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OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

**Office of Civil Liberties, Privacy, and Transparency
Semiannual Report:
1 July 2022 to 31 December 2022**

April 2024

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MESSAGE FROM THE CHIEF

As the Chief of the Office of Civil Liberties, Privacy, and Transparency (CLPT) for the Office of the Director of National Intelligence (ODNI), and ODNI's Civil Liberties Protection Officer (CLPO) and Chief Transparency Officer, I am pleased to present this report concerning CLPT activities, from 1 July 2022 to 31 December 2022, as required by Section 1062 of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004.¹ This report provides an overview of the work the former ODNI CLPT Chief, Benjamin Huebner, and ODNI CLPT's dedicated team of professionals accomplished during that time.



Key activities during the reporting period include:

- Public release in redacted form of the seven remaining historical decisions by the Foreign Intelligence Surveillance Court (FISC) and the Foreign Intelligence Surveillance Court of Review (FISC-R);
- International collaboration with the Organization of Economic Co-operation and Development (OECD) to finalize the *Principles of Trusted Government Access to Data*;
- Support of the Privacy and Civil Liberties Oversight Board (PCLOB), an independent federal agency, in conducting oversight of FISA Section 702 and other areas;
- Work with the National Security Council to ensure Executive Order 14086, *Enhancing Safeguards for United States Signals Intelligence Activities*, enshrined civil liberties and privacy safeguards; and
- Development, coordination, and release of Intelligence Community Directive 126, *Implementation Procedures for the Signals Intelligence Redress Mechanism under Executive Order 14086*.

This report also includes the number of privacy and civil liberties reviews conducted and the types of complaints received. In the interest of enhancing transparency, it also provides a narrative overview of significant activities for the reporting period.

It is the mission of every intelligence agency throughout the world to provide a decision advantage to their leaders. In the United States, surpassed by no other nation, our intelligence agencies accomplish this mission by complying with the law and respecting the foundational values of our free society.

Top among these values is that our Intelligence Community (IC) activities, programs, and policies protect privacy and civil liberties and incorporate an appropriate level of transparency to engender and enhance public trust. It is the responsibility of every intelligence officer to act in accordance with these values.

¹ Pub. L. No. 108-458, 118 Stat. 3638 (2004).

I am proud that CLPT successfully continued to serve as a focal point by providing advice, conducting reviews, and handling complaints regarding privacy and civil liberties within ODNI, and continued integration of the privacy, civil liberties, and transparency efforts of the broader IC.

REBECCA J. RICHARDS

*Chief, Office of Civil Liberties, Privacy, and Transparency, and
ODNI Civil Liberties Protection Officer and Chief Transparency Officer*

ABOUT THE OFFICE OF CIVIL LIBERTIES, PRIVACY, AND TRANSPARENCY

CLPT champions the *Principles of Professional Ethics for the Intelligence Community*, with a focus on mission, truth, lawfulness, integrity, stewardship, excellence, and diversity.² These are fundamental, ethical principles that unite professionals across agencies and functions. 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 promotes practices to earn and retain the trust of the American people. CLPT's participation in developing and overseeing IC activities seeks to give the American people confidence the IC is pursuing its vital national security mission consistent with our nation's values.

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

CLPT also reviews proposed legislation, policy documents, instructions, standards, guidance, testimony, reports, releases, and other materials to ensure that 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 ODNI's IC-wide responsibilities.

Additionally, CLPT reviews and investigates, as appropriate, alleged privacy and civil liberties abuses. When CLPT 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 IC Inspector General, the Office of Equal Employment Opportunity, or another agency. If CLPT determines a complaint is not frivolous and merits a full review, it obtains and analyzes relevant information consistent with pertinent legal and policy standards. Based on its findings, CLPT determines the appropriate course of action to resolve the complaint and notifies the complainant of the disposition.

As noted, the CLPO also serves as ODNI's Chief Transparency Officer. CLPT is responsible for leading implementation of the *Principles of Intelligence Transparency for the*

² Office of the Director of National Intelligence, *Principles of Professional Ethics for the Intelligence Community* (2017), <https://www.dni.gov/index.php/who-we-are/organizations/clpt/clpt-features/1789-principles-of-professional-ethics-for-the-intelligence-community>.

Intelligence Community.³ The Intelligence Transparency Principles guide how the IC makes information available to the public in a manner that enhances the public's understanding of intelligence activities, while continuing to protect information when disclosure would harm national security.

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).

OVERSIGHT, POLICY ADVICE AND DEVELOPMENT, AND FACILITATED TRANSPARENCY

Foreign Intelligence Surveillance Act

CLPT, in partnership with other ODNI offices, conducts joint oversight with DOJ of the IC's use of FISA Section 702 of the *Foreign Intelligence Surveillance Act of 1978* (FISA). Further, CLPT continued to develop policies to facilitate compliance with Section 702's rules and procedures. Finally, CLPT led the IC in being transparent with external overseers and, where appropriate, to the public regarding the IC's use of Section 702. CLPT's efforts resulted in stronger compliance with Section 702 requirements through oversight and policy development and advanced accountability to those external overseers and the public.

CLPT participated in on-site reviews, reviewed compliance documentation and guidance, and worked with DOJ to identify, resolve, and report to the FISC and Congress incidents of noncompliance. Participating in such oversight efforts afforded CLPT visibility into compliance trends and equipped CLPT with the factual information to provide policy recommendations and guidance to advance oversight and promote best practices to protect civil liberties and privacy.

CLPT's FISA oversight activities have been extensively documented in multiple *Semiannual Assessments of Compliance with Procedures and Guidelines Issued Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*, submitted by the Attorney General and the Director of National Intelligence (Joint Assessment). During this reporting period, CLPT led the public release of the 23rd and 24th Joint Assessments in redacted form.⁴ Importantly, CLPT continued to play a leading role, working closely with DOJ, in drafting these Joint Assessments. The Joint Assessments identify and analyze compliance trends, including through presenting compliance metrics over multiple reporting periods, as well as providing descriptions on the categories of compliance incidents and detailed examples of certain incidents. The Joint Assessments often identify what causes the compliance incidents, such as human errors and

³ Office of the Director of National Intelligence, *Principles of Intelligence Transparency for the Intelligence Community* (2015), <https://www.intelligence.gov/transparency>.

⁴ ODNI and the Department of Justice's 23rd Joint Assessment of the Section 702 program is available at https://www.intel.gov/assets/documents/702Documents/declassified/23rd_Joint_Assessment_of_FISA_for_Public_Release.pdf, and the 24th Joint Assessment of the Section 702 program is available at <https://www.intel.gov/assets/documents/702Documents/declassified/24th-Joint-Assessment-of-FISA-702-Compliance.pdf>.

system errors, allowing ODNI and DOJ to advise on prevention efforts to reduce or otherwise avoid future incidents and remediation efforts to address current incidents. Further, while these Joint Assessments are required to be submitted to Congressional overseers and the FISC, CLPT drafts the assessments for subsequent public release to enhance the public understanding of the IC's use of and compliance with Section 702.

CLPT participated in or led, often in coordination with ODNI's Directorate for Mission Integration (MI) and Office of General Counsel (OGC), interagency working groups monitoring the implementation of policy guidance for compliance with Section 702 requirements. CLPT leads a working group, along with DOJ and the Federal Bureau of Investigation (FBI), to facilitate compliance with rules and procedures for the FBI's querying of Section 702-acquired information. The working group focused on remediating the causes of previous compliance incidents and mitigating future incidents by updating and modifying relevant systems and applicable training. CLPT's efforts resulted in improved training on protecting U.S. person information for IC personnel who query FISA-acquired information. The collaboration also facilitated FBI systems modifications that improved Section 702 compliance.

Executive Order 14086

On 7 October 2022, President Biden issued Executive Order 14086, *Enhancing Safeguards for United States Intelligence Activities*, which updated and substantially enhanced the protections for all individuals, regardless of nationality, whose information may be acquired as the result of U.S. signals intelligence activity.⁵ CLPT provided extensive support in the development of Executive Order 14086, which bolsters rigorous privacy and civil liberties safeguards found in FISA, Executive Order 12333, and, previously, in Presidential Policy Directive 28.

New safeguards found in Executive Order 14086 include, but are not limited to, requirements that all U.S. signals intelligence (SIGINT) activities be conducted only in pursuit of defined national security objectives, take into consideration the privacy and civil liberties of all persons regardless of nationality or country of residence, and be conducted only when necessary to advance a validated intelligence priority and only to the extent in and in a manner proportionate to that priority. As noted by the White House, Executive Order 14086 underpins the U.S.-EU Data Privacy Framework (DPF) and the transatlantic data flows enabling the \$7.1 trillion relationship between the United States and the European Union.⁶

CLPT has a significant role in ensuring compliance with Executive Order 14086, which directs the ODNI CLPO to perform three key roles. First, pursuant to Section 2(b)(iii) of the

⁵ Executive Order No. 14086, <https://www.federalregister.gov/documents/2022/10/14/2022-22531/enhancing-safeguards-for-united-states-signals-intelligence-activities>; *see also* THE WHITE HOUSE, *FACT SHEET: President Biden Signs Executive Order to Implement European Union-U.S. Data Privacy Framework* (2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/07/fact-sheet-president-biden-signs-executive-order-to-implement-the-european-union-u-s-data-privacy-framework>.

⁶ The White House, *FACT SHEET: President Biden Signs Executive Order to Implement European Union-U.S. Data Privacy Framework* (2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/10/07/fact-sheet-president-biden-signs-executive-order-to-implement-the-european-union-u-s-data-privacy-framework>.

order, ODNI's CLPO must now assess whether anticipated SIGINT collection activities conducted under the National Intelligence Priorities Framework (1) advance the defined legitimate objectives, (2) are neither designed nor anticipated to result in signals intelligence collection in contravention of defined prohibited objectives, and (3) have been established after appropriate consideration of the privacy and civil liberties of all persons, regardless of their nationality or wherever they might reside. Second, Section 2(c)(iv) requires the CLPO to be consulted in the IC elements' updating of their procedures to comply with Executive Order 14086, including making updates necessary to implement privacy and civil liberties safeguards. Third, Section 3(c) directs the CLPO to play a critical role in the new multi-level independent and binding mechanism enabling individuals in qualifying states to seek redress for a covered violation arising from U.S. signals intelligence activities of their personal data that was reasonably believed to have been transferred from the qualifying state to the United States. The Executive Order assigning such critical roles to the CLPO demonstrates recognition of the importance of the CLPO on a global scale in championing privacy and civil liberties considerations in intelligence collection practices.

Prior to the President signing Executive Order 14086 in October 2022, CLPT, along with OGC, worked with the National Security Council to support the finalization of the Executive Order during the reporting period and provided detailed advice and counsel that informed the final product. CLPT's advice contributed to the inclusion of robust and actionable civil liberties and privacy safeguards being included into the Executive Order, thus enhancing public trust.

Further, CLPT supported the Director of National Intelligence (DNI) as she developed and issued Intelligence Community Directive (ICD) 126, *Implementation Procedures for the Signals Intelligence Redress Mechanism under Executive Order 14086*.⁷ The ICD guides implementation of the CLPO's redress mechanism under Section 3(b) of Executive Order 14086. The directive provides specificity and process clarity as to how the CLPO will implement her redress function. This directive was publicly released as well. Developing, issuing, and releasing ICD 126 provides the IC and the public with additional understanding of the redress mechanism and will help facilitate the submission of qualifying complaints from appropriate public authorities to the CLPO for investigation and, if appropriate, determination of an appropriate remedy.

Further, CLPT briefed congressional staff, along with IC peers, on the implementation of the new SIGINT safeguards and the redress process found in Executive Order 14086.

International Activities

CLPT routinely meets with international partners and transnational governmental counterparts to describe civil liberties and privacy protections that have been embedded in the IC's activities; to detail the IC's initiatives to make itself more transparent regarding its mission, authorities, and oversight mechanisms; and to learn from international partners regarding the

⁷ Office of the Director of National Intelligence, Intelligence Community Directive 126, *Implementation Procedures for the Signals Intelligence Redress Mechanism Under Executive Order 14086* (2022), <https://www.intel.gov/ic-on-the-record-database/results/1244-issuance-icd-126-implementation-procedures-for-the-signals-intelligence-redress-mechanism-under-executive-order-14086>.

comparable protections and programs that they have instituted in the service of common values. Such efforts not only support the *Principles of Intelligence Transparency* to enhance public understanding of global stakeholders and advance global CLPT safeguards and norms, but also CLPT's efforts in support of the DNI's objective of intelligence diplomacy.

During this reporting period, CLPT provided subject matter expertise and advice in support of OGC's participation in the U.S. interagency negotiations with the European Commission to finalize documentation related to the DPF. Further, CLPT, along with partners from DOJ and the U.S. Department of Commerce, briefed representatives from the United Kingdom to inform the UK's adequacy determination for the United States and to facilitate a UK extension to the U.S.-EU DPF.

CLPT further continued to engage on the ongoing effort of the Organisation for Economic Co-operation and Development (OECD) to develop and achieve consensus on common principles regarding government access, for law enforcement and national security purposes, to personal data held by the private sector. CLPT was a member of the official U.S. delegation negotiating on this effort at the OECD. CLPT represented U.S. privacy and civil liberties interests as applied to national security and worked closely with other countries' intelligence representatives to ensure that the negotiation with other OECD countries' privacy, trade, and law enforcement representatives was able to achieve an accurate set of principles. The OECD's Principles of Trusted Government Access to Data, adopted by the entire OECD in December 2022, was the first-ever set of principles by democracies that accurately describe how those democracies have common safeguards in protecting privacy when accessing data for national security and law enforcement purposes.⁸ Recognized by the OECD, these landmark principles will help enable flows of data between democracies by building trust among governments regarding the personal data of their citizens.⁹

Executive Order 12333 Guidance and Oversight

Executive Order 12333 authorizes, guides, and limits activities the IC conducts.¹⁰ For the purpose of this report, discussion will focus on Executive Order 12333's sections that directly impact U.S. persons because those sections' specific requirements ensures that U.S. persons' civil liberties are protected. First, Section 2.3 provides that the collection, retention, or dissemination of any information concerning U.S. persons in intelligence activities must be governed by procedures approved by the relevant head of the IC element and the Attorney General after consultation with the DNI. Second, Section 2.4 procedures requires that IC elements shall use the least intrusive collection techniques feasible within the United States or when directed against U.S. persons abroad. Third, Section 2.9 procedures prescribe the limited circumstances in which IC personnel may participate in a U.S. organization without disclosing

⁸ Press Release, Organisation for Economic Co-Operation and Development, *Landmark Agreement Adopted on Safeguarding Privacy in Law Enforcement and National Security Data Access* (14 December 2022), <https://www.oecd.org/newsroom/landmark-agreement-adopted-on-safeguarding-privacy-in-law-enforcement-and-national-security-data-access.htm>.

⁹ *Id.*

¹⁰ *See generally* Executive Order No. 12333, as amended.

their IC affiliation. Collectively, these procedures are commonly referred to as an IC element's "Attorney General Guidelines."

Over the past decade, CLPT worked with DOJ in leading IC elements to update and revise their Attorney General Guidelines, including ODNI, whose guidelines were updated effective 23 March 2021.¹¹ The effort to update IC elements' procedures was designed to ensure that Attorney General Guidelines reflect best practices for protecting privacy and civil liberties in the collection and handling of digital information; adopt common definitions across the IC to improve intelligence integration and provide consistent protections; and provide maximum transparency to the public regarding the law and policies that govern the IC's activities.¹²

During the reporting period, CLPT continued to work closely with the Department of the Treasury and the Drug Enforcement Administration. In so doing, CLPT helped to ensure that those agencies updated their respective guidelines consistent with applicable law and with other IC elements' updated guidelines containing civil liberties and privacy protections.

Additionally, CLPT finalized ODNI's standard operating procedures (SOPs) supporting implementation of CLPT's oversight responsibilities under the 2020 ODNI Attorney General Guidelines and submitted a work plan related to oversight review. Finalizing a set of SOPs and a work plan enables CLPT to further support a robust oversight regime, facilitate ODNI's compliance with the guidelines, and advance civil liberties and privacy safeguards as ODNI conducts its Executive Order 12333 duties. Along those lines, CLPT advised components on the implementation of the ODNI Attorney General Guidelines with respect to new datasets ODNI collected or gained access to in furtherance of its intelligence mission. CLPT also worked closely with the National Counterterrorism Center (NCTC) to ensure that intelligence activities with respect to combatting domestic terrorism complied with privacy and civil liberties controls.

Privacy and Civil Liberties Oversight Board

CLPT facilitated the important oversight functions performed by PCLOB, and CLPT's PCLOB support activities continued to increase substantially. These activities included, but were not limited to, working in close coordination with multiple IC elements to provide PCLOB detailed information and briefings on the implementation, value, and oversight of the FISA Section 702 program; briefing PCLOB's members on use of FISA Section 702 information; and working with IC elements to seek Board advice on updates to Executive Order 12333 Attorney General Guidelines described above. CLPT continues to lead IC-wide efforts to ensure PCLOB

¹¹ Press Release, Office of the Director of National Intelligence, *ODNI Releases ODNI Attorney General Procedures for Conducting Intelligence Activities* (14 January 2021), <https://www.dni.gov/index.php/newsroom/press-releases/press-releases-2021/item/2180-odni-releases-odni-attorney-general-procedures-for-conducting-intelligence-activities>.

¹² CLPT has created a chart with links to the current Attorney General Guidelines for every element of the Intelligence Community, which is available at https://www.intel.gov/assets/documents/guide/Chart_of_EO_12333_AG_approved_Guidelines_March_2021.pdf. Additional information can be found at: <https://www.intel.gov/ic-on-the-record/guide-to-posted-documents#EO12333>

is proactively provided information necessary to perform its duties, aiding the IC's ability to build trust and transparency with an important overseer.

In particular, during the reporting period, CLPT participated in briefing PCLOB on FISA Section 702 activities. CLPT joined DOJ and FBI to brief PCLOB on DOJ and ODNI's oversight of FBI's querying of FISA Section 702 data. That briefing was part of a series of briefings requested by PCLOB in their oversight review of FBI's querying of this data collected pursuant to FISA Section 702. Further, CLPT joined the National Security Agency (NSA) to brief PCLOB on changes to NSA's FISA Section 702 upstream collection program since 2014. CLPT's engagement facilitated an accurate and consistent narrative about the IC's efforts to protect U.S. person information, privacy, and civil liberties. As PCLOB's FISA Section 702 oversight report took shape, CLPT led the response to the questions for ODNI and played a central role in providing coordinated responses amongst the participating agencies.

Report on Protecting Americans of Chinese Descent

In May 2022, CLPT finalized and released to the public ODNI's report on *Best Practices to Protect Privacy, Civil Liberties, and Civil Rights of Americans of Chinese Descent in the Conduct of U.S. Intelligence Activities*.¹³ Conducted with the assistance of civil liberties and privacy officials from throughout the IC, the report examined the privacy, civil liberties, and related civil rights controls the IC uses when conducting intelligence and counterintelligence activities to counter the national security threats posed by the People's Republic of China.

The report stated that the law is clear that no IC agency or component may conduct an intelligence activity or otherwise make an employment decision based upon the ethnic or racial background of any U.S. person. The report found that IC policies and procedures reflect an appropriate focus on the protection of privacy, civil liberties, and civil rights. The report also made several recommendations to further ensure the protection of the privacy, civil liberties, and civil rights of all Americans, including Americans of Chinese descent.

During the reporting period, CLPT, through its leadership of the IC Civil Liberties and Privacy Council, continued engagements with various IC elements to identify ways to begin implementing the report's recommendations. While no finalized implementation steps were identified during this reporting period, CLPT-led discussions helped further progress on this effort.

Screening and Vetting

CLPT, in conjunction with ODNI's Office for Mission Performance, Analysis, and Collection, continued to engage in interagency efforts relating to National Security Presidential Memorandum 9, *Optimizing the Use of Federal Government Information in Support of the*

¹³ Press Release, Office of the Director of National Intelligence, *ODNI Report on Best Practices to Protect Privacy, Civil Liberties, and Civil Rights of Americans of Chinese Descent in the Conduct of U.S. Intelligence Activities* (31 May 2021), <https://www.dni.gov/index.php/newsroom/reports-publications/reports-publications-2022/item/2299-odni-report-on-best-practices-to-protect-privacy-civil-liberties-and-civil-rights-of-americans-of-chinese-descent-in-the-conduct-of-u-s-intelligence-activities>.

National Vetting Enterprise, advising on the privacy and civil liberties protections necessary for existing screening and vetting processes.¹⁴ Specifically, CLPT advised ODNI's National Counterintelligence and Security Center (NCSC) on the privacy and civil liberties impacts of new vetting proposals, while ensuring that those safeguards were appropriately incorporated into the new proposals. Further, CLPT continued serving as an advisory member to the National Vetting Governance Board and co-chaired that Board's Privacy, Civil Rights, and Civil Liberties Working Group. CLPT's participation facilitated CLPT's early awareness of any new proposal or activities that affect civil liberties and privacy, ensuring that CLPT could provide relevant advice early on to most effectively safeguard civil liberties and privacy.

Intelligence Transparency

Intelligence transparency, both to external overseers and the public, is integral to the execution of CLPT's duties pursuant to Section 1062 of the Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004.¹⁵ In addition to advocating for and coordinating the public release of key documents, CLPT has developed or supported efforts across the IC to explain in a clear, concise, and effective manner the IC's mission, activities, authorities, and oversight mechanisms. CLPT's championing of this type of proactive transparency advances the *Principles of Intelligence Transparency* to enhance public understanding while protecting classified information.

Transparency to External Overseers

CLPT continued to lead the IC in being transparent to external overseers by facilitating ongoing Congressional and PCLOB oversight of FISA Section 702 and other intelligence authorities. Specifically, CLPT coordinated and supported the ongoing production of classified FISA documentation, interagency responses to questions from those overseers, and briefings on the mission use, value, and privacy and civil liberties controls of the FISA Section 702 program. For example, during the reporting period, the PCLOB received the classified versions of the 25th and 26th Joint Assessments and Congress received the classified version of the 26th Joint Assessment (Congress previously received the classified 25th Joint Assessment). As a result of these transparency efforts, IC overseers became better informed about the IC's use of important surveillance authorities.

Transparency to the Public

CLPT has also championed and facilitated IC's transparency to the public through authorized releases, whether such releases were required by statute or were proactive releases. Consistent with the *Principles of Intelligence Transparency*, CLPT continued the public release of Joint Assessments in redacted form to ensure that the public has an accurate understanding of

¹⁴ The White House, *Presidential Memorandum on Optimizing the Use of Federal Government Information in Support of the National Vetting Enterprise* (6 February 2018), <https://trumpwhitehouse.archives.gov/presidential-actions/presidential-memorandum-optimizing-use-federal-government-information-support-national-vetting-enterprise>.

¹⁵ Pub. L. No. 108-458, 118 Stat. 3638 (2004).

the scope of ODNI and DOJ's oversight activities as well as compliance trends and findings related to the IC's use of Section 702.

One key oversight and transparency initiative that CLPT led during the reporting period was the redacted release of the seven remaining historical decisions by the FISC and the FISC-R. These decisions, opinions, and orders were previously determined to contain significant constructions of law and were provided to Congress, pursuant to 50 U.S.C. § 1871; however, those decisions had not been released.¹⁶ The proactive effort to release all historical decisions containing a significant or novel interpretation of law began in 2021, under the auspices of the *Principles of Intelligence Transparency*, with a substantial interagency review process that resulted in publicly releasing those remaining seven opinions and orders in August 2022.

The IC and DOJ worked together over nine years to release publicly significant decisions of the FISC and FISC-R. These efforts resulted in the public release of dozens of court opinions and orders and thousands of pages of released materials. All of these public releases and more are available on www.intel.gov, the chief digital component of the IC's transparency effort and a comprehensive online resource for IC-related information that CLPT manages. In 2015, Congress enacted the USA FREEDOM Act, which requires the DNI to continue to conduct a declassification review of new opinions or orders of the FISC and FISC-R that contain "a significant construction or interpretation of any provision of law," and "make publicly available to the greatest extent practicable" such opinions or orders.¹⁷ In addition to fully complying with this law, ODNI responded to Freedom of Information Act (FOIA) requests and conducted additional proactive disclosures with respect to FISC and FISC-R opinions that predate the 2015 USA FREEDOM Act.

However, there were still opinions and orders that had not been released and, thus, this effort focused on publicly releasing all remaining decisions that DOJ identified as containing a significant interpretation of law. In 2021, CLPT began leading the proactive effort to release all remaining historical decisions containing a significant or novel interpretation of law issued since 2003. It resulted in all historical, significant decisions being released in August 2022. And, as with many releases, CLPT coordinated the roll-out, including a release statement to facilitate the public's understanding of the documents being released.

In another transparency initiative, CLPT continued to work with ODNI NCSC to publicly release, on www.Intel.Gov, the Wall of Spies, which is an online, museum-quality exhibit that details the history and evolution of espionage activities conducted in the United States. During this reporting period, CLPT led the release of the third installment focusing on counterintelligence activities in and around World War I.¹⁸ This type of information provides the public with a historical understanding of the activities and value of the IC.

¹⁶ These final seven opinions and orders are available at <https://www.intel.gov/ic-on-the-record-database/results/1210-odni-releases-all-remaining-fisa-decisions-determined-to-contain-significant-construction-of-law>.

¹⁷ See 50 U.S.C. § 1872(a).

¹⁸ The digital Wall of Spies is available at <https://www.intel.gov/evolution-of-espionage>.

As noted, CLPT led the public release of the 23rd and 24th Joint Assessments in redacted form.¹⁹ While releasing these assessments is not required, the proactive release provides additional substantial information about how the IC implements Section 702 and compliance trends, such as by providing metrics, categories of compliance incidents, descriptions of certain incidents, and steps the IC takes to prevent or remediate incidents.

CLPT's transparency efforts include publicly releasing information pursuant to statutory requirements²⁰ and pursuant to the *Principles of Intelligence Transparency*. CLPT supplements the release of documents on www.Intel.Gov with corresponding releases on www.IContheRecord.gov. The impact of CLPT's extensive transparency efforts is to facilitate the IC's adherence to the democratic value of accountability to the public. The IC must both follow the rule of law and ensure that the relevant overseers and the public understand the governing authorities and rules and compliance with those requirements. During the reporting period CLPT led the release of nine one-page fact sheets discussing the IC's use of the FISA authority, all publicly available on www.Intel.Gov at the FISA Resource Library.²¹

CLPT's transparency efforts are not limited to the release of material, but also involve direct engagement with varied government audiences, the public, academics, the private sector, and non-governmental organizations (NGOs).

Examples of such engagement include, but are not limited to, briefing students in the IC Centers for Academic Excellence seminar program on the *Principles of Professional Ethics for the Intelligence Community*; participating in a roundtable discussion with national security leaders, business leaders, and educators sponsored by the Center for Strategic and International Studies to advise on a guide for teaching civics literacy in the workplace; contributing to a Brookings Institution moderated discussion on democracy, disinformation, and digital authoritarianism; and collaborating on multistakeholder engagements hosted by the Center for Democracy and Technology on reforming intelligence-related surveillance.

CLPT also continued participating in panel discussions regarding surveillance issues sponsored by NGOs and facilitating academic and NGO engagements between the IC and NGOs and academics on topics ranging from transnational repression to international human rights law. These engagements provide CLPT and the IC with an opportunity to contribute accurate

¹⁹ ODNI and the Department of Justice's 23rd Joint Assessment of the Section 702 program is available at https://www.intel.gov/assets/documents/702Documents/declassified/23rd_Joint_Assessment_of_FISA_for_Public_Release.pdf, and the 24th Joint Assessment of the Section 702 program is available at <https://www.intel.gov/assets/documents/702Documents/declassified/24th-Joint-Assessment-of-FISA-702-Compliance.pdf>.

²⁰ For example, the Annual Statistical Transparency Report complies with Section 602(a) and 603(b) of the *Foreign Intelligence Surveillance Act of 1978*, as amended (codified in 50 U.S.C. § 1873(b)), and FISC-related transparency releases rely on the 2015 Congressional enactment of the USA FREEDOM Act, which requires the DNI to continue to conduct a declassification review of new opinions or orders of the FISC and FISC-R that contain "a significant construction or interpretation of any provision of law," and "make publicly available to the greatest extent practicable" such opinions or orders (50 U.S.C. § 1872(a)).

²¹ The one-page fact sheets are available at <https://www.intel.gov/foreign-intelligence-surveillance-act>.

information to public debates; understanding of the IC's activities; and privacy and civil liberties safeguards contained within the IC's authorities.

CLPT, along with OGC and others, has continued to work on advancing policy considerations around the use of commercially available information in consultation with IC privacy and civil liberties peers. These engagements allow an informal exchange of ideas to flow between IC and outside government experts.

The IC Civil Liberties and Privacy Council and the Intelligence Transparency Council

Consistent with the role of ODNI in integrating intelligence activities across the IC, CLPT leads two IC councils: (1) the IC Civil Liberties and Privacy (CLP) Council and (2) the Intelligence Transparency Council. These councils facilitate collaboration between the IC civil liberties, privacy, and transparency officers and contribute to efforts and output that significantly advance civil liberties and privacy protections and transparency. For example, the *AI Ethics Principles* and *AI Ethics Framework* show how engagement from the councils resulted in output that affects the IC.

During the reporting period, CLPT relied on input received from IC CLP Council members in providing advice to the White House Office of Science and Technology Policy and Domestic Policy Council on an Artificial Intelligence Bill of Rights white paper. Further, CLPT leveraged the IC CLP Council and IC Transparency Council to lead policy and training activities to execute the IC Enterprise 2019–2024 Strategy for Civil Liberties, Privacy, and Transparency.²²

Additionally, CLPT led the IC CLP Council in supporting the update of privacy requirements governing all national security systems. CLPT and NSA's Office of Civil Liberties, Privacy, and Transparency (NSA CLPT) co-led a year-long, government-wide working group that provided privacy support to develop and, in July 2022, publish the Committee on National Security Systems Instruction (CNSSI) 1253.²³ CNSSI 1253 concerns security categorization and control selection for national security systems and provides all federal government departments, agencies, bureaus, and offices with guidance on a risk management framework for national security systems. Through their engagement, CLPT and NSA CLPT advanced an IC-wide consistent approach to protect personally identifiable information through required controls and privacy indicators by ensuring CNSSI 1253 contained data privacy safeguards in addition to the data security safeguards. Further, CLPT presented on the government-wide effort and significant impact on the CNSSI containing privacy safeguards at an October 2022 Privacy, Security, and Risk conference of the International Association of Privacy Professionals. The conference presentation to a technical privacy audience expanded awareness of revised privacy controls and risk factors, as well as the ease of implementing them.

²² The strategy is available at https://www.dni.gov/files/CLPT/documents/CLPT_Enterprise_Strategy_OCR.pdf.

²³ Committee on National Security Systems, Instruction No. 1253, *Categorization and Control Selection for National Security Systems* (29 July 2022), https://rmf.org/wp-content/uploads/2022/10/CNSSI_1253_2022.pdf.

CLPT also led the IC CLP Council to identify areas where there is greater need for an IC-wide policy to handle data breaches involving personally identifiable information. As IC systems are more integrated, the likelihood that such a breach involves more than one IC element increases; a formalized process ensures consistency in timing and content of breach alerts between IC elements.

OTHER ACTIVITIES OF THE OFFICE OF CIVIL LIBERTIES, PRIVACY, AND TRANSPARENCY

CLPT continued its critical functions in providing privacy and civil liberties advice across ODNI and the IC. CLPT reviews every ICD and ODNI internal instruction to ensure they fully address privacy and civil liberties concerns. CLPT also examines draft legislation with national security implications to assess potential impacts to privacy and civil liberties and to provide technical assistance both within the Executive Branch and, when requested, to Congress. CLPT's review ensures that IC and ODNI activities appropriately protect civil liberties and privacy commensurate with statutory duties. These reviews also ensure that CLPT is aware of the ways in which ODNI and the IC use technologies and affords CLPT the ability to ensure that such technologies sustain and do not erode privacy safeguards relating to the use, collection, or disclosure of personal information.

CLPT's Advice to ODNI, Review of ODNI Activities, and Related Training

CLPT continued to provide extensive advice within ODNI regarding its activities that may impact privacy and civil liberties. For example, CLPT has embedded personnel in two ODNI centers: NCTC and NCSC. NCTC's mission is to lead the nation's effort to protect the United States from terrorism by integrating, analyzing, and sharing information to drive whole-of-government action and achieve our national counterterrorism objectives.²⁴ NCSC's mission is to lead and support the U.S. Government's counterintelligence and security activities critical to protecting our nation; provide counterintelligence outreach to U.S. private sector entities at risk of foreign intelligence penetration; and issue public warnings regarding intelligence threats to the United States.²⁵ Having CLPT personnel dedicated to those centers ensures that CLPT can provide timely privacy and civil liberties guidance at early stages of proposed intelligence activities. CLPT's embedded personnel are well-known to the centers' personnel and facilitate continual informal checks with CLPT in addition to more formal requests for guidance.

For NCSC, CLPT advised on National Security Adjudicator Standards, which govern how the IC conducts background checks. CLPT's advice addressed privacy and civil liberties concerns and requirements in the development and implementation of a comprehensive personnel vetting reform. CLPT's engagement helped reduce time to onboard new hires while ensuring the protection of people, property, information, and mission. CLPT also worked with NCSC to establish and define the factors to use when evaluating the privacy risk of national security systems. By doing so, CLPT helped to make sure that such systems appropriately

²⁴ The NCTC mission statement is available at <https://www.dni.gov/index.php/nctc-who-we-are>.

²⁵ The NCSC mission statement is available at <https://www.dni.gov/index.php/ncsc-who-we-are/ncsc-mission-vision>.

protect the privacy of personally identifiable information as it also protects national security information.

For NCTC, CLPT advised NCTC on its acquisition, handling, use, and retention of data. CLPT oversaw compliance with ODNI's Attorney General Guidelines, corresponding NCTC Implementation Procedures, and various ODNI policies. CLPT also advised on other privacy, civil liberties, and transparency considerations regarding the data, ensuring that individuals' privacy and civil liberties interests in their data were properly protected. Additionally, CLPT reviewed NCTC reports of compliance incidents reported to, or discovered by, the NCTC Compliance and Transparency Group, as well as reports of periodic audits conducted of NCTC's data holdings and systems. The review enabled CLPT to identify systematic compliance issues and trends that could impact privacy, civil liberties, and transparency. CLPT also reviewed NCTC analytic products concerning domestic terrorism to ensure protection of U.S. persons' privacy and U.S. persons' exercise of their constitutional rights.

Furthermore, CLPT continued to provide direct support to other ODNI offices and components to ensure that privacy and civil liberties were appropriately considered in the focus on data, new research activities, and privacy assessments, opportunities, and mitigations.

- CLPT provided advice to the IC Chief Data Officers' Council on their IC Data Strategy, ensuring the integration of civil liberties and privacy equities in carrying out data collection, exploitation, and dissemination, informing key initiatives in artificial intelligence and machine learning.
- CLPT successfully oversaw the publishing of a new system of records notice involving the National Intelligence University (NIU) that contributed to its successful transition from the Defense Intelligence Agency to ODNI.
- CLPT advised the Intelligence Advanced Research Projects Activity (IARPA) on its research considerations to ensure data collection, analysis, and dissemination take into account appropriate privacy and civil liberties safeguards.

In addition to these advice functions, CLPT also conducts regular reviews to ensure that privacy and civil liberties controls are properly applied within ODNI. For example, CLPT continued its ongoing efforts to:

- Work with system owners and security personnel to conduct privacy assessments that evaluate the privacy controls on all new or substantially updated ODNI systems.
- Review reports of potential breaches involving personally identifiable information and direct any necessary remedial efforts.
- Evaluate proposed new projects funded by IARPA to ensure that appropriate privacy and civil liberties controls are applied in all funded research activities.
- Assist, in conjunction with OGC, in making sure ODNI meets its oversight obligations to the President's Intelligence Oversight Board (PIOB). These duties include reporting potential intelligence compliance issues to the PIOB and evaluating the PIOB incident submissions of all other IC elements to ensure that appropriate

steps have been taken to rectify and mitigate compliance issues, such as by contributing to a PIOB working group revising PIOB reporting criteria, and assisting on intelligence oversight reporting

CLPT's efforts and impact are not limited to advice and reviews. To ensure privacy and civil liberties protections are fully integrated into the IC's processes, CLPT also conducts regular training activities for IC personnel and professional development activities for privacy and civil liberties officers. These activities include periodic in-person and online trainings to explain or clarify civil liberties and privacy protections, as well as trainings that share best practices in the promotion of privacy and civil liberties protection and transparency.

During the reporting period, in October 2022, CLPT led the first annual tabletop exercise for the ODNI Breach Response Team to mitigate adverse impacts from a potential high-risk breach of personally identifiable information. Then, in November 2022, the CLPO signed the new Intelligence Community Standard 107-03, *Alert Guidelines for Privacy Breaches Affecting More Than One IC Element*. This new standard established a formal process for interagency breach notification to ensure consistency in timing and content.

CLPT's Advice on U.S. Government-wide Efforts

Further, CLPT also reviewed, on behalf of the IC, government-wide efforts seeking IC review. CLPT provided comments on the draft U.S. National Strategy for Artificial Intelligence and on the strategic plan of the Coalition for Academic Scientific Computation. In this regard, CLPT shared the *AI Ethics Principles* and *AI Ethics Framework* to advance the technical discussion and the responsible use of technology, ensuring continued focus on privacy and civil liberties protections.

CLPT also participated in the Big Data Interagency Working Group to address privacy and civil liberties questions concerning large, diverse, and real-time data sets, informing the working group about the need to test artificial intelligence capabilities to reduce bias and encourage a more diverse and inclusive workforce in artificial intelligence innovation.

CLPT continued to contribute to government-wide efforts by participating in panels and other training opportunities sponsored by the Federal Privacy Council (FPC) designed to increase the privacy acumen of professionals throughout the U.S. Government and continued our participation in bi-monthly meetings led by the FPC for all senior agency officials for privacy. Additionally, during this reporting period, CLPT contributed to a discussion of the Federal Innovators Network focused in part on transparency as a trust-building mechanism to foster cross-sector communication.

COMPLAINTS

Consistent with the statutory authority of the CLPO, CLPT ensures that there is an avenue to redress complaints, address concerns, or answer questions having to do with privacy and civil liberties, whether broadly focused (e.g., the privacy implications of intelligence activities) or related to narrow, individual concerns (e.g., how a particular personnel record may

have been used). CLPT is also the hub of ODNI's incident response team, which convenes upon notice of any lapse (actual or suspected) in the application of technical protocols involving systems containing personally identifiable information.

During the reporting period, CLPT received and processed four formal complaints. In addition to the formal complaints received, CLPT routinely addressed broader privacy and civil liberties concerns and questions raised with CLPT by IC personnel, other government personnel, and members of the public. The existence of CLPT's program for review and evaluation of formal complaints strengthens privacy and civil liberties oversight across the IC.

While the details of formal complaints must remain anonymous to protect the confidentiality of the complainants, these four complaints can be generally described as follows:

- one was determined to be valid after CLPT reviewed and investigated the complaint and provided a determination, the resolution of which was pending during this reporting period;
- one did not involve an actual violation but involved an individual who did not understand ODNI's Attorney General Guidelines, which CLPT remediated by educating the individual on the applicable requirements, restrictions, and obligations to resolve the matter; and
- the two remaining complaints were referred to another agency and subsequently closed without action as they did not allege facts regarding actions of ODNI or the IC.

As CLPT personnel inform the ODNI workforce through in-person sessions and through CLPT's websites, anyone can report a potential civil liberties and privacy violation or file a complaint. IC and ODNI personnel may go in-person to CLPT offices or use CLPT's intra-IC website. Individuals outside of the IC (as well as those inside the IC) may submit a complaint to CLPT by providing a written, detailed description of the incident and surrounding circumstances, to include copies of any unclassified documentation pertaining to the matter, to the following address:

Office of the Director of National Intelligence
ATTN: Office of Civil Liberties, Privacy, and Transparency
Washington, DC 20511

To ensure that individuals within the IC feel protected from retaliation when bringing allegations of civil liberties and privacy abuses to CLPT, no action constituting a reprisal, or threat of reprisal, may be made against a federal employee for making a complaint or for disclosing information to CLPT that indicates a possible violation of civil liberties or privacy protections in the administration of ODNI programs and operations, unless the complaint is made or the information is disclosed with the knowledge that it was false or made with willful disregard for its truth or falsity.

During the reporting period, in December 2022, the President signed Executive Order 14086, discussed above, that created a signals intelligence redress function, with a first level of

redress being with the ODNI CLPO who shall investigate, review, and, as appropriate, determine remediation of qualified complaints transmitted by an appropriate public authority of a qualifying state. No states were qualified during the reporting period.

METRICS

This report also documents the number of reviews conducted and complaints received during this reporting period. In calculating these metrics, and consistent with the methodology used in prior reports, CLPT used the following definitions:

- **Review:** An examination of activities or processes as required by controlling privacy and civil liberties authorities.
- **Information Sharing Complaint:** A written allegation made to CLPT of harm arising from ODNI sharing of terrorism data in the context of the Information Sharing Environment (ISE).
- **Privacy Act Complaint:** A written allegation made to CLPT regarding ODNI non-compliance with a requirement of the Privacy Act.
- **Privacy and Civil Liberties Complaint:** 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 U.S. persons, or violation of First Amendment rights of free speech and association, or Fifth Amendment guarantees of due process and equal protection).

| Category | 1 July 2022 to 31 December 2022 |
|----------------------------------------|---------------------------------|
| Reviews | 52 |
| ISE Complaints | 0 |
| Privacy Act Complaints | 0 |
| Privacy and Civil Liberties Complaints | 4 |

CONCLUSION

As required by Section 1062 of the IRTPA of 2004, this report provides information about CLPT's activities from 1 July 2022 through 31 December 2022. These activities continue to assist ODNI and the IC in meeting its obligations to the American people by ensuring that intelligence activities are conducted in a manner that protects privacy and civil liberties while promoting transparency and accountability.