

PPSA Sues PCLOB to Adhere to Disclosure Law ***Lawsuit Concerns Secretive Powers of Executive Order 12333***

Wednesday, June 9, 2021

The Project for Privacy and Surveillance Accountability filed suit today against the Privacy and Civil Liberties Oversight Board in an attempt to get this independent “watchdog” agency to respond to a lawful but long ignored disclosure request.

“PCLOB is tasked with oversight of U.S. intelligence agencies,” said Gene Schaerr, PPSA general counsel. “It is supposed to be our watchdog against encroachments on civil liberties by the intelligence community. Our lawsuit demonstrates, in fact, that PCLOB is more like a lazy pooch sleeping at the feet of its masters.

“This is a major test case concerning whether or not laws governing Freedom of Information Act requests must be obeyed,” Schaerr said. “We will demonstrate to the court that the Board is ignoring the law.”

Background

On April 23, 2019, Patrick Eddington of the CATO Institute made a FOIA request [asking for records](#) from the board concerning reports, and correspondence with agencies, about Executive Order 12333.

Signed by President Reagan in 1981, 12333 organizes the collection, analysis and use of foreign intelligence and counterintelligence from human sources, technological intercepts and foreign governments. But it has become far more than a roadmap for the intelligence community. [Sen. Richard Burr](#), former chair of the Senate Select Committee on Intelligence, alarmed civil libertarians everywhere when he took to the Senate floor to declare that under 12333 authority, the executive branch can do whatever it wants, without “guardrails” or statutory authority for mass surveillance.

PCLOB's Non-Response, Response

How did PCLOB respond to Eddington's request? The Board confirmed it has completed at least one "deep dive report" under Executive Order 12333 concerning at least one federal agency, but withheld that report. It refused to release any records regarding agency refusals to provide information requested by the Board.

In a letter to the Board, PPSA concluded: "It appears from these responses that the Board has censored itself at the direction of the very agency subject to its oversight."

On Sept. 16, 2020, PPSA filed its own FOIA request asking PCLOB to produce records mentioning the Eddington request or any denial or other responses to it. PPSA also doubled down on requests for information about 12333, as well as records on responses or denials of other requests concerning that executive order.

"In essence, we FOIAed the FOIA," Schaerr said. "We want to underscore for the Board that this isn't going away." In today's filing, PPSA demanded a response showing whether the "Board censors itself at the direction of IC elements subject to its oversight."

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Going to Court

Today's lawsuit asks the Board to comply with the law that it must respond to PPSA's FOIA request. PCLOB did not produce the requested records, or demonstrate that it is exempt from producing them.

“We gave the Board far more than the maximum thirty business days from our FOIA request,” Schaerr said. “It is time to turn to the courts to determine if the laws governing FOIA requests must be respected by PCLOB, or if the law can be effectively ignored.”

PCLOB’s History of Supine Oversight

In March, PPSA reported on the results of a six-year, “deep dive” investigation by PCLOB on the implications of privacy and civil liberties. Civil libertarians especially hoped that six years of rummaging through classified information would shed light on whether or not 12333, a non-statutory authority, was used to replace the expired legal authorities from Section 215 of the Patriot Act.

The report, released on the afternoon of Good Friday, 2021, contained no revelations or significant observations, criticisms or recommendations. It merely offered [a Wikipedia-level explanation](#) of 12333’s history and contents.

“You would think that if PCLOB were going to act as a cover for the intelligence community, they’d come up with something,” Schaerr said. “You’d think that, if only for cosmetic reasons, they’d at least put up a pretense of doing their job.”