

Civil Liberties Program Overview

April 7, 2022
Privacy and Civil Liberties Division



PRIVACY, CIVIL LIBERTIES, AND FREEDOM OF INFORMATION DIRECTORATE
Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency

What are Civil Liberties?



- ❖ Freedoms guaranteed to individuals by the U.S. Constitution to protect us from government tyranny
- ❖ Restrains governmental power
- ❖ Establishes freedoms that the government may not legally intrude upon

Safeguards of Liberty



First Amendment

- ✓ Freedom of religion
- ✓ Freedom of speech
- ✓ Freedom of the press
- ✓ Freedom of assembly
- ✓ Right to petition the government

Second Amendment

- ✓ Right to keep and bear arms

Third Amendment

- ✓ Prohibits government from forcing individuals to house soldiers in their home during peacetime

Safeguards of Justice

Fourth Amendment

- ✓ Freedom against unreasonable search and seizure

Fifth Amendment

- ✓ Grand jury indictment required for felony charges
- ✓ Protection from double jeopardy
- ✓ Prohibits punishment without due process of law
- ✓ Right against self-incrimination
- ✓ Takings clause – limits power of eminent domain



Safeguards of Justice

Sixth Amendment

- ✓ Right to fair and speedy trial by impartial jury
- ✓ Right to public trial (no secret proceedings)
- ✓ Right to legal counsel, to call and confront witnesses
- ✓ Right to hear charges against you

Seventh Amendment

- ✓ Right to jury trial in civil cases

Eighth Amendment

- ✓ Protection against unreasonable bail and fines
- ✓ Protects against cruel and unusual punishment

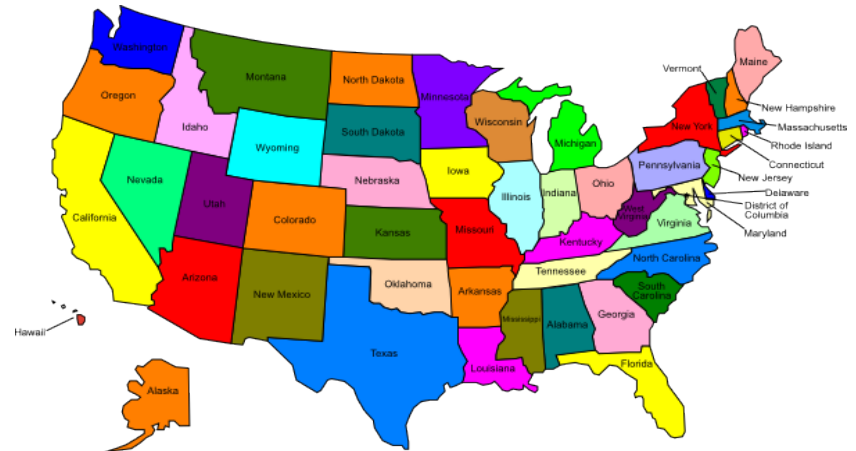
Preservation of Rights

Ninth Amendment

- ✓ Rights which belong to the people are not confined to those named in the Constitution

Tenth Amendment

- ✓ Any power that the Constitution does not assign to the Federal Government is retained by the states.



Civil Liberties vs Civil Rights

Civil Liberties

Freedoms guaranteed to individuals by the Constitution to protect against government tyranny

Civil Rights

Legal rights that protect individuals from discrimination based on protected characteristics, like race, gender, disability

Findings of Congress

❑ Report of the 9/11 Commission (2004) recommended enhancing the government's powers and programs in the intelligence, homeland security, and law enforcement arenas to better protect against terrorism and other risks



❑ The Commission also recognized these powers would increase risks to privacy and civil liberties.

❑ It recommended additional safeguards for civil liberties

Act of Congress

- ❑ Section 803, “Implementing Recommendations of the 9/11 Commission Act of 2007”
- ❑ DoD was one of 8 agencies required by the law to develop an active civil liberties program
- ❑ These agencies also had to appoint a Privacy and Civil Liberties Officer



Oversight Agency

The Privacy and Civil Liberties Oversight Board (PCLOB) was established in 2004 to provide:

- ❑ Advice and counsel to the President, departments, and agencies on development and implementation of counterterrorism policy.
- ❑ Oversight in the form of continual review of counterterrorism policies, and implementation thereof, to ensure appropriate privacy/CL protections

Privacy / CL Officer

A senior officer reporting to agency head who:

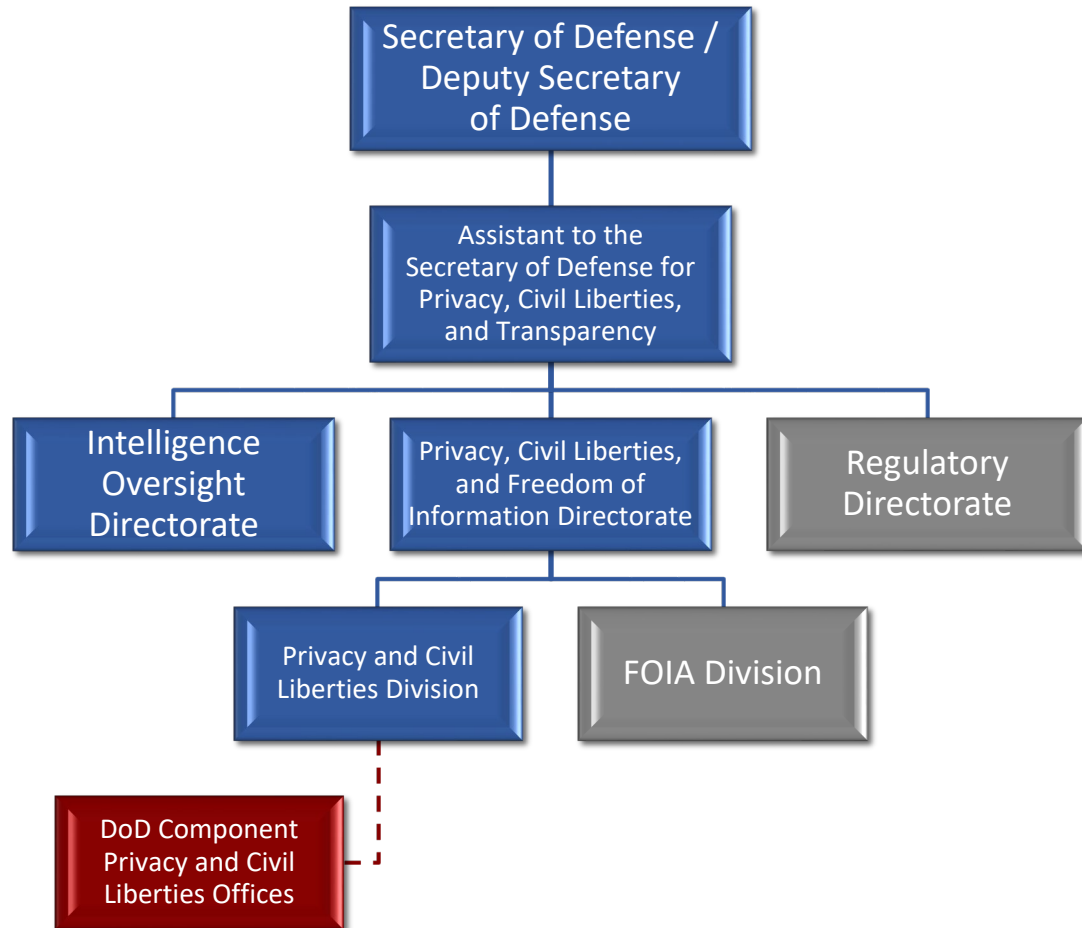
- Assists the Secretary/Director in considering privacy and civil liberties concerns
- Periodically investigates and reviews department actions, policies, procedures, guidelines
- Establishes a venue to address potential violations

Privacy & Civil Liberties Officer

As the DoD Privacy and Civil Liberties Officer, the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (ATSD(PCLT)):

- Reports directly to the Secretary
- Coordinates with the Department Inspector General
- Is advised of policy changes and consulted by decision makers

Organizational Structure



DoD Civil Liberties Policy

- ❑ PCLFD promulgated DoD Instruction 5400.11, *DoD Privacy and Civil Liberties Programs*
- ❑ DoDI 5400.11 requires all Components, to include each military Service, to appoint a Senior Component Official for Privacy (SCOP) and Privacy and Civil Liberties Officer (PCLO) to carry out the component privacy and civil liberties program

PCLFD/PCLD

- ❑ Conducts training and guidance for Component Civil Liberties Programs
- ❑ Collects data and provides reports through the Director, PCLFD to the ATSD(PCLT)
- ❑ Coordinates with Intelligence Oversight to meet statutory reporting requirements.



DoD Components

- ❑ Provide mechanisms for submitting privacy and civil liberties complaints or alleged violations, in accordance with DoD 5400.11-R.
- ❑ Receive and act on complaints from the public and DoD employees.
- ❑ Submit semi-annual summaries of complaint and responsive actions taken (“803 Report”)

Section 803 Reporting

- **Timeline:**

- Q1-Q2 Data call went out March 11, 2022
- All responses due back NLT April 15, 2022
- Q3-Q4 data call submission planned to go out early September with responses due back beginning of October 2022

- **Updates to DD 2984 beginning Q3-Q4:**

- Section 533 of Pub. Law 112-239, as amended, *Complaints by military service members alleging violations of conscience, moral principles or religious beliefs*

- **Reminder:**

- Do not include complaints for which other specific and established formal procedural avenues of redress exist

Example Complaint

- **Description of Complaint:** Alleged First Amendment violation. The complainant, a retired member who is currently an employee of a government contractor, alleged that installation security personnel required him to remove a bumper sticker that read “Fire Trump” from his personally owned vehicle. The complainant alleged that this requirement violated his right to freedom of speech under the First Amendment.
- **Findings:** The complaint was investigated and substantiated by the installation Inspector General. Eight security forces personnel were trained on appropriate procedures regarding bumper stickers that have potentially offensive messages, and the complainant received an apology.
- **Disposition:** Responsive Action Taken.

Contact PCLFD

PCLFD General Mailbox:

osd.ncr.odam.mbx.dpcltd-correspondence@mail.mil