

April 8, 2015 Sunshine Act Meeting

The Board has convened today to discuss and vote on a proposed project plan for its review of Executive Order 12333. Last July, PCLOB announced that it was going to engage in oversight of counterterrorism activities conducted under Executive Order 12333. EO 12333 establishes the overall framework for the conduct of intelligence activities by the U.S. intelligence agencies.

The purpose of today's meeting is for the Board to consider and vote on a proposed plan of action for oversight of counterterrorism activities conducted under 12333. The Board has already received briefings from the majority of the elements of the Intelligence Community to provide an overview of their implementation of 12333, and within the next few months, it will complete briefings with the remaining Intelligence Community elements. In addition, the Board has held follow-up briefings with some of the most significant collecting agencies, including the CIA, NSA, FBI, and Defense Intelligence Agency or DIA. These follow-up briefings have focused more closely on the specific counter-terrorism activities that those agencies conduct pursuant to the executive order. The Board also has received and examined the Attorney General-approved procedures and other implementing materials that govern the 12333 activities of these agencies.

Given the range of counterterrorism activities covered under 12333, the Board expects to be conducting oversight of those activities long after the work covered by today's proposed plan of action is completed.

As a preliminary matter, the Board is very cognizant that its jurisdiction is over efforts to protect the Nation from terrorism and that EO 12333 covers activities going well beyond counterterrorism. The proposed plan is accordingly limited to counterterrorism-related matters.

There are three key elements to the proposed plan.

First, the Board will conduct examinations, or "deep dives," of two specific activities undertaken pursuant to E.O. 12333.

In other words, based on what it learns in the briefings it has had and will receive, the Board will select two counterterrorism-related activities, focusing on the NSA and CIA, for in-depth examination and consideration of whether the need for the activity is appropriately balanced with the need to protect privacy and civil liberties. These examinations will be analogous to what the Board did in its review of the Section 215 and 702 programs. The goal is to complete the two examinations and prepare reports on each of them by the end of 2015.

While we anticipate that these deep dive reports may have to be largely or entirely classified, given the nature of the activities being examined, the Board will assess whether to seek public interest declassification of sufficient classified information to permit a public report to be issued on either or both of them.

Second, the Board will produce a public report explaining just what 12333 is and how its legal framework and implementing procedures govern the collection and use of information about Americans. The Board may also use the information obtained during the course of its two in-depth examinations to inform its public report. To the extent possible and appropriate in an unclassified document, the Board may seek to rely on these examinations for descriptive examples of how 12333 and its implementing procedures provide limits on some activities, authorizations for others, impose procedural requirements, and protect privacy and civil liberties.

Third, as appropriate and to the extent the Board can draw conclusions based on its two in-depths reviews and the information it receives from the rest of the Intelligence Community, the Board's public report will also assess the adequacy of EO 12333's safeguards in protecting privacy and civil liberties.

I favor adoption of the plan. I believe that doing two deep-dives on particular counterterrorism activities is important to developing the Board's understanding of how such activities are conducted under 12333. Focusing on two agencies – the CIA and NSA – will give us different perspectives on those activities.

It is also consistent with our mission to educate the public. Despite the importance of Executive Order 12333, remarkably few people understand just what it is or how it shapes the Intelligence Community's actions.

Therefore, the Board now has the opportunity to serve a valuable educational function by exploring in a public report what 12333 is all about and what implications it has for privacy and civil liberties.

However, the Board's mission is not merely to describe what it finds but to thoughtfully conduct meaningful oversight. The Board's job is also to apply its expertise and independent perspective to analyzing and reviewing counterterrorism actions to ensure the need for such actions is balanced with the need to protect privacy and civil liberties, including, as appropriate, whether the safeguards found under 12333 in this context are adequate.