



Advisory Function Policy and Procedure Fact Sheet:

The Privacy and Civil Liberties Oversight Board Releases New Policy to Ensure Opportunity to Provide Vital, Early Input to Federal Agencies

Background:

The mission of the Privacy and Civil Liberties Oversight Board (Board) is rooted in the belief that our nation can simultaneously protect both our security and our liberties. The Board has two core functions to enable it to achieve its mission:

- **Oversight:** In its oversight role, the Board is authorized to continually review the substance and implementation of executive branch regulations, policies, procedures, and information sharing practices relating to efforts to protect the nation from terrorism, in order to ensure that privacy and civil liberties are ensured.

Among the reports issued as part of the Board's oversight function are: *Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act*; and *Report on the Surveillance Program Operated under Section 702 of the Foreign Intelligence Surveillance Act*.

- **Provide Advice:** The Board is also authorized to provide advice and counsel on policy development and implementation by reviewing proposed legislation, regulations, and policies related to efforts to protect the nation from terrorism, in order to ensure that privacy and civil liberties are appropriately considered.

As part of this advice function, early engagement by the Board—before the executive branch or President has made a final decision and when there is still time to consider the Board's advice—is critical to its ability to provide meaningful advice.

The Board has recently released a new policy related to its “advice” responsibilities. The document, which is titled, “*Advisory Function Policy and Procedure*,” is intended to clarify the Board's advice function and thereby provide a clear path for federal agencies and components to engage with the Board in early stages of the process of a new agency policy, rule, or regulation being developed. Consultation at an early stage will help ensure privacy and civil liberties protections are part of the initial design of laws, policies, and regulations that seek to protect the nation from terrorism.

Summary of the Board's Advisory Function Policy and Procedure:

- Since early engagement is critical to the Board's ability to provide meaningful advice, the Board's new policy provides a pathway for federal agencies to seek the Board's input early on.
- The policy document outlines the process for a federal agency to request advice from the Board. The Board may also hold briefings or meetings with the agency to elaborate on its advice.
- When the Board is asked to consider a matter, the Board will vote on whether to accept the request. The Board will notify agencies whenever it is exercising its advisory function.
- The Board's policy clarifies that it can conduct oversight over a matter on which the Board may have previously provided advice under its "advice function."
- The policy also clarifies the Board's statutory reporting requirement, including the circumstances under which the Board must report to Congress or the President when an agency implements a proposal that the Board had advised against implementing.