



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
WASHINGTON, D.C. 20427

David Medine, Chairman
Rachel L. Brand
Elisebeth B. Collins
James X. Dempsey
Patricia M. Wald

May 26, 2015

Karen Neuman
Chief Privacy Officer
Department of Homeland Security
650 Massachusetts Avenue, NW
Washington, DC 20528

Megan Mack
Civil Rights and Civil Liberties Officer
Department of Homeland Security
131 M Street, NE
Washington, DC 20002

Dear Ms. Neuman and Ms. Mack,

I write on behalf of the Privacy and Civil Liberties Oversight Board¹ in response to the Executive Order 13636 Privacy and Civil Liberties Assessment Report that you submitted to the Board on April 10, 2015. As you know, Section 5(c) of Executive Order 13636 on Improving Critical Infrastructure Cybersecurity requires that the “Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties of DHS shall consult with the Privacy and Civil Liberties Oversight Board” in producing this report.

Thank you for your early engagement with the Board this year, which we believe enabled a meaningful consultation process and a useful exchange of information. While we look forward to working with agencies to continue to refine this process, we believe that, overall, this year’s consultative process was very productive. The Board appreciates agencies’ consideration of its feedback and their efforts to incorporate this feedback to the extent that they deemed appropriate. We look forward to reviewing next year’s Report and to receiving the information that agencies indicated would be forthcoming in the next reporting cycle.

The Board would like to commend reporting agencies on certain key aspects of this year’s Report. First, we appreciate the agencies’ acceptance of the Board’s suggestion to employ a standard format for the individual reports, which made the Report easier to understand. Second, agencies further developed and explained their policies and provided more thorough assessments of the privacy and civil liberties implications of their cybersecurity activities under the Executive Order. In fact, some agencies went beyond the plain language of the Executive Order and reported on activities that are related to the Order, although not necessarily implemented in response to the Order. This broad reporting enhances transparency. Third, the Report provides a better sense of how each agency’s privacy and civil liberties assessments are conducted, the metrics that are used, and whether the policies and procedures currently in place are in fact effective in protecting privacy and civil liberties. This included responding to many of the specific suggestions contained in the Board’s letter of March 2014 regarding last year’s Report. Finally, agencies more clearly

¹ Board Member James Dempsey is recusing himself from critical infrastructure cybersecurity matters before the PCLOB.

described the standards they utilize to strip personally identifiable information from cyber threat information, uses of shared cybersecurity information, and retention periods for shared cybersecurity information. These features of the Report provide the public with more readily understandable information about agencies' cybersecurity information sharing activities and the accompanying protections for privacy and civil liberties.

The Board hopes that future Reports will continue to describe how agencies' policies and procedures are applied to cybersecurity activities under the Executive Order and begin to more fully assess the adequacy of these policies and procedures in protecting privacy and civil liberties. As more agencies move from the policy development phase to the implementation phase, they should be better able to measure how effectively privacy and civil liberties policies are operating in practice.

The Board recognizes that its role under E.O. 13636 is to "consult with" DHS as it produces the compiled report. This consultative role fits within the Board's statutory advice function, rather than its oversight function. The Board recognizes that respecting agencies' internal decision-making processes is an essential aspect of ensuring that the Board can provide meaningful advice, and therefore the Board is not disclosing the substance of its engagement with reporting agencies. The Board is of course mindful of its statutory obligation to inform Congress when an agency implements a proposal despite the Board's advice against implementation. The Board has not yet encountered such a scenario, including in the course of its consultation on the E.O. 13636 Report.

The Board also notes that the Executive Order does not require the Board to publish an analysis of the Report or provide public feedback on each agency's report. As reporting continues to evolve over the coming years, the Board will decide on a report-by-report basis what role, if any, it will play after the annual Report is published.

Again, thank you for engaging the Board in a meaningful consultation process this year. We look forward to our continued involvement with you pursuant to Executive Order 13636 and in any other advisory capacities as we seek to appropriately balance privacy and civil liberties interests with national security.

Sincerely,

A handwritten signature in black ink that reads "David Medine". The signature is written in a cursive, slightly slanted style.

David Medine
Chairman