



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

**SEMI-ANNUAL REPORT**  
**JANUARY-JUNE 2023**

# **Privacy and Civil Liberties Oversight Board**

## **Semi-Annual Report: January - June 2023**

**AUGUST 2023**

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

This report is available at [www.pclob.gov/SemiAnnual](http://www.pclob.gov/SemiAnnual).  
Send comments or questions to [info@pclob.gov](mailto: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 January 2023 to June 2023, to the President and the Members of Congress listed below.

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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  
Select Committee on Intelligence

The Honorable Richard Durbin  
Chair  
U.S. Senate Committee on the Judiciary

The Honorable Lindsey Graham  
Ranking Member  
U.S. Senate Committee on the Judiciary

The Honorable Jim Jordan  
Chair  
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) 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 PCLOB's major activities from January 2023 through June 2023, providing information on findings, conclusions, and recommendations of PCLOB resulting from its authorized advice and oversight functions.

PCLOB 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.<sup>1</sup> 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. PCLOB 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, PCLOB conducted several oversight projects, including but not limited to:

- Section 702 of the Foreign Intelligence Surveillance Act;
- Government Efforts to Address Foreign Racially Motivated Violent Extremist Organizations;
- Domestic Terrorism; and
- The Terrorist Watchlist.

PCLOB performed its advice function as well, in particular by reviewing and advising on the implementing procedures developed by each component of the Intelligence Community pursuant to Executive Order 14086 on Enhancing Safeguards for United States Signals Intelligence Activities.<sup>2</sup>

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

<sup>2</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/07/executive-order-on-enhancing-safeguards-for-united-states-signals-intelligence-activities/>

PCLOB remains committed to enhancing its workforce, increasing its efforts to recruit and retain a stronger and more diverse workforce through increased recruiting and hiring endeavors; the development and implementation of new recruiting and retention incentive plans; and the pursuit of legislative approval to increase the PCLOB's statutory salary cap. Additionally, PCLOB has taken initial steps to assess and update the agency's work environment plan to improve the agency's organizational health and performance as well as the agency's mission delivery in the wake of the COVID-19 public health emergency.

PCLOB maintained strong administrative, managerial, and organizational capabilities throughout the reporting period, allowing the agency to operate efficiently while recognizing solid accomplishments in regard to its human resources and financial management, information technology, and security of agency data, among other things.

# MISSION ACTIVITIES

## Oversight Function

### Review of Section 702 of the Foreign Intelligence Surveillance Act

PCLOB continued examining the surveillance program that the executive branch operates pursuant to Section 702 of the Foreign Intelligence Surveillance Act (FISA). PCLOB plans to release a report on the program in anticipation of Section 702's December 2023 sunset date to inform public and congressional debate regarding reauthorization of the program. 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 to appropriately assess and consider the program's value and efficacy of protecting the nation's security while producing useful intelligence.

To achieve the project's stated goals, PCLOB is reviewing the program's past and projected value and efficacy, as well as the adequacy of existing privacy and civil liberties safeguards. Further, in order to provide an accurate description of the current program, PCLOB is examining changes to surveillance authorized by Section 702 since the agency's 2014 *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act*. As part of this review, PCLOB has conducted multiple oversight engagements with the agencies that conduct the Section 702 program, including receiving briefings and obtaining relevant policy and procedure documents. PCLOB's review includes (but is not necessarily limited to) U.S. Person queries of information collected under Section 702 and 'Upstream' collection conducted pursuant to Section 702.

To further public engagement and promote greater understanding of the privacy and civil liberties issues regarding operation of the Section 702 program, PCLOB Board Members hosted a virtual public forum about the law on January 12, 2023.<sup>3</sup> The forum featured a keynote address from Gen. Paul Nakasone, head of the National Security Agency and U.S. Cyber Command, as well as two discussion panels composed of senior government officials and leading civil society and academic experts representing a broad range of viewpoints. The forum, which received extensive media coverage, was widely seen as the public starting point for the 2023 public debate over reauthorization.

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<sup>3</sup> <https://www.youtube.com/watch?v=AZvaimMTqio>

Board Chair Franklin and Board Member Williams were also witnesses for an April 27, 2023 House Judiciary Subcommittee on Crime and Federal Government Surveillance hearing focused largely on Section 702.<sup>4</sup> The hearing, which also included Justice Department Inspector General Michael Horowitz, covered a range of topics regarding Section 702 such as querying procedures and incidental collection of Americans' communications.

### **Government Efforts to Address Foreign Racially Motivated Violent Extremist Organizations**

PCLOB is coordinating with intelligence agencies to gather information needed to produce a report, as directed by 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**

PCLOB continued its oversight project examining government policies and activities designed to counter domestic terrorism. PCLOB is focusing 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 authorized this oversight project during the prior reporting period, and PCLOB staff have begun meeting with relevant agency staff and gathering information in support of this oversight review.

### **Terrorist Watchlist**

PCLOB has been reviewing the operation of the Terrorist Screening Database, commonly known as the Terrorist Watchlist (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 forthcoming Watchlist Guidance issuance; renewal of major watchlist privacy impact assessments; and other relevant privacy and civil liberties-related watchlist records.

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<sup>4</sup> <https://www.youtube.com/watch?v=pIEqAjRKVyE>

PCLOB is working to finalize recommendations regarding the Watchlist program operation.

## **Recommendations Assessment Report**

In May 2023, PCLOB released a staff report, entitled, Recommendations Assessment Report (RAR)<sup>5</sup> discussing the status of the government’s implementation of recommendations made by the Board in three prior reports: the Report on Section 215 and the Operation of the FISA Court (2014); the Report on Section 702 (2014); and the Report on Presidential Policy Directive 28 (PPD-28)(2017). This is the first time that PCLOB has provided an overview of the status of recommendations made in PCLOB’s PPD-28 Report, which was publicly released in 2018.

## **Other Active Oversight Projects**

As PCLOB reviews its current projects and considers potential new initiatives, the agency continues its work on several other projects as well, including examining activities related to data aggregation and access and reviewing the National Counterterrorism Center’s (NCTC) access to and handling of datasets containing non-terrorism information. PCLOB staff obtained and reviewed additional documents related to these projects during the reporting period covered in this report. A description of these projects is available on PCLOB’s website.<sup>6</sup>

## **Advice Function**

PCLOB’s advice is has been valued by other executive branch agencies. Since 2016, PCLOB has provided advice on every significant issuance, revision, or re-issuance by an Intelligence Community (IC) 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, PCLOB continued its work pursuant to Executive Order 14086 on Enhancing Safeguards for United States Signals Intelligence Activities. Pursuant to the Executive Order, the Office of the Director of National Intelligence (ODNI) sought PCLOB’s advice on new procedures developed by each of the intelligence agencies to provide enhanced privacy and civil liberties safeguards covering cross-border data flows under the new EU/US Data Privacy Framework. In the spring of 2023, PCLOB provided its advice and recommendations

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<sup>5</sup> Chair Franklin and Members Williams and DiZinno had no involvement with the preparation of the report, the majority of which was drafted prior to their confirmations.

<sup>6</sup> PCLOB Projects, <https://www.pclob.gov/Projects>.

on these draft procedures. The IC subsequently responded to PCLOB regarding its advice, and published the final procedures at the end of June.

## **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 and Civil Liberties (PC/L) officers to issue Semi-Annual Reports about their activities to their respective agency heads, Congress, and PCLOB. PCLOB regularly receives and reviews Section 803 reports from federal departments and agencies.

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

### **Outreach to the Public, Congress, and Other Federal Agencies**

PCLOB is committed to ensuring that its work is available, relevant, and informative for the public, Congress, and other federal agencies. One example of how PCLOB works to advance that goal was the agency's work during the current reporting period to increase public access to and visibility of the aforementioned Section 803 reports. This goal was accomplished by posting either the reports or links to the reports on a new page on the agency's web site. After extensive coordination with numerous other federal departments and agencies to create this page, PCLOB has enabled the public, for the first time, to find all of the Section 803 reports in one place.

PCLOB'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."<sup>7</sup> As discussed above, PCLOB held an online public forum to discuss Section 702 of FISA, and heard from two panels including representatives from government and civil society. The forum received extensive media coverage, including from the New York Times, the Washington Post, and the Associated Press.

PCLOB also strives to be a valuable resource to Congress through its work and written reports, briefings, and testimony on matters within PCLOB's jurisdiction. As

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<sup>7</sup> 42 U.S.C. § 2000ee(f)(2).

noted above, on April 27, Chair Franklin and Board Member Williams testified before the Subcommittee on Crime and Federal Government Surveillance of the House Judiciary Committee regarding the privacy implications of Section 702 of FISA. During the current reporting period, PCLOB staff briefed Senate Homeland Security and Governmental Affairs staff on numerous agency projects, including the NCTC oversight, Domestic Terrorism, and Terrorist Watchlist projects.

Board Members remain available to testify and/or brief about matters within the agency's jurisdiction. Staff also remains prepared to provide briefings upon request.

To foster a better understanding of the PCLOB's work and help advance its mission, Board Members also participated in outside events. In January 2023, Board Member Williams participated in a panel discussion sponsored by MITRE on the U.S.-EU Data Privacy Framework. In April 2023, Board Member LeBlanc participated in an "AI and Democratic Values" roundtable hosted by the Center for AI and Digital Policy, while Member Williams discussed FISA Section 702 and the EU-US Data Privacy Framework at the International Association of Privacy Professionals' Global Privacy Summit. In addition, Chair Franklin spoke at Tufts University's Student Symposium in Cybersecurity Policy in March, and at the Georgetown Law Center's conference examining Section 702 of FISA in April.

## OPERATIONAL ACTIVITIES

During the reporting period, PCLOB further strengthened its institutional capacity by working to bolster its workforce, cybersecurity posture, and financial controls.

### Workforce

The work performed by PCLOB's staff 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. During the reporting period, although it had staff turnover, PCLOB hired several new staff members and secured several detailees from other federal agencies to provide valuable subject matter expertise on mission projects.

PCLOB's success in filling all of its full-time staff vacancies, which included the key position of Executive Director, was limited by the agency's statutory salary cap. The cap restricts the amount of direct salary that may be paid to staff to no greater than the equivalent of Executive Level V (\$172,100 during the reporting period) of the Federal Executive Pay Scale. PCLOB has been working to obtain approval to increase its statutory pay cap to the equivalent of Executive Level IV (\$183,500 during this reporting period). An increase in the agency's salary pay cap would enable PCLOB to pay salaries at levels equivalent to the full GS pay scale, providing more competitive compensation better aligned with those agencies PCLOB oversees and significantly improving the agency's ability to recruit and retain skilled professionals.

The agency continues to implement Executive Orders to advance 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. In early 2023, led by the agency's DEIA Committee, PCLOB issued its first Diversity, Equity, Inclusion, and Accessibility (DEIA) Annual Progress Report and updated its 2022 Strategic Plan to a multi-year plan covering FY 2023-2026.. The new DEIA Strategic Plan highlights the need for data and evidence-based decision-making as well as continuous assessment and improvement.

Similarly, in response to guidance from the Office of Management and Budget (OMB), the PCLOB has been working on measuring, monitoring, and improving organizational health and organizational performance. While not a Chief Financial Officer (CFO) Act agency, the PCLOB has been working hard to assess agency performance, update work environment plans and operational policies, and better assess agency health and performance overall. While this is a nascent effort within the organization, the PCLOB strives for iterative improvements over the coming years.

## **Information Technology Systems and Cybersecurity**

PCLOB'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, PCLOB'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 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 PCLOB's information security controls found the controls to be effective. PCLOB'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 PCLOB's network infrastructure.

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

PCLOB 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, PCLOB will continue to focus its efforts on the cybersecurity Cross-Agency Priorities and implementing Zero Trust strategies.

## Financial Summary and Highlights

PCLOB has maintained its momentum in improving its financial management. In November 2022, PCLOB issued its third Agency Financial Report (AFR), which included an unmodified (clean) opinion over the Fiscal Year (FY) 2022 financial statements in which the independent auditors noted no material weaknesses or significant deficiencies, and a report on the agency's annual internal controls assessment, which found no waste, fraud, or abuse. Through the issuance of the AFR, PCLOB satisfied all statutory reporting requirements and demonstrated its effective financial management.

In May 2023, PCLOB received its first Certificate of Excellence in Accountability Reporting (CEAR) award from the Association of Government Accountants (AGA). The AGA presents the esteemed CEAR award each year to federal agencies that produce high-quality Performance and Accountability Reports (PARs) and AFRs. The AGA praised the PCLOB AFR as being "informative, well organized, and professionally written." PCLOB was the smallest federal agency to receive an award for its FY 2022 PAR or AFR.

Since the issuance of its last AFR, the Office of the Chief Financial Officer has further strengthened PCLOB'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

PCLOB maintains its focus on protecting sensitive and classified materials. The agency continues to engage in government-wide efforts to modernize the security clearance process. 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 PCLOB'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*. PCLOB also continues its efforts to ensure Controlled Unclassified Information (CUI) received from partner agencies is protected.

## CONCLUSION

PCLOB continued to fulfill its statutory mission during the first half of 2023, addressing key issues related to efforts to protect the nation against terrorism while safeguarding privacy and civil liberties. In the second half of 2023, PCLOB looks forward to further engagement with Congress, the public, and other stakeholders while identifying future oversight projects and transparency initiatives. In particular, PCLOB anticipates making further substantive contributions to the public debate over FISA Section 702.

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