



Office of Privacy and Civil Liberties

Central Intelligence Agency

JULY 2016 - DECEMBER 2016

SEMIANNUAL REPORT





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FOREWORD

June 9, 2017

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, 2016 to December 31, 2016. 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.¹

A primary focus of OPCL during this reporting period was the finalization of the revisions to CIA's Executive Order 12333 Attorney General Guidelines. These Guidelines, which were published on CIA's website in January 2017, embody the core privacy and civil liberties protections CIA applies in conducting its foreign intelligence mission. The Guidelines underwent substantial revision to ensure that CIA will continue to appropriately handle information in our Digital Age. In addition, and for the first time, these Guidelines have been released to the public in full—without redaction or classified appendix.

The report that follows discusses these Guidelines in detail, as well as a variety of other important activities undertaken to ensure that CIA's intelligence activities remain consistent with the values embodied in our Constitution. 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.

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

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TABLE OF CONTENTS

I. Purpose and Scope.....	6
II. Overview of the Office of Privacy and Civil Liberties	6
III. Notable Initiatives	8
a. CIA’s Executive Order 12333 Attorney General Guidelines	8
b. Engagement with the Privacy and Civil Liberties Oversight Board.....	9
c. Signals Intelligence Reform.....	10
d. Argentina Declassification Project	11
e. Training and Awareness	11
f. Public Outreach.....	12
IV. Representative Examples and Metrics	13
a. Advice	13
b. Reviews.....	14
c. Complaints	16
V. Conclusion	16

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 July 1, 2016 to December 31, 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;
- 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

² 42 U.S.C. § 2000ee-1(f).

³ 42 U.S.C. § 2000ee-1(a).

- 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 (ISE) Privacy Official. In the role as SAOP, the PCLO represents the CIA on the Federal Privacy Council, the principal interagency forum established by Executive Order 13179⁴ 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. 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. A dedicated Privacy and Civil Liberties Counsel within the Office of the General Counsel also supports the OPCL.

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), Intelligence Community elements, and other departments and agencies within the Executive Branch, and the Privacy and Civil Liberties Oversight Board (PCLOB)⁵ regarding privacy and civil liberties matters.

⁴ 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>.

⁵ 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 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. During the reporting period, CIA worked with DOJ and ODNI to conduct a comprehensive revision of CIA's procedures (hereinafter, the "Guidelines"). The CIA 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.

During the reporting period, OPCL worked closely with the CIA's Office of General Counsel (OGC) and the DOJ to ensure that the Guidelines appropriately incorporated the protection of privacy and civil liberties in the conduct of CIA's authorized intelligence activities. Improvements incorporated into 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.⁶ In addition, OPCL and other Agency elements developed a ten page “deep dive” overview⁷ 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.

b. Engagement with the Privacy and Civil Liberties Oversight Board

During the reporting period, OPCL continued to closely interact with the PCLOB to support the PCLOB's conduct of its statutory review and advisory functions. With respect to

⁶ The Guidelines may be found at <https://www.cia.gov/about-cia/privacy-and-civil-liberties/CIA-AG-Guidelines-Signed.pdf>.

⁷ The Overview may be found at <https://www.cia.gov/about-cia/privacy-and-civil-liberties/Detailed-Overview-CIA-AG-Guidelines.pdf>.

PCLOB's review function, OPCL continued to facilitate PCLOB examinations of two CIA counterterrorism activities conducted pursuant to Executive Order 12333, including providing multiple briefings and additional information. OPCL also facilitated a special review conducted by the PCLOB concerning Intelligence Community implementation of Presidential Policy Directive-28 (PPD-28). This assistance included arranging substantive briefings on the Agency's implementation efforts, and facilitating the Agency's classification review of the PCLOB's report to the President, issued in accordance with Section 5 of PPD-28. Additionally, during this reporting period, CIA sought the expertise and guidance of the PCLOB members regarding the proposed revisions to the Guidelines discussed above.

c. Signals Intelligence Reform

During the reporting period, OPCL continued to partner with Agency components to guide CIA's phased approach to implement PPD-28's limitations on signals intelligence (SIGINT) collection and use. As part of this effort, OPCL participated in the internal working group focused on updating the Agency's PPD-28 training module and conducting extensive in-person briefings regarding PPD-28 requirements. In addition, OPCL advised the Agency Data Officer (ADO) on efforts to initiate a comprehensive compliance review of systems containing data subject to PPD-28. OPCL drafted a question set designed to elicit information to determine whether a system or data set contained information subject to PPD-28. With guidance from OPCL, specific Agency test bed systems also were provided with splash screens to provide notice to individual users that they are accessing a system containing PPD-28 data, to help ensure compliance with PPD-28 requirements for access, use, and querying of SIGINT information.

Additionally, 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 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 SIGINT information concerning the requestor acquired by the United States Government. During this reporting period, OPCL finalized CIA's internal policy to facilitate the work of the State Department Ombudsperson in processing such Privacy Shield complaints. The Agency's policy helps to ensure a rigorous and multi-layered process for implementing the Privacy Shield's new redress mechanism.

d. Argentina Declassification Project

In March 2016, President Obama announced during his visit to Argentina that the United States would embark on a comprehensive effort to search, identify, and review for public access, any records in U.S. government holdings related to human rights abuses committed under Argentina's dictatorship during the period between 1975 and 1984. An initial set of declassified records were provided to Argentine President Macri in August 2016. The effort involved multiple U.S. government agencies and departments, including the CIA. As part of this effort, OPCL provided guidance to Agency components involved in the search and review of Agency records for potential materials responsive to the release request on issues related to information privacy.

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.

These training and outreach activities are summarized below:

- *Formal Training Presentations.* OPCL provided specialized privacy and civil liberties training for Agency components, IC elements, and other federal government agencies. Topics covered included incorporating privacy and civil liberties considerations into insider threat programs; understanding Privacy Act and personally identifiable information (PII) requirements for records management; and increasing awareness of privacy issues in the context of integrating data science analytic efforts. OPCL also educated other Federal privacy practitioners on the IC's framework for protecting privacy and civil liberties.
- *OPCL Privacy Act Web-based Training.* In response to specific Agency user requests, OPCL made additional modifications to the Agency's Privacy Act web-based training module. The modifications included more robust performance tracking and updates to ensure the training is fully accessible to Agency officers through a variety of learning formats.
- *Constitution Day.* In September 2016, OPCL hosted a "Constitution Day" event at the Agency, to promote an awareness of privacy and civil liberties guaranteed by the Constitution and their application to intelligence activities. The event gave CIA officers an opportunity to meet and engage with OPCL senior officers and staff members, and to discuss their specific questions or concerns regarding privacy and civil liberties at CIA.

- *OPCL Officer Training.* Members of the OPCL management team conducted in-depth brown-bag training sessions for OPCL officers to facilitate knowledge transfer and allow for a deeper dive on current privacy issues. This included in-depth training on topics such as the Privacy Act, PII, and Executive Order 12333. OPCL officers throughout the period also attended Federal government and non-government training conferences focused on privacy and civil liberties topics.

f. Public Outreach

OPCL, in concert with CIA's Office of Public Affairs, enhanced CIA's public-facing presence on CIA.gov through the establishment of a new section devoted to "Privacy and Civil Liberties at CIA."⁸ The web page reiterates CIA's commitment to protecting the privacy and civil liberties of the American people and provides details about CIA activities that are focused on protecting privacy and civil liberties, including the recent revisions to the CIA Attorney General Guidelines and CIA minimization procedures governing foreign intelligence information acquired pursuant to Section 702 of the Foreign Intelligence Surveillance Act.

OPCL also engaged in other outreach initiatives to inform the public regarding the intersection of intelligence, privacy, and civil liberties. For example, in September 2016, the PCLO served as a panelist at a National Security Conference hosted by the George Washington University in Washington D.C., entitled "Ethos and Profession of Intelligence" to discuss, in a public educational setting, the outlook for oversight, public accountability, and transparency in the conduct of national security activities. OPCL also engaged in public outreach to a number of non-governmental organizations to provide additional information about CIA efforts to protect privacy and civil liberties.

⁸ The website may be found at www.cia.gov/privacy.

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 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, the 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 or the proper handling of PII.

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

- OPCL provided detailed advice to an Agency component on the requirements of Federal law, regulation, and policy, concerning what constitutes “need to know,” requirements for Privacy Act training, and proper access and handling of information containing PII.
- OPCL provided input and substantive comments on an internal agency security policy, including guidance to provide appropriate notice to the workforce for the purpose of collecting security-related personal information, and how to implement other privacy and fair information practice principles.
- OPCL provided detailed comments to the ODNI concerning Intelligence Community Directive (ICD) 121, *Managing the IC Information Environment (IC IE)*, a Directive that establishes policy for an IC enterprise approach to managing the IC IE.⁹ OPCL advised on the need to help ensure IC IE users understand and incorporate privacy and civil liberties safeguards associated with the access, discoverability, and use of information within the IC IE, as directed by Executive Order 12333.

⁹ See Intelligence Community Directive 121, *Managing the Intelligence Community Information Environment*, Office of the Director of National Intelligence, 10 January 2017.

- OPCL coordinated on an Agency response to another government agency, confirming that current CIA System of Record Notices as published in the Code of Federal Regulations¹⁰ permit the CIA to disclose or provide responsive records pursuant to that agency's authorities and responsibilities.
- OPCL assisted an Agency component concerning the appropriate Agency procedure for addressing a query from a member of the public to amend a record pursuant to the Privacy Act and CIA regulations published in the Code of Federal Regulations.

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.¹¹ 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:

Types of Review	Number of Reviews Conducted
Related to the Privacy Act	6
Related to Personally Identifiable Information	4
Related to SIGINT Collection Activities	2

During the reporting period, OPCL conducted a variety of reviews. 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 other requirements related to the protection of personal information from unauthorized use, access, or disclosure. OPCL also

¹⁰ See <https://www.federalregister.gov/documents/2005/07/22/05-13889/privacy-act-of-1974-system-of-records-and-routine-uses>.

¹¹ 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)).

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 reviewed two SIGINT activities consistent with CIA's implementation of PPD-28.
- OPCL reviewed select Agency information technology (IT) systems for which upgrades were proposed. OPCL reviewed whether the component had adequately considered applicable privacy safeguards for these IT systems and whether the upgraded systems would constitute Systems of Record under the Privacy Act.
- OPCL reviewed select Agency IT systems and advised data stewards, developers, and mission stakeholders on the sensitivity of the personal data retained in the systems and the appropriate privacy controls needed to protect PII.
- In addition, OPCL reviewed IT systems and provided advice on how to appropriately manage privacy for systems that intake Privacy Act-protected information, but that do not themselves constitute Privacy Act systems of record.
- For IT systems containing Privacy Act information, PII, and Health Insurance Portability and Accountability Act (HIPAA)-protected information, OPCL advised developers and systems owners on the application of a banner to alert users to the existence of protected information. CIA acquires HIPAA-protected information in the course of medical screening for new employees and providing medical services to its personnel. Medical information protected by HIPAA is particularly sensitive, and OPCL worked closely with Agency counsel and systems owners to ensure appropriate protections were accorded to this information in compliance with statutory requirements.
- During the reporting period, OPCL reviewed instances where Agency officers self-reported a potential breach of PII. These instances involved, for example, the inadvertent dissemination of personal employee information to a larger group of internal recipients than was intended. The potential breaches were followed up by appropriate OPCL after-action correction and guidance.

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 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 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.

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 and the CIA OPCL's activities for the reporting period of July 2016 to December 2016. OPCL is committed to ensuring that the CIA's activities align with our enduring commitment to protecting privacy and civil liberties.



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

