

CHAPTER 3

Reporting Requirements

Due to the sensitive and complex nature of cases involving classified information, especially those designated as national security cases, DoD and DON regulations have established specific reporting requirements. Responsibility for these reports falls in varying degrees upon the local command (commanding officer/security manager), the local law enforcement community (Naval Criminal Investigative Service (NCIS)), and the local legal community (staff judge advocate /trial counsel). Although the staff judge advocate and trial counsel are not personally responsible for all of the reports, they need to be familiar with them to ensure proper case processing. As is often the case, once a judge advocate becomes affiliated with the case, other parties rely on the judge advocate to manage the case.

A. Command-Immediate Actions. Upon discovery of a possible loss or compromise of classified information, chapter 12 of SECNAV M-5510.36 (the Manual) requires the cognizant commanding officer or security manager to initiate a preliminary inquiry (PI). If it is discovered during the PI that a loss or compromise of classified information occurred, the command must promptly notify the local NCIS office. NCIS will determine whether it needs to open an investigation or not, and, in any event, provide assistance to the completion of the PI. Paragraph 12-1 of the Manual defines “loss,” “compromise,” and “possible compromise.” A loss of classified information occurs when it cannot be accounted for or physically located. A compromise is the unauthorized disclosure of classified information to a person who does not have a valid security clearance, authorized access, or need-to-know. A possible compromise occurs when classified information is not properly controlled. The Manual clearly recognizes that every instance of mishandling classified information is not automatically a loss or compromise.

The Manual adds that “[t]imely referral to the NCIS is imperative to ensure preservation of evidence for any possible counterintelligence (CI) or criminal investigation.” (Emphasis added.) The Manual does not require a command to notify NCIS of a “possible compromise.”

Preliminary Inquiry. The PI must be completed within 72 hours, and should contain a conclusion as to the likelihood of an actual loss or compromise. Paragraph 12-5 of the Manual discusses the other information that must be in the PI. The command is required to conduct a PI regardless of whether NCIS has initiated its own investigation. According to paragraph 12-4 of the Manual, the completion of the PI should not normally be delayed because of the pending NCIS investigation. In certain cases, however, the NCIS Special Agent in Charge may request the commanding officer to delay the PI in order to preserve evidence for CI or criminal investigations. Such a request from NCIS is the only reason permitted for holding the completion of a PI in abeyance. The mere fact that a concurrent NCIS investigation is occurring is not sufficient reason to delay the PI since the PI is only a preliminary examination of what occurred and not a complete examination of the facts and circumstances surrounding the loss or compromise.

B. Command -72 Hour Report. Within 72 hours of discovery of the violation, the PI must be completed and sent to the organizations listed in paragraph 12-4 of the Manual, unless the PI concludes that a loss or compromise did not occur, or that the possibility of compromise is remote. If the possible loss or compromise involves special types of classified information, such as Sensitive Compartmented Information (SCI) or Special Access Program (SAP), paragraph 12-8 requires that the PI also be sent to the offices listed for that specific type of information. See Appendix 3-A for a list of the offices that receive the PI.

Special attention should be given to cases that involve SCI and SAP information. It is important to ensure that the special security officer (SSO) has been notified. The involvement of the SSO is vital in cases that involve SCI and SAP material to ensure proper handling of the information and the PI.

1. JAGMAN Investigation. If the PI determines that a loss or compromise occurred, the command having custodial responsibility over the lost or compromised information must initiate a full-scale investigation under Chapter 2 of the Manual of the Judge Advocate General (JAGMAN). The JAGMAN will normally provide a detailed factual investigation and recommend disciplinary action and, if necessary, additional corrective action above and beyond that recommended in the PI. Paragraphs 12-9 to 12-14 of the Manual and Chapter 2 of the JAGMAN discuss this requirement in extensive detail.

2. National Security Cases. If the PI determines that the case may meet the requirements for a national security designated case under JAGMAN § 0126a, the Commanding Officer and NCIS, shall notify the Office of the Judge Advocate (OJAG) (Code 17) for Navy cases and, for Marine cases, the Judge Advocate Division (Military Justice) , within the same 72 hours, .

C. NCIS Reports. If NCIS initiates an investigation for a case that meets the criteria for a national security designated case under JAGMAN § 0126a, NCIS is required to notify the appropriate Department of Justice investigative agency in compliance with the Memorandum of Understanding between the Departments of Defense and Justice and DODD 5525.7, which is Annex E to this Guide.

When the NCIS investigation involves allegations of espionage, SECNAVINST 5500.30F, requires NCIS to notify the Under Secretary of the Navy. Allegations of espionage include those offenses that are described in Article 106a, UCMJ; section 783 of title 50, U.S.C.; and chapter 37 of title 18, U.S.C.

D. Report to National Security Case Disposition Authority (NSCDA). As discussed in Chapter 4, only certain officers are authorized to initially dispose of national security cases. These officers are listed in JAGMAN § 0126f and are designated as national security case disposition authorities (NSCDA). If facts contained in the PI, NCIS investigation, and/or the JAGMAN investigation suggest that the criteria in JAGMAN § 0126a may be satisfied, in addition to the notification requirements detailed above, the command must notify the first NSCDA in the command's administrative chain-of-command during the same 72-hour period. Once the formal JAGMAN investigation and/or NCIS investigation is completed in such a case,

it is to be forwarded to the NSCDA for disposition. The NSCDA, using the criteria discussed in Chapter 4, then must determine whether to designate the case as a national security case. Even if designated as a national security case, the NSCDA can delegate the disposition of the case to any convening authority.

E. NSCDA Reports. Once informed of a potential case by a subordinate command, JAGMAN 0126i requires a NSCDA to submit a SITREP every 15 days to CNO and Navy JAG, via certain staff codes designated in the section. The reports continue until it is either determined that the case is not a national security case or until it is resolved by conviction, acquittal, or other final disposition. The Director of Naval Intelligence (CNO (N2)) is to be included on the reports when the case involves SCI information or intelligence information. Specific requirements for the report are detailed in JAGMAN § 0126i.

F. Reports to OJAG (Code 17) for All Classified Information Cases. In all cases where a violation of the UCMJ involves classified information, regardless of whether or not it is a designated national security case, OJAG (Code 17) is to be notified at least once every 30 days or whenever a major development in the case or investigation occurs, including contemplation of criminal prosecution. Although this section broadly tasks the “command, convening authority, or judge advocate” with the responsibilities, the command will typically rely on the staff judge advocate or trial counsel, if one has been assigned. A judge advocate involved in one of these cases should consider this to be his or her responsibility.

G. Coordination with Intelligence Community (IC). All classified information has an owner, the original classification authority (OCA). The OCA has equities in the court-martial process when the court-martial process includes classified information within the OCA’s purview. Judge advocates, especially staff judge advocates and trial counsel, must keep the IC’s interests in mind as the case proceeds through the process. Coordination with the IC, early and often, is recommended. Code 17 can support this coordination effort.

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APPENDIX 3-A

Reporting Checklist

IMMEDIATE REPORT (SECNAVINST 5510.36 § 12-2)

Local NCIS Office

72-HOUR REPORT, SENT VIA P.I.**

All incidents, send PI to:
(See SECNAVINST 5510.36, § 12-4)

- Next superior in administrative chain of command (ISIC)
- CNO (N09N2)
- Originator of the classified information
- Original Classification Authority (OCA)
- Local NCIS Office

In addition, if incident involves:
(See SECNAVINST 5510.36, § 12-8)

- DoD SAPS, send to ODUSD(PS) via CNO (N09N2)
- SIOP/SIOP-ESI, send to JCS and USCINSTRAT by “quickest means”
- COMSEC info or Keying material, send to controlling authority (e.g., NSA)
- SCI, send to ONI-522 or COMNAVSECGRU, as applicable, as delegated by DNI in Navy Supplement to DoDINST S-5105.21.M-1
- Intelligence sources and methods, send to DNI
- Non-DoD information, send to DoD Principal Director, Security and Information Operations (ODASD(S&IO))
- NATO classified information, send to ODUSD(PS) via CNO (N09N2)
- Foreign Government Information (FGI), send to ODUSD(PS) via CNO (N09N2)

**Do not send PI if it concludes that a loss or compromise did not occur, or that the possibility of compromise is “remote” due to multiple security controls within the command. See SECNAVINST 5510.36, § 12-7.

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