

# **OPERATIONAL ROLES AND RESPONSIBILITIES OF THE OFFICER FOR CIVIL RIGHTS AND CIVIL LIBERTIES & THE OFFICE OF CHIEF COUNSEL**

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## **1. Purpose**

This management directive unifies the internal and external responsibilities of the Officer for Civil Rights and Civil Liberties (or Officer) and clarifies the manner in which the Department of Homeland Security (Department or DHS) will execute the requirements of Section 705 of the Homeland Security Act. This management directive also establishes the role of the Office of the Chief Counsel for Civil Rights and Civil Liberties within the Office for Civil Rights and Civil Liberties (Office or CRCL), which provides legal advice to the Officer and whose attorneys report to the General Counsel.

## **2. Scope**

This management directive will be applicable to all components of the Department.

## **3. Authorities**

The authority for this management directive derives from:

- A. The Homeland Security Act of 2002 (the Act), as amended, Pub. L. No. 107-296, 116 Stat. 2135 (Secs. 103(d)(5) & 705 in particular).
- B. Interim Management Directive No. 0000 (Organization of the Office of the Secretary of Homeland Security).
- C. Delegation No. 3095 (Delegation to the Officer for Civil Rights and Civil Liberties For Matters Involving Civil Rights, Civil Liberties, and Equal Employment Opportunity).
- D. Interim Final Rule effectuating Regulations Regarding Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance From the Department of Homeland Security, 68 Fed. Reg. 10,904 (Mar. 6, 2003) (to be codified at 6 C.F.R. pt. 21).

E. Interim Final Rule effectuating Enforcement of Nondiscrimination on the Basis of Disability in Department of Homeland Security Programs or Activities, 68 Fed. Reg. 10,886 (Mar. 6, 2003) (to be codified at 6 C.F.R. pt. 15).

F. Interim Final Rule effectuating Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 68 Fed. Reg. 10,892 (Mar. 6, 2003) (to be codified at 6 C.F.R. pt. 17).

## **4. Definitions**

N/A.

## **5. Responsibilities**

A. The Officer for Civil Rights and Civil Liberties reports directly to the Secretary on the responsibilities set out in this management directive. To assist the Officer in fulfilling these responsibilities there shall be within the Office for Civil Rights and Civil Liberties an Office of the Chief Counsel for Civil Rights and Civil Liberties, the staff of which will include lawyers who report to the Office of the General Counsel. The Officer for Civil Rights and Civil Liberties, with support from the Office of the Chief Counsel, is by this management directive assigned responsibility in the following programmatic areas:

1. Provide policy advice directly to the Secretary, directorates and other senior officers of the Department with regard to issues and initiatives that may have an impact on civil rights and civil liberties, including but not limited to: proposed regulatory actions, immigration policy such as detention issues and refugee and asylum issues, law enforcement's use of race, ethnicity, or religion, employee training regarding civil rights and civil liberties, and responsibilities regarding preventing prohibited discrimination.
2. Through the Office of the Chief Counsel and in close cooperation with the General Counsel, provide legal advice within the Department with regard to issues and initiatives that may have an impact on civil rights and civil liberties.
3. Develop proactive initiatives that will demonstrate the Department's commitment to civil rights and civil liberties, such as integrating people with disabilities into emergency preparedness efforts, or consulting with Information Analysis and Infrastructure Protection (IAIP) on civil liberties impacts in the development of new information systems to fulfill the Department's mission.
4. Through the Office of the Chief Counsel and in close cooperation with the General Counsel, develop and implement all DHS regulations related to internal and external civil rights, civil liberties, and racial or ethnic profiling matters.

5. Manage (through policy development and implementation), oversee, and provide training assistance for all DHS components that handle allegations related to civil rights, civil liberties, and racial or ethnic profiling.
6. Collect information from within DHS and prepare the Secretary's annual report to Congress pursuant to Section 705, and use this information to produce or provide information for other reports as required.
7. Implement within the Office a matter review process for collecting, processing, and analyzing information regarding civil rights, civil liberties and racial or ethnic profiling matters concerning the public, and for promulgating an appropriate privacy policy to appropriately protect information provided by the public to the Office.
8. Refer to the appropriate DHS components, including CRCL, but excluding the Office of Inspector General (OIG), external matters involving allegations of abuses of civil rights, civil liberties and racial and ethnic profiling for examination and suitable action.
9. Communicate with the public and DHS employees to explain DHS' commitment to civil rights and civil liberties, and to provide notice on how to bring a matter to the attention of the Office.
10. Act as a DHS liaison with external organizations that have an interest in civil rights, civil liberties, and racial/ethnic profiling issues.

B. To the extent this management directive is at variance with Delegation No. 0160 (Delegation to Department of Homeland Security Organizational Elements) (particularly section 2.B.3.) or conflicts with prior management directives or delegations, this management directive takes precedence.

## **6. Policy & Procedures**

A. **Policy Development.** The Officer shall provide advice and counsel to all components of the Department on matters or deliberations that are related to civil rights, civil liberties, and racial or ethnic profiling. Such matters may include but are not limited to: the application and impact of federal case law, through the Office of the Chief Counsel and in close cooperation with the General Counsel; proposed regulations or federal legislation affecting the mission of the Department; issues of Executive Branch or Congressional attention, concern or inquiry; immigration, passenger screening, detention and employee training issues; information collection, storage, analysis, and utilization systems and programs; and any other matters of national or public importance pertaining to civil rights and civil liberties. In addition, the Officer shall assist in the development of proactive initiatives that will protect, and demonstrate the Department's commitment to, civil rights and civil liberties.

B. **Data Collection.** The Officer shall collect information from throughout the Department on matters of concern to the Office to advise the senior leadership and prepare the Secretary's annual report to Congress on civil rights and civil liberties, and other reports as required. To accomplish this, all Departmental elements shall coordinate with the Office to implement appropriate information systems to facilitate the collection of data necessary to produce this annual report and other required reports.

C. **DHS Liaison with External Organizations.** The Officer shall communicate with the public regarding the Department's commitment to civil rights, civil liberties, and the elimination of racial or ethnic profiling, and act as a liaison with external organizations that have an interest in these issues.

D. **Equal Employment Opportunity Programs.** The equal employment opportunity function of the Office is covered under Delegation No. 3095.

E. **Handling Matters That Warrant Review.**

1. **Statutory Background.** Under Section 705, authority resides with the Officer for Civil Rights and Civil Liberties "to review and assess information alleging abuses" of civil rights, civil liberties and racial and ethnic profiling and to report on "any actions taken by the Department in response to such allegations." Implicit in these statutory requirements is the authority within the Department to accept information, examine such allegations, and take appropriate responsive action.

2. **Delegation.** Delegation No. 3095, Paragraph 2, delegates to the Officer for Civil Rights and Civil Liberties the authority and responsibility to carry out internal and external functions, including promulgating policies, rules and regulations to carry out the delegated responsibilities. The internal functions include:

- (a) Directing the Department's processing of EEO complaints.
- (b) Directing the Department's equal employment opportunity programs.
- (c) Directing the Department's diversity initiative, developing and administering a dispute resolution program, evaluating the sufficiency and effectiveness of the EEO programs and diversity training activities and recommending improvements to the Secretary.

The external functions under this prior Delegation include:

- (d) Assuring that all federally-assisted and federally-conducted programs or activities of the Department comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, Title IX of the Education Amendments of 1972, as amended, the Rehabilitation Act of 1973, as amended, the Age Discrimination

Act of 1975, as amended, related Executive Orders, including but not limited to, Executive Orders 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), 13160 (Nondiscrimination on the Basis of Race, Sex, Color, National Origin, Disability, Religion, Age, Sexual Orientation, and Status as a Parent in Federally Conducted Education and Training Programs), 13163 (Increasing the Opportunity for Individuals With Disabilities To Be Employed in the Federal Government) and 13166 (Improving Access to Services for Persons With Limited English Proficiency).

(e) Undertaking compliance and complaint reviews pursuant to the Interim Rules (and any Final Rules promulgated as a result) cited in Section 3, above.

3. Matters Warranting Review. Responsibility for reviewing matters alleging violations of civil rights and civil liberties and racial or ethnic profiling is placed with the Office for Civil Rights and Civil Liberties. Examples of the types of matters that might be handled under this management directive are found at Attachment A. This review process is intended to meet responsibilities set forth in various statutes, regulations, and policies; to respond to matters raised by private citizens; to carry out a full review of the facts relevant to a matter; and, to provide the relevant officials of DHS with a report on each matter along with any recommendations for corrective actions. (It does not address internal EEO matters, which are covered in Delegation No. 3095.) This authority and responsibility is complete, but also complementary and not contradictory to the OIG's authority and responsibility in these matters. Accordingly, the Office for Civil Rights and Civil Liberties shall have authority and responsibility under Section 705 of the Homeland Security Act to:

(a) Accept information and conduct reviews of allegations of abuses of civil rights, civil liberties, and racial and ethnic profiling by employees, officials, contractors and grantees of the Department. In addition, the Office has the authority and responsibility to accept information and conduct reviews of allegations of discrimination involving race, color, national origin, disability, age, and gender, in education programs, involving recipients of federal financial assistance. All complaints and information of the type covered by this section received by CRCL shall be referred to the OIG for action or return to CRCL. A description of this process is included in a flow chart found at Attachment B setting out the process by which the Office may assign such matters to an appropriate DHS component for handling and appropriate action, or, where the matter originates with another component, allow routine matters to be handled by that component. Designation of types of matters as "routine" shall be made by the Officer in consultation with the individual components and the Inspector General. At any time the Officer in his sole discretion may assume responsibility for any Section 705 matter (not including employment matters that are addressed by other procedures), including matters forwarded to components by the OIG, but not those matters the OIG retains for exclusive action. This process may include:

- (1) Formally accepting matters warranting review. Matters shall generally be accepted if the allegations concern actions that occurred within 180 days of the date the information is received by CRCL.
  - (2) Notifying the relevant DHS component(s) involved of the matter and its acceptance by CRCL, and whether the matter will be handled by CRCL or by the component organization.
  - (3) Informing the component(s) handling the matter that an official response to the matter must be provided within a time specified by CRCL.
  - (4) (Interviewing persons and obtaining other information deemed by CRCL to be relevant and requiring cooperation by all agency employees.
  - (5) (Accessing documents and files that may have information deemed by CRCL to be relevant.
  - (6) Issuing, to the relevant DHS component(s), a report on CRCL's findings and recommendations at the conclusion of the examination of the matter. The report will include recommendations, if any, for corrective action or appropriate enforcement action including the initiation of fund termination provisions by the appropriate Departmental entity if a recipient of DHS assistance is involved. This report shall be prepared with the assistance of DHS attorneys in accordance with any applicable protections afforded by attorney-client and other legal privileges.
  - (7) Notifying the complainant regarding the conclusions of the examination, to the extent warranted, without compromising relevant agency privileges, individual privacy, or other legal requirements.
  - (8) (Requiring an official component report to CRCL on any actions taken in response to the report described in Paragraph 6.
- (b) Issue guidelines and regulations, in consultation with the Office of the General Counsel and the relevant DHS components, on the procedures to be used by all DHS components (except the Office of the Inspector General) in conducting examinations, issuing recommendations for matters warranting review, handling complaints and issuing compliance requirements for recipients of Federal financial assistance regarding assurances, reports, record keeping, notices to beneficiaries and compliance reviews (6 C.F.R. 21.7-9), pursuant to specific statutory provisions under the purview of the Officer for Civil Rights and Civil Liberties (i.e. Title VI, Title IX, Section 504 of the Rehabilitation Act, the Age Discrimination Act) and related regulations, and reporting the disposition of matters to CRCL.

- (c) Issue recommendations to component heads and other senior officials regarding such examinations, with the exception of those matters retained by the Inspector General.
- (d) Carry out auditing and training to ensure that appropriate standards are being followed by all DHS components in the conduct of such examinations.
- (e) Avoid duplication of effort when conduct being examined falls under both Section 705 and either Section 443 (Immigration Enforcement Functions – Professional Responsibility and Quality Review) or Section 453 (Citizenship and Immigration Services – Professional Responsibility and Quality Review) of the Homeland Security Act by taking primary responsibility for such examinations.
- (f) Ensure that all internal information systems within DHS EEO/Civil Rights components are compatible.
- (g) Develop, in consultation with the Office of the General Counsel and the Privacy Office, a privacy policy for the protection of information provided to the Office in connection with civil rights, civil liberties and racial and ethnic profiling, and establish and maintain a record system in accordance with the Privacy Act and the Federal Records Act.
- (h) As contemplated by section 6.3.a., develop agreements with the DHS Office of Inspector General regarding matters under the jurisdiction of that office, and, when necessary, with component organizations regarding routine matters that may be expeditiously handled on-site by the personnel in charge, and with criminal investigative elements regarding matters under their jurisdiction.

F. **Questions or Concerns Regarding the Process.** Any questions or concerns regarding this directive should be addressed to the Officer for Civil Rights and Civil Liberties or a designee.

## **APPENDIX A**

### **EXAMPLES OF TYPES OF ALLEGATIONS CLAIMING CIVIL RIGHTS OR CIVIL LIBERTIES ABUSES, OR RACIAL OR ETHNIC PROFILING**

#### **RACIAL OR ETHNIC PROFILING**

- A letter is received stating that a Border Patrol agent directed a person driving a pickup truck in rural Texas to pull over. The Border Patrol agent then asked questions about immigration documents. The letter asserts that this was done because of the driver's apparent race or ethnicity.
- An airline passenger alleges that he was subjected to more rigorous screening by TSA screeners because he is of Asian heritage. He saw no other people in line subjected to the same screening he experienced.
- An ICE investigator in Iowa believes that a meat processing plant is employing people who are not authorized to work in the United States. . She justifies her request for a search warrant partially on the grounds that a large number of people who appear to be Hispanic enter and exit the company's grounds. A letter making these allegations is received.

#### **RELIGION**

- A letter is received alleging that a TSA airport screener subjected a potential passenger to additional scrutiny because he was carrying a Koran.

#### **DISABILITY/AGE**

- DHS gave a grant to a city fire department. The fire department's building is used for a wide variety of community functions, including as a voting station and a place for civic groups to hold regular meetings. A letter is mailed stating that the building is not accessible to people with mobility impairments.
- A letter is received asserting that a TSA airport screener would not allow an insulin-dependent diabetic to carry her medicine kit into the airport because the kit includes a syringe.
- A letter is received from a person who uses a wheelchair. The person alleges that she tried to get to an interview at a BCIS building regarding her application for permanent residence, but the building was not accessible.
- A letter is received alleging that a student enrolled at a law enforcement-training center needs a sign language interpreter, but none are available.

## **PROGRAM ACCESSIBILITY**

- DHS has an application process that permits applicants to apply on-line. An applicant with visual impairments learns of the job and accesses the DHS website, but the technology does not allow the applicant to access the web page in the same manner as applicants without vision impairments.

## **RACE, COLOR OR NATIONAL ORIGIN**

- FEMA awards emergency relief funds to a state hit by a tornado. Persons within a particular community, which is predominantly populated by members of a minority group, allege that their community has not received a sufficient share of the funds. Moreover, they allege that temporary trailer homes set up by FEMA in the aftermath were placed directly beside a cemetery, while the temporary trailer homes established for those in a more affluent suburb were placed beside a golf course. The local FEMA officials ask for an investigation.
- DHS awards a grant to a fire department. The fire department subsequently institutes a rule that the only people who can be hired are residents of the township surrounding the fire station. A letter is received alleging that the rule was created to prevent minorities from being hired.
- An individual sends an e-mail claiming that customs and border patrol agents are targeting him for harassment because of his color and national origin, even though he is a naturalized U.S. citizen.

## **CIVIL LIBERTY ABUSES**

- An airline passenger writes a letter stating that during a screening at an airport he/she felt that a TSA screener touched him/her in inappropriate ways.
- An airline passenger writes a letter alleging that he was required to partially disrobe for inspection in a place in full view of the public.
- A passenger alleges he was subjected to secondary screening because he had pamphlets calling for a Palestinian State.

# APPENDIX B

## OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES

DHS Flow Chart for Processing Allegations of Abuses of Civil Rights/Civil Liberties

