

PCLOB Examination of E.O. 12333 Activities in 2015

The Privacy and Civil Liberties Oversight Board has a statutory mandate to review actions taken by the executive branch to protect the nation from terrorism, ensuring that the need for such actions is balanced with the need to protect privacy and civil liberties. Pursuant to this mandate, the Board has begun examining counterterrorism-related activities conducted by the Intelligence Community under Executive Order 12333. Given the range of such activities, the Board expects that it will periodically examine specific E.O. 12333 counterterrorism activities throughout its existence. The Board's initial efforts, however, will be limited as follows.

The Board has received, or will soon conclude the process of receiving, overview briefings on E.O. 12333 activities from each Intelligence Community element. During the next stage of its inquiry, the Board will select two counterterrorism-related activities governed by E.O. 12333, and will then conduct focused, in-depth examinations of those activities. The Board plans to concentrate on activities of the CIA and NSA, and to select activities that involve one or more of the following: (1) bulk collection involving a significant chance of acquiring U.S. person information; (2) use of incidentally collected U.S. person information; (3) targeting of U.S. persons; and (4) collection that occurs within the United States or from U.S. companies. Both reviews will involve assessing how the need for the activity in question is balanced with the need to protect privacy and civil liberties. The reviews will result in written reports and, if appropriate, recommendations for the enhancement of civil liberties and privacy. The Board's goal is to complete both reports by the end of 2015. While the Board anticipates that these reports will be largely or entirely classified, it will assess whether particular information about the activities under review warrants public-interest declassification, making targeted requests for such declassification as appropriate, using existing IC declassification procedures.

The Board also plans to issue a public report that explains E.O. 12333 at a high level, focusing on how the legal framework established by the executive order and its implementing procedures governs the collection, use, retention, and dissemination of information concerning U.S. persons. To the extent feasible in an unclassified document, the report will draw on the two in-depth reviews and the overview briefings described above for descriptive examples of how E.O. 12333 and its implementing procedures shape the privacy and civil liberties impacts of the Intelligence Community's efforts to prevent terrorism. As appropriate, and to the extent that the Board can draw conclusions based on its overview briefings and in-depth reviews, the public report also will assess the adequacy of E.O. 12333's safeguards for privacy and civil liberties. The Board's goal is to issue this report by the end of 2015, recognizing that any requests for public-interest declassification will affect the report's release date. Depending on the contents of the two in-depth reports

described in the previous paragraph, they might be formatted as classified annexes to the public report, rather than as standalone documents.

Board staff will continue to work with the CIA and NSA regarding how the Board will proceed to identify suitable topics for its in-depth reviews. Board staff also will continue to work with other Intelligence Community elements to coordinate the remaining overview briefings and any follow-up information requests. Such requests, if made, will be geared toward solidifying the Board's understanding of the basic counterterrorism-related functions of those elements and their associated E.O. 12333 procedures.