

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**



SECOND QUARTER 2013

JANUARY 1, 2013 – MARCH 31, 2013

I. INTRODUCTION

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, 42 U.S.C. § 2000ee-1 (2006) (hereinafter “Section 803”), requires 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, pursuant to Section 803, the Department submits the Second 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 (2006), the privacy provisions of the E-Government Act of 2002, 44 U.S.C. § 3501 (note) (2006), as well as federal privacy policies articulated in Office of Management and Budget (OMB) guidance, including OMB Circular A-130.

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 potential privacy issues; assess whether privacy documentation is required; and ultimately ensure the Department’s compliance with applicable privacy laws and

¹ See 42 U.S.C. § 2000ee-1 (2006).

² See *id.*

policies.³ 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.⁴ 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.⁵ 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.⁶ 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 published 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.⁷ 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 a determination of system of records notices to ensure their accuracy; 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 necessary; contracts to

³ See <http://www.justice.gov/opcl/privacy-compliance-process.html> for further information about the Department's IPA process.

⁴ 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.

⁵ See 5 U.S.C. § 552a(e)(4) (2006).

⁶ See *id.* § 552a(j), (k).

⁷ See *id.* § 552a(e)(3).

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.⁸ 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) 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.⁹ 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 on a request of amendment of information maintained in a Privacy Act system of records.¹⁰ For purposes of this report, this number represents the number of appeals that have been adjudicated and closed by OPCL.

⁸ 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.

⁹ See <http://www.justice.gov/opcl/breach-procedures.pdf> for further information on the Department’s data breach procedures.

¹⁰ See 5 U.S.C. § 552a(d)(2) (2006).

PRIVACY REVIEWS	
Type of Review	Number of Reviews
Legislation, testimony, and reports	55
Initial Privacy Assessments	12
Privacy Impact Assessments ¹¹	1
Exemption Regulations <ul style="list-style-type: none"> • BOP Inmate Central Records System, 28 C.F.R. § 16.97 (2013) • DEA Investigative Reporting and Filing System, 28 C.F.R. § 16.98 (2013) 	2
Privacy Act amendment appeals	1

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.

During this quarter, OPCL sponsored a full-day privacy awareness training course attended by privacy specialists and access professionals across the federal government. This course included an overview of the requirements of the Privacy Act; provided a technical course on drafting privacy impact assessments and systems of records notices; and covered an overview of privacy reporting requirements under the Federal Information Security Management Act. In addition to this DOJ-sponsored course, the Acting CPCLO conducted a comprehensive Privacy

¹¹ The Department of Justice posts its Privacy Impact Assessments (PIAs) or links to components PIA webpages for its non-national security systems at www.justice.gov/opcl/pia.htm. For this quarter, the Department completed one Privacy Impact Assessment. This PIA, for the FBI's eGuardian System, is forthcoming and will be posted here: <http://www.fbi.gov/foia/privacy-impact-assessments/departments-of-justice-federal-bureau-of-investigation>

Act training course to the Federal Aviation Administration as part of its privacy awareness training program.

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 is 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 COMPLAINTS¹²				
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	N/A	N/A	N/A
Redress	0	N/A	N/A	N/A
Operational	0	0	0	0
Civil Liberties Complaints	0	N/A	N/A	N/A
Total	0			

¹² For the second quarter, OPCL received 58 inquiries in the form of phone calls, emails, or letters from members of the public, non-federal entities, and within the Department. After a thorough review, OPCL determined that none of the inquiries received qualified as privacy and/or civil liberties complaints against the Department. This is due to the fact that the matters raised in the inquiries either fell outside the purview of the Office (e.g., the complaints were against private entities or non-DOJ entities) or did not raise issues concerning privacy and/or civil liberties matters.