

**Written Questions of Senator Patrick Leahy,
Chairman, Senate Committee On The Judiciary
To David Medine, Nominee for Chair, Privacy and Civil Liberties Oversight Board**

Hearing on “Nominations to the Privacy and Civil Liberties Oversight Board”

Held April 18, 2012

Data Retention

On March 22, the Director of National Intelligence and the Attorney General jointly released new guidelines governing the acquisition and retention of data by the National Counterterrorism Center (NCTC). Under these new guidelines, it is now conceivable that the NCTC could retain vast amounts of data regarding U.S. citizens for up to five years – well beyond the six months that was allowed under the previous guidelines. The new guidelines specifically state that the Privacy and Civil Liberties Oversight Board shall have “access” to all relevant NCTC records, reports, and other material relevant to its oversight of NCTC. However, the guidelines do not require any of the oversight and compliance reporting to go to the Privacy and Civil Liberties Oversight Board.

Mr. Medine, as Chair of the Privacy and Civil Liberties Oversight Board, how would you view the Board’s role in reviewing this new policy and other emerging policy issues that involve the collection and retention of Americans’ personal data?

If confirmed as Chair of the Privacy and Civil Liberties Oversight Board (PCLOB), oversight of information collection, use and retention policies, such as the recently released National Counterterrorism Center (NCTC) guidelines, would be a top Board priority. The accumulation of vast quantities of personal information by the government raises both privacy and civil liberties concerns. PCLOB, if reestablished, would be proactive in overseeing these types of guidelines, gathering enough information to make an informed judgment about whether the program appropriately takes into account privacy and civil liberties concerns. This would be the case whether or not the guidelines contain their own oversight or compliance reporting mechanisms.

In 2008, the Department of Homeland Security issued Fair Information Practice Principles (FIPPs). These FIPPs would provide a useful starting point for the Board in analyzing whether a program, or proposed change in a program such as the extension of record keeping for up to five years, raise concerns. The FIPPs are: transparency, individual participation, purpose specification, data minimization, use limitation, data quality and integrity, security and accountability and auditing. In the case of the guidelines, the data minimization principle states that information should only be retained for as long as is necessary to fulfill the specified purpose. PCLOB, if constituted, would examine whether the expansion of recordkeeping from six months to up to five years is necessary and justified.

An important oversight consideration is the efficacy of a program. In considering when privacy and civil liberties has properly been taken into account, PCLOB would examine the goals of a program and how well it was meeting those goals. If any program involving the collection and use of American’s personal information is found to be problematic, where practical, PCLOB would work constructively with the relevant agency or agencies to convey recommended changes and assess whether alternative approaches would be possible that would address privacy and civil liberties concerns while still accomplishing the program’s goals.