



PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

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August 22, 2013

The Honorable Eric H. Holder, Jr.
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable James R. Clapper
Director
Office of the Director of National Intelligence
Washington, DC 20511

Dear Attorney General Holder and Director Clapper:

As part of the Privacy and Civil Liberties Oversight Board's oversight of the Executive Branch's efforts to protect the Nation from terrorism while appropriately considering privacy and civil liberties, the Board believes that key policies and procedures addressing privacy and civil liberties should be kept up to date to take into account new developments including technological advancements.

As you know, Executive Order 12333 establishes the overall framework for the conduct of intelligence activities by U.S. intelligence agencies. Under section 2.3 of the Executive Order, intelligence agencies can only collect, retain, and disseminate information about U.S. persons if the information fits within one of the enumerated categories under the Order and if it is permitted under that agency's implementing guidelines approved by the Attorney General after consultation with the Director of National Intelligence.

The Privacy and Civil Liberties Oversight Board has learned that key procedures that form the guidelines to protect "information concerning United States persons" have not comprehensively been updated, in some cases in almost three decades, despite dramatic changes in information use and technology. Accordingly, the Board requests that both the Attorney General and Director of National Intelligence work together to focus the attention necessary to update each element of the Intelligence Community's procedures

to collect, retain and disseminate U.S. persons' information.¹ With updating, these procedures could appropriately capture both the evolution of technology and the roles and capabilities of the Intelligence Community since 9/11.² Specifically, the Board would appreciate receiving by October 31, 2013, an agency-by-agency schedule establishing a time frame for updating each agency's guidelines. In the meantime, the Board would appreciate a briefing on the status of the guidelines and process for reviewing and updating them.

If you need any additional information, please feel free to contact me or Diane Janosek, Chief Legal Officer, at (202) 331-4084 or diane.janosek@pclomb.gov.

Sincerely,



David Medine
Chairman

¹ Section 2.3 of Executive Order 12333, as amended, reads "Elements of the Intelligence Community are authorized to collect, retain, or disseminate information concerning United States persons only in accordance with procedures established the head of the Intelligence Community element concerned or by the head of a department containing such element and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order, after consultation with the Director."

² After 9/11, the Intelligence Community dramatically changed, in large part as a result of the Intelligence Reform and Terrorism Protection Act of 2004, P.L. 108-458 (2004).