



# Privacy Office

First Quarter Fiscal Year 2010 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

*January 19, 2010*



Homeland  
Security

# Foreword

I am pleased to present the following report, “Privacy Office First Quarter Fiscal Year 2010 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 first quarter report, covering the period from September 1, 2009 to November 30, 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 DHS Privacy Office at 202-235-0780.

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 first quarter report for fiscal year 2010.

This report covers the privacy complaints and privacy training for the period of September 1, 2009 to November 30, 2009. The Privacy Office works with each of the components of the Department to provide privacy training and expedite processing of complaints from the public.

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

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## INTRODUCTION

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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,<sup>1</sup> the Privacy Act of 1974,<sup>2</sup> the Freedom of Information Act,<sup>3</sup> the E-Government Act of 2002,<sup>4</sup> 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.

The *Implementing Recommendations of the 9/11 Commission Act of 2007* (9/11 Act), Public Law. 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.<sup>5</sup> In accordance with this requirement, this report serves as the Privacy Office’s first quarter report of Fiscal Year (FY) 2010, covering the period from September 1, 2009 to November 30, 2009.<sup>6</sup> The DHS Office for Civil Rights and Civil Liberties will provide a separate report regarding civil liberties.

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. The Department continues to review a wide variety of activities and procedures within the Department to find opportunities to enhance protections of privacy and civil liberties of individuals. Pursuant to the requirements of Section 803, the Privacy Office is providing its first quarter report for fiscal year 2010.

## REVIEWS

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The DHS Privacy Office performs a number of different reviews of IT systems and programs that may have a privacy impact. For purposes of Section 803 Reporting, reviews include the following activities:

1. Privacy Threshold Analyses (PTAs) – The DHS foundational mechanism for reviewing IT systems, programs, and other activities for privacy protection issues to determine whether a more comprehensive analysis is necessary through the Privacy Impact Assessment process;
2. Privacy Impact Assessments (PIAs) required under both the E-Government Act of 2002 and the Homeland Security Act of 2002, as amended;
3. Systems of Records Notice (SORNs) 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;

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<sup>1</sup> 6 U.S.C. § 101 *et seq.*

<sup>2</sup> 5 U.S.C. § 552a *et seq.*, as amended.

<sup>3</sup> 5 U.S.C. § 552.

<sup>4</sup> 44 U.S.C. § 3501.

<sup>5</sup> *See* 42 U.S.C. § 2000ee-1(f)(1).

<sup>6</sup> 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.

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 the DHS Enterprise Architecture Board.

Type of Review	Number of Reviews
Privacy Threshold Analyses	134
Privacy Impact Assessments	21
System of Records Notices and associated Privacy Act Exemptions	14
Privacy Act (e)(3) Statements	7
Computer Matching Agreements	1
Data Mining Reports	0
Privacy Reviews of IT and Program Budget requests	5
<i>Total Reviews for Q1FY10</i>	<i>182</i>

At the Department, the conduct of PIAs represents a substantial effort on the part of Components, Component Privacy Officers, Privacy Points of Contact, and the DHS Privacy Office. The PIA process is one of the key mechanisms used to assure that the use of technologies sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information. A complete list of PIAs conducted during this reporting period can be found at <http://www.dhs.gov/privacy>. Below are a few examples:

- Travel and Employment Authorization Listings (TEAL) – DHS’s U.S. Citizenship and Immigration Services (USCIS) TEAL system to streamline access to relevant information during the adjudication of certain benefits. TEAL consolidates immigration information about applicants from selected USCIS and Department of Homeland Security systems to provide greater accessibility to immigration information necessary to determine benefit eligibility.
- Recruit Analysis and Tracking System (RATS) - The DHS U.S. Coast Guard Recruiting Command operates RATS to support their recruiting mission. The system gathers and distributes recruiting leads, tracks recruit progression, prepares accession forms, processes reservations for enlisted and officer candidates, manages the mission plan, provides point-in-time projections, and reports on quality, quantity, and diversity statistics for the recruiting effort.

During this reporting period DHS published Privacy Act SORNs to support new programs at DHS as well as reviewing and republishing existing SORNs to ensure their accuracy. Below are a few examples of SORNs published during the reporting period and can be found at <http://www.dhs.gov/privacy>:

- DHS/ICE-012 Visa Security Program Records – The DHS U.S. Immigration and Customs Enforcement (ICE) Visa Security Program Records (VSPR) system manages, reviews, tracks, investigates, and documents visa security reviews conducted by ICE agents pertaining to U.S. visa applicants and to document ICE visa recommendations to the U.S. State Department. The system contains information about individuals who have applied for U.S. visas and

undergo a visa security review.

- DHS/ALL-001 Freedom of Information Act (FOIA) and Privacy Act (PA) Records System – DHS published the notice to update the FOIA and PA Records System as part of the biennial review. The system collects and maintains records that concern the Department’s FOIA and PA Records.
- DHS/FEMA-001 National Emergency Family Registry and Locator Systems (NEFRLS) – The DHS Federal Emergency Management Agency (FEMA) NEFRLS provides a nationally accessible electronic system that allows adults displaced from their homes or pre-disaster location after a Presidentially-declared emergency or disaster to voluntarily register themselves, and to identify up to seven family or household member they agree to allow access to their personal identifying information that may potentially include their current location or a special message to an identified individual. The system will allow individuals registered in the system and individuals who are searching for family or household members to reunite.

## **ADVICE AND RESPONSES**

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During the reporting period, DHS conducted the following training:

- DHS personnel and contractors attended classroom-based privacy training courses in 2,887 instances.
- DHS personnel and contractors took computer-assisted privacy training courses in 52,493 instances.

The Chief Privacy Officer engaged in the following Privacy Outreach activities:

- Participated in a bi-lateral meeting with the Secretary of Homeland Security and the Home Secretary Alan Johnson of the U.K.
- Met with members of the Muslim advocacy community to discuss the issuance of the Border Searches of Electronic Devices PIA.
- On September 9 and 10, the Privacy Office’s Federal Advisory Committee, the Data Privacy and Integrity Advisory Committee, held its quarterly public meeting in Detroit, Michigan. The Chief Privacy Officer updated the Committee on the Privacy Office accomplishments since the Committee’s last meeting and toured several U.S. Customs and Border Protection (CBP) facilities.
- Held the second quarterly outreach meeting with privacy advocates to discuss privacy activities within the Department.
- Participated in the keynote session at the National Institute of Standards and Technology’s Identity Management 2009 Conference on Transparent Government: Risk, Rewards and Repercussions in Gaithersburg, MD.
- Attended the High Level Contact Group (HLCG) Redress Workshop and the subsequent HLCG Experts Group meeting in Brussels, Belgium.
- Met with House Committee on Homeland Security Majority Staff to brief them on privacy activities at the Department.
- Moderated a panel and gave midday remarks to the participants at the Federal CIO Council Privacy Committee’s Privacy Summit entitled “Protecting Privacy Principles while Supporting an Open Government.”

- Met with EU Parliamentarians from the LIBE Committee. Responded to Parliamentarians' questions about the privacy impacts of DHS programs and the role of the DHS Privacy Office.
- Hosted three international data protection professionals in an information exchange program November 9 -13. Visitors included two representatives from Europol and one representative from the French Data Protection Authority (CNIL). The group met with representatives from the Privacy Office, DHS component offices, and other government agencies to learn about the U.S. privacy framework and DHS privacy policies and practices.

ICE engaged in the following Privacy Outreach activities:

- Conducted 13 Tip of the Week Broadcasts to all ICE Employees.
- Provided guidance and prepared privacy training materials for ICE's legal program.
- Hosted officials from Europol and CNIL to demonstrate privacy compliance in a law enforcement operation setting.

US-VISIT engaged in the following Privacy Outreach activities:

- Discussed privacy considerations embedded into a new international sharing project with internal stakeholders.
- Discussed the best practices in establishing a biometric entry/exit program including privacy challenges and best practices with Canadian Office of Citizenship and Immigration.
- Held Privacy Awareness Week to expand US-VISIT employees' awareness of privacy issues.
- Met with officials from Europol to discuss the unique privacy considerations that frame US-VISIT biometric sharing policies and projects.

TSA engaged in the following Privacy Outreach activities:

- Re-released Broadcast Messages to TSA workforce titled: Restricting Access on iShare and SharePoint.
- Continued to enhance privacy awareness by contributing guidance to the Office of Intelligence.

## 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. The categories of complaints reflected in the table below are aligned with the categories detailed in the Office of Management and Budget's (OMB) Memorandum M-08-21, FY 2008 Reporting Instructions for the Federal Information Security Act and Privacy Management. Complaints are received from U.S. citizens and lawful permanent residents as well as visitors and aliens.<sup>7</sup>

Type of Complaint	Number of Complaints received during this reporting period	Disposition of Complaint		
		Closed-Responsive Action Taken	In-Progress (Current Period)	In-Progress (Prior Periods)
Process and Procedure	6	6	0	0
Redress	26	25	1	0
Operational	31	20	11	8
Referred	5	8	0	0
<i>Total</i>	<i>68</i>	<i>59</i>	<i>12</i>	<i>8</i>

The complaints are separated into four categories:

1. *Process and Procedure*. Issues concerning process and procedure, such as consent, appropriate notice at the time of collection.  
Example: An individual submits a complaint that alleges a program violates privacy by collecting Social Security Numbers without providing proper notice.
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.<sup>8</sup>
3. *Operational*. Issues related to general privacy concerns and concerns not related to transparency or redress.
4. *Referred*. The DHS Component or the DHS Privacy Office determined that the complaint would be more appropriately handled by another federal agency or entity and referred the complaint to the appropriate organization. This category does not include referrals within DHS. The referral category both serves as a category of complaints, and represents responsive action taken by the Department unless the must first be resolved with the external entity.  
Example: An individual has a question about his or her driver's license or Social Security Number, which the DHS Privacy Office refers to the proper agency.

DHS Components and the DHS Privacy Office report disposition of complaints in one of the two following categories by:

1. *Closed-Responsive Action Taken*. The DHS Component or the DHS Privacy Office reviewed the complaint and a responsive action was taken. For example, an individual may provide additional information to distinguish himself from another individual. In some cases,

<sup>7</sup> DHS Privacy Policy Guidance Memorandum 2007-01, *Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons*.

<sup>8</sup> This category excludes FOIA and Privacy Act requests for access which are reported annually in the Annual FOIA Report.

- acknowledgement of the complaint serves as the responsive action taken. This category may include responsive action taken on a complaint received from a prior reporting period.
2. *In-Progress.* The DHS Component or the DHS Privacy Office is reviewing the complaint to determine the appropriate action and/or response. This category identifies in-progress complaints from both the current and prior reporting periods.

Examples of complaints received during this reporting period and their disposition are:

- An individual contacted US-VISIT regarding a watch list issue. The individual alleged a police encounter from several years ago was causing him to be identified for additional screening every time he entered the U.S. After a review of the record, US-VISIT determined that the individual was eligible for a watch list demotion and updated the information in the system to ensure an improved travel experience for the individual in the future.
- A husband and wife contacted US-VISIT regarding a biometrics issue. The issue involved a possible error in their fingerprint capture. US-VISIT reviewed the records of both individuals and confirmed that an operational error had resulted in the fingerprints of the husband being associated with the wife's biographic data, and vice versa. US-VISIT corrected the information in the system so each individual's biometric data was correctly associated thus preventing future travel problems.

## CONCLUSION

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As required by the 9/11 Act, this first quarter report provides a summary of the Privacy Office's activities from September 1, 2009 to November 30, 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.