

**Senator Chuck Grassley**  
**Questions for the Record**

**Patricia Wald**  
**to be a Member of the Privacy and Civil Liberties Oversight Board (reappointment)**

- 1. *Please summarize the Board's activities since March 2013 (the end of the period covered by the Board's last semi-annual Report to the Legislative Branch).***

Since March 2013, the Privacy and Civil Liberties Oversight Board (PCLOB) has engaged in the following activities:

- Met with officials of the Department of Justice, Office of the Director of National Intelligence, Federal Bureau of Investigation, and the National Security Agency on several occasions to discuss their current operations and oversight of data collection under Section 215 of the Patriot Act (telephone metadata) and Section 702 of the Foreign Intelligence Surveillance Act. These discussions covered the following areas: intelligence community collection, use, and dissemination practices, as well as compliance measures, including internal and external oversight and the implementation of the Attorney General Guidelines governing collection and use of intelligence conducted pursuant to Sections 215 and 702. These discussions were held to assist in preparing a PCLOB report which will cover the history, legality, necessity, and operational details of the programs that have been the subject of recent unauthorized disclosures in the press. . The PCLOB report will consider recommendations for change to the Section 215 and Section 702 programs. The PCLOB report was requested by both Senate and House members. The report is a top priority for the Board, and the Board is working expeditiously to complete it so that any recommended proposals can be considered by the Congress, the Executive Branch, and the public in the ongoing debate regarding government surveillance programs.
- PCLOB conducted an all-day public workshop on July 9 to hear the views of experts, former government officials (including a former FISC judge) and nongovernmental advocacy groups on the legality, necessity and operations of Sections 215 and 702. The Board has also formally noticed and is preparing for a public hearing on October 4 to hear the testimony from current government officials engaged with these two programs and outside experts, focusing on the proposals for change which have arisen in the public debate and in Legislative Branch hearings. The issue of proposed changes to the operations of the Foreign Intelligence Surveillance Court will also be discussed. Additionally, the Board has met on several occasions with representatives of the provider companies involved in these operations with regard to their views, challenges, and experiences with these programs. Preparation for the report and attendant activities have required Board members to spend substantial time reading classified information, including FISC opinions and compliance reports in PCLOB's secure facility.
- On June 21 at The White House's invitation, the Board met with the President and the White House senior staff involved in intelligence activities to discuss PCLOB's role in review of intelligence activities and public information on intelligence operations.

■ PCLOB held a closed meeting on June 19 to discuss classified information relating to its classified briefings. Additionally, the Board held several meetings and conference calls to discuss pre-deliberation matters, detailee recruitment and staff candidates, budget concerns, housing, Internet connection and telecommunication needs, its office facilities, and other administrative and organizational stand-up issues. To date, I have spent 25 days on PCLOB business during this period (as SGEs, Board members are currently limited to 130 days in any period of 365 consecutive days).

■ Various meetings with Members of Congress and Congressional staff were held on PCLOB's roles and responsibilities, budget, and review of potential legislation regarding process improvements, surveillance programs, and the FISC.

■ Other activities during this period (apart from those discussed above and in the answer to Question 2 below) include follow-up meetings with the Office of the Director of National Intelligence and the Department of Homeland Security on the Implementation of the National Counterterrorism Center (NCTC) Guidelines and Information Sharing, as well as with critics of parts of the NCTC guidelines. The Board also met with DHS, DOJ and FBI officials on the fusion center and the nationwide Suspicious Activity Reporting (SAR) programs. Fusion centers and SAR are areas the Board plans to look into more deeply as soon as we are able. As of September 2013, the Board is operating with four staff persons (two hires and two administrative detailees) and given budget restraints, the Board may not be able to hire more in the immediate future. We have also met with the other intelligence agencies on their involvement in the 215 and 702 programs. The Board also requested and received a preliminary briefing on the government's domestic uses of unmanned vehicles (drones) and the legal justifications for their use in targeted killings of enemies abroad. Given PCLOB's current focus on Sections 215 and 702 report preparations, we have not yet been able to follow-up in these areas. The Board has also requested an overview of the Terrorist Screening Center and the Foreign Terrorist Tracking Task Force, which is being scheduled.

**2. *At the time of your original confirmation, I asked a question about the role of the PCLOB, considering the vast number of privacy offices that currently exist. What specific steps, policies, or procedures have been implemented to coordinate with the following offices:***

- A. The privacy and civil liberties office does at the Office of the Director of National Intelligence (ODNI);***
- B. The privacy and civil liberties office does at the Department of Homeland Security (DHS);***
- C. The privacy and civil liberties office does at the Department of Justice (DOJ); and***
- D. The privacy and civil liberties office does at the Department of Defense (DOD)?***

PCLOB has been involved in several activities related to its statutory responsibilities with regard to privacy and civil liberty officers (PCOs)(42 U.S.C. § 2000e(d)(3)), which include: (a) receiving and reviewing reports and other information from the privacy and civil liberties officers (PCOs); (b) making recommendations to the CPOs regarding their activities; and (c) as appropriate, coordinating their activities on interagency matters.

With regard to the specific offices referenced:

- ODNI: PCLOB works closely with the ODNI privacy and civil liberties office to gain access to classified information about relevant intelligence agency programs and interagency processes.
- DHS: PCLOB maintains regular contact with DHS's office and has received an overview of their operations and anticipate increased interactions regarding cybersecurity issues.
- DOJ: The Board has remained in contact with the Acting Privacy Officer and has frequent interaction with the FBI privacy office.
- DOD: PCLOB has met with the DOD Privacy and Civil Liberties Office, participated in a DOD/CFTC program on privacy, and plans are in the works to review relevant DOD programs.

All of these offices have been very helpful and responsive.

Specifically, the Board has participated in an open meeting on April 30 under the aegis of the Privacy and Civil Liberties Subcommittee of the ISA-IPC (Information Sharing and Access Interagency Policy Committee) and the White House National Security staff to discuss optimal ways to coordinate with the PCOs on current and emerging issues that the PCOs spot in their work, at what stage in the development of agency issues with privacy/civil liberties implications the PCLOB can most effectively be integrated into the agency process, on criteria for PCLOB's selection and evaluation of privacy-sensitive programs, and on cross-cutting issues related to counterterrorism programs implicating several agencies.

The relevant agencies are required by statute to submit for PCLOB review quarterly reports ("Section 803 reports") on the number of public or internal complaints they receive, the type of advice and response that resulted, the nature of the complaints, and their disposition. PCLOB regularly receives quarterly reports for review from the Departments of Defense, Treasury and Homeland Security. The Section 803 reports for the most part were singularly uninformative, containing mainly numbers but with no narrative on the kind of complaints received or their disposition. The PCLOB sent all of the agencies that are statutorily required to submit Section 803 reports a letter reminding them of their obligation and of our intent to meet with them. The Board intends to discuss at the meeting how the reports could be made more useful and informative. The Board plans -- as time and limited staff permit -- to use the reports as a starting point for reviewing generally the operations of the PCOs in order to assist them in their work. The Board will also consider exercising its authority to expand the number of agencies required to submit 803 reports. The Board discussed the 803 reports and our plans with the PCOs at the April 30 meeting noted above. Separately, we have had extensive contacts and discussions with Alex Joel, the Civil Liberties and PCO for the ODNI on many facets of our work.

PCLOB Board members presented a panel and answered questions at the annual Intelligence Community Legal Conference on May 1 on the Board's activities, including informational meetings, our open meetings, "early impressions", and on particular issues such as cybersecurity and the intersection of technology and privacy. PCOs from all intelligence community agencies attended the Conference.

On August 22, 2013, PCLOB sent a letter to the Director of National Intelligence and Attorney General regarding the responsibility of these officials pursuant to E.O. 12333, as amended, to ensure the collection, retention and dissemination U.S. persons information occurs in accordance with Attorney General approved guidelines. The Board noted that several agencies and departments are operating under Guidelines that “have not comprehensively been updated, in some cases in almost three decades, despite dramatic changes in information use and technology”, and urged the Attorney General and Director of National Intelligence to take steps to expedite their updating. The Executive Branch intends, by October 31, to satisfy the PCLOB’s request for an agency-by-agency timeline to update specific guidelines.

**3. *The President recently established a NSA surveillance review panel. Unlike the PCLOB, this panel does not appear to be bipartisan, but rather seems to be comprised of individuals who reasonably could be described as White House “insiders.”***

***A. Please explain the relationship between the PCLOB and this panel.***

***B. What functions is this panel performing that are different from the responsibilities of the PCLOB?***

***C. Is this panel meeting with the same interested parties as the PCLOB?***

***D. To your knowledge, does this panel have access to the same classified materials that the PCLOB may access?***

***E. How does this panel’s mission differ from the PCLOB’s?***

A. PCLOB’s knowledge of the Review Group on Intelligence and Communications Technologies is limited to the public releases and its Terms of Reference. Although the Board was told the Review Group would like to meet with us and we have expressed a willingness to do so, no such meeting has yet been requested and thus, so far, there is no “relationship” between PCLOB and the Review Group.

B. I understand from its Terms of Reference, the Review Group will look at “broader, strategic matters relating to national security and foreign relations implications of US intelligence Community policy and procedures governing technical collection and in particular signals intelligence...” PCLOB’s statutory mandate is to “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” The Review Group is also tasked however “to weigh the national security and foreign policy imperatives served by technical collection against the possibilities of unauthorized exposure, insider threats and attendant risk to privacy”. The scope of the Review Group’s work appears to be broader than PCLOB’s but unlike PCLOB it has no permanent oversight responsibilities as to implementation or development of agency policies once its reporting functions are performed.

C. I have no knowledge, except public releases with whom the Review Group meets. Those releases inform that they are meeting with government officials, providers and advocacy organizations.

D. I have no knowledge as to what classified materials they can or cannot access.

E. See A. above.

**4. *What steps has the Board implemented to ensure maximum transparency in the work and deliberations of the Board? What are your views as to how well the Board operating in this regard, particularly with the Freedom of Information Act (FOIA), the Privacy Act, and the Government in the Sunshine Act?***

The Board has been acutely aware of its responsibility to conduct its operations with as much transparency as possible, taking into account the nature of our inquiries which to a significant degree involves classified materials. Thus, we have conducted three meetings pursuant to the Government in the Sunshine Act -2 open meetings, one closed due to a discussion of classified information. The Board held a public workshop (with a second one imminent) on the issues involved in the controversial 215 and 702 programs. The Board promulgated draft regulations implementing the FOIA, Privacy Act, and Government in the Sunshine Act, and is in the final stages of promulgating a final rule. In 2013, the Board has processed four FOIA requests and one FOIA request is pending; we granted a substantial amount of the information requested. We have a designated Chief FOIA officer and created the email address, [info@pclob.gov](mailto:info@pclob.gov), for email submissions and inquiries. Further, the Board has established a website with all meeting notices and information required by 5 USC § 552(a), as well as other relevant information and documents. Our first semi-annual report is a public document posted there, as well.

My views as to the statutory requirements with which we are complying is that the Government in the Sunshine Act requires much time-consuming and seemingly unproductive work for an agency which inherently works with so much classified material—having to go through so many motions in order to hold a complete or partial closed meeting to consider classified matters is inherently inhibitory as is the not-so-bright line the Act appears to draw between meetings which must be open because they could result in action by the Board and those that are pre-deliberative consisting of exchange of ideas or information not leading to joint policy or action. I think the Act should be reviewed to clarify that only meetings that result in a vote or consensus on future action need be open. While the FOIA requires agency time as well and is subject to sometimes frivolous requests, I believe its worth on the whole validates its existence.

**5. *There is ongoing concern that the work of the PCLOB will contribute to the creation of a new “wall” between law enforcement and intelligence. What specific policies or procedures have been adopted by the Board to ensure that none of your work contributes to the creation of a new “wall” between law enforcement and intelligence?***

I am not familiar with the “ongoing concern” that PCLOB’s work may contribute to a new “wall” between law enforcement and intelligence or the basis for any such concern. To my knowledge, the interaction between the two occurs primarily in the authorized uses to which data collected by the intelligence agencies may be accessed by law enforcement or disseminated to law enforcement and these regulations have been installed by the existing agencies such as DOJ, ONDI and Executive Orders. PCLOB has not spoken to any such issue although some outside experts at the Board’s workshop suggested that evidence of all but the most serious crimes not be sufficient to permit dissemination of information collected for intelligence purposes. The two forces also intersect to some degree in fusion centers and the SAR program where DHS and DOJ officials and local crime fighters merge information. Again, PCLOB has made no proposals in this area to date.

- 6. *To carry out its duties, the Board is authorized to have access to information from any Department or agency within the executive branch, including classified information. To manage that classified information appropriately, the Board shall adopt “rules, procedures . . . and other security” “after consultation with the Secretary of Defense, the Attorney General, and the Director of National Intelligence.” Please explain how you and the board handle or otherwise deal with classified information.***

All classified information is kept and read inside an authorized Sensitive Compartmented Information Facility (SCIF). If classified information is discussed at a meeting with government officials, Board member's notes are returned to the SCIF in a locked transport bag for safekeeping. Classified information is used only in the authorized computers located at our headquarters. All staff and Board members have top secret clearances. In March 2013, the Board developed and adopted an Interim Security Policy based on ODNI policy. Final procedures will be implemented in accordance with the Board's authorizing legislation.

- 7. *Given the bi-partisan composition of the Board, it is only appropriate that the staff members hired to assist in fulfilling the Board's statutory mandate also reflect the diverse views of the Board members. Accordingly, what steps, if any, have been taken to ensure that the Board's staff members represent a broad array of perspectives on these important issues? Has the Board adopted any hiring procedures or practices to this end? If so, in your opinion are these procedures or practices effective? If not, what changes would you propose?***

Under PCLOB's statute, only the Chairman has the authority to appoint staff; until late May the Board functioned without a Chairman and so the PCLOB's only staff were exclusively senior detailees from other agencies to assist in establishing organizational policies and procedures. (DNI, NSA and DOT). Our current Chief Administrative Officer and Chief Legal Officer are detailees from DNI and NSA, respectively. Approval has also been provided by DOJ to provide an Assistant United States Attorney on detail. Since the Chairman was confirmed in May, he has appointed an Executive Director and an attorney advisor. The Executive Director was the Staff Director from a prominent NGO which focuses on bringing together representatives from "conservative" and "progressive" sides on controversial policy issues; the attorney advisor was law clerk to a U.S. District Judge in the DC Circuit. The Board participated in certain interviews and the selection process. All five Board members approved these choices. Board members have expressed their desire to have representation of different points of view among the staff and although, because of budget constraints, it is unclear when the PCLOB can hire more staff. Among current PCLOB candidates are individuals who have worked with the Republican majority in the House and with the DEA, and the Democratic majority in the Senate and the Defense Department and CIA. In such a small agency as the PCLOB, I do not see any present need for more formal policies on opinion diversity among our hires.