Department of Defense
DIRECTIVE

NUMBER 5210.50
July 22, 2005

USD(I)

SUBJECT: Unauthorized Disclosure of Classified Information to the Public

References: (a) DoD Directive 5210.50, subject as above, February 27, 1992 (hereby canceled)
(b) DoD 5200.1-R, "Information Security Program," January 1997
(c) Section 2723 of title 10, United States Code
(d) Executive Order 12958, "Classified National Security Information," April 17, 1995, as amended by Executive Order 13292, March 25, 2003
(e) through (g), see enclosure

1. REISSUANCE AND PURPOSE

This Directive reissues reference (a), updates policy, and assigns responsibilities for reporting and investigating known or suspected incidents of unauthorized public disclosure of classified information and reporting corrective and disciplinary action taken.

2. APPLICABILITY AND SCOPE

This Directive:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components").

2.2. Shall be made applicable to DoD contractors through appropriate contract clauses.

3. DEFINITIONS

3.1. Additional Investigation. Additional investigation beyond what is required by Chapter 10 of DoD 5200.1-R (reference (b)), which may be needed to allow application of appropriate sanctions for violating regulations, criminal prosecution, or deciding effective remedies for discovered vulnerabilities.

3.2. Unauthorized Disclosure. A communication or physical transfer of classified information to an unauthorized recipient.

4. POLICY

It is DoD policy that known or suspected instances of unauthorized public disclosure of classified information shall be reported promptly and investigated to decide the nature and circumstances of the disclosure, the extent of damage to national security, and the corrective and disciplinary action to be taken. Unauthorized disclosure of classified information to the public reduces the effectiveness of DoD management; damages intelligence and operational capabilities; and lessens the Department of Defense's ability to protect critical information, technologies, and programs.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Intelligence (USD(I)) shall:

5.1.1. Provide policy and direction for reporting and investigating unauthorized public disclosures of classified information.

5.1.2. Authorize exceptions to this Directive. This authority may be delegated to one level below the USD(I).

5.1.3. Monitor and oversee investigations of unauthorized public disclosures of classified information throughout the Department of Defense and/or within DoD contractor facilities.

5.1.4. Review the findings of the DoD Component initial inquiries and/or investigations of unauthorized disclosure of classified information to the public.

5.1.5. Depending on the results of the initial inquiry and/or investigation, and in consultation with the Head of the DoD Component having original classification authority for the information and the DoD General Counsel (DoD GC), decide whether an additional investigation is appropriate.

5.1.6. In consultation with the Head of the DoD Component having original classification authority for the information and the DoD GC, decide whether an unauthorized disclosure should be referred to the Department of Justice (DOJ) for investigation and/or criminal prosecution.

5.1.7. Notify Congress and the Information Security Oversight Office, as required, by Section 2723 of title 10, United States Code (U.S.C.) and Executive Order 12958 (references (c) and (d)).

5.1.8. Serve as the principal point of contact on counterintelligence and security investigative matters that involve the unauthorized public disclosure of classified information directed to the Department of Defense by other Government Agencies or that may involve other Government Agencies.

5.1.9. Ensure that appropriately designated DoD Components provide investigative support to the Heads of the DoD Components that do not have an investigative capability and to conduct investigations involving more than one DoD Component.

5.1.10. Coordinate the conduct of comprehensive damage assessments, analysis, and/or operations, in consultation with the DoD GC, when unauthorized public disclosures significantly affect DoD programs, activities, capabilities, or techniques.

5.1.11. Request the initiation of comprehensive analyses and damage assessments when such disclosures affect DoD intelligence or counterintelligence activities, capabilities, and techniques.

5.1.12. Oversee the implementation of this program within the Department of Defense through security channels.

5.2. The Heads of the DoD Components shall:

5.2.1. Ensure that all known or suspected instances of unauthorized disclosure of classified information to the public are promptly reported and investigated, and that appropriate corrective action is taken. The preliminary inquiry and/or investigation shall decide the information listed in enclosure 3 under reference (b).

5.2.2. Notify the USD(I) or his or her designee about any unauthorized disclosure of classified information to the public, and provide the information listed in enclosure 3.

5.2.3. When the responsibility for a preliminary inquiry and/or investigation of the unauthorized public disclosure of known or suspected classified information is unclear or is shared with another DoD Component, refer the matter through security channels to the USD(I) or his or her designee, who shall decide investigative responsibility in consultation with the affected DoD Component.

5.2.4. When the initial inquiry and/or investigation identifies the person responsible for the unauthorized public disclosure of classified information, consider taking administrative and/or judicial action under reference (b) and 10 U.S.C. Chapter 47 (reference (e)). Submit a completed DOJ Media Leak Questionnaire (see enclosure 3), through security channels to the USD(I) who shall coordinate with the DoD GC to decide whether a referral to the DOJ for prosecution is warranted.

5.2.5. When the initial inquiry and/or investigation does not identify the person responsible for an unauthorized public disclosure of classified information, in consultation with the USD(I) and the DoD GC, determine whether an additional investigation is appropriate.

5.2.6. Report investigative results and corrective and/or disciplinary action taken to the USD(I).

5.2.7. Where circumstances show that a foreign intelligence service or an international terrorist group or organization may be involved, refer the incident to the appropriate counterintelligence organization in accordance with DoD Directive 5240.2 (reference (f)) and to the USD(I).

5.2.8. Designate a senior official to be responsible for carrying out this Directive.

6. INFORMATION REQUIREMENTS

The reporting requirements referred to in this Directive are exempt from licensing in accordance with paragraphs C4.4.7. and C4.4.8. of DoD 8910.1-19 (reference (g)).

7. EFFECTIVE DATE

This Directive is effective immediately.

Gordon England
Acting Deputy Secretary of Defense

Enclosures – 4
- E1. References, continued
- E2. Reporting and Investigation Guidance
- E3. Preliminary Inquiry and/or Investigation Information Requirements
- E4. DOJ Media Leak Questionnaire

E1. ENCLOSURE 1

REFERENCES, continued

(e) Chapter 47 of title 10, United States Code
(f) DoD Directive 5240.2, "DoD Counterintelligence (CI)," May 22, 1997
(g) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," June 30, 1998

E2. ENCLOSURE 2

REPORTING AND INVESTIGATION GUIDANCE

E2.1.1. Every civilian employee and Active, Reserve, and National Guard Military member of the Department of Defense, and every DoD contractor or employee of a contractor working with classified material, as provided by the terms of the contract, shall report promptly, through command or security channels, any suspected or actual unauthorized public disclosure of classified information.

E2.1.2. When notified of a suspected unauthorized disclosure of classified information through the public media, the USD(I) or his or her designee shall, unless already done by the reporting DoD Component, consult with the Assistant Secretary of Defense for Public Affairs and other officials having a primary interest in the information to decide if the information was officially released under proper authority.

E2.1.3. Decisions on whether to initiate an additional investigation by a military investigative organization or by the Federal Bureau of Investigation through a referral to the DOJ shall be based on the following factors:

E2.1.3.1. The accuracy of the information disclosed.

E2.1.3.2. The damage to national security caused by the disclosure and whether there were compromises regarding sensitive aspects of current classified projects, intelligence sources, or intelligence methods.

E2.1.3.3. The extent to which the disclosed information was circulated and the number of persons known to have access to it.

E2.1.3.4. The degree to which an investigation shall increase the damage caused by the disclosure.

E2.1.3.5. The existence of any investigative leads.

E2.1.3.6. The reasonable expectation of repeated disclosures.

E2.1.3.7. The extent to which the classified information was circulated outside the Department of Defense.

E2.1.4. Nothing in this Directive shall be construed to interfere with or prevent any DoD Component or contractor from reporting unauthorized public disclosures or otherwise complying with any applicable provision of law, Executive Branch policy, Instructions, or contract clauses.

E3. ENCLOSURE 3

PRELIMINARY INQUIRY AND/OR INVESTIGATION INFORMATION REQUIREMENTS

Preliminary inquiries or investigations should focus on addressing the following key questions:

E3.1.1. When, where, and how did the incident occur? What person(s), situation(s), or condition(s) caused or contributed to the incident?

E3.1.2. Was classified information compromised?

E3.1.3. If a compromise occurred, what specific classified information and/or material was involved?

E3.1.4. If classified information is alleged to have been lost, what steps were taken to find the material?

E3.1.5. In what specific media article or program did the classified information appear?

E3.1.6. To what extent was the compromised information circulated?

E3.1.7. Was the information properly classified?

E3.1.8. Was the information officially released?

E3.1.9. Are there any leads to be investigated that might lead to identifying the person(s) responsible for the compromise?

E3.1.10. Shall further inquiry increase the damage caused by the compromise?

E4. ENCLOSURE 4

DOJ MEDIA LEAK QUESTIONNAIRE

E4.1.1. If the media discloses classified information without proper authorization, the Heads of the DoD Components shall submit the DOJ Media Leak Questionnaire through security channels to the USD(I). In coordination with the DoD GC, the USD(I) shall prepare a letter addressed to the attention of Chief, Internal Security Section, Criminal Division, Bond Building, Room 9400, U.S. Department of Justice, 1400 New York Avenue, Northwest, Washington, D.C. 20530.

E4.1.2. There are eleven standard questions relating to unauthorized disclosures of classified information to the media that the Heads of the DoD Components must promptly answer to the fullest extent possible:

E4.1.2.1. What is the date and identity of the article containing classified information?

E4.1.2.2. What specific statements in the article are classified and was the information properly classified?

E4.1.2.3. Is the classified information disclosed accurate?

E4.1.2.4. Did the information come from a specific document, and if so, what is the origin of the document and the name of the individual responsible for the security of the classified data discussed?

E4.1.2.5. What is the extent of official circulation of the information?

E4.1.2.6. Has the information been the subject of prior official release?

E4.1.2.7. Was prior clearance for publication or release of the information sought from proper authorities?

E4.1.2.8. Has the material, parts thereof or enough background data, been published officially or in the press to make an educated speculation on the matter possible?

E4.1.2.9. Will the information be made available for use in a prosecution, and if so, what is the name of the person competent to testify on its classification?

E4.1.2.10. Has declassification been considered or decided on before publishing the data?

E4.1.2.11. What effect the disclosure of the classified data might have on the national defense?