

UNCLASSIFIED

Biannual Report on the Activities of the National Security Agency

Civil Liberties, Privacy, and Transparency Office

July 2021-December 2021



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Message from the Director

From July through December 2021, the Civil Liberties, Privacy, and Transparency (CLPT) Office saw an increase in the number of inquiries regarding activities at the National Security Agency (NSA or the Agency). As the Agency continued to address different aspects of the COVID-19 pandemic, there were opportunities for more in-person engagements. We advised on the process for handling religious exemptions from the vaccination requirement, as well as routine engagements on collection of personally identifiable information (PII) and the appropriate protections needed to do so.

During this timeframe, the Agency concluded several long-term projects related to civil liberties and privacy. In particular, the Agency created a new policy series titled Civil Liberties and Privacy. The Director of the NSA (DIRNSA) issued two key policies, 12-1, “NSA/CSS Civil Liberties and Privacy Program,” which sets out the policy for protecting civil liberties and privacy across the agency in both mission and administrative functions; and 12-2, “NSA/CSS Mission Compliance and Intelligence Oversight,” which establishes the requirements for intelligence oversight and assigns responsibilities related to the NSA/CSS Comprehensive Mission Compliance Program (CMCP). In addition, with extensive input and guidance from NSA, ODNI approved the first civil liberties and privacy compliance and oversight program under Section 2.3 of E.O. 12333, which allowed the National Geospatial-Intelligence Agency (NGA) the opportunity to access raw signals intelligence (SIGINT).

CLPT also continued to make great progress through interagency effort on behalf of the Committee for National Security Systems (CNSS) to update CNSS Instruction No. 1253 with a privacy baseline. This work is foundational. The final instruction will assist in ensuring that proper privacy protections are in place for national security systems that maintain PII.

At the same time, CLPT reviewed and ensured appropriate civil liberties and privacy protections were in place for non-national security systems that maintain PII. Our office strives to gain the trust and confidence of our Nation’s leaders, the American public, and the NSA workforce.



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Director, Civil Liberties, Privacy, and Transparency Office

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I. PURPOSE AND SCOPE

The National Security Agency/Central Security Service (hereinafter NSA or the Agency) is committed to protecting and incorporating safeguards for civil liberties and privacy, consistent with its mission to protect and defend the nation. This report is a summary of NSA's accomplishments during the reporting period of July-December 2021 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.

Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), as amended, requires that the Director of the NSA (DIRNSA) designate a privacy and civil liberties officer who reports directly to the head of the Agency on matters related to privacy and civil liberties.¹ 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.² The content of the report includes:

- The number and types of reviews undertaken;
- Types of advice provided and the responses given to such advice;
- Number and nature of complaints received by the CLPT Officer concerning alleged violations of civil liberties and privacy;
- 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, the PCLOB, the public, and Congress can assess progress in areas required for reporting under this law, as well as other significant activities that may not be required by law, regulation, or policy but demonstrate NSA's

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

² 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.

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

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 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 (SMEs) 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 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 across the federal government.

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

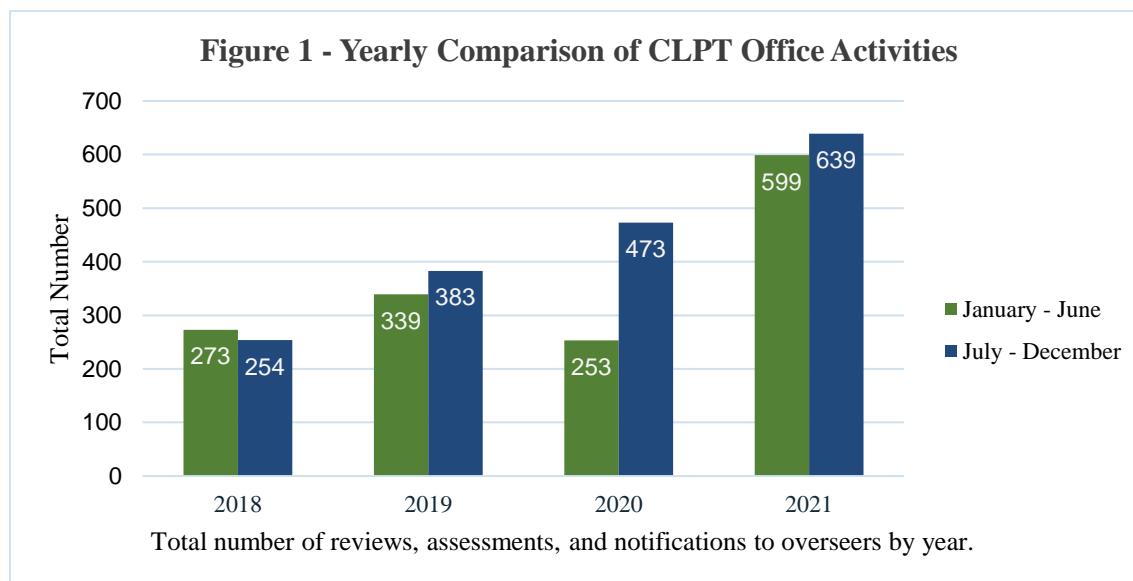
- Advise NSA senior leaders and mission managers regarding the protection of civil liberties and privacy;
- Review and assess policy, procedures, technology, and operations on incorporating civil liberties and privacy protections and safeguards in mission and non-mission systems;
- Maintain an effective mechanism for receiving complaints or indications of possible abuses of civil liberties and privacy;
- Provide training and guidance to NSA affiliates regarding their responsibilities to identify and protect the privacy of 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; and
- 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. TYPES AND NUMBER OF ACTIVITIES UNDERTAKEN FROM JULY-DECEMBER 2021

During the reporting period, the CLPT Office conducted 598 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 41 specific instances. The CLPT Office remains a vital component and resource for NSA affiliates to address privacy concerns. During the period from July-December 2021, the total number of CLPT inquiries, assessments and notifications to overseers continued to increase as shown in Figure 1.

Table 1 – Activities

Types of Review	Number conducted
Reviews for civil liberties and privacy impacts	598
Notifications, briefings, and applicable documents to external overseers	41
Total	639
Pages of classified documents reviewed and provided to PCLOB for oversight purposes	874
Pages of classified documents reviewed for PCLOB/public release	375



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 and feedback as appropriate. In addition, CLPT reviews a variety of documents requested by the Office of the Director of National Intelligence (ODNI) and DoD. Civil Liberties and Privacy Impact Assessments (CLPIAs) 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 change in direction, or new or existing activities that would have strategic implications for the Agency. CLPIAs 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 CLPIA 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 and input on the religious exemption process developed for those individuals seeking a waiver from the COVID vaccine mandate;
 - Reviewed extensive communications to workforce regarding the collection and use of vaccination related information;
- Conducted a variety of assessments on the collection, use, sharing/dissemination, and retention of data for the 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 the collection and use of publicly available and commercially available information and worked with mission owners to develop appropriate civil liberties and privacy safeguards. CLPT also worked with mission owners to showcase these assessments to external overseers, including both ODNI and DoD;
- Reviewed and assessed a variety of NSA 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 DoD-related Privacy Act systems of records (SORNs) for reference and use by NSA;
- Reviewed and assessed potential privacy incidents and ensured proper mitigations where appropriate;
- Provided input into the Office of the Inspector General (OIG) review of the NSA privacy program as required by Federal Information Security and Management Act (FISMA) as well as input in the DoD reporting.

Notifications, Briefings, and Applicable Documents to Overseers

CLPT provides notifications, briefings, and a variety of applicable documents to the PCLOB related to its mission to ensure the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. During this reporting period, CLPT provided notifications and documents either directly or through ODNI. CLPT continued to orchestrate the review of the PCLOB's classified E.O. 12333 report on XKEYSCORE along with the associated Board Member statements.

CLPT provided civil liberties and privacy subject matter expertise in two quarterly intelligence oversight reports. CLPT is also responsible for notifying the DoD Senior Agency Official for Privacy (SAOP) 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 375 pages of documents for necessary redactions and release by ODNI.

IV. TYPES OF ADVICE PROVIDED AND THE RESPONSES 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:

- Updating Civil Liberties and Privacy Policies:
 - As NSA/CSS continues to focus on a holistic approach to civil liberties and policies, it is consolidating and updating existing policies into one policy series titled 12 Civil Liberties and Privacy. DIRNSA approved the first two policies under this new construct during the reporting period, which can be found on the NSA's unclassified web site:
 - NSA/CSS Policy 12-1, "NSA/CSS Civil Liberties and Privacy Program." This policy establishes Civil Liberties and Privacy Program across NSA/CSS to include both mission related and administrative related activities;
 - NSA/CSS Policy 12-2, "NSA/CSS Mission Compliance and Intelligence Oversight." This policy establishes the requirements for intelligence

oversight and assigns responsibilities related to the NSA/CSS Comprehensive Mission Compliance Program (CMCP);

- Implementation by NSA and ODNI on of E.O. 12333 Raw SIGINT Availability Procedures (2.3 Procedures):
 - After providing ongoing advice to NSA and ODNI regarding the protection of civil liberties and privacy in the implementation of the Attorney General-approved E.O. 12333 Raw SIGINT Availability Procedures, ODNI approved the first set of compliance and oversight program for NGA; and
- Review of Activities related to allegation of improper use of the SIGINT system to target US Person communications.
 - An allegation of improper use of the SIGINT system was made publicly. CLPT conducted a review and determined that there had been no improper use of the SIGINT system, and provided recommendations that were implemented.

V. INTERNAL AND EXTERNAL OUTREACH

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, the CLPT Officer actively participated at Intelligence Community (IC) CLPT meetings, IC Transparency Council meetings, and Federal Privacy Council (FPC) meetings.

In support of the IC Civil Liberties and Privacy Council work plan, CLPT continued leading an interagency team in the review and incorporation of the privacy control baseline from the National Institute of Standards and Technology (NIST) 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 reviewed the updates and provided recommendations to the CNSS Safeguarding Working Group for inclusion in updated instructions.

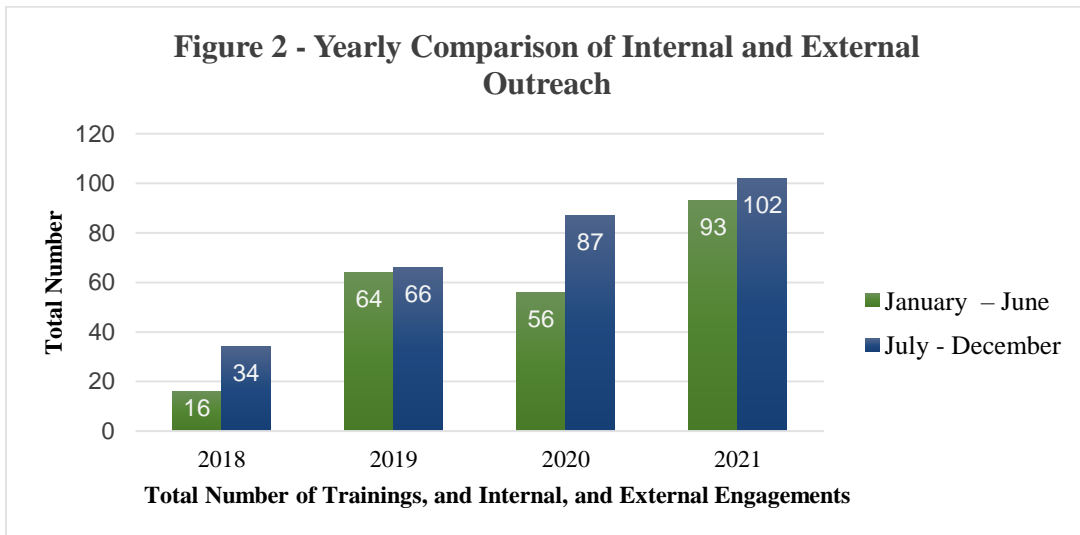
The CLPT Officer focused on sharing best practices around protecting civil liberties and privacy across the federal government while co-leading the FPC’s Agency Implementation Committee. CLPT continued to provide civil liberties and privacy training within NSA as well as for the broader IC and federal privacy community. For example, CLPT provided input and participated in training related to the Gates procedures for all analysts. The Gates procedures are ODNI-mandated procedures that establish IC policy for when an IC element seeks to disseminate unmasked or masked Congressional identity information within the Executive Branch.

Externally, the CLPT Officer attended domestic and international conferences related to protecting civil liberties and privacy at NSA and engaged with civil society groups on NSA activities. 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 continued to implement COVID-19 safety mitigations to protect the workforce, it limited external engagements to hybrid 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.

Table 2 – Internal and External Outreach

Type of Outreach July-December 2021	Number
Training and Awareness	13
Internal Engagements	60
External Engagements	29
Total	102



VI. QUESTIONS, CONCERNS, COMPLAINTS, AND REDRESS

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

Members of the public and NSA affiliates may contact CLPT via a form posted on NSA's public website at www.nsa.gov 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 OIG, 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 each question, concern, or complaint and provides written guidance regarding civil liberties and privacy concerns. If an activity could be a PII incident or breach, CLPT conducts an assessment (see CLPIAs above). As appropriate, CLPT will work closely with the Office of the General Counsel and affected organization if additional guidance or mitigation is required.

In reviewing the received questions, concerns, and complaints, CLPT determines whether there is a civil liberties and privacy issue to evaluate and answer, or whether the inquiry is more appropriate for another office to review and respond. CLPT also reviews submissions to determine if a question, concern, or complaint should be referred to the Inspector General (IG), and the IG similarly refers issues to CLPT on privacy related issues. As internal activities and outreach efforts increased and questions related to COVID-19 continued, CLPT has responded to an approximately three-fold increase in inquiries in 2021 compared to the amount received in the prior year, as shown in Figure 3. CLPT received 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

Requests, concerns, and referrals – July 2021 through December 2021	Quantity
Information requests to the CLPT Office	4
Civil liberties and privacy questions	264
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.	24
Referrals to and from the IG	1
Total Reviewed and Closed	293

