

From: Maietta, Frank S [mailto:Frank.Maietta2@dodiis.mil]
Sent: Wednesday, July 11, 2012 5:51 PM
To: Pick, Michael W.; Liard, Scott (GOV); Frederick, Calvin (GOV)
Cc: Moran, Michael G.; Light, Gary CIV NCCA DIA/D2X7-C; Norris, William F.
Subject: FW: NRO Press Article

Sir,

Please see the attached from Mr. Sullivan, USD (I) regarding the recent press articles about the NRO polygraph program. Additionally, I have attached a DNI draft Memorandum that pertains to polygraph and the recent media leaks. Below is a brief summary of these issues and the impact to DIA/DCHC:

On July 11, 2012, McClatchy News published three articles attacking procedures used by the National Reconnaissance Office's (NRO) polygraph program. Two former NRO polygraph examiners are the primary source of information for the articles that made broad allegations about NRO polygraph management pressuring examiners to use inappropriate testing procedures in order to elicit personal information. USD (I), under the direction of Mr. Toby Sullivan, provided the attached summary of the of the situation (attached - NRO Polygraph). As noted in the summary, NCCA personnel completed the biennial inspection of the NRO polygraph program in November 2011. In the report, NCCA noted inappropriate questions being utilized and recommended corrective action. NRO acknowledged this and ceased utilizing those questions. It is quite probable that these unauthorized questions, already discovered by this internal review, were partially responsible for allegations noted in these articles.

The Director, DCHC, in accordance with DoD Directive 5210.48 and DoD Instruction (DoDI) 5210.91, is responsible for the oversight of DoD polygraph programs, it is therefore recommended that DCHC/NCCA participate in the NRO review as recommended by USD (I).

In June 2012, DNI Clapper, in his statement to the Senate, regarding the "hemorrhage of leaks in the media" pledged to mandate that all Federal agencies authorized to conduct Counterintelligence Scope Polygraph (CSP) examinations utilize the CIA explanation when pre-testing disclosure of classified information. The CIA verbiage "Have you ever provided classified information or facilitated access to classified information to any unauthorized persons, to include the media, unauthorized U.S. persons, or foreign nationals", is consistent with current DoD protocols. This mandate should have little impact on the DoD polygraph programs as they all

currently pre-test these issues in conjunction with a question regarding unauthorized disclosure or mishandling of classified information. Attached is the final draft of the memorandum to be sent to DNI for signature.

DCHC has organized and is chairing a Federal Polygraph Executive Committee (EXCOM) meeting to discuss implementation of this mandate. This will be held on July 12, 2012 and will be hosted by the CIA in Tyson's Corner, VA.

Regards,

Frank

-----Original Message-----

From: Sullivan, Troy DISES OSD OUSDI [mailto:troy.sullivan@osd.mil]

Sent: Wednesday, July 11, 2012 5:19 PM

To: Hyde, Reginald D SES OSD OUSDI

Cc: Smith, Heidi A DISL OSD OUSDI; Lowery, Todd R CIV OSD OUSDI; McGee, Jenny Col OSD OUSDI; Gentile, Philip D COL OSD OUSDI; Gidwani, Toni CIV OSD OUSDI; Sullivan, David M. Col, USAF OSD OUSDI; Dreuth, Louise Ms OSD OUSDI; Gregory, James LTC OSD PA; Porco, Michael V Mr OSD OUSDI; Stegner, James E DISL OSD OUSDI; Davis, Timothy A DISES OSD OUSDI; Mehal, Robert S CTR OSD OUSDI; Davidson, Eliana, Ms, DoD OGC; Farr, Elizabeth, Ms, DoD OGC; Sharp, Gary, Mr, DoD OGC; Delaney, Leo; Pick, Michael W.; Liard, Scott (GOV); Maitta, Frank S
Subject: NRO Press Article

Classification: UNCLASSIFIED

Sir,

Attached is an information paper concerning the McClatchy articles of yesterday attacking the NRO polygraph program. The articles are also attached.

The document was prepared in collaboration with the National Credibility Assessment Center (NCCA) and DCHC. NRO was provided a copy but we did not receive any feedback, although we did receive information from them during the day that we used.

There is a possibility that the two polygraph oversight initiatives conducted at NRO last year identified some number of the matters that were raised in the article regarding the exams.

I recommended to the DCHC Deputy Director and several of his senior staff, the NCCA Director and Tim Davis that a team from NCCA and the CI and Security Directorates visit NRO to talk about the press articles, especially in view of the 2011 oversight initiatives.

All thought this would be of value, especially in view of LtCol Gregory's information today that McClatchy wanted a follow-up article on DoD's reaction to the articles. The visit would not be an inspection but a discussion about the articles, the prior oversight results and NRO's comments. The team would make an assessment as to the need for any other recommended action and brief our leadership. We will have done appropriate due diligence.

I also mentioned to the DCHC Deputy Director that I thought two actions would be required, if such a team is approved by the DIA or DCHC leadership (as the functional managers for DoD credibility assessment) and OUSD(I):

-First somebody senior would need to notify the NRO Director or Deputy Director to explain what this visit is and is not and to deconflict with the NRO IG if required.

-Second given the press comment that the DoD IG is looking into some aspect of this, it would be prudent to deconflict the visit with that organization.

Request your approval for CI and Security to participate contingent upon DIA/DCHC's similar approval.

Happy to answer any questions.

VR

Toby

Toby Sullivan
Director, Counterintelligence
703-697-5216
DSN: 227-5216

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NRO Polygraph Program

Background

- NRO conducts over 8,000 Counterintelligence Scope Polygraphs (CSP) annually and employs approximately 47 DoD certified examiners.
 - The polygraph examiners who conduct CSPs work for the NRO Security element.
- NRO's "Quality Assurance Program Agency Policies & Procedures" has undergone two reviews during the last year to assess compliance with DoD Instruction (DoDI) 5210.91, "Polygraph and Credibility Assessment (PCA) Procedures," August 12, 2012 (See "Oversight" below)

Press Reporting

- On July 11, 2012, McClatchy News published three articles attacking the NRO polygraph program: "NRO Accused of Illegally Collecting Personal Data"; "NRO View: Whistleblower is Merely a Malcontent; and "NRO Hasn't Told Police of Crime Confessions" (Tabs A-C)
- The articles made broad allegations concerning the NRO polygraph program
 - Examiners are pressured to conform to inappropriate testing techniques
 - Examiners are pressured to obtain inappropriate examinee personal information
 - Examiners are paid cash rewards based on this conduct
 - Examiners are required to summon employees and job applicants for multiple polygraph tests to ask a wide array of personal behavior
 - Examiners are pressured to use testing techniques that NRO is not authorized to use
 - NRO retains personal information in a data base
 - NRO does not report criminal activity to appropriate authorities
 - Although in DoD, NRO uses CIA authorizations for polygraph exams

NRO Comments (to date)

- All admission obtained during polygraph exams are given to NRO security and adjudicators for processing. The adjudicators and NRO OGC determine from that point who is notified. That information is not fed back to the polygraph office.

Oversight

- The NRO polygraph program underwent two independent reviews in 2011 by experienced

Prepared by Mike Porco, 697-4361

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polygraph examiners, quality control experts, senior polygraph policy subject matter experts, and senior law enforcement and security management professionals.

- During the period November 15-17, 2011, National Center for Credibility Assessment (NCCA) Quality Assurance Program personnel reviewed the program's activities for the previous two years pursuant to DoD policy. The only discrepancy noted was the improper use of comparison questions.
 - Have you engaged in any consistent personal behavior unsuitable for access?
 - Have you engaged in any personal behavior unsuitable for access?
 - Have you hidden any personal behavior unsuitable for access?
 - Outside the classified environment, have you ever done anything for which you could be fired?
 - Regarding your personal life, are there any reasons why you should not be considered for a security clearance?
 - In matters not related to security, have you ever done anything for which you could lose your job?
- Comparison questions are a necessary component of polygraph testing. They are a technical aspect of the test and are utilized only for diagnostic purposes; they are not evaluated to determine truth or deception nor are they included in formal agency reports
- The asking of these questions and their discussion with the examinee could elicit responses from an examinee that would not be consistent with established DoD protocols, therefore their use was directed to be discontinued. These questions were used during the time period of October 2010 – December 2011. NRO subsequently concurred and terminated the use of these questions. There was no indication that this practice continued outside the time frame stated above.
- Although not a discrepancy, the review noted the NRO polygraph program had a significant decrease in admissions rate between 2009 (47%) and 2011 (23%). NRO explained the decline was due to management redefining "admission", as the program previously was allowing many minor security violations to be considered an "admission".
- During the NCCA review
 - no information was identified concerning the conduct of any full-scope examination. (DoD and NRO policy require USD(I) approval for any full-scope examination)
 - no indication that NRO conducted any examinations consistent with CIA process or procedure. All examinations reviewed adhered to DoD and NRO policy
 - NRO has one of the most detailed set of policies for a polygraph program within the federal government. These policies are not consistent with those of the CIA due to missions supported and type of polygraph examinations authorized to be conducted.

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- The Principal Deputy Under Secretary of Defense (Intelligence) directed a six-month “Polygraph Program Process and Compliance Study,” that concluded in December 2011 and included the NRO program.
 - This study identified five Expanded Scope Screening (ESS) examinations on April 30, 2011, conducted by NRO examiners in support of National Security Agency applicant requirements. NRO was not authorized to perform those tests and was directed to discontinue ESS testing. The study did not identify any other issues with the NRO polygraph program.

CI Directorate Comments

- It is possible the author of these articles, Ms. Marisa Taylor, and her NRO sources confused and combined these two issues of inappropriate comparison questioning and ESS testing in developing her story.
- Neither of the individuals identified as sources in the articles spoke with the NCCA review team or the Study team.
- Recommended to OUSD(I) and DCHC that a team from NCCA, the Security Directorate and the CI Directorate visit NRO next week to discuss the articles, after deconfliction with the DoD and NRO IGs. The team will assess the results of that visit to determine what future actions may be required and brief command.

DIRECTOR OF NATIONAL INTELLIGENCE
WASHINGTON, DC 20511

D R A F T

E/S 00447

MEMORANDUM FOR: Distribution

SUBJECT: Deterring and Detecting Unauthorized Disclosures, Including Leaks to the Media, Through Strengthened Polygraph Programs

AUTHORITIES: A. The National Security Act of 1947 (NSA of 1947), as amended by the 2010 Intelligence Authorization Act (Pub. L. No. 111-259) codified at 50 U.S.C. 435b
B. Executive Order (EO) 13467, *Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information*

REFERENCE: Security Executive Agent Directive 1, Subject: *Security Executive Agent Authorities and Responsibilities*, 13 March 2012

Unauthorized disclosures of classified information, including “leaks” to the media, endanger vital intelligence sources and methods and damage international relationships. Aggressive action is required to better equip United States Government elements to prevent unauthorized disclosures.

In my role as Security Executive Agent, I am hereby standardizing how the topic of unauthorized disclosures is addressed during the polygraph interview process. One key to obtaining a reliable response to polygraph questions is to ensure that the subject understands the full meaning and implications of the questions posed. This explanation is provided during a pre-test dialogue between the polygraph examiner and the subject, during which more detailed versions of the questions are used than are asked during the test itself.

CIA's pre-test question related to unauthorized disclosures contains the requisite level of detail to support a thorough inquiry. The question used by CIA specifically asks whether an individual has provided classified information or facilitated access to classified information to any unauthorized persons, to include the media, unauthorized US persons, or foreign nationals. The polygraph process is also used to identify deliberate disclosures. To strengthen our collective practices, I am directing that agencies authorized to conduct polygraphs for security clearance-related purposes immediately incorporate into their polygraph process a pre-test dialogue on unauthorized disclosures that includes an equivalent level of detail.

Agencies authorized to conduct polygraphs for security clearance-related purposes will ensure that their polygraph processes address the issue of unauthorized disclosures of classified information by including a definition that explicitly states that an unauthorized disclosure includes providing, or facilitating access to, classified information to any unauthorized persons,

SUBJECT: Deterring and Detecting Unauthorized Disclosures, Including Leaks to the Media,
Through Strengthened Polygraph Programs

including to members of the media. The polygraph examiner will thoroughly explain this issue to the subject and will also include the following details:

- “Unauthorized recipient” includes any US person or foreign national without a need to know or not cleared at the appropriate level for the information, including any member of the media.
- “Unauthorized disclosure” means a communication, confirmation, acknowledgement, or physical transfer of classified information, including the facilitation of, or actual giving, passing, selling, keeping, publishing, or in any way making such information available, to an unauthorized recipient.
- Classified information includes information classified at any level, including Confidential, Secret, or Top Secret.

This policy will serve as a strong deterrent to would-be leakers while reinforcing the values of all the dedicated intelligence personnel who exemplify the highest standards of professionalism. If you or your staff has questions regarding this policy direction, please contact Mr. Michael Londregan, Assistant Director for Special Security at Michael.P.Londregan@dni.gov or 571-204-6593.

James R. Clapper

Date

cc: See Distribution List

SUBJECT: Deterring and Detecting Unauthorized Disclosures, Including Leaks to the Media,
Through Strengthened Polygraph Programs

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SUBJECT: Deterring and Detecting Unauthorized Disclosures, Including Leaks to the Media,
Through Strengthened Polygraph Programs

Director, Office of Personnel Management
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Director, United States Peace Corps
National Center for Credibility Assessment (NCCA)

McClatchy Newspapers (mcclatchydc.com)
July 10, 2012

National Reconnaissance Office Accused Of Illegally Collecting Personal Data

By Marisa Taylor, McClatchy Newspapers

WASHINGTON — One of the nation's most secretive intelligence agencies is pressuring its polygraphers to obtain intimate details of the private lives of thousands of job applicants and employees, pushing the ethical and legal boundaries of a program that's designed instead to catch spies and terrorists.

The National Reconnaissance Office is so intent on extracting confessions of personal or illicit behavior that officials have admonished polygraphers who refused to go after them and rewarded those who did, sometimes with cash bonuses, a McClatchy investigation found.

The disclosures include a wide range of behavior and private thoughts such as drug use, child abuse, suicide attempts, depression and sexual deviancy. The agency, which oversees the nation's spy satellites, records the sessions that were required for security clearances and stores them in a database.

Even though it's aggressively collecting the private disclosures, when people confess to serious crimes such as child molestation they're not always arrested or prosecuted.

"You've got to wonder what the point of all of this is if we're not even going after child molesters," said Mark Phillips, a veteran polygrapher who resigned from the agency in late May after, he says, he was retaliated against for resisting abusive techniques. "This is bureaucracy run amok. These practices violate the rights of Americans, and it's not even for a good reason."

The agency refused to answer McClatchy's questions about its practices. However, it's acknowledged in internal documents that it's not supposed to directly ask more personal questions but says it legally collects the information when people spontaneously confess, often at the beginning of the polygraph test.

After a legal review of Phillips' assertions, the agency's assistant general counsel Mark Land concluded in April that it did nothing wrong. "My opinion, based on all of the facts, is that management's action is legally supportable and corrective action is not required," he wrote.

But McClatchy's review of hundreds of documents – including internal policy documents, memos and agency emails – indicates that the National Reconnaissance Office is pushing ethical and possibly legal limits by:

- Establishing a system that tracks the number of personal confessions, which then are used in polygraphers' annual performance reviews.
- Summoning employees and job applicants for multiple polygraph tests to ask about a wide array of personal behavior.
- Altering results of the tests in what some polygraphers say is an effort to justify more probing of

employees' and applicants' private lives.

Various national security experts, including those who support the use of polygraph in general for security screening, said they were disturbed by what McClatchy found, especially considering that the number of polygraph screenings has spiked in the last decade.

"There's a narrow jurisdiction for a polygraph program, which is to promote security," said Steven Aftergood, a senior analyst with the Federation of American Scientists, a nonpartisan research center that tracks intelligence policies. "When agencies exceed their authority, they not only violate the privacy of employees, they corrupt the entire process."

The dispute is part of a long-running debate over the proper use of polygraph by the federal government in screening employees, when it's not known whether the machine can detect the difference between a lie and the truth or simply registers an emotional response.

In 2002, the National Academies, the nonprofit institute that includes the National Academy of Sciences, concluded that the federal government shouldn't use polygraph screening because it was too unreliable.

Yet since then, in the Defense Department alone, the number of national-security polygraph tests has increased fivefold, to almost 46,000 annually. Many of those who are required to undergo the tests aren't just bureaucrats in Washington but also private contractors across the country.

Federal agencies say the information gathered during polygraph screenings helps them root out undesirable and even dangerous employees who otherwise wouldn't be detected during routine background investigations, which often are described as expensive and time-consuming.

But some national security experts question whether U.S. agencies are striking the appropriate balance between protecting Americans' privacy rights and the nation's security interests as agencies are being permitted to ask what could be seen as more intrusive questions.

Last month, the Obama administration announced that federal agencies, including the National Reconnaissance Office, now may ask employees and applicants during polygraph screenings whether they've leaked classified information to the news media.

"If a whole program is susceptible to manipulation, then relying on it further is all the more disturbing," Aftergood said.

The National Reconnaissance Office orders the second highest number of screening polygraphs in the Pentagon, conducting about 8,000 a year at its headquarters in Chantilly, Va., and at locations in Los Angeles and the Silicon Valley area.

The agency's is among eight Pentagon polygraph programs that under Defense Department policy can directly ask only about national security issues in what's known as the counterintelligence scope polygraph. The test was designed to catch spies and terrorists who are trying to infiltrate the government without encroaching unnecessarily on the private lives of government employees and military personnel. Polygraphers are allowed to ask about espionage, terrorism, sabotage and the unauthorized sharing of classified information.

But about five years ago, the National Reconnaissance Office began pressuring polygraphers to pursue

information outside those limits in what amounted to an unwritten policy, said a group of polygraphers who agreed to describe the practices to McClatchy. The polygraphers include Phillips, a former Marine who worked for a number of intelligence agencies over two decades, and a former National Reconnaissance Office colleague, Chuck Hinshaw.

Both agreed to be named because they think the agency's practices violate Defense Department policies and should be stopped.

Other polygraphers backed their accounts, but they asked to remain anonymous because they feared retaliation. "I was coached to go after this stuff," one of the polygraphers said. "It blew my mind. They were asking me to elicit information that I'm not permitted to ask about, and I told them I wasn't going to do it."

Another longtime polygrapher said the National Reconnaissance Office had established an off-the-books policy that encouraged going after prohibited information.

"The organization says in writing that they're not supposed to be asking about this information, when in fact behind closed doors they are pushing (polygraphers) to actively pursue it," the polygrapher said.

Hinshaw, who said he'd witnessed the improper practices as a former acting supervisor, accused the agency of becoming so cavalier about following the rules that the polygraph branch chief, Michael McMahon, pressured him to change the results of the agency director's polygraph if he failed the test. In the end, director Bruce Carlson passed, but Hinshaw said the incident demonstrated how the agency's use of polygraph was arbitrary and wasn't about protecting the country.

McMahon didn't respond to emails and phone messages from McClatchy inquiring about the incident.

"There's a line you have to draw," said Hinshaw, who worked in the program from 2005 until earlier this year. "The original idea for using polygraph to clear people was to ferret out moles and spies. Now it's morphing into an ambiguous exam where anything's possible."

The National Reconnaissance Office, meanwhile, has branded Phillips and Hinshaw troubled employees. Before Phillips resigned, the agency suspended him for three days, saying he was insubordinate, among other complaints, and it revoked Hinshaw's security clearance earlier this year, citing his foreclosure on his family home.

Both men said they thought the agency had retaliated against them for trying to resist the polygraph practices, and records show that they'd voiced their concerns before the agency took action against them. The Pentagon's inspector general is investigating Phillips' complaint.

But even if the agency were found to be violating Pentagon policies, the laws that limit the government's use of polygraph in screening aren't specific on what constitutes an illegal abuse. The Privacy Act of 1974 requires that the government collect only personal information that's necessary and relevant, and a 1981 presidential directive calls for "the least intrusive collection techniques feasible."

Much of the interpretation of what that means has been left to the federal departments that run the polygraph programs.

"Some polygraph programs have been getting away with all sorts of abuses for years," said Mark Zaid, an attorney for Phillips who's been handling national security cases for 20 years. "It's very difficult to

hold them accountable.”

Why is the National Reconnaissance Office interested in such private details? In internal documents and emails, supervisors told polygraphers they felt pressure from the officials known as adjudicators, who make the final decisions on national security clearances.

The agency’s motives, however, are more complicated, some of the polygraphers said.

The Pentagon’s test is so restricted to counterintelligence issues that it’s notorious among polygraphers for compelling admissions of mundane and ultimately harmless infractions. One of the most common confessions involves harried bureaucrats who admit to taking classified documents home by mistake. By collecting confessions to repulsive or criminal behavior, officials can justify using polygraph screenings to their bosses, Congress and a skeptical public despite questions about the test’s reliability, the polygraphers said.

As a result, the National Reconnaissance Office closely tracked how many personal confessions it collected. The agency called them “Code 55 admissions,” the records show.

In fiscal year 2011, almost 50 percent of the 757 confessions the agency collected were of the personal nature that the rules said shouldn’t be directly pursued, the agency’s statistics show. Of 33 polygraphers, one-third collected more confessions related to personal behavior than to national security violations.

Other polygraph programs, such as those in the Naval Criminal Investigative Service, also conduct limited national-security polygraph screenings, but in an entire year their polygraphers may not encounter any confessions that are outside the limits of the test. It’s a rare occasion when someone blurts it out without prompting, officials said.

“If an agency is getting a big portion of its confessions that are outside the limits, it’s an indication that they’re going on fishing expeditions,” said John Sullivan, a former CIA polygrapher of 30 years. “And if they’re doing that, it’s wrong and being done under false pretenses.”

Phillips and Hinshaw accused the polygraph program’s branch chief, McMahon, of encouraging improper practices.

Within the intelligence world, only the CIA and the National Security Agency are permitted to directly ask about drug use, unreported crimes and falsification of the forms filled out for national security clearances, which require a wide array of personal information. The tests are known as lifestyle polygraphs.

Late last year, the Pentagon discovered that the National Reconnaissance Office had ordered five of the lifestyle tests in violation of Defense Department policies, according to an internal report obtained by McClatchy. The agency then claimed to have the legal authority to do so, when it was supposed to be asking only national security questions designed to catch spies and terrorists, the report said. The Pentagon concluded that the program was in “full compliance” because the agency said it was a mistake.

Polygraphers, however, say the agency’s pursuit of the off-limits information is much more widespread than the Pentagon’s report noted. Records show that the agency ordered at least one more lifestyle test after it was told to stop.

The agency also pursues the information in its routine counterintelligence tests, polygraphers said. In

one instance last year, Phillips' supervisors told him to "assess" the mental health of an applicant during a polygraph test, records show. Phillips said he'd refused to do it.

As a result of its efforts, the agency ends up with a vast accumulation of personal details of questionable national-security significance, polygraphers said.

Last September, a woman who'd held a clearance for more than 15 years and already had passed a national security polygraph was interrogated for more than four hours over two additional polygraph sessions, said Hinshaw, who said he'd been ordered to do it. Hinshaw's supervisors launched the aggressive inquiry because they suspected that the woman had smoked pot more than the one time years before that she'd admitted to, records show. In the end, however, the only other information the National Reconnaissance Office extracted from her was that she'd been molested at age 16.

Hinshaw said he'd received thousands of dollars in bonuses over several years in part because he'd collected a high number of confessions, including the more personal ones.

Phillips, on the other hand, had a much lower collection rate and received negative performance reviews. His supervisors cited his reluctance to collect the Code 55 information as part of the reason for their dissatisfaction with him.

"There are ways of leading people into making these admissions even though you're not supposed to," Phillips said. "By setting up a system that gives polygraphers an incentive to go after the information, the agency is pressuring them to collect it."

Despite the agency's interest in criminal behavior, those who confess to serious offenses aren't always criminally prosecuted even when child molestation is involved, McClatchy found.

In one case, a contractor who was a former Escondido, Calif., substitute teacher admitted to molesting a third-grade student in 2005 during outside tutoring sessions paid for by the girl's immigrant parents. In a 2010 polygraph session, the man said that if he were asked, " 'Have you ever molested a 9-year-old?' I'd have to say yes."

The Escondido Police Department and school district where he'd been employed weren't notified of the incident. After being contacted by McClatchy, the school district called the Escondido Police Department to file a report. When National Reconnaissance Office polygraphers asked supervisors in a meeting last summer why people weren't being arrested on the spot after such confessions, they were told that the allegations were referred to the appropriate authorities, Phillips and Hinshaw said.

The agency refused to answer McClatchy's questions about the molestation confession, saying in a statement only that its polygraph program "is in compliance with the law."

National Reconnaissance Office statement on its polygraph program

"The National Reconnaissance Office directs, manages and oversees appropriate investigative inquiries, including polygraph, for the purposes of rendering informed security access determinations. Such inquiries and determinations are in full compliance with the law and provide the security compliance required to best protect and further Intelligence Community program activities and objectives.

"If adverse information is disclosed during the administration of a polygraph examination the information is evaluated and forwarded to the appropriate authorities. For Privacy Act purposes the

NRO has a policy of not commenting on specific cases.

“The National Center for Credibility Assessment (NCCA), Quality Assurance Program (QAP), conducted an on-site inspection of the NRO Polygraph Program on November 15-17, 2011. During the QAP inspection, 118 criteria in nine primary areas were reviewed. Upon conclusion of the inspection, the NRO Polygraph program was found to be in full compliance with their policies and procedures and met or exceeded all standards required of a federal government polygraph program.”

Tish Wells contributed to this article.

McClatchy Newspapers (mcclatchydc.com)
July 10, 2012

National Reconnaissance Office Hasn't Told Police Of Crime Confessions

By Marisa Taylor, McClatchy Newspapers

WASHINGTON — The nation's spy satellite agency has been extracting polygraph confessions to crimes such as child molestation but local law enforcement agencies aren't always told so that they can investigate.

For instance, a former California substitute teacher who agreed to a polygraph test so he could get a national security clearance with the National Reconnaissance Office admitted in 2010 to molesting a girl who was his student at the time. The federal contractor said that if he were asked, " 'Have you ever molested a nine-year-old?' I'd have to say yes," an internal document says.

McClatchy checked with the police department and school district in Escondido, Calif., where the man once worked and discovered that neither had been notified of the 2005 incident involving a third-grader.

In a polygraph session with the spy agency in 2010, a man who was then an Air Force lieutenant colonel confessed to downloading child pornography on his Pentagon computer and to touching a child in a sexual way, records obtained by McClatchy show.

"He worried that because of his feelings toward children, he could be accused of being like 'Michael Jackson,' " a document says. "He did make it clear that viewing nude children between the ages of three and fourteen was sexually appealing to him."

The lieutenant colonel said he'd sexually touched the child in Stafford, Va., where the county sheriff's department has jurisdiction. The department wasn't notified, spokesman Bill Kennedy said.

The Air Force Office of Special Investigations, which could have investigated the downloading of child pornography, also wasn't informed. "I have nothing on it," Air Force OSI spokeswoman Linda Card said about the lieutenant colonel, who retired last August. It's unclear whether the Justice Department was notified. When McClatchy asked about it, spokeswoman Alisa Finelli said the department was "reviewing its records."

The federal government's failure to notify local law enforcement in these two cases comes after revelations that Penn State officials may have withheld suspicions that former assistant football coach Jerry Sandusky was molesting children. Sandusky was convicted last month of sexually abusing 10 boys.

The National Reconnaissance Office, which oversees spy satellites, conducts an aggressive and controversial polygraph program aimed at screening employees and job applicants from across the country for security clearances. The agency refused to answer McClatchy's questions about its polygraph program, saying in a statement that "The NRO polygraph program is in compliance with the law" and the confessions were "forwarded to the appropriate authorities," but officials declined to say whom they notified.

As soon as Escondido school district officials heard from McClatchy about their former substitute's confession, they reported it to the police. In Virginia and California, where the two cases of molestation were said to have occurred, a wide range of state and local government officials who have contact with children are required to report child abuse. The National Reconnaissance Office is in Fairfax County, Va.

"I'm not sure what this agency feels its obligations are under the law," said Bob Leon, the Escondido school district's deputy superintendent for human resources. "But in my opinion, it's important in any situation where children might be in a precarious situation that the information be shared so we can follow up on it."

The National Reconnaissance Office reported that it had 366 confessions ranging from crimes to inappropriate personal behavior in fiscal year 2011, according to statistics obtained by McClatchy.

McClatchy couldn't determine how many of them involved serious crimes nor how often the agency had failed to report them, because the details of the polygraph program are not disclosed.

Polygraphers who worked in other government agencies said someone who confessed to a serious crime during a polygraph session generally would be arrested or investigated so that any criminal evidence could be secured. In a child pornography case, for example, investigators would want to seize computer evidence. After an admission of child abuse, police and child protective services would want to investigate as soon as possible to ensure that children weren't in immediate danger.

The National Reconnaissance Office has an agreement with Fairfax County's police department that allows for referrals of serious criminal confessions when it deems it's warranted. But the police department didn't have any information about the child abuse confessions, said Don Gotthardt, a department spokesman.

When contacted by McClatchy, the retired lieutenant colonel confirmed being polygraphed but denied confessing to such crimes.

"I need to go and talk to some other people before I can say anything else to you," he said. "I don't know what this is about. I don't know what's going on."

He said he'd call the reporter back. His answering machine then was disconnected the next day, and he never called.

McClatchy tried repeatedly to contact the former substitute teacher and left messages on his phone and with his wife. He left a message last week on a reporter's voice mail confirming that he was the contractor but said, "I can't imagine how I would be implicated in a crime." He added that he was "moving out of state and don't know when I'll be back."

The substitute teacher said during the agency's polygraph that he'd molested the girl during one of the tutoring sessions that were paid for by her Vietnamese parents. He was supposed to be teaching her English.

He admitted to "observing girls in third, fourth, fifth and sixth grades in a sexual manner" during his time as a substitute, agency documents say.

The lieutenant colonel told the agency's polygrapher that he'd learned how to avoid detection while

viewing child pornography from a computer technician who was looking into a subordinate's reprimand for downloading porn. The officer confessed to masturbating at work after viewing the images.

The documents don't indicate and the agency wouldn't say whether the men received security clearances.

McClatchy isn't revealing the two men's names because the confessions weren't criminally investigated and the polygraphs weren't conducted by law enforcement officials.

In 2010, news media reported that dozens of military officials and defense contractors were found to have downloaded child pornography, but many of them weren't investigated by the Pentagon even though it had been notified of the practice years before.

One of the employees worked at the National Reconnaissance Office. The agency had been tipped off in 2006 that the employee allegedly had been trafficking in child porn. "However, the decision was made internally to only address the issue" at the employee's next security clearance renewal in 2008, Pentagon inspector general records show. In 2008, the employee confessed to the agency that he viewed child porn about twice a week from home. By the time federal prosecutors were informed in June 2009, the contractor had moved out of state and authorities couldn't find records of the downloaded purchases.

When National Reconnaissance Office polygraphers asked supervisors in a meeting last summer why people weren't being arrested on the spot after confessing to molestation, they were told that the allegations were referred to the appropriate authorities when warranted, several former polygraphers who attended the meeting said. Two of the polygraphers, Mark Phillips and Chuck Hinshaw, said several polygraphers at the agency have questioned whether it was handling confessions to crime appropriately. Both men have since left the agency and now think that they were retaliated against for objecting to the practices.

To prosecute a polygraph confession, criminal investigators often must collect more evidence or get an admission to a crime during a separate interrogation. Agencies such as the National Reconnaissance Office inform people who are polygraphed voluntarily during employment screenings that any such admission might be referred to law enforcement authorities. However, polygraphers generally don't inform them of their constitutional rights, as criminal investigators often are required to do. In the lieutenant colonel's case, the polygrapher was supposed to inform him of his rights under military law but did not, the records show. Many courts don't allow polygraph evidence because it isn't scientifically reliable, and prosecutors might determine that charges can't be filed even if there's a confession.

But several National Reconnaissance Office polygraphers who spoke to McClatchy, including Phillips and Hinshaw, questioned whether the agency was routinely withholding that it was obtaining such confessions to protect itself from outside scrutiny. A criminal prosecution would mean that the suspect's defense attorney would have access to taped interviews and notes of the polygraph sessions, and might question the agency's techniques at a time when some of its polygraphers already were accusing it internally of improper practices.

The Pentagon has told the National Reconnaissance Office that it doesn't have the authority to ask directly about crimes during its polygraph screenings. It's supposed to directly ask only about national security issues such as spying and terrorism.

Yet the agency compelled a job applicant in January to confess to stealing a lipstick and smoking pot once when she was a teenager, documents show. Adding to questions about the agency's practices, the

35-year-old woman already had gone through a polygraph in 2010 aimed at the national security issues the agency is permitted to ask about.

The National Security Agency, which along with the CIA is allowed to directly ask questions about criminal conduct in polygraph tests, is known for being aggressive about referring molestation and child pornography cases to local and state officials.

Tish Wells contributed to this article.

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National Reconnaissance Office View: Whistleblower Is Merely A Malcontent

By Marisa Taylor, McClatchy Newspapers

WASHINGTON — Mark Phillips wanted out of the spy business. He was so fed up with petty intrigue that some days he imagined walking out of his windowless office and never coming back.

Then, one morning last January, the veteran polygrapher who handled national security clearances got an assignment that would upend his life. “This is a PRIORITY special request,” the paperwork read. “Make a thorough assessment of subject’s mental health.”

The orders contradicted everything he’d been taught about the ethical and legal limits of polygraphing. Phillips refused to do it.

His decision that day pitted him against a secretive and little-known U.S. agency and prompted him to accuse his bosses of illegally prying into Americans’ private lives.

The agency has a different view. The National Reconnaissance Office sees Phillips as a malcontent who took matters into his own hands for questionable reasons.

McClatchy pulled together the story of the internal struggle based on interviews with Phillips and Chuck Hinshaw, a former colleague who also was troubled by the polygraph practices. The account also draws from interviews with more than a dozen others in the usually secretive polygraph world and hundreds of agency documents, including performance reviews, policy papers and memos in which the agency argues its case.

Their dispute is unfolding as the Obama administration moves aggressively to prosecute self-proclaimed whistleblowers, asserting that they’re endangering national security by revealing the government’s secrets.

The National Reconnaissance Office declined to respond to McClatchy’s questions, saying only that its polygraph program “is in compliance with the law.”

When Phillips joined the agency at the end of 2009, he already had worked for a long list of spy agencies over two decades.

But even in intelligence circles, the secrecy at the National Reconnaissance Office was impressive. Created in 1961 as the keeper of spy satellites, it was one of the last federal agencies to be acknowledged by the U.S. government.

Its classified budget is estimated to be \$10 billion a year. Even so, it didn’t have its own staff. It relied on employees loaned from the Air Force and the CIA, creating an unusual union between the military and a spy agency.

An Air Force civilian and former Marine, Phillips saw his job of polygraphing applicants and employees

as largely straightforward. He was supposed to ask them about spying, terrorism and the disclosure of classified information.

His bosses, however, seemed to think otherwise.

“We are not only testing to catch ‘spies,’ ” his supervisor wrote to him after one of his polygraphs. “As security officers we have a responsibility that drives us to actively search out any and all violations and concerns an individual may have coming into the room.”

Phillips wondered what that meant. In the intelligence world, Congress permitted only the CIA and the National Security Agency to use such broad polygraph tests to decide whether to give clearances. In so-called “lifestyle” polygraphs, those two agencies could ask a host of personal questions, including about crimes, psychological problems and financial troubles.

Hinshaw, a National Reconnaissance Office polygrapher since 2005, also noticed the difference from other agencies. But he saw his job as a balancing act. He first tried to establish rapport and then move to root out a secret.

Hinshaw’s bosses considered him good at what he did. By 2008, the agency had made Hinshaw an acting supervisor. Like other well-regarded polygraphers there, he received thousands of dollars in bonuses for the confessions he collected.

The office began pushing its polygraphers to extract as many confessions as possible. Every four months, supervisors showed them their confession rates. The agency also posted each polygrapher’s numbers internally for everyone to see. It praised polygraphers who had high rates or coaxed out especially shocking confessions.

The routine, however, began to worry some polygraphers. They were being told to collect much more intimate information about people than they thought was legal. Some of them voiced their objections. “You guys are killing me with all these emails,” a supervisor told them.

In June 2011, the supervisor set up training for the “elicitation” of such details. A group of veteran polygraphers again complained to their supervisors. Everyone is confused, they said. If we have the authority to do what we’re doing, show us. The supervisors maintained that everything they were doing was legal.

Hinshaw left the meeting unsettled. He once had reassured himself that he’d never crossed the line. He began to wonder whether that was really true.

Later that year, Hinshaw’s supervisor handed him a file with unusual instructions: “Don’t show this to anyone.”

It was a request for a prohibited lifestyle polygraph.

When Hinshaw asked whether it was allowed, he was told not to worry. So he tried not to. He did the test and the contractor passed.

But the special requests continued.

One morning, a middle-aged woman came in for a standard counterintelligence polygraph.

The contract employee had passed the National Reconnaissance Office's polygraph almost 15 years before. But after she'd taken the job, she applied to the CIA. During the CIA's test, she admitted that she'd smoked pot once in the last four years.

Hinshaw asked her about her drug use in passing. But she denied smoking pot since, so he moved on. He posed the usual counterintelligence questions. She passed without a problem. He sent the file on expecting to never see it again.

Soon afterward, his supervisors approached him with questions about his approach. Why hadn't he pursued the drug issue? She could be hiding more.

They decided to bring her back for a second polygraph session. The test, known as a specific issue polygraph, would seek more information about her possible drug use. Policies required them to be specific to one topic, not a fishing expedition.

But no matter how Hinshaw approached the question, she wouldn't confess to further drug use.

"Come on," he thought. "Admit it."

As he continued to probe, his instinct told him she was hiding something else, perhaps another secret related to drug use. He knew that at other agencies he would have let it go. But now he nudged her more.

Finally, she hinted at something she didn't want to talk about. Slowly, it came out. One relative was a "terrible man." She mentioned something he'd done to her when she was 16 years old.

"There were other girls," she told Hinshaw. She began sobbing.

Hinshaw then realized: She'd been molested.

"I understand," he told her.

She looked at him through tears. "Do you?" she asked.

Hinshaw decided it was time to shut it down. He'd gotten all he could.

But his supervisor had another idea. He demanded that Hinshaw continue the questioning: "Go back in there and get details."

By then, the questioning had gone on almost four hours.

"You don't understand," he told them. "This woman needs help."

Three supervisors continued to pressure him. If you don't go, we'll send someone else in.

Hinshaw worried that another polygrapher would push her over the edge. But he couldn't bring himself to continue. Exhausted and unnerved, he refused. They sent in another polygrapher. But they never got anything more.

Hinshaw thought the agency had gone too far. Polygraphers squeezed every personal secret out of people without regard for the consequences. He questioned whether the government needed to know

such details to keep the country safe.

Most people have personal humiliations they don't want anyone to know about. Hinshaw knew that firsthand. He was supposed to tell the agency about financial troubles he was facing. Like many Americans, his house had plummeted in value. He and his wife had decided to proceed to foreclosure.

But he waited to tell the agency. After he eventually did months later, in late 2011, the agency revoked his security clearance, which meant he couldn't work there anymore. The agency thought he no longer could be trusted.

Hinshaw, 45, knew his career was probably over. He also realized he didn't want to return to the National Reconnaissance Office.

Phillips, however, became determined to prove that the agency was wrong. He hunted down its policies and discovered that it had agreed to follow Pentagon polygraph rules.

"I've got them," he thought.

Its test was supposed to be about national security. As a result, all questions were supposed to have a "relevance to the subject of the inquiry," the Pentagon rules said. It shouldn't be pressuring polygraphers to go after personal information, Phillips concluded.

But when he made the same argument to a top agency official, Sharon Durkin, her response surprised him. She asserted that the agency relied on the same legal authorities as the CIA. If that were true, the National Reconnaissance Office had no such limits. Without hesitation, she also confirmed that the agency had authorized lifestyle tests.

Phillips kept pressing. He wrote a memo that went to the agency's attorney. He complained to an Air Force manager. All told, at least 10 officials within the agency and the Pentagon were made aware of his concerns.

Once deemed an "asset to the program," Phillips became known as a troublemaker. He became openly defiant, expressing his criticism in front of supervisors and colleagues. In a meeting with other polygraphers, a supervisor gestured at him and called his questions "a cancer on the program."

The criticism in his annual reviews was more restrained but just as clear.

"Instead of spending time trying to improve his information collection skills, Mr. Phillips has spent an inordinate amount of time documenting, making complaints and arguing why he believes our program is collecting information in violation of (Pentagon) regulations.

"His accusations are without merit."

Top polygraph officials started observing his sessions regularly. He suspected that they wanted to catch him in a mistake. They told him he needed more supervision.

At one point, while conducting a polygraph, he glanced up and saw that a ceiling tile was loose.

"Are they watching me now?" he asked himself.

Phillips excused the job applicant for a break. He climbed up on a chair and looked behind the tile. He stared into a dark and empty hole.

"I've been doing this too long," he thought as he slid the tile back in place.

His bosses began citing him: He was lazy. He was insubordinate. He filed his reports incorrectly. The agency suspended him for three days without pay.

Most importantly, it saw no merit in his complaints.

After a legal review of Phillips' assertions, the agency's assistant general counsel Mark Land concluded in April that the National Reconnaissance Office wasn't illegally pursuing personal information during polygraphs. "Corrective action is not required," he wrote.

After more than two years, Phillips decided he couldn't fight any longer. At the end of May, he resigned. The Pentagon Inspector General's Office now is investigating his complaint of retaliation.

Tish Wells contributed to this article.