

Information Technology: Government-Wide Guidance on Handling Data Could Improve Civil Rights and Civil Liberties Protections

GAO-25-106057

Q&A Report to Congressional Requesters

November 19, 2024

Why This Matters

New and emerging technologies and data capabilities have changed society's understanding of how to protect the civil rights and civil liberties of all Americans. Civil rights include, among other things, legal protections against discrimination in accessing employment, education, and housing because of race, color, national origin, disability, age, religion, and sex. Civil liberties are fundamental rights and freedoms such as those listed in the Bill of Rights, which include privacy protections, speech, and due process, among other things. However, civil liberties are not governed by the same federal legislation as most civil rights but are primarily protected through common law.

Society's increased reliance on digital platforms and data storage has made the safeguarding of personal information more essential. For example, civil rights and civil liberties advocates have noted that the use of facial recognition at certain events—such as protests—can have a chilling effect on individuals exercising their First Amendment rights. Additionally, facial recognition and artificial intelligence (AI) technologies have the potential for error and thus can misidentify individuals.

We were asked to examine federal agencies' civil rights and civil liberties protections related to data collection, sharing, and use. This report includes information on laws and guidance pertaining to civil rights and civil liberties and efforts the 24 Chief Financial Officers Act of 1990 (CFO Act) agencies are taking to protect the public's civil rights and civil liberties when collecting, sharing, and using data.¹ It also includes agency-reported challenges related to protecting civil rights and civil liberties while using personal information and actions taken to address the reported challenges.

Key Takeaways

- Agencies lack government-wide laws and guidance that identify how civil rights and civil liberties are to be considered and protected as they relate to data collection, sharing, and use.
- Agencies reported varying protections for the public's civil rights and civil liberties in the areas of establishing dedicated offices, appointing designated officials, and developing standalone policies and procedures for collecting, sharing, and using data.
- Agencies reported challenges in protecting the public's civil rights and civil liberties while using personal information that include handling issues that arise from new and emerging technologies and the lack of qualified and dedicated personnel.

- Agencies reported taking steps to address the challenges, but also stated that additional government-wide guidance or laws for protecting civil rights and civil liberties related to technology and data collection, sharing, and use would be useful and solve challenges in this area.

What federal laws and guidance address civil rights and civil liberties?

Federal agencies are governed by the U.S. Constitution’s Bill of Rights and are responsible for both enforcing and following federal laws and guidance that established requirements and responsibilities for ensuring civil rights and civil liberties protections.² Federal laws, such as those listed below, help govern what select federal agencies may collect, share, and use public data for during specific mission work (e.g., national security) or during use of specific technologies.

- **Privacy Act of 1974.** The act places limitations on agencies’ collection, disclosure, and use of personal information maintained in systems of records.³ It requires agencies to issue system of records notices to notify the public when they establish or make changes to systems of records. The notices identify, among other things, the types of data collected, the types of individuals about whom information is collected, the intended “routine” uses of the data, and procedures that individuals can use to review and correct personal information.
- **E-Government Act of 2002.** The act strives to enhance protection for personal information in government information systems by requiring that agencies conduct, where applicable, a privacy impact assessment (PIA) for each system.⁴ This assessment is an analysis of how personal information is collected, stored, shared, and managed in a federal system. Agencies must conduct a PIA before developing or procuring IT that collects, maintains, or disseminates information that is in an identifiable form. A PIA must also be performed before initiating any new data collection involving identifiable information that will be collected, maintained, or disseminated using IT if the same questions or reporting requirements are imposed on ten or more people.
- **Implementing Recommendations of the 9/11 Commission Act of 2007 (the 9/11 Commission Act).** This act puts into effect the recommendations made by the 9/11 Commission to enhance national security and includes civil liberties protections for improving information sharing, among other things.⁵ Specifically, selected agencies—the Departments of Defense (DOD), Health and Human Services, Homeland Security (DHS), Justice (DOJ), State, and Treasury—are required to designate a senior official to serve as the privacy and civil liberties officer. The officer is responsible, among other things, for considering the protections of the public’s civil liberties as they relate to issues of national security, and to consider the privacy and civil liberties issues concerning anti-terrorism efforts. These officers also conduct periodic reviews of agency actions to ensure adequate considerations of privacy and civil liberties and advise their department or agency when protecting the nation against terrorism.
- **Executive Order 14110, “Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence.”** This order was issued in October 2023 to provide, among other things, new AI safety and security standards. It focuses on actions intended to advance equity and civil rights.⁶ The executive order requires agencies to evaluate their collection and use of commercially available data containing personally identifiable information. The order also includes requirements for strengthening AI, civil rights, and civil liberties in the criminal justice system. To assist federal agencies with these tasks, in January 2024, the Office of Management and Budget (OMB) published a

request for the public to provide input on PIAs and insight on potential improvements for mitigating technology risks.⁷

- **OMB Memorandum M-24-10, *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence*.** This memo, issued in March 2024, established new agency requirements and guidance for AI governance, responsible innovation, and risk management practices.⁸ The memo included a requirement for all agencies to implement risk management practices, including the completion of an AI impact assessment for products that could impact safety and rights of the public. It also requires agencies to work with officials responsible for civil rights and civil liberties on identifying safety-impacting and rights-impacting AI within the agency. Further, it requires AI governance boards to include appropriate representation from senior agency officials responsible for civil rights and civil liberties.⁹

However, beyond privacy protections, there is currently no specific government-wide federal guidance on how to address civil rights and civil liberties issues associated with agency collection, sharing, and use of sensitive data. While there are existing federal laws and guidance focus on civil rights, they primarily address the civil rights complaint process and compliance efforts. The governing statutes and federal guidance do not comprehensively address the use of large volumes of data by emerging technologies, particularly those with the potential to misidentify individuals and to introduce bias against people with certain racial and ethnic backgrounds. The need to mitigate those types of systemic risks is not addressed.¹⁰

In addition, laws and guidance that govern civil liberties primarily focus on privacy. However, other broader civil liberties considerations include due process, informed consent, and data protection related to the use of publicly available information. These broader issues are not addressed in the federal guidance that outline privacy protections, which only apply to data stored in systems of records and therefore may not be addressed by agencies' privacy programs.

Further, existing federal guidance that addresses civil rights and civil liberties considerations applies only in specific circumstances in which agencies use AI, such as when the technology may impact rights or safety. The guidance does not apply to other technologies, such as facial recognition, that an agency may use to collect or share personal data, which present similar risks to the public's civil rights and civil liberties. Similarly, the existing guidance does not specify when federal agencies may use publicly available or commercially provided information and, what obligations, if any, apply to those data sets.

What actions, if any, have agencies taken to protect the public's civil rights and civil liberties?

The 24 CFO Act agencies varied in their actions to establish dedicated offices, designate oversight officials, and develop policies and procedures to protect the public's civil rights and civil liberties with respect to collecting, sharing, and using data.

Dedicated offices

All 24 CFO Act agencies established offices to handle the protection of the public's civil rights as identified in federal laws, including the Civil Rights Act of 1964. For example, agencies either positioned their civil rights office within the Office of the Secretary or Assistant Secretary, located their civil rights office in administrator offices, or established an equal employment opportunity office. These offices focused on the handling of civil rights complaints and violations,

including those that involve complaints deriving from the collection of, sharing, and using data.

In addition, four of 24 agencies—DOD, DHS, DOJ, and the Department of Education—have dedicated offices that handled civil liberty protections agencywide.¹¹ For example, DHS created the Office for Civil Rights and Civil Liberties to provide compliance oversight of these protections for agencywide activities, including collecting and sharing data. In addition, DOJ established the Office of Privacy and Civil Liberties focused on assisting the department with consideration and guidance, among other things, for civil liberties issues and protections.

The remaining 20 agencies reported not having dedicated agencywide offices that handled civil liberties protections. Instead, these agencies reported having a decentralized approach to protecting civil liberties, including when collecting, sharing, and using data. For example, the Department of the Interior reported that civil liberties protections are a shared responsibility between offices across the agency and its components.

Designation of an oversight official

Each of the 24 CFO Act agencies designated an official to oversee the protection of a person's civil rights. For instance, the Department of Labor designated a director to oversee the agency's Civil Rights Center. The director's responsibilities include ensuring that the department complies with equal employment opportunity regulations, enforcing civil rights laws, protecting individuals against retaliation, and handling the complaints process (including ones that involves data collection, sharing, or use).

In addition, seven of 24 agencies—DOD, DHS, DOJ, and the Departments of Education, Health and Human Services, State, and Treasury—designated an official with agencywide civil liberties responsibilities. For example, DHS designated a Civil Rights and Civil Liberties Officer who is responsible for, among other things, assisting with the development, implementation, and periodic review of department policies and procedures.¹² The officer also provides advice and guidance to ensure the protection of civil rights and civil liberties for individuals impacted by the programs and activities of the agency.

The remaining 17 agencies did not designate an official with agencywide responsibility and accountability for ensuring the protection of the public's civil liberties. According to these agencies, protecting civil liberties is a shared responsibility. For example, the Office of Personnel Management reported that the responsibilities to consider civil liberties protections are handled by multiple individuals across the program offices of the agency.

Table 1 identifies the offices and officials with civil rights and civil liberties responsibilities within the 24 CFO Act agencies.

Table 1: Officials and Offices with Agencywide Civil Rights and Civil Liberties Responsibilities at the 24 Chief Financial Officers Act of 1990 Agencies

Agency	Designated Civil Rights Official	Responsible Civil Rights Office	Designated Civil Liberties Official	Responsible Civil Liberties Office
U.S. Agency for International Development	Director of the Office of Civil Rights	Office of Civil Rights	None	None
U.S. Department of Agriculture	Acting Assistant Secretary for Civil Rights	Office of the Assistant Secretary for Civil Rights	None	None
Department of Commerce	Director of the Office of Civil Rights	Office of Civil Rights	None	None
Department of Defense	Executive Director for Office of Force Resiliency	Office of Force Resiliency	Privacy and Civil Liberties Officer	Office of the Under Secretary of Defense for Privacy, Civil Liberties, and Transparency
Department of Education	Assistant Secretary for Civil Rights	Office for Civil Rights	Senior Agency Official for Privacy	Student Privacy Policy Office within the Office of Planning, Evaluation and Policy Development
Department of Energy	Director, Office of Energy Justice and Equity, Office of Civil Rights and Equal Employment Opportunity	Office of Energy Justice and Equity, Office of Civil Rights and Equal Employment Opportunity	None	None
Department of Health and Human Services	Director of the Office for Civil Rights	Office for Civil Rights	Privacy and Civil Liberties Officer	Relevant Operating Division or Staff Division
Department of Homeland Security	Officer for Civil Rights and Civil Liberties	Office of Civil Rights and Civil Liberties	Civil Rights and Civil Liberties Officer	Office for Civil Rights and Civil Liberties
Department of Housing and Urban Development	Principal Deputy Assistant Secretary for Fair Housing and Equal Opportunity	Office of Fair Housing Equal Opportunity	None	None
Department of the Interior	Director/Principal Diversity Officer	Office of Diversity, Inclusion, and Civil Rights	None	None
Department of Justice	Assistant Attorney General for Civil Rights	Civil Rights Division	Privacy and Civil Liberties Officer	Office of Privacy and Civil Liberties
Department of Labor	Director of Civil Rights	Civil Rights Center	None	None
Department of State	Acting Director for Office of Civil Rights	Office of Civil Rights	Privacy and Civil Liberties Officer	Under Secretary for Management
Department of Transportation	Director of the Departmental Office of Civil Rights	Departmental Office of Civil Rights	None	None
Department of the Treasury	Acting Director for Office of Civil Rights and Equal Employment Opportunity	Office of Civil Rights and Equal Employment Opportunity	Director of Privacy and Civil Liberties	Office of Privacy, Transparency, & Records
Department of Veteran Affairs	Assistant Secretary for Human Resources and Administration	Office of Resolution Management Diversity and Inclusion	None	None
Environmental Protection Agency	Acting Deputy Director for Office of External Civil Rights Compliance	Office of External Civil Rights Compliance	None	None
General Services Administration	Associate Administrator for Office of Civil Rights	Office of Civil Rights	None	None
National Aeronautics and Space Administration	Associate Administrator for Diversity and Equal Opportunity	Office of Diversity and Equal Opportunity	None	None
National Science Foundation	Office Head for Office of Equity and Civil Rights	Office of Equity and Civil Rights	None	None

Agency	Designated Civil Rights Official	Responsible Civil Rights Office	Designated Civil Liberties Official	Responsible Civil Liberties Office
Nuclear Regulatory Commission	Director of Office of Small Business and Civil Rights	Office of Small Business and Civil Rights	None	None
Office of Personnel Management	Office of Personnel Management Director	Equal Employment Opportunity Office	None	None
Small Business Administration	Assistant Administrator for the Office of Diversity, Inclusion, and Civil Rights	Office of Diversity, Inclusion and Civil Rights	None	None
Social Security Administration	Deputy Commissioner for Civil Rights and Equal Opportunity	Office of Civil Rights and Equal Opportunity	None	None

Source: GAO analysis of agency data. | GAO-25-106057

Protections in policies and procedures

Twelve of the 24 CFO Act agencies reported that the consideration to protect a person’s civil rights and civil liberties when collecting, sharing, and using data is included in their privacy compliance activities. These activities include PIAs or system of record notices, among other things. For example, Department of Commerce officials responsible for civil liberty protections stated that privacy threshold and impact assessments are conducted and include the consideration to protect the civil liberties of the public’s personal information. Also, Nuclear Regulatory Commission officials who handles privacy protections reported that the agency considers civil liberties when conducting privacy impact assessments and during the system of records notice process. According to these officials, the assessment allows the agency to, among other things, oversee that civil liberties are safeguarded.

Additionally, four agencies—DOD, DHS, DOJ, and the Department of Treasury—reported addressing civil rights and civil liberties protections in standalone policies and procedures. For example, DHS established a civil rights and civil liberties impact assessment tool used by its civil rights and civil liberties policy analysts to review various departmental programs, policies, or activities and determine the risk of impact on a particular group or individuals. In another instance, Treasury has a policy that requires the Chief Privacy and Civil Liberties Officer to receive, investigate, and respond to civil liberties violations.¹³

Conversely, the remaining eight agencies reported not including or considering civil rights and civil liberties protections in any policies and procedures. Specifically, the U.S. Agency for International Development reported that their data collections are not focused on data from the American public.¹⁴ The remaining seven agencies did not include civil rights and civil liberties considerations in separate policies and procedures as it is not a requirement to do so.

What challenges have agencies reported for protecting civil rights and civil liberties while using personal information?

According to the results of GAO’s questionnaire, all 24 agencies reported a variety of challenges related to civil rights or civil liberties protections while collecting, sharing, and using the public’s personal information. Further, questionnaire results showed that there were two most frequently cited challenges. Specifically, 12 agencies cited complexities in handling protections associated with new and emerging technologies and 11 agencies reported a lack of dedicated and qualified staff with civil rights and civil liberties and technology skills.

New and emerging technologies

- Department of the Interior officials in the Office of Diversity, Inclusion and Civil Rights reported an insufficient number of skilled and knowledgeable staff that can manage the risks associated with new and emerging technology. Specifically, these officials noted that finding staff that can identify civil rights issues, understand the considerations and potential risks, and mitigate and monitor them is a challenge.
- The National Aeronautics and Space Administration officials in the Office of Diversity and Equal Opportunity noted that the existing section 508 regulations do not address IT accessibility issues with emerging technology.¹⁵ Officials also reported that since civil rights discrimination related to the use of emerging technology is a new area of the law, it will require federal equal employment opportunity specialists to develop experience in it.
- DOD's Privacy and Civil Liberties Division officials reported that rapid changes in technology and its impact on civil liberties presents a challenge. Specifically, these officials noted that it is difficult to keep policies and procedures current.
- Department of Transportation officials responsible for civil liberties protections noted that new and emerging technologies may introduce questions that existing department policy frameworks find difficult to address.
- DHS officials reported the rate at which technology is moving and the insufficient numbers of existing regulations and requirements to follow, as their biggest challenges. Specifically, officials from the United States Coast Guard noted that the emergence of AI has resulted in articles being published, and studies being conducted on AI's impact on individual civil rights. According to Coast Guard officials, since AI systems typically use a machine learning process, it tends to replicate previous decisions, which may include inherent biases toward individuals who are members of protected groups.¹⁶

Qualified and dedicated personnel

- Department of Treasury officials reported that finding personnel with the qualifications necessary to analyze civil liberties issues is a challenge. The officials noted that private sector companies are hiring qualified employees at salaries that exceed what similar professionals can earn in the federal government.
- DOJ officials from the Office of Privacy and Civil Liberties cited challenges of agency components not having dedicated staff to assess the potential civil liberties impact on an individual during the collection, use, and sharing of personal data. The officials noted that these tasks are addressed as time allows because staff are focused on completing their primary responsibilities.
- Department of Interior officials from the Office of Diversity, Inclusion, and Civil Rights reported that the agency relies on targeted role-based skills and expertise and may not have personnel with the skillset to oversee civil liberties protections.
- DHS officials from the Office for Civil Rights and Civil Liberties noted finding personnel with technical and civil rights knowledge and experience in multiple areas has been difficult. Additionally, officials from the Cybersecurity and Infrastructure Security Agency noted that traditional job series such as management and program analysis are not well-suited for addressing these challenges.

- General Services Administration officials from the Office of Civil Rights noted that filling IT related job series is already difficult and time consuming and obtaining personnel with civil liberties and technology skills can be considerably more challenging.

How did agencies address reported civil rights and civil liberties challenges?

Five of the 24 agencies that identified civil rights or civil liberties challenges in their questionnaire responses reported taking actions to address those challenges in the collection, use, and sharing of the public's personal information.

New and emerging technologies

- DHS officials from United States Citizenship and Immigration Services' Privacy office reported that it has informally conducted an analysis of civil rights and civil liberties. The office reviewed the results and incorporated the identified impacts, concerns, and mitigation strategies into the established privacy compliance process. According to the officials, this was done to ensure that all uses of emerging and advanced technology are reviewed across the privacy, civil rights, and civil liberties spectrum.
- DOJ officials from the Office of Privacy and Civil Liberties reported that when significant privacy and civil liberties risks arise with new technology for use across multiple agency components, a working group is formed. According to officials, agency leadership and the Chief Privacy and Civil Liberties Officer develop this group consisting of various agency components to discuss needs and data collection and use and develop measures to mitigate identified risks. In addition, the same officials reported developing budget requests with agency components that were based on their comprehensive privacy review.
- The Department of Transportation reported updating its policy framework with risk analysis guidance to address issues related to emerging technology, such as AI.¹⁷
- The Social Security Administration reported reviewing risk factors and potential remediations for emerging technology usage and its impact on a person or group.

Qualified and dedicated personnel

- DOD officials from the Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency reported taking steps to mitigate the staffing shortages in its civil liberties program. Specifically, the officials reported including the department's general counsel offices to assist with identifying civil liberties issues and allocating funds to hire a dedicated employee to lead the civil liberties program. In addition, the department reported making civil liberties training available across the workforce.

Nevertheless, questionnaire results showed that eight agencies noted that additional government-wide guidance or laws for protecting civil rights and civil liberties related to technology and data collection, sharing, and use would be useful and solve challenges in this area.

- Department of Commerce officials noted that to mitigate their coordination challenge, government-wide guidance that standardizes how agencies are to protect the public's civil rights and liberties related to agencies' data collection and use would be helpful. Additionally, the officials also noted that training would allow the agency to identify issues and the relevant expertise in a timelier manner.¹⁸

- Department of Energy officials from the Office of Civil Rights and Diversity noted that the agency continues to experience AI related challenges with accessing data and that policies and government-wide guidance could assist the agency with data sharing that otherwise cannot be received or shared.¹⁹
- DHS Cybersecurity and Infrastructure Security Agency officials from the Equal Employment Opportunity program reported that an overarching policy or statute for civil rights and civil liberties relating to technology, data collection, sharing, and use would provide a consistent framework for protecting the public's information. In addition, DHS officials noted that guidance to assist with the insufficient number of existing regulations and requirements to follow when protecting civil liberties would be helpful. Specifically, officials from U.S. Coast Guard reported that civil liberties may be impacted by AI and its decision making, but that having guidance would be helpful as they assess the use of new technologies and its collecting, sharing, and use of data.
- Department of Health and Human Services officials from the Office for Civil Rights reported that government-wide guidance and laws are vital to ensuring civil rights protections within health care. The officials also reported that the potential for discrimination emerges with the development of new technology or methods in which data sharing occurs.
- Department of the Interior officials from the Office of Diversity, Inclusion and Civil Rights noted that government-wide guidance or laws for civil rights and civil liberties protections during data collection, sharing, and use would promote awareness, consistency, and individual protections, among other things.
- Department of Transportation officials from the Departmental Office of Civil Rights reported that they would support government-wide civil rights guidance related to technology and data collection, sharing, and use. According to officials, emerging technologies have the potential to introduce questions that their existing policy frameworks may be unable to answer.
- General Services Administration officials noted that federal guidance would assist agencies to avoid violations of the public's civil rights and civil liberties when collecting and using their personal information because as government operations' reliance on emerging technologies increases so does the risk of civil rights and liberties violations. Officials further noted that a uniform set of policies and procedures would eliminate the "hodge-podge" approach to the governance of data and technology. This could ensure greater protections by reducing improper or unintended sharing of data.
- National Aeronautics and Space Administration officials noted consistent government-wide guidance and policy outlining clear expectations could assist with protecting civil liberties. Officials also noted that federal agencies could include the expectations into their related IT policies.

As previously mentioned, existing federal laws and guidance do not provide a comprehensive government-wide and technology inclusive approach to protecting the public's civil rights and civil liberties while using sensitive data. Agencies are currently using inconsistent approaches, with some not taking any action at all. Further, several agencies noted that government-wide guidance would be helpful to ensure awareness and consistency in protecting the public's civil rights and civil liberties. Agencies also pointed out that emerging technologies, such as AI, pose new questions and concerns with protecting civil rights and civil liberties. While some aspects of existing federal guidance address important civil rights and civil liberties issues, such as privacy and risks from

using AI, there are other areas of concern, technologies and methods of data collection that remain unaddressed.

It is important that government-wide guidance or regulation is issued that addresses a broad approach to considering civil rights and civil liberties protections. The guidance or regulations should consider all civil rights and civil liberties considerations and technologies used to collect, share, and use sensitive data. Until such guidance or regulations are issued, there is an increased risk of agencies' collection, sharing, and use of data potentially violating the public's civil rights and civil liberties.

Conclusions

The amount of personally identifiable information collected through the use of emerging technology poses challenges to individuals' civil rights and civil liberties. As previously stated, it is important to recognize that the protection of civil rights and civil liberties extend beyond privacy. Other considerations include freedom of speech, due process, and informed consent, among other things, which are important to ensure that all inherent freedoms are protected. Additionally, it is important for agencies to consider civil rights and civil liberties issues during the use of all technologies that could impact the public.

A lack of government-wide guidance that addresses broad civil rights and liberties considerations has led to an inconsistency in agencies' development of policies and procedures related to collecting, sharing, and using data. It has also prompted several agencies to report challenges related to protecting the public's civil rights and civil liberties in this area. Developing such guidance could help ensure consistency across federal agencies in response to emerging technologies and protecting the public's personal information when collecting, sharing, and using data.

Matter for Congressional Consideration

To assist federal agencies with consistently implementing civil rights and civil liberties protections when collecting, sharing, and using data, we suggest that Congress direct an appropriate federal entity to issue government-wide guidance or regulations addressing this matter. In its direction, Congress should consider delegating to such entity the explicit authority to make needed technical and policy choices or explicitly stating Congress's own choices.

Agency Comments

We provided a draft of this report to OMB and the 24 CFO Act agencies for review and comment.

The agencies did not agree or disagree with the report. Three agencies provided written comments which are summarized below. Ten agencies provided only technical comments, which we incorporated as appropriate.²⁰ The remaining twelve agencies, including OMB, did not have comments on this report.²¹

- The Department of Housing and Urban Development reported several actions the agency was taking to reduce the risk of civil rights and civil liberties violations related to personal and consumer data. Further, the agency noted that government-wide guidance on the risks of new technologies to civil rights has been valuable, and that continued guidance would be useful. Lastly, the letter stated that resources currently allocated for monitoring and enforcing civil rights are inadequate to fully address issues related to technology, privacy, and civil liberties that can also lead to civil rights issues. The comments are reprinted in appendix II.
- The Social Security Administration stated the agency is working to ensure that civil rights and civil liberties protections exist for its AI use cases and

utilize an agency-wide AI framework that aligns with the requirements from federal guidance. The comments are reprinted in appendix III.

- The U.S. Agency for International Development reported that it collects data, about U.S. Citizens, but only during their employment and other programmatic and business functions. The comments are reprinted in appendix IV.

How GAO Did This Study

To inform all our work, we focused on the 24 CFO Act agencies. We reviewed federal laws including the Civil Rights Act of 1964, the Privacy Act of 1974, and the 9/11 Commission Act to identify government-wide civil rights and civil liberties requirements with respect to the collection, sharing, and use of personal information.

We also determined, among other things, whether the 24 CFO Act agencies had a dedicated office, designated oversight official, and policies and procedures to protect the public's civil rights and civil liberties when handling data. To do so, we analyzed documentation, such as policies and procedures, organizational charts, and interviewed relevant agency officials.

In addition, we summarized agency-reported challenges in implementing civil rights and civil liberties protections with respect to data. To do so, we reviewed federal civil rights and civil liberties protections and interviewed relevant officials at the 24 CFO Act agencies and the Office of Management and Budget Office of Information and Regulatory Affairs staff. We also worked with our librarian to conduct a literature search to identify a list of advocacy organizations and academic authors to interview. We then conducted interviews with selected experts from academia and civil rights and civil liberties advocacy groups to obtain additional information on the challenges relating to technology and the public's civil rights and civil liberties.

We then developed and administered a questionnaire to the 24 CFO Act agencies to identify any potential challenges encountered with implementing civil rights and civil liberties protections when using data and any actions taken to address them. To develop the questionnaire, we used information from our prior reports, early interviews with the agencies, and information gathered from discussions held with the academic authors, and advocacy groups to determine the areas of inquiry. We developed this questionnaire in collaboration with our research methodologist. It underwent internal peer review as well as pretesting with federal civil rights and civil liberties agency officials that would be responding to our survey.

The questionnaire was divided into four sections and a summary of the types of statements and questions asked to agencies include, but are not limited to:

Section 1: Civil rights and civil liberties considerations and the use of technology

- Existing agency policies, processes, or procedures to analyze civil rights and civil liberties when using technology (e.g., artificial intelligence or algorithmic/automated decision-making, facial recognition technology, etc.) present a challenge.
- Minimizing risk associated with the agency's use of new and emerging technology (e.g., artificial intelligence or algorithmic/automated decision-making, facial recognition technology, etc.) presents a challenge.
- Protecting the public's civil rights and civil liberties against inappropriate use of personally identifiable information collected through technology (e.g.,

artificial intelligence or algorithmic/automated decision-making, facial recognition technology, etc.) by non-Federal entities (e.g., prime contractors, third-party data brokers, etc.) presents a challenge.

Section 2: Agency civil rights and civil liberties allegation processes and procedures

- Does your agency have an internal process to track allegations of agency violations of civil rights and civil liberties?
- What procedures or steps are taken with a civil liberties violation allegation is filed?

Section 3: Coordination, personnel resources, and spending

- Coordination among internal agency offices, programs, or stakeholders (e.g., Privacy Officer, Chief Information Officer, Data Steward, Legal Counsel, etc.) to ensure civil rights and civil liberties protections when data is collected, shared, or used presents a challenge.
- Hiring personnel with skills and expertise in technology and civil liberties presents a challenge.

Section 4: Federal guidance and oversight

- There should be further government-wide guidance or laws for protecting civil rights and civil liberties as it relates to technology and data collection, sharing, and use.
- There should be an oversight or advisory entity like the U.S. Privacy and Civil Liberties Oversight Board (PCLOB) with a broader mission or authority for protecting civil rights and civil liberties for all federal agencies. (PCLOB is an independent agency within the Executive Branch with a mission to ensure that the federal government’s efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties.)

The questionnaire offered a scale of responses from “strongly agree” to “strongly disagree” or “no basis to judge” for statements, or “yes” and “no” responses to questions. Space was also provided to enter a written response, where appropriate.

We administered the questionnaire from August 2023 to November 2023 and analyzed the results to identify the number of agencies citing challenges in the following categories: civil rights, civil liberties, and technology; coordination, personnel, and funding; and government guidance and oversight. We also used the results to determine what actions, if any, the agencies took to address the challenges they reported. All 24 agencies responded to the questionnaire.

We conducted this performance audit from May 2022 to November 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

List of Addressees

The Honorable Gary C. Peters
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Ron Johnson
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

We are sending copies of this report to the appropriate congressional committees, the heads of the agencies in our review, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

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Appendix I: Academic Authors and Civil Rights and Civil Liberties Advocacy Groups

We conducted interviews with academic authors and advocacy groups to inform our work on new and emerging technology and its impact on civil rights and civil liberties. The experts who we interviewed are listed below.

Heath Brown
Associate Professor of Public Policy, John Jay College of Criminal Justice, City University of New York

Sophia Cope
Senior Staff Attorney, Electronic Frontier Foundation

John Davisson
Director of Litigation and Senior Counsel, Electronic Privacy Information Center

Amy Fischer
Advocacy Director for the Americas, Amnesty International USA

Joshua Franco
Senior Research Advisor and Deputy Director of Amnesty Tech, Amnesty International

Ashley Gorski
Senior Staff Attorney, American Civil Liberties Union National Security Project

Elizabeth Joh
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Michael Kleinman
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Helen Murkuri-Smith
Amnesty International Algorithmic Accountability Lab

Jay Stanley
Senior Policy Analyst, American Civil Liberties Union Speech, Privacy, and
Technology Project

Sylvia Waghorne
Associate, Sheppard Mullin

James E. Wright II,
Assistant Professor and Co-Director of The Social Justice and Innovation Lab,
Florida State University

Harlan Yu
President and Executive Director, Upturn

Appendix II: Comments from the Department of Housing and Urban Development

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OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
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October 18, 2024

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Director of Information Technology and Cybersecurity Issues
Government Accountability Office
441 G St., NW
Washington, DC 20548

Dear Ms. Cruz Cain:

Thank you for providing HUD with the opportunity to review your draft report, and your attention to civil rights and civil liberties. HUD shares GAO's and Congress' concerns that technology such as artificial intelligence, facial recognition, and microtargeting have the potential for violating civil rights laws like the Fair Housing Act, and civil liberties such as due process.

The Department understands your report is focused on technologies agencies use to collect and maintain data, and how the federal government protects citizens' civil rights and civil liberties during data collection. HUD's Privacy Office oversees these internal policies for data collection, maintenance, and any associated risks to civil rights and civil liberties. HUD's Office of Fair Housing and Equal Opportunity (FHEO) is HUD's civil rights enforcement office, and investigates and resolves violations of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments Act of 1972, the Age Discrimination Act of 1975, Section 109 of Title I of the Housing and Community Development Act of 1974, Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022) to the Violence Against Women Act of 1994, and the Americans with Disabilities Act.

FHEO's responsibility under these statutes is broad and far reaching. Appropriated resources must be stretched to address many competing priorities. FHEO administers the statutorily mandated complaint process under the Fair Housing Act which prohibits discrimination in the sale, rental and financing of housing, including private market transactions. FHEO oversees compliance of fair housing laws by entities that receive HUD funding, including thousands of public housing and community development agencies. This civil rights work is distinct and separate from HUD's internal data collection and processing. Please note that there is no dedicated civil liberties office or staff within the Privacy Office whose role is to monitor these issues as applied to HUD's data collection and data maintenance.

Regarding federally funded programs and regulated entities, the Department has taken several significant actions to reduce the risk of civil rights and civil liberties violations related to personal and consumer data which do not appear in GAO's draft report due to the report's focus on internal data collection and protection. Please consider expanding the report's scope to

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include information about what agencies are requiring of their funded programs and regulated entities. This would provide Congress a more accurate picture of HUD's past and continuing efforts to address these important issues.

To reduce the risk of civil rights and civil liberties violations posed by facial recognition technology in HUD funded programs, the Department included language in all Notices of Funding Opportunities prohibiting the use of HUD funds to purchase any form of facial or biometric recognition technology for the purposes of surveillance or any other use that may adversely impact equitable access to housing. As a mandatory reviewing office in HUD's Departmental Clearance process, FHEO consistently reviews proposed data collections and new technology with the goal of protecting the civil rights of recipients of HUD assistance and the broader public.

HUD also recently [published guidance that applies to HUD regulated entities](#) outlining best practices for using artificial intelligence and machine learning by housing providers to conduct tenant screening – an area of growing risk for Fair Housing Act violations that harm renters. The [guidance describes](#) the increasing use of third-party screening companies to aid with tenant screening decisions and the emerging use of machine learning and artificial intelligence to aggregate factors such as rent payment history and housing court filings. The guidance includes strategies to conduct fair, transparent, and non-discriminatory tenant screening policies for both housing providers and companies that offer tenant screening services. Several of these focus on ensuring the accuracy of data collection and providing an accessible challenge or appeal process to correct erroneous negative information.

Concurrently, HUD [published guidance](#) related to digital technology that leverages demographic and other consumer data to target marketing and advertising in ways that could violate civil rights and fair housing protections. These violations may occur when certain ad targeting and delivery functions unlawfully deny consumers information about housing opportunities based on the consumers' protected characteristics. Violations of the Fair Housing Act may also occur when ad targeting and delivery functions are used, on the basis of protected characteristics, to target vulnerable consumers for predatory products or services, display content that could discourage or deter potential consumers, or charge different amounts for delivered advertisements.

Finally, HUD's engagement with the Department of Justice to meet the objectives and requirements of Executive Order 14110 has been beneficial and productive, culminating in the April 4, 2024 [Joint Statement On Enforcement Of Civil Rights, Fair Competition, Consumer Protection, And Equal Opportunity Laws In Automated Systems](#). This collaboration demonstrates the value to a "whole of government" approach to protecting civil rights and civil liberties from technological threats.

In conclusion, HUD would like to clarify two positions that are not reflected in the report. First, HUD concurs with and should be counted among federal agencies that have reported that government-wide guidance on the risks of new technologies to civil rights has been valuable, and that continued guidance would be useful. Second, HUD also wishes to report that current resources appropriated for civil rights monitoring and enforcement are

strained and inadequate to fully address emerging issues related to technology, privacy, and civil liberties that also have important civil rights implications.

HUD appreciates the opportunity to respond to this draft report and hopes these comments will be incorporated into the final release. Thank you again for your consideration of these important civil rights issues.

Sincerely,



Lynn Grosso
Deputy Assistant Secretary
for Enforcement

**Appendix III:
Comments from the
Social Security
Administration**



SOCIAL SECURITY
Office of the Commissioner

October 17, 2024

Marisol Cruz Cain
Director, Information Technology and Cybersecurity Team
United States Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Director Cain,

Thank you for the opportunity to review the draft report "Information Technology: Government-Wide Guidance on Handling Data Could Improve Civil Rights and Civil Liberties Protections" (GAO-25-106057). We have no technical comments. However, we are working to ensure that the Civil Rights and Civil Liberties protections exist for our artificial intelligence use cases and utilize an agency-wide AI Framework that aligns with the requirements from the Executive Order 14110 and OMB Memo M-24-10.

Please contact me at (410) 965-2611 if I can be of further assistance. Your staff may contact Hank Amato, Director of the Audit Liaison Staff, at (407) 765-9774.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dustin Brown".

Dustin Brown
Acting Chief of Staff

Appendix IV: Comments from the U.S. Agency for International Development



October 16, 2024

Ms. Marisol Cruz Cain
Director, GAO Information Technology and Cybersecurity Team
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20226

Re: Information Technology: Government-Wide Guidance on Handling Data Could Improve Civil Rights and Civil Liberties Protections ([GAO-25-106057](#))

Dear Ms. Cain:

I am pleased to provide the response of the U.S. Agency for International Development (USAID) to the draft report produced by the U.S. Government Accountability Office (GAO) titled, Information Technology: Government-Wide Guidance on Handling Data Could Improve Civil Rights and Civil Liberties Protections. The report does not contain any recommendations for action on behalf of USAID.

The Agency collects and processes information about American citizens during the employment cycle and through various programmatic and business functions, but otherwise USAID's data collections are not focused on data from the American public.

Thank you for the opportunity to respond to the draft report and for the courtesies extended by your staff while conducting this engagement. We appreciate the opportunity to participate in the thorough evaluation of our Data Management as it pertains to Civil Rights and Civil Liberties.

Sincerely,

Colleen Allen

Colleen Allen
Assistant Administrator
Bureau for Management

Endnotes

¹The Chief Financial Officers Act of 1990, Pub. L. No. 101-576, 104 Stat. 2838 (Nov. 15, 1990), as amended, established chief financial officers to oversee financial management activities at 23 civilian executive departments and agencies as well as the Department of Defense. The list of 24 departments and agencies is often referred to collectively as the CFO Act agencies, and is codified at 31 U.S.C., § 901 (b). The 24 agencies are the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, the Interior, Justice, Labor, State, Transportation, the Treasury, and Veterans Affairs, the Environmental Protection Agency, General Services Administration, National Aeronautics and Space Administration, National Science Foundation, Nuclear Regulatory Commission, Office of Personnel Management, Small Business Administration, Social Security Administration, and U.S. Agency for International Development.

²U.S. Constitution, Bill of Rights, Amendments I-X, December 15, 1791. The Civil Rights Act of 1964 and its various titles collectively address discrimination based on race, color, religion, sex, and national origin by schools, employers, government agencies, and institutions that receive federal funding. Relevant federal agencies are required to apply and ensure compliance with the law by issuing regulations and guidance addressing potential violations under the statutes. For example, agencies may terminate or suspend federal funding for a violation such as discrimination.

While the above list is not all inclusive, it focuses on those federal laws that specifically apply to situations involving data collection, sharing, and use. Other federal laws that CFO Act agencies regularly enforce and follow include Section 508 of the Rehabilitation Act of 1973, 29 U.S.C. 794d; Title II of the Americans with Disabilities Act of 1990 as amended, Pub. L. No. 101-336, 104 Stat. 337 (July 26, 1990) (codified at 42 U.S.C. Ch. 126, subch.1); Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et. seq.); Section 1557 of the Affordable Care Act, Pub. L. No. 111-418, 124 Stat. 119 – 1025 (March 23, 2010); the Age Discrimination Act of 1975 (codified at 42 U.S.C. 6101-6107) (see also 34 C.F.R. part 110); and the Fair Housing Act of 1968, Pub. L. No. 90-284, Title VIII, 82 Stat. 73, 81-89 (April 11, 1968) (42 U.S.C. 3601 et seq.).

³Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (Dec. 31, 1974) (codified at 5 U.S.C. § 552a). A system of records is a collection of information about an individual under control of an agency from which information is retrieved by the name of an individual or other identifier. 5 U.S.C. § 552a(a)(4), (5).

⁴E-Government Act of 2002, Pub. L. No. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

⁵Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53, § 803, 121 Stat. 266, 360-362 (codified at 42 U.S.C. § 2000ee-1). The 9/11 Commission Act was the result of the July 2004 report produced by the 9/11 Commission which contained 41 recommendations related to the protection against terrorism and the inclusion of civil liberties into information sharing policies.

⁶Exec. Order 14110, *Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence in the Federal government*, 88 Fed. Reg. 75191 (2023).

⁷A privacy impact assessment is an analysis of how personally identifiable information is collected, stored, shared, and managed in a federal system. E-Government Act of 2002, Pub. L. No. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002). OMB Circular A-130, *Managing Information as a Strategic Resource* (Washington, D.C.: July 2016). See also, Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (Dec. 31, 1974) (codified at 5 U.S.C. § 552a) defining a system of record.

⁸OMB, *Advancing Governance, Innovation, and Risk Management for Agency Use of Artificial Intelligence*, M-24-10 (Washington, D.C.: Mar. 28, 2024).

⁹In September 2024, OMB issued additional guidance that builds upon Memorandum M-24-10 by establishing acquisition related practices to improve cross-functional collaboration among federal agencies when acquiring AI while protecting the public from risks or harms. See OMB, *Advancing the Responsible Acquisition of Artificial Intelligence in Government*, M-24-18 (Washington, D.C.: September 24, 2024).

¹⁰Since 2018, the National Institute of Standards and Technology has tested facial recognition algorithms and reported that performance differences varied by the algorithms tested, with some performing better than others. For a small number of the one-to-many algorithms, differences in false positives across demographic groups were undetectable. The extent of performance differences varied by the algorithm developer, type of error, and quality of the facial images. See National Institute of Standards and Technology, *Face Recognition Vendor Test (FRVT) Part 3*:

Demographic Effects, NIST Interagency or Internal Report 8280 (Gaithersburg, MD: Dec. 19, 2019).

National Association of Criminal Defense Lawyers, *Letter to the White House Office of Science and Technology Policy*, (Washington, D.C.: January 15, 2022).

¹¹The Department of Energy reported that their Civil Liberties, Privacy, and Professional Integrity Office is responsible for civil liberties matters specifically related to the agency's Office of Intelligence and Counterintelligence.

¹²Establishment of the Officer for Civil Rights and Civil Liberties, see Homeland Security Act of 2002, Pub. L. No. 107-296, § 705, 116 Stat. 2219 - 2220 (codified at 6 U.S.C. § 345).

¹³U.S. Department of Treasury, *Privacy and Civil Liberties Activities Pursuant to Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007, P.L. 110-53* (Washington, D.C.: December 2018).

¹⁴USAID reported that while their data collections include information about U.S. Citizens, it is only during employment and other programmatic and business functions.

¹⁵Section 508 of the Rehabilitation Act of 1973, as amended, is a federal law requiring agencies to provide persons with disabilities equal access to electronic information and data comparable to those who do not have disabilities. 29 U.S.C. 794d.

¹⁶A protected group includes people or demographics that are protected against discrimination or unfair treatment. Categories of protected groups include, among others, race, gender, disability which are protected under the various anti-discrimination laws such as Civil Rights Act of 1964, Pub. L. No. 88-352. 78 Stat. 241. (July 2, 1964). See also the Rehabilitation Act of 1973, as amended (codified at 29 U.S.C. § 794), and the Americans with Disabilities Act of 1990. Pub. L. No. 101-336. 104 Stat. 327-378 (July 26, 1990).

¹⁷The Department of Transportation indicated that they have formed a department-wide council to address AI issues.

¹⁸While the Department of Commerce's coordination challenge was identified in the agency's questionnaire, the suggested actions that would mitigate the agency's issue, was provided during an agency interview.

¹⁹The Department of Energy's challenge was obtained during an agency interview and prior to receipt of the agency's questionnaire. In this case, since the challenge was already identified prior to the agency's response, the information was included as a reason for the agency wanting government-wide guidance for data collection, sharing, and use in our product.

²⁰The 10 agencies that provided only technical comments are Departments of Education, Energy, Health and Human Services, Homeland Security, Interior, Labor, State, and Transportation, as well as the Environmental Protection Agency and the Nuclear Regulatory Commission.

²¹Twelve agencies and the Office of Management and Budget reported that they had no comments We received emails from the Department of Agriculture, Commerce, Defense, Justice, the Treasury, Veterans Affairs, as well as the General Services Administration, National Aeronautics and Space Administration, National Science Foundation, the Office of Management and Budget, the Office of Personnel Management, and the Small Business Administration.