



## DEPARTMENT OF DEFENSE

### **ISSUE: DEFINITION OF “CREDIBLE INFORMATION FROM A RELIABLE SOURCE” UNDER THE HOMOSEXUAL CONDUCT POLICY (HCP), COLLQUIALLY KNOWN AS “DON’T ASK, DON’T TELL” (DADT).**

**POLICY DESCRIPTION:** Because there is no clear definition of “credible information from a reliable source,” service members are discharged based on unsupported information from unreliable sources. Our goal is to require that information actually be “credible information from a reliable source” before a commander may initiate an investigation or discharge proceedings.

Currently, the implementing directives allow a commander to initiate an investigation or discharge proceedings related to homosexual conduct “only if he or she has credible information that there is basis for discharge.”

The directives state: Credible information exists when “the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. It requires a determination based on articulable facts, not just a belief or suspicion.”

Credible information is defined in the following manner:

“A reliable person states that he or she observed or heard a Service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a member of the same sex; or

A reliable person states that he or she heard, observed, or discovered a member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or

A reliable person states that he or she observed behavior that amounts to a non-verbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.”



This language can be found in DoD Directive 1332.14 ¶ E3.A4.3.1, ¶ E3.A4.3.4.2, ¶ E3.A4.3.4.3 and DoD Directive 1332.40 ¶ E8.3, ¶ E8.3.4.1, ¶ E8.3.4.2, ¶ E8.3.4.3

The described directives raise several issues. First, the description of when credible information exists is ambiguous. In practice vague and unsupported allegations are often used to initiate investigations and derail careers. Second, the “reliable person” standard is also vague and allows persons not involved in the military or affected by the member’s alleged conduct to cause an investigation or discharge proceedings to be initiated. Third, the directive allows an investigation or discharge proceedings to be initiated based on a “non-verbal statement by a member.” The statute does not include “non-verbal statement” as a basis for discharge; it defines the specific acts (bodily contact and marriage or attempted marriage) and the words (“I am gay” or “words to that effect”). Thus, it is inappropriate to initiate an investigation based on such behavior.

The following are examples of situations in which commands initiated investigations and/or discharge proceedings based on non-credible information from unreliable sources:

- Army Sergeant Bleu Copas, an Arabic linguist, was outed by an anonymous email stating that he was out on his MySpace page. Copas denied being gay and invoked his Article 31 rights not to answer any further questions. The investigating officer admitted that the source never identified him or herself, and the credibility therefore could not be established. He nonetheless recommended discharging SGT Copas.
- Lieutenant Commander Karen Soria was a highly regarded Jewish Rabbi in the Navy’s chaplain corps. A civilian friend’s civilian husband accused her of having an affair with his wife while the two were going through a divorce. The husband turned over a friendship card sent by Rabbi Soria and an entry taken from his wife’s diary to the command. The accusation ended Rabbi Soria’s ten-year naval career when her command initiated discharge proceedings against her. Disheartened by the Navy’s pursuit of allegations made by a civilian motivated by revenge, she resigned her commission.

**RECOMMENDATIONS FOR CHANGE:** The description of when credible information exists should be amended to state:



“Credible information exists when a service member (not a civilian) has direct knowledge that there is a basis for discharge. It requires a determination based on facts presented in the record, not just belief or suspicion.”

“A commander should only rely on direct evidence obtained from a ‘reliable member of the military (not a civilian).’ In order to be considered reliable, the service member must be identifiable by name, rank, and social security number, must submit a sworn affidavit of what s/he directly witnessed, and “directly witnessed” means that s/he must have seen or heard the conduct directly from the subject.”

Delete from the directive: “A reliable person states that he or she observed behavior that amounts to a non-verbal statement by a member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.”

Because the statute’s stated objective is to maintain the armed forces’ high standards of morale, good order and discipline, and unit cohesion, then it is axiomatic that it is only the member’s conduct that is heard or observed by another member that should be the basis of discharge. Under the amendment, information received from a civilian could not be used to initiate an investigation. Additionally, members making claims of homosexual conduct against another member must have direct knowledge of the alleged conduct. A commander could not initiate an investigation based on hearsay or other indirect information. Finally, a commander could not initiate an investigation based on so-called “non-verbal statements.”

**PROCESS FOR MAKING CHANGES:** DoD is responsible for the directives implementing the requirements of 10 U.S.C. § 654. The Secretary of Defense can either issue the necessary directives or delegate that authority to persons within the Department. The Secretary of each military department, Army, Navy, Marines, and Air Force, is required to ensure that the mandates are followed by his or her respective branch although commanding officers are primarily responsible for the implementation of the proscribed instructions.