

Written Questions for Travis LeBlanc
Submitted by Senator Patrick Leahy
February 6, 2019

Role of PCLOB:

PCLOB is uniquely poised to ensure that the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties.

1. How does the role of the PCLOB differ from what is expected of the intelligence community?

America has the most professional and effective intelligence professionals in the world. This is due, in part, to the fact that our Intelligence Community embraces oversight and transparency. While not a member of the Intelligence Community, the Privacy and Civil Liberties Oversight Board's responsibilities comprise two essential functions: oversight of and advice about the government's efforts to protect the nation from terrorism while also protecting privacy and civil liberties.

In its oversight role, in order to ensure that privacy and civil liberties are protected to the greatest extent possible consistent with the demands of national security, the Board is authorized to perform continuing review of Executive Branch implementation of policies, procedures, regulations, and information-sharing practices related to protecting the nation from terrorism. In its advice role, the Board is authorized to review proposed legislation, regulations, and policies related to efforts to protect the nation from terrorism in order to advise the President, Executive Branch agencies, and Congress on ensuring that privacy and civil liberties are appropriately considered in their development and implementation. The Board is also directed by statute to coordinate, when appropriate, the activities of federal agency privacy and civil liberties officers on relevant interagency matters and to issue reports to Congress and the President on the Board's activities, making those reports available to the public to the greatest extent possible, once again consistent with the demands of national security and the protection of classified information.

2. If the courts have ruled that a program is consistent with the Fourth Amendment, do you believe that the PCLOB has an independent responsibility to consider whether the program adequately protects civil liberties, including Fourth Amendment rights?

I am mindful that the Privacy and Civil Liberties Oversight Board is not a judicial body. The Board's role is to provide oversight and advice; the Board does not issue binding opinions that have the force of law, and it is up to the Intelligence Community and Congress to consider the Board's recommendations. At the same time, in the course of its independent oversight and advising functions, the Board has an independent duty to consider relevant dimensions of the United States government's national security activities that relate to privacy and civil liberties, including technology, policy, and legal dimensions, some or all of which may implicate Fourth Amendment rights. Moreover, that a court has deemed a program "consistent" with Fourth Amendment rights does not preclude the Board from considering whether the addition of other privacy and civil liberties protections to the program should be warranted. Of course, any such consideration must be balanced against the Board's assessment of the risk that their

addition would unduly burden or compromise the program's intended national security protective function(s).

USA FREEDOM Act

Certain surveillance authorities authorized under the USA FREEDOM Act are set to sunset later this year.

1. What is your understanding of how effective the reforms contained in USA FREEDOM have been to date?

I do not have access to the classified and nonpublic information that would be necessary to evaluate fully the effectiveness of the reforms contained in the USA FREEDOM Act. If confirmed, I would prioritize working with fellow Privacy and Civil Liberties Oversight Board Members to evaluate the reforms contained in the USA FREEDOM Act.

2. What additional reforms or changes to these authorities, if any, do you believe are appropriate for Congress to consider?

I do not have access to the classified and nonpublic information that would be necessary to evaluate fully the effectiveness of the reforms contained in the USA FREEDOM Act. On the basis of the public information available to me today, Congress may want to consider whether to adopt a different standard for amicus involvement before the Foreign Intelligence Surveillance Court and whether to mandate the inclusion of amici curiae in the review of annual certifications under Section 702. If confirmed, I would encourage the Board to examine these issues, as well as the Call Detail Record provisions of the USA FREEDOM Act.

3. What role would you like the PCLOB to play in evaluating these authorities as Congress considers reauthorization?

If confirmed, I would work with fellow Members to set the Board's agenda. I would encourage other Board Members to review the Intelligence Community's policies and practices related to the USA FREEDOM Act provisions that are set to expire later this year. I would also make myself available to Congress as it considers whether to extend or modify the provisions of the USA FREEDOM Act.