



DEPUTY CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

NOV 25 2019

The Honorable Lindsey Graham
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed the Department of Defense (DoD) 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 second half of Fiscal Year 2019, April 1, 2019 through Sept 30, 2019.

The DoD is committed to promoting and protecting privacy and civil liberties as it carries out its programs and missions. Consistent with 42 U.S.C. § 2000ee-1, the DoD Privacy and Civil Liberties Officer ensure that privacy and civil liberties are considered in the decisions and policy-making activities of the Department and oversees the Department's compliance with applicable privacy and civil liberties laws, requirements, and policies through the Directorate for Oversight and Compliance.

In accordance with 42 U.S.C. § 2000ee-1, this report is also being sent to the Chairmen of the other appropriate congressional committees and the Chairman of the Privacy and Civil Liberties Oversight Board. Should you have questions about the report, you or your staff may contact Joo Y. Chung, Director, Directorate for Oversight and Compliance, Office of the Chief Management Officer, Office of the Secretary of Defense, at 703-692-2746, or at joo.y.chung2.civ@mail.mil.

Sincerely,

A handwritten signature in blue ink, reading "Lisa W. Hershman", is positioned below the word "Sincerely,".

Lisa W. Hershman

Enclosure:
As stated

cc:
The Honorable Dianne Feinstein
Ranking Member



DEPUTY CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

NOV 2 5 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Please find enclosed the Department of Defense (DoD) 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 second half of Fiscal Year 2019, April 1, 2019 through Sept 30, 2019.

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Lisa W. Hershman

Enclosure:
As stated

cc:
The Honorable Doug Collins
Ranking Member



DEPUTY CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

NOV 25 2019

The Honorable Richard M. Burr
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed the Department of Defense (DoD) 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 second half of Fiscal Year 2019, April 1, 2019 through Sept 30, 2019.

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Lisa W. Hershman

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As stated

cc:
The Honorable Mark Warner
Vice Chairman



DEPUTY CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

NOV 25 2019

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
And Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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cc:
The Honorable Gary C. Peters
Ranking Member



DEPUTY CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

NOV 25 2019

The Honorable Adam Smith
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Please find enclosed the Department of Defense (DoD) 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 second half of Fiscal Year 2019, April 1, 2019 through Sept 30, 2019.

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Lisa W. Hershman

Enclosure:
As stated

cc:
The Honorable William M. "Mac" Thornberry
Ranking Member



DEPUTY CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

NOV 25 2019

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Lisa W. Hershman

Enclosure:
As stated

cc:
The Honorable Devin Nunes
Ranking Member



DEPUTY CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

NOV 25 2019

The Honorable Carolyn B. Maloney
Acting Chairwoman
Committee on Oversight and Reform
U.S. House of Representatives
Washington, DC 20515

Dear Madam Chairwoman:

Please find enclosed the Department of Defense (DoD) 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 second half of Fiscal Year 2019, April 1, 2019 through Sept 30, 2019.

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As stated

cc:
The Honorable Jim Jordan
Ranking Member



DEPUTY CHIEF MANAGEMENT OFFICER
9010 DEFENSE PENTAGON
WASHINGTON, DC 20301-9010

NOV 25 2019

The Honorable James M. Inhofe
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed the Department of Defense (DoD) 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 second half of Fiscal Year 2019, April 1, 2019 through Sept 30, 2019.

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Lisa W. Hershman

Enclosure:
As stated

cc:
The Honorable Jack Reed
Ranking Member

Department of Defense
Privacy and Civil Liberties Officer Report



Semiannual Report for Fiscal Year 2019

April 1, 2019 – September 30, 2019

The estimated cost of this report or study for the Department of Defense is approximately \$8,410 for the 2019 Fiscal Year. This includes \$0 in expenses and \$8,410 in DoD labor.

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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 (PCLO) for the second semiannual reporting period of fiscal year 2019: April 1, 2019 through September 30, 2019.

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 Chief Management Officer (CMO)¹ of the DoD serves as the PCLO and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense on these matters.

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

- 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 such officer.

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 PCLO and the Senior Agency Official for Privacy (SAOP) in establishing policy and guidelines, as well as the efforts of the DoD 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 federal statutes and Office of Management and Budget (OMB) guidance governing privacy and civil liberties. On behalf of the PCLO, the Directorate for Oversight and Compliance (DO&C) issues and

¹ See <http://cmo.defense.gov/Home.aspx> for further information regarding the Office of the Chief Management Officer.

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 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, as amended.”² Following 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 and Civil Liberties Office. As capabilities in information technology and information management have become increasingly sophisticated and diverse, the DoD Privacy and Civil Liberties Programs have evolved to strengthen the ongoing protection of individual rights, consistent with the missions of the Department. 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 14728);³ DoD Instruction (DoDI) 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019;⁴ and DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007.⁵

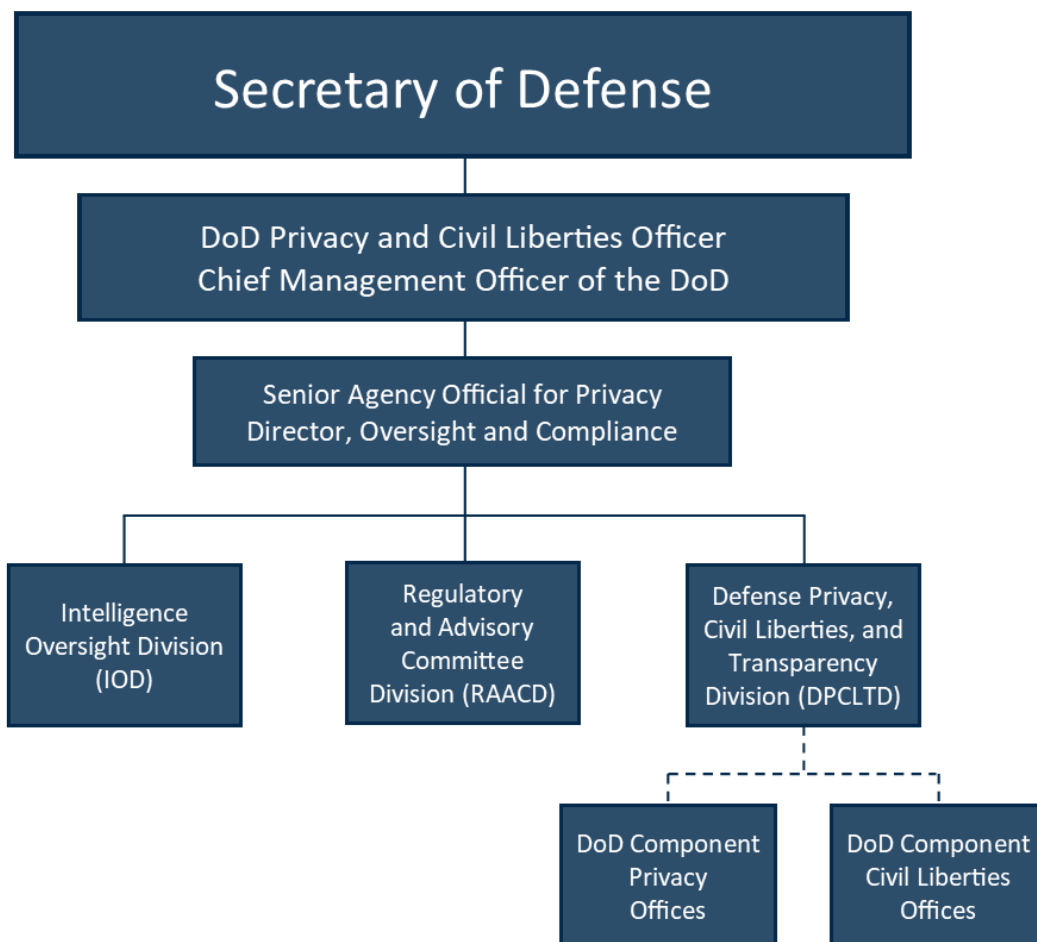
² The Privacy Act of 1974, 5 U.S.C. § 552a (2012) took effect on September 27, 1975, and can generally be characterized as an omnibus “code of fair information practices” that attempts to regulate the collection, maintenance, use, and dissemination of PII by federal executive branch agencies.

³ <https://www.govinfo.gov/content/pkg/FR-2019-04-11/pdf/2019-03971.pdf>.

⁴ <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/540011p.pdf?ver=2019-01-29-074544-090>.

⁵ <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>.

Figure 1: DoD Privacy and Civil Liberties Programs Structure



A. The Chief Management Officer (CMO)

The CMO serves as the DoD PCLO in accordance with Sections 2000ee-1 of Title 42, U.S.C. and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense. The CMO is responsible for advising the Secretary and Deputy Secretary on business transformation and leads the Department’s efforts to streamline business processes and improve efficiencies in headquarters structure. The CMO coordinates the business operations of the Department and, in a broad capacity, exercises oversight authority throughout the Department. As the PCLO, the CMO is responsible for ensuring the appropriate consideration and protection of individuals’ privacy and civil liberties.

B. The Directorate for Oversight and Compliance

The DO&C within the Office of the CMO (OCMO) comprises three divisions: the Intelligence Oversight Division (IOD), the Defense Privacy, Civil Liberties, and Transparency

Division (DPCLTD), and the Regulatory and Advisory Committee Division (RAACD). The Director of DO&C reports to the CMO, and keeps the CMO apprised of the Department's privacy and civil liberties concerns. The Director 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. This includes implementation of agency guidance and oversight on privacy and civil liberties from the OMB and the Privacy and Civil Liberties Oversight Board (PCLOB).

The Director of DO&C is also designated as the DoD SAOP in accordance with Executive Order 13719, OMB Memorandum M-16-24, and OMB Circulars No. A-130 and No. A-108. 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, privacy-related matters; and information risk management. The SAOP sets the DoD Privacy and Civil Liberties Program parameters. The SAOP also routinely provides information and recommendations directly to the PCLO. Finally, the DoD SAOP relies on the IOD and interfaces with DoD intelligence elements to ensure the appropriate scrutiny of privacy matters related to intelligence activities and national security.

C. The Intelligence Oversight Division

On behalf of the Secretary of Defense, the IOD is responsible for the independent oversight of all 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 part of the DoD Privacy and Civil Liberties Programs. The Chief, IOD, also serves as the DoD Senior Intelligence Oversight Official and the Deputy Director, DO&C.

D. The Defense Privacy, Civil Liberties, and Transparency Division

As a division of the DO&C, the DPCLTD assists the PCLO and SAOP in implementing the DoD Privacy and Civil Liberties Programs by providing guidance to Component officials, reviewing publications and legislative activities, facilitating official reporting, and providing training in privacy

and civil liberties content and program administration.

The DPCLTD routinely communicates on a wide range of activities with privacy and civil liberties officials at each DoD Component, 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 business practices for privacy and civil liberties. Also, the DPCLTD establishes the Privacy and Civil Liberties Program reporting processes, including the SAOP submission for the annual Federal Information Security Modernization Act (FISMA) Report, all PII breach reports, and assessments of the Defense Industrial Base Cybersecurity/Information Assurance, as well as this semi-annual PCLO report.

E. DoD Office of the General Counsel (OGC)

The DoD OGC provides legal advice to senior DoD officials, the DO&C, the DPCLTD, and assists DoD Component legal advisors supporting DoD Privacy and Civil Liberties Programs. In addition, DoD OGC legal advisors work directly with the DO&C and the DPCLTD to provide legal reviews of privacy and civil liberties issues and to ensure the development of privacy and civil liberties policies are consistent with the law.

F. DoD Component Privacy and Civil Liberties Officials

The DoD 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 concurrent with DoD issuances and guidelines. The DoD requires the designation of Senior Component Officials for Privacy (SCOPs) to ensure Component compliance with privacy and and civil liberties laws and policies. The Director of DO&C and the Chief, DPCLTD, communicate regularly with these individuals on their Component programs.

1. Senior Component Officials for Privacy (SCOPs).

Each SCOP must be a general/flag officer, Senior Executive Service, or Senior Level employee and oversee existing or potential compliance issues requiring executive-level intervention to 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 SAOP / Director, DO&C, to assist in Departmental level decision-making. Also, the SCOP directs the Component's compliance with Section 803 and the DoD Civil Liberties Program and is responsible for fulfilling

the day-to-day and reporting requirements of the DoD Civil Liberties Program.

2. Component Privacy and Civil Liberties Officers (PCLOs).

DoD Components are responsible for designating a service member or civilian employee to serve as the Component PCLOs. The Component PCLOs are responsible for managing and supervising the functions of the DoD Privacy and Civil Liberties Programs for the Component organizations. The Component PCLOs 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.⁶ Under the direction and guidance of the CMO and the DO&C Director, the DPCLTD performs privacy and civil liberties reviews for all Department-level issuances, as well as proposed federal legislation, testimony, and reports. In doing so, the DPCLTD analyzes language and activities for their impact on privacy and civil liberties. The division provides comments and may recommend changes to such documents in order to protect privacy and civil liberties. Upon request, the DPCLTD reviews and provides comments on documents promulgated by other DoD Components which may potentially affect the Department's operations. The total number of documents reviewed by the DPCLTD 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 the Federal Information Security Modernization Act of 2014 and the E-Government Act of 2002 (44 U.S.C. § 3501) 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 (SORN) Reviews

A SORN is a public notice published in the *Federal Register* describing the existence and character of a system of records.⁷ DoD Components must submit the SORNs for their respective

⁶ See 42 U.S.C. § 2000ee-1.

⁷ See 5 U.S.C. § 552a(a)(5).

systems of records to DPCLTD for review and agency approval. The number listed in this report represents the total number of SORNs DPCLTD has reviewed, approved, forwarded to OMB and Congress, and sent to the Office of the Federal Register for publication during this review period. The number of SORNs reviewed is provided in Table 1.

B. Exemption Rule Reviews

A Privacy Act exemption rule is promulgated when a system of records is exempted from certain provisions of the Privacy Act of 1974, as amended.⁸ For the purposes of this report, the number reported represents new and modified exemption rules published as a final rule during this reporting period. The number of Privacy Act exemption rules published as final rules is provided in Table 1.

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.⁹ For the purposes of this report, the number reported represents Matching Agreements reviewed and completed during this period, in which DoD is either the source agency or the recipient agency. The number of Matching Agreements reviewed and completed is provided in Table 1.

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.¹⁰ DoD Components report privacy breaches to the DPCLTD, which compiles the breach reports to identify and analyze trends and to inform the Department's senior leadership. The number of incidents reported as privacy breaches to DPCLTD by all DoD Components is provided in Table 1.

⁸ See 5 U.S.C. § 552a (j), (k).

⁹ See 5 U.S.C. § 552a(8) and (o).

¹⁰ OMB M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information," January 3, 2017.

E. Social Security Number (SSN) Justification Reviews

DoD Components must submit an SSN Justification Memorandum to the DPCLTD to use SSNs within information systems and on forms. The justification must comply with departmental direction¹¹ and be approved by DPCLTD. This effort is directed at reducing the use of SSNs in DoD information collections and to ensure greater protection of PII throughout the Department. The total number of SSN Justification Memoranda approved by DPCLTD during the reporting period is provided in Table 1.

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

DPCLTD reviews DoD-wide issuances for privacy and civil liberties issues and provides feedback as appropriate. In addition, DPCLTD reviews proposed legislation and testimony for privacy and civil liberties concerns on behalf of the DO&C and reviews other federal agency documents upon request. Table 1 includes privacy and civil liberties reviews of DoD and other federal agency documents.

Table 1: Privacy and Civil Liberties Reviews

| PRIVACY AND CIVIL LIBERTIES REVIEWS | |
|--|--------------------------|
| Type of Review | Number of Reviews |
| System of Records Notices (SORNs): | |
| ➤ New: | 0 |
| ➤ Modified: | 6 |
| ➤ Rescinded | 5 |
| Exemption Rules | 0 |
| Matching Agreements | 0 |
| Privacy Breach Reviews | 789 |
| SSN Justification Memoranda | 42 |
| DoD Issuances, Federal Legislation, Testimony, and Reports | 80 |

¹¹ DoDI 1000.30, "Reduction of Social Security Number (SSN) Use Within DoD," August 1, 2012.

IV. MATTERS OF ADVICE AND RESPONSE

The Office of the CMO provides advice on all 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 written issuance of DoD policies, procedures, or guidance pertaining to privacy and civil liberties by the PCLO or SAOP. The DoD is actively updating its foundation documents to reflect advances in knowledge, technology, and regulatory guidance. The DoD Privacy Regulation (32 C.F.R. Part 310) was published in the *Federal Register* on April 11, 2019 (84 FR 14728) as a final rule. The DoD Privacy and Civil Liberties Program Instruction, DoD Instruction 5400.11, was published on January 29, 2019 to align with current authorities and guidance. The DoD Right to Financial Privacy Act Rule (32 C.F.R. Part 275) was published in the *Federal Register* on May 29, 2019 (84 FR 24707) as a final rule. Issuances under review and revision include DoD Regulation 5400.11 (DoD 5400.11-R), “Department of Defense Privacy Program.”

B. Programmatic Achievements

The following activities highlight key DO&C and DPCLTD programmatic efforts during this period:

- The DPCLTD conducted four “SORN Privacy Boot Camp” live webinars / web conferences in June of 2019. All DoD component Privacy and Civil Liberties personnel and support staff were invited to participate in the live webinars / web conferences. The webinars / web conferences included a discussion on the current DPCLTD SORN approval process and future initiatives for streamlining and improvement; refresher training on creating SORNs and proper submission procedures for approval; routine uses and exemption rules; and an opportunity for DoD component personnel to ask questions and obtain additional information on the SORN process. All of the live webinar / web conference sessions were recorded and are available on the DPCLTD Training SharePoint website.¹²

¹² https://intelshare.intelink.gov/sites/foiaprivacytrainingworkshops/DFOIPOtraining/Webinars/_layouts/15/start.aspx#/SitePages/Home.aspx

- The DPCLTD provided a three-day Freedom of Information Act (FOIA) and Privacy Act Compliance workshop on August 6-8, 2019 at Scott Air Force Base in Belleville, IL. The seminar included multiple discussions and instructional lectures on the FOIA and the Privacy Act by DoD FOIA and Privacy Act subject matter experts. 267 FOIA and Privacy Act professionals across multiple DoD components attended the seminar.
- Public Law No. 115-59, the Social Security Number Fraud Prevention Act of 2017, requires all Federal agencies subject to the Chief Financial Officers Act of 1990 (Public Law No. 101-576) to cease including SSNs in mailed correspondence by September 15, 2022, unless approved by the head of the agency and to provide annual reports for the next five years on the agency's progress in curtailing the practice. The Department submitted the second annual report to Congress on August 20, 2019.
- The DPCLTD conducted a DoD SORN Process Improvement Workshop on July 30-August 1 and September 2, 2019. The Process Improvement Workshops' purpose was to review and discuss improvements, revisions, and a future way forward for the current SORN review and approval process.
- The DPCLTD conducted a DPCLTD Privacy "Hot Topics" live webinar / web conference on September 25, 2019. All DoD component Privacy and Civil Liberties personnel and support staff were invited to participate in the live webinar / web conference. The webinar was a discussion / presentation by the DPCLTD of the substantial privacy and civil liberties issues and other large-scale efforts (rules, regulations, SORNs, etc.) currently executed by the DPCLTD. Participants were encouraged to ask questions and seek additional information as necessary to expand both their personal and component's privacy and civil liberties knowledge base.

V. COMPLAINTS

DoD policy requires DoD Components to have established procedures for processing complaints from individuals alleging the DoD's violation of their privacy or civil liberties.¹³ DPCLTD forwards any received complaints directly to the appropriate DoD Component for further review and appropriate action. Generally, the receiving Component Privacy and Civil Liberties

¹³ See DoD Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019; DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007

Program Office reviews complaints and reports them to the Component command or appropriate official. The command may initiate an investigation and, as necessary, direct corrective action. The complaints counted in this report were received in accordance with these procedures. For the purposes of this report, a complaint is an allegation of a violation of an individual's privacy rights or civil liberties. Privacy or civil liberties complaints for which established formal procedural avenues exist—such as those resulting in non-judicial punishments, military courts-martial, administrative separations, and Equal Employment Opportunity actions—are not included in this report. Further, sexual harassment, sexual assault, and complaints arising under the Health Insurance Portability and Accountability Act are generally reported pursuant to different legal authorities and procedures and are also outside the scope of this report.

Table 2 reflects the number of complaints received by DoD Components during the reporting period for which (1) responsive action was taken, or (2) action is pending. "Responsive action taken" means the complaint was reviewed and 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.

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:

- Procedural Issues (such as appropriate consent, collection, and/or notice);
- Operational Issues (alleging violations of the Privacy Act, not including requests for access, disclosure, or amendment); and
- Redress Issues (not implicating the Privacy Act but that seek resolution of other privacy-related complaints).

For examples of DoD Privacy Complaints, please refer to the Appendix of this report.

A civil liberties complaint is an allegation of a violation of civil liberties in the administration of the Department's programs and operations. For purposes 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, the Bill of Rights, as well as the Fourteenth Amendment. Types of civil liberties complaints include, but are not limited to:

- First Amendment (e.g. freedom of speech, religion, assembly, and association);
- Second Amendment (right to keep and bear arms);

- Fourth Amendment (protection against unreasonable search and seizure);
- Fifth Amendment (due process);
- Sixth Amendment (speedy and fair trial);
- Eighth Amendment (no cruel/unusual punishment);
- Ninth Amendment (“unenumerated” rights); and
- Fourteenth Amendment (“equal protection”)

Examples of DoD civil liberties complaints, provided for illustrative purposes, are also 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 |
| Procedural | 11 | 5 | 6 |
| Operational | 0 | 0 | 0 |
| Redress | 0 | 0 | 0 |
| <i>Sub Total for Privacy Complaints:</i> | 11 | 5 | 6 |
| Nature of Civil Liberties Complaints | | | |
| First Amendment | 23 | 18 | 5 |
| Fifth Amendment | 20 | 17 | 3 |
| Eighth Amendment | 7 | 7 | 0 |
| Fourteenth Amendment | 16 | 12 | 4 |
| <i>Sub Total for Civil Liberties Complaints:</i> | 66 | 54 | 12 |
| TOTAL 3rd & 4th Qtrs FY19 | 77 | 59 | 18 |

CONCLUSION

In accordance with Section 803, this report summarizes the semiannual activities of the DoD PCLO from April 1, 2019 through September 30, 2019. 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 consideration 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 Complaints¹⁴

Sample Complaint #1:

Description of Complaint: A soldier/Criminal Investigation Division (CID) agent was a suspect in a CID stalking investigation. The soldier was alleged to have wrongfully accessed and reviewed information in the Army Law Enforcement Reporting and Tracking System (ALERTS) as a part of the CID investigation for which they were a suspect.

Findings: Substantiated. An inquiry found the soldier wrongfully accessed the Privacy Act protected information in ALERTS.

Disposition: Pending.

Sample Complaint #2:

Description of Complaint: Complaint claims a fellow service member accessed the complainant's information and then disclosed it to a third party in a court setting for personal gain.

Findings: Substantiated. A preliminary inquiry officer assigned to the case determined the incident took place. The other party received counseling and a non-punitive letter of caution.

Disposition: Responsive Action Taken.

Sample DoD Civil Liberties Complaints

Sample Complaint #1:

Description of Complaint: Alleged Fourth Amendment violation. Individual claims they were surveilled by counterintelligence personnel without cause.

Findings: Denied. The complaint was reviewed and found not credible.

Disposition: Responsive action taken.

¹⁴ The samples provided were reported in previous submissions and have been edited to ensure the privacy of the complainant.

Sample Complaint #2:

Description of Complaint: Alleged Fifth Amendment violation. A civilian employee submitted a complaint to Congress alleging a violation of due process because they were not allowed to have an attorney present at a meeting.

Findings: Denied. The claim was found to be baseless and untrue.

Disposition: Responsive action taken.