



U.S. PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

SEMI-ANNUAL REPORT JULY-DECEMBER 2023

Privacy and Civil Liberties Oversight Board

Semi-Annual Report: July - December 2023

FEBRUARY 2024

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
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This report is available at www.pclob.gov/SemiAnnual.
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 2023 to December 2023, to the President and the Members of Congress listed below.

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

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 July 2023 through December 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 2007.¹ 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. 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;
- Facial Recognition in Aviation Security;
- Government Efforts to Address Foreign Racially Motivated Violent Extremist Organizations;
- Domestic Terrorism; and
- The Terrorist Watchlist.

PCLOB also performed its advice function. Specifically, PCLOB provided advice on candidates to serve as judges on the Data Protection Review Court established pursuant to Executive Order 14086, *Enhancing Safeguards for United States Signals Intelligence Activities*.²

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

² E.O. 14086, *Enhancing Safeguards for United States Signals Intelligence Activities* (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/07/executive-order-on-enhancing-safeguards-for-united-states-signals-intelligence-activities/>)



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PCLOB remained committed to enhancing its workforce throughout the reporting period by increasing its efforts to obtain a more diverse workforce in part by implementing new recruiting and retention incentives. Additionally, PCLOB has taken initial steps to improve the agency's organizational health and performance by designating a new Performance Improvement Officer to lead our agency efforts in the assessment and update of the agency's work environment plan as well as guiding leadership in the development of new performance targets and measurement procedures.

PCLOB maintained strong administrative, managerial, and organizational capabilities, allowing the agency to operate efficiently while recognizing significant 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

In September 2023, PCLOB released a comprehensive report examining the surveillance program that the executive branch operates pursuant to Section 702 of the Foreign Intelligence Surveillance Act (FISA).³ The PCLOB's *"Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act"* carried forward and updated factual and legal information from PCLOB's 2014 Section 702 Report⁴ and added new discussions about substantial changes to the program. The report is intended to inform the public and congressional debate regarding reauthorization of Section 702. The statute was initially scheduled to expire on December 31, 2023, and has now been extended until mid-April 2024.

Among other things, PCLOB's report described how the government collects data under the authority, as well as how the government uses such data.

To help achieve the project's stated goals, PCLOB reviewed the program's past and projected value and efficacy, as well as the adequacy of existing privacy and civil liberties safeguards. Further, PCLOB examined changes to surveillance authorized by Section 702 since the agency's 2014 report on the program. The report includes a history of the program, an extensive review and explanation of the program's operations and oversight, policy analysis, and nineteen recommendations. Chair Franklin issued a separate statement pertaining to one of the recommendations. Board Members Williams and DiZinno issued a separate statement detailing their opposition to the report and making seven alternative recommendations.

³ Privacy and Civil Liberties Oversight Board, *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act* (Sept. 28, 2023), [https://documents.pclob.gov/prod/Documents/OversightReport/e9e72454-4156-49b9-961a-855706216063/2023%20PCLOB%20702%20Report%20\(002\).pdf](https://documents.pclob.gov/prod/Documents/OversightReport/e9e72454-4156-49b9-961a-855706216063/2023%20PCLOB%20702%20Report%20(002).pdf)

⁴ Privacy and Civil Liberties Oversight Board, *Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act* (July 2, 2014), <https://documents.pclob.gov/prod/Documents/OversightReport/ba65702c-3541-4125-a67d-92a7f974fc4c/702-Report-2%20-%20Complete%20-%20Nov%2014%202022%201548.pdf>



Following the release of the report at a September 28th public forum hosted by the agency,⁵ PCLOB made several additional efforts to further public engagement and promote greater understanding of the privacy and civil liberties issues regarding the operation of the Section 702 program. Among other things, Board Members Franklin, LeBlanc, DiZinno, and Williams participated in an October *Lawfare* podcast discussing Section 702.⁶

Facial Recognition in Aviation Security

PCLOB continued its ongoing review of the use of facial recognition in aviation security. The Transportation Security Agency (TSA) has piloted Credential Authentication Technology (CAT) machines to employ facial recognition at domestic airports. In 2023, TSA awarded a significant contract to acquire these devices to deploy the technology nationwide. PCLOB's review will provide transparency regarding how this CAT technology works and provide the public a better understanding of this screening process as it is deployed at additional airports. Additionally, PCLOB continued to track developments regarding advanced and emerging technologies through an artificial intelligence and machine learning working group and will consider various areas for possible oversight and advice.

Government Efforts to Address Foreign Racially Motivated Violent Extremist Organizations

Section 824 of the Consolidated Appropriations Act of 2022 directed PCLOB to assess 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. PCLOB has been coordinating with intelligence agencies to gather information needed to produce the report, which will include recommendations on options to develop protections to mitigate such adverse impacts.

Domestic Terrorism

PCLOB continued its oversight project examining government policies and activities designed to counter domestic terrorism. PCLOB is focusing this project on the impact on First Amendment rights and the impact on privacy and civil liberties

⁵ https://www.youtube.com/watch?v=CNsFgpZ_iLg

⁶ <https://www.lawfaremedia.org/article/the-lawfare-podcast-part-one-of-the-pclob-on-fisa-section-702>



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of particular groups, such as those with shared racial, religious, political, or ideological affiliations. PCLOB staff have begun meeting with staff from relevant agencies 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. PCLOB is working to finalize recommendations regarding the Watchlist program operation.

Other Active Oversight Projects

As PCLOB reviews its current projects and considers potential new initiatives, the agency continues its work on several other projects such as 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.⁷

Advice Function

PCLOB's advice is 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, *United States Intelligence Activities*.⁸

During the current reporting period, PCLOB continued its work pursuant to Executive Order 14086, *Enhancing Safeguards for United States Signals Intelligence Activities*.⁹ Among other things, EO 14086 requires the government to consult with PCLOB regarding appointment of judges to serve on a new "Data Protection Review

⁷ PCLOB Projects, <https://www.pclob.gov/Projects>.

⁸ E.O. 12333, *United States Intelligence Activities* (<https://www.archives.gov/federal-register/codification/executive-order/12333.html>)

⁹ E.O. 14086, *Enhancing Safeguards for United States Signals Intelligence Activities* (<https://www.whitehouse.gov/briefing-room/presidential-actions/2022/10/07/executive-order-on-enhancing-safeguards-for-united-states-signals-intelligence-activities/>)



Court” established by the order, and the agency provided such advice during the reporting period.

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

The Board is committed to ensuring that its work is available, relevant, and informative for the public, Congress, and other federal agencies. 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. The Board’s statute also 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.”¹⁰

As noted earlier, Board Members held a public event on September 28th to discuss the release of the Board’s Section 702 report. Board Members also participated in numerous other events to further debate and discussion regarding Section 702. During the reporting period, Board Members also held several briefings on Capitol Hill 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 its jurisdiction.

To foster a better understanding of its mission and work, Board Members continued to speak at events hosted by other government agencies, as well as by a variety of groups and organizations, including bar associations and educational institutions. Board Members and staff also continued their past practice of

¹⁰ 42 U.S.C. § 2000ee(f)(2)



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interacting with representatives of non-governmental organizations, international counterparts, and other entities with interest in issues within the Board's jurisdiction.

During the current reporting period, PCLOB also advanced its goal of ensuring public access to its work by increasing public access to Section 803 reports. The agency coordinated with numerous other federal agencies to create a webpage containing the reports or links to the reports.¹¹ The website is the first government webpage to consolidate all Section 803 reports.

¹¹ <https://www.pclob.gov/Section803>



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, PCLOB hired several new staff members and detailees from other federal agencies to provide valuable subject matter expertise on mission projects and agency operations.

PCLOB continues to implement Executive Orders to advance civil rights, racial justice, and equal opportunity for all, both internally for the agency's workforce and as part of its work to ensure that counterterrorism programs include adequate safeguards for privacy and civil liberties. The 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. In September 2023, the Board appointed the agency's first Performance Improvement Officer, who will be responsible for leading efforts in guiding leadership goalsetting, reviewing progress, making course corrections, and making results transparent.



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 a hybrid work environment. To that end, PCLOB's IT staff completed transitioning from a legacy security information and event management (SIEM) platform to a new platform with enhanced network infrastructure capabilities for monitoring and event logging 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. Two independent penetration tests 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 implementation of Zero Trust strategies.

Financial Summary and Highlights

PCLOB has maintained its momentum in improving its financial management. In November 2023, PCLOB issued its fourth Agency Financial Report (AFR), which included an unmodified (clean) opinion over the Fiscal Year (FY) 2023 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 agency's diligence and dedication to successful issuance of the AFR, PCLOB satisfied all statutory reporting requirements and demonstrated its effective financial management.



The Office of the Chief Financial Officer has continued to strengthen 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 second half of 2023, addressing key issues related to efforts to protect the nation against terrorism while safeguarding privacy and civil liberties. The agency looks forward to further engagement with Congress, the public, and other stakeholders while identifying future oversight projects and transparency initiatives.

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.