



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

6 December, 2022

The Honorable Adam Smith  
Chairman  
Committee on Armed Services  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Please find enclosed the Department of Defense 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 2022, April 1, 2022 through September 30, 2022.

I am sending identical letters to the other appropriate congressional committees and the Privacy and Civil Liberties Oversight Board.

Sincerely,

CHUNG.JOO.Y.1512306507  
Y.1512306507

Digitally signed by  
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Date: 2022.12.07 12:47:22  
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Joo Y. Chung

Enclosure:  
As stated

cc:  
The Honorable Mike D. Rogers  
Ranking Member



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

6 December, 2022

The Honorable Carolyn B. Maloney  
Chairwoman  
Committee on Oversight and Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Madam Chairwoman:

Please find enclosed the Department of Defense 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 2022, April 1, 2022 through September 30, 2022.

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cc:  
The Honorable James R. Comer  
Ranking Member



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1 155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1 155

6 December, 2022

The Honorable Adam B. Schiff  
Chairman  
Permanent Select Committee on Intelligence  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Please find enclosed the Department of Defense 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 2022, April 1, 2022 through September 30, 2022.

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CHUNG.JOO.Y.1512306507  
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Date: 2022.12.07 12:48:30  
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Joo Y. Chung

Enclosure:  
As stated

cc:  
The Honorable Michael R. Turner  
Ranking Member



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

6 December, 2022

The Honorable Mark Warner  
Chairman  
Select Committee on Intelligence  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed the Department of Defense 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 2022, April 1, 2022 through September 30, 2022.

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Date: 2022.12.07 12:48:55  
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Joo Y. Chung

Enclosure:  
As stated

cc:  
The Honorable Marco Rubio  
Ranking Member



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

6 December, 2022

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Please find enclosed the Department of Defense 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 2022, April 1, 2022 through September 30, 2022.

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Date: 2022.12.07 12:49:54  
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Joo Y. Chung

Enclosure:  
As stated

cc:  
The Honorable Jim Jordan  
Ranking Member



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

6 December, 2022

The Honorable Richard J. Durbin  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed the Department of Defense 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 2022, April 1, 2022 through September 30, 2022.

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Date: 2022.12.07 12:50:30  
-05'00'

Joo Y. Chung

Enclosure:  
As stated

cc:  
The Honorable Chuck Grassley  
Ranking Member



**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

6 December, 2022

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 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 2022, April 1, 2022 through September 30, 2022.

I am sending an identical letter to the appropriate congressional committees.

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CHUNG.JOO.Y.1512306507  
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Date: 2022.12.07 12:51:02  
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Joo Y. Chung

Enclosure:  
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**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

6 December, 2022

The Honorable Jack Reed  
Chairman  
Committee on Armed Services  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed the Department of Defense 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 2022, April 1, 2022 through September 30, 2022.

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Joo Y. Chung

Enclosure:  
As stated

cc:  
The Honorable James M. Inhofe  
Ranking Member





**ASSISTANT TO THE SECRETARY OF DEFENSE FOR  
PRIVACY, CIVIL LIBERTIES, AND TRANSPARENCY**

1155 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1155

6 December, 2022

The Honorable Gary C. Peters  
Chairman  
Committee on Homeland Security &  
Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Please find enclosed the Department of Defense 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 2022, April 1, 2022 through September 30, 2022.

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Digitally signed by  
CHUNG.JOO.Y.1512306507  
Date: 2022.12.07 12:51:56  
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Joo Y. Chung

Enclosure:  
As stated

cc:  
The Honorable Rob Portman  
Ranking Member

**Department of Defense**  
**Privacy and Civil Liberties Officer Report**



**Semiannual Report for Fiscal Year 2022**

**April 1, 2022 – September 30, 2022**

The estimated cost of this report or study for the Department of Defense is approximately \$7,280 for the 2022 Fiscal Year. This includes \$0 in expenses and \$7,280 in DoD labor.  
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## **I. INTRODUCTION**

The Department of Defense (“DoD” or “Department”) submits this Privacy and Civil Liberties Officer Report (hereinafter referred to as “the Report”) covering the activities of the DoD Privacy and Civil Liberties Officer (DoD PCLO) for the second half of fiscal year 2022: April 1, 2022 through September 30, 2022.

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, (Public Law 110-53), codified at 42 U.S.C. § 2000ee-1, requires the Secretary of Defense 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. The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency serves as the DoD PCLO and reports to and advises the Secretary of Defense and the Deputy Secretary of Defense on these matters.

The Report describes the privacy and civil liberties activities of the DoD PCLO, including:

- The organizational structure of the DoD Privacy and Civil Liberties Programs;
- Information on the number and types of reviews undertaken;
- The type of advice provided and the response to such advice;
- The number and nature of the complaints received by the Department for alleged privacy and civil liberties violations; and
- A summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of the DoD PCLO.

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 leadership and collaboration in this area, this Report includes the activities of the DoD PCLO in establishing policy and guidelines, as well as the efforts of the Privacy and Civil Liberties Officials within the DoD and Office of the Secretary of Defense (OSD) Components who implement those policies.

## **II. THE DOD PRIVACY AND CIVIL LIBERTIES PROGRAMS**

The DoD Privacy and Civil Liberties Programs were established to ensure compliance with law, policy, and regulations governing privacy and civil liberties. The DoD PCLO issues and

implements DoD privacy and civil liberties policies and directs and oversees the compliance efforts of the DoD Component Privacy and Civil Liberties Programs. The DoD privacy and civil liberties policies and related procedural requirements are established in 32 C.F.R. Part 310, “Protection of Privacy and Access to and Amendment of Individual Records Under the Privacy Act of 1974,” April 11, 2019 (84 FR 14730);<sup>1</sup> DoD Instruction (DoDI) 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019, as amended;<sup>2</sup> DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007;<sup>3</sup> DoD Manual 5400.11, Volume 2 “DoD Privacy and Civil Liberties Programs: Breach Preparedness and Response Plan,” May 6, 2021;<sup>4</sup> and DoDI 1000.30, “Reduction of Social Security Number (SSN) Use Within DoD,” August 1, 2012, as amended.<sup>5</sup>

The DoD Privacy and Civil Liberties Programs began with the establishment of the Defense Privacy Office in 1975, after the passage of Section 552a of Title 5, U.S.C., also known as the Privacy Act of 1974.<sup>6</sup> Following the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, including Section 803, the Department expanded the mission of the office and renamed it the Defense Privacy, Civil Liberties, and Transparency Division. As capabilities in information technology and information management continue to become increasingly sophisticated and diverse, the DoD Privacy and Civil Liberties Programs organizational structure continues to evolve to strengthen the ongoing protection of individual rights, consistent with the missions of the Department. Figure 1 reflects the current structure for the DoD Privacy and Civil Liberties programs, including responsible officials and offices within DoD, which became effective September 1, 2021.

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<sup>1</sup> <https://www.govinfo.gov/content/pkg/FR-2019-04-11/pdf/2019-03971.pdf>

<sup>2</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/540011p.pdf>

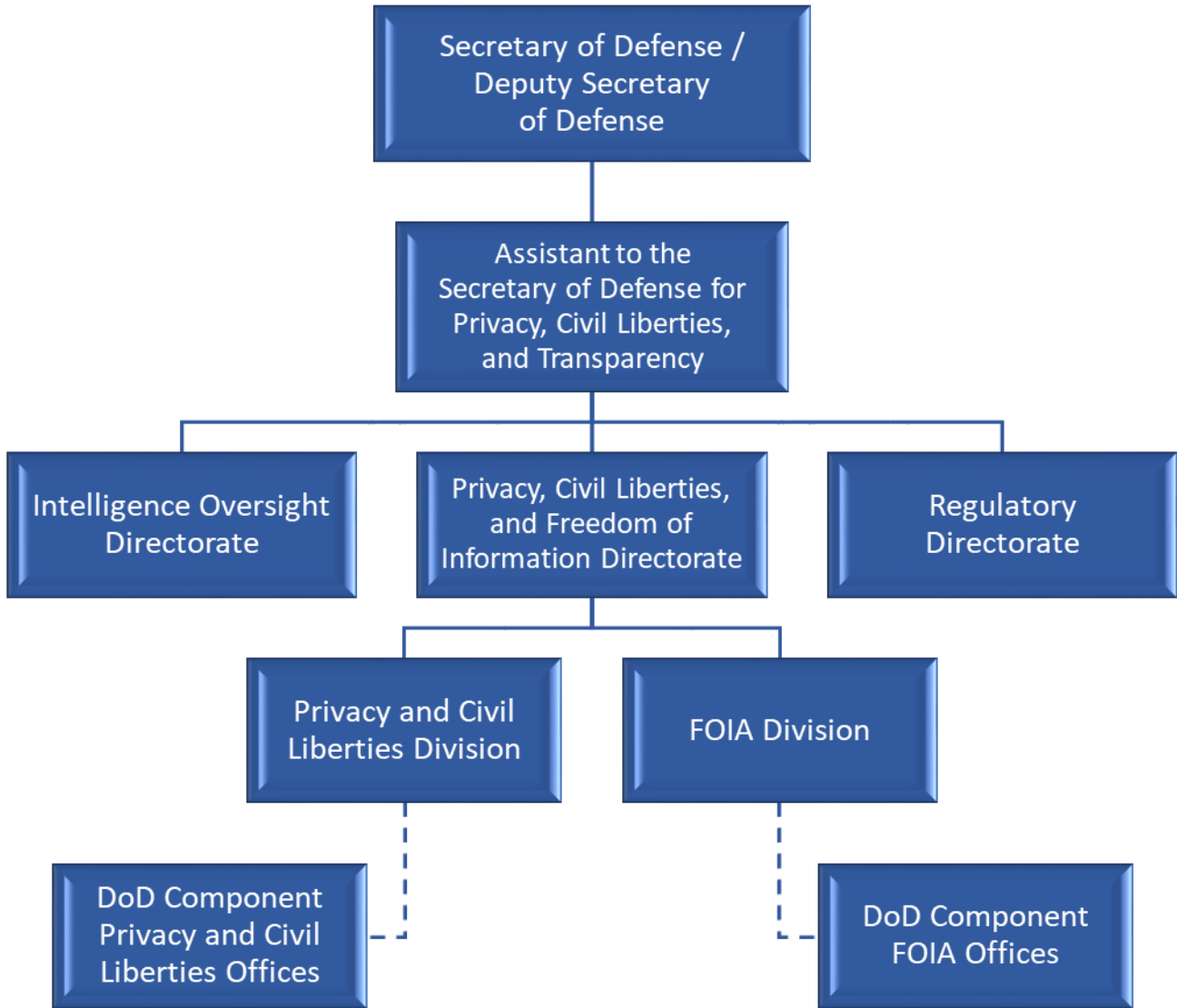
<sup>3</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>

<sup>4</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011v2.pdf>

<sup>5</sup> <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100030p.pdf>

<sup>6</sup> The Privacy Act of 1974, 5 U.S.C. § 552a, took effect on September 27, 1975, and can generally be characterized as an omnibus “code of fair information practices” that regulates the collection, maintenance, use, and dissemination of certain records about individuals by Federal executive branch agencies.

**Figure 1: Current DoD Privacy and Civil Liberties Programs Structure**



**A. The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency**

Consistent with Section 901(b) of the William M. “Mac” Thornberry National Defense Authorization Act (NDAA) for Fiscal Year 2022 (Public Law 116-283), on September 1, 2021, the Deputy Secretary of Defense directed the realignment of the privacy, civil liberties, transparency, regulatory, and intelligence oversight responsibilities under a newly designated Assistant to the

Secretary of Defense for Privacy, Civil Liberties, and Transparency (ATSD(PCLT)). The ATSD(PCLT) was also designated as the Principal Staff Assistant responsible for PCLT, regulatory, and intelligence oversight matters.

The ATSD(PCLT) serves as the DoD PCLO in accordance with Section 2000ee-1 of Title 42, U.S.C., and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense on privacy and civil liberties issues within the Department's programs and operations. As the DoD PCLO, the ATSD(PCLT) is responsible for ensuring DoD operations, policies, procedures, guidelines, and issuances and their implementation are periodically investigated, reviewed, and amended to provide for adequate protection of individuals' privacy and civil liberties. The ATSD(PCLT) is also charged with implementing the Department's Privacy and Civil Liberties Programs, ensuring compliance with the Privacy Act of 1974, as amended, and ensuring appropriate processes are in place to protect individuals' privacy and civil liberties in accordance with the law and policy. The ATSD(PCLT) also engages with entities charged with the oversight of privacy and civil liberties matters, such as the Privacy and Civil Liberties Oversight Board (PCLOB) and the Office of Management and Budget (OMB).

The ATSD(PCLT) is also designated as the DoD Senior Agency Official for Privacy (SAOP) in accordance with Executive Order 13719, OMB Memorandum M-16-24, OMB Circulars No. A-130 and No. A-108, and DoDI 5400.11. The SAOP has Department-wide responsibility for privacy and civil liberties, including the protection of personally identifiable information (PII); compliance with Federal privacy-related laws, regulations, and policies; reviewing and providing comments on legislative, regulatory, and other policy initiatives implicating Privacy Act compliance and privacy-related matters; and information privacy risk management. The SAOP sets the parameters and priorities for the DoD Privacy Program. In addition, as DoD's SAOP, the ATSD(PCLT) is actively involved in the Federal Privacy Council, which was established by Executive Order 13719, serving as its Vice Chair to support the protection of privacy across the Federal executive branch.

## **B. The Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties and Transparency**

The Office of the ATSD(PCLT) comprises three directorates: the Privacy, Civil Liberties, and Freedom of Information Directorate (PCLFD); the Intelligence Oversight Directorate (IOD); and the Regulatory Directorate.



## 1. The Privacy, Civil Liberties, and Freedom of Information Directorate

The PCLFD is composed of two divisions, the Privacy and Civil Liberties (PCL) Division and the Freedom of Information Act (FOIA) Division. Through the PCL Division, the PCLFD supports the ATSD(PCLT) in carrying out responsibilities as the DoD PCLO and SAOP to implement the DoD Privacy and Civil Liberties Programs. This includes supporting the ATSD(PCLT) in the following roles: the Chair of the Defense Data Integrity Board and the Privacy Act access and amendment appellate authority for the Office of the Secretary of Defense (OSD), the Joint Staff, and the Combatant Commands. The PCLFD routinely communicates and coordinates on a wide range of activities with DoD and OSD Component privacy and civil liberties officials, the OMB, the PCLOB, and other Federal departments and agencies, to facilitate the Department-wide execution of Federal privacy and civil liberties program requirements, and to exchange ideas on the development and implementation of best practices in the privacy and civil liberties area. Also, the PCLFD establishes reporting processes for the Privacy and Civil Liberties Programs, including the SAOP submission for the annual Federal Information Security Modernization Act (FISMA) Report, all PII breach reports, and this semiannual PCLO report.

Through the FOIA Division, the PCLFD assists the ATSD(PCLT) in carrying out responsibilities as the DoD Chief FOIA Officer pursuant to title 5, U.S.C., section 552(j)(1), and the DoD representative to the Chief FOIA Officers Council pursuant to title 5, U.S.C., section 552(k)(1). The ATSD(PCLT) also serves as the FOIA appellate authority for the OSD, the Joint Staff, the Combatant Commands, and designated Defense Agencies and DoD Field Activities for information denied under title 5, U.S.C., section 552, and with respect to other adverse determinations.

## 2. The Intelligence Oversight Directorate

Under the direction of the DoD Senior Intelligence Oversight Official, the IOD is responsible for the independent oversight of the Department's intelligence and counterintelligence activities. The IOD inspects all DoD Component intelligence activities to ensure 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 partner in implementing the DoD Privacy and Civil Liberties Programs.

## **C. DoD Office of the General Counsel**

The DoD Office of the General Counsel (OGC) provides legal advice to senior DoD officials, the ATSD(PCLT), the PCLFD, and the IOD, and assists DoD and OSD Component legal advisors supporting DoD Privacy and Civil Liberties Programs. In addition, OGC legal advisors work directly with the Office of the ATSD(PCLT) to provide legal reviews of matters implicating privacy and civil liberties issues and to ensure the development of privacy and civil liberties policies are consistent with the law.

## **D. DoD and OSD Component Privacy and Civil Liberties Officials**

The DoD and OSD Components are responsible for administering Privacy and Civil Liberties Programs, including the establishment and implementation of Component-level privacy and civil liberties policies, procedures, and training consistent with DoD issuances and guidelines. The DoD requires the designation of Senior Component Officials for Privacy (SCOPs) and Component Privacy and Civil Liberties Officers (Component PCLOs) to lead and implement the various elements of the DoD Privacy and Civil Liberties Programs. The Office of the ATSD(PCLT) communicates regularly with these officials on the operation of the Component programs.

### **1. Senior Component Officials for Privacy**

Each SCOP is generally a general/flag officer, Senior Executive Service, or Senior Level employee. SCOPs oversee the resolution of existing or potential privacy and civil liberties issues requiring executive-level intervention. They also identify issues and recommend actions for matters requiring the attention of the Component's leadership. In addition, the SCOPs provide information and policy advice to the ATSD(PCLT) to assist in Departmental-level decision-making. The SCOPs also direct Component compliance with Section 803 and the DoD Privacy and Civil Liberties Programs.

### **2. Component Privacy and Civil Liberties Officers**

DoD and OSD Components are responsible for designating a Military Service member or civilian employee to serve as the Component PCLO. These officials are responsible for managing and supervising the functions of the DoD Privacy and Civil Liberties Programs for the Component organizations. They also collaborate with and assist the SCOPs on all privacy and civil liberties matters as necessary.

### III. REVIEWS

The DoD considers privacy and civil liberties concerns when proposing, developing, and implementing laws, regulations, policies, procedures, and guidelines.<sup>7</sup> Under the direction and guidance of the ATSD(PCLT), the PCLFD performs privacy and civil liberties reviews for all Department-level issuances, as well as proposed Federal legislation, testimony, and reports. In doing so, the PCLFD analyzes policy, procedures, and activities for their impact on privacy and civil liberties and provides comments and may recommend changes to such documents in order to protect privacy and civil liberties. Upon request, the PCLFD reviews and provides privacy and civil liberties guidance on proposed plans, activities, regulations, policies, and procedures promulgated by other DoD and OSD Components.

Privacy and civil liberties reviews are conducted in accordance with the Privacy Act of 1974, as amended, certain rights guaranteed in the U.S. Constitution, and OMB and PCLOB executive guidance. The Department also ensures compliance and alignment with FISMA and the E-Government Act of 2002 (44 U.S.C. § 3501 *et seq.*) 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 Reviews

The Privacy Act of 1974 requires that agencies publish a system of records notice (SORN) in the *Federal Register* describing the existence and character of any agency system of records.<sup>8</sup> DoD and OSD Components must submit new, modified, and rescinded SORNs for their respective systems of records to the PCLFD for review and SAOP approval before they are published. Table 1 lists the number of SORNs reviewed, approved, forwarded to OMB and Congress, and sent to the Office of the Federal Register for publication during the reporting period.

#### B. Exemption Rule Reviews

A Privacy Act exemption rule is promulgated when an agency exempts a particular system of records from certain provisions of the Act.<sup>9</sup> The PCLFD and the OGC review Privacy Act exemption rules prior to publication in the *Federal Register*. Table 1 lists the number of new and

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<sup>7</sup> See 42 U.S.C. § 2000ee-1.

<sup>8</sup> See 5 U.S.C. § 552a(e)(4).

<sup>9</sup> See 5 U.S.C. § 552a(j), (k).

modified exemption rules published as a final rule during the reporting period.

### **C. Matching Agreement Reviews**

A matching agreement is a written agreement between a source agency and a recipient Federal agency or non-Federal agency when data from two or more automated systems of records is matched between the agencies, typically to establish or verify the eligibility of individuals for a specific Federal benefit.<sup>10</sup> The PCLFD and the OGC review matching agreements before they are presented to the Defense Data Integrity Board, which is chaired by the ATSD(PCLT), for approval. The Director, PCLFD, also serves as the Executive Secretary for the Defense Data Integrity Board, facilitating the review process for all DoD matching agreements. Table 1 lists the number of matching agreements reviewed and completed during the reporting 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, unauthorized disclosure, unauthorized acquisition or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses PII or (2) an unauthorized user accesses PII for other than an authorized purpose.<sup>11</sup> DoD and OSD Components report privacy breaches to the PCLFD, which provides breach response assistance, as appropriate, and compiles the breach reports to identify and analyze trends. Table 1 lists the number of privacy breaches reported by all DoD and OSD Components during the reporting period.

### **E. Social Security Number Justification Reviews**

DoD and OSD Components must submit a Social Security Number (SSN) Justification Memorandum to the PCL Division requesting authorization to collect and use SSNs within information systems and on forms. The justification must comply with departmental direction establishing limitations on the collection and use of SSNs.<sup>12</sup> The PCL Division reviews the justification and decides whether to grant or deny the Component's request. This effort aims to reduce the use of SSNs in DoD systems and information collections, thereby minimizing the risk of

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<sup>10</sup> See 5 U.S.C. § 552a(a)(8) and (o).

<sup>11</sup> OMB M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information," January 3, 2017.

<sup>12</sup> DoD Instruction 1000.30, "Reduction of Social Security Number (SSN) Use Within DoD," August 1, 2012, as amended.

SSN misuse or compromise throughout the Department. Table 1 lists the number of SSN Justification Memoranda reviewed and decided on during the reporting period.

Pursuant to the Social Security Number Fraud Prevention Act of 2017 (Public Law 115-59), the PCL Division also reviewed and decided requests from OSD and DoD Components seeking authorization to continue mailing forms containing full SSNs. The outcomes of these reviews are reported in the Department’s 2022 Social Security Number Fraud Prevention Act Annual Report. Table 1 lists the number of SSN Mailing Authorization Requests reviewed during the reporting period.

### F. DoD Issuances, Federal Legislation, Testimony, and Reports

The PCLFD reviews DoD-wide issuances for privacy and civil liberties issues and provides feedback as appropriate.<sup>13</sup> In addition, the PCLFD reviews proposed legislation, testimony, and reports for privacy and civil liberties concerns on behalf of the ATSD(PCLT) and reviews other Federal agency documents upon request. Table 1 lists the number of reviews of issuances, legislation, testimony, and reports conducted during the reporting period.

**Table 1: Privacy and Civil Liberties Reviews from April 1, 2022 to September 30, 2022**

<b>PRIVACY AND CIVIL LIBERTIES REVIEWS</b>	
<b>Type of Review</b>	<b>Number of Reviews</b>
System of Records Notices (SORNs)	
➤ New	4
➤ Modified	3
➤ Rescinded	52
Exemption Rules	3
Matching Agreements <sup>14</sup>	0
Privacy Breach Reviews	1098
SSN Justification Memoranda	8
SSN Mailing Authorization Requests	92

<sup>13</sup> A DoD issuance establishes or implements DoD policy, designates authority, assigns responsibilities, or provides procedures. Issuances apply to more than one DoD Component. *See* DoDI 5025.01, “DoD Issuances Program.”

<sup>14</sup> Does not include reviews of matching agreement renewals of up to one additional year in accordance with 5 U.S.C § 552a(o)(2)(D).

<b>PRIVACY AND CIVIL LIBERTIES REVIEWS</b>	
<b>Type of Review</b>	<b>Number of Reviews</b>
DoD Issuances, Federal Legislation, Testimony, and Reports	195

#### **IV. MATTERS OF ADVICE AND RESPONSE**

The Office of the ATSD(PCLT) provides advice on DoD Component privacy and civil liberties matters. This 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 issuance of DoD-wide policies, procedures, or guidance pertaining to privacy and civil liberties. The DoD is actively updating its foundational documents to reflect advances in knowledge, technology, and regulatory guidance. Issuances under review and revision during the reporting period included DoD Instruction (DoDI) 1000.30, “Social Security Number (SSN) Use Within DoD,” DoDI 5400.15, “Guidance on Obtaining Information from Financial Institutions,” DoDI 5400.11, “DoD Privacy and Civil Liberties Programs,” and DoD Directive 5200.27, “Acquisition of Information Concerning Persons and Organizations Not Affiliated with the DoD.”

##### **B. Programmatic Achievements**

The following activities highlight key DoD privacy and civil liberties offices’ programmatic efforts during the reporting period.

- The OATSD(PCLT), as part of an effort that began in 2019 to reduce the total number of SORNs across the Department, rescinded a total of 52 SORNs which were overlapping, redundant, or no longer needed. Most of the rescindments resulted from the publication of DoD-wide SORNs or Component efforts to consolidate existing SORNs. With the publication of these rescindments, DoD reduced its number of SORNs to fewer than 1,000. The reduction of total SORNs supports transparency to the public of DoD’s collections of information about U.S. individuals, creates efficiencies, and standardizes DoD's management of similar data across Components.

- The OATSD(PCLT), in response to an open recommendation for the DoD from a DoD Inspector General (IG DoD) report DODIG-2015-148, “Rights of Conscience Protections for Armed Forces Service Members and Their Chaplains,” updated the Department’s form used to collect necessary data from component privacy and civil liberties offices in order to prepare the semi-annual DoD Privacy and Civil Liberties Officer Report (803 Report). The revised form is now used by privacy and civil liberties program officers to report complaints filed by Military Service members or chaplains alleging violations of conscience, moral principles or religious beliefs in violation of Section 533 of Pub. Law 112-239, as amended. This revision will enhance the transparency of DoD’s civil liberties program by allowing the reporting of statistics specific to Section 533 complaints received by the Department’s privacy and civil liberties offices. This Report contains the first such instance of Section 533 reporting, which can be found in Table 2 below.
- The OATSD(PCLT) completed the successful delivery of the Department’s fifth and final annual report required by the Social Security Number Fraud Prevention Act of 2017. This submission highlighted the Department’s reduction in its document mailings containing a full SSN to 255 documents, which is a 43.5% decrease over a five-year period.
- The OATSD(PCLT) revised the DoDI 1000.30, “Reduction of Social Security Number (SSN) Use Within DoD,” to generally prohibit the inclusion of an individual’s full SSN on any document that is physically mailed, which includes delivery via the U.S. mail system (i.e., U.S. Postal Service) or other commercial parcel or letter delivery services (e.g., Federal Express, United Parcel Service, etc.) unless authorized. This revised policy is scheduled for publication this calendar year.
- The OATSD(PCLT) collaborated with other DoD Intelligence Community (IC) elements to provide consolidated comments to the Office of the Director of National Intelligence (ODNI) on the draft IC Standard entitled “Alert Guidelines for Privacy Breaches Affecting More than One Intelligence Community Element.” This IC Standard establishes alert guidelines for an IC element to proactively inform other IC elements in the event of a suspected or confirmed privacy breach of PII affecting one or more other IC element(s).

- The OATSD(PCLT) collaborated with OGC to provide privacy advice and compliance support to the DoD Anomalous Health Incident (AHI) Team and the efforts to launch the Department's AHI web portal. The portal will allow DoD-affiliated personnel to report AHI incidents in accordance with Section 6603 of the FY 2022 NDAA. Efforts included providing advice on the data elements to be collected through the portal, drafting a Privacy Act Statement for the web form, and determining appropriate System of Records Notice coverage for the information collection.
- The Defense Health Agency (DHA), based on a NDAA 2017 mandate, has transitioned more than 600 entities under the authority, direction, and control of the DHA; during this important time of major transition for the DoD, and in support of the DHA mission to ensure the safeguarding and protection of PII/protected health information (PHI) throughout the DHA, the DHA Privacy and Civil Liberties Office published guidance outlining roles and responsibilities across the DHA enterprise for privacy and civil liberties program management.
- The Defense Intelligence Agency (DIA) Information Management and Compliance Office (IMO) and Office of the Surgeon General (OSG) collaborated to implement guidance contained in the Office of the Secretary of Defense memorandum on Anomalous Health Incidents (AHI) while protecting the privacy of impacted persons. The IMO Privacy and Civil Liberties team worked with OSG to ensure clear understanding of the nuanced differences of protecting information under the Privacy Act and Health Insurance Portability and Accountability Act (HIPAA) and helped OSG develop a Privacy Act Statement advising participants of information uses while providing assurances of privacy protections well prior to any information collection.
- The National Geospatial-Intelligence Agency (NGA) conducted its first Unmasking Tabletop Exercise, an exercise that enabled NGA's Mission Oversight and Compliance, Privacy and Civil Liberties Division, and key stakeholders to establish and test the adjudication process for unmasking requests; to ensure enterprise reporting, decision-making, and notification requirements are met; and to enable the identification of best practices and specific needs for specialized training.



- The NGA integrated Privacy Training into NGA’s New Employee Orientation Seminar and Student Intern classes. The training provides a basic understanding of NGA Instruction 5401.1, “Privacy and Civil Liberties Program” for personnel during the on-boarding process, and is a prerequisite to NGA’s mandatory Privacy Awareness Training. The privacy training includes an introduction to PII, ways to safeguard PII, and breach reporting and response.

## V. COMPLAINTS

Consistent with 42 U.S.C. § 2000ee-1, DoD policy requires DoD Components to have procedures for processing complaints from individuals alleging the DoD violated their privacy or civil liberties.<sup>15</sup> Generally, the receiving Component Privacy and Civil Liberties Program Office reviews the complaints and reports them to the Component command or other appropriate official. The command will initiate an inquiry and, as necessary, direct corrective action. The complaints counted in this Report, listed in Table 2, were received in accordance with these procedures. For the purpose of this Report, a complaint is an allegation of a violation of an individual’s privacy rights, civil liberties, or an alleged violation of conscience, moral principles or religious beliefs in accordance with Section 533. Complaints received through this process for which established formal procedural avenues of redress exist, such as complaints alleging a violation of the HIPAA Rules and complaints addressed by the Equal Employment Opportunity or Military Equal Opportunity program offices, are outside the scope of this report. Similarly, complaints alleging sexual assault or sexual harassment addressed by Department or component sexual assault or harassment prevention and response offices, and complaints addressed through the military justice system, such as complaints against alleged perpetrators that result in military courts-martial, non-judicial punishment, or administrative separations, are generally reported pursuant to different legal authorities and procedures; therefore, they are also outside the scope of this report.

OATSD(PCLT) recently changed how it collects and reports privacy and civil liberties complaint data from DoD and OSD Components for inclusion in this Report. For the first time, this Report now includes a separate tally of civil liberties complaints filed by Military Service members or chaplains alleging violations of Section 533 of Public Law 112-239, as amended (Section 533),

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<sup>15</sup> See DoD Instruction 5400.11, “DoD Privacy and Civil Liberties Programs,” January 29, 2019.

and DoD Instruction 1300.17, “Religious Liberty in the Military Services,” concerning accommodations for individual expressions of conscience, moral principles, or religious beliefs.<sup>16</sup> These Section 533 complaints are now required to be reported by DoD and OSD Components separate from other privacy and civil liberties complaints, for purposes of this Report. Service members and chaplains are not required to file Section 533 complaints with the Component privacy and civil liberties program office, but may file them through other offices, such as the Component’s Office of Inspector General. This Report, however, only provides information on the number of Section 533 Complaints received by a Component’s privacy and civil liberties program office.

### **A. Complaint Dispositions**

Table 2 lists the number of privacy and civil liberties complaints received by DoD Components during the reporting period, and the disposition of the complaint. A disposition of “Responsive action taken” means the complaint was reviewed and is resolved. It also includes any action taken to remediate the violation and prevent recurrence. “Pending” indicates the complaint is under review to determine the necessary actions to resolve the complaint.

### **B. Privacy Complaints**

A privacy complaint is an allegation of a violation of privacy protections in the administration of the programs and operations of the Department. Privacy complaints are separated into three categories in Table 2:

- Process and Procedure Issues (such as appropriate consent, collection, disclosure, and/or notice);
- Redress Issues (non-Privacy Act inquiries seeking resolution of difficulties about privacy matters)
- Referred to Other Agency

For examples of DoD privacy complaints, please refer to the Appendix of this Report.

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<sup>16</sup> Section 533 of Public Law 112-239, as amended, and DoD Instruction 1300.17, “Religious Liberty in the Military Services,” require accommodations of individual expressions of beliefs of members of the armed forces that reflect their sincerely held conscience, moral principles, or religious beliefs unless such accommodations would have an adverse impact on military readiness, unit cohesion, and good order and discipline; such expression of accommodations may not, in so far as practicable, be the basis of an adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment. These authorities also prohibit requiring chaplains to perform rites, rituals, or ceremonies contrary to their conscience, moral principles, or religious beliefs and prohibit discrimination or adverse actions against chaplains on such a basis.

### **C. Civil Liberties Complaints**

A civil liberties complaint is an allegation of a violation of civil liberties in the administration of the Department's programs and operations. For the purpose of 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 (i.e., the Bill of Rights). The types of civil liberties complaints reported may include, but are not limited to:

- First Amendment (e.g. freedom of speech, religion, press, right to assemble peaceably, and right to petition for redress of grievances);
- Second Amendment (right to keep and bear arms);
- Fourth Amendment (protection against unreasonable search and seizure);
- Fifth Amendment (protection against double jeopardy and self-incrimination, right to due process (including equal protection));
- Sixth Amendment (right to speedy and public trial/counsel/calling of witnesses/confronting of accusers);
- Eighth Amendment (protection against cruel/unusual punishments/excessive fines/bail);
- Ninth Amendment (unremunerated rights)

Examples of DoD civil liberties complaints are included in the Appendix of this report.

### **D. Complaints Alleging Violations of Conscience, Moral Principles or Religious Beliefs Under Section 533 of Pub. Law 112-239, as amended**

This subsection will only apply to complaints by Military Service members, including chaplains, premised on Section 533 of Pub. Law 112-239, as amended. Section 533, as amended by Section 532 of Public Law 113-66, provides certain protections for the rights of conscience, moral principles, and religious beliefs of members of the Armed Forces and Chaplains as follows:

- Unless it could have an adverse impact on military readiness, unit cohesion, and good order and discipline, the Armed Forces shall accommodate individual expressions of belief of a member of the armed forces reflecting the sincerely held conscience, moral principles, or religious beliefs of the member and, in so far as practicable, may not use such expression of belief as the basis of any adverse personnel action, discrimination, or denial of promotion, schooling, training, or assignment.

- No member of the Armed Forces may require a chaplain to perform any rite, ritual, or ceremony that is contrary to the conscience, moral principles, or religious beliefs of the chaplain; or discriminate or take any adverse personnel action against a chaplain, including denial of promotion, schooling, training, or assignment, on the basis of the refusal by the chaplain to comply with such a requirement.

**Table 2: Privacy and Civil Liberties Complaints (received via Privacy and Civil Liberties Program Offices)**

Nature of Privacy Complaints	Number Received	Disposition of Complaint	
		Responsive Action Taken	Pending
Process and Procedure	23	15	8
Redress Issues	2	2	0
Referred to Other Agency	0	0	0
<b><i>Sub Total for Privacy Complaints:</i></b>	25	17	8
<b>Nature of Civil Liberties Complaints</b>			
First Amendment	34	28	6
Fourth Amendment	4	3	1
Fifth Amendment	85	58	27
Sixth Amendment	1	1	0
Other – General Civil Liberties Complaints	3	0	3
<b><i>Sub Total for Civil Liberties Complaints:</i></b>	127	90	37
<b>Complaints Alleging Violations of Conscience, Moral Principles or Religious Beliefs Under Section 533 of Pub. Law 112-239, as amended</b>			
Complaints by Military Service Members	0	0	0
Complaints by Chaplains	0	0	0
<b><i>Sub Total for Section 533 Complaints</i></b>	0	0	0
<b>TOTAL 3rd &amp; 4th Qtrs FY22</b>	<b>152</b>	<b>107</b>	<b>45</b>

## **CONCLUSION**

In accordance with Section 803, this Report summarizes the activities of the DoD PCLO from April 1, 2022 through September 30, 2022. The DoD will continue to work with Congress, the OMB, the PCLOB, and other Federal agencies to ensure it appropriately protects privacy and civil liberties. Program activities and accomplishments serve to assure the continuing protection of privacy and civil liberties in each of the functions and missions of the Department.

## APPENDIX: Samples of Privacy and Civil Liberties Complaints

### Sample DoD Privacy Complaints<sup>17</sup>

#### *Sample Complaint #1:*

**Description of Complaint:** The complaint alleged that: 1) The employee's W-2 tax form was mailed to a different employee; and 2) The employee's direct deposit form was emailed with unredacted financial information to a group of people.

**Findings:** Substantiated. After conducting an inquiry, it was determined that: 1) The employee's Form W-2 was in fact mailed to a different employee, but that employee never opened it; and 2) All recipients of the email with the employee's direct deposit form had an official need to know the information.

**Disposition:** Responsive Action Taken.

#### *Sample Complaint #2:*

**Description of Complaint:** The complaint alleged improper collection of partial Social Security number (SNN) being collected for drug testing.

**Findings:** Unsubstantiated. Complainant was provided the applicable SORN which provided for the collection of a partial SSN for drug testing.

**Disposition:** Responsive Action Taken.

### Sample DoD Civil Liberties Complaints

#### *Sample Complaint #1:*

**Nature of Complaint(s):** First Amendment: Freedom of Press.

**Details:** A Service member filed a Congressional inquiry claiming they received a Letter of Repromand (LOR) and their permissive Temporary Duty Travel (TDY) was canceled in retaliation for an article they wrote on problems within a Military Department.

**Reviews/Findings/Action Taken:** Unsubstantiated. The allegation was not supported by the evidence. The member received an LOR for a reason unrelated to the article and as a result of the LOR, the member was ineligible for a permanent change of station (PCS) in accordance with policy,

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<sup>17</sup> These samples reflect submissions during the reporting period and have been edited to ensure the privacy of the complainant.

thus, their PCS and a permissive TDY for house hunting in conjunction with a PCS was also canceled.

**Disposition:** Responsive action taken.

*Sample Complaint #2:*

**Nature of Complaint(s):** First Amendment: Freedom of Religion / Establishment.

**Details:** A DoD civilian employee alleged their First Amendment rights were violated when forced to participate in a prayer prior to unit functions.

**Reviews/Findings/Action Taken:** Referred to appropriate IG Office for investigation.

**Disposition:** Responsive Action Taken.