U.S. Department of Justice

THE OFFICE OF PRIVACY AND CIVIL LIBERTIES

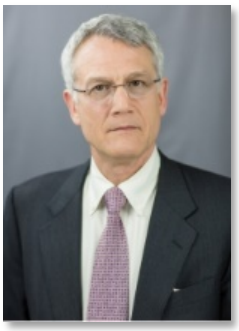
PRIVACY AND CIVIL LIBERTIES ACTIVITIES SEMI-ANNUAL REPORT

FIRST SEMI-ANNUAL REPORT, FY 2020

OCTOBER 1, 2019 – MARCH 31, 2020

United States Department of Justice
Semi-Annual Section 803 Report

Message from the Chief Privacy and Civil Liberties Officer



I am pleased to present the Department of Justice's (Department) Semi-Annual Report for the period from October 1, 2019 through March 31, 2020 as required by section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, 42 U.S.C. § 2000ee-1 (2018). Section 803 directs the privacy officers and civil liberties officers of each department, at the Department it is the Chief Privacy and Civil Liberties Officer (CPCLO), to provide the following information:

- The number and types of privacy reviews undertaken by the CPCLO (including reviews of legislation and testimony, initial privacy assessments, privacy impact assessments, system of records notices, Privacy Act exemption regulations, Office of Management and Budget (OMB) Circular A-130, data breach incidents, Privacy Act amendment appeals).
- The type and description of advice undertaken by the CPCLO and the Department's Office of Privacy and Civil Liberties (OPCL).
- The number and nature of privacy complaints received by the CPCLO and OPCL for alleged violations and a summary of the disposition of such complaints.
- The outreach to the public informing it about the activities of the CPCLO.
- The other functions of OPCL.

Overall, the Department's privacy program is supported by a team of dedicated privacy professionals who strive to reinforce a culture and understanding of privacy within the complex and diverse mission of the Department. The work of the Department's privacy team is evident in the care, consideration and dialogue about privacy that is incorporated in the daily operations of the Department.

As a leader of the Department's privacy team, I am committed to developing innovative, practical, and efficient ways to incorporate and implement privacy requirements and principles as the Department carries out its important mission of protecting and serving the American public.

Peter A. Winn
Acting Chief Privacy and Civil Liberties Officer

I. INTRODUCTION

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, 42 U.S.C. § 2000ee-1 (2018) (hereinafter "Section 803"), requires designation of a senior official to serve as the Attorney General's principal advisor on privacy and civil liberties matters and imposes reporting requirements on certain activities of such official. The Department's CPCLO, in the Office of the Deputy Attorney General, serves as the principal advisor to the Attorney General on these matters, and is supported by the Department's OPCL.

Specifically, Section 803 requires periodic reports[1] related to the discharge of certain privacy and civil liberties functions of the Department's CPCLO, including information on the number and types of privacy reviews undertaken by the CPCLO; the type of advice provided and the response given to such advice; the number and nature of complaints received by the Department for alleged violations; and a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such an officer. To provide a standard reportable framework, the Department has coordinated with OMB in order to tailor this report to the missions and functions of the Department's CPCLO.

II. PRIVACY REVIEWS

Pursuant to Section 803, this First Semi-Annual Report for FY 2020 includes "information on the number and types of reviews undertaken."[2] Among these are the reviews the Department conducts of information systems and other programs to ensure that privacy issues are identified and analyzed, in accordance with federal privacy laws such as the Privacy Act of 1974, as amended, 5 U.S.C. § 552a ("Privacy Act"), the privacy provisions of Section 208 of the E-Government Act of 2002, 44 U.S.C. § 3501 (note), as well as federal privacy policies articulated in OMB guidance.[3] Regular reviews conducted pursuant to the requirements of Section 803 include the following:

1. Proposed legislation, as well as testimony, and reports prepared by departments and agencies within the Executive Branch

OPCL and the CPCLO review proposed legislation, testimony, and reports for any privacy and civil liberties issues.

2. Initial Privacy Assessments (IPA)

An IPA is a privacy compliance tool developed by the Department as a first step to: facilitate the identification of potential privacy issues; assess whether privacy documentation is required; and ultimately ensure the Department's compliance with

[1] On July 7, 2014, the statute was amended to require semiannual submissions of the periodic reports rather than quarterly submissions. *See id*. § 2000ee-1(f) (2018); Pub. L. No. 113-126, Title III, § 329(b)(4), 128 Stat. 1406 (2014).
[2] *See* 42 U.S.C. § 2000ee-1(f)(2)(A).
[3] *See e.g.*, OMB Circular No. A-130, Managing Information as a Strategic Resource, 81 Fed. Reg. 49689 (July 28, 2016), https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A130/a130revised.pdf.

applicable privacy laws and policies.[4] OPCL coordinates and reviews IPAs conducted by Department components. For purposes of this First Semi-Annual Report for Fiscal Year 2020, this number represents IPAs that OPCL has reviewed and closed by issuance of a Final Determination.

3. Privacy Impact Assessments (PIA)

A PIA is an analysis, required by Section 208 of the E-Government Act of 2002, of how information in identifiable form is processed to ensure handling conforms to applicable legal, regulatory, and policy requirements regarding privacy; determine the risks and effects of collecting, maintaining, and disseminating information in identifiable form in an electronic information system; and examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks.[5] For purposes of this First Semi-Annual Report for Fiscal Year 2020, this number represents PIAs that OPCL and/or the CPCLO have reviewed, approved, and/or closed.

4. System of Records Notices (SORN)

A SORN is a notice document required by the Privacy Act that describes the existence and character of a system of records, including the categories of individuals whose records are in the system; the categories of records; and the routine uses of the records.[6] The SORN is published in the *Federal Register*. For purposes of this First Semi-Annual Report for Fiscal Year 2020, this number represents published SORNs that have exhausted their comment periods.

5. Privacy Act Exemption Regulations

The Privacy Act provides that agencies may exempt some systems of records from certain provisions of the Act. A Privacy Act exemption regulation is the regulation promulgated by an agency and published in the *Federal Register* that provides the reasons why a system of records maintained by the agency is exempt from certain provisions of the Privacy Act.[7] For purposes of this report, this number represents published Privacy Act exemption regulations that have resulted in final rules that have exhausted their notice periods.

6. Information Collection Notices

[4] For further information about the Department's IPA process, *see* https://www.justice.gov/opcl/privacy-compliance-process.
[5] *See* OMB Memorandum, M-03-22, OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, Attachment A, Section II.A.6 (Sept. 26, 2003), https://www.whitehouse.gov/wp-content/uploads/2017/11/203-M-03-22-OMB-Guidance-for-Implementing-the-Privacy-Provisions-of-the-E-Government-Act-of-2002-1.pdf.
[6] *See* 5 U.S.C. § 552a(e)(4).
[7] *See id.* § 552a(j), (k).

An information collection notice is a notice to individuals as required by subsection 552a(e)(3) of the Privacy Act.[8] The notice, which must be on the form used to collect the information or on a separate form that the individual can retain, includes the authority for collecting the information; the principal purposes for which the information is intended to be used; the routine uses of the information; and the effects on the individual, if any, of not providing all or any of part of the requested information. For purposes of this First Semi-Annual Report for Fiscal Year 2020, OPCL's review to determine whether an information collection notice is required occurs during the IPA and final determination review.

7. Other Assessments of Privacy Program Requirements

For purposes of this First Semi-Annual Report for Fiscal Year 2020, reviews are conducted on an annual basis in coordination with the Federal Information Security Modernization Act (FISMA)[9] reviews. Specific details of such FISMA reviews are submitted through the annual FISMA report.

On July 28, 2016, OMB released an update to OMB Circular A-130 titled, *Managing Information as a Strategic Resource*.[10] OMB Circular A-130 serves as the governing document for the management of federal information resources. Appendix II to OMB Circular A-130, *Responsibilities for Managing Personally Identifiable Information*, outlines many of the responsibilities for agencies managing information resources that involve personally identifiable information (PII). These responsibilities include a number of requirements for agencies to integrate their privacy programs into their Risk Management Framework, including but not limited to, the selection, implementation, and assessment of the Appendix J[11] privacy controls. OPCL is currently collaborating with the Department's Office of the Chief Information Officer (OCIO) to ensure that all requirements outlined in OMB Circular A-130 are satisfied.

8. Data Breaches or Incidents

The DOJ Instruction 0900.00.01, *Reporting and Response Procedures for a Breach of Personally Identifiable Information*,[12] was updated February 16, 2018, to account for OMB Memorandum M-17-12 requirements. The Instruction defines a data breach as "the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses personally identifiable information (PII) or (2) an authorized user accesses or potentially accesses PII for an other than authorized purpose. It includes both intrusions (from outside the organization) and misuse (from within the organization)." In

[8] *See id.* § 552a(e)(3).
[9] Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283, 128 Stat. 3073 (Dec. 18, 2014).
[10] *See supra* note 3.
[11] National Institute for Standards and Technology, NIST Special Pub. No. 800-53, rev. 4, *Security and Privacy Controls for Federal Information Systems and Organizations* (Apr. 2013), https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf.
[12] *See* DOJ Instruction 0900.00.01, *Reporting and Response Procedures for A Responsibilities for Managing Breach of Personally Identifiable Information* (Feb. 16, 2018).

addition, the Instruction defines an incident as "an occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies." The Instruction applies to all DOJ components and personnel that process, store, or transmit DOJ information, and contractors and other users of information systems that support the operations and assets of DOJ. For purposes of this report, this number includes data breaches and incidents that have been formally reviewed by the Department's Core Management Team (DOJ's organizational team chaired by the CPCLO and the Chief Information Officer, which convenes in the event of a significant data breach involving PII).

9. Privacy Act Amendment Appeals

A Privacy Act amendment appeal is an appeal of an initial agency action regarding a request from an individual to amend their record that is maintained in a Privacy Act system of records.[13] For purposes of this report, this number represents the number of appeals that have been adjudicated and closed by OPCL.

PRIVACY REVIEWS	
Type of Review	**Number of Reviews**
Legislation, testimony, and reports	240
Initial Privacy Assessments	20
Privacy Impact Assessments[14] • Next Generation Identification (NGI)-Interstate Photo System • National Domestic Communications Assistance Center Network (NDCACNet) • Management System: NexGen (CMS: NxG) • Electronic Clemency Records Database (ECRD) • Police Automated Security Roster (ASR) • Visual Information Support Network (VISNET) and Investigative and Prosecutive Graphic Network (IPGNET) • Atlas • National Instant Criminal Background Check System (NICS) • Liaison Relationship Management • ECE Case Management System	16

[13] *See* 5 U.S.C. § 552a(d)(2), (3).
[14] DOJ PIAs, https://www.justice.gov/opcl/doj-privacy-impact-assessments. Note: Six of the PIAs included in the number of reviews have not been listed because of the sensitivity of the associated systems.

PRIVACY REVIEWS	
Type of Review	**Number of Reviews**
System of Records Notices[15] • Public Safety Officers' Benefits System • National Instant Criminal Background Check System (NICS) • Next Generation Identification (NGI) System • NexGen (CMS:NxG) • Identity, Credential, and Access Service Records System • Justice Federal Docket Management System	6
Privacy Act Exemption Regulations	1
Data Breach and/or Incident Reviews	62
Privacy Act Amendment Appeals	16

III. ADVICE

Pursuant to Section 803, First Semi-Annual Report for Fiscal Year 2020 includes "the type of advice provided and the response given to such advice."[16] The CPCLO's responsibilities include the provision of both formal and informal advice addressing the issuance of formal written policies, procedures, guidance, or interpretations of privacy requirements for certain circumstances or business processes. This advice has been drafted or authorized by the CPCLO to respond to issues or concerns regarding safeguards for privacy and civil liberties and relates to the issuance of regulations, orders, guidance, agreements, or training. The CPCLO received appropriate responses to the formal and informal advice provided.

For this semi-annual period, the CPCLO and OPCL continued working with DOJ components and inter-agency partners to address international privacy questions affecting the Department, as well as international privacy matters, which included discussions with the United Nations Special Rapporteur on Privacy.

For this semi-annual period, the CPCLO and OPCL continued advising Department components on the impact of emerging technologies on privacy and civil liberties. For example, given the emergence of Artificial Intelligence (AI), and consistent with Executive Order 13859, Maintaining American Leadership in Artificial Intelligence,[17] OPCL has been involved in a number Department- and government-wide initiatives to ensure that the Department's use of AI is developed and deployed in a manner that fosters public trust and confidence, while protecting privacy, civil rights, civil liberties, and other American values.

The CPCLO and OPCL attended the International Conference of Data Privacy and Protection Commissioners, which is an organization comprising 110 privacy and data protection

[15] DOJ SORNs, https://www.justice.gov/opcl/doj-systems-records.
[16] *See* 42 U.S.C. § 2000ee-1(f)(2)(B).
[17] 84 Fed. Reg. 3967 (Feb. 14, 2019), https://www.govinfo.gov/content/pkg/FR-2019-02-14/pdf/2019-02544.pdf.

authorities from across the world that provides leadership at the international level in data protection and privacy. In October 2019, the CPCLO and OPCL attended the 41st International Conference of Data Privacy and Protection Commissioners (ICDPPC). The CPCLO and OPCL Deputy Director attended both the closed sessions for Data Protection Authorities and the open session for invited representatives from industry, academia, and other non-governmental entities.

The CPCLO and OPCL have been an active member of the DOJ Insider Threat Working Group pursuant to DOJ Order 0901, signed on February 12, 2014, which established the DOJ Insider Threat Prevention and Detection Program (ITPDP) and mandated that the ITPDP "include appropriate protections for legal, privacy, civil rights, and civil liberties requirements." Pursuant to this mandate, OPCL provides advice on privacy and civil liberties issues as part of the development of the DOJ ITPDP. OPCL's advice and assistance regarding insider threat issues has included assisting JMD in drafting a PIA. OPCL is also an active member of the NT-50 Insider Threat Legal Community of Practice.

The CPCLO and OPCL continue to participate in a number of working groups, including but not limited to:

- Open Government working groups internally and in the inter-agency. OPCL also advised on implementing the Information Quality Act and assisted in updating DOJ guidance;
- DOJ-wide Social Media Working Group. OPCL also handled all DOJ social media-related privacy compliance documentation;
- AI and Machine Learning (ML) working groups. In particular, the CPCLO and OPCL continued to coordinate with stakeholders, to ensure that impacts to privacy and civil liberties are a primary consideration as agencies investigate whether, and how, to develop and/or deploy the use of AI/ML technologies;
- Meetings with international officials. The CPCLO and OPCL met with international officials through the International Visitor's Leadership Program to discuss the US privacy framework and international privacy matters.

The CPCLO and OPCL have been extensively engaged on various resolutions and statements related to the UN General Assembly and other international organizations.

The CPCLO and OPCL continued participating in a number of training-related initiatives within the Department, and created and then posted LearnDOJ training modules, hosting in-person training events, and publishing videos of those events more broadly.

OPCL also received a number of requests for training through its public-facing "Privacy Inbox" and provided training regarding, *inter alia,* agency responsibilities under the Privacy Act, the E-Government Act of 2002, OMB Guidance, and NIST Special Publications.

IV. COMPLAINTS

Pursuant to Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, 42 U.S.C. § 2000ee-1 (2018), the First Semi-Annual Report for Fiscal Year 2020 includes "the number and nature of the complaints received by the department, agency, or element concerned for alleged violations" which are included in the Semi-Annual Report for FY

2018 and 2019 as well.[18] A privacy complaint encompasses a written allegation (excluding complaints filed in litigation against the Department) concerning a violation of privacy protections in the administration of the programs and operations of the Department that is submitted to or through the CPCLO and/or OPCL. Complaints directly received by components without notice to the CPCLO and/or OPCL are handled by components and are not counted for purposes of this report. Privacy complaints are separated into three categories:

1. Process and procedural issues, such as appropriate consent, collection, and/or notice;
2. Redress issues that are outside of the Privacy Act amendment process (such as misidentification or correction of personally identifiable information); and
3. Operational issues (inquiries regarding general privacy, including Privacy Act matters).

A civil liberties complaint encompasses a written allegation (excluding complaints filed in litigation against the Department) for a problem with or violation of civil liberties safeguards concerning the handling of personal information by the Department in the administration of Department programs and operations that is submitted to or through the CPCLO and/or OPCL.

For each type of privacy or civil liberties complaint received by the CPCLO and/or OPCL during the semi-annual period, the report will include the number of complaints in which (1) responsive action was taken or (2) no action was required. In the event a complaint is received within five business days of the last day of the close of a semi-annual period, the complaint may be counted and addressed in the subsequent semi-annual period if time constraints hinder a thorough examination of the complaint in semi-annual period in which it is received.

In addition to privacy and civil liberties complaints concerning the Department, OPCL receives privacy and civil liberties concerns, as defined above, that may pertain to another Federal agency. OPCL responds to these concerns with information on how to contact the appropriate agency to handle their concern. The number of inquiries and the disposition are reflected in the table below.

PRIVACY AND/OR CIVIL LIBERTIES COMPLAINTS				
Type of Complaint	**Number of Complaints**	**Disposition of Complaint**		**Inquiries for Outside the Department**
		Referred to Component for review	**Referred to Office of Inspector General**	**Referred to another Agency for review**
Process and Procedure	0	0	0	4
Redress	0	0	0	1
Operational	0	0	0	2

[18] *See* U.S.C. § 2000ee-1(f)(2)(C).

PRIVACY AND/OR CIVIL LIBERTIES COMPLAINTS				
Type of Complaint	**Number of Complaints**	**Disposition of Complaint**		**Inquiries for Outside the Department**
		Referred to Component for review	**Referred to Office of Inspector General**	**Referred to another Agency for review**
Civil Liberties Complaints	0	0	0	2
Total	0			9

V. INFORMING THE PUBLIC

Pursuant to Section 803, the CPCLO shall "otherwise inform the public of the activities of such officer, as appropriate and in a manner consistent with the protection of classified information and applicable law."[19] The CPCLO and OPCL have continued to engage stakeholders in the privacy community. They have conducted outreach to the privacy advocacy community, the technology industry, and international organizations. The CPCLO also participated in a number of speaking engagements to promote transparency of the Department's policies, initiatives, and oversight with respect to the protection of privacy and civil liberties.

VI. OTHER FUNCTIONS

Pursuant to Section 803, the First Semi-Annual Report for Fiscal Year 2020 "shall include information on the discharge of each of the functions of the officer concerned."[20] Throughout the reporting period, the CPCLO and OPCL have also worked with the Privacy and Civil Liberties Oversight Board and OMB to address privacy concerns, as well as ways to improve agency outreach. Moreover, the CPCLO and OPCL have met with other Federal agencies to improve inter-agency coordination, and to discuss agency privacy practices and common concerns. These meetings enable OPCL to review and assess the Department's information and privacy-related policies, and make improvements where appropriate and necessary.

The CPCLO and OPCL have also worked on several projects for the Federal Privacy Council (FPC), including teaching an introductory privacy law class to a wide group of agency privacy officials at a Privacy "Bootcamp" and contributing to the Federal Privacy Council's Executive Committee. Additionally, OPCL attorneys participated on various panels during the FPC's Annual Privacy Summit.

The CPCLO and OPCL continued participating in privacy and civil liberties training to external agencies, organized talks, and spoke on privacy issues in past IAPP Global Privacy Summits.

[19] *See* 42 U.S.C. § 2000ee-1(g)(2).
[20] *See* 42 U.S.C. § 2000ee-1(f)(2).

The CPCLO and OPCL continued to assist with the implementation of the Clarifying Lawful Overseas Use of Data Act of 2018 (CLOUD Act).[21] The CLOUD Act authorizes the Attorney General, with the concurrence of the Secretary of State, to enter into an executive agreement with foreign governments governing access by a foreign government to data. During the evaluation period, the U.S. entered into negotiations with the UK on an Executive Agreement under the CLOUD Act, and the CPCLO and OPCL assisting in the drafting the U.S. Government explanation as to why the domestic law of the UK, including the implementation of that law, affords robust substantive and procedural protections for privacy and civil liberties in light of the data collection and UK activities subject to the Executive Agreement. During the reporting period, the CPCLO and OPCL assisted the Department in meeting many of its disclosure obligations under the CLOUD Act. Such obligations included, but were not limited to, assisting with the disclosure of the U.S.-UK CLOUD Act Executive Agreement to the appropriate congressional entities, https://www.justice.gov/dag/page/file/1236281/download, and ensuring that the U.S.-UK CLOUD Act Executive Agreement was publically disclosed in the Federal Register, https://www.govinfo.gov/content/pkg/FR-2020-03-03/pdf/2020-04248.pdf.

[21]Full text of the CLOUD Act, https://www.justice.gov/dag/page/file/1152896/download