



PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

Recommendation Assessment Report

January 29, 2015

Fact Sheet: PCLOB Recommendations and Their Implementation

In January and July of 2014, the Privacy and Civil Liberties Board issued detailed reports on two government intelligence surveillance programs. The first report addressed the NSA's bulk collection of telephone calling records under Section 215 of the USA PATRIOT Act, as well as the operations of the Foreign Intelligence Surveillance Court and transparency regarding surveillance. The second report addressed surveillance under Section 702 of the Foreign Intelligence Surveillance Act, which authorizes collection by the NSA, CIA, and FBI of the contents of communications of non-U.S. persons reasonably believed to be located outside the United States. Between the two reports, the Board made twenty-two recommendations to the President, Congress, and the Foreign Intelligence Surveillance Court to enhance the protection of privacy and civil liberties.

The Board has now assessed how fully its recommendations have been adopted to date, and its conclusions are as follows:

- Overall, the Administration has been responsive to the Board's input. The Administration has accepted virtually all recommendations in the Board's Section 702 report and has made substantial progress toward implementing many of them, while also accepting most of the recommendations in the Board's Section 215 report.
- Most recommendations directed at the Administration are still in the process of being implemented, however, or have only been accepted in principle, without substantial progress yet made toward their implementation. We note that only six months have elapsed since the release of the Section 702 report, so there has been less time for implementation.
- However, the Administration has not halted the NSA's Section 215 telephone records program, which it could do at any time without congressional involvement, but instead has continued the program, with modifications. At the same time, the Administration has supported legislation, which has not yet been enacted, to create a new system for government access to telephone records under Section 215.
- Congress has not yet enacted legislation that would, consistent with the Board's recommendation, reform the operations of the Foreign Intelligence Surveillance Court.
- The Administration has made substantial progress in implementing some of the Board's recommendations regarding transparency.
- The Board has established a productive relationship with elements of the Intelligence Community and looks forward to working constructively with them on the implementation of its recommendations.

SECTION 215 REPORT RECOMMENDATIONS

Bulk Telephone Records Program		
1	End the NSA's Bulk Telephone Records Program	Not Implemented (Legislation Proposed)
2	Immediately Add Additional Privacy Safeguards to the Bulk Telephone Records Program	Implemented in Part

Foreign Intelligence Surveillance Court		
3	Enable the FISC to Hear Independent Views on Novel and Significant Matters	Not Implemented (Legislation Proposed)
4	Expand Opportunities for Appellate Review of FISC Decisions	Not Implemented (Legislation Proposed)
5	Take Full Advantage of Existing Opportunities for Outside Legal and Technical Input in FISC Matters	FISC Has Taken Action Consistent with Recommendation

Transparency		
6	Publicly Release New FISC and FISCR Decisions that Involve Novel Legal, Technical, or Compliance Questions	Being Implemented
7	Publicly Release Past FISC and FISCR Decisions that Involve Novel Legal, Technical, or Compliance Questions	Being Implemented
8	Publicly Report on the Operation of the FISC Special Advocate Program	Not Implemented (Legislation Proposed)
9	Permit Companies to Disclose Information about Their Receipt of FISA Production Orders, and Disclose More Detailed Statistics on Surveillance	Being Implemented
10	Inform the PCLOB of FISA Activities and Provide Relevant Congressional Reports and FISC Decisions	Accepted, but Awaiting Implementation
11	Begin to Develop Principles for Transparency	Being Implemented
12	Disclose the Scope of Surveillance Authorities Affecting Americans	Implemented in Part

SECTION 702 REPORT RECOMMENDATIONS

Targeting		
1	Revise NSA Procedures to Better Document the Foreign Intelligence Reason for Targeting Decisions	Accepted, but Awaiting Implementation

U.S. Person Queries		
2	Update the FBI’s Minimization Procedures to Accurately Reflect the Bureau’s Querying of Section 702 Data for Non–Foreign Intelligence Matters, and Place Additional Limits on the FBI’s Use of Section 702 Data in Such Matters	Being Implemented
3	Require NSA and CIA Personnel to Provide a Statement of Facts Explaining their Foreign Intelligence Purpose Before Querying Section 702 Data Using U.S. Person Identifiers, and Develop Written Guidance on Applying this Standard	Accepted, but Awaiting Implementation

Foreign Intelligence Surveillance Court		
4	Provide the FISC with Documentation of Section 702 Targeting Decisions and U.S. Person Queries	Being Implemented
5	Create and Submit to the FISC a Single Consolidated Document Describing All Significant Rules Governing Operation of the Section 702 Program	Being Implemented

“Upstream” and “About” Collection		
6	Periodically Assess Upstream Collection Technology to Ensure that Only Authorized Communications Are Acquired	Accepted, but Awaiting Implementation
7	Examine the Technical Feasibility of Limiting Particular Types of “About” Collection	Accepted, but Awaiting Implementation

Transparency		
8	Publicly Release the Current Minimization Procedures for the CIA, FBI, and NSA	Being Implemented
9	Adopt Measures to Document and Publicly Release Information Showing How Frequently the NSA Acquires and Uses Communications of U.S. Persons and People Located in the United States	Accepted, but Awaiting Implementation

Efficacy		
10	Develop a Methodology to Assess the Value of Counterterrorism Programs	Not Implemented