



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
WASHINGTON, D.C. 20002

August 4, 2022

VIA E-MAIL AND U.S. MAIL

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Dear Secretary Mayorkas:

As Chair and Member of the Privacy and Civil Liberties Oversight Board (“PCLOB”), we are writing to request information about activities conducted by the Department of Homeland Security (“DHS”) to counter disinformation. Counter-disinformation activities may have serious impacts on privacy and civil liberties, and the PCLOB has the authority to review and assess these activities and those impacts.

The mission of the PCLOB is to: “(1) 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) 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.”¹

Consistent with those authorities, the PCLOB is currently considering an oversight review of the government’s efforts to combat domestic terrorism. As you are aware, the PCLOB held an online public forum on May 26, 2022, to examine privacy and civil liberties issues related to these efforts, and one central area of inquiry involved examining the steps federal agencies are taking to ensure that they are protecting Americans’ First Amendment rights, including free speech online. The rules under which the government may lawfully monitor communications, including efforts to combat disinformation, must be transparent and include safeguards for privacy and civil liberties.

We are aware that DHS has suspended its Disinformation Governance Board (“DGB”),² but the controversy over DHS’s creation of the DGB has highlighted that, as a DHS fact sheet about the DGB stated, “For nearly 10 years, different agencies across DHS have worked to address

¹ 42 U.S.C. 2000ee(c).

² Nomaan Merchant and Amanda Seitz, “New ‘Disinformation Board’ Paused Amid Free Speech Questions,” Associated Press, May 18, 2022, available at <https://apnews.com/article/government-and-politics-national-security-83c67505703c02b0de154b21abd5c569>.



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disinformation that threatens our homeland security.”³ In addition, the National Strategy to Combat Domestic Terrorism (“National Strategy”) states:

A number of departments and agencies are already pursuing efforts to enhance community-level and individual-level resilience to violence, many of which help to advance the prevention of domestic terrorism. For example, the Department of Homeland Security and others are either currently funding and implementing or planning evidence-based digital programming, including enhancing media literacy and critical thinking skills, as a mechanism for strengthening user resilience to disinformation and misinformation online for domestic audiences.⁴

The National Strategy further links efforts to combat terrorism to the examination of disinformation, stating, “[T]he intelligence and law enforcement communities will enhance the government’s understanding of how foreign malign influence operations and the dissemination of disinformation, including by foreign governments, relate to the domestic terrorism threat we face.”⁵

Internal DHS documents provided to Senators Charles E. Grassley and Josh Hawley, and released by the Senators on June 7, 2022, confirm that these DHS activities predated the creation of the DGB and were premised, at least in part, on counterterrorism.⁶ For example, a memorandum entitled, “Organizing DHS Efforts to Counter Disinformation” states, “DHS components are already engaged in countering disinformation,” and goes on to list five functional areas in which they do so.⁷

DHS’s efforts to monitor online speech and counter disinformation raise many questions about the impact of DHS activities on Americans’ rights. As the PCLOB assesses the scope and nature of its oversight of the government’s efforts to combat domestic terrorism, we seek to

³ Fact Sheet: DHS Internal Working Group Protects Free Speech and Other Fundamental Rights When Addressing Disinformation That Threatens the Security of the United States, May 2, 2022, *available at* <https://www.dhs.gov/news/2022/05/02/fact-sheet-dhs-internal-working-group-protects-free-speech-other-fundamental-rights>. The fact sheet provided three examples of such work, by the U.S. Customs and Border Protection (“CBP”), the Federal Emergency Management Agency (“FEMA”), and the Cybersecurity and Infrastructure Security Agency (“CISA”). *Id.* We note CISA has a public website that describes its work, which refers to, and defines, three terms— “misinformation,” “disinformation,” and “malinformation” (collectively labeled “MDM”). See, <https://www.cisa.gov/mdm>.

⁴ *National Strategy for Countering Domestic Terrorism*, p. 18, <https://www.whitehouse.gov/wp-content/uploads/2021/06/National-Strategy-for-Countering-Domestic-Terrorism.pdf>.

⁵ *Id.*, p. 20.

⁶ Sen. Charles E. Grassley and Sen. Josh Hawley, Letter to Secretary Alejandro Mayorkas, June 7, 2022, https://www.grassley.senate.gov/imo/media/doc/grassley_hawley_to_deptofhomelandsecuritydisinformationgovernanceboard.pdf

⁷ Robert Silvers and Samantha Vinograd, Memorandum for the Secretary: Organizing DHS Efforts to Counter Disinformation, Sept. 13, 2021, p. 2. The memorandum notes three functions—identification, analysis, and information sharing—in which DHS’s Office of Intelligence and Analysis (I&A) is engaged, including a “Homeland Influence Task Force” that I&A operates that “collects information on possible disinformation from publicly available sources as well as other intelligence sources.” *Id.*



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

WASHINGTON, D.C. 20002

examine whether DHS’s activities have been limited to issuing statements to counter alleged disinformation, or whether DHS has taken efforts to suppress or in any way limit speech that it labels “disinformation”; whether any DHS efforts were taken to distinguish the speech of foreign actors from that of U.S. persons; and whether DHS has worked with or asked private companies to suppress or limit U.S. persons’ speech.⁸

To enable the PCLOB to begin to assess the privacy and civil liberties impacts of DHS’s monitoring of American’s speech, and its efforts to combat disinformation/mis-,dis-, and mal-information (“MDM”) activities, we request the following information:⁹

1. Is there a uniform definition of “disinformation” employed by all DHS components? If so, please state it. If not, why not?
2. Please explain (a) how DHS determines that a particular source of disinformation is foreign or domestic; (b) how DHS determines that a foreign source is influencing a domestic audience and what metrics are applied to this determination; (c) how DHS assesses the effectiveness of its efforts to combat disinformation; and (d) any minimization procedures used to remove consideration of U.S. person information.
3. What is the process by which DHS makes determinations of the truth or falsehood of statements? Who are the officials making these determinations, and what review process, if any, exists?
4. What is the process by which DHS determines whether to “counter” disinformation? Who are the officials making the determination whether to counter disinformation, and what review process, if any, exists for those determinations?
5. What are the means and methods by which DHS has countered disinformation? Which methods are ongoing, and which have ceased? What other methods has DHS contemplated or considered to counter disinformation?
6. What steps has DHS asked or suggested that private companies take or consider taking to counter disinformation? Has DHS established any formal or informal public-private partnerships to support counter-disinformation efforts, including but not limited to, contracts, memoranda of agreement/memoranda of understanding, cooperative research and development agreements, or any other formal or informal agreements?
7. What actions have been taken by DHS, or at the behest of or in cooperation with DHS, to influence U.S. persons’ opinions or beliefs on topics about which DHS believes disinformation has been disseminated? What actions have been taken by DHS, or at the behest of or cooperation with DHS, to limit speech that DHS has deemed disinformation?

⁸ For example, among the documents released by Senators Grassley and Hawley is a briefing memo for a meeting between Undersecretary Silvers and executives at Twitter described as “an opportunity to discuss operationalizing public-private partnerships between DHS and Twitter,” including “that Twitter become involved in Disinformation Governance Board Analytic Exchanges on Domestic Violent Extremism [sic] (DVE) and Irregular Migration.” *See*, Letter to Secretary Mayorkas, p.18.

⁹ While we acknowledge the review being conducted by the Homeland Security Advisory Council, *see*, Rebecca Beitsch, “DHS to Pause Work of Disinformation Board,” *The Hill*, May 18, 2022, *available at* <https://thehill.com/news/state-watch/3493070-dhs-to-pause-work-of-disinformation-board/>, the PCLOB provides a Congressionally-established independent check on the sufficiency of privacy and civil liberties protections.



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We request this information in our individual capacities. As such, this request does not yet currently constitute a formal oversight project of the PCLOB.

To provide your responses, or should you or your staff have any questions about this letter, please contact Tatjana Naquin (tatjana.naquin@pclob.gov) or John Tran (john.tran@pclob.gov). Thank you for your attention to our request for information.

Sincerely,

Sharon Bradford Franklin

Sharon Bradford Franklin
Chair, Privacy and Civil Liberties Oversight Board

Beth A. Williams

Beth A. Williams
Member, Privacy and Civil Liberties Oversight Board

cc: Lynn Parker Dupree, Chief Privacy Officer
Katherine Culliton-González, Officer for Civil Rights and Civil Liberties