

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE



Semiannual Report
July 2014 to December 2014
Civil Liberties and Privacy Office

LEADING INTELLIGENCE INTEGRATION

**SEMIANNUAL REPORT OF THE CIVIL LIBERTIES AND PRIVACY OFFICE (CLPO) OF THE OFFICE
OF THE DIRECTOR OF NATIONAL INTELLIGENCE
PERIOD COVERED: JULY 1, 2014 – DECEMBER 31, 2014**

INTRODUCTION.

As required by Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub.L. No. 110-53, this report provides information about the activities of the ODNI's Civil Liberties and Privacy Office (CLPO) during the reporting period, such as types of privacy and civil liberties reviews conducted; the types of advice, guidance or response furnished; and the types of complaints received and processed by the ODNI CLPO. In the interest of enhancing transparency, CLPO is including in this public report a narrative overview of its activities for the reporting period.

ABOUT CLPO

CLPO is headed by the ODNI's Civil Liberties Protection Officer, whose statutory duties include ensuring that the protection of civil liberties and privacy is appropriately incorporated in the policies and procedures of Intelligence Community elements; overseeing compliance by the ODNI with legal and policy requirements relating to privacy and civil liberties; and reviewing complaints concerning possible abuses of civil liberties and privacy in ODNI programs and operations. CLPO focuses on high-priority intelligence and national security initiatives to help ensure that the Intelligence Community protects civil liberties and

privacy as it pursues its intelligence objectives. In general, CLPO examines the privacy and civil liberties ramifications of intelligence-related technologies, programs and procedures. Recognizing the complex and changing nature of the intelligence environment, CLPO reviews the appropriateness of protective measures and compliance with legal and policy mandates, and works to modify or formulate protections as necessary. CLPO carries out its duties in close consultation with other offices with relevant responsibilities, including offices of general counsel, offices of inspectors general, intelligence oversight offices, civil liberties and privacy offices, and the Department of Justice.

OVERVIEW FOR THE REPORTING PERIOD

Guidance. During this period, CLPO continued to work with relevant organizations to provide guidance on implementing protections required by Section 215 of the USA PATRIOT Act, Section 702 of the Foreign Intelligence Surveillance Act, and other authorized communications collection programs. In addition, pursuant to recommendations of the President's Review Group on Intelligence and Communication Technologies, CLPO provided guidance on assessing privacy and civil liberties implications of "big data and data-mining programs directed at communications," and "for future developments in communications

technology.”

https://www.whitehouse.gov/sites/default/files/docs/2013-12-12_rg_final_report.pdf

In addition, CLPO helped the Office of Management and Budget (OMB) evaluate how to implement the Review Group’s recommendation “to apply the Privacy Act of 1974 to non-US persons where practicable, or to establish alternative privacy policies that apply appropriate and meaningful protections to personal information regardless of a person’s nationality.” In this regard, CLPO examined the feasibility and impact on the ODNI and on the IC of potential changes in US policy or practice involving information privacy protections to non-US persons and provided specific feedback for OMB’s consideration.

Moreover, pursuant to EO 13636, Improving Critical Infrastructure Cybersecurity, CLPO conducted an assessment of the ODNI’s duties under the Order. In particular, CLPO assessed the privacy and civil liberties implications of ODNI’s guidance for issuing “tearline” reports. As required by EO 13636, this review was submitted to the Department of Homeland Security for inclusion in an annual government-wide report to Congress. This report—including CLPO’s assessment—is publicly available at www.dhs.gov/publication/executive-order-13635-privacy-and-civil-liberties-assessment-report-2014.

¹ The *Principles of Intelligence Transparency for the IC* were completed soon after the reporting period and can be found on www.dni.gov.

PPD-28. CLPO helped prepare the Interim Progress Report on Implementing PPD-28, as required by that Directive. [See www.dni.gov/index.php/newsroom/reports-and-publications]. That report articulated the status of the IC’s efforts to implement the principles of PPD-28 for ensuring that personal information contained in signals intelligence is appropriately collected, handled and disseminated, regardless of a person’s nationality.

Transparency. The “Intelligence Transparency Working Group” (ITWG) – an interagency forum that CLPO established at the DNI’s direction – made substantial progress this period toward the development of a set of principles to direct and guide the IC elements to proactively engage in greater openness about their activities, practices and procedures.¹ The DNI is committed to establishing the principle of transparency as a governing tenet of the IC; we seek to earn and retain the trust of the American people by demystifying the IC and providing greater visibility into the legal, policy and procedural protections afforded individuals while preserving necessary secrecy with respect to intelligence sources, methods, and activities. Accordingly, CLPO continued to help identify or create materials for posting to the “IC on the Record” web platform and participated in agency deliberations on requests to declassify records for public consumption. For example, during this period, CLPO actively supported the redaction and release of *minimization*²

² Procedures designed to minimize the acquisition and retention, and to prohibit the dissemination of, non-publicly available information concerning US persons.

procedures used by the NSA, CIA and FBI. [See icontherecord.tumblr.com]

In furtherance of the transparency initiative, CLPO presented on the development of the transparency principles at a wide variety of forums, including engagements with European counterparts and other stakeholders external to the IC. CLPO also engaged with other stakeholders on a variety of *open government*³ initiatives.

Insider Threat. Internal to the IC, CLPO is actively engaged with stakeholders in implementing initiatives mandated by EO 13587 (Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information), including developing an ODNI “insider threat” monitoring and detection program that is consistent with privacy, civil rights and civil liberties protections for individuals subject to such monitoring. As needed, CLPO also provides support externally to the National Insider Threat Task Force, established to assist agencies across government in developing similar insider threat policies and practices. [See EO 13587 at www.ise.gov]

Counterterrorism. CLPO continued to perform its advisory and compliance role with respect to the activities of the National Counterterrorism Center (NCTC), the operational component within the ODNI primarily responsible within the U.S.

Government for counterterrorism intelligence analysis and counterterrorism strategic operational planning. [Additional information about NCTC is available at www.dni.gov]. CLPO provided guidance regarding conditions for NCTC’s receipt, use, retention, and dissemination of data and worked closely with NCTC to develop policies for access, use and tracking of certain categories of data containing personally identifiable information. In addition CLPO collaborated with NCTC components to review products, speeches, newsletters and other communications with state, local and territorial entities engaged in countering violent extremism, to ensure that these products are consistent with analytic standards, free of bias and protective of privacy and civil liberties.

FISA Oversight. CLPO conducted its regular on-site visits at NSA, CIA and FBI to ascertain compliance with procedures and guidelines under Section 702 of FISA. [See icontherecord.tumblr.com for “FISA.”] These oversight visits are conducted in concert with representatives from the Department of Justice (DOJ) and involve detailed reviews of documentation and discussions with relevant personnel. The results of these visits and of other oversight activities are assessed as part of a semiannual report, produced jointly by the ODNI and the Office of the Attorney General. CLPO also participates with DOJ in oversight of the NSA’s Section 215 Bulk Telephony program;

³ Generally, the policies, strategies, and activities that executive departments and agencies are implementing to further the principles of transparency, participation and collaboration that

President Obama articulated in his *Memorandum on Transparency and Open Government*, January 21, 2009.

during the reporting period, DOJ and CLPO conducted the regular quarterly review.

EO 12333. CLPO continued to work with the Department of Justice, IC agencies, and other ODNI components, to update several agencies' procedures implementing Executive Order 12333, United States Intelligence Activities. These agency-specific procedures implement the requirements of Section 2.3 of Executive Order 12333, governing how IC agencies and elements collect, retain, and disseminate information concerning U.S. persons.⁴ EO 12333 requires that such procedures be approved by the Attorney General, in consultation with the DNI.

Training. CLPO worked to ensure that its web-based course on the Privacy Act and protections for personally identifiable information became designated as mandatory for ODNI personnel, contractors, detailees and assignees. This training serves as a required follow-up to the overview privacy training provided to all employees at their

entry on duty (EOD) orientation. New employees must take this required web-based course within 30 days of EOD and incumbent personnel must take it annually. Compliance with these requirements is monitored.

An additional course launched this period addresses use of the Internet to collect publicly available information for intelligence purposes. This also is a self-paced web-based training, setting forth the privacy and civil liberties considerations governing "open source" research; it is based on CLPO-developed guidance entitled "Properly Obtaining and Using Publicly Available Information" [Find guidance on CLPO web page at www.dni.gov] This course is not mandatory, but is strongly advised for intelligence professionals engaged in collection and analysis of information about individuals.

Congressionally Directed Actions: At Congress' direction, ODNI and DoD jointly completed an assessment of a compartmented program.

⁴ Defined in EO 12333 Part 3, *US person* is a person or organization who meets any of the following criteria: (i) a U.S. citizen; (ii) , an alien known by the intelligence agency element concerned to be a permanent resident alien (i.e., lawful permanent resident green card holder); (iii) an unincorporated

association substantially composed of U.S. citizens or permanent resident aliens, or (iv) a corporation incorporated in the U.S. except for a corporation directed and controlled by a foreign government or governments.

Metrics

The attached table sets forth metrics regarding CLPO activities in each of the areas enumerated in Section 803 of the 9/11 Commission Act. The report categories are defined as follows:

Reviews: “Reviews” are examinations of activities or processes as required by controlling privacy and civil liberties authorities.

Advice: “Advice” refers to the identification of specific requirements or other safeguards identified in specific circumstances to protect privacy and civil liberties, including the formal issuance of responsive policies, procedures, guidance, interpretations and instructions.

Response to Advice: “Response to advice” relates to specific action taken as a result of the CLPO “advice” provided, again, including policies, procedures, training etc.

Privacy Act Complaint: “Privacy Act Complaint” is a written allegation regarding agency non-compliance with the requirement of the Privacy Act.

ISE Complaint: “ISE Complaint” is a written allegation of harm arising from ODNI sharing of terrorism data in the context of the Information Sharing Environment.

Privacy and Civil Liberties Complaint: “Privacy and Civil Liberties Complaint” is a written allegation charging violation of information privacy rights and/or civil liberties, e.g., relating to improper collection, use, retention, and dissemination of the information about US persons, or violation of First Amendment rights of free speech and association or Fifth Amendment guarantees of due process and equal protection.

Disposition of Complaints: “Disposition of complaints” refers to CLPO administration of the complaint (vice specific resolution of the complaint), i.e., responsive action, determination of “no merit” or referral of the complaint to a more appropriate venue.

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REVIEWS

TYPE	NO.
Compliance by ODNI with requirements under the Constitution and laws, regulations, Executive Orders, and implementing guidelines relating to civil liberties and privacy	3
Reviews to ensure that the use of technology sustains privacy protections	3
Reviews of the administration of programs and operations of the ODNI to ensure implementation and operation of appropriate safeguards related to civil liberties and privacy	32
Privacy Act/OMB Circular A-130	4
E-Gov Act-Privacy Impact Assessments (PIAs) of ODNI systems	
Privacy Guidelines of the Intelligence Reform and Terrorism Prevention Act Information Sharing Environment	2
FISA Compliance Reviews	10
OMB M-10-22 Review (web tracking technology)	
OMB M-10-23 Review (use of 3 rd party websites/applications)	
Privacy reviews of ODNI business cases supporting information technology budget requests	
OMB M-07-16 Reviews (breach of PII)	
Review of data mining activities under Section 804 of the 9/11 Act	1
Other review directed by DNI or required by law.	17

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ADVICE AND RESPONSE

TYPE	NO.
Regulations	
Directives	
Instructions	
Guidance	2
Agreements	
Written interpretations, Opinions, Memoranda	
Training *Internal (within ODNI) 2 External (in the IC) 1 Outside IC 12 (count excludes bi-weekly delivery of entrance on duty training)	
Procedures	
Other	65

*This category includes training presentations given on an ongoing basis within ODNI.

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COMPLAINTS

TYPE	NO.	DISPOSITION
Privacy Act		
ODNI sharing under the Information Sharing Environment (including terrorist watch list)		
Alleging violation of information privacy rights and/or civil liberties, such as those relating to alleged improper collection use, retention, and dissemination of information about U.S. persons, or such as those relating to the alleged violation of First Amendment's guarantees of freedom of speech and association, or Fifth Amendment guarantees of due process and equal protection		