



OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Semiannual 803 Report

Period Covered: July 1, 2018 to December 31, 2018

August 2019

The Office of Civil Liberties, Privacy, and Transparency

Table of Contents

INTRODUCTION	3
ABOUT CLPT	3
OVERVIEW FOR THE REPORTING PERIOD.....	5
Continuous Evaluation.....	5
Section 702 of the <i>Foreign Intelligence Surveillance Act of 1978 (P.L. 95-511)</i>, as Amended.....	5
International Activities.....	5
Legislative, Policy, and Product Review.....	6
Training.....	7
Transparency and Open Government.....	7
Complaints.....	8
METRICS.....	9
Required Reporting Categories.....	9
Reviews.....	9
Information Sharing Compliant.....	9
Privacy Act Compliant.....	9
Privacy and Civil Liberties Compliant.....	9

INTRODUCTION

As required by Section 1062 of the Intelligence Reform and Terrorism Prevention Act of 2004 (42 U.S.C. 2000ee-1) (as amended by Section 803 of the *Implementing Recommendations of the 9/11 Commission Act of 2007* and subsequent legislation), this report provides information about the notable activities, from July 1, 2018 through December 31, 2018, of the Office of the Director of National Intelligence (ODNI), Office of Civil Liberties, Privacy, and Transparency (CLPT), to include the types of privacy and civil liberties reviews conducted; the types of guidance or response furnished; and the types of complaints received. In the interest of enhancing transparency, it also provides a narrative overview of significant activities for the same period.

ABOUT CLPT

The Civil Liberties Protection Officer also serves as the ODNI's Chief Transparency Officer. In that capacity, he is responsible for leading implementation of the Principles of Intelligence Transparency for the Intelligence Community (IC). These principles guide how the IC should make information publicly available while protecting classified information, when disclosure would harm national security.

By leading the integration of civil liberties and privacy protections into the policies, procedures, programs, and activities of the IC, CLPT facilitates the conduct of intelligence activities in a manner that protects civil liberties and privacy, provides appropriate transparency, and earns and retains the trust of the American people. CLPT participation in developing and overseeing IC activities seeks to give the American people confidence that the IC is pursuing its vital security mission in a manner consistent with the nation's values.

In general, CLPT examines the privacy and civil liberties ramifications of intelligence-related technologies, programs, and procedures. CLPT collaborates closely with client offices to understand their initiatives or projects in detail, starting with the intelligence purpose for the specific activity, the authority pursuant to which data is obtained, and the characteristics and use of the data. Based on each set of individual circumstances, CLPT reviews the appropriateness of protective measures and compliance with legal and policy mandates, and works to modify or formulate protections as necessary.

Likewise, CLPT reviews proposed legislation, policy documents, instructions, standards, guidance, testimony, reports, releases, and other materials to ensure that any privacy and civil liberties issues are appropriately addressed and properly articulated. These reviews may

pertain specifically to ODNI, or to other IC elements to the extent that the issues fall within CLPT's IC-wide responsibilities.

CLPT carries out its duties in close consultation with other offices with relevant and complementary responsibilities, including offices of general counsel, offices of inspectors general, intelligence oversight offices, civil liberties and privacy offices, and the Department of Justice (DOJ). CLPT champions the Principles of Professional Ethics for the IC: Mission, Truth, Lawfulness, Integrity, Stewardship, Excellence, and Diversity. These are fundamental, ethical principles that unite professionals across agencies and functions, while distinguishing "intelligence" from other professions.

CLPT also reviews and investigates (as appropriate) alleged privacy and civil liberties abuses. When CLPT first receives a complaint, it must determine whether the complaint was properly directed to CLPT or whether it should have been referred to a different office or agency. For example, depending on the circumstances, certain complaints may be referred to the Intelligence Community Inspector General (ICIG), the Office of Equal Employment Opportunity and Diversity, or another agency. If CLPT determines a complaint is not frivolous and merits a full review, it researches the pertinent legal and policy standards, and then obtains and analyzes relevant information. Based on its findings, CLPT determines the appropriate course of action to resolve the complaint, and notifies the complainant of disposition.

OVERVIEW FOR THE REPORTING PERIOD

Continuous Evaluation

Continuous Evaluation (CE) helps detect and counter insider threats by continuously reviewing an individual's eligibility to obtain access to classified information to hold a sensitive position. Executive Order (EO) 13587, Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information, requires agencies to implement CE functions for the top security clearance levels. The ODNI CE Program is managed by the ODNI National Counterintelligence and Security Center (NCSC). During the reporting period, CLPT continued to provide CE guidance and coordinated the preparation and issuance of a system of records notice (SORN) for the CE Program. This SORN was published in the Federal Register as required by the Privacy Act (5 U.S.C. Sec 552a), and became final on December 29, 2018, after generating no public comments.

Section 702 of the *Foreign Intelligence Surveillance Act of 1978 (P.L. 95-511)*, as Amended

During this reporting period, ODNI, led by CLPT, continued to conduct joint oversight (along with DOJ) of how IC elements implement Section 702 of the Foreign Intelligence Surveillance Act (FISA). CLPT participated in on-site reviews, reviewed compliance documentation, and worked with DOJ on incident examinations and notifications.

FISA requires the DNI and Attorney General to jointly assess compliance with the requirements of Section 702, on a semiannual basis. This classified assessment is submitted to Congress; a redacted version is released publicly. In October of 2018, ODNI submitted the 18th semiannual joint assessment to Congress (much of the substantive work on this assessment was completed in the prior reporting period).

CLPT again facilitated the Privacy and Civil Liberties Oversight Board's (PCLOB) continuing oversight of Section 702 by coordinating the ongoing production of FISA documentation to the Board. For example, in October of 2018, CLPT submitted a classified copy of the 18th semiannual joint assessment to the PCLOB.

International Activities

CLPT continued to engage with the European Union (EU) to address questions on how the IC protects privacy and civil liberties and promotes transparency. CLPT participated in an

interagency meeting with members of the European Union Parliament to provide information and respond to questions relating to the EU/U.S. Privacy Shield. In addition, CLPT joined the U.S. delegation for the Second Annual Review of the EU/U.S. Privacy Shield. CLPT provided information describing how the IC protects privacy and promotes transparency, and responded to questions from the EU delegation.

CLPT periodically participates in engagements with foreign partners who are interested in learning more about how the IC protects civil liberties and privacy and promotes transparency. CLPT also learns from these engagements how other countries address similar issues. This period, CLPT hosted a bilateral meeting with Canadian government officials focused on transparency, to discuss lessons learned and best practices. In addition, CLPT hosted the Norwegian Parliamentary Intelligence Oversight Committee for a multi-hour session in which several ODNI officials explained the legal framework governing the IC's activities, how oversight is conducted, and the progress the IC has made in promoting transparency; CLPT also learned about how the Norwegian government conducts intelligence oversight.

In addition, CLPT participated in interagency efforts to ensure that the IC understood the implications of the United Kingdom's new legal and oversight framework as established by the Investigatory Powers Act.

Moreover, at the invitation of the ICIG, CLPT participated in a meeting with a delegation of intelligence oversight officials from Canada to enhance mutual understanding of how each country oversees intelligence activities.

At the invitation of the Australia's Inspector General of Intelligence and Security, the Chief of CLPT participated in the annual meeting of the Five Eyes Intelligence Oversight and Review Council, and gave a speech on the U.S. experience with enhancing transparency in the Intelligence Community.

Legislative, Policy, and Product Review

CLPT continued to conduct its routine review of IC-wide and ODNI-internal directives, policies and instructions, to ensure that privacy and civil liberties considerations were appropriately addressed. In certain instances, CLPT participated in working groups established to explore all equities and to ensure that a particular directive or policy would not result in unintended consequences.

CLPT continued to engage in interagency efforts relating to National Security Presidential Memorandum (NSPM) 7 on National Security Threat Actors, and NSPM-9 on the National Vetting Center (NVC). In particular, CLPT participated in the interagency effort to prepare documentation relating to the NVC in a manner that incorporates privacy and civil

liberties safeguards and provides appropriate transparency. This interagency effort included preparation of a detailed privacy impact assessment (PIA) for the NVC, with an annex covering the first phase of its operations. The government made public the PIA, the NVC's implementation plan, and the charters for the National Vetting Governance Board and the Privacy, Civil Rights, and Civil Liberties Working group. Relatedly, CLPT participated in a DHS-led engagement with representatives from civil society to discuss the status of the NVC.

Training

CLPT continued to deliver presentations at periodic training sessions for ODNI and other IC personnel. In addition, CLPT continued to provide training on an ad hoc basis to individuals, offices, and classes to explain or clarify civil liberties and privacy protections or transparency initiatives and best practices.

CLPT continued to provide training on transparency as part of a regular interagency course on Integrating the IC. The course is attended by mid-level intelligence professionals from across the IC.

As it does every year, CLPT helped arrange an event for the workforce commemorating Constitution Day. DNI Coats led IC professionals in retaking their oath to support and defend the Constitution. CLPT distributed pocket Constitutions at the event. Later in the week, CLPT hosted a virtual "Plain Talk about Civil Liberties" chat session for the IC work force. In a virtual Plain Talk, the Director of CLPT meets with ODNI workforce professionals in a secure chat room, and answers their civil liberties and privacy questions in real time.

CLPT personnel participated in the Federal Privacy Summit, a government-wide annual event attended agency privacy officials. CLPT led a training session on innovative approaches to government transparency, presenting the audience with first-hand experience and lessons learned on new ways to demonstrate to the public that the government can be a trusted steward of personal information. CLPT also participated on a panel discussing how federal agencies' privacy programs protect civil liberties, and exploring how civil liberties considerations are reviewed and considered from a practitioner's perspective.

CLPT moderated a panel of IC privacy officers as part of "Privacy Boot Camp," which is a training program for privacy officers from around the U.S. Government. The panel focused on how the IC protects privacy, and identified specific requirements that apply to the IC.

Transparency and Open Government

CLPT provided design, development, and data analysis to support ODNI's July 31 release on [Intelligence.gov](https://www.intelligence.gov) of newly declassified IC documents relating to the Tet Offensive of 1968. Providing these documents implements specific commitments the IC made in its Transparency

plan (e.g., to declassify historical information) and the National Action Plan for Open Government (e.g., to use Intelligence.gov to appropriately release national security information).

The Chief of CLPT spoke at an annual FOIA conference for the IC. He addressed FOIA officers from around the IC on the interrelationships between essential work FOIA officers do to enhance transparency, and the broader IC-wide transparency initiatives that are currently underway.

CLPT worked closely with the ODNI's Information Management Division to consider potential approaches to facing the challenges facing the IC relating to declassification and transparency.

CLPT was part of a cross-section of ODNI components that met with visiting students from Howard University Law School. CLPT explained its role in the IC's broader governance framework.

The Chief of CLPT participated on a panel hosted by the Center of Democracy and Technology. The panel focused on how the U.S. compares with certain European countries on how to oversee “bulk” collection activities by intelligence agencies.

Complaints

During the reporting period, CLPT reviewed an internal complaint that expressed a concern about the handling of the complainant’s personally identifiable information during processing of an administrative request.

METRICS

Required Reporting Categories

Metrics reporting shows the number of reviews, and the number of complaints in the required reporting categories.

Reviews

Examinations of activities or processes as required by controlling privacy and civil liberties authorities.

Information Sharing Compliant

A written allegation of harm arising from ODNI sharing of terrorism data in the context of the Information Sharing Environment.

Privacy Act Compliant

A written allegation regarding agency non-compliance with a requirement of the Privacy Act.

Privacy and Civil Liberties Compliant

A written allegation charging violation of information privacy rights and/or civil liberties; e.g., relating to improper collection, use, retention, and dissemination of the information about US persons, or violation of First Amendment rights of free speech and association, or Fifth Amendment guarantees of due process and equal protection.

<u>Category</u>	<u>Total</u>
Reviews	23
ISE Complaint	0
Privacy Act Complaint	1
Privacy and Civil Liberties Complaint	0

