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PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**
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Privacy and Civil Liberties Oversight Board
Suite 500
2100 K Street NW
Washington, DC 20427

Dear Members of the Board:

Please find enclosed the Department of Defense Privacy and Civil Liberties Officer Report, pursuant to section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53), as amended (42 U.S.C. § 2000ee-1). This report reflects activities covering the reporting period for the first half of fiscal year 2022, October 1, 2021 through March 31, 2022.

I am sending an identical letter to the appropriate congressional committees.

Sincerely,

CHUNG.JOO.Y.1512306507
Y.1512306507

Digitally signed by
CHUNG.JOO.Y.1512306507
Date: 2022.06.07 19:52:59
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Joo Y. Chung

Enclosure:
As stated

Department of Defense
Privacy and Civil Liberties Officer Report



Semiannual Report for Fiscal Year 2022

October 1, 2021 – March 31, 2022

The estimated cost of this report or study for the Department of Defense is approximately \$7,280 for the 2022 Fiscal Year. This includes \$0 in expenses and \$7,280 in DoD labor.
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TABLE OF CONTENTS

- I. INTRODUCTION 4
- II. THE DOD PRIVACY AND CIVIL LIBERTIES PROGRAMS 4
 - A. The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency.... 6
 - B. The Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties and Transparency 7
 - 1. The Privacy, Civil Liberties, and Freedom of Information Directorate 8
 - 2. The Intelligence Oversight Directorate..... 8
 - C. DoD Office of the General Counsel..... 9
 - D. DoD and OSD Component Privacy and Civil Liberties Officials 9
 - 1. Senior Component Officials for Privacy 9
 - 2. Component Privacy and Civil Liberties Officers 9
- III. REVIEWS 10
 - A. System of Records Notice Reviews 10
 - B. Exemption Rule Reviews 10
 - C. Matching Agreement Reviews 11
 - D. Privacy Breach Reviews 11
 - E. Social Security Number Justification Reviews 11
 - F. DoD Issuances, Federal Legislation, Testimony, and Reports 12
 - Table 1: Privacy and Civil Liberties Reviews from October 1, 2021 to March 31, 2022** 12
- IV. MATTERS OF ADVICE AND RESPONSE 12
 - A. Advice 13
 - B. Programmatic Achievements 13
- V. COMPLAINTS 15
 - A. Complaint Dispositions 16
 - B. Privacy Complaints 16
 - C. Civil Liberties Complaints 17
 - Table 2: Privacy and Civil Liberties Complaints** 18
- CONCLUSION..... 19
- APPENDIX: Samples of Privacy and Civil Liberties Complaints i
 - Sample DoD Privacy Complaints..... i

Sample DoD Civil Liberties Complaints..... ii

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 (PCLO) for the first half of fiscal year 2022: October 1, 2021 through March 31, 2022.

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 a semiannual basis the activities of this officer. The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency serves as the 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 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 DoD and Office of the Secretary of Defense (OSD) Component Privacy and Civil Liberties Officials implementing 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);¹ DoD Instruction (DoDI) 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019, as amended;² DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007;³ DoD Manual 5400.11, Volume 2 “DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan,” May 6, 2021;⁴ and DoDI 1000.30, “Reduction of Social Security Number (SSN) Use Within DoD,” August 1, 2012, as amended.⁵

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 1974.⁶ 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 continue to become increasingly sophisticated and diverse, the DoD Privacy and Civil Liberties Programs organizational structure continues to evolve to strengthen the ongoing protection of individual rights, consistent with the missions of the Department. Figure 1 reflects the current structure for the DoD Privacy and Civil Liberties programs, including responsible officials and offices within DoD, which became effective September 1, 2021.

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

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

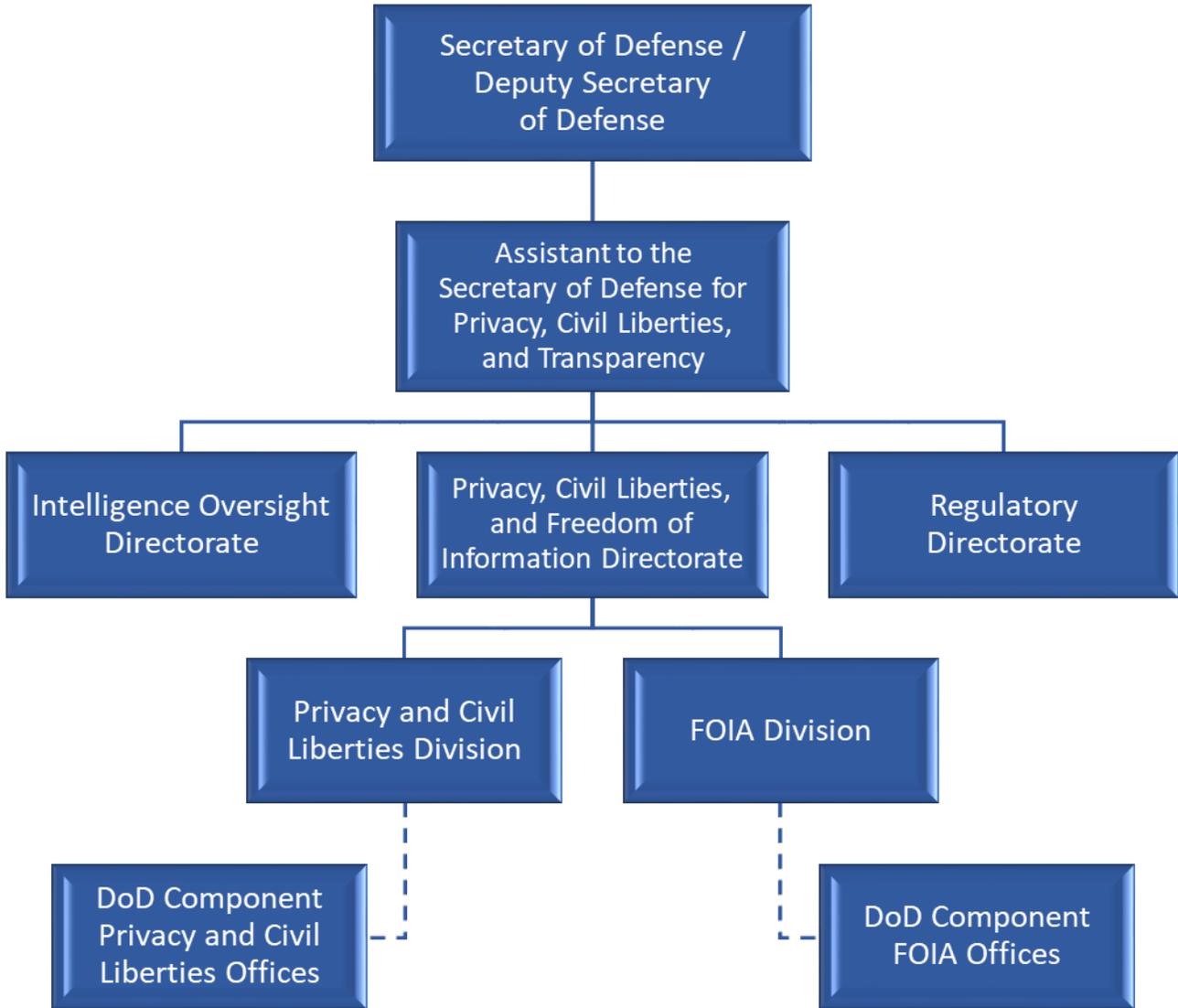
³ <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>

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

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

⁶ 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 attempts to regulate 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 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 a newly designated Assistant to the Secretary of

Defense for Privacy, Civil Liberties, and Transparency (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 the 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.

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

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

1. The Privacy, Civil Liberties, and Freedom of Information Directorate

The PCLFD is composed of two divisions, the Privacy and Civil Liberties (PCL) Division and the Freedom of Information Act (FOIA) Division. Through the PCL Division, the PCLFD 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 PCLFD 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 PCLFD 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 PII breach reports, and this semiannual PCLO report.

Through the FOIA Division, the PCLFD 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.

2. The Intelligence Oversight Directorate

Under the direction of the DoD Senior Intelligence Oversight Official, the IOD 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. 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.

C. DoD Office of the General Counsel

The DoD Office of the General Counsel (OGC) provides legal advice to senior DoD officials, the ATSD(PCLT), the PCLFD, and the IOD, 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 the development of 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 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 generally 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 service member or civilian employee to serve as the Component PCLO. These officials are responsible for managing and supervising 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.⁷ Under the direction and guidance of the ATSD(PCLT), the PCLFD performs privacy and civil liberties reviews for all Department-level issuances, as well as proposed Federal legislation, testimony, and reports. In doing so, the PCLFD 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 PCLFD reviews and provides privacy and civil liberties guidance on proposed plans, activities, regulations, policies, and procedures promulgated by other DoD and OSD Components. The total number of documents reviewed by the PCLFD during this review period is identified in Table 1.

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, as amended, 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.⁸ DoD and OSD Components must submit new, modified, and rescinded SORNs for their respective systems of records to the PCLFD for review and agency approval before they are published. 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.⁹ The PCLFD and the OGC review Privacy Act

⁷ See 42 U.S.C. § 2000ee-1.

⁸ See 5 U.S.C. § 552a(e)(4).

⁹ See 5 U.S.C. § 552a(j), (k).

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 when data from two or more automated systems of records is matched between the agencies, typically to establish or verify the eligibility of individuals for a specific federal benefit.¹⁰ The PCLFD 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 PCLFD 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 the 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.¹¹ DoD and OSD Components report privacy breaches to the PCLFD, 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.

E. Social Security Number Justification Reviews

DoD and OSD Components must submit a Social Security Number (SSN) Justification Memorandum to the PCL Division 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.¹² The PCL Division reviews the justification and decides whether to grant or deny the Component's request. This effort aims to

¹⁰ See 5 U.S.C. § 552a(a)(8) and (o).

¹¹ OMB M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information," January 3, 2017.

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

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.

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

The PCLFD reviews DoD-wide issuances for privacy and civil liberties issues and provides feedback as appropriate.¹³ In addition, the PCLFD 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, 2021 to March 31, 2022

PRIVACY AND CIVIL LIBERTIES REVIEWS	
Type of Review	Number of Reviews
System of Records Notices (SORNs)	
➤ New	4
➤ Modified	1
➤ Rescinded	0
Exemption Rules	5
Matching Agreements ¹⁴	2
Privacy Breach Reviews	1080
SSN Justification Memoranda	18
DoD Issuances, Federal Legislation, Testimony, and Reports	145

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

¹³ 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.

¹⁴ Does not include reviews of matching agreement renewals of up to one additional year in accordance with 5 U.S.C § 552a(o)(2)(D).

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, technology, and regulatory guidance. Issuances under review and revision during the reporting period included DoD Manual 5400.11, Volume 2, “DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan,” DoD Instruction 1000.30, “Social Security Number (SSN) Use Within DoD,” and DoD Directive 5200.27, “Acquisition of Information Concerning Persons and Organizations Not Affiliated with the DoD.”

B. Programmatic Achievements

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

- The Office of the ATSD(PCLT) launched the Privacy, Civil Liberties, and Transparency Speaker Series for the DoD community during this reporting period. The first virtual event focused on the Supreme Court opinion in *Van Buren v. United States* and how that decision affected the application of the Computer Fraud and Abuse Act. The second virtual event, held during Sunshine Week, featured a former Federal agency privacy, civil liberties, and transparency official who spoke on the importance of government transparency.
- The Office of the ATSD(PCLT) rescinded a final rule titled, “The Chairman of the Joint Chiefs of Staff and the Joint Staff Privacy Program” (32 CFR part 313), which is part of DoD’s regulatory program efforts to rescind duplicative component-level privacy regulations in order to follow a single Department-level privacy rule. This rescindment promotes greater uniformity of privacy compliance within DoD and transparency for members of the public seeking to exercise their rights under the Privacy Act of 1974.
- The PCLFD co-chairs the Federal Privacy Council’s (FPC) Public Affairs and Community Engagement Committee that championed the creation of icons representing each of the nine Fair Information Practice Principles (FIPPs). The FIPPs

icons graphically represent privacy principles such as Transparency, Minimization, and Access and Amendment. The icons will be used by the FPC, DoD, and other executive branch agencies in privacy awareness campaigns and educational materials for personnel.

- The PCLFD met with staff members from the new DoD Chief Digital Artificial Intelligence Office (CDAO) to discuss the CDAO's requirements to establish a Privacy and Civil Liberties program and fulfill its responsibilities under the FOIA. As the CDAO moves forward organizationally from initial operational capability to full operational capability, the staff learned about program management to include key statutory reporting and compliance requirements associated with the deployment of data, analytics, artificial intelligence/machine learning, and digital-enabled solutions. Discussion topics also included program organization, manpower, and resources required to successfully meet the statutory and agency requirements as implemented by DoDI 5400.11, DoD Privacy and Civil Liberties Programs, and DoDM 5400.07, DoD Freedom of Information Act Program.
- The PCL Division hosted the first quarterly outreach with DoD Component Privacy and Civil Liberties Officers. The meeting provides a forum for information sharing and collaboration on privacy and civil liberties matters, including updates on DoD policy and procedures, reporting requirements, and emerging topics of public or congressional interest. This quarter's meeting focused on providing updates to the Components on a range of privacy and civil liberties compliance and policy matters. Future meetings are expected to provide Components with a forum for focused discussion on common issues and sharing of best practices.
- The Defense Logistics Agency (DLA) Privacy Office launched an innovative Privacy Compliance Application (PCAP) which was developed in-house to automate workflow, reduce redundancy, and allow tracking and visibility of all IT systems containing PII. This tool changed the way DLA creates and reviews Privacy Impact Assessments (PIAs), SORNs, and SSN Justification Memorandums by eliminating the e-mail exchanges and passing of files back and forth while also providing data inventory and analytics. The DLA Privacy Office is continuing to enhance the tool and will also be working with the National Institute of Standards and Technology (NIST)

Chief Privacy Officer during the remainder of FY 2022 to consider ways to add Risk Management Framework reviews for systems, add a new role for the CIO for digital signatures of PIAs, add visibility/tracking for enclaves to inventory which systems are held within an enclave, enhance the review portion for the OMB Licensing, and add a workflow process for review of SORNs.

- The Defense Health Agency (DHA) provided guidance to the White House COVID-19 Task Force to develop federal guidelines for private-sector development of proof of COVID vaccination and vaccine verification tools. In doing so, DHA's guidance identified any gaps and relevant legal authority enabling the task force to develop appropriate standards aligned with Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security rules.
- The National Geospatial-Intelligence Agency (NGA) Mission Oversight and Compliance, Privacy and Civil Liberties Division (MOCP) launched a comprehensive Privacy Role-Based Training (RBT) Program to enhance training at the enterprise level. Pursuant to that Program, MOCP recently developed and delivered its inaugural RBT module for the Health Services functional area within NGA. The RBT Program provides information and guidance about privacy laws, regulations, policies, and procedures governing NGA's collection, maintenance, use, or dissemination of PII. The program provides additional education beyond the mandatory annual computer-based training (CBT) to educate NGA personnel granted increased access to PII on the proper ways to collect, maintain, use, and/or disseminate PII. MOCP is implementing the RBT program incrementally to reduce risk in the most critical areas in the near term while collecting quantitative and qualitative feedback to continuously enhance the content, development, delivery, and tracking mechanisms in a scalable manner. When fully implemented, the RBT will reach over 60 workforce roles across NGA which will significantly reduce the risk of non-compliance with Federal law and policy protecting privacy rights.

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.¹⁵ 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 or civil liberties. Complaints received through this process for which established formal procedural avenues of redress exist, such as complaints alleging the disclosure of protected health information that are addressed by the HIPAA Privacy Office in the military treatment facility of the alleged occurrence 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 complaints addressed through the military justice system, such as complaints against alleged perpetrators that result in military courts-martial, non-judicial punishment, or administrative separations, are generally reported pursuant to different legal authorities and procedures; therefore, they are also outside the scope of this report.

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 two categories in Table 2:

- Process and Procedure Issues (such as appropriate consent, collection, disclosure, and/or notice);
- Referred to Other Agency

¹⁵ See DoD Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019.

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.

Table 2: Privacy and Civil Liberties Complaints

Nature of Privacy Complaints	Number Received	Disposition of Complaint	
		Responsive Action Taken	Pending
Process and Procedure	32	30	3
Referred to Other Agency	1	1	0
<i>Sub Total for Privacy Complaints:</i>	33	31	3
Nature of Civil Liberties Complaints			
First Amendment	1	1	0
Fourth Amendment	3	1	2
Fifth Amendment	1	0	1
<i>Sub Total for Civil Liberties Complaints:</i>	5	2	3
TOTAL 1st & 2nd Qtrs FY22	38	33	6

CONCLUSION

In accordance with Section 803, this report summarizes the activities of the DoD PCLO from October 1, 2021 through March 31, 2022. 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 Complaints¹⁶

Sample Complaint #1:

Description of Complaint: A substitute teacher's folder containing student PII was erroneously sent home in the backpack of a primary school student.

Findings: Substantiated. Incident was reported to the appropriate Privacy offices. Official notification was sent to impacted parents/sponsors. The substitute teacher and educational assistant received counseling and completed safeguarding PII refresher training. The process was reviewed and revised and in-person training was provided to the entire school staff on safeguarding PII and handling Controlled Unclassified Information (CUI) / Privacy Act Protected Information.

Disposition: Responsive Action Taken.

Sample Complaint #2:

Description of Complaint: A document containing student PII was removed from a designated CUI container and misplaced. The PII included information on students' behavioral health rating scales. School personnel were unable to locate the document.

Findings: Substantiated. Provided notifications to the affected individuals. The incident was reported to the appropriate Privacy offices. In coordination with the district office, a comprehensive review of special education records was completed to ensure proper maintenance procedures. In addition, the school adopted a new policy to provide greater accountability over the custody of records and the individuals involved completed Safeguarding PII training. Further, the district office worked with the behavioral health department to develop a Standard Operating Procedure.

Disposition: Responsive Action Taken.

¹⁶ These samples reflect submissions during the reporting period and have been edited to ensure the privacy of the complainant.

Sample DoD Civil Liberties Complaints

Sample Complaint #1:

Description of Complaint: Alleged First Amendment violation. After receiving a Letter of Admonishment (LOA), a Service member alleged a violation of their First Amendment right to freedom of speech. The LOA was in response to comments made in uniform as a speaker during an official ceremony that were determined to be insubordinate and disrespectful.

Findings: Unsubstantiated. Investigation and an independent legal review found no First Amendment violation.

Disposition: Responsive action taken.

Sample Complaint #2:

Description of Complaint: Alleged Fifth Amendment violation. A Service member complaint alleged a lack of due process when issued a Military Protective Order after allegedly assaulting spouse.

Findings: Unsubstantiated. Commander Directed Investigation concluded the allegation of a due process violation was not substantiated.

Disposition: Responsive Action Taken.