

A

**DEPARTMENT OF DEFENSE
 REPORT ON PRIVACY AND CIVIL LIBERTIES ACTIVITIES
 SECTION 803 OF THE “IMPLEMENTING RECOMMENDATIONS OF THE 9/11
 COMMISSION ACT OF 2007”
 4TH QTR FY13 – JULY 1 – SEPTEMBER 30, 2013**

A. Number and Types of Reviews¹ Undertaken

Computer Matching Programs	3
Privacy Act Statements	829
Privacy Act Systems of Records Notices (SORNs) with applicable exemptions	189
Section (m) Contract Reviews	158

¹ A review is an activity to ensure compliance with requirements established in controlling authorities such as the Privacy Act of 1974, 5 U.S.C. § 552a, and OMB Circular A-130, Appendix 1.

B. Type of Advice Provided¹ and the Response to Advice²

Advice Provided	Response to Advice
1	0

¹ Advice provided is the written issuance of policies, procedures, or guidance pertaining to privacy and civil liberties issued by: (1) the Heads of the OSD and DoD Components; or (2) Component Senior Officials for Privacy or Component Chief Civil Liberties Officers.

² Response to advice is specific action taken by a DoD Component implementing the advice provided by: (1) the Heads of the OSD and DoD Components; or (2) Component Senior Officials for Privacy or Component Chief Civil Liberties Officers. Examples of a response to advice may include: guidance, new procedure, or training.

C. Nature, Number, and Disposition of Complaints¹ Received

Nature of Privacy Complaints	Number Received	Disposition of Complaint	
		Responsive Action Taken ²	Pending ³
Procedural	41	31	10
Redress	0	0	0
Operational	2	0	2
<i>Sub Total for Privacy Complaints:</i>	43	31	12
Nature of Civil Liberties Complaints			
First Amendment	21	13	8
Second Amendment	3	3	0
Fourth Amendment	77	77	0
Fifth Amendment	2	1	1
First and Fourth Amendments	2	0	2
<i>Sub Total for Civil Liberties Complaints:</i>	105	94	11
TOTAL for 3rd Qtr FY13	148	125	23

¹ A complaint is an assertion alleging a violation of privacy and/or civil liberties. Privacy complaints typically allege violations of: (1) procedure (consent, collection, disclosure, and notice); (2) redress (non-Privacy Act inquiries seeking resolution of difficulties about privacy matters); or (3) operational issues (Privacy Act matters not including requests for access, disclosure, and/or amendment). Civil liberties complaints typically allege a violation of the Bill of Rights or other Amendments to the Constitution of the United States.

² Responsive action taken means the complaint was reviewed and a responsive action was taken and/or the complaint was resolved.

³ Pending means the complaint is being reviewed to determine the responsive action and/or resolution.

B

**SECTION 803 OF 9/11 COMMISSION ACT OF 2007
DETAILS OF CIVIL LIBERTIES ADVICE PROVIDED
4TH QTR FY13 – JULY 1 – SEPTEMBER 30, 2013**

Total Number of Advice Provided: 1

1. NSA's General Counsel Office issued guidance to the agency about requirements for DoD's data mining report. This guidance discussed what data mining is and described best practices that should be considered in preparing the report.

C

**SECTION 803 OF 9/11 COMMISSION ACT OF 2007
DETAILS OF PRIVACY COMPLAINTS AND DISPOSITIONS
4TH QTR FY13 – JULY 1, 2013 – SEPTEMBER 30, 2013**

Total Number of Complaints: 43

Defense Commissary Agency (DeCA)

Complaint #1:

Description of Complaint: An employee found that when she reviewed her Defense Civilian Personnel Data System (DCPDS) record multiple medical terms were entered for a disability even though the employee has not claimed any type of disability. The employee also complained that her Social Security Number (SSN) was shown in its entirety rather than being masked.

Findings: Substantiated. Incorrect information had been entered into the employee's personal tab. Human Resources was notified immediately and advised to contact DCPDS. The employee was instructed on how to correct the information.

Disposition: Responsive Action Taken.

Defense Health Agency (DHA)

Complaint #2:

Description of Complaint: The complainant alleged that their privacy, civil liberties and civil rights were violated when Accredo Healthcare Group, which provides a mail-order pharmacy service, requested the complainant's consent to the disclosure of personal medical information and provide specific legal and medical documentation (i.e., living will, power of attorney, and an advance directive).

Findings: The DHA Privacy and Civil Liberties Office reviewed the complaint and is investigating it.

Disposition: Pending.

Department of the Army

Complaint #3:

Description of Complaint: Civilian employee claimed that she heard from a third party that someone had conveyed to that person and another third party false information about her medical information and status.

Findings: The Office of General Counsel reviewed the complaint and made recommendations regarding an inquiry into the matter and response to the complainant. A civilian employee has been appointed to conduct an informal investigation into the incident and the respondent was informed of the inquiry.

Disposition: Pending.

Complaint #4:

Description of Complaint: An individual received immunization records that did not belong to the complainant. The document contained SSNs for individuals not related to the individual.

Findings: Substantiated. After further investigation, it was found that the records of patients who request immunizations are put into a small filing cabinet at the front desk. When the patient arrives for the records, they are retrieved from the file cabinet. The wrong records were issued because the worker did not verify the name on the records before releasing them. The complainant was notified and the complaint was referred to the command for disciplinary action.

Disposition: Responsive Action Taken.

Complaint #5:

Description of Complaint: An employee filed a complaint that the employee's supervisor was attempting to force the employee to sign a release for their birth month occupational health visit.

Findings: Substantiated. Birth month occupational health visits are not required to be disclosed to the supervisor and the employee did not have to sign the consent. The employee and his supervisor were notified of the findings. The employee had received a counseling statement from his supervisor because he would not sign the consent. The supervisor removed the counseling statement.

Disposition: Responsive Action Taken.

Complaint #6:

Description of Complaint: An employee used their Armed Forces Health Longitudinal Technology Application (AHLTA)/Composite Health Care System (CHCS) privileges to access a retired individual's protected health information (PHI) without an official need to know.

Findings: Substantiated. The employee verified this action verbally and it was also reflected in the enterprise access report. The complainant was notified and the incident was referred to the command for disciplinary action.

Disposition: Responsive Action Taken.

Complaint #7:

Description of Complaint: A staff member, who was a recent patient in a local healthcare facility, alleged that another staff member discussed their PHI in a public setting.

Findings: Unsubstantiated. Preliminary investigation indicated that the complaint was questionable and the complaint was withdrawn.

Disposition: Responsive Action Taken.

Complaint #8:

Description of Complaint: Patient filed a complaint alleging that a nurse released the patient's personally identifiable information (PII)/ PHI to the patient's ex-spouse without authorization.

Findings: Unsubstantiated. An audit indicated that the nurse did not view or otherwise access the patient's data in either AHLTA or CHCS.

Disposition: Responsive Action Taken.

Complaint #9:

Description of Complaint: A patient accused healthcare providers of inappropriately disclosing PHI to the patient's employer.

Findings: Unsubstantiated.

Disposition: Responsive Action Taken.

Complaint #10:

Description of Complaint: A patient was concerned that their supervisor was inappropriately accessing the patient's electronic medical record.

Findings: Unsubstantiated. An audit was conducted of the patient's electronic medical record. No evidence was found to substantiate the complaint.

Disposition: Responsive Action Taken.

Complaint #11:

Description of Complaint: A staff member used their access to electronic medical records to view information on a patient who is an acquaintance.

Findings: Substantiated. An audit of the system confirmed that the records in question were accessed by the staff member and the patient was informed. The staff member was disciplined by supervisory staff.

Disposition: Responsive Action Taken.

Complaint #12:

Description of Complaint: A patient, who is also a staff member, accused their supervisor and providers of inappropriately using the patient's PHI to deny the employee a temporary duty.

Findings: Unsubstantiated. The supervisor did not use PHI to make their decision. The employee's employment with the clinic is scheduled to end and the request for temporary duty was denied.

Disposition: Responsive Action Taken.

Complaint #13:

Description of Complaint: A patient alleged that their information was inappropriately accessed by a staff member.

Findings: Substantiated. The violation was referred to supervisory staff.

Disposition: Responsive Action Taken.

Complaint #14:

Description of Complaint: A soldier stated that another soldier wrongfully accessed their PHI, altered it, and disclosed it to third parties.

Findings: Under investigation.

Disposition: Pending.

Complaint #15:

Description of Complaint: A soldier stated that their former spouse received medical information on their children without the soldier's consent.

Findings: Unsubstantiated. The former spouse has custodial rights to the children and is authorized to receive the medical information about the children. The parents have joint custody and share some parental rights.

Disposition: Responsive Action Taken.

Complaint #16:

Description of Complaint: A soldier stated that a supervisor read the soldier's medical information out loud to individuals who did not have need-to-know.

Findings: Under investigation.

Disposition: Pending

Complaint #17:

Description of Complaint: A patient stated that a student intern was in their treatment room and rendering care without consent.

Findings: Under investigation.

Disposition: Pending

Complaint #18:

Description of Complaint: A soldier stated that a staff member who was caring for the soldier discussed the soldier's medical information with another staff member who was not involved with their care and without consent of the soldier.

Findings: Under investigation.

Disposition: Pending

Complaint #19:

Description of Complaint: An alleged Privacy Act complaint was received from the Defense Privacy and Civil Liberties Office for further action. The United State Army Medical Command Headquarters privacy office made an inquiry into the matter. The complaint alleged that personnel shared PII of the complainant to individuals who did not have need to know.

Findings: Under investigation.

Disposition: Pending

Complaint #20:

Description of Complaint: A Criminal Investigation Command (CID) agent alleged that another CID agent vandalized their property, stole vehicles and money, impersonated the complainant in calls to the agent's doctor, and conducted improper searches of official records to access the agent's PII.

Findings: Under investigation.

Disposition: Pending.

Complaint #21:

Description of Complaint: A staff member filed a formal complaint alleging that PII was released to a union representative without the staff member's consent.

Findings: Under investigation; the commander was given the formal complaint and an appointment of an inquiry officer is pending.

Disposition: Pending.

Complaint #22:

Description of Complaint: A staff member filed a formal complaint alleging that PII was released to a union representative without the staff member's consent.

Findings: Under investigation; the commander was given the formal complaint and an appointment of an inquiry officer is pending.

Disposition: Pending.

Complaint #23:

Description of Complaint: A service member filed a formal complaint alleging that a copy of their Expiration Term of Service (ETS) orders were disclosed without necessary redactions to their landlord without consent. The ETS orders contained the disability status of the service member.

Findings: Under investigation; the commander was given the formal complaint and an appointment of an inquiry officer is pending.

Disposition: Pending.

Department of the Navy

Complaint #24:

Description of Complaint: A staff member working in a clinic's call center filed a complaint stating that her coworker counseled a patient in the work area and she overheard it.

Findings: Unsubstantiated. The conversation occurred but reasonable safeguards were used. The complainant was notified. No breach was found, but the staff was advised to avoid having conversations that can be overheard.

Disposition: Responsive Action Taken.

Complaint #25:

Description of Complaint: A mental health provider complained that a staff member inappropriately accessed and printed mental health notes.

Findings: Substantiated. Staff members were printing these notes and did so to verify patient charts and reconcile the notes into an official record. The complainant was notified. No breach occurred because the staff was working within the scope of their employment.

Disposition: Responsive Action Taken.

Complaint #26:

Description of Complaint: A staff member scanned incorrect information into a patient's electronic health record.

Findings: Substantiated. The incorrect information was expunged from the record.

Disposition: Responsive Action Taken.

Complaint #27:

Description of Complaint: A patient provided medical documentation from one hospital to another hospital's emergency room and alleged that it was lost.

Findings: Unsubstantiated. The documentation was located in the patient's emergency room record and returned to the patient.

Disposition: Responsive Action Taken.

Complaint #28:

Description of Complaint: A staff member alleged that another staff member inappropriately accessed an electronic health record without need to know.

Findings: Unsubstantiated.

Disposition: Responsive Action Taken.

Complaint #29:

Description of Complaint: A staff member alleged that another staff member inappropriately accessed an electronic health record without need-to-know.

Findings: Unsubstantiated. After contacting the patient several times, the patient failed to file a formal complaint.

Disposition: Responsive Action Taken.

Complaint #30:

Description of Complaint: A patient alleged that a staff member violated his privacy rights by denying him access to his medical records.

Findings: Substantiated. The patient was provided copies of his medical record.

Disposition: Responsive Action Taken.

Complaint #31:

Description of Complaint: A staff member alleged that another staff member accessed his wife's electronic health record without need to know.

Findings: Under investigation.

Disposition: Pending.

Complaint #32:

Description of Complaint: The complainant alleged that the chain of command wrongfully accessed the complainant's medical information without a need to know or other appropriate authorization.

Findings: Unsubstantiated.

Disposition: Responsive Action Taken.

Complaint #33:

Description of Complaint: The complainant alleged that the chain of command wrongfully accessed the complainant's medical information without a need to know or other appropriate authorization.

Findings: Unsubstantiated.

Disposition: Responsive Action Taken.

Complaint #34:

Description of Complaint: The complainant alleged that the chain of command accessed patients medical information without a need to know or other appropriate authorization.

Findings: Substantiated.

Disposition: Responsive Action Taken.

Complaint #35:

Description of Complaint: The complainant alleged that staff disclosed her medical information to persons that did not have a need to know or other appropriate authorization.

Findings: Under investigation.

Disposition: Pending

Complaint #36:

Description of Complaint: A patient was given images of another patient's surgery. They were printed on the same sheet as the complainant's surgical images.

Findings: Substantiated. Images of another patient's surgery were printed on the same sheet as a patient who received surgery that same day. The staff did not follow standard operating procedure to clear the images from the previous surgery prior to taking more images for the next patient's surgery. The Health Insurance Portability and Accountability Act (HIPAA) Privacy Officer was notified who in turn notified the Chief Information Officer (CIO). The CIO instructed that no notification was required because the images did not contain anything harmful to the patient. Staff members received necessary remedial training and instructions.

Disposition: Responsive Action Taken.

Complaint #37:

Description of Complaint: A patient complained that a nurse faxed a referral containing the patient's PII to the patient's place of work.

Findings: Substantiated. The nurse tried to contact the patient to provide the referral. The patient worked the overnight shift and could not be reached during normal business hours. The nurse then sent the referral containing PII to the patient's place of work. The fax was received by the patient's supervisor and placed in his office mailbox. The nurse's supervisor was notified, who in turn counseled and provided further training to the nurse.

Disposition: Responsive Action Taken.

Complaint #38:

Description of Complaint: A patient's spouse complained that she overheard staff members refer to her husband as a "psych patient".

Findings: Unsubstantiated. No privacy breach was found to have occurred, but the head nurse verbally reprimanded the staff and spoke to the patient's spouse, resolving the issue.

Disposition: Responsive Action Taken.

Complaint #39:

Description of Complaint: A complaint was filed that a nursing station had no privacy safeguards in place.

Findings: The nursing station was temporary and in a very small patient treatment room. Privacy screens were placed on computer monitors.

Disposition: Responsive Action Taken.

Complaint #40:

Description of Complaint: A patient's records were wrongfully accessed in ALHTA.

Findings: Unsubstantiated. The AHLTA audit was inconclusive. The patient's hard copy record was not at the hospital. However, the complaint was that a contract worker from the hospital wrongfully accessed the record. No such evidence was found.

Disposition: Responsive Action Taken.

Complaint #41:

Description of Complaint: A complaint alleged that the radiology department refused to provide a staff member information via email for suitability screening purposes.

Findings: Substantiated. The radiology staff was provided information on the proper way to send PII/PHI by email.

Disposition: Responsive Action Taken.

Complaint #42:

Description of Complaint: A complaint alleged that an email was sent to staff members containing an attachment with an SSN.

Findings: Substantiated. The email was sent to 10 staff members, all with verified HIPAA training. Provided training on sender and recipient email responsibilities for emailing SSNs.

Disposition: Responsive Action Taken.

National Reconnaissance Office

Complaint #43:

Description of Complaint: An individual contacted the privacy office to complain that anyone with network access was able to see the personal information of personnel identified in a SharePoint database.

Findings: Access permissions were modified to limit access to this database to those authorized personnel with a need to know the information. The office updated the privacy settings and redeployed the database.

Disposition: Responsive Action Taken.

**SECTION 803 OF 9/11 COMMISSION ACT OF 2007
DETAILS OF CIVIL LIBERTIES COMPLAINTS AND DISPOSITIONS
4TH QTR FY13 – JULY 1 - SEPTEMBER 30, 2013**

Total Number of Complaints: 105

Defense Finance and Accounting Service (DFAS)

Complaint #1:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that his commander violated his First Amendment right to free speech when, on two occasions, his supervisor issued him Letters of Warning (LoW).

Findings: The Civil Liberties Program Office received and evaluated the complaint. Upon review of agency records and case law, the complainant was issued the letters for being rude and disrespectful to his supervisors and members of the executive service. Agency guidance established that LoW are not disciplinary in nature, but merely used to formalize instruction that might otherwise be given orally. The employee's comments were made while performing his duties as a DFAS employee and not as a private citizen. The U.S. Supreme Court has held that speech made during the performance of one's duties as a public employee has no First Amendment protection against agency discipline of the employee. Therefore, it was determined that the complainant's freedom of speech was not violated.

Disposition: Responsive Action Taken.

Defense Logistics Agency

Complaint #2:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that her first and second-line supervisors informed her that she could not display her prayers in her work area.

Findings: The Equal Employment Opportunity (EEO) complaint is being investigated.

Disposition: Pending.

Complaint #3:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that he was the subject of derogatory comments about Muslims from a training officer.

Findings: During the EEO investigation, the complainant participated in a union settlement conference, which resulted in the withdrawal of his EEO complaint.

Disposition: Responsive Action Taken.

Defense Threat Reduction Agency (DTRA)

Complaint #4:

Description of Complaint: Alleged First and Fourth Amendment violations. The complainant, a contractor employee, alleged that a military member assigned to DTRA ordered him to stop all personal and professional contact with several DTRA leadership officials. The complainant also alleged that he was confined to military quarters for 24 hours by military police while participating in an overseas mission.

Findings: The Inspector General (IG) has received the complaint for investigation.

Disposition: Pending.

Department of the Air Force

Complaint #5:

Description of Complaint: Alleged First Amendment violation. The complainant alleged reprisal by her leadership for making a statement to the IG. Specifically, the complainant alleged she was denied reenlistment and subsequently selected for Date of Separation (DOS) Rollback because she made an IG complaint. The complainant received an Article 15 counseling for violating a no-contact order which made her eligible for DOS Rollback.

Findings: An extensive reprisal complaint analysis was conducted and it was recommended that the case be dismissed because the complainant was denied reenlistment for valid reasons and no evidence was found that the commander knew about the complainant's IG complaint. The case is still under legal review before being submitted to the DoD IG for final determination.

Disposition: Pending.

Complaint #6:

Description of Complaint: Alleged First Amendment violation. The complainant alleged reprisal for making or preparing to make a protected communication, under 10 U.S.C 1034 Whistleblower Statute, with the IG.

Findings: The IG received and evaluated the complaint, and the complaint is being investigated. IG completed interviews and is drafting the report.

Disposition: Pending.

Complaint #7:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that the Security Forces Squadron (SFS) Command Chief refused to allow members of the Random Antiterrorism Measures Squad to attend church services, and instead, ordered them to perform non-mission essential tasks, such as cleaning the squadron vehicle section.

Findings: Pending legal review.

Disposition: Pending.

Complaint #8:

Description of Complaint: Alleged First Amendment violation. The complainant alleged religious discrimination when he was removed from his position by the commander for disagreeing with the commander over whether or not discipline was to be administered to a junior active duty enlisted member who purportedly made disparaging comments with respect to same sex couples. The incident was the subject of a Command Directed Investigation (CDI).

Findings: The Military Equal Opportunity complaint is at the clarification stage. Regarding the CDI, the investigating officer's report is with the judge advocate for legal review.

Disposition: Pending.

Complaint #9:

Description of Complaint: Alleged Fifth Amendment violation. The complainant alleged that he was asked self-incriminating questions during a polygraph test.

Findings: Pending investigation.

Disposition: Pending.

Complaint #10:

Description of Complaint: Alleged First and Fourth Amendment violations. The complainant alleged that the Air Force Office of Special Investigations (AFOSI) was listened to privileged communications between him and his civilian lawyer.

Findings: Pending investigation.

Disposition: Pending.

Complaint #11:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that, over the course of two years, her squadron commander promoted his religious beliefs to his subordinates in a manner calling into question his impartiality and objectivity.

Findings: The group commander directed an investigation which substantiated the complaint. The group commander issued a Letter of Counseling to the squadron commander.

Disposition: Responsive Action Taken.

Complaint #12:

Description of Complaint: Alleged First Amendment violation. The complainant, an officer trainee (OT) in Officer Training School's (OTS) Basic Officer Training (BOT), alleged his instructor violated his First Amendment rights by requiring him to sign the commissioning oath, which includes the phrase "So help me God" at the end of the oath. He also claimed he was told he would be required to utter the same phrase while all OTs repeated the oath during the BOT graduation ceremony.

Findings: OTS received and evaluated the complaint. After a thorough legal review and consultation with the legal office, the complaint was found to be substantiated based on the Supreme Court precedent, *Torcaso v. Watkins* 367 U.S. 488 (1961), and an accommodation was determined to be the best course of action. Religious accommodation was made to permit the OT to strike through the words "So help me God" on his AF Form 133, and to omit speaking those four words at the end of the mass commissioning oath during the BOT graduation ceremony. OTS leadership and instructors were advised of the religious accommodation in this case and for future cases.

Disposition: Responsive Action Taken.

Complaint #13:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that a member of the Civilian Personnel Management Flight violated his right to free speech by sending him an email directing him to remove a personal Facebook posting, then by following-up with additional attempts to communicate.

Findings: The Civilian Personnel Management Flight member did not wrongfully violate the complainant's civil liberties. The email directing the complainant to remove the Facebook posting was sent in good faith when the member thought the posting contained non-public information subject to a non-disclosure agreement. Shortly thereafter, the Civilian Personnel Management Flight member discovered that the information had recently been made public and attempted to recall the original email. The Civilian Personnel Management Flight member's additional attempts to contact the complainant were for the purpose of explaining that the email directing removal of the Facebook post was in error.

Disposition: Responsive Action Taken.

Complaint #14:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that in 2006, a member of his squadron called him a Jew.

Findings: Substantiated. The unit commander at the time moved the members into separate work sections and addressed the issue.

Disposition: Responsive Action Taken.

Complaint #15:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that an email from the chaplain's office advertising the National Prayer Breakfast promoted religion over non-religion, alienating atheists, agnostics, and those with no religious preference.

Findings: The staff judge advocate determined that the emails were in compliance with current Air Force guidance.

Disposition: Responsive Action Taken.

Complaint #16:

Description of Complaint: Alleged First Amendment violation. The complainant alleged violations of freedom of speech and religion when an article was pulled from an installation website after an organization complained that the article gave the appearance of endorsement by command.

Findings: No violation found. Changes were made to ensure that command endorsement of articles posted in the chaplain's corner was not implied.

Disposition: Responsive Action Taken.

Complaint updated from 3rd Qtr FY 2012.

The complaint was received and reported as "pending" during the 3rd Qtr of FY 2012 and is not included as a new complaint received during the 4th Qtr of FY 2013.

Description of Complaint: Alleged Fourth and Fifth Amendment violations. The complainant, an active duty service member who lives in base privatized housing, alleged that a search of the complainant's home was conducted without probable cause. The complainant's spouse was apprehended for communicating a threat and firearms, ammunition, and knives were seized during a subsequent search of the home. The complainant also alleged that Security Forces (SF) continued to question his spouse after she invoked her right to remain silent. Further, the complainant alleged that the detective did not advise his spouse of her rights when she went to the detective's office to get a copy of the search and seizure authorization.

Finding: The CDI was completed, found to be legally sufficient and was reviewed by the commander. The CDI found that the individual's Fourth Amendment rights were violated because the seizure of knives from the personal residence exceeded the scope of the search authorization which was for firearms. There was no violation of the individual's Fifth Amendment rights.

Disposition: Responsive Action Taken.

Complaint updated from 3rd Qtr FY 2012.

The complaint was received and reported as "pending" during the 3rd Qtr of FY 2012 and is not included as a new complaint received during the 4th Qtr of FY 2013.

Description of Complaint: Alleged First, Fourth, Sixth, and Fourteenth Amendment violations. The complainant had been under investigation by AFOSI, and alleged that an AFOSI Special Agent conducted an unfair and gender biased investigation. The complainant alleged that the special agent violated the complainant's First Amendment freedom of religion, Fourth Amendment freedom against unreasonable search and seizure, Sixth Amendment right to a speedy trial and confrontation of witnesses, and Fourteenth Amendment rights. The complainant also alleged that the special agent violated the Privacy Act.

Findings: The inquiry found no violations of the Constitution.

Disposition: Responsive Action Taken.

Complaint updated from 3rd Qtr FY 2013.

The complaint was received and reported as "pending" during the 3rd Qtr of FY 2013 and is not included as a new complaint received during the 4th Qtr of FY 2013.

Description of Complaint: Alleged Fourth Amendment violation. The complainant alleged that security forces were called to his on-base housing on the reporting of false and unfounded allegations. During one of the calls, security forces detained the complainant's active duty family member.

Findings: Unsubstantiated. The determination of the inquiry was that there was no violation of civil liberties.

Disposition: Responsive Action Taken.

Department of the Army

Complaint #17:

Description of Complaint: Alleged First Amendment violation. The complainant, a prisoner at a military regional corrections facility, alleged that he was denied access to a religious publication.

Findings: The requested publication violated the content criteria established in the regional correction facility's prisoner rule book. The prisoner was advised on how to request accommodation of his religious practices under Army procedures.

Disposition: Responsive Action Taken.

Complaint #18:

Description of Complaint: Alleged First Amendment violation. The complainant, a prisoner at a military corrections facility, alleged that the facility personnel caused him to violate Ramadan daylight fasting practices by issuing him his prescribed medications during daylight hours.

Findings: The prisoner was advised on how to request accommodation of his religious practices under Army procedures.

Disposition: Responsive Action Taken.

Complaint #19:

Description of Complaint: Alleged Fourth Amendment violation. The complainant alleged that a “health and welfare” inspection of privately owned vehicles in the barracks parking lot was actually to search for illegal drugs. The chain of command told the soldiers their cars were being checked for safety issues. However, the inspectors opened up glove compartments, and one was heard yelling, “No drugs here, next vehicle!” The complainant’s commander also told the soldiers that an inspection of all on-post family quarters would take place the next week.

Findings: The commander conducted the inspection without following installation procedures requiring legal advisor approval beforehand. The commander was advised about appropriate inspection parameters. He was also advised that he may not “inspect” on-post family housing without occupant consent or probable cause.

Disposition: Responsive Action Taken.

Complaint #20:

Description of Complaint: Alleged First Amendment violation. A complaint was received that a childcare provider in a military child care facility told the children that “if you don’t have Jesus in your heart, you’re going to a bad place.”

Findings: Inquiry indicated that the statement was actually made by another child at the facility, to whom the provider responded, “we are kind to everyone because everyone believes something different.”

Disposition: Responsive Action Taken.

Complaint #21:

Description of Complaint: Alleged Second Amendment violation. A complaint was received that a commander had issued an improper order to his soldiers living in the barracks. He ordered these soldiers who owned weapons stored off-post to register the weapons on-post and store them in the unit arms room.

Findings: Inquiry indicated that the commander issued an improper order, but that it was rescinded after consultation with legal advisors.

Disposition: Responsive Action Taken.

Complaint #22:

Description of Complaint: Alleged Fifth Amendment violation. A soldier was walking on post when a Military Police (MP) patrolman offered him a courtesy ride home. Once in the vehicle, the officer noticed a smell of alcohol and that the soldier had slurred speech. The MP asked the soldier his age. The soldier replied "20." The MP questioned him further, asking "what have you been doing tonight?" etc., to which the soldier responded that he had been drinking. The MP then took the soldier to the station, read him his rights, and the soldier invoked.

Findings: The soldier's Article 31 rights and Miranda rights were violated. The soldier's constitutional rights against self-incrimination were violated when he was questioned by an MP who suspected him of having violated a punitive article of the UCMJ. No formal complaint was filed. The chain of command recommended an Article 15 for underage drinking. The Article 15 proceedings were terminated once the police report was received and the chain of command was notified that there was a potential civil liberties violation. No further action taken by the chain of command or Sergeant Major.

Disposition: Responsive Action Taken.

Complaint #23:

Description of Complaint: Alleged Fourth Amendment violation. A commander removed a license plate from a non-commissioned officer's vehicle because that vehicle was parked in the commander's parking space. The commander did not intend to keep the license plate, but rather took it to ensure the soldier would report to him and discuss why the soldier parked there. An anonymous call was placed to the Police Department stating the license plate was stolen. The police in turn called the installation military police, who investigated and detained the commander. The license plate was returned to the vehicle.

Findings: The commander never intended to keep the license plate but did wrongly take the license plate.

Disposition: Responsive Action Taken.

Complaint #24:

Description of Complaint: Alleged Second Amendment violation. The complainant alleged that his commander ordered him to store his privately owned weapon in the unit arms room after a domestic violence incident.

Findings: The complainant was told that his commander had an adequate basis to issue the order and to petition his commander for release of the weapon.

Disposition: Responsive Action Taken.

Complaint #25:

Description of Complaint: Alleged First Amendment violation. The complainant, the spouse of a civilian employee, alleged that his First Amendment rights were violated when a statement in an investigation made reference to him being in the process of contacting his congressman.

Findings: The Office of General Counsel reviewed the complaint and found that there was no violation of the spouse's civil liberties.

Disposition: Responsive Action Taken.

Complaint updated from 3rd Qtr FY 2013.

The complaint was received and reported as "pending" during the 3rd Qtr of FY 2013 and is not included as a new complaint received during the 4th Qtr of FY 2013.

Description of Complaint: Alleged Second and Fourth Amendment violations. The complainant made a complaint to the IG alleging that the command violated his Fourth Amendment rights. While meeting with his behavioral health counselor, the complainant, told his counselor that he would shoot his company commander. The counselor believed this to be a future threat and informed the company commander. The company commander asked the battalion commander what she should do and the battalion commander told her to "do what you have to do." The company commander asked the complainant for permission to take the weapons from his off-post house; the complainant did not consent. Despite the complainant's objection, the company commander had a Sergeant Major (who had a key to the house because he was pet-sitting while the complainant was in treatment) open the house and seize the weapons. The complainant was released from treatment the following day and asked for his weapons to be returned. The First Sergeant initially told the complainant "no." Later, the weapons were returned.

Findings: Substantiated. The battalion commander received a formal counseling.

Disposition: Responsive Action Taken.

Complaint updated from 3rd Qtr FY 2012.

The complaint was received and reported as "pending" during the 3rd Qtr of FY 2012 and is not included as a new complaint received during the 4th Qtr of FY 2013.

Description of Complaint: Alleged First Amendment violation. The complainant alleged that his supervisor counseled him, and wrongfully retaliated against him, for posting a derogatory comment about "MDs" on Facebook.

Findings: The complainant's supervisor counseled him for his lack of professionalism in posting these comments. This Facebook posting was not considered a "protected communication" under the Military Whistleblower Reprisal statute. The subsequent unfavorable personnel actions that the complainant received resulting from this Facebook posting and from several other unprofessional acts were appropriate.

Disposition: Responsive Action Taken.

DoD Inspector General

Complaint #26:

Description of Complaint: Alleged Second Amendment violation. The complainant alleged that her son's commander violated his Second Amendment right by seizing her son's weapons from his off-base residence after determining that he was mentally unstable.

Findings: The complaint was not referred for further action because the military member did not consent to the disclosure of his identity.

Disposition: Responsive Action Taken.

Complaint #27:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that school administrators denied teachers at a Department of Defense Dependents School their First Amendment rights by telling the teachers both verbally and in writing that the teachers cannot talk to the parents of students outside of work.

Findings: The complaint was referred to the Department of Defense Education Activity for inquiry.

Disposition: Pending.

Complaint #28:

Description of Complaint: Alleged First Amendment violation. The complainant alleged violations of the First Amendment based on the following: (1) Using church contributions to pay for appropriated fund positions while funds appropriated by Congress are used for other base or chapel expenses (to include planting base flowers); (2) Having someone other than the priest prohibit a Catholic Parish Advisory Board (PAB) from meeting because the PAB raised concerns about the use of monetary contributions; and (3) The issuing of no contact orders to the priest to keep him from discussing financial matters with the PAB President.

Findings: The complaint was referred to Air Force IG for inquiry.

Disposition: Pending.

Complaint #29:

Description of Complaint: Alleged First Amendment violation. The complainant alleged that his First Amendment right to free speech was violated when his supervisor requested that certain types of emails not be sent to people in the workgroup as two individuals expressed "concerns" regarding the emails.

Findings: The complaint was referred to Army IG for information.

Disposition: Pending.

National Security Agency (NSA)

Complaint #30:

Description of Complaint: Alleged First Amendment violation. NSA's Office of Administrative Grievances received a complaint from a grievant who alleged that he was forced to sign a letter of counseling and that this violated his right to free speech. Grievant alleged he was given the letter as a result of written comments he provided to a training catalog.

Findings: The grievant withdrew his grievance and decided not to pursue a grievance.

Disposition: Responsive Action Taken.

Complaints #31-105:

Description of Complaints: Alleged Fourth Amendment violations. In June 2013, the NSA Public Affairs Office (PAO) experienced a surge in civil liberties complaints following Edward Snowden's unauthorized disclosures of NSA information to the press. PAO received a total of 152 potential civil liberties complaints, including 75 potentially credible civil liberties complaints, related to the unauthorized disclosures between July and September 2013 via PAO's public Internet email address, nsapao@nsa.gov. PAO received 0 complaints prior to the unauthorized disclosures.

Findings: PAO is not a normal channel for handling civil liberties complaints; therefore PAO redirects potential complaints received through its public Internet address in one of two ways. First, if the message contains a request for information from NSA, PAO refers the requester to public online instructions for submitting a FOIA request to NSA. Second, if the message contains a request to file a complaint, or if it contains a credible allegation of a serious crime, PAO refers the complainant to public, online instructions for contacting the NSA IG Office. PAO does not respond to messages that allege generalized wrongdoing by NSA.

Of the 152 ostensible civil liberties complaints related to the unauthorized disclosures, PAO responded to 75 complaints seeking information from NSA by referring to the instructions for submitting a FOIA request and/or instructions for contacting the NSA IG office. PAO did not respond to the remaining 77 complaints related to unauthorized disclosures because they contained only broad recitations of wrongdoing flowing from the unauthorized disclosures.

Disposition: Responsive Action Taken.

(U) Notes on Non-Credible Civil Liberties Violation Complaints:

NSA's Freedom of Information Act & Privacy Office did not receive any civil liberties complaints.

NSA's Office of the Inspector General received 44 non-credible civil liberties complaints from the external Inspector General Hotline. The 44 complaints were received from multiple individuals who made various improbable claims such as: torture, attacks with directed energy weapons, and remote neural monitoring.

NSA's Office of Corporate Communications, Messaging and Public Affairs received many non-credible civil liberties complaints by phone, email and facsimile. Complaints alleged torture, attacks with energy weapons, tracking by satellites and a variety of incredible allegations. The overwhelming majority of these complaints were submitted by a small number of individuals.

NSA's Security Operations Command Center (SOCC) received several hundred contacts via phone, e-mail, and/or mail. All of these contacts were made by individuals who have no official business with NSA (unsolicited contacts). Many of the contacts were non-credible civil liberties claims by individuals such as being tracked or recorded by satellites or devices installed in the body. However, a large portion of the unsolicited

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DEPARTMENT OF DEFENSE
DEFENSE PRIVACY AND CIVIL LIBERTIES OFFICE
241 18TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202

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

NOV 08 2013

Dear Mr. Chairman:

Pursuant to section 803, Public Law 110-53, the "Implementing Recommendations of the 9/11 Commission Act of 2007," ("the Act"), this letter and its enclosure serve as the Department of Defense's (DoD) Privacy and Civil Liberties Report for the fourth quarter of fiscal year 2013, July 1 through September 30, 2013.

Consistent with the Act's requirement to review whether privacy and civil liberties are adequately considered, the Defense Privacy and Civil Liberties Office (DPCLCLO) continues to periodically review new and reissued policy issuances, legislative proposals, and agency responses to congressional inquiries. During the fourth quarter, the DPCLCLO reviewed 100 issuances.

The Act requires that DoD have "adequate procedures to receive, investigate, respond to, and redress complaints" alleging that DoD violated a complainant's privacy or civil liberties. For the reporting quarter, 43 privacy complaints and 105 civil liberties complaints were received; responsive action was taken for 125 complaints; and 23 are pending.

A similar letter is being sent to the Chairmen of the other appropriate congressional committees and the Chairman of the Privacy and Civil Liberties Oversight Board.

A handwritten signature in black ink, appearing to read "Michael L. Rhodes", is positioned above the typed name.

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

Enclosure:
As stated

cc:
The Honorable James M. Inhofe
Ranking Member



DEPARTMENT OF DEFENSE
DEFENSE PRIVACY AND CIVIL LIBERTIES OFFICE
241 18TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202

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

NOV 08 2013

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 Adam Smith
Ranking Member



DEPARTMENT OF DEFENSE
DEFENSE PRIVACY AND CIVIL LIBERTIES OFFICE
241 18TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202

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

NOV 08 2013

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



DEPARTMENT OF DEFENSE
DEFENSE PRIVACY AND CIVIL LIBERTIES OFFICE
241 18TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202

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

NOV 08 2013

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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 Ruppertsberger
Ranking Member



DEPARTMENT OF DEFENSE
DEFENSE PRIVACY AND CIVIL LIBERTIES OFFICE
241 18TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202

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

NOV 08 2013

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

Enclosure:
As stated

cc:
The Honorable Chuck Grassley
Ranking Member



DEPARTMENT OF DEFENSE
DEFENSE PRIVACY AND CIVIL LIBERTIES OFFICE
241 18TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202

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

NOV 08 2013

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 John Conyers, Jr.
Ranking Member



DEPARTMENT OF DEFENSE
DEFENSE PRIVACY AND CIVIL LIBERTIES OFFICE
241 18TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202

The Honorable Thomas R. Carper
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

NOV 08 2013

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

Enclosure:
As stated

cc:
The Honorable Tom Coburn
Ranking Member



DEPARTMENT OF DEFENSE
DEFENSE PRIVACY AND CIVIL LIBERTIES OFFICE
241 18TH STREET SOUTH, SUITE 101
ARLINGTON, VA 22202

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

NOV 08 2013

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

E



ADMINISTRATION AND
MANAGEMENT

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

The Honorable David Medine
Chairman
Privacy and Civil Liberties Oversight Board
2100 K Street NW
Suite 500
Washington, DC 20427

NOV 08 2013

Delivered electronically to Diane Janosek and Sue Reingold

Dear Mr. Chairman:

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This report is being sent to the Chairmen of the appropriate committees of the United States Congress.

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

Enclosure:
As stated



ADMINISTRATION AND
MANAGEMENT

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

cc:

U.S. Senate Committee on Armed Services
U.S. Senate Committee on Homeland Security and Governmental Affairs
U.S. Senate Committee on Judiciary
U.S. Senate Select Committee on Intelligence
U.S. House of Representatives Committee on Armed Services
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