

U.S. Department of Justice

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**THE OFFICE OF  
PRIVACY AND CIVIL LIBERTIES**  
PRIVACY AND CIVIL LIBERTIES  
ACTIVITIES QUARTERLY REPORT



**FOURTH QUARTER, FY 2009**

**JUNE 1, 2009 – AUGUST 31, 2009**

## **I. INTRODUCTION**

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, 121 Stat. 266, 361-62 (codified at 42 U.S.C. § 2000ee-1(f)) (hereinafter “Section 803”), imposes quarterly reporting requirements on certain privacy and civil liberties activities of the Chief Privacy and Civil Liberties Officer (CPCLO) of the Department of Justice. Specifically, Section 803 requires each report to include information related to the discharge of certain privacy and civil liberties functions of the Department’s CPCLO, including information on: the number and types of reviews undertaken; the type of advice provided and the response given to such advice; the number and nature of the complaints received by the department, agency, or element concerned for alleged violations; and a summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of such officer. *Id.* Pursuant to Section 803, the Department submits the fourth quarter report for fiscal year 2009 on such activities of the Department’s CPCLO.<sup>1</sup>

## **II. FUNCTIONS DEFINED**

In coordination with the Office of Management and Budget (“OMB”), the Department has established a standard reportable framework tailored to the missions and functions of its CPCLO. Accordingly, below is a brief outline defining the functions on which the CPCLO is required to report under Section 803.

### **A. REVIEWS**

A review encompasses activities that are part of a systematic and repeatable process looking at privacy and/or civil liberties matters enumerated in controlling authorities, such as the Privacy Act of 1974, 5 U.S.C. § 552a; E-Government Act of 2002, Pub. L. No. 107-347; Consolidated Appropriations Act of 2005, Pub. L. No. 108-447; OMB Circular A-130, Appendix 1; and OMB Memo M-07-16. Examples of reviews may include:

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<sup>1</sup> In order to maintain consistent quarterly privacy reporting schedules to OMB, the reporting period for Section 803 corresponds with the privacy reporting period established by the OMB in the Reporting Instructions for the Federal Information Security Management Act and Agency Privacy Management. Thus, the fourth quarter of fiscal year 2009 covers the activities of the Department’s CPCLO from June 1, 2009 to August 31, 2009.

1. Privacy Impact Assessments/Civil Liberties Impact Assessments, including reviews required under Section 208 of the E-Government Act;
2. OMB Circular A-130 Privacy Act Reviews, including the statutory duties of the Privacy Act, which include new and updated system of records reviews and reviews regarding proposed rules for Privacy Act exemptions;
3. OMB Circular A-130 Computer Matching Reviews, which requires the Department to examine the privacy implications of sharing information to be used in matching arrangements;
4. OMB Memorandum M-07-16 Privacy & Security Reviews, including reviews of policies and procedures in order to safeguard against the breach of personally identifiable information (PII), such as PII holdings reviews, Social Security Number use reduction, or identity theft reviews;
5. Information Sharing Environment Privacy Guidelines Assessment, including policy reviews and system assessments to ensure consistency with the ISE Privacy Guidelines;
6. National Security Reviews;
7. Data Mining Reviews, including the review required by Section 804 of the 9/11 Commission Act;
8. OMB Circular A-11, Part 7, Exhibit 300 Process, including reviews of privacy and civil liberties documentation associated with developmental and operational budgetary assessments.

## **B. ADVICE**

### *1. Formal Advice*

Formal Advice encompasses the issuance of formal written policies, procedures, guidance, or interpretations of privacy requirements for circumstances or business processes, which have been drafted or authorized by the CPCLC and approved as official agency policy by Department leadership, to respond to issues or concerns regarding safeguards for privacy and civil liberties.

## 2. *Response to Advice*

In addition, the report will indicate which of the following forms of final, formal advice the CPCLO has selected, such as the issuance of Privacy Impact Assessment Guidance. Examples of a response to advice may include:

1. Regulations;
2. Orders;
3. Guidance;
4. Agreements; or
5. Training.

## C. COMPLAINTS

### 1. *Privacy Complaints*

A privacy complaint encompasses a written allegation concerning a problem with or violation of privacy protections in the administration of the programs and operations of the Department that is submitted to or through the CPCLO. This will not include complaints filed in litigation against the Department. The types of privacy complaints include:

1. Process and procedural issues (consent, collection, and appropriate notice);
2. Redress issues (non-Privacy Act inquiries seeking resolution of difficulties or concerns about privacy matters);
3. Operational issues (inquiries regarding Privacy Act matters not including Privacy Act requests for access and/or amendment).<sup>2</sup>

### 2. *Civil Liberties Complaints*

A written allegation (other than in the context of litigation) concerning a problem with or violation of civil liberties safeguards concerning the handling of personal

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<sup>2</sup> This report excludes information related to requests for access to and amendment of information made pursuant to the Privacy Act of 1974, 5 U.S.C. § 552a, which currently is reported as part of the Department's annual Freedom of Information Act report.

information by the Department in the administration of Department programs and operations that is submitted to or through the CPCLO.

### 3. *Dispositions of Complaints*

For each type of privacy or civil liberties complaint received by OPCL during the quarter, OPCL will report the number of complaints in which (1) responsive action was taken or (2) no action was required. In the event a complaint is received within three business days of the last day of the close of the quarter, the complaint may be counted and addressed in the subsequent quarter if time constraints hinder a thorough examination of the complaint in the quarter in which received.

**III. FUNCTIONS OF THE PRIVACY AND CIVIL LIBERTIES OFFICER**

The United States Department of Justice  
 Quarterly Report on Privacy and Civil Liberties Activities  
 Under Section 803 of the 9/11 Commission Act of 2007  
 Fourth Quarter, FY 2009, 6/1/09 to 8/31/09

Reviews		Advice			Complaints <sup>3</sup>		
Type	Number	Type	Number	Response	Type	Number	Response
Privacy reviews on legislation, testimony, and reports	105	Formal Advice	1	Training to Web 2.0 subcommittee of Privacy Committee of the CIO Council on 6/9/09.	<b>PRIVACY</b>	0	
Initial Privacy Assessments	3	Formal Advice	1	Training to the Department of Homeland Security's Government 2.0 workshop on 6/23/09.			
System of Records Notices and Rules	2				<b>CIVIL LIBERTIES</b>	0	
Privacy Impact Assessments	1						

<sup>3</sup> For the fourth quarter, OPCL received 60 privacy and/or civil liberties related inquiries in the form of emails or letters. After a thorough review, OPCL determined that none of the inquiries received qualified as privacy and/or civil liberties complaints against the Department.