



# Office of Privacy and Civil Liberties

Central Intelligence Agency

JULY 2017 – DECEMBER 2017

## SEMIANNUAL REPORT





## FOREWORD

November 8, 2018

I am pleased to present the Semiannual Report of the Central Intelligence Agency's Office of Privacy and Civil Liberties (OPCL), covering the period of July 1, 2017 to December 31, 2017. This report sets out the activities of the OPCL in accordance with Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, as amended.<sup>1</sup> As detailed in this report, through this period OPCL continued to advise senior CIA leaders regarding the protection of privacy and civil liberties in the conduct of CIA's authorized intelligence activities and conduct reviews to help CIA continue to fulfill its obligations to protect the rights and liberties of every American.

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<sup>1</sup> 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”),<sup>2</sup> this report summarizes the activities of the Central Intelligence Agency’s (CIA) Office of Privacy and Civil Liberties (OPCL) for the reporting period of July 1, 2017 to December 31, 2017. 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. As required by statute, this report has been prepared to the greatest extent possible in unclassified form.<sup>3</sup>

## 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,<sup>4</sup> the CIA PCLO serves as the principal advisor to the Director of the CIA (DCIA) on the following responsibilities:

- 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;
- 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

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<sup>2</sup> 42 U.S.C. § 2000ee-1(f) (2012).

<sup>3</sup> 42 U.S.C. § 2000ee-1(g) (2012).

<sup>4</sup> 42 U.S.C. § 2000ee-1(a) (2012).

- 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 requirements, the PCLO also serves as the CIA designated Senior Agency Official for Privacy (SAOP) and the CIA Information Sharing Environment (ISE) Privacy Official. In the role as SAOP, the PCLO represents CIA on the Federal Privacy Council, the principal interagency forum established by Executive Order 13179<sup>5</sup> to improve privacy practices at agencies across the Federal Government.

A team of dedicated privacy and civil liberties officers supports the PCLO, who works 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 varied intelligence mission. OPCL officers have diverse experience from across CIA, other Intelligence Community (IC) elements, and other Executive Branch agencies or departments. A dedicated Privacy and Civil Liberties Counsel within the Office of the General Counsel also supports the OPCL. OPCL officers receive specialized training in privacy and civil liberties and have backgrounds in law, Federal Government inspections, information management, intelligence collection and analysis, security, and federal litigation.

Additionally, OPCL serves as 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), IC elements, and other departments and agencies within the Executive Branch, as well as with the Privacy and Civil Liberties Oversight Board (PCLOB)<sup>6</sup>, regarding privacy and civil liberties matters.

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<sup>5</sup> Executive Order 13719, 81 Fed. Reg. 30 (Feb. 9, 2016), available at <https://www.gpo.gov/fdsys/pkg/FP-2016-02-16/pdf/R1-2016-03141.pdf>.

<sup>6</sup> 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.

#### *a. CIA's Executive Order 12333 Attorney General Guidelines*

Executive Order 12333, Section 2.3 requires that the collection, retention, and dissemination of information concerning U.S. 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.

The CIA's revised implementing procedures (hereinafter, the "Attorney General Guidelines"), which were publicly released in January 2017,<sup>7</sup> reflect changes in CIA intelligence activities since the 1980s and, in particular, incorporate appropriate updates that relate to the manner in which CIA collects and uses information in a digital and interconnected environment.

During the reporting period, OPCL – in partnership with the CIA's Office of General Counsel – advised Agency components on aspects of the implementation of the Attorney General Guidelines. These engagements included broadening training for Agency employees to help ensure they understood their obligations to protect United States person information as required by the revised Guidelines. OPCL also developed recommendations to create, revise, and expand oversight mechanisms for ensuring Agency compliance with the Guidelines. As a result of these activities, and consistent with the PCLO's statutory obligation to review the privacy and civil liberties implications of CIA's activities, OPCL has been designated as the lead entity within CIA to conduct future oversight and review of the Agency's implementation of the United States person protections found in the Attorney General Guidelines.

#### *b. FISA Dissemination Review*

At the request of the Director of National Intelligence, OPCL conducted a review of CIA's dissemination of United States person information acquired pursuant to Section 702,<sup>8</sup> and Titles I and III of the Foreign Intelligence Surveillance Act of 1978, as amended (FISA).<sup>9</sup> Comparable

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<sup>7</sup> See <https://www.cia.gov/about-cia/privacy-and-civil-liberties/CIA-AG-Guidelines-Signed.pdf>. A comprehensive explanation of the revised Attorney General Guidelines can be found at <https://www.cia.gov/about-cia/privacy-and-civil-liberties/Detailed-Overview-CIA-AG-Guidelines.pdf>.

<sup>8</sup> 50 U.S.C. § 1881a.

<sup>9</sup> 50 U.S.C. §§ 1801-1813, 1841 – 1846.

reviews were conducted by NSA and FBI. CIA OPCL's review included an evaluation of the protocols used by CIA's FISA Program Office, the Office of General Counsel, and various CIA components to review such FISA disseminations. OPCL attended FISA dissemination training offered to all new officers seeking access to FISA information. OPCL also reviewed all disseminations of United States person information acquired under these FISA authorities in a four month period. The review resulted in an unclassified report that was subsequently released to the public by ODNI, and is available on the CIA and ODNI websites.<sup>10</sup>

Based on the results of this review, OPCL concluded that CIA does not conduct electronic surveillance or physical searches in the United States pursuant to FISA.<sup>11</sup> CIA is, however, authorized to receive, review, and appropriately disseminate certain data acquired pursuant to Section 702, and Titles I and III that have been initially collected by FBI or NSA. As described in the report, such information is required to be handled under the Foreign Intelligence Surveillance Court (FISC)-approved "minimization procedures" that govern the access to, retention of, and dissemination of FISA-acquired data.

OPCL's review of CIA's procedures and practices with respect to the dissemination of U.S. persons made the following findings:

- CIA has specific procedures to limit the dissemination of U.S. person information to that which is assessed to be necessary to understand the foreign intelligence information.
- Dissemination of U.S. person information is only permitted after several prior steps to filter out irrelevant information concerning U.S. persons.
- CIA requires all initial disseminations of information acquired pursuant to Titles I/III and Section 702 of FISA concerning U.S. persons to be reviewed and approved by both CIA OGC and the FISA Program Office prior to dissemination.

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<sup>10</sup> Review of Procedures and Practices of CIA to Disseminate United States Person Information Acquired Pursuant to Titles I and III and Section 702 of the Foreign Intelligence Surveillance Act (FISA), Central Intelligence Agency, Office of Privacy and Civil Liberties, August 2017. See [https://www.cia.gov/about-cia/privacy-and-civil-liberties/other-opcl-reports/FISA\\_Dissemination\\_Report\\_August2017.pdf](https://www.cia.gov/about-cia/privacy-and-civil-liberties/other-opcl-reports/FISA_Dissemination_Report_August2017.pdf).

<sup>11</sup> See Executive Order 12333, Section 2.4(a) and (b). CIA has limited authority to conduct electronic surveillance in the United States for testing and training purposes or to conduct countermeasures to hostile electronic surveillance, as well as physical searches of non-U.S. persons' personal property that is already lawfully in CIA's possession. A description of the limited electronic surveillance and physical search activities that may be conducted within the United States may be found in Sections 4.4.1, 4.4.3, and 4.4.4 of CIA's Executive Order 12333 Attorney General Procedures, available at <https://www.cia.gov/about-cia/privacy-and-civil-liberties/CIA-AG-Guidelines-Signed.pdf>.

- Consistent with prior oversight reviews, OPCL discovered no intentional violations of CIA’s FISA procedures governing the handling and dissemination of U.S. person information.
- CIA’s disseminations of FISA-acquired information concerning U.S. persons are limited in number and, when identifying a particular U.S. person, generally provided to a relatively narrow audience in order to address a specific national security threat.
- Relatedly, because these disseminations of FISA-acquired information were generally for narrow purposes and sent to a limited number of recipients, the replacement of a U.S. person identity with a generic term (e.g., “named U.S. person,” sometimes colloquially referred to as “masking”) was rare, due to the need to retain the U.S. person identity in order to understand the foreign intelligence information by this limited audience.
- Using a generic term in place of a U.S. person’s name occurs in finished intelligence products provided to policymakers and broader audiences within the IC, but subsequent requests to reveal the identity of the U.S. person (sometimes colloquially referred to as “unmasking”) obtained under FISA authorities are rare. OPCL identified no such “unmaskings” in the four months of FISA disseminations that it reviewed.
- CIA has an extensive and multi-pronged approach to training to ensure compliance with the FISA minimization procedures.
- Compliance and oversight activities to ensure and monitor adherence to the FISA minimization procedures are carried out by several elements of CIA, as well as DOJ, ODNI, Congress, and the FISC.

The report was prepared at the unclassified level to increase public transparency and awareness of CIA’s activities, authorizations, and limitations regarding the dissemination of U.S. persons’ information acquired in accordance with FISA.

### ***c. Engagement with the Privacy and Civil Liberties Oversight Board***

OPCL continued to closely interact with the Privacy and Civil Liberties Oversight Board to provide information responsive to PCLOB queries regarding an ongoing review of a CIA counterterrorism activity conducted pursuant to Executive Order 12333.

In addition, OPCL worked with an Agency component to ensure the continued implementation of the PCLOB's recommendations from a completed review of a different counterterrorism activity conducted pursuant to Executive Order 12333.

#### ***d. Data Mining Report***

Section 804 of the Implementing Recommendations of the 9/11 Commission Act of 2007, also known as the Federal Agency Data Mining Reporting Act of 2007, requires the head of each Federal department or agency, in coordination with the privacy officer, to submit an annual report to Congress describing any activity to use or develop "data mining," as that term is defined in the statute.<sup>12</sup> OPCL identified an activity that was conducted by CIA in 2016 that met the definition of data mining and was reportable to Congress under the act. During this reporting period, OPCL reviewed this data mining activity and evaluated the privacy and civil liberties protections employed by CIA to ensure that data was appropriately handled and used throughout the data mining activity. Due to the classified nature of the data mining activity, OPCL's detailed description of the activity and privacy and civil liberties analysis was classified, but public portions of the CIA's data mining report may be found on CIA's website.<sup>13</sup>

#### ***e. Information Sharing***

As stated in previous reporting, a critical component of the work of OPCL is to advise on how information may be appropriately shared by and with CIA in a manner that gives proper consideration to privacy and civil liberties concerns. In this reporting period, OPCL advised various Agency components, and collaborated with other external agency mission partners, on several policy issues that impacted information sharing arrangements designed to support a range of CIA intelligence missions, to include counterterrorism and insider threats.

#### ***f. Training and Awareness***

During the reporting period, OPCL provided formal and informal training and engaged in other activities designed to foster a culture of privacy and civil liberties awareness for the workforce in the conduct of the Agency's authorized activities. Several of these training and awareness activities are summarized below:

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<sup>12</sup> 42 U.S.C. § 2000ee-3 (2007).

<sup>13</sup> See <https://www.cia.gov/about-cia/privacy-and-civil-liberties/other-opcl-reports/2016-cia-data-mining-report.PDF>.

- *Training and Awareness*: OPCL provided tailored training and information on privacy and civil liberties topics to a host of Agency components and offices, including orientation training for new Agency officers, to senior Agency training officials, Office of General Counsel attorneys, and the Agency’s Diversity and Inclusion Office. OPCL training encompassed topics such as how to protect personally identifiable information (PII), compliance with the Attorney General Guidelines concerning the protection of U.S. persons’ information, and compliance with applicable laws, policies, and regulations. Representative examples include:
  - Training and informational sessions to Agency information management specialists on compliance with the Privacy Act and requirements to protect PII;
  - A privacy and civil liberties awareness presentation to the CIA Diversity and Inclusion Office;
  - Informational briefings and a Q&A session on the Privacy Act and how to protect PII to Agency (IT) professionals; and
  - An internal, brown-bag panel discussion by the PCLO and other senior subject-matter experts on privacy and civil liberties and compliance requirements pursuant to the Privacy Act, Executive Order 12333 and the Agency’s implementing Guidelines, and other related policies.
- *Constitution Day*: OPCL sponsored an internal Agency challenge, to commemorate Constitution Day (September 17) and raise awareness of the Constitution for the workforce. The challenge, designed to prompt a personal reflection and study of the Constitution and its underlying principles, asked Agency officers to share their personal thoughts, perspectives, and ideas on what the phrase “We the People” meant to them in achieving the Agency’s mission and in their everyday lives.

***g. Outreach***

The PCLO, in his role as the Agency’s Transparency Officer, met with members of the press, non-governmental organizations, and other experts through various outreach initiatives to inform the public about the institutional and policy frameworks that lie at the intersection of intelligence, privacy, and civil liberties to enhance oversight and privacy protections in the conduct of intelligence activities. For example:

- Along with other Federal government privacy and civil liberties and subject-matter experts, the PCLO met with the press, civil society advocates, non-governmental organizations, and others, to describe the privacy and civil liberties protections incorporated into the FISA Section 702 program activities at CIA;

- The PCLO spoke at a panel at CIA’s annual *Ethos and Profession of Intelligence Conference*, held at George Washington University. The panel, titled “Masking Unmasked: Conducting Espionage in a Transparent, Connected World” discussed the benefits and harms of transparency as they relate to the practice of espionage, as well as safeguards the IC employs to protect information, privacy, and civil liberties in an increasingly open and interconnected world;
- The PCLO spoke at a training panel and a conference for Federal government privacy officials on the protection of privacy and civil liberties in the IC; and
- The PCLO presented at the Federal Privacy Summit sponsored by the Federal Privacy Council.

#### IV. REPRESENTATIVE EXAMPLES AND METRICS

In addition to the notable initiatives discussed above, this section describes 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 provides information, guidance, and/or assistance (generically categorized as “advice”) to CIA components to ensure Agency programs and activities incorporate appropriate privacy and civil liberties protections. 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 to various Agency Directorates and components, ODNI, other IC elements, and Executive Branch agencies on matters ranging from inter-agency initiatives to individual requests for advice regarding the Privacy Act of 1974<sup>14</sup>, the proper handling of PII, implementation of the Attorney General Guidelines, and other matters.

Representative examples include:

- OPCL met with offices to discuss requirements and recommendations for data tagging to enhance protections for U.S. persons’ information in Agency IT systems;
- OPCL provided advice to CIA OGC and another Agency component on tracking disseminations of U.S. persons’ information;

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<sup>14</sup> 5 U.S.C. § 552a (2012).

- OPCL met with another IC element to provide information and assistance concerning the privacy protections mandated under Section 702 of the FISA;
- OPCL conducted numerous meetings with Agency offices and components to advise on the requirements under the Privacy Act on the applicability of System of Records requirements; and,
- OPCL provided substantive input and comments on proposed policy initiatives or frameworks on matters involving security, data access, and training requirements to ensure the appropriate consideration of privacy and civil liberties in Agency activities.

### ***b. Reviews***

OPCL exercises its review function by examining CIA systems, processes, programs, or activities to consider whether such comply with privacy and civil liberties requirements, as set out in relevant Federal law, Executive Order, guidance, or policy. A review may be formal and responsive to a complaint or issue that has come to the attention of OPCL or from a part of the OPCL’s program of periodic investigation and review of Agency systems, processes, programs, or activities.<sup>15</sup> A review also may be collateral to OPCL providing advice to an Agency Office, Directorate, or component.

For the purposes of this report, reviews are distinguished from the provision of advice insofar as a review consists of an assessment regarding whether an existing system, process, program, or activity complies with law, regulation, or policy, in contrast to assessing a proposed system, action, or procedure. The following table provides metrics regarding the instances in which OPCL conducted reviews on privacy and civil liberties matters:

<b>Types of Review</b>	<b>Number of Reviews Conducted</b>
Related to Personally Identifiable Information	6
Related to Collection, Retention, and Dissemination Activities	3

During the reporting period, OPCL conducted six reviews concerning the use and handling of PII and three reviews concerning authorized and appropriate collection, retention, and dissemination activities, consistent with the PCLO’s review responsibilities. In the reviews concerning the use and handling of PII, the matter involved most typically dealt with the unnecessary collection and retention of social security numbers or the disclosure of the PII of an Agency employee to an internal recipient who was not authorized to receive the information.

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<sup>15</sup> 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)).

The second type of review concerned the authorized collection, retention, or dissemination activities engaged in by certain Agency components to ensure they were adequately considering privacy and civil liberties concerns in their actions. These reviews include the FISA Dissemination Review and the Data Mining Report discussed above in the Notable Activities section.

### *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.

During the reporting period, OPCL received two complaints from CIA personnel and six complaints from the public. The PCLO conducted appropriate reviews and inquiries to assess the nature of the complaint and to assess their disposition.

The following tables provide metrics regarding the number, nature, and disposition of the complaints received by the PCLO:

#### **I. Internal Complaints:**

Nature of Complaint	Number of Complaints	Disposition of Complaint
Misuse of PII	1	Complaint closed. OPCL determined there was an insufficient factual basis to support the complaint.
Infringement of a Constitutional Right	1	Complaint closed. OPCL determined there was an insufficient factual basis to support the complaint.

## II. Complaints from the Public:

Nature of Complaint	Number of Complaints	Disposition of Complaint
Allegation that CIA violated a civil liberty	5	Complaints closed. OPCL determined there was an insufficient factual basis to support the complaint.
Request for assistance from CIA	1	Complaint closed. OPCL determined the request received would be handled as a complaint. OPCL determined there was no factual basis to support the complaint and no nexus between the concern expressed and the operation of a CIA program or activity.

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 U.S. postal mail to the following address:

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

Complaints may also be submitted via a web form accessible on [www.cia.gov/privacy](http://www.cia.gov/privacy).

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. CONCLUSION

This semiannual report summarizes the CIA OPCL's activities for the reporting period of July 1, 2017 to December 31, 2017. OPCL is committed to ensuring that CIA's activities align with our enduring commitment to protecting privacy and civil liberties.

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

