

**Department of Defense**  
**Privacy and Civil Liberties Officer Report**



**Annual Report for Fiscal Year 2023**  
**October 01, 2022 – September 30, 2023**

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## **I. INTRODUCTION**

The Department of Defense (“DoD” or “Department”) submits this Privacy and Civil Liberties Officer Report (hereinafter referred to as “the Report”) covering the activities of the DoD Privacy and Civil Liberties Officer (DoD PCLO) for fiscal year 2023: October 1, 2022, through September 30, 2023.

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, (Public Law 110-53), codified at 42 U.S.C. § 2000ee-1, requires the Secretary of Defense to designate a senior officer to serve as the Department’s principal advisor on privacy and civil liberties matters and to report on an annual basis the activities of this officer. The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (ATSD(PCLT)) serves as the DoD PCLO and reports to and advises the Secretary of Defense and the Deputy Secretary of Defense on these matters.

The Report describes the privacy and civil liberties activities of the DoD PCLO, including:

- The organizational structure of the DoD Privacy and Civil Liberties Programs;
- Information on the number and types of reviews undertaken;
- The type of advice provided and the response to such advice;
- The number and nature of the complaints received by the Department for alleged privacy and civil liberties violations; and
- A summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of the DoD PCLO.

The DoD is committed to protecting and promoting privacy and civil liberties in its operations and programs, consistent with the Department’s mission to defend the Nation. In keeping with the Department’s leadership and collaboration in this area, this Report includes the activities of the DoD PCLO in establishing policy and guidelines, as well as the efforts of the Privacy and Civil Liberties Officials within the DoD and Office of the Secretary of Defense (OSD) Components who implement those policies.

## **II. THE DOD PRIVACY AND CIVIL LIBERTIES PROGRAMS**

The DoD Privacy and Civil Liberties Programs were established to ensure compliance with law, policy, and regulations governing privacy and civil liberties. The DoD PCLO issues and

implements DoD privacy and civil liberties policies and directs and oversees the compliance efforts of the DoD Component Privacy and Civil Liberties Programs. The DoD privacy and civil liberties policies and related procedural requirements are established in 32 C.F.R. Part 310, “Protection of Privacy and Access to and Amendment of Individual Records Under the Privacy Act of 1974,” April 11, 2019 (84 FR 14730);<sup>1</sup> DoD Instruction (DoDI) 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019, as amended;<sup>2</sup> DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007;<sup>3</sup> DoD Manual 5400.11, Volume 2 “DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan,” May 6, 2021;<sup>4</sup> and DoDI 1000.30, “Reduction of Social Security Number (SSN) Use Within DoD,” August 1, 2012, as amended.<sup>5</sup>

The DoD Privacy and Civil Liberties Programs began with the establishment of the Defense Privacy Office in 1975, after the passage of Section 552a of Title 5, U.S.C., also known as the Privacy Act of 1974.<sup>6</sup> Following the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, including Section 803, the Department expanded the mission of the office and renamed it the Defense Privacy, Civil Liberties, and Transparency Division. As capabilities in information technology and information management continued to become increasingly sophisticated and diverse, the DoD Privacy and Civil Liberties Programs organizational structure continued to evolve to strengthen the ongoing protection of individual rights, consistent with the missions of the Department. Figure 1 reflects the current structure as of September 2023, for the DoD Privacy and Civil Liberties programs, including responsible officials and offices within DoD.

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<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2019-04-11/pdf/2019-03971.pdf>

<sup>2</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/540011p.pdf>

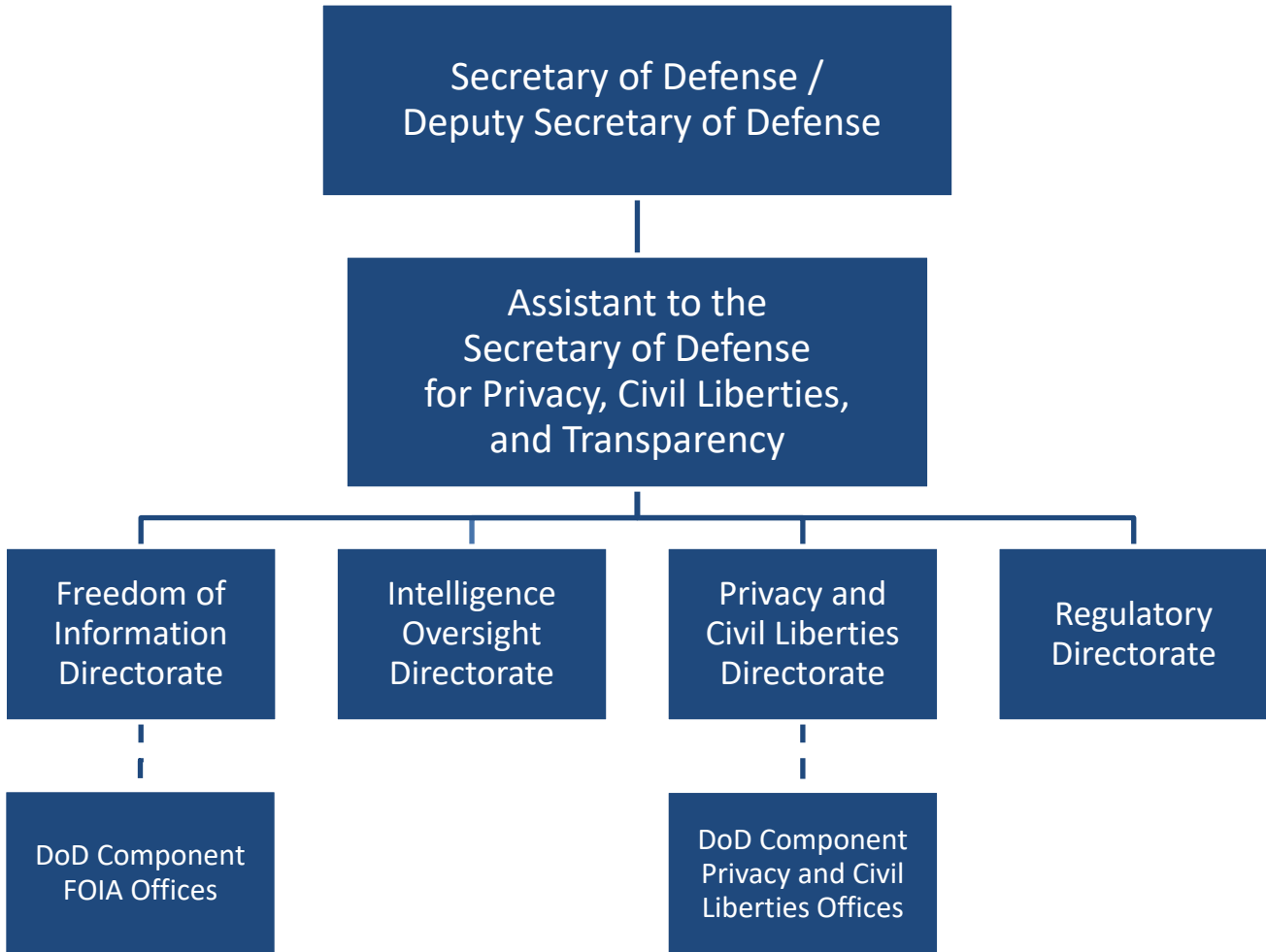
<sup>3</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>

<sup>4</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011v2.pdf>

<sup>5</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100030p.pdf>

<sup>6</sup> The Privacy Act of 1974, 5 U.S.C. § 552a, took effect on September 27, 1975, and can generally be characterized as an omnibus “code of fair information practices” that regulates the collection, maintenance, use, and dissemination of certain records about individuals by Federal executive branch agencies.

**Figure 1: Current DoD Privacy and Civil Liberties Programs Structure**



**A. The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency**

Consistent with Section 901(b) of the William M. “Mac” Thornberry National Defense Authorization Act (NDAA) for Fiscal Year 2022 (Public Law 116-283), on September 1, 2021, the Deputy Secretary of Defense directed the realignment of the privacy, civil liberties, transparency, regulatory, and intelligence oversight responsibilities under the ATSD(PCLT). The ATSD(PCLT) was also designated as the Principal Staff Assistant responsible for PCLT, regulatory, and intelligence oversight matters.

The ATSD(PCLT) serves as the DoD PCLO in accordance with Section 2000ee-1 of Title 42, U.S.C., and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense on privacy and civil liberties issues within the Department's programs and operations. As the DoD PCLO, the ATSD(PCLT) is responsible for ensuring DoD operations, policies, procedures, guidelines, and issuances and their implementation are periodically investigated, reviewed, and amended to provide for adequate protection of individuals' privacy and civil liberties. The ATSD(PCLT) is also charged with implementing the Department's Privacy and Civil Liberties Programs, ensuring compliance with the Privacy Act of 1974, as amended, and ensuring appropriate processes are in place to protect individuals' privacy and civil liberties in accordance with law and policy. The ATSD(PCLT) also engages with entities charged with the oversight of privacy and civil liberties matters, such as the Privacy and Civil Liberties Oversight Board (PCLOB) and the Office of Management and Budget (OMB).

The ATSD(PCLT) is also designated as the DoD Senior Agency Official for Privacy (SAOP) in accordance with Executive Order 13719, OMB Memorandum M-16-24, OMB Circulars No. A-130 and No. A-108, and DoDI 5400.11. The SAOP has Department-wide responsibility for privacy and civil liberties, including the protection of personally identifiable information (PII); compliance with Federal privacy-related laws, regulations, and policies; reviewing and providing comments on legislative, regulatory, and other policy initiatives implicating Privacy Act compliance and privacy-related matters; and information privacy risk management. The SAOP sets the parameters and priorities for the DoD Privacy Program. In addition, as DoD's SAOP, the ATSD(PCLT) is actively involved in the Federal Privacy Council, which was established by Executive Order 13719, serving as its Vice Chair to support the protection of privacy across the Federal executive branch. The ATSD(PCLT) also participates in key governance structures, which may have the opportunity to assess and advise on privacy and civil liberties concerns. Examples of this are the Office's participation in the DoD Responsible Artificial Intelligence (AI) Council, which is charged with ensuring the ethical use of data, including PII, in DoD AI programs, and the ATSD(PCLT)'s participation in DoD's recently formed DoD Chief Digital and Artificial Intelligence Officer's (CDAO) Council.

## **B. The Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency**

The Office of the ATSD(PCLT) comprises four directorates: the Privacy and Civil Liberties Directorate (PCLD); the Freedom of Information Directorate ; the Intelligence Oversight Directorate (IOD); and the Regulatory Directorate.

### **1. The Privacy and Civil Liberties Directorate**

The Privacy and Civil Liberties Directorate (PCLD) supports the ATSD(PCLT) in carrying out responsibilities as the DoD PCLO and SAOP to implement the DoD Privacy and Civil Liberties Programs. This includes supporting the ATSD(PCLT) in the following roles: the Chair of the Defense Data Integrity Board and the Privacy Act access and amendment appellate authority for the Office of the Secretary of Defense (OSD), the Joint Staff, and the Combatant Commands. The PCLD routinely communicates and coordinates on a wide range of activities with DoD and OSD Component privacy and civil liberties officials, the OMB, the PCLOB, and other Federal departments and agencies, to facilitate the Department-wide execution of Federal privacy and civil liberties program requirements, and to exchange ideas on the development and implementation of best practices in the privacy and civil liberties area. Also, the PCLD establishes reporting processes for the Privacy and Civil Liberties Programs, including the SAOP submission for the annual Federal Information Security Modernization Act (FISMA) Report, all DoD PII breach reports, including breach reports pursuant to Section 1639(a) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232) (10 U.S.C. § 2224 note), major incidents involving PII, and this annual PCLO report.

### **2. The Freedom of Information Directorate**

The Freedom of Information Directorate assists the ATSD(PCLT) in carrying out responsibilities as the DoD Chief FOIA Officer pursuant to title 5, U.S.C., section 552(j)(1), and the DoD representative to the Chief FOIA Officers Council pursuant to title 5, U.S.C., section 552(k)(1). The ATSD(PCLT) also serves as the FOIA appellate authority for the OSD, the Joint Staff, the Combatant Commands, and designated Defense Agencies and DoD Field Activities for information denied under title 5, U.S.C., section 552, and with respect to other adverse determinations.

### **3. The Intelligence Oversight Directorate**



The Intelligence Oversight Directorate (IOD), under the direction of the DoD Senior Intelligence Oversight Official, who serves as the Principal Deputy to the ATSD(PCLT), is responsible for the independent oversight of the Department’s intelligence and counterintelligence activities. The IOD inspects all DoD Component intelligence activities to ensure these activities comply with Federal law, Executive Orders, Presidential Directives, Intelligence Community directives, and DoD issuances. The IOD maintains routine contact with the intelligence oversight offices within the component, fielding questions and providing guidance on the implementation of Executive Order 12333. Additionally, IOD oversees and manages the reporting and remediation of questionable intelligence activities (QIAs) in accordance with DoDD 5148.13. These reports are compiled quarterly and provided to Senior Leaders at DoD, the Office of the Director of National Intelligence (ODNI), and the President’s Intelligence Oversight Board (IOB). Additionally, in the event an intelligence component engages in activities that meet the definition of a significant/highly sensitive matter (S/HSMs), the IOD is responsible for the immediate reporting, oversight, and remediation through DoD Senior Leaders, ODNI, and the IOB. Due to the importance of protecting privacy and civil liberties when conducting intelligence activities, the IOD is an integral partner in implementing the DoD Privacy and Civil Liberties Programs.

#### 4. The Regulatory Directorate

Under the direction of the ATSD(PCLT), who serves as the designated DoD Regulatory Policy Officer in accordance with E.O. 12866, the Regulatory Directorate (RD) serves as the DoD e-Rulemaking Lead for matters concerning the Federal Docket Management System and Regulations.gov, which includes managing DoD regulatory dockets pursuant to Section 206 of Public Law 107-347 (also known as the “e-Government Act of 2002”). The RD approves each phase of departmental Federal regulations, except Defense procurement regulations, and DoD guidance documents with impact on the public for submission to the OMB, including matters to be published in the Federal Register, in accordance with E.O. 12866. The RD establishes policies and procedures for the DoD Regulatory Program, including the review, coordination, approval, and publication of federal rules and notices in the Federal Register and approves the DoD’s Regulatory Plan and Regulatory Agenda for inclusion in the Unified Agenda of Regulatory and Deregulatory Actions for submission to the OMB.

## **C. DoD Office of the General Counsel**

The DoD Office of the General Counsel (OGC) provides legal advice to senior DoD officials, the Office of the ATSD(PCLT), and assists DoD and OSD Component legal advisors supporting DoD Privacy and Civil Liberties Programs. In addition, OGC legal advisors work directly with the Office of the ATSD(PCLT) to provide legal reviews of matters implicating privacy and civil liberties issues and to ensure privacy and civil liberties policies are consistent with the law.

## **D. DoD and OSD Component Privacy and Civil Liberties Officials**

The DoD and OSD Components are responsible for administering Privacy and Civil Liberties Programs, including the establishment and implementation of Component-level privacy and civil liberties policies, procedures, and training consistent with DoD issuances and guidelines. The DoD requires the designation of Senior Component Officials for Privacy (SCOPs) and Component Privacy and Civil Liberties Officers (Component PCLOs) to lead and implement the various elements of the DoD Privacy and Civil Liberties Programs. The Office of the ATSD(PCLT) communicates regularly with these officials on the operation of the Component programs.

### **1. Senior Component Officials for Privacy**

Each SCOP is typically a general/flag officer, Senior Executive Service, or Senior Level employee. SCOPs oversee the resolution of existing or potential privacy and civil liberties issues requiring executive-level intervention. They also identify issues and recommend actions for matters requiring the attention of the Component's leadership. In addition, the SCOPs provide information and policy advice to the ATSD(PCLT) to assist in Departmental-level decision-making. The SCOPs also direct Component compliance with Section 803 and the DoD Privacy and Civil Liberties Programs.

### **2. Component Privacy and Civil Liberties Officers**

DoD and OSD Components are responsible for designating a Military Service member or civilian employee to serve as the Component PCLO. These officials are responsible for managing the functions of the DoD Privacy and Civil Liberties Programs for the Component organizations. They also collaborate with and assist the SCOPs on all privacy and civil liberties matters as necessary.

### III. REVIEWS

The DoD considers privacy and civil liberties concerns when proposing, developing, and implementing laws, regulations, policies, procedures, and guidelines.<sup>7</sup> Under the direction and guidance of the ATSD(PCLT), the PCLD performs privacy and civil liberties reviews for all Department-level issuances, as well as proposed Federal legislation, testimony, and reports. In doing so, the PCLD analyzes policy, procedures, and activities for their impact on privacy and civil liberties and provides comments and may recommend changes to such documents in order to protect privacy and civil liberties. Upon request, the PCLD reviews and provides privacy and civil liberties guidance on proposed plans, activities, regulations, policies, and procedures promulgated by other DoD and OSD Components.

Privacy and civil liberties reviews are conducted in accordance with the Privacy Act of 1974, as amended, certain rights guaranteed in the U.S. Constitution, and OMB and PCLOB executive guidance. The Department also ensures compliance and alignment with FISMA and the E-Government Act of 2002 (44 U.S.C. § 3501 *et seq.*) with respect to information management requirements. For the purposes of this report, privacy compliance reviews are enumerated as follows and are summarized in Table 1.

#### A. System of Records Notice Reviews

The Privacy Act of 1974 requires that agencies publish a system of records notice (SORN) in the *Federal Register* describing the existence and character of any agency system of records.<sup>8</sup> DoD and OSD Components must submit new, modified, and rescinded SORNs for their respective systems of records to the PCLD for review and SAOP approval before they are published. Through the publication of Privacy Act SORNs, the PCLD invites public comments on the activities described in the notice, the proposed sharing of information via routine uses, and any exemptions proposed for the system of records. DoD makes an effort to address those comments in the next publication of that SORN (typically, this occurs in a final rule after a notice of proposed rulemaking has been published). While public comments to DoD SORNs and associated exemption rules are relatively infrequent, this is an important feedback mechanism available to the public to express concerns on

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<sup>7</sup> See 42 U.S.C. § 2000ee-1.

<sup>8</sup> See 5 U.S.C. § 552a(e)(4).

the collection, use, and sharing of individuals' personal information in an agency system of records, and to have those concerns considered and addressed by the DoD PCLO. Table 1 lists the number of SORNs reviewed, approved, forwarded to OMB and Congress, and sent to the Office of the Federal Register for publication during the reporting period.

## **B. Exemption Rule Reviews**

A Privacy Act exemption rule is promulgated when an agency exempts a particular system of records from certain provisions of the Act.<sup>9</sup> The PCLD and the OGC review Privacy Act exemption rules prior to publication in the *Federal Register*. Table 1 lists the number of new and modified exemption rules published as a final rule during the reporting period.

## **C. Matching Agreement Reviews**

A matching agreement is a written agreement between a source agency and a recipient Federal agency or non-Federal agency that specifies the terms by which data from two or more automated systems of records is compared between the agencies, typically to establish or verify the eligibility of individuals for a specific Federal benefit.<sup>10</sup> The PCLD and the OGC review matching agreements before they are presented to the Defense Data Integrity Board, which is chaired by the ATSD(PCLT), for approval. The Director, PCLD, also serves as the Executive Secretary for the Defense Data Integrity Board, facilitating the review process for all DoD matching agreements. Table 1 lists the number of matching agreements reviewed and completed during the reporting period, in which DoD is either the source agency or the recipient agency.

## **D. Privacy Breach Reviews**

A breach is defined as “[t]he loss of control, unauthorized disclosure, unauthorized acquisition or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses PII or (2) an unauthorized user accesses PII for other than an authorized purpose.”<sup>11</sup> DoD and OSD Components report privacy breaches impacting DoD personnel to the PCLD, which provides breach response assistance, as appropriate, and compiles the breach reports to identify and analyze trends. Table 1 lists the number of privacy breaches reported by all DoD and OSD Components during the reporting period.

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<sup>9</sup> See 5 U.S.C. § 552a(j), (k).

<sup>10</sup> See 5 U.S.C. § 552a(a)(8) and (o).

<sup>11</sup> OMB M-17-12, “Preparing for and Responding to a Breach of Personally Identifiable Information,” January 3, 2017.

## **E. Social Security Number Justification Reviews**

DoD and OSD Components must submit a Social Security Number (SSN) Justification Memorandum to the PCLD requesting authorization to collect and use SSNs within information systems and on forms. The justification must comply with departmental direction establishing limitations on the collection and use of SSNs.<sup>12</sup> The PCLD reviews the justification and decides whether to grant or deny the Component's request. This effort aims to reduce the use of SSNs in DoD systems and information collections, thereby minimizing the risk of SSN misuse or compromise throughout the Department. Table 1 lists the number of SSN Justification Memoranda reviewed and decided on during the reporting period.

Pursuant to the Social Security Number Fraud Prevention Act of 2017 (Public Law 115-59), the PCLD also reviewed and made decisions concerning requests from OSD and DoD Components seeking authorization to continue mailing forms containing full SSNs. The outcomes of these reviews are reported in the Department's fifth and final Social Security Number Fraud Prevention Act Annual Report and reviews of Component submissions remain ongoing. The historical reporting data collected pursuant to the Act indicates the number of mailed DoD Component-specific documents containing SSNs decreased each year during the five years for which annual reports were required. The Department continues its efforts to replace the SSN of DoD-affiliated persons with the DoD Identification Number in its internal systems and processes, where possible.

## **F. DoD Issuances, Federal Legislation, Testimony, and Reports**

The Office of the ATSD(PCLT) reviews DoD-wide issuances for privacy and civil liberties issues and provides feedback as appropriate.<sup>13</sup> In addition, the Office reviews proposed legislation, testimony, and reports for privacy and civil liberties concerns on behalf of the ATSD(PCLT) and reviews other Federal agency documents upon request. Table 1 lists the number of reviews of issuances, legislation, testimony, and reports conducted during the reporting period.

### **Table 1: Privacy and Civil Liberties Reviews from October 1, 2022 to September 30, 2023**

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<sup>12</sup> DoD Instruction 1000.30, "Reduction of Social Security Number (SSN) Use Within DoD," August 1, 2012, as amended.

<sup>13</sup> A DoD issuance establishes or implements DoD policy, designates authority, assigns responsibilities, or provides procedures. Issuances apply to more than one DoD Component. *See* DoDI 5025.01, "DoD Issuances Program."

| <b>PRIVACY AND CIVIL LIBERTIES REVIEWS</b>                 |                          |
|--|--------------------------|
| <b>Type of Review</b>                                      | <b>Number of Reviews</b> |
| System of Records Notices (SORNs)                          |                          |
| ➤ New  | 13                       |
| ➤ Modified   | 7                        |
| ➤ Rescinded  | 26                       |
| Exemption Rules  | 5                        |
| Matching Agreements <sup>14</sup>                          | 3                        |
| Privacy Breach Reviews                                     | 1,731                    |
| SSN Justification Memoranda                                | 50                       |
| DoD Issuances, Federal Legislation, Testimony, and Reports | 196                      |

#### **IV. MATTERS OF ADVICE AND RESPONSE**

The Office of the ATSD(PCLT) provides advice on DoD Component privacy and civil liberties matters. This advice serves as important guidance for DoD Component Privacy and Civil Liberties Program implementation.

##### **A. Advice**

For the purpose of this report, advice encompasses the issuance of DoD-wide policies, procedures, or guidance pertaining to privacy and civil liberties. The DoD is actively updating its foundational documents to reflect advances in knowledge and technology legal developments, and regulatory guidance. Issuances under review and revision during the reporting period included DoD Instruction (DoDI) 1000.30, “Social Security Number (SSN) Use Within DoD,” DoDI 5400.15, “Guidance on Obtaining Information from Financial Institutions,” DoD Manual 5400.11, Volume 2, “DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan,” and DoDI 5400.11, “DoD Privacy and Civil Liberties Programs.”

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<sup>14</sup> Includes re-establishments of matching agreements; does not include matching agreement renewals of up to one additional year in accordance with 5 U.S.C § 552a(o)(2)(D).

## B. Programmatic Achievements

The following activities highlight key DoD privacy and civil liberties offices' programmatic efforts during the reporting period.

- The OATSD(PCLT) continued a process of establishing and transitioning to DoD-wide SORNs, to help DoD standardize its practices and notices concerning the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. In furtherance of that effort, DoD rescinded 26 system of records notices (SORNs) and published three new DoD-wide SORNs during this reporting period. DoD-wide SORNs reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public and create efficiencies in the operation of the DoD privacy program.
- The OATSD(PCLT) launched a new DoD Defense Privacy Information Management System (DPIMS) breach reporting tool, which provides the entire DoD with a new enterprise-wide breach reporting system. DPIMS is a unique case management system which allows users with a DoD CAC to initiate a breach report which the system tasks to their Component Privacy Office. This enables the Component Privacy Officials to have complete visibility of all breaches within their Component as the reports travel through the assigned workflows. DPIMS supports the oversight of all Department breaches and provides decision makers key information to manage the compliance process effectively and efficiently for breach reporting within the Department.
- The OATSD(PCLT) supported the DoD Chief Information Officer (CIO) and Risk Management Framework Technical Advisory Group (RMF TAG) in the implementation of DoD Instruction 8510.01, Risk Management Framework for DoD Systems, which adopts the National Institute of Standards and Technology (NIST) RMF in accordance with Special Publications (SP) 800-37 Rev. 2. DoD Instruction 8510.01 details how DoD categorizes information systems; selects, implements, and assesses controls; and authorizes and monitors systems for control effectiveness. NIST 800-53 and the Committee on National Security Systems Instruction (CNSSI) No. 1253 provide a catalog of security and privacy controls for information systems

under the RMF. The OATSD(PCLT) established DoD Specific Assignment Values (DSPAVs) to the privacy controls to assist Department-wide system/program managers and privacy officials with evaluating privacy considerations through the system lifecycle.

- The Defense Counterintelligence and Security Agency (DCSA) Privacy Office created the Workflow Guide for Privacy Threshold Analysis (PTA) and PIAs to ensure consistent and complete review of new and renewed information technology systems.
- The Defense Health Agency (DHA) Privacy and Civil Liberties Office launched a Branch level Table Talk resource which shows continued prioritization for the education of its workforce on important privacy and security information, policies, and procedures through its training and communication initiatives. During these informal regular synchronous touchpoints, DHA Privacy professionals are provided opportunities for live questions & answer sessions that include training. This resource is open to all Health Insurance Portability and Accountability Act (HIPAA) Privacy Officers (HPOs), HIPAA Security Officers (HSOs), Researchers, Purchase Care Contractors, and DHA employees and staff with privacy inquiries.
- The DHA Privacy and Civil Liberties Office launched the PCLO monthly in-service training which occurs on the third Tuesday of every month. Training opportunities have increased with a weekly PCLO function-specific training series throughout modules established in April 2023. All training aims to reinforce key concepts and ensure the workforce is knowledgeable and aware of the latest processes and procedures. Sessions provide topic focused information to assess “boots on the ground” actions for HPOs and HSOs at the 20 Large Markets (256 Military Treatment Facilities (MTFs)), 17 Small Markets (68 MTFs) Pacific Region (45 MTFs) and Europe Region (38 MTF’s) aligned under DHA. Monthly average participation range between 85-112 attendees.
- The Defense Human Resources Activity (DHRA) began significant revisions to the DHRA Privacy Playbook, which now includes references to PII in cloud environments, de-identification requirements for data used in test and research



environments and proper citation and references relating to NIST Security and Privacy Controls.

- The Office of the DoD CIO has established an internal privacy page aimed to equip the DoD CIO workforce with privacy program training and awareness in an effort to enrich privacy protections for all Office of the DoD CIO (OCIO) mission activities.
- The National Geospatial-Intelligence Agency (NGA) Mission Oversight and Compliance, Privacy and Civil Liberties Division (MOCP) fully implemented its automated PTA process on the unclassified network. This automated process increased MOCP efficiencies by eliminating the manual input previously required for processing PTAs. With this automated process, MOCP processed approximately 200 PTAs in FY23.

## V. COMPLAINTS

Consistent with 42 U.S.C. § 2000ee-1, DoD policy requires DoD Components to have procedures for processing complaints from individuals alleging the DoD violated their privacy or civil liberties.<sup>15</sup> Generally, the receiving Component Privacy and Civil Liberties Program Office reviews the complaints and reports them to the Component command or other appropriate official. The command will initiate an inquiry and, as necessary, direct corrective action. The complaints counted in this Report, listed in Table 2, were received in accordance with these procedures. For the purpose of this Report, a complaint is an allegation of a violation of an individual's privacy rights, civil liberties, or an alleged violation of conscience, moral principles or religious beliefs in accordance with Section 533 of Public Law 112-239, as described below. Complaints received through Privacy and Civil Liberties Program Offices for which established formal procedural avenues of redress exist, such as complaints alleging a violation of the HIPAA Rules and complaints addressed by the Equal Employment Opportunity or Military Equal Opportunity program offices, are outside the scope of this report. Similarly, complaints alleging sexual assault or sexual harassment addressed by Department or component sexual assault or harassment prevention and response offices, and certain complaints addressed through the military justice system, such as complaints against alleged perpetrators that result in military courts-martial, are generally reported pursuant to different legal authorities and procedures; therefore, they are also outside the scope of this report.

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<sup>15</sup> See DoD Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019.

In 2022, OATSD(PCLT) began using a newly updated form for the collection and reporting of privacy and civil liberties complaint data from DoD and OSD Components for inclusion in this Report. This Report includes a separate tally of civil liberties-related complaints filed by Military Service members or chaplains alleging violations of Section 533 of Public Law 112-239, as amended (Section 533), and DoD Instruction 1300.17, “Religious Liberty in the Military Services,” concerning accommodations for individual expressions of conscience, moral principles, or religious beliefs.<sup>16</sup> These Section 533 complaints are reported by DoD and OSD Components separate from other privacy and civil liberties complaints. Service members and chaplains are not required to file Section 533 complaints with the Component privacy and civil liberties program office, but may file them through other offices, such as the Component’s Office of Inspector General. This Report, however, only provides information on the number of Section 533 Complaints received by a Component’s privacy and civil liberties program office.

### **A. Complaint Dispositions**

Table 2 lists the number of privacy and civil liberties complaints received by DoD Components during the reporting period, and the disposition of the complaint. A disposition of “Responsive action taken” means the complaint was reviewed and is resolved. It also includes any action taken to remediate the violation and prevent recurrence. “Pending” indicates the complaint is under review to determine the necessary actions to resolve the complaint.

### **B. Privacy Complaints**

A privacy complaint is an allegation of a violation of privacy protections in the administration of the programs and operations of the Department. Privacy complaints are separated into three categories in Table 2:

- Process and Procedure Issues (such as appropriate consent, collection, disclosure,

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<sup>16</sup> Section 533 of Public Law 112-239, as amended, and DoD Instruction 1300.17, “Religious Liberty in the Military Services,” require accommodations of individual expressions of beliefs of members of the armed forces that reflect their sincerely held conscience, moral principles, or religious beliefs unless such accommodations would have an adverse impact on military readiness, unit cohesion, and good order and discipline; such expression of accommodations may not, in so far as practicable, be the basis of an adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment. These authorities also prohibit requiring chaplains to perform rites, rituals, or ceremonies contrary to their conscience, moral principles, or religious beliefs and prohibit discrimination or adverse actions against chaplains on such a basis.

and/or notice);

- Redress Issues (non-Privacy Act inquiries seeking resolution of difficulties about privacy matters)
- Referred to Other Agency

For examples of DoD privacy complaints, please refer to the Appendix of this Report.

### **C. Civil Liberties Complaints**

A civil liberties complaint is an allegation of a violation of civil liberties in the administration of the Department's programs and operations. For the purpose of this report, civil liberties complaints involve the assertion of a violation of the rights and freedoms guaranteed by the first 10 amendments to the U.S. Constitution (i.e., the Bill of Rights). The types of civil liberties complaints reported may include, but are not limited to:

- First Amendment (e.g. freedom of speech, religion, press, right to assemble peaceably, and right to petition for redress of grievances);
- Second Amendment (right to keep and bear arms);
- Fourth Amendment (protection against unreasonable search and seizure);
- Fifth Amendment (protection against double jeopardy and self-incrimination, right to due process (including equal protection));
- Sixth Amendment (right to speedy and public trial/counsel/calling of witnesses/confronting of accusers);
- Eighth Amendment (protection against cruel/unusual punishments/excessive fines/bail);
- Ninth Amendment (unremunerated rights)

Examples of DoD civil liberties complaints are included in the Appendix of this report.

### **D. Complaints Alleging Violations of Conscience, Moral Principles or Religious Beliefs Under Section 533 of Pub. Law 112-239, as amended**

This subsection will only apply to complaints by Military Service members, including chaplains, premised on Section 533 of Pub. Law 112-239, as amended. Section 533, as amended by Section 532 of Public Law 113-66, provides certain protections for the rights of conscience, moral principles, and religious beliefs of members of the Armed Forces and Chaplains as follows:

- Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.
- No member of the Armed Forces may require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with such a requirement.

**Table 2: Privacy and Civil Liberties Complaints (received via Privacy and Civil Liberties Program Offices)**

| Nature of Privacy Complaints   | Number Received | Disposition of Complaint |           |
|--|-----------------|--------------------------|-----------|
|  |                 | Responsive Action Taken  | Pending   |
| Process and Procedure  | 40              | 33                       | 7         |
| Redress Issues   | 0               | 0                        | 0         |
| Referred to Other Agency   | 0               | 0                        | 0         |
| <b><i>Sub Total for Privacy Complaints:</i></b>  | 40              | 33                       | 7         |
| <b>Nature of Civil Liberties Complaints</b>  |                 |                          |           |
| First Amendment  | 8               | 5                        | 3         |
| Fourth Amendment   | 4               | 4                        | 0         |
| Fifth Amendment  | 156             | 82                       | 74        |
| Sixth Amendment  | 0               | 0                        | 0         |
| Other – General Civil Liberties Complaints   | 1               | 1                        | 0         |
| <b><i>Sub Total for Civil Liberties Complaints:</i></b>  | 169             | 92                       | 77        |
| <b>Complaints Alleging Violations of Conscience, Moral Principles or Religious Beliefs Under Section 533 of Pub. Law 112-239, as amended</b> |                 |                          |           |
| Complaints by Military Service Members   | 2               | 2                        | 0         |
| Complaints by Chaplains  | 0               | 0                        | 0         |
| <b><i>Sub Total for Section 533 Complaints</i></b>   | 2               | 2                        | 0         |
| <b>TOTAL 3rd &amp; 4th Qtrs FY22</b>   | <b>211</b>      | <b>127</b>               | <b>84</b> |

## **CONCLUSION**

In accordance with Section 803, this Report summarizes the activities of the DoD PCLO from October 1, 2022 through September 30, 2023. The DoD will continue to work with Congress, the OMB, the PCLOB, and other Federal agencies to ensure it appropriately protects privacy and civil liberties. Program activities and accomplishments serve to assure the continuing protection of privacy and civil liberties in each of the functions and missions of the Department.

## APPENDIX: Samples of Privacy and Civil Liberties Complaints

### Sample DoD Privacy Complaints<sup>17</sup>

#### *Sample Complaint #1:*

**Description of Complaint:** An active-duty Army soldier alleged that a senior official improperly shared personal protected information with individuals that did not have a need-to-know.

**Findings:** Unsubstantiated by DoD OIG.

**Disposition:** Responsive Action Taken.

#### *Sample Complaint #2:*

**Description of Complaint:** Individual made a complaint that their ex-spouse, who was a contract employee at the command, had accessed the complainant's personal information without authorization.

**Findings:** Substantiated. Review of system access logs obtained evidence indicating that the contract employee had improperly accessed their ex-spouse's Official Military Personnel File. The contract-employee's access was immediately suspended, and the contract employee is no longer employed at the command.

**Disposition:** Responsive Action Taken.

### Sample DoD Civil Liberties Complaints

#### *Sample Complaint #1:*

**Nature of Complaint(s):** Fifth Amendment: Right to Due Process (including Equal Protection).

**Details:** Commander Directed Investigation concerning allegations of hostile work environment based on race, unprofessional relationships, and abuse of authority in the squadron.

**Reviews/Findings/Action Taken:** Partially substantiated. The allegations of hostile work environment and abuse of authority were unsubstantiated, but the allegation of unprofessional relationships was substantiated. A letter of admonishment was administered for the unprofessional relationships allegation.

**Disposition:** Responsive action taken.

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<sup>17</sup> These samples reflect submissions during the reporting period and have been edited to ensure the privacy of the complainant.

*Sample Complaint #2:*

**Nature of Complaint(s): Fourth Amendment:** Protection Against Unreasonable Search or Seizure

**Details:** Complainant alleged that civilian employees violated another employee's 4th Amendment rights when they searched and confiscated the employee's property without consent.

**Reviews/Findings/Action Taken:** Referred to Defense Logistics Agency.

**Disposition:** Responsive Action Taken