



Privacy Office

Third 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

July 14, 2009



Homeland
Security

Foreword

I am pleased to present the following report, “Privacy Office Third 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 third quarter report, covering the period from March 1, 2009, to May 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 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 third quarter report for fiscal year 2009.

This report covers the privacy complaints and privacy training for the period of March 1, 2009, to May 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.

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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 third quarter report of Fiscal Year (FY) 2009, covering the period from March 1, 2008, to May 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 third quarter report for fiscal year 2009.⁶ This report in large part covers the period of March 1, 2008, to May 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 protection 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	133
Privacy Impact Assessments	5
System of Records Notices and associated Privacy Act Exemptions	3
Privacy Act (e)(3) Statements	3
Computer Matching Agreements	0
Data Mining Reports	0
Privacy Protection Reviews of IT and Program Budget requests	17
<i>Total Reviews for Q3FY09</i>	<i>161</i>

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:

1. DHS personnel and contractors attended classroom-based privacy training courses in 3,103 instances.
2. DHS personnel and contractors took computer-assisted privacy training courses in 55,710 instances.

The Chief Privacy Officer engaged in a series of courtesy meetings with officials both inside and outside of DHS.

The Chief Privacy Officer travelled to Europe and met with her counterparts in France, Germany, and Belgium and with the European Commission to educate European officials on American privacy practices.

The Chief Privacy Officer taped a series of video promotions on privacy while at the European Media Hub while in Brussels; videos available for media use

The Privacy Office participated in press roundtables with foreign press when travelling to explain US privacy policy.

The Privacy Office continues to host or participate in work/study exchanges with foreign countries. The last visit included representatives from Mexico and the United Kingdom, who spent a week in the Privacy Office.

The Chief Privacy Officer conducted a radio interview with WFED-AM (Federal News Radio) in which she detailed her goals and visions for privacy at DHS, and also had an interview with the Associated Press regarding RFID and WHTI.

The Privacy Office published the *Privacy Matters* Newsletter, a periodical newsletter with a distribution to the privacy community inside and outside DHS.

The Chief Privacy Officer published an article on redress for foreign visitors in Data Protection Law & Policy.

The Privacy Office hosted the Privacy Office Speaker Series: Government 2.0 at the crossroad with speaker Ari Schwartz of the Center for Democracy & Technology.

The Privacy Office hosted the Privacy Office Speaker Series: The people behind the cyber crime wave and how they hurt you with Alan Paller of the SANS Institute.

The Transportation Security Administration participated in Privacy Outreach Efforts via meetings with EPIC, ACLU, CDT, Privacy Coalition and the Liberty Coalition.

On April 23, 2009 at the Bring Our Daughters and Sons to Work Day, privacy was imbedded into the day's program so young people could see first hand how US-VISIT promotes privacy and protection of personal information.

The United States Coast Guard (USCG) Privacy Office sent representatives to deliver a Privacy Presentation at the Annual Information Systems Security Officers (ISSO) conference in Atlanta, GA. Over 125 ISSOs, Designated Accrediting Authorities and Information Assurance personnel attended this week long conference. The privacy presentation provided attendees with detailed information relative to, Privacy Incident Reporting; Privacy Compliance Documentation - including PTAs, PIAs, SORNs, C&A requirements and Rulemaking; Current USCG and DHS policies; and, a comprehensive listing of available resources.

On May 11-15, 2009, Science and Technology (S&T) Directorate executed its second annual privacy awareness training event. S&T extended this year's event from Privacy Day to Privacy Week to include even more training activities and allow for more flexibility in individual schedules. In addition to the mandatory annual privacy training session, S&T privacy staff conducted supplemental training for S&T Program Managers and Division Directors that focused specifically on the Principles in Implementing Privacy Protections in Research Projects and draft Implementation Plan. S&T coordinated with the DHS Privacy Office to hold a "Privacy Office Q&A session" where Program Managers had the opportunity to meet with the DHS Privacy Office staff and address privacy questions and concerns related to their projects. Throughout the week, S&T employees and contractors received daily email tips and reminders on everyone's responsibilities in safeguarding and protecting PII. S&T also held an introductory training session with the DHS Office of Civil Rights and Civil Liberties to provide Program Managers and Division Directors a brief overview of how civil rights and liberties relate to S&T research. S&T Privacy Week was a great success, and demonstrates S&T's continual commitment to privacy.

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	Disposition of Complaint		
		Responsive Action Taken	No Action Required	Pending ⁸
Process and Procedure	1	1	0	2012
Redress	322	228	0	121
Operational	8	7	2	3
Referred	40	40	0	0
<i>Total</i>	<i>371</i>	<i>276</i>	<i>2</i>	<i>2136</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 DHS is taking action to resolve these carry-over complaints.

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 third quarter report provides a summary of the Privacy Office's activities from March 1, 2008, to May 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.