



Office of Privacy and Civil Liberties

Central Intelligence Agency

JANUARY – JUNE 2016

SEMIANNUAL REPORT





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FOREWORD

January 26, 2017

I am pleased to present the Semiannual Report of the Central Intelligence Agency's Office of Privacy and Civil Liberties, covering the period of 1 January 2016 to 30 June 2016.

This report covers the activities of the CIA's Office of Privacy and Civil Liberties, in accordance with Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, as amended.¹ CIA is required by law to protect the freedoms, civil liberties, and privacy rights of individuals while carrying out the intelligence activities that help to protect our Nation. As the CIA's mission evolves to meet new national security threats, we will look for additional opportunities to communicate to the public, to our oversight bodies, and to other key stakeholders our efforts regarding the protection of privacy and civil liberties in our programs and operations.

CIA is committed to protecting and incorporating safeguards for privacy and civil liberties, consistent with the Agency's national security mission. It is my hope that this report will promote a better understanding of our ongoing efforts to integrate privacy and civil liberties protections into our policies, procedures, and technologies.

Benjamin T. Huebner
Privacy and Civil Liberties Officer
Central Intelligence Agency

¹ Implementing Recommendations of the 9/11 Commission Act of 2007, as amended, 42 U.S.C. § 2000ee-1(f).

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I. PURPOSE AND SCOPE

In accordance with Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, as amended, (hereinafter, the “Implementing Recommendations of the 9/11 Commission Act”),² this report summarizes the activities of the Central Intelligence Agency’s (CIA) Office of Privacy and Civil Liberties (OPCL) for the reporting period of 1 January 2016 through 30 June 2016. This report provides an overview of the role of OPCL and a summary of notable initiatives undertaken during the reporting period.

The report also provides representative examples of the type of advice provided; the number and type of privacy and civil liberties reviews undertaken; and the number, nature, and disposition of complaints received. In accordance with the Implementing Recommendations of the 9/11 Commission Act, the following report has been prepared to the greatest extent possible in unclassified form.

II. OVERVIEW OF THE OFFICE OF PRIVACY AND CIVIL LIBERTIES

The CIA’s Office of Privacy and Civil Liberties is led by the Privacy and Civil Liberties Officer (PCLO), a senior Agency official who carries out statutory authorities to safeguard privacy and civil liberties in CIA intelligence operations, policies, programs, and technologies. In accordance with the Implementing Recommendations of the 9/11 Commission Act,³ the CIA PCLO serves as the Director of the CIA’s (DCIA) principal advisor to:

- Assist the DCIA and other CIA officials in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;
- Periodically investigate and review CIA actions, policies, procedures, guidelines, and related laws and their implementation to ensure that CIA is adequately considering privacy and civil liberties in its actions;

² 42 U.S.C. § 2000ee-1(f).

³ 42 U.S.C. § 2000ee-1(a).

- Ensure that CIA has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege that CIA has violated their privacy or civil liberties; and
- In providing advice on proposals to retain or enhance a particular governmental power available to CIA, include consideration of whether CIA has established that:
 - The need for the power is balanced with the need to protect privacy and civil liberties;
 - There is adequate supervision of the use by CIA of the power to ensure protection of privacy and civil liberties; and
 - There are adequate guidelines and oversight to properly confine its use.

In addition to fulfilling these statutory functions, the PCLO also serves as the CIA designated Senior Agency Official for Privacy (SAOP) and the CIA Information Sharing Environment Privacy Official.

The PCLO is supported by a team of dedicated privacy and civil liberties officers who work closely with the Office of the Director, as well as with other Agency Directorates, Mission Centers, and components to ensure privacy and civil liberties safeguards are fully considered in the day-to-day conduct of the Agency's complex and diverse intelligence mission. OPCL officers have diverse experience from across CIA, other Intelligence Community agencies, and other Executive Branch agencies/departments. OPCL officers receive specialized training in privacy and civil liberties and have backgrounds in law, Federal Government inspections, Federal records and data management, and library science.

Additionally, OPCL serves as the CIA's focal point for interactions with counterpart privacy and civil liberties organizations within the Office of the Director of National Intelligence (ODNI), the Office of Management and Budget (OMB), the Department of Justice (DOJ), other Intelligence Community elements, other departments and agencies within the Executive Branch, and the Privacy and Civil Liberties Oversight Board (PCLOB)⁴ regarding privacy and civil liberties matters.

⁴ The Privacy and Civil Liberties Oversight Board (PCLOB) is an independent, bipartisan agency within the Executive Branch, established by the Implementing Recommendations of the 9/11 Commission Act. The PCLOB's enabling statute, codified at 42 U.S.C. § 2000ee, vests it with two fundamental authorities: (1) to review and analyze actions the executive branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties, and (2) to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the nation from terrorism.

III. NOTABLE INITIATIVES

OPCL provides advice, conducts reviews, processes complaints, and conducts other activities to ensure the protection of privacy and civil liberties. The following sections provide a summary of several notable initiatives undertaken by OPCL during the reporting period, followed by metrics and examples reflecting a sampling of OPCL's activities.

a. The CIA's Executive Order 12333 Attorney General Guidelines

Section 2.3 of Executive Order 12333 requires that the collection, retention, and dissemination of information concerning United States persons be conducted in accordance with procedures established by the head of the Intelligence Community element concerned and approved by the Attorney General, after consultation with the Director of National Intelligence (DNI). During the reporting period, CIA worked with DOJ and the ODNI to conduct a comprehensive revision of CIA's procedures (hereinafter "Guidelines"). The CIA Guidelines had not been substantially revised since the 1980s. The CIA's revised Guidelines, which were publicly released in January 2017, capture changes in CIA intelligence activities since the 1980s and, in particular, will incorporate appropriate updates that relate to the manner in which CIA collects and uses information in a digital and interconnected environment.

OPCL reviewed and provided substantive comments on the Guidelines to ensure they appropriately balanced the protection of privacy and civil liberties in the conduct of CIA's authorized intelligence activities. OPCL also participated in interagency discussions regarding the Guidelines and led CIA's engagement with the PCLOB wherein CIA sought the expertise and guidance of the PCLOB regarding the proposed revisions to the Guidelines.

OPCL worked with CIA's Office of General Counsel and others to ensure that the CIA's Guidelines were written in a manner to be as transparent as possible to the public. As a result, the revised CIA Guidelines were publicly released in January 2017 proactively and without redaction.⁵

⁵ See <https://www.cia.gov/news-information/press-releases-statements/2017-press-releases-statements/statement-on-updated-EO-12333-procedures.html> (release statement); <https://www.cia.gov/about-cia/privacy-and-civil-liberties/CIA-AG-Guidelines-Signed.pdf> (the revised Guidelines).

b. Implementation of Presidential Policy Directive 28 (PPD-28)

In January 2014, President Obama signed Presidential Policy Directive 28 (PPD-28) on Signals Intelligence Activities. PPD-28 articulates principles that guide the United States Government's conduct of signals intelligence (SIGINT) activities for authorized intelligence purposes. In 2015, CIA publicly released its policy implementing PPD-28 in the context of CIA SIGINT activities.⁶ Under the implementing policy, OPCL has several roles, including reviewing novel or unique SIGINT collection activities and any significant changes to existing SIGINT collection activities to ensure appropriate safeguards are in place to protect personal information; coordinating procedures to receive, evaluate, and report significant compliance incidents to the DCIA and to the DNI; and reviewing requests for extensions to the five-year retention limitation on personal information.

During this reporting period, OPCL continued to assist CIA personnel and offices with implementing PPD-28's requirements concerning the collection, use, retention, and dissemination of SIGINT information. In addition, OPCL provided substantive guidance for several PPD-28 training initiatives to help CIA personnel's ensure understanding of and compliance with PPD-28's SIGINT limitations.

OPCL also reviewed and provided substantive comments on the development of:

- The ODNI Intelligence Community Standard 107-02, *Reporting Significant Compliance Issues Involving Personal Information under PPD-28 to the DNI*.⁷ The Standard implements Section 4(a)(iv) of PPD-28, which requires IC elements to report significant compliance issues to the DNI involving personal information of any person, regardless of nationality, collected as a result of signals intelligence activities, and establishes the process for reporting such issues to the DNI; and
- The ODNI 2016 Progress Report on Signals Intelligence Reform.⁸ The Report details the Intelligence Community's continued progress in implementing the

⁶ See <https://www.cia.gov/library/reports/Policy-and-Procedures-for-CIA-Signals-Intelligence-Activities.pdf>.

⁷ Issued 10 February 2016 and available at: https://www.dni.gov/files/documents/ICS107-02Reporting_significant_compliance_issues_under_PPD-28_to_theDNI.pdf.

⁸ Available at: <https://icontherecord.tumblr.com/ppd-28/2016>.

requirements of PPD-28, as well as other transparency efforts discussed in the 2015 Report.

c. EU-U.S. Privacy Shield

In 2016, the United States Department of Commerce and the European Commission agreed to the EU-U.S. Privacy Shield Framework,⁹ an agreement that replaced the U.S.-EU Safe Harbor Framework, to provide a mechanism to comply with European Union (EU) data protection requirements for the transfer of personal data from the EU to the U.S. in support of transatlantic commerce. During the negotiation of this agreement, OPCL worked closely with the Department of State and the ODNI to accurately describe the protections for non-United States persons with regard to the U.S. Government's acquisition, retention, and dissemination of SIGINT information.

During the reporting period, and in coordination with the Department of State and the ODNI, OPCL developed an internal process for handling Privacy Shield complaints that may implicate CIA's activities with regard to SIGINT information. CIA's PCLO will have primary responsibility at CIA to coordinate, respond to, and remedy, if needed, Privacy Shield complaints and inquiries via the designated Department of State Privacy Shield Ombudsperson.

d. Training

During the reporting period, OPCL engaged in an extensive review and update of the CIA's web-based training modules on the Privacy Act¹⁰ and Personally Identifiable Information (PII).¹¹ OPCL also provided extensive training in support of CIA components and the broader Intelligence Community, completing a total of 12 presentations during the reporting period. Training initiatives are designed to foster a culture of privacy and civil liberties awareness, as well as ensure the CIA

⁹ The Privacy Shield provides a mechanism for citizens of the European Union (EU), via their supervisory authorities in the Member States, to make a complaint to the Privacy Shield Ombudsperson, who is designated as the Senior Coordinator for International Information Technology Diplomacy at the Department of State. Specifically, the Ombudsperson mechanism will handle individual complaints from Europeans regarding concerns as to whether any SIGINT information regarding the requestor acquired by the United States Government was handled in compliance with U.S. laws, executive orders, presidential directive, and agency policies, as described in the ODNI Letter from General Counsel Robert Litt, found in the full text of the EU-U.S. Privacy Shield Agreement in Attachment B to that Agreement.

¹⁰ The Privacy Act of 1974, 5 U.S.C. § 552a.

¹¹ OMB Memorandum, 07-16 *Safeguarding Against and Responding to the Breach of Personally Identifiable Information* (May 22, 2007). See also, Office of Management and Budget Circular No. A-130 of July 2016, *Managing Information as a Strategic Resource*.

workforce understands and complies with requirements of the Privacy Act, OMB policy issuances, and other privacy and civil liberties legal and policy requirements.

OPCL also participated in the development of the CIA's new employee training program, leveraging the opportunity to promote and share the OPCL's mission, vision, and values. OPCL participation is aimed at helping new employees adopt these values and maintain awareness of civil liberties and privacy in the conduct of Agency activities as they enter the workforce. This training is an important step in continuing to instill the protection of privacy and civil liberties as a core cultural value.

IV. REPRESENTATIVE EXAMPLES AND METRICS

The following sections describe representative examples and metrics regarding the activities of OPCL in carrying out the PCLO statutory responsibilities during the period covered in this report in each of the areas enumerated in Section 803 of the Implementing Recommendations of the 9/11 Commission Act.

a. Advice

OPCL exercises its advisory function by providing specific policy guidance to CIA components related to an Agency program or operation to ensure that privacy and civil liberties are appropriately taken into account. Advisory activities generally are forward-looking and may involve a proposed course of action or a request for comments on a proposed rule, policy, or guidance. During this reporting period, OPCL provided advice and assistance to Agency Directorates and components, the ODNI, other Intelligence Community elements, and other Executive Branch agencies on matters ranging from inter-agency initiatives to individual requests for advice regarding the Privacy Act of 1974 or the proper handling of PII.

In addition to the Notable Initiatives discussed above, representative examples of the provision of advice include:

- OPCL provided guidance to an Agency information management specialist on Privacy Act accounting requirements in records storage, inventory, maintenance, and archiving activities.

- OPCL reviewed a proposed CIA database to affirmatively determine whether the database constituted a Privacy Act System of Records. OPCL further advised on Privacy Act requirements regarding appropriate administrative, technical, and physical safeguards to protect the data from unauthorized access and disclosure.
- OPCL reviewed and advised on appropriate consent language for the development of a CIA form collecting and disseminating personally identifiable information for official business purposes.
- OPCL led the CIA's efforts to provide review and comment to the Office of Management and Budget for the development and update of several issuances, to include:
 - OMB Circular A-130, *Managing Information as a Strategic Resource*, issued 28 July 2016, which establishes Executive Branch policy for information governance, acquisitions, records management, open data, security, and privacy.¹² The Circular includes an Appendix for managing information resources that involve PII and summarizes the key privacy requirements included in other sections of the Circular.
 - OMB Memorandum 16-24, *Role and Designation of Senior Agency Officials for Privacy*, issued 15 September 2016, which revises policies on the role and designation of the Senior Agency Official for Privacy, as required by Executive Order 13719, *Establishment of the Federal Privacy Council*, issued 09 February 2016.

b. Reviews

OPCL exercises its review function by examining a CIA system, process, program, or operation to consider whether it complies with privacy and civil liberties requirements, as set out in relevant Federal law, Executive Order, Executive Branch guidance, or internal agency policy. A review may be formal and responsive to a complaint or issue that has come to the attention of OPCL. A review may form a part of the OPCL's program of periodic investigation and review of

¹² Office of Management and Budget Circular No. A-130, *Managing Information as a Strategic Resource*, 81 Fed. Reg. 49689 (July 28, 2016).

Agency systems, processes, or programs.¹³ A review also may be incidental to OPCL providing advice to an Agency Office, Directorate, or component. Reviews are distinguished from the provision of advice insofar as a review consists of an assessment regarding whether an existing system, action, or procedure complies with law, regulation, or policy, in contrast to assessing a proposed system, action, or procedure. The following table provides metrics regarding all of the instances in which OPCL conducted reviews on privacy and civil liberties matters:

Type of Review	Responses Provided
Reviews Related to the Privacy Act	7
Reviews Related to Personally Identifiable Information	6

During the reporting period, OPCL conducted numerous reviews, ranging from whether a system constituted a Privacy Act system of records to an assessment of the adequacy of administrative, physical, and technical safeguards in information systems to protect PII. These reviews involved systems and applications used to support both CIA-wide and mission-specific activities. OPCL’s focus was to ensure compliance with the Privacy Act and requirements for protecting PII, to protect personal information from unauthorized use, access, or disclosure. OPCL also worked with or directed CIA personnel to Agency legal counsel on specific legal questions, when appropriate. Specific examples of reviews conducted during this reporting period include:

- OPCL provided a Privacy Act review of records held by the CIA’s Office of Equal Employment Opportunity (OEEO). OEEO records are particularly sensitive, as they often contain personal information concerning claims of harassment or discrimination. The OPCL review of OEEO records and systems focused on ensuring that the personal information of employees contained in the records was properly protected and handled in accordance with the requirements of the Privacy Act.
- OPCL reviewed select databases being developed and updated by the Counterintelligence Mission Center and Directorate of Operations, working in tandem with component legal counsel, information management specialists, and Information Technology (IT) specialists. The OPCL review included whether the

¹³ The PCLO is charged with the function of periodically investigating and reviewing CIA actions, policies, procedures, guidelines, and related laws and their implementation to ensure that CIA is adequately considering privacy and civil liberties in its actions. (*See* 42 U.S.C. § 2000ee-1(a)).

information contained in the databases constituted Systems of Records under the Privacy Act, and whether the required System of Records Notice had been published. OPCL also provided substantive advice, in conjunction with legal counsel, aimed at ensuring that information contained in these systems has been appropriately collected, used, maintained, and disseminated.

- OPCL collaborated with various Directorates and components to ensure the appropriate selection and implementation of privacy and security controls for Agency systems. Privacy and security controls selected to protect PII in information systems are distinct from the security controls selected to enforce security classification. Security classifications focus on protecting national security interests, while selection of privacy and security controls focus on protecting individuals and organizations from potential harm specific to privacy risks.

c. Complaints

Complaints include any concerns raised by members of the public, CIA staff or contractors, or any other government officials to the PCLO indicating a possible violation of privacy protections or civil liberties in the administration of the programs and operations of CIA.

The PCLO received no complaints during the reporting period.

Members of the public may contact the CIA PCLO to make a complaint that indicates a possible violation of privacy protections or civil liberties in the administration of CIA programs and operations. A complaint may be sent via postal mail to the following address:

Central Intelligence Agency
Privacy and Civil Liberties Officer
Washington, D.C. 20505

OPCL will review all complaints directed to the PCLO. A complaint must state the possible violation of privacy protections or civil liberties with sufficient detail to allow the PCLO to assess the nature of the complaint and whether a remedy may be appropriate. A response by the PCLO will neither confirm nor deny the accuracy of the complaint and/or whether the individual has been subject to CIA action, but will confirm that the complaint has been properly investigated and indicate, when appropriate, that the matter has been remedied or found to be in

compliance with applicable law or policy. OPCL also may refer a complaint to the CIA Office of Inspector General or to another Federal Government agency, as appropriate.

V. OTHER SUBSTANTIVE INITIATIVES

a. Engagement with the Privacy and Civil Liberties Oversight Board

During this reporting period, OPCL interacted closely with the PCLOB to support the PCLOB's conduct of its statutory review and advisory functions. Specifically, during the reporting period, OPCL facilitated two ongoing PCLOB examinations of CIA counterterrorism activities conducted pursuant to Executive Order 12333.

In addition, OPCL similarly coordinated CIA's efforts to respond to the PCLOB's request for information and briefings regarding the PCLOB's planned public report regarding the legal framework established by Executive Order 12333 and how its implementing procedures govern the Intelligence Community's collection, use, retention, and dissemination of information concerning U.S. persons. As part of this interaction, OPCL, in coordination with CIA's Office of General Counsel, DOJ, and the ODNI specifically engaged with the PCLOB regarding CIA's planned update to its Executive Order 12333 implementing Attorney General Guidelines, as previously discussed in the Notable Initiatives section of this report.

In June 2016, the PCLOB also issued a report recommending several best practices to Privacy and Civil Liberties Officers in drafting Section 803 reports such as this one. OPCL provided the PCLOB with substantive comments regarding the PCLOB's report and recommendations and has utilized the Board's recommendations in drafting the present report.

Lastly, OPCL engaged with the PCLOB regarding CIA's implementation of specific, applicable recommendations previously provided by the PCLOB. These recommendations, addressed to the CIA and other Intelligence Community elements, were made as part of the PCLOB's earlier reports on the telephone records program conducted under Section 215 of the USA PATRIOT ACT and on the operations of the Foreign Intelligence Surveillance Court and its report on the surveillance program operated pursuant to Section 702 of the Foreign Intelligence Surveillance Act.



**Office of Privacy and Civil Liberties
Central Intelligence Agency**