

# COMPONENT CIVIL LIBERTIES COMPLAINT REPORT

## SUMMARY OF CIVIL LIBERTIES COMPLAINTS

2nd QTR FY14 – JANUARY THRU MARCH 2014

DEPARTMENT OF THE ARMY

TOTAL NUMBER OF COMPLAINTS: 25

### **Complaint #1 (continued from the 1<sup>st</sup> Quarter FY 2014 report):**

**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 inspector general found that the inmate's request to receive prescribed medications in a manner that would not violate Ramadan fasting provisions violated facility procedures. The inmate was advised on how to request accommodation of this religious practice under Army procedures (AR 600-20, paragraph 5-6).

**Disposition:** Closed.

### **Complaint #2 (continued from the 1<sup>st</sup> quarter FY 2014 report):**

**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(continued from the 1<sup>st</sup> quarter FY 2014 report):**

**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:** Investigation revealed that the supervisor conducted a previously-announced health-and-welfare inspection of the barracks. The complainant/Soldier was in the process of moving out of the barracks and was not present when this inspection took place. The Soldier had cleared all of her property from the room except for two camelbacks. Under these circumstances, it was reasonable for the supervisor to search the Soldier's entire room to ensure she had left nothing else behind and to ensure the Soldier had cleaned the room to standard before departing. No documents were taken and no civil liberties violation occurred.

**Disposition:** Closed.

**Complaint #4 (continued from the 1<sup>st</sup> quarter FY 2014 report):**

**Description of Complaint:** A complaint arrived that a Soldier's command reprimed against 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:** Investigation indicated that that, since 2010, the Soldier had used social media to make derogatory comments about the President of the United States and homosexuals serving in the military. The investigator concluded that this Soldier's social media use affected the good order and discipline in the Soldier's unit. The unit received training on the Army's policies on social media use and derogatory comments about the President and homosexuals serving in the military. No reprisal occurred because of the Soldier's "tweets."

**Disposition:** Closed.

**Complaint # 5 (continued from the 1<sup>st</sup> quarter FY 2014 report):**

**Description of Complaint:** : A complaint arrived that a Soldier's command reprimed against 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 (annual training). Possible freedom of religion issue.

**Findings:** Investigation revealed that the Soldier did not attend annual training so his accommodation request was moot.

**Disposition:** Closed.

**Complaint # 6 (continued from the 1<sup>st</sup> quarter FY 2014 report):**

**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:** Investigation revealed that the Soldier based his request for early return of dependents on "the lack of religious accommodation for my dependents . . . due to absence of Cambodian Temples in Puerto Rico to worship and practice Cambodian Religions." Given the religious basis of his request, it was not unreasonable for the commander to ask the unit chaplain to research the topic for him. In any case, the commander did not base his EROD decision on the family's religious preference or the chaplain's information. He based his decision on mission considerations.

**Disposition:** Closed.

**Complaint # 7 (continued from the 1<sup>st</sup> quarter FY 2014 report):**

**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:** Investigation revealed that all administrative and legal procedures were followed.

**Disposition:** Closed.

**Complaint # 8 (continued from the 1<sup>st</sup> quarter FY 2014 report):**

**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:** Investigation revealed that the military police questioning during detention was administrative in nature and did not involve incriminating information. Regarding the additional allegation, the installation Commanding General asked that the Soldier be contacted to monitor his welfare and not to ask any incriminating questions.

**Disposition:** Closed.

**Complaint #9 (continued from the 1<sup>st</sup> quarter FY 2014 report):**

**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 #10 (continued from the 1<sup>st</sup> quarter FY 2014 report):**

**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. Local prosecutors are still moving toward prosecution of the store owners but there is no timeline.

**Disposition:** On-going.

**Complaint #11 (continued from the 4<sup>th</sup> quarter FY 2013 and 1<sup>st</sup> quarter FY 2014 reports):**

**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:** On-going.

**Disposition:** On-going.

**Complaint #12 (continued from the 4<sup>th</sup> quarter FY 2013 and 1<sup>st</sup> quarter FY 2014 reports):**

**Description of Complaint:** Originally filed in 3<sup>rd</sup> Quarter FY 2012. 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. 4<sup>th</sup> Quarter FY 2012, complainant was returned to duty and hospitalized. Complainant is out of the hospital.

**Findings:** Psychiatric review by the US Army Court of Criminal Appeals has occurred. Information received on 4 April 2014 that by order of the US Army Court of Criminal Appeals, 13 Dec 2013, the conclusion was made that there is little possibility of the above individual being able to "consult with his lawyer with a reasonable degree of rational understanding," and all proceedings were abated *ab initio*. The findings of guilty and the sentence were set aside, and the charges were DISMISSED. All rights, privileges, and property of which appellant was deprived by virtue of the findings of guilty and the sentence will be restored.

**Disposition:** Closed.

**Complaint #13:**

**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:** Ongoing.

**Complaint #14:**

**Description of Complaint:** A complaint alleged that the command denied an inmate at a military detention facility his request for religious materials. Possible freedom of religion issue.

**Findings:** Investigation revealed that the inmate was on suicide watch, in which case all the inmate's possessions are closely monitored to ensure none are used to commit suicide. The inmate received his requested religious materials once taken off of suicide watch.

**Disposition:** Closed.

**Complaint #15:**

**Description of Complaint:** A complaint alleged that two Department of Defense (DoD) Policeman improperly detained and unreasonably searched a driver after stopping him for failure to come to a complete stop at a stop sign. The incident occurred on a military installation around 2130. Possible unreasonable search and seizure issue.

**Findings:** On-going.

**Disposition:** On-going.

### **Complaint #16:**

**Description of Complaint:** A complaint alleged that the commander ordered a Soldier to give his privately owned vehicle to the Soldier's wife. The Soldier and his wife were living in separate quarters. Possible unreasonable search and seizure issue.

**Findings:** Investigation revealed that the commander had only recommended that the Soldier provide the vehicle to his wife. The wife was living in on-post family housing and was caring for the couple's two children. The Soldier was living in the barracks within walking distance of his work and food. The Soldier owned three vehicles, only one of which was operational. The Soldier provided his wife with the operational vehicle and was working on repairing the other two

**Disposition:** Closed.

### **Complaint #17:**

**Description of Complaint:** A complaint alleged that a company commander improperly ordered a search of all his Soldiers' barracks rooms to recover an allegedly stolen Xbox video gaming system. The system belonged to a Soldier who was on convalescent leave and not in the barracks at the time. While a commander may inspect barracks for health or safety reasons, a commander generally may not conduct a search for stolen items without probable cause to believe the stolen item was in a particular Soldier's room. Possible unreasonable search and seizure issue.

**Findings:** On-going.

**Disposition:** On-going.

### **Complaint #18:**

**Description of Complaint:** A complaint alleged that a company commander and his first sergeant improperly confiscated a subordinate Soldier's privately owned weapon and ordered it to be stored at another Soldier's off-post residence. Generally the company commander issues the Soldier a hand receipt when confiscating a privately owned weapon, and then stores the weapon in the unit arms room. The weapon belonged to the Soldier's spouse. Possible right to bear arms and search and seizure issue.

**Findings:** Investigation is currently in progress.

**Disposition:** On-going.

**Complaint # 19:**

**Description of Complaint:** By memorandum dated 14 March 2014, the Soldier submitted matters in defense, extenuation, and mitigation at a General Officer Article 15 proceeding. The Soldier alleged that he was not properly informed of the nature of the accusations against him prior to making an incriminating statement. The Soldier renewed this complaint in his written appeal of the GO Art 15.

**Findings:** On-going.

**Disposition:** On-going.

**Complaint # 20:**

**Description of Complaint:** A Trial Services attorney informed the unit Office of the Staff Judge Advocate (OSJA) that a Soldier was ordered by a supervisor Noncommissioned Officer (NCO) to be restricted to certain limits of his unit area. Possible 5<sup>th</sup> Amendment deprivation of liberty issue.

**Findings:** The restriction by the NCO was improper punishment. The restriction order was rescinded after servicing trial counsel contacted the unit command team and provided advice about proper administrative, non-punitive and punitive measures for dealing with allegations of misconduct against Soldiers.

**Disposition:** Closed.

**Complaint #21:**

**Description of Complaint:** Customer/Client filed a claim in February 2014 alleging that MPs wrongfully towed his two vehicles in August 2013 from a parking area on post.

**Findings:** Claim is under investigation.

**Disposition:** On-going.

**Complaint #22 :**

**Description of Complaint:** Customer/Client filed a claim in March 2014 asserting that the MPs wrongfully towed his vehicle in August 2013 after he experienced a medical emergency.

**Findings:** Claim is under investigation.

**Disposition:** On-going.

**Complaint #23:**

**Description of Complaints:** A court case has been brought by a news publication which alleges that three military police unlawfully detained two of its employees and destroyed property (photos) protected by the First Amendment without due process of law at an Army vehicle manufacturing plant. The plaintiffs are the news publication and the two employees involved in the incident. The complaint includes allegations of violations of the First Amendment and unlawful search and seizure.

**Findings:** Pending.

**Disposition:** On-going.

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

**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. Final response pending.

**Disposition:** On-going.

**Complaint #25:**

**Description of Complaint:** A former civilian employee filed a Federal civil suit against a Department of the Army police officer alleging that the officer used excessive force while apprehending him in August 2010. Possible Fourth Amendment violation.

**Findings:** Pending.

**Disposition:** On-going.