



NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

Biannual Report on the Activities of the National Security Agency Civil Liberties, Privacy, and Transparency Office

July - December 2018



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A Message from the Civil Liberties, Privacy, and Transparency Officer

During July through December 2018, the NSA Civil Liberties, Privacy, and Transparency (CLPT) Office was focused on developing the methodology and process for capturing metrics and substance for this statutorily required report. CLPT continued to interact quarterly with the Civil Liberties and Privacy Panel of the NSA Advisory Board. In addition, CLPT played a key advisory role in supporting the activities of the Russia Small Group and its efforts to protect the 2018 elections. CLPT was also focused extensively on providing advice related to ongoing concerns with USAFREEDOM Act records and external engagement continued particularly related to USAFREEDOM Act.

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I. PURPOSE AND SCOPE

The National Security Agency/Central Security Service (hereinafter NSA or the Agency) is committed to protecting and incorporating safeguards for civil liberties and privacy, consistent with its mission to protect and defend the nation. This report summarizes NSA's accomplishments and continuing commitment to conduct its vital foreign intelligence and cybersecurity missions in a manner that protects civil liberties and privacy, and promotes appropriate transparency during the reporting period of July-December 2018.

Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), as amended, requires that the Director of the NSA (DIRNSA) designate a privacy and civil liberties officer who reports directly to the head of the agency on matters related to privacy and civil liberties.¹ To implement this statutory requirement, the DIRNSA has designated the NSA Civil Liberties, Privacy, and Transparency Officer to fulfill this role.

Section 1062 also requires the NSA Civil Liberties, Privacy, and Transparency Officer to issue an unclassified report at least semi-annually, with a classified annex when necessary, to the appropriate committees of Congress, DIRNSA, and the Privacy and Civil Liberties Oversight Board (PCLOB). This law requires the unclassified report be made available to the greatest extent possible to the public.² The content of the report includes:

- Number and types of reviews undertaken;
- Type of advice provided and the response given to such advice;
- Number and nature of complaints received by the Civil Liberties, Privacy, and Transparency Officer concerning alleged violations of civil liberties and privacy; and
- Summary of the disposition of such complaints, reviews and inquiries conducted, and the impact of the activities of the Civil Liberties, Privacy, and Transparency Officer.

This report is structured so that DIRNSA, Congress, PCLOB, and the public can assess progress in areas required for reporting under this law, as well as other significant activities that may not be required by law, regulation, or policy but demonstrate NSA's commitment to

¹ Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) is sometimes referred to as "Section 803" because that provision was amended by Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) to establish the requirement for the heads of certain agencies to designate privacy and civil liberties officers. Section 1062 was further amended by Section 109 of the FISA Amendments Reauthorization Act of 2017 (P.L. 115-118), which added the DIRNSA to the list of agency heads required to designate a privacy and civil liberties officer. Section 1062 is codified at 40 U.S.C. 2000ee-1.

² Prior to the change to Section 1062 in 2017, NSA submitted information similar to that contained in this report to the Department of Defense (DoD) Privacy and Civil Liberties Officer in support of DoD's statutory reporting requirement.

protecting civil liberties and privacy. It also provides additional transparency about the activities of the Agency.

II. OVERVIEW OF THE NATIONAL SECURITY AGENCY CIVIL LIBERTIES, PRIVACY, AND TRANSPARENCY PROGRAM

The Civil Liberties, Privacy, and Transparency (CLPT) Office focuses on possible impacts to civil liberties and privacy, and areas for increased transparency, particularly as they relate to authorities and capabilities used to conduct NSA activities. It develops and supports policies that bridge the gaps between existing laws, current technology, foreign intelligence, and cybersecurity needs. The CLPT Office also engages and collaborates with mission elements and staff throughout NSA to improve processes to safeguard civil liberties and privacy; document existing civil liberties and privacy protections; and increase transparency with the workforce, public, key stakeholders, and overseers. NSA appointed its first Civil Liberties and Privacy Officer and formed a team of professionals to support the Officer in 2014. The duties of this position expanded as a result of Intelligence Community Directive (ICD) 107, “Civil Liberties, Privacy, and Transparency” to include the role of NSA Transparency Officer. This CLPT Officer advises the DIRNSA, NSA senior leadership, and mission managers on emerging areas where new intelligence capabilities and challenges intersect with civil liberties and privacy questions.

In establishing the CLPT Office, NSA consolidated various functions relating to civil liberties and privacy, many of which were already being performed throughout NSA. Bringing these functions together in a single office ensures that civil liberties, privacy, and transparency considerations remain a vital, comprehensive, and consistent driver for NSA’s strategic decisions. Through engagement, training, awareness, and advice, the CLPT Office underscores and reminds the NSA workforce of their individual responsibility to protect civil liberties and privacy while promoting transparency.

To ensure that civil liberties, privacy, and transparency factors are explicitly considered in decisions at NSA, CLPT works extensively across the Agency to communicate its concerns with leadership and the workforce. To further facilitate internal engagement and coordination, the Operations Directorate has forward-deployed subject matter experts (SMEs) to serve as members of the CLPT workforce. In addition, there are ongoing efforts to deploy additional SMEs to the CLPT Office from other Directorates.

In addition to fulfilling the legal requirements of Section 1062, as amended, the NSA CLPT Officer is designated as the NSA Component senior official for privacy, as required by Department of Defense (DoD) Instruction 5400.11, “DoD Privacy Program,” October 29, 2014. The current CLPT Officer also serves as a member of the Federal Privacy Council (FPC), the principal interagency forum established by Executive Order 13719 to improve privacy practices at agencies across the federal government.

The CLPT Officer carries out this mission to ensure civil liberties, privacy, and transparency are appropriately considered in the course of NSA’s mission, executing both statutory and policy requirements. The seven major activities conducted include:

- Advise NSA senior leaders and mission managers regarding the protection of civil liberties and privacy;
- Review and assess policy, procedures, technology, and operations and advise on incorporating civil liberties and privacy protections and safeguards in mission and non-mission systems;
- Maintain an effective mechanism for receiving complaints or indications of possible abuses of civil liberties and privacy;
- Provide training and guidance to NSA affiliates regarding their responsibilities to identify and protect the privacy of personally identifiable information (PII) and U.S. Person Information (USPI), including following the requirements of the Privacy Act of 1974;
- Receive and respond to incidents involving actual or potential breaches of PII in classified and unclassified environments and comply with reporting requirements;
- Periodically review and investigate NSA policies, procedures, and operations to determine whether they incorporate the protections and safeguards necessary to protect civil liberties and privacy;
- Provide appropriate transparency into the civil liberties and privacy protections present in NSA activities to mission partners, executive, legislative, and judicial branch overseers and the American public; including reporting independently to DIRNSA and external executive and legislative branch entities.

III. TYPE AND NUMBER OF ACTIVITIES UNDERTAKEN

During the reporting period, the CLPT Office reviewed 249 activities for civil liberties and privacy implications. Additionally, the CLPT Office notified external overseers of NSA activities through written explanations, oral briefings, and applicable documents in 5 specific instances.

Table 1 – Types of Activities

Types of Review	Number conducted
Reviews and assessments for civil liberties and privacy	249
Notifications to external overseers	5
Total	254



Reviews and Assessments for Civil Liberties and Privacy

The CLPT Office reviews and assesses NSA activities for privacy and civil liberties implications and provides advice/feedback, as appropriate. In addition, CLPT reviews a variety of documents requested by the Office of the Director of National Intelligence (ODNI) and DoD. Civil Liberties and Privacy Assessments (CLPAs) are incorporated into the NSA Risk Management process. The Risk Management process assesses a variety of factors when considering activities with potential threats to life or limb, major new programs or initiatives, significant change in direction, or new or existing activities that would have strategic implications for the Agency. CLPAs are conducted in other contexts, such as with certain collection activities, analytic tool development, information-sharing arrangements and decisions, compliance incidents, privacy incidents, and data retention decisions.

The CLPA asks questions about the amount and type of information associated with an activity; the scope of persons involved (including the number of individuals, status of those individuals as U.S. persons, and location of those individuals); the purpose and anticipated uses for the data; the methodology of the activity; and the safeguards in place to mitigate potential risks to civil liberties and privacy.

Examples of the types of documents and activities CLPT reviewed during this reporting period include the following:

- Conducted a variety of assessments on the collection, use, sharing/ dissemination, and retention of data for Signals Intelligence (SIGINT) and Cybersecurity missions that identified civil liberties and/or privacy risks. CLPT ensured that the civil liberties and privacy protections were tailored to mitigate identified risks or that the appropriate level of leadership was involved to accept the identified risks.
- Reviewed NSA policies and incorporated any necessary civil liberties and privacy protections and assessments.
- Reviewed and assessed NSA's information technology systems, particularly unclassified systems and systems handling administrative PII, to determine whether PII was properly identified and secured.
- Provided advice to the Department of Homeland Security (DHS) to assist with PII incident handling within the National Vetting Center.
- Assessed the risks of maintaining hardcopy personnel files in a separate building where files could be lost or damaged in transit.
- Assessed the risk of recommending approval to an exception to NSA policy that would allow second party personnel to access data stored in NSA/CSS managed architecture.

- Reviewed and assessed potential privacy incidents and ensured proper mitigations were put in place, where appropriate.
- Reviewed and assessed Memorandums of Understandings related to information sharing activities.
- Provided input into the DoD Annual Federal Data Mining Report.
- Provided input into the Office of the Inspector General (IG) review of the NSA privacy program as required by the Federal Information Security and Management Act.

Notifications to External Overseers

CLPT provides briefings and notifications to PCLOB related to its mission to ensure the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. During this reporting period, CLPT provided notifications to PCLOB regarding the USA FREEDOM Act.

CLPT is also responsible for providing to the DoD Senior Agency Official for Privacy (SAOP) notifications related to reportable privacy breaches, but whether or not the Agency had such breaches is classified.

IV. TYPE OF ADVICE PROVIDED AND THE RESPONSE GIVEN TO SUCH ADVICE

During the reporting period, CLPT continued to perform its advisory role. Examples of the types of advice provided by CLPT and the responses received are provided below. These activities are sustained activities in which CLPT played a key role in providing advice to senior leadership:

- **USAFREEDOM Act.** CLPT provided extensive advice regarding data quality and compliance concerns associated with Call Detail Records (CDRs) collected under the USA FREEDOM Act. CLPT advised on the need to provide appropriate notifications to Department of Defense, Director of National Intelligence, Department of Justice, Congressional Committees, and the PCLOB to demonstrate accountability for the use of the authority.
- **2018 Election Security.** CLPT provided advice regarding civil liberties and privacy protections and transparency associated with protecting the 2018 mid-term elections.
- **NSA and ODNI Implementation of E.O. 12333 Raw SIGINT Availability Procedures (2.3 Procedures).** CLPT provided ongoing advice to NSA and ODNI regarding the protection of civil liberties and privacy in the implementation of Attorney General (AG) approved E.O. 12333 Raw Signals Intelligence (SIGINT) Availability Procedures. These procedures, also known as 2.3 Procedures, require ODNI to approve

an Intelligence Community (IC) element’s civil liberties and privacy compliance program before the IC element can gain access to the raw SIGINT for a specific articulated intelligence mission.

- **DoD Manual 5240.01.** CLPT continued to provide ongoing advice to evaluate collection activities to determine whether the activities required enhanced safeguards to protect U.S. person information.

V. INTERNAL AND EXTERNAL OUTREACH

Engaging both internally and externally about how NSA protects civil liberties and privacy is a core function of the CLPT Office. Internally, the CLPT Officer hosted brown bag sessions and internal social media gatherings, and spoke at town halls hosted by internal NSA organizations. Co-leading the FPC’s Agency Implementation Committee, the CLPT Officer focused on sharing best practices around protecting civil liberties and privacy across the federal government.

External engagements during this reporting period included speaking at multiple public events, particularly addressing decisions to delete USAFREEDOM Act data because of data integrity issues. The audiences included overseers, civil liberties and privacy groups, and academics. The CLPT Office also hosted a group of civil liberties and privacy experts, on behalf of the NSA Director, to discuss NSA’s mission and how it protects civil liberties and privacy. These engagements allow the CLPT Officer to understand public concerns about NSA’s activities and their potential impact on civil liberties and privacy. These engagements also promote transparency and allow outside experts the ability to understand NSA challenges. CLPT continued to support involvement in a variety of conferences and academic engagements as well, both within the U.S. and internationally.

Table 2 – Internal and External Outreach

Type of Outreach July 2018 – December 2018	Number
Training and Awareness	5
Internal Engagements	13
External Engagements	16
Total	34

VI. QUESTIONS, CONCERNS, COMPLAINTS, AND REDRESS

For the purpose of this report, questions, concerns, or complaints submitted to the CLPT Office must include a written allegation of harm or violation of privacy or civil liberties protections. These concern the administration of an NSA program and/or operations raised by a member of the public, NSA workforce (including civilian, military, and contractors), or any other government officials.



Members of the public and NSA affiliates may contact CLPT via a form posted on NSA’s public website at www.nsa.gov to ask questions or to submit written complaints alleging violation of privacy or civil liberties protections in the administration of NSA programs and operations. Additionally, NSA affiliates with access to classified information technology systems may submit questions, concerns, and complaints to CLPT via an internal email or an anonymous web form. During this reporting period, CLPT received no actionable privacy and/or civil liberties complaints from either source. NSA did receive a number of questions as well as a request for information, as identified in Table 3 below.

CLPT received questions on a variety of topics during this reporting period, such as: collection and use of PII (particularly Social Security numbers); requests for Privacy Act Statements based on specific collections; input on survey tools; and policies related to the need to encrypt PII. CLPT reviews the question, concern, or complaint and provides written guidance if it is related to a civil liberties and privacy concern. If the activity could be a PII incident or breach, CLPT conducts an assessment (see CLPAs above). As appropriate, CLPT will work closely with the Office of the General Counsel and affected organization if additional guidance or mitigation is required.

In reviewing the received questions, concerns, and complaints, CLPT determines whether there is a civil liberties and privacy issue to evaluate and answer, or if the information needs to be forwarded elsewhere for review and response. CLPT also reviews submissions to determine if a question, concern, or complaint should be referred to the Inspector General (IG), and the IG similarly refers back to CLPT. CLPT receives a number of inquiries on the unclassified web site that are not actionable because they lack the information needed for the Agency to adequately assess and address. These requests are not captured in the metrics provided below.

Table 3 – Requests, Concerns, and Referrals

Requests, concerns, and referrals – July 2018 through December 2018	Quantity
Information requests to CLPT Office	1
Civil liberties and privacy questions	36
Concerns alleging violations of privacy and civil liberties protections	0
Requests for redress	1
Complaints, concerns, queries related to counterterrorism that would require whistleblower protections provided in the statute.	0
Referrals to and from the Office of Inspector General	0
Total Reviewed and Closed	38

