

Department of Defense
Privacy and Civil Liberties Officer Report



Semiannual Report for Fiscal Year 2018
April 1, 2018 – September 30, 2018

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I. INTRODUCTION

The Department of Defense (“DoD” or “Department”) submits this Privacy and Civil Liberties Officer Report covering the activities of the DoD Privacy and Civil Liberties Officer (PCLO) for the second semiannual reporting period of fiscal year 2018: April 1, 2018 through September 30, 2018.

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53 (hereinafter referred to as “the Report”), requires the DoD to designate a senior officer to serve as the Department’s principal advisor on privacy and civil liberties matters, and to report on a semiannual basis the activities of this officer. The Chief Management Officer of the Department of Defense (CMO)¹ serves as the PCLO and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense on these matters.

The Report describes the privacy and civil liberties activities of the DoD PCLO, including:

- Information on the number and types of reviews undertaken;
- The type of advice provided and the response to such advice;
- The number and nature of the complaints received by the Department for alleged privacy and civil liberties violations; and
- A summary of the disposition of such reported complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.

The DoD is committed to protecting and promoting privacy and civil liberties in its operations and programs, consistent with the Department’s mission to defend the nation. In keeping with the Department’s leadership and collaboration in this area, this report includes the activities of the PCLO and the Senior Agency Official for Privacy (SAOP) in establishing policy and guidelines, as well as the efforts of the DoD Component privacy and civil liberties officials implementing those policies, and the compliance mechanisms which safeguard the personally identifiable information (PII), privacy, and civil liberties of individuals.

II. THE DOD PRIVACY AND CIVIL LIBERTIES PROGRAM

The DoD Privacy and Civil Liberties Program was established to ensure compliance with applicable federal statutes and Office of Management and Budget (OMB) guidelines and policies

¹ See <http://cmo.defense.gov/Home.aspx> for further information regarding the Office of the Chief Management Officer.

governing privacy and civil liberties. On behalf of the PCLO, the Directorate for Oversight and Compliance (DO&C) issues and implements DoD privacy and civil liberties policy, and directs and oversees the compliance of the DoD component privacy and civil liberties programs.

The DoD Privacy and Civil Liberties Program began with the establishment of the Defense Privacy Office in 1975, after the passage of Section 552a of Title 5, U.S.C., also known as “The Privacy Act of 1974, as amended.”² With the “Implementing Recommendations of the 9/11 Commission Act of 2007, Section 803,” the Department expanded the mission of the office and renamed it as the Defense Privacy and Civil Liberties Office. As capabilities in information technology and information management have become increasingly sophisticated and diverse, the DoD privacy and civil liberties programs have evolved to strengthen the ongoing protection of individual rights, consistent with the missions of the Department. The DoD privacy and civil liberties policies and procedural requirements protecting privacy and civil liberties are established in DoD Directive (DoDD) 5400.11, “DoD Privacy Program,” October 29, 2014;³ DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007;⁴ and DoD Instruction (DoDI) 1000.29, “DoD Civil Liberties Program,” December 14, 2014.⁵

Partly as a result of changes in guidance by the OMB since 2016, the DoD issuances cited above are undergoing substantial revision in a coordinated and deliberate fashion. In addition, the DoD privacy regulation (32 C.F.R. Part 310) was published in the *Federal Register* on [date] as a proposed rule, and when finalized will result in the rescission of 21 separate DoD Component regulations to promote uniformity across the Department.

Because of its size and diversity of functions, the Department employs a decentralized structure for implementing privacy and civil liberties programs. This approach enables the DoD to comply with Federal agency requirements and ensure the appropriate consideration of privacy and civil liberties in all Department activities. Figure 1 provides the structure and responsibilities of the DoD Privacy and Civil Liberties Program.

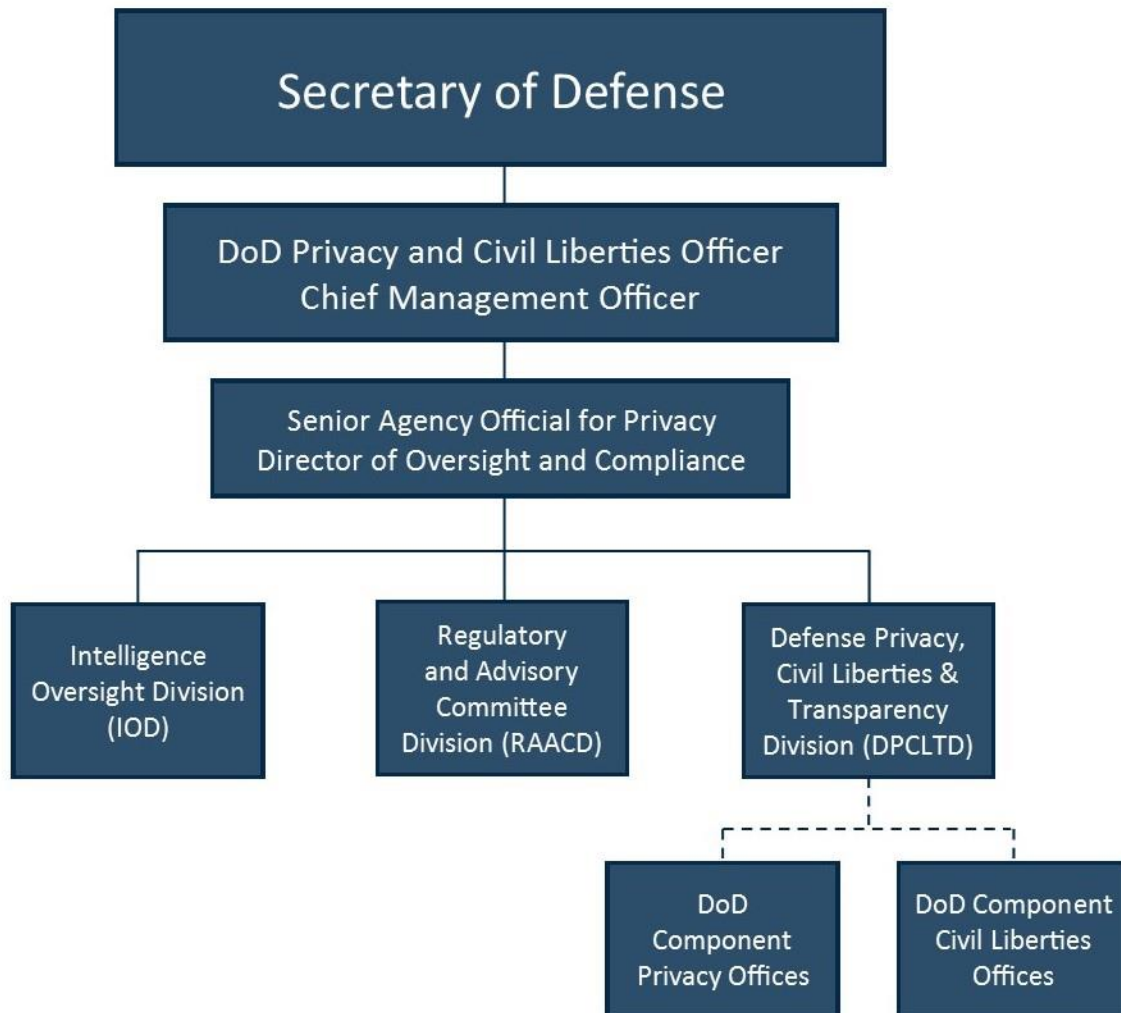
² The Privacy Act of 1974, 5 U.S.C. § 552a (2012) took effect on September 27, 1975, and can generally be characterized as an omnibus “code of fair information practices” that attempts to regulate the collection, maintenance, use, and dissemination of PII by Federal executive branch agencies.

³ Available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/540011p.pdf>.

⁴ Available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/540011r.pdf>.

⁵ Available at <http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/100029p.pdf>.

Figure 1: DoD Privacy and Civil Liberties Program Structure



A. The Chief Management Officer (CMO)

The CMO serves as the DoD PCLO and reports to and advises the Deputy Secretary of Defense and the Secretary of Defense. The CMO is responsible for advising the Secretary and Deputy Secretary on business transformation and leading the Department’s efforts to streamline business processes and improve efficiencies in headquarters structure. The CMO coordinates the business operations of the Department and, in a broad capacity, exercises oversight authority throughout the Department. As the PCLO, the CMO is responsible for ensuring the appropriate consideration and protection of individuals’ privacy and civil liberties.

B. The Directorate for Oversight and Compliance

The DO&C within the Office of the CMO (OCMO) comprises three divisions: the Intelligence Oversight Division (IOD), the Defense Privacy, Civil Liberties, and Transparency Division (DPCLTD), and the Regulatory and Advisory Committee Division (RAACD). The Director of DO&C reports to the CMO, apprising him of privacy and civil liberties concerns within the Department. The Director is also charged with implementing the Department's privacy and civil liberties programs, ensuring compliance with the Privacy Act of 1974, as amended, and that appropriate processes are in place to protect the privacy and civil liberties of individuals in accordance with the law. This includes implementation of agency guidance and oversight on privacy and civil liberties from the OMB and the Privacy and Civil Liberties Oversight Board.

The Director of DO&C is also designated as the DoD SAOP. The SAOP has Department-wide responsibility for privacy, including the protection of PII, compliance with Federal privacy-related laws, regulations, and policies, and reviewing and providing comments on legislative, regulatory, and other policy initiatives implicating Privacy Act compliance, privacy-related matters, and information risk management. The SAOP sets the parameters of DoD Privacy and Civil Liberties Programs. The SAOP also routinely provides information and recommendations directly to the PCLO. Finally, the SAOP, as the Director of DO&C, relies on the IOD and interfaces with DoD intelligence elements to ensure the appropriate scrutiny of privacy-related matters related to intelligence activities and national security.

C. The Intelligence Oversight Division

The IOD is responsible for the independent oversight of all intelligence, counterintelligence, and intelligence-related activities of the Department on the Secretary of Defense's behalf. The IOD inspects all intelligence or intelligence-related activities conducted by any of the DoD Components to ensure these activities comply with Federal law, Executive Orders, Presidential Directives, intelligence community directives, and DoD issuances. Due to the importance of protecting privacy and civil liberties when conducting intelligence activities, the IOD is an integral part of the DoD privacy and civil liberties programs. The Chief, IOD, also serves as the DoD Senior Intelligence Oversight Official, and serves as the Deputy Director, DO&C.

D. The Defense Privacy, Civil Liberties, and Transparency Division

As a division of the DO&C, the DPCLTD assists the PCLO and SAOP in implementing the

DoD privacy and civil liberties programs by providing guidance to Component officials, reviewing publications and legislative activities, facilitating official reporting, and providing training in privacy and civil liberties content and program administration.

The DPCLTD communicates routinely on a wide range of activities with privacy and civil liberties officials at each DoD Component, the OMB, the Privacy and Civil Liberties Oversight Board (PCLOB), and other Federal departments and agencies, to facilitate the Department-wide execution of Federal privacy and civil liberties program requirements, and to exchange ideas on the development and business practices for privacy and civil liberties. The DPCLTD also establishes the reporting processes of the privacy and civil liberties programs, including the annual Federal Information Security Modernization Act (FISMA) Report, reports of significant breaches of PII in the Department, and assessments of the Defense Industrial Base Cybersecurity/Information Assurance, as well as this semi-annual PCLO report.

E. DoD Office of General Counsel (OGC)

The DoD OGC provides legal advice to senior DoD officials, the DO&C, the DPCLTD, and assists legal advisors to the DoD Components directly in support of the DoD Privacy and Civil Liberties Program. In addition to the many Department attorneys working on privacy and civil liberties matters, including complaints, DoD OGC assigned legal advisors work directly with the DO&C and the DPCLTD to provide legal reviews for privacy and civil liberties issues and to ensure the development of privacy and civil liberties policy is consistent with the law.

F. DoD Component Privacy and Civil Liberties Officials

The DoD Components are responsible for administering privacy and civil liberties programs, including the establishment and implementation of Component-level privacy and civil liberties policies, procedures, and training concurrent with DoD issuances and guidelines. The Director of DO&C and the Chief, DPCLTD, communicate regularly with privacy and civil liberties officials in their respective capacities within DoD Components to ensure compliance with law and policy.

1. Senior Component Officials for Privacy (SCOPs) and Component Privacy Officers (CPOs)

To enhance the strength and implementation of the privacy and civil liberties program, the DoD requires the designation of SCOPs. Each SCOP must be a general/flag officer, Senior Executive Service, or Senior Level employee and oversee existing or potential compliance issues

requiring executive-level intervention to identify issues and recommend actions for matters requiring the attention of the Component's leadership. In addition, SCOPs work closely with CPOs to understand such matters. DoD CPOs and support staff assist the SCOPs throughout the Department. In addition, the SCOPs provide information and policy advice to the SAOP/Director, DO&C, to assist in decision-making at the Departmental level.

2. Component Chief Civil Liberties Officers (CCLOs) and Points of Contact (POCs)

DoD Components are also responsible for designating a senior service member or civilian employee to serve as the CCLO, and another service member or civilian employee to serve as the Component's civil liberties POC. Generally, the CCLO has the authority to act on behalf of the Component Head to direct the Component's compliance with Section 803 and the DoD Civil Liberties Program. The civil liberties POC is responsible for fulfilling the day-to-day and reporting requirements of the DoD Civil Liberties Program within the Component, under the direction of the CCLO.

III. REVIEWS

The DoD considers privacy and civil liberties concerns when proposing, developing, and implementing laws, regulations, policies, procedures, and guidelines.⁶ On behalf of the CMO and the Director of DO&C, the DPCLTD performs privacy and civil liberties reviews for all Department-level issuances, as well as proposed Federal legislation, testimony, and reports. In doing so, the DPCLTD analyzes language and activities for impacts on privacy and civil liberties. The division provides comments and may recommend changes to such documents in order to protect privacy and civil liberties. When requested, the DPCLTD reviews and comments on documents promulgated by other DoD Components which may potentially affect the Department's operations. The total number of documents reviewed by the DPCLTD during this review period is identified in Table 1.

Privacy and civil liberties reviews are conducted in accordance with the Privacy Act of 1974, as amended, the Bill of Rights of the United States Constitution, and OMB and PCLOB executive guidance. The Department also ensures compliance and alignment with the Federal Information Security Modernization Act of 2014 and the E-Government Act of 2002 (44 U.S.C. § 3501) with respect to information management requirements. For the purposes of this report, privacy compliance reviews are enumerated as follows and are summarized in Table 1.

⁶ See 42 U.S.C. § 2000ee-1.

A. System of Records Notice (SORN) Reviews

A SORN is a public notice published in the *Federal Register* describing the existence and character of a system of records.⁷ DoD Components must submit their SORNs for their respective systems of records to DPCLTD for review and agency approval. The number listed in this report represents the SORNs DPCLTD has reviewed, approved, forwarded to OMB and Congress, and sent to the Office of the Federal Register for publication during this review period. The number of SORNs reviewed is provided in Table 1.

B. Exemption Rule Reviews

A Privacy Act exemption rule is promulgated when a system of records is exempted from certain provisions of the Privacy Act of 1974, as amended.⁸ For the purposes of this report, the number reported represents new and modified exemption rules reviewed by DPCLTD and the DoD OGC and published as a final rule during the reporting period. The number of Privacy Act exemption rules published as final rules is provided in Table 1.

C. Matching Agreement Reviews

A Matching Agreement is a written agreement between a source agency and a recipient (Federal agency or non-Federal agency) when automated systems of records data is matched between the agencies, typically to determine the eligibility of individuals for a specific Federal benefit.⁹ For the purposes of this report, the number reported represents Matching Agreements reviewed and completed during this period, in which DoD is either the source agency or the recipient agency. The number of Matching Agreements reviewed and completed is provided in Table 1.

D. Privacy Breach Reviews

A breach is defined as the loss of control, unauthorized disclosure, unauthorized acquisition or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses PII or (2) an unauthorized user accesses PII for other than an authorized purpose.¹⁰ DoD Components report privacy breaches to the DPCLTD, which compiles the breach reports to identify and analyze trends and to inform the Department's senior leadership. The number reported herein is

⁷ See 5 U.S.C. § 552a(a)(5).

⁸ See 5 U.S.C. § 552a (j), (k).

⁹ See 5 U.S.C. § 552a(8) and (o).

¹⁰ OMB M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information," January 3, 2017.

the total number of privacy breaches across all Components reported to DPCLTD. The number of privacy breach reviews is provided in Table 1.

E. Social Security Number (SSN) Justification Reviews

DoD Components must submit an SSN Justification Memorandum to the DPCLTD to use SSNs in information systems and forms. The justification must comply with departmental direction¹¹ and be approved by DPCLTD for a record system or form collecting SSNs. This effort is directed at reducing the use of SSNs in DoD information collections and to ensure greater protection of PII throughout the Department. Table 1 contains the total number of SSN justification memoranda approved by DPCLTD during the reporting period.

F. DoD Issuances, Federal Legislation, Testimony, and Reports

DPCLTD reviews DoD-wide issuances for privacy and civil liberties issues and provides feedback as appropriate. In addition, DPCLTD reviews proposed legislation and testimony for privacy and civil liberties concerns on behalf of the DO&C and reviews other Federal agency documents upon request. Table 1 includes privacy and civil liberties reviews of DoD and other Federal agency documents.

Table 1: Privacy and Civil Liberties Reviews

PRIVACY AND CIVIL LIBERTIES REVIEWS	
Type of Review	Number of Reviews
System of Records Notices (SORNs):	
➤ New:	3
➤ Modified:	4
➤ Rescinded	1
Exemption Rules	1
Matching Agreements	2
Privacy Breach Reviews	590
SSN Justification Memoranda	11
DoD Issuances, Federal Legislation, Testimony, and Reports	94

¹¹ DoDI 1000.30, “Reduction of Social Security Number (SSN) Use Within DoD,” August 1, 2012.

IV. MATTERS OF ADVICE AND RESPONSE

The Office of the CMO provides advice and on all DoD Component privacy and civil liberties matters. This advice serves as important guidance for DoD Component privacy and civil liberties program implementation.

A. Advice

For the purpose of this report, advice encompasses the written issuance of DoD policies, procedures, or guidance pertaining to privacy and civil liberties by the PCLO or SAOP. The DoD is actively updating its foundation documents to reflect advances in knowledge, technology, and regulatory guidance. Issuances under review and revision include DoD Directive 5400.11, “DoD Privacy Program”; DoD Regulation 5400.11 (DoD 5400.11-R), “Department of Defense Privacy Program;” and DoD Instruction 1000.29, “DoD Civil Liberties Program.” The Department’s Privacy Rule (32 C.F.R. Part 310) was also updated and published as a proposed rule in the *Federal Register* on [date], and when finalized will result in the rescission of 21 separate DoD Component regulations to promote uniformity across the Department. The Department is also finalizing an update to its Right to Financial Privacy Act Rule (32 C.F.R. Part 275), which was published as a proposed rule in the *Federal Register* on October 29, 2018.

B. Programmatic Achievements

The following activities highlight key DO&C and DPCLTD programmatic efforts during this period:

- Public Law No. 115-59, the Social Security Number Fraud Prevention Act of 2017, requires all Federal agencies subject to the Chief Financial Officers Act of 1990 (Public Law No. 101-576) to cease including SSNs in mailed correspondence by September 15, 2022, unless approved by the head of the agency and to provide annual reports for the next five years on the agency's progress in curtailing the practice. The DO&C assumed responsibility for the Department’s policy implementation and all reporting requirements. Following an initial report submitted in 2017, the Department submitted the first annual report on September 15, 2018.
- The DPCLTD conducted a Component Privacy Officer Meeting for all DoD Component privacy officers, officials, alternates and support personnel on September 26, 2018. The meeting’s purpose was to provide updates on privacy and civil liberties issuances and

regulations, reiterate reporting requirements and deadlines and reinforce the agency's expectations and commitments for the protection of privacy. Additionally, the meeting allowed Component personnel to ask questions, discuss privacy and civil liberties issues, and obtain other information to assist in their privacy and civil liberties agency responsibilities.

- The DPCLTD provided a three-day Freedom of Information Act (FOIA) and Privacy Act Compliance workshop on April 10-12, 2018 at the Mark Center in Alexandria, VA. The seminar included multiple instructional and educational lectures on FOIA and the Privacy Act by DoD FOIA and Privacy Act subject matter experts as well as multiple breakout sessions on various FOIA and Privacy Act topics for further specialized learning opportunities. Over 400 FOIA and Privacy Act professionals spanning all DoD components (both within and outside of the National Capital Region (NCR)) attended the seminar.
- The DPCLTD provided three days of FOIA and Privacy training in May 2018 to 57 Component Privacy Officers predominantly stationed in the European and Central Commands. These attendees were presented with the latest training material and subject matter experts capable of answering their questions while recognizing the complexities of the overseas environment.

V. COMPLAINTS

DoD policy requires the DoD Components to have established procedures for processing complaints from individuals alleging the DoD's violation of their privacy or civil liberties.¹² DPCLTD forwards any received complaints directly to the appropriate DoD Component for further review and appropriate action. Generally, complaints are reviewed by the receiving Component privacy and civil liberties program office and reported to the Component command or appropriate official. The command may initiate an investigation and, as necessary, direct corrective action. The complaints counted in this report were received in accordance with these procedures. For the purposes of this report, a complaint is an allegation of a violation of an individual's privacy rights or civil liberties. Privacy or civil liberties complaints arising out of non-judicial punishments, military courts-martial, and administrative separations or falling under the Health Insurance Portability and Accountability Act (HIPAA) are not included in this report.

Table 2 reflects the number of complaints received by DoD Components during the reporting

¹² See DoD 5400.11-R, "Department of Defense Privacy Program," May 14, 2007; DoDI 1000.29, "DoD Civil Liberties Program," December 14, 2014.

period for which (1) responsive action was taken, or (2) action is pending. “Responsive action taken” means the complaint was reviewed and resolved. It also includes any action taken to remediate the violation and prevent recurrence. “Pending” indicates the complaint is under review to determine the necessary actions to resolve the complaint.

A privacy complaint is an allegation of a violation of privacy protections in the administration of the programs and operations of the Department. Privacy complaints are separated into three categories in Table 2:

- Procedural Issues (such as appropriate consent, collection, and/or notice);
- Operational Issues (Privacy Act alleging violations of the Privacy Act, not including requests for access, disclosure, or amendment).
- Redress Issues (non-Privacy Act not implicating the Privacy Act but that seek resolution of other privacy-related complaints); and

For examples of DoD Privacy Complaints, please refer to the Appendix of this report.

A civil liberties complaint is an allegation of a violation of civil liberties in the administration of the programs and operations of the Department. For this report, civil liberties complaints involve the assertion of a violation of the rights and freedoms guaranteed by the first 10 amendments to the U.S. Constitution, the Bill of Rights, as well as the Fourteenth Amendment. Types of civil liberties complaints include, but are not limited to:

- First Amendment (e.g. freedom of speech, religion, assembly, and association);
- Second Amendment (right to keep and bear arms);
- Fourth Amendment (protection against unreasonable search and seizure);
- Fifth Amendment (due process);
- Sixth Amendment (speedy and fair trial);
- Eighth Amendment (no cruel/unusual punishment)
- Ninth Amendment (“unenumerated” rights) and
- Fourteenth Amendment (“equal protection”)

[Examples of DoD civil liberties complaints, provided for illustrative purposes, are also included in the Appendix of this report.](#)

Table 2: Privacy and Civil Liberties Complaints

Nature of Privacy Complaints	Number Received	Disposition of Complaint	
		Responsive Action Taken	Pending
Procedural	4	4	0
Operational	0	0	0
Redress	0	0	0
<i>Sub Total for Privacy Complaints:</i>	4	4	0
Nature of Civil Liberties Complaints			
First Amendment	6	5	1
Fourth Amendment	2	1	1
Fifth Amendment	3	2	1
Fourteenth Amendment	1	1	0
Second and Fourth Amendment	1	1	0
Fourth and Fifth Amendment	1	1	0
<i>Sub Total for Civil Liberties Complaints:</i>	14	11	3
TOTAL 3rd & 4th Qtrs FY18	18	15	3

CONCLUSION

In accordance with Section 803, this report summarizes the semiannual activities of the DoD PCLO from April 1, 2018 through September 30, 2018. DoD will continue to work with Congress, the OMB, the PCLOB, and other Federal agencies to ensure it appropriately protects privacy and civil liberties. Program activities and accomplishments continually assure the consideration of privacy and civil liberties in each of the functions and missions of this Department.

APPENDIX: Samples of Privacy and Civil Liberties Complaints

Sample DoD Privacy Complaints¹³

Sample Complaint #1:

Description of Complaint: A complainant alleged a DoD law enforcement entity improperly provided a copy of an investigative report to an attorney in conjunction with a civil suit. The allegation was investigated.

Findings: Unsubstantiated. It was determined that a copy of the report was properly released to a government attorney representing the U.S. Government in an Equal Employment Opportunity (EEO) reprisal complaint case filed by the subject. The attorney requested the report in preparation for a hearing on the matter. The release was authorized under existing regulations. No PA violation was identified.

Disposition: Responsive action taken.

Sample Complaint #2:

Description of Complaint: A complainant working in a DoD office alleged his personal phone number should not be included on the staff emergency recall roster.

Findings: Substantiated. After reviewing pertinent publications and consulting with the complainant's supervisor, it was found there was a legitimate need for the employee's number to be included on the roster. The supervisor was reminded that access to the roster must be restricted to individuals with a verified need-to-know.

Disposition: Responsive Action Taken.

Sample DoD Civil Liberties Complaints

Sample Complaint #1:

Description of Complaint: Alleged Second Amendment violation. The complainant alleged their unit Commander confiscated their weapons from the complainant's off post residence.

¹³ The samples provided were reported in previous submissions and have been edited to ensure the privacy of the complainant.

Findings: The IG determined the complainant was being treated for mental health issues. The Commander visited the residence and asked the complainant's spouse to allow the weapons be stored in the unit's arms room for safety reasons. The complainant's spouse agreed to allow the weapons to be stored in the unit's arms room. Approximately two months later, the complainant requested that the weapons be returned, and the unit released the weapons from the arms room.

Disposition: Responsive action taken. The unit released the weapons to the complainant.

Sample Complaint #2:

Description of Complaint: Alleged First Amendment violation. The complainant alleged the unit's Senior Non-commissioned Officer (SNCO) banned the viewing of certain news channels, infringing the complainant's First Amendment rights.

Findings: The SNCO claimed staff members were watching inappropriate shows like "Jerry Springer." The SNCO also recalled an incident where two service members had an altercation over something reported on one of the news stations. The SNCO therefore, felt justified in limiting channel availability.

Disposition: Responsive action taken. The SNCO removed the restrictions and advised staff members to use good viewing judgment.