



NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

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

July – December 2020



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

During July through December 2020, COVID-19 continued to impact various aspects of the Agency and CLPT continued to focus on ensuring that the proper civil liberties and privacy protections were identified and built into mitigations that our agency was putting in place to protect NSA affiliates. Activities ranged from ensuring temperature testing activities did not include the collection of temperatures and other personal information, to notifications regarding what information the Agency would require for visitors and applicants coming to the Agency. A variety of technical opportunities were explored to determine improvements to contact tracing and ways to reduce the number of phone calls on whether an individual can or should return to work after quarantining.

The Agency explored opportunities to conduct more work in unclassified environments, which increases the risk to privacy when PII is implicated. CLPT continued to support the Privacy and Civil Liberties Oversight Board's oversight report on E.O. 12333 and the classified report on XKEYSCORE. CLPT orchestrated the review of hundreds of classified pages for redaction and release by ODNI and then supported engagement with key external subject matters in academia, media, think tanks, and civil society on the nature of the documents. Protecting the 2020 elections continued to be a main focus of the Agency, and CLPT continued to assist the Agency in providing appropriate civil liberties and privacy safeguards.

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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 2020.

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 (CLPT) Officer to fulfill this role.

Section 1062 also requires the NSA CLPT Officer issue an unclassified report at least semi-annually, with a classified annex when necessary, to the appropriate committees of Congress, DIRNSA, and 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 CLPT Officer concerning alleged violations of civil liberties and privacy;
- summary of the disposition of such complaints, reviews and inquiries conducted; and impact of the activities of the CLPT Officer.

This report is structured so that the DIRNSA, PCLOB, public, and Congress can assess progress in areas required for reporting under this law, as well as other significant activities that

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.

may not be required by law, regulation, or policy but demonstrate NSA's commitment to protecting civil liberties and privacy. It also provides additional transparency about Agency activities.

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

The Civil Liberties, Privacy, and Transparency (CLPT) Office focuses on civil liberties, privacy, and transparency issues, 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 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, the NSA CLPT Officer is designated as the NSA Senior Component Official for Privacy, as required by a Department of Defense (DoD) Instruction 5400.11, "DoD Privacy and Civil Liberties Programs," January 29, 2019. 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 the following.

- 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 environment 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 four hundred forty-four (444) 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 twenty-nine (29) specific instances.

Table 1 – Types of Activities

Types of Review	Number conducted
Reviews for civil liberties and privacy	444
Notifications, briefings, and applicable documents to external overseers	29
Total	473
Pages of classified documents reviewed and provided to PCLOB for oversight purposes	367
Pages of classified documents reviewed for PCLOB/public release	502

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. This 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, status 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 and ensured the civil liberties and privacy protections were tailored to mitigate identified risks or the appropriate level leadership was involved to accept the identified risks.
- Reviewed collection and use of publicly available and commercially available information and worked with mission owners to develop appropriate civil liberties and privacy safeguards.



- Reviewed and assessed a variety of NSA's information technology systems to determine whether PII was properly identified and secured, particularly as it related to unclassified systems and systems handling administrative PII.
- Reviewed and assessed policies, communications, and technologies related to the collection and use of personally identifiable information and personal medical information related to the declared health emergency from the COVID-19 pandemic.
- Reviewed and assessed potential privacy incidents and ensured proper mitigations were put in place where appropriate.
- Provided input into the DoD Annual Federal Data Mining Report.
- Provided input into the OIG review of the NSA privacy program as required by Federal Information Security and Management Act (FISMA).

Notifications, Briefings, and Applicable Documents to Overseers

CLPT provides notifications, briefings, and a variety of applicable documents to the 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 either directly or through ODNI. These included twenty-nine (29) such notifications, including nine classified documents (367 pages). CLPT continued to orchestrate the necessary briefings and responses to questions to enable PCLOB's E.O. 12333 deep dive on XKEYSCORE. CLPT in concert with the DoD, ODNI, and DOJ provided briefings on the SIGINT Annex.

CLPT provided subject matter expertise for five (5) Congressional briefings and correspondence, demonstrating NSA's incorporation of civil liberties and privacy protections into its mission activities. CLPT provided civil liberties and privacy subject matter expertise in two (2) quarterly intelligence oversight reports. CLPT is also responsible for notifying the DoD Senior Agency Official for Privacy (SAOP) about reportable privacy breaches, but whether or not the Agency had such breaches is classified.

Review of FISA Related Materials for release to PCLOB and the Public

CLPT facilitates the review of Foreign Intelligence Surveillance Act (FISA) related materials for release to the PCLOB and the public. CLPT led the review of 13 classified documents for necessary redactions and release by ODNI to the PCLOB and the public. These reviews covered 502 pages of material.



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:

- **2020 Election Security.** CLPT continued to provide advice regarding civil liberties and privacy protections and transparency associated with protecting the 2020 elections. CLPT played a review and advise role in the repeatable processes developed to provide enhanced safeguards for protecting civil liberties and privacy.
- **Unclassified Work Environment.** CLPT continued to support the strategic NSA initiative to move to the unclassified work environment, by conducting civil liberties and privacy assessments on unclassified work environment to identify and help mitigate civil liberties and privacy risks associated with these new activities.
- **Release of the SIGINT Annex.** CLPT worked closely within NSA and with counterparts at the Department of Defense, Office of the Director of National Intelligence, and Department of Justice to prepare for the approval and release of DoD Manual S-5240.01, Procedures Governing the Conduct of DoD intelligence Activities: Annex Governing Signals Intelligence Information and Data Collected Pursuant to Section 1.7 (c) of E.O. 12333 (the SIGINT Annex). The release occurred in January 2021
- **Support to ODNI Transparency Activities.** Pursuant to statutory requirements, ODNI published redacted copies of FISC opinions related to the 2019 FAA 702 certifications and the associated procedures. CLPT participated with ODNI, FBI, and DOJ on calls with former intelligence officials, press, and privacy and civil liberties groups to provide context and respond to questions.
- **Protect Privacy of Our Affiliates during COVID.** CLPT assessed the civil liberties and privacy impact of Agency activities related to COVID to include: contact tracing, proximity tracing, and temperature screening. A variety of mitigations ranging from increased transparency to reduced collection and access to information were implemented. CLPT provided written guidance on the collection and use of personal medical information and personally identifiable information (PII).
- **Advice in the development and implementation of 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. In particular, CLPT provided advice on issuing an NSA specific policy related to the implementation of Section 3.2 e., “Special Circumstances Collection,” for publicly available and commercially available collection.

- **NSA and ODNI on 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 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.

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, CLPT Officer presented to senior leadership the possible impacts to mission because of civil liberties and privacy concerns. CLPT supported activities with the NSA Advisory Board through virtual interactions and CLPT continued to educate on protecting privacy during COVID-19 and the implementation of COVID-19 mitigations. CLPT also participated in the review of National Institute of Standards and Technology (NIST) guidance on the protection of privacy and PII safeguards. The CLPT Officer actively participated at IC CLPT meetings, IC Transparency Council meetings, and FPC meetings. 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. CLPT continued to provide civil liberties and privacy training within NSA as well as for the broader IC and federal privacy community.

Externally, the CLPT Officer supported the ODNI with media and civil society engagements related to the release of FISA materials; supported ODNI in efforts related to European Court of Justice decisions; taught classes about assessing civil liberties and privacy at various academic institutions; and engaged in domestic and international conferences related to protecting civil liberties and privacy at NSA. These engagements promote transparency and allow NSA to understand any public concerns about NSA’s activities and potential impact on civil liberties and privacy.

Table 2 – Internal and External Outreach

Type of Outreach July 2020 – December 2020	Number
Training and Awareness	8
Internal Engagements	26
External Engagements	53
Total	87



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 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 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 and one referral from the OIG, 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 unclassified inquiries via NSA.gov 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 2020 through December 2020	Quantity
Information requests to the CLPT Office	0
Civil liberties and privacy questions	86
Concerns alleging violations of privacy and civil liberties protections	0
Requests for redress	0
Complaints, concerns, queries related to counterterrorism that would require whistleblower protections provided in the statute.	0
Referrals to and from the IG	1
Total Reviewed and Closed	87

