



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

SEMI-ANNUAL REPORT
SEPTEMBER 2013 – MARCH 2014

July 23, 2014

In accordance with Section 801 of the Implementing Recommendations of the 9/11 Commission Act, 42 U.S.C. § 2000ee, I am pleased to present the third Semi-Annual Report of the Privacy and Civil Liberties Oversight Board. This Semi-Annual Report is being provided to the President and the following Members of Congress:

The Honorable Barbara A. Mikulski
Chairwoman, U.S. Senate Committee on Appropriations

The Honorable Richard Shelby
Ranking Member, U.S. Senate Committee on Appropriations

The Honorable Thomas R. Carper
Chairman, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Tom Coburn
Ranking Member, U.S. Senate Committee on Homeland Security and Governmental Affairs

The Honorable Dianne Feinstein
Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Saxby Chambliss
Vice Chairman, U.S. Senate Select Committee on Intelligence

The Honorable Patrick J. Leahy
Chairman, U.S. Senate Committee on the Judiciary

The Honorable Charles Grassley
Ranking Member, U.S. Senate Committee on the Judiciary

The Honorable Hal Rogers
Chairman, U.S. House of Representatives Committee on Appropriations

The Honorable Nita M. Lowey
Ranking Member, U.S. House of Representatives Committee on Appropriations

The Honorable Michael McCaul
Chairman, U.S. House of Representatives Committee on Homeland Security

The Honorable Bennie G. Thompson
Ranking Member, U.S. House of Representatives Committee on Homeland Security

The Honorable Mike Rogers
Chairman, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable C.A. “Dutch” Roppersberger
Ranking Member, U.S. House of Representatives Permanent Select Committee on Intelligence

The Honorable Bob Goodlatte
Chairman, U.S. House of Representatives Committee on the Judiciary

The Honorable John Conyers, Jr.
Ranking Member, U.S. House of Representatives Committee on the Judiciary

The Honorable Darrell E. Issa
Chairman, U.S. House of Representatives Committee on Oversight and Government Reform

The Honorable Elijah Cummings
Ranking Member, U.S. House of Representatives Committee on Oversight and Government Reform

Inquiries relating to this report may be directed to (202) 331-4068.

Sincerely,



David Medine
Chairman, on behalf of the Board

Privacy and Civil Liberties Oversight Board

David Medine, Chairman

Rachel Brand

Elisebeth Collins Cook

James Dempsey

Patricia Wald



PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

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I. EXECUTIVE SUMMARY

The Privacy and Civil Liberties Oversight Board is pleased to submit its third semi-annual report, as required by law. This report covers the Board's major activities from September 2013 to March 2014 (the "Reporting Period").

The Board is an independent agency within the executive branch established by the Implementing Recommendations of the 9/11 Commission Act, signed into law in August 2007.¹ The Board is comprised of four part-time members and a full-time chairman. It has two primary purposes:

- 1) To analyze and review actions the executive branch takes to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and
- 2) To ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the nation against terrorism.²

During the Reporting Period, the Board continued to establish itself as an independent executive branch agency, and focused on three areas: organization and administration, outreach, and operational activity.

- *Organization and Administration.* The Board took a number of actions necessary for it to function as an independent federal agency, assuming control of the lease on the Board's permanent office space, installing unclassified and classified information technology and telecommunications capabilities, acquiring additional administrative and security support, beginning to hire additional permanent staff, and improving its website (www.pclob.gov). The Board also focused on its financial management activities, developing its FY2014 and FY2015 budgets and refining its staffing plan. In addition, the Board promulgated and finalized regulations governing its obligations under the Freedom of Information Act, the Privacy Act, and the Sunshine Act, and it established formal internal personnel policies on Security, Training, Telework, and Inclement Weather and (other) Emergencies. It also established a privacy policy for its website.
- *Outreach.* The Board has met extensively with government agencies, to familiarize itself with counterterrorism programs and to establish working relationships. The Board has

¹ Pub. L. No. 110-53, § 801(a).

² Pub. L. No. 108-458, § 1061(c), *as amended by* Pub. L. No. 110-53, § 801(a). Section 1061 is codified at 42 U.S.C. § 2000ee.

also sought out the views of a wide variety of advocacy organizations, business groups, academics, and members of the public seeking to learn about their concerns in connection with threats to privacy and civil liberties arising from the government's counterterrorism efforts. The Board also reached out to these and other individuals and organizations in connection with the Board's review of the U.S. government's surveillance programs operated pursuant to Section 215 of the USA PATRIOT Act (the "Section 215 program") and Section 702 of the Foreign Intelligence Surveillance Act (the "Section 702 program"). As part of this review, the Board also met with the President and senior personnel at the White House, with congressional committees, and with members of Congress and their staff. Also in connection with the Board's work on the Section 215 and 702 programs, the Board conducted formal public hearings, where it heard from federal agency officials, former government officials, representatives from non-profit and advocacy groups, industry representatives, academics, and members of the public.

- *Operational Activity.* Apart from establishing its organization and administrative infrastructure, as discussed above, during the Reporting Period the Board focused primarily on completing its review of the Section 215 and Section 702 programs. To inform themselves about the many complex factual issues involved in the operation of these programs, the Board members and PCLOB staff met frequently with the intelligence and oversight agencies involved in managing these programs. In addition to numerous classified briefings, the Board also received substantial volumes of classified documents, including decisions of the Foreign Intelligence Surveillance Court. Board members and staff also met with former judges on the Foreign Intelligence Surveillance Court, as well as with congressional staff and representatives of industry groups and privacy advocacy organizations. The Board held public hearings on November 4, 2013 and March 19, 2014, at which the Board heard from current and former government officials involved with the operation of the surveillance programs, law professors, technologists and other academics, representatives of non-profit and advocacy groups, representatives of the technology and telecommunications industries, a former member of Congress, a former Foreign Intelligence Surveillance Court judge, and an attorney experienced in litigating before the court.

At a public meeting on January 23, 2014, the Board voted to formally adopt its *Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court*. After the Reporting Period for this semi-annual report, the Board also completed its work on the Section 702 program, which will be discussed in the PCLOB's next semi-annual report.

While the Board's review of the Section 215 and Section 702 programs has been its main priority in the Reporting Period, the Board also has continued addressing broader

programmatic issues, including urging executive branch agencies to update the Attorney General guidelines developed to implement the privacy provisions of Section 2.3 of Executive Order 12333, and working with federal agencies to help them submit Section 803 privacy and civil liberties reports to the Board.³ The Board looks forward to working proactively with other agencies as they design and implement new programs that may raise privacy and civil liberties concerns.

II. INTRODUCTION

The Implementing Recommendations of the 9/11 Commission Act of 2007,⁴ which created the Privacy and Civil Liberties Oversight Board as an independent agency within the executive branch, requires the Board to report not less than semi-annually to the President and Congress. The report must include:

- (a) a description of the major activities of the Board during the preceding period;
- (b) information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions;
- (c) the minority views on any findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions;
- (d) each proposal reviewed by the Board that:
 - (i) the Board advised against implementation; and
 - (ii) notwithstanding such advice, actions were taken to implement; and
- (e) for the preceding period, any requests for the issuance of a subpoena that were modified or denied by the Attorney General.⁵

During the current reporting period, the Board continued to focus on establishing a solid organizational foundation, targeting three initial priorities: agency organization and administration, outreach, and operational activity. Board members continued to reach out to relevant committees and members of Congress, the White House, federal agencies, academics, industry representatives, non-profit and advocacy groups, and the public, in order to increase awareness of the Board's status and mission. The Board continued its review of proposed policies as part of the executive branch policy development processes managed by the Office of Management and Budget.

³ See page 12 below for an explanation of Section 803 privacy and civil liberties reports.

⁴ Pub. L. No. 110-53, § 801(a).

⁵ Pub. L. No. 108-458, § 1061(e)(2), *as amended by* Pub. L. No. 110-53, § 801(a).

III. HISTORY AND MISSION

A. History

A full history of the Board was included in its first and second semi-annual reports. That history is not repeated here, but these reports can be read at www.pclob.gov. The Board consists of four part-time Board members and a full-time chairman.⁶

B. Mission

The Board is vested with two fundamental authorities: (1) to analyze and review actions the executive branch takes to protect the nation from terrorism, ensuring the need for such actions is balanced with the need to protect privacy and civil liberties; and (2) to ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the nation against terrorism.⁷

To meet its mission, the Board must provide advice to the President and to executive branch agencies and departments on policy development and implementation; oversee certain actions, regulations, policies, and procedures of the executive branch (including information-sharing practices) to ensure that privacy and civil liberties are protected; and, when appropriate, coordinate the activities of federal agency privacy and civil liberties officers on relevant interagency matters.

When necessary to carry out its statutory duties, the Board is authorized to access all relevant executive agency records, reports, audits, reviews, documents, papers, recommendations, or other relevant materials, including classified information, and to interview, take statements from, or take public testimony from any executive branch officer or employee. In addition, the Board

⁶ The Board's first four part-time members were confirmed together by the Senate on August 2, 2012, and were appointed by the President and sworn into office later that month, with Board members serving staggered terms. Since that time, two Board members' initial terms ended, but each was confirmed for a second term. Therefore, Patricia M. Wald and Elisebeth Collins Cook have new terms as identified below. The four part-time Board members and their respective terms are as follows:

- Rachel L. Brand, for a term ending on January 29, 2017;
- Elisebeth Collins Cook, for a term ending on January 29, 2020;
- James X. Dempsey, for a term ending on January 29, 2016; and
- Patricia M. Wald, for a term ending on January 29, 2019.

The Board's chairman and its only full-time member, David Medine, was confirmed by the Senate on May 7, 2013. He was appointed and sworn in on May 29, 2013, for a term ending on January 29, 2018.

⁷ IRTPA, § 1061(c), *as amended by* Pub. L. No. 110-53, § 801(a).

may, by written request to the Attorney General, require by subpoena that persons (other than departments, agencies, and elements of the executive branch) produce relevant information.⁸

The Board must conduct official business in accordance with the Government in the Sunshine Act,⁹ which requires that the public be provided notice of any meetings at which the Board deliberates to determine official action. The Board also is subject to the Freedom of Information Act,¹⁰ including its requirements to make certain information available to the public through a website.¹¹

In addition to those authorities and responsibilities contained in the Board's enabling legislation, the President's Executive Order 13636, *Improving Critical Infrastructure Cybersecurity*, dated February 12, 2013, provides that the Department of Homeland Security ("DHS") shall consult with the Board in producing a report that assesses the privacy and civil liberties risks associated with the activities undertaken by federal agencies under the Order.¹² Although the PCLOB was not consulted early enough to be able to play a significant role in the first DHS report, the Board did provide feedback to the DHS by letter of March 21, 2014, and Board members look forward to coordinating and consulting with the DHS in connection with its second cybersecurity report over the coming year.

⁸ IRPTA, § 1061(g), *as amended* by Pub. L. No. 110-53, § 801(a).

⁹ 5 U.S.C. § 552b. The Sunshine Act requires that these meetings be open to the public, unless the Board decides, by majority vote, to close the meeting based on one of permitted bases for closing a meeting in the Sunshine Act.

¹⁰ 5 U.S.C. § 552; 42 U.S.C. § 2000ee(1)(1).

¹¹ 5 U.S.C. § 552(a)(2).

¹² Exec. Order No. 13636, *Improving Critical Infrastructure Cybersecurity* (2013).

IV. MAJOR ACTIVITIES: SEPTEMBER 2013 – MARCH 2014

A. Organization, Administration, and Budget

Organization

As a new independent agency, the Board continued to address a variety of organizational and administrative matters during the Reporting Period, including finalizing its arrangements for permanent office space, procuring information technology and telecommunications support, developing its FY2015 budget, identifying personnel and security requirements, beginning to hire additional permanent staff, adopting required operational policies and procedures, and addressing a myriad of other issues that are required to continue the start-up and functioning of the agency.

In particular, during the Reporting Period, the Board:

- Worked with both the General Services Administration (“GSA”) Financial and Payroll Services Division under a fee-for-service arrangement and the Board’s Resource Management Officer at the Office of Management and Budget to develop a budget as part of the President’s FY2015 budget submission to Congress;
- Continued the process of hiring additional staff members and acquiring necessary security clearances;
- Continued to seek additional detailees to support the Board’s mission;¹³
- Adopted policies related to the Board’s internal operations, including promulgating and finalizing regulations governing its obligations under the Freedom of Information Act, the Privacy Act, and the Sunshine Act, as well as establishing a privacy policy for the Board’s website and formal internal personnel policies on Security, Training, Inclement Weather and (other) Emergencies, and Telework;
- Continued fee-for-service agreements with the GSA for human resources and financial services support;
- Secured improvements to existing information technology services, and enhanced the Board’s website;¹⁴ and

¹³ The Board’s enabling statute allows for federal employees to be detailed to the Board from other federal agencies. IRTPA, § 1061(j)(1), *as amended by* Pub. L. No. 110-53, § 801(a).

¹⁴ Despite extensive efforts, the Board was unable to establish a workable arrangement with any of the multiple agencies with Secure Compartmented Information Facilities (SCIFs) in the San Francisco Bay Area that would enable the one part-time Board member who lives outside the

- Signed agreements with GSA and others in November 2013 for the full occupancy of fully furnished and equipped office space meeting the security requirements applicable to an agency that regularly handles classified information.

Administration

Due to its status as a federal agency, the Board must comply with numerous statutes, regulations, and executive orders, as well as develop its own implementing policies and procedures. During the Reporting Period, the Board:

- Adopted a Website Privacy Policy on November 1, 2013, later revised on July 1, 2014;
- Finalized as of November 8, 2013 a rule for its Freedom of Information Act, Privacy Act, and Sunshine Act procedures, effective on January 7, 2014;¹⁵
- Adopted a Security Policy on November 14, 2013, that covers personnel security, physical security, information security, and internal procedures;
- Adopted an Inclement Weather and Emergency Conditions Policy on December 6, 2013;
- Continued to integrate itself into the executive branch's legislative coordination and clearance process, as specified in Office of Management and Budget Circular A-19, as a mechanism to augment its outreach efforts and to further assimilate the Board into executive branch review processes by providing advice and counsel; and
- Began more active engagement in information technology and chief information officer responsibilities, such as cloud technology matters, including beginning the process of entering into a new contract for IT services and help-desk functionality.

Budget

Although the Board's authorizing legislation was enacted in 2007, the Board did not begin operations until the last month of FY2012. Only the chairman has statutory authority to hire permanent staff, and the chairman was not confirmed by the Senate until May 2013. The Board's budget for FY2013 was limited to the previously appropriated placeholder budget of \$900,000, placing extreme restrictions on the Board's ability to hire permanent staff. It was not until the continuing resolution passed in the fall of 2013 that the Board's budget was increased to \$3.1 million for FY2014. During the Reporting Period the Board's entire workforce consisted of four part-time board members, its full-time chairman, two permanent staff members (the executive

Washington DC area to work with classified information or conduct secure telephone calls or video conferences closer to his place of residence.

¹⁵ This regulation is available at www.pclob.gov.

director and an attorney-advisor), a contractor, and three detailed staff members from other agencies. It was thus not until the end of calendar year 2013, when the FY2014 budget negotiations were resolved by Congress, that the Board finally had access to its full appropriation of \$3.1 million and was able to begin interviewing and making offers to hire additional permanent staff.

As of July 18, 2014, the Board has a staff consisting of permanent staff and detailees that includes an Executive Director, an Acting General Counsel, four Attorney-Advisors, a Chief Security Officer, a Senior Administrative Officer, an Acting Chief Information Officer/Senior Technical Advisor, and a Technology-Advisor.

B. Outreach and Meetings

Since September 2013, the Board has engaged in the following activities:

1. The Board held a public hearing on November 4, 2013 on the Section 215 and Section 702 programs, which had been postponed (from October 4, 2013) due to the lapse in government appropriations and the resulting unavailability of witnesses. Notice of the hearing was published in the Federal Register. A full agenda is included as Attachment A of this report. At the public hearing, the Board heard testimony from current and former government officials and outside experts, with a focus on proposals for change and continued public debate. Approximately 200 people attended, as well as national and international news media.
2. The full Board met with the President's Intelligence Advisory Board ("PIAB") on November 19, 2013, to discuss the operation and oversight of the Sections 215 and 702 surveillance programs.
3. The Board held a public meeting on January 23, 2014, to formally adopt its report on the bulk telephone records program operated under Section 215 of the USA PATRIOT Act and on the Foreign Intelligence Surveillance Court. Notice of the meeting was published in the Federal Register and is included as Attachment B of this report.
4. Chairman Medine testified at a House Judiciary Committee hearing on February 4, 2014, entitled "Recommendations to Reform Foreign Intelligence Programs."¹⁶
5. The entire Board testified at a United States Senate Judiciary Committee hearing on February 12, 2014, entitled, "The Report of the Privacy and Civil Liberties Oversight

¹⁶ Chairman Medine's prepared testimony is available at <http://www.pclob.gov/All%20Documents/David-Medine-Testimony-House-Judiciary-Comm-2-4-14.pdf>

Board on Reforms to the Section 215 Telephone Records Program and Foreign Intelligence Surveillance Court.”¹⁷

6. Board members participated in the RSA conference on February 26, 2014, at a panel session entitled “Meet the PCLOB: An Introduction to the Independent US Privacy and Civil Liberties Oversight Board.”¹⁸
7. Board members and staff on March 4, 2014, consulted with the President’s Big Data and Privacy Working Group led by White House Counselor John Podesta.¹⁹
8. The Board held a public hearing on March 19, 2014, to hear from government and non-government officials on the surveillance program conducted under Section 702 of the Foreign Intelligence Surveillance Act. Notice of the hearing was published in the Federal Register. A full agenda is included as Attachment C of this report. While conducting the public hearing, the Board encouraged public comments or written statements for the record on www.regulations.gov. Approximately 200 people attended, as well as national and international news media.
9. Although it occurred after the reporting period for this semi-annual report, the Board notes that it held a public meeting on July 2, 2014, to formally adopt its report on the surveillance program operated under Section 702 of the Foreign Intelligence Surveillance Act. Notice of the meeting was published in the Federal Register.
10. Board members and staff met with officials of the Department of Justice (“DOJ”), Office of the Director of National Intelligence (“ODNI”), Central Intelligence Agency (“CIA”), Federal Bureau of Investigation (“FBI”), and National Security Agency (“NSA”) on numerous occasions to discuss the operation and oversight of data collection programs conducted under Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act. These discussions covered the Intelligence Community’s collection, use, and dissemination practices with respect to these programs, as well as compliance measures, including internal and external oversight. Board members and staff

¹⁷ A transcript and video of the hearing is available at <http://www.judiciary.senate.gov/meetings/the-report-of-the-privacy-and-civil-liberties-oversight-board-on-reforms-to-the-section-215-telephone-records-program-and-the-foreign-intelligence-surveillance-court>

¹⁸ For more information see <http://www.rsaconference.com/events/us14/agenda/sessions/1284/meet-the-pclob-an-introduction-to-the-independent>.

¹⁹ For more information on the Working Group’s process and report, see <http://www.whitehouse.gov/blog/2014/05/01/findings-big-data-and-privacy-working-group-review>.

also met with industry representatives, non-profit and advocacy groups, and private individuals regarding their views of these programs.

11. Board members and staff met with various members of Congress and staff regarding the Board's roles and responsibilities, its budget, and potential legislation affecting the Board, surveillance programs reviewed by the Board, and the Foreign Intelligence Surveillance Court.
12. Board members and staff participated in several meetings with members of privacy, civil liberties, and civil rights advocacy organizations to discuss the impact of government surveillance activities on their respective constituencies.
13. Chairman Medine and staff met with foreign government officials to discuss privacy and civil liberties concerns with respect to United States government programs.

C. Operational Activities

The Board's primary operational focus during the Reporting Period was on reviewing the federal government surveillance programs conducted pursuant to Section 215 of the USA PATRIOT ACT and Section 702 of the Foreign Intelligence Surveillance Act. The Board issued its public report on the Section 215 program on January 23, 2014. The Board issued its public report on the Section 702 program on July 2, 2014. Both reports are publicly available online at www.pclob.gov, and we do not attempt to summarize here their extensive findings and recommendations. However, we note that both reports were issued in fully unclassified form, presenting very detailed descriptions of important programs that had been the subject of great public controversy and some degree of misunderstanding.

In addition, the Board continued to evaluate other potential areas of focus and address its statutory mandate and duties as follows:

1. *Working with privacy and civil liberty officers.* Pursuant to 42 U.S.C. § 2000e(d)(3), the Board's functions include: (a) receiving and reviewing reports and other information from the privacy and civil liberties officers of other agencies; (b) making recommendations regarding those officers' activities; and (c) as appropriate, coordinating those officers' activities on interagency matters.²⁰ During the reporting period, the Board

²⁰ With regard to working with the agencies' privacy and civil liberties officers, the Board's current activities are listed below:

- CIA: The Board works with the CIA privacy and civil liberties office to gain access to classified information about relevant intelligence agency programs.

has engaged primarily with privacy and civil liberties officers of with ODNI, DHS, DOJ, CIA and NSA. The Board anticipates now that its report on Sections 215 and 702 are completed, it will continue to expand its activities in this area.

2. *Receiving and reviewing quarterly Section 803 Reports.* Eight federal agencies are required by statute to produce quarterly reports on the activities of their privacy officers and civil liberties officers. These reports, known as Section 803 reports, must include, among other things, the number and nature of the complaints received by the agencies and a summary of the disposition of these complaints.²¹ The quarterly reports under Section 803 must be provided to the Board, among other recipients.²² The Section 803 reports for the most part are not fully informative, as they contain quantitative information but little narrative on the kinds of complaints received or the basis of their disposition. On August 2, 2013, the Board sent each agency that is statutorily required to submit Section 803 reports a written reminder of its obligation to submit its quarterly reports and a request that the agency identify its Section 803 official. As of March 2014, all eight agencies fulfilled their statutory obligations. Notably, two of these eight agencies had not previously completed any report; the PCLOB commends the Department of State and the Department of Health and Human Services for their efforts to begin completing

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- DHS: The Board maintains regular contact with DHS’s privacy office, as well its civil rights and civil liberties office. The Board has received an overview of these offices’ operations and anticipates increased interactions regarding cybersecurity issues.
 - DOD: The Board has met with the DOD Privacy and Civil Liberties Office.
 - DOJ: The Board has met with the Chief Privacy and Civil Liberties Officer.
 - FBI: The Board works closely with their privacy and civil liberties offices to gain access to classified information about relevant intelligence agency programs
 - NSA: The Board has worked frequently with the NSA’s new Director of Civil Liberties and Privacy after her arrival in February 2014.
 - ODNI: The Board works closely with the ODNI privacy and civil liberties office to gain access to classified information about relevant intelligence agency programs and interagency processes.

²¹ See 42 U.S.C. § 2000ee-1(f). The relevant section in Pub. L. No. 110-53 is Section 803 and therefore these reports are referred to as “Section 803 Reports.” Pursuant to the statute, Section 803 reports are to be submitted no less than quarterly, and the content of the report must include:

- Information on the number of privacy and civil liberties reviews undertaken;
- The type of advice provided and the response given to such advice;
- The number and nature of the complaints received by the Department or Agency alleging a violation of privacy and civil liberties; and
- A summary of the disposition of such complaints, the reviews and inquiries conducted, and the impact of the activities of the Privacy and Civil Liberties Officer.

²² 42 U.S.C. § 2000ee-1(f)(1)(A)(iii).

Section 803 reports.²³ With all eight agencies now submitting their reports, the Board, in consultation with the agencies' Section 803 officials, plans to examine how the reports could be made more useful and informative. Next steps include meeting with Section 803 officials to ensure compliance with reporting requirements and to discuss development of more robust quarterly reports. The Board also will consider exercising its authority to expand the number of agencies required to submit Section 803 reports.²⁴

3. *Attorney General–approved guidelines on United States persons.* On August 22, 2013, the Board sent a letter to the Attorney General and the Director of National Intelligence regarding the responsibility of these officials pursuant to Executive Order 12333, as amended, to ensure that the collection, retention, and dissemination of U.S. persons' information in the context of intelligence-gathering occurs in accordance with Attorney General–approved guidelines.²⁵ The Board noted that several agencies and departments are operating under guidelines that “have not comprehensively been updated, in some cases in almost three decades, despite dramatic changes in information use and technology.”²⁶ The Board urged the Attorney General and the Director of National Intelligence to take steps to resolve this. In November 2013, Board members and staff met with representatives of the DOJ and ODNI to discuss the process for updating specific guidelines. Having completed the Board's reports on the Section 215 and Section 702 programs, the Board will resume its efforts to work with the DOJ and ODNI on updating these guidelines.
4. *Executive Order 13636 on Improving Critical Infrastructure Cybersecurity.* Executive Order 13636 requires that “the Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties of DHS shall consult with the Privacy and Civil Liberties Oversight Board” in producing a report on the government's cybersecurity activities, making recommendations to “minimize or mitigate” the “privacy and civil liberties risks of the functions and programs” undertaken pursuant to the Order.²⁷ On March 21, 2014, the Board sent a letter to the DHS providing feedback on the draft report coordinated by the DHS. The Board had not been brought into the process in time to be involved in the development of the report, and it has not yet had the opportunity for any in-depth study of the privacy and civil liberties issues presented by the cybersecurity programs, as called

²³ Reports have been received from the CIA, DOD, Department of Health and Human Services, DHS, DOJ, Department of the Treasury, Department of State, and ODNI.

²⁴ See 42 U.S.C. § 2000ee-1(a) (granting Board authority to expand reporting requirement to other departments, agencies, or elements of the executive branch).

²⁵ See Exec. Order No. 12333, *United States Intelligence Activities*, as amended, § 2.3 (2008).

²⁶ This letter and additional correspondence are available at <http://www.pclob.gov/SiteAssets/newsroom/PCLOB%20DNI%20AG%2012333%20Guidelines%20Letter.pdf>.

²⁷ Exec. Order No. 13636, *Improving Critical Infrastructure Cybersecurity* (2013).

for in the Executive Order. However, the Board did provide feedback, pointing out “encouraging aspects of the report,” such as the detailed analysis by several agencies examining compliance with the Fair Information Practice Principles, as well as noting areas needing further development or improvement. The Board looks forward to engaging in a dialogue with the DHS as part of the “consultation” process for revisions to the report in future years.

5. *Transparency and Training.* Prior to the Board’s decision to review the surveillance programs conducted pursuant to Sections 215 and 702, the Board identified two areas of interest that cut across the federal government: transparency and training. At the Board’s March 5, 2013 open meeting, the Board stated that further Board involvement in these issues would be warranted and consistent with its statutory mandate.²⁸ The Board supports greater transparency about certain counterterrorism-related operations and activities, and it addressed transparency in both its Section 215 and Section 702 reports. The Board intends to remain engaged in this area in the future. As to training, the Board observed in its March 2013 open meeting that privacy and civil liberties training for analysts, agents, and other personnel is a common element of the extensive internal training procedures in place for counterterrorism programs. The Board began to evaluate these training programs in May 2013.

²⁸ The minutes of this open meeting are available at <http://www.pclob.gov/meetings-and-events/5-march-2013-public-meeting>.

V. FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS

A. Findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions

During the Reporting Period, the bulk of the Board's attention was focused on fact finding and evaluation of privacy and civil liberties concerns related to the federal government's surveillance programs operated pursuant to Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act. On January 23, 2014, the Board issued a public report on the Section 215 program and on the operations of the Foreign Intelligence Surveillance Court, which included findings, legal conclusions, and recommendations resulting from the Board's extensive review of the program. The Board made twelve recommendations regarding the Section 215 program, the operation of the FISC, and the promotion of transparency. Ten of the twelve recommendations were unanimous. Two of the Board's recommendations were supported by a majority of three members, with the remaining two members writing separate statements explaining their dissenting positions. On July 2, 2014, after the Reporting Period, the Board issued a public report on the Section 702 program. All of the Board's recommendations were unanimous. The Board's Section 215 report, its Section 702 report, and all minority views thereto, are currently available at www.pclob.gov.

B. Each proposal reviewed by the Board that: (i) the Board advised against implementation: and (ii) notwithstanding this advice, actions were taken to implement

For the Reporting Period, the Board has no items to report under this section.

C. Requests for the issuance of subpoenas that were modified or denied by the Attorney General

For the Reporting Period, the Board has no items to report under this section.

VI. NEXT STEPS

The Board expects the following priorities to guide its activities for Fiscal Years 2014 and 2015:

- Ensure that the Board's budgets for FY2015 and FY2016 are sufficient to support the Board's operations and to acquire necessary staff.
- Begin more robust engagement on the Board's request for privacy and civil liberties training materials from executive branch agencies with a counterterrorism mission.
- Conduct an open meeting and solicit public comment regarding issues with which the Board should engage in FY2015.
- Continue to coordinate and consult with the DHS as it issues its next report pursuant to President's Executive Order 13636, *Improving Critical Infrastructure Cybersecurity*, to ensure that privacy and civil liberties are appropriately considered.
- Continue to track the government's response to the Board's letter asking that attention be paid to several agencies' outdated implementing guidance for the Attorney General Guidelines on the collection, retention, and dissemination of information concerning United States persons in accordance with Executive Order 12333, as amended.
- Prepare a report assessing the implementation of Presidential Policy Directive 28 to the extent such implementation falls within the Board's mandate.
- Continue to work with agencies regarding their submission of Section 803 reports so that those reports can be made more meaningful and informative.
- Continue stand-up activities to ensure full operational capability, including hiring additional staff and establishing sound ethics and records management programs.
- Take responsibility for the management of its unclassified IT network, designate a Chief Information Officer and a Chief Information Security Officer, and develop appropriate IT and information security policies.
- Continue identifying and examining issues within the Board's mandate.
- Continue outreach to federal agencies, industry representatives, and non-profit and advocacy groups to assist in identifying issues for the Board's focus and to aid the Board in its examination of these issues.

- Provide advice and guidance to federal agency privacy and civil liberties officers as they exercise oversight of terrorism-related programs.
- Increase and promote transparency to the public.
- Ensure key congressional committees are apprised of the Board's progress.

VII. CONCLUSION

During the Reporting Period, the Board transitioned from start-up activities to fulfilling the advice and oversight responsibilities that comprise its substantive mandate. With the additional staff that the Board has hired, the Board has made significant progress in initiating its oversight responsibilities. The Board completed its first oversight report on January 23, 2014, examining the federal government surveillance program operated pursuant to Section 215 of the USA PATRIOT Act as well as the operations of the Foreign Intelligence Surveillance Court. The Board also was able to make substantial progress on its review of the surveillance program conducted pursuant to Section 702 of the Foreign Intelligence Surveillance Act, a review that culminated in the issuance of the Board's second oversight report on July 2, 2014.

In addition, the Board continued its oversight of the process of updating agencies' Attorney General-approved guidelines to protect information concerning United States persons in the context of intelligence gathering, in accordance with Executive Order 12333, as amended. The Board also called for greater accountability and substance regarding agencies' mandatory Section 803 reports, and now seven of the eight agencies required to complete a report are doing so.

The Board continues to be grateful to the federal agencies, congressional staff, advocacy groups, industry representatives, and members of the public who have engaged with the Board during this reporting period, and the Board plans to continue to strengthen these relationships in furtherance of the Board's mission as it moves forward to protect privacy and civil liberties.

ATTACHMENT A

AGENDA OF PUBLIC HEARING

HELD ON NOVEMBER 4, 2013



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD PUBLIC HEARING

Consideration of Recommendations for Change: The Surveillance Programs Operated Pursuant to Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act

November 4, 2013

Renaissance Mayflower Hotel – Grand Ballroom
1127 Connecticut Ave NW, Washington DC

AGENDA

- 08:45** **Doors Open**
- 09:15 – 09:30** **Introductory Remarks (David Medine, PCLOB Chairman,
with Board Members Rachel Brand, Elisebeth Collins Cook,
James Dempsey, and Patricia Wald)**
- 09:30 – 11:45** **Panel I: Section 215 USA PATRIOT Act and
Section 702 Foreign Intelligence Surveillance Act**
- **Rajesh De (General Counsel, National Security Agency)**
 - **Patrick Kelley (Acting General Counsel, Federal Bureau of Investigation)**
 - **Robert Litt (General Counsel, Office of the Director of National Intelligence)**
 - **Brad Wiegmann (Deputy Assistant Attorney General, National Security Division, Department of Justice)**
- 11:45 – 1:15** **Lunch Break (on your own)**
- 1:15 – 2:30** **Panel II: Foreign Intelligence Surveillance Court**
- **James A. Baker (formerly DOJ Office of Intelligence and Policy Review)**

- Judge James Carr (Senior Federal Judge, U.S. District Court, Northern District of Ohio and former FISA Court Judge 2002-2008)
- Marc Zwillinger (Founder, ZwillGen PLLC and former Department of Justice Attorney, Computer Crime & Intellectual Property Section)

2:30 – 2:45 Break

2:45 – 4:15 Panel III: Academics and Outside Experts

- Jane Harman (Director, President and CEO, The Woodrow Wilson Center and former Member of Congress)
- Orin Kerr (Fred C. Stevenson Research Professor, George Washington University Law School)
- Stephanie K. Pell (Principal, SKP Strategies, LLC; former House Judiciary Committee Counsel and Federal Prosecutor)
- Eugene Spafford (Professor of Computer Science and Executive Director, Center for Education and Research in Information Assurance and Security, Perdue University)
- Stephen Vladeck (Professor of Law and Associate Dean for Scholarship at American University Washington College of Law)

4:15 Closing Comments (David Medine, PLCOB Chairman)

All Affiliations are listed for identification purposes only.

ATTACHMENT B

**FEDERAL REGISTER
NOTICE OF SUNSHINE ACT MEETING
ON JANUARY 23, 2014**

Federal Register /Vol. 79, No. 11 /Thursday, January 16, 2014 /Notices

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

[Notice–PCLOB–2014–01; Docket No. 2014– 0001; Sequence No. 1]

Sunshine Act Meeting

TIME AND DATE: Thursday, January 23, 2014 from 1:00 p.m.–2:00 p.m. (Eastern Standard Time).

PLACE: Will be announced on the *www.pcllob.gov* Web page.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Privacy and Civil Liberties Oversight Board will meet for the disposition of official business. At the meeting, the Board will be voting on the issuance of its report on the surveillance program operated pursuant to Section 215 of the USA PATRIOT Act and the operations of the Foreign Intelligence Surveillance Court.

Additional information on the Board’s review of this program, such as the prior public workshop and hearing, is available at www.pcllob.gov.

Procedures for Public Observation: The meeting is open to the public. Pre-registration is not required. Individuals who plan to attend and require special assistance should contact Ms. Susan Reingold, Chief Management Officer, 202–331–1986, at least 72 hours prior to the meeting date.

CONTACT PERSON FOR MORE INFORMATION:

Ms. Susan Reingold, Chief Management Officer, 202–331–1986.

Dated: January 13, 2014.

Diane Janosek,
Chief Legal Officer,
Privacy and Civil Liberties Oversight Board.

[FR Doc. 2014–00838 Filed]

ATTACHMENT C

AGENDA OF PUBLIC HEARING

HELD ON MARCH 19, 2014



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Hearing Regarding the Surveillance Program Operated Pursuant Section 702 of the Foreign Intelligence Surveillance Act

March 19, 2014

Renaissance Mayflower Hotel – Grand Ballroom
1127 Connecticut Ave NW, Washington DC

AGENDA

08:45 **Doors Open**

09:00 - 09:10 **Introductory Remarks (David Medine, PCLOB Chairman)**
**Panel I: Government Perspective on Section 702 Foreign
Intelligence Surveillance Act**

Panelists:

09:15 - 10:45

- **James A. Baker (General Counsel, Federal Bureau of Investigation)**
- **Rajesh De (General Counsel, National Security Agency)**
- **Robert Litt (General Counsel, Office of the Director of National Intelligence)**
- **Brad Wiegmann (Deputy Assistant Attorney General, National Security Division, Department of Justice)**

10:45 - 11:00 **Break**
**Panel II: Legal Issues with 702 Foreign Intelligence Surveillance
Act**

Panelists:

11:00 - 12:30

- **Laura Donohue (Professor of Law, Georgetown University Law School)**
- **Jameel Jaffer (Deputy Legal Director, American Civil Liberties Union)**
- **Julian Ku (Professor of Law, Hofstra University)**
- **Rachel Levinson-Waldman (Counsel, Liberty and National**

Security Program, Brennan Center for Justice)

12:30 - 1:45 **Lunch Break (on your own)**
Panel III: Transnational and Policy Issues

Panelists:

- **John Bellinger (Partner, Arnold & Porter)**
- **Dean C. Garfield (President and CEO, Information Technology Industry Council)**
- 1:45 - 3:45** • **Laura Pitter (Senior National Security Researcher, Human Rights Watch)**
- **Eric Posner (Professor of Law, University of Chicago Law School)**
- **Ulrich Sieber (Director, Max Planck Institute for Foreign and International Criminal Law, Freiburg/Germany)**
- **Christopher Wolf (Partner, Hogan Lovells)**

3:45 **Closing Comments (David Medine, PCLOB Chairman)**

**All Affiliations are listed for identification purposes only.*