



NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

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

January – June 2020



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During this reporting period CLPT hosted the first Privacy Day at NSA bringing focus to NSA workforce on the risks to their privacy in social media. CLPT also hosted external speakers to talk about the impacts of social media on teens. CLPT supported PCLOB on the issuance of their unclassified report on USAFREEDOM Act, which focused on NSA's use of the Call Detail Records provision. This unclassified report required extensive review and support of the Director of National Intelligence declassifying information in support of the report.

This timeframe was also marked by a substantial change in the operating environment with the onset of COVID-19. It necessarily shifted focus on the need to protect sensitive personally identifiable information to include personal medical information (PMI). The focus in late 2019 on creating an unclassified work environment and ensuring the proper sensitivity to privacy issues in that environment helped set the strong framework for protecting PII and PMI of our NSA affiliates. Despite the extensive changes in the environment because of COVID-19, NSA supported the ODNI's on time issuance of the Annual Statistical Transparency Report with new statistics related to unmasking of U.S. person information not previous provided. NSA also supported the issuance of the Intelligence Community's Principles and Framework for the Ethical Use of Artificial Intelligence. CLPT also continued focus on implementing the necessary safeguards to protect civil liberties and privacy throughout the work to safeguard the 2020 elections.

During this timeframe there was social unrest that also impacted our workforce, CLPT worked closely with Diversity, Equality, and Inclusion, Strategic Communications, and the Office of General Counsel to remind employees how they could participate in lawful protests.

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 January-June 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 and Privacy Officer to fulfill this role.

Section 1062 also requires the NSA Civil Liberties and Privacy 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 Civil Liberties, Privacy, and Transparency Officer concerning alleged violations of civil liberties and privacy; and
- Summary of the disposition of such complaints, reviews and inquiries conducted, and the impact of the activities of the Civil Liberties, Privacy, and Transparency Officer.

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.

This report is structured so that DIRNSA, Congress, PCLOB, and the public can assess progress in areas required for reporting under this law, as well as other significant activities that may not be required by law, regulation, or policy but demonstrate NSA's commitment to protecting civil liberties and privacy. It also provides additional transparency about the activities of the Agency.

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

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

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

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

In addition to fulfilling the legal requirements of Section 1062, 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 her mission to ensure civil liberties, privacy, and transparency are appropriately considered in the course of NSA’s mission, executing both statutory and policy requirements. The seven major activities conducted include:

- Advise NSA senior leaders and mission managers regarding the protection of civil liberties and privacy;
- Review and assess policy, procedures, technology, and operations and advise on incorporating civil liberties and privacy protections and safeguards in mission and non-mission systems.
- Maintain an effective mechanism for receiving complaints or indications of possible abuses of civil liberties and privacy;
- Provide training and guidance to NSA affiliates regarding their responsibilities to: 1) identify and protect the privacy of personally identifiable information (PII) and U.S. Person Information (USPI); including following the requirements of the Privacy Act of 1974.
- Receive and respond to incidents involving actual or potential breaches of PII in classified and unclassified environments, and comply with reporting requirements;
- Periodically review and investigate NSA policies, procedures, and operations to determine whether they incorporate the protections and safeguards necessary to protect civil liberties and privacy;
- Provide appropriate transparency into the civil liberties and privacy protections present in NSA activities to mission partners, executive, legislative, and judicial branch overseers and the American public; including reporting independently to DIRNSA and external executive and legislative branch entities.

III. TYPE AND NUMBER OF ACTIVITIES UNDERTAKEN

During the reporting period, the CLPT Office reviewed 245 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 eight specific instances. During this reporting period, CLPT Office was able to provide more detail on the number of pages reviewed for oversight and public review and will include these metrics going forward.

Table 1 – Types of Activities

Types of Review	Number conducted
Reviews and assessments for civil liberties and privacy	245
Notifications, briefings, and applicable documents to external overseers	8
Total	253
Pages of classified documents reviewed and provided to PCLOB for oversight purposes	3 pages
Pages of classified documents reviewed for PCLOB/public release	314 pages

Reviews and Assessments for Civil Liberties and Privacy

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

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

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

- CLPT conducted a variety of assessments on the collection, use, sharing/dissemination, and retention of data for Signals Intelligence (SIGINT) and Cybersecurity missions that identified civil liberties and/or privacy risks. CLPT ensured that the civil liberties and privacy protections were tailored to mitigate identified risks or that the appropriate level of leadership was involved to accept the identified risks.
- CLPT reviewed and assessed a number of NSA's information technology systems, particularly unclassified systems and systems handling administrative PII, to determine whether PII was properly identified and secured.
- CLPT reviewed and assessed potential privacy incidents and ensured proper mitigations were put in place, where appropriate.
- CLPT reviewed and assessed a number of 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.
- CLPT worked closely with Diversity, Equality, and Inclusion, Strategic Communications, and the Office of General Counsel to remind employees how they could participate in lawful protests.
- CLPT reviewed and reported on the ongoing efforts to reduce the use of social security numbers in NSA systems and forms.

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 engaged extensively with the PCLOB. Acting as the focal point for NSA, CLPT orchestrated extensive in-depth briefings from NSA subject matter experts to the Board members on mission, functions, technology, civil liberties and privacy policy, and compliance program for signals intelligence (SIGINT). These briefings and technology demonstrations permitted the PCLOB to conduct their oversight of NSA's counterterrorism mission and continue working on their E.O. 12333 "deep dive" report. CLPT orchestrated the necessary notifications, briefings, and technology demonstrations to enable the PCLOB's review of NSA's use of the USAFREEDOM

Act authority for the collection, use, dissemination, and retention of call detail records. As part of the oversight process, NSA produced one applicable document (3 pages).

CLPT provided subject matter expertise for two congressional briefings, demonstrating NSA's incorporation of civil liberties and privacy protections into its mission activities. CLPT provided civil liberties and privacy subject matter expertise into two 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 public. CLPT led the review of seven (7) classified documents for necessary redactions and release by ODNI to the PCLOB and the public. These reviews covered three hundred fourteen (314) 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:

- **PCLOB's Unclassified Report on USAFREEDOM Act.** CLPT orchestrated NSA review and support of DNI declassifying certain information in the PCLOB's unclassified report regarding NSA's use of the USAFREEDOM Act authority.
- **2020 Election Security.** CLPT provided ongoing advice regarding civil liberties and privacy protections and transparency associated with protecting the 2020 elections. CLPT worked across the Agency to build a consistent repeatable process for identifying activities that required enhanced civil liberties and privacy safeguards.
- **ODNI Annual Statistical Transparency Report (ASTR).** CLPT led the identification and consolidation of NSA metrics included in the ODNI's ASTR. During this reporting period, a new set of metrics related to IC Policy Guidance 107.1, "Requests for Identities of U.S. Persons in Disseminated Intelligence Reports" were compiled for

- both classified and unclassified reporting. CLPT presented NSA's metrics to ODNI to ensure NSA activities were appropriately reflected in the ASTR.
- **PCLOB's E.O. 12333 Classified Report.** CLPT continued to provide support to the PCLOB on their classified E.O. 12333 deep dive regarding NSA's use of XKEYSCORE as an analytic tool for counterterrorism purposes and its implications for civil liberties and privacy.
 - **ODNI Public Release of *IC Artificial Intelligence (AI) Ethics Principles and Framework*.** CLPT in concert with others subject matter experts within NSA supported the development and public release of IC principles for the ethical use of Artificial Intelligence.
 - **DoD Manual 5240.01.** CLPT continued to provide ongoing advice to evaluate collection activities to determine whether the activities required enhanced safeguards to protect U.S. person information.

V. INTERNAL AND EXTERNAL OUTREACH

Engaging both internally and externally about how NSA protects civil liberties and privacy is a core function of the CLPT Office. Internally, the CLPT hosted its first Privacy Day for NSA affiliates. The presentations focused on privacy and security risks when using social media. It was followed by in-depth discussion on the impacts of social media on teens and tweens with a noted privacy expert, medical doctor, and teens. These unique presentations helped NSA affiliates consider how their non-work related activities impact their privacy. CLPT presented to senior leadership the NSA-related statistics for inclusion in the ODNI Annual Statistical Transparency Report. CLPT focused internally extensively on communicating about the ways to protect privacy during the COVID-19 pandemic, providing guidance and input to policies and procedures implicating personally identifiable information (PII). She also actively participated at Intelligence Community (IC) CLPT meetings, IC Transparency Council meetings, and Federal Privacy Council (FPC) coordination calls. Co-leading the FPC's Agency Implementation Committee, the CLPT Officer focused on sharing best practices around protecting civil liberties and privacy across the federal government.

External engagements during this reporting period included: speaking at multiple public events and supporting the public release of the *ODNI Annual Statistical Transparency Report*. Of particular note was support to the PCLOB on their unclassified report on the USAFREEDOM Act and the publication of the *IC AI Ethics Principles and Framework*. CLPT also continued to support involvement in a variety of virtual conferences and academic engagements both within the U.S. and internationally. These engagements allow the CLPT Officer to understand public concerns

about NSA’s activities and their potential impact on civil liberties and privacy. These engagements also promote transparency and allow outside experts the ability to understand NSA challenges.

Table 2 – Internal and External Outreach

Type of Outreach January 2020 – June 2020	Number
Training and Awareness	3
Internal Engagements	16
External Engagements	37
Total	56

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 concerning the administration of an NSA program and/or operations raised by a member of the public, NSA workforce (including civilian, military, and contractors), or any other government officials.

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

CLPT received questions on a variety of topics during this reporting period, such as: collection and use of PII (particularly Social Security Numbers); requests for Privacy Act Statements based on specific collections; input on survey tools; and policies related to the need to encrypt PII. CLPT reviews the question, concern, or complaint and provides written guidance if it is related to a civil liberties and privacy concern. If the activity may 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 be evaluated and answered, or if the information needs to be forwarded to the appropriate office for review and response. CLPT also reviews submissions to determine if a question, concern, or complaint should be referred to the Inspector General (IG), and the IG similarly refers back to CLPT. CLPT receives a number of inquiries on the unclassified web site that are not actionable because they lack the information needed for the Agency to adequately assess and address. These requests are not captured in the metrics provided below.

Table 3 – Requests, Concerns, and Referrals

Requests, concerns, and referrals – January 2020 through June 2020	Quantity
Information requests to CLPT Office	6
Civil liberties and privacy questions	89
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	0
Total Reviewed and Closed	95

