



**U.S. PRIVACY AND
CIVIL LIBERTIES
OVERSIGHT BOARD**

**SEMI-ANNUAL REPORT
JULY-DECEMBER 2022**

Privacy and Civil Liberties Oversight Board

Semi-Annual Report for July through December, 2022

APRIL 2023

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
800 N. CAPITOL STREET, NW
WASHINGTON, DC 20002

This report is available at www.pclob.gov.
Send comments or questions to info@pclob.gov or to the mailing address above.

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Report Distribution

In accordance with Section 801 of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Privacy and Civil Liberties Oversight Board is providing this Semi-Annual Report, which covers the period from July 2022 to December 2022, to the President and the Members of Congress listed below.

The President of the United States
Joseph R. Biden, Jr.

The Honorable Patty Murray
Chair
U.S. Senate Committee on Appropriations

The Honorable Susan Collins
Vice Chair
U.S. Senate Committee on Appropriations

The Honorable Kay Granger
Chair
U.S. House of Representatives Committee on
Appropriations

The Honorable Rosa DeLauro
Ranking Member
U.S. House of Representatives Committee on
Appropriations

The Honorable Gary C. Peters
Chair
U.S. Senate Committee on Homeland Security
and Governmental Affairs

The Honorable Rand Paul
Ranking Member
U.S. Senate Committee on Homeland Security
and Governmental Affairs

The Honorable Mark Warner
Chair
U.S. Senate Select Committee on Intelligence

The Honorable Marco Rubio
Vice Chair
U.S. Senate Select Committee on Intelligence

The Honorable Mike Turner
Chair
U.S. House of Representatives Permanent
Select Committee on Intelligence

The Honorable Jim Himes
Ranking Member
U.S. House of Representatives Permanent
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The Honorable Richard Durbin
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The Honorable Lindsey Graham
Ranking Member
U.S. Senate Committee on the Judiciary

The Honorable Jim Jordan
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U.S. House of Representatives Committee on
the Judiciary

The Honorable Jerrold Nadler
Ranking Member
U.S. House of Representatives Committee on
the Judiciary

The Honorable Mark Green
Chair
U.S. House of Representatives Committee on
Homeland Security

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

The Honorable James Comer
Chair
U.S. House of Representatives Committee on
Oversight and Accountability

The Honorable Jamie Raskin
Ranking Member
U.S. House of Representatives Committee on
Oversight and Accountability

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EXECUTIVE SUMMARY

In accordance with its enabling statute, 42 U.S.C. § 2000ee, this Semi-Annual Report has been developed by the Privacy and Civil Liberties Oversight Board (“PCLOB” or “the Board”) for distribution to the President of the United States and to appropriate committees of Congress, as listed on the preceding Report Distribution. This report describes the Board’s major activities from July 2022 through December 2022, providing information on findings, conclusions, and recommendations of the Board resulting from its authorized advice and oversight functions.

The Board is an independent agency within the executive branch, established in its current form by the Implementing Recommendations of the 9/11 Commission Act of 2007.¹ A bipartisan, five-Member Board, each appointed by the President and confirmed by the Senate, ensures that the federal government’s efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties. The Board conducts oversight and provides advice regarding executive branch regulations, policies, procedures, and activities related to efforts to protect the nation from terrorism.

During the reporting period of this Semi-Annual Report, the Board conducted numerous oversight projects, including but not limited to:

- Section 702 of the Foreign Intelligence Surveillance Act (“FISA”)
- Government Efforts to Address Foreign Racially Motivated Violent Extremist Organizations
- Domestic Terrorism
- The Terrorist Watchlist

The Board performed its advice function as well, providing pre-decisional advice for one agency regarding its procedures under Executive Order 12333 and, pursuant to Executive Order 14086, consulting with the Department of Justice on potential candidates for the Data Protection Review Court. Other mission related activities included soliciting public comments through the Federal Register and other outreach to the public and Congress.

Although the COVID-19 pandemic continued to disrupt certain facets of life during the reporting period, the Board eased its pandemic-related office restrictions

¹ Pub. L. No. 110-53 § 801 (2007), codified at 42 U.S.C. § 2000ee.

while effectively providing for the health and safety of Board Members, staff, stakeholders, and government officials with whom the Board regularly interacts. Rigorous health protocols such as contact tracing and limits on access to the agency's Sensitive Compartmented Information Facility ("SCIF") enabled the Board to make significant progress on classified projects. If necessary, the agency will make further changes in response to changing pandemic conditions.

The agency also saw the confirmation and reconfirmation of Board Members, so that the agency is now operating with a full complement of five Board Members for the first time in almost two years. Specifically, in September, Board Member Travis LeBlanc was confirmed by the Senate to a new, six-year term and Board Member Richard DiZinno was confirmed by the Senate to complete the end of a six-year term of another Member who resigned. This Member's term is set to expire on January 29, 2023, though Member DiZinno is eligible to serve through January 29, 2024.

The Board maintained strong administrative, managerial, and organization capabilities throughout the reporting period, allowing the agency to operate efficiently while recognizing solid accomplishments over its human resources and financial management, information technology, and security of agency data, personnel, and assets.

MISSION ACTIVITIES

Oversight Function

Review of Section 702 of the Foreign Intelligence Surveillance Act

The Board is examining the surveillance program that the Executive Branch operates pursuant to Section 702 of the Foreign Intelligence Surveillance Act (FISA), in anticipation of the December 2023 sunset date for Section 702 and the upcoming public and Congressional consideration of its reauthorization. The goals of this oversight project are to ensure that privacy and civil liberties are protected in the course of the Executive Branch's use of its Section 702 authorities, and to ensure that Congress and the public are able appropriately to assess and consider the program's value, and efficacy in protecting the nation's security and producing useful intelligence.

This oversight project is examining significant changes to the operation of the 702 program since the Board's 2014 *"Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act"* in order to provide an accurate description of the current program. The Board's review covers selected focus areas for investigation, including but not necessarily limited to, U.S. Person queries of information collected under Section 702, and 'Upstream' collection conducted pursuant to Section 702. This includes the Board's previously authorized project specifically examining FBI's queries under Section 702. This project also includes reviewing the program's past and projected value and efficacy, as well as the adequacy of existing privacy and civil liberties safeguards. As part of this review, the Board has conducted multiple oversight engagements with the agencies that conduct Section 702 surveillance, including receiving briefings and obtaining relevant policy and procedure documents.

Government Efforts to Address Foreign Racially Motivated Violent Extremist Organizations

The Board is coordinating with intelligence agencies to gather information needed to produce a report, per Section 824 of the Consolidated Appropriations Act of 2022, assessing adverse impacts on the privacy and civil liberties of Americans concerning the use or recommended use of any federal laws, regulations, and policies used to address significant threats to the United States and Americans associated with foreign racially motivated violent extremist organizations. The report will include recommendations on options to develop protections to mitigate such impacts.

Domestic Terrorism

The Board has initiated a new oversight project to examine government policies and activities to counter domestic terrorism. The Board will focus this project on two simultaneous and distinct workstreams: the impact on First Amendment rights; and the impact on privacy and civil liberties of particular groups, such as those with shared racial, religious, political, or ideological affiliations. The Board has begun planning its investigation and gathering information in support of this oversight review.

Terrorist Watchlist

The Board has been reviewing the operation of the Terrorist Screening Database, commonly known as the Terrorist Watchlist, which contains information on known and suspected terrorists. PCLOB staff has maintained regular engagement with the Terrorist Screening Center (“TSC”), which manages the Watchlist, during this reporting period. The TSC continues to provide PCLOB staff with updates on the forthcoming, expected in 2023, Watchlist Guidance issuance, renewal of major watchlist privacy impact assessments, and other relevant privacy and civil liberties-related watchlist records. PCLOB is working to finalize recommendations regarding the Watchlist.

Other Active Oversight Projects

The Board is working on several other projects as well, including examining activities related to data aggregation and access, such as the application of facial recognition technology in aviation security, and reviewing the National Counterterrorism Center’s (NCTC) access to and handling of datasets containing non-terrorism information. These efforts comprise meetings and briefings (including telephone and virtual) and obtaining and reviewing relevant documents. A description of these projects is available on the Board’s website.² The Board is also in the process of reviewing its current projects and considering potential new initiatives.

Advice Function

The Board’s advice is valued by Executive Branch agencies. The Board has provided advice, or is currently providing advice, on every significant issuance,

² PCLOB Projects, <https://www.pclob.gov/Projects>.

revision, or re-issuance by an Intelligence Community element of its Attorney General-approved guidelines governing the handling of U.S.-person information collected under Executive Order 12333.

During the current reporting period, the Board began its work pursuant to Executive Order 14086 on Enhancing Safeguards for United States Signals Intelligence Activities. The order, issued in October 2022, requires the Department of Justice (DOJ) and the intelligence agencies to consult with the Board in two respects. First, shortly after issuance of the executive order, DOJ consulted with the Board regarding the appointment of judges to serve on the newly created Data Protection Review Court, and the Board provided its advice to DOJ. In addition, the intelligence agencies are required to seek the Board's advice regarding development of new procedures to provide enhanced privacy and civil liberties safeguards for surveillance activities, and the Board has announced that it intends to provide its advice on these procedures. Doing so will help ensure safeguards for cross-border data flows under a new EU/US Data Privacy Framework.

Additionally, the Board provided advice on one agency's procedures under Executive Order 12333.

Other Mission Activities

Coordination of Executive Branch Privacy and Civil Liberties Activities

Section 803 of the Implementing Recommendations of the 9/11 Commission Act of 2007 requires agencies' Privacy Officers to issue Semi-Annual Reports about their activities to their respective agency heads, Congress, and the Board. The Board regularly receives and reviews Section 803 reports from federal departments and agencies.

The Board's authorizing statute instructs the Board to advise covered agencies on their efforts to protect privacy and civil liberties and to coordinate those activities on relevant interagency matters. As such, the Board has regular interactions with agency Privacy Officers, promoting information sharing of privacy best practices.

Outreach to the Public, Congress, and Other Federal Agencies

The Board is committed to ensuring that its work is available, relevant, and informative for the public, Congress, and other federal agencies. The Board's statute requires it to "hold public hearings and otherwise inform the public of its activities, as appropriate and in a manner consistent with the protection of classified information and applicable law."³

The Board strives to be a valuable resource to Congress through its work and written reports, briefings, and testimony on matters within the Board's jurisdiction. During the reporting period, staff briefed Capitol Hill staff to provide updates on the Board's work and, upon request, to provide technical assistance on legislative matters. Board Members continue to remain available to testify about matters within the agency's jurisdiction.

To foster a better understanding of the PCLOB's work and help advance its mission, Board Members participated in outside events. This included Board Members participating in the Global Privacy Assembly in Istanbul in October, and speaking at a November 2022 forum in Brussels hosted by the International Association of Privacy Professionals (IAPP).

With regard to the PCLOB's oversight project on Section 702, the Board held a period of public comment to seek input on questions the Board should ask and recommendations it should make as part of its examination of Section 702. The Board publicized the public comment period through the Federal Register as well as through

³ 42 U.S.C. § 2000ee(f)(2).

the Board's website and social media, and received about a dozen comments in response. The agency also moved forward with plans to host a January 2023 virtual forum on FISA Section 702.

OPERATIONAL ACTIVITIES

During the reporting period, the Board further strengthened its institutional capacity by bolstering its workforce, cybersecurity posture, and financial controls.

Workforce

The PCLOB intensified its efforts to recruit new talent during the second half of 2022, and was successful in hiring several new staff members.

The work performed by PCLOB's employees requires an agile and diverse mix of talent equipped with critical skills that align with the evolving strategic workforce needs of the agency. As funds have allowed each year, the agency has sought to fill vacancies and grow its staff by recruiting skilled professionals with backgrounds in intelligence, counterterrorism, privacy and civil liberties, oversight and investigations, federal accounting, human resources, and information technology. As of the end of 2022, the PCLOB had hired new attorney advisors and policy analysts as well as a new Chief Human Capital Officer, and was in the process of hiring for several vacant positions.

During the current reporting period, the PCLOB started implementing an employee recruitment and retention plan after receiving approval to move forward from the Office of Personnel Management (OPM). Additionally, the agency received OPM approval for a new employee performance appraisal system.

However, the agency's recruitment efforts continued to be hampered by its statutory salary cap, including in the search for a new permanent Executive Director. The cap restricts the amount of direct salary that may be paid to staff to no greater than the equivalent of Executive Level V (\$165,300 during the reporting period) of the Federal Executive Pay Scale.

In line with the PCLOB's strategic goal of recruiting and retaining a stronger and more diverse workforce, the PCLOB is seeking to increase its salary pay cap and, separately, to increase its total number of employees. With respect to salaries, the PCLOB is seeking a statutory change to increase its staff pay cap from the equivalent

of Executive Level V to Executive Level IV (\$176,300 during this reporting period, but higher in 2023). Increasing the pay cap will enable the agency to pay salaries at levels equivalent to the full GS pay scale, and thereby provide more competitive compensation better aligned with those agencies the PCLOB oversees.

Measures to Enhance the Agency's Workforce

During the current reporting period, the PCLOB's workforce continued adapting to Presidential initiatives issued in 2021. To advance equity so that it is not just an ideal but a principle that is reflected in how the agency serves the American people and fulfills its mission, the PCLOB moved forward with implementation of the PCLOB Equity Action Plan. This plan was developed specifically in response to Executive Order 13895, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (January 20, 2021). In addition, the PCLOB took additional steps to implement a Diversity, Equity, Inclusion, and Accessibility (DEIA) Strategic Plan in line with Executive Order 14035, *Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce* (June 25, 2021). The goal of these plans is to advance equity, civil rights, racial justice, and equal opportunity for all, both internally for PCLOB's workforce and as part of its work to ensure that counterterrorism programs include adequate safeguards for privacy and civil liberties. PCLOB's Equity and DEIA Strategic Plan efforts will continue to be implemented throughout the remainder of FY 2023 and FY 2024.

To support the health and safety of the agency's employees, the Board took steps through its COVID Re-entry Plan and agency Safety Plan to facilitate more work in the office while still supporting the health and safety of the agency's employees, onsite contractors, and individuals interacting with the agency workforce. The Board's Continuing Operations ("COOP") team monitored the CDC's COVID community level determinations for the Washington, DC area on a weekly basis to evaluate conditions and determine if any changes to the reentry status needed to be made. By implementing and adhering to robust health protocols, the agency was able to effectively continue pursuing its mission throughout the reporting period.

Information Technology Systems and Cybersecurity

The Board's information technology ("IT") staff remains focused on solidifying the agency's cybersecurity posture while maintaining infrastructure and strategies to support the COVID-19 hybrid work environment. To that end, the Board's IT staff is transitioning from a legacy security information and event management ("SIEM") platform to a new system with enhanced network infrastructure capabilities to meet compliance objectives listed in the Office of Management and Budget ("OMB") Memorandum 21-31, *Improving the Federal Government's Investigative and Remediation Capabilities Related to Cybersecurity Incidents*.

Information security also continues to be a top priority for the agency. During the reporting period, the independent review of the Board's information security controls found the controls to be effective. The Board's annual Federal Information Security Management Act ("FISMA") audit concluded that its internal controls were effective in protecting information resources, and an independent penetration test detected no critical or high vulnerabilities across the Board's network infrastructure.

The Board did not experience any major cybersecurity incidents during the reporting period.

The Board continues to leverage shared-service providers and contractor support to augment its boundary protection. IT staff implemented, maintained, and documented technical controls to comply with federal standards and DHS's Cross-Agency Priority Goals for cybersecurity. These goals include managing asset security, protecting networks and data, and limiting personnel access. In the coming months, the Board will continue to focus its efforts on the cybersecurity Cross-Agency Priorities and implementing Zero Trust strategies.

Financial Summary and Highlights

The Board has maintained its momentum in improving its financial management. In November 2022, the Board issued its third Agency Financial Report (“AFR”), which included an unmodified (“clean”) audit of the Fiscal Year (“FY”) 2022 financial statements, which noted no material weaknesses or significant deficiencies, and a report on an internal controls assessment, which found no waste, fraud, or abuse. Through the issuance of the AFR, the Board satisfied all relevant statutory reporting requirements and demonstrated its effective financial management. These accomplishments are a testament to the Board’s commitment to achieving excellence despite the agency’s small size.

Since the issuance of its last AFR, the Office of the Chief Financial Officer has further strengthened the Board’s fiscal management by:

- Overseeing, implementing, and updating procedures and internal reference guides;
- Scrutinizing contracts for cost savings; and
- Enhancing the budget monitoring process.

Protecting Classified and Sensitive Information

The Board continues to focus on protecting sensitive and classified materials. The Chief Security Officer engages in government-wide efforts to modernize the security clearance process. Among other things, this includes continued implementation of Trusted Workforce (“TW”) 2.0. and NSPM – 28, which directs agencies to implement an Operations Security (“OPSEC”) program and allows the Board’s insider threat program to maintain the standards required by EO 13587, *Structural Reforms to Improve the Security of Classified Networks and the Responsible Sharing and Safeguarding of Classified Information*. The Board also continues its efforts to ensure Controlled Unclassified Information (CUI) received from partner agencies is protected.

The Board also made significant progress in transitioning its security portfolio to the Defense Counterintelligence and Security Agency (“DCSA”), resulting in improved services for the agency. The Chief Security Officer, acting as the Senior Implementation Officer (“SIO”) for TW 2.0, enrolled all Board personnel in the modernized Continuous Evaluation process, with ODNI, DCSA, and the FBI Rap Back service, as part of a joint effort to reform personnel security clearances.

CONCLUSION

The Board continued to fulfill its statutory mission during the second half of 2022, addressing key issues related to efforts to protect the nation against terrorism while safeguarding privacy and civil liberties.

In 2023, the Board looks forward to further engagement with Congress, the public, and other stakeholders while identifying future oversight projects and transparency initiatives.

The Board appreciates the collaborative efforts of Congress, the executive branch, nongovernmental organizations, private-sector entities, and members of the public who have engaged with the Board in support of its mission.