

COMPONENT CIVIL LIBERTIES COMPLAINT REPORT

SUMMARY OF CIVIL LIBERTIES COMPLAINTS

2nd QTR FY13 –JANUARY THRU MARCH 2013

DEPARTMENT OF THE ARMY

TOTAL NUMBER OF COMPLAINTS: 27

Complaint #1:

Description of Complaint: A Soldier's supervisor counseled him, and possibly reprimed against him, for posting a derogatory comment about "MDs" on Facebook. Possible freedom of speech issue.

Findings: Investigation on-going.

Disposition: Investigation on-going.

(This complaint is pending from the 2012 3rd Qtr submission and is not included as a new complaint for the 2013 1st Qtr.)

Complaint #2:

Description of Complaint: A Soldier complained about his first sergeant's unlawful entry into his on-post family quarters. The Soldier reported his involvement in an off-post incident involving civilian law enforcement to the unit staff duty officer. After being informed of this, the Soldier's squad leader and platoon sergeant went to the Soldier's on-post family quarters to look for him. No one responded at the quarters. The installation military police informed the squad leader and platoon sergeant that nothing more could be done without a search warrant. The squad leader and platoon sergeant told the unit first sergeant that a warrant would be required to enter the Soldier's family quarters. The first sergeant responded by calling the installation housing locksmith to open the door, then proceeding to search the quarters himself. The Soldier did not realize anyone had entered his quarters until the following week when the Soldier received a bill for the charge of replacing the locks and keys to the quarters. The command is investigating the complaint. Possible unreasonable search/privacy issue.

Findings: The installation housing office permitted the first sergeant to enter the Soldier's quarters improperly, without a search warrant based on probable cause or emergency justification. The installation housing office amended its SOP to preclude a recurrence.

Disposition: Closed.

(This complaint is pending from the 2013 1st Qtr submission and is not included as a new complaint for the 2013 2nd Qtr.)

Complaint #3:

Description of Complaint: The FBI notified the command that one of its colonels was alleged to have participated in some extremist organizations. Possible freedom of speech/assembly issue. This was originally noticed as involving two soldiers, in fact only the one soldier appears to have been involved, from the submission.

Findings: The command investigated these allegations. The colonel was found to have attended at least three meetings of three suspected extremist organizations (the organizations conducted joint meetings), comprising of a weapons qualification event and two ideology/education training events. The colonel gave a presentation at one of these training events. He was found to have met individually with the leader of one of these groups six times. These organizations were found not to be “extremist” organizations as defined in paragraph 4-12a of Army Regulation 600-20, *Army Command Policy*, 18 March 2008 (Rapid Action Review 20 September 2012). However, one of these organizations advocated the use of violence against Members of Congress and federal and state employees; consequently, the Soldier’s membership in this organization violated the provision in Enclosure 3, paragraph 8b of Department of Defense Instruction 1325.06, *Handling Dissident and Protest Activities Among Members of the Armed Forces*, 22 February 2012, requiring military personnel to reject active participation in organizations that advocate the use of violence.

Disposition: Closed; the command is taking appropriate punitive action against the Colonel.

(This complaint is pending from the 2012 4th Qtr submission and is not included as a new complaint for the 2013 2nd Qtr.)

Complaint #4 :

Description of Complaint: Complainant alleges his new supervisor sent an email to all-hands announcing that the pre-existing practice of allowing employees to take time away from their desks for religious prayer is being discontinued. Possible First Amendment, Freedom of Religion implication.

Findings: The Department of the Army evaluated and investigated the complaint.

Disposition: The POC is closing this action.

(This complaint is pending from the 2012 3rd Qtr submission and is not included as a new complaint for the 2013 1st Qtr.)

Complaint #5 :

Description of Complaint: Complainant alleges he was reprimanded for attending a political rally during his lunch break. Possible First Amendment, Freedom of Association.

Findings: The Department of the Army has received and evaluated the complaint.

Disposition: Pending.

(This complaint is pending from the 2013 1st Qtr submission and is not included as a new complaint for the 2013 2nd Qtr.)

Complaint #6 :

Description of Complaint: A Soldier complained about his commandant's ordering an "inspection" of the work area to include opening personal backpacks and purses, and then ordering the Soldiers out of the barracks and searching their rooms and their persons, after a bag of change was reported missing from the Pepsi vending machine. Possible unreasonable search/privacy issue.

Findings: The unit legal advisor drafted an SOP for the unit on search authorizations and inspections.

Disposition: Closed.

(This complaint is pending from the 2012 4th Qtr submission and is not included as a new complaint for the 2013 1st Qtr.)

Complaints #7:

Description of Complaint: A Soldier complained that his unit commander, with the assistance of local law enforcement, entered the Soldier's off-post residence using a key that was provided by a coworker to confiscate the Soldier's privately owned weapons and ammunition without his consent while the Soldier was receiving in-patient PTSD treatment at a local facility. Possible right to bear arms/unreasonable seizure issue.

Findings: Investigation on-going.

Disposition: On-going.

(This complaint is pending from the 2013 1st Qtr submission and is not included as new complaints for the 2013 2nd Qtr.)

Complaint #8:

Description of Complaint: A Soldier complained that his unit commander inappropriately assisted his spouse to remove property from his residence. The commander ordered the Soldier to work in another location so the spouse could access the residence without the Soldier's knowledge. Possible unreasonable seizure issue.

Findings: Investigation on-going.

Disposition: On-going.

(This complaint is pending from the 2013 1st Qtr submission and is not included as new complaints for the 2013 2nd Qtr.)

Complaint #9, #10, and 11:

Description of Complaint: Three Soldiers complained that their commanders improperly ordered them to store their privately owned weapons in their unit arms rooms. Possible infringement on the right to bear arms.

Findings: In one case, the commander admitted having issued the order after consulting with his legal advisor. The commander believed the Soldier posed a threat to himself and others based on the Soldier's recent non-judicial punishment, his deteriorating work performance, and newborn baby in the house. The legal advisor confirmed that the commander had the legal authority to issue this order. In the second case, a former Soldier complained that, while he was still in the Army, his former commander ordered him to store his privately owned weapon in the unit arms room during his mental illness treatment. The Soldier was told, when he asked for return of his weapon upon his discharge from the Army, that the commander had given his weapon to the local civilian police department. The police department will not return the weapon without a court hearing. In the third case, a Soldier complained that his commander ordered him to store his privately owned weapon in the unit arms room during his mental illness treatment. Investigation continues on the second and third cases.

Disposition: On-going.

Complaint #12:

Description of Complaint: An individual complained that the installation gate guard would not allow him to transport his privately owned weapons onto post unless he registered them with the installation provost marshal office. Possible infringement on the right to bear arms.

Findings: The installation provost marshal had recently changed policies regarding registration of privately owned weapon transported on post to adhere to Army Regulation 190-11, *Physical Security of Arms, Ammunition, and Explosives*, 15 December 2006, Rapid Action Revision 28 June 2011.

Disposition: Closed.

Complaint #13:

Description of Complaint: A former Soldier complained that while he was still in the Army his former commander ordered him to store his privately owned weapon in the unit arms room during his mental illness treatment. The Soldier was told, when he asked for return of his weapon upon his discharge from the Army, that the commander had given his weapon to the local civilian police department. The police department will not return the weapon without a court hearing. Possible infringement on the right to bear arms.

Findings: Investigation on-going.

Disposition: On-going.

Complaint #14:

Description of Complaint: A Soldier complained that his commander ordered him to store his privately owned weapon in the unit arms room during his mental illness treatment. Possible infringement on the right to bear arms.

Findings: Investigation on-going.

Disposition: On-going.

Complaint #15:

Description of Complaint: A Soldier complained that he was being made to write papers about God as part of his command-directed alcohol rehabilitation class; he objected to this because he was an atheist. Possible establishment of religion issue.

Findings: The drug and alcohol cadre explained that having some sort of belief system was a necessary part of alcohol abuse recovery. The cadre agreed to consider non-religion-based belief systems in this part of the training.

Disposition: Closed.

Complaint #16:

Description of Complaint: A Soldier complained that his commander had suspended his pass privileges for two weeks without justification. The commander stated that the Soldier had committed misconduct and that he did not trust the Soldier. The commander had not administered any punitive measures to the Soldier for the misconduct. Possible deprivation of liberty issue.

Findings: The commander was advised that restricting a Soldier for misconduct without any corresponding punitive action was improper. The Soldier's pass privileges were reinstated.

Disposition: Closed.

Complaint #17:

Description of Complaint: A Soldier complained that his command had not processed his request for separate rations submitted two months earlier. The Soldier wanted separate rations so he could adhere to his religiously-based dietary restrictions. Part of the delay was attributed to the battalion S-1's demand for a memorandum from the chaplain confirming the Soldier's religious practices. The confirmation was not required by any Army regulation to receive separate rations; the command inserted the requirement to "prevent fraud." Possible freedom of religion issue.

Findings: The commander was advised that requiring this confirmation without any Army requirement to do so was improper. Two months later, the request was finally processed.

Disposition: Closed.

Complaint #18:

Description of Complaint: A complainant contacted the IG with concerns about the religious themes in an ROTC graduation/commissioning ceremony. He found the chaplain's invocation, the guest speaker's comments, and the Professor of Military Science's comments were "charged with evangelical Christianity" with no regard for the mixed cultural audience. Possible establishment of religion issue.

Findings: Inquiry indicated that the speeches were overly religious with a Christian focus. The Professor of Military Science was counseled to conduct future commissioning ceremonies in a less Christian-centric manner.

Disposition: Closed.

Complaint #19:

Description of Complaint: A Soldier complained that, during a command health fair, the chaplain's assistant refused to give him a rosary because he wasn't catholic, and made other comments about the Soldier not being a religious person. The Soldier had wanted to consult with the chaplain but hesitated to do so because he would have to interact with the chaplain's assistant first. Possible freedom of religion issue.

Findings: The chaplain gave his direct cell phone number to the inspector general to pass to the Soldier so he could contact him directly without going through the assistant. The chaplain also counseled the assistant on his behavior.

Disposition: Closed.

Complaint #20:

Description of Complaint: A Soldier requested removal of the permanent religious fixtures from the forward operating base chapel, namely the cross at the top of the steeple and the crosses cut into the chapel doors. Army Regulation 165-1, *Army Chaplain Corps Activities*, 3 December 2009, paragraph 12-3k, precludes affixing permanent religious symbols on an Army chapel interior, exterior, or grounds. Possible establishment of religion issue.

Findings: The chapel was modified to comply with the Army Regulation.

Disposition: Closed.

Complaints #21, #22, and #23:

Description of Complaints: Three Soldiers asked about Army accommodation of their religious practices. One Soldier asked whether he could grow a beard, as required by his Muslim precepts, and remain in the National Guard. Another complained that his supervisor would not allow him to attend religious classes located 90 minutes away while the unit was on its two week annual training. A third asked to attend religious services for 1-3 hours while on guard duty. Possible freedom of religion issues.

Findings: All three Soldiers were counseled on the process to request religious accommodation found in Army Regulation 600-20, *Army Command Policy*, 18 March 2008, Rapid Action Review 20 September 2012, paragraph 5-6.

Disposition: Closed.

Complaint #25: Description of Complaint: A commander involuntarily referred a Soldier to the unit chaplain for counseling. Upon consultation with legal, it was determined that the commander could not legally order a Soldier to consult with a chaplain; the commander may only encourage this consultation. Possible establishment of religion issues.

Findings: The commander reworded his order to the Soldier.

Disposition: Closed.

Complaint #26:

Description of Complaint: A Soldier was arrested by civil authorities for allegedly shooting his wife during an argument. Upon return from civilian detention, his unit commander restricted him to post and ordered him to give the keys to his privately owned vehicle to the First Sergeant. The Soldier complained about the restriction and his commander's confiscation of his car keys. Possible deprivation of liberty/unreasonable seizure issues.

Findings: Upon consultation with legal, it was determined that the restriction was legal and reasonable, but not the car key confiscation. The commander gave car keys back to the Soldier.

Disposition: Closed.

Complaint #27:

Description of Complaint: A Soldier complained that a CID agent and his commander were improperly ordering him to render a handwriting sample. The Soldier refused until he could seek legal counsel. The Soldier eventually rendered the sample without an attorney present. Possible unreasonable search issue.

Findings: The order to "seize" the Soldier's handwriting was properly supported by probable cause. The constitution and case law does not entitle one to legal representation at a search supported by probable cause.

Disposition: Closed.