



Department of Homeland Security

Office for Civil Rights and Civil Liberties

Quarterly Report to Congress

First Quarter, FY 2012 (October 1 – December 31, 2011)

June 25, 2012



Homeland Security

Foreword



I am pleased to present this Quarterly Report on the activities of the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL), as required by Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, 42 U.S.C. § 2000ee-1(f).

This Report includes information on the first quarter of Fiscal Year 2012. The DHS Chief Privacy Officer provides separate quarterly reports under the 9/11 Commission Act concerning privacy advice and complaints, available at the Privacy Office's Web site, <http://www.dhs.gov/privacy>.

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

The Honorable Daniel K. Inouye

Chairman, U.S. Senate Committee on Appropriations

The Honorable Thad Cochran

Ranking Member, U.S. Senate Committee on Appropriations

The Honorable Joseph I. Lieberman

Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Susan M. Collins

Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Dianne Feinstein

Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Saxby Chambliss

Vice Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Patrick J. Leahy

Chairman, U.S. Senate Committee on the Judiciary

The Honorable Charles Grassley

Ranking Member, U.S. Senate Committee on the Judiciary

The Honorable John Boehner

Speaker of the House, U.S. House of Representatives

The Honorable Hal Rogers

Chairman, U.S. House of Representatives Committee on Appropriations

The Honorable Norm Dicks

Ranking Member, U.S. House of Representatives Committee on Appropriations

The Honorable Peter T. King

Chairman, U.S. House of Representatives Committee on Homeland Security

The Honorable Bennie G. Thompson

Ranking Member, U.S. House of Representatives Committee on Homeland Security

The Honorable Mike Rogers

Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable C.A. “Dutch” Ruppertsberger

Ranking Member, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable Lamar Smith

Chairman, U.S. House of Representatives Committee on the Judiciary

The Honorable John Conyers, Jr.

Ranking Member, U.S. House of Representatives Committee on the Judiciary

The Honorable Darrell Issa

Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

The Honorable Elijah E. Cummings

Ranking Member, U.S. House of Representatives Committee on Oversight and Government Reform

Additional information, including our prior quarterly and annual reports and our civil rights complaint contact information, are available at www.dhs.gov/crcl. Please direct inquiries regarding this Report to the Office for Civil Rights and Civil Liberties at 866-644-8360 (TTY 866-644-8361) or crcl@dhs.gov.

Yours very truly,

Tamara Kessler
Acting Officer for Civil Rights and Civil Liberties
U.S. Department of Homeland Security

Executive Summary

This Quarterly Report details activities of the Department of Homeland Security Office for Civil Rights and Civil Liberties, as required by section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, 42 U.S.C. § 2000ee-1(f).

This Report includes information on the first quarter of Fiscal Year 2012, including impact assessments, and data analysis of investigations involving civil rights and civil liberties.



DHS Office for Civil Rights and Civil Liberties, FY 2012 First Quarter Report

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Legislative Language

42 U.S.C. § 2000ee-1 Privacy and Civil Liberties Officers

Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, sec. 803, 121 Stat. 266, 360-362.

(a) Designation and functions

...

[T]he Secretary of Homeland Security. . . shall designate not less than 1 senior officer to serve as the principal advisor to—

(1) assist the head of such department, agency, or element and other officials of such department, agency, or element in appropriately considering privacy and civil liberties concerns when such officials are proposing, developing, or implementing laws, regulations, policies, procedures, or guidelines related to efforts to protect the Nation against terrorism;

(2) periodically investigate and review department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering privacy and civil liberties in its actions;

(3) ensure that such department, agency, or element has adequate procedures to receive, investigate, respond to, and redress complaints from individuals who allege such department, agency, or element has violated their privacy or civil liberties; and

(4) in providing advice on proposals to retain or enhance a particular governmental power the officer shall consider whether such department, agency, or element has established—

(A) that the need for the power is balanced with the need to protect privacy and civil liberties;

(B) that there is adequate supervision of the use by such department, agency, or element of the power to ensure protection of privacy and civil liberties; and

(C) that there are adequate guidelines and oversight to properly confine its use.

(b) Exception to designation authority

...

(2) Civil liberties officers

In any department, agency, or element referred to in subsection (a) of this section . . . which has a statutorily created civil liberties officer, such officer shall perform the functions specified in subsection (a) of this section with respect to civil liberties.

(c) Supervision and coordination

Each privacy officer and civil liberties officer described in subsection (a) or (b) of this section shall—

- (1)** report to the head of the department . . . ; and
- (2)** coordinate their activities with the Inspector General of such department ... to avoid duplication of effort.

(d) Agency cooperation

The head of each department, agency, or element shall ensure that each privacy officer and civil liberties officer—

- (1)** has the information, material, and resources necessary to fulfill the functions of such officer;
- (2)** is advised of proposed policy changes;
- (3)** is consulted by decision makers; and
- (4)** is given access to material and personnel the officer determines to be necessary to carry out the functions of such officer.

...

(f) Periodic reports

(1) In general

The privacy officers and civil liberties officers of each department, agency, or element referred to or described in subsection (a) or (b) of this section shall periodically, but not less than quarterly, submit a report on the activities of such officers—

- (A)(i)** to the appropriate committees of Congress, including the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives;
- (ii)** to the head of such department, agency, or element; and
- (iii)** to the Privacy and Civil Liberties Oversight Board; and
- (B)** which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

(2) Contents

Each report submitted under paragraph (1) shall include information on the discharge of each of the functions of the officer concerned, including—

- (A)** information on the number and types of reviews undertaken;

- (B) the type of advice provided and the response given to such advice;
- (C) the number and nature of the complaints received by the department, agency, or element concerned for alleged violations; and
- (D) a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer.

(g) Informing the public

Each privacy officer and civil liberties officer shall—

- (1) make the reports of such officer, including reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and
- (2) otherwise inform the public of the activities of such officer, as appropriate and in a manner consistent with the protection of classified information and applicable law.

(h) Savings clause

Nothing in this section shall be construed to limit or otherwise supplant any other authorities or responsibilities provided by law to privacy officers or civil liberties officers.

I. Civil Rights and Civil Liberties Impact Assessments

The Civil Rights and Civil Liberties (CRCL) Impact Assessment Section, in the Programs Branch, undertakes in-depth examinations of the civil rights and civil liberties implications and effects of selected DHS programs, and provides suggestions for improvements to those programs. The following [CRCL Impact Assessments](#) were underway or completed during the first quarter of FY 2012:

- 1. *Future Attribute Screening Technology:*** This quarter, CRCL completed an impact assessment on the [Future Attribute Screening Technology program \(FAST\)](#), an initiative of DHS's Science and Technology Directorate (S&T) to develop innovative, non-invasive technologies to enhance the screening of individuals in transportation venues and at special events or other secure areas.
- 2. *Border Search of Electronic Devices:*** At Secretary Janet Napolitano's direction, the CRCL is collaborating with U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs and Enforcement (ICE) to examine the civil rights and civil liberties impact of those Components' policies relating to border searches of electronic devices. CRCL expects to complete this report in the coming months.
- 3. *State and Major Urban Area Fusion Center Support (Fusion Centers):*** Section 511 of the Implementing Recommendations of the 9/11 Commission Act requires CRCL to conduct a follow-up to the Fusion Center Impact Assessment released in December 2008. CRCL is working with the DHS Office of Intelligence and Analysis (I&A) State and Local Program Office and with FEMA's Office of Equal Rights to complete a new impact assessment that reflects current support for fusion centers, including civil rights and civil liberties related funding conditions included in the FY 2012 Homeland Security Grant Program.
- 4. *Fusion Center Fellowship Program:*** Section 512 of the Implementing Recommendations of the 9/11 Commission Act requires CRCL to conduct a follow-up to the 2008 Impact Assessment on the Fusion Center Fellowship Program, previously known as the Information Sharing Fellows Program. CRCL worked with the DHS I&A State and Local Program Office to complete a new impact assessment that evaluates the civil rights and civil liberties impacts of the existing program. CRCL expects to complete this report in the coming months.

II. Investigations Data and Analysis

CRCL investigates complaints concerning:

- abuses of civil rights, civil liberties, and racial, ethnic, or religious profiling, 6 U.S.C. § 345(a)(1);
- compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights or civil liberties of individuals affected by the programs and activities of the Department, 6 U.S.C. § 345(a)(4);
- possible abuses of civil rights or civil liberties, unless the Inspector General of the Department determines that any such complaint or information should be investigated by the Inspector General, 6 U.S.C. § 345(a)(6); and
- department, agency, or element actions, policies, procedures, guidelines, and related laws and their implementation to ensure that such department, agency, or element is adequately considering civil liberties in its actions, 42 U.S.C. § 2000ee-1(a)(2).

Under these authorities, CRCL reviews and assesses civil rights and human rights complaints. These matters arise in a variety of contexts, which we designate in the tables that follow as “situations,” and raise one or more issues. The tables set forth here identify investigations by the primary situation and issue involved.

Our process for addressing complaints has been explained in detail in CRCL’s previous quarterly reports. CRCL initiates investigations based on complaints received from the general public and non-governmental organizations by U.S. mail, email, fax, and the CRCL telephone hotline, as well as through the DHS Traveler Redress Inquiry Program (TRIP). Incidents that might merit investigation are also forwarded to CRCL from other offices at DHS and other government agencies. **Table 1**, below, indicates investigations opened during the first quarter by the primary civil rights *issue* raised, the *situation* in which the investigation arose, and the DHS *Component* that was the primary subject of the investigation.

Pursuant to 6 U.S.C. § 345(a)(6) and internal DHS policies, CRCL begins the investigation process by referring all matters involving the conduct of DHS employees to the DHS Office of Inspector General (OIG).¹ OIG then determines whether or not it will investigate the case; in this report, such cases are designated *OIG retained*. If OIG declines to investigate the complaint, it is referred back to CRCL for appropriate action, at which point CRCL determines whether the case should be retained for CRCL’s own investigation (*CRCL retained*), or referred to the relevant DHS Component(s) (*CRCL referred*). Retained cases may be subject to a *full investigation* or

¹ Complaints involving the activities of state or local law enforcement agencies, acting under state law, that come to CRCL as a result of ICE’s Secure Communities program are not initially referred to OIG, because they do not involve the conduct of ICE employees. CRCL notifies the Department of Justice, which has jurisdiction to investigate violations of civil rights by state and local officers of all investigations undertaken. The complaint protocol in Secure Communities cases is posted on the ICE Secure Communities web site, http://www.ice.gov/secure_communities.

short-form resolution². A small number of cases are subject to a *joint investigation*, combining CRCL's investigative resources with those of the relevant Component(s). Investigations at any other stage (such as clerical steps between these stages) are noted as *in process*.³ **Table 2** describes all investigations (not only investigations opened in FY 2012) in process as of the last day of the quarter, under these categories. For the rare cases that OIG retains for investigation, once OIG completes its investigation, the matter returns to CRCL. We may then close the matter or retain it for our own investigation. There were no such matters for the first quarter.

If a case is referred to a Component for investigation, the Component issues a Report of Investigation to CRCL at the completion of the investigation; if retained, CRCL conducts its own investigation and drafts its own investigative report. When the investigation, whether conducted by CRCL or the Component involved, is complete, CRCL *closes* the matter and provides senior leadership of the relevant Component(s) with its conclusions and any recommendations for improving policy, practice, or training arising from the investigation. At that time, we also notify the complainant of the result of our investigation. **Table 4** provides investigations closed during the quarter, by issue, situation, and Component principally involved.

Beginning in FY 2010, CRCL has asked DHS Components to formally concur (or non-concur) with our recommendations, and to provide concrete action plans for implementing accepted recommendations. A single matter may result in multiple recommendations (or none at all), and a Component may accept some, all, or none of the recommendations. **Table 5** indicates the current status of recommendations resulting from investigations closed during the first quarter.

Typically, we provide the status of matters that were closed with recommendations in the previous quarterly report. There were a total of 12 complaints closed with recommendations in the third and fourth quarters of FY 2011, including one complaint closed in the third quarter and 11 complaints closed in the fourth quarter. The status of these complaints will be provided in the forthcoming CRCL FY 2011 Annual Report to Congress.

² CRCL has implemented new "short-form" complaint processing procedures to facilitate swift action on urgent complaints and expeditious resolution of allegations that are narrowly focused and require limited investigation. The short-form process makes it easier to open and close complaints, allowing speedier resolution. Cases that prove to require additional work are converted to standard investigations.

³ The *in process* categories include more than a few cases where Reports of Investigation (ROIs) have been received from Components and are currently under review within CRCL. For CRCL's purposes, these investigations remain in process until we have completed our review and response to the ROIs.

Table 1. Investigations opened, by Quarter (as of December 31, 2011)

	TOTAL, YTD	1Q2012
<i>By issue</i>		
Abuse of authority/misuse of official position	2	2
Conditions of detention	15	15
Discrimination/profiling	3	3
Due Process	1	1
Excessive force	4	4
Free Speech/association	1	1
Inappropriate questioning/inspection conditions	4	4
Intimidation/threat/improper coercion	2	2
Language access (limited English proficiency)	1	1
Legal access	3	3
Medical/mental health care	2	2
Religious accommodation (other religious issues covered by inappropriate questioning, discrimination)	1	1
Sexual assault/abuse	1	1
Total by issue	40	40
<i>By situation</i>		
CBP detention/hold room/CBP deferred inspection site	1	1
DHS law enforcement activity	8	8
Immigration detention	21	21
Port of entry/CBP checkpoint	3	3
Screening (non-watch list)	1	1
Unaccompanied minor	3	3
Visa processing	1	1
Watch list/aviation security	2	2
Total by situation	40	40
<i>By Component</i>		
DHS (multi-component or headquarters unit)	1	1
CBP	12	12
ICE	25	25
TSA	2	2
Total by Component	40	40

Table 2. Investigations in progress as of December 31, 2011 (end Q1)

	Grand Total	In Process	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
<i>By issue</i>							
Abuse of authority/misuse of official position	20	4	1	5	3	2	5
Breach of confidentiality	6	1			3		2
Conditions of detention	95	9		21	37		28
Disability accommodation	3				3		
Discrimination/profiling	43	3	1	8	18	6	7
Due process	20	1		2	12		5
Excessive force	40	2	8	6	10	2	12
Fourth Amendment (search and seizure)	9			3	5		1
Free Speech/association	4			1	1		2
Inappropriate questioning/inspection conditions	14	1	1	2	4	1	5
Intimidation/threat/improper coercion	7			1	4		2
Language access (limited English proficiency)	4			1	3		
Legal access	5	3		1	1		
Medical/mental health care	47	7		18	17		5
Religious accommodation (other religious issues covered by inappropriate questioning, discrimination)	4	1			1		2
Retaliation	5			1	1	1	2
Sexual assault/abuse	8	1		4	3		
TSA AIT and TSA pat-downs	3			1		1	1
Total by issue	337	33	11	75	126	13	79

Table 2 continued (Investigations in process as of December 31, 2011)

	Grand Total	In Process	OIG Retained	CRCL Retained		Joint Investigation	CRCL Referred
				Full Investigation	Short Form		
By situation							
287(g)	4			1	1	1	1
CBP detention/hold room/CBP deferred inspection site	11	1	1	3	2		4
DHS law enforcement activity	35	1	2	6	19	4	3
DHS public messaging / websites	1	1					
DHS supported activity (not 287(g))	6	1		2	1		2
Federal government building or area	10				8		2
Immigration benefit application processing	7	1		2	1	1	2
Immigration detention	172	21	2	43	62	3	41
Political demonstration/rally	3			1	1		1
Port of entry/CBP checkpoint	29	2	1	5	13	2	6
Screening (non-watch list)	9			1	1	2	5
Secure Communities	3			1	2		
Unaccompanied minor	38	3	5	10	10		10
Visa processing	5	1			3		1
Watch list/aviation security	4	1			2		1
Total by situation	337	33	11	75	126	13	79
By Component							
DHS (multi-component or headquarters unit)	18	3	1	2	8	1	3
CBP	98	7	7	19	40	5	20
FEMA	2						2
ICE	200	23	3	50	71	6	47
TSA	9			1	3	1	4
USCIS	10			3	4		3
Total by Component	337	33	11	75	126	13	79

Table 3. Matters previously retained by OIG returned during 1Q2012: None

Table 4. Investigations closed, by Quarter (as of December 31, 2011)

	TOTAL, YTD	1Q2012
<i>By issue</i>		
Abuse of authority/misuse of official position	4	4
Conditions of detention	20	20
Discrimination/profiling	32	32
Due process	8	8
Excessive force	4	4
Fourth Amendment (search and seizure)	2	2
Inappropriate questioning/inspection conditions	3	3
Medical/mental health care	13	13
TSA AIT and TSA pat-downs	3	3
Total by issue	89	89
<i>By situation</i>		
287 (g)	1	1
CBP detention/hold room/CBP deferred inspection site	1	1
DHS law enforcement activity	5	5
DHS regulatory/rule processing	1	1
DHS supported activity (not 287(g))	7	7
Federal government building or area	1	1
Immigration benefit application processing	1	1
Immigration detention	38	38
Political demonstration/rally	1	1
Port of entry/CBP checkpoint	26	26
Screening (non-watch list)	4	4
Unaccompanied minor	2	2
Watch list/aviation security	1	1
Total by situation	89	89
<i>By Component</i>		
DHS (multi-component or headquarters unit)	4	4
CBP	34	34
ICE	45	45
TSA	5	5
USCIS	1	1
Total by Component	89	89

Table 5. Results of investigations closed in 1Q 2012

	Grand Total	No Recommendation	Recommendations Made			
			Awaiting Response	All Accepted	Some Accepted	Non-Concur
<i>By issue</i>						
Abuse of authority/misuse of official position	4	4				
Conditions of detention	20	19	1			
Discrimination/profiling	32	28	4			
Due process	8	7	1			
Excessive force	4	3	1			
Fourth Amendment (search and seizure)	2	2				
Inappropriate questioning/inspection conditions	3	3				
Medical/mental health care	13	13				
TSA AIT and TSA pat-downs	3	3				
Total by issue	89	82	7			
<i>By situation</i>						
287(g)	1	1				
CBP detention/hold room/ CBP deferred inspection site	1	1				
DHS law enforcement activity	5	5				
DHS regulatory/rule processing	1	1				
DHS supported activity (not 287(g))	7	7				
Federal government building or area	1	1				
Immigration benefit application processing	1		1			
Immigration detention	38	37	1			
Political demonstration/rally	1	1				
Port of entry/CBP checkpoint	26	22	4			
Screening (non-watch list)	4	4				
Unaccompanied minor	2	2				
Watch list/aviation security	1		1			
Total by situation	89	82	7			
<i>By Component</i>						
DHS (multi-component or headquarters unit)	4	4				
CBP	34	29	5			
ICE	45	44	1			
TSA	5	5				
USCIS	1		1			
Total by Component	89	82	7			

III. Appendix: Acronyms

CBP	U.S. Customs and Border Protection
CRCL	Office for Civil Rights and Civil Liberties
DHS	Department of Homeland Security
FAST	Future Attribute Screening Technology
FEMA	Federal Emergency Management Agency
FY	Fiscal Year
ICE	U.S. Immigration and Customs Enforcement
I&A	Office of Intelligence and Analysis
OIG	Office of the Inspector General
S&T	Science and Technology Directorate
TRIP	Traveler Redress Inquiry Program
TSA	Transportation Security Administration
USCG	U.S. Coast Guard
USCIS	U.S. Citizenship and Immigration Services