

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE



Semiannual Report  
Office of Civil Liberties, Privacy, and Transparency  
Period Covered: January 1, 2018 to June 30, 2018

LEADING INTELLIGENCE INTEGRATION

## Introduction

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As required by Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), as amended, this report provides information about the notable activities, from January 1, 2018 through June 30, 2018, of the ODNI's Office of Civil Liberties, Privacy, and Transparency (CLPT), to include the types of privacy and civil liberties reviews conducted; the types of guidance or response furnished; and the types of complaints received. In the interest of enhancing transparency, it also provides a narrative overview of significant activities for the same period.

### ABOUT CLPT

The Civil Liberties Protection Officer also serves as the ODNI's Chief Transparency Officer. In that capacity, he is responsible for leading implementation of the Principles of Intelligence Transparency for the Intelligence Community (IC). These principles guide how the IC should make information publicly available while protecting classified information, when disclosure would harm national security.

By leading the integration of civil liberties and privacy protections into the policies, procedures, programs, and activities of the IC, CLPT facilitates the conduct of intelligence activities in a manner that protects civil liberties and privacy, provides appropriate transparency, and earns and retains the trust of the American people. CLPT participation in developing and overseeing IC activities seeks to give the American people confidence that the IC is pursuing its vital security mission in a manner consistent with the nation's values.

In general, CLPT examines the privacy and civil liberties ramifications of intelligence-related technologies, programs, and procedures. CLPT collaborates closely with client offices to understand their initiatives or projects in detail, starting with the intelligence purpose for the specific activity, the authority pursuant to which data is obtained, and the characteristics and use of the data. Based on each set of individual circumstances, CLPT reviews the appropriateness of protective measures and compliance with legal and policy mandates, and works to modify or formulate protections as necessary.

Likewise, CLPT reviews proposed legislation, policy documents, instructions, standards, guidance, testimony, reports, releases, and other materials to ensure that any privacy and civil liberties issues are appropriately addressed and properly articulated. These reviews may pertain specifically to ODNI, or to other IC elements to the extent that the issues fall within CLPT's IC-wide responsibilities.

CLPT carries out its duties in close consultation with other offices with relevant and complementary responsibilities, including offices of general counsel, offices of inspectors general, intelligence oversight offices, civil liberties and privacy offices, and the Department of Justice (DOJ). CLPT champions the Principles of Professional Ethics for the IC: Mission, Truth, Lawfulness, Integrity, Stewardship, Excellence, and Diversity. These are fundamental, ethical principles that unite professionals across agencies and functions, while distinguishing “intelligence” from other professions.

CLPT also reviews and investigates (as appropriate) alleged privacy and civil liberties abuses. When CLPT first receives a complaint, it must determine whether the complaint was properly directed to CLPT or whether it should have been referred to a different office or agency. For example, depending on the circumstances, certain complaints may be referred to the IC Inspector General, the Office of Equal Employment Opportunity and Diversity, or another agency. If CLPT determines a complaint is not frivolous and merits a full review, it researches the pertinent legal and policy standards, and then obtains and analyzes relevant information. Based on its findings, CLPT determines the appropriate course of action to resolve the complaint, and notifies the complainant of disposition.

## OVERVIEW FOR THE REPORTING PERIOD

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### EXECUTIVE ORDER 12333

CLPT continued to work with DOJ and other ODNI components on IC elements' efforts to update their procedures implementing Executive Order (EO) 12333, United States Intelligence Activities. These agency-specific procedures implement the requirements of Section 2.3 of EO 12333, governing how IC agencies and elements collect, retain, and disseminate information concerning United States persons. EO 12333 requires that such procedures be approved by the Attorney General, in consultation with the DNI. In addition, CLPT helped coordinate staff-level reviews by the Privacy and Civil Liberties Oversight Board (PCLOB) regarding the proposed updates. CLPT also supported the ongoing reviews by PCLOB staff of the EO 12333 projects approved by the PCLOB before the Board fell below quorum.

CLPT participated closely in the process for developing and issuing IC Policy Guidance (ICPG) 107.1, which requires agencies to promulgate procedures governing how to "unmask" United States person identities that were originally masked in an intelligence dissemination. CLPT also worked with ODNI components to develop ODNI's implementing procedures, and with other IC elements as they developed their own procedures. This implementation process remained ongoing as of the end of the reporting period.

### FOREIGN INTELLIGENCE SURVEILLANCE ACT

During this reporting period, CLPT continued to conduct joint oversight (along with DOJ) of how IC elements implement Section 702 of the Foreign Intelligence Surveillance Act (FISA). CLPT participated in on-site reviews, reviewed compliance documentation, and worked with DOJ on incident examinations and notifications.

FISA requires the DNI and Attorney General to jointly assess compliance with the requirements of Section 702, on a semiannual basis. This classified assessment is submitted to Congress; a redacted version is released publicly. During the reporting period, CLPT worked closely with other offices and DOJ to prepare and submit the 18<sup>th</sup> semiannual joint assessment. As with prior reports, CLPT prepared the report in a manner designed to enhance public understanding.

CLPT also facilitated the PCLOB's continuing oversight of Section 702 by coordinating the ongoing production of FISA documentation to the Board. In addition, CLPT led efforts to respond to statutorily-required FISA transparency reporting for FISA. This included preparation of the annual statistical transparency report required by the USA FREEDOM Act. ODNI published the fifth such report during this period.

In addition, CLPT worked with other ODNI offices and National Security Agency (NSA) on NSA's implementation of the call details record provision under the USA FREEDOM Act. NSA identified and remediated an incident involving call detail records provided to NSA under this authority. NSA notified oversight entities and provided public transparency on the incident.

## INFORMATION SYSTEMS AND DATA GOVERNANCE

CLPT continued to support the activities of the IC Chief Information Officer, the ODNI Chief Data Officer, and the ODNI-internal Chief Information Officer relating to information technology systems and to the security and governance of personal data in those systems. CLPT partnered with counterparts at other IC elements to promote alignment among community privacy officers regarding protections for systems and data.

Similarly, CLPT continued to participate in meetings and activities of ODNI-internal and interagency bodies dealing with information systems and data governance.

## INTERNATIONAL ENGAGEMENT

CLPT continued to engage with European Union (EU) and United States Government officials to address EU questions on how the IC protects privacy and civil liberties and promotes transparency. In addition, CLPT supported and participated in engagements with foreign partners to enhance mutual understanding of each country's intelligence oversight framework.

## LEGISLATIVE, POLICY AND PRODUCT REVIEW

CLPT continued to conduct its routine review of IC-wide and ODNI-internal directives, policies and instructions, to ensure that privacy and civil liberties considerations were appropriately addressed. In certain instances, CLPT participated in working groups established to explore all equities and to ensure that a particular directive or policy would not result in unanticipated consequences.

CLPT continued to engage in interagency efforts relating to National Security Presidential Memorandum (NSPM) 7 on National Security Threat Actors, and NSPM-9 on the National Vetting Center.

## TRAINING

CLPT continued to deliver presentations at periodic training sessions for ODNI and other IC personnel. In addition, CLPT continued to provide training on an ad hoc basis to individuals, offices, and classes to explain or clarify civil liberties and privacy protections or transparency initiatives and best practices.

CLPT began providing regular training on transparency as part of a regular interagency course on Integrating the Intelligence Community. The course is attended by mid-level intelligence professionals from across the IC

CLPT also continued with its “Plain Talk” series. Plain Talk sessions are unstructured engagements with the work force where they are encouraged to ask any and all questions they may have about civil liberties, privacy, and transparency. During the reporting period, CLPT engaged in its first online version of this series.

## SECURITY, COUNTERINTELLIGENCE, CONTINUOUS EVALUATION AND INSIDER THREAT

Continuous Evaluation (CE) helps detect and counter insider threats by continuously reviewing an individual's eligibility to obtain access to classified information to hold a sensitive position. Executive Order (EO) 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information*, requires agencies to implement CE functions for the top security clearance levels. The ODNI CE Program is managed by the ODNI National Counterintelligence and Security Center (NCSC). During the reporting period, CLPT continued to provide guidance on the CE program, including on the implementation of Security Executive Agent Directive 6 (SEAD 6), *Continuous Evaluation* (January 2018), which codified CE policy and responsibilities.

CLPT participated in an interagency task force that examined the oversight and management of personnel security procedures for Government and contractor employees. CLPT provided input on appropriate safeguards in information sharing to protect personally identifiable information (PII).

In addition, CLPT continued to support ongoing compliance with Section 705 of the Intelligence Authorization Act for Fiscal Year 2016 (P.L. 114-113), which requires reporting on the effects of the OPM data breach

## TRANSPARENCY AND OPEN GOVERNMENT

ODNI revised and re-issued IC Directive (ICD) 107. When ICD 107 was first issued in 2012, it covered civil liberties and privacy. The ODNI reissued ICD 107 so that it also includes transparency, making clear that it is a foundational principle for the IC, along with the protection of civil liberties and privacy.

CLPT helped coordinate and support efforts to provide transparency relating to the NVC. During this reporting period, these efforts included coordinating and participating in an engagement with civil liberties and privacy advocacy organizations, and work on key documents with a view toward enhancing transparency.

CLPT continued to engage directly with the public to enhance understanding of how the IC protects civil liberties and privacy and promotes transparency. For example, the Chief of CLPT spoke with students and faculty at Rutgers Law School and at the University of Virginia Law School.

CLPT continued to chair Intelligence Transparency Council (ITC) meetings during this period to discuss transparency matters with the IC, including coordination of IC efforts on transparency initiatives, and declassification efforts such the IC's historical declassification initiative.

## COMPLAINTS

CLPT is statutorily mandated to serve as an "action office" (i.e., avenue of redress) for complaints, concerns, or questions having to do with privacy and civil liberties in the IC, whether broadly focused (e.g., the privacy implications of intelligence activities) or related to narrow, individual concerns (e.g., how a particular personal record may have been used). CLPT investigated and resolved a concern around proper handling of personal identifying information for a government employee. Pursuant to applicable policy, CLPT is the hub of an incident response team to be convened upon notice of any lapse (actual or suspected) in the application of technical protocols involving systems containing personally identifiable information.

CLPT reports on the number of complaints received in these categories: Information Sharing Environment, Privacy Act, and Civil Liberties and Privacy. During this reporting period, CLPT received no complaints.

## METRICS

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### Required Reporting Categories

As of 2018, the Metrics reporting has been streamlined to show the number of reviews, and the number of complaints in the required reporting categories, which are:

**Reviews:** Examinations of activities or processes as required by controlling privacy and civil liberties authorities.

**ISE Complaint:** A written allegation of harm arising from ODNI sharing of terrorism data in the context of the Information Sharing Environment.

**Privacy Act Complaint:** A written allegation regarding agency non-compliance with a requirement of the Privacy Act.

**Privacy and Civil Liberties Complaint:** A written allegation charging violation of information privacy rights and/or civil liberties; e.g., relating to improper collection, use, retention, and dissemination of the information about U.S. persons, or violation of First Amendment rights of free speech and association, or Fifth Amendment guarantees of due process and equal protection.

<u>Category</u>	<u>Total</u>
Reviews	26
ISE Complaint	0
Privacy Act Complaint	0
Privacy and Civil Liberties Complaint	1