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November 30, 2007

The Honorable Robert C. Byrd
Chairman
The Honorable Thad Cochran
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
United States Senate

The Honorable David Price
Chairman
The Honorable Harold Rogers
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
House of Representatives

Subject: Transportation Security Administration's Processes for Designating and Releasing Sensitive Security Information

Since the September 11, 2001, terrorist attacks, federal agencies have faced the challenge of protecting sensitive information from terrorists and others without a need to know while sharing this information with parties who are determined to have such a need. One form of protection involves identifying and marking such information sensitive but unclassified—information that is generally restricted from public disclosure but not designated as classified national security information.

As part of post-September 11 efforts to better share information critical to homeland protection, sensitive but unclassified information has undergone scrutiny by Congress and GAO. In March 2006, we reported results from our survey of 26 federal agencies, from which we found that most of the agencies lacked policies and procedures for designating and releasing sensitive but unclassified information. As a result, we recommended governmentwide implementation of (1) guidance for determining what information should be protected with sensitive but unclassified designations, (2) provisions for training on making designations and for controlling and sharing information with other entities, and (3) a review process to determine how well the program is working.¹

¹ GAO, *Information Sharing: The Federal Government Needs to Establish Policies and Processes for Sharing Terrorism-related and Sensitive but Unclassified Information*, [GAO-06-385](#) (Washington, D.C.: Mar. 17, 2006).

The Department of Homeland Security's (DHS) Transportation Security Administration (TSA) requires that certain information be protected from public disclosure as part of its responsibility for securing all modes of transportation. TSA, through its authority to protect information as sensitive security information (SSI), prohibits the public disclosure of information obtained or developed in the conduct of security activities that, for example, would be detrimental to transportation security. According to TSA, SSI may be generated by TSA, other DHS agencies, airports, aircraft operators, and other regulated parties when they, for example, establish or implement security programs or create documentation to address security requirements.

In February 2005, TSA established its SSI office to develop and implement TSA policies concerning the handling, training, and protection of such information. Through this office, TSA has established regulations that allow for the sharing of SSI with covered persons having a need to know—including airport and aircraft operators, foreign vessel owners, and TSA employees.² If, however, persons who do not otherwise have a need to know request access to SSI, TSA may share or release such information if it determines the information no longer requires protection as SSI. Also, in the course of a civil proceeding, a requesting party or the party's attorney may be granted access to SSI after being cleared through a background check. This is permissible if the party has established that it has a substantial need for relevant SSI and that it is unable, without undue hardship, to obtain the substantial equivalent by other means. Furthermore, TSA or the judge in the civil proceeding must determine that the sensitivity of the information at issue does not present a risk of harm to the nation.

Congress has had ongoing interest in whether TSA is consistently and appropriately designating information as SSI and balancing the trade-off between the need to protect SSI and the need to provide useful information to the public. Section 525 of the DHS Appropriations Act, 2007 (Public Law 109-295), required the Secretary of DHS to revise Management Directive (MD) 11056, which establishes DHS policy regarding the recognition, identification, and safeguarding of SSI, to (1) review requests to publicly release SSI in a timely manner and establish criteria for the release of information that no longer requires safeguarding; (2) release certain SSI that is 3 years old, upon request, unless it is determined the information must remain SSI or is otherwise exempt from disclosure under applicable law; and (3) provide common and extensive examples of the 16 categories of SSI (see app. I for a list of the categories) to minimize and standardize judgment by persons identifying information as SSI.³ The law further prescribed steps that must be taken during the course of a civil proceeding in the U.S. District Courts to provide a party with access to relevant SSI. This provision also required us to report to the Committees on Appropriations of the Senate and House of Representatives on DHS's progress and procedures in implementing these requirements not later than 1 year from the date of the law's enactment (October 4, 2006).

In addition to answering this mandate, we are following up on a June 2005 report in which we recommended that DHS direct the Administrator of TSA to establish (1) guidance and procedures for using TSA regulations to determine what constitutes SSI, (2) responsibility for the identification and determination of SSI, (3) policies and procedures within TSA for

² "Covered person" is defined at 49 C.F.R. § 1520.7 and includes persons permanently or temporarily assigned, attached, or detailed to, employed by, or under contract with DHS. Section 1520.11 establishes the circumstances under which a person has a need to know SSI, such as when a person requires access to specific SSI to carry out transportation security activities approved, accepted, funded, recommended, or directed by DHS or the Department of Transportation.

³ See Pub. L. No. 109-295, § 525, 120 Stat. 1355, 1381-82 (2006).

providing training to those making SSI determinations, and (4) internal controls⁴ that define responsibilities for monitoring compliance with SSI regulations, policies, and procedures and communicate these responsibilities throughout TSA.⁵

To respond to the mandate and update the status of all four of our recommendations, we assessed DHS's

- status in establishing criteria and examples for identifying SSI;
- efforts in providing training to those that identify and designate SSI;
- processes for responding to requests to release SSI, including the legislative mandate to review various types of requests to release SSI; and
- efforts in establishing internal controls that define responsibilities for monitoring SSI policies and procedures.

To address these objectives, we reviewed applicable DHS management directives, policies and procedures, and other related documents, and interviewed TSA and DHS officials involved in, the SSI designation, training, document review, and oversight processes. While our review focused on the policies and procedures developed by TSA, we also interviewed officials involved in the SSI designation, training, document review, and oversight processes for four other DHS components to better understand the use of SSI throughout DHS. We compared the internal controls in place with the standards for internal control in the federal government to determine whether TSA's internal controls are designed to provide reasonable assurance that monitoring exists to help ensure compliance with SSI regulations, policies, and procedures.⁶ We also used as criteria GAO-developed core characteristics of a strategic training program to assess whether TSA has created and implemented the training necessary for staff to make SSI determinations.⁷ We determined that the data were sufficiently reliable for the purposes of our review. We based our decision on an assessment of existing documentation on program operations and interviews with knowledgeable officials about the source of the data and TSA's policies and procedures for collecting and maintaining the data.

On October 4, 2007, we provided a copy of our briefing slides to your staff. This report conveys the information that was provided in these slides (see app. I).

We conducted our work from May 2007 through October 2007 in accordance with generally accepted government auditing standards.

⁴ Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are achieved: (1) effectiveness and efficiency of operations, (2) reliability of financial reporting, and (3) compliance with applicable laws and regulations.

⁵ See [GAO-05-677](#), *Transportation Security Administration: Clear Policies and Oversight Needed for Sensitive Security Information* (Washington, D.C.: June 29, 2005).

⁶ GAO, *Standards for Internal Control in the Federal Government*, [GAO/AIMD-00-21.3.1](#) (Washington, D.C.: November 1999).

⁷ GAO, *A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, [GAO-04-546G](#) (Washington, D.C.: March 2004).

Results

DHS, primarily through TSA's SSI Office, has addressed all of the legislative mandates from the DHS Appropriations Act, 2007, and taken actions to satisfy all of the recommendations from our June 2005 report.

DHS revised its MD to address the need for updating SSI guidance, and TSA has established more extensive SSI criteria and examples that respond to requirements in the DHS Appropriations Act, 2007, and our 2005 recommendation that TSA establish guidance and procedures for using TSA regulations to determine what constitutes SSI. Further, TSA has documented the criteria and examples in various publications to serve as guidance for identifying and designating SSI. TSA has also shared its documentation of the criteria and examples with other DHS agencies. For example, the U.S. Coast Guard and U.S. Customs and Border Protection either have developed or are in the process of developing their own SSI examples to correspond with the types of SSI that their agencies encounter. Additionally, officials we interviewed from other DHS components have recognized opportunities to adapt TSA's criteria to their offices' unique needs. Furthermore, TSA has appointed SSI coordinators at all program offices to, among other things, implement SSI determination policy. This action responds to our 2005 recommendation that TSA establish responsibility for identifying and determining SSI.

TSA's SSI Office is in the process of providing SSI training to all of TSA's employees and contractors in accordance with its recently established policies and procedures, an action that responds to our 2005 recommendation. The office uses a "train the trainer" program in which it instructs SSI program managers and coordinators who are then expected to train appropriate staff in their respective agencies and programs. Several aspects of the SSI training program that we evaluated are consistent with GAO-identified components of a strategic training program. TSA has taken actions to incorporate stakeholder feedback and establish policies to collect data to evaluate its training program and foster a culture of continuous improvement. For example, the SSI Office assesses the accuracy of the designations made by various DHS agencies and contacts the agencies, when necessary, to correct any problems. Additionally, TSA has taken action to coordinate training activities within and among DHS agencies. For instance, the SSI Office shares its guidance with other DHS components so that program managers can create customized training programs that will meet the needs of their staff.

Consistent with the legislative mandate, DHS has taken actions to update its processes to respond to requests to release SSI. Specifically, DHS revised MD 11056 in accordance with the DHS Appropriations Act, 2007, to incorporate a provision that all requests to publicly release SSI will be reviewed in a timely manner, including SSI that is at least 3 years old. Between February 2006 and January 2007, the SSI Office received 490 requests to review records pertaining to the release of SSI, the majority of which came from government entities (62 percent). The SSI Office worked with the requesting government entity to agree upon a time frame for processing the request. Within the same 12-month period, 30 percent of requests were initiated by the public under the Freedom of Information Act (FOIA).⁸ The SSI Office has established a process for reviewing information requested through the FOIA process in 5 days, unless the information consists of more than 100 pages. The remaining 8 percent of requests within the 12-month period came from individuals in connection with litigation, including civil proceedings within the U.S. District Courts. According to TSA,

⁸ The Freedom of Information Act is the primary process for releasing information to (and for withholding information from) information to the public, as appropriate. See 5 U.S.C. § 552. SSI, by statute, is exempt from disclosure under FOIA.

parties have sought SSI in nine civil proceedings since the enactment of the DHS Appropriations Act, 2007, in October 2006. In one such proceeding, the litigant requested that TSA make a final determination on the request for access to SSI. TSA, in accordance with the law, made a final determination in which it released some of the requested SSI but withheld other SSI because of the sensitivity of the information or because it was not relevant to the litigation. TSA's SSI Office stated that all information that is at least 3 years old that does not warrant continued protection as SSI is released upon request. The SSI Office uses a controlled access database to document the completion of its steps in reviewing requests to release SSI, which serves as a quality control mechanism.

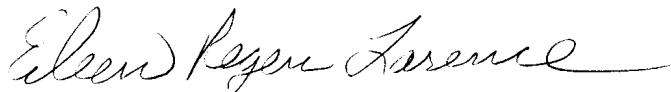
The internal controls that TSA designed for SSI are consistent with governmentwide requirements and respond to our 2005 recommendation. For example, standards for internal controls in the federal government state that areas of authority and responsibility be clearly defined by a supportive management structure and that controls be in place to ensure that management's directives are carried out. The revised DHS MD 11056 outlined areas of authority for the monitoring of and compliance with SSI policy. Further, the MD established managers and coordinators within DHS agencies and programs, respectively, to communicate SSI responsibilities to DHS staff. Standards for internal controls in the federal government also call for monitoring activities to assess the quality of program performance over time and ensure that problems raised during quality reviews are promptly resolved. TSA program managers and coordinators are required to periodically complete self-inspections on the use of SSI for their respective office or agency.

Agency Comments

We provided a draft of this report to DHS for review and comment. DHS did not submit any formal comments. However, TSA provided technical comments and clarifications, which we incorporated, as appropriate.

We are sending copies of this report to other interested congressional committees and to the Secretary of the Department of Homeland Security and the Administrator of the Transportation Security Administration. We will also make copies available to others upon request. In addition, the report will be available at no charge on GAO's Web site at <http://www.gao.gov>.


If you or your staff have any questions concerning this report, please contact me at (202) 512-6510 or by e-mail at Larencee@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report were Glenn Davis, Assistant Director; Brian Sklar; Nicole Harris; Thomas Lombardi; Katherine Davis; Carolyn Ikeda; and Michele Fejfar.



Eileen R. Larence, Director
Homeland Security and
Justice Issues

Enclosure


Information for Congressional Committees



Transportation Security Administration's (TSA) Processes for Designating and Releasing Sensitive Security Information (SSI)

Briefing to the Appropriations Committees October 4, 2007

1



Introduction

- After the terrorist attacks of September 11, 2001, the Aviation and Transportation Security Act (ATSA) was enacted on November 19, 2001, with the primary goal of strengthening the security of the nation's aviation system;
- ATSA created TSA as the agency responsible for the security of all modes of transportation and extended most civil aviation security responsibilities, including authority to designate Sensitive Security Information, from the Federal Aviation Administration (FAA) to TSA; and
- TSA's SSI authority is codified at 49 U.S.C. § 114(s) and its SSI regulations are codified at 49 C.F.R. part 1520.

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Introduction

- SSI constitutes one category of “Sensitive but Unclassified” (SBU) information – information generally restricted from public disclosure but that is not classified national security information.
 - SSI is an SBU category specifically required by statute (other examples include Protected Critical Infrastructure Information and Privacy Act information).
 - Categories of SBU information not specifically mandated by statute include For Official Use Only and Law Enforcement Sensitive Information.
- The Freedom of Information Act (FOIA) is the primary process for releasing information to (and for withholding information from) the public, as appropriate. See 5 U.S.C. § 552. SSI, by statute, is exempt from disclosure under FOIA.

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Introduction

- TSA, through its SSI authority, prohibits the public disclosure of information obtained or developed in the conduct of security activities that would be detrimental to transportation security.
- According to TSA, SSI is generated by TSA, other DHS agencies, airports, aircraft operators, and other regulated parties, when they are establishing or implementing security programs or documentation to address security requirements.
- SSI regulations allow for the sharing of SSI with covered persons having a need to know—including airport operators, aircraft operators, foreign vessel owners, TSA employees, and other persons.¹
- According to TSA, safeguarding information as SSI allows controlled information sharing with covered persons to meet TSA’s mission to protect the nation’s transportation systems.

¹ “Covered person” is defined at 49 C.F.R. § 1520.7 and includes persons permanently or temporarily assigned, attached, or detailed to, employed by, or under contract with DHS. Section 1520.11 establishes the circumstances under which a person has a need to know SSI, such as when a person requires access to specific SSI to carry out transportation security activities approved, accepted, funded, recommended, or directed by DHS or the Department of Transportation. 4

Introduction

TSA's SSI Office:

- Was established in February 2005 to develop and implement TSA policies concerning SSI handling, training, and protection.
 - Provides guidance and training to other DHS agencies that use SSI, such as U.S. Customs and Border Protection, and serves as the Chair of the SSI Oversight Committee, which meets monthly to share SSI guidance and best practices.
 - Reviews requests for SSI, including FOIA requests that might contain SSI.
 - Is not responsible for ensuring the appropriate use of SSI markings by other DHS agencies. The exception to this rule occurs when the SSI Office is asked by other agencies to assist in responding to a request to release SSI. In such cases, the SSI Office reviews the information and provides a determination to the other agency as to whether the information has been appropriately marked as SSI.
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Introduction

- There is ongoing congressional interest in whether TSA is applying the SSI criteria consistently and appropriately and balancing the trade-off between the need to protect SSI and the need to provide useful information to the public.
 - One example of an instance is when an individual might seek SSI in connection with a civil proceeding in a U.S. District Court. TSA will make an initial determination on whether the party has a substantial need for any of the specific SSI to which access is sought and whether the sensitivity of the issue is such that any provisions of access would present a risk of harm to the nation.
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Introduction

Section 525 of the DHS Appropriations Act, 2007 (Public Law 109-295), requires the Secretary of DHS to revise Management Directive (MD) 11056—which establishes the department's policy regarding the recognition, identification, and safeguarding of SSI—to provide for the following:²

- review requests to publicly release SSI in a timely manner and release information that no longer requires safeguarding as SSI;
- release certain SSI that is 3 years old upon request unless it is determined the information must remain SSI or is otherwise exempt from disclosure under applicable law; and
- provide common and extensive examples of the 16 categories of SSI (see attachment 1 for a list of the categories) to minimize and standardize judgment by persons identifying information as SSI.

The law further prescribes steps that must be taken during the course of a civil proceeding in the U.S. District Courts when a party seeking access to SSI demonstrates a substantial need for the information and cannot, without undue hardship, obtain the substantial equivalent of the information by other means.

This law also requires GAO to report to the Committees on Appropriations of the Senate and the House of Representatives on DHS progress and procedures in implementing these requirements not later than 1 year from the date of enactment of the Act (October 4, 2006). This briefing responds to that mandate.

² See Pub. L. No. 109-295, § 525, 120 Stat 1355, 1381-82 (2006).

Introduction

In June 2005,³ we recommended that DHS direct the Administrator of TSA to establish:

- guidance and procedures for using TSA regulations to determine what constitutes SSI;
- responsibility for the identification and determination of SSI;
- policies and procedures within TSA for providing training to those making SSI determinations; and
- internal controls that define responsibilities for monitoring compliance with SSI regulations, policies, and procedures and communicate these responsibilities throughout TSA.

³ See GAO-05-677, *Transportation Security Administration: Clear Policies and Oversight Needed for Sensitive Security Information* (Washington, D.C.: June 29, 2005).

Objectives

To respond to the mandate and update the status of our recommendations, we established four objectives. Specifically, we assessed DHS's:

1. status in establishing criteria and examples for the identification of SSI;
 2. efforts in providing training to those that identify and designate SSI;
 3. processes for responding to requests to release SSI, including the legislative mandate to review various types of requests to release SSI; and
 4. efforts in establishing internal controls that define responsibilities for monitoring SSI policies and procedures.
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Scope and Methodology

To address the objectives we:

- reviewed applicable DHS management directives, policies and procedures, and other documents related to SSI designation, training, document review, and the oversight process, and
 - interviewed TSA and DHS officials involved in the SSI designation, training, document review, and oversight process.
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Scope and Methodology

- Our review focused on the policies and procedures developed by TSA's SSI Office, but we also interviewed officials from four additional DHS agencies to better understand the use of SSI throughout DHS.
- We compared the internal controls in place with the standards for internal control in the federal government to determine whether TSA's internal controls are designed to provide assurance that monitoring is in place and a control environment and activities have been established.⁴
- We also used as criteria GAO-developed core characteristics of a strategic training program to assess whether TSA has created and implemented the training necessary for staff to make SSI determinations.⁵
- We determined that the data were sufficiently reliable for the purposes of our review. We based our decision on an assessment of existing documentation on program operations, and interviews with knowledgeable officials about the source of the data and TSA's policies and procedures for collecting and maintaining the data.
- We conducted our work from May 2007 through October 2007 in accordance with generally accepted government auditing standards.

⁴GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

⁵GAO, *A Guide for Assessing Strategic Training and Development Efforts in the Federal Government*, GAO-04-546G (Washington, D.C.: March 2004). 11

Results in Brief

TSA has established SSI criteria and examples, and several DHS agencies have recognized opportunities to adapt the SSI criteria to their unique needs:

- DHS revised its MD to address the need for SSI criteria and examples in accordance with the law.
- TSA has shared its documentation of SSI criteria and examples with other DHS agencies to help them identify and designate SSI.⁶
- Officials we interviewed from DHS agencies that work with or generate SSI products stated that they have developed, or are in the process of developing, their own SSI examples to correspond with the types of SSI that their agencies encounter.

⁶ In the context of this research, we use the term "designate" to include the identification and marking of information as SSI. It should be noted that the SSI Office uses the term "designate" to mean an original SSI determination in writing. See 49 C.F.R. § 1520.5(b)(9)(iii), (16). Under the DHS MD, only the DHS Secretary, the TSA Administrator, and the Director of the SSI Office have the authority to designate SSI. 12

Results in Brief (cont'd)

TSA is providing SSI training, and aspects of the training program are consistent with several GAO-identified components of a high-quality training program:

- The SSI Office has developed an SSI training program and has shared this program with DHS agencies that use and generate SSI.
- TSA documentation from mid-September 2007 shows that 93.5 percent of TSA personnel (all employees and contractors) assigned to headquarters and 95.5 percent of TSA personnel assigned to airports have completed online SSI training.⁷
- The SSI Office uses a “train the trainer” model in which it trains SSI program managers and coordinators who are then expected to train appropriate staff in their agency.
- Several aspects of the SSI training program are consistent with GAO-identified components of a high-quality training program. For example, TSA is soliciting feedback to evaluate the quality of the SSI training that it is providing.

⁷The SSI Office stated that all TSA employees have not completed the online SSI training because of normal attrition, military leave, and disability leave.

Results in Brief (cont'd)

TSA has policies and procedures to respond to all three types of SSI requests, and a mechanism is in place to document its processes:

- The SSI Office has a procedure in place to respond to requests from government entities, FOIA-related requests, and requests stemming from civil proceedings.
- TSA plans to publish a Notice of Proposed Rulemaking to articulate the process for providing SSI to parties in connection with civil proceedings in U.S. District Courts.
- The SSI Office has a process for recording its steps when reviewing requests to release SSI that serves as a quality control mechanism.

Results in Brief (cont'd)

TSA has established internal controls for SSI and created mechanisms to communicate these controls, which are consistent with internal control standards for the federal government:⁸

- DHS revised its MD to define responsibilities for monitoring the compliance with SSI regulations, policies, and procedures.
- The MD establishes SSI program managers and coordinators to communicate SSI responsibilities with staff in their respective offices and agencies.
- Various tools are used to monitor the compliance with SSI regulations, policies, and procedures including self-inspections, agency audits, and SSI Office reviews based on requests to release SSI.
- The internal controls TSA designed for monitoring compliance with SSI regulations, policies, and procedures are consistent with internal control standards for the federal government.

⁸ GAO/AIMD-00-21.3.1.

Objective #1—Criteria and Examples for the Identification of SSI

DHS revised MD 11056 in accordance with section 525 of the DHS Appropriations Act, 2007, to address the need for common and extensive examples of individual categories of SSI. In response to this mandate, as well as GAO's past recommendation, DHS issued a revised MD (MD 11056.1) and the TSA SSI Office issued the following guidance:

- Advanced Application Guide: provides SSI criteria and examples for each of the categories,
- One-Page Summary List of SSI Criteria: provides SSI criteria and explanatory notes for each category,
- SSI Identification Guides: provide guidance for identifying SSI within the context of specific DHS programs, and
- SSI Reviewers' Guide: provides a more detailed version of the Advanced Application Guide that SSI Office analysts use to review requests for SSI.

Objective #1—Criteria and Examples for the Identification of SSI

- TSA has shared its SSI criteria and examples with other DHS agencies to help them identify and designate SSI.
- Officials we interviewed from DHS agencies that work with or generate SSI products stated that they have developed, or are in the process of developing, their own SSI examples to correspond with the types of SSI that their agencies encounter. For example:
 - U.S. Coast Guard worked with the SSI Office to develop an SSI Identification Guide that provides examples of the application of SSI criteria to documents generated by the Coast Guard; and
 - U.S. Customs and Border Protection has identified the need to create its own SSI Identification Guide and is currently working with the SSI Office to create the guidance.

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Objective #1—Criteria and Examples for the Identification of SSI

- Using the SSI criteria and examples provided by the SSI Office, DHS agencies that use SSI identify certain records as containing SSI. Section 537 of the DHS Appropriations Act, 2006 (Public Law 109-90), enacted October 2005, mandated that DHS provide an annual list of all DHS documents that are designated SSI in their entirety for the period October 1, 2005, through December 31, 2005. Beginning on January 31, 2007 (and annually thereafter), the DHS Secretary is to provide a report on all documents designated SSI in their entirety for the prior calendar year. Therefore, the report provided to Congress in 2006 covered a 3-month period (it was due no later than January 31, 2006), whereas the report provided in January 2007 covered the entire prior calendar year, 2006.
- There were 118 documents in the report provided by DHS in 2007.⁹ Below are the DHS agencies that generated documents from the 2006 list and their relative percentage of documents generated:
 - Coast Guard (50 percent),
 - Office of Science and Technology (37 percent), and
 - TSA (13 percent).
- As a result of policy updates made by the SSI Office, 282 documents generated by TSA determined to be SSI in their entirety as reported to Congress in 2006 no longer met the criteria for continued SSI protection in their entirety. Therefore, if requested, some of the information contained in these documents could be publicly released. The removal of the 282 documents also helps to explain the smaller number of SSI documents DHS reported to Congress in 2007, particularly from TSA.

⁹ According to the report DHS provided to Congress in 2007, U.S. Customs and Border Protection did not report any documents that it generated and determined were SSI in their entirety.

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Objective #2—Training for Those Who Generate and Use SSI

In response to GAO's recommendation to provide training to staff that generate SSI, TSA:

- Requires new employees to take 60-minute online SSI training within the first week of employment. TSA documentation from mid-September 2007 shows that 93.5 percent of TSA personnel (all employees and contractors) assigned to headquarters and 95.5 percent of TSA personnel assigned to airports have completed the online training or completed the live training.¹⁰
- Provides recurring training to SSI coordinators from offices within DHS agencies that use SSI.
- Provides 60-minute live training to TSA and selected DHS employees.
- Develops specialized training for TSA contractors, SSI coordinators, and others as needed.

¹⁰ TSA documentation shows that 3,097 out of 3,309 TSA personnel in headquarters and 49,626 out of 51,930 personnel assigned to airports have completed online SSI training.

Objective #2—Training for Those Who Generate and Use SSI

- Although the SSI Office provides training to all SSI program managers and coordinators from the DHS agencies that use or generate SSI, the program manager from each DHS agency that handles SSI is responsible for customizing and evaluating the sufficiency of his or her SSI training to meet the agency's unique program needs.
- The SSI Office is utilizing a "train the trainer" model in which it trains SSI program managers and coordinators who are then expected to tailor the materials to train the appropriate staff in their agency or office.

Objective #2—Training for Those Who Generate and Use SSI

TSA's training and development efforts reflect the following core characteristics that GAO has identified for a strategic training process:¹¹

Stakeholder Involvement, Accountability, and Recognition: incorporate stakeholder feedback throughout the training process and establish accountability mechanisms to hold managers and employees responsible for learning in new ways.

- The SSI Office collects stakeholder feedback on its training program through training evaluation forms, its e-mail address, over the phone, and through the DHS SSI Oversight Committee.
- In an attempt to establish accountability for whether training has led to accurate SSI identifications, the SSI Office requires program managers and coordinators to complete self-evaluations that include evaluations of a selection of SSI designations in their respective office or agency.
- SSI coordinators are required to complete a self-inspection every 12 months, and SSI program managers are required to complete a self-inspection every 18 months.

¹¹ GAO-04-546G.

Objective #2—Training for Those Who Generate and Use SSI

Effective Resource Allocation and Partnerships and Learning from Others: provide the appropriate level of funding and resources to ensure that training is achieving its missions and goals, and coordinate within and among agencies to achieve economies of scale.

- The creation of the DHS SSI Oversight Committee provides a mechanism for interagency coordination.
- The SSI Office shares its guidance with other DHS components so that program managers can create customized training programs that will meet the needs of their staff.
- According to TSA officials, additional funding would allow the SSI Office to provide more training and to create a national conference for SSI coordinators.

Objective #2—Training for Those Who Generate and Use SSI

Data Quality Assurance and Continuous Performance Improvement: establish policies to collect quality data and use these data to evaluate the training program, and foster a culture of continuous improvement by assessing and refining the training program.

- The SSI Office provides all DHS staff that complete live SSI training with a training evaluation form to evaluate both the content of the training and the quality of instruction.
- During its process of responding to requests to release SSI, the SSI Office evaluates the accuracy of designations made by various DHS agencies. If the SSI Office finds that the information has been inaccurately identified as being SSI, it can contact the DHS agency that made the original designation to identify the error. This allows DHS agencies to follow up with refined training to correct the problem as necessary.
- The SSI Office began conducting audits within TSA in September 2007 to evaluate whether SSI is being appropriately marked and protected at various airports. The SSI Office invited other program managers to attend the audits so that lessons learned from the audits may be incorporated by other DHS agencies.

The aspects of the SSI training program evaluated in this study are consistent with GAO identified components of a high-quality training program.

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Objective #3—Processes for Responding to Requests to Release SSI

Between February 2006 and January 2007, the SSI Office received 490 requests to review records pertaining to the release of SSI. For January 2007 through April 2007, the SSI Office reported the percentage of the total requests to review records by each type of request it processes, as follows:

1. requests from government entities (62 percent);
2. FOIA requests that may contain SSI (30 percent); and
3. requests from individuals in connection with litigation, including civil proceedings, within U.S. District Courts (8 percent).¹²

On most occasions, the SSI Office is able to respond to all types of requests within 7-14 days. TSA documentation indicates that the SSI Office is able to meet this goal in 92 percent of all requests. The SSI Office stated that it is not able to complete all requests within its 7-14 days due to the size and complexity of certain requests, as well as the client's needs and the SSI Office's workload.

¹² According to TSA, additional programming to the SSI Office database would be required to show the percentage for the three types of SSI requests (litigation, FOIA, and other) for February 2006 – January 2007.

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Objective #3—Requests for SSI by Government Entities

- Requests for SSI from government entities can include requests from federal, state, local, or tribal governments.
 - The SSI Office works with the requesting government entity to agree upon a time frame for processing the request.
 - All requests for SSI, including requests from government entities, are reviewed by the SSI Office through a nine-step process (see attachment II for more details on this process).
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Objective #3—Requests for SSI through the Freedom of Information Act

- The SSI Office has established a process for reviewing information requested through the FOIA process in 5 days, unless the request contains more than 100 pages.
 - The SSI Office and FOIA Office coordinate to establish deadlines for FOIA requests that contain more than 100 pages.
 - Officials from the TSA FOIA Office stated that the SSI Office responds to FOIA requests in a timely manner.
 - The SSI Office has provided training to the department's FOIA Office staff members so that they can make basic determinations on whether a FOIA request might include SSI.
-

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Objective #3—Process for Responding to Requests to Release SSI That Is at Least 3 Years Old

- The information that should be designated as SSI, based on the application of the current identification (ID) guidance, may change over time, given changing circumstances. For example, the TSA Administrator may decide to publicly disclose information previously designated as SSI to increase public awareness of an issue or security program.
- At the time of a request to release SSI, all requested information is to be reviewed against the SSI categories and current precedents for applying each category. This process is to occur with all requested SSI, regardless of the age of the information.
- According to SSI Office officials, the content of the information being requested is the relevant factor to be considered, not the age of the information.
- All SSI that is at least 3 years old that does not warrant continued protection as SSI is released upon request.

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Objective #3—Requests for SSI during Civil Proceedings

- According to TSA's Office of Chief Counsel, persons who do not otherwise have a "need to know" sought SSI 48 times in connection with civil proceedings since TSA was established. Since the enactment of Public Law 109-295 in October 2006, 9 such requests for SSI have been made in connection with civil proceedings.
- Prior to the passage of Public Law 109-295, TSA did not permit SSI access in civil proceedings by persons who did not otherwise have a need to know. TSA did submit SSI to courts for *in camera* review.¹³
- Section 525(d) of Public Law 109-295 prescribes steps that must be taken during the course of a civil proceeding in the U.S. District Courts when a party seeking access to SSI demonstrates a substantial need for the information and that it cannot, without undue hardship, obtain the substantial equivalent of the information by other means.
- Since the enactment of this provision, one litigant has requested that TSA make a final determination on a request for SSI access in connection with civil proceedings. TSA complied with this request and, in accordance with the law, issued a final determination releasing some of the requested SSI while withholding other SSI because of the sensitivity of the information or because it was not relevant to the litigation.

¹³ *In camera* review means a trial judge's private consideration of evidence.

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Objective #3—Requests for SSI during Civil Proceedings

According to TSA documentation:

- If TSA or the judge decides that a party in a civil proceeding has demonstrated that it has a substantial need for relevant SSI and that it is unable without undue hardship to obtain the substantial equivalent of the information by other means, and if TSA or the judge has determined that the sensitivity of the SSI at issue does not present a risk of harm to the nation, TSA will begin a background check of the requesting party or the party's attorney who has been designated to view the SSI.
- Once TSA has received a party's payment to conduct the background check, and the party has completed an SSI threat assessment questionnaire and been fingerprinted, it takes approximately 3 weeks to complete the background check.
- If TSA determines that there is risk to the nation to provide a party or a party's attorney with SSI based on the results of the background check, TSA will deny the applicant's request. At that time, the party may designate a new attorney to access SSI on its behalf. If this occurs, TSA will conduct a background check on the new attorney.
- The determination of whether SSI will be released to a party in civil proceedings is a joint determination made by TSA's Office of Chief Counsel and the SSI Office.

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Objective #3—SSI Office Efforts to Establish Quality Controls for Responding to SSI Requests

The SSI Office's use of a controlled access database to document the completion of its steps in the review of requests to release SSI serves as a quality control mechanism. This is achieved by:

- incorporating controls in the database so that the previous step must be documented before information can be entered in the next step of the review process; and
- requiring that a senior analyst within the SSI Office approve the SSI review and document his or her approval in the database prior to releasing information formerly protected as SSI.

TSA is also currently drafting a Notice of Proposed Rulemaking in anticipation of establishing its processes and procedures for responding to requests for SSI during civil proceedings.

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Objective #4—DHS SSI Internal Controls Are Consistent with Internal Control Standards for the Federal Government

TSA has established internal controls for SSI and created mechanisms to communicate these controls that are consistent with internal control standards for the federal government.¹⁴

Control Environment and Control Activities: areas of authority and responsibility to be clearly defined by a supportive management structure and controls in place to ensure that management's directives are carried out.

- Areas of authority for the monitoring and compliance of SSI policy are outlined in the revised DHS MD (MD 11056.1) and other agency and departmental guidance.
- SSI program managers and coordinators have been established in the MD to communicate SSI responsibilities with DHS staff.

¹⁴ GAO/AIMD-00-21.3.1.

Objective #4—DHS SSI Internal Controls Are Consistent with Internal Control Standards for the Federal Government

Monitoring: information is used to assess the quality of program performance over time and problems raised during quality reviews are promptly resolved.

- Controls are in place to provide oversight for each agency's generation and designation of SSI including self-inspection reporting methods. The self-inspection process requires SSI program managers and coordinators to, among other monitoring activities, evaluate a portion of records marked as containing SSI.
- Agencies may also utilize audits of the identification and use of SSI. TSA is in the process of conducting such an audit.
- The SSI Office reviews information in response to requests to release SSI, regardless of the agency that originally identified the information as SSI.

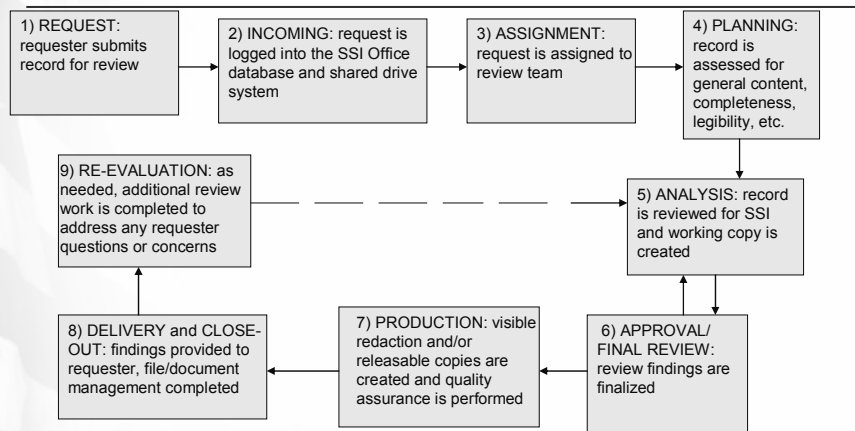
The aspects of the SSI internal controls for monitoring activities that we evaluated are consistent with internal control standards for the federal government.

Attachment #1—Categories of SSI as Established by TSA at 49 C.F.R. § 1520.5(b)

- | | |
|---|---|
| 1. Security program and contingency plans; | 9. security screening information; |
| 2. security directives; | 10. security training materials; |
| 3. information circulars; | 11. identifying information of certain transportation security personnel; |
| 4. performance specifications; | 12. critical aviation or maritime infrastructure asset information; |
| 5. vulnerability assessments; | 13. systems security information; |
| 6. security inspections or investigative information; | 14. confidential business information; |
| 7. threat information; | 15. research and development; and |
| 8. security measures; | 16. other information determined to be SSI in accordance with the statute (as designated in writing by the DHS Secretary, the TSA Administrator, or the Director of the SSI Office) |

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Attachment #2—SSI Office’s Nine-Step Process for Reviewing Document Requests¹⁵



¹⁵ GAO analysis of information provided by the TSA SSI Office.

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