



# **Central Intelligence Agency**

Office of Privacy and Civil Liberties

Semiannual Report to Congress

January 1, 2019 – June 30, 2019



December 7, 2021

I am pleased to present the Semiannual Report of the Central Intelligence Agency's Office of Privacy and Civil Liberties (OPCL), covering the period of January 1, 2019 to June 30, 2019, in accordance with Section 803 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, as amended. The COVID-19 pandemic caused a delay in the issuance of this report.

As detailed in this report, OPCL continues to advise senior CIA officials regarding the protection of privacy and civil liberties in the conduct of the Agency's authorized intelligence mission and to conduct reviews to ensure CIA fulfills its obligation to appropriately protect the rights and civil liberties of every American.

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## I. Purpose and Scope

In accordance with Section 803 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, as amended, this report summarizes the activities of the Central Intelligence Agency's (CIA) Office of Privacy and Civil Liberties (OPCL) for the reporting period of January 1, 2019 to June 30, 2019.<sup>1</sup> This report provides an overview of the role of OPCL and a summary of notable initiatives undertaken during the reporting period.

The report also provides representative examples of the type of advice provided; the number and type of privacy and civil liberties reviews undertaken; and the number, nature, and disposition of complaints received. As required by statute, this report has been prepared to the greatest extent possible in unclassified form.<sup>2</sup>

## II. Overview of the Office of Privacy and Civil Liberties

CIA's OPCL is led by a Privacy and Civil Liberties Officer (PCLO), a senior Agency official charged pursuant to the *Implementing Recommendations of the 9/11 Commission Act of 2007* with the following responsibilities:<sup>3</sup>

- Assist the CIA Director and other Agency officials in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;
- Periodically investigate and review CIA actions, policies, procedures, guidelines, and related laws and their implementation to ensure the CIA is adequately considering privacy and civil liberties in its actions;
- Ensure the CIA has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege that CIA has violated their privacy or civil liberties; and
- In providing advice on proposals to retain or enhance a particular governmental activity available to CIA, include consideration of whether the Agency has established that the need for the activity is balanced with the need to protect privacy and civil liberties; that there is adequate supervision of the use by CIA of the activity to ensure protection of privacy and civil liberties; and that there are adequate guidelines and oversight to properly confine its use.

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<sup>1</sup> 42 U.S.C. § 2000ee-1(f)(2018).

<sup>2</sup> 42 U.S.C. § 2000ee-1(g)(2018).

<sup>3</sup> 42 U.S.C. § 2000ee-1(a)(2018).

The PCLO also serves as the CIA's designated Senior Agency Official for Privacy (SAOP) and the CIA Information Sharing Environment (ISE) Privacy Official. As the SAOP, the PCLO represents CIA on the [Federal Privacy Council](#) (FPC),<sup>4</sup> the principal interagency forum established by Executive Order 13719, *Establishment of the Federal Privacy Council*, to improve privacy practices at agencies across the Federal Government.

The PCLO has the additional duty and responsibility as CIA's Transparency Officer, in support of the Intelligence Community's [Principles of Intelligence Transparency](#). In this role, the PCLO proactively engages in various initiatives, on behalf of CIA, to enhance public understanding of intelligence activities needed to accomplish the national security mission.

A team of dedicated privacy and civil liberties officers supports the PCLO, who works closely with the Office of the Director, as well as with other Agency Directorates, Mission Centers, and components to ensure privacy and civil liberties safeguards are fully considered in the day-to-day conduct of the Agency's complex and varied intelligence mission. OPCL officers have diverse experience from across CIA, executive branch agencies and departments, and other Intelligence Community (IC) elements. A senior level Privacy and Civil Liberties Counsel within the Office of General Counsel also supports OPCL. OPCL officers receive specialized training in privacy and civil liberties and have backgrounds in law, information management, intelligence collection and analysis, security, and federal litigation.

### III. Notable Initiatives

The following sections provide a brief summary of several notable initiatives undertaken during the reporting period.

#### CIA's Executive Order 12333 Attorney General Guidelines

Section 2.3 of Executive Order 12333 (EO 12333), as amended, requires that elements of the IC collect, retain, and disseminate intelligence information concerning U.S. persons only in accordance with procedures established by the head of the IC element and approved by the Attorney General, after consultation with the Director of National Intelligence.

In 2017, the CIA worked with the Department of Justice (DOJ) and the Office of the Director of National Intelligence (ODNI) to revise CIA's Attorney General-approved procedures for implementing EO 12333. This revision was necessary, in part, to address Section 309 of the Intelligence Authorization Act for Fiscal Year 2015 which generally requires every IC element to

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<sup>4</sup> Created by the White House in 2016, the FPC is an interagency structure that supports Federal agencies in protecting privacy rights through various means, including promoting collaboration between Federal privacy personnel, developing recommendations for the Office of Management and Budget, informing government-wide priorities and identifying more effective ways to protect privacy rights.

purge unevaluated, nonpublic telephone or electronic communications within five years.<sup>5</sup> CIA's revised EO 12333 implementing procedures are referred to as the "Attorney General Guidelines."

In recognition of heightened privacy concerns, the revised Attorney General Guidelines impose exceptional handling requirements on unevaluated nonpublic telephone and electronic communications and certain other sensitive data. The Guidelines limit access to such information and require training in its handling. With limited exceptions, the Guidelines require the destruction of information subject to these more stringent handling requirements no later than five years after the information was made available to CIA intelligence professionals for operational or analytic use. The revised Attorney General Guidelines are one way in which the CIA ensures it engages in its foreign intelligence, counterintelligence, and other authorized activities in support of national security objectives in a manner that respects Americans' privacy rights and civil liberties.

Consistent with the PCLO's statutory responsibility to conduct reviews and in accordance with Section 10 of CIA's Attorney General Guidelines, OPCL has been designated as the lead entity within the CIA to conduct oversight reviews of the Agency's implementation and use of the revised Attorney General Guidelines. During this reporting period, OPCL completed an Agency-wide review of the CIA's efforts to comply with the access and training requirements for unevaluated information subject to exceptional handling controls as described in Section 6 of the Attorney General Guidelines. Through this review, OPCL highlighted and shared best practices for handling data and provided specific recommendations for continued implementation.

Also during this reporting period, OPCL continued to support the Attorney General Guidelines implementation efforts by assisting in the planning of and participation in a 2019 CIA-wide summit which highlighted the history of the Guidelines, what is required by CIA under the Guidelines, implementation resources, and the importance of compliance. In addition, OPCL provided advice which led senior Agency leaders to take specific steps to ensure compliance with the Guidelines,

## Privacy and Civil Liberties Oversight Board Engagement

OPCL continued to engage on substantive issues with the Privacy and Civil Liberties Oversight Board (PCLOB) during this reporting period. The PCLOB was established as an independent, bipartisan agency within the Executive branch by the *Implementing Recommendations of the 9/11 Commission Act of 2007*, as amended.<sup>6</sup> The PCLOB's enabling statute, codified at 42 U.S.C. § 2000ee, vests it with two fundamental authorities: (1) to review and analyze actions the Executive branch takes to protect the Nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and (2) to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation from terrorism.

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<sup>5</sup> See <https://www.cia.gov/about-cia/privacy-and-civil-liberties/CIA-AG-Guidelines-Signed.pdf>. A comprehensive explanation of the revised Attorney General Guidelines can be found at <https://www.cia.gov/about-cia/privacy-and-civil-liberties/Detailed-Overview-CIA-AG-Guidelines.pdf>.

<sup>6</sup> 42 U.S.C. § 2000ee-1(a)(2018).

During the reporting period, OPCL briefed new PCLOB members to apprise them of the role of OPCL and OPCL activities at CIA. OPCL later met with PCLOB to discuss PCLOB's oversight priorities for the Agency. In addition, OPCL participated alongside stakeholders across the government in the PCLOB's Machine Learning Working Group, organized under PCLOB's convening capacity. OPCL continued its wide-ranging engagement with PCLOB by attending a quarterly meeting and briefing PCLOB on CIA's Attorney General Guidelines.

## Workforce Engagement

OPCL provides numerous educational and training opportunities for the Agency workforce to increase the Agency's awareness of privacy and civil liberties requirements and resources. During this reporting period, OPCL continued to provide new Agency employees with an overview of OPCL's functions, Agency requirements to protect personally identifiable information (PII),<sup>7</sup> and privacy and civil liberties responsibilities at CIA, ensuring new officers are aware of their privacy and civil liberty responsibilities as they begin their CIA careers. OPCL presented a Tech Talk for CIA employees about artificial intelligence (AI).<sup>8</sup> Tech Talks bring together in-house experts to teach topics of interest to software developers and project managers. OPCL continued to offer online training and conducted in-person training regarding the requirements of the [Privacy Act of 1974, as amended](#), and safeguarding PII in Agency systems.

Additionally, OPCL provided more specialized briefings to various components within the Agency. For example, OPCL briefed both the Office of Security (OS) and the Office of the Inspector General (OIG) on how to identify possible breaches, incidents, and Privacy Act of 1974, as amended, violations and disclosures. The OS protects personnel, intelligence, operations and facilities by providing secure information systems and safe operating environments while the OIG promotes accountability within the CIA by performing audits, inspections, and investigations to deter fraud, abuse, mismanagement, and the violation of rules and laws. In this reporting period, OPCL also spoke to data scientists about the nature of privacy and civil liberties risks in AI and machine learning.

OPCL continues to engage the workforce by creating tools and resources that will help guide the Agency workforce in incorporating privacy and civil liberties safeguards into various programs and activities. During this reporting period, OPCL drafted the CIA Artificial Intelligence Ethics

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<sup>7</sup> Personally identifiable information (PII) refers to information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to that individual. Office of Mgmt. & Budget, Exec. Office of the President, OMB M-17-12, *Preparing for and Responding to a Breach of Personally Identifiable Information* (3 January 2017).

<sup>8</sup> Artificial Intelligence is defined as “[a]ny artificial system that performs tasks under varying and unpredictable circumstances without significant human oversight, or that can learn from experience and improve performance when exposed to data sets; [a]n artificial system developed in computer software, physical hardware, or other context that solves tasks requiring human-like perception, cognition, planning, learning, communication, or physical action; [a]n artificial system designed to think or act like a human, including cognitive architectures and neural networks; [a] set of techniques, including machine learning, that is designed to approximate a cognitive task; [a]n artificial system designed to act rationally, including an intelligent software agent or embodied robot that achieves goals using perception, planning, reasoning, learning, communicating, decision making, and acting.” [John S. McCain National Defense Authorization Act, Pub. L. No. 115-232 § 1051\(f\)\(2019\)](#).

Framework to provide the Agency workforce with a practical approach to ensure that AI protects privacy and civil liberties.

## Interagency Engagement

OPCL serves as CIA's focal point for interactions with counterpart privacy and civil liberties organizations within the ODNI, the Office of Management and Budget (OMB), the Department of Justice (DOJ), IC elements, and other departments and agencies within the Executive branch, regarding privacy and civil liberties matters.

Representative examples of interagency engagement during the reporting period include the following:

- OPCL met with privacy and civil liberties offices from other elements of the IC to exchange best practices and provide guidance;
- The PCLO participated in a panel at the FPC's Privacy Boot Camp during Data Privacy Week;
- OPCL began participation in a training reciprocity initiative put forth by the Principal Deputy Director of National Intelligence;
- OPCL regularly participated in the [FPC](#) and other councils, such as the Intelligence Community Civil Liberties Privacy Council;<sup>9</sup> and
- OPCL prepared a series of articles that were published in an IC blog about privacy and civil liberties to increase awareness of privacy and civil liberties resources and celebrate Data Privacy Day.

## Public Engagement

Consistent with the [Principles of Intelligence Transparency for the Intelligence Community](#), OPCL conducts activities to inform the public about the laws, directives, authorities, and policies governing intelligence activities and the compliance and oversight frameworks in place that ensure such activities are conducted in a manner that respects privacy and civil liberties.

OPCL continued to participate in a wide range of public engagements. For example, in June 2019, the PCLO presented at the American Society of Access Professionals "Privacy Day Training" to discuss how the IC accounts for privacy and civil liberty considerations. OPCL also worked with the Agency's Talent Center to add briefings to hiring events to enhance the public's understanding of CIA's approach and requirements pertaining to oversight of privacy and civil liberties matters. The PCLO spoke at the Brookings Institute about balancing transparency and secrecy in a digital age; [the event](#) was broadcast on C-SPAN and Lawfare. During this reporting period, OPCL also met with a non-governmental organization to discuss cyber policy. In coordination with the Office

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<sup>9</sup> Created by the White House in 2016, the FPC is an interagency structure that supports Federal agencies in protecting privacy rights through various means, including promoting collaboration between Federal privacy personnel, developing recommendations for the Office of Management and Budget, informing government-wide priorities and identifying more effective ways to protect privacy rights.



of Management and Budget, OPCL engaged in a substantial effort to update CIA's [System of Records Notices \(SORNs\)](#).<sup>10</sup>

## IV. Representative Examples and Metrics

In addition to the notable initiatives discussed above, this section describes representative examples and metrics regarding the activities of OPCL in carrying out the PCLO's statutory responsibilities during the period covered in this report in each of the areas enumerated in Section 803 of the *Implementing Recommendations of the 9/11 Commission Act*, as amended.<sup>11</sup>

### Advice

OPCL provides information, guidance, and/or assistance (generically categorized as "advice") to CIA components to ensure Agency programs and activities incorporate appropriate privacy and civil liberties protections. Advisory activities generally are forward-looking and may involve a proposed course of action or a request for comments on a proposed rule, policy, or guidance. During this reporting period, OPCL continued to provide advice to various Agency Directorates and components, ODNI, other IC elements, and Executive Branch agencies on matters including inter-agency initiatives, requests for advice regarding the Privacy Act of 1974, as amended, implementation of EO 12333 Attorney General Guidelines, and the proper handling of PII.

Representative examples include the following:

- OPCL provided guidance to the Director of the Central Intelligence Agency on the implementation of PPD-28;
- OPCL advised CIA components on the requirements for identifying breaches, incidents, violations, and disclosures of PII;
- OPCL provided input, guidance, and advice to CIA components on the implementation of the revised Attorney General Guidelines;
- OPCL met with another IC element to provide information and assistance concerning the privacy protections mandated under Section 702 of the Foreign Intelligence Surveillance Act (FISA);
- OPCL convened numerous meetings with Agency offices and components to advise on the requirements under the Privacy Act of 1974, as amended, and the applicability of System of Records Notice requirements;
- OPCL continued to provide substantive input and comments on proposed policy initiatives involving security, data access, and training requirements to ensure the CIA took into account privacy and civil liberties considerations in these activities; and

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<sup>10</sup> SORNs are public-facing documents published in the Federal Register which inform the public of the existence of records and provides notice to the public of their rights and procedures under the Privacy Act of 1974, as amended.

<sup>11</sup> 42 U.S.C. § 2000 ee-1(2018).

- OPCL advised CIA components on the proper protection, including data tagging, of PII in Agency IT systems, in accordance with applicable technical standards as well as privacy and civil liberties laws and policies.

## Reviews

For the purposes of this report, OPCL reviews are distinguished from OPCL’s provision of advice insofar as a review consists of an assessment regarding whether an existing system, process, program, or activity complies with law, regulation, or policy, in contrast to assessing a proposed system, action, or procedure. A review may be formal and responsive to a complaint or issue that has come to the attention of OPCL or form a part of OPCL’s program of periodic investigation and review of Agency systems, processes, programs, or activities. A review also may be collateral to OPCL providing advice to an Agency Office, Directorate, Mission Center, or component. Often, several separate actions may take place to complete a review. When there is one output, such as a report, these actions will be counted as one review.

The following table provides metrics regarding the instances in which OPCL conducted reviews:

| <b>Table I</b>   |                          |
|--|--------------------------|
| <b>Reviews Completed: January 1, 2019 – June 30, 2019</b>                              |                          |
| <b>Type of Review</b>  | <b>Number of Reviews</b> |
| Related to the Collection, Retention, and Dissemination of U.S. Persons Information    | 6                        |
| Related to Privacy Act of 1974, as amended, Requirements                               | 1                        |
| Related to the Use and Handling of Personally Identifiable Information                 | 8                        |
| Related to Federal Agency Data Mining Reporting Act of 2007 Requirements <sup>12</sup> | 4                        |
| Related to Civil Liberties   | 1                        |
| <b>Total Reviews</b>   | <b>20</b>                |

In the reviews related to the collection, retention, and dissemination of U.S. Person information, OPCL met with CIA components to review programs and determine whether the programs complied with applicable privacy and civil liberties rules.

In the reviews concerning the Privacy Act of 1974, as amended, OPCL reviewed existing information technology systems to determine whether the systems contained information or records subject to the Privacy Act of 1974, as amended, and, if so, determined whether Systems of Records

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<sup>12</sup> 42 U.S.C. § 2000ee-3(2007).

Notice requirements were being met. OPCL also worked with a CIA component to review Privacy Act of 1974, as amended, disclosures.

In the reviews concerning the use and handling of personally identifiable information, OPCL met with developers, system owners, data stewards, and information management officers to ensure PII was being correctly identified and that appropriate technical safeguards had been put in place to protect against unauthorized access, use, or disclosure of the information.

In the reviews conducted pursuant to the Federal Agency Data Mining Reporting Act of 2007, OPCL reviewed data mining activities from 2018 to conduct an assessment of the privacy and civil liberties protections designed to limit the impact on the privacy and civil liberties of individuals, resulting from such activities.

## Complaints

Complaints include any concerns raised by members of the public, CIA staff or contractors, or any other government officials to the PCLO indicating a possible violation of privacy protections or civil liberties in the administration of the programs and operations of CIA. During the reporting period, OPCL received eight complaints from CIA personnel and six complaints from the public. The PCLO conducted appropriate reviews and inquiries to assess the nature of the complaint and to assess their disposition.

The following tables provide metrics regarding the number, nature, and disposition of the complaints received by the PCLO:

### I. Internal complaints:

| Nature of Complaint   | Number of Complaints | Disposition of Complaint                                   |
|---|----------------------|--|
| <b>Allegation that CIA violated a privacy or civil liberty right.</b> | 8                    | Complaints closed. Conducted a review and provided advice. |

## II. Complaints from the Public:

| Nature of Complaint   | Number of Complaints | Disposition of Complaint   |
|---|----------------------|--|
| Allegation that CIA violated a privacy or civil liberty right.  | 6                    | Complaints closed. OPCL determined there was an insufficient factual basis to support the complaint.   |
| Request for assistance from CIA.  | 4                    | Complaints closed. In each case, OPCL determined there was either no discernable basis in fact for the complaint or the complaint had no nexus to the authorities and activities of the CIA. |
| Individuals alleging that a third party is violating their privacy or civil liberties and requesting CIA intervention | 6                    | Complaints closed. In each case, OPCL determined there was either no discernable basis in fact for the complaint or the complaint had no nexus to the authorities and activities of the CIA. |

Members of the public may continue to contact the CIA PCLO to make a complaint that indicates a possible violation of privacy protections or civil liberties in the administration of CIA programs and operations. Complaints may be submitted via a [web form](http://www.cia.gov/privacy) accessible on [www.cia.gov/privacy](http://www.cia.gov/privacy). A complaint may also be sent via U.S. postal mail to the following address:

Central Intelligence Agency  
Privacy and Civil Liberties Officer  
Washington, D.C. 20505

OPCL will review all complaints directed to the PCLO. A complaint must state the possible violation of privacy protections or civil liberties with sufficient detail to allow the PCLO to assess the nature of the complaint and whether a remedy may be appropriate. A response by the PCLO will neither confirm nor deny the accuracy of the complaint and/or whether the individual has been subject to CIA action, but will confirm that the complaint has been properly investigated and indicate, when appropriate, that the matter has been remedied or found to be in compliance with applicable law or policy. OPCL also may refer a complaint to the CIA OIG or to another Federal Government agency, as appropriate.

## V. Conclusion

This semiannual report summarizes the CIA OPCL's activities for the reporting period of January 1, 2019 to June 30, 2019. OPCL is committed to ensuring that CIA's activities align with our enduring commitment to protecting privacy and civil liberties.