



# NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

## **Biannual Report on the Activities of the National Security Agency Civil Liberties, Privacy, and Transparency Office**

July – December 2019



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## **A Message from the Civil Liberties, Privacy, and Transparency Officer**

During July through December 2019, the Director of NSA (DIRNSA) reviewed the NSA strategy, and CLPT played a key role in helping to set that strategy, bringing focus to the ongoing importance of fostering trust and confidence in NSA activities with our overseers and the American public. As the strategy and vision of the DIRNSA was rolled out within NSA, CLPT continued to assist in ensuring civil liberties and privacy protections were incorporated at the beginning of new activities. NSA created a new Cybersecurity Directorate on October 1 2019, which increased focus on engaging and partnering to improve cybersecurity. There has been a need to update policies, procedures, and protections to ensure that proper civil liberties and privacy protections are built into unclassified work environments. USAFREEDOM Act was up for re-authorization, and there was extensive unclassified and classified engagement on the use of Call Detail Records by NSA under the USAFREEDOM Act. CLPT orchestrated the review of PCLOB's unclassified report that was issued in early 2020. CLPT issued its first statutorily required report.

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## I. PURPOSE AND SCOPE

The National Security Agency/Central Security Service (hereinafter NSA or the Agency) is committed to protecting and incorporating safeguards for civil liberties and privacy, consistent with its mission to protect and defend the nation. This report summarizes NSA's accomplishments and continuing commitment to conduct its vital foreign intelligence and cybersecurity missions in a manner that protects civil liberties and privacy, and promotes appropriate transparency during the reporting period of July-December 2019.

Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), as amended, requires that the Director of the NSA (DIRNSA) designate a privacy and civil liberties officer who reports directly to the head of the Agency on matters related to privacy and civil liberties.<sup>1</sup> To implement this statutory requirement, the DIRNSA has designated the NSA Civil Liberties and Privacy Officer to fulfill this role.

Section 1062 also requires the NSA Civil Liberties and Privacy Officer issue an unclassified report at least semi-annually, with a classified annex when necessary, to the appropriate committees of Congress, DIRNSA, and Privacy and Civil Liberties Oversight Board (PCLOB). This law requires the unclassified report be made available to the greatest extent possible to the public.<sup>2</sup> The content of the report includes:

- Number and types of reviews undertaken;
- Type of advice provided and the response given to such advice;
- Number and nature of complaints received by the Civil Liberties, Privacy, and Transparency Officer concerning alleged violations of civil liberties and privacy; and
- Summary of the disposition of such complaints, reviews and inquiries conducted, and the impact of the activities of the Civil Liberties, Privacy, and Transparency Officer.

This report is structured so that DIRNSA, Congress, PCLOB, and the public can assess progress in areas required for reporting under this law, as well as other significant activities that may not be required by law, regulation, or policy but demonstrate NSA's commitment to

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<sup>1</sup> Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) is sometimes referred to as "Section 803" because that provision was amended by Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) to establish the requirement for the heads of certain agencies to designate privacy and civil liberties officers. Section 1062 was further amended by Section 109 of the FISA Amendments Reauthorization Act of 2017 (P.L. 115-118), which added the DIRNSA to the list of agency heads required to designate a privacy and civil liberties officer. Section 1062 is codified at 40 U.S.C. 2000ee-1.

<sup>2</sup> Prior to the change to Section 1062 in 2017, NSA submitted information similar to that contained in this report to the Department of Defense (DoD) Privacy and Civil Liberties Officer in support of DoD's statutory reporting requirement.

protecting civil liberties and privacy. It also provides additional transparency about the activities of the Agency.

## **II. OVERVIEW OF THE NATIONAL SECURITY AGENCY CIVIL LIBERTIES, PRIVACY, AND TRANSPARENCY PROGRAM**

The Civil Liberties, Privacy, and Transparency (CLPT) Office focuses on possible impacts to civil liberties and privacy, and areas for increased transparency, particularly as they relate to authorities and capabilities used to conduct NSA activities. It develops and supports policies that bridge the gaps between existing laws, current technology, foreign intelligence, and cybersecurity needs. The CLPT Office also engages and collaborates with mission elements and staff throughout NSA to improve processes to safeguard civil liberties and privacy; document existing civil liberties and privacy protections; and increase transparency with the workforce, public, key stakeholders, and overseers. NSA appointed its first Civil Liberties and Privacy Officer and formed a team of professionals to support the Officer in 2014. The duties of this position expanded as a result of Intelligence Community Directive (ICD) 107, “Civil Liberties, Privacy, and Transparency” to include the role of NSA Transparency Officer. This CLPT Officer advises the DIRNSA, NSA senior leadership, and mission managers on emerging areas where new intelligence capabilities and challenges intersect with civil liberties and privacy questions.

In establishing the CLPT Office, NSA consolidated various functions relating to civil liberties and privacy, many of which were already being performed throughout NSA. Bringing these functions together in a single office ensures that civil liberties, privacy, and transparency considerations remain a vital, comprehensive, and consistent driver for NSA’s strategic decisions. Through engagement, training, awareness, and advice, the CLPT Office underscores and reminds the NSA workforce of their individual responsibility to protect civil liberties and privacy while promoting transparency.

To ensure that civil liberties, privacy, and transparency factors are explicitly considered in decisions at NSA, CLPT works extensively across the Agency to communicate its concerns with leadership and the workforce. To further facilitate internal engagement and coordination, the Operations Directorate has forward-deployed subject matter experts (SMEs) to serve as members of the CLPT workforce. In addition, there are ongoing efforts to deploy additional SMEs to the CLPT Office from other Directorates.

In addition to fulfilling the legal requirements of Section 1062, the NSA CLPT Officer is designated as the NSA Senior Component Official for Privacy, as required by a Department of Defense (DoD) Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019. The current CLPT Officer also serves as a member of the Federal Privacy Council (FPC), the principal interagency forum established by Executive Order 13719 to improve privacy practices at agencies across the federal government.

The CLPT Officer carries out this mission to ensure civil liberties, privacy, and transparency are appropriately considered in the course of NSA's mission, executing both statutory and policy requirements. The seven major activities conducted include:

- Advise NSA senior leaders and mission managers regarding the protection of civil liberties and privacy;
- Review and assess policy, procedures, technology, and operations and advise on incorporating civil liberties and privacy protections and safeguards in mission and non-mission systems;
- Maintain an effective mechanism for receiving complaints or indications of possible abuses of civil liberties and privacy;
- Provide training and guidance to NSA affiliates regarding their responsibilities to identify and protect the privacy of personally identifiable information (PII) and U.S. Person Information (USPI), including following the requirements of the Privacy Act of 1974;
- Receive and respond to incidents involving actual or potential breaches of PII in classified and unclassified environments, and comply with reporting requirements;
- Periodically review and investigate NSA policies, procedures, and operations to determine whether they incorporate the protections and safeguards necessary to protect civil liberties and privacy;
- Provide appropriate transparency into the civil liberties and privacy protections present in NSA activities to mission partners, executive, legislative, and judicial branch overseers and the American public; including reporting independently to DIRNSA and external executive and legislative branch entities.

### **III. TYPE AND NUMBER OF ACTIVITIES UNDERTAKEN**

During the reporting period, the CLPT Office reviewed 348 activities for civil liberties and privacy implications. Additionally, the CLPT Office notified external overseers of NSA activities through written explanations, oral briefings, and applicable documents in 35 specific instances.

**Table 1 – Types of Activities**

<b>Types of Review</b>	<b>Number conducted</b>
Reviews for civil liberties and privacy	348
Notifications, briefings, and applicable documents to external overseers	35
<b>Total</b>	<b>383</b>
Pages of classified documents reviewed and provided to PCLOB for oversight purposes	176 pages
Pages of classified documents reviewed for PCLOB/public release	498 pages

### **Reviews and Assessments for Civil Liberties and Privacy**

The CLPT Office reviews and assesses NSA activities for privacy and civil liberties implications and provides advice/feedback, as appropriate. In addition, CLPT reviews a variety of documents requested by the Office of the Director of National Intelligence (ODNI) and DoD. Civil Liberties and Privacy Assessments (CLPAs) are incorporated into the NSA Risk Management process. The Risk Management process assesses a variety of factors when considering activities with potential threats to life or limb, major new programs or initiatives, significant change in direction, or new or existing activities that would have strategic implications for the Agency. CLPAs are conducted in other contexts, such as with certain collection activities, analytic tool development, information-sharing arrangements and decisions, compliance incidents, privacy incidents, and data retention decisions.

The CLPA asks questions about the amount and type of information associated with an activity; the scope of persons involved (including the number of individuals, status of those individuals as U.S. persons, and location of those individuals); the purpose and anticipated uses for the data; the methodology of the activity; and the safeguards in place to mitigate potential risks to civil liberties and privacy.

Examples of the types of documents and activities CLPT reviewed during this reporting period include the following:

- Conducted a variety of assessments on the collection, use, sharing/dissemination, and retention of data for Signals Intelligence (SIGINT) and Cybersecurity missions that identified civil liberties and/or privacy risks. CLPT ensured the civil liberties and privacy protections were tailored to mitigate identified risks or that the appropriate level leadership was involved to accept the identified risks.
- Reviewed and assessed a number of NSA’s information technology systems to determine whether PII was properly identified and secured.



- Reviewed and assessed potential privacy incidents and ensured proper mitigations were put in place where appropriate.
- Provided input into the DoD Annual Federal Data Mining Report.
- Provided input into the OIG review of the NSA privacy program as required by Federal Information Security and Management Act (FISMA).

### **Notifications, Briefings, and Applicable Documents to Overseers**

CLPT provides notifications, briefings, and a variety of applicable documents to the PCLOB related to its mission to ensure the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. During this reporting period, CLPT provided notifications and briefings concerning NSA's use of the PCLOB report; and USAFREEDOM Act authority for the collection, use, dissemination, and retention of call detail records. As part of the oversight process, NSA produced two applicable documents equating to 176 pages.

CLPT provided subject matter expertise for congressional briefings, demonstrating NSA's incorporation of civil liberties and privacy protections into its mission activities. CLPT provided civil liberties and privacy subject matter expertise in two quarterly intelligence oversight reports.

CLPT is also responsible for notifying the DoD Senior Agency Official for Privacy (SAOP) of any reportable privacy breaches, but whether or not the Agency had such breaches is classified.

### **Review of FISA Related Materials for release to PCLOB and the Public**

CLPT facilitates the review of Foreign Intelligence Surveillance Act (FISA)-related materials for release to the PCLOB and public. CLPT led the review of 30 classified documents for necessary redactions and release by ODNI to the PCLOB and the public. These reviews covered 498 pages of material.

## **IV. TYPE OF ADVICE PROVIDED AND THE RESPONSE GIVEN TO SUCH ADVICE**

During the reporting period, CLPT continued to perform its advisory role. CLPT played a key role in helping to set the strategy of NSA, bringing focus on the ongoing importance of fostering trust and confidence in all NSA activities with our overseers and the American public. Examples of the types of advice provided by CLPT and the responses received are provided below. These activities are sustained activities in which CLPT played a key role in providing advice to senior leadership:





- **USAFREEDOM Act.** The USAFREEDOM Act was up for re-authorization during the reporting period. CLPT provided extensive advice regarding transparency related to the Call Detail Records (CDRs) collected by NSA under the USA FREEDOM Act. CLPT advised on the need to provide appropriate notifications to the DoD, DNI, Department of Justice, Congressional Committees, and PCLOB to demonstrate accountability for the use of the authority.
- **PCLOB's Unclassified Review of USAFREEDOM Act.** CLPT orchestrated the NSA review of the PCLOB unclassified report regarding its use of the USAFREEDOM Act authority. This included document production, responses to questions, and ultimately a classification review of the PCLOB report.
- **Election Security.** CLPT continued to provide advice regarding civil liberties, privacy protections, and transparency associated with protecting the 2020 elections. CLPT worked across the Agency to build a consistent repeatable process for identifying activities that required enhanced civil liberties and privacy safeguards.
- **Unclassified Work Environment.** CLPT supported key goals for DIRNSA's strategic imperative to move to the unclassified work environment by conducting civil liberties and privacy assessments on unclassified work environment to identify and help mitigate civil liberties and privacy risks associated with these activities.
- **DoD Manual 5240.01.** CLPT continued to provide ongoing advice to determine whether the activities required enhanced safeguards to protect U.S. person information.
- **NSA and ODNI on Implementation of E.O. 12333 Raw SIGINT Availability Procedures (2.3 Procedures).** CLPT provided ongoing advice and support to NSA and ODNI regarding the protection of civil liberties and privacy in the implementation of Attorney General (AG) approved E.O. 12333 Raw SIGINT Availability Procedures. These 2.3 Procedures require ODNI approve an IC element's civil liberties and privacy compliance program before the IC element can gain access to the raw SIGINT for a specific, articulated intelligence mission.
- **IC Artificial Intelligence (AI) Ethics Principles and Framework.** CLPT continued to provide advice on specific considerations for mitigating bias, documenting limitations about training data, furnishing user training, and providing explanatory accountability for oversight purposes. CLPT engaged extensively with ODNI and other IC partners to develop ethics principles that would provide both guidance to users of AI and provide framework for external parties to understand how the IC approaches AI.



## V. INTERNAL AND EXTERNAL OUTREACH

Engaging both internally and externally about how NSA protects civil liberties and privacy is a core function of the CLPT.

Internally, the CLPT Officer presented to senior leadership the possible impacts to mission because of civil liberties and privacy concerns and visited one of the Cryptologic Centers to discuss the work of the CLPT Office. The CLPT Office worked extensively on shaping the AI ethics working group led by ODNI, and met with foreign partners to discuss approaches to protecting civil liberties and privacy. CLPT continued to support activities with the NSA Advisory Board. The CLPT Officer also actively participated at IC CLPT Council meetings, IC Transparency Council meetings, and FPC meetings. Co-leading the FPC's Agency Implementation Committee, the CLPT Officer focused on sharing best practices around protecting civil liberties and privacy across the federal government. CLPT continued to provide civil liberties and privacy training within NSA, as well as for the broader IC and federal privacy community.

Externally, the CLPT Officer supported the ODNI with media and civil society engagements related to the release of FISA materials; taught classes about assessing civil liberties and privacy at various academic institutions; and engaged in domestic and international conferences related to protecting civil liberties and privacy at NSA. These engagements promote transparency and allow NSA to understand any public concerns about NSA's activities and their potential impact on civil liberties and privacy.

**Table 2 – Internal and External Outreach**

<b>Type of Outreach July 2019 – December 2019</b>	<b>Number</b>
Training and Awareness	13
Internal Engagements	35
External Engagements	18
<b>Total</b>	<b>66</b>

## VI. QUESTIONS, CONCERNS, COMPLAINTS, AND REDRESS

For the purpose of this report, questions, concerns, or complaints submitted to the CLPT Office must include a written allegation of harm or violation of privacy or civil liberties protections. These concern the administration of an NSA program and/or operations raised by a member of the public, NSA workforce (including civilian, military, and contractors), or any other government officials.

Members of the public and NSA affiliates may contact CLPT via a form posted on NSA's public website at [www.nsa.gov](http://www.nsa.gov) to ask questions or to submit written complaints alleging violation



of privacy or civil liberties protections in the administration of NSA programs and operations. Additionally, NSA affiliates with access to classified information technology systems may submit questions, concerns, and complaints to CLPT via an internal email or an anonymous web form. During this reporting period, CLPT received no actionable privacy and/or civil liberties complaints from either source. NSA did receive a number of questions as identified in Table 3 below.

CLPT received questions on a variety of topics during this reporting period, such as: collection and use of PII (particularly Social Security numbers); requests for Privacy Act Statements based on specific collections; input on survey tools; and policies related to the need to encrypt PII. CLPT reviews the question, concern, or complaint and provides written guidance if it is related to a civil liberties and privacy concern. If the activity could be a PII incident or breach, CLPT conducts an assessment (see CLPAs above). As appropriate, CLPT will work closely with the Office of the General Counsel and affected organization if additional guidance or mitigation is required.

In reviewing the received questions, concerns, and complaints, CLPT determines whether there is a civil liberties and privacy issue to evaluate and answer, or if the information needs to be forwarded elsewhere for review and response. CLPT also reviews submissions to determine if a question, concern, or complaint should be referred to the Inspector General (IG), and the IG similarly refers back to CLPT. CLPT receives a number of inquiries on the unclassified web site that are not actionable because they lack the information needed for the Agency to adequately assess and address. These requests are not captured in the metrics provided below.

**Table 3 – Requests, Concerns, and Referrals**

<b>Requests, concerns, and referrals – July 2019 through December 2019</b>	<b>Quantity</b>
Information requests to the CLPT Office	0
Civil liberties and privacy questions	61
Concerns alleging violations of privacy and civil liberties protections	0
Requests for redress	0
Complaints, concerns, queries related to counterterrorism that would require whistleblower protections provided in the statute	0
Referrals to and from the Office of the IG	0
<b>Total Reviewed and Closed</b>	<b>61</b>

