



DEPARTMENT OF JUSTICE | OFFICE OF THE INSPECTOR GENERAL

## MANAGEMENT ADVISORY MEMORANDUM

### 21-101

**JULY 2021**

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Notification of Concerns regarding Use of  
Photographs of FBI Employees for Online  
Undercover Operations

INVESTIGATIONS DIVISION



July 30, 2021

Management Advisory Memorandum

To: Christopher A. Wray  
Director  
Federal Bureau of Investigation

A handwritten signature in blue ink, reading "Michael E. Horowitz", is positioned below the "To:" field.

From: Michael E. Horowitz  
Inspector General

Subject: Notification of Concerns regarding Use of Photographs of FBI Employees for Online Undercover Operations

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The purpose of this memorandum is to advise you of concerns the Department of Justice (DOJ) Office of the Inspector General (OIG) has identified with the use of photographs of Federal Bureau of Investigation (FBI) employees who are not certified undercover employees (UCE) or certified online covert employees (OCE) in online undercover (UC) operations.<sup>1</sup> The OIG identified these concerns during an investigation in which an FBI Special Agent (SA) used photographs of female support staff employees to pose as underage females in a sex trafficking investigation. In this memorandum, the OIG makes two recommendations to address the concerns we identified.

## Background

The OIG conducted an investigation in which an FBI SA was alleged to have engaged in an inappropriate relationship with an FBI support staff employee that included the FBI SA requesting the support staff employee provide him with provocative pictures of herself for online UC operations.

## Relevant Authorities

The FBI Inspections Division advised the OIG that the FBI did not have a policy concerning the use of photographs of non-UCE/OCEs for UC operations. The Attorney General's Guidelines on FBI Undercover Operations (AGG-UCO) and the FBI's Undercover Sensitive Operations Policy Guide (FBI UC Policy) contain guidelines on the handling of undercover operations, including various approval and documentation requirements and extensive certification requirements for UCEs and OCEs. The FBI UC Policy states that "[s]upport personnel will not be used in undercover roles unless it is absolutely necessary" and "personally authorized" by the Special Agent in Charge (SAC), who "must certify that the support employee has volunteered for the assignment and is capable of performing the role and provide a detailed explanation as to why a sworn [law enforcement officer] cannot be utilized." In addition, the FBI UC Policy states that agents may communicate using the online identity of another person with that person's consent only if "the

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<sup>1</sup> We refer to FBI employees who are not certified UCEs or certified OCEs together as "non-UCE/OCEs"

communications are within the scope of the consent, and if such activity is authorized” and that “[a]bsent extremely exigent circumstances the consent to use an online identity must be obtained in written form.” However, neither the AGG-UCO nor the FBI UC Policy specifically address using photographs of non-UC E/OCEs for UC operations. According to all parties interviewed during the OIG’s investigation, there was no FBI policy requiring SAs to obtain written informed consent from a non-UC E/OCE, notify a non-UC E/OCE’s supervisor, or obtain supervisory approval before using a non-UC E/OCE’s photograph in a UC operation, and there was otherwise no oversight of the use of the non-UC E/OCE’s photographs.

## **The Issue**

During the course of our investigation, the OIG learned that SAs sometimes used photographs of young female support staff employees to pose as minor children or sex workers to entice sexual predators on various social media websites. These employees were not certified UC E/OCEs or certified OCEs. In the instances we reviewed in connection with the OIG investigation, the employees’ faces were blurred and the employees were clothed. However, the SA who was the subject of the OIG’s investigation did not document which employees were used, obtain written consent from the employees, document the websites on which the photographs were posted, or document when the photographs were posted. The SA said he was “fishing” on social media sites but not recording which sites he used. The SA did not inform the support staff employees’ supervisors that the employees were involved in UC operations, and the SA advised the support staff employees who provided photographs to not tell anyone, including their supervisors, about the UC operations. Both the SA and the SA’s supervisor told the OIG that they could not produce any documentation regarding how the photographs were obtained or used. Additionally, the FBI had no documentation or information regarding whether the photographs still appear on the websites or how long the photographs appeared on the websites, during which time the photographs could have been—and potentially could still be—downloaded, copied, or further disseminated. The OIG believes that this conduct poses potential adverse consequences for non-UC E/OCE employees participating in UC operations, including potentially placing them in danger of becoming the victims of criminal offenses.

## **Conclusions**

The OIG has determined there is potential for adverse consequences if a policy is not put in place to govern and document the use of non-UC E/OCEs’ photographs in UC operations.

## **Recommendations**

The OIG recommends that the FBI take the following two measures to address the concerns identified in this memorandum.

1. Create a policy concerning the use of photographs of FBI employees who are not certified undercover employees or certified online covert employees for online undercover operations.
2. If the policy in Recommendation 1 states that it is permissible to use photographs of FBI employees who are not certified undercover employees or certified online covert employees for online undercover operations, the policy should address the following considerations:
  - a. Management notification and approval of the use of photographs of FBI employees for online undercover operations;
  - b. Guidelines regarding the appearance of FBI employees in photographs used in online undercover operations;
  - c. Documentation regarding the use of photographs of FBI employees in online undercover operations, including which photographs are used, the websites on which they are posted, and the dates and times of postings; and

- d. Written consent from FBI employees appearing in photographs for online undercover operations, after the employees are fully informed about the FBI policy and the potential risks surrounding the use of their photographs for online undercover operations.
3. Other guidelines the FBI deems necessary to ensure photographs of FBI employees for online undercover operations are used safely and appropriately.

Please advise the OIG within 60 days of the date of this memorandum on what actions the FBI has taken or intends to take with regard to these issues. If you have any questions or would like to discuss the information in this memorandum, please contact me at (202) 514-3435 or Sarah E. Lake, Assistant Inspector General for Investigations, at (202) 616-4730.

cc: Bradley Weinsheimer  
Associate Deputy Attorney General Department of Justice

Louise Duhamel  
Acting Assistant Director, Audit Liaison Group, Internal Review and Evaluation Office, Justice  
Management Division

# Appendix 1: The FBI's Response



U.S. Department of Justice

Federal Bureau of Investigation

*Office of the Executive Assistant Director*

*Washington, D.C. 20535 - 0001*

July 27, 2021

The Honorable Michael E. Horowitz  
Inspector General  
U.S. Department of Justice  
Washington, D.C. 20530

Dear Inspector General Horowitz,

Thank you for the opportunity to respond to the Office of the Inspector General (OIG) Management Advisory Memorandum regarding the OIG's "Notification of Concerns regarding Use of Photographs of FBI employees for Online Undercover Operations" (Memorandum).

The FBI's utilization of certified undercover employees (UCE) and certified online covert employees (OCE) in authorized investigative activities is an essential law enforcement technique that dramatically enhances the FBI's ability to detect and disrupt criminal actors. It is critical that the FBI ensures adherence to the highest standards of conduct when the FBI engages in operations, including in the use of UCE and OCEs. In this instance, the OIG identified several examples where an FBI special agent chose to use photographs of support employees to further ongoing undercover (UC) operations. The OIG further identified that the FBI does not have policy concerning the use of support employee photographs such as what occurred, stating in the Memorandum that "neither the AGG-UCO [Attorney General Guidelines for Undercover Operations] nor the FBI's UC Policy specifically address using photographs of non-UCE/OCEs for UC operations." To correct this, the OIG recommended that the FBI adopt two measures which can be summarized as establishing policy to ensure that the FBI has guidelines for the use of photographs of employees who are not UCE/OCEs and developing additional guidelines that the FBI deems necessary to ensure photographs of FBI employees for online UC operations are used safely and appropriately. The FBI fully accepts these recommendations.

In the coming weeks, the FBI will evaluate existing policy and determine which policies require adjustment, drafting new language to establish the needed guidelines. Upon publication, the FBI will also ensure that the FBI personnel who engage in UC operations are aware of the new guidelines and trained on the requirements.

The findings of the OIG's administrative inquiry related to the conduct of the special agent in this matter will be promptly adjudicated by the FBI's Office of Professional Responsibility.

The FBI appreciates the OIG's identification of the need for additional policy in this area. The FBI looks forward to providing your office with the new policy language upon completion.

Sincerely,

A handwritten signature in blue ink that reads "Brian C. Turner". The signature is written in a cursive, flowing style.

Brian Turner  
Executive Assistant Director  
Criminal, Cyber, Response and Services Branch



## **Appendix 2: Office of Inspector General Analysis and Summary of the Actions Necessary to Close the Report**

The OIG provided a draft of this memorandum to the FBI, and the FBI's response is incorporated in Appendix 1. The FBI indicated in its response that it fully accepts the OIG's recommendations.

The following provides the OIG's analysis of the FBI's response and a summary of actions necessary to close the recommendations in the memorandum. The OIG requests that the FBI provide an update on the status of its response to these recommendations within 90 days of the issuance of this memorandum.

- 1. Create a policy concerning the use of photographs of FBI employees who are not certified undercover employees or certified online covert employees for online undercover operations.**

**Resolved.** The FBI indicated that it will "evaluate existing policy and determine which policies require adjustment, drafting new language to establish the needed guidelines." The FBI further stated that, "[u]pon publication, the FBI will also ensure that the FBI personnel who engage in UC operations are aware of the new guidelines and trained on the requirements." This response is responsive to the OIG's recommendation.

This recommendation can be closed once the FBI evaluates existing policy, makes appropriate adjustments to existing policies to address the use of photographs of FBI employees who are not certified undercover employees or certified online covert employees for online undercover operations, provides a copy of the updated policies to the OIG, and provides confirmation that FBI personnel who engage in UC operations have been notified of and trained on the new policies.

- 2. If the policy in Recommendation 1 states that it is permissible to use photographs of FBI employees who are not certified undercover employees or certified online covert employees for online undercover operations, the policy should address the following considerations:**
  - a. Management notification and approval of the use of photographs of FBI employees for online undercover operations;**
  - b. Guidelines regarding the appearance of FBI employees in photographs used in online undercover operations;**
  - c. Documentation regarding the use of photographs of FBI employees in online undercover operations, including which photographs are used, the websites on which they are posted, and the dates and times of postings; and**
  - d. Written consent from FBI employees appearing in photographs for online undercover operations, after the employees are fully informed about the FBI policy and the potential risks surrounding the use of their photographs for online undercover operations.**

**Resolved.** As noted above, the FBI indicated that it will "evaluate existing policy and determine which policies require adjustment, drafting new language to establish the needed guidelines." The FBI further stated that, "[u]pon publication, the FBI will also ensure that the FBI personnel who engage in UC operations are aware of the new guidelines and trained on the requirements." This response is responsive to the OIG's recommendation.

This recommendation can be closed once the FBI evaluates existing policies, makes appropriate adjustments to existing policies, addresses the considerations identified above if the FBI policies state that it is permissible to use photographs of FBI employees who are not certified undercover employees or certified online covert employees for undercover operations, provides a copy of the updated policies to the OIG, and provides confirmation that FBI personnel who engage in UC operations have been notified of and trained on the new policies.

**3. Other guidelines the FBI deems necessary to ensure photographs of FBI employees for online undercover operations are used safely and appropriately.**

**Resolved.** As noted above, the FBI indicated that it will “evaluate existing policy and determine which policies require adjustment, drafting new language to establish the needed guidelines.” The FBI further stated that, “[u]pon publication, the FBI will also ensure that the FBI personnel who engage in UC operations are aware of the new guidelines and trained on the requirements.” This response is responsive to the OIG’s recommendation.

This recommendation can be closed once the FBI evaluates existing policy, makes appropriate adjustments to existing policies to ensure photographs of FBI employees for online undercover operations are used safely and appropriately, provides a copy of the updated policies to the OIG, and provides confirmation that FBI personnel who engage in UC operations have been notified of and trained on the new policies.