

LOS ANGELES POLICE COMMISSION

ANTI-TERRORISM INTELLIGENCE

SECTION AUDIT,

FISCAL YEAR 2009/2010

(Public Version, Open Session)



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

ALAN J. SKOBIN,
DEBRA WONG YANG
Commissioners

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PURPOSE

The primary purpose of the Anti-Terrorism Intelligence Section (ATIS) Audit (Audit) was to evaluate compliance with Police Commission (Commission) guidelines which, among other things, govern ATIS operations over initial lead investigations, preliminary investigations, open intelligence investigations, surveillance operations, analytical files, and use of confidential informants. Also, the Audit was intended to evaluate closed criminal investigations conducted by Major Crimes Division (MCD) to ensure that they indeed represent valid criminal investigations, *not* intelligence investigations conducted under the guise of criminal investigations.^{1,2}

BACKGROUND

According to Commission guidelines, ATIS operations shall be audited at least annually. Police Commissioners Alan Skobin and Debra Wong Yang constitute the Commission's Undercover Investigation Liaison and were tasked with assessing MCD's compliance with Commission guidelines. In order to accomplish this objective, Commissioners Skobin and Wong Yang requested the assistance of the Office of the Inspector General (OIG). The following members of the OIG assisted with the Audit: (Resigned) Inspector General Nicole Bershon, Assistant Inspector General Kevin Rogan, Assistant Inspector General Gary McCaskill, Police Performance Auditor IV John Grosdidier, and (Resigned) Special Investigator II Charles Gaither.

The ATIS, housed within MCD, has established that their primary objective is to prevent and investigate terrorist activity and illegal actions that could result in a significant disruption of public order. The intelligence investigations conducted by the ATIS are strategy oriented, rather than case oriented as with criminal investigations. Intelligence investigations focus on the goals or potential of an individual, whereas criminal investigations focus on specific violations of law after a crime has been committed. The primary objective of an intelligence investigation is not to arrest and prosecute suspects; rather, it is to detect, collect, analyze, and disseminate information for the purpose of developing intelligence and preventing future terrorist activity, while steadfastly respecting all constitutional and statutory rights guaranteed to every individual.

The Commission recognizes the delicate balance between providing effective terrorist prevention protocols and protecting the rights of all citizens. Constitutional and statutory rights guarantee every citizen the right to privacy, the expression of ideas and dissension, and the right to associate publicly and privately for any lawful purpose. As such, the Commission has established a policy that strictly prohibits the use of illegal or unauthorized methods of collecting, maintaining, or disseminating intelligence information.

¹ MCD is responsible for conducting certain criminal investigations, including those for which the criminal act could pose a threat to the City of Los Angeles.

² If an intelligence investigation was *disguised* as a criminal investigation, certain procedures and internal controls could possibly be circumvented.

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It is inconsistent with Los Angeles Police Department (Department) standards to maintain an intelligence file on any individual unless the standards underlying reasonable suspicion are met. Personnel are also prohibited from collecting, maintaining or disseminating information about an individual’s sexual, political, or religious activities, beliefs, or opinions unless such information is germane to an approved investigation. The table, presented below, describes the three levels of intelligence investigations performed by the ATIS, each one bound by strict guidelines with respect to the criteria and approval levels for opening an investigation, the available investigative techniques, and the time limits for completing an investigation.

LEVELS OF INTELLIGENCE INVESTIGATION ACTIVITY			
	INITIAL LEAD	PRELIMINARY	OPEN INTELLIGENCE
Source of Information	Other law enforcement agencies, private citizen, Department employees	Same as Initial Lead	Same as Initial Lead
Required Threshold for Opening Investigation	Prompt and limited follow-up of information received concerning the possibility that terrorist activity exists.	Articulate reasonable suspicion that an individual or organization may be planning, threatening, attempting, performing, aiding/abetting, or financing unlawful acts; and the results of which are intended to further their objectives by influencing societal action or harassing on the basis of race, religion, national origin, or sexual orientation.	Same as Preliminary except that the articulable reasonable suspicion must be based on reliable information.
Approval Level	Detective III	Commanding Officer, MCD	Commanding Officer, MCD
Investigative Techniques	Public records, LAPD records, interviewing potential subject, reporting person, witnesses, and monitoring.	Surveillance, use of confidential informants, and all other techniques utilized during Initial Lead investigations.	All lawful techniques may be used.
Time Limit for Completion	60 days	120 days	A Follow-Up Intelligence Report completed every six months while the investigation remains open. The Officer-in-Charge, ATIS, shall ensure that the follow-up Intelligence Reports are completed every six months. The date the Commanding Officer, MCD, approved the initial Intelligence Report serves as the starting date for the six-month period.

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SCOPE AND METHODOLOGY

The Audit scope period was the 12-month period of July 1, 2009, through June 30, 2010, and documentation evaluated included:

- A random sample of initial leads initiated or closed during the scope period.
- All preliminary investigation(s) initiated or closed during the scope period.
- All open intelligence investigation(s) initiated or closed during the scope period.³
- All confidential informant (CI) package(s) active during the scope period.⁴
- All intelligence-related surveillance operation(s) conducted during the scope period.
- All analytical file(s) active during the scope period.
- A random sample of criminal investigations closed during the scope period.

The sample sizes for the random samples of initial leads and criminal investigations were calculated based on a 95% one-tail confidence level, an expected error rate of 6%, and various plus precisions.^{5,6} The detailed audit work plan approved by Commissioners Skobin and Wong Yang delineates tests for each audit area (initial leads, CI packages, etc.).

The approximately 40 audit tests are not itemized in this report but are available upon request. Lastly, the methodology noted herein is consistent with the methodologies of prior audits conducted during the pendency of the Consent Decree and Transition Agreement.

SUMMARY OF RESULTS

The results of the Audit reflected substantial compliance with Commission guidelines, including that closed criminal investigations conducted by the ATIS, MCD, represents valid criminal investigations, *not* intelligence investigations. Moreover, in response to the prior year's Audit, the ATIS developed and implemented additional internal controls to assure compliance with Commission guidelines and to guard against risks inherent in obtaining and securing intelligence. Each investigation was opened only after the appropriate threshold was met, and closed when ATIS investigators determined that the individual suspected of terrorist activity no longer presented a threat to the City of Los Angeles or the actions required referral to another law enforcement agency or Department entity for appropriate investigation.⁷

³ Working folders, which are created by the investigator for each individual who is the subject of an approved open intelligence investigation, were also reviewed.

⁴ Some of the confidential informant packages reviewed were identified during our review of either preliminary or open intelligence investigation files.

⁵ Plus precisions of 7% for initial leads and 10% for criminal investigations.

⁶ This sample size calculation formula is a generally accepted auditing practice. A detailed explanation of each parameter is available from the OIG Audit Section.

⁷ See Required Threshold for Opening Investigation in the Levels of Intelligence Investigation Activity on Page 2.

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Furthermore, the investigation files were well-organized and the documentation noted therein adequately supported the investigation, which suggests that the internal protocols implemented since the prior year's Audit have had a positive impact on the manner in which intelligence is gathered and maintained. Additionally, all MCD personnel contacted during the Audit were extremely cooperative, promptly provided all documents that were requested, and were responsive to all other requests.

Notwithstanding this substantial compliance, the Commission identified two issues that need further review and remediation: (1) documentation of supervisory oversight for criminal investigations and (2) articulation of reasonable suspicion to start open intelligence investigations.

DETAILED FINDINGS

Documentation of Supervisory Oversight for Criminal Investigations

Background: The Criminal Investigation Section (CIS) is housed within MCD, which enables MCD to quickly respond to incidents having a criminal predicate and to dedicate investigative resources concurrent with, but independent from, intelligence investigations. With respect to the dissemination and transfer of intelligence investigations to the CIS, a MCD Intradepartmental Correspondence, dated November 8, 2006, provides:

In order to properly track intelligence investigations referred to the CIS, a case referral form has been developed (see attachment). The concerned Intelligence Investigator shall complete the CIS Referral Form when referring an intelligence case to CIS for criminal investigation. This includes Initial Lead, Preliminary, or Open Intelligence Investigations. In addition, ATIS personnel that refer cases(s) containing information obtained from other official sources shall also complete a referral form. At the conclusion of the criminal investigation, the assigned CIS investigator shall complete the disposition portion of the form and store it in the respective CIS case package.

Issue: The purpose of this review of criminal investigation(s) was to ensure that each investigation had a nexus to criminal activity, that the probable cause standard was met, and that the protocols governing the transfer and dissemination of intelligence investigations were strictly adhered to. During the review, the Commission determined that there was no evidence that CIS investigators departed from procedures and controls governing the transfer or dissemination of intelligence investigations or initiated criminal investigations without probable cause. However, it was apparent that the CIS did not have a formalized documentation process by which CIS supervisors could assess whether CIS investigations conflicted with or involved intelligence investigations prior to the initiation of a criminal investigation.

Risk: Intelligence investigations are subject to extensive scrutiny to guard against constitutional violations involving freedom of association, free speech, and unlawful searches and seizures.

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At issue, is the risk that the procedures and controls governing intelligence investigations could be circumvented by classifying them as criminal investigations for purposes of expediency or otherwise. Further, while the Commission is aware that CIS supervisors verbally discuss the merits of each case prior to the commencement of a criminal investigation, this method of supervisory oversight does not document the substance of supervisory review and may yield inconsistencies among supervisors tasked with approving criminal investigations.

Management's Response to Issue: Management of MCD expressed agreement with this issue. As a result, the ATIS changed the CIS Data Input Sheet and related checklist to initiate a criminal case so that it requires the signature of the approving supervisor and the substance of his or her review.

Articulation of Reasonable Suspicion to Start Open Intelligence Investigations

Background: An open intelligence investigation may be initiated when: (1) Reasonable suspicion, based upon reliable information, exists that an individual or organization may be planning, threatening, attempting, performing, aiding/abetting, or financing unlawful acts, and (2) The results of the unlawful acts are intended to further their societal objectives, influence societal action or harass on the basis of race, religion, natural origin, or sexual orientation.

According to Commission guidelines, reasonable suspicion is:

An honest belief, based on known articulable circumstances, which would cause a reasonable and trained⁸ law enforcement officer to believe that some activity, relating to a definable criminal activity or enterprise, may be occurring or has the potential to occur.

Issue: For 3 of the open intelligence investigations evaluated, the Commission concluded that the initial Intelligence Report itself did not adequately document reasonable suspicion before the investigation was started. However, after Commissioner Skobin conducted further discussion with ATIS personnel and a review of additional documentation, the Commission concluded that, apart from this initial Intelligence Report, there was documentation and information that adequately supported that reasonable suspicion existed *before* the investigation was started.

Risk: If the initial Intelligence Report approved by management does not “stand alone” in adequately articulating reasonable suspicion, an open intelligence investigation could possibly be started without the existence of reasonable suspicion.

Management's Response to Issue: Management of MCD expressed agreement with this issue. As a result, investigators and supervisory personnel within ATIS are being provided training to ensure that Initial Intelligence Reports are sufficiently detailed to demonstrate a reasonable suspicion in order to start an investigation. Additionally, as ATIS has changed the CIS Data

⁸ Trained specifically in terrorism intelligence.

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Input Sheet and related checklist to initiate a criminal case so that it requires the signature of the approving supervisor and the substance of his or her review.

OTHER RELATED MATTERS

With the exception of the guidelines pertaining to the Department's Secret Working Environment, the Commission noted that the ATIS's policies and procedures governing the manner in which intelligence information is gathered and maintained has not been thoroughly reviewed and/or revised since 2003. In light of changes in the methods and modes of terrorist activity, technology, social media, open source information, and Department of Justice (DOJ) guidelines, the Commission requests that the Department thoroughly review its current standards and procedures to prevent and investigate terrorist activity and to report back to the Commission any recommended changes to policies and procedures that it believes the Commission should consider. The Department should also give special attention to DOJ guidelines to ensure that its methods to prevent and investigate terrorist activity are consistent with national standards and are consistently applied.

During discussions with MCD and ATIS personnel, the Commission determined that field and other personnel were not adequately supplied with equipment necessary to investigate and prevent terrorist activity. For example, it appears that the telephones used by field personnel are outdated and do not include the ability to send or receive photographic images or effectively communicate covertly during surveillance activities. Furthermore, in some instances the radio packages in the surveillance cars are not compatible from squad to squad. This is particularly problematic in larger multi-squad operations. While there are "fixes," such as combining officers from different squads on emergency call-outs, this is not a preferred practice for multiple reasons. Another example of an unmet equipment need is that MCD lacks "situation room technology" that would enable it to monitor field operations in real time or provide adequate oversight of field operations occurring at multiple locations. Moreover, this technology would help assure the "interoperability" of Department resources and enable MCD to keep abreast of counter-surveillance methods and technologies underlying their function. Finally, the Commission requests MCD to make it aware of equipment that may facilitate or enhance MCD's ability to prevent and investigate terrorist activity having a nexus to the City of Los Angeles.

CONCLUSION

The results of the Audit reflected substantial compliance with Commission guidelines. Each investigation was opened only after the appropriate threshold was met and closed when ATIS investigators determined that the individual suspected of terrorist activity no longer presented a threat to the City of Los Angeles, or his/her actions required referral to another law enforcement agency or Department entity for appropriate investigation.

As noted above, all personnel contacted during the Audit were extremely cooperative, promptly provided all documents that were requested, and were responsive to all other requests.

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These actions, the Audit findings, and improvements that were made by MCD both subsequent to the prior Commission audit and during the course of this Audit, demonstrated a commitment by MCD personnel to transparency and adherence to policies, guidelines and procedures. We particularly acknowledge the outstanding work of the MCD Compliance Officer.