



NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

Report on the Activities of the National Security Agency Civil Liberties & Privacy Officer

January – June 2018

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I. PURPOSE AND SCOPE

The National Security Agency/Central Security Service (hereinafter NSA) is committed to protecting and incorporating safeguards for civil liberties and privacy, consistent with its mission to protect and defend the nation. This report summarizes NSA's past accomplishments and continued commitment to carry out its vital foreign intelligence and cybersecurity missions in a manner that protects civil liberties and privacy, and promotes appropriate transparency during the reporting period, January-June 2018.

Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 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, the DIRNSA has designated the NSA Civil Liberties and Privacy Officer to fulfill this role.

This law also requires the NSA Civil Liberties and Privacy Officer to issue a report at least semi-annually in unclassified form, with a classified annex when necessary, to the appropriate committees of Congress, the DIRNSA, and the 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 shall include information on the discharge of the civil liberties and privacy functions 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 complaints received by the department, agency, or element concerned 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 officer.

This report is structured so that Congress, DIRNSA, PCLOB, and the public 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 yet 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 statute 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 in this law, 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 activities of the Agency. No classified annex exists for this reporting period.

II. OVERVIEW OF THE National Security Agency (NSA) Civil Liberties, Privacy, and Transparency Program

On February 1, 2014, NSA appointed its first Civil Liberties and Privacy Officer and established an office to support the Officer. The duties of this position have expanded as a result of Intelligence Community Directive (ICD) 107, “Civil Liberties, Privacy, and Transparency” to include the role of NSA Transparency Officer. The office focuses on key civil liberties, privacy, and transparency issues, particularly as they relate to authorities and capabilities used to conduct NSA activities. The Civil Liberties, Privacy, and Transparency Officer advises on key emerging areas where new intelligence capabilities and challenges intersect with civil liberties and privacy questions. She develops and supports policies that can help bridge the gaps between existing laws, current technology, foreign intelligence, and cybersecurity needs. She provides advice to the DIRNSA, NSA senior leadership, and mission managers. The Civil Liberties, Privacy, and Transparency (CLPT) Office will continue to engage and collaborate 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.

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 that 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 supports every affiliate’s individual responsibility to protect civil liberties and privacy while promoting transparency.

To ensure that civil liberties, privacy, and transparency factors are explicitly considered in decisions of NSA, CLPT works extensively across the Agency, particularly with:

- The Director of Operations
- The Director of Engagement and Policy
- The Authorities Integration Group
- The Compliance Group
- The Mission Engagement, Requirements, and Assessments Group
- The Legislative, State and Local Affairs Group



- The Strategic Communications Group
- The Policy, Implementation, Performance, and Exports Group;
 - The Risk Management Office;
 - The Office of General Counsel; and
 - The Office of the Inspector General.

In addition to fulfilling the statutory requirements of Section 803, the NSA Civil Liberties, Privacy, and Transparency Officer is designated as the NSA Senior Component Official for Privacy, as required by Department of Defense (DoD) Instruction.³ The current CLPT Officer also serves as a member of the Federal Privacy Council, the principal interagency forum established by Executive Order 13719 to improve privacy practices at agencies across the Federal Government.

The CLPT Officer carries out her mission to ensure civil liberties, privacy, and transparency are appropriately considered in the course of NSA's mission, executing both statutory and policy requirements, by conducting six major activities:

- advising NSA senior leaders and mission managers regarding the protection of civil liberties and privacy in the resourcing, development and implementation of policies, procedures, programs, activities, training, education, and technologies necessary to accomplish NSA missions;
- periodically investigating and reviewing whether NSA policies, procedures, and operations incorporate the protections and safeguards necessary to protect civil liberties and privacy and to foster future innovative privacy and civil liberties protections;
- ensuring an effective mechanism for receiving complaints or indications of possible abuses of civil liberties and privacy is developed and maintained and that complaints or comments are received, reviewed, assessed, investigated, responded to, resolved as appropriate, and reported publicly in aggregate;
- providing training and guidance to NSA affiliates regarding their responsibilities to: 1) identify and protect of the privacy of such personally identifiable information (PII) and U.S. Person Information (USPI), 2) perform the civil liberties and privacy aspects of their work, 3) report and respond to incidents involving actual or potential breaches information;
- providing appropriate visibility into the civil liberties and privacy protections present in NSA activities to mission partners, executive, legislative, and judicial branch overseers and the American public; and

³ DoD Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019.



- periodically reporting independently to the DIRNSA and external executive and legislative branch entities regarding the activities of the NSA Civil Liberties and Privacy Officer in accordance with 42 U. S. C. 2000ee-1

III. TYPE AND NUMBER OF REVIEWS UNDERTAKEN FROM JANUARY – JUNE 2018

During the reporting period, CLPT reviewed and assessed two hundred sixty-three activities (263) for civil liberties and privacy implications. CLPT notified external overseers through written and oral briefings of NSA activities in ten (10) specific instances.

Table 1 – Types of Review

Types of Review	Number conducted
Reviews for civil liberty and privacy	55
Assessment for civil liberty and privacy	208
Notifications to external overseers	10
Total	273

Reviews for Civil Liberties and Privacy

CLPT reviews a variety of ODNI, DoD, and NSA issuances for privacy and civil liberties implications and provides feedback, as appropriate. Examples of the types of documents CLPT reviews include:

- DoD and NSA policies, memoranda of understanding (MOUs), and reports;
- Privacy Act System of Records Notice (SORN)⁴,
- Privacy Act exemption rule⁵,
- Records Disposition Schedule (RDS)⁶, and
- Social Security Number (SSN) Justification Memorandum.⁷

⁴ A system of records is a group of any records under the control of any agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The SORN is the public notice issued to provide transparency into the Agency’s activities.

⁵ A Privacy Act exemption rule is promulgated when a system of records is exempted from certain provisions of the Privacy Act of 1974, as amended. See 5 U.S.C. § 552a (j), (k).

⁶ An RDS is an official document providing mandatory instructions for preserving or disposing of records no longer needed for current business. The schedules identify temporary and permanent records and lay out instructions for what to do when records have been retained for their scheduled duration. NSA/CSS Policy 1-6, NSA/CSS Records Management Program.

⁷ A SSN Justification Memorandum is required from the office of responsibility to the DoD Privacy, Civil Liberties, and Transparency Division for approval to use social security numbers. The justification must be in accordance with



Assessments for Civil Liberties and Privacy (CLP)

The CLPT oversees CLP assessments conducted at NSA. CLP assessments are part of the overall NSA enterprise risk management process. The enterprise risk management process assesses a number of different 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. The CLP assessments are also conducted in other contexts, such as certain collection activities, analytic development, information sharing arrangements and decisions, compliance incidents, privacy incidents, and data retention decisions.

The CLP assessment asks questions about the amount and type of information associated with an activity; the scope of persons involved (including the number of individuals, the status of those individuals as U.S. persons, and the location of those individuals); the purpose and anticipated uses for the data; and the methodology of the activity. The CLP assessment then considers the civil liberties and privacy protections to determine the overall risk of a particular activity. Examples of the types of CLP assessments conducted during this reporting period included:

- CLPT assessed the impact of retaining certain data sets beyond their standard retention period. Generally, NSA retains unevaluated intelligence data for no more than five years. Consistent with law and policy, NSA may need to retain data longer than five years and follows an approval process that includes a CLP assessment before approval.
- CLPT assessed the impact of sharing information with partners, foreign and domestic.
- CLPT assessed collection activities, including, in coordination with the Office of General Counsel, questions about whether certain activities met the requirements of the Special Circumstances Collection section of DoD Manual 5240.01.
- CLPT assessed the impact of possible administrative privacy incidents to determine whether there was an impact on privacy, whether the incident constituted a breach, required reporting, and recommended mitigating courses of action to include notification to individuals.
- CLPT assessed the potential civil liberties and privacy implications of NSA's input to the DoD Intelligence Oversight Quarterly to ensure information included was in accordance with the Privacy Act.

departmental direction. DoDI 1000.30, "Reduction of Social Security Number (SSN) Use within DoD," August 1, 2012.



Notifications to Overseers

CLPT is responsible for providing notifications and briefings to the PCLOB related to PCLOB's mission to ensure the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. CLPT is also responsible for providing to the DoD Senior Agency Official for Privacy (SAOP) notifications related to reportable privacy breaches.

IV. TYPE OF ADVICE PROVIDED AND THE RESPONSE GIVEN TO SUCH ADVICE:

During the reporting period, CLPT continued to perform its advisory role. Below are examples of the types of advice provided by CLPT and the responses received:

- **Rewrite of the Classified Annex to DoD Regulation 5240.1-R for Attorney General Approval.** CLPT is an integral member of the NSA and interagency working group to rewrite the Classified Annex to DoD Regulation 5240.1-R for conducting Signals Intelligence activities under E.O. 12333. In this role, CLPT is focused on making the guidelines more transparent and technology-neutral while strengthening civil liberties and privacy protections in accordance with the U.S. Constitution and applicable laws. This ongoing project began shortly after the DoD reissuance of procedures for Intelligence Activities⁸ in August 2016. The last substantial update to the Classified Annex was in 1988. In accordance with the requirements of Executive Order 12333, the Annex will ultimately be issued by the Secretary of Defense, in consultation with the Director of National Intelligence, after approval by the Attorney General.
- **Support to PCLOB Staff Level Privacy and Civil Liberties Report.** During the reporting period, CLPT supported the PCLOB staff as it finalized an interim classified report on the civil liberties and privacy implications of one aspect of NSA's E.O. 12333 collection and processing activities. CLPT subsequently led NSA's review of and response to the interim report. CLPT facilitated the provision of this interim staff level report to the Department of Justice, Department of Defense, and Office of Director of National Intelligence as background on how NSA protects civil liberties and privacy when it conducts E.O. 12333 collection and processing activities.
- **Civil Liberties and Privacy Assessment of Portable Electronic Devices (PEDs) Confiscation Program.** As authorized in NSA/CSS Policy Manual 5-23 "Physical Security Requirements for Controlled Areas Manual," personnel from

⁸ DoD Manual 5240.01, "Procedures Governing the Conduct of DoD Intelligence Activities"



NSA's Security & Counterintelligence Group conduct inspections of affiliates upon entry to and exit from Agency facilities. As a result of these inspections, in addition to self-reporting by affiliates, prohibited and restricted items brought into NSA facilities, including electronic storage medium and devices such as PEDs, may be confiscated. Given the volume of personal information typically stored on PEDs, CLPT worked in partnership with the Security & Counterintelligence Group to develop and conduct a civil liberties and privacy assessment on the confiscation and analysis of affiliates' PEDs. During the assessment, a variety of privacy impacts were identified. These impacts are being addressed with notification, policy clarification and increased workforce communication. As a result of CLPT advice and ongoing engagement, there continues to be improvements in the program; privacy impacts are being minimized while transparency and workforce awareness are increasing.

- **Revision of Section 702 as Part of the Reauthorization of the Foreign Intelligence Surveillance Act (FISA).** In response to public criticism of the Intelligence Community's implementation of Section 702 of FISA and recognizing the need for maintaining the authority, CLPT was instrumental in the execution of an extensive engagement strategy to increase overall transparency on a range of topics to ensure public understanding of NSA's use of the authority. The engagement strategy included dialogue with overseers, civil society organizations, and the general public on NSA's use of the authority, the incorporation of civil liberties and privacy protections in its implementation, and the reason NSA was unable to provide a count of the number of U.S. persons' communications incidentally collected under Section 702 authority
- **Compliance Incident and Public Disclosure associated with Call Detail Records (CDRs)** received under Title V of the FISA, as amended by the USAFREEDOM Act. During this reporting period, NSA identified and reported a compliance incident associated with CDR received under Title V of the FISA, as amended by the USAFREEDOM Act. CLPT worked extensively within the Agency to understand the activities and events that caused the incident and subsequently advised on civil liberties and privacy implications of proposed mitigation strategies. CLPT assisted in efforts to inform DoD and ODNI as well as external overseers including the PCLOB. CLPT also played a critical role in the issuance of a public statement about the incident on both NSA.gov and IC on the Record. Additionally, CLPT worked directly with NSA Media Relations to help educate reporters that covered this announcement to ensure accuracy in their reporting.
- **The Annual Statistical Transparency Report (ASTR).** CLPT led the identification and consolidation of the NSA metrics included in the ODNI's Annual Statistical Transparency Report. CLPT presented NSA's annual metrics to ODNI



to ensure NSA activities are properly reflected in the ASTR and to address any anomalies.

V. INTERNAL AND EXTERNAL OUTREACH

Engaging both internally and externally about how NSA protects civil liberties and privacy is a core function of the CLPT. Internally, the CLPT Officer hosts brown bag sessions and internal social media gatherings. She also speaks at town halls hosted by internal NSA organizations.

Externally, the CLPT Officer coordinates within NSA and with the IC on numerous reviews of NSA documents for redaction and release on the ODNI website, IC on the Record; speaks at public events; hosts meetings at NSA with representatives from civil society groups and academia; participates in meetings with other IC members and civil society groups; and publishes materials about NSA's civil liberties and privacy activities. These engagements promote transparency and allow NSA to understand any public concerns about NSA's activities and potential impact on civil liberties and privacy.

Table 2 – Internal and External Outreach

Type of Outreach January 2018 – June 2018	Number
Training and Awareness	5
Internal Engagements	3
External Engagements	8
Total	16

VI. QUESTIONS, CONCERNS, COMPLAINTS, AND REDRESS

For the purpose of the report, a question, concern, or complaint includes any written allegation of harm or violation of privacy or civil liberties protections in the administration of the program and operations of NSA raised by a member of the public, NSA workforce (including civilian, military, and contractors) or any other government officials to CLPT.

Members of the public and the NSA affiliates may contact CLPT via web form on NSA's public website at www.nsa.gov to ask a question or make a written complaint 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 an anonymous web form. During the reporting period, CLPT received no



actionable privacy and/or civil liberties complaints from either source. NSA did receive a number of questions as well as requests for information, as identified in Table 3, below.

Examples of questions that the CLPT received during this reporting period include questions about retaining PII on shared drives, emails being sent to too large of a distribution, concerns that Privacy Act Statements were not easily accessible, and proper form for recall rosters. CLPT reviews the question, concern, or complaint, and if it is related to a civil liberties and privacy concern, provides written guidance. If the activity may be a PII incident or breach, CLPT conducts an assessment (See Civil Liberties and Privacy Assessments above). As appropriate, CLPT will work closely with Office of General Counsel and the affected organization if additional guidance or mitigation is required.

In reviewing the questions, concerns, and complaints received, CLPT reviews the information provided and determines whether there is a civil liberties and privacy issue that it can review and answer or if it needs to be forwarded to the appropriate office for review and response. CLPT also reviews to determine if a question, concern, or complaint should be referred to the Inspector General.

NSA CLPT receives a number of inquiries on the unclassified web site 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 below metrics.

(U) Table 3 – Questions, Concerns, Complaints, and Redress

Questions, Concerns, Complaints, and Redress – January 2018 through June 2018	Quantity
Information requests to Civil Liberties, Privacy, and Transparency Office	6
Civil liberties and privacy questions	53
Complaints concerning alleged 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.	0
Referrals to and from the Office of Inspector General	0
Total Reviewed and Closed	59

