

Department of Defense
Privacy and Civil Liberties Officer Report



Semiannual Report for Fiscal Year 2015

April 1 – September 30, 2015

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I. INTRODUCTION

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53), 42 U.S.C. §2000ee-1 (hereafter referred to as “Section 803”), requires the Department of Defense (“DoD” or “Department”) to designate a senior officer to serve as DoD’s principal advisor on privacy and civil liberties matters and to report on the activities of this officer.¹

The Deputy Chief Management Officer (DCMO) of the Department serves as the DoD Privacy and Civil Liberties Officer, and reports directly to the Deputy Secretary of Defense, who is the Chief Management Officer. Specifically, Section 803 requires federal agencies to submit semiannual reports related to the discharge of certain privacy and civil liberties activities.

Section 803 Reports² relate to the performance of certain privacy and civil liberties activities of the DoD Privacy and Civil Liberties Officer, to include information on:

- The number and types of privacy and civil liberties reviews undertaken;
- The type of advice provided and response to such advice;
- The number and nature of the complaints received by the Department for alleged violations; and
- A summary of the disposition of such complaints.

The Directorate for Oversight and Compliance (DO&C) within the Office of the DCMO oversees the Department’s privacy and civil liberties activities and responsibilities. DO&C is comprised of the Defense Privacy and Civil Liberties Division, the Intelligence Oversight Division, the Transparency Office, the Regulatory and Audit Management Office, and the Advisory Committee Management Office. Specifically, the Defense Privacy and Civil Liberties Division (DPCLD) within DO&C implements the DoD Privacy Program³ and the DoD Civil Liberties Program⁴ through guidance, review, official reporting, and training. DPCLD coordinates with privacy and civil liberties officials at each DoD Component and within the functional areas of DO&C, as appropriate, to ensure Department-wide compliance with DoD’s privacy and civil liberties programs and to develop and review sound and appropriate privacy and civil liberties policies.

DoD submits its Privacy and Civil Liberties Officer Report (the “report”) covering the activities of the DoD Privacy and Civil Liberties Officer for the second semiannual reporting period of fiscal year 2015, April 1 through September 30, 2015.

¹ See 42 U.S.C. § 2000ee-1 “Implementing Recommendations of the 9/11 Commission Act of 2007” (Public Law No. 110-53).

² On July 7, 2014, the statute was amended to require semiannual submissions of the periodic reports rather than quarterly submissions. See § 2000ee-1(f) (2014), (Public Law No. 113-126, title III, § 329(b) (4), 128 Stat. 1406 (2014)).

³ The DoD Privacy Program is based on the Privacy Act of 1974, as amended (5 U.S.C. 552a), as implemented by Office of Management and Budget (OMB) Circular A-130 “Management of Federal Information Resources,” February 8, 1996, and DoD regulatory authorities DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014, as amended, and DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007.

⁴ The DoD Civil Liberties Program is based on 42 U.S.C. 2000ee, ee-1, “Implementing Recommendations of the 9/11 Commission Act of 2007,” as implemented by DoD Instruction 1000.29, “DoD Civil Liberties Program,” Change 1, November 26, 2014.

II. REVIEWS

DoD appropriately considers privacy and civil liberties concerns when proposing, developing, and implementing laws, regulations, policies, procedures, or guidelines.⁵ On behalf of the DCMO and the Director of DO&C, DPCLD performs privacy and civil liberties reviews of DoD issuances and proposed federal legislation, testimony, and reports. In addition, DPCLD reviews and coordinates comments on other federal agency documents when requested by leadership. The total number of documents reviewed by DPCLD for both privacy and civil liberties issues is identified in Tables 1 and 2 (below).

A. Privacy Reviews

Privacy reviews are conducted in accordance with information privacy requirements such as the Privacy Act of 1974, 5 U.S.C. § 552a, as amended, and federal privacy policies articulated in OMB guidance, including OMB Circular A-130.⁶ In the Department's information management activities, the Department also ensures compliance and alignment with the Federal Information Security Modernization Act of 2014, the E-Government Act of 2002, and Appendix J of the National Institutes for Standards and Technology Special Publication 800-53, Rev 4. For the purposes of this report, privacy reviews are defined as follows:

1. System of Records Notice (SORN) Reviews – A SORN is a notice for the public that describes the existence and character of a system of records.⁷ At DoD, Components must submit their SORNs to DPCLD for review. The number listed in this report represents the SORNs that have been reviewed, approved, and forwarded to OMB, Congress, and sent to the Office of the Federal Register for publication.
2. Exemption Rule Reviews – A Privacy Act exemption rule is promulgated by an agency to exempt a system of records from certain access provisions of the Privacy Act of 1974.⁸ For the purposes of this report, the number reported represents the exemption rules that were reviewed by DPCLD, to include the DoD OGC Legal Advisor, and published as a final rule during the reporting period.
3. Computer Matching Agreement (CMA) Reviews – A CMA is a written agreement between a source agency and a recipient agency (federal or non-federal agency), that must be signed when automated data is matched to determine eligibility for a federal service or benefit.⁹ For purposes of this report, the number reported represents CMAs in which DoD is either the source agency or the recipient agency.
4. Privacy Breach Reviews – A breach is the intentional or inadvertent loss of PII in the control of the Department or its contractors who process, store, or possess PII. At DoD, Components report all privacy-related breaches to DPCLD and DPCLD compiles the breach reports to inform leadership, analyze trends, and enhance DoD breach prevention measures.¹⁰ The

⁵ See 42 U.S.C. § 2000ee-1.

⁶ See OMB Circular No. A-130, "Management of Federal Information Resources," Appendix 1, Federal Agency Responsibilities for Maintaining Records About Individuals, 61 Fed. Reg. 6428 (Feb. 20, 1996), as amended, 65 Fed. Reg. 77, 677 (Dec. 12, 2000), available at: http://www.whitehouse.gov/omb/circulars_a130.

⁷ See 5 U.S.C. § 552a (e) (4).

⁸ See 5 U.S.C. § 552a (j), (k).

⁹ See 5 U.S.C. § 552a (o).

¹⁰ Director of Administration & Management (DA&M) Memorandum, "Use of Best Judgement for Individual

number reported below is the total number of breaches across all Components that were reported to DPCLD during the reporting period.

5. Social Security Number (SSN) Justification Memoranda Reviews – An SSN Justification Memorandum is submitted by the Component to DPCLD for each system or form that collects SSNs.¹¹ For the purposes of this report, the number reported accounts for the total memoranda that were approved and signed during the reporting period.
6. Privacy Reviews of Proposed Legislation, Reports, Testimony, and DoD Issuances – DPCLD reviews DoD issuances for privacy issues and provides comments as appropriate. In addition, DPCLD reviews and coordinates comments on other federal agency documents when requested by DO&C leadership. Table 1 (below) includes privacy reviews of DoD and other federal agency documents.

Table 1: Privacy Reviews

PRIVACY REVIEWS	
Type of Review	Number of Reviews
System of Records Notices (SORNs)	28
Exemption Rules	5
Computer Matching Agreements	4
Breaches	194
SSN Justification Memoranda	9
DoD Issuances, Federal Legislation, Testimony, and Reports	146

B. Civil Liberties Reviews

Civil liberties are fundamental rights and freedoms guaranteed by the Constitution of the United States. Civil liberties are listed in the first 10 amendments to the Constitution, known as the Bill of Rights, and include the freedoms of speech and religion.

DPCLD reviews initiatives coordinated throughout DoD to ensure the appropriate consideration and protection of civil liberties. As stated, civil liberties reviews cover DoD issuances and include reports, testimony, and proposed federal legislation and Executive Branch documents. In addition, DPCLD reviews and coordinates comments on other federal agency documents when

Personally Identifiable Information (PII) Breach Notification Determinations," August 2, 2012; OMB M-07-16, "Safeguarding Against and Responding to the Breach of Personally Identifiable Information," May 22, 2007.

¹¹ See DoDI 1000.30, "Reduction of Social Security Number (SSN) Use Within DoD," August 1, 2012. Please note, DPCLD is only the approving office for SSN Justification Memoranda, and is not the owner of the instruction itself.

requested by leadership. Table 2 (below) includes all such documents reviewed.

Table 2: Civil Liberties Reviews

CIVIL LIBERTIES REVIEWS	
Type of Review	Number of Reviews
DoD Issuances, Federal Legislation, Testimony, and Reports	146

III. ADVICE AND RESPONSE TO ADVICE

The ODCMO provides advice and response to advice on privacy and civil liberties issues for all DoD Components. This advice and response to advice serves as important guidance for DoD Component privacy and civil liberties program implementation.

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 ODCMO. The ODCMO did not issue formal privacy or civil liberties advice during this reporting period.

B. Outreach and Engagement

DoD is committed to engaging stakeholders in the privacy and civil liberties community. It conducts outreach and training in response to Department privacy and civil liberties advice. The following activities highlight a few key DO&C and DPCLD outreach and engagement efforts.

- Defense Privacy Board – DPCLD conducts regular meetings with the DoD Component Privacy Officers to enhance communication within the privacy program. During the reporting period, the board discussed the new requirements for the Federal Information Security Management Act (FISMA) Report, which differed from the previous year’s requirements. The board also discussed trends in breach reporting; examining both the types of breaches experienced and the causes thereof. Information was also shared concerning the DoD response to the breaches of personnel records maintained by the Office of Personnel Management (OPM).
- Response to OPM Breaches – In response to the OPM cybersecurity incidents, DoD has worked to provide accurate and timely information regarding the incidents to its employees and former employees. For example, DPCLD responded to calls and e-mails from individuals to inform and assist those concerned. During a two-week period, DPCLD staff answered more than 1,300 telephone calls and 1,500 e-mails from the affected personnel. DO&C has also collaborated with multiple agencies to assist in the notification process.

- Defense Civil Liberties Board – Component members were briefed on current trends and issues related to the DoD Civil Liberties Program. Members shared initiatives in their program areas and identified tasks going forward.
- Updates to DPCLD’s webpage -- DoD is committed to providing awareness and transparency of its privacy and civil liberties programs in accordance with the Open Government Initiative.¹² The DPCLD website¹³ is the primary resource for individuals interested in learning more about DoD’s privacy and civil liberties programs. Official guidance, procedures, and policies cleared for public release are maintained on DPCLD’s website, along with previously signed Privacy and Civil Liberties Officer Reports.¹⁴ Additionally, all published SORNs are updated to the most current version and posted for public view. This comprehensive website helps to ensure that DoD remains transparent, accessible, and accountable to the public on privacy and civil liberties concerns. Accordingly, DPCLD continuously updated its public-facing website and social media platform during this reporting period.
- DoD Privacy and Civil Liberties Day -- DPCLD conducted Privacy and Civil Liberties Day on June 10, 2015 at the Pentagon to demonstrate the activities of the Components and highlight the importance of DoD’s privacy and civil liberties programs.

Training for Privacy and Civil Liberties

- Privacy Act Compliance and Management Training – This training was conducted for Privacy Officers throughout the DoD. DPCLD provided presentations in two sessions, for a total of five days, on privacy compliance and program management with a combination of guest speakers and DPCLD staff.
- The Chief, DPCLD, presented six hours of Privacy Act compliance training to over 300 Privacy/FOIA officers in San Antonio, Texas, September 16-17.
- Privacy and Civil Liberties Awareness Training – This introductory level of training was given during the reporting period to incoming DoD Action Officers to provide them with an understanding of proper privacy and civil liberties programs at DoD.
- DoD Joint Inspector General Course – DPCLD presented a briefing to Inspectors General about their role in implementing the responsibilities of the DoD Civil Liberties Program within their Component.
- DPCLD coordinated revisions to web-based training to expand the reach of privacy and civil liberties awareness at all levels throughout the Department.

IV. COMPLAINTS

DoD has well-established procedures in place for processing privacy and civil liberties complaints. The complaints identified in this report were received in accordance with these procedures. For the purposes of this report, a complaint is an assertion alleging a violation of an individual’s privacy or civil liberties. Privacy or civil liberties complaints arising out of non-judicial punishments, military courts-martial, and administrative separations are not included in this report.

¹² In compliance with Executive Order 13563, “Improving Regulation and Regulatory Review,” (2011), the DoD releases annual reports on the Open Government Initiative <http://open.defense.gov/>.

¹³ The DPCLD website can be viewed at <http://dpclد.defense.gov/>

¹⁴ The DoD Privacy and Civil Liberties Officer Reports can be viewed at <http://dpclد.defense.gov/Reports.aspx>

This report includes the number of complaints received by DoD during the reporting period in which (1) responsive action was taken or (2) action is pending. “Responsive action taken” means the complaint was reviewed and resolved. It also includes any action taken to remediate the violation and prevent recurrence. “Pending” means the complaint is under review to determine what actions are required to resolve the complaint.

A. Privacy Complaints

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

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

For samples of DoD Privacy Complaints, please refer to the Appendix of this report.

Table 3: Privacy Complaints

Nature of Privacy Complaints	Number Received	Disposition of Complaint	
		Responsive Action Taken	Pending
Procedural	7	6	1
Redress	0	0	0
Operational	1	0	1
<i>Subtotal for Privacy Complaints:</i>	8	6	2

B. Civil Liberties Complaints

A civil liberties complaint is an allegation concerning a violation of civil liberties in the administration of the programs and operations of the Department. For 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, the Bill of Rights. Types of civil liberties complaints include, but are not limited to:

1. First Amendment (freedom of speech, religion, assembly, and association);
2. Second Amendment (right to keep and bear arms);

3. Fourth Amendment (protection against unreasonable search and seizure);
4. Fifth Amendment (due process);
5. Sixth Amendment (speedy trial); and
6. Ninth Amendment (“unenumerated” rights).

For samples of DoD Civil Liberties Complaints, please refer to the Appendix of this report.

Table 4: Civil Liberties Complaints

Nature of Civil Liberties Complaints	Number Received	Disposition of Complaint	
		Responsive Action Taken	Pending
First Amendment	11	9	2
Second Amendment	0	0	0
Fourth Amendment	5	3	2
Fifth Amendment	2	0	2
Sixth Amendment	1	0	1
Ninth Amendment	0	0	0
First and Fourth Amendments	1	1	0
Fourth and Ninth Amendments	2	2	0
<i>Subtotal for Civil Liberties Complaints:</i>	22	15	7

V. CONCLUSION

In accordance with Section 803, this report summarizes the semiannual activities of the DoD Privacy and Civil Liberties Officer from April 1 through September 30, 2015. DoD will continue to work with Congress, other federal agencies, and the public to ensure that privacy and civil liberties are protected in performing its national security mission.

APPENDIX: Samples of Privacy and Civil Liberties Complaints

Sample DoD Privacy Complaints

Sample Complaint # 1:

Description of Complaint: A complainant alleged that a co-worker released PII and other sensitive information about complainant to personnel who did not have a need-to-know.

Findings: Unsubstantiated. It was confirmed that the co-worker did have a need-to-know of the PII. There was no substantial evidence that the PII and other sensitive information was released or shared with other personnel in the office. The complainant was notified. Privacy Act training was conducted to ensure everyone within the directorate understood how to properly handle PII and sensitive information.

Disposition: Responsive Action Taken.

Sample Complaint #2:

Description of Complaint: A complainant alleged that an application form that was used for applying for access was not compliant with the Privacy Act.

Findings: After review of the form, it was found that a Privacy Act statement was required. The information on the form is “For Official Use Only/Freedom of Information Act” (FOUO/FOIA) exempt information and contained PII. The form should be encrypted when sent electronically and safeguarded when stored with limited access by those with a need-to-know, and then destroyed (shredded). In accordance with the reviewing officer’s findings and recommendations, the form in question was revised to make it compliant with the Privacy Act.

Disposition: Responsive Action Taken.

Sample DoD Civil Liberties Complaints

Sample Complaint #1:

Description of complaint: Alleged Second Amendment violation. The complainant, a soldier, alleged that his unit commander unlawfully confiscated his personally owned weapons.

Findings: Inquiry indicated that the unit had improperly confiscated these weapons. The unit’s confiscation rationale, that the complainant was suspended from duty and under investigation for an inappropriate relationship, was not justified under Section 1062 of the National Defense Authorization Act of FY 2011 and Army policy. The unit returned the personally owned weapons to the soldier.

Disposition: Responsive action taken.

Sample Complaint #2:

Description of Complaint: Alleged Fourth Amendment violation. The complainant, a civilian, alleged that security forces violated the complainant’s rights against unlawful search and seizure.

Findings: An internal investigation was conducted and appropriate training was provided.

Disposition: Responsive action taken.