

**DHS Data Privacy and Integrity Advisory Committee  
Public Meeting  
October 5, 2011**

**Committee members in attendance:**

Richard V. Purcell, Chairman

Ana I. Anton

Ramon Barquin

J. Howard Beales III

Renard Francois

A. Michael Froomkin

Joanna L. Grama

David A. Hoffman

Joanne McNabb

Lisa S. Nelson

Greg Nojeim

Christopher Pierson

Jules Polonetsky

John Sabo

Ho Sik Shin

Barry Steinhardt

Lisa J. Sotto

**Also in attendance:**

Mary Ellen Callahan, Chief Privacy Officer and Sponsor

Peter Pietra, Director of Privacy Policy and Compliance, Transportation Security Administration,  
Department of Homeland Security

Delores Barber, Deputy Chief Freedom of Information Act (FOIA) Officer, Department of  
Homeland Security

Martha Landesberg, Executive Director and Designated Federal Official

Chairman Richard Purcell called the meeting to order and welcomed Committee members and the public to the first Committee meeting of the fiscal year.

**DHS Privacy Officer's Update:**

Ms. Callahan provided an update on DHS Privacy Office activities since the DPIAC's July 11, 2011 meeting, including accomplishments of the Policy, Privacy Information Sharing and Intelligence, International Privacy Policy, Compliance, Privacy Technology, and Incidents and Inquiries Groups.

**Policy**

Two weeks ago the Privacy Office published its FY2011 Annual Report to Congress, which showcases the Office's and DHS component privacy offices' activities. The Report illustrates DHS' commitment to operationalizing privacy throughout the Department, and furthering transparency and accountability. Sixty-two DHS staff members devoted a total of 1,038 hours to preparing the Report.

In July, the DHS Under Secretary for Management signed a Directive on "Privacy Policy and Compliance" that incorporates the long-standing Department privacy policy and procedures, and related guidance issued by the Privacy Office, into the Department's system of operational directives. The Directive, which was written by Privacy Office staff, "codifies" the Fair Information Practice Principles (FIPPs) as the core of DHS privacy policy and notifies all DHS

employees about their privacy-related responsibilities. The Directive is posted in the online DHS FOIA reading room.

### Privacy, Information Sharing, and Intelligence

The Privacy Office remains engaged in international information sharing negotiations with the EU and Canada, and is an advocate for privacy protections in all international information sharing agreements.

Privacy Office staff are active members of the DHS Information Sharing and Safeguarding Strategy working group that is updating the DHS information sharing strategy. The group continues to leverage DPIAC's 2009 White Paper on information sharing to refine the Department's information sharing strategy.

The Privacy Office continues to provide expertise in support of efforts to implement the National Strategy for Trusted Identities in Cyberspace (NSTIC), which is led by the National Institute for Standards and Technology and the White House National Security Staff

### Fusion Centers

The Privacy Office continues to support state and major urban fusion centers through training and policy review. Since the July DPIAC meeting, the Office has trained four new DHS intelligence professionals who are now assigned to fusions centers. In September, staff provided a full day in-person training for state and local fusion center personnel in Baton Rouge, Louisiana, and (together with the DHS Office for Civil Rights and Civil Liberties) hosted the sixth two-day train-the-trainer course for newly-appointed fusion center privacy officers. In early November, the Office will complete trainings on consecutive days in Virginia at two different fusion centers.

As noted in prior briefings before the Committee, the Privacy Office reviews fusion center privacy policies to confirm the policies are "at least as comprehensive" as the Federal ISE Privacy Guidelines. All 71 operational centers achieved this important milestone. The Office's staff also reviewed other centers' policies, and since the July Committee meeting the Office commented on two privacy policies. To date the Office has completed this type of review for 12 centers.

The Privacy Office is now part of the Department's effort to train DHS analysts who will participate in the National SAR Initiative. The Office trained two classes and nearly sixty DHS employees in late August.

### International Privacy Policy (IPP)

The Privacy Office is still engaged in follow-on discussions for a U.S.-EU Passenger Name Record (PNR) Agreement led by the Deputy Secretary. The negotiations are complete, and Ms. Callahan traveled to Bulgaria and Romania to conduct additional outreach on the agreement.

The Privacy Office, in coordination with the U.S. Department of Justice, Public Safety Canada, and Justice Canada, is leading efforts to develop joint privacy protection principles that will be the cornerstone for numerous information sharing initiatives under the February 2011 Beyond the Border Declaration entered into by the United States and Canada.

Additionally, the Privacy Office educates international partners on the U.S. privacy framework, DHS compliance and FOIA programs, and DHS privacy policy and best practices. Since July 2011, Office staff participated in two State Department-led International Visitors Leadership Programs with 10 EU participants, and met separately with delegations from Germany, Estonia, the EU Transatlantic Legislators Dialogue, and the Netherlands.

Ms. Callahan will participate on panels on Privacy by Design and on Data Protection Agency Oversight of Privacy at Law Enforcement Agencies at the next International Conference of Data Protection and Privacy Commissioners in Mexico City on November 2-3. The Privacy Office's IPP Director will speak on a panel on "Balancing Privacy and Recovery in a Natural Disaster."

### Compliance

Between July 8, 2011 and October 4, 2011, the Privacy Office completed:

- 21 PIAs;
- 11 SORN; and
- 146 PTAs.

The Department's FISMA score improved from 77% to 81% for PIAs and the System of Records Notice (SORN) score remains 95%. The Privacy Office met the FY 2011 goal of 80% and is now working toward 90% for FY 2012.

The Privacy Office approved three SORNs in support of the U.S. Citizenship and Immigration Services (USCIS) Transformation Program. USCIS is working to roll out a person-centric Electronic Immigration System (ELIS) to move from a paper based system to an electronic based system. The Office will issue PIAs as the system's December deployment date gets closer.

Since the July DPIAC meeting, the Privacy Office also published the DHS-Wide SORN for Watchlist Services (WLS). The SORN does not change current DHS practice in using the FBI's Terrorist Screening Center's Terrorist Watchlist. The Office published a PIA last summer explaining that the WLS reduces the risk to privacy because it uses a more secure and timely method of pushing the Terrorist Watchlist to DHS for use in its screening missions. The Office also updated the Secure Flight PIA. This PIA and the WLS SORN are posted on the Office's website.

### Privacy Technology

The Privacy Office's technology team is working closely with the Department's leadership of the National Information Exchange Model (NIEM) initiative to explore ways to literally build privacy into the data models that different government entities use to describe the data they collect, maintain, and share.

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The Privacy Office is enhancing awareness of cybersecurity and privacy issues through a Privacy Speakers Series that is open to all federal employees and contractors. The most recent event took place on October 4, 2011. George Washington University Professor Daniel Solove spoke on what he described as the “false tradeoff” between privacy and security. Representatives of forty-two federal agencies attended.

### Incidents and Inquiries

On August 11, 2011, the Privacy Office hosted the third Privacy Incident Handling Quarterly Meeting and presented an overview of privacy incidents at DHS from April through July 2011.

On September 22, 2011, Ms. Callahan chaired the third annual meeting of the Privacy Incident Management Annual Core Management Group (CMG), which is comprised of representatives from DHS leadership, component privacy personnel, and component information technology security personnel. The meeting provided an overview of the Privacy Incident Handling Program and discussed successes in identifying, reporting, mitigating, and remediating Privacy Incidents from January 2007 through August 2011.

Following her report, Ms. Callahan responded to questions and comments from the Committee.

### **Subcommittee Reports/Committee Discussion:**

The DPIAC’s Policy and Technology Subcommittees presented proposed reports, prepared in response to a tasking from the Chief Privacy Officer, on federated information sharing systems for the Committee’s consideration. The drafts are posted on the DPIAC website.

### Policy Subcommittee

Lisa Sotto presented the Policy Subcommittee’s draft report. The Subcommittee considered the advantages and disadvantages of a system with decentralized access control, a system with centralized access control, and a hybrid system. The Subcommittee believes a centralized access system that does not attempt to replicate data but rather directs users to existing databases is the appropriate solution. This system would require less information to be stored in a central location and therefore reduce privacy risk. The Subcommittee also noted that while a federated system may increase privacy risk it is also an opportunity to enhance privacy through uniform safeguards.

The Subcommittee identified these privacy concerns:

- Maintaining appropriate control and access to data
- Determining the appropriate privacy policies
- Data integrity and quality assurance
- Accountability and auditing
- Database security
- Redress

Following discussion on the draft, Ms. Sotto noted that a footnote will be added that acknowledges the Department's current PIA process and the need to complete timely PIAs related to any federated system. Several other changes in the draft were proposed during the discussion, and the Subcommittee will provide a revised version for the Committee's consideration during the Committee's next public meeting on December 6.

### Technology Subcommittee

David Hoffman presented the Technology Subcommittee's draft report.

The Subcommittee developed nine areas of focus for its draft:

- Controlling access to a shared database
- Data integrity and quality assurance
- Redress
- Secondary uses and onward transfers
- Applicable privacy policies and standards development
- Accountability
- Audits of system usage
- Data retention
- Data security

The Subcommittee noted that the Privacy Office and the Committee should be involved in the development and implementation of any federated information sharing systems. After Mr. Hoffman's presentation, the Committee discussed several possible edits and additions to the draft. The Subcommittee will provide a revised version for the Committee's consideration during the public meeting on December 6.

### **DHS FOIA Update:**

Deputy Chief FOIA Officer Delores Barber provided an update on FOIA operations at DHS.

#### Current State

DHS FOIA operations are centralized for the purposes of policy and programmatic oversight and decentralized for purposes of operational implementation. DHS Headquarters provides policy to the Components who then implement the policy in the appropriate way for a particular component. There are more than 420 full time FOIA staff, including the FOIA Officers in each of the 19 DHS components, who respond directly to FOIA requests. Preliminary numbers indicate an increase in the number of requests and backlog. In FY 2011, the Department:

- Processed over 120,000 requests;
- Received 148,000 requests; and
- Closed the fiscal year with an estimated backlog of 45,000 requests on the heels of an estimated 29% increase in FOIA requests this year.

Additionally, the Department has proactively posted 445 documents totaling 13,381 pages. In FY 2011, DHS FOIA posted 338 documents totaling 6,240 pages.

### Current Challenges

Upon her arrival at DHS last March, Ms. Barber met each component-level FOIA Officer to better understand the DHS FOIA program as a whole and share her strategic vision. The comprehensive review surfaced the following themes that will set the agenda for DHS FOIA operations in the months to come:

- Reducing the backlog of FOIA requests
- Exploring an enterprise-wide FOIA tracking system
- Developing a FOIA strategic plan

This past summer Ms. Barber instituted a Department-wide surge to reduce the backlog, placing selected activities on hold for the duration of the surge. During the surge, DHS FOIA required all DHS offices and components to submit weekly reports on the status of their caseloads and provided regular feedback. In order to further assist with backlog reductions, DHS FOIA deployed one FOIA specialist to the Transportation Security Administration (TSA) and two to U.S. Immigration and Customs Enforcement (ICE) to provide assistance where it was most needed.

In order to achieve consistent and efficient FOIA processing, DHS FOIA has identified the need to implement a single, integrated FOIA architecture. To that end, DHS FOIA will pursue a different strategy for FY 2012 that revolves around implementing an enterprise-wide electronic FOIA solution with the capacity to track cases throughout their lifecycle and automatically generate reports, which should lead to better case management on a day-to-day basis.

### Education and Training for Employees and FOIA Requesters

This past summer, DHS FOIA provided special trainings for the Information and Security Office and the Office of Intelligence and Analysis with another scheduled for the Chief Human Capital Office the first week in October. Collaborative training with the Department of Justice, Office of Information Policy on FOIA Exemptions (b)(5) (civil discovery privileges) and (b)(6) (personal privacy of third parties) is also on the calendar for October. DHS also co-sponsored a day-long FOIA training with the Departments of Commerce, and Interior, and the Environmental Protection Agency. Additionally, DHS FOIA continues to enhance the FOIA website and make it more user-friendly.

After Ms. Barber provided her update on FOIA operations, she addressed questions and comments from the Committee.

### **Advanced Imaging Technology (AIT) Update**

Peter Pietra, component privacy officer for the Transportation Security Administration (TSA), provided the committee with an update on the use of Advanced Imaging Technology. AIT was first developed to search for metallic and non-metallic threats, including weapons, explosives and other objects concealed under layers of clothing. TSA currently uses two types of imaging

technology, millimeter wave and backscatter. TSA selected AIT after an extensive evaluation of technologies and has taken the following measures to address associated privacy concerns:

- Posting signs at checkpoints to give passengers notice about the technology in use;
- Providing passengers the opportunity to opt-out and undergo a pat-down in lieu of screening with AIT;
- Anonymizing the images;
- Disabling the storing of images;
- Requiring that the images produced by AIT be read only by personnel stationed remotely from the location of the machines

Mr. Pietra informed the Committee that in the last year TSA has piloted Automated Target Recognition (ATR) software on its millimeter wave imaging technology machines – an upgrade designed to enhance privacy by eliminating the need for passenger-specific images, and instead auto-detecting potential threats and indicating their location on a generic outline of a person. By eliminating the image of an actual passenger and replacing it with a generic outline, passengers are able to view the same outline that the TSA officer sees on a monitor co-located with the officer. Further, a separate TSA officer will no longer be required to view the image in a remotely located viewing room.

The new ATR technology results in a much faster decision time and streamlines checkpoint processing. Due to the increased efficiency and enhanced privacy of the new imaging technology, approximately 550 millimeter wave systems with ATR will be rolled out to airports over the next six months.

After Mr. Pietra's update, he addressed comments and questions from the Committee.

### **Public Comments**

Chairman Purcell opened the floor for public comments at 4:40 p.m. As there were no public comments, Chairman Purcell adjourned the meeting.

*The DHS Data Privacy and Integrity Advisory Committee provides advice at the request of the Secretary of DHS and the Chief Privacy Officer of DHS on programmatic, policy, operational, administrative, and technological issues within DSH that relate to personally identifiable information (PII), as well as data integrity and other privacy-related matters. Materials presented to the Committee, including all Committee reports and recommendations, and meeting summaries and transcripts, are available to the public on the Committee's web page on the DHS Privacy Office website, [www.dhs.gov/privacy](http://www.dhs.gov/privacy).*