

U.S. Department of Justice

**THE CHIEF PRIVACY AND CIVIL LIBERTIES OFFICER AND
THE OFFICE OF PRIVACY AND CIVIL LIBERTIES**

**PRIVACY AND CIVIL LIBERTIES
ACTIVITIES QUARTERLY REPORT**



FOURTH QUARTER, FY 2013

JULY 1, 2013 – SEPTEMBER 30, 2013

I. INTRODUCTION

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, 42 U.S.C. § 2000ee-1 (2012) (hereinafter “Section 803”), requires designation of a senior official to serve as the Attorney General’s principal advisor on privacy and civil liberties matters and imposes quarterly reporting requirements on certain activities of such official.¹ The Department of Justice’s Chief Privacy and Civil Liberties Officer (CPCLO) in the Office of the Deputy Attorney General serves as this principal advisor to the Attorney General and is supported by the Department’s Office of Privacy and Civil Liberties (OPCL). Specifically, Section 803 requires quarterly reports related to the discharge of certain privacy and civil liberties functions of the Department’s CPCLO, including information on: the number and types of privacy reviews undertaken by the CPCLO; the type of advice provided and the response given to such advice; the number and nature of the complaints received by the department, agency, or element concerned for alleged violations; and a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.² Many of these functions are discharged, on behalf of the CPCLO, by the Department’s OPCL. To provide a standard reportable framework, the Department has coordinated with the Office of Management and Budget (OMB) in order to tailor the report to the missions and functions of the Department’s CPCLO. Accordingly, in accordance with Section 803, the Department submits the Fourth Quarter Report for Fiscal Year 2013 on such activities of the Department’s CPCLO and OPCL.

II. PRIVACY REVIEWS

The Department conducts privacy reviews of information systems and programs to ensure that privacy issues are identified and analyzed in accordance with federal privacy laws enumerated in controlling authorities such as the Privacy Act of 1974, 5 U.S.C. § 552a (2012), the privacy provisions of the E-Government Act of 2002, 44 U.S.C. § 3501 (note) (2012), as well as federal privacy policies articulated in Office of Management and Budget (OMB) guidance, including OMB Circular A-130.³

A privacy review for purposes of this report encompasses activities that are part of a systematic and repeatable process such as those listed below:

1. Reviews of proposed legislation, testimony, and reports for privacy and civil liberties issues.
2. Initial Privacy Assessment (IPA) reviews – An IPA is a privacy compliance tool developed by the Department of Justice as a first step to: facilitate the identification of

¹ See 42 U.S.C. § 2000ee-1 (2012).

² See *id.* § 2000ee-1(f).

³ See OMB Circular No. A-130, Management of Federal Information Resources, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals, 61 Fed. Reg. 6428 (Feb. 20, 1996), as amended, 65 Fed. Reg. 77,677 (Dec. 12, 2000), available at http://www.whitehouse.gov/omb/circulars_a130.

potential privacy issues; assess whether privacy documentation is required; and ultimately ensure the Department's compliance with applicable privacy laws and policies.⁴ IPAs are conducted by Department components with coordination and review by OPCL. For purposes of this report, this number represents IPAs that have been reviewed and closed by OPCL.

3. Privacy Impact Assessment (PIA) reviews – A PIA is an analysis required by Section 208 of the E-Government Act of 2002 of how information in identifiable form is processed to: ensure handling conforms to applicable legal, regulatory, and policy requirements regarding privacy; determine the risks and effects of collecting, maintaining, and disseminating information in identifiable form in an electronic information system; and examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks.⁵ For purposes of this report, this number represents PIAs that have been reviewed, approved, and/or closed by OPCL and/or the CPCLO.
4. System of Records Notice (SORN) reviews – A SORN is a notice document required by the Privacy Act of 1974, which describes the existence and character of a system of records.⁶ For purposes of this report, this number represents SORNs reviewed and approved by OPCL and the CPCLO that result in a published SORN for which the comment period has exhausted.
5. Privacy Act exemption regulation reviews – A Privacy Act exemption regulation is a regulation promulgated by an agency that maintains a system of records which exempts such system from certain provisions of the Act.⁷ For purposes of this report, this number represents exemption regulations that have been reviewed and approved by OPCL and the CPCLO that result in a final regulation for which the comment period has exhausted.
6. Information collection notices reviews – An information collection notice is a notice as required by subsection (e)(3) of the Privacy Act.⁸ For purposes of this report, this number represents reviews of information collection notices conducted by OPCL to ensure that they fully meet the requirements of subsection (e)(3) of the Privacy Act.
7. OMB Circular A-130 privacy reviews – OMB Circular A-130 reviews include assessments of the following: SORNs to ensure that they are accurate and up to date; routine uses to ensure that they are still required and compatible with the purpose for which the information was collected; record practices and retention schedules to ensure that they are still appropriate; exemption regulations to ensure that they are still

⁴ For further information about the Department's IPA process, see <http://www.justice.gov/opcl/privacy-compliance-process.html>.

⁵ See OMB Memorandum, M-03-22, OMB Guidance for Implementing the Privacy Provisions of the E-Government Act of 2002, Attachment A, Section II.A.6 (Sept. 26, 2003), available at http://www.whitehouse.gov/omb/memoranda_m03-22.

⁶ See 5 U.S.C. § 552a(e)(4).

⁷ See *id.* § 552a(j), (k).

⁸ See *id.* § 552a(e)(3).

necessary; contracts to ensure that appropriate Federal Acquisition Regulation language is used to bind the contractor to provisions of the Privacy Act; Computer Matching programs to ensure compliance; civil or criminal violations of the Privacy Act to assess concerns; and agency programs for any privacy vulnerabilities.⁹ For purposes of this report, this number represents the systems of records that have been reviewed in accordance with the requirements of OMB Circular A-130 by Department components and submitted to OPCL. These reviews are conducted on an annual basis in coordination with the Federal Information Security Management Act (FISMA)¹⁰ reviews and specific details of such FISMA reviews are submitted through the annual FISMA report.

8. Data breach and incident reviews – A data breach or incident includes intentional or inadvertent losses of personally identifiable information (PII) in the control of the Department or its contractors who process, store, or possess DOJ PII.¹¹ For purposes of this report, this number includes data breaches and incidents that have been formally reviewed by the Department’s Core Management Team (DOJ’s organizational team which convenes in the event of a significant data breach involving PII).
9. Privacy Act amendment appeal reviews – A Privacy Act amendment appeal is an appeal of an initial agency action regarding a request from an individual to amend their information that is maintained in a Privacy Act system of records.¹² For purposes of this report, this number represents the number of appeals that have been adjudicated and closed by OPCL.

⁹ See OMB Circular No. A-130, Management of Federal Information Resources, Appendix I, Federal Agency Responsibilities for Maintaining Records About Individuals, 61 Fed. Reg. 6428 (Feb. 20, 1996), as amended, 65 Fed. Reg. 77,677 (Dec. 12, 2000), available at http://www.whitehouse.gov/omb/circulars_a130.

¹⁰ 44 U.S.C. § 3541 *et seq.* (2012).

¹¹ For further information on the Department’s data breach procedures, see <http://www.justice.gov/opcl/breach-procedures.pdf>.

¹² See 5 U.S.C. § 552a(d)(2), (3).

PRIVACY REVIEWS	
Type of Review	Number of Reviews
Legislation, testimony, and reports	82
Initial Privacy Assessments	5
Privacy Impact Assessments ¹³ <ul style="list-style-type: none"> • International Biosecurity Prevention Forum (IBPF), Federal Bureau of Investigation • Firearms Information, Registration, & Shooter Tracking Application (FIRST), Federal Bureau of Investigation • Trustee Uniform Final Reports System (TUFR), United States Trustee Program • Bureau Electronic Medical Records Initiative (BEMR), Federal Bureau of Prisons • Correspondence Tracking System (CTS), Federal Bureau of Prisons • Justice Prisoner and Alien Transportation Management Information System, (JMIS), United States Marshals Service • Justice Detainee Information System (JDIS), United States Marshals Service 	7

¹³ The Department of Justice’s Privacy Impact Assessments (PIAs) for non-national security systems can be located at <http://www.justice.gov/opcl/pia.htm>. For this quarter, the Department completed seven PIAs. The IBPF PIA is currently being processed for posting by the FBI. The FIRST PIA is available at <http://www.fbi.gov/foia/privacy-impact-assessments/first>. The TUFR PIA is available at <http://www.justice.gov/opcl/docs/tufr-pia.pdf>. The BEMR PIA is available at <http://www.bop.gov/foia/bemr.pdf>. The CTS PIA is available at <http://www.bop.gov/foia/cts.pdf>. The JMIS PIA is available at <http://www.justice.gov/opcl/docs/pia-jmis-may2013-aug-opcl.pdf>. The JDIS PIA is available at <http://www.justice.gov/opcl/docs/jdis-pia.pdf>.

III. ADVICE

Formal advice encompasses the issuance of formal written policies, procedures, guidance, or interpretations of privacy requirements for circumstances or business processes. This advice has been drafted or authorized by the CPCLO and approved as official agency policy by Department leadership to respond to issues or concerns regarding safeguards for privacy and civil liberties. Examples of formal advice and responses to advice provided may include issuance of regulations, orders, guidance, agreements, or training. For this quarter, the CPCLO or OPCL did not provide any formal written guidance or formal training.

IV. COMPLAINTS

A privacy complaint encompasses a written allegation (excluding complaints filed in litigation against the Department) concerning a violation of privacy protections in the administration of the programs and operations of the Department that is submitted to or through the CPCLO and/or OPCL. Privacy complaints are separated into three categories:

1. Process and procedural issues (such as appropriate consent, collection, and/or notice);
2. Redress issues (such as misidentification or correction of personally identifiable information, which are outside of the Privacy Act amendment process); and
3. Operational issues (inquiries regarding general privacy, including Privacy Act matters).

A civil liberties complaint encompasses a written allegation (excluding complaints filed in litigation against the Department) for a problem with or violation of civil liberties safeguards concerning the handling of personal information by the Department in the administration of Department programs and operations that are submitted to or through the CPCLO and/or OPCL.

For each type of privacy or civil liberties complaint received by the CPCLO and/or OPCL during the quarter, the report will include the number of complaints in which (1) responsive action was taken or (2) no action was required. In the event a complaint is received within five business days of the last day of the close of the quarter, the complaint may be counted and addressed in the subsequent quarter if time constraints hinder a thorough examination of the complaint in the quarter in which received.

PRIVACY AND/OR CIVIL LIBERTIES COMPLAINTS¹⁴				
Type of Complaint	Number of Complaints	Disposition of Complaint		
		Referred to Component for review	Referred to Office of Inspector General	Referred to another Component or Agency for review
Process and Procedure	0	0	N/A	N/A
Redress	0	N/A	N/A	N/A
Operational	1	Referred to component	0	0
Civil Liberties Complaints	0	N/A	N/A	N/A
Total	1			

¹⁴ For the Fourth Quarter, OPCL received 104 inquiries in the form of phone calls, emails, or letters from members of the public, from non-federal entities, and from within the Department. After a thorough review, OPCL determined that one of the inquiries received qualified as a privacy and/or civil liberties complaint against the Department. The complaint involved an inadvertent misfiling of a paper record, which was later converted to an electronic record. OPCL worked with the affected component to ensure that other records were properly safeguarded and referred the complaint to appropriate Department offices in accordance with Department incident response procedures in order to seek resolution of the complaint. The other inquiries did not qualify as privacy and/or civil liberties complaints because the matters raised in those inquiries either fell outside the purview of the Office (e.g., the complaints were against private entities or other non-DOJ entities) or did not raise issues concerning privacy and/or civil liberties matters.