



# NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

## **Biannual Report on the Activities of the National Security Agency Civil Liberties, Privacy, and Transparency Office**

**July - December 2018**



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## **A Message from the Civil Liberties, Privacy, and Transparency Officer**

During July through December 2018, the NSA Civil Liberties, Privacy, and Transparency (CLPT) Office was focused on developing the methodology and process for capturing metrics and substance for this statutorily required report. CLPT continued to interact quarterly with the Civil Liberties and Privacy Panel of the NSA Advisory Board. In addition, CLPT played a key advisory role in supporting the activities of the Russia Small Group and its efforts to protect the 2018 elections. CLPT was also focused extensively on providing advice related to ongoing concerns with USAFREEDOM Act records and external engagement continued particularly related to USAFREEDOM Act.

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Civil Liberties, Privacy, and Transparency Officer



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## 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 July-December 2018.

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.<sup>1</sup> To implement this statutory requirement, the DIRNSA has designated the NSA Civil Liberties, Privacy, and Transparency Officer to fulfill this role.

Section 1062 also requires the NSA Civil Liberties, Privacy, and Transparency Officer to issue an unclassified report at least semi-annually, with a classified annex when necessary, to the appropriate committees of Congress, DIRNSA, and the Privacy and Civil Liberties Oversight Board (PCLOB). This law requires the unclassified report be made available to the greatest extent possible to the public.<sup>2</sup> 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.

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

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<sup>1</sup> 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.

<sup>2</sup> 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.

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, as amended, the NSA CLPT Officer is designated as the NSA Component senior official for privacy, as required by Department of Defense (DoD) Instruction 5400.11, “DoD Privacy Program,” October 29, 2014. 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 this 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 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 249 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 5 specific instances.

**Table 1 – Types of Activities**

<b>Types of Review</b>	<b>Number conducted</b>
Reviews and assessments for civil liberties and privacy	249
Notifications to external overseers	5
<b>Total</b>	<b>254</b>



## Reviews and Assessments for Civil Liberties and Privacy

The CLPT Office reviews and assesses NSA activities for privacy and civil liberties implications and provides advice/feedback, as appropriate. In addition, CLPT reviews a variety of documents requested by the Office of the Director of National Intelligence (ODNI) and DoD. Civil Liberties and Privacy Assessments (CLPAs) are incorporated into the NSA Risk Management process. The 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 CLPT reviewed during this reporting period include the following:

- 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.
- Reviewed NSA policies and incorporated any necessary civil liberties and privacy protections and assessments.
- Reviewed and assessed NSA's information technology systems, particularly unclassified systems and systems handling administrative PII, to determine whether PII was properly identified and secured.
- Provided advice to the Department of Homeland Security (DHS) to assist with PII incident handling within the National Vetting Center.
- Assessed the risks of maintaining hardcopy personnel files in a separate building where files could be lost or damaged in transit.
- Assessed the risk of recommending approval to an exception to NSA policy that would allow second party personnel to access data stored in NSA/CSS managed architecture.

- Reviewed and assessed potential privacy incidents and ensured proper mitigations were put in place, where appropriate.
- Reviewed and assessed Memorandums of Understandings related to information sharing activities.
- Provided input into the DoD Annual Federal Data Mining Report.
- Provided input into the Office of the Inspector General (IG) review of the NSA privacy program as required by the Federal Information Security and Management Act.

### Notifications to External Overseers

CLPT provides briefings and notifications to 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 provided notifications to PCLOB regarding the USA FREEDOM Act.

CLPT is also responsible for providing to the DoD Senior Agency Official for Privacy (SAOP) notifications related to reportable privacy breaches, but whether or not the Agency had such breaches is classified.

### 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:

- **USAFREEDOM Act.** CLPT provided extensive advice regarding data quality and compliance concerns associated with Call Detail Records (CDRs) collected under the USA FREEDOM Act. CLPT advised on the need to provide appropriate notifications to Department of Defense, Director of National Intelligence, Department of Justice, Congressional Committees, and the PCLOB to demonstrate accountability for the use of the authority.
- **2018 Election Security.** CLPT provided advice regarding civil liberties and privacy protections and transparency associated with protecting the 2018 mid-term elections.
- **NSA and ODNI Implementation of E.O. 12333 Raw SIGINT Availability Procedures (2.3 Procedures).** CLPT provided ongoing advice to NSA and ODNI regarding the protection of civil liberties and privacy in the implementation of Attorney General (AG) approved E.O. 12333 Raw Signals Intelligence (SIGINT) Availability Procedures. These procedures, also known as 2.3 Procedures, require ODNI to approve





an Intelligence Community (IC) element’s civil liberties and privacy compliance program before the IC element can gain access to the raw SIGINT for a specific articulated intelligence mission.

- **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 Officer hosted brown bag sessions and internal social media gatherings, and spoke at town halls hosted by internal NSA organizations. 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, particularly addressing decisions to delete USAFREEDOM Act data because of data integrity issues. The audiences included overseers, civil liberties and privacy groups, and academics. The CLPT Office also hosted a group of civil liberties and privacy experts, on behalf of the NSA Director, to discuss NSA’s mission and how it protects civil liberties and privacy. 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. CLPT continued to support involvement in a variety of conferences and academic engagements as well, both within the U.S. and internationally.

**Table 2 – Internal and External Outreach**

<b>Type of Outreach July 2018 – December 2018</b>	<b>Number</b>
Training and Awareness	5
Internal Engagements	13
External Engagements	16
<b>Total</b>	<b>34</b>

## 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. These concern 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](http://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 a request 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 could 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 evaluate and answer, or if the information needs to be forwarded elsewhere 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**

<b>Requests, concerns, and referrals – July 2018 through December 2018</b>	<b>Quantity</b>
Information requests to CLPT Office	1
Civil liberties and privacy questions	36
Concerns alleging violations of privacy and civil liberties protections	0
Requests for redress	1
Complaints, concerns, queries related to counterterrorism that would require whistleblower protections provided in the statute.	0
Referrals to and from the Office of Inspector General	0
<b>Total Reviewed and Closed</b>	<b>38</b>





# NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

## **Biannual Report on the Activities of the National Security Agency Civil Liberties, Privacy, and Transparency Office**

**January – June 2019**



**REBECCA J. RICHARDS**  
Civil Liberties, Privacy, and Transparency Office  
National Security Agency



## **A Message from the Civil Liberties, Privacy, and Transparency Officer**

During January through June 2019, I became an official advisor to the National Security Agency's (NSA) Board of Directors, which increased visibility and understanding of Agency activities and continued to support the emphasis on protecting civil liberties and privacy in all of NSA activities – mission or administrative. The Privacy and Civil Liberties Oversight Board regained a quorum and CLPT orchestrated briefings and conducted extensive outreach on a range of topics including both supporting their classified review of USAFREEDOM Act, as well as their E.O. 12333 deep dive related to XKEYSCORE. Election security continued to focus on both reviewing lessons learned from the 2018 election security activities and developing policies, procedures, and safeguards for the 2020 election security activities. On behalf of the Director of NSA, CLPT hosted a group of cybersecurity and Civil Liberties and Privacy experts from industry, academia, and civil society to discuss the civil liberties and privacy implications of protecting the elections. This initial day long engagement developed into broader engagement on the complexities of protecting elections from foreign malign influence and interference. During this timeframe ODNI began working within the Intelligence Community (IC) on principles for ethical use of Artificial Intelligence and Machine Learning.

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- 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.

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

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## **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 this 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 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 299 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 40 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**

<b>Types of Review</b>	<b>Number conducted</b>
Reviews and assessments for civil liberties and privacy	299
Notifications, briefings, and applicable documents to external overseers	40
<b>Total</b>	<b>339</b>
Pages of classified documents reviewed and provided to PCLOB for oversight purposes	545 pages
Pages of classified documents reviewed for PCLOB/public release	437 pages

### **Reviews and Assessments for Civil Liberties and Privacy**

The CLPT Office reviews and assesses NSA activities for privacy and civil liberties implications and provides advice/feedback, as appropriate. In addition, CLPT reviews a variety of documents requested by the Office of the Director of National Intelligence (ODNI) and DoD. Civil Liberties and Privacy Assessments (CLPAs) are incorporated into the NSA Risk Management process. The 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 CLPT reviewed during this reporting period include the following:

- 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.

- 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.
- Reviewed and assessed potential privacy incidents and ensured proper mitigations were put in place, where appropriate.
- Reviewed and assessed Memorandums of Understandings related to information sharing activities.
- Reviewed and reported on the ongoing efforts to reduce the use of Social Security numbers in NSA information systems and forms.

### **Notifications, Briefings, and Applicable Documents to External 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 newly reconstituted 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 15 applicable classified documents (545 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) of any 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 an additional 15 classified documents for necessary redactions and release by ODNI that went to both the PCLOB and the public. These reviews covered 437 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. CLPT became an official advisor to the NSA Board of Directors during this reporting period. 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:

- **USAFREEDOM Act.** CLPT provided extensive advice regarding data quality and compliance concerns associated with Call Detail Records collected under the USA FREEDOM Act. CLPT advised on the need to provide appropriate notifications to DoD, DNI, Department of Justice, Congressional Committees, and PCLOB to demonstrate accountability for the use of the authority.
- **PCLOB's Classified Review of USAFREEDOM Act.** CLPT orchestrated NSA's classified presentation to the PCLOB regarding NSA's use of the USAFREEDOM Act authority. This included extensive briefings, technology reviews, and document production throughout the reporting period.
- **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. CLPT presented NSA's metrics to ODNI to ensure NSA activities were appropriately reflected in the ASTR.
- **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.
- **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.
- **IC Artificial Intelligence (AI) Ethics Principles and Framework.** CLPT provided advice on specific considerations for mitigating bias, documenting limitations about training data, furnishing user training, and providing accountability and explainability for oversight purposes. CLPT engaged extensively within NSA and with external

partners to develop ethics principles that would provide both guidance to users of AI and provide a framework for external parties to understand how the IC approaches AI.

## 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 Officer presented the process and results of the ODNI Annual Statistical Transparency Report, participated in table-top exercises, presented at the NSA Advisory Board, and represented the Agency during visits to Combatant Commands. She also actively participated at Intelligence Community (IC) Civil Liberties and Privacy Council meetings, IC Transparency Council meetings, and 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: coordinating with the IC on reviews of NSA documents for redaction and release on the ODNI website; speaking at multiple public events; and supporting the public release of the ODNI Annual Statistical Transparency Report. The CLPT Office also hosted a group of civil liberties and privacy experts, on behalf of the NSA Director, to discuss the implications of civil liberties and privacy cybersecurity implications. 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. CLPT continued to support involvement in a variety of conferences and academic engagements, both within the U.S. and internationally.

**Table 2 – Internal and External Outreach**

<b>Type of Outreach January 2019 – June 2019</b>	<b>Number</b>
Training and Awareness	6
Internal Engagements	36
External Engagements	22
<b>Total</b>	<b>64</b>

## 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. These concern 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](http://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 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 could 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 evaluate and answer, or if the information needs to be forwarded elsewhere 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**

<b>Requests, concerns, and referrals – January 2019 through June 2019</b>	<b>Quantity</b>
Information requests to CLPT Office	0
Civil liberties and privacy questions	49
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
<b>Total Reviewed and Closed</b>	<b>49</b>





# NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

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

July – December 2019



**REBECCA J. RICHARDS**  
Civil Liberties, Privacy, and Transparency Office  
National Security Agency



## **A Message from the Civil Liberties, Privacy, and Transparency Officer**

During July through December 2019, the Director of NSA (DIRNSA) reviewed the NSA strategy, and CLPT played a key role in helping to set that strategy, bringing focus to the ongoing importance of fostering trust and confidence in NSA activities with our overseers and the American public. As the strategy and vision of the DIRNSA was rolled out within NSA, CLPT continued to assist in ensuring civil liberties and privacy protections were incorporated at the beginning of new activities. NSA created a new Cybersecurity Directorate on October 1 2019, which increased focus on engaging and partnering to improve cybersecurity. There has been a need to update policies, procedures, and protections to ensure that proper civil liberties and privacy protections are built into unclassified work environments. USAFREEDOM Act was up for re-authorization, and there was extensive unclassified and classified engagement on the use of Call Detail Records by NSA under the USAFREEDOM Act. CLPT orchestrated the review of PCLOB's unclassified report that was issued in early 2020. CLPT issued its first statutorily required report.

REBECCA J. RICHARDS  
Civil Liberties, Privacy, and Transparency Officer



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- I. Purpose and Scope
- II. Overview of the National Security Agency Civil Liberties, Privacy, and Transparency Program
- III. Type and Number of Activities Undertaken
- IV. Type of Advice Provided and the Response Given to Such Advice
- V. Internal and External Outreach
- VI. Questions, Concerns, Complaints, and Redress





## 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 July-December 2019.

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.<sup>1</sup> 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.<sup>2</sup> 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.

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

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<sup>1</sup> 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.

<sup>2</sup> 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.



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 this 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 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 348 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 35 specific instances.

**Table 1 – Types of Activities**

<b>Types of Review</b>	<b>Number conducted</b>
Reviews for civil liberties and privacy	348
Notifications, briefings, and applicable documents to external overseers	35
<b>Total</b>	<b>383</b>
Pages of classified documents reviewed and provided to PCLOB for oversight purposes	176 pages
Pages of classified documents reviewed for PCLOB/public release	498 pages

### **Reviews and Assessments for Civil Liberties and Privacy**

The CLPT Office reviews and assesses NSA activities for privacy and civil liberties implications and provides advice/feedback, as appropriate. In addition, CLPT reviews a variety of documents requested by the Office of the Director of National Intelligence (ODNI) and DoD. Civil Liberties and Privacy Assessments (CLPAs) are incorporated into the NSA Risk Management process. The 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 CLPT reviewed during this reporting period include the following:

- 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 the civil liberties and privacy protections were tailored to mitigate identified risks or that the appropriate level leadership was involved to accept the identified risks.
- Reviewed and assessed a number of NSA’s information technology systems to determine whether PII was properly identified and secured.



- Reviewed and assessed potential privacy incidents and ensured proper mitigations were put in place where appropriate.
- Provided input into the DoD Annual Federal Data Mining Report.
- Provided input into the OIG review of the NSA privacy program as required by Federal Information Security and Management Act (FISMA).

### **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 provided notifications and briefings concerning NSA's use of the PCLOB report; and USAFREEDOM Act authority for the collection, use, dissemination, and retention of call detail records. As part of the oversight process, NSA produced two applicable documents equating to 176 pages.

CLPT provided subject matter expertise for 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 in two quarterly intelligence oversight reports.

CLPT is also responsible for notifying the DoD Senior Agency Official for Privacy (SAOP) of any 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 30 classified documents for necessary redactions and release by ODNI to the PCLOB and the public. These reviews covered 498 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. CLPT played a key role in helping to set the strategy of NSA, bringing focus on the ongoing importance of fostering trust and confidence in all NSA activities with our overseers and the American public. 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:



- **USAFREEDOM Act.** The USAFREEDOM Act was up for re-authorization during the reporting period. CLPT provided extensive advice regarding transparency related to the Call Detail Records (CDRs) collected by NSA under the USA FREEDOM Act. CLPT advised on the need to provide appropriate notifications to the DoD, DNI, Department of Justice, Congressional Committees, and PCLOB to demonstrate accountability for the use of the authority.
- **PCLOB’s Unclassified Review of USAFREEDOM Act.** CLPT orchestrated the NSA review of the PCLOB unclassified report regarding its use of the USAFREEDOM Act authority. This included document production, responses to questions, and ultimately a classification review of the PCLOB report.
- **Election Security.** CLPT continued to provide advice regarding civil liberties, 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.
- **Unclassified Work Environment.** CLPT supported key goals for DIRNSA’s strategic imperative to move to the unclassified work environment by conducting civil liberties and privacy assessments on unclassified work environment to identify and help mitigate civil liberties and privacy risks associated with these activities.
- **DoD Manual 5240.01.** CLPT continued to provide ongoing advice to determine whether the activities required enhanced safeguards to protect U.S. person information.
- **NSA and ODNI on Implementation of E.O. 12333 Raw SIGINT Availability Procedures (2.3 Procedures).** CLPT provided ongoing advice and support to NSA and ODNI regarding the protection of civil liberties and privacy in the implementation of Attorney General (AG) approved E.O. 12333 Raw SIGINT Availability Procedures. These 2.3 Procedures require ODNI approve an IC element’s civil liberties and privacy compliance program before the IC element can gain access to the raw SIGINT for a specific, articulated intelligence mission.
- **IC Artificial Intelligence (AI) Ethics Principles and Framework.** CLPT continued to provide advice on specific considerations for mitigating bias, documenting limitations about training data, furnishing user training, and providing explanatory accountability for oversight purposes. CLPT engaged extensively with ODNI and other IC partners to develop ethics principles that would provide both guidance to users of AI and provide framework for external parties to understand how the IC approaches AI.



## 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.

Internally, the CLPT Officer presented to senior leadership the possible impacts to mission because of civil liberties and privacy concerns and visited one of the Cryptologic Centers to discuss the work of the CLPT Office. The CLPT Office worked extensively on shaping the AI ethics working group led by ODNI, and met with foreign partners to discuss approaches to protecting civil liberties and privacy. CLPT continued to support activities with the NSA Advisory Board. The CLPT Officer also actively participated at IC CLPT Council meetings, IC Transparency Council meetings, and FPC meetings. 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. CLPT continued to provide civil liberties and privacy training within NSA, as well as for the broader IC and federal privacy community.

Externally, the CLPT Officer supported the ODNI with media and civil society engagements related to the release of FISA materials; taught classes about assessing civil liberties and privacy at various academic institutions; and engaged in domestic and international conferences related to protecting civil liberties and privacy at NSA. These engagements promote transparency and allow NSA to understand any public concerns about NSA's activities and their potential impact on civil liberties and privacy.

**Table 2 – Internal and External Outreach**

<b>Type of Outreach July 2019 – December 2019</b>	<b>Number</b>
Training and Awareness	13
Internal Engagements	35
External Engagements	18
<b>Total</b>	<b>66</b>

## 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. These concern 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](http://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 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 could 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 evaluate and answer, or if the information needs to be forwarded elsewhere 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**

<b>Requests, concerns, and referrals – July 2019 through December 2019</b>	<b>Quantity</b>
Information requests to the CLPT Office	0
Civil liberties and privacy questions	61
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 Office of the IG	0
<b>Total Reviewed and Closed</b>	<b>61</b>





# 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**



**REBECCA J. RICHARDS**  
Director, Civil Liberties, Privacy, and Transparency Office  
National Security Agency



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- II. Overview of the National Security Agency Civil Liberties, Privacy, and Transparency Program
- III. Type and Number of Activities Undertaken
- IV. Type of Advice Provided and the Response Given to Such Advice
- V. Internal and External Outreach
- VI. Questions, Concerns, Complaints, and Redress

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.<sup>1</sup> 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.<sup>2</sup> 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.

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<sup>1</sup> 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.

<sup>2</sup> 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**

<b>Types of Review</b>	<b>Number conducted</b>
Reviews and assessments for civil liberties and privacy	245
Notifications, briefings, and applicable documents to external overseers	8
<b>Total</b>	<b>253</b>
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
<b>Total</b>	<b>56</b>

## 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](http://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**

<b>Requests, concerns, and referrals – January 2020 through June 2020</b>	<b>Quantity</b>
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
<b>Total Reviewed and Closed</b>	<b>95</b>





# NATIONAL SECURITY AGENCY CENTRAL SECURITY SERVICE

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

July – December 2020



**REBECCA J. RICHARDS**  
Civil Liberties, Privacy, and Transparency Office  
National Security Agency



## **A Message from the Civil Liberties, Privacy, and Transparency Officer**

During July through December 2020, COVID-19 continued to impact various aspects of the Agency and CLPT continued to focus on ensuring that the proper civil liberties and privacy protections were identified and built into mitigations that our agency was putting in place to protect NSA affiliates. Activities ranged from ensuring temperature testing activities did not include the collection of temperatures and other personal information, to notifications regarding what information the Agency would require for visitors and applicants coming to the Agency. A variety of technical opportunities were explored to determine improvements to contact tracing and ways to reduce the number of phone calls on whether an individual can or should return to work after quarantining.

The Agency explored opportunities to conduct more work in unclassified environments, which increases the risk to privacy when PII is implicated. CLPT continued to support the Privacy and Civil Liberties Oversight Board's oversight report on E.O. 12333 and the classified report on XKEYSCORE. CLPT orchestrated the review of hundreds of classified pages for redaction and release by ODNI and then supported engagement with key external subject matters in academia, media, think tanks, and civil society on the nature of the documents. Protecting the 2020 elections continued to be a main focus of the Agency, and CLPT continued to assist the Agency in providing appropriate civil liberties and privacy safeguards.

REBECCA J. RICHARDS  
Civil Liberties, Privacy, and Transparency Officer

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## 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 July–December 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.<sup>1</sup> To implement this statutory requirement, the DIRNSA has designated the NSA Civil Liberties, Privacy, and Transparency (CLPT) Officer to fulfill this role.

Section 1062 also requires the NSA CLPT 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.<sup>2</sup> 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 CLPT Officer concerning alleged violations of civil liberties and privacy;
- summary of the disposition of such complaints, reviews and inquiries conducted; and impact of the activities of the CLPT Officer.

This report is structured so that the DIRNSA, PCLOB, public, and Congress can assess progress in areas required for reporting under this law, as well as other significant activities that

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<sup>1</sup> 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.

<sup>2</sup> 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.

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 Agency activities.

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

The Civil Liberties, Privacy, and Transparency (CLPT) Office focuses on civil liberties, privacy, and transparency issues, 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 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 this 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 the following.

- 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 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 environment 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 four hundred forty-four (444) 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 twenty-nine (29) specific instances.

**Table 1 – Types of Activities**

<b>Types of Review</b>	<b>Number conducted</b>
Reviews for civil liberties and privacy	444
Notifications, briefings, and applicable documents to external overseers	29
<b>Total</b>	<b>473</b>
Pages of classified documents reviewed and provided to PCLOB for oversight purposes	367
Pages of classified documents reviewed for PCLOB/public release	502

### **Reviews and Assessments for Civil Liberties and Privacy**

The CLPT Office reviews and assesses NSA activities for privacy and civil liberties implications and provides advice/feedback as appropriate. In addition, CLPT reviews a variety of documents requested by the Office of the Director of National Intelligence (ODNI) and DoD. Civil Liberties and Privacy Assessments (CLPAs) are incorporated into the NSA risk management process. This 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, status 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 CLPT reviewed during this reporting period include the following.

- 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 and ensured the civil liberties and privacy protections were tailored to mitigate identified risks or the appropriate level leadership was involved to accept the identified risks.
- Reviewed collection and use of publicly available and commercially available information and worked with mission owners to develop appropriate civil liberties and privacy safeguards.



- Reviewed and assessed a variety of NSA's information technology systems to determine whether PII was properly identified and secured, particularly as it related to unclassified systems and systems handling administrative PII.
- Reviewed and assessed 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.
- Reviewed and assessed potential privacy incidents and ensured proper mitigations were put in place where appropriate.
- Provided input into the DoD Annual Federal Data Mining Report.
- Provided input into the OIG review of the NSA privacy program as required by Federal Information Security and Management Act (FISMA).

### **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 provided notifications either directly or through ODNI. These included twenty-nine (29) such notifications, including nine classified documents (367 pages). CLPT continued to orchestrate the necessary briefings and responses to questions to enable PCLOB's E.O. 12333 deep dive on XKEYSCORE. CLPT in concert with the DoD, ODNI, and DOJ provided briefings on the SIGINT Annex.

CLPT provided subject matter expertise for five (5) Congressional briefings and correspondence, demonstrating NSA's incorporation of civil liberties and privacy protections into its mission activities. CLPT provided civil liberties and privacy subject matter expertise in two (2) 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 the public. CLPT led the review of 13 classified documents for necessary redactions and release by ODNI to the PCLOB and the public. These reviews covered 502 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:

- **2020 Election Security.** CLPT continued to provide advice regarding civil liberties and privacy protections and transparency associated with protecting the 2020 elections. CLPT played a review and advise role in the repeatable processes developed to provide enhanced safeguards for protecting civil liberties and privacy.
- **Unclassified Work Environment.** CLPT continued to support the strategic NSA initiative to move to the unclassified work environment, by conducting civil liberties and privacy assessments on unclassified work environment to identify and help mitigate civil liberties and privacy risks associated with these new activities.
- **Release of the SIGINT Annex.** CLPT worked closely within NSA and with counterparts at the Department of Defense, Office of the Director of National Intelligence, and Department of Justice to prepare for the approval and release of DoD Manual S-5240.01, Procedures Governing the Conduct of DoD intelligence Activities: Annex Governing Signals Intelligence Information and Data Collected Pursuant to Section 1.7 (c) of E.O. 12333 (the SIGINT Annex). The release occurred in January 2021
- **Support to ODNI Transparency Activities.** Pursuant to statutory requirements, ODNI published redacted copies of FISC opinions related to the 2019 FAA 702 certifications and the associated procedures. CLPT participated with ODNI, FBI, and DOJ on calls with former intelligence officials, press, and privacy and civil liberties groups to provide context and respond to questions.
- **Protect Privacy of Our Affiliates during COVID.** CLPT assessed the civil liberties and privacy impact of Agency activities related to COVID to include: contact tracing, proximity tracing, and temperature screening. A variety of mitigations ranging from increased transparency to reduced collection and access to information were implemented. CLPT provided written guidance on the collection and use of personal medical information and personally identifiable information (PII).
- **Advice in the development and implementation of 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. In particular, CLPT provided advice on issuing an NSA specific policy related to the implementation of Section 3.2 e., “Special Circumstances Collection,” for publicly available and commercially available collection.

- **NSA and ODNI on Implementation of E.O. 12333 Raw SIGINT Availability Procedures (2.3 Procedures).** CLPT provided ongoing advice to NSA and ODNI regarding the protection of civil liberties and privacy in the implementation of Attorney General (AG) approved E.O. 12333 Raw SIGINT Availability Procedures. These procedures, also known as 2.3 Procedures, require ODNI to approve an Intelligence Community (IC) element’s civil liberties and privacy compliance program before the IC element can gain access to the raw SIGINT for a specific, articulated intelligence mission.

## 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, CLPT Officer presented to senior leadership the possible impacts to mission because of civil liberties and privacy concerns. CLPT supported activities with the NSA Advisory Board through virtual interactions and CLPT continued to educate on protecting privacy during COVID-19 and the implementation of COVID-19 mitigations. CLPT also participated in the review of National Institute of Standards and Technology (NIST) guidance on the protection of privacy and PII safeguards. The CLPT Officer actively participated at IC CLPT meetings, IC Transparency Council meetings, and FPC meetings. 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. CLPT continued to provide civil liberties and privacy training within NSA as well as for the broader IC and federal privacy community.

Externally, the CLPT Officer supported the ODNI with media and civil society engagements related to the release of FISA materials; supported ODNI in efforts related to European Court of Justice decisions; taught classes about assessing civil liberties and privacy at various academic institutions; and engaged in domestic and international conferences related to protecting civil liberties and privacy at NSA. These engagements promote transparency and allow NSA to understand any public concerns about NSA’s activities and potential impact on civil liberties and privacy.

**Table 2 – Internal and External Outreach**

Type of Outreach July 2020 – December 2020	Number
Training and Awareness	8
Internal Engagements	26
External Engagements	53
<b>Total</b>	<b>87</b>



## 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. These concern 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](http://www.nsa.gov) to ask questions or 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 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 and one referral from the OIG, 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 could 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 evaluate and answer, or if the information needs to be forwarded elsewhere 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 unclassified inquiries via NSA.gov 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**

<b>Requests, concerns, and referrals – July 2020 through December 2020</b>	<b>Quantity</b>
Information requests to the CLPT Office	0
Civil liberties and privacy questions	86
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	1
<b>Total Reviewed and Closed</b>	<b>87</b>

