

# COMPONENT CIVIL LIBERTIES COMPLAINT REPORT

## SUMMARY OF CIVIL LIBERTIES COMPLAINTS

1st QTR FY14 – OCTOBER THRU DECEMBER 2013

DEPARTMENT OF THE ARMY

TOTAL NUMBER OF COMPLAINTS: 29

### **Complaint #1:**

**Description of Complaint:** A complaint arrived alleging that personnel at a military corrections facility caused an inmate to violate Ramadan daylight fasting practices by issuing his prescribed medications during daylight hours. Possible infringement on freedom of religion.

**Findings:** The inmate was advised on how to request accommodation of this religious practice under Army procedures (AR 600-20, paragraph 5-6).

**Disposition:** On-going.

### **Complaint #2:**

**Description of Complaint:** A complaint arrived that a Soldier's supervisor denied her the ability to attend church on Saturdays. Possible freedom of religion issue.

**Findings:** On-going.

**Disposition:** On-going.

### **Complaint #3:**

**Description of Complaint:** A complaint arrived that a supervisor searched a Soldier's barracks room without cause after finding out she was involved in a same sex relationship pursuing marriage. The Soldier stated that her marriage license application was missing after this search. Possible unreasonable search and seizure issue.

**Findings:** On-going.

**Disposition:** On-going.

**Complaint #4:**

**Description of Complaint:** A complaint arrived that a Soldier's command reprimanded him by issuing him a poor evaluation because the Soldier "tweeted" via his private account statements critical of same-sex marriage (words to the effect of having Chick-Fil-A cater at his retirement party because of that fast food chain's stance against same-sex marriage). Possible freedom of speech issue.

**Findings:** On-going.

**Disposition:** On-going.

**Complaint # 5:**

**Description of Complaint:** A complaint arrived that a Soldier's command reprimanded him by giving him an adverse evaluation because he declined to participate in the "grog ceremony" conducted at the unit's ball based on religious objections to drinking alcohol. Possible freedom of religion issue.

**Findings:** Inquiry indicated that the adverse evaluation was primarily based on the Soldier's poor duty performance. The Soldier was advised on how to appeal the evaluation.

**Disposition:** Closed.

**Complaint # 6:**

**Description of Complaint:** A complaint arrived that a Soldier's command reprimanded him by referring him for an involuntary mental health evaluation and denying his request to speak with the commander, in part because he asked to attend Catholic Mass while on active duty for training. Possible freedom of religion issue.

**Findings:** On-going.

**Disposition:** On-going.

**Complaint # 7:**

**Description of Complaint:** A complaint was received that a Soldier asked not to be sent the unit chaplain's daily religious-based inspirational message. Various unit officials told the Soldier that it would be difficult to remove the Soldier from the e-mail command listing for this purpose. Possible establishment of religion issue.

**Findings:** Inquiry indicated no impropriety on the chaplain's part. The Soldier declined to provide more information and did not respond to the IG's attempt to recontact him.

**Disposition:** Closed.

**Complaint # 8:**

**Description of Complaint:** A complaint was received that a command violated a Soldier's freedom of religion. The Soldier's limitations on physical activities (known as a "profile") stated that he could do "yoga and pool PT." The Soldier complained to his commander that these exercises violated his religion. The commander told him to "just call it stretching." Later, the commander and the unit educational consultant declined to approve the Soldier's continuing education plan; the Soldier believed this disapproval was because he wanted to attend a non-accredited religious-based school. Possible freedom of religion issue.

**Findings:** The Soldier declined to provide more information and did not respond to the IG's attempt to recontact him.

**Disposition:** Closed.

**Complaint #9:**

**Description of Complaint:** A complaint was received that a Soldier was not permitted to attend an Army Chaplains Corps-sponsored "Strong Bonds" marriage retreat because of the Soldier's same sex marriage. Possible freedom of association/religious establishment issue.

**Findings:** Inquiry revealed that the chaplain conducting the retreat did not want to take actions inconsistent with his religious beliefs regarding same-sex marriage. The command could not find another chaplain to assist or conduct the retreat. The Soldier was put in touch with another chaplain who promised to assist the search for a chaplain willing to include same-sex spouses in a "Strong Bonds" retreat.

**Disposition:** Closed.

**Complaint #10:**

**Description of Complaint:** A complaint was received that an Outside of the Continental United States (OCONUS) command violated a Soldier's freedom of religion while processing his request for Early Return of Dependents (EROD). The complaint alleged that the memorandum analyzing his request contained false information regarding his family's religious practices; these religious practices were one of the bases for the EROD request. Possible freedom of religion issue.

**Findings:** On-going.

**Disposition:** On-going.

**Complaint #11:**

**Description of Complaint:** A complaint was received that a Soldier's commander seized the Soldier's privately owned vehicle (POV) without a warrant or probable cause. Possible unreasonable search and seizure issue.

**Findings:** Inquiry indicated that the Soldier's commander merely gave the Soldier an order not to drive the POV following an episode of underage drinking. The Soldier was encouraged to seek legal assistance and petition the commander for rescission of the order.

**Disposition:** Closed.

**Complaint #12:**

**Description of Complaint:** A complaint was received that a Soldier's chain of command ordered him shackled after local law enforcement officials released him on bail following assault of his wife. Possible deprivation of liberty issue.

**Findings:** Inquiry indicated that the chain of command had legal concurrence on shackling the Soldier. This concurrence was based on the Soldier's previous violation of the 1SG's order to remain on in the barracks; the Soldier left the barracks room to return to his residence and assault his wife, kneeling her in the side of the head and choking her. The chain of command later rescinded the shackling order.

**Disposition:** Closed.

**Complaint #13:**

**Description of Complaint:** A complaint was received that a company commander, his first sergeant, and two other non-commissioned officers (NCOs) had wrongfully entered and searched a subordinate Soldier's on-post quarters. Possible unreasonable search and seizure issue.

**Findings:** Inquiry indicated that the Soldier who was assigned to the on-post quarters had allowed another Soldier to reside with him. This second Soldier failed to report to work. The Soldier assigned to the quarters was ordered to stay at work and not contact the Soldier missing from work while the commander, 1SG, and two NCOs went to his quarters. The second Soldier opened the door when the four personnel knocked. The second Soldier also allowed these four into the quarters where they saw unit equipment recently stolen lying on the floor. There was no unreasonable search and seizure issue because the second Soldier allowed the four into the quarters. Both Soldiers are undergoing discharge proceedings.

**Disposition:** Closed.

**Complaint #14:**

**Description of Complaint:** A complaint arrived alleging that personnel at a military correctional facility failed to afford due process to an inmate in the administration of a DNA swab based on a search warrant from the state of Pennsylvania. Possible unreasonable search and seizure issue.

**Findings:** On-going.

**Disposition:** On-going.

**Complaint #15:**

**Description of Complaint:** A complaint arrived alleging that military police personnel failed to afford a Soldier access to counsel prior to questioning during a temporary detention. The detention was associated with the Soldier's service of process in connection with a civil matter over real estate. The Soldier was on leave and assigned

overseas, not to the installation where the detention occurred. An additional allegation concerned the installation commander's order to a military policeman to check up on the Soldier that evening at his private hotel room. Possible self-incrimination and unreasonable search and seizure issue.

**Findings:** On-going.

**Disposition:** On-going.

### **Complaint #16:**

**Description of Complaint:** American's United for Separation of Church and State sent a letter stating the weekly messages sent from Evans Army Community Hospital Chaplain's office violate the Establishment Clause of the First Amendment.

**Findings:** The chaplain's office plays a valuable role in maintaining spiritual fitness and resilience for Evans employees. The chaplain's office ensures the messages offer information which is inter-faith and often gives notice of resiliency opportunities and events available. The messages contain a note regarding how to have the message sent directly to the deleted messages box for the benefit of anyone not wishing to receive the message. Draft letter completed, preparing final response.

**Disposition:** On-going.

### **Complaint #17:**

**Description of Complaint:** Soldier's Mother alleges the Army violated her privacy when the unit gave her private information to the doctor when they verified that Soldier/daughter needed to drive Mother to hospital for medical procedure and needed to be excused from Battle Assembly (BA).

**Findings:** Soldier asked to be excused from BA a few days before start. Command contacted the doctor and verified that Soldier was needed to drive her mother to the hospital. Once verified the unit excused Soldier's from BA. When unit contacted the doctor, they did not provide any information that was protected by the Privacy Act. There was no Privacy Act violation. Mother's complaint was addressed through a Congressional Response.

**Disposition:** Closed.

**Complaint #18:**

**Description of Complaint:** Soldier alleges that “Deputy Commanding General” violated his due process rights by issuing a GOMOR based on an Army Regulation (AR) 15-6 investigation where investigating officer (IO) found he had committed misconduct. He alleges he was really the subject of the investigation and should not have been questioned without being first read his rights.

**Findings:** Soldier was not named as a respondent in the appointment letter for the investigation. Another Soldier was named as a respondent and was being investigated for numerous acts of misconduct, including having an inappropriate relationship with Soldier/complainant, who was married at the time. During investigation, Soldier was questioned by investigating officer (IO), and not read his rights. He gave an unsworn statement denying any involvement with Soldier. Soldier did not make an incriminating statement, and his statement of denial was not used against him in the findings. The IO found that the Soldier was involved in an inappropriate relationship based on the statements of other witnesses. The failure to read him his rights was not a prejudicial error and did not violate the Uniform Code of Military Justice (UCMJ). Soldier received administrative action, General Officer Memorandum of Reprimand (GOMOR), for his misconduct. He did not receive disciplinary action under the UCMJ. The latter action is prohibited if a Soldier’s rights under Article 31(b), UCMJ are violated. Soldier’s GOMOR was filed in his Official Military Performance File. Soldier’s complaint was addressed through a Congressional.

**Disposition:** Closed.

**Complaint # 19:**

**Description of Complaint:** Soldier requested assistance with a relief for cause from command which resulted from an AR 15-6 investigation. Soldier was not interviewed prior to submission of final investigation to Senior Commander and prior to being relieved for cause from command.

**Findings:** Soldier was not interviewed by the IO before findings were made by the IO. Soldier was not given an opportunity to respond to the allegations or to invoke his rights under Article 31, UCMJ. Unit was advised by legal office to reopen the investigation and interview the Soldier prior to making findings and before finalizing the relief for cause. Investigation was reopened and is ongoing. Interim response sent to Congressman that investigation is ongoing. A final response will be sent once the investigation is completed.

**Disposition:** Ongoing.

**Complaint # 20:**

**Description of Complaint:**

Claimants own a military surplus store located in Lakewood, WA, a community near Joint Base Lewis-McChord (JBLM). The JBLM Military Police and Lakewood police conducted a joint investigation into claimants' possession and sale of military issued equipment. Based upon that investigation, the Lakewood police obtained search warrants for claimants' retail store and warehouse and the JBLM Military Police assisted in the execution of those warrants. Those searches discovered a large amount of military issued items in claimants' possession, which the MP's seized and now retain in their evidence room. On 28 Oct 13, claimants filed an administrative claim in which they allege that the search and seizure of their property violated their 4<sup>th</sup> Amendment rights as well as other unspecified federal laws.

**Findings:** Installation Claims Office is currently waiting for claimants' attorney to respond to their two requests for substantiating evidence.

**Disposition:** On-going

**Complaint #21 ( continued from the 4th Quarter FY13 report):**

**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 and confiscated the Soldier's privately owned weapons and ammunition without his consent while the Soldier was receiving in-patient mental health treatment at a local facility. Possible right to bear arms/unreasonable search and seizure issue.

**Findings:** Investigation on-going.

**Disposition:** On-going

**Complaint #22 ( continued from the 4th Quarter FY13 report):**

**Description of Complaint:** Complainant alleges that Army personnel stole \$100,000 from his Thrift Savings Plan (TSP) account after his court martial. Complainant was originally AWOL when the complaint was received. Complainant was returned to duty

and hospitalized. Complainant is now out of the hospital. Possible violation of 5<sup>th</sup> Amendment.

**Findings:** Psychiatric review by the US Army Court of Criminal Appeals has occurred. The Army is still reviewing whether to medically discharge/retire the individual. Investigators continue to wait for outcome of the review and determination of the individual's ability to assist in an investigation.

**Disposition:** Ongoing.

**Complaint #23 (continued from the 4<sup>th</sup> Quarter FY13 report):**

**Description of Complaint:** A Company Commander removed a license plate from an NCO's vehicle because that vehicle parked in the Company Commander's parking space. The Company Commander did not intend to keep the license plate, but rather took it to ensure the Soldier would report to him and discuss why the Soldier parked there. An anonymous call was placed to the Police Department stating the license plate was stolen. The police in turn called the installation military police, who investigated and detained the Company Commander. The license plate was returned to the vehicle.

**Findings:** The Company Commander never intended to keep the license plate but did wrongly take the license plate. Brigade Commander imposed a local memorandum of reprimand on Company Commander in October 2013.

**Disposition:** Closed.

**Complaint # 24 (continued from th 4th Quarter FY13 report):**

**Description of Complaint:** Soldier living off-post complained that his commander ordered him to store his privately owned weapon in the unit arms room. 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.

**Findings** The legal advisor confirmed that the commander had the legal authority to issue this order.

**Disposition:** Closed.

**Complaint #25 ( continued from the 4th Quarter FY13 report):**

**Description of Complaint:** A former Soldier complained that, while he was still in the Army and living off-post, 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.

**Findings:** The commander properly ordered the soldier to render his privately owned weapon into unit or civilian law enforcement custody pending a final finding that the Soldier was mentally fit.

**Disposition:** Closed.

**Complaint #26 ( continued from the 4th Quarter FY13 report):**

**Description of Complaint:** Soldier living off-post complained that his commander ordered him to store his privately owned weapon in the unit arms room during his mental illness treatment.

**Findings:** The commander properly ordered the soldier to render his privately owned weapon into unit custody pending a final finding that the Soldier was mentally fit.

**Disposition:** Closed.

**Complaint #27 (continued from 4th Quarter FY13 report):**

**Description of Complaint:** A Soldier complained that three non-commissioned officers (NCOs) in a Soldier's chain of command demanded entry to his on-post residence on a Friday evening at about 9 pm. After entering, the NCOs searched the Soldier's cabinets and closets and found some female visitors. One of the NCOs took the Soldier's motorcycle keys. Then the NCOs ordered the Soldier and another Soldier visiting at the time to the unit orderly room, where they had to spend the night. The next morning the two Soldiers' chain of command issued them counseling statements which the Soldiers signed, admitting to violations of the Uniform Code of Military Justice. Possible unreasonable search and seizure and self-incrimination issues.

**Findings:** Inquiry indicates that the NCOs improperly entered the Soldier's off-post quarters and improperly retained the Soldier's motorcycles keys. The unit had concerns

about the Soldier's adulterous activity, excessive alcohol use, and improperly registered motorcycle; but, there were better and more constitutional ways to resolve these concerns. The NCOs have been counseled.

**Disposition:** Closed.

**Complaint #28 (continued from the 4th Quarter FY13) report:**

**Description of Complaint:** A Soldier complained that his commander illegally searched his off-post quarters. Possible unreasonable search and seizure issue.

**Findings:** Inquiry indicated that the unit commander indeed searched the Soldier's off-post barracks. The commander believed that a "White House Dot" message from Mrs. Obama's office gave him the authority to conduct this search. The First Lady had received correspondence from the Soldier's mother. However, inquiry also indicates that the search was nevertheless properly conducted given the Soldier's suicidal ideations.

**Disposition:** Closed.

**Complaint #29 (continued from the 4th Quarter FY13 report):**

**Description of Complaint:** Civilian employee claimed her civil liberties were violated when she heard from a third party that someone had conveyed to that person and another third party false information about her medical information and status. The Office of General Counsel reviewed the complaint and made recommendations regarding inquiry into the matter and response to the complainant.

**Findings:** Investigation found that medical information had not been conveyed to a third party. The investigation further revealed that the civilian employee's right to privacy had not been violated. The employee was formally notified of the results of the investigation.

**Disposition:** Closed.