

42 USC 2000ee: Privacy and Civil Liberties Oversight Board

From Title 42-THE PUBLIC HEALTH AND WELFARE CHAPTER 21E-PRIVACY AND CIVIL LIBERTIES PROTECTION AND OVERSIGHT

§2000ee. Privacy and Civil Liberties Oversight Board

(a) IN GENERAL

There is established as an independent agency within the executive branch a Privacy and Civil Liberties Oversight Board (referred to in this section as the “Board”).

(b) FINDINGS Consistent with the report of the National Commission on Terrorist Attacks Upon the United States, Congress makes the following findings:

(1)

In conducting the war on terrorism, the Government may need additional powers and may need to enhance the use of its existing powers.

(2)

This shift of power and authority to the Government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life and to ensure that the Government uses its powers for the purposes for which the powers were given.

(3)

The National Commission on Terrorist Attacks Upon the United States correctly concluded that “The choice between security and liberty is a false choice, as nothing is more likely to endanger America’s liberties than the success of a terrorist attack at home. Our history has shown us that insecurity threatens liberty. Yet, if our liberties are curtailed, we lose the values that we are struggling to defend.”

(c) PURPOSE The Board shall—

(1)

analyze and review actions the executive branch takes to protect the Nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties; and

(2)

ensure that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.

(d) FUNCTIONS

(1) ADVICE AND COUNSEL ON POLICY DEVELOPMENT AND IMPLEMENTATION

The Board shall—

(A)

review proposed legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the development and adoption of information sharing guidelines under subsections (d) and (f) of [section 485 of title 6](#);

(B)

review the implementation of new and existing legislation, regulations, and policies related to efforts to protect the Nation from terrorism, including the implementation of information sharing guidelines under subsections (d) and (f) of [section 485 of title 6](#);

(C)

advise the President and the departments, agencies, and elements of the executive branch to ensure that privacy and civil liberties are appropriately considered in the development and implementation of such legislation, regulations, policies, and guidelines; and

(D) in providing advice on proposals to retain or enhance a particular governmental power, consider whether the department, agency, or element of the executive branch has established—

(i) that the need for the power is balanced with the need to protect privacy and civil liberties;

(ii) that there is adequate supervision of the use by the executive branch of the power to ensure protection of privacy and civil liberties; and

(iii) that there are adequate guidelines and oversight to properly confine its use.

(2) OVERSIGHT

The Board shall continually review—

(A) the regulations, policies, and procedures, and the implementation of the regulations, policies, and procedures, of the departments, agencies, and elements of the executive branch relating to efforts to protect the Nation from terrorism to ensure that privacy and civil liberties are protected;

(B) the information sharing practices of the departments, agencies, and elements of the executive branch relating to efforts to protect the Nation from terrorism to determine whether they appropriately protect privacy and civil liberties and adhere to the information sharing guidelines issued or developed under subsections (d) and (f) of [section 485 of title 6](#) and to other governing laws, regulations, and policies regarding privacy and civil liberties; and

(C) other actions by the executive branch relating to efforts to protect the Nation from terrorism to determine whether such actions—

(i) appropriately protect privacy and civil liberties; and

(ii) are consistent with governing laws, regulations, and policies regarding privacy and civil liberties.

(3) RELATIONSHIP WITH PRIVACY AND CIVIL LIBERTIES OFFICERS

The Board shall—

(A) receive and review reports and other information from privacy officers and civil liberties officers under [section 2000ee-1 of this title](#);

(B) when appropriate, make recommendations to such privacy officers and civil liberties officers regarding their activities; and

(C) when appropriate, coordinate the activities of such privacy officers and civil liberties officers on relevant interagency matters.

(4) TESTIMONY

The members of the Board shall appear and testify before Congress upon request.

(e) REPORTS

(1) IN GENERAL

The Board shall—

(A)

receive and review reports from privacy officers and civil liberties officers under [section 2000ee-1 of this title](#); and

(B)periodically submit, not less than semiannually, reports—

(i)

(I)

to the appropriate committees of Congress, including the Committee on the Judiciary of the Senate, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Homeland Security of the House of Representatives, the Committee on Oversight and Government Reform of the House of Representatives, the Select Committee on Intelligence of the Senate, and the Permanent Select Committee on Intelligence of the House of Representatives; and

(II)

to the President; and

(ii)

which shall be in unclassified form to the greatest extent possible, with a classified annex where necessary.

(2) CONTENTS

Not less than 2 reports submitted each year under paragraph (1)(B) shall include—

(A)

a description of the major activities of the Board during the preceding period;

(B)

information on the findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d);

(C)

the minority views on any findings, conclusions, and recommendations of the Board resulting from its advice and oversight functions under subsection (d);

(D)each proposal reviewed by the Board under subsection (d)(1) that—

(i)

the Board advised against implementation; and

(ii)

notwithstanding such advice, actions were taken to implement; and

(E)

for the preceding period, any requests submitted under subsection (g)(1)(D) for the issuance of subpoenas that were modified or denied by the Attorney General.

(f) INFORMING THE PUBLIC

The Board—

(1)

shall make its reports, including its reports to Congress, available to the public to the greatest extent that is consistent with the protection of classified information and applicable law; and

(2)

shall 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, but may, notwithstanding [section 552b of title 5](#), meet or otherwise communicate in any number to confer or deliberate in a manner that is closed to the public.

(g) ACCESS TO INFORMATION

(1) AUTHORIZATION

If determined by the Board to be necessary to carry out its responsibilities under this section, the Board is authorized to—

(A)

have access from any department, agency, or element of the executive branch, or any Federal officer or employee of any such department, agency, or element, to all relevant records, reports, audits, reviews, documents, papers, recommendations, or other relevant material, including classified information consistent with applicable law;

(B)

interview, take statements from, or take public testimony from personnel of any department, agency, or element of the executive branch, or any Federal officer or employee of any such department, agency, or element;

(C)

request information or assistance from any State, tribal, or local government; and

(D)

at the direction of a majority of the members of the Board, submit a written request to the Attorney General of the United States that the Attorney General require, by subpoena, persons (other than departments, agencies, and elements of the executive branch) to produce any relevant information, documents, reports, answers, records, accounts, papers, and other documentary or testimonial evidence.

(2) REVIEW OF SUBPOENA REQUEST

(A) In general

Not later than 30 days after the date of receipt of a request by the Board under paragraph (1)(D), the Attorney General shall—

(i)

issue the subpoena as requested; or

(ii)

provide the Board, in writing, with an explanation of the grounds on which the subpoena request has been modified or denied.

(B) Notification

If a subpoena request is modified or denied under subparagraph (A)(ii), the Attorney General shall, not later than 30 days after the date of that modification or denial, notify the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives.

(3) ENFORCEMENT OF SUBPOENA

In the case of contumacy or failure to obey a subpoena issued pursuant to paragraph (1)(D), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found may issue an order requiring such person to produce the evidence required by such subpoena.

(4) AGENCY COOPERATION

Whenever information or assistance requested under subparagraph (A) or (B) of paragraph (1) is, in the judgment of the Board, unreasonably refused or not provided, the Board shall report the circumstances to the head of the department, agency, or element concerned without delay. The head of the department, agency, or element concerned shall ensure that the Board is given access

to the information, assistance, material, or personnel the Board determines to be necessary to carry out its functions.

(5) ACCESS

Nothing in this section shall be construed to authorize the Board, or any agent thereof, to gain access to information regarding an activity covered by [section 3093\(a\) of title 50](#).

(h) MEMBERSHIP

(1) MEMBERS

The Board shall be composed of a full-time chairman and 4 additional members, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS

Members of the Board shall be selected solely on the basis of their professional qualifications, achievements, public stature, expertise in civil liberties and privacy, and relevant experience, and without regard to political affiliation, but in no event shall more than 3 members of the Board be members of the same political party. The President shall, before appointing an individual who is not a member of the same political party as the President, consult with the leadership of that party, if any, in the Senate and House of Representatives.

(3) INCOMPATIBLE OFFICE

An individual appointed to the Board may not, while serving on the Board, be an elected official, officer, or employee of the Federal Government, other than in the capacity as a member of the Board.

(4) TERM

(A) Commencement

Each member of the Board shall serve a term of 6 years, commencing on the date of the appointment of the member to the Board.

(B) Reappointment

A member may be reappointed to one or more additional terms.

(C) Vacancy

A vacancy on the Board shall be filled in the manner in which the original appointment was made.

(D) Extension

Upon the expiration of the term of office of a member, the member may continue to serve for up to one year after the date of expiration, at the election of the member—

(i)

during the period preceding the reappointment of the member pursuant to subparagraph (B); or

(ii)

until the member's successor has been appointed and qualified.

(5) QUORUM AND MEETINGS

The Board shall meet upon the call of the chairman or a majority of its members. Three members of the Board shall constitute a quorum.

(i) COMPENSATION AND TRAVEL EXPENSES

(1) COMPENSATION

(A) Chairman

The chairman of the Board shall be compensated at the rate of pay payable for a position at level III of the Executive Schedule under [section 5314 of title 5](#).

(B) Members

Each member of the Board shall be compensated at a rate of pay payable for a position at level IV of the Executive Schedule under [section 5315 of title 5](#) for each day during which that member is engaged in the actual performance of the duties of the Board.

(2) TRAVEL EXPENSES

Members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for persons employed intermittently by the Government under [section 5703\(b\) \[1\]](#) of title 5, while away from their homes or regular places of business in the performance of services for the Board.

(j) STAFF

(1) APPOINTMENT AND COMPENSATION

The chairman of the Board, in accordance with rules agreed upon by the Board, shall appoint and fix the compensation of a full-time executive director and such other personnel as may be necessary to enable the Board to carry out its functions, without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under [section 5316 of title 5](#).

(2) APPOINTMENT IN ABSENCE OF CHAIRMAN

If the position of chairman of the Board is vacant, during the period of the vacancy, the Board, at the direction of the unanimous vote of the serving members of the Board, may exercise the authority of the chairman under paragraph (1).

(3) DETAILEES

Any Federal employee may be detailed to the Board without reimbursement from the Board, and such detailee shall retain the rights, status, and privileges of the detailee's regular employment without interruption.

(4) CONSULTANT SERVICES

The Board may procure the temporary or intermittent services of experts and consultants in accordance with [section 3109 of title 5](#), at rates that do not exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(k) SECURITY CLEARANCES

(1) IN GENERAL

The appropriate departments, agencies, and elements of the executive branch shall cooperate with the Board to expeditiously provide the Board members and staff with appropriate security clearances to the extent possible under existing procedures and requirements.

(2) RULES AND PROCEDURES

After consultation with the Secretary of Defense, the Attorney General, and the Director of National Intelligence, the Board shall adopt rules and procedures of the Board for physical,

communications, computer, document, personnel, and other security relating to carrying out the functions of the Board.

(l) TREATMENT AS AGENCY, NOT AS ADVISORY COMMITTEE

The Board—

(1)

is an agency (as defined in [section 551\(1\) of title 5](#)); and

(2)

is not an advisory committee (as defined in [section 1001\(2\) of title 5](#)).

(m) AUTHORIZATION OF APPROPRIATIONS There are authorized to be appropriated to carry out this section amounts as follows:

(1)

For fiscal year 2008, \$5,000,000.

(2)

For fiscal year 2009, \$6,650,000.

(3)

For fiscal year 2010, \$8,300,000.

(4)

For fiscal year 2011, \$10,000,000.

(5)

For fiscal year 2012 and each subsequent fiscal year, such sums as may be necessary.