



Department of Homeland Security Office of Inspector General

Release of the U.S. Immigration and Customs Enforcement's Worksite Enforcement Strategy



Office of Inspector General

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



Homeland
Security

December 3, 2009

MEMORANDUM FOR: John T. Morton
Assistant Secretary
U.S. Immigration and Customs Enforcement

FROM: *Richard L. Skinner*
Richard L. Skinner
Inspector General

SUBJECT: *Letter Report: Release of the U.S. Immigration and
Customs Enforcement's Worksite Enforcement Strategy
OIG-10-22*

At the request of U.S. Representative Harold (Hal) Rogers, Ranking Member of the Subcommittee on Homeland Security, Committee on Appropriations, we initiated a review into the potential unauthorized release of the U.S. Immigration and Customs Enforcement's (ICE) Worksite Enforcement Strategy guidelines.

We reviewed the events surrounding the release of the Worksite Enforcement Strategy guidelines to the *New York Times*. The April 30, 2009, article described very specific aspects of the strategy, which created confusion as to whether "law enforcement sensitive" information was released to the public. Later that day, the copy of the strategy provided to Congress was marked as law enforcement sensitive. We determined the release had deviated from previously established Department of Homeland Security (DHS) and ICE practices; however, no law enforcement sensitive information was released. This event appears to be isolated, and not a systemic issue within DHS or ICE.

We are making two recommendations to clarify the sensitivity designation of the Worksite Enforcement Strategy, and to enhance the ICE's designation removal processes.

Should you have any questions, please call me, or your staff may contact Carlton I. Mann, Assistant Inspector General for Inspections, at (202) 254-4100.

Background

At the request of U.S. Representative Hal Rogers, Ranking Member of the Subcommittee on Homeland Security, Committee on Appropriations, we reviewed the release of the U.S. Immigration and Customs Enforcement's (ICE) Worksite Enforcement Strategy guidelines. The request was in response to an April 30, 2009, article in the *New York Times* that described very specific aspects of the strategy. The public release occurred before the strategy was distributed within ICE or to Congress. However, the copy of the strategy guidelines provided to Congress later that day was marked as law enforcement sensitive (LES) information.¹ Because the copy of the strategy sent to Congress was designated LES even though the strategy had been released to the media without such designation, confusion was created as to whether LES information was released to the public. Our objectives were to (1) determine the process to disseminate the Worksite Enforcement Strategy guidelines, and (2) assess the events related to the potential unauthorized release of LES information, including ICE's actions in addressing and handling the incident.

ICE protects the security of the United States through its enforcement of customs and immigration laws and has developed a comprehensive worksite enforcement strategy that promotes national security, protects critical infrastructure and ensures fair labor standards. The worksite enforcement strategy encompasses activities intended to mitigate the risk of terrorist attacks posed by unauthorized workers employed in secure areas of our Nation's critical infrastructure. Further, ICE's worksite enforcement reduces the demand of illegal employment and protects employment opportunities for a lawful workforce by investigating employers involved in criminal activity or the exploitation of workers.

In January 2009, the Secretary of the Department of Homeland Security (DHS) issued a series of action directives to assess departmental effectiveness and improve current programs and operations. One of the action directives, dated January 30, 2009, included a number of emphasis areas related to immigration, border security, employment verification, and enforcement. On February 25, 2009, shortly after the directives were released, the Secretary testified before the U.S. House of Representative's Committee on Homeland Security that the day before ICE conducted a worksite enforcement action without her knowledge. This worksite enforcement action involved the arrest of 28 illegal immigrant workers at the Yamato Engine Specialists facility in Bellingham, Washington. The Secretary further testified that she requested that ICE provide answers to questions she asked about the predicate for this enforcement action. Following the Secretary's testimony and issuance of action directives, the department was to focus on setting mission priorities, including immigration enforcement, as well as ensuring that

¹ The term For Official Use Only is used by the Department of Homeland Security to denote sensitive but unclassified information that is not regulated by statute or regulation. ICE further delineates within the For Official Use Only designation a law enforcement-related category known as LES.

worksite enforcement actions focused appropriately on employers. Those events served as a catalyst for developing ICE's new enforcement strategy.

Results of Review

Efforts to Develop the Worksite Enforcement Strategy

In March 2009, the department instructed ICE to create a strategy that emphasized its renewed focus on worksite enforcement, targeting employers for criminal prosecution. This strategy was to serve as general guidance for ICE agents and direct investigative efforts toward those employers who knowingly engaged in employing illegal workers. Further, the strategy would clarify that ICE is to use all available civil and administrative tools, including fines and debarment, to penalize and deter the employment of illegal workers.

As instructed, ICE's Office of Investigations, with the assistance of ICE's Office of the Assistant Secretary, collaborated to develop the strategy. By late March 2009, ICE forwarded its initial draft to DHS. During the initial development stages, ICE designated the draft Worksite Enforcement Strategy guidelines as LES, and the draft copy reportedly retained this designation until days before its release.

Within DHS, personnel from the Offices of the Secretary, General Counsel, and Policy worked to finalize the strategy's content and direction. Although DHS maintained ultimate responsibility for the strategy, DHS provided ICE's Office of Investigations and Office of the Assistant Secretary some opportunities for comments. However, we were told that several DHS officials limited ICE's involvement toward the end of drafting in an attempt to reduce the potential risk of the strategy becoming public prior to its official release. As the department was finalizing the strategy, DHS and ICE officials made general statements highlighting the forthcoming strategy and the department's renewed efforts to focus on worksite enforcement operations. However, none of these statements committed to providing the strategy prior to its official release.

Release of the Strategy and Removal of the Law Enforcement Sensitive Information Designation Caused Confusion

As part of the release, DHS officials intended to unveil the department's Worksite Enforcement Strategy guidelines in a manner to generate positive public relations for worksite enforcement and highlight DHS' refocus on worksite enforcement priorities. DHS officials determined that the best vehicle for the release was to conduct an exclusive news interview with the *New York Times*. DHS intended for the news article release to coincide with ICE's internal release and its congressional notifications.

ICE and DHS officials we interviewed provided conflicting statements about the strategy's sensitivity designation and removal. Although ICE had previously designated the strategy as LES, some officials reported those involved with the development of the

strategy reached a consensus that the document was not LES. However, DHS policy states that information designated as “For Official Use Only” retains its designation until the original designator, or a management official who has program management responsibility over the designator or the information, determines otherwise. Officials involved in the creation of the strategy could not verify when or why the LES designation was removed from the document. Although it is unclear who removed the LES designation during drafting, the final strategy signed on the evening of April 29, 2009, did not contain an LES designation.

After the final strategy was signed on April 29, 2009, DHS proceeded with its notification process to the news media, ICE employees, and Congress. On April 29, 2009, the department’s Office of Legislative Affairs verbally notified congressional staff and those committees with an interest in worksite enforcement activities of the program’s new strategy. Although congressional staff requested a copy of the strategy during those verbal notifications, a senior management official directed the Office of Legislative Affairs not to grant these requests to avert the potential risk of the document’s early release.

On April 30, 2009, at 8:01 a.m., ICE’s Office of Investigations transmitted the strategy, without an LES designation, to its field offices. Subsequent to that transmission, ICE’s Office of Investigations conducted a teleconference with the Special-Agents-In-Charge to announce and discuss the new strategy. As planned, the news article also appeared in the *New York Times*, which included a statement that the newspaper received a copy of the new strategy. Although DHS officials held several discussions with the *New York Times*’ reporter prior to the release, neither DHS nor ICE officials were certain whether the actual strategy document or just press highlights were provided to the reporter.

On April 30, 2009, after its release, DHS asked ICE whether the entire strategy document could be released to Congress. Although not required, ICE employees routinely seek counsel from ICE’s Office of the Principal Legal Advisor before releasing information to entities outside of ICE. Therefore, ICE officials immediately forwarded the strategy to its Office of the Principal Legal Advisor for an LES review determination to ensure the protection and safeguarding of sensitive information. It is unclear why the document required an LES review at this point, when it had already been released to the media without the LES designation.

To provide Congress with a timely response, and under some pressure by DHS, ICE officials did not wait for the Office of the Principal Legal Advisor’s review and instead marked the strategy as LES with an abundance of caution, without any additional language to indicate that the LES designation was provisional. As a result, the strategy copy forwarded to Congress on April 30, 2009, was marked “Law Enforcement Sensitive – Unauthorized Disclosure Prohibited.” Because the copy of the strategy sent to Congress was designated LES even though the strategy had been released to the media without such designation, confusion was created as to whether LES information was released to the public. However, later that afternoon, ICE’s Office of Principal Legal

Advisor responded that the strategy was releasable because it did not describe with specificity the tools or methodologies employed by ICE in conducting worksite enforcement activities. Even so, during our fieldwork, neither ICE nor DHS officials had removed the LES designation or reissued the strategy without any designation markings.

Designation Removal Authorities and Determinations Need Further Enhancement

Given DHS' authority over components and its involvement in policy creation, such as the Worksite Enforcement Strategy, the department could clarify sensitive but unclassified designation removal authorities and processes, as well as release procedures. The use of subject matter experts and component program officials to conduct sensitivity reviews prior to official internal, congressional, or media releases would enhance coordination and communication efforts between DHS and its components, as well as avoid potential future disclosures that are perceived to be unauthorized.

Although the need for better internal coordination and communication within the department led to confusion over the Worksite Enforcement Strategy's release and sensitivity designation, this event appears to be isolated and is not a systemic issue within DHS or ICE. Nevertheless, ICE should take additional steps to enhance its safeguarding of law enforcement sensitive information to avoid potential future disclosures. We urge ICE to incorporate additional measures into policies related to its safeguarding of law enforcement sensitive information to clarify ultimate designation removal authorities, as well as procedures and processes for designation removal determinations, including superseding designation determinations.

Recommendations

We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement, in coordination with the Under Secretary for Management:

Recommendation #1: Revise policies related to the safeguarding of ICE's law enforcement sensitive information to clarify designation removal authorities, as well as procedures and processes for designation removal determinations, including superseding designation determinations.

We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement:

Recommendation #2: Obtain a final sensitivity review of the Worksite Enforcement Strategy and, if appropriate, reissue the strategy without the 'For Official Use Only, Law Enforcement Sensitive' designation.

Management Comments and OIG Analysis

We received written comments to our report from ICE. A summary of ICE's written response to the report's recommendations and our analysis of the response follows each recommendation. A copy of ICE's response, in its entirety, is included as Appendix B.

ICE Response: ICE concurred with Recommendation 1.

OIG Analysis: We consider Recommendation 1 resolved and open. This recommendation will remain open pending our receipt of ICE's revised law enforcement sensitive information policy that clarifies designation removal authorities, as well as procedures and processes for designation removal determinations, including superseding designation determinations.

ICE Response: ICE concurred with Recommendation 2.

OIG Analysis: We consider Recommendation 2 resolved and open. This recommendation will remain open pending documentation of a final sensitivity review of the Worksite Enforcement Strategy, and if appropriate, documentation of the strategy's reissuance without the 'For Official Use Only, Law Enforcement Sensitive' designation.

Established Congressional Notification Practices Were Not Followed

Although ICE's Worksite Enforcement program does not have a specific congressional notification requirement, DHS and ICE have established practices for advance notification to Congress. However, DHS' decision to provide the Worksite Enforcement Strategy as an exclusive *New York Times* interview, and to withhold its notification of the strategy to ICE employees and Congress until the morning of the article's release, deviated from previously established practices.

Both DHS and ICE recognized the importance of prompt response and notification to Congress, and special emphasis is placed on ensuring that congressional requests for information are fulfilled. Further, DHS and ICE attempt to notify relevant congressional members and committees prior to substantive news media events. To the extent possible, an ICE official said they attempt to provide 24 hours advance notice, although sometimes notifications coincide with media releases.

DHS and ICE Are Working on Improving Practices

As a result of the confusion surrounding the release of the Worksite Enforcement Strategy, several DHS officials said that they understand the importance of coordination and notification practices, as well as the need to adhere to and improve upon past practices. The same officials recognized the importance of following established

practices to ensure proper coordination of congressional notifications and news media releases.

Since the release of the Worksite Enforcement Strategy, both DHS' Office of Legislative Affairs and ICE's Office of Congressional Relations have implemented improved practices. For congressional notifications, both offices created notifications lists of committees and members cross-referenced with the specific areas of interest. Further, the Office of Legislative Affairs said that it is working on a manual to clarify roles, responsibilities, and processes for both DHS and all of its components. Both offices report improved coordination and communication, which will improve service to the department, Congress, and the public.

Appendix A

Purpose, Scope, and Methodology

We conducted this review in response to a request from U.S. Representative Hal Rogers, Ranking Member of the Subcommittee on Homeland Security, Committee on Appropriations. Our objectives were to (1) determine the process to disseminate the Worksite Enforcement Strategy guidelines, and (2) assess the events related to the potential unauthorized release of law enforcement sensitive (LES) information, including ICE's actions in addressing and handling the incident.

We conducted our fieldwork from June to August 2009. We conducted interviews with ICE's Offices of the Assistant Secretary, Congressional Relations, Investigations, and Principal Legal Advisor. At DHS, we interviewed staff from the Offices of Legislative Affairs, General Counsel, Public Affairs, and Policy. We reviewed DHS and ICE policies, procedures, and documentation related to safeguarding sensitive but unclassified information, public affairs, and legislative and congressional affairs.

We conducted this review 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.

Appendix B Management Comments to the Draft Letter Report

Office of the Assistant Secretary
U.S. Department of Homeland Security
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U.S. Immigration
and Customs
Enforcement

November 6, 2009

MEMORANDUM FOR: Carlton I. Mann
Assistant Inspector General for Inspections
Office of Inspector General

FROM: Robert F. De Antonio *for sig Va Pett 6 Nov 09/1420*
Director
Audit Liaison Office

SUBJECT: Response to Recommendations in OIG Draft Letter Report: "Release of
the U.S. Immigration and Customs Enforcement's Worksite Enforcement
Strategy"

U.S. Immigration and Customs Enforcement (ICE) appreciates the opportunity to submit the following response to the two recommendations in the subject Office of Inspector General (OIG) draft report.

OIG wrote: "We recommend that the Assistant Secretary of U.S. Immigration and Customs Enforcement, in coordination with the Under Secretary for Management:

OIG Recommendation 1: "Revise policies related to the safeguarding of ICE's law enforcement sensitive information to clarify designation removal authorities, as well as procedures and processes for designation removal determinations, including superseding designation determinations."

ICE Response: ICE concurs.

OIG Recommendation 2: "Obtain a final sensitivity review of the Worksite Enforcement Strategy and, if appropriate, reissue the strategy without the 'For Official Use Only, Law Enforcement Sensitive' designation."

ICE Response: ICE concurs.

Should you have any questions or concerns, please contact Margurite Barnes, OIG audit portfolio manager at (202) 732-4161 or by e-mail at Margurite.Barnes@dhs.gov.

Appendix C
Major Contributors to This Report

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Appendix D
Letter Report Distribution

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