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Release #27-2016
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FOR IMMEDIATE RELEASE
TUESDAY, AUGUST 23, 2016

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DOI'S INSPECTOR GENERAL FOR THE NEW YORK CITY POLICE DEPARTMENT RELEASES REPORT ON NYPD'S COMPLIANCE WITH RULES GOVERNING INVESTIGATIONS OF POLITICAL ACTIVITY

The Department of Investigation's ("DOI") Office of the Inspector General for the New York City Police Department ("OIG-NYPD") issued a Report today detailing the findings of its review of the New York City Police Department's ("NYPD") compliance with the court-mandated rules governing the investigation of political activity. These rules, also known as the Handschu Guidelines, are codified in the NYPD Patrol Guide. In the course of this investigation, OIG-NYPD examined highly confidential intelligence files never before subject to review or available to non-police entities. OIG-NYPD's investigators examined, among other things, whether NYPD's Intelligence Bureau satisfied the established standard for opening investigations, met deadlines for extending investigations, and obtained necessary approvals for the use of human sources, which include confidential informants and undercover officers. The investigation found that the NYPD Intelligence Bureau failed to renew investigations before the authorization expired more than half of the time, resulting in investigations of political activity that continued without the requisite authorization. More than 25% of the extensions reviewed exceeded the required deadline by more than 31 days. Further, requests to use human sources were frequently approved despite failing to document the particularized role of confidential informants and undercover officers, as required. However, OIG-NYPD found that in all cases NYPD met the informational threshold required to open an investigation. A copy of the Report can be found at the following link: http://www1.nyc.gov/site/oignypd/reports/reports.page

DOI Commissioner Mark G. Peters said, "This investigation demonstrates a failure by NYPD to follow rules governing the timing and authorizations of surveillance of political activity. While we found no evidence of improper motives, these rules are important to protect the rights of all New Yorkers and must be rigorously followed. We will continue our oversight to ensure compliance going forward."

Inspector General for the NYPD Philip K. Eure said, "Keeping New York safe is an important and difficult job, and we applaud NYPD for its dedication to that mission. When investigating political activity, however, NYPD must adhere to well-established rules governing how these investigations can be opened and extended. Our recommendations, if implemented, will ensure tighter compliance with these rules in a way that will promote greater police accountability and give the public greater confidence in how NYPD operates."

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Section 212-72 of the NYPD Patrol Guide defines several levels of investigation and contains requirements for how, and under what circumstances, NYPD's Intelligence Bureau may commence and extend investigations involving political activity. These guidelines, which were modified after the attacks of September 11, 2001, were established pursuant to a 1971 federal lawsuit brought against the City and NYPD.

To comply with the guidelines, NYPD must articulate, in writing, the basis for the investigation and secure approvals from NYPD's Deputy Commissioner of Intelligence and other senior NYPD officials. These investigations have strict time limitations, which can be extended only upon written approval from the Deputy Commissioner of Intelligence. OIG-NYPD reviewed relevant documents in a random sample of NYPD Intelligence Bureau cases closed between 2010 and 2015. OIG-NYPD's findings include:

- **More than half the time, investigations continued even after approval of the operation expired.** The Department failed to renew these investigations before their authorization expired more than 53.5% of the time. NYPD maintained that if a deadline passes before the extension is authorized, the investigation will continue and will be subject to supervision. Unauthorized investigations continued for an average of 22 days before re-authorization was obtained. In 25.6% of extensions reviewed, the deadlines were exceeded by more than 31 days.

- **The use of human sources (confidential informants and undercover officers) continued after approval expired more than half the time.** NYPD failed to re-authorize the use of human sources 57.3% of the time. Renewals for the use of informants and undercovers is required every 120 days. In the random sample of closed cases examined, this unauthorized use continued for an average of 31 days before reauthorization occurred.

- **NYPD routinely failed to include a description of the role of undercover officers or confidential informants in its authorization memos.** Under the Patrol Guide, NYPD is required to provide a description of the facts on which an investigation is based and the role of an undercover to obtain approval. Without this information, a reviewer cannot determine whether the use of an undercover is necessary. In the Human Source Authorization Memoranda reviewed, NYPD included no factual information on the role of the undercover in the investigation, yet all facially deficient applications were approved by NYPD.

- **When Preliminary Inquiries were extended, the extensions did not include articulable reasons why further investigative steps were warranted.** All Preliminary Inquiries reviewed by OIG-NYPD failed to include fact-specific reasoning for why investigations should be extended, in violation of the Patrol Guide rule requiring such written justification.

- **Adherence to the rules would not hinder anti-terrorism efforts.** The documents reviewed showed nothing to suggest that following the rules would have interfered with vigorous anti-terrorism work that is vital to New York City's safety.

- **Documents opening investigations did articulate facts sufficient to meet guidelines' thresholds for beginning investigations.** The documents reviewed did not contain evidence of improper motives.

OIG-NYPD's review also identified numerous other signature, date, and related errors on forms, leading to inconsistent record-keeping and tracking of authorizations. OIG-NYPD determined that NYPD fell short of basic principles of record-keeping and compliance which require more robust, consistent, and auditable systems for monitoring investigations and tracking deadlines. OIG-NYPD also observed that the people under investigation were predominantly associated with Muslims and/or engaged in political activity that those individuals associated with Islam, although NYPD does not use such categorizations in its approved documents.

As a result of its investigation, OIG-NYPD made several recommendations to strengthen NYPD's compliance with the Guidelines, including developing formal tracking mechanisms for deadlines to ensure timely renewals of authorizations and creating tighter controls on the documentation of approvals for investigations and human source usage to avoid future errors, facilitate compliance, and avoid the risk of further unauthorized investigations. The NYPD has informed DOI that it has recently implemented a new case-tracking mechanism.

The New York City Department of Investigation (DOI) is one of the oldest law-enforcement agencies in the country and is New York City's corruption watchdog. DOI investigations may involve any agency, officer, elected official, or employee of the City, as well as those who do business with or receive benefits from the City. DOI's strategy attacks corruption comprehensively, through independent, systemic investigations that lead to high-impact arrests, preventive internal controls, and operational reforms that improve the way the City runs. The Office of the Inspector General for the New York City Police Department (OIG-NYPD) is part of DOI and is independent of NYPD. OIG-NYPD is charged with investigating, reviewing, studying, auditing, and making recommendations relating to the operations, policies, programs, and practices of NYPD, with the goal of enhancing the effectiveness of the Police Department and increasing the public's confidence in the police force. Inspector General Eure reports to DOI Commissioner Peters.

An Investigation of NYPD's Compliance with Rules Governing Investigations of Political Activity

New York City Department of Investigation
Office of the Inspector General for the NYPD (OIG-NYPD)

Mark G. Peters
Commissioner

Philip K. Eure
Inspector General for the NYPD

August 23, 2016

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Overview

New York City Police Department (NYPD) investigations of political activity in New York City are regulated by a set of court-mandated rules, also known as the *Handschu* Guidelines. The Department of Investigation's (DOI) Office of the Inspector General for the NYPD (OIG-NYPD) has completed an investigation into NYPD's compliance with these rules. Specifically, OIG-NYPD sought to examine whether NYPD's Intelligence Bureau was conforming to rules concerning the informational threshold required to open an investigation, deadlines for closing or extending an investigation, restrictions on the use of human sources (confidential informants and undercover officers), and requisite approvals from senior management for other investigative activities. This investigation included a review of a randomly selected set of highly confidential intelligence files not available to non-police entities, and thus never before subjected to a review of this type.

The investigation of political activity, like all police activity that can impact constitutional rights, is carefully regulated to balance the need for law enforcement to investigate and maintain public safety with the right of citizens to be free of government intrusion upon their private lives.[1] The rules governing this balance are set forth not only by a federal court order but by NYPD's own regulations. Thus, before NYPD can begin investigating political activity – which could include surveillance within a mosque, church, or synagogue – it must articulate, in writing, the objective basis of need for the investigation and must secure approvals from senior NYPD officials. Further, permission is not open-ended; rather, it runs for a certain period of time, at the end of which NYPD must apply for (and justify) an extension or otherwise end the investigation. The thresholds for obtaining and extending permission in this area are not particularly high. The rules were amended after September 11, 2001, to accommodate the increased threat to the City.

OIG-NYPD's investigation found that NYPD, while able to articulate a valid basis for commencing investigations, was often non-compliant with a number of the rules governing the conduct of these investigations. For example, when applying for permission to use an undercover officer or confidential informant, the application must state the particular role of the undercover in that specific investigation, so that the need for this intrusive technique can be evaluated. NYPD almost never included such a fact-specific discussion in its applications, but instead repeatedly used generic, boilerplate text to seek such permission. Tellingly, this boilerplate text was so routine that the same typographical error had been cut and pasted into virtually every application OIG-NYPD reviewed, going back over a decade. Further, among all cases reviewed, NYPD continued its investigations even after legal authorization expired more than half of the time. Often more than a month of unauthorized investigation occurred before NYPD belatedly sought to renew the authorization. While NYPD has provided assurances that

[1] Based on its review, OIG-NYPD determined that the individuals under investigation were predominantly associated with Muslims and/or engaged in political activity that those individuals associated with Islam – more than 95% of all files reviewed for this investigation – although NYPD does not use such categorizations in its approval documents. However, in the past, investigations have focused on others, including Black and Latino activists, student groups, socialists, and political protesters. This Report addresses only NYPD's compliance with specific investigative rules and makes no conclusions about NYPD's strategic decisions regarding investigations. As noted below, in all files reviewed, NYPD articulated facts sufficient to meet the informational threshold required to open an investigation.

these investigations were always supervised (even if they ran past the authorized expiration date), the fact that deadlines were missed and rules were violated is troubling and must be rectified.

These failures cannot be dismissed or minimized as paperwork or administrative errors. The very reason these rules were established was to mandate rigorous internal controls to ensure that investigations of political activity – which allow NYPD to intrude into the public and private aspects of people's lives – were limited in time and scope and to ensure that constitutional rights were not threatened. Unlike other constitutionally regulated law enforcement techniques, such as searching homes or tapping phones, investigating political activity – including surveillance of such activity – does not require approval from an independent third-party (usually a judge), but rather, is monitored by an internal police committee. As a result, until OIG-NYPD conducted this review, there had never been any routine, independent third-party review to ensure compliance with these rules. NYPD's compliance failures demonstrate the need for ongoing oversight, which OIG-NYPD will now provide.

Finally, protecting New York City residents from terrorism is a prime responsibility of NYPD – one it has done with remarkable and commendable success. Terrorism is a real threat that requires constant vigilance; it does not require, however, that NYPD fall short of adhering to well-accepted rules for protecting the rights of the citizens it is sworn to protect. Indeed, there was nothing in the documents that OIG-NYPD reviewed to suggest that adherence to the rules would have harmed the investigations at issue or hindered vigorous anti-terrorism enforcement.

Executive Summary

All New York City Police Department (NYPD) investigations involving political activity are governed by section 212-72 of the NYPD Patrol Guide (the "Guidelines") and are within the sole jurisdiction of NYPD's Intelligence Bureau. The Guidelines, sometimes referred to as *Handschu* Guidelines, are rooted in a 1971 federal lawsuit brought against the City, the Police Commissioner, and NYPD, where plaintiffs alleged that NYPD's surveillance and related activities had violated the constitutional rights of various political, ideological, and religious groups and individuals.[2] The lawsuit resulted in a consent decree that established the Guidelines. In September 2002, just over a year after the attacks of September 11, 2001, NYPD moved to modify the restrictions placed upon it by the *Handschu* Guidelines to accommodate the new realities of a post-9/11 world. These modified guidelines are currently codified in the NYPD Patrol Guide and are binding on all NYPD members of service who are engaged in the investigation of political activity.

The Guidelines define several levels of investigation and contain requirements for how, and under what circumstances, NYPD's Intelligence Bureau may commence an investigation involving political activity, the investigative tools available to NYPD in such investigations, the duration and extension of investigations, and the types of information NYPD's Intelligence Bureau can retain on individuals and organizations. Under the Guidelines, "political activity" can cover a wide range of activities, encompassing events people choose to participate in, organizations they belong to, where and with whom they choose to pray, and political statements made in public, private, or on social media.[3] The Guidelines contain the following Statement of Policy:

> It is the policy of the New York City Police Department that investigations involving political activity conform to the guarantees of the Constitution, that care be exercised in the conduct of those investigations so as to protect constitutional rights, and that matters investigated be confined to those supported by a legitimate law enforcement purpose.[4]

Central to the Guidelines is the balance that must be struck between ensuring the safety of New York City and protecting the constitutional rights of individuals whose political activity has drawn the attention of NYPD. The Guidelines were established for the very purpose of ensuring that investigations involving political activity are subject to necessary controls and ongoing review. The Guidelines grant NYPD significant power to investigate matters involving such activity so that potential unlawful acts can be detected *before* they happen. Under the Guidelines, NYPD's Intelligence Bureau may deploy formidable investigative tools when there is information indicating the mere *possibility* of unlawful conduct, including long-term surveillance

[2] *Handschu v. Special Services Div.*, 605 F. Supp. 1384, 1388 (S.D.N.Y. 1985).

[3] Political activity is defined as "[t]he exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions." 2014 NYPD PATROL GUIDE, GUIDELINES FOR UNIFORMED MEMBERS OF THE SERVICE CONDUCTING INVESTIGATIONS INVOLVING POLITICAL ACTIVITIES [PROC. NO.] 212-72, Definitions. (Effective Aug. 1, 2013) (hereinafter "Guidelines").

[4] Guidelines, Appx B, § I.

and undercover operations. The Guidelines are designed to allow NYPD to prevent such unlawful activity while protecting individuals and groups from the potential for unending investigation of constitutionally-protected activity in cases where such investigation is not necessary or merited.

Mindful of the importance of NYPD's compliance with the Guidelines, OIG-NYPD began investigating whether NYPD was in compliance with the Guidelines, as enumerated in Patrol Guide § 212-72. Specifically, OIG-NYPD sought to determine whether NYPD's Intelligence Bureau was conforming to the Guidelines' rules concerning the informational threshold required to open an investigation, deadlines for closing or extending investigations, restrictions on the use of human sources (confidential informants and undercover officers), and requisite approvals from senior management for other investigative activities.[5] The review focused largely on three categories of investigations: (1) Preliminary Inquiries; (2) Full Investigations; and (3) Terrorism Enterprise Investigations.

In conducting this particular review, OIG-NYPD did not seek to re-investigate NYPD's cases, to replace the investigative judgment of NYPD's Intelligence Bureau, or to assess the appropriateness of NYPD's decision to use confidential informants and undercover officers when investigating political activity. Likewise, this Report does not investigate the activities of NYPD's Zone Assessment Unit (formerly known as the Demographics Unit), which NYPD disbanded in 2014. Instead, this investigation assesses whether NYPD is adhering to the well-established and long-standing safeguards and rules that must be followed when conducting investigations of political activity.

To conduct this review, OIG-NYPD reviewed relevant documents in a random sample of NYPD Intelligence Bureau cases closed between 2010 and 2015. The review included examination of the following categories of documents:

- **Investigative Statements**, also referred to as *Handschu* Statements, which NYPD's Intelligence Bureau uses to summarize case facts, note procedural history, secure requisite approvals, and memorialize relevant dates.

- **Human Source Authorization Memoranda**, which are used to request authorization for use of undercover officers or confidential informants (collectively referred to as "human sources" by NYPD's Intelligence Bureau, with no differentiation between the two).

- **Discontinuance Memoranda**, which memorialize the closure of an investigation.

[5] *See* sections V(B), V(C), V(D), and VI(3)(a) of the Guidelines. This Report does not assess NYPD's compliance with other aspects of the Guidelines, which may be subjects of later reports.

OIG-NYPD's investigation found the following:

- **More than half the time, investigations continued even after approval of the operation expired.** Investigations of political activity are subject to strict time limitations which can be renewed. Preliminary Inquiries are initially authorized for a period of 180 days and may be extended for additional 90-day periods. Full Investigations and Terrorism Enterprise Investigations are initially authorized for a period of one year and may be extended for additional one year increments. Even when calculating deadlines in a light favorable to NYPD, OIG-NYPD found that the Department failed to renew investigations before the authorization expired more than 53.5% of the time, resulting in investigations of political activity that continued without the requisite authorization. NYPD confirmed that, in general practice, if a deadline passes before the requisite extension authorization is obtained, the investigation will continue and will be subject to supervision. From its review, OIG-NYPD found that when investigative activity ran past the deadline, the unauthorized investigation continued for an average of 22 days before reauthorization was obtained. OIG-NYPD found that 25.6% of extensions exceeded their deadlines by more than 31 days. Delays longer than a month are significant because the NYPD Intelligence Bureau committee that reviews these cases meets on a monthly basis.[6]

  The failure to adhere to time limitations cannot be discounted as merely technical or administrative. The Guidelines were designed to establish certain baseline controls on NYPD's considerable investigative power. When NYPD does not follow these rules, an investigation is proceeding without the required authorization and the Guidelines have been violated. Because there has historically been no third-party review and NYPD is self-monitoring, careful compliance is particularly important.

- **The use of human sources (confidential informants and undercover officers) continued after approval expired more than half of the time.** The Guidelines permit the use of confidential informants and undercover officers when investigating political activity, but such usage is also subject to strict but renewable 120-day time limitations. NYPD failed to timely reauthorize the use of human sources 57.3% of the time, resulting in undercover officers and confidential informants who were potentially working investigations without the requisite authorization. NYPD confirmed that if a deadline has passed and the requisite extension authorization has not been obtained, the use of human sources will generally continue and will be supervised. When human source activity ran past the deadline, the unauthorized use continued for an average of 31 days before

[6] NYPD provided OIG-NYPD with its own date list for tracking approvals of investigation extensions. As discussed in this Report, OIG-NYPD has concerns about NYPD's method of tracking approvals. Even applying NYPD's own approval dates, however, NYPD's Intelligence Bureau missed deadlines for reauthorizing investigations to a degree similar to OIG-NYPD's findings. NYPD's own dates reflect that 55.8% of extensions occurred after the prescribed deadlines had passed. The average number of days of unauthorized investigation was 18, and 16.3% of deadlines were exceeded by more than 31 days.

reauthorization was obtained. OIG-NYPD found that 16% of human source extension documents were unauthorized for over a month before reauthorization was obtained.[7]

- **NYPD routinely fails to describe the role of undercover officers or confidential informants in any Human Source Authorization Memoranda.** Section 212-72 of the NYPD Patrol Guide requires that the request to use undercover officers or confidential informants include: (1) a description of the facts on which the investigation is based; and (2) the role of the undercover. Without this information, a reviewer cannot determine whether the use of this intrusive technique is necessary. However, all Human Source Authorization Memoranda reviewed simply cited to the corresponding Investigative Statement for the facts of the investigation and included no information on the role of the undercover in the investigation. These applications were approved despite the failure to include a case-specific particularized need.

- **When Preliminary Inquiries were extended, the extensions did not include articulable reasons why further investigative steps were warranted.** The Guidelines require that when extending Preliminary Inquiries, NYPD articulate the reasons why the investigation is continuing despite the absence of a reasonable indication of unlawful activity. (Where a reasonable indication of unlawful activity does exist, the Preliminary Inquiry should be converted to a Full Investigation.) One hundred percent of Preliminary Inquiry extensions reviewed failed to include this articulation of reasons. Some contained generic language about the need to extend the case, but no fact-specific reasons about the need to investigate further. Other applications did not even contain this generic language. While OIG-NYPD was satisfied with NYPD's subsequent verbal rationale for why extensions were required in specific cases, the rules nevertheless require that NYPD document those reasons in writing.

- **Authorization and extension documents for investigations and the use of human sources often contained signature errors, date errors, and related errors.** The Guidelines do not specifically require NYPD to memorialize the dates of when investigations are opened or extended, nor do they specifically require signatures or check-boxes. The Guidelines do, however, require authorizations and adherence to time limitations. To meet these requirements, basic principles of record-keeping and compliance would call for a robust, consistent, and auditable system for registering and tracking such approvals and their dates. While NYPD has voluntarily set up processes to facilitate such compliance, the Department has not consistently followed these processes. Recently, NYPD's Intelligence Bureau has informed OIG-NYPD of the implementation of a new case tracking system that may address some of these issues.

[7] NYPD provided OIG-NYPD with its own date list for tracking approvals of human source extensions. As discussed in this Report, OIG-NYPD found the data to be unreliable for analytical purposes because 13.2% of these "dates" did not identify a specific approval date but simply noted the month and year. As a result, NYPD's own tracking data could not be used to calculate the levels of unauthorized human source activity.

- **Investigative Statements for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations sufficiently articulated facts to satisfy the thresholds required by the Guidelines.** NYPD may open a Preliminary Inquiry when it receives an allegation or information "indicating the possibility of unlawful activity."[8] A Full Investigation may be launched if the "facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed."[9] A Terrorism Enterprise Investigation may be initiated when the "facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts; (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or (iii) committing any offense described in [specific sections of the penal code]."[10] When reviewing Investigative Statements through the perspective of the "prudent investigator" – as indicated by the Guidelines – OIG-NYPD determined that the Investigative Statements for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations articulated facts sufficient to meet the required thresholds. This finding is important because it demonstrates that NYPD has been articulating valid reasons for its general decisions to open particular cases. OIG-NYPD found nothing to suggest improper motives in these documents.

In light of these findings, OIG-NYPD submits the recommendations below.

Tracking Deadlines and Securing Timely Renewals

1. **For investigations of political activity, NYPD should use a formal mechanism for tracking investigative deadlines and should ensure that, where needed, extensions are approved prior to required deadlines.** Given the percentage of Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations that continued without the appropriate documented authorization, NYPD should take greater steps to ensure that investigations are either renewed in a timely manner or closed once the investigative period has expired. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure the appropriate authorizations before the scheduled expiration of an investigation.

2. **NYPD should use a formal case tracking mechanism that identifies when investigations advance to the next investigative level.** While the level of investigation can change over time (e.g., Preliminary Inquiries can advance into Full Investigations, Terrorism Enterprise Investigations can change into Full Investigations, etc.), NYPD's system for assigning and tracking case numbers did not effectively trace the full history of the investigation. For example, a Preliminary Inquiry may escalate to a Full Investigation, but separate case

[8] Guidelines, Appx B, § V(B)(1). It is important to note that the threshold standard in such matters is relatively low.
[9] Guidelines, Appx B, § V(C).
[10] Guidelines, Appx B, § V(D)(1)(a).

numbers are assigned such that a review of the Preliminary Inquiry may not identify the subsequent Full Investigation. Case tracking terminology should more clearly capture all investigations related to the same core set of facts.

3. **For the use of confidential informants and undercover officers in investigations of political activity, NYPD should use a formal mechanism for tracking expiration deadlines and ensure that extensions are approved prior to the expiration of an authorization.** Given the percentage of instances where confidential informants and undercover officers may have been utilized on investigations without appropriate authorization, NYPD should take greater steps to ensure that the use of a human source in an investigation is either renewed in a timely manner or closed once the authorization expires. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure appropriate authorizations before the scheduled expiration of an authorization.

   With respect to Recommendations 1 and 3, NYPD's Intelligence Bureau has recently informed OIG-NYPD that in July 2016, it began using a new case tracking system that apparently allows NYPD to more efficiently and effectively track cases. This is a promising development, and OIG-NYPD looks forward to evaluating whether the new system effectively addresses the deficiencies outlined in this Report.

Memorializing Requisite Approvals for Investigations

4. **For requests to extend a Preliminary Inquiry, NYPD should ensure that Investigative Statements capture fact-specific reasons why further investigative steps are warranted.** In consideration of the justification requirement attached to extensions of Preliminary Inquiries, requests for extending Preliminary Inquiries should include specific, fact-based reasons why further investigative steps are necessary and should not be limited to boilerplate statements.

5. **For authorizations and renewals of investigations, NYPD should create controls to ensure that authorizations to renew or extend investigations properly capture the date, signature, and approval of the authorizing officials.** To avoid errors and facilitate compliance with all applicable rules and internal practices, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.

Requests to Use or Extend the Use of Confidential Informants or Undercover Officers

6. **NYPD's Human Source Authorization Form should require members of NYPD's Intelligence Bureau to specify the role of the undercover officer or confidential informant.** Consistent with the applicable rules, requests to use undercover officers and confidential informants should not be limited to boilerplate language but instead should include a specific discussion of the role of the human source in the investigation.[11]

7. **NYPD should specify, when extending use of an undercover or confidential informant, the reason for the extension.** In consideration of the justification requirement attached to extending the use of an undercover, requests for extensions should include specific, fact-based reasons for the extension.

8. **NYPD should create controls to ensure that authorizations to use or extend the use of human sources properly capture the date, signature, and approval of the appropriate supervisor.** To avoid errors and facilitate compliance with all applicable rules, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.

9. **NYPD's Human Source Authorization Form should include the number of the extension request and the date of the last extension.** Although NYPD maintains a record of each date that NYPD believes a human source extension request was approved, these records are difficult to reconcile with documentation because Human Source Authorization Forms for any given investigation are not numbered in any sequential order and do not list the previous extension date. Including this information, as it is contained in Investigative Statements, would simplify independent verification of extension dates.

Codification of Policies and Procedures

10. **NYPD should consolidate its policies and procedures for investigations involving political activity into a unified handbook.** Although NYPD's Intelligence Bureau has made important strides with documenting policies and procedures for investigations – including initial steps towards consolidating its operational policies – more work is needed to codify these practices and guidelines into a single handbook that provides investigators, attorneys, analysts, and supervisors with a baseline for what is required and recommended in such investigations. Without official policies, there is a risk that necessary safeguards surrounding investigations of political activity will not be observed in a thorough and consistent manner throughout the Intelligence Bureau.

[11] "Undercover" includes all undercover personnel, including confidential informants, based on the definition established in *Handschu v. Special Services Div*., 605 F. Supp. at 1391 (S.D.N.Y. 1985)("An employee or agent of the New York City Police Department who joins or participates in a political organization for the purpose of investigation without disclosing police affiliation.").

11. **NYPD should develop written guidelines concerning informational standards for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations.** Appreciating that each investigation is unique and that the nature of threats and criminal activity changes over time, NYPD's Intelligence Bureau should develop written guidelines concerning the informational thresholds for each level of investigation. Having such guidelines would help ensure consistency across investigations and provide NYPD's Intelligence Bureau with a baseline for assessing facts and making determinations. Such guidelines would not be static, but would instead require updates as the nature of the threat evolves.

Introduction

I. NYPD Investigations of Political Activity: *Handschu* and Patrol Guide § 212-72

All NYPD investigations involving political activity are governed by a unique set of rules codified in section 212-72 of the NYPD Patrol Guide.[12] The Guidelines, sometimes referred to as the *Handschu* Guidelines, are rooted in the following Statement of Policy:

> It is the policy of the New York City Police Department that investigations involving political activity conform to the guarantees of the Constitution, that care be exercised in the conduct of those investigations so as to protect constitutional rights, and that matters investigated be confined to those supported by a legitimate law enforcement purpose.[13]

The Guidelines contain regulations for how and under what circumstances NYPD can commence an investigation involving political activity, the different levels of investigation, the investigative tools available to NYPD in such investigations, the duration and extension of investigations, and the type of information NYPD's Intelligence Bureau can retain on individuals and organizations.

These rules stem from a 1971 class-action lawsuit brought by civil rights and civil liberties activists against the City, the Police Commissioner, and NYPD's Intelligence Bureau (then called the Special Services Division).[14] The suit alleged that the Special Services Division had surveilled, infiltrated, and compiled dossiers on various political, ideological, and religious groups and individuals, thereby suppressing plaintiffs' constitutionally protected political activity. Following a 1985 court ruling, the City entered into a consent decree which vested NYPD's Intelligence Bureau with the sole authority within NYPD to investigate political activity and which established rules – the *Handschu* Guidelines – to govern these investigations.

In September 2002, a year after the attacks of September 11, 2001, NYPD successfully moved to modify the restrictions of the *Handschu* Guidelines to be more consistent with the United States Department of Justice Guidelines issued in 2002.[15] These modified guidelines are currently codified in Patrol Guide § 212-72 and are binding on all NYPD members of service who

* NYC Department of Investigation Commissioner Mark G. Peters and Inspector General for the NYPD Philip K. Eure thank the staff of OIG-NYPD and DOI for their efforts, persistence, and insight in helping to produce this Report. Gratitude is also extended to the New York City Police Department for its cooperation during the preparation of this Report.

[12] A copy of the Guidelines is attached at Appendix A.

[13] Guidelines, Appx B, § I.

[14] *Handschu v. Special Services Div.*, 605 F. Supp. at 1388 (S.D.N.Y. 1985).

[15] The U.S. Department of Justice has since repealed the 2002 DOJ Guidelines. *See* https://www.justice.gov/archive/opa/docs/guidelines.pdf (current guidelines), https://www.justice.gov/ag/attorney-generals-guidelines-general-crimes-racketeering-enterprise-and-domestic#preliminary (2002 Guidelines)

are engaged in the investigation of political activity.[16] The Guidelines define "political activity" as "[t]he exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions."[17]

II. OIG-NYPD Investigation

Recognizing the serious threat that the City faces from potential terrorist attacks, the Guidelines give NYPD significant power to investigate matters involving political activity so that potential unlawful conduct can be detected *before* it happens. NYPD's Intelligence Bureau may deploy formidable investigative tools when there is evidence of the mere *possibility* of unlawful conduct. While such powers enable NYPD to protect the City and promote public safety, they also implicate the constitutional rights of those being investigated. Indeed, the Guidelines acknowledge the importance of safeguarding constitutional protections while investigating political activity.[18]

Considering the broad powers NYPD has in investigations involving political activity, the importance of compliance with these requirements cannot be overstated. As noted, documents reviewed by OIG-NYPD revealed a particular focus at this time by the Intelligence Bureau on political activity by individuals with religious affiliations. The confluence of two forms of constitutionally protected activity – free speech and the free exercise of religion – underscores the necessity for strict compliance with the Guidelines so that the rights of groups and individuals are protected. Because the files in question are, quite legitimately, not available to non-police reviewers, no systemic analysis of NYPD's compliance had been possible prior to OIG-NYPD's creation.

Mindful of these concerns, in 2015 DOI's OIG-NYPD began investigating NYPD's compliance with the Guidelines, as enumerated in Patrol Guide § 212-72. Specifically, OIG-NYPD sought to examine whether NYPD's Intelligence Bureau was conforming to certain standards, rules, and parameters established by the Guidelines. These standards and rules include the informational threshold required to open an investigation, authorizations and deadlines for closing or extending investigations, restrictions on the use of human sources, and requisite approvals from senior management for various investigative activities.

OIG-NYPD's investigation focused primarily on section five of the Guidelines – "Levels of Investigation" – which governs the types of investigations that can be commenced and the requirements for opening, extending, and closing these investigations, as well as rules on using confidential informants and undercover officers. Future reports may review other aspects of the Guidelines and the work of NYPD's Intelligence Bureau.

[16] As of the release of this Report, the federal court in *Handschu v. Special Services Div.* is considering new changes to the Guidelines. OIG-NYPD's Report is limited to the current version of the Guidelines and does not opine on the changes under consideration by the court.

[17] Guidelines, Definitions.

[18] *See, e.g.,* Guidelines, Appx A, § 3(I); Appx B, Preamble; Appx B § I; Appx B § II.

Methodology and Access

I. Treatment of Sensitive Information

OIG-NYPD's investigation required establishing review criteria, determining the appropriate sampling approach, consulting with NYPD's Intelligence and Legal Bureaus, and identifying, reviewing, and assessing the relevant NYPD Intelligence Bureau records. Given the highly sensitive nature of the Intelligence Bureau's investigations, steps to protect the security of information were necessary and agreed upon with NYPD. These steps included inspection of certain documents on site and only by security-vetted OIG-NYPD staff. Further, certain sensitive information has been redacted from the public version of this Report and no case-specific information has been included.

II. Compliance Criteria

Based on the language of the Guidelines and their requirements, as well as a preliminary review of NYPD Intelligence Bureau documents, OIG-NYPD developed criteria to assess and quantify NYPD's compliance with the Guidelines. For this Report, OIG-NYPD developed criteria by focusing primarily on the requirements established in the "Levels of Investigation" section (§ V) and the "Undercover Operations" section (§ VI.a) of the Guidelines. The compliance criteria fall broadly into the following categories:

- **Authorizations of Investigations**: The Guidelines require written authorization by specific supervisory titles before an investigation can be opened and renewed. OIG-NYPD assessed whether such authorizations were obtained.

- **Time Limitations**: Each level of investigation is subject to strict time limitations, both for the initial investigation and for any extensions. OIG-NYPD assessed NYPD's compliance with these time limitations.

- **Informational Threshold for Opening an Investigation**: For each level of investigation, the evidence must satisfy a particular informational standard before the investigation can proceed. OIG-NYPD assessed whether those thresholds were met.

- **Extensions**: For Preliminary Inquiries, the Guidelines require that NYPD articulate reasons why further extensions of the investigation are required. OIG-NYPD determined whether NYPD was providing proper written justification for continuing these investigations. (This is not required for Full Investigations and Terrorism Enterprise Investigations).

- **Use of Undercover Members of NYPD or Confidential Informants**: The use of human sources requires separate written authorizations that are also subject to time limitations. OIG-NYPD assessed NYPD's compliance with these requirements.[19]

[19] For a detailed breakdown of the Guidelines' language supporting these criteria, please see Appendix B.

OIG-NYPD opted to apply these criteria to three levels of investigation identified in the Guidelines: (1) Preliminary Inquiries; (2) Full Investigations; and (3) Terrorism Enterprise Investigations. OIG-NYPD's investigation did not include "Checking of Leads," the lowest level of investigation, because the Guidelines provide only limited criteria by which to measure compliance.

III. Scope and Sampling

OIG-NYPD's investigation involved reviewing documents associated with a sample of closed investigations to assess compliance with the Guidelines. To obtain a sample of cases for review that both best approximates the characteristics of all closed cases and would result in a document set that could be reviewed in a reasonable period of time, OIG-NYPD asked NYPD to produce a list of case numbers for all cases investigated under the Guidelines that were discontinued or closed in the 2010-2015 time frame, separated by year and level of investigation.

From this complete list of investigations, OIG-NYPD created a review sample by randomly selecting approximately 20% of discontinued cases in each case type, separated by individual year.[20] The sampling protocol is depicted in Table A. The total resulting number of cases for review was [redacted]. [redacted] of the cases were Preliminary Inquiries, [redacted] were Full Investigations, and [redacted] were Terrorism Enterprise Investigations. OIG-NYPD's sample included investigations opened between 2004 through 2014.

TABLE A – CASE SAMPLE

	Preliminary Inquiry		Full Investigation		Terrorism Enterprise Investigation	
	Cases Closed	Number Selected	Cases Closed	Number Selected	Cases Closed	Number Selected
2010	[redacted]					
2011						
2012						
2013						
2014						
2015						

[20] [redacted]

IV. Documents Reviewed

For each of the [redacted] investigations, OIG-NYPD requested and conducted on-site reviews of the following categories of documents:

- **Investigative Statements**, also referred to as *Handschu* Statements, which NYPD's Intelligence Bureau uses to summarize case facts, note the procedural history, secure the requisite approvals, and memorialize relevant dates. A new Investigative Statement is generated each time an investigation is extended, so a single investigation may consist of multiple Investigative Statements.
- **Human Source Authorization Memoranda**, which are used to request authorization for use of undercover officers or confidential informants (collectively referred to as "human sources" by NYPD's Intelligence Bureau, with no differentiation between the two). Because human source authorizations are subject to time limitations and can be renewed, a single investigation may include multiple memoranda.
- **Discontinuance Memoranda**, which memorialize the closure of an investigation.

In total, OIG-NYPD reviewed [redacted] documents associated with [redacted] cases. To ensure accuracy, all information recorded in OIG-NYPD's review was subjected to quality control measures.

For context and background, OIG-NYPD also reviewed NYPD Intelligence Bureau training material, organizational charts, and documents which outline the Bureau's policies, practices, procedures, and standards regarding the handling of investigations under the Guidelines.

Investigations Under the Guidelines

The following section provides an overview of the levels of investigations under the Guidelines, the process by which NYPD's Intelligence Bureau manages those investigations, the use of human sources, and the Intelligence Bureau's policies and practices for investigations of political activity.

I. Levels of Investigations

This Report focuses on three of the four levels of investigations involving political activity: Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations. This Report does not cover the first level of investigation, "Checking of Leads."

a. Preliminary Inquiry

Preliminary Inquiries are matters where allegations or information require further scrutiny because there is a "possibility"— but not yet a "reasonable indication" – of unlawful activity.[21] According to NYPD's application of the Guidelines, Preliminary Inquiries can be triggered by what a person (such as a vetted source of information, an undercover officer, or a confidential informant) witnesses or hears.

b. Full Investigation

Full Investigations are subject to a stricter threshold standard and "may be initiated when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed."[22] While the Guidelines note that the standard is substantially lower than probable cause, "[t]here must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient."[23] As compared to Preliminary Inquiries, NYPD investigators in a Full Investigation have a wider array of investigative techniques available to them.

c. Terrorism Enterprise Investigation

Terrorism Enterprise Investigations are similar to Full Investigations but involve more than one subject engaged in an enterprise. The threshold standard is more detailed than Preliminary Inquiries and Full Investigations, though it also turns on a "reasonable indication" of unlawful activity.

NYPD has explained that, while not required by the Guidelines, it has set a higher internal threshold standard for targeting a *location* as the subject of a Terrorism Enterprise Investigation. According to NYPD, for a location or institution – such as a mosque – to be the subject of a Terrorism Enterprise Investigation, there must be a reasonable indication that the leadership or staff members are involved in unlawful activity. If an individual is observed engaging in suspicious behavior during a Terrorism Enterprise Investigation, but is not part of the enterprise under

[21] Guidelines, Appx B, § V(B)(1).
[22] Guidelines, Appx B, § V(C).
[23] Guidelines, Appx B, § V(C)(1).

investigation, the individual could be subject to a separate NYPD Intelligence Bureau investigation.

II. Undercover Officers and Confidential Informants

The Guidelines permit NYPD's Intelligence Bureau to use undercover officers and confidential informants (collectively "human sources") in investigations of political activity.[24] NYPD's Intelligence Bureau stated that human sources are only used if, based on all circumstances surrounding a case, they are the "most effective means" of obtaining information.[25] According to NYPD, human sources are prohibited from disrupting lawful political activity and cannot, as a source, attend religious services unless in connection with a subject of an investigation under the Guidelines.

III. NYPD Intelligence Bureau Meetings

In order to authorize or extend Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations, members of NYPD's Intelligence Bureau's Legal Matters Unit (LMU), alongside analysts, detectives, and their various supervisors, must first draft Investigative Statements.[26] Investigative Statements are reviewed at monthly "*Handschu* Committee" meetings and are approved in writing by both the Commanding Officer and the Deputy Commissioner of the Intelligence Bureau. The *Handschu* Committee currently includes the Deputy Commissioner, Commanding Officer, and Executive Officer of the Intelligence Bureau, the Deputy Commissioner and Assistant Deputy Commissioner for Legal Matters, the senior leadership of the Intelligence Operations and Analysis Section, the Commanding Officer of the Criminal Intelligence Section, and Department attorneys, among others. The Committee discusses cases and asks questions so that the Deputy Commissioner can make determinations about investigations.

At *Handschu* Policy Meetings, held every four to six weeks, members of NYPD's Intelligence Bureau attempt to determine the best way to create policies to guide the operations of the Bureau. During these meetings, participants formulate workable rules and practices in order to improve the Intelligence Bureau's functionality and compliance with the Guidelines.

At weekly Collections meetings, Intelligence Bureau professionals discuss, review, and critique specific investigations that are currently underway. In these meetings, participants analyze investigations from an operational perspective and attempt to determine the best way to proceed. All Intelligence Bureau investigations undergo this process.

NYPD's Intelligence Bureau also holds regular "DD5" review meetings in which all field intelligence reports (known as "DD5s") are reviewed. LMU attorneys review all DD5s to spot issues and potential violations of internal practices, and provide guidance to investigators on what content should be included in these field intelligence reports.

[24] Guidelines, Appx B, § VI(3)(a).
[25] Guidelines, Appx B, § VI(3)(a)(i).
[26] LMU is comprised of five non-uniformed attorneys and one uniformed attorney who report to a Deputy Commissioner. Members of LMU attend all Intelligence Bureau meetings.

IV. Intelligence Bureau Policies Governing Investigations Under the Guidelines

NYPD's Intelligence Bureau does not currently have a unified policy manual to govern all investigations falling under the Guidelines. Instead, the Intelligence Bureau's policies, procedures, and guidelines are spread across a range of meeting minutes, handbooks, emails, and related records. According to NYPD, beginning in early 2011, the Intelligence Bureau's analysts, investigators, and lawyers increased their collaboration on the drafting of Investigative Statements. This collaboration led to a more systemized documentation of the process. NYPD's Intelligence Bureau has, for several years, also discussed the development of a single policy manual, but the project remains ongoing.

Findings

I. Time Limitations

Investigations, the use of human sources, and the respective extensions of both, are subject to strict time limitations under the Guidelines. These time limitations help ensure that investigations are completed in an efficient manner and do not continue indefinitely when they are not productive. OIG-NYPD's review found a material level of non-compliance by NYPD with the applicable time limitations under the Guidelines.

a. Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations

i. Methodology for Calculating Dates

Preliminary Inquiries are initially authorized for a period of 180 days and may be extended for additional 90-day periods. Both Full Investigations and Terrorism Enterprise Investigations may be initially authorized for one year (365 days) and can be renewed in additional one-year (365-day) increments.[27] Because the Guidelines do not require initial investigation authorizations to be documented in writing, OIG-NYPD used the opening dates provided by NYPD as the opening date of each investigation reviewed. NYPD's Intelligence Bureau confirmed that this is the appropriate date for the initial approval. For extensions, OIG-NYPD used the date that the Deputy Commissioner of Intelligence signed and approved the authorization forms.[28] Each time an extension was approved, OIG-NYPD would reset the 90-day or 365-day extension clock to identify the next anticipated extension date.[29] This approach takes into account possible delays in extensions earlier in the investigation and adjusts for them, so that these delays do not accumulate across the length of the investigation. In other words, OIG-NYPD's date calculations avoid double-counting a particular delay. Such calculations are therefore favorable to NYPD when assessing compliance. A summary of the formulas used in OIG-NYPD's date calculations can be found in Table B.

[27] Guidelines, Appx B, § V(C)(4)(b), V(D)(4)(b).

[28] If the authorization form was lacking a date for the signature of the Deputy Commissioner of Intelligence, OIG-NYPD relied instead on the signature date of the Commanding Officer or, if none, the applicable deadline as identified in subsequent Investigative Statements or, if none, the date of the Investigative Statement itself.

[29] Under OIG-NYPD's calculations, if a document was expected for a final extension date but none was filed, OIG-NYPD calculated the number of days between the expected extension date and the discontinuance date to determine whether the missing extension should be marked "late." OIG-NYPD found that [redacted] such discontinuances occurred later than the extension deadline. In addition, [redacted] extension requests — all occurring at the end of investigations — were disapproved. For these, OIG-NYPD also calculated the number of days between the expected extension date and the discontinuance date to determine whether the disapproval should be marked "late." [redacted] of those disapprovals occurred prior to the extension deadline, while [redacted] occurred after the extension deadline.

TABLE B – DATE CALCULATIONS FOR INVESTIGATION EXTENSIONS		
	Anticipated First Extension Date (following Initial Authorization)	**Extensions**
Preliminary Inquiry	Opening Date + 180 Days	Last Recorded Extension Date + 90 Days
Full Investigation	Opening Date + 365 Days	Last Recorded Extension Date + 365 Days
Terrorism Enterprise Investigation	Opening Date + 365 Days	Last Recorded Extension Date + 365 Days

In order to test this methodology, OIG-NYPD asked NYPD to produce its own tracking data for the opening and extension dates both on Investigative Statements and on authorizations and extensions for the use of human sources (discussed further below). With respect to Investigative Statements, the data provided by NYPD resulted in outcomes not significantly different from OIG-NYPD's findings (see below and footnote 6 above). However, OIG-NYPD could not make full use of NYPD's data because the Department has considered numerous different types of events (signature pages, meeting minutes, emails) to constitute approvals by the Deputy Commissioner of Intelligence. Such variation in tracking does not lend itself to appropriate oversight and increases the risk of tracking failures. This issue arose most prominently with respect to human source authorizations. OIG-NYPD could not even compare its findings to NYPD's own tracking sheet because 13.2% of NYPD's entries recorded only the month and year but not the specific day of the approval (see footnote 7 above).

The weaknesses in NYPD's current case tracking and monitoring process – which make it difficult to reliably assess NYPD's compliance with the Guidelines – highlight the need for NYPD to use a more thorough, consistent, and auditable system for registering and tracking dates and deadlines for the authorization and extension of investigations and the use of human sources. While the findings below identify the degree to which NYPD was non-compliant with the prescribed deadlines under the Guidelines, the broader concern is that NYPD does not have an adequate system in place to ensure compliance with these deadlines. Recently, NYPD's Intelligence Bureau has informed OIG-NYPD of the implementation of a new case tracking system that may address some of these issues. This is a promising development, and OIG-NYPD looks forward to evaluating whether the new system effectively addresses the deficiencies outlined in this Report.

ii. Findings

OIG-NYPD's analysis found that [redacted] of the [redacted] extensions reviewed (53.5%) failed to meet the renewal deadline and were dated after the required deadlines. When investigations exceeded their extension deadlines, the average number of days that investigations continued past their extension deadlines was 22 per extension. One-quarter ([redacted] extensions, or 25.6%) of extensions exceeded their deadlines by more than 31 days. The average number of days per extension that investigations continued past their deadlines differed by investigation type (see Table C). For Preliminary Inquiries, the average number of days that each extension exceeded its deadline was 20, while Full Investigations and Terrorism Enterprise Investigations averaged 30 days and 18 days, respectively.

TABLE C – INVESTIGATIONS: DAYS OF UNAUTHORIZED ACTIVITY PER EXTENSION

	Average
Preliminary Inquiry	20 Days
Full Investigation	30 Days
Terrorism Enterprise Investigation	18 Days

Although the average overage for each individual extension was 22 days, when an investigation has multiple extensions and several of these extensions miss the deadline, the cumulative impact on that particular investigation may be more than 22 days. For example, for Preliminary Inquiries examined, the accumulated number of days of unauthorized investigative activity on a single Preliminary Inquiry ranged from zero days (no missed deadlines within one investigation) to 117 days (multiple missed deadlines within one investigation), with an average of 33 accumulated days of unauthorized investigative activity per Preliminary Inquiry. For Full Investigations, the accumulated days of unauthorized activity on a single Full Investigation ranged from 25 days to 104 days, with an average of 42 days. For Terrorism Enterprise Investigations, the cumulative range was between zero and 124 days, with an average of 55 days. Across all investigative types, the average number of accumulated days of unauthorized activity on a single investigation was 38.

NYPD's Intelligence Bureau reported that NYPD attorneys use spreadsheets to track and monitor authorization and expiration dates. However, NYPD's Intelligence Bureau confirmed that if the Department intends to continue an investigation but the authorization expires prior to the renewal deadline, the investigation does not close; the investigation may instead continue in an unauthorized state pending documented renewal. NYPD noted that in such scenarios where formal authorization has not been obtained, the ongoing investigative work is still subject to supervision.

Even when calculated in a manner favorable to NYPD, the Department is still non-compliant with the Guidelines' time limitations more than half of the time. As noted, the Guidelines impose time limitations for a reason, and if NYPD wants to continue an investigation it must present the case for renewal discussion in a timely manner. Notably, the *Handschu* Committee meets once a month to discuss and approve the extensions of investigations, and

there is a weekly NYPD Intelligence Bureau meeting to review the general status of each open investigation. In other words, there is active ongoing review of these investigations. Accordingly, the fact that one-quarter of extensions that exceeded their deadlines did so by more than one month raises serious concerns about the importance that NYPD places on these time limitations or the constitutional safeguards they represent.

This degree of error illustrates, at a minimum, that the Intelligence Bureau's current tracking and monitoring mechanism is not effective. The failure to adhere to time limitations cannot be discounted as merely technical or administrative. The Guidelines were designed so that NYPD could conduct investigations that it believes promote public safety, while also safeguarding the constitutional rights of the citizens they serve. One of those safeguards is that investigations cannot continue indefinitely without renewed approval and oversight. When NYPD does not follow those restrictions, the investigative activity is unauthorized and the Guidelines designed to prohibit open-ended and un-reviewed surveillance have been violated.

b. Human Source Use

i. Methodology for Calculating Dates

The use of an undercover officer or confidential informant may be initially authorized only by the Deputy Commissioner of the Intelligence Division for 120 days, and may be extended for additional periods of 120 days, also only with the approval of the Deputy Commissioner of the Intelligence Division.[30] These requests and authorizations must be in writing.[31] Given these requirements, OIG-NYPD used the date that the Deputy Commissioner signed the investigation's human source authorization form as the date that the use of a human source was officially authorized or extended.[32] To identify extension dates, OIG-NYPD added the required number of days following the initial authorization and then to each subsequent recorded extension date (120 days).[33]

[30] The NYPD Intelligence Division referred to in the Guidelines is now called NYPD's Intelligence Bureau.

[31] Guidelines, Appx B, § VI(3)(a)(ii).

[32] Because NYPD does not number human source extensions nor list the date of the last extension in its Human Source Authorization memoranda, OIG-NYPD was unable to determine whether large gaps between extensions of the use of human sources were due to missing documents or failures to extend on time. Accordingly, OIG-NYPD only used documented human source extensions for its calculations.

[33] Unlike investigations, which have discontinuance memos to identify an investigation's end, NYPD does not use a discontinuance memo for human source authorizations. Accordingly, while OIG-NYPD can identify unauthorized periods of potential human source use between human source extension memos (i.e., identify recorded extension dates in excess of 120 days), OIG-NYPD could not calculate the timeliness of human source reauthorizations following the last known human source extension memo. For example, if the last human source extension was authorized on day 240 (such that the next extension would be on day 360), but the investigation closed on day 370, OIG-NYPD has no documentation to verify whether human source activity closed on day 360 or continued for ten more days unauthorized. As a result, OIG-NYPD's analysis only accounts for days in between existing human source extension memos.

ii. Findings

OIG-NYPD reviewed [redacted] human source extension memos. Just over half of these human source extensions ([redacted] documents, or 57.3%) failed to meet the renewal deadline and were dated after the required deadlines. When authorizations to use human sources exceeded their extension deadlines, the average number of days that human source use continued past each extension deadline was 31. Furthermore, 16% ([redacted]) of the human source extensions exceeded their deadlines by more than 31 days. The average number of days per extension that human source use continued past prescribed deadlines differed by investigation type (see Table D). For Preliminary Inquiries, the average number of days that each extension exceeded its deadline was 18, while Full Investigations averaged 27 days, and Terrorism Enterprise Investigations 43 days.

TABLE D – DAYS OF UNAUTHORIZED HUMAN SOURCE ACTIVITY PER EXTENSION	
	Average
Preliminary Inquiry	18 Days
Full Investigation	27 Days
Terrorism Enterprise Investigation	43 Days

Although the average overage for each individual extension was 31 days, when an investigation has multiple extensions and several of these extensions miss the deadline, the cumulative impact on that particular investigation may be more than 31 days. For example, for Preliminary Inquiries examined, the accumulated number of days of unauthorized human source activity on a single Preliminary Inquiry ranged from zero days (no missed deadlines within one investigation) to 108 days (multiple missed deadlines within one investigation), with an average of 20 accumulated days of unauthorized human source activity per Preliminary Inquiry. For Full Investigations, the accumulated days of unauthorized activity on a single Full Investigation ranged from 10 days to 380 days, with an average of 102 days. For Terrorism Enterprise Investigations, the cumulative range was between 60 and 576 days, with an average of 296 days. Across all investigative types, the average number of accumulated days of unauthorized activity on a single investigation was 79.

As with the investigation authorizations, the degree of error here illustrates, at a minimum, that the Intelligence Bureau's current tracking and monitoring mechanism is not effective. NYPD's Intelligence Bureau has confirmed that when it intends to extend a human source authorization but does not do so before the deadline, the human source may remain active and under supervision until the extension is approved. In short, when deadlines are missed, confidential informants and undercover officers are operating without authorization. Even if such human sources are being actively managed by NYPD's Intelligence Bureau, the failure to secure the appropriate authorizations is an avoidable violation of the Guidelines. Again, this is not simply a technical issue. The Guidelines are designed to prevent open-ended

investigations. By failing to obtain renewal authorizations, sometimes for months at a time, NYPD is violating substantive protections now in place.

Notably, with respect to Collection Leads – a lower level investigation – NYPD's Intelligence Bureau's written policy states that the use of human sources shall not continue past the authorization expiration date and that legal counsel must notify senior staff when an expiration date is reached. This policy makes sense, yet OIG-NYPD uncovered no such corresponding policy for the use of human sources on Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations.

II. Authorizations and Approvals

As noted, the Guidelines require that the opening and extension of investigations, as well as the use and renewal of human sources, be memorialized in writing by specific individuals. OIG-NYPD's review found several deficiencies in how NYPD's Intelligence Bureau secures and records the requisite authorizations.

a. Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations

Under the Guidelines, requests to commence an investigation may be authorized by one of several designated "Authorizing Officials." This authorization is then subject to final approval by the Deputy Commissioner of Intelligence. As noted, investigations approaching expiration can be renewed. Renewal authorization for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations are granted by the Deputy Commissioner of Intelligence and must be in writing.

In practice, the Intelligence Bureau records authorizations by executives on authorization forms that are attached to Investigative Statements and memos. When fully completed, these forms contain:

- **Signatures** by an "Authorizing Official" (defined in Patrol Guide § 212-72 as the Commanding Officer or Executive Officer of the Intelligence Division (now Bureau), or the Commanding Officer of the Criminal Intelligence Section) and the Deputy Commissioner of Intelligence;

- **Dates** accompanying the signatures; and

- **Checkmarks** indicating approval or disapproval of the request.

OIG-NYPD used data on these authorization forms and related documents to assess whether NYPD's Intelligence Bureau was in compliance with the requirements for authorizations, extensions, and time limitations. For a detailed list of the review criteria derived from the Guidelines, see Appendix C.

i. Findings

OIG-NYPD's review found a series of deficiencies in the documentation of authorizations and extensions of the [redacted] investigations. As demonstrated in Table E, the forms documenting the authorization of the investigations had a number of missing items, making it impossible for OIG-NYPD to verify that authorization by an Authorizing Official properly occurred. Notably, only 57% ([redacted]) of the authorizations to open investigations had dates that were consistent and well-documented.

TABLE E - DEFICIENCIES IN AUTHORIZATIONS OF INVESTIGATIONS	
No signature from any Authorizing Official	[redacted] cases (6.5%)
No date accompanying the signature of any Authorizing Official	[redacted] cases (6.5%)
No checkmarks indicating whether at least one Authorizing Official had either approved or disapproved the investigation	[redacted] cases (6.5%)
Forms missing at least one item (a signature, date, or checkmark)	[redacted] cases[34] (47.8%)
Date provided by NYPD as the official opening date of investigation did not match the signature dates of either Authorizing Official[35]	[redacted] cases (34.8%)

Many of the above issues were also discovered during OIG-NYPD's review of the [redacted] investigation extension documents, as can be seen in Table F.

[34] The [redacted] cases includes the [redacted] aforementioned cases as well as other examples where there is at least one type of error.

[35] [redacted] investigations' opening dates as per NYPD was exactly one year off from the authorizing signature dates, which appears to be a typo in NYPD's recorded opening date list.

TABLE F - DEFICIENCIES IN EXTENSIONS OF INVESTIGATIONS	
No signature from the Deputy Commissioner of Intelligence	[redacted] documents (4.5%)[36]
No date accompanying Deputy Commissioner of Intelligence signature	[redacted] documents (12.4%)
No checkmarks indicating whether Deputy Commissioner of Intelligence had either approved or disapproved the investigation	[redacted] documents (9.0%)
Forms missing at least one item (a signature, date, or checkmark) in regards to the Deputy Commissioner of Intelligence's authorization	[redacted] documents (47.8%)

The Guidelines do not specifically require NYPD to memorialize the dates when investigations are opened or extended, nor do they specifically require signatures or check-boxes. The Guidelines do, however, require authorizations and adherence to time limitations (which cannot be properly calculated without accurately registering when an investigation was opened). To meet these requirements, basic principles of record-keeping and compliance require a robust, consistent, and auditable system for registering and tracking such approvals and their dates.

OIG-NYPD also found a number of deficiencies in the [redacted] Discontinuance Memos reviewed for Preliminary Inquiries. The Guidelines do not specifically require NYPD to document signatures, dates, and checkmarks of Authorizing Officials when Preliminary Inquiries are discontinued. The Guidelines *do*, however, require that NYPD "make a record of the closing" of inquiries when they "fail to disclose sufficient information to justify an investigation."[37] In practice, NYPD uses Discontinuance Memos to make a record every time a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation is closed. Table G summarizes the deficiencies in documentation of the closing records of Preliminary Inquiries.

[36] While OIG-NYPD's metrics on extensions only consider the Deputy Commissioner's authorization, it should be noted that all of these documents were missing the signature of *any* Authorizing Official.
[37] Guidelines, Appx B, § V (B)(7).

TABLE G - DEFICIENCIES IN PRELIMINARY INQUIRY DISCONTINUANCE MEMOS	
No signature from any Authorizing Official	[redacted] documents (20.7%)
No date accompanying the signature of any Authorizing Official	[redacted] documents (6.9%)
No checkmarks indicating whether at least one Authorizing Official had either approved or disapproved the investigation	[redacted] documents (17.2%)
Forms missing at least one item (a signature, date, or checkmark)	[redacted] documents (34.5%)

b. Human Source Use

The use of undercover officers and confidential informants can only be authorized by the Deputy Commissioner of the Intelligence Bureau prior to commencement of the undercover operation, and both the request to use human sources and action taken on this request must be in writing. Under the Guidelines, the request to use undercover officers or confidential informants also "must include a description of the facts on which the investigation is based and the role of the undercover."[38] The use of human sources may be extended with the approval of the Deputy Commissioner of Intelligence. These requests and any action therein must be in writing. NYPD uses a standard form for all human source authorizations and extensions.

Given the requirement for authorizations and extensions of the use of these human sources to be approved in writing by the Deputy Commissioner of Intelligence, OIG-NYPD used the date that the Deputy Commissioner signed the investigation's human source authorization form as the date that the use of a human source was officially authorized or extended.[39]

i. Findings

OIG-NYPD's review found several deficiencies in the authorizations for the use of human sources. First, while the Guidelines require that "The request to use undercovers…must include a description of the facts on which the investigation is based *and the role of the undercover*," (emphasis added) none of the human source memos that OIG-NYPD reviewed contained any information whatsoever on the specific anticipated role of the undercover. The documents instead referred back to the associated Investigative Statement (which, as a retrospective document, could have facts about the human source but not prospective operational information about the human source's role). Second, all human source memos reviewed were comprised primarily of boilerplate language, devoid of case-specific facts, and were generally issued at the outset of all investigations as a blanket practice. All cases that OIG-NYPD reviewed had human

[38] Guidelines, Appx B, § VI(3)(a)(i).
[39] NYPD also uses the signature of the Deputy Commissioner of Intelligence on the human source authorization form to track authorizations and extensions.

source authorizations, and nearly all dates of authorization for the human sources occurred on the same day or within a few days of the start of the investigation.[40] (The average number of days separating the two dates was three.)

Moreover, not only did the human source authorization forms, in violation of the Guidelines, contain boilerplate language to populate the form rather than case-specific facts, but the entries made on every authorization document analyzed contained the same identical typographical error going back to at least 2003. Specifically, the substantive entry on every such document reviewed contained the following typographical error: "… the undersigned has concluded *that that* the use of undercover officers and/or confidential informant …" (emphasis added). In addition, OIG-NYPD noted a second typographical error present in the subject lines of numerous authorization or renewal documents ("EXTENSION OF *THE USE OF THE USE OF* UNDERCOVER OPERATIVES AND/OR CONFIDENTIAL INFORMANTS …" (emphasis added)).

The chronic appearance of the same typographical errors supports the notion that NYPD personnel are preparing and signing the authorizations without sufficiently reviewing the document. Such errors further suggest that the same text was copied repeatedly into every human source authorization for over a decade, without regard to the specific facts of each case or the expected role of each source. Despite these applications' facial deficiencies, however, they are routinely approved by the NYPD.

Further, [redacted] of the [redacted] investigations (4.3%) reviewed by OIG-NYPD lacked any initial authorizing document for use of a human source at all. The remaining [redacted] human source documents contained a number of issues that are detailed in Table H.

TABLE H – DEFICIENCIES IN HUMAN SOURCE AUTHORIZATIONS	
No signature from the Deputy Commissioner of Intelligence	[redacted] documents (2.3%)
No date accompanying Deputy Commissioner of Intelligence signature	[redacted] documents (11.4%)
No checkmarks indicating whether the Deputy Commissioner of Intelligence had either approved or disapproved the investigation	[redacted] documents (27.3%)
Forms missing at least one item (a signature, date, or checkmark) regarding the Deputy Commissioner of Intelligence's authorization	[redacted] documents (34.1%)

[40] NYPD has informed OIG-NYPD that while all cases reviewed by OIG-NYPD received authorization to use human sources for the investigation, not every investigation actually involved a human source.

Similar concerns were also found in OIG-NYPD's review of the [redacted] human source extension documents, which are depicted in Table I.

TABLE I – DEFICIENCIES IN HUMAN SOURCE EXTENSIONS	
No signature from the Deputy Commissioner of Intelligence	[redacted] documents (4.8%)
No date accompanying Deputy Commissioner of Intelligence signature	[redacted] documents (10.6%)
No checkmarks indicating whether the Deputy Commissioner of Intelligence had either approved or disapproved the investigation	[redacted] documents (10.1%)
Forms missing at least one item (a signature, date, or checkmark) regarding the Deputy Commissioner of Intelligence's authorization	[redacted] documents (17.9%)

Furthermore, under the Guidelines "[t]he request to extend the use of undercovers and action taken on the request must be in writing and must include the reason for the extension."[41] As with the initial authorization forms, the extension forms contained boilerplate language that lacked a specific, fact-based reason for the extension.

The various deficiencies in the Intelligence Bureau's authorization documents reflect a troubling lack of rigor in ensuring that authorizations are completed correctly, on time, and based upon a demonstrated need for the investigation or source requested. Failing to include this required information in the authorization document undermines the accountability integral to NYPD's most sensitive investigations and makes difficult any legally sufficient review of the need for this investigative tool.

[41] Guidelines, Appx B, § VI(3)(a)(ii).

III. Extensions of Preliminary Inquiries

Preliminary Inquiries have a unique requirement that does not exist for Full Investigations and Terrorism Enterprise Investigations. Under the Guidelines:

> Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90 day periods may be granted by the Deputy Commissioner of Intelligence. **Any such request for extension shall be in writing and shall include a statement of the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity.** The action taken on any such request for extension shall also be recorded in writing.[42]

The highlighted sentence makes clear that if there is no demonstrable reason to continue the Preliminary Inquiry, the investigation should be closed. This provision is understandable in light of the Guidelines' framework. By design, a Preliminary Inquiry is a short-term investigation that allows NYPD to assess whether a Full Investigation should be opened. A Preliminary Inquiry has a very low informational threshold – "a possibility of unlawful activity" – while allowing for broad and sometimes invasive investigative powers, including the use of confidential informants and undercover officers.[43] By requiring NYPD to include a "statement of reasons" why a Preliminary Inquiry must continue, the Guidelines create an important safeguard against perpetual investigations where there is scant evidence of actual unlawful conduct.

OIG-NYPD found that in all of the Investigative Statements reviewed to extend Preliminary Inquiries, NYPD's Intelligence Bureau failed to document reasons, supported by specific facts, as to why further investigative steps were warranted when there was no reasonable indication of unlawful activity. In some cases (8.7%), NYPD's Intelligence Bureau included the following generic statement when seeking to extend a Preliminary Inquiry:

> Although this request for extension contains no new information, the undersigned conclude that the prior statements and activities of [subject] raise the possibility that [subject] plans to engage in unlawful conduct at some time in the future.

OIG-NYPD finds that the quoted language amounts to boilerplate and, on its face, fails to satisfy the requirements imposed by the Guidelines. By citing to non-specific evidence and using conclusory language, the boilerplate text offers no guidance as to the actual reasons to continue the investigation. Instead, the text invites speculative, after-the-fact rationalizations which may

[42] Guidelines, Appx B, § V(B)(4) (emphasis added).

[43] Guidelines, Appx B, § V(B)(1). Investigative techniques such as mail openings, eavesdropping, and video surveillance that would otherwise require a warrant are prohibited. *See* Guidelines, Appx B, § V(B)(5).

or may not reflect the reasons why the Deputy Commissioner of Intelligence authorized the extension.[44]

NYPD's Intelligence Bureau informed OIG-NYPD that the reasons for extending Preliminary Inquiries are discussed during the monthly *Handschu* Committee meetings, but that these discussions are not captured by the *Handschu* Committee meeting minutes or any other document. This further underscores the necessity for citing specific, non-ambiguous information in writing when extending a Preliminary Inquiry. NYPD's Intelligence Bureau also noted that delays caused by subpoenas or other logistical actions are often the cause for seeking an extension of a Preliminary Inquiry, and such operational detail would not be appropriate to include in an Investigative Statement. While NYPD's Intelligence Bureau is free to determine what content should and should not appear in an Investigative Statement, the Guidelines still require NYPD to memorialize the reasons for the extension, and that currently is not being done in any form. This failure is not merely procedural. It makes review by oversight bodies such as OIG-NYPD extremely difficult and thus prevents verification that constitutional violations are not occurring.

IV. Informational Thresholds Under the Guidelines

In order for NYPD to launch an investigation under the Guidelines, a certain threshold must be met. As detailed in the Methodology section, NYPD may open a Preliminary Inquiry when it receives an allegation or information "indicating the possibility of unlawful activity."[45] A Full Investigation may be launched if "facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed."[46] Lastly, a Terrorism Enterprise Investigation may be initiated when "facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts; (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or (iii) committing any offense described in [specific sections of the penal code]."[47]

Compliance with the threshold standard is a bedrock principle of the Guidelines. As noted, the Guidelines permit NYPD to deploy significant resources and use powerful investigative tools when investigating political activity, including the use of confidential informants and undercover operatives. Consistent with the Guidelines' "Statement of Policy," the thresholds

[44] It is important to note that OIG-NYPD is not making any findings regarding the merits of particular extension requests. OIG-NYPD accepts that the narrative section of the Investigative Statement may already suggest reasons why further investigative work is needed (e.g., if the Investigative Statement quotes a subject saying that he/she intends to do something in the near future). Instead, OIG-NYPD is determining whether the language provided in the required authorization satisfies the requirements to set forth in writing "the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity."

[45] Guidelines, Appx B, § V(B)(1).

[46] Guidelines, Appx B, § V(C).

[47] Guidelines, Appx B, § V(D)(1)(a).

serve as a check to ensure that these tools are only used when there is a "legitimate law enforcement purpose."[48]

When reviewing the Investigative Statements through the perspective of the "prudent investigator" – as indicated by the Guidelines – OIG-NYPD determined that the Investigative Statements for all Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations articulated facts sufficient to meet the applicable threshold.[49] Compliance with this basic requirement is important, and OIG-NYPD notes that it found nothing to suggest improper motives in these documents.

V. Other Observations

OIG-NYPD's review revealed other issues which are not governed by the Guidelines but which nonetheless merit comment.

a. Case Tracking

NYPD's Intelligence Bureau tracks investigations with case numbers [redacted]

When a case is upgraded or downgraded to a different level of investigation, the prior investigation and case number are discontinued, and a new investigation is begun and assigned a unique number, despite the fact that the information and subjects of that case may not have changed. As a result, for investigations that change level, NYPD's Intelligence Bureau does not maintain a single case number that survives the life of the investigation.

When a case receives a new number following a change in level, the first Investigative Statement under the new case number contains language noting the prior case number and the discontinuance of that investigation. In this way, by viewing such an Investigative Statement, it is possible to identify the prior case from which the new investigation was generated. However, the reverse is not possible. In other words, the final Investigative Statement and discontinuance memo for a case that has been upgraded or downgraded provide no information by which to track the case forward into the new investigation. From the file, a reader cannot tell if the closure of a Preliminary Inquiry means that the investigation has ended or if the Preliminary Inquiry has graduated into a Full Investigation.

Rigorous oversight demands the ability to determine whether, instead of being discontinued entirely, an investigation was upgraded or downgraded, and, if so, which new case number was assigned to it. The absence of this information significantly complicates the task of auditing the number of cases that are upgraded or downgraded and, subsequently, whether the circumstances of each case merited such an action. To remedy this, NYPD should include new

[48] Guidelines, Appx B, § I.
[49] Guidelines, Appx B, § V(C)(1).

case numbers, once assigned, in the discontinuance memos for investigations which have been upgraded and downgraded. NYPD's new case tracking system may assist in this regard.

b. Policies and Procedures

Some of the policies and procedures that OIG-NYPD reviewed revealed an organized, detailed, and thoughtful approach to how various operational aspects of NYPD Intelligence Bureau investigations should be handled. The documents provided definitions and explanations of key terms, guidelines on how to complete field reports, best practices for investigators, specific guidance regarding religious institutions and political gatherings, information about training, outlines of various operational steps that must be followed, and related rules.

While these documents are encouraging, much of this written guidance is relatively new and is piecemeal. NYPD's Intelligence Bureau acknowledged that while it has, for many years, engaged in rigorous discussion regarding how investigations involving political activity should be handled, it did not reduce these findings to written guidance until recently. With the exception of a few stray emails and memos, there were few documented policies in NYPD's Intelligence Bureau before 2011.

For example, beyond the text of the Guidelines, NYPD does not have any internal written guidelines on how to assess whether particular cases meet the informational thresholds for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations. Although such guidelines would be challenging to draft in light of the dynamic and evolving nature of terrorist and related threats, law enforcement has succeeded in providing written guidance to police professionals on other standards. To ensure ongoing compliance, NYPD should establish such written guidelines. Although *Handschu* does not require NYPD's Intelligence Bureau to adopt any particular policies, there are institutional advantages to doing so. Without more comprehensive official policies, there is a risk that necessary safeguards surrounding investigations involving political activity will not be observed in a thorough and consistent manner throughout NYPD's Intelligence Bureau.

Recommendations

OIG-NYPD's recommendations are designed to strengthen NYPD's compliance with the Guidelines.

Tracking Deadlines and Securing Timely Renewals

1. **For investigations of political activity, NYPD should use a formal mechanism for tracking investigative deadlines and should ensure that, where needed, extensions are approved prior to required deadlines.** Given the percentage of Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations that continued without the appropriate documented authorization, NYPD should take greater steps to ensure that investigations are either renewed in a timely manner or closed once the investigative period has expired. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure the appropriate authorizations before the scheduled expiration of an investigation.

2. **NYPD should use a formal case tracking mechanism that identifies when investigations advance to the next investigative level.** While the level of investigation can change over time (e.g., Preliminary Inquiries can advance into Full Investigations, Terrorism Enterprise Investigations can change into Full Investigations, etc.), NYPD's system for assigning and tracking case numbers did not effectively trace the full history of the investigation. For example, a Preliminary Inquiry may escalate to a Full Investigation, but separate case numbers are assigned such that a review of the Preliminary Inquiry may not identify the subsequent Full Investigation. Case tracking terminology should more clearly capture all investigations related to the same core set of facts.

3. **For the use of confidential informants and undercover officers in investigations of political activity, NYPD should use a formal mechanism for tracking expiration deadlines and ensure that extensions are approved prior to the expiration of an authorization.** Given the percentage of instances where confidential informants and undercover officers may have been utilized on investigations without appropriate authorization, NYPD should take greater steps to ensure that the use of a human source in an investigation is either renewed in a timely manner or closed once the authorization expires. Such steps include establishing and using a more robust system to track and alert the Intelligence Bureau of upcoming deadlines, as well as better coordination to secure appropriate authorizations before the scheduled expiration of an authorization.

   With respect to Recommendations 1 and 3, NYPD's Intelligence Bureau has recently informed OIG-NYPD that in July 2016, it began using a new case tracking system that apparently allows NYPD to more efficiently and effectively track cases. This is a promising development, and OIG-NYPD looks forward to evaluating whether the new system effectively addresses the deficiencies outlined in this Report.

Memorializing Requisite Approvals for Investigations

4. **For requests to extend a Preliminary Inquiry, NYPD should ensure that Investigative Statements capture fact-specific reasons why further investigative steps are warranted.** In consideration of the justification requirement attached to extensions of Preliminary Inquiries, requests for extending Preliminary Inquiries should include specific, fact-based reasons why further investigative steps are necessary and should not be limited to boilerplate statements.

5. **For authorizations and renewals of investigations, NYPD should create controls to ensure that authorizations to renew or extend investigations properly capture the date, signature, and approval of the authorizing officials.** To avoid errors and facilitate compliance with all applicable rules and internal practices, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.

Requests to Use or Extend the Use of Confidential Informants or Undercover Officers

6. **NYPD's Human Source Authorization Form should require members of NYPD's Intelligence Bureau to specify the role of the undercover officer or confidential informant.** Consistent with the applicable rules, requests to use undercover officers and confidential informants should not be limited to boilerplate language but instead should include a specific discussion of the role of the human source in the investigation.

7. **NYPD should specify, when extending use of an undercover or confidential informant, the reason for the extension.** In consideration of the justification requirement attached to extending the use of an undercover, requests for extensions should include specific, fact-based reasons for the extension.

8. **NYPD should create controls to ensure that authorizations to use or extend the use of human sources properly capture the date, signature, and approval of the appropriate supervisor.** To avoid errors and facilitate compliance with all applicable rules, NYPD should create controls so that all written authorizations and renewals properly capture the date and the name, signature, and authorizing action of the requisite supervisor.

9. **NYPD's Human Source Authorization Form should include the number of the extension request and the date of the last extension.** Although NYPD maintains a record of each date that NYPD believes a human source extension request was approved, these records are difficult to reconcile with documentation because Human Source Authorization Forms for any given investigation are not numbered in any sequential order and do not list the previous extension date. Including this information, as it is contained in Investigative Statements, would simplify independent verification of extension dates.

Codification of Policies and Procedures

10. **NYPD should consolidate its policies and procedures for investigations involving political activity into a unified handbook.** Although NYPD's Intelligence Bureau has made important strides with documenting policies and procedures for investigations, more work is needed to codify these practices and guidelines into a single handbook that provides investigators, attorneys, analysts, and supervisors with a baseline for what is required and recommended in such investigations. Without official policies, there is a risk that necessary safeguards surrounding investigations of political activity will not be observed in a thorough and consistent manner throughout the Intelligence Bureau.

11. **NYPD should develop written guidelines concerning informational standards for Preliminary Inquiries, Full Investigations, and Terrorism Enterprise Investigations.** Appreciating that each investigation is unique and that the nature of threats and criminal activity changes over time, NYPD's Intelligence Bureau should develop written guidelines concerning the informational thresholds for each level of investigation. Having such guidelines would help ensure consistency across investigations and provide NYPD's Intelligence Bureau with a baseline for assessing facts and making determinations. Such guidelines would not be static, but would instead require updates as the nature of the threat evolves.

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APPENDIX A

Patrol Guide Procedure No. 212-72

PATROL GUIDE

Section: Command Operations	Procedure No: 212-72

GUIDELINES FOR UNIFORMED MEMBERS OF THE SERVICE CONDUCTING INVESTIGATIONS INVOLVING POLITICAL ACTIVITIES

DATE ISSUED:	DATE EFFECTIVE:	REVISION NUMBER:	PAGE:
08/01/13	08/01/13		1 of 18

PURPOSE To provide guidelines for investigations of possible unlawful or terrorist related activity that involve political activity, including the collection, analysis, processing, retention, and dissemination of information concerning persons, groups, or organizations involved in political activity.

DEFINITIONS POLITICAL ACTIVITY - The exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.

INVESTIGATION – A police activity undertaken to obtain information or evidence.

LEAD – Information submitted to or obtained or developed by the Intelligence Division concerning an ongoing investigation, or, that may be used to initiate a new investigation.

INVESTIGATIVE STATEMENT – A detailed written request submitted under this procedure to obtain approval for the initiation of a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation.

AUTHORIZING OFFICIAL – The Intelligence Division official (specifically, the Commanding Officer and the Executive Officer, Intelligence Division, and the Commanding Officer, Criminal Intelligence Section) authorized to approve requests to initiate or extend a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation.

PROCEDURE When a Lead involving possible unlawful or terrorist related activity is received from any source involving an individual, group, or organization that is engaged in political activity which requires some follow up or further investigation:

NOTE *The Handschu Consent Decree (Appendix A) and the Guidelines for Investigations Involving Political Activity (Appendix B) (together, "the Modified Handschu Guidelines," or, "the Guidelines") require that any investigation by the New York City Police Department involving political activity shall be initiated by and conducted only under the supervision of the Intelligence Division. Accordingly, members of the service shall not conduct investigations involving political activity without the express written approval of the Deputy Commissioner, Intelligence.*

MOS RECEIVING INFORMATION SUGGESTING NEED FOR INVESTIGATION INVOLVING POLITICAL ACTIVITY

1. Report information or observations concerning possible unlawful or terrorist activity involving political activity to the Intelligence Division, Criminal Intelligence Section (24 hours, 7 days a week).
   a. Include details of Lead, including information suggesting need for investigation of individual, group, or organization involved in political activity.
   b. Comply with directions of Criminal Intelligence Section, including preparation of more detailed report, if necessary.

INTELLIGENCE DIVISION CRIMINAL INTELLIGENCE SECTION

2. Accept and record Leads received.
   a. Contact reporter and conduct telephone interview to obtain additional details, if necessary.
3. Confer with Criminal Intelligence Section supervisor concerning assignment and disposition of Lead; if appropriate, refer for review as required by Lead processing procedures.

CRIMINAL INTELLIGENCE SECTION SUPERVISOR

4. Assign Lead requiring follow up by Intelligence Division to appropriate unit for Checking of Lead or other investigation.

SUPERVISOR, INTELLIGENCE DIVISION UNIT ASSIGNED

5. Supervise performance of Checking of Lead, if appropriate.
6. Submit Investigative Statement to Authorizing Official requesting approval to conduct either a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation, if the original Lead, the results of a Checking of Lead, or other information suggests the need for further investigation that involves political activity.
   a. Specify request and justification for use of undercover or confidential informant, (or other investigative technique requiring approval) as appropriate.

NOTE *The Investigative Statement will be clear and precise. The subject group, organization, or individual whose political activity is to be investigated will be clearly identified. The Investigative Statement will specify the information that forms the basis for the request for a Preliminary Inquiry, Full Investigation, or Terrorism Enterprise Investigation. In exigent circumstances, an investigation may be undertaken before an Investigative Statement has been submitted and approved. In such case, the Investigative Statement must be submitted as soon as practicable.*

AUTHORIZING OFFICIAL

7. Review request; determine whether requested investigation is warranted and in compliance with the Modified *Handschu* Guidelines.
   a. Indicate approval or disapproval of investigation and investigative technique(s) in written endorsement.
   b. Forward endorsement to Deputy Commissioner, Intelligence for final approval, if approved.

DEPUTY COMMISSIONER, INTELLIGENCE	8.	Review request, determine whether requested investigation is warranted and in compliance with these Guidelines. a. Indicate approval or disapproval of investigation and investigative technique(s) in written endorsement.
INVESTIGATIVE UNIT ASSIGNED	9.	Conduct approved investigation involving political activity according to the Constitution, the *Handschu* Consent Decree, the *Guidelines for Investigations Involving Political Activity*, and other applicable law and Department procedures.
ASSIGNED INVESTIGATOR	10.	Confer with supervisor and prepare report of investigative activity.
	11.	Submit completed report to supervisor.
SUPERVISOR, INVESTIGATIVE UNIT ASSIGNED	12.	Review report to verify that only approved investigative activity has been undertaken.
	13.	Forward completed investigator's report to Commanding Officer of Investigative Unit assigned.
COMMANDING OFFICER, INVESTIGATIVE UNIT ASSIGNED	14.	Review all reports prepared by assigned investigator and verify that the investigation was conducted in compliance with the *Guidelines.*
DEPUTY COMMISSIONER, INTELLIGENCE	15.	Periodically review the progress of approved investigations to ensure that investigations are conducted in compliance with the *Guidelines.*
	16.	Periodically advise the Police Commissioner concerning the status and outcome of investigations conducted under the *Guidelines*.

ADDITIONAL DATA *See attached Appendix A, Handschu Consent Decree, and Appendix B, Guidelines for Investigations Involving Political Activity.*

ADDITIONAL DATA (continued)

APPENDIX A

HANDSCHU CONSENT DECREE; DECISION AND GUIDELINES

1. ***PURPOSE***

Pursuant to the settlement entered into by the Police Department in the case of Handschu, et al. v. Special Services Division, et al., the Department is required to comply with certain guidelines in investigative matters as set forth herein.

2. ***BACKGROUND OF HANDSCHU, et al. v. SPECIAL SERVICES DIVISION, et al.***

Handschu was commenced in 1971. The complaint alleged that certain intelligence gathering practice and conduct of the Department infringed upon the plaintiffs' constitutional rights. Such conduct included infiltration, electronic surveillance, dossier collection, and improper dissemination of collected information. In order to resolve the issues raised in Handschu, the parties agreed to the implementation of certain guidelines which were commonly referred to as the Handschu Guidelines and which have been incorporated in the Patrol Guide since that time. Pursuant to a recent court order granting the Department's request to modify those guidelines, the following "Modified Handschu Guidelines" (including the following "Guidelines for Investigations Involving Political Activity") hereby replace the old guidelines, and are now in effect.

3. ***GUIDELINES***

I. GENERAL STATEMENT OF POLICY

Activities of the New York City Police Department in the investigation of political activity will conform to constitutionally guaranteed rights and privileges.

II. DEFINITIONS

A. Political Activity - The exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.

B. Authority - A board established pursuant to Section III of these guidelines.

C. Investigation - A police activity undertaken to obtain information or evidence.

III. AUTHORITY ESTABLISHED

There is hereby established an Authority to conduct the review of records described in paragraph IV. It shall consist of three members who shall act as a body, to wit, the Deputy Commissioner - Legal Matters of the Police Department, the Chief of Internal Affairs of the Police Department, and a civilian member appointed by the Mayor upon consultation with the Police Commissioner for a term revocable at will. The decisions of the Authority as set forth herein shall be by majority vote.

ADDITIONAL DATA (continued)

IV. REVIEW OF RECORDS TO DETERMINE COMPLIANCE

A. At any time a person or member of a group or organization, having reason to believe that such person, group, or organization has been the subject of investigation of political activity which violates constitutionally guaranteed rights and privileges, may request in writing which sufficiently identifies the requesting party that the Authority make inquiry of the appropriate investigative officer of the NYPD. If the Authority's inquiry reflects that the investigation was conducted in conformity with the Constitution, the Authority shall notify the requesting party that if an investigation was made, it was made in accordance with the Constitution.

B. If the inquiry reveals or if the Authority otherwise becomes aware that an investigation was not conducted in conformity with the Constitution with respect to the requesting party, the Authority shall proceed as follows:

(1) The Authority shall obtain all information and documents pertaining to the requesting party developed in the course of such investigation.

(2) The Authority shall conduct or cause to be conducted an inquiry into the circumstances of such investigation with respect to the requesting party.

(3) In the event the inquiry determines that such investigation with respect to the requesting party was not conducted in accordance with the Constitution, the Authority shall so notify the requesting party and submit a report to the Police Commissioner.

4. DATE OF EFFECT

Effective immediately, no members of the service shall engage in an investigation of political activity except through the Intelligence Division. Requests for such investigations should be on Typed Letterhead addressed to the Commanding Officer, Intelligence Division. Where time is of the essence the request may be by telephone (646) 805-6400 to the Criminal Intelligence Section of the Intelligence Division. In all cases, members of the service concerned shall abide by the direction of the Intelligence Division. Such investigations shall be conducted pursuant to the "Guidelines for Investigations Involving Political Activity" set forth below.

5. INTERPRETATION

Any member of the service who is uncertain whether a particular investigation constitutes an "investigation involving political activity" shall consult with the Legal Bureau.

ADDITIONAL DATA (continued)

APPENDIX B
GUIDELINES FOR INVESTIGATIONS INVOLVING POLITICAL ACTIVITY

PREAMBLE

Subsequent to the terrorist attacks on the City of New York on September 11, 2001 which resulted in the loss of thousands of lives and the total destruction of the World Trade Center complex, it became apparent that the City faces unprecedented threats to its continued safety and security. In the view of federal, state and local law enforcement agencies, the prevention of future attacks requires the development of intelligence and the investigation of potential terrorist activity before an unlawful act occurs.

As a result of a federal court order entered in 1985, the New York City Police Department was bound by guidelines, known as the Handschu Guidelines, which governed the investigation of political activity. The Handschu Guidelines (i) limited the investigation of political activity to those circumstances when there was specific information of criminal activity and (ii) established the Handschu Authority to oversee compliance.

After evaluating the impact of the Handschu Guidelines on the need to investigate terrorism in a changed world, the City made an application to modify the order so as to eliminate the restrictions contained in the Handschu Guidelines and the oversight of the Handschu Authority with respect to those restrictions. The City did not seek to eliminate the Handschu Authority's role to investigate an individual's complaint that the NYPD had engaged in unconstitutional conduct in the investigation of political activity.

The Court granted the City's application to modify the decree provided the City adopt the internal guidelines set forth below and distribute the guidelines to supervisory personnel who, in turn, were to make them known to those under their command. These guidelines shall remain in effect unless otherwise ordered by the Court.

These guidelines are binding on all members of the service who are engaged in the investigation of political activity. It is the purpose of these guidelines to enable officers to perform their duties with greater certainty, confidence and effectiveness while at the same time protecting the guarantees of the Constitution.

I. STATEMENT OF POLICY

It is the policy of the New York City Police Department that investigations involving political activity conform to the guarantees of the Constitution, that care be exercised in the conduct of those investigations so as to protect constitutional rights, and that matters investigated be confined to those supported by a legitimate law enforcement purpose.

ADDITIONAL DATA (continued)

II. GENERAL PRINCIPLES

(1) In its effort to anticipate or prevent unlawful activity, including terrorist acts, the NYPD must, at times, initiate investigations in advance of unlawful conduct. It is important that such investigations not be based solely on activities protected by the First Amendment. When, however, statements advocate unlawful activity, or indicate an apparent intent to engage in unlawful conduct, particularly acts of violence, an investigation under these guidelines may be warranted, unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

(2) Based upon the circumstances of a given case, investigative action may be required under exigent circumstances. Exigent circumstances are circumstances requiring action before authorization otherwise necessary under these guidelines can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation. When any investigative action, taken under exigent circumstances, would require an approval under ordinary conditions, such approval shall be obtained as soon as practicable in accordance with the provisions of these guidelines. Where a regular approval or request is required to be in writing, the approval or request following exigent circumstances shall also be in writing.

(3) Investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement purpose justifies their continuance.

III. APPLICABILITY

These guidelines apply only to investigations which involve political activity. They do not apply to, or limit, other activities of the NYPD in the investigation or detection of unlawful conduct, the preservation of the peace and public safety or other legitimate law enforcement activities which do not involve political activity.

IV. ROLE OF THE INTELLIGENCE DIVISION

(1) Investigation of political activity shall be initiated by, and conducted under the supervision of the Intelligence Division. Nothing in this paragraph, however, is intended to prevent any member of the service from reporting his or her observations of suspicious conduct which involves political activity to his or her commanding officer or to the Intelligence Division.

(2) The Deputy Commissioner of Intelligence shall periodically inform and advise the Police Commissioner concerning the status of any investigations conducted pursuant to these guidelines.

V. LEVELS OF INVESTIGATION

These guidelines provide for three levels of investigative activity. They are intended to provide the NYPD with the necessary flexibility to act well in advance of the commission of planned terrorist acts or other unlawful activity. However, if the

ADDITIONAL DATA (continued)

available information shows at the outset that the threshold standard for a Preliminary Inquiry or Full Investigation is satisfied, then the appropriate investigative activity may be initiated immediately, without progressing through more limited investigative stages.

A. CHECKING OF LEADS

The lowest level of investigative activity is the "prompt and extremely limited checking out of initial leads," which should be undertaken whenever information is received of such a nature that some follow-up as to the possibility of unlawful activity is warranted. This limited activity should be conducted with an eye toward promptly determining whether further investigation (either a Preliminary Inquiry or a Full Investigation) should be conducted.

B. PRELIMINARY INQUIRIES

(1) In cases where the NYPD receives information or an allegation not warranting an investigation - because there is not yet a "reasonable indication" of unlawful activity - but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads, the NYPD may initiate an "inquiry" in response to the allegation or information indicating the possibility of unlawful activity. Whether it is appropriate to open a Preliminary Inquiry immediately, or instead to engage first in a limited Checking of Leads, depends on the circumstances presented.

Example : If the NYPD receives an allegation that an individual or group has advocated the commission of violence, and no other facts are available, an appropriate first step would be Checking of Leads to determine whether the individual, group, or members of the audience have the apparent ability or intent to carry out the advocated unlawful act.

(2) The authority to conduct inquiries short of a Full Investigation allows the NYPD to respond in a measured way to ambiguous or incomplete information, with as little intrusion as the needs of the situation permit. This is especially important in such areas as where there is no complainant involved or when an allegation or information is received from a source of unknown reliability. Such inquiries are subject to the limitations on duration under paragraph (4) below and are carried out to obtain the information necessary to make an informed judgment as to whether a Full Investigation is warranted.

Example: Officers are not required to possess information relating to an individual's intended unlawful use of dangerous biological agents or toxins prior to initiating investigative activity. If an individual or group has attempted to obtain such materials, or has indicated a desire to acquire them, and the reason is not apparent, investigative action, such as conducting a Checking of Leads or initiating a Preliminary Inquiry, may be appropriate to determine whether there is a legitimate purpose for the possession of the materials by the individual or group.

A Preliminary Inquiry is not a required step when facts or circumstances reasonably indicating unlawful activity are already available. In such cases, a Full Investigation can be immediately opened.

ADDITIONAL DATA (continued)

(3) A Preliminary Inquiry may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division, or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"). The Authorizing Official must assure that the allegation or other information which warranted the inquiry has been recorded in writing. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.

(4) Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90 day periods may be granted by the Deputy Commissioner of Intelligence. Any such request for extension shall be in writing and shall include a statement of the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity. The action taken on any such request for extension shall also be recorded in writing.

(5) All lawful investigative techniques, including the use of undercover operations and the development of sources and informants may be used in an inquiry except:

- *(a) Mail openings; and,*
- *(b) Eavesdropping and Video Surveillance as those terms are defined in Article 700 of the New York State Criminal Procedure Law.*

(6) The following investigative techniques may be used in a Preliminary Inquiry without any prior authorization from a supervisor:

- *(a) Examination of NYPD indices and files;*
- *(b) Examination of records available to the public and other public sources of information;*
- *(c) Examination of available federal, state and local government records;*
- *(d) Interview of complainant, previously established informants, and other sources of information;*
- *(e) Interview of the potential subject;*
- *(f) Interview of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or coworkers unless the interviewee was the complainant; and*
- *(g) Physical, photographic or video surveillance of any person, provided that such surveillance does not require a warrant.*

The use of any other lawful investigative technique that is permitted in a Preliminary Inquiry shall meet the requirements and limitations of Part VI and, except in exigent circumstances, requires prior approval by a supervisor.

(7) Where a Preliminary Inquiry fails to disclose sufficient information to justify an investigation, the NYPD shall terminate the inquiry and make a record of the closing.

(8) All requirements regarding inquiries shall apply to reopened inquiries.

ADDITIONAL DATA (continued)

C. FULL INVESTIGATION

A Full Investigation may be initiated when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed. A Full Investigation may be conducted to prevent, solve or prosecute such unlawful activity.

(1) The standard of "reasonable indication" is substantially lower than probable cause. In determining whether there is reasonable indication of an unlawful act an investigator may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current, or future violation. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.

(*2) Where an unlawful act may be committed in the future, preparation for that act can be a current violation of the conspiracy or attempt provisions of state law. The standard for opening an investigation is satisfied where there is not yet a current substantive or preparatory unlawful act, but facts or circumstances reasonably indicate that such unlawful conduct will occur in the future.*

(3) Any lawful investigative technique may be used in a Full Investigation, subject to the requirements and limitations of Part VI hereof.

(4) Authorization and Renewal

a. A Full Investigation may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials") upon a written recommendation setting forth the facts or circumstances reasonably indicating that an unlawful act has been, is being or will be committed. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.

b. A Full Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. All requests for renewal authorization, and action thereon, shall be in writing.

c. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized.

(5) An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation. All requirements regarding investigations shall apply to reopened investigations.

ADDITIONAL DATA (continued)

D. TERRORISM ENTERPRISE INVESTIGATION

A Terrorism Enterprise Investigation is a Full Investigation but differs from a general investigation of unlawful conduct in several important respects. As a general rule, an investigation of a completed unlawful act is normally confined to determining who committed that act and securing evidence to establish the elements of the particular offense. It is, in this respect, self-defining. A Terrorism Enterprise Investigation must determine the identity and nature of the individual, group, or organization involved, its geographic dimensions, its past acts and intended goals, including unlawful goals, and its capacity for harm, among other factors. While a standard investigation of unlawful conduct terminates with the decision to prosecute or not to prosecute, a Terrorism Enterprise Investigation does not necessarily end, even though one or more of the participants may have been prosecuted.

In addition, groups and organizations provide a life and continuity of operation not normally found in other types of unlawful activity. As a consequence, these investigations may continue for several years. Furthermore, the focus of such investigations may be less precise than that directed against more conventional types of unlawful conduct. Unlike the usual case involving unlawful conduct, there may be no completed offense to provide a framework for the investigation. It often requires the fitting together of bits and pieces of information, many meaningless by themselves, to determine whether a pattern of unlawful activity exists. For this reason, such investigations are broader and less discriminate than usual, involving the interrelation of various sources and types of information.

This section focuses on investigations of enterprises that seek to further political or social goals through activities that involve force or violence, or that otherwise aim to engage in terrorism or terrorism-related crimes. It authorizes investigations to determine the structure and scope of the enterprise as well as the relationship of the members.

1. General Authority

a. A Terrorism Enterprise Investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts; (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or (iii) committing any offense described in N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, or 490.35, or other related statutes currently in effect or subsequently enacted. The standard of "reasonable indication" is identical to that governing Full Investigations generally. In determining whether an investigation should be conducted, the NYPD shall consider all of the circumstances including: (i) the magnitude of the threatened harm; (ii) the likelihood that it will occur; (iii) the immediacy of the threat; and (iv) any danger to privacy or free expression posed by an investigation. In practical terms, the "reasonable indication" standard for opening a Terrorism Enterprise Investigation could be satisfied in a number of ways.

Example: Direct information about statements made in furtherance of an enterprise's objectives which show a purpose of committing crimes described in N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35 or other related statutes currently in effect or subsequently enacted, would satisfy the threshold.

ADDITIONAL DATA (continued)

Example: Activities such as attempting to obtain dangerous biological agents, toxic chemicals, or nuclear materials, or stockpiling explosives or weapons, with no discernible lawful purpose, may be sufficient to reasonably indicate that an enterprise aims to engage in terrorism.

b. While no particular factor or combination of factors is required, considerations that will generally be relevant to the determination whether the threshold standard for a Terrorism Enterprise Investigation is satisfied include, as noted, a group's statements, its activities, and the nature of potential unlawful acts suggested by the statements or activities. Thus, where there are grounds for inquiry concerning a group, it may be helpful to gather information about these matters, and then to consider whether these factors, either individually or in combination, reasonably indicate that the group is pursuing terrorist activities or objectives as defined in the threshold standard. Findings that would weigh in favor of such a conclusion include, for example, the following:

(1) <u>Threats or advocacy of violence or other covered unlawful acts</u>. Statements are made in relation to or in furtherance of an enterprise's political or social objectives that threaten or advocate the use of force or violence, or statements are made in furtherance of an enterprise that otherwise threaten or advocate unlawful conduct within the scope of N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35, or other related statutes currently in effect or subsequently enacted which may concern such matters as (e.g.):

- *(i) engaging in attacks involving or threatening massive loss of life or injury, mass destruction, or endangerment of the national security;*
- *(ii) killing or injuring public officials, or destroying public facilities, or defying lawful authority;*
- *(iii) killing, injuring or intimidating individuals because of their status as United States nationals or persons, or because of their national origin, race, color, religion or sex; or*
- *(iv) depriving individuals of any rights secured by the Constitution or laws of the United States or the State of New York.*

(2) <u>Apparent ability or intent to carry out violence or other covered activities.</u> The enterprise manifests an apparent ability or intent to carry out violence or other activities within the scope of N.Y. Penal Law §§ 490.10, 490.15, 490.20, 490.25, 490.30, 490.35 or other related statutes currently in effect or subsequently enacted, <u>e.g.</u>:

- *(i) by acquiring or taking steps towards acquiring, biological agents or toxins, toxic chemicals or their precursors, radiological or nuclear materials, explosives or other destructive or dangerous material (or plans or formulas for such materials), or weapons, under circumstances where, by reason of the quantity or character of the items, the lawful purpose of the acquisition is not apparent;*
- *(ii) by the creation, maintenance, or support of an armed paramilitary organization;*
- *(iii) by paramilitary training; or*

ADDITIONAL DATA (continued)

(iv) by other conduct demonstrating an apparent ability or intent to injure or intimidate individuals, or to interfere with the exercise of their constitutional or statutory rights.

(3) Potential Unlawful Act. The group's statements or activities suggest potential unlawful acts that may be relevant in applying the standard for initiating a Terrorism Enterprise Investigation - such as crimes under the provisions of the N.Y. Penal Law that set forth specially defined terrorism or support of terrorism offenses, or that relate to such matters as aircraft hijacking or destruction, attacks on transportation, communications, or energy facilities or systems, biological or chemical weapons, nuclear or radiological materials, assassinations or other violence against public officials or facilities, or explosives.

c. Mere speculation that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this Subpart. But where facts or circumstances reasonably indicate that an individual or group has engaged or aims to engage in conduct described in paragraph 1.a. above in a demonstration, an investigation may be initiated in conformity with the standards of that paragraph. This does not limit the collection of information about public demonstrations by individuals or groups that are under active investigation pursuant to paragraph 1.a. above or any other provisions of these guidelines.

2. Purpose

The immediate purpose of a Terrorism Enterprise Investigation is to obtain information concerning the nature and structure of the enterprise as specifically delineated in paragraph (3) below, with a view to the longer range objectives of detection, prevention, and prosecution of the unlawful activities of the enterprise.

3. Scope

a. A Terrorism Enterprise Investigation initiated under these guidelines may collect such information as:

(i) the identity and nature of an individual or group and its members, their associates, and other persons likely to be acting in furtherance of its unlawful objectives, provided that the information concerns such persons' activities on behalf of or in furtherance of the suspected unlawful activity of the individual, group, or organization;

(ii) the finances of the individual, group, or organization;

(iii) the geographical dimensions of the individual, group, or organization; and

(iv) past and future activities and goals of the individual, group, or organization.

b. In obtaining the foregoing information, any lawful investigative technique may be used in accordance with the requirements of these guidelines.

ADDITIONAL DATA (continued)

*4. **Authorization and Renewal***

a. A Terrorism Enterprise Investigation may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"), upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise as described in paragraph 1.a. above. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence. When exigent circumstances exist, as described in these guidelines, a Terrorism Enterprise Investigation may be commenced upon the verbal authorization of an Authorizing Official. However, in such cases, the required written recommendation must be submitted as soon as practicable.

b. A Terrorism Enterprise Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. The request for renewal and action thereon shall be in writing.

c. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized. In some cases, the enterprise may meet the threshold standard but be temporarily inactive in the sense that it has not engaged in recent acts of violence or other unlawful activities as described in 1.a., nor is there any immediate threat of harm - yet the composition, goals and prior history of the group suggest the need for continuing law enforcement interest. The investigation may be continued in such cases with whatever scope is warranted in light of these considerations.

d. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

VI. INVESTIGATIVE TECHNIQUES

(1) When conducting investigations under these guidelines, the NYPD may use any lawful investigative technique permitted by these guidelines. The choice of investigative techniques is a matter of judgment, which should take account of:

- *(i) the objectives of the investigation and available investigative resources;*
- *(ii) the intrusiveness of a technique, considering such factors as the effect on the privacy of individuals and potential damage to reputation;*
- *(iii) the seriousness of the unlawful act; and*
- *(iv) the strength of the information indicating its existence or future commission of the unlawful act.*

(2) Where the conduct of an investigation presents a choice between the use of more or less intrusive methods, the NYPD should consider whether the information could be obtained in a timely and effective way by the less intrusive means. The NYPD should not hesitate to use any lawful techniques consistent with these guidelines in an investigation, even if intrusive, where the intrusiveness is warranted in light of the

ADDITIONAL DATA (continued)

seriousness of the crime or the strength of the information indicating its existence or future commission. This point is to be particularly observed in investigations relating to terrorist activities.

(3) Authorized methods in investigations include, among others, use of confidential informants, undercover activities and operations, eavesdropping and video surveillance (as defined in Article 700 of the NY Criminal Procedure Law), pen registers and trap and trace devices, consensual electronic monitoring, and searches and seizures.

a. <u>Undercover Operations</u>

(i) Undercover operations, including confidential informants, may be used when such operations are the most effective means of obtaining information, taking into account all the circumstances of the investigation, including the need for the information and the seriousness of the threat. The use of undercovers and confidential informants must be authorized by the Deputy Commissioner of the Intelligence Division prior to commencement of the undercover operation. The request to use undercovers or confidential informants and action taken on the request must be in writing and must include a description of the facts on which the investigation is based and the role of the undercover.

(ii) The use of an undercover or confidential informant will be approved for a period of 120 days and may be extended for additional periods of 120 days with the approval of the Deputy Commissioner of the Intelligence Division. Such extensions may be approved for as long as the investigation continues and the use of the undercover is the most effective means of obtaining information. The request to extend the use of undercovers and action taken on the request must be in writing and must include the reason for the extension.

(iii) Undercovers are strictly prohibited from engaging in any conduct the sole purpose of which is to disrupt the lawful exercise of political activity, from instigating unlawful acts or engaging in unlawful or unauthorized investigative activities.

b. <u>Eavesdropping and Video Surveillance (as defined in Article 700 of the NY Criminal Procedure Law), Pen Registers and Trap and Trace Devices, and Consensual Electronic Monitoring</u>

(i) All requirements for the use of such methods under the Constitution, applicable statutes, and NYPD regulations or policies must be observed.

(4) Whenever an individual is known to be represented by counsel in a particular matter, the NYPD shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel.

ADDITIONAL DATA (continued)

VII. DISSEMINATION AND MAINTENANCE OF INFORMATION

A. Dissemination

The NYPD may disseminate information obtained during the Checking of Leads, Preliminary Inquiries and investigations conducted pursuant to these guidelines to federal, state or local law enforcement agencies, or local criminal justice agencies when such information:

- *(i) falls within the investigative or protective jurisdiction or litigative responsibility of the agency;*
- *(ii) may assist in preventing an unlawful act or the use of violence or any other conduct dangerous to human life;*
- *(iii) is required to be disseminated by interagency agreement, statute, or other law.*

B. Maintenance

All documentation required under these Guidelines shall be maintained by the Intelligence Division in accordance with general police department practice and applicable municipal record retention and destruction rules, regulations and procedures. Under these rules and practices documents are retained for no less than five years.

VIII. COUNTERTERRORISM ACTIVITIES AND OTHER AUTHORIZATIONS

In order to carry out its mission of preventing the commission of terrorist acts in or affecting the City of New York and the United States and its people, the NYPD must proactively draw on available sources of information to identify terrorist threats and activities. It cannot be content to wait for leads to come in through the actions of others, but rather must be vigilant in detecting terrorist activities to the full extent permitted by law, with an eye towards early intervention and prevention of acts of terrorism before they occur. This Part accordingly identifies a number of authorized activities which further this end, and which can be carried out even in the absence of a checking of leads, Preliminary Inquiry, or Full Investigation as described in these guidelines. The authorizations include both activities that are specifically focused on terrorism and activities that are useful for law enforcement purposes in both terrorism and non-terrorism contexts. The authorized law enforcement activities of the NYPD include carrying out and retaining information resulting from the following activities.

A. COUNTERTERRORISM ACTIVITIES

1. Information Systems

The NYPD is authorized to operate and participate in identification, tracking, and information systems for the purpose of identifying and locating potential terrorists and supporters of terrorist activity, assessing and responding to terrorist risks and threats, or otherwise detecting, prosecuting, or preventing terrorist activities. Systems within the scope of this paragraph may draw on and retain pertinent information from any source permitted by law, including information derived from past or ongoing

ADDITIONAL DATA (continued)

investigative activities; other information collected or provided by governmental entities, such as foreign intelligence information and lookout list information; publicly available information, whether obtained directly or through services or resources (whether nonprofit or commercial) that compile or analyze such information; and information voluntarily provided by private entities. Any such system operated by the NYPD shall be reviewed periodically for compliance with all applicable statutory provisions and Department regulations and policies.

2. Visiting Public Places and Events

For the purpose of detecting or preventing terrorist activities, the NYPD is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential unlawful or terrorist activity.

B. OTHER AUTHORIZATIONS

1. General Topical Research

The NYPD is authorized to carry out general topical research, including conducting online searches and accessing online sites and forums as part of such research on the same terms and conditions as members of the public generally. "General topical research" under this paragraph means research concerning subject areas that are relevant for the purpose of facilitating or supporting the discharge of investigative responsibilities. It does not include online searches for information by individuals' names or other individual identifiers, except where such searches are incidental to topical research, such as searching to locate writings on a topic by searching under the names of authors who write on the topic, or searching by the name of a party to a case in conducting legal research.

2. Use of Online Resources Generally

For the purpose of developing intelligence information to detect or prevent terrorism or other unlawful activities, the NYPD is authorized to conduct online search activity and to access online sites and forums on the same terms and conditions as members of the public generally.

3. Reports and Assessments

The NYPD is authorized to prepare general reports and assessments concerning terrorism or other unlawful activities for purposes of strategic or operational planning or in support of other legitimate law enforcement activities.

IX. <u>PROTECTION OF PRIVACY AND OTHER LIMITATIONS</u>

A. General Limitations

The law enforcement activities authorized by this Part do not include maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States. Rather, all such law enforcement activities

ADDITIONAL DATA (continued)

must have a valid law enforcement purpose and must be carried out in conformity with all applicable statutes and Department regulations and policies.

B. Construction of Part

This Part does not limit any activities authorized by or carried out under other Parts of these guidelines. The specification of authorized law enforcement activities under this Part is not exhaustive, and does not limit other authorized law enforcement activities of the NYPD.

X. RESERVATION

Nothing in these guidelines shall limit the general reviews or audits of papers, files, contracts, or other records in the possession of the NYPD or City of New York, or the performance of similar services at the specific request of another government agency. Such reviews, audits, or similar services must be for the purpose of detecting or preventing violations of law which are within the investigative responsibility of the NYPD.

Nothing in these guidelines is intended to limit the NYPD's responsibilities to investigate certain applicants and employees, or to pursue efforts to satisfy any other of its legal rights, privileges, or obligations.

These guidelines are set forth solely for the purpose of internal NYPD guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitation on otherwise lawful investigative and litigative prerogatives of the NYPD or City of New York.

RELATED PROCEDURES

Citywide Intelligence Reporting System (P.G 212-12)
Communications Between the Intelligence Division and Units in the Field Regarding Suspected Terrorist Activity (P.G. 212-110)
Guidelines for the Use of Video/Photographic Equipment by Operational Personnel at Demonstrations (P.G. 212-71)

APPENDIX B

Review Criteria and Patrol Guide Procedures

Review Criteria and Patrol Guide Procedures

Criteria	Level of Investigation	Patrol Guide Section	Patrol Guide Language
Authorization to Open Investigation	Preliminary Inquiry	PG §212-72 Appx. V.B.(3)	A Preliminary Inquiry may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division, or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"). The Authorizing Official must assure that the allegation or other information which warranted the inquiry has been recorded in writing. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.
Authorization to Open Investigation	Full Investigation	PG §212-72 Appx.B V.C.(4).a	A Full Investigation may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials") upon a written recommendation setting forth the facts or circumstances reasonably indicating that an unlawful act has been, is being or will be committed. Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence.
Authorization to Open Investigation	Terrorism Enterprise Investigation	PG §212-72 Appx.B V.D.4.a	A Terrorism Enterprise Investigation may be authorized by the Commanding Officer or Executive Officer of the Intelligence Division or the Commanding Officer of the Criminal Intelligence Section ("the Authorizing Officials"), upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise ... Upon such authorization a notification must be made for final approval by the Deputy Commissioner of Intelligence. When exigent circumstances exist, as described in these guidelines, a Terrorism Enterprise Investigation may be commenced upon the verbal authorization of an Authorizing Official. However, in such cases, the required written recommendation must be submitted as soon as practicable.
Informational Threshold	Preliminary Inquiry	PG §212-72 Appx.B V.B.(1)	In cases where the NYPD receives information or an allegation not warranting an investigation - because there is not yet a "reasonable indication" of unlawful activity - but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads, the NYPD may initiate an "inquiry" in response to the allegation or information indicating the possibility of unlawful activity.
Informational Threshold	Full Investigation	PG §212-72 Appx.B V.C.	A Full Investigation may be initiated when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed.

Informational Threshold	Terrorism Enterprise Investigation	PG §212-72 Appx.B V.D.(1)a.	A Terrorism Enterprise Investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of (i) furthering political or social goals wholly or in part through activities that involve force, violence or other unlawful acts; (ii) engaging in terrorism as defined in N.Y. Penal Law § 490.05, or (iii) committing any offense described in [specific sections of the penal code]
Extension / Renewal of Investigation	Preliminary Inquiry	PG §212-72 Appx.B V.B.(4)	Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90 day periods may be granted by the Deputy Commissioner of Intelligence. Any such request for extension shall be in writing and shall include a statement of the reasons why further investigative steps are warranted when there is no reasonable indication of unlawful activity. The action taken on any such request for extension shall also be recorded in writing.
Extension / Renewal of Investigation	Full Investigation	PG §212-72 Appx.B V.C.(4).b, c	A Full Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. All requests for renewal authorization, and action thereon, shall be in writing. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized.
Extension / Renewal of Investigation	Terrorism Enterprise Investigation	PG §212-72 Appx.B V.D.(4).b, c	A Terrorism Enterprise Investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the Deputy Commissioner of Intelligence. The request for renewal and action thereon shall be in writing. Authorizations shall be reviewed by an Authorizing Official before the expiration of the period for which the investigation and each renewal thereof is authorized.

Discontinuance	Preliminary Inquiry	PG §212-72 Appx.B V.B.(7)	Where a Preliminary Inquiry fails to disclose sufficient information to justify an investigation, the NYPD shall terminate the inquiry and make a record of the closing.*
Use of Undercover Members of NYPD or Confidential Informants - Authorization	All Investigations	PG §212-72 Appx.B VI.(3).a.(i)	The use of undercovers and confidential informants must be authorized by the Deputy Commissioner of the Intelligence Division prior to commencement of the undercover operation. The request to use undercovers or confidential informants and action taken on the request must be in writing and must include a description of the facts on which the investigation is based and the role of the undercover.
Use of Undercover Members of NYPD or Confidential Informants - Extension	All Investigations	PG §212-72 Appx. VI.(3).a.(ii)	The use of an undercover or confidential informant will be approved for a period of 120 days and may be extended for additional periods of 120 days with the approval of the Deputy Commissioner of the Intelligence Division. Such extensions may be approved for as long as the investigation continues and the use of the undercover is the most effective means of obtaining information. The request to extend the use of undercovers and action taken on the request must be in writing and must include the reason for the extension.

* There are no Patrol Guide provisions that pertain to the discontinuance of Full Investigations or Terrorism Enterprise Investigations, though NYPD's Intelligence Bureau, in practice, files a Discontinuance Memo at the conclusion of all investigations.

APPENDIX C

Review Criteria for Authorizations and Dates

Authorizations and Extensions – Time Limits and Approvals

Question under Consideration	Document(s) Reviewed	Metrics	Associated Patrol Guide Section(s)
Was the authorization of the investigation properly documented?	Investigative Statements; Authorization Forms	• Presence of allegation or other information warranting the inquiry in the Investigative Statement; • Presence of Authorization Form; • Presence of Authorizing Official signature; • Presence of Deputy Commissioner of Intelligence signature; • Recorded date of Authorizing Official signature; • Recorded date of Deputy Commissioner of Intelligence signature; • Presence of checkmark indicating approval or disapproval of Authorizing Official; • Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.	PG §212-72 V.B.(3); PG212-72 V.C.(4).a; PG212-72 V.D.4.a
Was the authorization of the extension of the investigation properly documented?	Investigative Statements; Authorization Forms	• Presence of Authorization Form; • Presence of Deputy Commissioner of Intelligence signature; • Date of Deputy Commissioner of Intelligence signature within designated time frame; • Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.	PG §212-72 V.B.(4); PG212-72 V.C.(4).b; PG212-72 V.C.(4).c; PG212-72 V.D.4.b; PG212-72 V.D.4.c
Was the authorization of the use of a human source properly documented?	Human Source Memos; Authorization Forms	• Presence of Human Source Authorization Memo; • Presence of Authorization Form; • Presence of Deputy Commissioner of Intelligence signature; • Recorded date of Deputy Commissioner of Intelligence signature; • Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.	PG §212-72 VI.(3).a.(i)

Was the authorization of the extension of the use of a human source properly documented?	Human Source Authorization Memos; Authorization Forms	• Presence of Authorization form; • Presence of Deputy Commissioner of Intelligence signature; • Date of Deputy Commissioner of Intelligence signature within designated time frame; • Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.	PG §212-72 VI.(3).a.(ii)
Was the discontinuance of the Preliminary Inquiry properly documented?	Discontinuance Memos; Authorization Forms	• Presence of Discontinuance Memo; • Presence of Authorization Form; • Presence of Authorizing Official signature; • Presence of Deputy Commissioner of Intelligence signature; • Recorded date of Authorizing Official signature; • Recorded date of Deputy Commissioner of Intelligence signature; • Presence of checkmark indicating approval or disapproval of Authorizing Official; • Presence of checkmark indicating approval or disapproval of Deputy Commissioner of Intelligence.	PG §212-72 V.B.(7)