

## **Chapter 3**

### **Inspector General Records**

#### **3-1. Nature of inspector general records**

*a.* All IG records, including USAR, ARNG, and ARNGUS IG records, are the property of the SA. Inspectors general maintain these records on behalf of the SA. The SA's designated authority for all IG records is TIG. The Inspector General, DTIG, the Principal Director to the Inspector General for Inspections, and their designated representatives (DAIG's legal advisor and deputy legal advisor) have the authority to release IG records.

*b.* The IG records are protected documents that contain sensitive and confidential information and advice. Unauthorized use or release of IG records can undermine the public's trust in the IG system and hamper an IG's effectiveness as a trusted advisor to a commander or State AG (see para 1-12, above).

*c.* Army IG records are any written or recorded IG work-product created during the course of an IG assistance inquiry, inspection, investigative inquiry, or investigation. An IG record includes, but is not limited to, correspondence or documents received from a witness or a person requesting assistance, IG reports, IGMET data, or other computer automatic data processing files or data, to include IG notes and working papers.

*d.* Non-IG records are documents contained within an IG file created by other Army or Federal agencies or documents from outside the Federal Government. While these records may be under the control of the IG for purposes of conducting assistance inquiries, inspections, investigative inquiries, and investigations, release of these records remains under the jurisdiction of the originating organization. Inspectors general will refer requests for non-IG records to the appropriate custodian for release determination and direct response to the requester.

#### **3-2. Protection of inspector general records**

*a.* Inspectors general will mark all unclassified IG records "for official use only (FOUO)" and "Dissemination is prohibited except as authorized by AR 20-1." The markings will appear on all IG reports starting on the bottom of the front cover, on every page that contains IG sensitive information, and on the outside of the back cover in accordance with 32 CFR part 518. Non-IG records do not require this marking.

*b.* An IG will mark classified IG records and removable media storage devices in accordance with AR 380-5, AR 25-55, and all other applicable security classification guides. Inspectors general will also mark these records as follows: "When declassified, document becomes for official use only. Dissemination is prohibited except as authorized by AR 20-1."

*c.* An IG will mark removable media storage devices containing IG data with the appropriate DA label (see AR 25-55 and AR 380-5) and with the "FOUO" and "Dissemination is prohibited except as authorized by AR 20-1" markings as well.

*d.* Original copies of IG correspondence designed to leave IG control (such as replies to correspondence or subjects and letters to MC) are not given protective markings and treatment. However, IGs will protectively mark file copies of such correspondence if that correspondence leaves IG channels.

*e.* Internal management documents designed to circulate within an IG office and that govern routine matters do not require protective markings; however, they are still protected as FOUO material. Any IG sending an email message containing IG information will ensure that the following footer is included in the message: INSPECTOR GENERAL SENSITIVE INFORMATION The information contained in this email and any accompanying attachments may contain Inspector General sensitive information, which is protected from mandatory disclosure under 5 USC 552. Matters within IG records are often pre-decisional in nature and do not represent final approved DA policy. Dissemination is prohibited except as authorized under AR 20–1. Do not release outside of DA channels without prior authorization from The Inspector General. If you are not the intended recipient of this information, any disclosure, copying, distribution, or the taking of any action in reliance on this information is prohibited. If you received this email in error, please notify us immediately by return email or by calling (ADD PHONE NUMBER).

*f.* The disposition and destruction of IG records will be in accordance with AR 25–400–2 and with additional guidance furnished by DAIG’s Information Resource Management Division (SAIG–IR). Refer to the Army Records Information Management System record retention schedule at <https://www.arims.army.mil> for further information. In addition, the destruction of IG records must conform to AR 25–55, chapter 4, and AR 380–5 as appropriate.

### **3–3. Use of inspector general records for adverse actions**

*a.* Inspector general records will not be used as the basis for adverse action (see glossary) against any individual unless specifically authorized by the SA, the Under Secretary of the Army, the CSA, the VCSA, TIG, DTIG, or the Principal Director to the Inspector General for Inspections. Requests for such use will be submitted to TIG or DTIG via DAIG’s Records Release Office (SAIG–ZXR) by mail to The U.S. Army Inspector General Agency (SAIG–ZXR), 1700 Army Pentagon, Room 1E132, Washington, DC 20310–1700, or emailed to [office.saig-zxl@ignet.army.mil](mailto:office.saig-zxl@ignet.army.mil). Any request to use the results of an IG investigation for adverse action must state why the command did not initiate a command investigation into the alleged misconduct, and why a follow-on command investigation would be unduly burdensome, disruptive, or futile. Command investigations preclude the necessity of using IG records for adverse action and thereby safeguard the integrity of the IG system.

*b.* Commanders and supervisors seeking to use IG records as the basis for adverse action should request only the minimum amount of evidence necessary. The request should describe precisely which portions of the IG records are necessary to support the adverse action and why. Assistance in determining whether an action is deemed adverse may be obtained from the servicing legal office. The IG will encourage consultation between the commander or supervisor concerned and the servicing legal office regarding the need for IG records for adverse action and the availability of other evidence. IG opinions, conclusions, and recommendations are not evidence and will not be used as a basis for adverse action.

*c.* Commanders and supervisors will not initiate flagging actions for individuals under IG investigation, because such an action could be construed as adverse in nature. Commanders or supervisors seeking approval for the use of IG records for adverse action may flag the individual in accordance with AR 600–8–2 upon TIG, DTIG, or Principal Director to the Inspector General for Inspections approval to use IG records to support the adverse action. This provision does not preclude USAHRC or another similar DA-level agency from initiating a DA-level flag on individuals identified, as the result of a DAIG record screen, as having a substantiated finding from an IG investigation or investigative inquiry or pending IG investigation in order to stop a promotion or assignment until the IG investigation is concluded.

### **3–4. Requests for inspector general records**

*a.* Requests for IG records can be for official use or be a request under the FOIA. Requests for IG records must be in writing and submitted for action to The U.S. Army Inspector General Agency (SAIG–ZXR), 1700 Army Pentagon, Room 1E132, Washington, DC 20310–1700, or emailed to [office.saig-zxl@ignet.army.mil](mailto:office.saig-zxl@ignet.army.mil).

*b.* Requests for an “Official Use” release must be in writing and reasonably identify the IG records sought (that is, the name of the complainant or subject, date of the investigation, where the IG investigation was conducted, and so forth.). The request must also state the specific purpose or intended use of the IG records. Persons and agencies may ask to obtain IG records for official use by providing their local detailed IG, or the IG office of record, a written request that clearly states the reason they need the IG records. The IG will retain written notations concerning the release and its justification with the record-file copy of the case.

*c.* Procedures for requesting records under the FOIA for nonofficial use are as follows:

(1) DAIG’s Records Release Office is the only component of DAIG designated to receive and process FOIA requests. IG field offices and DAIG divisions should direct FOIA requestors to submit their requests directly to DAIG’s Records Release Office.

(2) Requests must be submitted in writing or via email and reasonably identify the IG records sought. When possible, IGs will assist requesters in identifying the specific information they are seeking, thereby limiting the volume of records copied and processed for release.

(3) Requests for IG records under the FOIA must comply with AR 25–55.

(4) An IG who receives a FOIA request will forward the scanned original request and responsive record to DAIG’s

Records Release Office via encrypted email (office.saig-zxl@ignet.army.mil) or fax within 2 working days. Records sent by mail, commercial courier, or a similar method will use the 3-day delivery option.

(a) All records forwarded must be legible, single-sided, and properly aligned.

(b) The IG office of origin will prepare a forwarding memorandum containing the date the office received the request, any specific local concerns or recommendations, a list of witnesses who did not consent to release of their testimony, and the source of each non-IG work-product document forwarded by the IG office of origin. Telephone coordination with DAIG's Records Release Office is encouraged, especially before copying and forwarding voluminous exhibits to a requested record.

(c) Inspectors general will enter the FOIA request in IGARS in the case notes of the existing case or as a 1-minute IGAR.

### **3–5. Release authority for inspector general records**

a. The Inspector General, DTIG, the Principal Director to the Inspector General for Inspections, or their designated representatives (DAIG's legal advisor and deputy legal advisor) may approve the release of IG records outside IG channels. Normally, release of IG records will only be made after case closure.

b. Inspectors general may release information from IG records to respond to requests for assistance, advice, or information; answer complaints; and prepare closure letters. An IG should seek consent before releasing personal information to resolve a case and record this consent in the IGAR case notes. Inspectors general will consult DAIG's Records Release Office or the command legal advisor when they are uncertain whether the use of personal information will cause either an unwarranted invasion of privacy or a breach of IG confidentiality.

c. The chief of DAIG's Assistance Division may release complaints and attachments to the Army staff and Secretariat for command investigations or inquiries. The new warning statement placed by DOD IG on all new DOD Hotline cases states that it is a Department of Defense IG document and may contain information that could identify an IG source. The identity of an IG source must be protected, and access to the documents is limited to persons with the need to know for the purpose of providing a response to the DOD IG. The documents cannot be released, reproduced, or disseminated (in whole or in part) outside of the DOD without the prior written approval of the DOD IG or authorized designee. Subjects, witnesses, or others cannot receive, review, or make copies of this document.

d. Command IGs may release IG records FOUO as follows:

(1) *Release of a report of investigation or report of investigative inquiry to the directing authority for informational purposes only and not for adverse action.* Directing authorities may have an official need for an ROI or ROII. Such official uses may include verbal counseling of a substantiated subject or suspect, or background information to justify initiating a follow-on command investigation. Inspectors general will advise directing authorities on the confidentiality of IG information, the protection of IG records, and the restrictions on release to others. The Inspector General, DTIG, DAIG's legal advisor, or the deputy legal advisor must approve any dissemination of the ROI or ROII beyond the directing authority.

(2) *Release of an inspection report to the directing authority and to other Army agencies and commands as required.* Once the IG releases the report to the directing authority, he or she may in turn release the report to members of his or her own staff and/or command or to other Army commands or agencies as necessary. The directing authority or the IG must advise all recipients about the FOUO restrictions on IG inspection reports.

(3) *Release of records or information to Army investigators.* Department of the Army investigators include personnel such as investigating officers, officers conducting financial liability investigations of property loss, Criminal Investigation Command (CID) investigators, military police investigators, and similar investigators performing law enforcement or other investigations under Army regulations and outside IG channels. These personnel are entitled to IG information described below when that information is relevant to an authorized investigation. They will not be provided additional information without approval of TIG, DTIG, the legal advisor, or the deputy legal advisor or a higher authority. In particular, IGs may not allow DA investigators to interview them about matters involving IG information without approval from DAIG's Records Release Office.

(a) Inspectors general may inform investigators of allegations or matters the IG office examined; however, IGs will not reveal any IG findings, opinions, conclusions, or recommendations.

(b) An IG may release documentary evidence that is readily available to any DA investigator and that the IG did not receive in confidence. This evidence includes, but is not limited to, finance and personnel records, travel vouchers, motel and restaurant receipts, emails, and so forth. "Readily available" includes documents that would be readily available from the source but have been lost, destroyed, retired, or altered after the IG obtained them.

(c) An IG may provide investigators a list of witnesses, the witnesses' contact information, and a brief synopsis of their relevant testimony. The IG will not reveal which witness is the complainant (see para 1–12, below). Written statements, transcripts, and recorded tapes taken by the IG will not be released.

(4) *Release of inspection reports.* Inspectors general may share DAIG inspection reports posted to the IGET Web page with their commands if the commands have an official need for the report. Inspectors general will limit distribution of these reports using the FOUO classification.

(5) *Release of civilian screening results to Civilian Personnel Operations Centers.* Any IGs who are hiring officials

may release to CPOCs the results of any IG screens that make a candidate unsuitable for service as an IG (see para B-4b(6), below).

### **3-6. Requests for official use**

a. The Inspector General, the DTIG, the Principal Director to the Inspector General for Inspections, the legal advisor, and the deputy legal advisor may release IG records to individuals, commands, or agencies within the Federal or a state government having a need for these records in the performance of their official duties as an FOUO release. The following restrictions apply to all IG records released for official use.

(1) The IG records will not be reproduced or further disseminated without specific permission of TIG, DTIG, the Principal Director to the Inspector General for Inspections, the legal advisor, or the deputy legal advisor.

(2) Use or attachment of IG records as exhibits or enclosures to non-IG agency records or reports is not authorized without written approval of TIG, the DTIG, the Principal Director to the Inspector General for Inspections, the legal advisor, or the deputy legal advisor.

(3) Commanders at any level will not use IG records to compare their commands or commanders.

(4) Rating officials and supervisors may not cite inspection findings, inquiry results, or other IG information in an evaluation report, performance appraisal, or other evaluation that is maintained in official personnel records. However, rating officials and supervisors can use the underlying conduct that may have been the subject of investigation or inquiry for which evidence is readily available from non-IG records or sources. The ACOMs, ASCCs, and DRUs may request permission from TIG, the DTIG, or the Principal Director to the Inspector General for Inspections through DAIG's Records Release Office to use IG inspection results for adverse action from inspections conducted by the DAIG's Information Assurance, Intelligence Oversight, and Technical Inspections Divisions.

(5) Any IG records provided FOUO will be returned to DAIG's Records Release Office or securely destroyed within 60 days or after the records have served their purpose. If destroyed, the FOUO recipient will inform DAIG's Records Release Office that the records have been destroyed in a secure fashion such as "burn bag" incineration or shredding. These records are only on loan to the recipient and remain under the authority of TIG. Recipients of IG records are not to incorporate them into a system of records subject to the PA (5 USC 552a) because the recipient's system of records may not be subject to the same PA exemptions as the IG system of records.

(6) The requesting agency's intended use of IG records must be in compliance with the "Department of Defense Blanket Routine Uses" published in the Federal Register to receive the records without the consent of individuals mentioned in the IG records. The term "Routine Uses" means that the requesting agency will use the record for the stated purpose. The release of IG records for "Routine Uses" is strictly discretionary.

b. Examples of FOUO releases include—

(1) Release of IG records to investigative personnel outside of DA or outside the parameters of paragraph 3-5.

(2) Release of records to the General Officer Management Office when acting as the agent of the CSA and VCSA in general officer assignment, promotion, and other personnel matters.

(3) Use of IG records to respond to requests for information from the White House and Congress while acting as a body (or through its committees, joint committees, or subcommittees).

(4) Requests for records from the Civilian Senior Leader Management Office.

### **3-7. Requests for inspector general records under the Freedom of Information Act**

a. The FOIA is a statutory right of access to Federal Government information. The Government's policy is to disclose requested records unless exempt or excluded from disclosure under the FOIA and PA (5 USC 552 and 552(a)).

b. Examples of FOIA requests include the following:

(1) *Requests for records by a Member of Congress.* The IG will treat requests for copies of IG records by an MC, on the MC's own behalf or on the behalf of a constituent, as a request for records under the FOIA.

(2) *Release of witness statements.* Individuals who have provided statements must submit a FOIA request to obtain a copy of their own testimony.

(3) *Media requests.* An IG is not authorized to discuss specific inspections, assistance inquiries, investigative inquiries, or investigations with media representatives. All IGs will refer media inquiries to the local public affairs officer. Inspectors general will neither confirm nor deny that a specific subject or topic is, or has been, under investigation or inquiry. Inspectors general will not answer questions concerning hypothetical situations that might occur in performing their duties. There is no prohibition against an IG answering questions of a general nature after coordination with the local public affairs officer. Requests for IG records from media representatives will be referred to DAIG's Records Release Office.

### **3-8. Release of records and reports under the military whistleblower reprisal statute**

a. An IG may provide information relating to complaints of whistleblower reprisal and improper MHE referral directly to DODIG Military Reprisal Investigations upon request without TIG or DAIG's Records Release Office approval. This information includes, but is not limited to, the original complaint with supporting documentation; IG records or investigation material; official personnel and medical records (orders, evaluations, and so forth); AR 15-6

investigations, commander's inquiries, or equal opportunity investigations; and any other information deemed relevant to resolving an official complaint. This exemption only applies when DODIG Military Reprisal Investigations requests the information in support of a preliminary inquiry or investigation. If any questions arise, the Whistleblower Investigations and Oversight Branch in DAIG's Assistance Division (SAIG-AC) may be contacted at (703)601-1060 or DSN 329-1060.

b. The Department of the Army Inspector General Records Release Office processes the release of whistleblower reprisal ROIs to complainants upon case closure per 10 USC 1034.

### **3-9. Inspector general records in support of litigation**

a. *Litigation.* "Litigation" includes, but is not limited to, all phases of courts-martial, State and Federal civil lawsuits, Equal Employment Opportunity Commission hearings, and Merit Systems Protection Board proceedings.

b. *Requests for records for discovery in a judicial proceeding.* Discovery is the disclosure of relevant information before and during litigation. The following procedures apply:

(1) Discovery requests for IG records must be in writing and submitted to the Government representative in the case.

(2) The Government representative will forward the request to DAIG's Records Release Office for action. The Records Release Office will release requested IG records to the Government representative for a relevancy determination.

(3) The Government representative will review the IG records to determine which portion(s), if any, of the IG records are relevant to the case. If the Government representative determines that the IG records are relevant to the case, the Government representative will submit a written request to DAIG's Records Release Office for release of relevant portions of IG records to the Government counsel and defense counsel.

(4) The Records Release Office will redact information that is not relevant or is FOIA-protected from requested IG records and will forward the records to the Government representative. The Government representative is authorized to release the records to opposing counsel.

(5) If the Government representative determines that the IG records requested by the defense counsel are not relevant to the case, the Government counsel must assert the IG confidentiality and records protection policy to prevent disclosure of the IG records.

(6) If the defense counsel objects to the "not relevant" determination made by the Government representative or the limited discovery provided through release of the redacted copy, the Government representative should request an in-camera review by the presiding judge.

(7) In the event the presiding judge orders the release of the IG records, the Government representative must request the judge issue a protective order to prevent the opposing party and counsel from making further dissemination of the IG records.

c. *Subpoenas and similar court orders.* The U.S. Army Legal Services Agency Litigation Division (JALS-LT) is the proponent for all aspects of litigation involving DA personnel. (See AR 27-40 for specific guidance; AR 27-40, appendix C, contains information on litigation extracted from DODD 5405.2.)

(1) Inspector general personnel may not disclose any official information from IG files or any information acquired during the performance of IG duties without prior written approval from TIG, the DTIG, the Principal Director to the Inspector General for Inspections, the legal advisor, or the deputy legal advisor.

(2) When an IG receives a subpoena, court order, or request for attendance at a judicial or quasi-judicial proceeding, or a request for an interview that the IG reasonably believes is related to actual or potential litigation and the information sought is from DA files or is known to the IG as a result of official duties, the IG will notify the local SJA and DAIG's legal advisor within 48 hours. The IG must never ignore a subpoena.

(3) Inspectors general will inform requesters to set forth, in writing and with specificity, the nature and relevance of the official information sought.

(4) If a response to a subpoena or court order is required before the TIG, the DTIG, the Principal Director to the Inspector General for Inspections, the legal advisor, or the deputy legal advisor authorizes release, the IG will advise the requesting official of the IG policy of records protection and confidentiality; inform the requesting official that the request is being reviewed expeditiously; and seek a stay of the subpoena or order pending a final determination by DAIG.

(5) If a court of competent jurisdiction or other appropriate authority declines to stay the order or subpoena, the IG will notify the local SJA and DAIG's legal advisor immediately. In those rare cases in which circumstances require a response before TIG acts, the IG will respectfully decline to comply with the subpoena or order (see 340 US 462 (1951)). Continuing coordination between the IG, the local SJA, and the appropriate U.S. Army Legal Services Agency litigating division is critical in these types of cases.

### **3-10. Requests by labor organizations**

a. The right of access, under 5 USC 7114(b)(4), requires agencies to furnish labor organizations with information related to collective bargaining and includes IG records that meet the criteria listed in the statute. Inspectors general

will send requests for IG records by labor organizations through the servicing legal office to obtain an opinion on whether the requested documents are releasable under 5 USC 7114. Inspectors general will forward the request, a copy of the requested records, the written opinion of the labor law attorney, and a copy of the collective bargaining agreement to DAIG's Records Release Office (SAIG-ZXR). Advance coordination with the Records Release Office will prove helpful.

*b.* This statutory right to agency information is in addition to access rights under the FOIA. Inspector general records that do not pertain to subjects within the scope of collective bargaining will not be released under 5 USC 7114(b)(4) but will be processed under the FOIA.

### **3-11. Factual amendment of inspector general records**

*a.* This paragraph pertains to requests to amend factual errors such as ranks, name spellings, and the like contained in IG records. Information pertaining to requests to reconsider an IG finding, or matters of IG opinion, judgment, or conclusions, appears in paragraph 3-12, below.

*b.* Persons will direct requests for the factual amendment of IG records to—

(1) The authority that directed the record's creation (for example, the directing authority of an ROI).

(2) The Inspector General, the DTIG, or the Principal Director to the Inspector General for Inspections for cases in which DAIG is the office of record.

*c.* Directing authorities may amend personal information on individuals contained in the record provided that adequate documentary evidence supports the request. This amendment authority is limited to those portions of the record containing facts (for example, the spelling of a name). For changes to other parts of an IG record, see paragraph 3-12, below.

*d.* Amendment requests for which the directing authority recommends denial must be supported by memoranda and forwarded to DAIG's Records Release Office. As the access and amendment refusal authority designated in AR 340-21, TIG is the first official who may deny requests to amend IG records.

*e.* Should the directing authority review or re-look a case and, based on new evidence, determine that a subject should be added or deleted, a function code should be changed, and/or a determination of an allegation is warranted, the directing authority must submit that request to TIG in accordance with paragraph 3-12, below.

### **3-12. Requests for reconsideration of inspector general findings, opinions, judgments, or conclusions**

All requests to add or delete a subject, alter a function code, and/or alter an allegation determination in an IG record will be forwarded or directed to DAIG's Assistance Division (SAIG-AC) for referral to the appropriate divisions within DAIG for review prior to action by TIG, the DTIG, or the Principal Director to the Inspector General for Inspections. Only TIG may approve or disapprove requests to amend determinations in IG records. All requests to amend determinations in IG records will include one copy of the record for which the amendment is sought; any documents in support of or related to the disputed record; acknowledgement to the requester; and recommendations, with supporting rationale, concerning whether the amendment should be approved or disapproved. Requests for amendments concerning opinion, judgment, or conclusion may be granted upon a showing of fraud, mistake of law, mathematical miscalculation, or newly discovered evidence.