apparent inability of DOD to curtail leaks and to remove from positions of trust those employees who are responsible for the unauthorized disclosure of classified information. The official agreed

that the record of success in this area is not good. He suggested that a possible solution would be legislation similar to the British Official Secrets Act, which, among other things, makes it a crime for an individual to receive classified or official information in contravention of the act if he knew or believed such to be the case.

WAS THE INVESTIGATION CONDUCTED IN
A MANNER TO MOST EFFECTIVELY
FERRET OUT WRONGDOERS AND
PROTECT THE RIGHTS OF DOD EMPLOYEES?

The subject investigation, which involved the extensive use of the polygraph, was conducted in a manner unlike any previous DOD investigation of an unauthorized disclosure of classified information. However, due to the unusual circumstances of this case, we have no basis for questioning the decision to use the polygraph or the timing of the tests that were administered. Overall, it appeared to us that the investigation was conducted in an effective manner, and we found no indication of noncompliance with the procedural safeguards prescribed by the Directive.

Two separate issues were involved in this case. The first involved the unauthorized release of classified information and the second involved the disclosure of certain discussions during a January 7 meeting of DOD's top policy making group, the Defense Resources Board.

With respect to the first issue, some of the information in the Post article was taken from two documents, classified "secret", that were used during the meeting and were available prior to the meeting. We examined both documents. A talking paper, used by one of the staffers who assisted in the briefing during the meeting, was not classified. It should have been classified on a derivative basis because its contents were taken from one of the two classified documents.

With respect to the second issue, it appears that top officials were concerned that, in addition to classified information that was leaked to the press, either before or after the Board meeting, someone present at the meeting had revealed discussions among meeting participants. According to DOD records, the primary concern of the Deputy Secretary of Defense was that deliberations of the Board were conveyed to a reporter shortly after the meeting. The reporter called DOD officials to verify the information 2 hours after the meeting was adjourned, and the story appeared in the Post on January 8. The records also show that during an interview with one individual on January 12, that individual identified two other individuals whom he suspected of being involved in the leak. The first individual was also given a polygraph the same day,

B-209060

bringing to 13 the total number of polygraphs given through January 12. The records show that one of the suspected individuals was interviewed on January 12 and subsequently given polygraph examinations on January 14 and 18 and February 10. That individual, the one whom DOD proposed to remove from Federal service, was given a letter of reprimand after appealing the proposed action to the Secretary of Defense.

- - - -

As requested by your representative, we did not request comments from DOD and, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its issue date. At that time, we will send copies to the Secretary of Defense and other interested parties and make copies available to others upon request.

Sincerely yours,



William J. Anderson
Director