



# NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

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

January 2021 – June 2021



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## **A Message from the Director, Office of Civil Liberties, Privacy, and Transparency**

From January 2021 through June 2021, the COVID-19 pandemic continued to impact various activities at the National Security Agency (NSA). Protecting NSA affiliates' civil liberties and privacy remained a key focus for the Civil Liberties, Privacy, and Transparency (CLPT) Office as the Agency evolved its response to the pandemic.

As civil liberties and privacy work kept pace with the evolving COVID-19 challenges, CLPT was excited to incorporate directorate liaisons further into its workflow during this reporting period. The liaisons helped increase awareness of, and collaboration on, civil liberties and privacy issues across their directorates. They also provided an opportunity to incorporate civil liberties and privacy protections earlier into Agency activities. This addition of liaisons allowed CLPT to focus on cybersecurity-related activities, increase awareness in activities related to policy and engagement, and expand reviews of information technology for necessary privacy protections. As part of a long-term strategy to incorporate privacy considerations into the development and deployment of national security systems, CLPT has been leading an interagency effort on behalf of the Committee for National Security Systems (CNSS) to update CNSS Instruction No. 1253.

Of particular significance, in January 2021, the Attorney General and the Secretary of Defense, in consultation with the Office of the Director of National Intelligence (ODNI), approved guidelines governing signals intelligence. These procedures were the product of interagency collaboration to develop a more transparent and technology-neutral set of civil liberties and privacy protections.

CLPT continued to support the Privacy and Civil Liberties Oversight Board's oversight report on E.O. 12333 and the classified report on XKEYSCORE. CLPT orchestrated the review of hundreds of classified pages for redaction and release by ODNI, and then supported engagement with key external subject matter experts in academia, media, think tanks, and civil society on the nature of the documents. CLPT orchestrated the Agency's response for the ODNI's Annual Statistical Transparency Report.

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## I. PURPOSE AND SCOPE

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The National Security Agency (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 is a summary of NSA's accomplishments and continued 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 January – June 2021.

Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), as amended, requires that the Director, 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, DIRNSA has designated the NSA Civil Liberties, Privacy, and Transparency (CLPT) Officer to fulfill this role.

Section 1062 also requires NSA's CLPT Office to 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 CLPT Officer concerning alleged violations of civil liberties and privacy;
- a summary of the disposition of such complaints, reviews, and inquiries conducted; and
- impact of the activities of the CLPT Officer.

This report is structured so that DIRNSA, PCLOB, Congress, and the public can assess progress in areas required for reporting under this law, as well as other significant activities that

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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 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.

may not be required by law, regulation, or policy but demonstrate NSA’s commitment to protecting civil liberties and privacy. It also provides additional transparency about the Agency’s activities.

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

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The CLPT Office focuses on civil liberties, privacy, and transparency issues, 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. The CLPT Officer advises 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 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, subject matter experts from Cybersecurity, Capabilities, Engagement & Policy, Operations, Research, and Workforce Support Activities Directorates serve as liaisons to the CLPT Office to provide expertise on directorate priorities.

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 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 the following:

- Advise NSA senior leaders and mission managers regarding the protection of civil liberties and privacy.
- Review and assess policy, procedures, technology, and operations, and incorporate 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, 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 FROM JANUARY 2021 – JUNE 2021**

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During the reporting period, the CLPT Office conducted 591 reviews for civil liberties and privacy impacts as shown in Table 1. Additionally, the CLPT Office notified external overseers of NSA activities through written explanations, oral briefings, and applicable documents in eight instances. The CLPT Office remains a vital component and resource for NSA affiliates to address privacy concerns. During January – June 2021, the total number of CLPT inquiries, assessments, and notifications to overseers more than doubled compared to previous years, as shown in Figure 1. We attribute this, in part, to the increased internal engagement that began with Privacy Day 2021 and has continued in concert with the addition of the directorate liaisons. We also attribute this in part to questions related to the Agency’s response to COVID and the novel privacy issues that have been presented over time as the Agency and the country

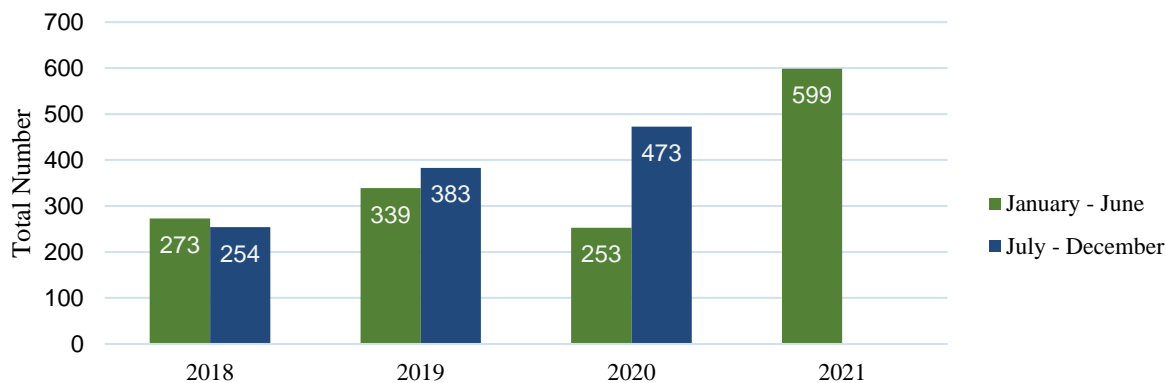


have worked to respond to the pandemic. Please note, data for July-December 2021 is pending and will be released in the next biannual report.

**Table 1 –Activities**

Types of Review	Number conducted
Reviews for civil liberties and privacy impacts	591
Notifications, briefings, and applicable documents to external overseers	8
<b>Total</b>	<b>599</b>
Pages of classified documents reviewed and provided to PCLOB for oversight purposes	158
Pages of classified documents reviewed for PCLOB/public release	789

**Figure 1 - Yearly Comparison of CLPT Office Activities**



Total number of reviews, assessments, and notifications to overseers by year.

### 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 ODNI and DoD. Civil Liberties and Privacy Assessments (CLPAs) are incorporated into the NSA risk management process. This process assesses a variety of factors when considering activities with potential threats to life or limb, major new programs or initiatives, significant changes 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 addresses details such as: the amount and type of information associated with an activity; the scope of persons involved (including the number, status 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:

- COVID-19 Response:
  - Provided advice on what information the Agency may collect or not collect from visitors and applicants.
  - Reviewed a variety of technical opportunities to determine improvements to contact tracing and ways to reduce the number of inquiries on whether an individual can or should return to work after quarantining.
  - Identified mitigation strategies to protect employee PII needed for the Agency to identify work that could be conducted remotely from unclassified environments.
- NSA was chosen to conduct the next phase of ODNI's Trusted Workforce 2.0 initiative, the Annual Security Appraisal (ASA). The ASA will help reshape the way NSA maintains a trusted workforce and better protects classified information. As the new program was rolled out, CLPT ensured necessary privacy protections were in place to safeguard data collected.
- 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. Ensured the civil liberties and privacy protections were tailored to mitigate identified risks or the appropriate level leadership was involved to consider the identified risks.
- Reviewed collection and use of publicly available and commercially available information and worked with mission owners to develop appropriate civil liberties and privacy safeguards.
- Reviewed and assessed a variety of NSA's information technology systems to determine whether PII was properly identified and secured, particularly as it related to unclassified systems and systems handling administrative PII.
- Reviewed and assessed potential privacy incidents and ensured proper mitigations where appropriate.
- Provided input to the DoD Annual Federal Data Mining Report in April 2021.



## **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 either directly or through ODNI. These included eight such notifications, including three classified documents (158 pages). CLPT orchestrated the classification review of the PCLOB's classified E.O. 12333 report and deep dive on XKEYSCORE along with the associated Board Member statements. CLPT also orchestrated NSA's response to the PCLOB's recommendations. CLPT, in concert with the DoD, ODNI, and Department of Justice (DOJ), provided briefings to PCLOB and Congress on the SIGINT Annex.

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 about reportable privacy breaches, but whether or not the Agency had any such breaches during the reporting period is currently and properly 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 the public. CLPT led the review of 63 classified documents for necessary redactions and release by ODNI to the PCLOB and the public. These reviews covered 789 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. Examples of the types of advice provided by CLPT and the responses received are provided below. These are sustained activities in which CLPT played a key role in providing advice to senior leadership:

- **Release of the SIGINT Annex.** CLPT worked closely within NSA and with counterparts at DoD, ODNI, and DOJ to prepare for the approval and release of DoD Manual S-5240.01-A, Procedures Governing the Conduct of DoD Intelligence Activities: Annex Governing Signals Intelligence Information and Data Collected Pursuant to Section 1.7 (c) of E.O. 12333 (the SIGINT Annex). The release occurred in January 2021.
- **Advice in the development and implementation of DoD Manual 5240.01.** CLPT continued to provide ongoing advice for both the Manual and the SIGINT Annex:
  - Collection: Advised on the development of a policy to evaluate collection activities to determine whether the collection required enhanced safeguards to protect U.S. person information. In particular, CLPT provided advice on issuing

an NSA-specific policy related to the implementation of Section 3.2.e., “Special Circumstances Collection.”

- Query: Advised on the development of the decision tool for analysts to determine when particular queries need enhanced safeguards. Also assisted in the development of a repeatable process for identifying and approving such queries.
- **Support to ODNI Transparency Activities.** ODNI published redacted copies of FISC opinions related to the 2019 FAA 702 certifications and the associated procedures. CLPT participated with ODNI, FBI, and DOJ on calls with former intelligence officials, press, and privacy and civil liberties groups to provide context and respond to questions.
- **Protect Privacy of Our Affiliates during the COVID-19 Pandemic.** CLPT continued to assess the civil liberties and privacy impact of Agency activities related to the COVID-19 pandemic including voluntary provision of vaccination status. The Agency implemented a variety of mitigations, ranging from increased transparency to reduced collection and access to information. Throughout, CLPT provided written guidance on the collection and use of personal medical information and PII.
- **Implementation of E.O. 12333 Raw SIGINT Availability Procedures (2.3 Procedures).** CLPT provided ongoing advice to NSA and ODNI regarding the protection of civil liberties and privacy in the implementation of Attorney General-approved E.O. 12333 Raw SIGINT Availability Procedures. These procedures, also known as “the 2.3 Procedures,” require ODNI to approve, among other things, an Intelligence Community (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.
- **Unclassified Work Environment.** CLPT continued to support the strategic NSA initiative to move to an unclassified work environment by conducting civil liberties and privacy assessments. This was vital for the office to identify and help mitigate civil liberties and privacy risks, and it ensured that the Agency’s activities continue to prioritize the protection of PII.

## **V. INTERNAL AND EXTERNAL OUTREACH**

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A core function of the CLPT Office is to engage both internally and externally about how NSA protects civil liberties and privacy.

As identified in Table 2, CLPT supported activities through virtual-only interactions and continued to educate on privacy protections during the implementation of COVID-19 mitigations. The CLPT Officer actively participated at IC CLPT 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. CLPT began leading an interagency team in the review and incorporation of the privacy control baseline from the National Institute of Standards and Technology special publication, Security and Privacy Controls for Information Systems (SP 800-53, Rev 5), into the Committee for National Security Systems (CNSS) Instruction 1253, Security Categorization and Selection for National Security Systems. This interagency group of privacy and security experts reviews the updates and provides recommendations to the CNSS Safeguarding Working Group for inclusion in updated instructions.

CLPT also kicked off a sustained communication and education effort on Privacy Day in January 2021. This included a mixture of articles for the workforce, videos, and an interview with a private sector privacy office.

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

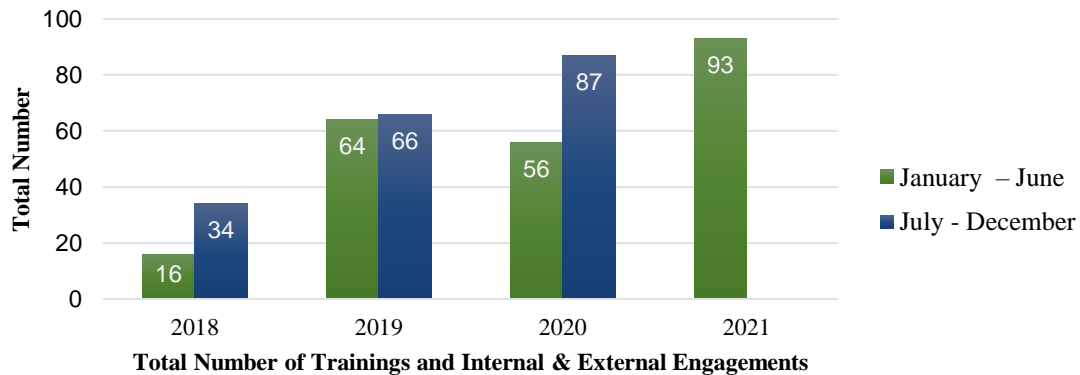
As the Agency implemented COVID-19 safety mitigations to protect the workforce, it limited external engagements to essential activities only. With these limitations, the Agency utilized more virtual opportunities to educate and connect with NSA affiliates, while also limiting external events, meetings, and conferences. During this time, CLPT saw an increase overall in training awareness and engagements from January 2021 – June 2021, compared to previous years as shown in Figure 2. Please note, data for July-December 2021 is pending and will be released in the next biannual report.

**Table 2 – Internal and External Outreach**

Type of Outreach January 2021– June 2021	Number
Training and Awareness	11
Internal Engagements	56
External Engagements	26
Total	93



**Figure 2 - Yearly Comparison of Internal and External Outreach**



## **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, and concern the administration of an NSA program and/or operations raised by a member of the public, NSA workforce, 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 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 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 and two referrals from the Inspector General (IG), 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 the 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 IG, and the IG similarly refers back to CLPT. As internal activities and outreach efforts increased and questions related to COVID continued, the office responded to more than triple the amount of inquiries this year compared to the amount received in the first half of 2018, as shown in Figure 3. CLPT receives a number of unclassified inquiries via NSA.gov 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 – January 2021 through June 2021</b>	<b>Quantity</b>
Information requests to the CLPT Office	10
Civil liberties and privacy questions	188
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 IG	2
<b>Total Reviewed and Closed</b>	<b>200</b>

**Figure 3 - Yearly Comparison of Inquires**

