

DEPARTMENT OF HOMELAND SECURITY
Office of Inspector General

**A Review of Immigration and
Customs Enforcement Discipline
Procedures**



Office of Inspections and Special Reviews

OIG-06-57

August 2006

Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

August 18, 2006

Preface

The Department of Homeland Security (DHS) Office of Inspector General (OIG) was established by the Homeland Security Act of 2002 (*Public Law 107-296*) by amendment to the Inspector General Act of 1978. This is one of a series of audit, inspection, and special reports prepared as part of our oversight responsibility to promote economy, effectiveness, and efficiency within the department.

This report identifies measures that can be taken by Immigration and Customs Enforcement (ICE) to improve its employee disciplinary system and the efforts undertaken by ICE to establish a single, integrated disciplinary process that is uniform in its assessment of discipline for verified offenses of its employees. It is based on interviews with employees and officials of relevant agencies and institutions, statistical analyses, and a review of applicable documents.

The recommendations herein have been developed to the best knowledge available to our office, and have been discussed in draft with those responsible for implementation. It is our hope that this report will result in more effective, efficient, and economical operations. We express our appreciation to all those who contributed to the preparation of this report.

A handwritten signature in cursive script that reads "Richard L. Skinner".

Richard L. Skinner
Inspector General

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Abbreviations

AIG/I	Assistant Inspector General for Investigations
BTS	Border and Transportation Security
CBP	Customs and Border Protection
DHS	Department of Homeland Security
ELR	Employee and Labor Relations
FAMS	Federal Air Marshal Service
ICE	Immigration and Customs Enforcement
INS	Immigration and Naturalization Service
JIC	Joint Intake Center
JICMS	Joint Integrity Case Management System
MOU	Memorandum of Understanding
MSPB	Merit Systems Protection Board
OIG	Office of Inspector General
OPLA	Office of the Principal Legal Advisor
OPR	Office of Professional Responsibility
ROI	Reports of Investigation
USCS	United States Customs Service

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Executive Summary

On a cyclical basis, our Office of Investigations conducts quality assurance reviews of the internal affairs units in component agencies of the Department of Homeland Security (DHS). These examinations address the handling of allegations, the quality and timeliness of investigations, management of the caseload, and reporting of the results.¹ A review performed on the internal affairs unit of Immigration and Customs Enforcement (ICE) gave rise to concerns that completed internal affairs cases, in which the misconduct allegations had been substantiated, were not receiving timely or effective attention with a probable erosion of good discipline.

In response to those concerns, we reviewed ICE's disciplinary system to determine how, once an allegation has been investigated and found to have merit, ICE imposes and enforces discipline on the employee. Specifically, we reviewed the timeliness and consistency of disciplinary adjudications, and whether ICE's disciplinary system was being administered in a uniform manner. We focused on the most serious cases of employee misconduct, commonly described in Reports of Investigation (ROI). We did not assess the reasonableness of the sanctions eventually imposed on ICE employees who engage in misconduct.

To determine ICE's ability to track, monitor, and process disciplinary cases within its system, we reviewed the status of 246 ROIs from a universe of 268 ROIs completed between January 2003 and August 2005. The ICE Office of Professional Responsibility (OPR) case management system does not track information on the status of disciplinary cases after the investigation of the allegation is complete. Once OPR has turned the investigated case over to ICE managers for assessment of an appropriate sanction, those managers may, but are not required to, ask the Employee and Labor Relations (ELR) servicing offices to assist. ELR does not have an effective system for tracking ICE disciplinary cases, which impacts its ability to maintain case file data. For example, because information in ELR case management logs is incomplete or inaccurate, we were unable to track the status of 22 ROIs. Furthermore, cases are not being subsequently adjudicated in a prompt manner when we or OPR

¹ We conduct investigations of serious misconduct and criminal behavior committed by DHS employees, but, pursuant to a Memoranda of Understanding between the OIG and the Department's organizational elements with internal affairs units, we assign to cognizant internal affairs units responsibility for investigating lesser matters of misconduct. The quality assurance review discussed here is one way by which we monitor the performance of the internal affairs units and the cases they investigate.

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substantiates serious misconduct. Of the 246 ROIs, there are 147 (60 %) with components for adjudication where no identifiable action has been taken, and only 71 ROIs (29 %) have been processed for adjudication. An additional 28 ROIs (11 %) had no action taken by the component because the alleged misconduct was not substantiated.

Currently, ELR uses five separate Tables of Offenses and Penalties to guide management in determining appropriate discipline for ICE employees. Four tables are from former agencies that merged within Border and Transportation Security (BTS) and one is an interim ICE Table of Offenses and Penalties for its non-bargaining component employees. As a result, the current disciplinary process does not provide uniform treatment for ICE employees. We highlight several cases where timeliness, consistency of disciplinary procedures, or the degree of discipline raises serious concerns. These cases underscore ICE's need for more formal policy on the roles and responsibilities of those involved in the disciplinary process and better management oversight of the decision-making process. ICE and DHS OIG also need to improve their coordination and communication. ICE must establish a reliable process to respond to information requests on the disciplinary status of ROIs, and clarification is needed on what information ICE should provide in its required monthly reports to our Office of Investigations.

To improve ICE's ability to establish a single, integrated disciplinary process that is timely and uniform, we are making 11 recommendations. Essentially, we are recommending that:

- ELR implement a centralized case management system, standardize the recording and collecting of information, provide more training to ELR employees, ensure active disciplinary case file information is transferred to the new case management system, establish performance measures for the timely adjudication of cases, and implement policies to process existing cases during the transition to the new system;
- OPR provide notification to ELR when ROIs are completed, revise its procedures to ensure effective reporting on the disciplinary status of ROIs, and establish a process to track receipt and distribution of DHS OIG ROIs; and
- ICE implement a single Table of Offenses and Penalties, and coordinate components' adjudication of disciplinary cases with ELR.

Background

The Homeland Security Act of 2002 established the Border and Transportation Security Directorate as the primary customs and immigration enforcement entity in DHS. Within BTS, criminal investigators from the former United States Customs Service (USCS) and the former Immigration and Naturalization Service (INS) were combined in ICE. The border inspectors of USCS and INS were combined in the Bureau of Customs and Border Protection (CBP). As a result of a DHS reorganization that began in July 2005, BTS has ceased to exist and CBP and ICE operate independently.

ICE's mission is to prevent acts of terrorism by targeting the people, money, and materials that support terrorist and criminal activities. The largest investigative arm of DHS, ICE is responsible for identifying and shutting down vulnerabilities in the nation's border, economic, transportation, and infrastructure security. ICE targets the people, money, and materials that support criminal activities. At the time we began our review, ICE had five operational components: (1) the Office of Detention and Removal, (2) the Federal Protective Service, (3) the Office of Intelligence, (4) the Office of Investigations, and (5) the Federal Air Marshal Service (FAMS).² The July 2005 reorganization resulted in the transfer of FAMS from ICE to the Transportation Security Administration later that year. ICE currently has approximately 15,000 employees, of which approximately 6,000 are criminal investigators, and an operating budget of \$3.9 billion in FY 2006.

ICE employees must meet a high standard of ethical conduct that serves and protects the interest of the public and furthers ICE's organizational goals. For this to occur, ICE needs an effective disciplinary system based upon well-defined policies and procedures, a system that assists its employees to understand expected behavior, and that deals fairly and objectively with employees accused of misconduct.

According to Appendix A of DHS Management Directive 810.1, (see Appendix D), serious allegations of unprofessional conduct by ICE employees are referred to OIG for a decision whether OIG will investigate or decline in favor of an ICE investigation. A Memorandum of Understanding (MOU) that defines which cases will be referred, and what procedures OIG and ICE will follow, was executed in March 2003 (see Appendix E). The MOU calls for timely reports back to the AIG/I by ICE. We began this review because ICE could not provide the disciplinary status on OIG conducted ROIs, which gave

² See Appendix C, ICE Organization Chart.

rise to concerns that allegations of employee misconduct were not receiving timely or effective adjudication.

Overview of ICE's Disciplinary System

Title 5, United States Code, Chapter 75, provides the legal framework for federal agencies to address employee misconduct through discipline and adverse actions. Such actions range from oral and written admonishments, to suspensions or demotions, and ultimately to removals. According to Chapter 75, employees may be disciplined for such cause as will promote the efficiency of the service. ICE has the authority to take disciplinary action when an employee's misconduct or unacceptable performance interferes with the organization's ability to carry out its mission. However, ICE currently does not have cohesive policies and processes in place to ensure the timely, uniform treatment of complaints against its employees.

ICE's disciplinary process involves two stages, investigation and adjudication.³ Once an investigation determines whether or not misconduct occurred, the case is transmitted to the employee's operating entity for disposition. In the adjudicative stage, disciplinary action is proposed and imposed. The ELR division is within ICE's Office of Resource Management. ELR assists with the adjudicative stage, when invited by the appropriate ICE component, but can only assist when the entity managers make ELR aware of the case. ELR has three locations, headquarters in Washington, DC, and field offices in Dallas, Texas, and Laguna Niguel, California.

The Allegation Intake and Classification Process

Allegations of misconduct are received by ICE OPR from telephone calls to a 24-hour toll free hotline, faxes, reports from other government employees, the public, anonymous sources, or referrals from the OIG and OPR field offices. Regardless of the source, allegations are forwarded to ICE's Joint Intake Center (JIC) for processing and assignment. The JIC, which is located at CBP headquarters, is funded by CBP and operated by ICE OPR. The JIC is staffed with personnel from CBP and ICE who are responsible for receiving, classifying, and routing allegations of CBP and ICE employee misconduct. After an allegation is received at the JIC, an Intake Control Specialist catalogs the allegation in a two-step process described in OPR's Investigative Guidebook as categorizing and classifying.

³ Many of the employees with whom we spoke used the word discipline to refer only to the adjudicative stage – discipline in the sense of punishment. We use it to refer to the entire process that disposes of allegations of professional misconduct – the investigation and the subsequent sanction, if any.

First, the Intake Control Specialist categorizes the allegation from a list of twenty named offenses covering a range of criminal, non-criminal, and administrative matters. Categories of offense include bribery, smuggling, falsification, sexual harassment, mismanagement, and lost credentials. After the allegation is categorized, it is then assigned to one of six investigative classes that determine how the allegation will be handled. These classes are:

- Class I - Criminal Misconduct
- Class II - Serious Non-Criminal Misconduct
- Class III – Administrative Misconduct
- Class IV – Informational Purpose Only
- Class V – Administrative Investigations or Non- Investigations
- Class VI – Computer Generated Files to Capture Non-Operational Duties

Class I and II allegations are considered the most serious in nature. Allegations of bribery or employee involvement in drug smuggling would be classified as allegations of criminal misconduct. Allegations of sexual harassment or misuse of a government vehicle would be classified as serious non-criminal misconduct. Class III allegations generally are referred to ICE management for inquiry or action. These types of allegations would include unprofessional behavior or some specific conduct or action that would be considered inconsistent with ICE or government policies and standards. Class IV designations do not require any type of investigative action; the information concerning this class is indexed and may be referred to appropriate ICE officials for informational purposes and are generally closed without action, but a permanent record remains for future reference. For example, information regarding lost credentials would be a class IV allegation. Class V designations are used to electronically monitor a program or project, track an initiative, or to document integrity tests with no named subjects. Finally, the Class VI designation is used to capture non-operational duties for ICE employees such as leave, collateral duties, or to document special projects.

After the allegation is analyzed, the respective ICE or CBP JIC supervisor reviews the case file to ensure it contains all relevant information, and is properly categorized and classified, before it is acted upon by DHS OIG or the appropriate ICE component. There are two JIC supervisors, one for CBP and one for ICE, who review their corresponding agency cases before they are assigned for processing. The CBP supervisor at the JIC is a labor and employee relations specialist; the ICE supervisor is a Senior Special Agent.

Investigative Responsibility for Allegations of Misconduct

As described in DHS Management Directive 0810.1, OPR does not investigate all allegations of criminal or serious non-criminal employee misconduct. OPR is required to report all allegations of serious employee misconduct to DHS OIG, which either accepts or declines investigative responsibility for the case reported by OPR. If DHS OIG declines to investigate an allegation, the case file is returned to OPR for disposition. OPR then conducts its own investigation on any case declined by DHS OIG. Allegations that are investigated by either DHS OIG or OPR result in case files that are referred to as ROIs.

Completed DHS OIG ROIs are forwarded to ICE OPR headquarters for review and appropriate disposition. The ROIs are first reviewed for sufficiency of information and documentation of the facts by a designated senior ICE supervisor.⁴ ROIs then go to the Director of OPR's Investigations Support Unit, which is responsible for overseeing the accuracy and routing of completed investigations to the appropriate component directors. After this review process, the Director of OPR reviews and approves the ROIs for release to the appropriate ICE component Director for review and action. If there is a question regarding the sufficiency of information or documentation contained in an ROI, the case file is sent back to the investigating component for additional information.

Even if the allegation has not been substantiated, the Director of OPR forwards the ROI for review to the appropriate ICE component Director because the employee's conduct or action may still warrant non-disciplinary remedies such as counseling or training, a verbal warning, a letter of caution, or referral to an Employee Assistance Program.

Adjudicating Reports of Investigation

The case enters the adjudication stage once the ROI is forwarded to the appropriate ICE component Director. The four main actors during adjudication are the proposing official (usually the employee's supervisor), the deciding official (superior to the proposing official), ELR, and ICE's Office of the Principal Legal Advisor (OPLA).

⁴ ROIs conducted by OPR are initially reviewed by one of three Regional Operations Managers who are Senior Special Agents. The JIC OIG Desk Officer and ICE supervisor are responsible for providing the first level review for DHS OIG ROIs.

Upon receipt, the ICE component Director sends the ROI to the employee's supervisor or manager, who serves as the proposing official. He or she reviews the ROI, determines whether misconduct has been substantiated, and proposes a penalty. The deciding official then reviews the ROI, the proposed penalty, and any written statement submitted or oral testimony provided by the employee. The deciding official determines whether to sustain or reduce the proposed penalty; he or she cannot increase the proposed penalty.

ELR provides advice to both officials when requested,⁵ and reviews the proposal and decision letters to ensure technical and procedural compliance before issuance to the employee. ELR also represents ICE in some third-party hearings, such as arbitrations, and assists with Merit Systems Protection Board (MSPB) cases, unfair labor practice cases, and grievance procedures.

OPLA provides legal advice throughout the process as requested, and formally reviews all proposals concerning suspensions of 15 days or more, which can be appealed to the MSPB. OPLA also represents the agency at all MSPB hearings.

Results of Review

The lack of reliable tracking and processing procedures prevents ICE from adequately documenting and monitoring completed investigations throughout the adjudication phase. Inadequate management oversight diminishes ICE's ability to ensure that disciplinary cases are adjudicated in a timely and uniform manner. The degree of coordination between DHS OIG and ICE OPR is insufficient, preventing timely information sharing on the adjudication status of completed investigations.

Some of the management challenges we identify are similar to problems identified in other reviews of ICE.⁶ ICE officials acknowledge the need to resolve the deficiencies identified during the course of our review, but have not completed the corrective actions.

⁵ There is no policy that requires the proposing or deciding official to contact ELR or OPLA for advice when deciding what action, if any, to take in a disciplinary case. Even when ELR is contacted for assistance, the proposing or deciding official is not required to follow or consider ELR's advice.

⁶ Government Accountability Office, *Department of Homeland Security, Addressing Management Challenges That Face Immigration Enforcement Agencies*, GAO-05-664T (May 5, 2005), which also identified questions surrounding ICE's strategic planning process, performance measures, and personnel accountability mechanisms.

Improvements Are Needed in ICE's Disciplinary Process

ICE does not have a centralized tracking system for its disciplinary cases. ELR must query multiple databases and manually review paper records in order to respond to requests for information on case files, a process that is cumbersome and time consuming. There are other deficiencies that affect ICE's ability to administer its disciplinary cases in a timely and uniform manner. 147 of the 246 ROIs we examined had unexplained delays in processing. In addition, ICE has five separate Tables of Offenses and Penalties for its employees, and no systematic process to ensure consistency in the application of proposed penalties.

Effective Tracking and Processing of Cases Is Needed

ELR headquarters and the two field offices use electronic spreadsheets to manage disciplinary cases. There is no requirement for uniform record keeping among the three offices. Current case management practices do not provide ELR with the ability to readily manage or identify the total number and status of cases in its disciplinary system. The current system is also cumbersome in that it fails to provide ELR with the ability to readily reconstruct case histories. For example, it took ELR headquarters more than two weeks to provide information on three cases discussed later in this report, and the information was incomplete.

ELR officials use case management logs to manage disciplinary caseloads. Each ELR servicing office enters into its log the information it considers relevant. The information contained in the different logs cannot be easily transferred or consolidated among the two ELR servicing offices or headquarters, making it difficult to share and consolidate case data. Even when the case management logs were shared, the data is incompatible. Each office records information differently, except for a few common data elements, such as the employee's name and component. The differences range from coding an allegation to the format used for entering dates. For example, one servicing office used four different offense codes to identify the misuse of a government issued credit card. This lack of standardization makes it difficult to compile and compare data across the organization for reporting and statistical purposes.

Reliable information is critical to informed decision making and effective management oversight. However, some information contained in the records provided by ELR was inaccurate and incomplete. Out of 268 ROIs, we had to exclude 22 ROIs from our review because of concerns regarding the accuracy of the dates or names in the records. In 21 of those 22 ROIs, ELR case

management logs indicated the ROIs were active earlier than OPR recorded the ROIs as having been completed. In the 22nd case, OPR could not provide a date the ROI was delivered to the component for adjudication. We also question the reliability of data used to identify 26 of the remaining 246 ROIs because of missing, inconsistent, or incomplete information.⁷

ELR officials said many of the errors in its case management logs are due to data entry mistakes by staff. In some instances, an ELR servicing office was not provided information by the component manager or there was inadequate verification of the information before it was entered into the logs. ELR officials also cited too few staff, too little training, and high turnover as reasons for the errors.

OPR and ELR officials acknowledged they need a more reliable and efficient case management system and are addressing the issue. OPR, in connection with a broad redesign of its Case Management System,⁸ proposed incorporating ELR disciplinary case adjudication functions into the new system, known as the Joint Integrity Case Management System (JICMS), which became operational in October 2005. ELR has been working with OPR to define its system requirements, and as of early February 2006, ELR headquarters personnel were given access to this system. ELR officials noted that a full roll out of the system to all ELR personnel, including training, is anticipated in the near future. The JICMS is intended to be an all-inclusive system that will allow for the tracking and monitoring of ICE disciplinary cases from initial investigation to final adjudication. If implemented effectively, JICMS should address many of the shortfalls in ELR's current disciplinary Case Management System.⁹ However, we have concerns that some issues will not be adequately addressed by ELR, such as (1) developing common data collection and reporting standards, (2) effectively training ELR personnel on the new system, and, (3) carrying over active case information to JICMS. ELR officials acknowledged these issues, but did not provide a definitive response on how they plan to resolve them.

Recommendations

Recommendation 1: We recommend that ICE implement a centralized and automated case management system to enhance effective tracking, processing,

⁷ See Appendix F, Total Reports of Investigation Statistics.

⁸ The Case Management System used by OPR is a legacy Customs system that is shared with CBP to track and manage its investigative caseload. This system is not used to track ICE disciplinary cases once they move into the adjudication stage, and cannot be accessed by ICE ELR.

⁹ This new system should also be managed and its access based on rules governing accepted personnel practices to ensure that the appropriate privacy safeguards are in place to protect sensitive employee information.

and reporting on disciplinary cases from receipt of an allegation to investigation through final adjudication.

Recommendation 2: We recommend that ICE standardize the methodology used for recording and collecting disciplinary case information.

Recommendation 3: We recommend that ICE implement a training program for all Employee and Labor Relations personnel on the Joint Integrity Case Management System.

Recommendation 4: We recommend that ICE implement procedures to ensure that active disciplinary case file information is transferred to the new Joint Integrity Case Management System.

Completed Investigations Need to be Adjudicated in a Timely Manner

ICE managers do not ensure the timely processing of completed investigations. Between January 2003 and August 2005, ICE experienced excessive delays in initiating action on ROIs forwarded to component Directors for review and disposition. For example, of the 246 ROIs we tracked, we determined that 147 (60 %) had not been processed by the time of our review.¹⁰ The table below depicts how long the 147 ROIs had gone without being adjudicated as of September 30, 2005.

Figure 1. Time Taken to Process Reports of Investigation

Length of Time	ROIs
0 to 2 months	24
3 to 4 months	24
5 to 6 months	16
7 months to 12 months	21
1 year to 1.5 years	24
1.5 years to 2 years	16
2 years to 2.5 years	15
Over 2.5 years	7
Total Records Tracked	147

Source: DHS Office of Inspector General, ICE Office of Professional Responsibility, and ICE Employee and Labor Relations records.

¹⁰ We define an open case as a completed investigation that has been forwarded to the appropriate component Director for review and action, but ELR has no record of action being taken on the case file.

ICE officials involved in both the investigative and adjudicative processes expressed concerns over the length of time it takes to adjudicate completed investigations. They said that delays can occur for reasons outside management's control, such as when an accused employee requests additional time to respond or when an adjudicator requests additional information. However, even after considering such factors, we were not able to determine a reasonable explanation for the excessive delays between the date an ICE component receives a case file for disposition and when action is initiated to adjudicate the case.

OPLA officials said that when months or years lapse before disciplinary action is initiated on a case, the allegation of misconduct loses its urgency and it becomes harder to justify a suspension of 14 days or more, removal, or demotion. This is especially true in cases where the employee continues to hold a position of public trust after a serious allegation is substantiated, and is then issued a proposed removal after the case has languished for a year or more.¹¹ Some ICE officials blame OPR for the lack of timeliness in completing investigations, while others point to ELR as the source of the delay.¹²

To emphasize this point, both ELR and OPLA officials cited as an example a case known as the "Phoenix Five," which by some estimates has taken ICE four to five years to adjudicate. Based upon the information provided by ELR, the case involved five legacy INS employees and various allegations of misconduct that occurred between January 2000 and November 2002. OPR conducted an investigation and issued substantiated ROIs to the appropriate component director in January 2004. However, the case was transferred from the ICE field component to ICE headquarters for disciplinary action and processing. Proposal letters were issued and then rescinded. The case file was then returned to the component for a fresh review. Three of the five cases were finally adjudicated in September 2005, one case is being appealed to the MSPB, and one employee has filed an Equal Employment Opportunity complaint. ICE officials did not provide a clear explanation as to why the events unfolded in this manner.

We asked ELR officials to provide us with the information on the oldest case in its system. The case, as described by ELR officials, involved a legacy INS criminal investigator who was eventually charged with a lack of candor during

¹¹ Generally, an employee is not placed on administrative leave during the investigation or pending disciplinary action. However, there are circumstances when an employee can be placed on indefinite suspension usually related to the initiation of formal criminal charges.

¹² In August 2004, we conducted an oversight inspection of OPR to assess the quality and completeness of its internal investigations. The report determined that OPR was completing internal investigations in a timely manner.

the course of an investigation by the Department of Justice's OIG in January 2002, for not having a positively adjudicated background investigation since 1988. As a result of the substantiated lack of candor charge, the employee received a proposed removal in July 2003, but the proposal was later rescinded because of the delay in adjudication. A new proposal for removal was issued in October 2005, and as of August 1, 2006, the removal will be upheld unless an appeal is filed with the MSPB.¹³

These examples, along with the 147 open ROIs, illustrate deficiencies in ICE's overall ability to adjudicate completed investigations timely. We asked ICE officials whether it has performance goals and standards for processing and adjudicating disciplinary cases. They responded that the processing of cases is dictated by several factors, such as labor agreements, administrative procedures, and policies that are based upon case law or federal regulations, factors that exist generally for all federal agencies. In addition, ELR officials said they are not aware of any government regulation that requires the issuance of a decision letter in disciplinary cases within a specific time frame.¹⁴ ELR officials also said ICE has informal internal goals that are used to assist the process, but considers it disadvantageous to the organization to establish formal timelines for rendering decisions. Even though no statutory authority requiring federal agencies to adjudicate disciplinary cases within a specific timeframe exists, we have concerns that currently there are no policies and procedures in place either to compel ICE managers to assess discipline expeditiously or to hold them accountable for their inaction.

The Government Performance and Results Act of 1993 requires federal organizations to establish five-year strategic plans with clearly stated strategic goals, corresponding annual plans to assess yearly progress toward attaining those goals, and annual reports on progress. Although the Government Performance and Results Act of 1993 addresses the major functions and operations of federal organizations, the concept of measuring outcomes to improve effectiveness applies to all programs and processes. Setting goals and measuring performance assists federal organizations establish priorities, control operations, document accomplishments, and motivates personnel to improve performance.

ICE's Interim Strategic Plan for 2005 outlines specific program goals, objectives, and strategies for the organization. One strategic objective of the plan requires the investigation of allegations of misconduct in a timely manner. However, the plan does not include goals and measures pertaining to

¹³ The employee's duties have been restricted pending final adjudication.

¹⁴ ELR's assertion is consistent with standard employee relations practices on the issue.

the adjudication phase of the disciplinary process.¹⁵ This absence, coupled with the need for broader organizational policies, inhibited ICE's ability to identify deficiencies within its disciplinary system and initiate improvements.

Recommendation

Recommendation 5: We recommend that ICE establish performance measures and standards to ensure that completed investigations are adjudicated in a timely manner.

Penalties Should Be Uniformly Applied

ICE's current disciplinary process fails to ensure the uniform treatment of ICE employees. Given similar circumstances, a uniform disciplinary system should ensure that employees receive similar discipline for similar misconduct. However, ICE management cannot determine whether disciplinary actions are being applied in a consistent and uniform manner.

At the time of our review, ICE had five separate Tables of Offenses and Penalties for its employees. Two of the tables are from the former INS and USCS, one table is from FAMS,¹⁶ and one table is from the General Services Administration, which covers the Federal Protective Service employees. In April 2005, ICE implemented its own interim table for ICE non-bargaining unit employees.¹⁷

The use of multiple tables facilitates inconsistent treatment of similar employees for similar offenses. This risk is greatly increased because the proposing official, who is generally the employee's supervisor, decides which Table of Offenses and Penalties should apply regarding an employee under their supervision. Consequently, two similarly situated employees, that commit similar misconduct under similar circumstances, within the same unit, could receive different penalties.

The table below demonstrates the range afforded a first offense for insubordination and misuse of position across the five applicable Tables of Offenses and Penalties utilized by ICE.

¹⁵ In February 2005, ICE submitted their Interim Strategic Performance Plan for DHS approval.

¹⁶ For the period covered by this review, FAMS was still a component of ICE.

¹⁷ ELR officials said all Tables of Offenses and Penalties apply a similar methodology in that they provide a range of penalties for certain offenses and are designed to function as a "guide" to assist managers in determining appropriate discipline.

Figure 2. Comparison of ICE Five Tables of Penalties and Offenses

Component:	1st Offense¹⁸: Insubordination	1st Offense: Misuse of Position
INS	Reprimand to removal	15 days to removal
Customs	5 days to removal	Reprimand to 10 days
FAMS	14 days to removal	Reprimand to removal
General Services Administration	Reprimand to removal	Suspension to Removal
ICE (Interim)	5 days to removal	5 days to removal

Source: ICE Employee Labor Relations.

ELR officials said they review their individual case management logs to ensure uniformity when advising proposing officials or deciding officials on similar penalties for similar offenses. Each ELR servicing office uses a combination of information from their individual case management logs and its staff’s historical knowledge. However, because ELR offices do not have the ability to access information from the others’ case management logs, proposed penalties cannot be reviewed for uniformity of process across the organization. Furthermore, proposing and deciding officials do not always seek advice from ELR, so some cases are not reviewed by ELR for uniformity.

ICE officials said efforts to implement an agency-wide Table of Offenses and Penalties had been postponed to await the implementation of DHS’ new personnel system, known as Max^{HR}. The Max^{HR} system will, if implemented, permit the implementation of an organization wide Table of Offenses and Penalties, without having any formal negotiations with the unions. Because a federal district court ruled against DHS on portions of the new personnel system, ICE officials have decided to move forward without the benefit of Max^{HR} system flexibilities.¹⁹

¹⁸ The descriptions of these first offenses are generalized because each tables use different language and characterizations to describe similar offenses.

¹⁹ DHS had intended to implement Max^{HR} performance management components on August 15, 2005. On August 7, 2005, the Federal District Court ruled sections of Max^{HR} illegal. On September 9, 2005, DHS circulated an internal memorandum stating Max^{HR} performance-based pay components would be delayed up to one year.

ICE officials said the agency is formulating a single Table of Offenses and Penalties that will apply to all employees and is preparing notification to its unions of ICE's intention to include bargaining component employees under the new table.

Recommendation

Recommendation 6: We recommend that ICE implement a single Table of Offenses and Penalties that applies to all ICE employees.

Policies and Management Oversight Are Needed

ICE does not have a policy that requires its operational divisions to coordinate their efforts with ELR in adjudicating completed investigations. There is also a lack of oversight of officials involved in the disciplinary process. Collectively, these conditions prevent objective enforcement of rules and regulations and compromise the integrity of ICE's disciplinary process.

Improved Policies Are Needed to Enhance Coordination

When an investigation is completed, OPR's Director hand delivers the investigative case file to the appropriate component director for review and action. However, neither OPR nor ICE component Directors consistently provide notification to ELR when a completed investigation has been submitted for adjudication. Even when ELR officials are made aware that a component has received a completed investigation for adjudication, it is ELR policy to wait for the component to contact them for assistance, instead of proactively reaching out to offer their services. ELR officials said that severe budget and staff shortfalls have hampered its efforts to address this issue, and additional staff would be required to facilitate outreach efforts to the components.

More importantly, ELR officials said component managers are not required to contact ELR for assistance when they receive a case file for action, and are not required to follow or consider ELR's advice. Of the 246 completed ROIs we reviewed, only 71 had been adjudicated to completion. Of those 71 adjudicated disciplinary cases, 9 were not on ELR's case management logs, which indicates that ELR was not involved in the decision making process concerning their adjudication.

Out of the 246 completed investigations, 28 completed investigations had no disciplinary action taken by the component because the alleged misconduct

was unsubstantiated by the OPR investigation. We have concerns regarding 26 of those 28 completed investigations, because the investigations were closed by the component without contacting ELR for advice or assistance.²⁰ Because all completed investigations are forwarded by OPR to the appropriate component for review whether or not the allegation of misconduct has been substantiated,²¹ it is imperative ELR be involved in all aspects of the disciplinary process to ensure the uniform application of discipline. This is particularly important when dealing with unusual or complex cases, such as those involving multiple findings of misconduct, more than one employee, or multiple tables of offenses. An ELR official said ICE would be issuing a directive to provide agency wide guidance on its adverse action process, and that this directive would provide guidance on the roles and responsibilities of those involved in the disciplinary process. The official did not provide a timeframe when the directive would be issued.

Recommendations

Recommendation 7: We recommend that ICE require its Office of Professional Responsibility to notify Employee and Labor Relations when completed Reports of Investigations have been transmitted to ICE components for adjudication.

Recommendation 8: We recommend that ICE implement policies to ensure all ICE components coordinate with Employee and Labor Relations in the adjudication of all completed investigations.

ICE informed us that it is working to improve coordination, consultation, and communication between its operational divisions. ICE officials noted the establishment of the ICE Policy Action Committee, an internal policy development forum. The committee is responsible for identifying gaps in ICE policy and selecting best practices from among the policies formerly used at legacy agencies to be incorporated into ICE policies.

Current Decision Making Process Requires More Management Oversight

In explaining the mechanics of the ICE disciplinary process, various ICE officials told us that deciding officials may take whatever disciplinary or

²⁰ See Appendix F, Total Reports of Investigation Statistics.

²¹ The case file is forwarded by OPR to the appropriate component for review even when the alleged misconduct has not been substantiated because the facts of the investigation may suggest the employee's conduct warrants corrective measures or non-disciplinary remedies.

adverse action they deem appropriate,²² including no action, without any management oversight.²³ One ELR official stated that there was definitely a lack of uniformity within the system, resulting in the perception that a “good old boys” network still existed where certain infractions were simply made to go away. For example, OPR officials noted a recent case that it investigated involving a Senior Executive Service employee. The employee had several serious charges of substantiated misconduct that were referred to the appropriate component director for discipline. The initial decision to impose a three-day suspension was rescinded, and a letter of reprimand was imposed, which is under appeal.²⁴ OPR officials we interviewed expressed surprise at the lenient penalty, considering the serious nature of the misconduct and the employee’s seniority and position, and thought the misconduct warranted a stronger penalty than was imposed. Another official familiar with the case stated that the component responsible for disciplining the employee is widely known for being too lenient. OPR officials said this case is an example of why better management oversight of the current decision-making process is needed.

The current disciplinary process also raises serious concerns about the possibility for inconsistent treatment of employees, especially in cases where the maximum punishment is a suspension of less than 14 days, as these cases are handled exclusively at the component level.²⁵ Without transparency and accountability in the disciplinary process, disciplinary actions can be assessed and imposed differently depending upon grade, position, or office. The problem is compounded by the fact that ELR has no defined oversight authority in the adjudication process, and that ICE has yet to address unresolved legacy INS issues regarding the lack of accountability standards for ICE employees.²⁶

²² Supervisors are to consider twelve factors commonly referred to as the “Douglas Factors.” See Douglas v. Veterans Administration, 5 Merit Systems Protection Board Reporter 280, which established criteria that supervisors should consider in determining an appropriate penalty to impose for an act of employee misconduct.

²³ In an October 2001, statement before House Judiciary Committee Subcommittee on Immigration and Claims, the Department of Justice Inspector General was critical of INS saying, “INS has not sufficiently demanded accountability either of individual INS employees or from the organization as a whole.” The Inspector General also said, “Discipline for INS employees who have committed misconduct has been spotty and uneven.”

²⁴ According to Office of Personnel Management regulations, an agency may suspend a Senior Executive Service employee for 14 days or more, but the regulation is silent on suspensions of 14 days or less, so there are no provisions for such suspensions. An agency may issue a reprimand or admonishment for offenses that do not warrant a suspension for more than 14 days.

²⁵ Under federal regulations in 5 CFR 752 Parts C and D, an employee has the right to appeal a suspension of more than 14 days, a reduction in grade or pay, a removal to the MSPB or alternatively arbitration. The MSPB appeal or arbitration provides a level of review in the discipline process that a disciplinary action 14-days or less is not afforded.

²⁶ See footnote 23, detailing Department of Justice OIG comments on INS accountability and discipline issues.

In June 2005, OPR prepared an internal memorandum proposing that ICE explore other alternatives, such as the establishment of a Disciplinary Review Board, to promote fairness and consistency in addressing cases of alleged employee misconduct. Input was solicited from ICE components to assist in the evaluation of different options regarding the implementation of a centralized disciplinary system.

In August 2005, ICE officials elected to implement a new disciplinary system similar to a Disciplinary Review Board. Under the new system, disciplinary responsibilities would be transferred from the individual ICE component where the assessment of the penalty is usually made by the employee's supervisors. Instead, disciplinary responsibilities would rest with a new central disciplinary entity at ICE headquarters that would review reports of misconduct and propose disciplinary or adverse actions as appropriate. The new entity would apply uniform standards of conduct to all ICE employees regardless of their grade, position, or office. As described in the internal memorandum, the disciplinary process would be a two-tier system consisting of a proposing panel and a decision board. The proposing panel would consider and issue proposed actions, as well as determine whether lesser actions, e.g., reprimands and counselings, should be returned to the component manager or ELR for action. The decision board would have the responsibility of reviewing all relevant documents, including employee responses, and issuing final decisions. ICE officials said they are in the final stages of determining staffing requirements and the system should be operational by mid 2006.²⁷

Implementing the new system should provide ICE with a better opportunity to establish a single, integrated disciplinary process that is timely and uniform. However, we have concerns with how ICE will address current disciplinary cases during the transition period. ICE said directives would be issued, but these directives were not available during our review and no timeframe was provided for when the directives would be implemented.

Recommendation

Recommendation 9: We recommend that ICE implement policies for processing existing disciplinary cases during the transition to the new centralized disciplinary system.

²⁷ ICE recently began recruiting candidates to the proposing panel and decision board through its pilot Management Development Program. The program is open to all Non-Bargaining Unit GS-14 and GS-15 level employees who are interested in career development training that focuses on core competency skills related to Senior Executive Service level positions. The panel and board will be located at ICE headquarters and positions initially will be held for one year.

Coordination Issues Are Affecting Investigation Information Sharing

We identified two issues that affect information sharing and hamper DHS OIG efforts to obtain timely and accurate information on the disciplinary status of their ROIs: ineffective ICE procedures for reporting back to OIG and unclear guidance on reporting requirements. More focused attention on these issues is needed by ICE to ensure an appropriate resolution.

The Investigative Reporting Process and Requirements Need to be Clarified

In September 2004, the DHS Inspector General sent a memorandum to the Under Secretary for BTS requesting an update on the status of its ROIs. The memorandum informed BTS that DHS OIG had not received, as requested, a response within 30 days on the status of its ROIs, some of which dated back to 2003.²⁸ The Under Secretary did not reply to the memorandum. We asked an OPR official why the Under Secretary did not reply and were provided a copy of an October 13, 2004, memorandum from ICE's Assistant Secretary to the Under Secretary that addressed the Inspector General's concerns.²⁹ The official could not explain why the memorandum was never transmitted to the Inspector General.

DHS OIG routinely attaches a transmittal letter to substantiated ROIs that requests a status on the case file within 30 days. OPR passes the ROI and reporting requirement on to the appropriate component director for action. An OPR official told us that OPR acts only as the postman to deliver ROIs to the appropriate component director, and the component is responsible for reporting directly back to DHS OIG on the disposition of the completed investigation, specifically what disciplinary action, if any, was taken. The OPR official stressed that it is in the same position as DHS OIG because ICE components are also not reporting back to OPR on the status of its ROIs, and OPR does not have the authority to mandate that ICE components report back to either entity.

Also, ICE is not providing the disciplinary status on DHS OIG ROIs in its monthly status report.³⁰ We were told ICE is only required to report on all

²⁸ See Appendix G, DHS Inspector General letter dated September 30, 2004.

²⁹ See Appendix H, ICE's Assistant Secretary for Immigration and Customs Enforcement Letter dated October 13, 2004.

³⁰ In March 2003, BTS and DHS OIG signed a MOU, providing the authority for DHS OIG to investigate allegations of misconduct involving BTS employees. In June 2004, DHS issued Management Directive 0810.1 that provided DHS OIG with the authority to review all allegations of BTS employee misconduct to determine whether DHS OIG would conduct the investigation. Both the memorandum and the directive require ICE to provide monthly status reports on all

open investigations, and OPR defines DHS OIG investigations as closed once the ROI is completed and forwarded by OPR to the responsible component for action.³¹ However, DHS OIG does not consider its ROIs closed until the completed investigation has been adjudicated. The current process is not working and both entities have fundamentally different understandings of what information is to be reported.³² This lack of coordination demonstrates the need for clearly defined policies and procedures for all entities involved in the disciplinary process.

Recommendations

Recommendation 10: We recommend that ICE provide DHS Office of Inspector General with a monthly report on the disciplinary status of all Reports of Investigation.

Improvements Are Needed to Track the Distribution of DHS OIG Investigations

We reviewed an initial list of 184 ROIs from DHS OIG to determine how OIG investigations are processed and when those investigations are delivered to the component directors for action.

When the JIC receives an ROI from DHS OIG, a document called a “blue sheet” and a letter of transmittal are attached to the ROI for internal routing to the Director of OPR. Once the Director reviews and approves the ROI for release, the blue sheet is returned to the JIC for filing. At some point thereafter, OPR’s Director delivers the ROI with a signed transmittal letter to the appropriate component director for action.

According to OPR officials, DHS OIG ROIs are not tracked in its Case Management System.³³ Other than the blue sheet, there is no system in place to determine when the ROI was received by OPR or when it was delivered to a component director for action. For the 184 OIG ROIs we reviewed, the majority of transmittal letters did not have dates and many of the blue sheets

open investigations. However, neither specifically requires reporting on the disciplinary status of DHS OIG investigations. See Appendices D and E for further information.

³¹ OPR defines a continuing or ongoing investigation as open.

³² OPR officials said on numerous occasions they discussed these issues with DHS OIG, but have not reached a resolution.

³³ A DHS OIG ROI is classified as closed in the Case Management System after it is received into the JIC. The ROI receives a first level review at the JIC and is forwarded with a generic transmittal letter for the signature of OPR’s Director when the case file is approved for release. A blue sheet is attached to the case file for internal routing to the OPR Director.

were missing. Without this information, OPR had no way of tracking whether the ROIs were received by the JIC, or delivered to the components for processing. Under the current system, ROIs could be lost or misplaced without OPR's or OIG's knowledge. For example, OPR said they never received six DHS OIG case files.³⁴ We could not determine whether the ROIs were never received by the JIC, or they were lost in OPR's internal routing process.

Recommendation

Recommendation 11: We recommend that ICE track the receipt and distribution of DHS Office of Inspector General Reports of Investigation.

Management Comments and OIG Analysis

We issued our draft report to ICE on May 2, 2006, and met with ICE officials on May 31, 2006, to discuss the report. ICE provided its written response on June 6, 2006, in which it concurred with the report's information, findings, and recommendations. ICE is taking actions to resolve most of the deficiencies noted in our report. We consider five recommendations resolved and closed. Four recommendations remain resolved and open, and two remain unresolved and open.

Following is our analysis of ICE's response to our draft report.

Recommendation 1; We recommend that ICE implement a centralized and automated case management system to enhance effective tracking, processing, and reporting on disciplinary cases from receipt of an allegation to investigation through final adjudication.

ICE Response: ICE agrees with the recommendation. On October 6, 2006, ICE's Office of Professional Responsibility (OPR) launched the Joint Integrity Case Management System (JICMS). This system improves management of ICE discipline cases.

OIG Evaluation: This recommendation is resolved and closed.

Recommendation 2: We recommend that ICE standardize the methodology used for recording and collecting disciplinary case information.

³⁴ There were three ROIs containing two subjects each. As a result of our findings, we informed DHS OIG that these ROIs should be reissued.

ICE Response: ICE agrees with the recommendation. In developing JICMS, OPR worked with ICE Employee and Labor Relations (E&LR) personnel and CBP labor employee relations specialists to determine the scope and type of data collection protocols needed to record, manage, and track ICE discipline cases.

OIG Analysis: This recommendation is resolved and closed.

Recommendation 3: We recommend that ICE implement a training program for all Employee and Labor Relations personnel on the Joint Integrity Case Management System.

ICE Response: ICE agrees with the recommendation. ICE recently completed one-on-one training of all ELR personnel who manage and adjudicate employee disciplinary matters.

OIG Analysis: This recommendation is resolved and closed.

Recommendation 4: We recommend that ICE implement procedures to ensure that active disciplinary case file information is transferred to the new Joint Integrity Case Management System.

ICE Response: ICE responded that the recommendation appears to be the same as recommendation 9, to which a response has been provided.

OIG Analysis: ICE has misinterpreted the intent our recommendation. The intent of recommendation 4 is to ensure that active and historical disciplinary case file information is not lost during the transition period to the new Joint Integrity Case Management System (JICMS). Recommendation 9 focuses on the need for transparency and consistency in the current decision making process. We highlighted in the report the difficulty ELR had in reconstructing details of discipline cases, and have concerns this issue has not been adequately address by implementation of JICMS. Recommendation 4 is unresolved and open.

Recommendation 5: We recommend that ICE establish performance measures and standards to ensure that completed investigations are adjudicated in a timely manner.

ICE Response: ICE agrees with the recommendation. ICE ELR is addressing this issue through the MaxHR ePerformance system that includes goal requirements based on measurable data and competencies. ICE's Chief

Human Capital Officer is working with DHS to realign all non-bargaining unit employees into DHS' ePerformance system by October 1, 2006. This would ensure that MaxHR supervisors, managers, and employees would all be held accountable for their respective responsibilities in the discipline process. In the interim, ICE programs have been directed to include performance standards for managers in their appraisals to emphasize individual accountability for the timely adjudication of discipline cases.

OIG Analysis: ICE is currently in the process of addressing the issue of measurable performance standards for employees involved in the discipline process. This recommendation is resolved but remains open.

Recommendation 6: We recommend that ICE implement a single Table of Offenses and Penalties that applies to all ICE employees.

ICE Response: ICE agrees with the recommendation. Compliance is underway, in that the agency-wide Table of Offenses and Penalties (TOP) has been finalized and forwarded to the respective unions for review and comment. ICE is required to wait for the unions to submit comments and requests for negotiations, and complete any related dispute resolution before the agency-wide TOP can be implemented.

OIG Analysis: ICE is currently in the process of implementing an agency-wide Table of Offenses and Penalties. This recommendation is resolved and open.

Recommendation 7: We recommend that the Office of Professional Responsibility notify Employee and Labor Relations when completed Reports of Investigations have been transmitted to the ICE components for adjudication.

ICE Response: ICE agrees with the recommendation. With the implementation of the Joint Integrity Case Management System (JICMS), ELR can directly confirm the real-time status of all administrative cases. Additionally, the Office of Professional Responsibility provides ELR with a hard copy of the final Report of Investigation (Redbook), when it is provided to the ICE directorate for adjudication.

OIG Analysis: ICE did not provide any specificity on actions taken or planned to ensure ELR also receives notification of DHS' Reports of Investigation (Blackbooks). This recommendation is resolved and open.

Recommendation 8: We recommend that ICE implement policies to ensure all ICE components coordinate with Employee and Labor Relations in the adjudication of all completed investigations.

ICE Response: ICE agrees, and is in the process of implementing a Discipline and Adverse Action Process (DAAP) that will institute one uniform and consistent discipline system for its employees. The DAAP places responsibility for all disciplinary actions, except reprimands and counseling with the DAAP panel instead of field managers. The DAAP panel will review all investigations and make decisions regarding proposed penalties and charges. Designated officials will make final decisions on such actions after hearing employee replies, and reviewing the facts and aggravating and mitigating factors. E&LR and ICE's Office of the Principal Legal Advisor (OPLA), will review discipline cases for legal and administrative sufficiency.

OIG Analysis: ICE is currently in the process of adopting a new discipline system that has not been fully implemented. This recommendation is resolved and open.

Recommendation 9: We recommend that ICE implement policies for processing existing disciplinary cases during the transition to the new centralized disciplinary system.

ICE Response: ICE responded that policies, procedures, and implementation guidelines have been written and reviewed in conjunction with implementation of its Discipline and Adverse Action Process (DAAP) panel.

OIG Analysis: ICE did not provide any specificity on actions taken or planned that we consider responsive to the intent of the recommendation. We intended to highlight the absence of any specific discussions by ICE officials as to how the agency plans to ensure transparency and consistency of process in the decision making process for existing discipline cases until the DAAP is implemented. This recommendation remains unresolved and open.

Recommendation 10: We recommend that ICE provide DHS Office of Inspector General with a monthly report on the disciplinary status of all Reports of Investigation.

ICE Response: ICE has provided the DHS OIG full access to JICMS, which provides us with the capability to view investigations and adjudications as they progress and generate current reports from the system. ICE has also provided our investigative staff with JICMS training.

OIG Analysis: This recommendation is resolved and closed.

Recommendation 11: We recommend that ICE track the receipt and distribution of DHS Office of Inspector General Reports of Investigation.

ICE Response: ICE agrees with the recommendation. ICE Office of Professional responsibility has established a tracking database into existing protocols to improve tracking of DHS OIG investigations. ICE in its response requested DHS OIG provide OPR with one bound copy full copy of each report and also one copy without evidentiary materials in electronic portable document format.

OIG Analysis: We concur with the actions and initiatives taken. We will forward ICE's request regarding delivery protocols for DHS OIG investigations to the Assistant Inspector General for Investigations for review and appropriate action. This recommendation is resolved and closed.

Purpose, Scope, and Methodology

The purpose of our review was to determine whether completed OIG and ICE investigations involving employee disciplinary actions were being processed in a uniform and timely manner. We focused on the current procedures to establish a single, integrated disciplinary process for employees.

We reviewed the status of ROIs performed between January 2003 and August 2005 and analyzed case management logs provided by DHS OIG, OPR, ELR headquarters, and ELR servicing offices in Texas and California.

We interviewed officials from the various ICE components, as well as DHS OIG. The majority of our fieldwork was performed in Washington, DC.

We also reviewed ICE policies, memoranda, and organization charts. These included a white paper on the Discipline Review Process, Customs, INS, FAMS, and ICE interim Tables of Offenses and Penalties, internal memoranda on the Discipline Review Process, Discipline and Adverse Action Procedures, and documentation on ICE budget and staffing.

Our fieldwork was performed between August 2005 and September 2005. This review was conducted under the authority of the Inspector General Act of 1978, as amended, and according to *the Quality Standards for Inspections issued by the President's Council on Integrity and Efficiency*.

Office of the Assistant Secretary

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

JUN - 6 2006

MEMORANDUM FOR: Richard Skinner
Inspector General
Department of Homeland Security

THROUGH: Steve Pecinovsky
Director
Departmental GAO/OIG Audit Liaison Office

FROM: Julie L. Myers 
Assistant Secretary

SUBJECT: Office of Inspector General Draft Report: A Review of Immigration
and Customs Enforcement Discipline Procedures, OIG-06-XX,
May 2006

U.S. Immigration and Customs Enforcement (ICE) provides the following comments to the Office of the Inspector General (OIG) Draft Report: A Review of Immigration and Customs Enforcement Discipline Procedures, OIG-06-XX, May 2006. These comments respond to the recommendations made in the draft report, and are intended to assist the Department of Homeland Security in preparing its response.

Recommendation 1: We recommend that ICE implement a centralized and automated case management system to enhance effective tracking, processing, and reporting on disciplinary cases from receipt of allegation to investigation through final adjudication.

Concur and Completed. ICE, since its inception on March 1, 2003, has taken steps to create a disciplinary process that is fair, firm and robust. In doing so, ICE has eliminated divergent practices, linked the responsible agency elements, and developed the capability to resolve employee disciplinary matters with greater uniformity and promptness. As a part of this process, ICE sought to integrate all facets of the disciplinary process, to capitalize upon the vast wealth of experience among management and staff, and to introduce a long-planned information system known as the Joint Integrity Case Management System (JICMS). We are confident that JICMS, when used in conjunction with other Departmental initiatives such as the MaxHR Performance Management System, and with other ICE initiatives such as the Integrity Awareness Program, will be instrumental in preserving the organizational integrity of the agency at all levels.

On October 6, 2005, the ICE Office of Professional Responsibility (OPR) launched JICMS. This system, which is based upon a commercial Web-based information technology platform common

www.ice.gov

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to many Fortune 500 companies, affords ICE the ability to manage allegations of misconduct from receipt, through investigation or inquiry¹ and the adjudication process, to the final disposition. JICMS is used at all levels of the allegation management process and eliminates the need for multiple databases and information systems to manage administrative discipline matters. JICMS is now fully integrated into the investigative and adjudication processes within both ICE and U.S. Customs and Border Protection (CBP). Through JICMS, ICE has formulated a closed-loop disciplinary process that includes OPR, Employee and Labor Relations (E&LR), and the Office of the Principal Legal Advisor (OPLA). ICE continues to explore expanded application of the system to other elements as well.

Recommendation 2: We recommend that ICE standardize the methodology used for recording and collecting disciplinary case information.

Concur and Completed. In developing JICMS, OPR worked with E&LR managers and ICE and CBP specialists to determine the scope and type of data captured for the purpose of adjudicating administrative discipline cases. The legacy U.S. Customs Service (USCS) Discipline and Adverse Action Tracking System (DAATS) served as a developmental model. The data and model served as the foundation for developing a module within JICMS that is specific to case adjudication. This module, which serves as the primary online workspace for E&LR specialists, standardized the capture of disciplinary case information to a level not previously available and affords immediate access to the most current disciplinary information. It is now fully integrated into the work process of E&LR specialists within ICE and CBP.

Recommendation 3: We recommend that ICE implement a training program for all Employee and Labor Relations personnel on the Joint Integrity Case Management System.

Concur and Completed. ICE recently completed one-on-one training of all E&LR personnel who manage and adjudicate employee disciplinary matters. ICE has also established JICMS "super users" within E&LR who serve as the in-house expert for E&LR JICMS users and will instruct all new E&LR staff. These "super-users" will also work closely with OPR on all issues arising from JICMS. Additionally, OPR developed and distributed user manuals in electronic and hard copy formats, and staffs a JICMS Help Desk that provides on-call technical support.

Recommendation 4: We recommend that ICE implement procedures to ensure that active disciplinary case file information is transferred to the new Joint Integrity Case Management System.

This recommendation appears to be the same as recommendation 9, to which ICE has responded below.

¹ This was not previously available because of the legacy methods. That is, legacy Immigration and Naturalization Service's (INS) E&LR was separated into three Administrative Centers, each with its own method for tracking discipline and adverse actions, grievances, performance issues, etc. No attempt by INS is evident to consolidate the tracking systems of these three E&LR offices because they reported to the regional offices, not Headquarters (HQs), as in the current environment. In addition, the Federal Protective Service (FPS) joined ICE with no database, and ICE E&LR employees could not access past discipline actions on legacy United States Customs Service (USCS) employees as E&LR had no system permissions.

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Recommendation 5: We recommend that ICE establish performance measures and standards to ensure that completed investigations are adjudicated in a timely manner.

Concur. ICE agrees that this recommendation must be implemented effectively. ICE E&LR is addressing this through the MaxHR ePerformance system which, for the first time, addresses goal requirements based on measurable data as well as competencies. At this time, these cascading goals are applicable to supervisors and managers only. The ICE Office of the Chief Human Capital Officer is working with both DHS and ICE to place all non-bargaining unit employees onto DHS' ePerformance system by October 1, 2006. The result of this would be the accountability of all² E&LR staff members for quantifiable goals. In addition, until the Discipline and Adverse Action Process (DAAP) is implemented, ICE programs have been directed to address this issue in their performance goals so that managers seek advice from E&LR on a timely basis.

Recommendation 6: We recommend that ICE implement a single Table of Offenses and Penalties that applies to all ICE employees.

Concur and Partially Completed. ICE recently completed a review of the overall Table of Offenses and Penalties (TOP) with OPLA and has notified the two unions. At the time of the OIG review, ICE had inherited multiple unions from legacy agencies, including the General Services Administration and INS. Since the FLRA decision of December 16, 2005, the ICE non-professional bargaining unit has been consolidated into a single union. This left two unions with which ICE deals: AFGE Local 511, which represents professionals (attorneys and certified public accountants), and AFGE Council 117, which represents non-professional legacy INS and GSA bargaining units. ICE needed to wait for the Federal Labor Relations Authority (FLRA) decision which consolidated six (6) legacy bargaining units into one. The effect of this decision was to allow ICE to bargain with as few unions as possible. This reduces the likelihood of multiple TOPs that was inherent in legacy systems. The TOP that was used to notify the unions would cover all ICE employees, both bargaining and non-bargaining units, and would supersede the current Interim TOP for non-bargaining unit employees that became effective in April 2005. Although this recommendation is partially completed, in that the TOP has been finalized and forwarded to the respective unions, ICE is required to wait for the union to submit its comments and requests for negotiations on this issue. Once the negotiations and any related dispute resolution processes are completed, ICE may apply the TOP agency-wide, thereby completing the recommendation.

² The OIG recognized that staffing shortfalls have been a serious contributing factor. This is not a short-term issue, but a factor which has impeded ICE since October 2003 when the tri-bureau split occurred. This resulted in the reassignment of E&LR specialists of legacy INS among the three components (U.S. Citizenship and Immigration Services, CBP, and ICE), and the substantial understaffing of ICE. Furthermore, ICE did not receive additional E&LR staff with the annexation of the Federal Air Marshal Service (which has since transferred to the Transportation Security Administration), the Federal Protective Service (FPS), or the legacy USCS Office of Investigations. During the time period after these occurrences, ICE contended with budgetary constraints to fill positions. In May 2005, or shortly before, ICE E&LR was granted nine supplementary positions. These positions were quickly offset by attrition in E&LR, most of which could not be filled due to lack of funding. Therefore, it has been difficult to assign goals to E&LR staff who have not only been inundated with discipline and adverse action work, but also labor negotiation matters, grievances, customer support, performance management and other issues at a ratio of approximately 1,300 ICE employees to one E&LR specialist. At one time, this ratio was nearly 1,800:1. This ratio remains significantly larger than CBP's servicing ratio of approximately 450:1.

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Recommendation 7: We recommend the Office of Professional Responsibility notify Employee and Labor Relations when completed Reports of Investigations have been transmitted to the ICE components for adjudication.

Concur and Completed. ICE has attained greater informational awareness through the deployment of JICMS. With JICMS, ICE's E&LR section is notified electronically when an administrative investigation or inquiry is undertaken. When OPR completes its investigation, the case is electronically assigned to E&LR's lead manager, who then assigns it to an E&LR specialist to process.

OPR further strengthens this process by providing a bound hard copy of the completed Final Report of Investigation (or Redbook) to E&LR at the same time a copy of the Redbook is provided to the ICE directorate for adjudication.

Additionally, E&LR may now confirm the real-time status of all administrative cases directly through the system using the system's reporting and analytical capabilities.

Recommendation 8: We recommend that ICE implement policies to ensure all ICE components coordinate with Employee and Labor Relations in the adjudication of all completed investigations.

Concur. ICE is in the process of implementing DAAP, which will institute a uniform and consistent application of the system in ICE. DAAP will be comprised of a panel that will review all investigations (OPR, OIG, management inquiries, and management referrals of all types), and make decisions regarding proposed penalties and charges. Designated officials will make final decisions on such actions after hearing employee replies and reviewing the facts and mitigating and aggravating factors. This system will be supported by E&LR³ and OPLA for the respective sufficiency requirements. In addition, this process places responsibility for all actions, except reprimands and counseling, with the panel and not the field managers.

Recommendation 9: We recommend that ICE implement policies for processing existing disciplinary cases during the transition to the new centralized disciplinary system.

Concur. The policy, procedures, and implementation guidelines have been written and reviewed by OPLA. E&LR, in conjunction with OPLA drafted a proposal regarding the composition of the DAAP panel and its deciding officials. Implementation of the DAAP policy and procedures for non-bargaining unit employees is anticipated shortly after review and approval of the recommendations. Implementation for the bargaining unit employees will be effected after the Unions have had the opportunity to review, comment and negotiate on the DAAP policy and procedures. Usually, Unions, per the respective labor agreements, are afforded approximately 30 calendar days to respond however, the process of negotiating is indeterminate due to varying negotiations requirements and dispute resolution process.

³ E&LR's staffing has been adjusted to take this process into consideration. E&LR requested a total staff of 23 specialists and assistants to support this process as well as third-party proceedings, negotiations, grievance handling, performance management, customer service, and other matters. This would give ICE a total servicing ratio of approximately 650:1, which is still significantly higher than CBP's, which has had a long-term institutionalized discipline review panel and E&LR specialists that do not perform third-party proceedings.

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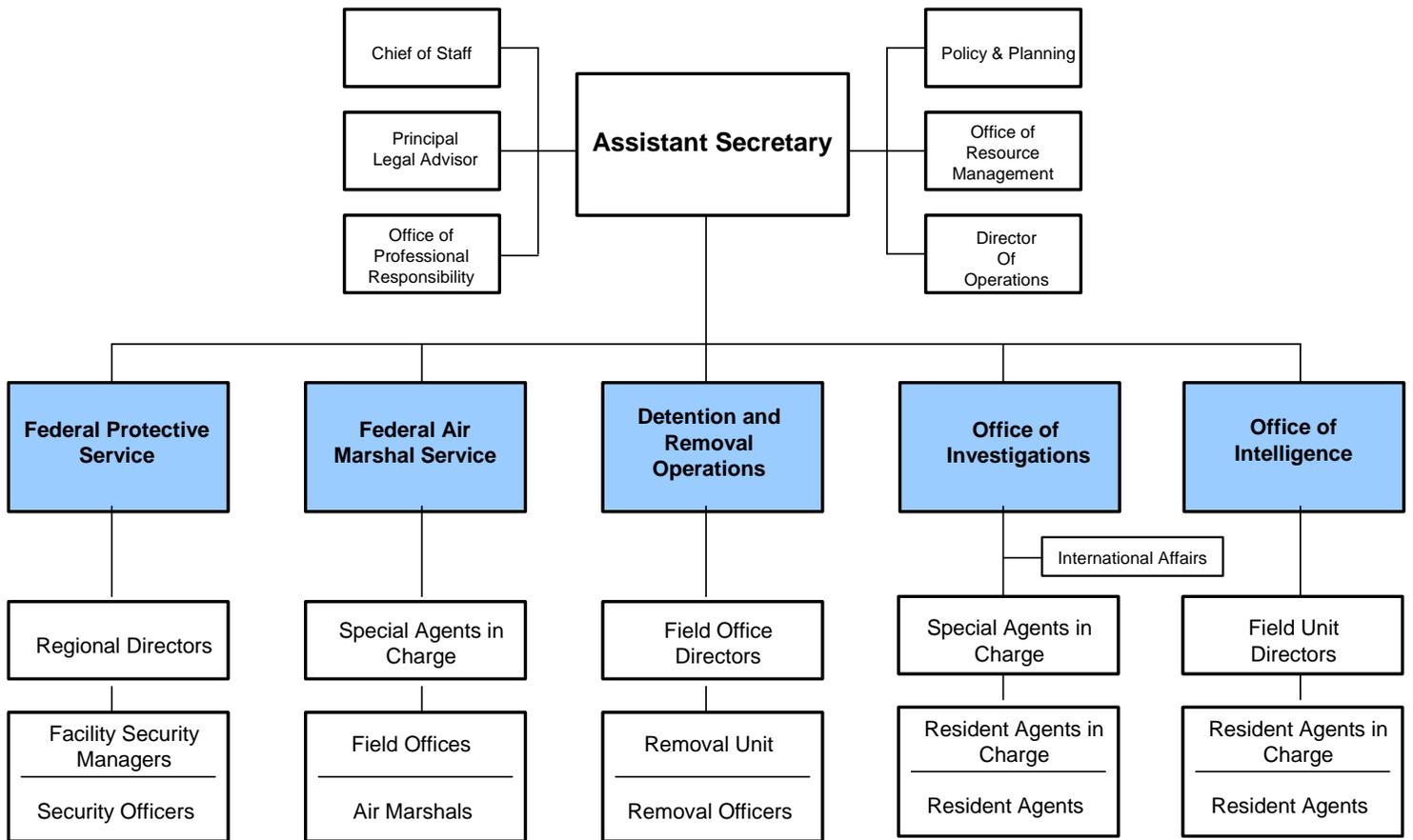
Recommendation 10: We recommend that ICE provide DHS Office of Inspector General with a monthly report on the disciplinary status of all Reports of Investigation.

Partially Concur and Completed. ICE has provided the DHS OIG with full access to JICMS, which affords the capability to view investigations and adjudications as they progress and generate current reports from the system's data. ICE has also previously provided JICMS training to DHS OIG personnel.

Recommendation 11: We recommend that ICE track the receipt and distribution of DHS Office of Inspector General Reports of Investigation.

Concur. OPR has established a tracking database for DHS OIG investigative products and will incorporate the use of the database into existing protocols to improve tracking of DHS OIG investigative reports. To foster security of these reports and preclude administrative burden upon the OPR OIG investigative liaison, ICE requests that DHS OIG provide OPR with one bound full-copy of each report and also one copy without evidentiary materials in electronic portable document format. This will enable OPR to selectively distribute the reports quickly and with greater security, and will allow the reports to be attached to the appropriate JICMS electronic case file.

Appendix C
ICE Organization Chart



Operational/Core Elements

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³⁵ FAMS was removed from ICE as of October 16, 2005, and is now part of the Transportation Security Administration

MD 0810.1

APPENDIX A

The categories of misconduct identified below shall be referred to the OIG. Such referrals shall be transmitted by the OE offices immediately upon receipt of the allegation, and no investigation shall be conducted by the OE offices prior to referral unless failure to do so would pose an imminent threat to human life, health or safety, or result in the irretrievable loss or destruction of critical evidence or witness testimony. In such extraordinary situations, the OIG will be contacted as soon as practical, and all information and evidence collected by the OE office shall then be provided to the OIG as part of the OE referral to the OIG. The OIG will accept and retain all such allegations for investigation subsumed under this exigent circumstance exception.

- All allegations of criminal misconduct against a DHS employee;
- All allegations of misconduct against employees at the GS-15, GM-15 level or higher, or against employees in the OE offices;
- All allegations of serious, noncriminal misconduct against a law enforcement officer. "Serious, noncriminal misconduct" is conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in loss of law enforcement authority. For purposes of this directive, a "law enforcement officer" is defined as any individual who is authorized to carry a weapon, make arrests, or conduct searches;
- All instances regarding discharge of a firearm that results in death or personal injury or otherwise warrants referral to the Civil Rights Criminal Division of the Department of Justice;
- All allegations of fraud by contractors, grantees or other individuals or entities receiving DHS funds or otherwise engaged in the operation of DHS programs or operations;
- All allegations of visa fraud by DHS employees working in the visa issuance process.

In addition, the OIG will investigate allegations against individuals or entities that do not fit into the categories identified above if the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling, serious management problems within the department, or otherwise represent a serious danger to public health and safety.

With regard to categories not specified above, the OE offices will initiate the investigation upon receipt of the allegation, and shall notify within five business days the OIG's Office of Investigations of such allegations. The OIG shall notify the OE offices if the OIG intends to assume control over or become involved in such an investigation, but absent such notification, the OE office shall maintain full responsibility for these investigations.

Any allegations received by the OIG that do not come within the categories specified above, or that the OIG determines not to investigate, will be referred within five business days of receipt of the allegation by the OIG to the appropriate OE office along with any confidentiality protections deemed necessary by the OIG.

The OE offices shall provide monthly reports to the OIG on all open investigations. In addition, upon request, the OE offices shall provide the OIG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation. Similarly, the OIG shall provide the OE offices, upon request, with a complete copy of any Report of Investigation relating to its OE, including all exhibits, at the completion of the investigation. The OIG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter within its jurisdiction.

**Special Agent Handbook
Chapter 1.0 - Exhibits**

Exhibit 1-4, MOU between IG and Under Secretary, BTS

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY
AND THE INSPECTOR GENERAL**

The Under Secretary for Border and Transportation Security (USBTS) of the Department of Homeland Security (Department) is the head of the Directorate of Border and Transportation Security (BTS). USBTS' authority and responsibility are described in Title IV of the Homeland Security Act of 2002, as amended, (the Act) and include authority and responsibility acquired pursuant to Section 1512 of the Act and by delegation from the Secretary of the Department.

The Inspector General (IG) of the Department is the head of the Office of Inspector General. The IG's authority and responsibility are described in Title VIII, Subtitle B of the Act, as amended, and the Inspector General Act of 1978, as amended, and include authority and responsibility acquired pursuant to section 1512 of the Act.

To prevent duplication of effort and ensure the most effective, efficient and appropriate deployment of resources, the USBTS and the IG enter into this memorandum of understanding.

The following categories of misconduct shall be referred to the IG for its determination whether to conduct an investigation. The referral to the IG shall be made immediately upon receipt of the allegation and no investigation shall be conducted prior to the referral. The IG will determine within one business day of the referral whether to investigate the allegation itself or to refer the matter back to USBTS or one of its subordinate entities for investigation. This list is representative of the types of matters appropriate for IG investigation but is not intended to represent an exhaustive or all-inclusive identification of such matters:

- All allegations of criminal misconduct against a BTS employee;
- All allegations of serious, noncriminal misconduct against a law enforcement officer. "Serious, noncriminal misconduct" is conduct that, if proved, would constitute perjury or material dishonesty, warrant suspension as discipline for a first offense, or result in the loss of law enforcement authority. A "law enforcement officer" is defined as any individual who is authorized to carry a weapon, make arrests, or conduct searches;
- All allegations of noncriminal misconduct against employees at the GS-15, GM-15 level or higher, and all political and Schedule C appointees;
- All allegations of noncriminal misconduct against an employee in the internal affairs division of an entity under USBTS authority;

Special Agent Handbook
Chapter 1.0 - Exhibits

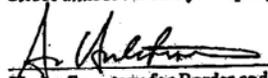
- All allegations regarding misuse or improper discharge of a firearm (other than accidental discharge during training, qualifying or practice);
- All allegations of fraud committed by contractors, grantees or other individuals or entities receiving Department funds or otherwise engaged in the operation of Department programs or operations;
- All allegations of visa fraud by BTS employees in the visa issuance process.

In addition, it shall be presumed that the IG will investigate allegations against individuals or entities who do not fit into the categories identified above if, in the judgment of the IG, the allegations reflect systemic violations, such as abuses of civil rights, civil liberties, or racial and ethnic profiling; serious management problems within the Department, or otherwise represent a serious danger to public health and safety.

With regard to categories of misconduct not specified above, USBTS or the entity receiving the allegation should initiate investigation upon receipt of the allegation, and shall notify in writing, within five business days, the IG's Office of Investigations of such allegation. The IG shall notify the USBTS or investigating entity if the IG intends to assume control or become involved in an investigation, but absent such notification, the USBTS or investigating entity shall maintain full responsibility for these investigations.

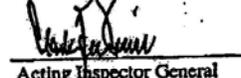
USBTS or any of its subordinate entities shall provide a monthly report to the IG on all open investigations. This report, at a minimum, shall identify the subject, the issues under investigation, the identity of the investigating agent, and the status of the investigation. USBTS or the subordinate entity shall provide the IG with a complete copy of the Report of Investigation, including all exhibits, at the completion of the investigation or upon referral of the matter to the Department of Justice for prosecution (either criminal or civil) or to a component of the Department to determine appropriate administrative action. USBTS also shall advise the IG promptly of the resolution of any such referrals. The IG shall have the right to request more frequent or detailed reports on any investigations and to reassert at any time exclusive authority or other involvement over any matter, whether or not initially referred by the IG to USBTS or presumptively within USBTS jurisdiction.

This MOU shall be effective upon the signature of both parties and shall remain in effect until revoked by one party, upon thirty day's written notice to the other.



Under Secretary for Border and
And Transportation Security

Dated: 3/25/03



Acting Inspector General

Dated: 3/25/03

**Total Reports of Investigation Statistics
January 2003 – August 2005**

TOTAL REPORTS OF INVESTIGATION (DHS OIG and OPR)	
Total Reports of Investigation	385
Minus Records Out of Scope³⁶	-117
Records Sent to ELR for Status Review	268
Minus Records with Errors³⁷	-22
TOTAL RECORDS	246

Source: DHS Office of Inspector General and ICE Office of Professional Responsibility investigation records.

STATUS	Reports of Investigation	On ELR Log	Not on ELR Log	Questionable Data Provided
Records Open³⁸	147	0	147	
Records Action Pending, Proposed, or Taken	71	62	9	23 records had missing or incomplete information. 2 other records were logged by ELR with multiple active entry dates.
Records No Action Taken - No Independent Oversight³⁹	28	2	26	3 records had missing or incomplete information.
Total Records	246	64	182	

Source: DHS Office of Inspector General, ICE Office of Professional Responsibility, and ICE Employee and Labor Relations Records.

³⁶ The 117 records excluded were: 23 records were removed because they were outside our scope (2002), 21 records were removed because the subjects were unknown, 20 civilian records, 16 resigned/retired, 11 non-ICE employees, 8 records OPR said they never received from OIG Investigations, 7 duplicate or inconsistent/unidentifiable names or case numbers, 6 Non-ICE Employees, 4 duplicate or subject unknown records (irreconcilable), and 1 case was referred back to OIG for processing.

³⁷ We excluded from our review 21 records because of inconsistent or missing dates between OPR and ELR records, and 1 record because of a duplicate or inconsistent/unidentifiable name.

³⁸ We define an “open” case as a completed investigation that has been forwarded to the appropriate component director for review and action, but where no visible action has been documented to date.

³⁹ We define a record with no action taken and no independent oversight as a completed investigation that has been forwarded to the appropriate component director for review and action, but was closed without action and without any independent oversight from ELR or OPLA.

Appendix G
DHS Inspector General Letter Concerning
Delinquent Replies

Office of Inspector General

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

September 30, 2004

MEMORANDUM FOR: Asa Hutchinson
Under Secretary
Border and Transportation Security

FROM: Clark Kent Ervin 
Inspector General

SUBJECT: Delinquent Replies

Attached is a list of final Office of Inspector General Reports of Investigation (ROIs) that we forwarded to the bureaus within your Directorate for action and which remain outstanding. We requested a response within 30 days of the issuance of each of the listed ROIs, several of which date back to 2003. According to our records, we have not yet received a response from officials within your Directorate to the ROIs on the attached list. Please research these cases and provide the OIG with a copy of your findings and/or final action in each matter. I would appreciate a response by October 8, 2004, so that we may update our files. I will be noting the status of this request in my SemiAnnual Report to the Congress for the period ending September 30, 2004.

If final action is still pending and you would like to discuss the need for an extension, or if your records do not correspond with ours, please send an e-mail to OIGIDMS@DHS.GOV. Your e-mail request should include a brief summary of the current status of this matter and an anticipated completion date.

The ROIs on this list include those pertaining to employees or issues within the U.S. Immigration and Customs Enforcement, Customs and Border Protection, the Transportation Security Administration, the Federal Law Enforcement Training Center, and the Federal Protective Service. Additionally, as you may know, prior to August 2004, ROIs pertaining to employees or matters within the purview of the U.S. Citizenship and Immigration Services (CIS) were also sent to your directorate, per agreement between CIS and the Joint Intake Center, U.S. Immigration and Customs Enforcement, Office of Professional Responsibility, and are therefore included on the attached list. Should you have any questions, you may contact me at (202) 254-4100, or a member of your staff may call my Assistant Inspector General for Investigations, Elizabeth M. Redman, at (202) 254-4042.

Thank you for your cooperation concerning this matter.

Attachment

A Review of Immigration and Customs Enforcement Disciplinary Procedures

Appendix H
ICE's Assistant Secretary for Immigration and
Customs Enforcement Letter

Office of the Assistant Secretary

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

OCT 13 1:304

MEMORANDUM FOR: Asa Hutchinson
Under Secretary
Border and Transportation Security

FROM: Michael J. Garcia 
Assistant Secretary
Immigration and Customs Enforcement

SUBJECT: Delinquent Replies to the Department of Homeland
Security Office of the Inspector General

Reference is made to the September 30, 2004 memorandum sent to you by Department of Homeland Security (DHS) Inspector General (IG) Clark Kent Ervin, titled "Delinquent Replies." The memo stated several DHS IG reports of investigation (ROI) were forwarded to Border and Transportation Security bureaus for action and remain outstanding. An attachment to the IG's memorandum outlined 37 IG ROI's that were sent to Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) for final action.

ICE OPR serves a facilitator role for OIG's reports of investigation by forwarding the ROI's to the appropriate ICE or Customs and Border Protection (CBP) entity. Beyond this function, ICE OPR has no involvement with, or responsibility for, taking final disciplinary action as a result of an employee misconduct investigation, other than advising ICE or CBP to report back to OPR on final dispositions. All forwarded files remain in a pending status as no final disposition responses have been received to date.

The IG 30-day timeframe for reporting back on disciplinary resolutions is not realistic given process timelines and/or OPM guidelines. ROI information alone is typically reviewed for 30-60 days before a proposal letter is drafted and then issued to the employee. At a minimum, the employee has between 10-30 days to respond, whereupon the employee's response is further evaluated for 10-20 days before a decision letter is issued. If the employee seeks further remedy, the employee has 22 days to grieve the decision, 30 days to appeal the decision to the MSPB, and/or 45 days to file with EEOC.

Of the 36 IG reports (two were duplicates) routed to ICE OPR, 6 involved non-BTS Bureau of Citizenship and Immigration Service employees forwarded to ICE OPR in error and summarily returned to the OIG for proper routing. One ROI was returned to the OIG for follow-up investigation and has not been returned. Two ROI's involved civilians or retired employees,

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Asa Hutchinson
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therefore no disciplinary action will be taken. Either no investigative findings or a finding of unsubstantiated were listed on 12 ROI's, resulting in the inability to take further action as a result of these investigative conclusions.

Of the remaining 15 IG ROI's, 7 involved substantiated or partially substantiated allegations of misconduct involving CBP personnel. These reports were forwarded to CBP Internal Affairs (IA) for appropriate action. ICE has forwarded the eight remaining substantiated or partially substantiated IG ROI's to the appropriate ICE office for review and action. Aside from dispositions noted in bold, no final reported action has yet been taken on the remaining files.

The cited files, by category, are listed below.

<u>DHS IG</u> <u>File Number</u>	<u>Date Received</u> <u>by OPR</u>	<u>Action Taken</u> <u>by OPR</u>
BCIS EMPLOYEES:		
04-03411	05/19/2004	Both reports received by OPR: DHS IG was contacted and advised BCIS disciplinary actions are not part of OPR's responsibility. OIG requested the reports be returned for their correct distribution.
03-0849	03/08/2004	
03-0828	N/A	<u>Report returned to IG for routing to correct bureau</u> Report was received by OPR and immediately returned to OIG for correct routing.
03-0699	N/A	<u>Report returned to IG for routing to correct bureau</u> Report was received by OPR and immediately returned to OIG for correct routing.
04-04020	N/A	<u>Report returned to IG for routing to correct bureau</u> Report was received by OPR and immediately returned to OIG for correct routing.
03-0853	Not rec by OPR	<u>Report returned to IG for routing to correct bureau</u> OPR's records reflect this ROI was routed directly to BCIS by the DHS IG. Report was never sent to ICE OPR.
RETURNED TO OIG FOR FURTHER INVESTIGATION:		
04-00022	N/A	<u>Report returned to OIG for follow up investigation on 05/27/2004</u>

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CIVILIANS OR RETIRED EMPLOYEES:

04-00189	07/26/2004	<u>Investigation of civilians- No action to be taken</u>
03-0585	11/17/2003	<u>Investigation of retired Legacy Customs Inspector- No action to be taken</u>

UNSUBSTANTIATED OR NO INVESTIGATIVE FINDINGS:

04-01445	08/18/2004	Allegation was <u>unsubstantiated</u> by IG- CBP/LER requested additional fact finding
03-0734	03/26/2004	Allegation was <u>unsubstantiated</u> by IG- Closed; no action to be taken by CBP
04-02670	06/21/2004	Allegation was <u>unsubstantiated</u> by IG Report forwarded to CBP IA
04-00071	09/03/2003	Allegation was <u>unsubstantiated</u> by IG Report was forwarded to Legacy INS OIA
03-0673	03/09/2004	Allegation was <u>unsubstantiated</u> by IG Report forwarded to ICE OI
03-0758	N/A	Allegation was <u>unsubstantiated</u> by IG Report forwarded to ICE OI
03-0772	03/10/2004	Allegation was <u>unsubstantiated</u> by IG Report forwarded to ICE DRO
04-02007	07/26/2004	<u>No misconduct involved-</u> Report forwarded to ICE DRO
04-00115	07/21/2004	<u>No findings</u> reached by IG concerning allegation Report forwarded to ICE DRO
04-00132	02/13/2004	<u>No findings</u> reached by IG concerning allegation Report forwarded to ICE OI
03-0788	03/02/2004	<u>No findings</u> reached by IG concerning allegation Report forwarded to ICE FPS
04-02350	07/21/2004	IG report only documented arrest of employee- <u>No investigation conducted by IG</u> Report forwarded to ICE OI

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SUBSTANTIATED OR PARTIALLY SUBSTANTIATED FINDINGS:

03-0724	05/24/2004	Substantiated- Closed- no action to be taken by CBP
03-0697	06/17/2004	Substantiated- Resigned prior to CBP (DRB) action
04-00097	02/27/2004	Substantiated- CBP/LER requested additional fact finding
03-0651	05/25/2004	Substantiated- forwarded to CBP IA for action
04-00111	02/13/2004	Substantiated- forwarded to CBP IA for action
03-0866	05/17/2004	Partially substantiated- forwarded to CBP IA for action
04-02462	06/14/2004	Partially substantiated- forwarded to CBP IA for action
04-04136	06/21/2004	Substantiated- forwarded to ICE DRO for action
04-00002	07/26/2004	Substantiated- forwarded to ICE DRO for action
04-05060	08/17/2004	Substantiated- forwarded to ICE DRO for action
03-0574	03/08/2004	Substantiated- forwarded to ICE DRO for action
04-00055	07/21/2004	Partially substantiated- forwarded to ICE FAMS/action
03-0797	02/13/2004	Substantiated- forwarded to ICE AMO for action
04-00100	03/09/2004	Substantiated- forwarded to ICE OI for action
03-0749	01/28/2004	Partially substantiated- forwarded to ICE OI for action

Marcia Moxey Hodges, Chief Inspector, Department of Homeland Security,
Office of Inspections and Special Reviews

Douglas Ellice, Chief Inspector, Department of Homeland Security,
Office of Inspections and Special Reviews

Carolyn Aya Johnson, Inspector, Department of Homeland Security, Office of
Inspections and Special Reviews

Ryan Carr, Inspector, Department of Homeland Security, Office of
Inspections and Special Reviews

Department of Homeland Security

Secretary
Deputy Secretary
Chief of Staff
Deputy Chief of Staff
General Counsel
Executive Secretary
Chief Privacy Officer
Assistant Secretary for Policy
DHS GAO OIG Audit Liaison
Assistant Secretary for Public Affairs
Assistant Secretary for Legislative and Intergovernmental Affairs
Assistant Secretary, Immigration and Customs Enforcement
Immigration and Customs Enforcement, Audit Liaison
Commissioner, Customs and Border Protection
Customs and Border Protection, Audit Liaison

Office of Management and Budget

Chief, Homeland Security Branch
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Congress

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