



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

SAMR-MPQ

**MEMORANDUM FOR DEPUTY DIRECTOR DEFENSE HUMAN RESOURCES
ACTIVITY (DHRA)**

SUBJECT: Army Response to the Office of the Special Council (OSC), Specific Follow-Up Questions, OSC Referral-File No. DI-17-1416

1. The attached enclosure provides the Army's response to the specific follow-up questions to the OSC Referral-File No. DI-17-1416, requesting that the Department of Defense (DoD) investigate allegations that employees at DoD, specifically the Department of the Army engaged in conduct that may constitute a violation of law, rule, or regulation. There were two allegations to be investigated: (1) DoD Instruction 5525.12 improperly grants DoD Components the authority to impose additional criteria for "qualified law enforcement officer" status, a designation with conditions explicitly defined by Amended Law Enforcement Officers Safety Act of 2004 (LEOSA); (2) Army Directive 2015-03 inappropriately imposes an additional requirement on qualified law enforcement officer certification that appears to violate LEOSA.

2. The enclosure "Army Proposed Response" provides additional information on the following topics as requested by OSC:

- a. Army timetable for revision and promulgation of a revised Army Policy.
- b. Army Security Guards do not have recognized rights to carry under LEOSA.
- c. Army utilizes a third party vendor at a cost to the applicant of \$135 for a LEOSA permit.
- d. Army mandates that active duty Army police must serve 6 years to receive a LEOSA permit.

3. The Army's LEOSA POC is Mr. Thomas Blair, (703) 695-8823 or thomas.s.blair4.civ@mail.mil.

DONALD G. SALO, JR
Deputy Assistant Secretary of the Army
(Military Personnel & Quality of Life)

Enclosure

Questions for Army

(Proposed Responses Highlighted in Blue Font)

Is there a timetable for revision and promulgation of the revised Army policy?

We are currently coordinating with OSD and collaborating to ensure 100% synchronization in policy revision efforts at both, the OSD and Army levels.

The whistleblower indicated that Dept. of the Army Security Guards do not have recognized rights to carry under LEOSA, whereas Army CID Agents do, despite the fact that Security Guards are considered DOD law enforcement officers per Army Regulation 190-56 § 5-2. Specifically, this regulation indicates that DACP/SGs have the authority to perform law enforcement duties, including apprehending suspects, which appears to make them LEOSA permit eligible under 18 USC 926B (c).

Army Regulation (AR) 190-56 is in the process of being revised. During the revision process, paragraph 5-2 will be updated and clarified. Regardless, a careful reading of the current version of paragraph 5-2 does not support the assertion that Department of the Army Security Guards (DASG) are considered law enforcement officers.

Paragraph 5-2(a) states, “The DACP/SGs performing law enforcement and security duties...are limited...to the installation boundaries.” This should not be interpreted to mean Department of the Army Civilian Police (DACP) and Department of the Army Security Guards (DASGs) have both law enforcement duties and security duties. Rather, the duties listed (law enforcement and security) apply respectively to DACP and DASGs, i.e. DACPs’ (the first organization listed) duties correspond with law enforcement (the first duty listed) and DASGs’ (the second organization listed) duties correspond with Security duties (the second duty listed). This interpretation is supported by the proceeding subparagraphs of 5-2.

Paragraph 5-2(c) states, “The DASGs’ authority and jurisdiction to perform security tasks...are only valid...during their work hours.” There is no mention of law enforcement duties for DASGs, only security duties. Further, paragraph 5-2(d) states, DACPs are authorized to perform specified law enforcement duties only during work hours and only within the boundaries of their assigned installation.” There is no mention of security duties for DACP, only law enforcement duties.

Army Regulation 190-56 specifically delineates DACP and their law enforcement tasks from DASGs and their security tasks. Department of the Army Security Guards’ “security tasks” do not rise to the level of a qualified law enforcement officer as defined under 18 U.S.C. § 926b(c)(1).

With the understanding that AR 190-56 para 5-2 does not confer full law enforcement authority on DASGs, 18 U.S.C. § 926b would not apply to DASGs. It takes more than simple apprehension authorities to be a “qualified law enforcement officer” under 18 U.S.C. § 926b. In addition to statutory authority to

Enclosure: Army Proposed Response

arrest, 18 U.S.C. § 926b(c)(1) requires a qualified law enforcement officer to have authority to engage in or supervise “the prevention, detection, investigation, or prosecution of, or the incarceration of any person for any violation of law.”

Finally, [Foley v. Godinez, 2016 IL App \(1st\) 151814 \(Ill. App. Ct. 1st Dist. Aug. 2, 2016\)](#) held that, under the Law Enforcement Safety Officers Act, the Illinois Department of Corrections director has authority to decide whether an applicant meets the statutory requirements to be certified as a qualified law enforcement officer. The court held the director had authority to refuse to certify three corrections officers as LEOSA qualified. Thus, granting LEOSA qualifications can be a discretionary act.

The Provost Marshal General is in charge of the Career Program 19 which covers the law enforcement and security job series (inclusive of DACP and DASG) for the Army. In this role, he oversees the training, education, and qualifications of DASGs. As the individual responsible for overseeing DASG training and their qualifications, it is within the authority of the Provost Marshal General to exercise discretion in establishing guidance and standards on which jobs under his supervision and direction rise to the level of qualified law enforcement and who is eligible to be certified as LEOSA qualified.

The Army also requires applicants to pay a third party vendor \$135 for a LEOSA permit even if the applicant was already issued LEOSA compliant credentials. Mr. Lomax noted that this purchase requirement is enforced in spite of a clause in DODI 5525.12 Enclosure 3 Section 2(a) which states: "No new identification card needs to be created if the employing organization's current credential or identification card addresses these requirements."

Foremost, it is the position of the Office of the Provost Marshal General that DASGs are not qualified law enforcement officers. As such, there is no requirement to provide identification cards to DASGs.

If an individual is in a LEOSA qualified position, the Army complies with the requirement of providing a photographic identification card stating the individual is a qualified law enforcement officer through a contract with a civilian provider. Military Police and DACP are jurisdictionally restricted to performing law enforcement functions on the installation. Due to this limited jurisdiction, the LEOSA identification card has no nexus to the jobs performed by MP/DACP. As these LEOSA identification cards have no nexus to the performance of their duties, the Army does not use taxpayer money to pay the cost of the cards.

Will the 6 year mandate be removed for active duty Army police (i.e., individuals with arrest authority under title 10), as well?

We will adjust the Army policy, as applicable to both Army civilian police and military police, in accordance with the pending revision of Department of Defense policy (DoD Instruction 5525.12).