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Description of document: Department of Justice (DOJ) Criminal Division memo:
Department of the Interior Policy on the Use of the Polygraph in Criminal Investigations, 1999

Request date: 17-June-2010

Released date: 28-September-2012

Posted date: 16-November-2015

Source of document: FOIA/PA Mail Referral Unit
Department of Justice
Room 115
LOC Building
Washington, DC 20530-0001
E-mail: MRUFOIA.Requests@usdoj.gov

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U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Telephone: (202) 514-3642

SEP 28 2012

Re: DAG/11-00701 (F)
CLM:VRB:GSA

While processing your Freedom of Information Act (FOIA) request dated June 17, 2010, for a September 17, 1999 memorandum entitled "Re: Department of the Interior Policy on the Use of the Polygraph in Criminal Investigations," the Criminal Division referred six documents, totaling sixteen pages, to this Office for processing on behalf of the Office of the Deputy Attorney General. The Criminal Division tracking number associated with this request is 201000519F. For your information, the documents were received by this Office on May 6, 2011.

I have determined that the referred material is appropriate for release without excision and copies are enclosed. Although portions of this material could be withheld pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), I have determined in this instance that such material may be disclosed as a matter of agency discretion.

I apologize for the delay of this response, which was caused by the need to consult with other Department components and federal agencies.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Inasmuch as this constitutes a full grant of the documents that were referred by the Criminal Division, for processing on behalf of the Office of the Deputy Attorney General, I am closing your file in this Office.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Mallon', with a long horizontal flourish extending to the right.

Carmen L. Mallon
Chief of Staff

Enclosures



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, DC 20530-0001

September 17, 1999

EXECUTIVE SUMMARY

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL *JKR*

FROM: *JKR* James K. Robinson *10-13-99*
Assistant Attorney General

SUBJECT: *JKR* Department of the Interior Policy on the Use of
the Polygraph in Criminal Investigations.

PURPOSE: To obtain the Attorney General's approval for a Department of the Interior (DOI) policy for the use of polygraph examinations in criminal investigations.

TIMETABLE: As soon as practicable.

SYNOPSIS: DOI has entered into a memorandum of understanding with the Federal Bureau of Investigation and the United States Secret Service for the administration of polygraph examinations in criminal investigations.

DISCUSSION: DOI has submitted this policy to the Department of Justice because of an undated Presidential Memorandum, issued by Lyndon Johnson, requiring Attorney General approval of all executive branch policies on the use of polygraph.

RECOMMENDATION: The policy meets the requirements set by Presidential Directive, and has incorporated suggestions from Executive Office of U.S. Attorneys. Approval via the attached memorandum is recommended.

Attachment



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, DC 20530-0001

September 17, 1999

MEMORANDUM FOR THE ATTORNEY GENERAL

THROUGH: THE DEPUTY ATTORNEY GENERAL

FROM: ^{JKR} James K. Robinson
Assistant Attorney General

SUBJECT: ^{JKR} Department of the Interior Policy on the Use of
the Polygraph in Criminal Investigations.

PURPOSE: To obtain the Attorney General's approval for a Department of the Interior (DOI) policy for the use of polygraph examinations in criminal investigations (Attachment 1).

TIMETABLE: As soon as practicable.

SYNOPSIS: DOI has entered into a memorandum of understanding with the Federal Bureau of Investigation (FBI) and the United States Secret Service (USSS) whereby DOI will rely upon the expertise of the FBI and the USSS for the proper administration and interpretation of polygraph examinations when employed in a criminal investigation. The policy meets the requirements set by presidential directive, and approval is recommended.

DISCUSSION:

DOI has submitted the proposed policy to the Attorney General for approval in keeping with a memorandum issued by President Lyndon Johnson (the Johnson Memorandum) which remains in force and effect (Attachment 2). The Johnson Memorandum requires that a department or agency promulgate regulations or directives governing the use of the polygraph examinations and that these regulations or directives be submitted to, and approved by, the Attorney General.

The policy proposed by DOI addresses all of the requirements set forth in the Johnson Memorandum and expands those requirements to reflect current law and policy concerns in this area.

The Johnson Memorandum

During his Administration, President Lyndon Johnson, after reviewing the use of polygraph examinations in the Executive Branch, issued a memorandum to ensure against unwarranted intrusions into individual privacy.

The Johnson Memorandum prohibits all departments or agencies of the Executive Branch from using polygraph examinations in a variety of situations, including criminal investigations, unless or until the conditions, set out in the memorandum, have been met. The Johnson Memorandum requires that the regulations or directives on the administration of polygraphs in criminal investigations include, as a minimum:

- ▶ The range of criminal matters in which the polygraph will be used.
- ▶ A statement that no polygraph examination will be given unless the person to be examined has voluntarily consented in writing after being informed fully of:
 - ▶ his privilege against self-incrimination;
 - ▶ his right to consult a lawyer prior to the examination;
 - ▶ his right to refuse to submit to the examination; and
 - ▶ the characteristics and nature of the polygraph machine and examination including an explanation of the physical operations of the machine, the procedures to be followed during the examination, and the disposition of information developed from an examination.
- ▶ An affirmation that, in the case of an employee of the Federal Government, refusal to consent to a polygraph examination will not lead to any adverse action and will not be made a part of the subject's personnel file.
- ▶ Adequate standards for the selection and training of examiners, keeping in mind the government's objective of insuring protection for the subject of an examination, and the accuracy of polygraph results.

The DOI Proposed Policy

The DOI proposed policy, at §21.1, limits the range of criminal matters in which a polygraph examination may be used, as required in the Johnson Memorandum, which specifies use of this technology in the following situations only:

- ▶ To aid in determining whether a person has pertinent knowledge of a particular matter under investigation or inquiry;
- ▶ To aid in determining the truthfulness of statements made or information furnished by a subject, victim, witness, informant, and/or an individual making allegations;
- ▶ To obtain information leading to the location of evidence, individuals or sites of offenses.

The required statement mandating voluntary consent by the subject; the subject's right to counsel prior to the examination; the subject's right to refuse to submit; and, the characteristics and nature of the polygraph machine and examination, including an explanation of the physical operations of the machine, the procedures to be followed during the examination, and the disposition of information developed from an examination, is found at §21.2(G) (a) - (d) of the proposed DOI policy.

Also included in §21.2, as subpart (e), is the statement required by the Johnson Memorandum that, if the subject is an employee of the Federal Government, a refusal to consent to a polygraph examination will not lead to any adverse action against the subject and will not be made a part of one's personnel file.

The proposed policy establishes, at §21.2(c), that the examination will be conducted by federally certified examiners employed by the Federal Bureau of Investigation or the United States ~~Secret Service~~.

Having met the requirements of the Johnson Memorandum, the proposed policy then strictly prohibits the use of technology, such as voice stress analysis technology, whose accuracy cannot yet be fully assessed. The proposed policy also states that a polygraph examination should be used selectively and the results not relied upon to the exclusion of other evidence derived from a complete and professional investigation. Where appropriate, the policy urges consultation with the United States Attorney's Office to ensure that administration of an examination would not negatively impact ongoing prosecutions.

Memorandum for the Attorney General
Request by Department of Interior for
Approval of Polygraph Policy

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The proposed policy further defines those areas inappropriate for examination, specifically: religious beliefs or affiliations; beliefs and opinions regarding social matters; information concerning sexual opinions or practices; and political beliefs and organizational affiliations of a non-subversive nature.

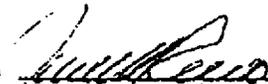
Finally, the proposed policy addresses the concerns raised by the Executive Office of the United States Attorney by incorporating the suggestions fully and redrafting Section 21.2, paragraph E to include the following language: "The United States Attorney or his or her designee should be consulted prior to the administration of a polygraph examination in any matter in which there has been previous contact with the United States Attorney's Office or where potential criminal charges are contemplated."

RECOMMENDATION:

I recommend that the Attorney General approve the Department of the Interior's proposed policy on polygraph examinations. The policy, as drafted, fully comports with the requirements of the Johnson Memorandum, incorporates the suggestions of the Executive Office of the United States Attorneys, and expands privacy protections further by incorporating limitations imposed by current public policy considerations, as more fully set forth above.

Memorandum for the Attorney General
Request by Department of Interior for
Approval of Polygraph Policy

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APPROVE: 
DATE: October 26, 1999
DISAPPROVE: _____

Concurring Components

EOUSA ^{RL}
OPD ^{RL} 10/26/99

Nonconcurring Components

None

Attachments (2)



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240

July 22, 1998

Note:

To: Jeff Fogel

From: Roger Phillips

Subject: Informal Review of the DOI Polygraph draft policy.

Dear Mr. Fogel, ^{JEFF}

Thanks for taking the time to review our draft policy statement on the use of the polygraph. As I noted in our telephone conversation, the MOU's with the FBI and USSS have not been finalized.

Pending the informal review and approval of this policy by DOJ, we then must change the policy prohibiting polygraph operations in DOI. (A separate issue from this policy statement) Then we must go through the DOI surname process before publishing as a chapter in the Department Manual 446. (Law Enforcement) We will then enter into MOU's with the FBI and the USSS. It will take some time before this project is completed.

Sincerely,

Roger

Thanks again for your review



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, D.C. 20240
July 2, 1999

Beneva Weintraub
Chief, Policy and Statutory Enforcement Unit
Office of Enforcement Operations
1301 New York Avenue, NW
Washington, DC 20003

RE: Department of the Interior Polygraph Policy

Dear Chief Weintraub:

The change in the proposed Chapter 21, Section 21.2, paragraph E that was requested by the Department of Justice has been reviewed and the change made. The Department of the Interior appreciates the review and approval of this important departmental policy statement.

Sincerely,

Roger F. Phillips
Special Agent

Enclosure

**Department of the Interior
Departmental Manual**

Effective Date:

Series: Law Enforcement and Security

Part 446: Law Enforcement

Chapter 21: Use of The Polygraph and Polygraph Examinations

Originating Office: Office of Managing Risk and Public Safety

446 DM 21

21.1 Policy. It is the policy of the Department of the Interior that polygraph examinations may only be used in criminal investigations. No other use of the polygraph is authorized within the Department of the Interior. During criminal investigations, polygraphs may be used for the following purposes:

- A. To aid in determining whether a person has pertinent knowledge of a particular matter under investigation or inquiry.
- B. To aid in determining the truthfulness of statements made or information furnished by a subject, victim, witness, informant, and/or an individual making allegations.
- C. To obtain information leading to the location of evidence, individuals or sites of offenses.

21.2 Use of the Polygraph.

A. The polygraph examination has been used by federal law enforcement agencies as ~~an investigative tool and may be valuable when the examination is performed by a competent~~ and ethical examiner. Statements, admissions and confessions obtained from the examinee during a polygraph examination are admissible in court. Findings and conclusions resulting from interpretations of polygraph charts are generally not admissible in court.

B. Consistent with the current policy of the Federal Bureau of Investigation and the United States Secret Service, the use of voice-stress devices to determine the truthful or deceptive nature of a person's oral statements is prohibited.

C. Polygraph examinations are to be conducted only by federally-certified polygraph examiners employed by the Federal Bureau of Investigation (F.B.I.) or the United States

Secret Service (U.S.S.S.). The Department of the Interior has entered into Memorandum of Agreements with the F.B.I. and the U.S.S.S. for polygraph examination services.

D. The polygraph is to be used selectively as an investigative aid and results considered within the context of a complete investigation. Polygraph results are not to be relied upon to the exclusion of other evidence or knowledge obtained during the course of a complete investigation. Use of the polygraph for dragnet-type screening of large numbers of suspects or as a substitute for logical investigation by conventional means is prohibited.

E. The decision whether or not to use a polygraph examination must be made with the awareness that it might impact on other prosecutive actions related to the action. The United States Attorney or his or her designee should be consulted prior to the administration of a polygraph examination in any matter in which there has been previous contact with a United States Attorney's office or where potential criminal charges are contemplated.

F. Polygraph examinations will be administered only to individuals who agree or volunteer to take an examination. Information concerning a person's refusal to take a polygraph examination shall appear only in the unproductive section of the prosecutive report or in the administrative section of other reports.

G. No polygraph examination will be given unless the person to be examined has voluntarily consented in writing after being fully informed of:

- (a) His or her privilege against self-incrimination,
- (b) His or her right to consult a lawyer prior to the examination,
- (c) His or her right to refuse to submit to the examination, and
- (d) The characteristics and nature of the polygraph machine and examination

including an explanation of the physical operations of the machine, the procedures to be followed during the examination, and the disposition of information developed from an examination.

(e) In the case of an employee of the Federal Government, an affirmation that a refusal to consent to a polygraph examination will not lead to any adverse action against them and will not be made part of their personnel file.

H. The following areas are not to be probed unless directly relevant to the investigation or inquiry.

- (a) Religious beliefs or affiliations.

- (b) Beliefs and opinions regarding social matters.
- (c) Information concerning sexual opinion or practices.
- (d) Political beliefs and organizational affiliations of a nonsubversive nature.

I. Polygraph examinations may only be conducted when the F.B.I. or U.S.S.S. examiner, in his/her professional judgment, believes the results will be accurate. All reasonable efforts must be made to ensure accuracy of the results.

21.3 Authorization/Approval for Conducting Polygraph Examination.

The following guidelines govern the authorization for conducting polygraph examinations:

A. Before asking the F.B.I. or U.S.S.S. examiner to conduct a polygraph examination, Interior Law Enforcement Officers shall first obtain the written approval from their supervisor after showing that the investigation has been as thorough as circumstances permit, the proposed examinee has been interviewed and, consistent with the circumstances of the case, the development of additional information by means of a polygraph examination is essential and timely for further conduct of the investigation or inquiry.

B. If approval is given, the Interior Law Enforcement Officer shall consult with the F.B.I. or U.S.S.S. examiner who will conduct the polygraph examination. The Interior Law Enforcement Officer should bring to the attention of the examiner any previously determined illness or psychiatric condition, current illness or physical condition of the examinee which could preclude the conduct of a meaningful polygraph examination.

C. If the F.B.I. or U.S.S.S. examiner agrees to conduct the polygraph examination, the examiner's agency guidelines governing the polygraph examination operation shall apply.

D. The Interior Law Enforcement Officer who is thoroughly familiar with the investigation should be available to assist the polygraph examiner as required during the test. This investigator should also be available to take any statement or confession which the examinee may elect to give after the examination is concluded.

E. After the polygraph examination has been conducted, the F.B.I. or U.S.S.S. examiner will provide the Interior Law Enforcement Officer with a copy of the polygraph examination work sheet and results, consent or agreement form signed by the examinee, interrogation or advice of rights form signed by the examinee, and any statements or

admissions made by the examinee.

F. The information and forms regarding the polygraph examination and results are to be included in the Interior Law Enforcement Officer's investigative report in the same manner as any other investigative matter.

21.4 Law Enforcement Administrators' Responsibility.

Interior Law Enforcement Administrators may supplement this chapter with policy statements or guidance consistent with this policy or issue guidelines governing the polygraph examination operation. It is the responsibility of the Interior Law Enforcement Administrators or their designees to review policy statements, guidance, or guidelines in a timely and comprehensive manner. Any supplemental policy, guidance, or guidelines must be first reviewed and approved by the Office of Managing Risk and Public Safety and the Office of the Solicitor.

21.5 Outside Cooperating Law Enforcement Agencies.

This policy does not prohibit a cooperating law enforcement agency from conducting polygraph examinations in accord with that agency's policy and procedures if there is a joint criminal investigation being conducted between an Interior bureau and an outside law enforcement agency which is acting as the lead investigative agency.

THE WHITE HOUSE
WASHINGTON

Memorandum to the Heads of Departments and Agencies

Use of the Polygraph in the Executive Branch

On the basis of a comprehensive review of the use of the polygraph in the Executive Branch, I am convinced that action is necessary to prevent unwarranted intrusions into the privacy of individuals.

Hereafter, use of the polygraph is prohibited with the following limited exceptions:

1. Use of the Polygraph in Personnel Investigations and Intelligence Operations

An Executive Department or Agency (such as Central Intelligence Agency and certain components of the Department of Defense) which has an intelligence or counter-intelligence mission directly affecting the national security may use the polygraph for employment screening and personnel investigations, and in intelligence and counter-intelligence operations, only after complying with the following procedures:

The executive agency must submit to the Chairman of the Civil Service Commission a statement setting forth the nature of its mission. The Chairman shall then determine whether the agency has an intelligence or counter-intelligence mission directly affecting the national security. If he so finds, the following shall apply:

(1) The agency shall prepare regulations and directives governing the use of the polygraph in intelligence and counter-intelligence operations which must be approved by the head of that agency.

(2) The agency shall prepare regulations and directives governing the use of the polygraph in employment screening and personnel investigations which must be reviewed by the Chairman of the Civil Service Commission. These regulations shall contain as a minimum:

- a. Specific purposes for which the polygraph may be used, the types of positions for which it will be used, and the officials authorized to approve such examinations.

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- b. A directive that a person to be examined must be informed as far in advance as possible of the intent to use the polygraph and of --
- (i) Other devices or aids to the interrogation which may be used simultaneously with the polygraph, such as voice recordings, etc.
 - (ii) His privilege against self-incrimination and his right to consult with legal counsel or to secure other professional assistance prior to the examination.
 - (iii) The effect of the polygraph examination or his refusal to take such examination on his eligibility for employment. He should be informed that refusal to consent to a polygraph examination will not be made a part of his personnel file.
 - (iv) The characteristics and nature of the polygraph device and examination, including an explanation of the physical operations of the device, the procedures to be followed during the examination, and the disposition of information developed.
 - (v) The general areas of all questions to be asked during an examination.
- c. A directive that no polygraph examination will be given unless the person to be examined has voluntarily consented in writing to be examined after having been informed of the above, (i) through (v).
- d. A directive that questions to be asked during a polygraph examination must have specific relevance to the subject of the particular inquiry.
- e. Adequate standards for the selection and training of examiners, keeping in mind the Government's objective of insuring protection for the subject of an examination and the accuracy of polygraph results.

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B. Use of the Polygraph in Criminal Investigations

Executive departments and agencies shall not use the polygraph in aid of criminal investigations without first promulgating regulations or directives governing such use which have been approved by the Attorney General. Such regulations and directives must include as a minimum:

1. The range of criminal matters in which the polygraph will be used.

2. A statement that no polygraph examination will be given unless the person to be examined has voluntarily consented in writing, after being fully informed of:

- (a) his privilege against self-incrimination,
- (b) his right to consult a lawyer prior to the examination,
- (c) his right to refuse to submit to the examination, and
- (d) the characteristics and nature of the polygraph machine and examination including an explanation of the physical operations of the machine, the procedures to be followed during the examination, and the disposition of information developed from an examination.

3. An affirmation that in the case of an employee of the Federal Government refusal to consent to a polygraph examination will not lead to any adverse action against him and will not be made a part of his personnel file.

4. Adequate standards for the selection and training of examiners, keeping in mind the Government's objective of insuring protection for the subject of an examination and the accuracy of polygraph results.

C. Use of the Polygraph in Research and Development

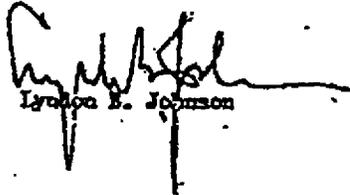
The polygraph may be used to record physiologic variables in bona fide research and development projects. For those bona fide research and development projects in which the recorded results are interpreted to make any judgment about the subject being polygraphed other than an assessment of his psycho-physiologic state, the requirements of Parts A and B of this memorandum, including the review by the Chairman of the Civil Service Commission or the Attorney General shall be applicable.

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The head of each Executive Department and Agency which uses the polygraph must satisfy himself of the reliability and validity of his polygraph procedures. Projects undertaken to determine the reliability and validity of the polygraph as an aid to interrogation shall be expedited. The Office of Science and Technology shall collate and distribute the results of such studies.

Departments and agencies currently using the polygraph under regulations approved by the head of the department or agency may continue to use the polygraph pending review of their respective regulations as specified in Parts A and B of this memorandum by the Chairmen of the Civil Service Commission or the Attorney General, as appropriate, provided such department or agency regulations are consistent with the policies set forth in this memorandum.



Lyndon B. Johnson