

DEPARTMENT OF HOMELAND SECURITY

Office of Inspector General

DHS CHALLENGES IN CONSOLIDATING TERRORIST WATCH LIST INFORMATION



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Office of Information Technology

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**Homeland
Security**

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, investigative, and special reports prepared by the OIG as part of its DHS oversight responsibility to identify and prevent fraud, waste, abuse, and mismanagement.

This report assesses the strengths and weaknesses of the program or operation under review. It is based on interviews with employees and officials of relevant agencies and institutions, direct observations, and a review of applicable documents.

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

A handwritten signature in black ink, appearing to read "Clark Kent Ervin".

Clark Kent Ervin
Inspector General

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Abbreviations

CAPPS II	Computer Assisted Passenger Prescreening System
CBP	Customs and Border Protection
DHS	Department of Homeland Security
FBI	Federal Bureau of Investigation
FTTTF	Foreign Terrorist Tracking Task Force
GAO	Government Accountability Office, (formerly General Accounting Office)
HSPD	Homeland Security Presidential Directive
IAIP	Information Analysis and Infrastructure Protection

Contents

IT	information technology
OIG	Office of Inspector General
TSC	Terrorist Screening Center
TTIC	Terrorist Threat Integration Center

Introduction

Terrorist and criminal “watch lists” are important tools for controlling and protecting U.S. borders. Traditionally, federal agencies have used various means, developed in response to their individual missions, to manage watch list information. The attacks of September 11, 2001, underscored the need for standardization and consolidation of the terrorist watch lists to help ensure homeland security. According to the Homeland Security Act of 2002,¹ DHS is to play a major role in watch list consolidation activities.

As part of its ongoing responsibilities to evaluate the effectiveness of DHS programs and activities, the OIG conducted a review of terrorist watch list consolidation efforts. The objectives of the review were to: (1) determine DHS’ role in working with other federal agencies to consolidate terrorist watch list systems and operations in response to recent legislation and executive branch direction; (2) evaluate the effectiveness of plans and activities to standardize and consolidate the watch lists to address the new requirements; and (3) identify any obstacles or challenges encountered and determine whether changes to the interagency systems integration approach are needed. The scope and methodology of this review are discussed in Appendix A.

Results in Brief

DHS is not playing a lead role in consolidating terrorist watch list information. Instead, these consolidation activities are generally administered by the entities that were responsible for collecting and disseminating terrorist information prior to DHS’ formation. DHS officials said that the new department lacked the resources and infrastructure to assume leadership for the consolidation. While this contention has merit, DHS can still play a more robust role than at present by overseeing and coordinating watch list consolidation activities across agency lines. Such oversight would help DHS fulfill the role required by the Homeland Security Act and better ensure that the past ad hoc approach to managing watch list consolidation is not continued.

¹ Public Law 107-296 (Nov. 25, 2002), codified at 6 USC 101 *et seq.*

Stronger DHS leadership and oversight would also help improve current watch list consolidation efforts. Although some progress toward streamlined processes and enhanced interagency information sharing has been made, the consolidation is hampered by a number of issues that have not been coordinated effectively among interagency participants. Specifically, in the absence of central leadership and oversight for the watch list consolidation, planning, budgeting, staffing, and requirements definition continue to be dealt with on an ad hoc basis, posing a risk to successful accomplishment of the goal. A number of additional challenges, such as i (b) (2) High, privacy, (b) (2) High, (b) (2) High, could be pursued in the context of a centrally coordinated approach to watch list management.

Background

Effective use of information technology (IT) is fundamental for the federal government to accomplish its counterterrorism mission. For example, compiling automated data on potential or known terrorists to check against the names of foreigners entering or already present in the U.S. is one critical means of protecting the homeland. In April 2003, the General Accounting Office, recently renamed as the Government Accountability Office (GAO), reported that nine federal agencies used 12 separate systems and databases, each developed in response to the agencies' individual legal, cultural, and systems environments, to support federal law enforcement and border security processes.²

Generally called "watch lists," these systems actually serve a variety of purposes and contain different types of information. For example, the Department of State's Consular Lookout and Support System was designed to support visa and passport issuance. U.S. Customs and Border Protection's (CBP) Interagency Border Inspection System facilitates border crossing inspections and includes information on potential terrorists, as well as people suspected of narcotics trafficking or other law enforcement violations. The Federal Bureau of Investigation's (FBI) Violent Gang and Terrorist Organization File helps manage information on organized criminal activities, including domestic terrorism. Further, the Transportation Security Administration's "no-fly" and selectee lists are used to determine whether a person may board an airplane.

The Department of State's TIPOFF database was the only one that can be considered purely a terrorist watch list. TIPOFF contained intelligence data that

² *Information Technology: Terrorist Watch Lists Should Be Consolidated to Promote Better Integration and Sharing*, U.S. General Accounting Office (GAO-03-322, April 2003).

was shared with other agencies responsible for ensuring that potential terrorists do not enter the U.S. For example, an unclassified subset of TIPOFF data was shared with the Consular Lookout and Support System, Interagency Border Inspection System, National Automated Immigration Lookout System, and the Canadian and Australian governments.

Although TIPOFF data was being shared, the extent of sharing was inconsistent among other watch list systems. (b) (2) High

(b) (2) High Where information was shared, it was not supported by common architectures because individual agencies developed and implemented interfaces with other federal agency watch list systems on an ad hoc basis. This situation was complicated by a lack of policies and procedures to govern the sharing, and there was no way of ensuring that consistent data was on each agency's watch list. The consequence, GAO reported, was the kind of overly complex, unnecessarily inefficient, and potentially ineffective network that is associated with unstructured and non-standard database environments. In the current environment of increased terrorist activity and security awareness, "stove piped" management of critical watch list information is no longer tolerable.

Recognizing the need for a more concerted approach to ensuring national security, Congress passed legislation that calls for increased information sharing among government agencies. Specifically, the Homeland Security Act of 2002 established DHS and gave it significant responsibility to coordinate the sharing of information to protect the U.S. from terrorist threats. The law requires the DHS Under Secretary for Information Analysis and Infrastructure Protection (IAIP) to consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the federal government to establish collection priorities and strategies for information relating to threats of terrorism against the U.S.³ The law also directs the IAIP Under Secretary to review, analyze, and make recommendations to improve the policies and procedures governing the sharing of law enforcement, intelligence, intelligence-related, and other information relating to homeland security.⁴ According to the law, "homeland security information" is defined as any information possessed by a federal, state, or local agency that: (1) relates to the threat of terrorist activity; (2) relates to the ability to prevent, interdict, or disrupt terrorist activity; (3) would improve the identification or investigation of a suspected terrorist or terrorist organization; or (4) would improve the response to a terrorist act. Terrorist watch lists and related consolidation activities are clearly covered by this definition.⁵

³ 6 USC 121 (d)(10).

⁴ 6 USC 121 (d)(8).

⁵ 6 USC 482.

Such legislation is kindred to earlier legislation that called for increased interagency sharing. The USA Patriot Act,⁶ enacted in October 2001, directed that foreign intelligence or counterintelligence information obtained during criminal investigations be disclosed to federal law enforcement, intelligence, immigration, national defense, or national security officials to assist them in performing their official duties. Further, in May 2002, the Enhanced Border Security and Visa Entry Reform Act⁷ required federal law enforcement and intelligence agencies to share information with the Department of State and the Immigration and Naturalization Service regarding the admissibility and deportation of aliens.

Findings

DHS Is Not Overseeing Interagency Consolidation Activities

DHS is not playing a lead role in coordinating the sharing of terrorist watch list information. Instead, terrorist watch list consolidation activities are conducted by the federal organizations that were primarily responsible for collecting and disseminating terrorist information prior to DHS' formation. DHS officials said that the newly created department lacked the resources and infrastructure to assume leadership for the watch list consolidation effort. While this contention has merit, DHS can still play a more robust role than at present by overseeing and coordinating watch list consolidation activities across agency lines. Such oversight would help DHS fulfill its coordination responsibility as required by the Homeland Security Act, better ensuring that the ad hoc watch list management pattern of the past is not continued.

DHS HAS NOT FULFILLED ITS LEADERSHIP RESPONSIBILITY

With passage of the Homeland Security Act, Congress expected that DHS would help put an end to the ineffective counterterrorist information sharing activities of the past. Forged from 22 separate agencies with a range of homeland security related missions, the new department was designed to facilitate interagency coordination and cooperation, as well as to conduct terrorist threat risk analysis and assessment. Not just Congress, but officials both internal and external to

⁶ Public Law 107-56, *Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001*, October 26, 2001.

⁷ Public Law 107-173, May 14, 2002.

DHS, anticipated that in this context DHS would play a lead role in terrorist watch list consolidation. With its range of customs, immigration, transportation security, infrastructure protection, and threat analysis responsibilities, it appeared logical for DHS to assume this lead responsibility. Such a role would include coordinating interagency planning, policy formation, and oversight of watch list consolidation activities. Such a role also would include taking an overarching view of watch list consolidation activities across government and no longer managing on an organization-by-organization basis. Given its responsibilities under the Homeland Security Act to improve the policies and procedures governing the sharing of information relating to homeland security threats, IAIP is the organization within the department that should play this role.

Despite these expectations, IAIP has not provided the leadership of the watch list consolidation effort that is needed. Specifically, DHS is not carrying out significant responsibilities assigned to it under the Homeland Security Act, i.e., orchestrating the integration of terrorist information and establishing national policies and guidelines governing the use of such information. Instead, other federal entities that have traditionally collected, analyzed, and disseminated watch list information continue to conduct these efforts under the auspices of two newly created interagency organizations: The Terrorist Threat Integration Center (TTIC) and the Terrorist Screening Center (TSC).

The President called for the creation of the TTIC in his State of the Union address in January 2003, by directing that the leaders of the FBI, DHS, Central Intelligence Agency, and Department of Defense develop a single location for merging, analyzing, and disseminating terrorist threat related information to appropriate recipients. The President directed that this new organization be placed under the auspices of the Director of Central Intelligence. Accordingly, Director of Central Intelligence Directive 2/4 provided guidance for establishing the new center. While a director for the new center was appointed from the Central Intelligence Agency, a deputy director was assigned from the FBI. To support TTIC operations, staff have been drawn from a number of intelligence, defense, law enforcement, and national security agencies, including DHS. TTIC was established on May 1, 2003, just over three months after the President announced its creation.

Further, on September 16, 2003, Homeland Security Presidential Directive – 6 (HSPD) directed the establishment of a second organization, the TSC, to consolidate the government’s initiatives for the appropriate and lawful use of information in terrorist screening processes. On that same date, the Secretary of

Homeland Security, along with the Secretary of State, the Attorney General, and the Director of Central Intelligence, signed a memorandum of understanding that outlined general guidelines for TSC operations. In signing that memorandum, the DHS Secretary agreed that the FBI would have responsibility for administering the center. TSC began operations on December 1, 2003, just over two months after its creation.

The FBI had extensive involvement in establishing the TSC. Its Foreign Terrorist Tracking Task Force (FTTTF), an organization established to prevent terrorists from entering the country and track those already in the country, was located with the TSC. The FTTTF provided IT contractors and equipment to help initiate TSC operations. The FBI also developed TSC's initial concept of operations and took much of the responsibility for its day-to-day management. More recently, FBI support has included developing a "business case"⁸ to request funding from the Office of Management and Budget for the center for FY 2005. Currently, the TSC director reports to FBI leadership.

DHS REASONS FOR NOT ASSUMING LEADERSHIP

DHS officials offered various reasons as to why the department did not assume responsibility under the Homeland Security Act for leading and coordinating the watch list consolidation effort. Primarily, DHS officials said that DHS initially lacked the internal resources and infrastructure to carry out the effort. DHS faced the enormous task of getting its own internal operations up and running. When DHS was established, it assumed control of approximately 180,000 employees from 22 federal agencies and offices. As the OIG reported in March 2004,⁹ DHS faced major challenges in consolidating and integrating the myriad financial systems and operations inherited from its legacy agencies. Also, DHS was working to design a human capital management system, develop a department-wide IT infrastructure, consolidate its redundant procurement functions, and institute an information assurance program.

In addition, DHS' IAIP directorate, which has responsibility for coordination and oversight of terrorist information sharing, was not prepared to take on this interagency effort. The IAIP directorate lacked the resources to assume responsibility for coordinating the interagency effort and had a number of other

⁸ A business case is an outline of the objectives, desirable outputs, and benefits of a proposed project.

⁹ *Review of the Status of Department of Homeland Security Efforts to Address Its Major Management Challenges*, (OIG-04-21, March 2004).

¹⁰ *Survey of the Information Analysis and Infrastructure Protection Directorate*, (OIG-04-13, February 2004).

internal issues that it first needed to resolve.¹⁰ Many of the issues reportedly are being addressed at the highest levels within IAIP. Specifically, IAIP is having difficulty hiring staff with the appropriate clearances to support its risk and threat analysis mission. Because IAIP is a new organization, it needs to hire experienced intelligence analysts to undertake its mission. However, IAIP is competing with other federal organizations whose needs for intelligence analysts have increased since September 11, 2001. An IAIP official estimated that there are about five or six positions available within the intelligence community for every potential applicant with the proper clearance. This official also said that it is unrealistic to hire people without clearances and expect them to get the clearances soon after they come on board because the clearance process for new hires requires about 14 months. The resulting shortage of staff within IAIP has created long workdays for employees, which negatively affects morale and results in reactionary rather than proactive operations, according to a senior IAIP representative. Sending staff to support TTIC and TSC operations only exacerbates the difficult staffing situation.

Another problem that IAIP faced was inadequate capabilities for managing national security information. When it was first created, the directorate did not have an accredited “high-side” classified network and adequate, secure office space, and equipment. The directorate also lacked established procedures and guidelines for handling classified data. Because of this, other federal agencies were unable to send it classified materials. More recently, in May 2004, an IAIP official told the OIG that it has since put in place policies and procedures for handling classified information, as well as a secure infrastructure for receiving such information.

Further, IAIP officials said that HSPD – 6 and the related memorandum of understanding established the TSC under the FBI and limited DHS to a supporting role in the watch list consolidation. These officials further said that the directive gave the FBI not only operational control, but also strategic and policy coordination responsibility for the TSC and watch list consolidation activities. IAIP officials could not provide documented legal assessments to support these assertions, however.

According to the provisions of HSPD – 6, it should be carried out consistent with applicable laws, thereby supplementing, rather than supplanting, existing DHS authorities and responsibilities under the Homeland Security Act. Indeed, by giving the Attorney General responsibility for establishing TSC operations, the directive provides supplemental direction for carrying out provisions of the act.

The directive does not assign to the FBI responsibility for oversight, policy, or coordination across the various federal, state, and local government participants. As such, the directive does not preclude DHS from carrying out such oversight responsibilities pursuant to the Homeland Security Act.

In contrast to the situation at DHS, the intelligence community, and the FBI were viewed as well positioned to get the job done quickly. The TTIC, under the auspices of the Director of Central Intelligence, was able to incorporate resources from the Department of State unit that had collected the majority of the terrorist watch list information in the past. Specifically, in November 2003, in accordance with provisions of the interagency memorandum of understanding that clarified HSPD – 6, the Department of State’s TIPOFF database was transferred to the newly established TTIC. For 17 years, the TIPOFF database had been the only U.S. government database containing purely terrorist information. Along with the database, some of the Department of State’s employees from the TIPOFF program were also transferred to TTIC to conduct research and analysis, providing the center with the benefit of experienced staff. A Department of State representative said that these employees formed the core of the TTIC.

Further, the FBI was experienced in establishing command centers and well prepared to mobilize the necessary personnel from across the country quickly to establish the TSC. The FBI’s FTTTF had previously been tasked with responsibilities similar to the TSC under HSPD – 2. A January 2003 Director of Central Intelligence annual report¹¹ supports this assertion. Specifically, this report noted that the FTTTF would maintain a unified, unclassified, consolidated tracking list and co-locate critical law enforcement, intelligence, and open source data for analysis and decision making support. An FTTTF official said that, as a result of this effort, FTTTF created in 2002 a consolidated tracking list, which consists of TIPOFF, the FBI’s Violent Gangs and Terrorist Organization File, and the FBI’s 22 Most Wanted List to support its analysis to identify associates of known terrorists and their supporters.

A senior IAIP official said that having more experienced federal agencies move ahead with watch list consolidation was the most expeditious way to proceed. However, several DHS officials said that the expectation is to place the TSC under DHS control eventually. Specifically, the September 2003 interagency memorandum of understanding includes a clause that requires a review of the organization, structure, and progress of the TSC and allows for modifications based on any recommendations that result from the review. Officials both internal

¹¹ *The 2002 Annual Report of the United States Intelligence Community*, January 2003.

and external to DHS have suggested that such modifications might include a transfer of responsibility for the watch list consolidation to DHS, specifically the IAIP directorate, as the Homeland Security Act requires. DHS could prepare for the transition by developing an operational plan outlining what needs to be done to take on the responsibility. But DHS' assumption of the watch list consolidation effort as it currently exists would not be enough. Rather, DHS would need to provide the central oversight and strategic vision to ensure that interagency consolidation efforts are effective, coordinated, and progressing in the right direction.

AD HOC APPROACH TO WATCH LIST CONSOLIDATION CONTINUES

The manner through which the watch list consolidation has unfolded has not helped the nation break from its pattern of ad hoc approaches to counterterrorism. Specifically, in the years since the September 11 terrorist attacks, just as in the past, the government has continued to implement solutions in an uncoordinated manner. While the requirement to consolidate the multiple watch lists was clear, the approach to accomplishing it has not been so. Responsibility for consolidating multiple databases of watch list information has shifted among various federal organizations; the results of repeated efforts have been limited.

Beginning in 2001, the White House Office of Homeland Security became very involved in this issue, developing both short and long-term plans for watch list consolidation. According to a senior DHS official, the plans should have been implemented by the beginning of 2003. However, this was not accomplished, for reasons undisclosed to the OIG. In July 2002, the White House office nonetheless released a "National Strategy for Homeland Security," which discussed federal agency roles and comprehensive steps for mobilizing and organizing to protect against terrorist attacks, including watch list consolidation. According to the National Strategy, the FBI was establishing a consolidated watch list to serve as a central access point for information about people of investigative interest that would be fully accessible to the law enforcement and intelligence communities.

Along these lines, the White House created an organization within the Department of Justice with specific responsibility for improving the sharing of terrorist information. On October 29, 2001, just over a month after the attacks of September 11th, the White House issued HSPD – 2, which directed the Attorney General to establish the FTTTF in coordination with the Department of State, the intelligence community, and other federal organizations. These entities

were to work together to deny entry to suspected terrorists, as well as to locate, detain, prosecute, or deport any aliens already present in the U.S. who were suspected of supporting terrorism. Another FTTTF mission was to develop and implement multi-year plans to enhance the investigative and intelligence analysis capabilities of the CBP and the Immigration and Naturalization Service. Although the presidential directive specifically did not require that these entities create a consolidated database, it did direct them to recommend ways in which existing federal databases could best be utilized to locate and apprehend potential terrorists in the country. Further, in a January 2003 report to the Congress, the Director of Central Intelligence said that the FTTTF would maintain a consolidated tracking list and bring together law enforcement, intelligence, and open source data for analysis and decision-making support.

The Intelligence Authorization Act for Fiscal Year 2003¹² also required the creation of a “watch list” of suspected terrorists. It specifically required the Director of Central Intelligence to establish and maintain a list of suspected international terrorists and international terrorist organizations. The law further called for the Director to prescribe requirements for the inclusion of an individual or organization on the list, as well as provide for the sharing of that information with federal, state, and local governments.

At about the same time that the Intelligence Authorization Act was approved, the Homeland Security Act was passed. The Homeland Security Act required the Under Secretary of IAIP to review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing of law enforcement information, intelligence information, intelligence related information, and other information related to homeland security within the federal government, and between the federal government and state and local government agencies and authorities. However, before IAIP began operations within the new department, the President announced the creation of the TTIC. Establishment of TSC followed in late 2003.

Interagency Watch List Consolidation Could Be Improved

While some progress has been made with the current watch list consolidation approach, there remain a number of issues and challenges to effective interagency sharing that have not yet been addressed. In the absence of central oversight and a strategic approach to watch list consolidation, problems with uncoordinated

¹² Public Law 107-306, released on November 27, 2002.

interagency planning, budgeting, staffing, requirements definition, and policy management persist.

PROGRESS IN WATCH LIST CONSOLIDATION

With the current approach, the federal government has made some progress toward streamlined processes and enhanced terrorist information sharing. Whereas earlier, multiple agencies were independently collecting and reviewing watch list information to meet their respective missions, the federal government has, with the establishment of the TTIC and the TSC, brought agencies together to consolidate two of the main watch list processes: compiling intelligence information on suspected international terrorists; and filtering and disseminating that information to help apprehend or track suspected terrorists within this country or keep them from entering U.S. territory in the first place. Each of these processes and the responsible entities is discussed below.

TTIC Has Helped Consolidate Terrorist Intelligence Information

Establishment of TTIC brought together analysts from the Departments of State, Defense, Homeland Security, and Justice, as well as others in the intelligence community to compile and analyze intelligence data on potential terrorists. Under the auspices of TTIC, these analysts are managing and upgrading a consolidated all-source database on known and suspected foreign terrorists. The Department of State's TIPOFF counterterrorist program served as a basis for the upgraded database. TTIC analysts enhanced TIPOFF to increase the functions of the database, and they are currently working on the next generation database to provide even greater functionality.

Other improvements resulting from TTIC's creation are improved coordination and more consistent information sharing. (b) (2) High

(b) (2) High



Further, TTIC has provided greater access to its classified website, which has more than 2,600 registered intelligence community users, including DHS and Justice. When TTIC moves to its new location, the center will be located with counterterrorism divisions of the Central Intelligence Agency and the FBI, possibly resulting in even greater cooperation among federal intelligence agencies.

TSC Has Consolidated Management and Dissemination of Terrorist Data

TSC uses information from a range of sources to populate its watch list database. Most of the information that TSC receives is a sensitive but unclassified version of the intelligence information that TTIC maintains in its classified database. TSC also receives information about domestic terrorists from the FBI. Prior to September 11, 2001, this domestic information was not widely disseminated among federal agencies due to legal restrictions. (b) (2) High

(b) (2) High



The TSC has brought together representatives from the FBI, Department of State, and a number of DHS component organizations, including the CBP, Transportation Security Administration, Secret Service, Immigration and Customs Enforcement, and Coast Guard to consolidate the information dissemination functions of the watch list process. These functions involve proposing names for inclusion in each agency's database, operating a call center, and providing customer service. Some of the functions previously were done by federal agencies prior to watch list consolidation, while others are entirely new.

(b) (2) High



(b) (2) High

One of the most important contributions of the TSC is the new link it establishes between law enforcement and intelligence agencies. Traditionally, law enforcement agencies have not coordinated with intelligence officials to obtain information about suspected terrorists due to legal restrictions. Also, such detailed intelligence information, compiled to support the inclusion of individuals on watch lists, is highly classified and therefore not widely disseminated. However, the Patriot Act has provided for greater sharing of intelligence information among federal, state, and local law enforcement officials. These officials require this supporting information to supplement basic information contained in the unclassified TSC database. The additional information provides a better basis for identifying suspected terrorists among the people they encounter in the performance of their respective duties.

TSC created a call center of screeners, available 24 hours a day and 7 days a week, to assist in verifying the identities of the persons encountered. TSC officials said that these call center operations are expected to improve support for personnel in the field, as well as help save time and money. TSC receives about of its calls from CBP personnel, while approximately come from state and local law enforcement officers. TSC personnel help these callers determine whether the person they have in front of them is the person listed in the database. If there is a negative match, no further action is taken. When there is a positive or inconclusive match, call center personnel ensure that callers get the help they need to determine how to handle suspected individuals. For example, a local law enforcement officer may be advised to arrest, detain, or question a suspect. Concurrently, TSC's call center contacts the FBI's Counter Terrorism Division, known as "CT Watch," which ensures that local Joint Terrorism Task Force personnel provide assistance to law enforcement officials.

Further, TSC established a customer service department to provide outreach and disseminate information regarding federal counterterrorism activities. The customer service functions include responding to calls and e-mails for information from federal, state, and local organizations, as well as monitoring media and press releases. The customer service department also receives calls about individuals

whose names have mistakenly been included on terrorist watch lists. TSC representatives said that they planned to establish a program to address the calls about such misidentification.

CHALLENGES FACING THE CURRENT CONSOLIDATION APPROACH

Despite the progress made, the watch list consolidation effort is hampered by a number of issues that have not been effectively coordinated among all interagency participants. Given the lack of central leadership and oversight of current watch list consolidation efforts, matters such as planning, budgeting, staffing, and requirements definition continue to be dealt with on an ad hoc basis, posing a risk to successful accomplishment of the goal.

Lack of a Strategic Plan

The Government Performance and Results Act of 1993,¹³ requires agencies to prepare strategic plans that describe mission objectives and methods to attain them. These agency plans must establish measurable goals for program activities and describe the methods by which performance against those goals will be measured.

A strategic and performance management approach could prove beneficial for managing the sharing of terrorist threat information, including watch list data. Although the watch list consolidation is a highly visible, complex, and critical undertaking, no strategic plan has been put in place to outline an interagency approach to determining program scope, objectives, costs, alternatives, and resource requirements. No interagency structure has been established to govern the program, thereby ensuring active involvement of all relevant parties and their commitment to sharing information and providing the staff and funding needed to accomplish mission objectives. Also, no provision has been made for monitoring program activities and measuring performance to ensure that the consolidated watch list is delivered on time and within budget to meet user needs.

TSC officials told us that they are relying on the September 2003 homeland security directive, the corresponding memorandum of understanding, and other operational documents to guide them. However, the directive and memorandum do not provide sufficient detail on how the relevant parties will work together to oversee the program and address the crosscutting challenges faced. At the

¹³ Public Law 103-62.

point that these documents were developed, planning for the consolidation effort was limited to involvement by agency heads and other senior level agency representatives. The resulting documents are directive and general in nature, not prescriptive and specific.

Further, working level officials developed a concept of operations for watch list consolidation based on this general guidance. The concept of operations was a good start, outlining the mission and vision for the program, and addressing the roles, responsibilities, and need for coordination among watch list partners and customers. However, it does not discuss an interagency forum or approach to overseeing program performance. At this operational level, managers were working to establish the TSC to meet the initial December 2003 deadline. In the press for time, they did not address the need for a strategy or an interagency program management structure to govern their activities. Rather, they have focused on a phased approach to establishing the screening center and managing day-to-day operations. Along the way, they have had to contend with a number of interagency challenges—budgeting, staffing, requirements, and policy issues—that could be better addressed by a cross-federal decision-making forum.

Budget

The need for central oversight and strategic vision is reflected in the ad hoc manner in which program funding has been managed. The National Strategy for Homeland Security calls for federal agencies to allocate resources efficiently in carrying out activities to safeguard the nation against terrorism. However, in the case of watch list consolidation, it is not clear that this has been done, because the funding was provided from a number of different agencies and at different times with no central coordination. For example, TTIC received money from a number of federal sources, including DHS. DHS components also provided funding to the unclassified screening center operations. However, overall funding from other agencies for the first year of these screening center operations was not managed in a coherent manner.

One of the first efforts to establish a terrorist screening and information dissemination organization began in FY 2002 with the FTTTF, administered by the FBI. FTTTF initially received interagency funds from the Defense Department, the Immigration and Naturalization Service, as well as its parent organization. In contrast, FTTTF funding for FY 2003 came from the FBI through a direct appropriation of \$62 million, making the FBI solely responsible for the task force's operations. Similarly, pursuant to HSPD – 6, the TSC received

multi-agency funding in FY 2004 from the FBI, the Department of State, TTIC, and DHS. The FBI contributed about \$15 million to TSC in FY 2004. The Department of State contributed over \$1.5 million to the watch list consolidation effort from funds allocated for the TIPOFF program.

Additionally, the chief information officer organization within DHS received \$10 million for the watch list consolidation and provided \$3 million of that amount to the TSC. Approximately \$3 million of the remaining \$7 million was allocated within DHS to align systems for integration with TSC's systems. As of February 2004, DHS had not yet allocated the remaining \$4 million, but the chief information officer said that some of those funds still could be sent to TSC, if needed. DHS' IAIP directorate also provided money to the TSC and TTIC, in an undisclosed, classified amount.

Whereas in FY 2004, TSC received interagency funding, TSC funding in FY 2005 may come solely from the FBI, following the same funding pattern as FTTTF. Specifically, the Office of Management and Budget noted in its December 2003 response to DHS' budget submission that no funds for FY 2005 would be provided directly to the department for the TSC and TTIC. Rather, the TSC had requested its own appropriation of \$29 million through the FBI for that year. Accordingly, the TSC is developing a business case to support FY 2005 funding for its watch list consolidation activities managed by the FBI. By totally controlling the funding, the FBI will also control much of the consolidation effort, potentially making it more difficult to obtain commitment or address the needs of other federal agencies involved in terrorist watch list management, particularly DHS, which was created specifically to help coordinate these efforts.

Although the Office of Management and Budget provided some coordination of the multi-agency funding for the watch list consolidation program, officials from this office said that their primary role is to facilitate. For example, these officials assisted the various agencies in determining an equitable amount to contribute to the TSC, based on a cost-benefit analysis. The Office of Management and Budget did not get involved in managing the day-to-day operations or decision-making of the TSC. In the absence of such central oversight, there has been no mechanism fully to coordinate funding across agencies, develop cost estimates, or ensure that the money spent is achieving measurable results. Office of Management and Budget Circular A-11¹⁴ suggests that development of a multi-agency business case

¹⁴ Office of Management and Budget Circular A-11, Part 7, *Planning, Budgeting, Acquisition, and Management of Capital Assets*, July 25, 2003.

would be an effective way to help address these issues. Such businesses cases are used typically when a number of agencies share a common vision and mission.

Staffing Issues

Staffing the interagency consolidation effort is a significant problem. TTIC and TSC require personnel with a range of skills to support their various program management, data analysis, IT specialist, law enforcement, and customer service functions. Given the responsibility for handling sensitive information and classified databases, such personnel generally need high-level clearances to be assigned. However, in the absence of a strategy and central leadership, there has been no effective means of coordinating among federal agencies to ensure that TTIC and TSC obtain the personnel resources they need. As such, while the TTIC plans to have about 300 analysts when fully staffed, in December of 2003 they had less than half of that number. Similarly, while TSC indicated a need for over 160 employees by June 2004 to become fully operational, as of March 2004, it had only 84 staff on board.

The problems with staffing result from the fact that, since the TTIC and the TSC have no direct staff allocations, they have relied on the individual participating federal organizations to support their efforts. For national security reasons, the breakdown of staff provided to the TTIC remains undisclosed. However, component organizations within the Departments of State, Justice, and Homeland Security have all provided personnel to these organizations, but in an inconsistent manner. Few full-time staff have been provided; the majority of the staff have been provided on a temporary basis, either as detailees or assignees. A number of contractors also have been brought in to supplement the staff.

For example, pursuant to the September 2003 memorandum of understanding on how the interagency TSC would operate, the Department of State's Bureau of Intelligence and Research transferred to TTIC and TSC most of the full-time and contractor staff who had previously been responsible for the TIPOFF program. The FBI brought personnel from across the country experienced in establishing command centers to support the TSC on a temporary duty basis. Further, Justice's FTTTF lent contractors to TSC to provide technical support.

Despite requirements to play a major role in watch list consolidation, as of April 2004 the DHS components collectively had provided only a mix of 19 full-time

and contractor staff to TSC. The breakdown of staff from the various DHS components is as follows:

- IAIP – 1
- Customs and Border Protection – 2
- Transportation Security Administration – 6
- Immigration and Customs Enforcement – 2
- U.S. Secret Service – 5
- U.S. Coast Guard – 3

A senior TSC official said that in the long run having temporary personnel could be a problem because of the institutional knowledge lost when staff depart after their assignments are completed and the need to retrain incoming personnel. This official would prefer having permanent employees, but has had problems attracting cleared workers with the needed skill sets. As a result of not having enough employees, some consolidation activities are inadequately staffed or not getting done at all. For example, TSC has not completed many of the required memoranda of understanding to govern interagency operations because it does not have adequate legal staff. In addition, TSC has a shortage of IT personnel to develop and maintain the database.

Due to the difficulty TSC has experienced in obtaining qualified permanent staff, some temporary positions are being extended. Not all employees are happy about this situation. Several DHS assignees said that they were not interested in working at TSC for an extended period of time for various reasons. For example, some believed that their work at the center was mundane and not career enhancing.

User and Technical Requirements for Consolidated Watch List System Not Defined

Although the agencies participating in watch list consolidation have the common goal of supporting the identification and arrest of terrorists, each agency has different requirements and restrictions concerning these activities due to the various statutes governing their work. For example, the laws concerning federal agency dealings with foreigners are less stringent than those that address dealings with U.S. citizens. In addition, law enforcers may have an immediate need for information to identify individuals, while consular officers can generally take more time to obtain, review, or follow-up on the identifying information they receive. ^{(b) (2) High}

(b) (2) High



Inadequate User Participation in Requirements Definition

There are a number of federal guidelines regarding gathering requirements for system development projects. According to Office of Management and Budget Circular A-130,¹⁵ agencies should ensure the participation and commitment of users when designing new IT systems. This helps ensure that the systems developed deliver intended benefits and meet mission needs. Addressing user concerns is also critical to obtain the commitment of participating agencies. If agency users do not think that their opinions are being heard, or if they do not understand overall program directions, they are less likely to participate in a meaningful way, reducing the chances of program success.

As of February 2004, TSC had not developed formal requirements for its consolidated watch list database. Interagency working groups managed by the FBI have been documenting watch list processes of the various agencies as a basis for developing a concept of operations for the projected system. This is a critical first step to determine how technology will be applied to help improve watch list processes. To a limited extent, this has involved identifying corresponding user requirements, such as standard operating procedures and criteria for proposing names for inclusion in the watch list database.

However, not all essential agencies were asked to participate in these initial interagency working groups. For example, because the two organizations work in close coordination with each other, Immigration and Customs Enforcement represented the U.S. Citizenship and Immigration Services bureau at the working group meetings. U.S. Citizenship and Immigration Services officials should have had their own representatives present at the meetings since their bureau collects a large amount of information on foreigners through its immigration services processes. U.S. Citizenship and Immigration Services could play a key role in terrorist watch lists, but generally it is not consulted or included in such matters.

Additionally, the Department of State's Consular Affairs bureau was not represented at the working group meetings, although the officials it has stationed worldwide to review and approve applications for U.S. visas are often the first

¹⁵ Office of Management and Budget Circular A-130, *Management of Federal Information Resources*, November 28, 2000.

to obtain identifying information on foreigners before they enter this country. The only information that consular affairs officials have received from the TSC and TTIC has been through the Department of State's Bureau of Intelligence and Research, which has its own unique requirements and cannot speak for the consular function. Also, there are no Consular Affairs representatives working at TSC or TTIC.

Further, some users who attended the working group meetings to develop the concept of operations for TSC did not think that their needs were taken into consideration. One DHS representative said that a "top-down" approach was taken, in which the concept of operations was "pushed out" rather than built on input from working group participants. In January 2004, another DHS representative said that no working group meetings had been held since November 2003 and that he had not received anything from TSC outlining how the center would be managed, how personnel issues would be handled, or what the governance structure would be. As a result, this official was not sure how his agency's watch list requirements were being addressed.

Senior TSC officials acknowledged that there had been some problems with the FBI's approach to develop the initial concept of operations. However, the director of the TSC said that she disbanded the working group shortly after beginning work at the TSC because she was not happy with the approach it had taken. In February 2004, TSC managers said that they would resume efforts to develop user requirements for the watch list consolidation the following month. These officials said that they had assigned a project manager and planned to outline a schedule and an approach for the requirements gathering process. TSC will have a number of significant issues to contend with as part of this process, as discussed below.

Differing Needs Regarding Name-Matching Algorithms

Federal agencies have different requirements regarding the algorithms that will be used in the consolidated watch list database. "Algorithms" are formulas or rules for solving a problem in a finite number of steps. For counterterrorism purposes, algorithms support the capability to search watch list databases and check peoples' names against those on the lists. The level of complexity that agencies require for algorithms varies greatly. For example, due to its responsibility to provide passport and visa processing worldwide, the Department of State has developed sophisticated name-searching algorithms that recognize names from

many diverse countries.

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Reliance on the National Crime Information Center's System

Perhaps one of the TSC's greatest accomplishments is the support that it provides to state and local law enforcement officials in identifying domestic and international terrorists. Now these officials can use the National Crime Information Center's system to check suspects against TSC's consolidated watch list database. However, according to testimony by an FBI official in November 2003, the National Crime Information Center's system will be able to handle user processing demands only through FY 2006, with an estimated growth rate of 17 percent each year. This is a critical issue to consider as watch list requirements are developed because the center's system may be one of the principal ones connected to TSC's database once it is integrated.

(b) (2) High

Technical Solutions to Integration of Watch List Systems
Have Not Been Determined

Once user requirements are defined to provide a sound basis on which to proceed, interagency participants face the challenge of engineering an automated system that will integrate existing systems and provide real time access to a consolidated terrorist watch list database. This is a highly complex undertaking and, contrary to popular belief, was not expected to occur when TSC was created in December 2003.

Rather, TSC is taking an iterative approach to watch list consolidation. Phase 1, which began with the September 2003 agreements to establish the TSC,

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[Redacted]

(b) (2) High [Redacted] Phase 2 of the program, from December 2003 to March 2004, consisted of developing the first version of the consolidated database containing all suspected international and domestic terrorists. It is in Phase 3, scheduled for March to December 2004, that the single, integrated system, allowing either update of agency systems or online query of the TSC database, will be developed. (b) (2) High [Redacted]

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[Redacted]

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[Redacted]

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[Redacted]

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Additional Issues Relating to Interagency Sharing of Terrorist Information Need to be Addressed

While not central to ongoing watch list consolidation efforts, there are a number of additional challenges that affect interagency counterterrorist efforts.

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Privacy is another issue that could hinder both the watch list consolidation and related systems.

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Such issues could be pursued in the context of DHS orchestration of the interagency watch list consolidation effort.

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PRIVACY

Privacy is a subject that is raised frequently with regard to creation of TTIC and TSC. However, several privacy concerns related to watch list consolidation have yet to be addressed. One concern is the lack of a privacy policy, agreed to by all participants involved in watch list consolidation. Section 222 of the Homeland Security Act created a management position with primary responsibility for establishing privacy policy. Among other things, this policy formulation effort was to be based on a privacy impact assessment of proposed DHS rules. A DHS official said that TSC was created so quickly that the necessary privacy impact review was not conducted. As a result, each participating organization is following its own approved guidelines for addressing privacy issues.

A second concern is that citizens' privacy rights may be violated due to methods that airlines use to identify terrorists and threats to civil aviation. Recently, the American Civil Liberties Union filed a class action lawsuit that challenged DHS' no-fly list, claiming that the list violates passengers' constitutional rights to freedom from unreasonable search and seizure, as well as their right to due process of law. In addition, DHS has suspended CAPPS II, designed to replace the no-fly list, due to similar concerns about potential privacy violations. CAPPS II would have required each passenger to give the airlines a birth date, home phone number, and address prior to boarding a flight. This information would have been checked against government and commercial databases. Based on analysis of the crosschecked information, passengers were to be assigned a color-coded score, indicating the level of security risk that they may pose. GAO reported that CAPPS II, as originally planned, did not provide adequate controls over privacy.¹⁶

Third, a number of organizations involved in watch list consolidation were conducting data mining activities without central oversight to ensure that they complied with Homeland Security Act provisions regarding privacy. "Data mining" involves analyzing large amounts of data to extract new kinds of useful information. The Homeland Security Act authorizes the Under Secretary for IAIP to utilize data mining and other advanced tools to analyze data to conduct its threat assessment mission. However, several other DHS components, such as the National Targeting Center, U.S. Citizenship and Immigration Services, CBP, and Immigration and Customs Enforcement, also were conducting data mining activities without coordinating with IAIP.

¹⁶ *Aviation Security: Challenges Delay Implementation of Computer-Assisted Passenger Prescreening System*, U.S. General Accounting Office, (GAO-04-504T, March 17, 2004).

As a result of such uncoordinated data mining activities, there is a potential for greater civil liberties violations and law enforcement errors. For example, in a January 2003 letter to the Attorney General, a U.S. senator raised concerns about the Department of Justice's data mining activities. Two of the concerns expressed were (1) excessive government surveillance that infringes on privacy interests; and (2) the potential for an increase in false leads and law enforcement mistakes with regard to surveillance or arrests due to the sheer volume of information being collected and analyzed. Both such concerns could also apply to DHS data mining operations.

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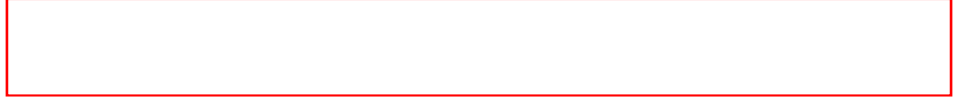
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¹⁷ GAO-03-322, April 2003.

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Recommendations

The OIG recommends that the Under Secretary for Information Analysis and Infrastructure Protection:

1. Clarify DHS' and IAIP's respective legal responsibilities under the Homeland Security Act relative to the sharing of law enforcement, intelligence, intelligence-related, and other homeland security information; and, establish collection priorities and strategies for this information.
2. Establish and chair an interagency forum to build commitment; identify staff, capital, technology, and other resource requirements; coordinate allocation of the resources identified; establish performance goals; and, oversee results of terrorist information sharing activities, including watch list consolidation, across agency lines.
3. Assign the staff and other resources needed to support the work of the interagency forum.

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4. Ensure, within the context of the interagency forum, that user requirements, policy concerns, and other issues related to terrorist information sharing are reviewed and adequately addressed.

Management Comments and OIG Evaluation

We obtained written comments on a draft of this report from the Under Secretary for Information Analysis and Infrastructure Protection. We have included a copy of the comments in their entirety at Appendix B.

In the comments, the Under Secretary agreed that effective consolidation of the terrorist watch lists maintained by different government agencies is a critical step in defending the nation against future terrorist attacks. However, the Under Secretary disagreed with the report's premise that either DHS or IAIP has lead responsibility within the federal government for consolidating terrorist watch lists.

Specifically, the Under Secretary said that the report fails to recognize the legal authority of HSPD-6, which assigned the lead role for consolidating terrorist screening data to the Attorney General, Department of Justice. The Under Secretary commented that, in leading the TSC, the Attorney General has government-wide broad authority and not just an operational responsibility for watch list consolidation. The Under Secretary stated that the Homeland Security Act also does not mention watch list consolidation and does not provide any specific authority to DHS in this regard. The Under Secretary said that the OIG's report does not cite any statute, regulation, legislative history, HSPD, or other authority to back up its assumption that DHS is to have responsibility for the watch list consolidation. Nonetheless, the Under Secretary noted that within the HSPD-6 structure, DHS is playing a leadership role.

On the basis of these views, the Under Secretary non-concurred with the OIG's recommendations. The following discussion provides the OIG's evaluation of each of the Under Secretary's comments, as well as a response to his more general observations concerning the OIG's audit approach.

- Views on What Constitutes Watch List Consolidation: The Under Secretary is working from a narrow view that the TSC alone constitutes watch list consolidation. On the contrary, the TSC and its functions are just one part of a larger process, which the OIG outlines in its report. The process involves different agencies with various roles and, as such,

is supported principally by two interagency organizations. Specifically, the TTIC, under the auspices of the Director of Central Intelligence, is responsible for gathering, coordinating, and assessing terrorist-related intelligence, which the Department of State and the intelligence community principally provide. The TSC subsequently screens and disseminates that information to a variety of customers. HSPD-6 discusses not just the TSC, but also the TTIC, and outlines the TSC's role relative to that of the TTIC. For example, among other functions, the TSC is to maintain a consolidated terrorist screening database containing a sensitive but unclassified subset of the information obtained from the TTIC and the FBI.

- Overriding Authority of HSPD-6: The OIG agrees with the Under Secretary that HSPD-6 directed the Attorney General to establish the TSC. Also, according to the related September 2003 memorandum of understanding, the Attorney General is responsible for administering TSC operations in coordination with the various participating agencies. However, it is not the responsibility of the TSC to coordinate general policies or strategies for managing terrorist information across agency lines. Although the TSC brings together in one location the representatives of the various participating agencies, the representatives work to fulfill their individual agency missions in screening and disseminating terrorist watch list information to those who need it.

In contrast, per the Homeland Security Act, ensuring effective management of terrorist information across agency lines is an intrinsic part of DHS' primary mission of preventing terrorist attacks within the U.S. Given its responsibilities under the Homeland Security Act to improve the policies and procedures governing the sharing of information relating to homeland security threats, IAIP is the organization within the department that should play this role. The Homeland Security Act not only establishes an Under Secretary for IAIP, but also delineates about 20 explicit functions for this official.¹⁹ No less than six of these functions, and perhaps more, relate in some capacity to the creation, maintenance, and dissemination of watch list information. While none of these functions explicitly identify "watch list" information, neither do they exclude it. Specifically, according to the various parts of 6 USC 121 (d), the Under Secretary is to:

¹⁹ 6 USC 121(d).

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- (1) “assess, receive, and analyze...information...and to integrate such information” to identify, detect and assess terrorist threats;
 - (8) “review, analyze, and make recommendations for improvements in the policies and procedures governing the sharing” of homeland security information;
 - (10) in consultation with the Director of Central Intelligence and others, “establish collection priorities and strategies for information... relating to threats of terrorism;”
 - (13) request and to obtain additional information from other federal, as well as state and local government agencies, as well as the private sector, relating to threats of terrorism;
 - (14) establish and utilize secure communications to “disseminate information acquired and analyzed by the Department;” and
 - (15) ensure that information databases and analytical tools developed or used by DHS are compatible with relevant information databases of other federal agencies.

Based on these citations, DHS has an important and dominant role to play in watch list consolidation—a role that it is not fully executing. To the extent the department is suggesting that HSPD-6 supersedes the Homeland Security Act, such an argument clearly fails. First established by the President in the aftermath of the September 11, 2001, terrorist attacks, this and other directives provide guidance to the executive branch, but have not been published in the Federal Register. Such directives plainly cannot supersede a statute passed by the Congress and signed into law by the President. HSPD-6, by its very terms, “is intended only to improve the internal management of the executive branch” and “does not alter existing authorities or responsibilities of department and agency heads....”

As such, HSPD-6 does not preclude DHS from carrying out its interagency coordination and oversight responsibility. However, DHS has not conducted or documented a legal assessment of the Homeland Security Act to clearly define these responsibilities. That is why the OIG recommends that such an assessment be conducted.

- Government-wide Attorney General Authority for Watch List Consolidation: Despite the Under Secretary’s comment that the Attorney General has government-wide broad authority for watch list consolidation, the OIG could find no reference in HSPD-6 or the related

memorandum of understanding to this effect. Rather, as previously stated, HSPD-6 directed that the Attorney General establish and administer the interagency TSC organization in coordination with the Department of State, DHS, and the Director of Central Intelligence. Under the Attorney General's administration, the TSC is staffed with assignees and other officials from the federal departments and agencies that the TSC supports. Working together, the interagency TSC representatives collaborate on terrorist screening and dissemination activities. The Attorney General does not have broad authority for the entire watch list process, which involves both TTIC and TSC, as discussed above.

- Homeland Security Act Citations Regarding DHS' Leadership Role: The OIG disagrees with the Under Secretary's comments that the report includes no specific citations from the Homeland Security Act of 2002 to back up its assertion that DHS is to have a leadership role in watch list consolidation. Specifically, the OIG states on page 4 of the report that the Homeland Security Act requires the Under Secretary for IAIP to consult with the Director of Central Intelligence and other appropriate intelligence, law enforcement, or other elements of the federal government to establish collection priorities and strategies for information relating to threats of terrorism against the U.S.²⁰ The Act also directs the Under Secretary for IAIP to review, analyze, and make recommendations to improve the policies and procedures governing the sharing of law enforcement, intelligence, intelligence-related, and other information relating to homeland security.²¹

In line with these requirements, in the DHS strategic plan, the Secretary identified seven key priorities for the department in its second year of operations, including establishment of a fully integrated watch list database in the TSC by the end of 2004 to provide immediate updates to federal border-screening and law-enforcement systems. Building upon this stated DHS priority, the Senate Appropriations Committee, in its report accompanying the DHS Appropriations Bill for 2005, requests that the department report on the status of its efforts to consolidate multiple,

²⁰ 6 USC 121 (d)(10).

²¹ 6 USC 121 (d)(8).

overlapping, and inconsistent terrorist watch lists; reconcile different policies and procedures governing whether and how terrorist watch list data are shared with other agencies and organizations; and resolve fundamental differences in the design of the system that houses the watch list so as to achieve consistency and expeditious access to accurate, complete, and current information.

- “Watch List Consolidation” Not Specified in the Homeland Security Act: OIG agrees with the Under Secretary that the Homeland Security Act does not include the term “watch list consolidation.” Laws typically are not written to include such specific terminology, which has almost become a buzzword in the current environment. It should be noted, furthermore, that HSPD-6 also does not use the term “watch list.” However, by assigning responsibility to IAIP for “establishing collection priorities and strategies for information relating to threats of terrorism against the U.S” and “improving the policies and procedures governing the sharing of homeland security information,” the law gives DHS broad responsibilities that encompass watch list consolidation.

As the OIG states on page 4 of this report, section 6 USC 482 of the law also defines, “homeland security information” as any information possessed by a federal, state, or local agency that: (1) relates to the threat of terrorist activity; (2) relates to the ability to prevent, interdict, or disrupt terrorist activity; (3) would improve the identification or investigation of a suspected terrorist or terrorist organization; or (4) would improve the response to a terrorist act. The OIG agrees with the Under Secretary that this definition is drawn from a section of the Homeland Security Act regarding facilitating homeland security information sharing procedures and not from the portion of the law regarding specific IAIP responsibilities. However, that does not make the definition any less relevant to the topic of watch list consolidation. The OIG does not assert that section 6 USC 482 ascribes authority to DHS for watch list consolidation. The OIG cites the definition in section 6 USC 482 only to help clarify language in another section of the law that does give IAIP such authority.

- DHS Leadership Role in Watch List Consolidation: Although the Under Secretary comments that within the HSPD-6 structure, DHS is playing a leadership role in watch list consolidation, throughout his comments, he also says that the FBI is leading the effort. The Under Secretary’s

comments appear to be contradictory. Since the OIG agrees that the FBI is leading the TSC, DHS inevitably is left to play a supporting role in its operations. To this end, DHS has provided financial and human resources to the TSC, as well as similar support to the TTIC. Nonetheless, the Under Secretary tends to equate leadership of the watch list consolidation with administration of the TSC's terrorist information screening and dissemination function alone and, as such, perceives the effort from an operational point of view, narrowly focused on the TSC. In contrast, in its report, the OIG assesses the end-to-end watch list consolidation process, which requires a larger, more overarching strategic planning and coordination approach. The OIG does not intend to suggest by this analysis that the TSC has no role to play in the consolidation of watch lists, but only that whatever role it does play must be subordinated to that of IAIP.

- OIG Report Goes Beyond the Scope of Stated Objectives: The Under Secretary says that the OIG report details assumptions that are beyond the scope of its objectives. The OIG does not agree and believes that it conducted its review well within the parameters of both its legal authority and its stated goals. Specifically, the OIG based its review on Homeland Security Act requirements that DHS lead and coordinate interagency activities to share terrorist information. This legal requirement provides a broad basis for DHS OIG review of the watch list consolidation effort. Further, because DHS has contributed significant resources to the watch list consolidation and its CBP bureau alone comprises about percent of the TSC's customers, the OIG has a valid interest in ensuring that the department effectively meets its responsibility for ensuring successful accomplishment of the program. As such, the OIG conducted its review with the stated objectives of: (1) determining DHS' role in working with other agencies to consolidate terrorist watch list systems and operations; (2) evaluating the effectiveness of plans and activities to standardize and consolidate the watch list; and (3) identifying any obstacles and challenges encountered.

The OIG's audit work and findings directly correlate to these objectives. Specifically, the OIG examined legal and background information and met with representatives of each of the principal agencies participating in watch list coordination—including DHS, the Defense Intelligence Agency, the Department of State, the Department of Justice, and the Central Intelligence Agency—to determine how well

DHS was coordinating with them. The OIG also evaluated extensive documentation concerning the interagency approach to accomplishing the end-to-end watch list consolidation, not just the TSC function. Neither the OIG review nor its report was intended to provide an assessment of operations at either the TTIC or the TSC. Rather, the OIG provides a factual and balanced discussion of the watch list consolidation process, including accomplishments as well as challenges at both organizations. To validate its findings, the OIG obtained informal comments on a draft of the report from all of the agencies visited as part of its review. The OIG reviewed the comments and made changes to the report where deemed appropriate.

- OIG Meetings with Department of Justice, FBI Officials: The Under Secretary's comment that the OIG did not meet with any of the FBI leadership or other employees at the TSC is not correct. The OIG met with senior officials at the TSC, the FTTTF, and a Department of Justice inspections unit, all of whom had pertinent information and management perspectives to provide concerning terrorist watch list consolidation. The OIG would have welcomed the opportunity to interview other Department of Justice personnel at the TSC, but was specifically prohibited from doing so by senior department managers. Given that the OIG focused its audit on watch list consolidation management strategies and coordination from a DHS perspective, it was not essential that the OIG meet extensively with FBI personnel regarding internal TSC operations.
- Sweeping Observations Regarding the TSC: The report does not make sweeping observations about the TSC, as the Under Secretary suggests. Rather, as previously stated, the OIG based its findings and conclusions on cumulative data collected and interviews conducted at all of the principal organizations involved in the end-to-end interagency watch list consolidation effort. The OIG's report findings and observations largely concern DHS' leadership responsibility for watch list consolidation and the issues and challenges that need to be coordinated and addressed across agency lines. It is both inevitable and appropriate that a number of the more specific issues that the OIG presents in its report involve the TSC because this is where much of the activity and a majority of DHS' resources for watch list consolidation were concentrated during

the course of the OIG's review. However, the report also discusses issues with regard to the TTIC and other agencies that comprised the consolidation effort.

Finally, the Under Secretary offers no comments regarding the critical need for improved oversight and strategic management of the interagency terrorist watch list consolidation program. The Under Secretary does not address issues that the OIG raised concerning the need for coordinated planning, budgeting, staffing, and requirements definition activities across agency lines to ensure successful accomplishment of watch list consolidation goals. Due to HSPD-6, the Under Secretary repeatedly disavows DHS responsibility for leadership of terrorist information sharing activities as they concern watch list consolidation. However, the Under Secretary also does not address the issue of IAIP's broad, standing responsibility under the Homeland Security Act for governance of terrorist information sharing across agency and government lines, HSPD-6 notwithstanding. Coordinating terrorist information sharing is a major part of achieving DHS' broad mission to prevent and reduce the vulnerability of the United States to terrorist attack. "Connecting the dots" and ensuring better communications and information exchange among disparate federal, state, and local government entities for counter-terrorist purposes is a large part of why DHS was created. If DHS, or specifically IAIP, does not assume this interagency coordination responsibility, the question remains, who will?

The OIG researched laws related to DHS' responsibility for coordinating federal information sharing activities in support of counterterrorism. The OIG reviewed prior GAO reports and contacted GAO officials to learn more about their findings on terrorist watch lists. Additionally, OIG researched the internet to obtain published news articles, congressional testimony, and private industry studies on watch list consolidation activities.

The OIG met with senior IAIP officials to learn about their roles, responsibilities, and activities concerning terrorist watch list consolidation. The OIG interviewed attorneys from the Office of the Chief of Staff and the Office of General Counsel to find out about DHS' involvement in establishing the TTIC and the TSC. Officials within the Office of the Chief Information Officer told the OIG about strategies for integrating DHS systems with the TSC database. The OIG met with representatives from the Transportation Security Administration, U.S. Citizenship and Immigration Services, Border and Transportation Security, Immigration and Customs Enforcement, CBP, and the National Targeting Center—to learn about their involvement and commitment to the overall watch list consolidation effort.

TTIC officials provided an overview of their systems and processes for managing intelligence information on terrorists and their working relationships with the various federal participants in the watch list consolidation. Further, the OIG met with TSC officials to learn about coordination with DHS to establish the screening center, processes for proposing individuals for inclusion on terrorist watch lists, dissemination of terrorist information, and development of the consolidated database. The OIG discussed TSC's approach to gathering user requirements to support implementation of the integrated watch list database. The OIG reviewed plans, memoranda, and other documents that TSC officials provided pursuant to these discussions. The OIG met with DHS employees detailed to the TSC to discuss their roles and responsibilities for supporting watch list nominations, call center operations, and customer service. The OIG discussed with both TTIC and TSC officials their interagency plans for providing the systems, facilities, personnel, and financial resources to support the overall consolidation.

Representatives from other federal agencies told the OIG about their participation and commitment to watch list consolidation efforts. Specifically, a Defense Intelligence Agency representative told the OIG about Defense coordination with TTIC. An official at the Department of Justice's National Crime Information Center discussed the center's system for disseminating watch list information to federal, state, and local law enforcement officials. The OIG also interviewed a representative from Justice's FTTTF to learn about their involvement in the

establishment of TSC and their continuing coordination with TSC concerning counterterrorist activities. A representative of the FBI's Inspection Division provided highlights of an internal inspection that involved watch list activities. The OIG met with representatives from the Department of State regarding their systems for managing watch list data. To gain perspectives on interagency funding of the consolidation effort, the OIG met with the Office of Management and Budget.

Further, representatives from the Heritage Foundation discussed studies they recently published on terrorist information sharing. A representative from the 9/11 Commission met with the OIG to learn about its review objectives, approach, and preliminary findings. The OIG also attended several congressional hearings to learn about watch list consolidation progress.

The OIG conducted this review from October 2003 to May 2004 at DHS, Department of Defense, Department of Justice, Department of State, and Central Intelligence Agency locations in the Washington, DC metropolitan area, and at the Criminal Justice Information Service in Clarksburg, WV. The OIG performed its work according to generally accepted government auditing standards.

The principal OIG points of contact for the audit are Frank Deffer, Assistant Inspector General for Information Technology Audits, (202) 254-4100; and Sondra McCauley, Director, Information Management, (202) 254-4212. Major OIG contributors to the audit are identified in Appendix C.


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



Homeland
Security

July 21, 2004

MEMORANDUM FOR: Clark Kent Ervin
Inspector General

FROM: Frank Libutti 
Under Secretary
Information Analysis and Infrastructure
Protection Directorate

SUBJECT: OIG Draft Report – *Challenges to Terrorist Watch List Consolidation* (OIG-A-IT-04-001)

The purpose of this memorandum is to provide the Information Analysis and Infrastructure Protection Directorate's (IAIP) response to your draft report regarding activities undertaken to consolidate terrorist watch lists. Thank you for the opportunity to comment on the report prior to its publication. Our specific comments on the report's recommendations are contained in the attachment and other comments were forwarded for your consideration under a separate cover.

We agree with the report in general that effective consolidation of the terrorist watch lists maintained by different government agencies is a critical step in defending the nation against future terrorist attacks. However, we strongly disagree with the report's premise that either DHS or IAIP has the lead responsibility within the Federal government for consolidating terrorist watch lists. This report fails to recognize the legal authority of Homeland Security Presidential Directive 6 (HSPD-) (*Integration and Use of Screening Information*) signed by the President of the United States which assigns the lead role for consolidating terrorism screening data to the Department of Justice. The report in large part is based on this incorrect assumption, and fails to provide a complete and accurate picture of the government's efforts to date.

1. The report asserts that DHS has not fulfilled its "leadership responsibility" in coordinating the consolidation of terrorist watch lists.

a. HSPD-6

HSPD-6 issued by the President in September 2003 is the clear authority for watch list consolidation for the Federal government. It clearly states:

To protect against terrorism it is the policy of the United States to (1) develop, integrate, and maintain thorough, accurate, and current information about individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (Terrorist Information); and (2) use that information as appropriate and to the full extent permitted by law to support (a) Federal, State, local, territorial, tribal, foreign-government, and private-sector screening processes, and (b) diplomatic, military, intelligence, law enforcement, immigration, visa, and protective processes.

Furthermore, the President through HSPD-6 gave this authority to the Attorney General:

(1) The Attorney General shall establish an organization to consolidate the Government's approach to terrorism screening and provide for the appropriate and lawful use of Terrorist Information in screening processes.

HSPD-6 further clarified DHS' role in this process:

The Attorney General, in coordination with the Secretary of State, the Secretary of Homeland Security, and the Director of Central Intelligence shall implement appropriate procedures and safeguards with respect to all such information about United States persons.

HSPD-6 directed the Attorney General and not the Secretary of Homeland Security to report to the President the progress of this effort:

The Attorney General, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Director of Central Intelligence, shall report to me through the Assistant to the President for Homeland Security not later than October 31, 2003, on progress made to implement this directive and shall thereafter report to me on such progress or any recommended changes from time to time as appropriate.

In your report you state that "DHS is not playing a lead role in the consolidating terrorist watch list information. Instead, these consolidation activities are generally administered by entities that were responsible for collecting and disseminating terrorist watch list prior to DHS' formation." As stated above, the President directed the Attorney General to assume this responsibility on September 2003. As such, the Secretary of Homeland Security and the Under Secretary for Information Analysis and Infrastructure Protection are working diligently to support the Attorney General's efforts as outlined in the Presidential Directive.

The report also states that HSPD-6 gives the "Attorney General responsibility for establishing the Terrorist Screening Center (TSC), it does not assign to the FBI responsibility for oversight, policy or coordination across various Federal, state and local government participants." You further state that HSPD-6 does not preclude DHS from exercising their oversight responsibilities. Again, you fail to recognize the legal authority of HSPD-6. HSPD-6 directs the Attorney General to "consolidate the Government's approach" to watch lists. Also, HSPD-6 (5) states that this directive is intended to improve the internal management of the executive branch. As the language indicates, the Attorney General has government-wide broad authority and not just an operational role.

The fact that DOJ currently has the intergovernmental lead does not mean that DHS does not play a critical role. Within the HSPD-6 structure, DHS has played a leadership role. DHS has been a full partner in the establishment and operation of the TSC. IAIP detailed a key member of its staff to act as the Deputy Director of TSC, has provided funding and IT support, and is playing a key role in setting up the procedures and policies of the TSC.

b. Homeland Security Act

Next, the report states that the Homeland Security Act of 2002 (HSA) gives DHS and specifically IAIP authority to consolidate watch lists. Specifically, the report cites the definition of “homeland security information” to conclude that “terrorist watch lists and related consolidation activities are clearly covered by this definition.” It goes on to state that not just “Congress, but officials both internal and external to DHS, anticipated that in this context DHS would play a lead role in terrorist watch list consolidation.”

First, the topic of watch list consolidation is never mentioned specifically in the HSA. The report’s reliance on the definition of homeland security information in support of the conclusion that DHS is required to oversee watch list consolidation is misplaced. Homeland Security Information as defined in Sec 892 of the HSA, however, deals with how the Federal government as a whole will share information state and local entities. It does not provide any specific authority to DHS. Rather, it tasks the President with establishing procedures to share all such information. The President in subsequent Executive Order 13311 gave that responsibility for developing such procedures to DHS. The President could have delegated that responsibility to DOJ or some other department. Thus, we fail to see how a definition used to develop procedures for sharing such information with state and local personnel can be construed to grant DHS primary oversight authority over watch list consolidation.

Moreover, while it might be a defensible construction of another section of the HSA that DHS is responsible for terrorism watch list consolidation, HSPD-6 has removed any confusion by specifically dealing with the issue of watch list consolidation.

The assertion that Congress and others expected DHS to assume this watch list consolidation role may be correct but it is not backed by the letter of the law. The report does not cite to any statute, regulation, legislative history, HSPD or any other authority to back up this assumption. It seems to rely solely on individuals’ expectations or opinion of what agency roles should have been rather than to acknowledge what was mandated by the President in an appropriate exercise of his executive authority. These expectations and opinions must give way to the legal authority of the President.

c. Background for HSPD-6

At the time the President was signing HSPD-6, DHS was not even a year old and the IAIP Directorate was still addressing significant resource and staffing challenges associated with the start up of the Department. Given these constraints, and in order to move expeditiously, it was determined at the highest levels of the government that DOJ was in a better position to take on the responsibility for coordinating the Federal government’s effort in watch list consolidation. That was not a decision that was made lightly. The President, the Secretary and others

considered numerous factors. As your report correctly points out, at that time IAIP did not have the personnel or the facility to lead such an important task. Therefore after careful consideration, the White House decided that DOJ should lead this effort.

Following the issuance of HSPD-6, the Attorney General, the Director of Central Intelligence, the Secretary of State, and the Secretary of Homeland Security developed a Memorandum of Understanding (MOU) on the Integration and Use of Screening Information to Protect Against Terrorism. That MOU reflected a consensus view on how to implement the directives contained in HSPD-6 and established the TSC as the organization which would consolidate the government's approach to terrorist screening. The TSC is jointly manned by the signatory agencies. The TSC Director is appointed by the Attorney General in consultation with the other MOU principals and the TSC Deputy Director is a DHS official. The MOU further stated that the Attorney General and the Secretary of Homeland Security would jointly conduct a future review of the TSC and develop recommendations, as appropriate, on modifications to enhance the TSC's operational effectiveness.

2. Generalizations about TSC

The report makes several generalizations about the performance of the TSC. During its data collection activities at the TSC, however, according to the director of the TSC, the OIG team only met with and interviewed DHS personnel. OIG staff reportedly did not meet with any of the Federal Bureau of Investigation (FBI) leadership or other employees at TSC. Therefore, some of the reports more sweeping observations about the TSC as a whole may not be balanced and therefore subject to challenge. Based on the DHS-focused data collection methodology, the report might more appropriately be limited to commenting on the DHS role in support of the TSC.

In general, this report details assumptions that are beyond the scope of its stated objectives. A letter dated October 16, 2003, stated the OIG objectives were to determine DHS' role in watch list consolidation and to evaluate the effectiveness of the Department's plans in this area. However, the report addresses more about the Department of State's activities, internal workings of the TSC, and issues associated with assigning personnel to multiple interagency entities than the specifics of DHS support to the TSC. This appears to exceed the scope of the stated objectives. IAIP and other DHS offices were not informed that this report was intended to focus on issues beyond the Department's supporting role to TSC regarding watch list consolidation. Since IAIP and DHS personnel were not advised that you were planning to address issues other than DHS' role in watch list consolidation, we strongly believe that your report should reflect only your stated objectives.

Given the sensitivity of this topic, we continue to express serious concerns about your intention to publicly release this report, and ask that you consider our reservations about the propriety of a public release. Again, we appreciate the opportunity to comment on this report. If you have any questions regarding our comments, please contact John Daley, IAIP Audit Liaison, at 202-282-8381.

Attachment

Specific Comments on the Recommendations contained in OIG-A-IT-04-001 (Challenges to Terrorist Watch List Consolidation).

1. *IAIP should clarify DHS' and IAIP's respective legal responsibilities under the Homeland Security Act relative to the sharing of law enforcement, intelligence, intelligence-related, and other homeland security information; and, establish collection priorities and strategies for this information.*

Non Concur. Again as stated, there is no legal ambiguity when it comes to watch list consolidation. The President through HSPD-6 gave that responsibility to the Attorney General, and it was then delegated to the FBI/TSC. We offer no comment on intelligence sharing at large because this report did not examine that issue. The report only examined the issue of watch list consolidation.

2. *IAIP should establish and chair an interagency forum to build commitment; identify staff, capital, technology, and other resource requirements; coordinate allocation of the resources identified; establish performance goals; and oversee results of terrorist information sharing activities, including watch list consolidation, across agency lines.*

Non- Concur. Since HSPD-6 assigned the leadership of what later became the TSC to the Attorney General, it would not be appropriate for IAIP to set up such a forum for watch list integration. Furthermore, the TSC is the embodiment of the interagency forum to address watch list consolidation.

3. *IAIP should assign the staff and other resources needed to support the work of the interagency forum.*

Non- Concur. Since HSPD-6 assigned the leadership of what later became the TSC to Attorney General, it would not be appropriate for IAIP to set up such a forum for watch list integration.

4. *IAIP should ensure, within the context of the interagency forum, that user requirements, policy concerns, and other issues related to terrorist information sharing are reviewed and adequately addressed.*

Non- Concur. Again, HSPD-6 more appropriately assigns this role to TSC.

Appendix C
Major Contributors to this Report

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