



# Office of Privacy and Civil Liberties

Central Intelligence Agency

JANUARY 2017 – JUNE 2017

## SEMIANNUAL REPORT





## FOREWORD

February 28, 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 January 1, 2017, to June 30, 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>

While the work of OPCL is varied, ranging from the review of individual systems for compliance with the Privacy Act to advising on the appropriate privacy and civil liberties controls required for interagency information sharing, OPCL's primary focus during this reporting period was on the finalization, public release, and implementation of the revisions to CIA's Executive Order 12333 Attorney General Guidelines. These updated Guidelines provide the framework that CIA will use for the foreseeable future to collect, handle, and—where, and only where, appropriate—use information concerning United States persons. In conformance with the Principles of Intelligence Transparency, these Guidelines were released to the public in their entirety and are available on CIA's website.<sup>2</sup>

In addition, and in collaboration with CIA's Office of Public Affairs, OPCL unveiled a new section of the public CIA website.<sup>3</sup> The new section describes CIA's commitment to protecting privacy and civil liberties, provides explanations of how the Attorney General Guidelines are used to protect personal information, details the work of OPCL, includes reports published by OPCL, and provides a web form and other mechanisms for the public to make privacy and civil liberties complaints. I hope these new resources, as well as this report, will further elucidate to the public the care and respect CIA takes in protecting the privacy and freedoms of every American.

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Privacy and Civil Liberties Officer  
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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).

<sup>2</sup> See <https://www.cia.gov/about-cia/privacy-and-civil-liberties/CIA-AG-Guidelines-Signed.pdf>.

<sup>3</sup> See <https://www.cia.gov/about-cia/privacy-and-civil-liberties/>.

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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>4</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 January 1, 2017, to June 30, 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>5</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>6</sup> 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;
- 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>4</sup> 42 U.S.C. § 2000ee-1(f) (2012).

<sup>5</sup> 42 U.S.C. § 2000ee-1(g) (2012).

<sup>6</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>7</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 diverse 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, Federal records and data management, intelligence collection, and analysis.

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 the Privacy and Civil Liberties Oversight Board (PCLOB)<sup>8</sup> regarding privacy and civil liberties matters.

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<sup>7</sup> Executive Order 13719, Vol. 81, Federal Register, No. 30 (2016), available at <https://www.gpo.gov/fdsys/pkg/FP-2016-02-16/pdf/R1-2016-03141.pdf>.

<sup>8</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. Before and during the reporting period, CIA worked with DOJ and ODNI to finalize the comprehensive revision to CIA's procedures (hereinafter, the "Guidelines"). The Guidelines had not been substantially revised since the 1980s.

The revised Guidelines, which were publicly released in January 2017, 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. Improvements to the revised Guidelines include:

- Protections for Unevaluated Information: The revised Guidelines now include specific approval requirements for handling any data set that cannot be promptly evaluated for its intelligence value, including a requirement to take reasonable steps to limit the collection of information to the smallest subset of data necessary to achieve CIA's authorized intelligence objectives, and develop appropriate plans for ensuring that the data is properly handled and queried.
- Restrictions on Queries: The revised Guidelines specifically address the querying of CIA's unevaluated data holdings, requiring that such queries be conducted only in relation to CIA's authorized intelligence activities and that, where practicable, queries of particularly sensitive data sets, such as the contents of communications, be accompanied by a statement explaining the purpose for the query, if designed to retrieve information concerning a United States person.
- Exceptional Handling Requirements for Electronic Communications and Other Similarly Sensitive Information: CIA complies with Executive Order 12333's prohibition against CIA conducting electronic surveillance in the United States, but may in the course of its authorized intelligence activities acquire electronic

communications through other means. In recognition of the heightened privacy concerns surrounding electronic communications, the revised Guidelines impose exceptional handling requirements on unevaluated electronic communications. The Guidelines limit access to such communications, require training in the handling of such communications, and with limited exceptions, require the destruction of communications subject to these more stringent handling requirements no later than five years after they have been made available to CIA intelligence professionals. Certain other sensitive information is subject to these same exceptional handling requirements.

- Compliance and Oversight: To ensure compliance, the Guidelines impose a number of authorization and documentation requirements on activities that may result in the acquisition of United States person information. The Guidelines also require periodic auditing. These requirements build on the extensive oversight that Congress, CIA’s Office of Inspector General, the PCLOB, and the President’s Intelligence Oversight Board conduct.

In addition to advising on the substance of the Guidelines, OPCL coordinated the Agency’s efforts to ensure that the Guidelines were released in a manner that provided the public the maximum transparency regarding these rules and restrictions. As a result, in January 2017, the Guidelines were released to the public in full – proactively and without redaction.<sup>9</sup>

OPCL also worked with Agency components and OGC to enhance public understanding of the practical effects of the Guidelines on intelligence activities. OPCL and other Agency components developed a ten page “deep dive” overview<sup>10</sup> that described the specific provisions of the Guidelines and their practical effect in ensuring that the Agency’s day-to-day intelligence mission activities are conducted in a manner that protects privacy and civil liberties. OPCL also worked with OGC and other Agency components to provide information to the press regarding the Guidelines. OPCL also conducted an in depth briefing regarding the Guidelines for non-governmental organizations concerned with privacy and civil liberties, intelligence, and transparency.

Following the publication of the Guidelines, OPCL engaged in extensive engagement and outreach to Agency components to enhance the Agency’s implementation of the Guidelines, which became effective in March 2017. In its advisory role, OPCL assisted the Agency in developing a

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<sup>9</sup> The Guidelines may be found at <https://www.cia.gov/about-cia/privacy-and-civil-liberties/CIA-AG-Guidelines-Signed.pdf>.

<sup>10</sup> The Overview may be found at <https://www.cia.gov/about-cia/privacy-and-civil-liberties/Detailed-Overview-CIA-AG-Guidelines.pdf>.

strategic implementation plan to help ensure consistent and compliant implementation of the Guidelines throughout the Agency. OPCL also took a leading role in Agency efforts to revise and expand internal oversight and training mechanisms as required by the revised Guidelines.

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

OPCL continued its interaction 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 implement the recommendations from a completed PCLOB review of a different counterterrorism activity conducted pursuant to Executive Order 12333.

#### ***c. Information Sharing***

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 actively advised CIA and interacted with other agency partners on several policy discussions that impact how information is shared within the United States government, to include sharing information to combat insider threats, to use in vetting processes, and more generally in the Intelligence Community Information Technology Environment.

#### ***d. Privacy Shield***

In 2016, the United States Department of Commerce and the European Commission agreed to the European Union (EU)-U.S. Privacy Shield Framework, an agreement that replaced the U.S.-EU Safe Harbor Framework, to provide a new mechanism to comply with EU data protection requirements for the transfer of personal data from the EU to the U.S. in support of transatlantic commerce. The Privacy Shield provides a mechanism for citizens of the EU, via their supervisory authorities in the Member States, to make a complaint to the U.S. Privacy Shield Ombudsperson, a U.S. State Department official, regarding the handling of signals intelligence (SIGINT) information concerning the requestor acquired by the United States Government. During this reporting period, OPCL participated in the development of policies to facilitate the work of the State Department Ombudsperson in processing such Privacy Shield complaints. These policies ensure a rigorous and multi-layered process for implementing the Privacy Shield's new redress mechanism.

### *e. Training and Awareness*

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

- *Formal Training Presentations:* OPCL provided tailored privacy and civil liberties training to Agency components, IC elements, and other federal government agencies. OPCL training included an overview of OPCL's organization and overall responsibilities for new component officers as part of a discussion of Agency capabilities and initiatives; Agency requirements to protect personally identifiable information (PII) and information subject to the Privacy Act for information management specialists; Agency requirements for handling and protecting PII in Agency data systems; Agency requirements for complying with Privacy Act and Agency privacy policy to summer interns; and providing a briefing to Agency information management specialists on the updated Guidelines and their impact on CIA records management activities. OPCL also participated in a series of workshops and conferences throughout the reporting period, at the request of an Agency component that primarily deals with industry partners, to share best practice for implementing privacy and civil liberties safeguards into various programs and activities. The PCLO also served as a panelist at an IC legal conference and a training for Federal privacy professionals where he discussed current topics in privacy, civil liberties, and transparency.
- *OPCL Internal Website:* OPCL developed an OPCL-dedicated website within CIA to facilitate workforce access to information about the office and OPCL's role within the Agency; news and updates; and point of contact information. The website also provides ready access to the OPCL Privacy Act web-based training, and links to internal Agency reference materials on privacy and civil liberties-related laws and authorities in order to help ensure effective implementation of privacy and civil liberties safeguards within the Agency.

#### *f. Public Outreach*

In addition to the extensive public outreach on the Attorney General Guidelines described above, OPCL engaged in other 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:

- The PCLO served on a panel on the topic of “*Conducting Legitimate Espionage in a Transparent Society*” with privacy and civil liberties officers from the National Security Agency (NSA), the Federal Bureau of Investigation, and ODNI at a conference hosted by the International Association of Privacy Professionals.
- In conjunction with ODNI, the PCLO met with a number of non-governmental organizations for a frank discussion on recent releases related to the Foreign Intelligence Surveillance Act of 1978<sup>11</sup> and other topics related to national security oversight, including CIA’s FISA Section 702 minimization procedures.
- The PCLO met with the United Nations’ Special Rapporteur for Privacy with officers from ODNI and NSA, to promote better international understanding of the principles and legal framework by which CIA and other Federal agencies protect privacy and civil liberties within the context of each of these agencies’ unique national security missions.

## 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.

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<sup>11</sup> 50 U.S.C. § 1801 (2017).

### *a. Advice*

OPCL provides specific policy guidance to CIA components to ensure that CIA programs and operations 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 and assistance to 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>12</sup> or the proper handling of PII.

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

- OPCL developed practical desktop references for Agency information management and information technology specialists to help them properly identify and understand how to manage PII and information protected under the Privacy Act contained in Agency records and information technology (IT) systems, to foster a mission appropriate understanding of applicable laws, regulations, and policies for protecting personal information in the Agency. As part of this initiative, OPCL initially engaged in extensive outreach with these stakeholders to solicit their input, and then worked to raise awareness of the documents throughout the Agency once the materials were completed. These reference materials enhanced Agency officers' understanding of the requirements when collecting, using, and storing PII and information subject to the Privacy Act in Agency records holdings and IT systems, and to promote a consistent application of safeguards throughout the Agency.
- In support of CIA's intelligence mission, OPCL advised various Agency components on incorporating appropriate privacy and civil liberties safeguards when developing or implementing formal information sharing agreements with multiple mission partners.
- OPCL provided guidance to an Agency component on the requirements of Federal law, regulation, and policy on how to appropriately protect the PII of individuals proposed to be recorded in an IT system in connection with the provision of certain employee services.

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<sup>12</sup> 5 U.S.C. § 552a (2012).

- OPCL provided guidance to an Agency component proposing to implement a recordkeeping tool for collating employee information needed for certain administrative purposes, and advising whether the system contained appropriate protections for PII.
- OPCL provided advice to an Agency component on whether a proposed IT system would constitute a Privacy Act System of Record, as well as how other records ingested from an existing Privacy Act System of Records should be protected.

### ***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 Agency systems, processes, or programs.<sup>13</sup> A review also may be collateral 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 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 SIGINT Collection Activities	1
Related to Personally Identifiable Information	8
Related to the Privacy Act	5

During the reporting period, OPCL conducted three specific types of reviews. The first type related to the review of a SIGINT activity, consistent with the PCLO’s responsibilities under Presidential Policy Directive 28, Signals Intelligence Activities.<sup>14</sup> The second type related to instances involving an incident or potential incident concerning PII contained in an Agency document, a record, or an IT system. In these cases, the matter involved most typically the

<sup>13</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)).

<sup>14</sup> Presidential Policy Directive 28, Signals Intelligence Activities, of January 17, 2014.

disclosure of PII to an internal recipient who was not authorized to receive the information. For example, OPCL reviewed an instance in which the personal financial information of an employee was inadvertently disseminated to another employee. OPCL also reviewed an instance involving the temporary loss of a written document containing PII in an open space at CIA, which was subsequently retrieved. These incidents or potential incidents were followed up by OPCL after-action correction and guidance to the officer or component concerned, as appropriate.

The third type of review typically related to a review of policies and processes for protecting information contained within a Privacy Act system of record, or whether an Agency IT system constitutes a Privacy Act system of record so that the information privacy protections required by the Privacy Act would be triggered. When appropriate, OPCL also worked with or directed CIA personnel to Agency legal counsel, including the OPCL Counsel, on specific questions requiring legal interpretation or guidance concerning the Privacy Act.

### *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 this reporting period, OPCL developed comprehensive internal procedures for the efficient and consistent management of complaints or inquiries.

The PCLO received no formal complaints from the public 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 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 January 1, 2017 to June 30, 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**

