



# Privacy Office

Second 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

*April 29, 2009*



Homeland  
Security

# Foreword

I am pleased to present the following report, “Privacy Office Second 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 second quarter report, covering the period from December 1, 2008, to February 28, 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 Arlen Specter  
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 second quarter report for fiscal year 2009.

This report covers the privacy complaints and privacy training for the period of December 1, 2008, to February 28, 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.

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## PRIVACY OFFICE

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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.<sup>1</sup> In accordance with this requirement, this report serves as the Privacy Office's second quarter report of Fiscal Year (FY) 2009, covering the period from December 1, 2008, to February 28, 2009.

## 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>2</sup> the Privacy Act of 1974,<sup>3</sup> the Freedom of Information Act,<sup>4</sup> the E-Government Act of 2002,<sup>5</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.

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 second quarter report for fiscal year 2009.<sup>6</sup> This report in large part covers the period of December 1, 2008, to February 28, 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

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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;

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

<sup>2</sup> 6 U.S.C. § 101 *et seq.*

<sup>3</sup> 5 U.S.C. § 552a *et seq.*, as amended.

<sup>4</sup> 5 U.S.C. § 552.

<sup>5</sup> 44 U.S.C. § 3501.

<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.

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 protection reviews of Information Technology and Program Budget requests, including OMB 300s and Enterprise Architecture Alignment Requests through DHS's Enterprise Architecture Board.

<b>Type of Review</b>	<b>Number of Reviews</b>
Privacy Threshold Analyses	166
Privacy Impact Assessments	15
System of Records Notices and associated Privacy Act Exemptions	69
Privacy Act (e)(3) Statements	2
Computer Matching Agreements	0
Data Mining Reports	1
Privacy Protection Reviews of IT and Program Budget requests	13
<i>Total Reviews for Q2FY09</i>	<i>266</i>

## **ADVICE AND RESPONSES**

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During the reporting period, DHS released the following guidance related to privacy:

1. The DHS Privacy Office issued the Privacy Policy Guidance Memorandum 2008-01, The Fair Information Practice Principles: Framework for Privacy Policy at the Department of Homeland Security, found at [www.dhs.gov/privacy](http://www.dhs.gov/privacy) under "Privacy Policy Guidance and Reports."
2. The DHS Privacy Office issued the Privacy Policy Guidance Memorandum 2008-02, DHS Policy Regarding Privacy Impact Assessments, found at [www.dhs.gov/privacy](http://www.dhs.gov/privacy) under "Privacy Policy Guidance and Reports."
3. The DHS Privacy Office reissued the Privacy Policy Guidance Memorandum 2007-1, DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Information on Non-U.S. Persons, found at [www.dhs.gov/privacy](http://www.dhs.gov/privacy) under "Privacy Policy Guidance and Reports."

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:

1. DHS personnel and contractors attended classroom-based privacy training courses in 2,263 instances.

2. DHS personnel and contractors took computer-assisted privacy training courses in 28,700 instances.

The Transportation Security Administration released its third poster in its ongoing poster campaign related to protecting personally identifiable information.

The Transportation Security Administration participated in Privacy Outreach Efforts meetings with the Electronic Privacy Information Center (EPIC) and with the American Civil Liberties Union (ACLU).

The US VISIT Privacy program engaged in opportunities to increase privacy awareness at special events, such as the US-VISIT Information Security & Biometrics Awareness Day held on February 24, 2009.

The Federal Emergency Management Agency conducted Safeguarding PII training for its Logistic Management Directorate.

## **PRIVACY COMPLAINTS AND DISPOSITIONS**

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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.<sup>7</sup>

Type of Complaint	Number of Complaints	Disposition of Complaint		
		Responsive Action Taken	No Action Required	Pending
Process and Procedure	32	6	26	2012 <sup>8</sup>
Redress	70	44	0	27
Operational	8	4	2	3
Referred	14	14	0	0
<i>Total</i>	<i>124</i>	<i>68</i>	<i>28</i>	<i>2042</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.<sup>9</sup>

<sup>7</sup> DHS Privacy Policy Guidance Memorandum 2007-01.

<sup>8</sup> This number represents 2012 complaints that were pending from Q4 FY 2008. DHS is taking action to resolve these carry-over complaints.

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



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.
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**

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As required by the 9/11 Act, this second quarter report provides a summary of the Privacy Office's activities from December 1, 2008, to February 28, 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.