

AFP National Guideline on sensitive investigations

1. Disclosure and compliance

This document is marked **Official** and is intended for internal AFP use.

Disclosing any content must comply with Commonwealth law and the [AFP National Guideline on information management](#).

This instrument is part of the AFP's professional standards framework. The [AFP Commissioner's Order on Professional Standards \(CO2\)](#) outlines the conduct expected of AFP appointees. Inappropriate departures from the provisions of this instrument may constitute a breach of AFP professional standards and be dealt with under Part V of the [Australian Federal Police Act 1979](#) (Cth) (AFP Act).

2. Guideline authority

This guideline was issued by Assistant Commissioner Counter Terrorism & Special Investigations using power under s. 37(1) of the AFP Act as delegated by the Commissioner under s. 69C of the AFP Act.

3. Introduction

This guideline outlines the framework for managing *sensitive investigations*. *Sensitive investigations* are investigations which meet the definition in section 5 of this guideline. This guideline does not apply to non-investigative work including projects or where investigative action is not being undertaken.

4. Policy on sensitive investigations

The AFP operates in a complex and challenging environment to perform functions as set out in s. 8 of the AFP Act. The AFP at times conducts investigations which can be defined as a *sensitive investigation*.

These investigations can significantly affect:

- Australia's national reputation, international relationships, economy or environment
- the operation or administration of an Australian or foreign government or agency, legislature or judiciary
- political or public policy through increased, prolonged or ongoing public or political discourse.

Due to their nature or the operating environment, some *sensitive investigations* require additional oversight. This may be achieved through a number of investigative engagement strategies, additional oversight within a Command and for the most sensitive may include escalation to the Sensitive Investigations Oversight Board (SIOB).

5. What is a sensitive investigation?

An AFP sensitive investigation is a process of inquiry that:

1. involves, or is likely to impact on and/or be of significant interest to:
 - a. Australia's international relationships or agreements
 - b. the operation or administration of the federal government or parliament, or a state, territory, local or foreign government or parliament
 - c. an/a:
 - i. elected member
 - ii. associate or staff member of an elected member
 - iii. election candidate
 - iv. senior or prominent member of a public service entity, of a federal, state, territory, local or foreign government or parliament
 - d. a professional journalist or news media organisation
 - e. an organisation, entity or individual prominent in the Australian community or politics, **and**
2. is, or possibly would be, of significant interest to the Australian community **and/or**
3. is declared to be a sensitive investigation by the AFP Commissioner.

For an investigation to be a *sensitive investigation* it must relate to a criteria under limb 1 **AND** limb 2 of the definition.

Alternatively, the Commissioner or their delegate may declare any investigation to be a *sensitive investigation*.

6. Applying the definition

An investigation can only be a *sensitive investigation* if it is an investigation as defined in the [AFP Investigations Doctrine](#). The definition also applies to any investigative action undertaken by the AFP, whether an AFP investigation or otherwise. It excludes non-investigative work including projects where no investigative action is undertaken.

AFP appointees should use their judgement and make a reasonable assessment on the information available. In assessing the elements of the definition, AFP appointees should reasonably forecast what is likely to unfold during the investigation or as a result of investigative action to determine whether the investigation is, or is likely to be, a *sensitive investigation*.

The **Guidance Note** at Attachment 1 provides some explanatory notes to guide AFP appointees when applying the *sensitive investigation* definition.

6.1 When to assess an investigation against the definition

AFP appointees should routinely assess an investigation against the *sensitive investigation* definition, including:

- upon receipt of a Report or Request
- during the decision making process on the actions the AFP will take on a Report or Request
- upon allocation to an investigations team
- when preparing a situation report for the investigation
- in the lead-up to, and following, certain milestones in the investigation
- where there are changes in the nature of the investigation, such as investigative strategy
- when there are changes to external factors, such as the political environment.

6.2 Recording *sensitive investigations* in PROMIS

All investigations must have an individual PROMIS case. For an investigation where the security classification of the information prohibits its recording on PROMIS, it must be appropriately recorded on a secure system. A corresponding PROMIS case must be created recording the existence of the investigation and must include sufficient case information that will assist in its identification (e.g. incident type, special categories, case officer etc.).

For investigations that are identified as a *sensitive investigation* as per section 6.1, AFP appointees must:

- complete a Decision Case Note Entry (CNE) selecting '*Sensitive Investigation*' from the 'Decision Sub-type' field (the CNE must outline the background of the investigation, reason for it being determined as a *sensitive investigation* and any consultation)
- select the '*Sensitive Investigation*' special category on the PROMIS home screen.

If an investigation ceases to meet the *sensitive investigation* definition, AFP appointees must:

- complete a Decision CNE selecting '*Sensitive Investigation*' from the 'Decision Sub-type' field (the CNE must outline the reason the investigation is no longer a *sensitive investigation* and any appropriate consultation or endorsement)
- remove the '*Sensitive Investigation*' special category on the PROMIS home screen.

7. Managing *sensitive investigations*

To assist in managing the additional risks and potential scrutiny of *sensitive investigations*, unless otherwise directed by a Command, AFP appointees involved in any *sensitive investigations* must consider:

- creating an Investigation Plan
- creating a stakeholder engagement plan, including any victims
- engaging AFP Legal

- early engagement with the Commonwealth Director of Public Prosecutions
- engaging AFP Ministerial and conducting ministerial briefings
- engaging AFP Media.

7.1 Oversight of *sensitive investigations*

When an investigation has been identified as a *sensitive investigation*, it must, through the chain of command, be brought to the attention of the relevant Commander and briefed to the responsible Assistant Commissioner, or in the case of ACT Policing the Chief Police Officer, for awareness and potential escalation. This is to ensure there is sufficient visibility of *sensitive investigations* within each Command. *Sensitive investigations* should be escalated for additional oversight in accordance with section 9 of this guideline.

7.2 Additional risk treatments

Each *sensitive investigation* is unique and in some circumstances additional risk treatments may be required, including:

- appointing a Senior Investigating Officer (SIO)
- increasing resources such as investigators, intelligence, support capability
- compressing investigation timeframes
- creating an engagement plan with a journalist or news media organisation as appropriate via AFP Legal and/or AFP/ACT Policing Media.

These additional risk treatments should be implemented on an as needs basis or at the direction of the relevant Commander, Assistant Commissioner or SIOB.

7.3 *Sensitive investigations* reporting

For all *sensitive investigations*, the Case Officer must ensure a situation report is created on PROMIS (or on the appropriate secure system where the security classification of the information requires it) or as set by appropriate business rules.

8. Sensitive Investigations Oversight Board (SIOB)

The SIOB is a strategic oversight board for AFP *sensitive investigations*. The SIOB provides strategic direction and management of designated *sensitive investigations* and ensures alignment of AFP capabilities and capacities to conduct *sensitive investigations*. The purpose of escalating particularly *sensitive investigations* to the SIOB is to enable the senior executive to have direct awareness and oversight of the matter, and to make recommendations to Deputy Commissioner Investigations (DCI) in order for DCI to make or endorse certain tactical and strategic operational decisions. The SIOB Chair (and decision-maker) is DCI.

The role of the SIOB includes:

- providing strategic direction and priorities for *sensitive investigations* that are subject to SIOB oversight
- reviewing the progress of *sensitive investigations*

- considering and approving (through DCI) future investigative activity, particularly any overt or sensitive information gathering
- considering operational and broader risks regarding *sensitive investigations* and ensuring investigative strategies sufficiently mitigate these risks
- ensuring sufficient stakeholder consultation to consider broader Whole of Australian Government entities have been considered for investigational strategies
- determining whether appointing an SIO is required to lead the *sensitive investigation* and make critical case management decisions
- considering resourcing requirements and access to specialist capabilities where required.

9. Escalation triggers for *sensitive investigations*

While it may be difficult to specify precisely which *sensitive investigations* should be escalated, it is likely appropriate to escalate investigations where particular risks are identified or where broader senior executive oversight is required. This may include rejecting or finalising an investigation. Depending on the level of oversight required, escalation could be within a Command or to the SIOB.

9.1 Escalation within a Command

Escalation within a Command maybe appropriate to enable:

- situational and operational awareness
- endorsement of investigative decisions, including rejecting an investigation
- facilitating escalation to the SIOB
- engagement with external stakeholders
- addressing resourcing requirements.

The following factors might trigger escalation:

- the Commissioner has determined the investigation to be a *sensitive investigation*
- use of certain covert or overt investigative powers, such as special projects and search warrants
- arrest of a person/s
- change in the significance to the Australian community
- changes in the investigative circumstances which impact on the sensitivities associated with the investigation.

9.2 Escalation to the SIOB

Only the most *sensitive investigations* require escalation to the SIOB. AFP appointees should consider the characteristics of the investigation and the role of the SIOB when considering escalating the investigation to the SIOB.

While Espionage and Foreign Interference (EFI) and Counter Terrorism (CT) investigations may be *sensitive investigations* as per the definition, where they are subject to separate oversight regimes they do not need to be escalated to the SIOB. However, in exceptional circumstances, EFI and CT *sensitive investigations* may be escalated to the SIOB after consultation with and

endorsement by the Assistant Commissioner Counter Terrorism & Special Investigations.

The following are some factors which might trigger escalation of the *sensitive investigation* to the SIOB:

- involves obtaining evidence from or about a professional journalist or news media organisation
- involves significant complexities with Legal Professional Privilege, Parliamentary Privilege or legal opinions
- certain allegations or crime types:
 - war crimes investigations
 - serious unauthorised disclosure investigations
 - allegations of bribery or corruption within Australia
 - allegations of foreign bribery which are likely to significantly impact Australia's international relationships
 - allegations of serious offences against or by a state, federal or local government elected member
 - allegations of offences against or by an agency/department head, deputy head or persons holding a position of significant influence or trust with the agency/department
- certain investigative actions are about to be undertaken, such as:
 - use of special projects or sensitive capabilities
 - use of a journalist information warrant
 - use of overt police powers such as search warrants
 - arrest of a high profile or other relevant person
- an increase in criminality is identified during the investigation, such as:
 - identity of person/s who is a subject of the investigation, including co-offenders
 - seriousness of offending
 - identification of other offences
 - impact/harm of offending
- an increase in significance to the Australian community, for example:
 - change from being a sector of the community to a larger group
 - likely material increase in media reporting
 - political impact
 - relevant international impact
- involves a high risk death penalty matter (*the [AFP National Guideline on international police-to-police assistance in death penalty situations](#) applies to these matters*).

The **Guidance Note** at Attachment 2 provides some explanatory notes to guide AFP appointees when considering SIOB escalation triggers.

9.3 How to escalate a *sensitive investigation* to the SIOB

Any briefing to the SIOB should be done in consultation with the responsible Assistant Commissioner, or in the case of ACT Policing the Chief Police Officer, and Assistant Commissioner Counter Terrorism & Special Investigations.

The [SIOB Briefing-Decision Template](#) must be completed by the SIO, case officer or other appropriate person. Refer to the instructional material within the SIOB Briefing-Decision Template for guidance on the information required. This

document must be endorsed through the relevant chain of command to the responsible Assistant Commissioner and reviewed by AFP Legal. The briefing should then be sent to the SIOB Secretariat.

Decisions to escalate *sensitive investigations* to the SIOB and decisions made or endorsed by the SIOB should be recorded, such as in PROMIS.

10. Case security

The case officer should consider whether restricting access to the PROMIS case is appropriate. Such restrictions on access must be used judiciously and reviewed regularly.

AFP appointees must consider restricting access to case information by referring to [National PROMIS Procedure 13 - Team level cases and team level entries](#).

11. Media reporting

Any media reporting must be conducted in accordance with the [Handbook on AFP National Media](#).

A media strategy should be determined in consultation with the relevant stakeholders and coordinated with the AFP National Media Team or ACT Policing Media. Any media strategy must take into account information security considerations.

The timing and contents of all AFP media reporting must be determined in consultation with the relevant Commander, Assistant Commissioner, Chief Police Officer, or SIOB and the AFP National Media Team or ACT Policing Media, with all media reports being cleared, at a minimum, by the relevant Commander.

12. Ministerial

Any ministerial reporting must be conducted in accordance with the [Better Practice Guide on Ministerial Briefings for Investigations](#).

Depending on the circumstances, early engagement with the Ministerial team may be appropriate to devise an engagement strategy specific to the investigation.

13. Further advice

Queries about the content of this guideline should be referred to Commander Counter Foreign Interference & Special Investigations.

14. References

Legislation

- [Australian Federal Police Act 1979](#) (Cth)

AFP governance instruments

- [AFP Commissioner’s Order on Professional Standards \(CO2\)](#)
- [AFP Investigations Doctrine](#)
- [AFP National Guideline for Execution of Search Warrants where Parliamentary Privilege may be involved](#)
- [Better Practice Guide on Ministerial Briefings for Investigations](#)
- [Better Practice Guide on preparation and submission of an Investigation Plan](#)
- [Better Practice Guide on procedures to obtain a Journalist Information Warrant](#)
- [Handbook on AFP National Media](#)
- [Ministerial Direction on Press Freedom 2019](#)

15. Shortened forms

| | |
|----------------|---|
| AFP | Australian Federal Police |
| AFP Act | <i>Australian Federal Police Act 1979</i> (Cth) |
| CNE | case note entry |
| PROMIS | Police Real-time Online Management Information System |
| SIOB | Sensitive Investigations Oversight Board |
| SOP | standard operating procedure |

16. Definitions

AFP appointee means a Deputy Commissioner, an AFP employee, special member or special protective service officer and includes a person:

- engaged overseas under s. 69A of the AFP Act to perform duties as an AFP employee
- seconded to the AFP under s. 69D of the AFP Act
- engaged under s. 35 of the AFP Act as a consultant or contractor to perform services for the AFP and determined under s. 35(2) of the AFP Act to be an AFP appointee. (see s. 4 of the AFP Act.)

Investigation means a process of seeking information relevant to an alleged, apparent or potential breach of the law, involving possible judicial proceedings. The primary purpose of an investigation is to gather admissible evidence for any subsequent action, whether under criminal, civil penalty, civil, disciplinary or administrative sanctions. Investigations can also result in prevention and/or disruption action. The term investigation can also include intelligence processes which directly support the gathering of admissible evidence. (See [AFP Investigations Doctrine](#)).

Investigative action means any action undertaken by the AFP that is directed to the progress of an investigation, whether an AFP investigation or otherwise.

Report means an allegation that a crime has been, is being, or may be committed.

Request means a request for service (in this context, a request for investigative service – such as search warrant assists, mutual assistance requests, some forensic services).

Sensitive investigation is defined in section 5 of this guideline.

17. Attachments

Attachment 1: Guidance Note: *Sensitive Investigation* Definition

Attachment 2: Guidance Note: Possible SIOB escalation triggers

Attachment 3: Flowchart

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Attachment 1: Guidance Note: Sensitive Investigation Definition

| # | Definition Limb | Explanatory Notes |
|---|--|--|
| | An AFP Sensitive Investigation is a process of inquiry that: | <p>It must first be an investigation as defined in the AFP Investigations Doctrine before it can be assessed against the definition.</p> <p>It therefore excludes AFP strategic intelligence and non-investigative work.</p> |
| 1 | Involves, or is likely to impact on and/or be of significant interest to: | For example: a witness, victim, suspect, interested or affected party. |
| | 1(a) Australia's international relationships or agreements | <p>For instance: relating to Australia's trading relationship; defence relationships; inter-government relationships; diplomatic relationships (in Australia and overseas); interaction with world bodies such as the United Nations etc.</p> <p>This is not intended to include an investigation for the sole reason that the investigation involves a mutual assistance request.</p> |
| | 1(b) The operation or administration of the Federal Government or Parliament, or a state, territory, local or foreign government or parliament | For instance: compromise, interference or serious impact to: critical infrastructure; communication or computer networks; specific government or public buildings; electoral integrity; operation of parliament. (e.g. bomb explosion, foreign interference, cyber attack, sabotage, public health emergency, natural disaster). |
| | 1(c) An/a | |
| | (i) Elected member | <p>This includes any elected member of the Commonwealth, state, territory or local government. For instance: a mayor or local council members would be included in this definition.</p> <p>While this does not specify a foreign elected member, it may be appropriate to have it declared a sensitive investigation to ensure oversight.</p> |
| | (ii) Associate or staff member of an elected member | An 'associate' may include a relative, co-habitant, former business partner, or close party colleague. |
| | (iii) Election candidate | <p>Current or past election candidates of a Commonwealth, state, territory or local government election, whether elected or not.</p> <p>While this does not specify a foreign election candidate, it may be appropriate to have it declared a sensitive investigation to ensure oversight.</p> |

| | | |
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| | | |
| | And/or | |
| | (iv) Senior or prominent member of a public service entity, of a federal, state, territory, local or foreign government or parliament | This is intended to apply to an agency head or deputy head, or a person within an agency with a unique high profile position such as a head of mission / ambassador or persons holding a position of significant influence or trust with the agency/department. |
| 1(d) | A professional journalist or news media organisation | <p>A <i>professional journalist</i> is considered to be a person employed or engaged by a news media organisation in the profession or occupation of journalism or is working in a professional capacity as a journalist.</p> <p>A <i>news media organisation</i> is considered to be an organisation whose activities consist of or include the collection, preparation for dissemination or dissemination of the following material for the purpose of making it available to the public or a section of the public:</p> <ul style="list-style-type: none"> ▪ material having the character of news or current affairs ▪ material consisting of commentary or opinion on, or analysis of, news or current affairs. <p>Examples of a <i>news media organisation</i> can include organisations:</p> <ul style="list-style-type: none"> ▪ forming part of the radio and television industry, as regulated by the Australian Communications and Media Authority ▪ print or online media organisations that are members of the Australian Press Council. |
| | And/or | |
| 1(e) | An organisation, entity or individual prominent in the Australian community or politics | <p>For example:</p> <ul style="list-style-type: none"> • a publicly listed Australian company • a well-known Australian company • a senior religious figure • celebrities and well-known sports people • head of a political party (e.g. unelected official) • head of a university • trade union • member of the judiciary • charity or not-for-profit organisation. |

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| | | |
|---|--|---|
| 2 | Is or possibly would be of significant interest to the | Each investigation must be assessed on its merits and the circumstances unique to it. |
|---|--|---|

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| | | |
|--|----------------------|---|
| | Australian community | <p>Significance to the Australian community will depend on the political and external environment at the time and are therefore not static considerations. What might be of interest to the Australian community at one point or period in time may not be of interest at another.</p> <p>Reference to 'Australian community' may include a part of the Australian community such as a state or territory or a sector of the community in Australia.</p> <p>In assessing if an investigation 'possibly would be of significant interest', appointees should reasonably forecast how the investigation may unfold in determining those future potential impacts. This may include understanding how similar investigations in the past were of interest to the Australian community.</p> <p>Media/news coverage:</p> <p>While media coverage of an investigation may indicate interest by the Australian community, it may not necessarily be the case.</p> <p>In assessing 'significant interest' while an investigation may be reported in the newspaper, even nationwide, single day or fleeting coverage may not mean the interest is significant.</p> <p>An investigation of significant interest is likely to experience extended media coverage and/or ongoing public or political discourse impacting political or public policy and be subject of a feature or analytical story in print or broadcast media.</p> <p>For example: An arrest of a drug offender receiving short-term media coverage, might not be of significant interest to the Australian community.</p> |
|--|----------------------|---|

AND/OR

| | | |
|---|--|--|
| 3 | Is declared to be a sensitive investigation by the AFP Commissioner. | <p>These are likely to be investigations that do not meet the sensitive investigation definition that require SIOB oversight.</p> <p>The Commissioner or their delegate can make this determination.</p> |
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Attachment 2: Guidance Note: Possible SIOB escalation triggers

The following are some factors which might trigger escalation of the *sensitive investigation* to the SIOB:

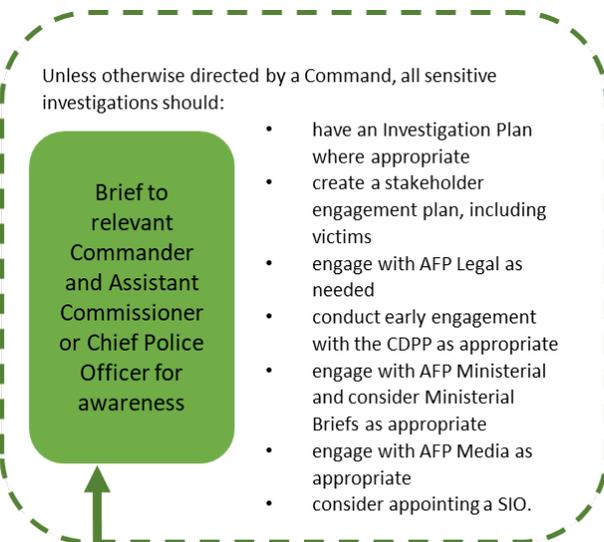
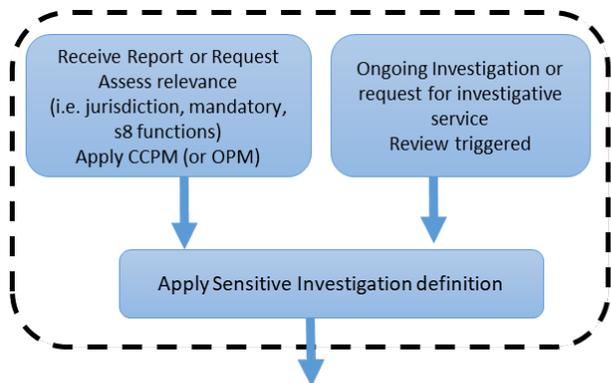
- involves obtaining evidence from or about a professional journalist or news media organisation
- involves significant complexities with Legal Professional Privilege, Parliamentary Privilege or legal opinions
- certain allegations or crime types: *(note this list could change depending on what is of interest at a future/given point in time)*
 - war crimes investigations
 - serious unauthorised disclosure investigations *(note: 'serious' in this context has not been defined but will be guided by the circumstances of the investigation. This may also be informed by the harm statement)*
 - allegations of bribery or corruption within Australia
 - allegations of foreign bribery which are likely to significantly impact Australia's international relationships
 - allegations of serious offences against or by a state, federal or local government elected member
 - allegations of offences against or by an agency/department head, deputy head or persons holding a position of significant influence or trust with the agency/department
- certain investigative actions are about to be undertaken, such as:
 - use of special projects or sensitive capabilities *(e.g. special projects deployment on a MP is likely to require escalation, but on a peripheral suspect maybe not)*
 - use of a journalist information warrant
 - use of overt police powers such as search warrants *(this will allow the SIOB to see if overt action on two different sensitive investigations, e.g. Newspaper A/Media Organisation C, is likely to occur at or around the same time. However, a search warrant to obtain bank records may not require escalation)*
 - arrest of a high profile or other relevant person
- an increase in criminality is identified during the investigation, such as:
 - identity of person/s who is a subject of the investigation, including co-offenders *(e.g. a sensitive investigation relating to a prominent person downloading Child Abuse Material (CAM) may not require escalation; however, if multiple prominent persons are identified as co-offenders it may require escalation)*
 - seriousness of offending *(e.g. downloading 4 images of CAM is then discovered to be 400,000 images or contact offending)*
 - identification of other offences
 - impact/harm of offending *(e.g. initially it was suspected to be a \$400,000 fraud, but later discovered to be \$40M and serious impact on government revenue or administration of a key government policy)*
- an increase in significance to the Australian community, for example:
 - change from being a sector of the community to a larger group *(e.g. initially a sensitive investigation only relating to a state or territory, but later identified as being multi-jurisdictional and impacting many communities across Australia)*

- likely material increase in media reporting (*while general media matters may be dealt with by the Command with AFP Media, escalation may be required if it is likely that the investigation will undergo sustained media reporting with questions to the Minister and Commissioner*)
- political impact
- relevant international impact (*e.g. a sensitive fraud and anti-corruption investigation into conduct of an Australian company overseas identifies the involvement of foreign government officials*)
- involves a high risk death penalty matter (*the [AFP National Guideline on international police-to-police assistance in death penalty situations](#) applies to these matters*).

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Question 1. Involves, or is likely to impact on and/or be of significant interest to:

- Australia's international relationships or agreements;
- the operation or administration of the federal government or parliament, or a state, territory, local or foreign government or parliament;
- an/a:
 - elected member;
 - associate or staff member of an elected member;
 - election candidate; and/or
 - senior or prominent member of a public service entity, of a federal, state, territory, local or foreign government or parliament;
- a professional journalist or news media organisation; and/or
- an organisation, entity or individual prominent in the Australian community or politics,

Investigation is sensitive

Question 2. Is or possibly would be of significant interest to the Australian community? (refer NG)

Does the sensitive investigation need SIOB oversight?

Question 3. Is declared to be a sensitive investigation by the AFP Commissioner?

Investigation is not sensitive

SIOB Escalation triggers

These factors may not be applicable in every investigation. Every investigation is different, internal and external environment impacting the need for escalation often changes. Escalation may be for information or for decision.

Factors in addition to meeting the definition to consider include:

- involves obtaining evidence from or about a professional journalist or news media organisation
- involves significant complexities with Legal Professional Privilege, Parliamentary Privilege or legal opinions
- certain allegations or crime types:
 - war crimes investigations
 - serious unauthorised disclosure investigations
 - allegations of bribery or corruption within Australia
 - allegations of foreign bribery which are likely to significantly impact Australia's international relationships
 - allegations serious offences against or by a state/federal or local government elected member
 - allegations of offences against or by an agency/department head, deputy head or persons holding a position of significant influence or trust with the agency/department
- certain investigative actions are about to be undertaken, such as:
 - use of special projects or sensitive capabilities
 - use of a journalist information warrant
 - use of overt police powers such as search warrants
 - arrest of a high profile or other relevant person
- an increase in criminality is identified during the investigation, such as:
 - identity of person/s subject of the investigation, including co-offenders
 - seriousness of offending
 - identification of other offences
 - impact/harm of offending
- an increase in significance to the Australian community, for example:
 - change from being a sector of the community to a larger group
 - likely material increase in media reporting
 - political impact
 - relevant international impact
- involves a high risk death penalty matter

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