



Privacy Office

Fourth Quarter Fiscal Year 2009 Report to Congress

Department of Homeland Security Report of the Chief Privacy Officer
Pursuant to Section 803 of the Implementing Recommendations of the
9/11 Commission Act of 2007

October 8, 2009



Homeland
Security

Foreword

I am pleased to present the following report, “Privacy Office Fourth Quarter Fiscal Year 2009 Report to Congress.” The *Implementing Recommendations of the 9/11 Commission Act of 2007*, Pub. L. 110-53, requires the Department of Homeland Security (DHS) Privacy Office to report quarterly regarding: (1) the number and types of review of Department actions undertaken; (2) the type of advice provided and the response given to such advice; (3) the number and nature of complaints received by DHS for alleged violations; and (4) a summary of the disposition of such complaints. In accordance with this requirement, this report serves as the Privacy Office’s fourth quarter report, covering the period from June 1, 2009 to August 31, 2009.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Joseph R. Biden
President, United States Senate

The Honorable Christopher S. Bond
Vice Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Susan M. Collins
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable John Conyers, Jr.
Chairman, U.S. House of Representatives Committee on the Judiciary

The Honorable Dianne Feinstein
Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Peter Hoekstra
Ranking Member, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable Darrell Issa
Ranking Member, U.S. House of Representatives Committee on Oversight and Government Reform

The Honorable Peter T. King
Ranking Member, U.S. House of Representatives Committee on Homeland Security

The Honorable Patrick J. Leahy
Chairman, U.S. Senate Committee on the Judiciary

The Honorable Joseph I. Lieberman
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Nancy Pelosi
Speaker, U.S. House of Representatives

The Honorable Silvestre Reyes
Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable Lamar Smith
Ranking Member, U.S. House of Representatives Committee on the Judiciary

The Honorable Jeff Sessions
Ranking Member, U.S. Senate Committee on the Judiciary

The Honorable Bennie G. Thompson
Chairman, U.S. House of Representatives Committee on Homeland Security

The Honorable Edolphus Towns
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

Inquiries relating to this report may be directed to the Office of Legislative Affairs at 202-447-5890.

Sincerely,

Mary Ellen Callahan
Chief Privacy Officer
U.S. Department of Homeland Security

Executive Summary

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53, established additional privacy and civil liberties requirements for DHS. Pursuant to the requirements of Section 803, the Privacy Office is providing its fourth quarter report for fiscal year 2009.

This report covers the privacy complaints and privacy training for the period of June 1, 2009 to August 31, 2009. The Privacy Office works with each of the Components at the Department to provide privacy training, and to expedite the processing of complaints from the public.

The DHS Office for Civil Rights and Civil Liberties will provide a separate report regarding civil liberties.

TABLE OF CONTENTS

FOREWORD II
EXECUTIVE SUMMARY IV
PRIVACY OFFICE 1
INTRODUCTION 1
REVIEWS 1
ADVICE AND RESPONSES 2
PRIVACY COMPLAINTS AND DISPOSITIONS 4
CONCLUSION 5

PRIVACY OFFICE

The *Implementing Recommendations of the 9/11 Commission Act of 2007* (9/11 Act), Pub. L. 110-53, requires the Privacy Office to report quarterly regarding: (1) the number and types of review of Department actions undertaken; (2) the type of advice provided and the response given to such advice; (3) the number and nature of complaints received by DHS for alleged violations; and (4) a summary of the disposition of such complaints.¹ In accordance with this requirement, this report serves as the Privacy Office's fourth quarter report of Fiscal Year (FY) 2009, covering the period from June 1, 2009 to August 31, 2009.

INTRODUCTION

The Department of Homeland Security (DHS) Chief Privacy Officer is the first statutorily mandated Chief Privacy Officer in the Federal Government. The DHS Privacy Office is founded upon the responsibilities set forth in Section 222 of the Homeland Security Act of 2002 ("Homeland Security Act") [Public Law 107-296; 6 U.S.C. §142], as amended. The mission of the Privacy Office is to sustain privacy protections and to promote transparency of government operations while achieving the mission of the Department. Within the Department, the Chief Privacy Officer implements Section 222 of the Homeland Security Act,² the Privacy Act of 1974,³ the Freedom of Information Act,⁴ the E-Government Act of 2002,⁵ and the numerous laws, executive orders, court decisions and DHS policies that protect the collection, use, and disclosure of personally identifiable information collected, used, maintained, or disseminated by DHS.

Section 803 of the *Implementing Recommendations of the 9/11 Commission Act of 2007*, P.L. 110-53, established additional privacy and civil liberties requirements for DHS. Pursuant to the requirements of Section 803, the Privacy Office is providing its fourth quarter report for fiscal year 2009.⁶ This report in large part covers the period of June 1, 2009 to August 31, 2009. The DHS Office for Civil Rights and Civil Liberties will provide a separate report regarding civil liberties.

As DHS continues to review the complaints and responses, DHS may modify the categories over time to reflect the types of complaints received.

REVIEWS

For purposes of Section 803 Reporting, reviews include the following activities, which may be updated, as appropriate:

1. Privacy Threshold Analyses - DHS's foundational mechanism for reviewing IT systems, programs, and other activities for privacy protection issues, including the appropriate use of Social Security Numbers and information sharing environment (ISE) reviews;

¹ See 42 U.S.C. § 2000ee-1(f)(1).

² 6 U.S.C. § 101 *et seq.*

³ 5 U.S.C. § 552a *et seq.*, as amended.

⁴ 5 U.S.C. § 552.

⁵ 44 U.S.C. § 3501.

⁶ The reporting period matches the existing reporting period required for Office of Management and Budget (OMB) Federal Information Security Management Act (FISMA) IT Security and Privacy reporting.

2. Privacy Impact Assessments, required under both the E-Government Act of 2002 and the Homeland Security Act of 2002, as amended;
3. System of Records Notices and associated Privacy Act Exemptions;
4. Privacy Act Statements as required under Section (e)(3) of the Privacy Act, which provide notice to individuals at the point of collection;
5. Computer Matching Agreements;
6. Data Mining Report as defined by Congress under Section 804 of the Implementing Recommendations of the 9/11 Commission Act of 2007; and
7. Privacy reviews of Information Technology and Program Budget requests, including OMB 300s and Enterprise Architecture Alignment Requests through DHS's Enterprise Architecture Board.

| Type of Review | Number of Reviews |
|---|--------------------------|
| Privacy Threshold Analyses | 126 |
| Privacy Impact Assessments | 25 |
| System of Records Notices and associated Privacy Act Exemptions | 33 |
| Privacy Act (e)(3) Statements | 5 |
| Computer Matching Agreements | 1 |
| Data Mining Reports | 0 |
| Privacy Reviews of IT and Program Budget requests | 99 |
| <i>Total Reviews for Q4FY09</i> | 289 |

ADVICE AND RESPONSES

The DHS Privacy Office conducted the following activities in response to the guidance released this quarter.

During the reporting period, DHS conducted the following training:

- DHS personnel and contractors attended classroom-based privacy training courses in 3,404 instances.
- DHS personnel and contractors took computer-assisted privacy training courses in 26,379 instances.

The Chief Privacy Officer conducted the following Privacy Outreach:

- A panelist in Center for Democracy & Technologies (CDT) panel discussion on “The Future of Privacy in the Federal Government.”
- Met with American Immigration Lawyers Association (AILA).
- Gave opening remarks at the Privacy Compliance Fundamentals workshop.
- Held the first Privacy Information for Advocates (PIA) meeting.
- Spoke at the American Library Association Annual Conference.
- Conducted a conference call regarding the Border searches of electronic devices PIA with Data Privacy and Integrity Advisory Committee (DPIAC) members and a separate conference call with privacy advocates.

The DHS Privacy Office held a public workshop on privacy issues raised by federal government use of social media. The public workshop brought together leading academic, private sector, and public sector experts to discuss privacy issues posed by the government's use of social media.

The Coast Guard Privacy Office conducted the following outreach activities:

- Hosted the Second Annual Privacy Awareness Week, June 22-26, 2009. Privacy Office personnel hosted a table in the Coast Guard Headquarters cafeteria, accessible to several thousand military and civilian employees, providing educational and information material, including:
 - Guidebooks and templates needed to complete privacy compliance documentation (i.e.; PTAs, PIAs and SORNs).
 - DHS Handbook for Safeguarding Sensitive Personally Identifiable Information (PII).
 - Posters for display in the office space reminding personnel of the importance of daily adherence to sensible privacy procedures.
 - Coast Guard reporting requirements of when a privacy incident occurs either suspected or confirmed, involving the loss or compromise of PII.
 - Privacy Staff engaged with personnel, answered questions and distributed a list of basic "Do's and Don'ts" to increase privacy awareness.
- Coordinated with the DHS Privacy Office to conduct PTA and PIA training for several Program Managers. Attendees received a comprehensive step-by-step presentation of the requirements/processes to write and submit subject documents, gaining a broad knowledge base regarding privacy compliance.
- Conducted Privacy Incident Handling and Safeguarding Sensitive PII training at the CG Assignment Officers (AOs) Conference in Alexandria, VA on August 19, 2009. The AOs are responsible for coordinating transfers, special assignments, separations, and retirements for 34,000 active duty and reserve CG members. AOs routinely counsel CG commands and members on various aspects of the assignment process and are instrumental in the development of assignment policies and procedures. Additionally, their duties require them to interface with numerous HR systems and medical documents which contain sensitive PII. The CG Privacy Office Staff provided an overview of Incident Reporting, guidance on safeguarding SPII and distributed related materials to the attendees.

TSA conducted the following Privacy Outreach activities:

- Participated in Privacy outreach efforts via formal presentation at the 2009 Computers, Freedom and Privacy (CFP) Conference.
- Conducted additional outreach with the Center for Democracy in Technology (CDT), Information and Privacy Commissioner of Canada (IPC), the Liberty Coalition, and U. S. Congressional Staffers.
- Conducted a new awareness campaign by distributing 500 "Privacy Please" door hangers throughout HQ.
- Released Broadcast Messages to TSA workforce titled: 1) Be Careful What You Mail; 2) Annual Privacy Training Requirement; 3) Restricting Access on iShare and SharePoint.

PRIVACY COMPLAINTS AND DISPOSITIONS

For purposes of Section 803 reporting, complaints are written allegations of harm or violation of privacy compliance requirements filed with the DHS Privacy Office or DHS Components or programs. Complaints may be from U.S. citizens and lawful permanent residents as well as visitors and aliens.⁷

| Type of Complaint | Number of Complaints received during this reporting period | Disposition of Complaint during this reporting period | | |
|-----------------------|--|---|--------------------|-----------|
| | | Responsive Action Taken | No Action Required | Pending |
| Process and Procedure | 11 | 2021 ⁸ | 2 | 0 |
| Redress | 256 | 355 | 0 | 14 |
| Operational | 49 | 19 | 1 | 58 |
| Referred | 49 | 47 | 0 | 0 |
| <i>Total</i> | <i>365</i> | <i>2442</i> | <i>3</i> | <i>72</i> |

The complaints have been separated into four categories for this reporting period. As the reporting is further developed, additional categories may be added.

1. *Process and Procedure*. Issues concerning process and procedure, such as consent, appropriate notice at the time of collection, or notices provided in the *Federal Register*, such as rules and SORNs.
Example: An individual submits a complaint as part of a rulemaking that alleges the program violates privacy.
2. *Redress*. Issues concerning appropriate access, correction of PII, and redress therein.
Example: Misidentifications during a credentialing process or during traveler screening at the border or at airports.⁹
3. *Operational*. Issues related to general privacy concerns and concerns not related to transparency or redress.
4. *Referred*. The DHS Component or the Privacy Office determined that the complaint would be more appropriately handled by another federal agency or other entity and referred the complaint to the appropriate organization.
Example: An individual has a question about his or her driver's license or Social Security Number, which the Privacy Office refers to the proper agency.

Dispositions of complaints are reported in one of the three following categories by DHS Components or the Privacy Office:

1. *Responsive Action Taken*. The DHS Component or the Privacy Office reviewed the complaint and a responsive action was taken. For example, an individual may provide additional information to distinguish themselves from someone else.

⁷ *DHS Privacy Policy Guidance Memorandum 2007-01*.

⁸ This number reflects the 2012 complaints that were pending from the 3rd Quarter 2009 Report. The Department published the CBP Border Searches of Electronic Devices PIA, which responds to these complaints which were largely related to searches of electronic devices at the border.

⁹ This category excludes FOIA and Privacy Act requests for access which are reported annually in the Annual FOIA Report

2. *No Action Required.* The DHS Component or the Privacy Office determined that the complaint does not ask for or require a DHS action or response. Examples are a complaint regarding a published PIA or final rule.
3. *Pending.* The DHS Component or the Privacy Office is reviewing the complaint to determine the appropriate response.

CONCLUSION

As required by the 9/11 Act, this fourth quarter report provides a summary of the Privacy Office's activities from June 1, 2009 to August 31, 2009. The Privacy Office will continue to work with Congress, its colleagues in other Federal departments and agencies, and the public to ensure privacy is protected in our homeland security efforts.