



Office of Inspector General

EVALUATION OF THE FEDERAL LABOR  
RELATIONS AUTHORITY'S COMPLIANCE WITH  
THE PRIVACY ACT MANDATORY ANNUAL  
TRAINING REQUIREMENT FOR FISCAL YEAR 2023

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FEDERAL LABOR RELATIONS  
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FOR FISCAL YEAR 2023**

**Report No. MAR-25-01  
OCTOBER 2024**

Federal Labor Relations Authority  
1400 K Street, N.W., Washington, D.C. 20424

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## Abbreviations

FLRA	Federal Labor Relations Authority
FY	Fiscal Year
IPA	Independent Public Accountant
HRD	Human Resources Division
IT	Information Technology
OIG	Office of Inspector General
OMB	Office of Management and Budget
PII	Personally Identifiable Information
SAOP	Senior Agency Official for Privacy
U.S.C.	United States Code

# Evaluation of the FLRA's Compliance with the Privacy Act Mandatory Annual Training Requirement for FY 2023

Report No. MAR-25-01

October 7, 2024

The Honorable Susan Tsui Grundmann  
Chairman

The Federal Labor Relations Authority (FLRA) Office of Inspector General (OIG) performed a management advisory review on FLRA's policy<sup>1</sup> that requires all employees to complete annual agency-wide personally identifiable information (PII) training. This is commonly referred to "Privacy Act training." Our work was limited to reviewing, as of June 30, 2024, the status of FLRA's mandatory Fiscal Year (FY) 2023 privacy training. This report details our findings and recommendations.

## Results in Brief

We determined that FLRA did not effectively monitor completion of required annual Privacy Act training. We found that 29 of 123 employees (23.6 percent) as of September 30, 2023, did not take the mandatory privacy training given by the Solicitor's office on September 27, 2023. During our review, 9 of the 29 employees asserted that they did take the training, but failed to send a confirmation email as evidence they took the training. If those assertions are accepted, 20 of the 123 (16.3 percent) employees failed to take the mandatory training.

## Background

The Privacy Act of 1974, as amended, 5 U.S.C. § 552a, prescribes how Federal agency records containing individually identifiable information are to be maintained, who may access such information, how that information may be accessed, and when the Government may use or disclose it. The general rule under the Privacy Act is that an agency cannot disclose a record contained in a system of records unless the individual to whom the record pertains gives prior written consent to the disclosure.<sup>2</sup> There are 12 exceptions to this general rule.<sup>3</sup>

The Privacy Act also requires Federal agencies to instruct their employees on the law and the rules and procedures established by the agency with regards to the agency's implementation of the law.<sup>4</sup> The Office of Management and Budget (OMB) provided guidance issued on July 9, 1975, Privacy Act Implementation, Guidelines and Responsibilities, 40 Fed. Reg. 28948, which stated the need for Federal agencies to provide training to its employees.<sup>5</sup> OMB provided further instruction on the Privacy Act in OMB Circular A-130, *Managing Information as a Strategic*

<sup>1</sup> FLRA Policy No. 1312, *Protection of Personally Identifiable Information* (Nov. 3, 2010).

<sup>2</sup> 5 U.S.C. § 552a(b).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* § 552a(e)(9) ("Each agency that maintains a system of records shall ... establish rules of conduct for persons involved in the design, development, operation, or maintenance of any system of records, or in maintaining any record, and instruct each such person with respect to such rules and the requirements of this section, including any other rules and procedures adopted pursuant to this section and the penalties for noncompliance; ....").

<sup>5</sup> 40 Fed. Reg. at 28965-66, 28970.

*Resource* (July 28, 2016), which states: “Agencies should be accountable for complying with these principles and applicable privacy requirements, and should appropriately monitor, audit, and document compliance. Agencies should also clearly define the roles and responsibilities with respect to PII for all employees and contractors, and should provide appropriate training to all employees and contractors who have access to PII.”<sup>6</sup> Further, OMB Circular A-108, *Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act* (Dec. 23, 2016): states:

Agencies shall design their privacy control selection process to include privacy controls that allow the agency to ensure compliance with applicable requirements in the Privacy Act and related OMB guidance. At a minimum, the controls selected for an information system that contains information in a system of records shall address the following elements:

...

**Privacy Training.** Agencies shall ensure that the agency’s training practices are sufficient and that agency personnel understand the requirements of the Privacy Act, OMB guidance, the agency’s implementing regulations and policies, and any job-specific requirements.<sup>7</sup>

FLRA’s current Policy No. 1312, *Protection of Personally Identifiable Information*, was issued on November 3, 2010. It sets formal policy regarding the protection of PII and requires annual training by all FLRA employees, contractors, and others with access to FLRA Information Technology (IT) systems or records.<sup>8,9</sup> The policy also defines roles and responsibilities for employees and other key officials such as the Senior Agency Official for Privacy (SAOP). The FLRA Solicitor is the FLRA’s SAOP. It is important to note that the scope of our review was limited to reviewing FLRA employee compliance with the mandatory training requirement and did not include whether the SAOP properly identified any and all FLRA contractor employees who should take the training.

## Report Findings

The FY 2024 mandatory privacy review was performed by Dembo Jones, P.C., an independent public accountant (IPA) under contract with the FLRA OIG. Part of the scope of that review was to verify that FLRA provided the mandatory privacy training in FY 2023. The IPA confirmed the training was given live via Microsoft Teams on September 27, 2023, 2:00 PM EDT. The session

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<sup>6</sup> OMB Circular A-130, Appendix II, § 3.b.

<sup>7</sup> OMB Circular A-108, § 12.f.

<sup>8</sup> See Policy No. 1312, § 1312.4.k.(3) (requiring “FLRA Users,” those with access to FLRA IT systems or records, to “[c]omplete annual agency-wide PII training and, as appropriate, office or job specific training”); § 1312.4.j.(1) (requiring supervisors to “[e]nsure that employees within their organization complete any required agency-wide PII training, including the required annual Information Systems Security Awareness Training.”).

<sup>9</sup> FLRA Policy No. 1312 defines “FLRA User” as: “employee, contractor, intern, volunteer, detailee, or other individual performing work for FLRA with access to FLRA IT systems, FLRA’s operational records, or FLRA’s accessioned records and donated historical materials that contain PII.” FLRA Policy No. 1312, § 1312.3.f.

was recorded and an attendance list was created and maintained by the Office of the Solicitor. As part of the FLRA OIG quality assurance program in monitoring the IPA work, we observed that the attendance list did not appear to show that all FLRA employees had taken the training. We initiated a separate review to determine if 100 percent of the FLRA employees had completed the annual mandatory training.

We requested and received data from the Office of the Solicitor and the Human Resources Division (HRD). We compared the official employee roster as of September 30, 2023, to the official list of attendees maintained by the Office of the Solicitor. The Office of the Solicitor required attendees of the live training to send a confirmation email that they attended. Those who were unable to attend were instructed to watch the recording of the live training and send a confirmation email to the Solicitor stating they watched the recording.

After our initial review, we determined there were 33 employees who did not attend the live training or watch the recorded video of the 2023 privacy training. After reaching out to each division with employees not on the attendance list and receiving updated information from the Solicitor, we determined 4 of the 33 did attend or watch the video and were able to provide supporting evidence. Therefore, the final number of employees who did not take the training was 29 employees, which represents 23.6 percent of FLRA employees based on the active employee roster of 123 employees on September 30, 2023. However, 9 of the 29 noncompliant employees asserted that they did take the 2023 privacy training, but failed to send a confirmation email as evidence. If the assertions were accepted, 20 employees, or 16.3 percent of FLRA employees were not compliant and did not take the 2023 mandatory privacy training.

We determined the Office of the Solicitor maintained the attendance list and did perform follow-up on at least one or two occurrences reminding employees who had not taken the training that they needed to take the training. However, there does not appear to have been continued follow-up with the employees after the first one or two attempts. We also determined that the Office of the Solicitor did not inform employees' supervisors of the employees' failure to take the mandatory training. FLRA's Policy No. 1312, *Protection of Personally Identifiable Information*, dated November 3, 2010, specifically states that supervisors are to ensure their employees complete the privacy training. The policy further provides for potential disciplinary action for failure to ensure that their staff completes the annual required training.<sup>10</sup>

It also appeared that the Office of the Solicitor did not have a complete employee roster. We identified 17 employees who were not on the Office of the Solicitor's tracking sheet.

## **Conclusion**

FLRA's SAOP has not effectively monitored the completion of annual Privacy Act training for FY 2023. We determined that while some follow-up was conducted by the SAOP, there was no formal process established to continue follow-up to ensure 100 percent compliance. This was in part due to not having a complete employee roster. Also, the follow-up that was conducted by the Office of the Solicitor did not include any notification to the employees' supervisors so that the

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<sup>10</sup> Sec. 1312.12.b. ("Supervisors are subject to disciplinary action for failure to ensure that their staff completes any agency-wide or job specific PII training or for failure to take appropriate action upon discovering a suspected or actual breach of PII.")

supervisors could take appropriate action to ensure their employees took the mandatory privacy training. We also note that FLRA's policy regarding the protection of PII is 14 years old (predating revisions to the OMB Circulars referenced in this report) and should be reviewed to ensure it is up-to-date.

## **Recommendations**

We recommend the SAOP:

1. Develop and implement a process to monitor the completion of mandatory annual privacy training including the notification of supervisors.
2. Obtain an up-to-date and accurate FLRA Users roster for tracking compliance.
3. Review FLRA's Policy No. 1312, *Protection of Personally Identifiable Information*, to ensure it is up-to-date with current OMB guidance and update if necessary.

## **Management Comments**

On September 26, 2024, we provided a draft report to the SAOP for their comments to our findings, conclusions, and recommendations. On October 1, 2024, the SAOP provided their formal comments. The SAOP fully concurred with our findings and recommendations.

## **OIG Evaluation of Management's Comments**

The comments and planned action by FLRA's SAOP are adequate. The SAOP has already put procedures in place to ensure 100 percent compliance for the 2024 mandatory privacy training and is already close to achieving that goal. The SAOP has also taken steps to ensure the user list is accurate and up-to-date. The SAOP concurs with and plans to review FLRA's policy to ensure it is up-to-date with all OMB and statutory requirements. We plan to conduct a follow-up to ensure the SAOP's action plan is completed.

## **Appendix I: Objectives, Scope, and Methodology**

The objectives of this review were to determine whether all FLRA employees participated in the mandatory annual privacy training that took place on September 27, 2023 for FY 2023. Our fieldwork was conducted July 1, 2024 through August 31, 2024, with information provided through FLRA's offices in Washington, DC and the regional offices.

We interviewed and had discussions with the Solicitor and HRD Director and other FLRA employees. We gathered data from the Solicitor, HRD, headquarters offices, and regional offices. We compared data from the privacy training attendance list maintained by the Solicitor's office to the official employee roster from HRD dated September 30, 2023. We then coordinated with all offices with noncompliant employees to ensure the list was accurate.

All the requested information that was provided, together with management comments, were reviewed and evaluated to come to our findings, conclusions, and recommendations. We documented all the review activity and drafted a report for FLRA management review. An advanced copy of the draft report was provided to management for their review and comments.

The scope of our review was limited to determining if all employees took the required annual privacy training. Our review did not include whether FLRA properly identified any other "FLRA Users" (e.g., contractor employees) that are required to take the Privacy Act Training. Our findings and conclusions also do not address the content of the training as the content of the training was not included in the scope of our review.

## Appendix II: Employees Who Did Not Take Privacy Training in FY 2023

Office	Total FTE*	Not On Attendance List and No Support of Taking the Training		Does not include employees who assert they took the training.	
		No Privacy Training	Percent	No Privacy Training	Percent
Office of the Chairman	8	1	12.5%	1	12.5%
Office of the Member, Vacant	6	0	0.0%	0	0.0%
Office of the Member, Kiko	9	1	11.1%	0	0.0%
Foreign Service Labor Relations Board	3	3	100.0%	3	100.0%
Case Intake and Publication	4	0	0.0%	0	0.0%
Office of Legislative and Program Planning	2	0	0.0%	0	0.0%
Collaboration Alternative Dispute Resolution	2	0	0.0%	0	0.0%
Office of the Inspector General	2	0	0.0%	0	0.0%
Office of Administrative Law Judges	5	0	0.0%	0	0.0%
Office of the Solicitor	3	0	0.0%	0	0.0%
Office of the Executive Director	1	0	0.0%	0	0.0%
Human Resources Division	4	2	50.0%	1	25.0%
Budget and Finance Division	3	0	0.0%	0	0.0%
Information Resources Management Division	6	2	33.3%	0	0.0%
Administrative Services Division	4	1	25.0%	0	0.0%
Federal Services Impasse Panel	14	6	42.9%	6	42.9%
Office of the General Counsel	5	1	20.0%	1	20.0%
Atlanta Regional Office	9	1	11.1%	1	11.1%
Chicago Regional Office	8	2	25.0%	0	0.0%
Denver Regional Office	10	5	50.0%	5	50.0%
San Francisco Regional Office	8	2	25.0%	1	12.5%
Washington Regional Office	7	2	28.6%	1	14.3%
	123	29	23.6%	20	16.3%

\*Roster of on-board employees on September 30, 2023.



## Appendix III

# Management's Comments to the Draft Report

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UNITED STATES OF AMERICA  
**FEDERAL LABOR RELATIONS AUTHORITY**

October 1, 2024

### **MEMORANDUM**

TO: Dana Rooney, Inspector General

FROM: Thomas Tso, Senior Agency Official for Privacy and Solicitor

SUBJECT: Management Response to *Evaluation of the Federal Labor Relations Authority's Compliance with the Privacy Act Mandatory Annual Training Requirement for Fiscal Year 2023* (Report No. MAR-25-01)

Thank you for the opportunity to review and provide comments on the Office of Inspector General's (OIG) report on the Federal Labor Relations Authority's compliance with the Privacy Act's Mandatory Training Requirement for Fiscal Year 2023. The FLRA is committed to making sure that FLRA employees are trained in accordance with Privacy Act requirements.

### **RECOMMENDATIONS**

The Senior Agency Official for Privacy should:

1. Develop and implement a process to monitor the completion of mandatory annual privacy training including the notification of supervisors.
2. Obtain an up-to-date and accurate FLRA Users roster for tracking compliance.
3. Review FLRA's Policy No. 1312, *Protection of Personally Identifiable Information*, to ensure it is up-to-date with current OMB guidance and update if necessary.

**Management Response:** FLRA appreciates the Inspector General's thorough investigation of our compliance with the Privacy Act's training requirement. Management agrees with the recommendations and will work quickly to implement the proposed changes. The SAOP will raise the completion percentage from around 84% in FY 23 to 100% in FY 24. The SAOP, who entered service on May 23, 2023, reevaluated the FY 23 process for monitoring compliance and instituted an improved process for the FY 24 Privacy Training, which occurred on September 11, 2024. The Office of the Solicitor obtained the most recent roster and sent weekly reminders to those who did not complete the training. So far, as of October 1, 2024, only 10 people have not confirmed compliance, and the SAOP anticipates reaching 100% by October 31, 2024. The Office of the Solicitor will continue to send weekly reminders and will reach out to supervisors in October.

### **Appendix III**

## **Management's Comments to the Draft Report**

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The SAOP will also review the FLRA's Policy No. 1312 with the CIO and update if necessary. As always, we appreciate your consideration of these responses and look forward to continuing our efforts to find innovative ways to improve.

CC: Dave Fontaine, CIO

## **Appendix IV**

### **Report Distribution**

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#### **Federal Labor Relations Authority**

Colleen Duffy Kiko, Member  
Anne M. Wagner, Member  
Michael Jeffries, Executive Director  
Thomas Tso, Solicitor  
Dave Fontaine, Chief Information Officer

# Contacting the Office of Inspector General

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