



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155

Privacy and Civil Liberties Oversight Board
Suite 500
2100 K Street NW
Washington, DC 20427

Dear Members of the Board:

Please find enclosed the Department of Defense (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 2021, April 1, 2021 through September 30, 2021.

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

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

Sincerely,

CHUNG.JOO.
Y.1512306507

Digitally signed by
CHUNG.JOO.Y.1512306507
Date: 2021.12.02 16:53:28
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Joo Y. Chung

Enclosure:
As stated

Department of Defense
Privacy and Civil Liberties Officer Report



Semiannual Report for Fiscal Year 2021

April 1, 2021 – September 30, 2021

The estimated cost of this report or study for the Department of Defense is approximately \$7,280 for the 2021 Fiscal Year. This includes \$0 in expenses and \$7,280 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 half of fiscal year 2021: April 1, 2021 through September 30, 2021.

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, (Public Law 110-53), codified at 42 U.S.C. § 2000ee-1, requires the Secretary of Defense to designate a senior officer to serve as the Department’s principal advisor on privacy and civil liberties matters and to report on a semiannual basis the activities of this officer. The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency serves as the PCLO and reports to and advises the Secretary of Defense and the Deputy Secretary of Defense on these matters.

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

- The organizational structure of the DoD Privacy and Civil Liberties Programs;
- Information on the number and types of reviews undertaken;
- The type of advice provided and the response to such advice;
- The number and nature of the complaints received by the Department for alleged privacy and civil liberties violations; and
- A summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of the PCLO.

The DoD is committed to protecting and promoting privacy and civil liberties in its operations and programs, consistent with the Department’s mission to defend the Nation. In keeping with the Department’s leadership and collaboration in this area, this report includes the activities of the DoD PCLO in establishing policy and guidelines, as well as the efforts of the DoD 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. The DoD PCLO issues and implements DoD privacy and civil liberties policies and directs and oversees the compliance efforts of the DoD Component Privacy and Civil Liberties Programs.

The DoD privacy and civil liberties policies and related procedural requirements are established in 32 C.F.R. Part 310, “Protection of Privacy and Access to and Amendment of Individual Records Under the Privacy Act of 1974,” April 11, 2019 (84 FR 14730);¹ DoD Instruction (DoDI) 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019, as amended;² DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007;³ DoD Manual 5400.11, Volume 2 “DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan,” May 6, 2021;⁴ and DoDI 1000.30, “Reduction of Social Security Number (SSN) Use Within DoD,” August 1, 2012, as amended.⁵

The DoD Privacy and Civil Liberties Programs began with the establishment of the Defense Privacy Office in 1975, after the passage of Section 552a of Title 5, U.S.C., also known as the Privacy Act of 1974.⁶ Following the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, including Section 803, the Department expanded the mission of the office and renamed it the Defense Privacy, Civil Liberties, and Transparency Division. As capabilities in information technology and information management continue to become increasingly sophisticated and diverse, the DoD Privacy and Civil Liberties Programs organizational structure has continued to evolve to strengthen the ongoing protection of individual rights, consistent with the missions of the Department. Figure 1 reflects the current structure for the DoD Privacy and Civil Liberties programs, including responsible officials and offices within DoD, which became effective September 1, 2021.

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

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

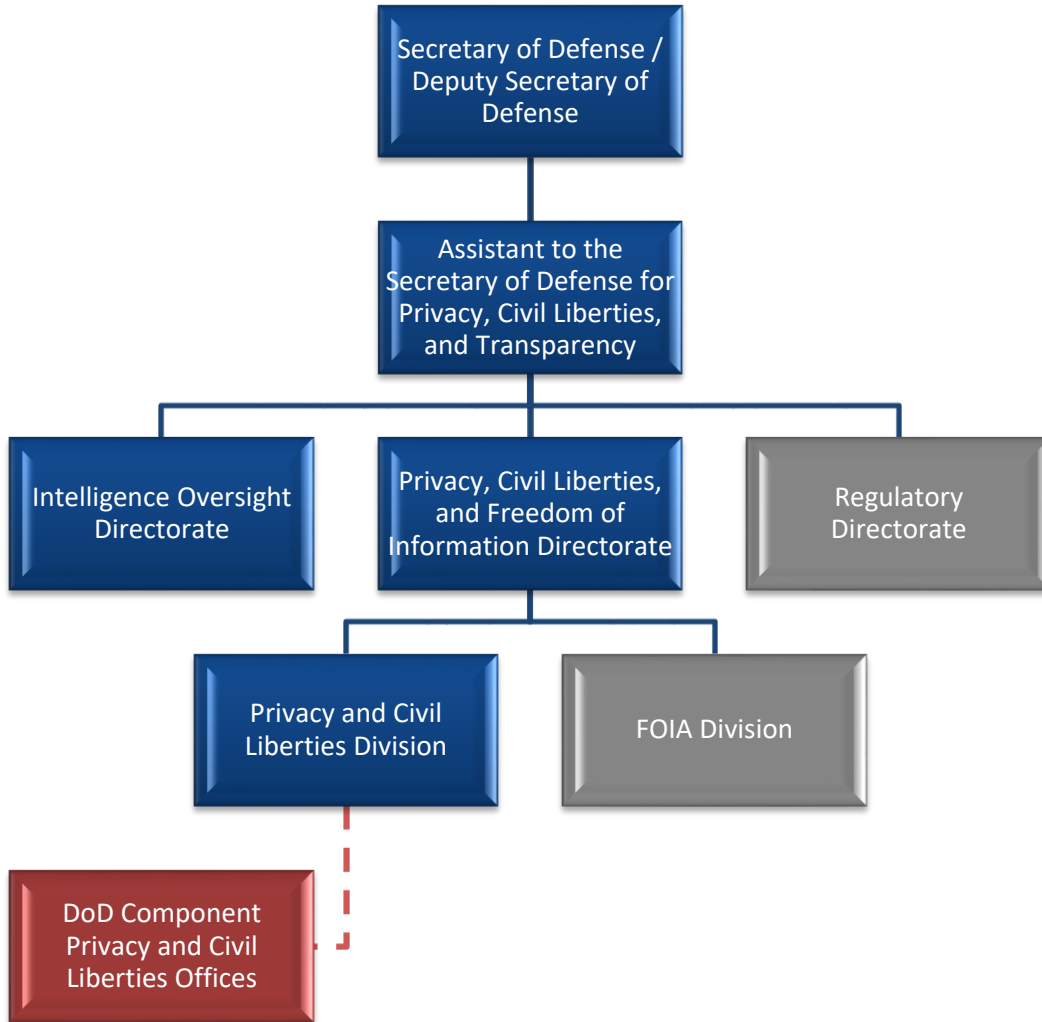
³ <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>

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

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

⁶ The Privacy Act of 1974, 5 U.S.C. § 552a, took effect on September 27, 1975, and can generally be characterized as an omnibus “code of fair information practices” that attempts to regulate the collection, maintenance, use, and dissemination of certain records about individuals by Federal executive branch agencies.

Figure 1: Current DoD Privacy and Civil Liberties Programs Structure



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

Consistent with Section 901(b) of the William M. “Mac” Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283) on September 1, 2021, the Deputy Secretary of Defense directed the realignment of the privacy, civil liberties, transparency, regulatory, and intelligence oversight responsibilities under a newly designated Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (ATSD(PCLT)). The ATSD(PCLT) was also

designated as the Principal Staff Assistant responsible for PCLT, regulatory, and intelligence oversight matters.

The ATSD(PCLT) serves as the DoD PCLO in accordance with Section 2000ee-1 of Title 42, U.S.C., and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense.⁷ The ATSD(PCLT) is responsible for advising the Deputy Secretary and Secretary on the DoD Privacy and Civil Liberties Programs. As the DoD PCLO, the ATSD(PCLT) is responsible for ensuring DoD operations, policies, procedures, guidelines, and issuances and their implementation are periodically investigated, reviewed, and amended to provide for adequate protection of individuals' privacy and civil liberties.

The ATSD(PCLT) reports to the Secretary of Defense and keeps the Secretary apprised of privacy and civil liberties issues within the Department's programs and operations. The ATSD(PCLT) is also charged with implementing the Department's Privacy and Civil Liberties Programs, ensuring compliance with the Privacy Act of 1974, as amended, and ensuring appropriate processes are in place to protect individuals' privacy and civil liberties in accordance with the law and policy. The ATSD(PCLT) also engages with entities charged with the oversight of privacy and civil liberties matters, such as the Privacy and Civil Liberties Oversight Board (PCLOB) and OMB.

The ATSD(PCLT) is also designated as the DoD Senior Agency Official for Privacy (SAOP) in accordance with Executive Order 13719, OMB Memorandum M-16-24, 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 and privacy-related matters; and information risk management. The SAOP sets the parameters and priorities for the DoD Privacy Program. In addition, as DoD's SAOP, the ATSD(PCLT) is actively involved in the Federal Privacy Council, which was established by Executive Order 13719, serving as its Vice Chair to support the protection of privacy across the Federal executive branch.

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

The OATSD(PCLT) comprises three directorates: the Privacy, Civil Liberties, and Freedom

⁷ Prior to September 1, 2021, the Director for Administration and Management served as the DoD PCLO.

of Information (FOI) Directorate (PCLFD); the Intelligence Oversight Directorate (IOD); and the Regulatory Directorate.

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

The PCLFD is composed of two divisions, the Privacy and Civil Liberties Division (PCLD) and the FOIA Division. Through the PCLD, the PCLFD supports the ATSD(PCLT) in carrying out her responsibilities as the DoD PCLO and SAOP to implement the DoD Privacy and Civil Liberties Programs. This includes supporting the ATSD(PCLT) in her roles as the Chair of the Defense Data Integrity Board and as the Privacy Act access and amendment appellate authority for the Office of the Secretary of Defense (OSD), the Joint Staff, and the Combatant Commands. The PCLFD routinely communicates and coordinates on a wide range of activities with DoD Component privacy and civil liberties officials, the OMB, the PCLOB, and other Federal departments and agencies, to facilitate the Department-wide execution of Federal privacy and civil liberties program requirements, and to exchange ideas on the development and implementation of best practices in the privacy and civil liberties area. Also, the PCLFD establishes reporting processes for the Privacy and Civil Liberties Programs, including the SAOP submission for the annual Federal Information Security Modernization Act (FISMA) Report, all PII breach reports, and this semiannual PCLO report.

Through the FOIA Division, the PCLFD assists the ATSD(PCLT) in carrying out her responsibilities as the DoD Chief FOIA Officer pursuant to title 5, U.S.C., section 552(j)(1), and the DoD representative to the Chief FOIA Officers Council pursuant to title 5, U.S.C., section 552(k)(1). The ATSD(PCLT) also serves as the FOIA appellate authority for the OSD, the Joint Staff, the Combatant Commands, and designated Defense Agencies and DoD Field Activities for information denied under title 5, U.S.C., section 552, and with respect to other adverse determinations.

2. The Intelligence Oversight Directorate

Under the direction of the DoD Senior Intelligence Oversight Official, the IOD is responsible for the independent oversight of the Department's intelligence and counterintelligence activities. The IOD inspects all DoD Component intelligence activities to ensure these activities comply with Federal law, Executive Orders, Presidential Directives, Intelligence Community directives, and DoD issuances. Due to the importance of protecting privacy and civil liberties when conducting intelligence activities, the IOD is an integral partner in implementing the DoD Privacy and Civil Liberties Programs.

C. DoD Office of the General Counsel

The DoD Office of the General Counsel (OGC) provides legal advice to senior DoD officials, the ATSD(PCLT), the PCLFD, and the IOD, and assists DoD Component legal advisors supporting DoD Privacy and Civil Liberties Programs. In addition, OGC legal advisors work directly with the OATSD(PCLT) 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.

D. 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 consistent with DoD issuances and guidelines. The DoD requires the designation of Senior Component Officials for Privacy (SCOPs) and Component PCLOs to lead and implement the various elements of the DoD Privacy and Civil Liberties Programs. The OATSD(PCLT) communicates regularly with these officials on the operation of the Component programs.

1. Senior Component Officials for Privacy

Each SCOP is generally a general/flag officer, Senior Executive Service, or Senior Level employee 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 ATSD(PCLT) to assist in Departmental-level decision-making. The SCOPs also direct Component compliance with Section 803 and the DoD Privacy and Civil Liberties Programs.

2. Component Privacy and Civil Liberties Officers

DoD Components are responsible for designating a service member or civilian employee to serve as the Component PCLO. These officials are responsible for managing and supervising the functions of the DoD Privacy and Civil Liberties Programs for the Component organizations. They also collaborate with and assist the SCOPs on all privacy and civil liberties matters as necessary.

III. REVIEWS

The DoD considers privacy and civil liberties concerns when proposing, developing, and

implementing laws, regulations, policies, procedures, and guidelines.⁸ Under the direction and guidance of the ATSD(PCLT), the PCLFD performs privacy and civil liberties reviews for all Department-level issuances, as well as proposed Federal legislation, testimony, and reports. In doing so, the PCLFD analyzes policy, procedures, and activities for their impact on privacy and civil liberties. The division provides comments and may recommend changes to such documents in order to protect privacy and civil liberties. Upon request, the PCLFD reviews and provides privacy and civil liberties guidance on proposed plans, activities, regulations, policies, and procedures promulgated by other DoD Components. The total number of documents reviewed by the PCLFD during this review period is identified in Table 1.

Privacy and civil liberties reviews are conducted in accordance with the Privacy Act of 1974, as amended, certain rights guaranteed in the U.S. Constitution, as amended, and OMB and PCLOB executive guidance. The Department also ensures compliance and alignment with FISMA and the E-Government Act of 2002 (44 U.S.C. § 3501 *et seq.*) with respect to information management requirements. For the purposes of this report, privacy compliance reviews are enumerated as follows and are summarized in Table 1.

A. System of Records Notice Reviews

The Privacy Act of 1974 requires that agencies publish a system of records notice (SORN) in the *Federal Register* describing the existence and character of any agency system of records.⁹ DoD Components must submit new, modified, and rescinded SORNs for their respective systems of records to the PCLFD for review and agency approval before they are published. Table 1 lists the number of SORNs the PCLFD has reviewed, approved, forwarded to OMB and Congress, and sent to the Office of the Federal Register for publication during the reporting period.

B. Exemption Rule Reviews

A Privacy Act exemption rule is promulgated when an agency exempts a particular system of records from certain provisions of the Act.¹⁰ The PCLFD and the OGC review Privacy Act exemption rules prior to publication in the *Federal Register*. Table 1 lists the number of new and modified exemption rules published as a final rule during the reporting period.

⁸ See 42 U.S.C. § 2000ee-1.

⁹ See 5 U.S.C. § 552a(e)(4).

¹⁰ See 5 U.S.C. § 552a(j), (k).

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.¹¹ The PCLFD and the OGC review matching agreements before they are presented to the Defense Data Integrity Board, which is chaired by the ATSD(PCLT), for approval. Table 1 lists the number of matching agreements reviewed and completed during the reporting period, in which DoD is either the source agency or the recipient agency.

D. Privacy Breach Reviews

A breach is defined as the loss of control, unauthorized disclosure, unauthorized acquisition or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses PII or (2) an unauthorized user accesses PII for other than an authorized purpose.¹² DoD Components report privacy breaches to the PCLFD, which provides breach response assistance, as appropriate, and compiles the breach reports to identify and analyze trends. Table 1 lists the number of privacy breaches reported to the PCLFD by all DoD Components during the reporting period.

E. Social Security Number Justification Reviews

DoD Components must submit a Social Security Number (SSN) Justification Memorandum to the PCLFD requesting authorization to collect and use SSNs within information systems and on forms. The justification must comply with departmental direction establishing limitations on the collection and use of SSNs.¹³ The PCLFD reviews the justification and decides whether to grant or deny the Component's request. This effort aims to reduce the use of SSNs in DoD systems and information collections, thereby minimizing the risk of SSN misuse or compromise throughout the Department. Table 1 lists the number of SSN Justification Memoranda reviewed and decided by the PCLFD during the reporting period.

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

The PCLFD reviews DoD-wide issuances for privacy and civil liberties issues and provides

¹¹ See 5 U.S.C. § 552a(a)(8) and (o).

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

¹³ DoD Instruction 1000.30, "Reduction of Social Security Number (SSN) Use Within DoD," August 1, 2012, as amended.

feedback as appropriate. In addition, the PCLFD reviews proposed legislation, testimony, and reports for privacy and civil liberties concerns on behalf of the ATSD(PCLT) and reviews other Federal agency documents upon request. Table 1 lists the number of reviews of issuances, legislation, testimony, and reports the PCLFD conducted during the reporting period.

Table 1: Privacy and Civil Liberties Reviews from April 1, 2021 to September 30, 2021

| PRIVACY AND CIVIL LIBERTIES REVIEWS | |
|--|--------------------------|
| Type of Review | Number of Reviews |
| System of Records Notices (SORNs) | |
| ➤ New | 5 |
| ➤ Modified | 6 |
| ➤ Rescinded | 25 |
| Exemption Rules | 3 |
| Matching Agreements ¹⁴ | 3 |
| Privacy Breach Reviews | 981 |
| SSN Justification Memoranda | 12 |
| DoD Issuances, Federal Legislation, Testimony, and Reports | 214 |

IV. MATTERS OF ADVICE AND RESPONSE

The OATSD(PCLT), supported by the ATSD(PCLT), and the PCLFD, provides advice on all DoD Component privacy and civil liberties matters. This advice serves as important guidance for DoD Component Privacy and Civil Liberties Programs implementation.

A. Advice

For the purpose of this report, advice encompasses the written issuance of DoD-wide policies, procedures, or guidance pertaining to privacy and civil liberties. The DoD is actively updating its foundational documents to reflect advances in knowledge, technology, and regulatory guidance. Issuances under review and revision during the reporting period included DoD Manual 5400.11,

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

Volume 2, “DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan” (published May 6, 2021); DoD Instruction 1000.30, “Social Security Number (SSN) Use Within DoD,” DoD Directive 5200.27, “Acquisition of Information Concerning Persons and Organizations Not Affiliated with the DoD,” and DoD Regulation 5400.11 (DoD 5400.11-R), “Department of Defense Privacy Program.”

B. Programmatic Achievements

The following activities highlight key DoD privacy and civil liberties offices’ programmatic efforts during the reporting period. For purposes of this report, references to PCLFD include PCLFD’s predecessor entity, the Defense Privacy, Civil Liberties, and Transparency Division of the Directorate for Oversight and Compliance.

- The PCLFD published DoD Manual 5400.11, Volume 2, “DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan,” May 6, 2021. This volume assigns responsibilities and provides procedures for preparing and responding to known or suspected breaches of PII. In accordance with OMB Memorandum M-17-12, this volume serves as the DoD Breach Preparedness and Response Plan.
- The PCLFD is continuing to prioritize the creation of DoD-wide SORNs. A DoD-wide SORN has the capability of covering multiple DoD paper or electronic recordkeeping systems operated by DoD components that maintain records about individuals for similar purposes. Establishment of DoD-wide SORNs helps the DoD standardize the rules governing the collection, maintenance, use, and sharing of personal information in key areas across the enterprise. DoD-wide SORNs also serve to reduce duplicative and overlapping SORNs published by separate DoD components. The creation of DoD-wide SORNs is expected to make locating relevant SORNs easier for DoD personnel and the public, and create efficiencies in the operation of the DoD privacy program. Over time, the PCLFD expects this initiative to reduce the overall number of DoD SORNs to a more manageable number. PCLFD published two DoD-wide SORNs during this reporting period: DoD 0006, Military Justice and Civilian Criminal Case Records, May 25, 2021, and DoD 0007, Reasonable Accommodations and Assistive Technology Records, July 22, 2021.
- The PCLFD rescinded a total of 25 SORNs in June 2021. This reflects the continuing

effort by the PCLFD to establish DoD-wide SORNs that provide Privacy Act coverage for multiple Components and thus allow the rescindment of multiple legacy SORNs.

- In order to increase oversight of civil liberties complaints and to properly distinguish and route other complaints involving discrimination, the Department of the Air Force created a policy detailing requirements for handling such complaints. Specifically, the new Commander Directed Investigation (CDI) Department of the Air Force Manual (DAFMAN) (DAFMAN 1-101 CDIs) contains provisions that outline the steps and responsibilities of Commanders and the investigating entities for investigating allegations of discrimination. This policy allows for proper management and handling of civil liberties complaints vs. civil rights complaints; ensuring separate and distinct handling by the appropriate points of contact.
- The United States Army (USA) Privacy and Civil Liberties Office collaborated with the USA Audit Agency (AAA) to conduct a Privacy Audit of both USA Europe and Africa as well as the USA Materiel Command. As a result of the AAA findings, the Records Management Directorate (RMD) senior leadership will institute monthly general privacy and PII safeguarding training sessions across the USA enterprise on the third Wednesday of each month in order to raise awareness of safeguarding PII and increase breach preparedness and prevention efforts based on AAA findings.
- Effective September 27, 2021, the Department of Defense Education Activity (DoDEA) implemented and incorporated technical safeguards in Microsoft Outlook to automatically prevent employees from sending/emailing PII outside of the agency. In addition, the agency added a CUI sensitivity categories drop-down list for assistance with identifying sensitive e-mails.
- As part of its role-based training effort, the National Reconnaissance Office (NRO) developed two workforce training videos highlighting privacy compliance: one on writing effective SSN Justification Memorandums and the second on ways to safeguard emails containing PII. The videos garnered more than 1,200 views in five days, which were some of the most viewed videos at the agency in recent months.

V. COMPLAINTS

Consistent with 42 U.S.C. § 2000ee-1, DoD policy requires DoD Components to have

procedures for processing complaints from individuals alleging the DoD violated their privacy or civil liberties.¹⁵ Generally, the receiving Component Privacy and Civil Liberties Program Office reviews the complaints and reports them to the Component command or other appropriate official. The command will initiate an inquiry and, as necessary, direct corrective action. The complaints counted in this report, listed in Table 2, were received in accordance with these procedures. For the purpose of this report, a complaint is an allegation of a violation of an individual's privacy rights or civil liberties. Complaints received through this process for which established formal procedural avenues exist, such as those resulting in non-judicial punishments, military courts-martial, administrative separations, and Equal Employment Opportunity actions, are outside the scope of this report. Further, sexual harassment, sexual assault, and complaints arising under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) are generally reported pursuant to different legal authorities and procedures; therefore, they are also outside the scope of this report.

A. Complaint Dispositions

Table 2 lists the number of privacy and civil liberties complaints received by DoD Components during the reporting period, and the disposition of the complaint. A disposition of "Responsive action taken" means the complaint was reviewed and is resolved. It also includes any action taken to remediate the violation and prevent recurrence. "Pending" indicates the complaint is under review to determine the necessary actions to resolve the complaint.

B. Privacy Complaints

A privacy complaint is an allegation of a violation of privacy protections in the administration of the programs and operations of the Department. Privacy complaints are separated into three categories in Table 2:

- Process and Procedure Issues (such as appropriate consent, collection, disclosure and/or notice);
- Redress Issues (Non-Privacy Act inquiries seeking resolution of difficulties about privacy matters.
- Operational Issues (Privacy Act matters not including requests for access, disclosure, and/or amendment);

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

- Referred to Other Agency;
- Other

For examples of DoD privacy complaints, please refer to the Appendix of this report.

C. Civil Liberties Complaints

A civil liberties complaint is an allegation of a violation of civil liberties in the administration of the Department's programs and operations. For the purpose of this report, civil liberties complaints involve the assertion of a violation of the rights and freedoms guaranteed by the first 10 amendments to the U.S. Constitution (i.e., the Bill of Rights). The types of civil liberties complaints reported may include, but are not limited to:

- First Amendment (e.g. freedom of speech, religion, press, right to assemble peaceably, and right to petition for redress of grievances);
- Second Amendment (right to keep and bear arms);
- Fourth Amendment (protection against unreasonable search and seizure);
- Fifth Amendment (protection against double jeopardy and self-incrimination, right to due process (including equal protection));
- Sixth Amendment (right to speedy and public trial/counsel/calling of witnesses/confronting of accusers);
- Eighth Amendment (protection against cruel/unusual punishments/excessive fines/bail);
- Ninth Amendment (unremunerated rights)

Examples of DoD civil liberties complaints are included in the Appendix of this report.

Table 2: Privacy and Civil Liberties Complaints

| Nature of Privacy Complaints | Number Received | Disposition of Complaint | |
|--|-----------------|--------------------------|----------|
| | | Responsive Action Taken | Pending |
| Process and Procedure | 30 | 29 | 1 |
| Redress Issues | 0 | 0 | 0 |
| Operational | 1 | 1 | 0 |
| Referred to Other Agency | 2 | 2 | 0 |
| Other | 0 | 0 | 0 |
| <i>Sub Total for Privacy Complaints:</i> | 33 | 32 | 1 |
| Nature of Civil Liberties Complaints | | | |
| First Amendment | 3 | 3 | 0 |
| Second Amendment | 1 | 1 | 0 |
| Fifth Amendment | 8 | 4 | 4 |
| Eighth Amendment | 2 | 1 | 1 |
| Ninth Amendment | 1 | 1 | 0 |
| <i>Sub Total for Civil Liberties Complaints:</i> | 15 | 10 | 5 |
| TOTAL 3rd & 4th Qtrs FY21 | 48 | 42 | 6 |

CONCLUSION

In accordance with Section 803, this report summarizes the activities of the DoD PCLO from April 1, 2021 through September 30, 2021. The DoD will continue to work with Congress, the OMB, the PCLOB, and other Federal agencies to ensure it appropriately protects privacy and civil liberties. Program activities and accomplishments serve to assure the continuing protection of privacy and civil liberties in each of the functions and missions of the Department.

APPENDIX: Samples of Privacy and Civil Liberties Complaints

Sample DoD Privacy Complaints¹⁶

Sample Complaint #1:

Description of Complaint: Allegation that a civilian violated the Privacy Act on several occasions by releasing the PII of military personnel and civilians to the media, non-Department of Defense-affiliated civilians, and members of Congress / Congressional staff lacking authorization under the Privacy Act to receive such information.

Findings: Substantiated. Civilian was suspended and derogatory information was referred to the appropriate security office for review. Revocation of credentials pending rebuttal and final decision. Personnel action decision pending completion of credential revocation.

Disposition: Responsive Action Taken.

Sample Complaint #2:

Description of Complaint: A school secretary collectively emailed multiple families students' PII (name, grade, address) to notify them of bus routes.

Findings: Substantiated. Provided notifications to those affected. Employee responsible for the breach was counseled, placed on probation, and received privacy refresher training.

Disposition: Responsive Action Taken.

Sample DoD Civil Liberties Complaints

Sample Complaint #1:

Description of Complaint: Alleged Fifth Amendment violation. A General Schedule (GS) employee sought information as to why their spouse was barred from the Service Reserve Center and questioned the scope of a complaint made against their spouse by a Service Member (SM).

Findings: Investigation completed and determined the commander acted prudently to bar the civilian's spouse from the installation due to a conflict with a Full Time Support SM. SM is due to Permanent Change of Duty Station within the next 60 days, thereby resolving the underlying issue.

Disposition: Responsive action taken.

Sample Complaint #2:

¹⁶ These samples reflect the most recent submissions and have been edited to ensure the privacy of the complainant. The content is still relevant for reference purposes.

Description of Complaint: Alleged Second Amendment violation. Complaint that individual was inappropriately added to the "Do Not Arm list" due to pending criminal investigation and prosecution.

Findings: Inquiry found that established protocol and requirements were followed.

Disposition: Responsive Action Taken.