

PCLOB Sunshine Act Meeting

April 8, 2015

Statement of Board Member Elisebeth B. Collins:

First and foremost, I want to recognize our agency staff for the hours of work that have lead up to the meeting this morning and our consideration of a proposed work plan. I would also like to thank my fellow Board Members for their dedication to developing a workable path forward in this important area.

Before I record my vote this morning, I would like to offer a brief explanation as to why I can support this proposal, and also say a few words about what I believe must be our highest priority going forward—regularizing our internal processes and our interactions with the agencies within the Intelligence Community, the White House, and our congressional committees of oversight. It is unfortunate that our path forward was arrived at in spite of our ad hoc process, rather than pursuant to clear and consistent procedures appropriate for a permanent executive branch agency governed by five independent board members.

Last July, we announced as part of our agenda that we would be looking at Executive Order 12333. We had just completed reports on two discrete programs authorized pursuant to the Foreign Intelligence Surveillance Act, and it was time to transition the agency to its longer term mission and goals. This agenda item reflected the reality that authority for significant portions of what the intelligence agencies do derives from Congressional enactments, or reflects the President's inherent Article II authority. These activities are conducted within the framework of E.O. 12333, which, for lack of a better phrase, provides both the rules of the road for agencies conducting foreign intelligence activities, and also provides an initial framework for

privacy protections of U.S. persons. E.O. 12333 is not a program like the Section 215 or Section 702 programs, nor do we intend to approach it as such.

We began our transition away from assessing the 215 and 702 programs with comprehensive briefings from agencies within the Intelligence Community about the scope of their foreign intelligence activities. And here, I would like to take a moment to thank those agencies for their cooperation throughout that initial process. I hope we can have that same level of cooperation going forward.

Our work plan sets forth our next steps, and I support that plan for several reasons. While our work in this area may have begun with an effort to attain foundational knowledge as to the broader activities, this proposal recognizes that the scope of our assessment needs to fit soundly within the Board's enabling statute, which is limited to oversight and advice with respect to Federal Government actions taken to protect the nation against terror. So the proposal appropriately sets forth an anticipated review of specified counterterrorism activities, reflecting our limited role in the executive branch oversight infrastructure. Relatedly, we have identified an anticipated focus on specified key aspects of those activities. For example, the potential for incidental collection of U.S. person information through non-targeted acquisition is one aspect of interest to us.

Second, our approach recognizes that objective oversight must be conducted without any preconceived notion of what our findings might be, or that there will be recommendations made at the end of the review.

Third, the work plan acknowledges that the activities we anticipate assessing are highly classified. We therefore do not commit to a public report on specific activities, or commit to pushing for declassification. Instead, we reserve these decisions for the end of our review to ensure that any decisions made on public disclosure will have the benefit of a full and comprehensive study.

Finally, I support the proposal as drafted because I believe there is public value in potentially clarifying or demystifying popular misconceptions about Executive Order 12333, as we did through our work with respect to the section 702 program. The 12333 framework has been the approach of numerous Presidents to organizing and dividing responsibility in the Intelligence Community, and restricting those activities, and the American people should understand that framework. Moreover, the American people could benefit from understanding that we are, as far as I know, unique in the world in having such a framework that explicitly recognizes and protects privacy interests. That said, we are not purporting to undertake in the first instance a comprehensive review of all activities implicating Executive Order 12333, or implying that we will be in a position to draw generalized conclusions about those activities or the 12333 framework itself.

In short, this is not a fishing expedition or a means to deliver pre-ordained solutions in search of a problem. Nor are we setting expectations that we will be completing our work on 12333-related activities any time in the near future. Instead, this work plan recognizes that we will be looking at counterterrorism activities conducted within the 12333 framework for the life of our agency, and this is simply a first step.

I hope and expect that now we will turn to our internal operating procedures and standardizing our interactions with Intelligence Community agencies and our congressional committees of oversight. As a permanent agency of the United States Government, we need our own rules of the road, designed to clarify how we will fulfill our oversight and advice functions—which may sometimes be in tension—and how the governing structure of our agency can be organized to lead to decisions that are most likely to reflect the best of our diverse set of viewpoints and backgrounds. It is simply good government to regularize our interactions and procedures, and it is now overdue given the increased size of our agency and our expanding efforts to fulfill both the oversight and advice functions.