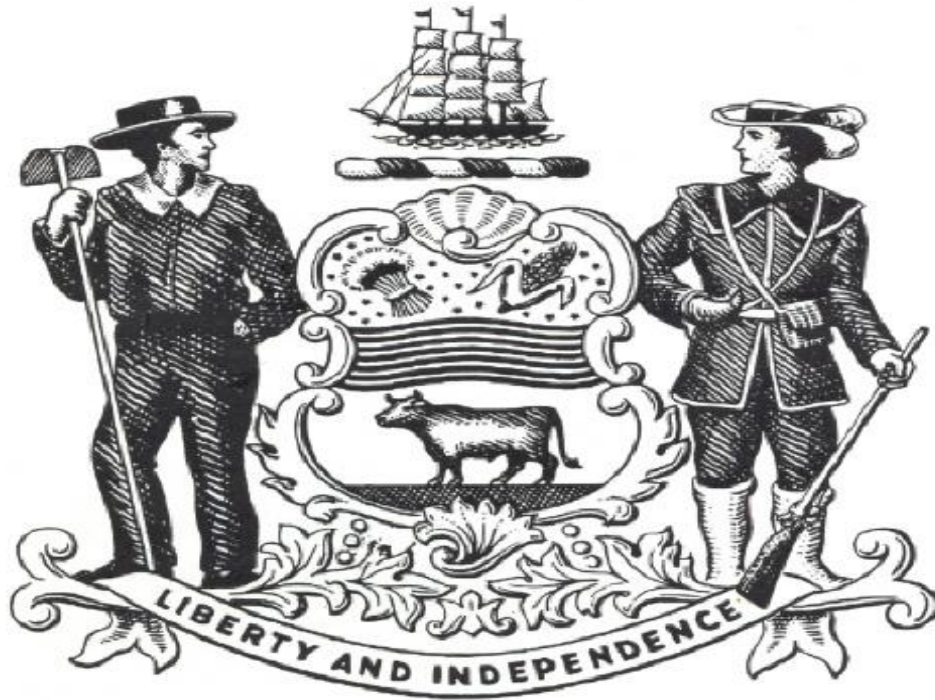

Joint Legislative Oversight and Sunset Committee



**Delaware Information and
Analysis Center**

2017 Draft Report

February 2017

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Table of Contents

A NOTE ABOUT THIS DRAFT REPORT.....5

AGENCY HISTORY7

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY7

MISSION & GOALS7

COMPOSITION & STAFFING8

ENACTED LEGISLATION IMPACTING DIAC.....13

PENDING LEGISLATION.....13

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE.....13

FREEDOM OF INFORMATION ACT COMPLIANCE14

FISCAL INFORMATION.....15

ACCOMPLISHMENTS16

CHALLENGES18

OPPORTUNITIES FOR IMPROVEMENT18

ADDITIONAL COMMENT FROM THE COMMITTEE’S ANALYST

APPENDIX A: ORGANIZATION CHART TAB A

APPENDIX B: 28 CFR, PART 23 TAB B

APPENDIX C: EXECUTIVE ORDER 21 TAB C

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A NOTE ABOUT THIS DRAFT REPORT

The information provided in this report is taken from the Joint Legislative Oversight and Sunset Committee (“Committee”) Performance Review Questionnaire, as it was completed by the agency under review. When appropriate, the Analyst who prepared this report made minor changes to grammar and the organization of information provided in the questionnaire, but no changes were made to the substance of what the agency reported. Any point of consideration which arose in analyzing the questionnaire and compiling this report is addressed in the section titled “Additional Comment from the Committee’s Analyst.” It is the intent of the Analyst to make any substantive changes which may be required as the result of findings made through the review processes, in the final version of this report.

The statutes governing and applying to the agency under review are included as Appendixes to this Draft Report. They are included only as a reference for Committee members and may not be included in the Final Report.

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AGENCY HISTORY

The Delaware Information and Analysis Center (“DIAC”) is a unit that the Delaware State Police (DSP) created in 2005. It was formed out of the DSP Intelligence Section as Delaware’s designated “fusion center.” Currently, DIAC falls under the Delaware State Police (“DSP”), Intelligence and Homeland Security Section. There was no new legislation to create DIAC.

Fusion centers were created as a response to the 9/11 Commission Report, which proposed that “information be shared horizontally, across new networks that transcend individual agencies.”

A fusion center is a state or locally operated entity, designated and recognized by each state’s governor, addressing crime prevention, response, and investigation (including terrorism).¹ The fusion center concept is defined as “a collaborative effort of two or more agencies that provide resources, expertise, and/or information to the center with the goal of maximizing the ability to detect, prevent, investigate, apprehend, and respond to criminal and terrorist activity.”

DIAC is part of a national network of fusion centers. There are 78 state and major urban area fusion centers in the United States. The role of fusion centers in the network is to serve as focal points with the state and local environment for the receipt, analysis, gathering, and sharing of threat-related information, including terrorism information and information on traditional crime activities, between the federal government and state, local, tribal territories (“SLTT”), and private sector partners.²

JOINT LEGISLATIVE OVERSIGHT AND SUNSET COMMITTEE REVIEW HISTORY

The Joint Legislative Oversight and Sunset Committee (“JLOSC”) has not previously reviewed DIAC.

MISSION & GOALS

DIAC’s mission is to combat terrorism through information and intelligence sharing an “all crimes, all hazards” model was developed in order for DIAC to utilize the information sharing and analytical tools beyond the counterterrorism mission.

DIAC’s goals and objectives are:

1. Prevent acts of terrorism.
2. Prevent, reduce, and solve crime through information sharing and analysis.
3. Utilize information sharing tools to add value to homeland security partners through an “all crimes, all hazards” approach. This involves partnerships, collaboration, and innovation.

In the last five years, DIAC participated in the U.S. Department of Homeland Security (“DHS”) Annual Fusion Center Assessment and Gap Mitigation Activities.³ The results of this assessment were the topic of legal discussion to keep the results from being publically released and identifying particular strengths

¹ In 2007, the Secretary for the U.S. Department of Homeland Security and the U.S. Attorney General issued a letter to each governor, requesting the designation of “a single fusion center to serve as the statewide or regional hub to interface with the federal government and through which to coordinate the gathering, processing, analysis, and dissemination of terrorism, law enforcement, and homeland security information.” Further, the letter requested the development of a strategy that “is consistent with federal efforts to constitute the ISE,” which also includes any major urban area fusion center.

² For the 2014-2017 National Strategy for the National Network of Fusions Centers, click the following link: <https://www.ise.gov/sites/default/files/National%20Strategy%20for%20the%20National%20Network%20of%20Fusion%20Centers%202014.pdf>.

³ For additional information regarding fusion center assessment and gap mitigation activities click the following link: <https://www.dhs.gov/annual-fusion-center-assessment-and-gap-mitigation-activities>.

and weaknesses of each individual center. The aggregate data was released. The assessments revealed an average score of 98% in 2015.⁴

Fusion centers are expected to have the following Critical Operating Capabilities (“COCs”):

- Receive: Ability to receive classified and unclassified information from federal partners.
- Analyze: Ability to assess local implications of that threat information through the use of a formal risk assessment process.
- Disseminate: Ability to further disseminate that threat information to other state, local, tribal, territorial, and private sector entities within their jurisdiction.
- Gather: Ability to gather locally generated information, aggregate it, analyze it, and share with federal partners as appropriate.

Fusion centers were expected to have the following Enabling Capabilities (“ECs”):

- Privacy, Civil Rights, and Civil Liberties Protections.
- Sustainment Strategy.
- Communication and Outreach.
- Security.

COMPOSITION & STAFFING OF DIAC

There are currently 23 DSP employees assigned to DIAC. Twelve are sworn troopers and 11 are civilians. DIAC would like to keep the detailed list of employees and their assignments confidential due to safety concerns.⁵

The path for discipline or removal will usually follows the DSP Complaint and Disciplinary Process via DSP Internal Affairs Section. This path is not absolute, since some sworn members may be deemed unfit for duty for not qualifying to carry a firearm, not passing weight or fitness standards, or having their driving privileges revoked for an extended period of time. Some civilian employees, such as analysts, are required to qualify for and maintain a national security clearance. Colonel McQueen and Secretary Coupe have the ultimate authority to approve terminations. No members of DIAC have been removed.

Delaware’s Homeland Security Advisory Council (“HSAC”) is the DIAC Governance Board and is comprised of the following members, all whom may appoint a designee, other than the first 2 listed:

- The Secretary of the Department of Safety and Homeland Security, who serves as chair.
- The Homeland Security Advisor for the Department of Safety and Homeland Security.
- The Adjutant General of the Delaware National Guard.
- The Chief Information Officer of the State of Delaware.
- The Secretary of the Department of Natural Resources and Environmental Control.
- The Secretary of the Delaware Department of Transportation.
- The Secretary of the Delaware Department of Education.

⁴ The 2015 National Network of Fusion Centers Final Report can be found at <https://www.dhs.gov/sites/default/files/publications/2015%20Final%20Report%20Section%20508%20Compliant.pdf>.

⁵ See Appendix A for the DIAC organization chart. Analyst’s note: Employee safety is important to DIAC staff and their families. Such lists have been distributed to those responsible for terrorizing Delaware’s protectors. News articles to support privacy for DIAC employees have been provided and are available upon request.

- The Secretary of the Delaware Department of Agriculture.
- The Commissioner of the Department of Correction.
- The Superintendent of the Delaware State Police.
- The Director of the Division of Public Health.
- The Director of the Delaware Emergency Management Agency.
- The Director of the Division of Motor Vehicles.
- The Executive Secretary of the Delaware Volunteer Firefighters' Association.
- The Chair of the Delaware Police Chiefs' Council.
- The President of the League of Local Governments; and
- Other representatives from federal, state, and local governments, private sector partners, academia, and emergency service organizations, as recommended by the Secretary of Safety and Homeland Security and appointed by the Governor.⁶

Currently, there are 23 HSAC members. Twelve members constitute a quorum.

There is no designated term for DIAC members. Sworn troopers may be transferred out of DIAC to other DSP assignments at the discretion of the DSP Superintendent.

There is no designated term of office for HSAC members. Each new member must receive an official appointment; however, with the position is an expectation that they will serve on the Council or name a designee. For example, if the Director of DEMA retires and is replaced, the DSHS Secretary appoints the new Director HSAC member.

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⁶ Other representatives currently represent Dover Motorsports, Wilmington University, Dover Air Force Base, Delaware Healthcare Association, Amtrak, US Department of Homeland Security, Federal Bureau of Investigation, and the U.S. Attorney's Office.

Staff Member	Responsibilities	Percentage of Time Devoted to Each Responsibility
Captain- Commander (1) DIAC Director	Administrator	50% DIAC 50% Intelligence Unit
Lieutenant (1) DIAC Deputy Director	Administrator	100% DIAC
Lieutenant (1) DIAC Special Projects	Administrator/Project Manager	100% DIAC
Sergeant (1) DIAC	First-Line Supervisor for Analysts and Criminal Intelligence Officers	100% DIAC
Sergeant (1) DSP Maritime Unit	First-Line Supervisor of DSP Maritime Unit	80% DIAC, 20% DSP SCUBA Team (Part-Time Unit, not under DIAC)
Intelligence Analysts (7)	Intelligence Analysis	100%
Crime Analyst (1)	Crime Analysis	100%
Crime Statistician also known as Management/Data Analyst (1)	Statistics	100%
Criminal Intelligence Officers (3)	Support to DSP criminal investigative units in each county(N,K,S) and other police agencies	100%
Planner- Vulnerability Assessment Specialist in Critical Infrastructure Unit (1)	Infrastructure outreach and vulnerability assessments. Maintains specific information on Critical Infrastructure	100%
Terrorism Liaison Officer (1)	Conducts outreach and education concerning suspicious activity reporting related to terrorism and response considerations to acts of violence (i.e. active shooter, violent intruder)	100%
Planner- Weapons of Mass Destruction Unit (1)	Planning, exercise, and training in chemical, biological, radiological, nuclear, and explosive (CBRNE) incidents	100%

Contractors

DIAC has employed 1 contractor for the last 2 years, providing computer programming and technical assistance.

Compensation

DIAC employees are DSP employees, either sworn or civilian, and are compensated as such.

Training

Training is offered throughout the year and throughout the country. The Homeland Security Grant Program (“HSGP”) provides funding for these training opportunities. The Delaware Emergency Management Agency (“DEMA”) HSGP Working Group must approve HSGP expenditures.

DIAC Analysts must complete 8 hours of training per year and DSP Troopers must complete 16 hours of training per year (COPT-Council on Police Training)

Conflict of Interest

DSP internal rules and regulations prohibit conflicts of interest.

Partnerships

DIAC offers many other state entities the opportunity to utilize DIAC tools and information-sharing capabilities to further their mission and add value. For example, in August of 2016, DIAC partnered with the Delaware Department of Health and Social Services, Delaware Division of Forensic Science, Delaware Office of Emergency Services, Delaware Division of Substance Abuse and Mental Health, and the High Intensity Drug Trafficking Area (HIDTA) Program to develop a comprehensive statewide drug monitoring initiative (DMI), initially focusing on the heroin epidemic. This research will greatly assist in painting a better picture of the current operating environment for law enforcement, service providers, and treatment communities in Delaware. Delaware’s DMI will continue to share its findings with the state, region, and nation to combat heroin overdoses and deaths.

In October 2016, DIAC submitted a request to the Delaware National Guard for a full-time Counterdrug Task Force analyst to assist with the DMI project. National Guard leadership agreed that this was a priority for the citizens of Delaware and committed the resource. The position has been posted and a selection panel was held on November 10, 2016. The National Guard analysts assigned to the DMI project are currently working in DIAC.

Next, the DMI partnership will be extended to other agencies and entities. The Delaware Department of Correction (“DOC”) is one excellent example. Many Delaware inmates have had substance abuse issues and DOC inclusion in the DMI project could help shape treatment strategies and efforts in our prisons.

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Agencies that DIAC regularly interacts with are as follows:

Delaware Agencies:

- All Delaware law enforcement.
- Delaware National Guard.
- United States Air Force (DAFB).
- Delaware Emergency Management Agency (“DEMA”).
- Department of Natural Resources and Environmental Control (“DNREC”).
- Department of Education.
- Department of Transportation.
- Department of Agriculture.
- Dept. of Correction.
- Div. of Public Health.
- Division of Motor Vehicles.
- Delaware Volunteer Firefighters.
- Delaware League of Local Governments.

Federal Agencies:

- Federal Bureau of Investigation.
- U.S. Dept. of Homeland Security.
- Federal Protective Service.
- US Dept. of Agriculture.
- Amtrak Police Department.

Licensing:

DIAC is the conduit for law enforcement officers and personnel to gain access to criminal intelligence information. Individuals must first be trained and certified in 28 CFR, Part 23- Criminal Intelligence Information.⁷ In the past 3 years, 954 individuals received the license and were permitted access to the Delaware Statewide Intelligence System (‘DSIS’). This licensing is valid until their employment is terminated.

A standardized national certification examination is used to test knowledge of 28 CFR Part 23. The United States Department of Justice (“USDOJ”) Bureau of Justice Assistance (“BJA”) develop and score the examination, and issues the certification. Delaware, via DIAC, does not issue licenses outside of Delaware, except to federal law enforcement agency personnel that work within Delaware.

Many other states have reciprocity with DIAC and DIAC users if they are trained and certified in 28 CFR, Part 23. Often times, intelligence is shared through a pointer/index system via the Regional Information Sharing System (“RISS”) network. With a pointer/index system intelligence information is not immediately shared over the network, but the requester is directed to the specific holder (agency) of that information. There may be additional inquiries or requirements as to the right and need to know that information.

⁷ See Appendix B for 28 CFR, Part 23.

The criteria for determining qualifications for licensure include a law enforcement nexus, a need and right to know, and a Delaware Justice Information System (“DELJIS”) access.

	# of License Applications Received	# of License Applications Approved	# of Licenses Issued	# of Licenses Rejected	# of Licenses Revoked
Calendar Year 2014	595	595	595	0	0
Calendar Year 2015	209	209	209	0	0
Calendar Year 2016	150	150	150	0	0

ENACTED LEGISLATION IMPACTING DIAC

State Executive Order:

Delaware Executive Order 21, dated October 12, 2010; reauthorizing the Delaware HSAC with an “all hazards, all persons” approach.⁸

Federal Legislation:

The Code of Federal Regulations, specifically 28 CFR Part 23, covers the collection, retention, and dissemination of criminal intelligence information.⁹

Although not laws or regulations, the Fusion Center Guidelines and the National Suspicious Activity Reporting (“SAR”) Initiative standards are guidelines for fusion centers.¹⁰

PENDING LEGISLATION

There is no pending legislation at this time.

ADMINISTRATIVE PROCEDURES ACT COMPLIANCE

DIAC does not promulgate rules and regulations.

The DIAC website is a resource available to the general public and other potential partners. DIAC is also highlighted in the Delaware State Police Annual Report.

In 2015, DIAC greatly increased public outreach efforts through the creation of the DIAC Terrorism Liaison Officer (“TLO”). The TLO educates the public and particular target groups on reporting suspicious activity related to terrorism. The current terrorism threat stream can guide the TLO outreach effort. For example, when international terrorists were calling for attacks on shopping malls, the TLO

⁸ See Appendix C for Executive Order 21.

⁹ https://it.ojp.gov/documents/28CFR_Part_23.PDF.

¹⁰ https://it.ojp.gov/documents/fusion_center_guidelines_law_enforcement.pdf

reached out to Delaware's larger commercial establishments and conducted training and awareness events. In response to attacks in American religious institutions, the TLO conducted House of Worship training events in partnership with the United States Attorney's Office in Wilmington, DE.

This education also provides these target groups with considerations for responding, or planning to respond, to violence.

FREEDOM OF INFORMATION ACT ("FOIA") COMPLIANCE

All FOIA requests are to be forwarded to the Deputy Attorney General assigned to the Delaware State Police for legal review and recommended response.

DIAC has never received a complaint that it violated FOIA.

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FISCAL INFORMATION

DIAC does not collect fines or fees.

- Total amount of federal funds - \$488,585.
- Type of federal fund – Department of Homeland Security Grants.
- State/Federal Match Ratio - No state match if Port Security grants are used for training.
- State Share of Dollars - \$0.
- Federal Share of Dollars - 100%

FY15 and FY16 Actual Expenditures and FY17 Budgeted Expenditures

Also indicated are the source of expenditures, such as general fund, special fund, or federal fund.

Fiscal Year	Source(s)	Amount \$\$
FY17 (budgeted)	GF	\$2,549,337
	ASF	\$18,000
	NSF (federal/other)	\$733,059
		TOTAL \$3,300,396
FY16 (actual)	GF ASF	\$2,194,347
	NSF (federal/other)	\$18,000
		\$576,629
		TOTAL \$2,788,976
FY15 (actual)	GF	\$2,289,037
	ASF	\$18,000
	NSF (federal/other)	\$679,138
		TOTAL \$2,986,175

FY16 Budgeted Expenses.

Line Item	Source(s)	Amount of Expenditures
Personnel Costs	GF	\$2,373,238
	NSF (Federal)	\$176,274
Vehicle Operating/Capital Costs	GF	\$86,925
Facilities	GF	\$89,173
Computer Services	ASF	\$6,500
	NSF	\$556,785
Misc. Contractual Services	ASF	\$5,000
Plotter Supplies	ASF	\$6,500
		TOTAL \$3,330,396

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ACCOMPLISHMENTS

The largest accomplishment is that DIAC has matured into an effective fusion center and has consistently met the expectations set by the US Department of Homeland Security. DHS, under the Secretary for Intelligence and Analysis, Francis X. Taylor, testified before the US House Homeland Security Committee on September 14, 2016 concerning shutting down terrorist pathways into America. He stated, “Today, the National Network of Fusion Centers serves as the cornerstone of domestic information sharing, and architecture, providing grassroots intelligence and analytic capabilities to their customers at the state and local levels.” There is a full-time DHS Intelligence Officer assigned to work in DIAC to capitalize on these resources.

On October 26, 2016, the Director of the Federal Bureau of Investigation (“FBI”), James Comey, addressed hundreds of representatives from fusion centers at the National Fusion Center Association (“NFCA”) conference in Alexandria, VA. Director Comey discussed terror threats and the FBI desire to work more closely with all fusion centers. FBI has been working through their Office of Partner Engagement (“OPE”) to find the best possible ways to increase these working relationships. Director Comey stated that co-location of fusion center and FBI personnel was an extremely effective way of working together, but not possible in every scenario. He also discussed security clearances for fusion center personnel, so that the FBI could be readily transparent with as much information as possible. This is already occurring in DIAC and is a significant accomplishment.

The Director of National Intelligence, James Clapper, also spoke at the October 2016 NFCA Conference. He discussed how fusion centers fit into the national framework for increased homeland security efforts. Deputy Secretary of DHS, Alejandro Mayorkas, chose to spend his last day in office at the NFCA Conference and also addressed the event participants. These actions demonstrate the strong partnerships between the federal government and their state, local, and tribal territory partners via the fusion center network and can be viewed as a significant accomplishment.

DIAC is well-positioned to share threat information with the federal government, both as the provider and the recipient. The following examples provide clear evidence:

- In February 2015, Delawareans learned that a terror suspect was operating a kiosk at the Dover Mall. He was arrested and accused of being part of a plot to raise money to fly 2 subjects to Syria to join ISIL fighters. This was Plan A. Plan B was to remain in the US and kill a police officer and take his weapon and kill more police officers. This case was a surprise to most who read it in the news. DIAC personnel had been briefed months earlier by the FBI and had participated in activities to ensure that Plan B did not occur. In addition, leadership from the Delaware State Police and Dover Police Department were made fully aware of the investigation and supported the FBI-led efforts. This degree of information sharing and partnership is at the highest level ever in Delaware.¹¹

¹¹ More details of this investigation are available to JLOSC on a confidential basis.

- In July 2015, the Middletown Police Department was alerted by a Delaware citizen who saw a disturbing Facebook post of a photograph of an acquaintance holding a Koran and an assault rifle while wearing Arab-style clothing. This photograph was similar to martyr photos often produced by terrorists and was posted in the immediate wake of the terror-inspired killings of 5 US military service members in Chattanooga, Tennessee. The Middletown PD officer notified DIAC and emailed the photograph. The on-call DIAC analyst observed the notification, determined that the incident needed immediate attention and made contact with DIAC leadership. Within minutes, FBI leadership in Delaware was made aware of the incident and a Joint Terrorism Task Force investigation was launched. DSP and FBI investigators determined that the individual in the photo was holding a real assault rifle, had recently taken the photo, and was prohibited from possessing firearms due to a domestic violence conviction. Investigators also learned that the subject held extreme radical Islamic beliefs and spent hours a day watching beheading videos. The subject was arrested for illegally possessing a firearm and eventually convicted. He was not linked to any plots to do harm.¹²

DIAC personnel have been very effective at finding information to add value to criminal investigations. DIAC information-sharing efforts have also added value to solving cases.¹³

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¹² More details of this investigation are available to JLOSC on a confidential basis.

¹³ More details of this investigation are available to JLOSC on a confidential basis.

CHALLENGES

The counterterrorism mission is extremely challenging. It is tantamount to investigators being expected to identify and apprehend a bank robber prior to the subject committing the actual robbery. Efforts in this area are often very difficult to measure for effectiveness and crime prevention.

DIAC has the immediate need to have 24/7 coverage, particularly for the “watch” function. Currently, this is accomplished through the on-call analyst periodically checking the DIAC email box and/or administrators responding to calls or reacting to reported events. DSP Headquarters Communications is 24/7 and notifies DIAC personnel during non-working hours for matters that appear to necessitate immediate attention. Other “on-call” DIAC personnel remain available to respond for an emergency which is not an uncommon business practice for DSP.

Staffing is an issue. DIAC has several “units” consisting of only 1 person. This presents an obvious problem for continuity of operations, including extended hours, long-term events, and even planned vacations; unplanned vacancies; and general turnover, including transfers, and retirements.

OPPORTUNITIES FOR IMPROVEMENT

DIAC works under the philosophy of “continuous improvement.” There can always be improvement in methods of sharing and analyzing information. DIAC not only looks for the best methods, but also seeks out smart methods that could have applicability. In the fusion center environment it is important to look at information from several different angles. This can effectively be accomplished through the sharing of information and the inclusion of personnel with different backgrounds and from different disciplines. Looking at things through different lenses can greatly enhance analytic capabilities and enhance the quality of product production. DIAC should continue to seek buy-in from potential partners and increase efforts to have these partners contribute to the fusion center mission through inclusion and if possible, immersion.

ADDITIONAL COMMENT FROM THE JOINT SUNSET ANALYST

The DIAC may wish to provide an overview of efforts to assist Delaware officials regarding the recent James T. Vaughn Correctional Center standoff.

The JLOSC requested review of the DIAC due to concerns regarding its potential use of the Stingray technology, first observed in a News Journal article in February 2016. The DIAC provided the JLOSC with an overview of technology regarding cell phone data and that DIAC follows guidelines regarding the retention of data set forth by the National Strategy for the National Network of Fusion Centers. DIAC utilizes information to detect, prevent, investigate, apprehend, and respond to criminal and terrorist activity.

DIAC would like to become a 24 hour, 7 day a week operation in the future, which would require additional funding.