



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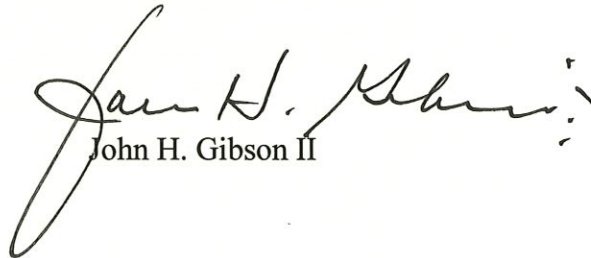
Privacy and Civil Liberties Oversight Board
Suite 500
2100 K Street NW
Washington, DC 20427

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 2017, April 1 through September 30, 2017.

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 that 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 Directorate for Oversight and Compliance.

In accordance with 42 U.S.C. § 2000ee-1, this report is also being sent to the Chairmen of the other appropriate congressional committees. Should you have questions about the report, you or your staff may contact Joo Y. Chung, Director, Directorate for Oversight and Compliance, Office of the Deputy Chief Management Officer, Office of the Secretary of Defense, at 703-692-2746 or at joo.y.chung2.civ@mail.mil.


John H. Gibson II

Enclosure:
As stated

cc:

U.S. Senate Committee on Armed Services
U.S. Senate Committee on Homeland Security and Government Affairs
U.S. Senate Committee on Judiciary
U.S. Senate Select Committee on Intelligence
U.S. House of Representatives Committee on Armed Services
U.S. House of Representatives Committee on the Judiciary
U.S. House of Representatives Committee on Oversight and Government Reform
U.S. House of Representatives Permanent Select Committee on Intelligence

Department of Defense
Privacy and Civil Liberties Officer Report



Semiannual Report for Fiscal Year 2017

April 1, 2017 – September 30, 2017

The estimated cost of this report or study for the Department of Defense is approximately \$11,000 for the 2017 Fiscal Year. This includes \$110 in expenses and \$11,000 in DoD labor.
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I. INTRODUCTION

The Department of Defense (“DoD” or “Department”) submits this Privacy and Civil Liberties Officer Report covering the activities of the DoD Privacy and Civil Liberties Officer (PCLO) for the second semiannual reporting period of fiscal year 2017: April 1, 2017 through September 30, 2017.

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Public Law 110-53), 42 U.S.C. § 2000ee-1 (hereinafter referred to as “Section 803”) requires the DoD 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.¹ The Deputy Chief Management Officer (DCMO)² of the Department serves as the PCLO and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense on these matters.

Section 803 Reports describe the privacy and civil liberties activities of the DoD PCLO, including:

- Information on the number and types of reviews undertaken;
- The type of advice provided and the response given to such advice;
- The number and nature of the privacy and civil liberties complaints received by the Department; and
- A summary of the disposition of such reported complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.

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 dedication to leadership and collaboration in this area, this report includes the activities of the PCLO in establishing policy and guidelines, the efforts of other DoD privacy and civil liberties officials who implement those policies, and the compliance mechanisms which safeguard the personal information, privacy, and civil liberties of individuals.³

II. THE DOD PRIVACY AND CIVIL LIBERTIES PROGRAM

The DoD Privacy and Civil Liberties Program was established to ensure compliance with applicable federal statutes and Office of Management and Budget (OMB) guidelines and policies governing privacy and civil liberties. On behalf of the PCLO, the Directorate for Oversight and Compliance (DO&C) issues DoD privacy and civil liberties policy, and directs and oversees compliance of the DoD component privacy and civil liberties programs.

The DoD Privacy and Civil Liberties Program began with the establishment of the Defense Privacy Office in 1975, after the passage of Section 552a of Title 5, United States Code (U.S.C.), also known as “The Privacy Act of 1974.”⁴ With the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Department expanded the mission of the

¹ See 42 U.S.C. § 2000ee-1, “Implementing Recommendations of the 9/11 Commission Act of 2007.”

² See <http://dcmo.defense.gov/Home.aspx> for further information regarding the Office of the Deputy Chief Management Officer.

³ As defined in 5 U.S.C. 552a.(a)(2).

⁴ The Privacy Act of 1974, 5 U.S.C. § 552a (2012) 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 personal information of individual by federal executive branch agencies.

A. The Office of the Deputy Chief Management Officer

The DCMO serves as the DoD PCLO, and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense. The DCMO is responsible for advising the Secretary and Deputy Secretary on business transformation, and leading the Department's efforts to streamline business processes and improve efficiencies in headquarters structure. The DCMO serves to coordinate the business operations of the Department and, in a broad capacity, exercises oversight authority throughout the Department. As the PCLO, the DCMO is responsible for ensuring that the privacy and civil liberties of individuals are appropriately considered and protected.

B. The Directorate for Oversight and Compliance

The DO&C within the ODCMO comprises three divisions: the Intelligence Oversight Division (IOD), the Defense Privacy, Civil Liberties, and Transparency Division (DPCLTD), and the Regulatory and Advisory Committee Division. The Director of O&C reports to the DCMO and is charged with implementing the Department's privacy and civil liberties programs. This includes ensuring compliance with the Privacy Act, as well as ensuring processes are in place to protect the privacy and civil liberties of individuals in accordance with applicable law. This includes implementation of agency guidance and oversight on privacy and civil liberties from the OMB and the Privacy and Civil Liberties Oversight Board (PCLOB).

The Director of O&C has also been designated as the DoD Senior Agency Official for Privacy (SAOP). The SAOP has Department-wide responsibility for privacy, including protection of personal information of individuals, compliance with Federal laws, regulations, and policies, and providing recommendations on legislative, regulatory, and other policy initiatives that implicate Privacy Act compliance and information risk management. The SAOP establishes the parameters of DoD Privacy and Civil Liberties Program for the Department. The SAOP relies on the IOD and interfaces with intelligence elements to ensure that matters sensitive to national security are scrutinized appropriately. Finally, the SAOP routinely provides information and recommendations directly to the PCLO.

C. The Intelligence Oversight Division

The IOD is responsible to the Secretary of Defense for the independent oversight of all intelligence, counterintelligence, and intelligence-related activities of the Department. The IOD inspects all intelligence or intelligence-related activities conducted by any of the DoD Components to ensure that 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 part of the DoD Privacy and Civil Liberties Programs. The Chief, IOD, also serves as the DoD Senior Intelligence Oversight Official (SIOO), reporting directly to the Secretary of Defense, and serves as the Deputy Director, DO&C.

D. The Defense Privacy, Civil Liberties, and Transparency Division

As a division of the Oversight and Compliance Directorate, the DPCLTD assists the PCLO and DO&C/SAOP in implementing the DoD Privacy and Civil Liberties Program by providing guidance to Component officials, reviewing publications and legislative activities, facilitating official reporting, and providing training in both privacy and civil liberties content and program administration.

The DPCLTD communicates routinely on a wide range of activities with privacy and civil liberties officials at each DoD Component, the OMB, the PCLOB, and other Federal departments

implementing laws, regulations, policies, procedures, and guidelines.⁸ On behalf of the DCMO and the Director of O&C, the DPCLTD reviews all Department-level issuances, as well as proposed federal legislation, testimony, and reports for impacts on privacy and civil liberties, recommending changes when appropriate. When requested, the DPCLTD reviews and comments on other federal agency documents which may affect the Department's operations. The total number of documents reviewed by the DPCLTD during this review period is identified in Table 1.

Privacy and civil liberties reviews are conducted in accordance with guidance generally established by the OMB and in consultation with the DoD OGC. The Department also ensures compliance and alignment with the Federal Information Security Modernization Act of 2014 and the E-Government Act of 2002 (44 U.S.C. § 3501) 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 (SORN) Reviews

A SORN is a notice published by an agency in the *Federal Register* upon the establishment or modification of a system of records, describing the existence and character of that system.⁹ DoD Components must submit their SORNs for their respective systems of records to DPCLTD for review, and agency approval. Table 1 lists the number of SORNs that DPCLTD has reviewed, approved, forwarded to OMB and Congress, and sent to the Office of the Federal Register for publication during this review period.

B. Exemption Rule Reviews

A Privacy Act exemption rule is promulgated when a system of records is exempted from certain general or specific provisions of the Privacy Act of 1974, as amended.¹⁰ For the purposes of this report, the number of exemption rules reported in Table 1 represents new exemption rules reviewed by DPCLTD and the DoD OGC and published as a final rule during the reporting period.

C. Computer Matching Agreement Reviews

Computer Matching Agreement (CMA) Reviews – A CMA is a written agreement between a source agency and a recipient agency (federal or non-federal agency) when automated systems of records data is matched between the agencies, typically to determine the eligibility of individuals for a specific federal service or benefit.¹¹ For the purposes of this report, the number of CMAs reported in Table 1 represents CMAs reviewed and completed during this 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, 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 or (2) an unauthorized user accesses personally identifiable information for an other than authorized purpose.¹² DoD Components are required to report all privacy breaches to the DPCLTD, which compiles the breach reports to identify and analyze trends, and to inform and make recommendations to the Department's

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).

¹¹ See 5 U.S.C. § 552a (8) and (o).

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

A. Advice

For the purpose of this report, advice encompasses the written issuance of DoD policies, procedures, or guidance pertaining to privacy and civil liberties by the PCLO or SAOP. This includes the SAOP's issuance of formal privacy guidance in its Breach Response Plan, approved in September 2017.

B. Programmatic Achievements

The following activities highlight key DO&C and DPCLTD programmatic efforts during this period:

- The DPCLTD continued its work with the Office of the Chief Information Officer to expand the application of privacy controls to all information systems which contain Personally Identifiable Information and not limited to those systems of records defined in the Privacy Act. The privacy overlays outlined in Committee on National Security Systems Instruction (CNSSI) No. 1253¹⁴ have been designed for this broader approach to protecting personal information.
- DoD privacy subject matter experts provided recommendations for the revision of DoD Instruction 5400.16, "Privacy Impact Assessments," which provides guidance on completing and documenting Privacy Impact Assessments on agency information systems. In addition, DoD privacy subject matter experts provided the CIO staff with recommendations on updating the Department's privacy impact assessments – the first revision in nearly a decade.
- The Risk Management Framework (RMF) also supports the management of privacy information. The RMF Knowledge Service (KS) portal defines privacy categorization and corresponding controls throughout the process of bringing new information systems online.
- The Privacy team conducted training on Joint Base Pearl Harbor-Hickam and McGhee Tyson Air National Guard Base and delivered state-of-the-art instruction for over 275 personnel supporting DoD's privacy program stationed in various parts of the world.
- The SAOP received the designations of SCOPs, to include representatives from the DoD principal staffs. Establishing SCOPs at the highest levels in the DoD staff and Components provides the SAOP with a wide range of advice and exposure to the Department's myriad programs concerning privacy.
- The IOD continued to conduct detailed on-site inspections, and inspection items included ensuring that privacy and civil liberties are respected in the Department's intelligence program.

V. COMPLAINTS

DoD Components are required to have established procedures for processing complaints from individuals who allege violations of their privacy or civil liberties.¹⁵ Complaints received directly by DPCLTD are forwarded to the appropriate DoD Component for further review. Generally, complaints are reviewed by the receiving Component privacy and civil liberties program office and reported to the Component command or appropriate official. Upon receipt of the complaint, the command may initiate an investigation and, as necessary, direct corrective action. The complaints identified in this report at Table 2 were received in accordance with these procedures. For the

¹⁴ Attachment 6 to Appendix F, CNSSI No. 1253, Version 2, 15 March 2012.

¹⁵ See DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007; DoDI 1000.29, "DoD Civil Liberties Program," December 14, 2014.

Table 2: Privacy and Civil Liberties Complaints

Nature of Privacy Complaints	Number Received	Disposition of Complaint	
		Responsive Action Taken	Pending
Procedural	4	3	1
Redress	2	2	0
Operational	0	0	0
<i>Sub Total for Privacy Complaints:</i>	6	5	1
Nature of Civil Liberties Complaints			
First Amendment	1	1	0
Second Amendment	0	0	0
Fourth Amendment	12	10	2
Fifth Amendment	48	29	19
Fifth and Fourteenth Amendments	1	1	0
Sixth Amendment	0	0	0
Eighth Amendment	0	0	0
Ninth Amendment	1	0	1
Fourteenth Amendment	1	1	0
<i>Sub Total for Civil Liberties Complaints:</i>	64	42	22
TOTAL 3rd & 4th Qtrs. FY17	70	47	23

VI. CONCLUSION

In accordance with Section 803, this report summarizes the semiannual activities of the DoD Privacy and Civil Liberties Officer from April 1, 2017 through September 30, 2017. DoD will continue to work with Congress, the OMB, the PCLOB, and other federal agencies to ensure that it proactively and appropriately protects privacy and civil liberties.