



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

## **SEMI-ANNUAL REPORT**

### **JUNE 2022**

# **Privacy and Civil Liberties Oversight Board**

## **Semi-Annual Report**

### **JUNE 2022**

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

This report is available at [www.pclob.gov](http://www.pclob.gov).  
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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 June 2021 to June 2022, 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 Patrick Leahy  
Chairman  
U.S. Senate Committee on Appropriations

The Honorable Richard Shelby  
Vice Chairman  
U.S. Senate Committee on Appropriations

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

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

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

The Honorable Rob Portman  
Ranking Member  
U.S. Senate Committee on Homeland Security  
and Governmental Affairs

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

The Honorable Marco Rubio  
Ranking Member U.S. Senate Select  
Committee on Intelligence

The Honorable Adam Schiff  
Chairman  
U.S. House of Representatives Permanent  
Select Committee on Intelligence

The Honorable Michael Turner  
Ranking Member  
U.S. House of Representatives Permanent  
Select Committee on Intelligence

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

The Honorable Chuck Grassley  
Ranking Member  
U.S. Senate Committee on the Judiciary

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

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

The Honorable Bennie G. Thompson  
Chairman  
U.S. House of Representatives Committee  
on Homeland Security

The Honorable John Katko  
Ranking Member  
U.S. House of Representatives Committee  
on Homeland Security

The Honorable Carolyn B. Maloney  
Chairwoman  
U.S. House of Representatives Committee  
on Oversight and Reform

The Honorable James Comer  
Ranking Member  
U.S. House of Representatives Committee  
on Oversight and Reform

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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 June 2021 through June 2022, providing information on findings, conclusions, and recommendations of the Board resulting from its authorized advice and oversight functions. The PCLOB was unable to issue two Semi-Annual Reports in 2021 due to its sub-quorum status for the second half of the year.

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.<sup>1</sup> A bipartisan, five-Member Board, each appointed by the President and confirmed by the Senate, leads both mission and operations staff to carry out the agency’s mission: to ensure 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:

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

The Board performed its advice function as well, providing pre-decisional staff advice for one on-going advice engagement, and voting to accept one additional advice project. Other mission related activities included coordinating of executive

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

branch privacy and civil liberties activities and outreach to the public, Congress, and other federal agencies.

Although the COVID-19 pandemic continued to disrupt many facets of life during the reporting period, the Board adapted to the difficult and evolving circumstances and remained committed to fulfilling its oversight and advice functions while providing for the health and safety of Board Members, staff, stakeholders, and government officials with whom the Board regularly interacts. Rigorous health protocols have ensured access to the agency's Sensitive Compartmented Information Facility ("SCIF"), enabling the Board to make significant progress on classified projects. These protocols remain in place as the agency assesses changing pandemic conditions.

The agency overcame other challenges relating to changes in leadership and the way it achieved its mission. The Board lost its quorum in the summer of 2021, which prevented the Board from issuing new reports, including semi-annual reports to Congress, until new Members were nominated and confirmed. The Board performed its mission during the sub-quorum period while working to fill vacancies for key positions pivotal to the Board's success. In February 2022, it regained a quorum upon the Senate confirmations of Chair Sharon Bradford Franklin and Member Beth A. Williams. Member Travis LeBlanc was renominated for a new term in March 2022. Richard DiZinno was nominated in June 2022 to fill the Board's one remaining vacancy.

The Board maintained strong administrative, managerial, and organization capabilities throughout the reporting period, allowing the small 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

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

The Board is working to produce a report, per Section 824 of the Consolidated Appropriations Act of 2022, assessing the 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 continued to track legislative proposals that would update existing authorities and laws related to defining, investigating, and prosecuting domestic terrorism. The Board has also engaged with federal agencies to better understand the privacy and civil liberties implications of these agencies' efforts to combat domestic terrorism. In the spring of 2022, the Board published a public notice to solicit input from the public regarding privacy and civil liberties issues related to the government's efforts to combat domestic terrorism. In late May 2022, it held a virtual domestic terrorism public forum with both senior government officials and non-government experts. The Board is in the process of determining the scope and nature of its oversight on domestic terrorism and will continue its investigation of these issues in the next reporting period.

### **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 2022 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.



## **FBI Queries Under Section 702 of the Foreign Intelligence Surveillance Act**

The Board continues its review of FBI's querying of data obtained pursuant to Section 702 of the Foreign Intelligence Surveillance Act and related authorities. This review has examined the procedures and technology used to record queries and ensure compliance with applicable rules. The Board has conducted multiple oversight engagements with FBI, including receiving briefings and obtaining relevant policy and procedure documents.

## **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 the FBI's use of open-source data. These efforts comprise meetings and briefings (including telephone and virtual) and obtaining and reviewing relevant documents. A detailed description of these projects is available on the Board's website.<sup>2</sup> 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. During the current reporting period, staff provided advice on one ongoing advice engagement. Since regaining its quorum in February 2022, the Board has accepted an advice request from within the Executive Branch for advice on matters within its jurisdiction. Notably, the Board has provided advice, or is currently providing advice, on every significant issuance, 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.

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

## **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."<sup>3</sup>

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 conducted briefings to 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 mission and work, Board Members spoke at events, including webinars, hosted by a variety of groups and organizations. As noted earlier in this report, Board Members also held a public forum on the issue of domestic terrorism in late May 2022.

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<sup>3</sup> 42 U.S.C. § 2000ee(f)(2).

## OPERATIONAL ACTIVITIES

During the reporting period, the Board strengthened its institutional capacity, and bolstered its workforce, cybersecurity posture, and financial controls. Despite various challenges during the reporting period, the Board achieved several significant accomplishments.

### Workforce

The Board lost its quorum in the summer of 2021 when three of its five Board Member seats became vacant. Some of the Board's authorities were limited while in sub-quorum, as the Board may not initiate new oversight projects, nor formally finalize existing projects, during a sub-quorum period. Until new Members were nominated and confirmed, the Board collectively worked to ensure continuity during the transition period, with remaining Board Members continuing their oversight and advisory roles in their individual capacities, while staff worked on existing projects. The Board also appointed an acting Executive Director and an acting General Counsel to provide additional leadership and guidance as staff vacancies rose to roughly 20 percent, and subsequently hired a new Legislative and Public Affairs Officer and General Counsel, both of whom joined the agency during the reporting period. As the Board recruited and hired staff to fill vacancies, Chair Sharon Bradford Franklin and Board Member Beth A. Williams were confirmed and sworn in, re-establishing the Board's quorum in February 2022.

The Board's workforce is evolving as a result of new 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 Board developed and began implementing the PCLOB Equity Action Plan. This plan was developed specifically in response to EO 13895, *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government* (January 20, 2021). In addition, the Board developed and began implementing a Diversity, Equity, Inclusion, and Accessibility ("DEIA") Strategic Plan in line with EO 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.

To support the health and safety of the agency's employees, onsite contractors, and individuals interacting with the agency workforce, the Board developed a COVID Re-entry Plan, along with an agency Safety Plan, to resume regular use of the PCLOB

office through the implementation of a phased re-entry approach. The Board's Continuing Operations ("COOP") team monitors 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 need to be made. By implementing and adhering to these robust health protocols, the agency has been able to continue pursuing its mission throughout the reporting period. Despite the challenges related to the pandemic which continue into the next reporting period, the Board is well positioned to carry out its vigorous oversight and advice agenda.

Throughout the reporting period, the Board experienced increased efficiencies in Human Resources ("HR") services from the agency's HR service provider, the Department of Interior's Business Center ("IBC"), and through the implementation of the Board's first learning management system. In the coming year, the Office of Human Resources will focus on increasing efficiency in operations and recruitment, as well as promoting employee growth and development.

## **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 Controls and Contracting**

The Board has maintained its momentum in improving its financial management. In November 2021, the Board issued its second Agency Financial Report ("AFR"), which included an unmodified ("clean") audit of the Fiscal Year ("FY") 2021 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, which includes implementation of Trusted Workforce (“TW”) 2.0. and NSPM – 28 directing agencies to implement an Operations Security (“OPSEC”) program, allowing 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 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

Despite the many challenges our nation has faced during the COVID-19 pandemic, the Board has fulfilled its statutory mission, pursuing work on its oversight and advice projects that address important issues related to efforts to protect the nation against terrorism while safeguarding privacy and civil liberties.

The Board looks forward to engaging with Congress, the public, and other stakeholders as it identifies 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.