

# DEPARTMENT OF HOMELAND SECURITY

## Office of Inspector General

### Letter Report:

### DHS National Applications Office Privacy Stewardship (Redacted)



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**OIG-08-35**


**April 2008**



# Homeland Security

April 2, 2008

MEMORANDUM FOR: Charles E. Allen  
Under Secretary for Intelligence & Analysis  
Office of Intelligence & Analysis

FROM:   
Richard L. Skinner  
Inspector General

SUBJECT: *National Applications Office Privacy Stewardship*

We reviewed the Department of Homeland Security (DHS) National Applications Office (NAO) privacy stewardship to determine whether NAO's plans and activities instill and promote a privacy culture and are in compliance with privacy regulations. Privacy stewardship includes establishing privacy requirements prior to program initiation, privacy risk assessment and mitigation, and privacy integration in the program operation.

Generally, NAO is making good progress in developing an effective privacy program for its operations. Specifically, NAO involved the DHS Privacy Office early in program planning and development of key organizational documents. Also, NAO acknowledges privacy requirements and states a commitment to privacy in its Charter. By doing so, NAO signaled its intent to incorporate accepted privacy principles in its policies and operating procedures. We identified several elements that serve as a framework for NAO's privacy stewardship. These include ongoing privacy oversight by departmental privacy and civil liberties officers, public notice of system of records, training of NAO personnel, and approved risk assessments. However, a revised Privacy Impact Assessment and a Civil Liberties Impact Assessment reflecting changes in the Charter are still necessary prior to NAO becoming operational.

We recommend the Under Secretary for Intelligence & Analysis direct the Director of NAO to obtain approval by the DHS Privacy Office of an updated program Privacy Impact Assessment reflecting a signed Charter and standard operating procedures and approval by the DHS Office for Civil Rights and Civil Liberties of NAO's Civil Liberties Impact Assessment.

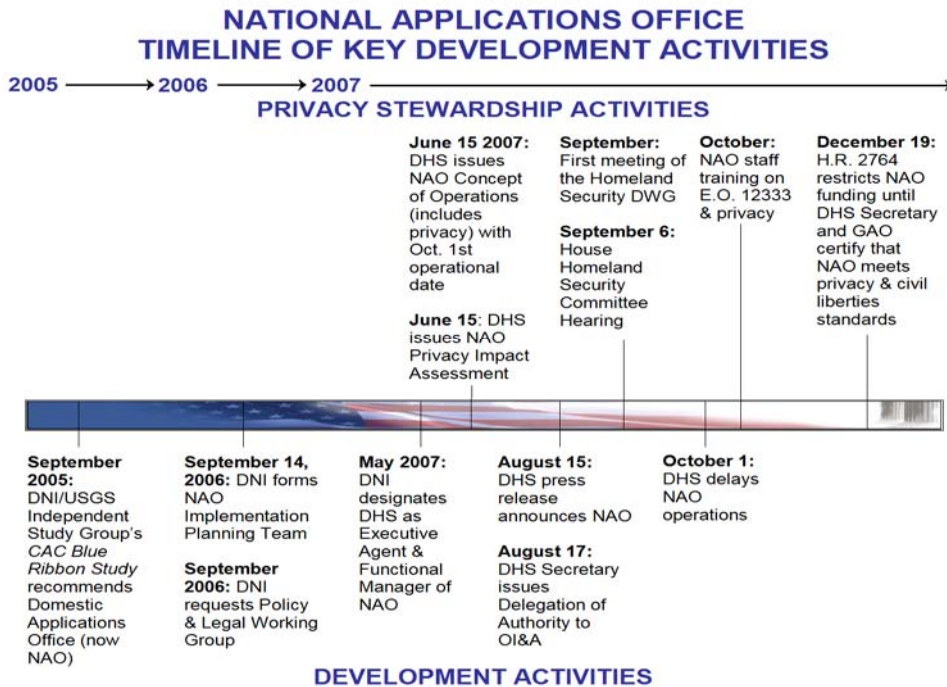
# Background

NAO will perform a centralized role to facilitate access to and proper use of various intelligence community disciplines and capabilities

Within legal boundaries, NAO will share intelligence for domestic scientific, geographic, or environmental research; homeland security; preparation, response, and mitigation of disasters; terrorism response and mitigation; border protection; and criminal and civil law enforcement.

The Director of National Intelligence formed a planning team for NAO in September 2006 and designated the DHS Secretary as Executive Agent of NAO in June 2007. By August 2007, the DHS Secretary delegated management authority to the Office of Intelligence & Analysis, which together with NAO, issued a Concept of Operations. DHS intended for NAO to be operational by October 2007. Figure 1, Timeline of Key Activities, indicates NAO's developmental activities and initial privacy stewardship activities from September 2005 to December 2007.

**Figure 1: Timeline of Key Activities**



## Results of Review

### Framework for Privacy Stewardship is Ready for Implementation

In September 2007, NAO sought agreement from partner Departments to finalize its Charter.<sup>2</sup> NAO involved the Office of the Director of National Intelligence Civil Liberties Protection Office, and the DHS Office of Policy, Privacy Office, and Office for Civil Rights and Civil Liberties to ensure that the Charter adequately addresses DHS policies and privacy and civil liberties safeguards. Additionally, NAO added other key elements in developing its framework for privacy stewardship and implementing active monitoring of privacy compliance.

The elements supporting privacy stewardship include: Charter and standard operating procedures, ongoing guidance from DHS and the Office of the Director of National Intelligence, privacy and civil liberties training, and public notice of a system of records. The left column of Figure 2, Framework for Privacy Stewardship, shows what elements are needed as the foundation for NAO's framework. The second column identifies what NAO is addressing to comply with the legal requirements. In the third column, comments describe the status or a check (✓) indicates completion. The last column indicates the legal requirement or enabling legislation for oversight groups.

**Figure 2: Framework for Privacy Stewardship**

Elements that are Needed	What NAO is Addressing	Status	Requirement
1) Legal framework that complies with existing laws, including all applicable privacy standards	Charter and standard operating procedures	Pending signatory concurrence	<i>Consolidated Appropriations Act, 2008, H.R. 2764 §525</i>
2) External oversight and monitoring	Ongoing guidance and monitoring from DHS Privacy Office, DHS Office for Civil Rights and Civil Liberties, and Office of the Director of National Intelligence Civil Liberties Protection Officer	✓	6 USC §142 (DHS Privacy Officer) and §345 (Officer for Civil Rights and Civil Liberties); <i>Intelligence Reform and Terrorism</i>
	Ongoing guidance from DHS Office of Policy, Office of General Counsel	✓	<i>Prevention Act of 2004, P.L. 108-458, §103D; 50 USC 403-1 (ODNI Civil Liberties Protection Officer)</i>

Data as of February 26, 2008

<sup>2</sup> The draft NAO Charter identifies Departments of Homeland Security, Interior, Justice, and Defense, and the Office of the Director of National Intelligence as its signatories.

The first element of privacy stewardship is a legal framework that includes a Charter and standard operating procedures. The Charter ensures NAO’s compliance with all laws, policies and procedures that protect privacy, civil rights, and civil liberties.

The Charter is a binding agreement among the signatories that describes NAO’s mission, infrastructure for operational oversight, and roles and responsibilities of stakeholders, partners, and customers. Both the Charter and standard operating procedures further define partner and customer interactions because NAO will work with members of the intelligence community and users outside the intelligence community to support civil, homeland security, and law enforcement applications. These procedures embed privacy protections into NAO’s daily operations, such as



The second element supporting NAO’s privacy stewardship is external oversight and monitoring. The DHS Privacy Office, DHS Office for Civil Rights and Civil Liberties, and Office of the Director National Intelligence-Civil Liberties Protection Office provide guidance and monitoring to ensure compliance with privacy and civil liberties protections. The DHS Offices of Policy and General Counsel provide external oversight concerning policy and legal matters. The National Applications Executive Committee is the oversight body for NAO. The three Committee chairs, the Deputy Secretary of DHS, the Deputy Secretary of the Interior, and the Principal Deputy Director of National Intelligence will be aided in their oversight roles by their privacy, civil liberties, and civil rights advisors.

**Figure 2: Framework for Privacy Stewardship (continued)**

Elements that are Needed	What NAO is Addressing	Status	Requirement
3) Training in privacy awareness and privacy and civil liberties in intelligence activities	Privacy Awareness and intelligence activity training for personnel including rules, requirements, and penalties for violations  Customer training	✓  Planned	<i>Privacy Act of 1974, as amended, 5 USC §552a (e)(9)</i>
4) Published Notice of System of Records	System of Records Notice covered by Homeland Security Operations Center	✓	<i>Privacy Act of 1974, as amended, 5 USC §552a (e)(4)</i>

Data as of February 26, 2008

The third element in NAO's framework for privacy stewardship is training on privacy awareness and intelligence oversight activity.<sup>3</sup> As it becomes operational, NAO is responsible for properly administering privacy safeguards for the public and the intelligence community. To comply with the *Privacy Act of 1974*, as amended, NAO must ensure all personnel including customers are properly trained and aware of potential privacy issues and safeguards.<sup>4</sup> In September 2007, NAO complied with the Act's requirements by providing privacy training, which included rules of conduct and consequences for privacy noncompliance.

To comply with its draft Charter, NAO must train personnel on the proper conduct of intelligence oversight. The DHS Office of General Counsel provided this training to NAO personnel in September 2007. As part of NAO's new employee orientation and ongoing training programs, personnel will complete both privacy awareness and intelligence oversight activity training. NAO also plans to develop specific privacy training and guidance for its nontraditional customers and applications.

The fourth element of the privacy stewardship framework is a public notice of NAO's system of records. A system of records is a group of records under the control of an agency from which information is retrieved by the individual's name or some other identifier assigned to the individual. The *Privacy Act of 1974*, as amended, 5 USC 552a (e)(4), requires each agency to publish a System of Records Notice (SORN) in the *Federal Register* describing the purpose of the system, the types of information contained therein, and details for individuals to gain access to information relevant to the individual stored in the system. NAO's proposed system of records is covered under the SORN for the Homeland Security Operations Center, 70 F.R. 20061 (April 18, 2005). As NAO develops its products and services, it will need to review its activities to ensure that any new information that it collects and maintains is appropriately described by the SORN.

## **NAO Risk Assessments are Being Finalized**

Two different types of risk assessments on NAO's program and its information need to be completed. Through a Privacy Impact Assessment, the DHS Privacy Office evaluates possible privacy risks and discusses the mitigation of those risks at the beginning and throughout the development life cycle of a program that handles personal data. Through a Civil Liberties Impact Assessment, the DHS Office for Civil Rights and Civil Liberties will ensure that the domestic use of intelligence capabilities and products complies with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected.

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<sup>3</sup> NAO requires training regarding Executive Order 12333 *United States Intelligence Activities* for personnel so its intelligence activities are conducted in a manner that protects the Constitutional rights and privacy of U.S. persons.

<sup>4</sup> The *Privacy Act of 1974*, as amended, provides protections and handling requirements for records containing information about individuals that are collected and maintained by the federal government and are retrieved by a personal identifier.

The left column of Figure 3, NAO Risk Assessments, indicates that two different types of risk assessments are needed. The second column indicates the areas of risk that NAO is reviewing. In the third column, comments describe the status or a check (✓) indicates completion. The last column lists the requirements for privacy assessments and for the review of civil rights and civil liberties protections in NAO activities.

**Figure 3: NAO Risk Assessments**

What Assessments Are Needed	What NAO is Reviewing	Status	Requirement
1) Approved Privacy Impact Assessments	Privacy risks a) Program b) Program revisions resulting from updated Charter and standard operating procedures, including customer/partner processes	✓ Planned	<i>E-Government Act of 2002</i> , P.L. 107-347, §208 (b)
2) Approved Civil Liberties Impact Assessment	Civil liberties risks	Pending approval	6 USC §345 (Officer for Civil Rights and Civil Liberties)

Data as of February 26, 2008

The first type of assessment, a Privacy Impact Assessment, is required by section 208 of the *E-Government Act of 2002*. In June 2007, NAO submitted a completed Privacy Impact Assessment to the DHS Privacy Office. This assessment described how NAO would comply with the *Privacy Act of 1974*, as amended. However, NAO’s initial program plans will change because it is still finalizing its Charter, standard operating procedures, and customer partner processes to gain concurrence by stakeholders and partners. Therefore, NAO plans to update its initial Privacy Impact Assessment to reflect those changes.

The second type of assessment, Civil Liberties Impact Assessment, is the approach that DHS Office for Civil Rights and Civil Liberties is using to satisfy its assessment requirements under the *Implementing Recommendations of the 9/11 Commission Act of 2007* (Pub. L. 110-53). The Office for Civil Rights and Civil Liberties is finalizing this assessment to ensure that civil liberties are not diminished by programs aimed at securing the homeland.

The organizational framework for NAO is still under development and waiting for final approval. NAO is a complex organization involving many stakeholders, partners and constituents. All of these groups have different concerns and priorities. The Charter, privacy and civil liberties risk assessments, and other key documents create a framework that shows how NAO will be capable of accomplishing an important mission that supports existing privacy laws and policies. However, for a framework of privacy stewardship to be realized, risk assessments must be based upon NAO’s preliminary

activities to instill a culture of privacy and the standard operating procedures and the finalized Charter.

## **Recommendations**

We recommend that the Under Secretary for Intelligence & Analysis direct the Director of NAO to:

**Recommendation #1:** Obtain approval by the DHS Privacy Office of an updated program Privacy Impact Assessment reflecting a signed Charter and standard operating procedures.

**Recommendation #2:** Obtain approved NAO's Civil Liberties Impact Assessment by the DHS Office for Civil Rights and Civil Liberties.

## **Management Comments and OIG Analysis**

We obtained written comments on a draft of this report from the Under Secretary for Intelligence & Analysis. We reviewed the Under Secretary's suggestions and made changes where appropriate. We have included a copy of the comments in Appendix A.

The Under Secretary for Intelligence & Analysis concurred with our findings and recommendations. We consider our recommendations resolved, but open pending our review of actions taken by NAO.

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The review is based on analysis of applicable documentation and interviews with personnel and officials of relevant agencies and institutions. We conducted our audit from October 19, 2007 to February 29, 2008 under the authority of the *Inspector General Act of 1978*, as amended, and according to generally accepted government audit standards.



## Appendix A Management Comments

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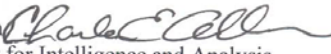
U.S. Department of Homeland Security  
Washington, DC 20528



**Homeland  
Security**

April 1, 2008

MEMORANDUM FOR: Richard Skinner  
Inspector General

FROM: Charles E. Allen   
Under Secretary for Intelligence and Analysis

SUBJECT: Response to Draft Letter Report – National Applications  
Office Privacy Stewardship

I have reviewed your draft report, *National Applications Office Privacy Stewardship*, and appreciate your candid review of this new program, which will become an important mission of the Department. I have endorsed the two recommendations made in your draft report and am pleased to report that the NAO staff has already taken action on both recommendations.

- On Recommendation 1, the DHS Office of Privacy completed an updated program Privacy Impact Assessment on March 11, 2008.
- On Recommendation 2, the DHS Officer for Civil Rights and Civil Liberties completed a Civil Liberties Impact Assessment on March 5, 2008.

Because action on the two recommendations has now been completed, I suggest that they not be included in your final report.

Finally, your report noted the need for a signed charter. Again, I am pleased to report that the NAO charter was signed by DHS, DOD, DOI, DNI, and DOJ on February 29, 2008. Copies of the signed charter, Privacy Impact Statement, Civil Liberties Impact Statement, and three key NAO Standard Operating Procedures have been provided to your Office. In addition to the comments above, my staff has separately provided some minor technical edits for your consideration.

I am personally grateful to you and your staff for the very professional manner in which you and your officers have handled this review. As you can see, privacy, civil rights, and civil liberties have been a central consideration throughout the development of the NAO.

**Appendix B**  
**Major Contributors to this Report**

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**Special Projects Division**

Marj Leaming, Director

R. Steve Durst, Audit Manager

Michael Galang, Management and Program Analyst

Kyle Peterson, Management and Program Assistant

Gretchen Trygstad, Management and Program Assistant

Anthony Nicholson, Referencer

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