



**The Department of the Treasury  
FY 2013 Q3 Report on Privacy and Civil  
Liberties Activities Pursuant to Section 803  
of the Implementing Recommendations of  
the 9/11 Commission Act of 2007**

**For the reporting period  
March 1, 2013 to May 31, 2013**

1. Introduction

The Treasury Department is committed to protecting the privacy and civil liberties of individuals in all Treasury programs. In recognition of the threat to individual privacy resulting from the global expansion of information technology (IT), the Department is determined to continue its vigilant oversight of the personally identifiable information (PII) entrusted to its care. 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 the Office of Privacy, Transparency, and Records (OPTR). Accordingly, below is an outline defining the functions on which OPTR is required to report under Section 803.

2. Department Actions

The Department of the Treasury filled the vacant position for Deputy Assistant Secretary for Privacy, Transparency, and Records (DASPTR) during this quarter. Helen Foster was selected just after the close of the reporting period. Prior to this position, Ms. Foster served in the Department of Homeland Security Privacy Office, and was detailed to the White House as Director for Privacy and Civil Liberties on the National Security Staff. Among the challenges facing the new DASPTR designee is the Department's implementation of E.O. 13636, creating a working relationship with the Privacy and Civil Liberties Oversight Board (PCLOB), and enhancing and maintaining the culture of privacy and civil liberties awareness at Treasury.

During the third quarter, OPTR oversaw the development and implementation of the Privacy Clearance Tracker (PCT) application that Treasury eventually will use throughout throughout the Department. This application automates the comment and review process for privacy impact assessments (PIAs) and systems of records notices (SORNs). After successfully completing the beta testing phase of the development process, PCT was ready for use. Four bureaus were identified as initial users of the application and will undergo training provided by OPTR to facilitate implementation.

The IRS continued to make significant strides in the area of identity theft protection and detection. For the 2013 filing season, identity theft indicators and business rules isolated 298,078 returns for additional screening to validate whether the true taxpayer filed the return, preventing \$454 million from being paid out in fraudulent refunds. Of the 90,994 fraudulent returns, 83,715 related to the Operation Mass Mail identity theft scheme identified by the Criminal Investigation Division, accounting for \$422 million of the total \$454 million protected as a result of this program. In addition, the Identity Protection Personal Identification Number (IP PIN) population expanded to 772,000 taxpayers (from 57,000 in 2011 and 250,000 in 2012) for the 2013 filing season.

OPTR was an active participant in Records and Information Management Month events at Treasury in April 2013. There was a day-long lecture/discussion on social engineering, which described non-technical types of intrusion that rely heavily on human interaction and that often involve manipulating personal data to violate normal security procedures. The discussion focused on the tactics that social engineers use to gather information.

Finally, during this reporting period, the IRS became the focus of Congressional oversight hearings and media coverage on the subject of tax-exempt requests. A number of civil liberties complaints were filed against the IRS as a result of the alleged inappropriate screening of these requests. There are now three civil liberties complaints regarding tax-exempt case processing, five complaints involving other civil liberties matters, and one violation of privacy allegation on record and awaiting adjudication.

### Privacy Complaint

On March 11, 2013, John Doe Company, by and through its attorney Robert Barnes, filed a Class Action Complaint against the IRS alleging privacy interests in medical records were “offended, abridged and violated” arising out of the unlawful search and seizure of records during a raid at John Doe Company. The suit specifically asks for compensatory damages pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), for the constitutional violation of rights under the Fourth Amendment for each record searched, seized, and retained by the IRS.

### Tax Exempt Cases

During this reporting period, three civil liberties complaints were filed against the IRS regarding tax-exempt processing. The complaints are summarized below:

- On May 20, 2013, Norcal Tea Party Patriots, on behalf of itself, its members, and the class it seeks to represent, filed a Class Action Complaint against the IRS. The suit claims the IRS “singled out groups like NorCal Tea Party Patriots for intensive and intrusive scrutiny, probing their members’ associates, speech, activities and beliefs.” Plaintiffs assert violations of the Privacy Act of 1974 and the First and Fifth Amendments.

- On May 21, 2013, True the Vote, Inc. filed a Verified Complaint for Declaratory Judgment, Declaratory and Injunctive Relief and Damages against the IRS. The suit brings action against the IRS and Acting IRS Commissioner Steven T. Miller for declaratory and injunctive relief from violations of the Plaintiff's rights of free speech and association under the First Amendment to the United States Constitution. The Suit also brings action against IRS employees in their individual capacities pursuant to *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971) to recover damages resulting from violations of rights under the First Amendment to the United States Constitution.
- On May 29, 2013, The American Center for Law and Justice filed a lawsuit against the IRS and other Executive Branch officials on behalf of 25 Tea Party-related groups. The suit claims the IRS unlawfully delayed and obstructed tax-exempt status applications "by means of conduct that was based on unconstitutional criteria and impermissibly disparate treatment" in violation of the Plaintiffs' rights under the First and Fifth Amendments to the United States Constitution and the Administrative Procedure Act.

In addition, the IRS received five other complaints of violations of constitutional due process during the period April 1, 2013 through June 10, 2013:

- Complaint received April 1, 2013, Buckner, Nanette: Plaintiff alleges harassment and age discrimination/retaliation for prior Equal Employment Opportunity (EEO) related activity.
- Complaint received April 19, 2013, Bowman, John J., Plaintiff alleges constitutional due process violations; deprivation of property (practice before IRS as an enrolled agent).
- Complaint received May 6, 2013, Johnson, Brad, et al.: Plaintiffs allege due process violations and "First Amendment Retaliation."
- Complaint received May 6, 2013, Underwood, Darrell and Cynthia: Plaintiffs allege constitutional due process violations including deprivation of property (real estate) without due process of law.
- Complaint received May 13, 2013, Carpenter v. Shulman, et al.: Plaintiff alleges illegal search and seizure; invalid warrant.

### 3. Quarterly Reporting Matrix

The Department uses a standard reporting framework and instructions tailored to its mission and functions to address Section 803 reporting requirements. In developing the framework and instructions, the Department collaborated with the Office of Management and Budget (OMB) and the other agencies required to report under this section.

The attached reporting matrix consolidates all Treasury privacy and civil liberties activities, including data on the reviews conducted, reference to the advisory guidance delivered, and information about written complaints received and processed.

### 3.1. Types of Potential Complaints

3.1.1. *Privacy Complaint*: A privacy complaint is a written allegation concerning a problem with or violation of privacy protections in the administration of the programs and operations of the Department that may be the cause of harm or violation of personal or information privacy filed with the Department. This information may include:

- Process and procedural issues, such as consent, collection, and appropriate notice;
- Non-Privacy Act of 1974 issues, such as Terrorist Watchlist Redress processing or identity theft mitigation; or
- Privacy Act of 1974 issues.

3.1.2 *Civil Liberties Complaint*: A written allegation of harm or violation of the constitutional rights afforded individuals filed with the Department. Types of civil liberties complaints include, but are not limited to:

- First Amendment (Freedom of speech, religion, assembly, and association);
- Fourth Amendment (Protection against unreasonable search and seizure); and
- Fifth Amendment or Fourteenth Amendment, § 1 (Due process and equal protection).

## 4. Reporting Categories

4.1. *Reviews*: Reviews include Treasury privacy and civil liberties activities delineated by controlling authorities, such as the Privacy Act of 1974, 5 U.S.C. § 552a; E-Government Act of 2002 (P.L. 107-347); Consolidated Appropriations Act of 2005 (P.L. 108-447); OMB Circular A-130, Appendix 1; and OMB Memo M-07-16. Examples include:

- Privacy Threshold Analyses (PTAs) – review of an IT system’s use of data to determine whether a PIA is required;
- Privacy Impact Assessments (PIAs);
- OMB Memorandum 07-16 issues, including reviewing records to minimize the volume of PII necessary for the proper performance of an agency function, SSN use reduction efforts, or initiatives related to combating identity theft;
- OMB Circular A-130 issues, including SORNs, routine use descriptions, Agency security contacts, recordkeeping and disposal policies, training practices, continued Privacy Act exemptions under 5 U.S.C §552a (j)(2), (k), and Computer Matching Programs;
- Persistent Tracking Technology features used on a website;

- Achievement of machine readability, which ensures that website users are automatically alerted about whether site privacy practices match their personal privacy preferences;
- Reviews under 5 CFR part 1320 (collection of information/Paperwork Reduction Act);
- Information Sharing Environment Privacy Guidelines Assessment including policies and system reviews; and
- Reviews related to the OMB Circular A-11, Exhibit 300 process.

4.2. *Advice*: Advice includes written policies, procedures, guidance, or interpretations of requirements for circumstances or business processes that respond to privacy or civil liberties issues or concerns.

4.3. *Response to Advice*: Specific action taken in response to Treasury Advice. Examples of Responses to Advice include issuing a regulation, order, or directive; interpreting or otherwise issuing guidance as a result of Advice; reaching an agreement related to the Advice; and developing training programs or other procedures that enhance understanding of the issue that precipitated the request for Advice.

4.4. *Disposition of Complaints*: Treasury action in response to a privacy or civil liberties complaint. In response to a complaint, the Department will:

1. Take direct action (description in the summary report);
2. Refer to another agency or entity that may be able to assist in addressing the complaint (referral agency and explanation in summary report); or
3. Determine that no action is required (explanation in summary report).

The Department will continue to submit quarterly reports in coordination with OMB. The next quarterly report is due September 30, 2013, and will cover the period of June 1, 2013 through August 31, 2013. The data collection period for each report ends approximately 30 days prior to the report deadline.