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NATIONAL COUNTERTERRORISM CENTER



# NCTC Civil Liberties and Privacy Office

## PROTECTION OF PRIVACY AND CIVIL LIBERTIES



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## Why a CLPO?

- Outside of the Intelligence Community (“IC”), there are many additional oversight mechanisms that provide for transparency:
  - Legal process/burdens of proof –and - court review (less likely to have “state secrets” defense at their disposal)
  - access by the public (and media) to records, including through redress mechanisms
  - independent watchdog organizations, public advocacy groups, etc.
  - Congress (i.e., not limited to the traditional Intel Committees)

### SECURITY

There are limitations on what the government can disclose. (essential for the protection of intelligence sources and methods)

### TRANSPARENCY

The “civil liberties protection infrastructure” provides a proxy for transparency. It is this interrelationship between legal requirements, guidelines, compliance standards, and oversight that ensures the Intelligence Community operates in a manner that protects privacy and civil liberties.

“We all share in the responsibility to ensure that our efforts to combat terrorism adhere to the laws and policies that protect the privacy and civil liberties of Americans. I appreciate your commitment to fulfill that responsibility.”

*NCTC Director Matt Olsen (January 10, 2012)*





## US Person Protections

- The key mechanisms for the protection of civil liberties and privacy within the IC emanate from 2 primary sources: Executive Order (“EO”) 12333 and the Privacy Act. You’ll be receiving detailed training on both in the near future.
  
- For now, just be aware that:
  - EO 12333 and the Privacy Act are designed to preserve the privacy of US Persons (“USPs”), and to ensure that we protect and preserve each USP’s constitutionally protected rights
  
  - In order to implement EO 12333, each IC entity adopts Attorney General Guidelines (AGGs)
    - At NCTC we have 2 sets of AGGs ; CIA’s AGGs (applied to terrorism datasets) and NCTC’s own AGG’s (applied to datasets provided by non-IC USG agencies)
  
  - Some of our mission partners require us to extend USP Protection to non-USPs
    - these requirements should be highlighted for you within the context of your work with such a dataset

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## Civil liberty and privacy considerations in data access

- As part of our counter-terrorism ("CT") mission we acquire and analyze data for many sources. Some of this data comes from non-IC agencies, like the Depts. of Homeland Security & State
  - people engaging in every day activities, like traveling on a plane or applying for a passport
  - We often refer to these as "non-terrorism datasets"
- There are a number of privacy and civil liberties considerations implicated when we ingest this data (sometimes referred to as concerns about "Big Data")
  - potential for "mission creep," data obsolescence, and misuse/abuse/theft of data
  - Americans also have a general level of discomfort with the IC holding their data
- Ability to demonstrate that we diligently follow our privacy and civil liberties protections is critical to earning and retaining the trust of the American people/oversight entities/mission partners
- So long as we maintain this trust, we continue to have access to this critical data
  - If we lose that trust we risk losing access to the data

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## First Amendment Issues

- A core CL/P protection is that our focus on an individual cannot be based solely on the exercise of a constitutional right, such as a person's first amendment right to free speech
- It's therefore helpful to ask 2 questions when looking at speech:
  - 1) Why are we focused on this individual? For example, we're interested in this person because.....
    - a) s/he is donating to a charity associated with terrorism;
    - b) s/he is communicating with someone as part of an ongoing plot to conduct an attack
    - c) s/he is a known associate of a known or suspected terrorist ("KST")
  - 2) Why is the speech relevant to this focus?
    - a) e.g., speech demonstrates this person's knowledge that the charity funnels \$ for terrorism
    - b) e.g., speech shows that the person is directing the individual to commit an act of imminent violence
    - c) e.g., speech demonstrates familiarity with, or access to, the KST
- So long as the underlying focus of our analytic judgment/action is based on more than just the protected speech itself, than it is permissible to use that speech



## Compliance

- **Compliance (and compliance incidents reviews) are normal parts of the oversight process and necessary to preserve/earn the public's trust**
- **Compliance incidents may be:**
  - one-off occurrences (e.g., a typo in a database query caused by simple human error); or
  - ongoing occurrences (e.g., unauthorized personnel having access to an NCTC information technology system)
- **We have regular compliance obligations – such as spot checks, audits and reporting**
- **Compliance is designed to: “trust and verify” and to correct mistakes and fix broken processes**
- **If we have zero (0) compliance incidents it means either:**
  - we're not checking, or
  - our compliance oversight processes are broken





## CLPO Take-Away

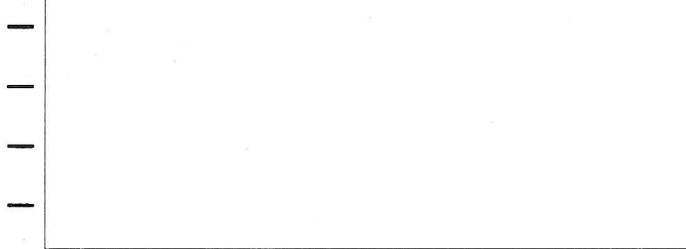
- Terrorists target the US because of our ideals, our freedoms and our constitutional way of life
- Your mission is to prevent terrorists from assailing these very ideals through the conduct of physical attacks
- CLPOs mission is to ensure that in preventing these attacks, we don't unintentionally infringe on the very constitutional rights that we are trying to protect
  - Thus, our job is to help you spot potential issues, and tackle challenges you encounter, so that together we can ensure the safety of our homeland and our way of life
- At the end of the day, we all have the very same vision/mission



# Contact Information



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