



U.S. Department of Justice
Federal Bureau of Investigation

Office of Congressional Affairs

Office of the Assistant Director

935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

January 28, 2022

The Honorable Dianne Feinstein
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Feinstein:

(U) This responds to your letter, dated November 19, 2021, requesting an update regarding the report released by the Department of Justice Office of the Inspector General (OIG) on July 14, 2021, titled *Investigation and Review of the Federal Bureau of Investigation's Handling of Allegations of Sexual Abuse by Former USA Gymnastics Physician Lawrence Gerard Nassar* ("OIG Report"). As Director Wray described at the Committee's hearing on September 15, 2021, the FBI has accepted all of the findings in the OIG Report. Similar copies of this response are being sent to the co-signers of your letter.

Recommendation One

(U) With respect to the OIG's first recommendation, the FBI has revised its *Domestic Investigations and Operations Guide* (DIOG) to provide clearer guidance on when FBI personnel must alert law enforcement of suspected abuse. Specifically, the FBI modified DIOG Appendix K, *Requirement For All FBI Personnel to Report Suspected Abuse* (Apx. K). Apx. K clarifies the mandatory obligation for all FBI personnel to report suspected abuse of children, the elderly, and other vulnerable individuals, and sets forth specific documentation and process requirements for personnel to follow. The policy is mandatory and does not permit employees to choose to not report suspected abuse, including when the allegations potentially fall within the FBI's jurisdiction. In August 2021, the FBI's Victim Services Division (VSD) issued training, titled *Reporting Child Abuse: What FBI Personnel Need to Know*, to reinforce the requirement to report abuse to all FBI personnel. This is a mandatory annual training requirement for all personnel.

(U) According to Apx. K, reporting abuse must be made to the state, local, tribal, or territorial law enforcement agency (SLTT) with jurisdiction to investigate the matter without delay (without unnecessary or unreasonable deviations in not more than 24 hours), with a limited exception.¹ In addition, and as noted in Apx. K, FBI personnel may have a state law requirement

¹ (U) The only exception to promptly reporting suspected abuse is when FBI personnel, in consultation with legal counsel and subject matter experts, and with authorization from their division head, determine that reporting promptly will

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to report to the appropriate child protective or social services agency, and personnel are advised to familiarize themselves with applicable state laws and to consult with FBI legal counsel if they have questions. Apx. K also includes guidance for reporting suspected abuse occurring on federal land, within a federal facility, or in foreign jurisdictions. FBI personnel are directed to report even if they think it may already be under investigation, and the process outlined in Apx. K provides requirements on the documentation for such reporting.

(U) The FBI's *Crimes Against Children and Human Trafficking Program Policy Guide* has been updated to include a new notification requirement for transferring complaints, such as complaints of serious or multi-victim sexual abuse, from an office of origin to another office. This new notification requirement includes positive contact between a supervisor in the originating office and a supervisor in the receiving office about the transfer of the matter.

(U) To further augment the new notification requirement for transferring complaints, the FBI's Criminal, Cyber, Response and Services Branch is evaluating technical infrastructure to identify and implement further improvements related to transferring complaints and investigations between field offices when they involve allegations of crimes against children. Significant technical improvements have already been made. Specifically, since 2018, the FBI has used an entirely different tips and leads management system called Guardian for crimes against children complaints than it used during the time period of the OIG's review. Guardian is now utilized enterprise-wide for all programs. One of the key attributes of the Guardian system is the enhanced transparency gained from having tips, leads, and assessments in one system where they may be, for example, viewed by the field office supervisor or the FBI Headquarters program manager. When transferring an assessment or information entered in Guardian, such as a lead, between one office and another, the system documents when it occurred and who transferred it.

(U//FOUO) In addition, Guardian provides increased visibility about actions taken with a particular assessment or pre-assessment, such as opening or closing an assessment or taking investigative steps. This transparency and accountability vastly improves FBI Headquarters' visibility and ability to understand what is occurring in the handling of a particular tip, pre-assessment, or assessment. Further, the system, which alerts a user when a 30-day justification review for an assessment is due, has been updated to provide this functionality for pre-assessments related to sexual abuse or sexual assault, introducing a frequent review of pre-assessment information.

(U) The Victim Services Policy Guide (VSPG) comprehensively outlines the FBI's victim services requirements, as defined by federal law and by the *Attorney General Guidelines for Victim and Witness Assistance*. The FBI provides victim services once a Special Agent or

significantly compromise a confidential source, disclose protected information, or endanger public safety. In this limited instance, reporting may be delayed, but throughout the delay division heads must monitor the case, documenting justification for any delay exceeding 30 days. The temporary delay does not permit FBI personnel to ultimately not report the abuse.

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Task Force Officer identifies a federal crime victim (as defined by the Victims' Rights and Restitution Act, 34 U.S.C. § 20141, and the Crime Victims' Rights Act, 18 U.S.C. § 3771). The provision of victim services is not a discretionary determination. The FBI updated the VSPG after the DIOG was published. The updated DIOG and the VSPG now address: 1) that interviews of minor victims and witnesses regarding alleged abuse or sexual exploitation should take place in-person, whenever possible; and 2) special considerations for interviews of minor victims and witnesses (i.e., victims and witnesses under the age of 18 years) and adults who report being victimized as minors.

Recommendation Two

(U) With respect to the OIG's second recommendation, the FBI has updated the DIOG with an example that illustrates and clarifies the existing policy prohibiting supervisors from approving their own investigative activity. The example makes it even clearer that agents and supervisors cannot approve their own investigative activity. While this practice of self-approval was prohibited under previous DIOG language, the FBI believes adding this new example will re-emphasize the importance of the existing policy and underscore that it also applies to supervisors (e.g., by explaining a Supervisory Special Agent needs an Assistant Special Agent-in-Charge's approval). Further, the clarification now specifically identifies self-approval as "substantial noncompliance" pursuant to the DIOG.

(U) Upon review, the FBI has determined that pre-assessment activities related to crimes against children can continue for more than five days and, more generally, pre-assessment activities could occur regardless of the program type for more than five days. With the exceptions of counterterrorism and threat-to-life related matters, there is not a specific timeframe for pre-assessment activities required in program policy, by the DIOG, or by the *Attorney General Guidelines for Domestic FBI Operations*. Further, there is not a set policy timeframe for an assessment, though the expectation is that assessments will be completed promptly. The FBI believes that it is appropriate for field offices to pursue investigative activity on a tip or lead (which would be in the pre-assessment category) in a timely manner, but does not believe that setting a five-day limit is supported by data available at this time. In many instances, a tip may lack the requisite information to make the determination that the matter should be converted to an assessment or closed out. The 30-day justification review for pre-assessments, as noted above, has been put in place to ensure that information in the pre-assessment phase related to sexual abuse and sexual assault is evaluated promptly and does not linger unresolved for extended periods of time.

(U) The DIOG has also been updated to clarify that documentation must go in the part of a case file containing non-evidentiary information — called the "1A section" — of the listed files. The direction to maintain the documentation or other information received in pre-assessment is regardless of the number of days taken to conduct the investigative activity.

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Recommendation Three

(U) With respect to the OIG's third recommendation, the FBI believes that clarification of existing policy is sufficient to describe the circumstances under which telephonic interviews may be appropriate, especially as these are in extremely limited circumstances. With this in mind, and as noted above, the VSPG has been updated with a reference to the relevant DIOG Section that has been updated to note that interviews of minor victims and witnesses regarding alleged abuse or sexual exploitation should take place in-person, whenever possible.

Recommendation Four

(U) With respect to the OIG's fourth recommendation, as noted above, FBI personnel are mandated to take the new training *Reporting Suspected Child Abuse: What FBI Personnel Need to Know*. This will ensure that FBI personnel are aware of their obligation to report suspected child abuse. This mandatory training will be an annual requirement going forward. Further, the FBI provided *Lessons Learned and Next Steps in Response to the Nassar OIG Report* training to all Criminal Investigative Division operational personnel in Headquarters and the field offices that work in the crimes against children program. As of September 2021, all offices had received the training.

* * *

(U) Thank you for continuing to support the FBI, our mission, and our people.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jill C. Tyson", with a long horizontal flourish extending to the right.

Jill C. Tyson
Assistant Director