

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE



Semiannual Report
Office of Civil Liberties, Privacy and Transparency
Period Covered: January 2015 to June 2015

LEADING INTELLIGENCE INTEGRATION

**SEMIANNUAL REPORT OF THE
OFFICE OF CIVIL LIBERTIES, PRIVACY AND TRANSPARENCY (CLPT)
OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE (ODNI)
PERIOD COVERED: JANUARY 1, 2015 – JUNE 30, 2015**

INTRODUCTION

As required by Section 803 of the *Implementing Recommendations of the 9/11 Commission Act of 2007* (P.L. 110-53), as amended, this report provides information about the notable activities, from January 1, 2015 through June 30, 2015, of the ODNI's Office of Civil Liberties, Privacy and Transparency (CLPT) to include the types of privacy and civil liberties reviews conducted; the types of advice, guidance or response furnished; and the types of complaints received and processed. In the interest of enhancing transparency, also provided is a narrative overview of representative activities for the same period.

ABOUT CLPT

CLPT is headed by the ODNI's Civil Liberties Protection Officer, a position established by the *Intelligence Reform and Terrorism Prevention Act of 2004*. The Act provides that the Civil Liberties Protection Officer reports directly to the Director of National Intelligence (DNI), and sets forth his duties, which include ensuring that privacy and civil liberties protections are appropriately addressed in the policies and procedures of intelligence agencies; overseeing compliance by the ODNI with privacy and civil liberties protections in programs and operations administered by the ODNI; reviewing complaints concerning possible abuses of civil liberties and privacy in ODNI programs and operations; and ensuring that the use of technology sustains, and does not erode, privacy.

The Civil Liberties Protection Officer also serves as the ODNI's Chief Transparency Officer. In that capacity, he is responsible for leading implementation of the Principles of Intelligence Transparency for the Intelligence Community (IC). The principles guide how the IC should make information publicly available while protecting classified information, when disclosure would harm national security.

By leading the integration of civil liberties and privacy protections into the policies, procedures, programs and activities of the IC, CLPT facilitates the conduct of intelligence activities in a manner that protects civil liberties and privacy, provides appropriate transparency, and earns and retains the trust of the American people. CLPT participation in developing and overseeing IC activities seeks to give the American people confidence that the IC is pursuing its vital security mission in a manner that exemplifies American values.

In general, CLPT examines the privacy and civil liberties ramifications of intelligence-related technologies, programs and procedures. CLPT staff collaborate closely with client offices to understand their initiatives or projects in detail, starting with the intelligence purpose for the specific activity, the authority pursuant to which data is obtained, and the characteristics and use of the data. Based on each set of individual circumstances, CLPT reviews the appropriateness of protective measures and compliance with legal and policy mandates, and works to modify or formulate protections as necessary.

CLPT likewise reviews proposed legislation, policy documents, instructions, standards, guidance, testimony, reports, releases, and other materials to ensure that any privacy and civil liberties issues are appropriately addressed and properly articulated. These reviews can pertain specifically to ODNI, or to other IC elements to the extent that the issues fall within CLPT's IC-wide responsibilities.

CLPT carries out its duties in close consultation with other offices with relevant and complementary responsibilities, including offices of general counsel, offices of inspectors general, intelligence oversight offices, civil liberties and privacy offices, and the Department of Justice (DOJ). CLPT champions the *Principles of Professional Ethics for the IC: Mission, Truth, Lawfulness, Integrity, Stewardship, Excellence, and Diversity*. These are fundamental, ethical principles that unite professionals across agencies and functions, and distinguish "intelligence" from other professions.

CLPT also reviews and investigates (as appropriate) alleged privacy and civil liberties abuses. When CLPT first receives a complaint, it must determine whether the complaint is properly directed to CLPT or whether it should be referred to a different office or agency. For example, depending on the circumstances, certain complaints may be referred to the Intelligence Community Inspector General, the Office of Equal Employment Opportunity and Diversity, or to another agency. If CLPT determines that a complaint is not frivolous and merits a full review, it researches the pertinent legal and policy standards, and then obtains and analyzes relevant information. Based on its findings, CLPT determines the appropriate course of action to resolve the complaint, and notifies the complainant.

OVERVIEW FOR THE REPORTING PERIOD

Please note that CLPT was called the Civil Liberties and Privacy Office (CLPO) during the reporting period addressed in this report and is referenced as such in the body of this document.

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 (FISA) and other authorized communications collection programs.

In addition, CLPO helped the Office of Management and Budget (OMB) evaluate the President's Review Group on Intelligence and Communication Technologies' recommendation "to apply the Privacy Act of 1974 to non-U.S. persons where practicable, or to establish alternative privacy policies that apply appropriate and meaningful protections to personal information regardless of a person's nationality."

PPD-28. In February 2015, ODNI released the [SIGNALS Intelligence Reform 2015 Anniversary Report](#), which reported on the implementation of the 2014 Presidential Policy Directive (PPD) - 28, *Signals Intelligence Activities*, and related matters. The report also linked to the IC elements' issuance of *Policies and Procedures to Safeguard Personal Information Collected through SIGINT*.

Transparency. The Intelligence Transparency Working Group (ITWG), an interagency forum that CLPO established at the DNI's direction, issued the [Principles of Intelligence Transparency for the Intelligence Community](#). The principles direct and guide IC elements to proactively engage in greater openness about their activities, practices, and procedures.

Implementation of the transparency principles seeks 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* website and participated in agency deliberations on requests to declassify records for public release. For example, in April 2015, ODNI released its [Second Annual Statistical Transparency Report Regarding Use of National Security Authorities](#).

Additionally, CLPO helped coordinate and conduct the review and redaction process for release of FISA documents. For example, a tranche of FISA documents was released in March 2015; this included [documents](#) concerning how the FBI shares unevaluated FISA counterterrorism information under FISA Titles I and III with the CIA, NSA, and the National Counterterrorism Center (NCTC), and the minimization procedures governing how the CIA, NSA and NCTC use this information.

In furtherance of the transparency initiative, CLPO presented on the development of the transparency principles at a wide variety of fora, including engagements with European

counterparts and other stakeholders external to the IC. CLPO also engaged with other stakeholders on a variety of open government¹ initiatives.

For example, CLPO reviewed and supported the ODNI Information Management Division's decision to participate in the DOJ's Freedom of Information Act (FOIA) Proactive Disclosure Pilot, in which participants would proactively post all materials released through FOIA to ODNI's public-facing website.

Insider Threat. Internal to the IC, CLPO continued to actively engage with stakeholders in implementing initiatives mandated by [Executive Order \(EO\) 13587](#), *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information*. One such initiative requires developing an "insider threat" monitoring and detection program that is consistent with privacy, civil rights and civil liberties protections for individuals subject to such monitoring. CLPO also continued to provide support to the National Insider Threat Task Force, established to assist agencies across government in developing similar insider threat policies and practices. And CLPO prepared and published [two systems of records notices](#), one for Counterintelligence Trends Analyses Records and the other for Insider Threat Program Records, published May 27, 2015.

Counterterrorism. CLPO continued to perform its advisory and compliance role with respect to the activities of NCTC, the operational component within the ODNI primarily responsible for counterterrorism intelligence analysis and counterterrorism strategic operational planning. 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 were consistent with analytic standards, free of bias, and protective of privacy and civil liberties.

FISA Oversight. CLPO conducted regular on-site visits at NSA, CIA, and FBI to ascertain compliance with procedures and guidelines under Section 702 of FISA. These oversight visits are conducted in concert with representatives from the DOJ and involve detailed reviews of documentation and discussions with relevant personnel. The results of these visits and other oversight activities are assessed as part of a semiannual assessment, produced jointly by the ODNI and the Office of the Attorney General. During the reporting period, CLPO also participated with DOJ in oversight of the NSA's Section 215 Bulk Telephony program; DOJ and

¹ 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*, Jan. 21, 2009.

CLPO conducted the regular quarterly review. More information on FISA is available at IC on the Record (<https://icontherecord.tumblr.com>).

EO 12333. CLPO continued to work with the DOJ, IC elements, 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 EO 12333, governing how IC agencies and elements collect, retain, and disseminate information concerning U.S. persons.² EO 12333 requires that such procedures be approved by the Attorney General, in consultation with the DNI.

Complaints. CLPO continued to ensure that ODNI has adequate procedures to receive, investigate, respond to, and redress complaints indicating possible abuse of civil liberties and privacy in the administration of the programs and operations of the ODNI.

Training. In addition to previously completed web-based training, CLPO continued the development of a third web-based course on protecting U.S. persons. When completed, this course will cover various laws, regulations, and policies protecting the civil liberties of U.S. persons and other protected individuals.

² Defined in EO 12333 Part 3, a U.S. 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: examinations of activities or processes as required by controlling privacy and civil liberties authorities.

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

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

ISE Complaint: 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: 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 U.S. 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: refers to CLPO administration of the complaint (versus 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	6
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	41
Privacy Act/OMB Circular A-130	6
E-Gov Act – Privacy Impact Assessments (PIAs) of ODNI systems	
Privacy Guidelines of the Intelligence Reform and Terrorism Prevention Act Information Sharing Environment	
FISA Compliance Reviews	13
OMB M-10-22 Review (Web tracking technology)	
OMB M-10-23 Review (use of third-party websites or applications)	
Privacy reviews of ODNI business cases supporting information technology budget requests	
OMB M-07-16 Reviews (breach of Personally Identifiable Information)	
Review of data mining activities under Section 804 of the 9/11 Act	3
Other review directed by DNI or required by law	18

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ADVICE AND RESPONSE

TYPE	NO.
Regulations	
Directives	
Instructions	
Guidance	
Agreements	
Written interpretations, opinions, memoranda	
Training (count excludes bi-weekly delivery of entrance on duty training)	
Internal (within ODNI)*	2
External (in the IC)	12
Outside IC	17
Procedures	
Other	1

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

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COMPLAINTS

TYPE	NO.	DISPOSITION
Privacy Act	1	Responsive action
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	1	Responsive action
Other	1	Referred to appropriate government agency