Department of Defense
Report on Privacy Activities
Section 803 of 9/11 Commission Act of 2007
1st Quarter FY11 – October 1, 2010 to December 31, 2010

A. Types of Privacy Reviews

Privacy Act Statements (PAS)	461
Privacy Act Systems of Records (SORNs) with applicable associated exemptions	159
Computer Matching Program(s)	2
Section (m) Contractor Reviews	14

B. Topics of Advice and Responses Given

Collection, Use, Disclosure, Protection of PII	9139
Privacy Impact Assessments (PIA)	1452
Privacy Act Program Requirements /Principles	2637
Website Safeguards	10191
Privacy Compliance/DITPR Reporting	876
Privacy Presentations	3370
Training Requirements	1896
Privacy Act Violations	526
Privacy Reports	369
Privacy Act Systems of Records Notices (SORNs)	1011
Privacy Compliance in Agency Publication	565
SSN and PII Reduction Actions	2592
PII Breach Notification/Identity Theft	1351
Other	171

C. Privacy Complaints and Dispositions

Type/Nature of Complaint or Alleged Violation	Number of Complaints	Disposition of Complaint		
		Responsive Action taken[1]	No Action Required[2]	Pending[3]
Process and Procedure *(Compliance Matters)*	7	5	2	0
Redress	2	1	0	1
Operational *(Collection, Use, Disclosure Issues)*	12	5	0	7
Referred to Other Agency(s)	0	0	0	0
Other	0	0	0	0
Total for 1st Qtr FY11	21	11	2	8

Dispositions of complaints are reported in one of the following categories:
[1]*Responsive Action Taken*. The complaint was reviewed and a responsive action was taken.
[2]*No Action Required.* The complaint did not ask for or require a DoD action or response.
[3]*Pending.* The complaint is being reviewed to determine the appropriate response.

SECTION 803 OF 9/11 COMMISSION ACT OF 2007
DETAILS OF PRIVACY COMPLAINTS AND DISPOSITIONS
1ST QTR FY11 – OCT TO DEC 2010

Agency' Name: Defense Logistics Agency

Complaint #1
Description of Complaint: Complaint from Department of Navy CIO that DLA Transaction Services (DAASC) had a web based System Access Authorization Request (SAR) form for the DoD Web Visual Logistics Information Processing System (WEBVLIPS). After the SAR web form is submitted, DAASC sends an e-mail to the requestor's security officer and requires him to provide the following data elements in an unencrypted e-mail to a DLA generic e-mail address, e.g., validate@dla.mil (not the real e-mail address):

- Employee's Name
- Is employee a U.S. Citizen?
  - If the customer is a naturalized citizen when did they obtain their citizenship?
- Is employee a Contractor?
  - If customer was contractor when did they become federal employee?
- Last 4 digits of employee's Social Security Number (SSN)
- Clearance(s)
  - Confidential, Secret, etc.
- Type of Background Investigation Performed
  - NAC, NACI, SSBI, etc.
- Date of the last background investigation
  - YYYY/MM/DD
- ADP/IT Designation
  - I, II, III

As the validate@dla.mil address did not have a certificate registered to its address, the Navy complaint was that there was no way to send an encrypted e-mail containing the required PII.
Findings: DAASC WEBVLIPS SAR process did ask requestor's security officer to send sensitive PII via e-mail without the use of encryption.
Disposition: DLA CIO and Program Executive Officer instructed DLA Transaction Service's Information Operations Director to no longer require transmission of e-mail containing sensitive PII without encryption.

Agency's name: National Guard Bureau

Complaint #2 – Process & Procedural
Description of Complaint: Complaint received via DoD Privacy Office to the TMA Privacy Office in Nov 2010 and transferred to NGB Privacy Office in Dec 2010. Complaint was regarding the collection of information on medications used by Air Traffic Controllers. Complainant does not feel this form is in line with neither HIPAA nor the Privacy Act. The form is asking all Air Traffic Controllers (Military & Civilian) to disclose any medications being taken and also does not have a Privacy Act Statement.
Findings: Contacted NGB/A1 who reports that the form will be revised to add a Privacy Act Statement and made into a NGB Form to comply with Forms and Publications Management requirements. Research found that there are existing SORNs to allow for the collection and maintenance of this information.
Disposition: Complaint closed. NGB/A1 notified all field activities to discontinue use until form could be properly revised. Complainant was notified that the form has been discontinued from use until it can be properly revised and reissued.

Complaint #3 – Redress (Carryover from 2nd Quarter, 2010)
Description of Complaint:
Complainant alleges performance appraisals and recommendations for employee awards/time off awards were left unattended by supervisor and records were accessed and removed from the workplace by another co-worker and that copies of the documents were then offered to and viewed by co-workers.
In addition, she alleges that documents containing PII were left unattended when custodial crews were unaccompanied in office spaces and that a locked file cabinet was found broken into possibly allowing access to PII (timecards). She also alleges that when she reported this break in of the file cabinet and concern on improper access of performance appraisals to her chain of command and asked how to report this as a PII breach that she was told this was not the type of incident that should be reported unless a formal complaint was made by someone for having their information accessed.
Findings: Investigation complete; some allegations are substantiated.
Disposition: Complaint closed. Final personnel action of proposed removal from employment was administered to employee. Complainants were notified in Dec, 2010 that appropriate action was taken in response to the complaint and were provided a redacted copy of the findings of the investigation (all information that would be releasable under FOIA).

Complaint #4 – Redress (Carryover from 3rd Quarter, 2010)
Description of Complaint:
Complainant alleges volumes of books entitled "Army National Guard Personnel Registers" from 1971-1976 were found in public library containing full names, dates of birth, and SSNs of 50,000+ individuals. The books were published by the Government Printing Office and the complainant would like the books pulled from library shelves.
Findings: None yet.
Disposition: Still ongoing. The Director, Army National Guard (MG Carpenter) determined on 16 Sep 10 he will appointing a working group to determine what, if any, action can be taken on removal of books from public domain and/or replacement with redacted versions. Research indicated 1974 and 1975 versions of these books were available for sale through National Technical Information Service (NTIS). Their 2 year sales history indicated only 1 book has been sold (1975 version) which was sometime early this year. As of 7 Jul 10, at our request, they are no longer available for sale through NTIS. As of 3 Dec 10 this has also been removed from DTIC website for purchase. Research has also been done on the steps that would need to be taken to remove these from public libraries. Follow-up has been made to the Director, Army Guard on the status of forming a working group to come up with recommendations on whether or not we will pursue removal from public libraries as of 11 Jan 11.

Agency' Name: Department of the Air Force (AF)

Complaint #5
Description of Complaint: Complaint from a Reserve member that an Orderly room NCO was sending her personal documents to her home email address (yahoo.com) from a Distribution list.
Findings: Orderly Room NCO had established a distribution list for the members and would forward various document to them through that email list. The list included everyone's SSNs.
Disposition: Complainant requested the AFRC FOIA/PA manager to alert the Orderly Room NCO of the violation and to seek an alternative way to correspond with members without using SSNs.
Corrective Action: Emailed NCO a copy of Air Force Instruction (AFI) 33-332, Highlighted Chap 7, 7.3 and all of Chap 12. The NCO was informed of the dangers and consequences of PII violations. Included were the Privacy Act (PA) training slides and a point of contact for questions and guidance.

Complaint #6
Description of Complaint: Complaint from a commercial freight conveyance driver that commercial driver's license number was being collected by AF personnel when packages were being received.
Findings: Outbound freight personnel are required to collect commercial driver's license numbers of the driver who receives packages containing ammunition for shipping.
Disposition: The office of primary responsibility employee explained that Air Force Instruction requires collection of the driver's license number instead of the SSN. No AF PA system of records notice applies. The AF employee was briefed to explain requirements to non-AF civilians that no cross reference of driver's license number is used. The record is maintained for 6 years.

Complaint #7
Description of Complaint: Official documents belonging to the 96 Security Force Squadron timekeeper containing Privacy Act documents were allegedly found, unprotected in an office with a cipher lock.
Findings: Instead of returning the documents to the appropriate person, the individual who complained kept the documents.
Disposition: The documents in question have been returned to their rightful owner in the 96 SFS it was suggested to the commander that he send his personnel to Privacy Act Training to avoid this type of complaint in the future.

Agency' Name: Department of the Army

Complaint #8
Description of Complaint: Employee alleged a supervisor inappropriately disclosed their personal information.
Findings: While the individual's supervisor was filling out CA-1 (US Dept of Labor Traumatic Injury and Claim for Continuation of Pay/Compensation document injury report) on the individual (who filed the complaint), the supervisor called another individual for assistance.
Disposition: Pending. The incident is under investigation.

Complaint #9
Description of Complaint: Complaint from Active Duty Service member that PHI was discussed with Service Member's Platoon Sergeant by a nurse of the Occupational Health Clinic.
Findings: Service Member's Platoon Sergeant discussed "what if" scenario of non-compliant Service Member with nurse at Occupational Health. Nurse was able to identify non-compliant Service Member and continued to discuss specifics with Platoon Sergeant.
Disposition: Nurse was verbally counseled and reminded of further penalties for violations of HIPAA.

Complaint #10
Description of Complaint: Soldier filed HIPAA complaint against a Physician Assistant (PA) that worked in his Battalion aide station. The PA announced the patient's medical issue to a full room of sick-call Soldiers.
Findings: Investigation still being conducted. The HIPAA Officer is waiting on response from witnesses that were provided by the complainant. Block leave and training at another installation slowed down the process of the findings.
Disposition: Pending.

Complaint #11
Description of Complaint: Patient received a copy of her authorization for a flu shot and corresponding Form SF600 along with an additional Form SF600 that listed all of her medical issues and medications from her medical records. Administrative personnel without a need to know were able to view the patient's personal medical information.

Findings: Substantiated as an incidental disclosure by the Occupational Health Office.
Disposition: Individual at Occupational health was required to take HIPAA training again and to put together a system of doing quality checking before information containing PHI is sent out.

Complaint #12
Description of Complaint: Patient visited a therapist in Behavioral Health (BH) to talk to them regarding a medical issue. The therapist documented the visit in patient's electronic medical records. When the patient went to her Primary Care Provider (PCP), the PCP questioned her about the BH issue, the patient got upset since she had requested that the therapist not record anything about her questions and the visit in her medical records.
Findings: There was no violation of the patient's HIPAA or privacy. If the therapist had not registered the visit by the patient there would have been a violation of not recording visit in the patient record.
Disposition: Provider at BH was instructed to be clear and explain the legality of not recording a medical visit in a patient's medical record.

Complaint #13
Description of Complaint: A family member reported that for about five minutes while she and her daughter were in a patient room waiting to be seen, PHI belonging to others was accessible and viewable on a computer monitor. The monitor displayed patients' names, and the reasons for their appointments along with social security numbers.
Findings: Currently pending investigation.
Disposition: Pending.

Complaint #14
Description of Complaint: Patient alleged that while being seen at the Urgent Care clinic the provider stated aloud her diagnosis with the door partly open and that other staff and patients in the waiting area could hear him.
Findings: Currently under investigation.
Disposition: Pending.

Complaint #15
Description of Complaint: Complainant alleged several violations of the Privacy Act of 1974 and the Health Insurance Portability and Accountability Act of 1996 including documents with Public Health Information (PHI) left on printers and sensitive emails sent without encryption.
Findings: Investigation revealed no documents containing PHI were left on printers and although documents were emailed without encryption the complainant verbally approved use of his personal email address to receive information and did not express any concerns.
Disposition: Unsubstantiated. Staff/Employees were advised that in the future they must provide a privacy act statement or a Privacy Act Data Cover Sheet for all cases.

Agency' Name: Department of the Navy

Complaint #16
Description of Complaint: Complaint from employee at Naval Air Warfare Center-Aircraft Division, Lakehurst that the Joint Base, McGuire Air Force motor vehicle division is asking for and making a copy of state drivers license to issue government drivers license.
Findings: NAVAIR Privacy Act Coordinator discussed issue with Joint Base McGuire Privacy Act Officer. She was given details and emails were forwarded to her from employee.
Disposition: The issue was discussed with motor vehicle division. It was determined that the motor vehicle division is only receiving copies of state driver's license from employees who do not come in person to submit

and receive government driver's license. Supervisors/Managers are taking copies of state driver's license to McGuire to submit employees request for government driver's license. Copies are destroyed on-site in front of Supervisor/Manager after request is processed.

Complaint #17
Description of Complaint: Complainant alleged that a patient contact representative did not follow appropriate identification protocols when dealing with her personal information and that the patient contact representative submitted a report to her place of employment requesting verification of her identity.
Findings: Naval Medical Center, Portsmouth staff handled complainant's PHI in accordance with HIPAA as implemented by the DoD regulation. Additionally, it is the HIPAA Security Officer's opinion that access to complainant's medical information was necessary to provide complainant with the services performed.
Disposition: Complainant was formally notified that there was no inappropriate use of medical information in this incident.

Complaint #18
Description of Complaint: Complainant alleged that a Naval Medical Center, Portsmouth staff member contacted her in an email with medical information that could have only been retrieved from her medical records.
Findings: Audit report and review of clinic protocol by HIPAA Security Officer confirmed that there was no unauthorized access of complainant's medical information.
Disposition: Complainant was formally notified that there was no inappropriate access of medical information in this incident.

Complaint #19
Description of Complaint: Complainant alleged that Naval Medical Center, Portsmouth clinic members accessed his medical records and disclosed medical information to individuals without his authorization or knowledge.
Findings: Audit report and review of clinic protocol by HIPAA Security Officer confirmed that there was no unauthorized access of complainant's medical information.
Disposition: This complaint is under investigation.

Complaint #20
Description of Complaint: Complainant alleged that a doctor assigned to Naval Medical Center, Portsmouth discussed her medical information with a supervisor at her command without her authorization or knowledge.
Findings: Naval Medical Center, Portsmouth provider confirmed that he discussed complainant's medical information with a member of complainant's command without the member's authorization or knowledge. HIPAA Security Officer is researching issue.
Disposition: This complaint is under investigation.

Complaint #21
Description of Complaint: Complainant submitted concerns to Department of Health and Human Services that the U.S. Navy was not in compliance with the Privacy and Security Rules. Additionally, complainant alleges several members at Naval Medical Center, Portsmouth impermissibly accessed her electronic medical information.
Findings: HIPAA Security Officer confirmed that Naval Medical Center, Portsmouth staff members' access to complainant's medical information was appropriate and necessary to respond to members FOIA request.
Disposition: Investigation report of findings in this incident was forwarded to the Privacy Officer.

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

FEB 15 2011

The Honorable Carl Levin
Chairman
Committee on Armed Services
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Pursuant to Section 803, Public Law 110-53, "Implementing Recommendations of the 9/11 Commission Act of 2007," and Section 1062, Public Law 108-458, "National Security Intelligence Reform Act of 2004," as amended, this letter and its attachment serve as the Department of Defense's (DoD) Privacy and Civil Liberties Report for the first quarter, fiscal year (FY) 2011, October 1, 2010 through December 31, 2010.

Consistent with prior reporting, TAB A provides data about the Department's Privacy Program for the first quarter. We anticipate providing reports on the Civil Liberties Program that follow a similar format beginning in the third quarter of FY 2011.

In recognition of new threats to individual privacy and civil liberties posed by the global expansion of information technology, DoD continues efforts to strengthen its oversight responsibilities. The Defense Privacy and Civil Liberties Office (DPCLO) continues to review a wide variety of activities and procedures within DoD to find opportunities to enhance protections of individuals' privacy and civil liberties.

The DPCLO has multiple functions to include developing policy, providing program oversight and serving as DoD's focal point for privacy and civil liberties matters. As part of the policy development function, the DPCLO has drafted a DoD Instruction to establish policy and assign responsibilities for the implementation of the Civil Liberties Program, in accordance with requirements of the Act. We expect the instruction to be published as official DoD policy in FY 2011.

Consistent with the Act's requirements to assist the Secretary and other DoD officials in "appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism," the DPCLO is now a mandatory coordinator reviewing all new and reissued DoD policy issuances, draft legislative proposals, and agency responses to Congressional inquiries. During the first quarter of FY 2011, the DPCLO conducted policy reviews of 81 issuances.

The Act requires that DoD has "adequate procedures to receive, investigate, respond to, and redress complaints" from individuals who allege that DoD has violated their privacy or civil liberties. To that end, the DPCLO has established a formatting guide for civil liberties complaint submission. The guide provides guidance to assist individuals submitting complaints, and will be made available on the DPCLO website (http://dpclo.defense.gov).

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The point of contact for this report is Mr. Michael E. Reheuser, Director, DPCLO, who can be reached at (703) 607-2943 or michael.reheuser@osd.mil.

Michael L. Rhodes
Senior Agency Official for Privacy
and DoD Civil Liberties Officer

Enclosure:
As stated

cc:
The Honorable John McCain
Ranking Member

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

The Honorable Dianne Feinstein
Chairman
Select Committee on Intelligence
United States Senate
Washington, DC 20510

FEB 15 2011

Dear Madam Chairman:

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Michael L. Rhodes
Senior Agency Official for Privacy
and DoD Civil Liberties Officer

Enclosure:
As stated

cc:
The Honorable Saxby Chambliss
Vice Chairman

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
U.S. House of Representatives
Washington, DC 20515

FEB 15 2011

Dear Mr. Chairman:

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Michael L. Rhodes
Senior Agency Official for Privacy
and DoD Civil Liberties Officer

Enclosure:
As stated

cc:
The Honorable Elijah E. Cummings
Ranking Member

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

FEB 15 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Enclosure:
As stated

cc:
The Honorable John Conyers, Jr.
Ranking Member

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

FEB 15 2011

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The DPCLO has multiple functions to include developing policy, providing program oversight and serving as DoD's focal point for privacy and civil liberties matters. As part of the policy development function, the DPCLO has drafted a DoD Instruction to establish policy and assign responsibilities for the implementation of the Civil Liberties Program, in accordance with requirements of the Act. We expect the instruction to be published as official DoD policy in FY 2011.

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The point of contact for this report is Mr. Michael E. Reheuser, Director, DPCLO, who can be reached at (703) 607-2943 or michael.reheuser@osd.mil.

Michael L. Rhodes
Senior Agency Official for Privacy
and DoD Civil Liberties Officer

Enclosure:
As stated

cc:
The Honorable Susan M. Collins
Ranking Member

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

FEB 15 2011

Dear Mr. Chairman:

Pursuant to Section 803, Public Law 110-53, "Implementing Recommendations of the 9/11 Commission Act of 2007," and Section 1062, Public Law 108-458, "National Security Intelligence Reform Act of 2004," as amended, this letter and its attachment serve as the Department of Defense's (DoD) Privacy and Civil Liberties Report for the first quarter, fiscal year (FY) 2011, October 1, 2010 through December 31, 2010.

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Michael L. Rhodes
Senior Agency Official for Privacy
and DoD Civil Liberties Officer

Enclosure:
As stated

cc:
The Honorable Jeff Sessions
Ranking Member

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

The Honorable Mike Rogers
Chairman
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

FEB 15 2011

Dear Mr. Chairman:

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Michael L. Rhodes
Senior Agency Official for Privacy
and DoD Civil Liberties Officer

Enclosure:
As stated

cc:
The Honorable C. A. Dutch Ruppersberger
Ranking Member

OFFICE OF THE SECRETARY OF DEFENSE
1950 DEFENSE PENTAGON
WASHINGTON, DC 20301-1950

ADMINISTRATION AND
MANAGEMENT

The Honorable Howard P. "Buck" McKeon
Chairman
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515

FEB 15 2011

Dear Mr. Chairman:

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Michael L. Rhodes
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Enclosure:
As stated

cc:
The Honorable Adam Smith
Ranking Member