

April 23, 2019

VIA ELECTRONIC MAIL

Mr. Adam I. Klein
Chairman, Privacy and Civil Liberties Oversight Board
800 North Capitol Street NW.
Suite 565
Washington, DC 20002

Dear Chairman Klein:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I request, in Portable Document Format (PDF), copies of the following:

1. Any Board reports issued on federal department and agency activities conducted pursuant to Executive Order 12333, as amended; and
2. Any correspondence in any form to or from the Board regarding alleged or actual violations of laws, regulations, or executive orders by any federal department or agency under the purview of the Board.
3. Any correspondence in any form to or from the Board regarding refusals by any federal department or agency to provide information requested by the Board pursuant to its statutory oversight mission.

In order to help to determine my status to assess fees, you should know that I am a Research Fellow at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. **I request a waiver of all fees for this request.**

Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Whenever possible, please provide the requested information in electronic Portable Document Format (PDF).

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would appreciate your communicating with me by email or telephone, rather than by mail. My email address is peddington@cata.org and my cell number is 571-215-3468.

Please provide expedited processing of this request which concerns a matter of urgency. As a civil liberties policy analyst, I am primarily engaged in disseminating information. As you are well aware, concerns about unconstitutionally broad government surveillance activities remain a major concern among American citizens. The sweeping nature of EO 12333, and the general lack of public information about how surveillance activities authorized under it are carried out, are cause for grave concern vis a vis the protection of the constitutional rights of Americans.

Moreover, as the Board has made public through its FY2020 Congressional Budget Justification document, at least one classified report related to CIA activities carried out under EO 12333 has already been issued by the Board. Volume IV of the Church Committee report recounts in some detail the CIA's infamous HTLINGUAL program. The public deserves to know whether or not the Board's report on the CIA activity in question under EO 12333, or any related activities, show even the slightest evidence of a return to such unconstitutional practices.

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires.

Thank you for your assistance.

Sincerely,

/s/

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001-5403
571-215-3468 (cell)
peddington@cato.org



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
WASHINGTON, D.C. 20002

May 6, 2019

Patrick Eddington
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001
peddington@cato.org

Re: PCLOB FOIA 2019-12

Dear Mr. Eddington,

I am writing in response to your request for records under the Freedom of Information Act ("FOIA") received on April 23, 2019 seeking:

- I. Any Board report issued on federal department and agency activities conducted pursuant to Executive Order 12333, as amended; and
2. Any correspondence in any form to or from the Board regarding alleged or actual violations of laws, regulations, or executive orders by any federal department or agency under the purview of the Board; [and]
3. Any correspondence in any form to or from the Board regarding refusals by any federal department or agency to provide information requested by the Board pursuant to its statutory oversight mission.

Your request includes a request for expedited processing.

Please be advised that your request for expedited processing has been denied. In accordance with the PCLOB's FOIA regulation, expedited processing is warranted when the requester "demonstrates a compelling need for such processing." 6 C.F.R. § 1001.8(h). A compelling need involves: (i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or (ii) A request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged federal government activity." 6 C.F.R. § 1001.8(h)(i)-(ii).

While we have determined that the Cato Institute is "a person primarily engaged in disseminating information," your request for expedited processing is denied because you did not satisfy the "urgency to inform" standard, which requires that there be an urgency to inform the public of actual or alleged government activity. Specifically, while you identify "[the]... classified report related to CIA activities..." as an example of activities under Executive Order 12333, you fail to articulate a particular urgency to inform the public about an actual or alleged federal government activity beyond the public's right to know about government activities generally.

Accordingly, you do not satisfy the urgency to inform standard required for expedited processing. We will move forward with processing your request under the normal timeframes required under the

FOIA. Please note that the Board has a small FOIA practice and a practice of complying with statutory time limits.

You may contact me directly or write foia@pclob.gov for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration ("NA RA") to inquire about the FOIA mediation services they offer. The contact information for OGIS is Office of Government Information Services, National Archives and Records Administration, 860 I Adelphi Road-OGIS, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5 770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the PCLOB Freedom of Information Act Appeal Authority, at 800 N. Capitol St., NW, Washington, DC 20002, or you may submit an appeal via email to foia@pclob.gov. Your appeal must be postmarked or electronically transmitted within ninety calendar days from the date of this letter/

/S/

Logan O'Shaughnessy
Freedom of Information Act Officer
General Attorney
(202) 296-4649

PRIVACY AND CIVIL LIBERTIES
OVERSIGHT BOARD WASHINGTON, D.C.
20002

May 21, 2019

Patrick Eddington
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001
peddington@cato.org

Re: PCLOB FOIA 2019-12

Dear Mr. Eddington,

This letter responds to your Freedom of Information Act ("FOIA") received by the Privacy and Civil Liberties Oversight Board ("PCLOB" or "Board") on April 23, 2019, in which you request copies of the following:

1. Any Board reports issued on federal department and agency activities conducted pursuant to Executive Order 12333, as amended; and
2. Any correspondence in any form to or from the Board regarding alleged or actual violations of laws, regulations, or executive orders by any federal department or agency under the purview of the Board; [and]
3. Any correspondence in any form to or from the Board regarding refusals by any federal department or agency to provide information requested by the Board pursuant to its statutory oversight mission.

On April 26, 2019, you emailed the PC LOB to clarify that the text used in your second request is "inclusive of alleged or actual violations of laws, regulations, or executive orders regarding surveillance or other programs impacting the constitutional rights of Americans whether or not said programs or activities have previously been publicly acknowledged."

Please be advised that a search was conducted and documents were located that are responsive to your requests. Regarding your first request, I have determined that it is appropriate to withhold in full the Board's completed Executive Order 12333 deep dive report pursuant to Exemption I of the FOIA, 5 U.S.C. § 552(b)(1). Exemption 1 protects from disclosure information that has been deemed classified "under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy."

Regarding your second request, the responsive records are now under review by other relevant agencies in the consultation process. Should any records be processed and releasable, the PCLOB will disclose them to you after the formal consultation process.

Regarding your third request, I have determined that it is appropriate to withhold in full the responsive documents regarding refusal by a federal department or agency to provide information requested by the PCLOB pursuant to its oversight mission pursuant to Exemption 5 and Exemption 6 of

The FOIA, 5 U.S.C. § 552 (b)(5), (b)(6). Exemption 5 pertains to certain inter- and intra-agency memorandums or letters protected by the deliberative process privilege; and, Exemption 6 protects information the disclosure of which would “constitute a clearly unwarranted invasion of personal privacy.”

You may contact me directly or write foia@pclob.gov for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration ("NARA") to inquire about the FOIA mediation services they offer. The contact information for OGIS is Office of Government Information Services, National Archives and Records 860 I Road-OGIS, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the PCLOB Freedom of Information Act Appeal Authority, at 800 N. Capitol St., NW, Washington, DC 20002, or you may submit an appeal via email to foia@pclob.gov. Your appeal must be postmarked or electronically transmitted within ninety calendar days from the date of this letter.

Sincerely,

/S/

Logan O’Shaughnessy
Freedom of Information Act Officer
General Attorney
(202) 296-4649

May 31, 2019

VIA foia@pclob.gov

PCLOB Freedom of Information Act Appeal Authority
800 N. Capitol St., NW
Washington, DC 20002

To the responsible Appeal Authority officer:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, I hereby appeal the various denials of my request PCLOB FOIA 2019-12, regarding the following:

1. Any Board reports issued on federal department and agency activities conducted pursuant to Executive Order 12333, as amended; and
2. Any correspondence in any form to or from the Board regarding alleged or actual violations of laws, regulations, or executive orders by any federal department or agency under the purview of the Board.
3. Any correspondence in any form to or from the Board regarding refusals by any federal department or agency to provide information requested by the Board pursuant to its statutory oversight mission.

In his May 21, 2019 response to me, the Board's FOIA officer, Logan O'Shaughnessy, stated as follows:

Please be advised that a search was conducted and documents were located that are responsive to your requests. Regarding your first request, I have determined that it is appropriate to withhold in full the Board's completed Executive Order 12333 deep dive report pursuant to Exemption 1 of the FOIA, 5 U.S.C. § 552(b)(1). Exemption 1 protects from disclosure information that has been deemed classified "under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy."

Regarding your second request, the responsive records are now under review by other relevant agencies in the consultation process. Should any records be processed and releasable, the PCLOB will disclose them to you after the formal consultation process.

Regarding your third request, I have determined that it is appropriate to withhold in full the responsive documents regarding refusal by a federal department or agency to provide information requested by the PCLOB pursuant to its oversight mission pursuant to Exemption 5 and Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(5), (b)(6). Exemption 5 pertains to certain inter- and intra-agency memorandums or letters protected by the

deliberative process privilege; and, Exemption 6 protects information the disclosure of which would "constitute a clearly unwarranted invasion of personal privacy."

I appreciate Mr. O'Shaughnessy's decision regarding item 2 of my request, and I thank him and the Board for the ongoing efforts to provide me responsive documents regarding this part of my request.

However, I must appeal Mr. O'Shaughnessy's denial of my requests regarding items 1 and 3 of my FOIA, and I am also now appealing his prior denial of expedited processing for my FOIA request.

Regarding item 1 (the Board's completed deep dive report on activities carried out under EO 12333), Mr. O'Shaughnessy's wholesale invocation of Exemption 1 is contrary to the plain language of the FOIA statute, which explicitly states that "Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt..."

Mr. O'Shaughnessy failed to explain how it would be impossible to, for example, segregate Board comments, opinions, or conclusions about a given program's legality or effectiveness from any specific description of the program or activity itself that would be legitimately classified under EO 12333 in the opinion of the executive agent of the program or activity in question. I should note that in its Section 702 report, the Board did redact certain information from FISA Court opinions while still making public other portions of the opinions and related Board comments or conclusions on the opinions, the operations of the FISC, etc. Accordingly, I ask that the Board conduct a line-by-line review of its EO 12333 report for any segregable material that can be released, as required by the statute.

Regarding Mr. O'Shaughnessy's invocation of Exemption 5 for item 3, federal courts have ruled that communications between an agency such as the Board and Congress cannot be withheld under Exemption 5 as Congress is not an agency in the context of the statute.¹ Similarly, any communications to or from the Board and a private third party likewise cannot be withheld under Exemption 5.²

Finally, if the Board uncovered any information pertinent to item 2 of my request in its review of activities and programs carried out under EO 12333, per EO 13526, Sec. 1.7(a), neither the Board nor the executive agent for any program or activity in question may utilize the classification system to "(1) conceal violations of law, inefficiency, or administrative error; (2) prevent embarrassment to a person, organization, or agency; (3) restrain competition; or (4) prevent or delay the release of information that does not require protection in the interest of the national security."

¹ *Dow Jones & Co., Inc. v. Dep't of Justice*, 917 F.2d 571, 575 (D.C. Cir. 1990).

² *Judicial Watch v. Dep't of Army*, 435 F.Supp.2d 81, 91 (D.D.C. 2006).

Thus, any communications to or from the Board with Congress or a private third party that are responsive to item 3 of my request should be released to me in full, as should any information regarding potential violations of law, regulations or executive orders uncovered by the Board in its review of activities and programs carried out pursuant to EO 12333. I therefore appeal Mr. O'Shaughnessy's withholdings under Exemption 5 on the above basis.

Regarding Mr. O'Shaughnessy's invocation of Exemption 6, FOIA's privacy exemptions (exemptions 6 and 7(C)) reflect a balance of people's privacy rights and the public's right to know. Mr. O'Shaughnessy erred because he failed to perform the balancing analysis required by the FOIA's privacy exemptions.

The exemptions permit an agency to withhold records only when the public's interest in disclosure is outbalanced by an individual's privacy interest. *Kimberlin v. Dep't of Justice*, 139 F.3d 944, 948 (D.C. Cir. 1998). The public interest at stake is opening "agency action to the light of public scrutiny" so that citizens can "be informed about what their government is up to." *Dep't of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

Had Mr. O'Shaughnessy weighed these interests correctly, he would have determined that, at a minimum, records involving members of Congress or their staffs, as well as any political appointees (those requiring Senate confirmation (PAS), those not requiring Senate confirmation (PA), those appointed under 5 U.S.C. sections 5312 through 5316, and those appointed under 5 CFR §§ 213.3301-3302), should have been released to me in full. Accordingly, I appeal Mr. O'Shaughnessy's withholdings under Exemption 6 on that basis.

In order to help to determine my status to assess fees, you should know that I am a policy analyst and scholar at the Cato Institute, an IRS-recognized 501(c)(3) nonprofit educational and public interest organization. As I am employed by an educational or noncommercial scientific institution, this request is made for a scholarly or scientific purpose and not for a commercial use. **I request a waiver of all fees for this request.**

Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Whenever possible, please provide the requested information in electronic Portable Document Format (PDF).

If my request is denied in whole or part, I ask that you justify all deletions by reference to specific exemptions of the act. I will also expect you to release all segregable portions of otherwise exempt material. I, of course, reserve the right to appeal your decision to withhold any information or to deny a waiver of fees.

I would appreciate your communicating with me by email or telephone, rather than by mail. My email address is peddington@cato.org and my cell number is 571-215-3468.

Please provide expedited processing of this request which concerns a matter of urgency. As a Research Fellow, I am primarily engaged in disseminating information. The public has an urgent need for information about whether the agencies and departments under the Board's oversight purview have conducted potentially unconstitutional surveillance or related activities against the American public. Federal government domestic surveillance activities are a source of media stories on literally a weekly basis, making this a very high-profile topic of intense public and Congressional interest.

Moreover, as the Board is aware, the USA Freedom Act call detail record (CDR) program, as codified in the USA Freedom Act (PL 114-23) is set to expire on December 15, 2019. The looming expiration of that program and the pending Congressional debate on its fate should include an examination of any other intelligence activities or programs reviewed by the Board in which actual or potential violations of the constitutional rights of Americans have been discovered prior to any vote on surveillance reform legislation. Accordingly, release of the information sought in this FOIA action is of extreme urgency from a public policy perspective.

As a Cato scholar, I meet the statutory definition of a "representative of the news media" per *Cause of Action v. F.T.C.*, 799 F.3d 1108 (D.C. Cir. 2015) as Cato and its scholars (1) gather information of potential interest (2) to a segment of the public; (3) use editorial skills to turn the raw materials into a distinct work; and (4) distribute that work (5) to one or more audiences. **Accordingly, I ask for expedited processing on the aforementioned bases.** I certify that my statements concerning the need for expedited processing and fee waivers are true and correct to the best of my knowledge and belief.

I look forward to your determination regarding my request for expedited processing within 10 calendar days, as the statute requires. Thank you for your assistance.

Sincerely,

/S/

Patrick G. Eddington
Policy Analyst in Civil Liberties and Homeland Security
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001-5403
571-215-3468 (cell)
peddington@cato.org



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

800 NORTH CAPITOL STREET N.W., SUITE 565
WASHINGTON, D.C. 20002

June 14, 2019

Patrick Eddington
Cato Institute
1000 Massachusetts Avenue, N.W.
Washington, D.C. 20001
peddington@cato.org

Re: PCLOB FOIA 2019-12

Dear Mr. Eddington,

The Privacy and Civil Liberties Oversight Board ("PCLOB") is in receipt of your appeal dated May 31, 2019. For the reasons stated herein, I am granting your appeal in part and denying it in part, then remanding to the Freedom of Information Act ("FOIA") Officer.

On April 23, 2019, you submitted a FOIA request to the PCLOB seeking the following documents:

1. Any Board reports issued on federal department and agency activities conducted pursuant to Executive Order 12333, as amended; and[sic]
2. Any correspondence in any form to or from the Board regarding alleged or actual violations of laws, regulations or executive orders by any federal department or agency under the purview of the Board.¹
3. Any correspondence in any form to or from the Board regarding refusals by any federal department or agency to provide information requested by the Board pursuant to its statutory oversight mission.

You also sought expedited processing, which the FOIA Officer denied on May 6, 2019. The FOIA Officer responded to your request in a May 21, 2019 letter. In response to Request 1, he withheld in full the Board's completed Executive Order ("E.O.") 12333 deep dive report pursuant to FOIA Exemption 1. He informed you that records responsive to Request 2 were under review by other relevant agencies in the consultation process.² He withheld in full the responsive documents to Request 3 pursuant to FOIA Exemptions 5 and 6.

¹ In an April 26, 2019 email to the FOIA Officer, you clarified that the text used in Request 2 is " inclusive of alleged or actual violations of laws, regulations, or executive orders regarding surveillance or other programs impacting the constitutional rights of Americans whether or not said programs or activities have previously been publicly acknowledged."

² 5 U.S.C. § 552(a)(6)(B)(i), (B)(iii)(III); 6 C.F.R. § 1001.8(f).

In your appeal, you request a fee waiver. You also appeal the FOIA Officer's prior denial of expedited processing for your FOIA request and request expedited processing for this appeal. You further appeal the FOIA Officer's decision with respect to Requests 1 and 3. I address each of your requests and appeals below.³

I. Fee Waiver Request

You have sought a waiver of all fees for your FOIA processing because you are a policy analyst at the Cato Institute, an Internal Revenue Service 501(c)(3) nonprofit educational and public interest organization. You state in your appeal that "this request is made for a scholarly or scientific purpose and not for a commercial use." I have reviewed your request for a fee waiver in light of the applicable FOIA standard, and I grant it.⁴

II. Expedited Processing

Expedited processing is appropriate when the requestor demonstrates "a compelling need," which means either that failure to obtain records "could reasonably be expected to pose an imminent threat to the life or physical safety of an individual," or the request is from "a person primarily engaged in disseminating information," who has an "urgency to inform the public concerning actual or alleged Federal Government activity."⁵

You have appealed the FOIA Officer's May 6, 2019 denial of expedited processing and have also requested expedited processing of this appeal. I consider both below.

A. *FOIA Officer Denial of Expedited Processing*

You originally made a request for expedited processing in your April 23, 2019 letter, which the FOIA Officer denied on May 6, 2019. The FOIA Officer provided a response to your FOIA request on May 21, 2019, which was within the 20 days required by FOIA. In your current appeal, you state that you are "now appealing his prior denial of expedited processing" for your FOIA request. Since the FOIA Officer has already provided you with a timely response to your request, your appeal of his denial of expedited processing is moot and therefore denied.⁶

B. *Expedited Processing of this Appeal*

You have also requested expedited processing of this appeal because, as stated in your letter, you are "primarily engaged in disseminating information," the USA FREEDOM Act expires on Dec. 15, 2019, and the "release of the information sought in this FOIA action is of extreme urgency from a public policy perspective."

³ 5 U.S.C. § 552(a)(6)(A)(ii); 6 C.F.R. § 1001.7.

⁴ 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 100.1.10(n); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003).

⁵ 5 U.S.C. § 552(a)(6)(E)(i)(I), (E)(v); *see also* 6 C.F.R. § 1001.8(h).

⁶ *See, e.g., Rosenberg v. DOD*, 342 F. Supp. 3d 62, 97 n. 3 (D.D.C. 2018).

When granted, expedited processing moves a FOIA request "'to the front of the agency's queue' and the agency must process it 'as soon as practicable.'" ⁷ This FOIA request is already at the front of the PCLOB's queue and the PCLOB is already processing it as soon as practicable. In addition, my review of the matters under appeal is complete. I grant expedited processing for June 14, 2019, which is consistent with the applicable "compelling need" standard due to the upcoming reauthorization of the USA FREEDOM Act. ⁸

III. Appeal of Request 1

You have appealed the FOIA Officer's decision pursuant to FOIA Exemption 1 to withhold in full the PCLOB's completed E.O. 12333 deep dive because he "failed to explain how it would be impossible to, for example, segregate Board comments, opinions, or conclusions about a given program's legality or effectiveness from any specific description of the program or activity itself that would be legitimately classified under E[.]O[.] 12333 in the opinion of the executive agent of the program or activity in question."

FOIA Exemption 1 applies to documents when they are "(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order."⁹ While there is a duty to segregate releasable from classified information with respect to Exemption 1,¹⁰ that is not always possible and some reports must remain classified.¹¹ In the PCLOB's E.O. 12333 project description, the Board anticipated that the deep dive reports " will be largely or entirely classified."¹²

I have reviewed the Board's completed deep dive report and concur with the FOIA Officer that FOIA Exemption 1 is appropriate to apply to this report. However, I will send the report back to the relevant agency for consultation to determine whether any part of the classified report is segregable and releasable.¹³ I therefore grant your appeal regarding Request 1.

IV. Appeal of Request 3

You have appealed the FOIA Officer's decision pursuant to FOIA Exemptions 5 and 6 to withhold in full documents regarding a federal department or agency's refusal to provide information requested by the PCLOB for its oversight mission.

I have reviewed the documents withheld in full by the FOIA Officer. The documents meet the requirements for Exemption 5 because they are pre-decisional and deliberative without

⁷ See, e.g., *EPIC v. DOJ*, 15 F. Supp. 3d 32, 43 (D.D.C. 2014) (quoting *Leadership Conference on Civil Rights v. Gonzales*, 404 F. Supp. 2d 246, 259-60 (D.D.C. 2005)).

⁸ *Wadelton v. Dep't of State*, 941 F. Supp. 2d 120, 123 (D.D.C. 2013).

⁹ 5 U.S.C. § 552(b)(1); see also *Larson v. Dep't of State*, 565 F.3d 857, 863-68 (D.C. Cir. 2009).

¹⁰ *Nat'l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 206-208 (D.D.C. 2013).

¹¹ *EPIC v. ODNI*, 281 F. Supp. 3d 203, 211-12 (D.D.C. 2017).

¹² https://www.pcllob.gov/library/20150408-E0_12333_project_Description; see also PCLOB Semi-Annual Report, at 7 (Jan. 2017), <https://www.pcllob.gov/library/Semi-Annual-Report-Apr-Sept2016>.

¹³ 5 U.S.C. § 552(a)(6)(B)(i), (B)(iii)(III); 6 C.F.R. § 1001.8(f).

any releasable or segregable information, and are therefore appropriately withheld in full.¹⁴ The withholding pursuant to Exemption 6 is also appropriate because it applies to names of PCLOB staff who do not meet the criteria you cite in your appeal,¹⁵ and I have determined that the public interest does not outweigh their privacy interest in non-disclosure.¹⁶ Based on the foregoing, I deny your appeal regarding Request 3.

V. Adjudication and Notices

As stated above, I have granted your fee waiver. I have also denied your appeal of the FOIA Officer's prior denial of your expedited processing as moot and granted your expedited processing of this appeal. I have further granted your appeal regarding Request 1 and denied it regarding Request 3.

I am remanding PCLOB FOIA 2019-12 to the FOIA Officer for further processing consistent with this appeal adjudication. The FOIA Officer will inform you of the consultation results for Requests 1 and 2 as soon as they are available and provide you with any documents deemed releasable in whole or part.

Since I have denied your appeal in part, you are hereby advised of your right to seek judicial review of my determination pursuant to 5 U.S.C. § 552. You may seek judicial review in the United States District Court in the district in which you reside, in which you have a principal place of business, in which the agency records are situated, or in the District of Columbia.¹⁷

You may contact the PCLOB's FOIA Officer/FOIA Public Liaison Logan O'Shaughnessy at foia@pclob.gov for further assistance. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA services they offer. The contact information for OGIS is Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road - OGIS, College Park, Maryland, 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

/S/

Eric J. Broxmeyer
General Counsel Chief
FOIA Officer FOIA
Appeals Authority

¹⁴ See, e.g., *Pub. Citizen v. Dep't of Educ.*, 2019 WL 2211118, at **4-5, 12 (D.D.C. May 22, 2019); *Kapende v. DHS*, 2019 WL 1359285, at **3-6 (D.D.C. Mar. 26, 2019).

¹⁵ See, e.g., *Machado Amadis v. DOJ*, 2019 WL 2211120, at *6 (D.D.C. May 22, 2019).

¹⁶ See, e.g., *EPIC v. DHS*, 384 F. Supp. 2d 100, 116-117 (D.D.C. 2005).

¹⁷ 5 U.S.C. § 552(a)(4)(B).

Subject: RE: Status update for PCLOB FOIA 2019-12?

From: FOIA - To: peddington@cato.org - Cc: - Date: September 6, 2019 at 5:15 PM, Attachments: image001.jpg

Good afternoon Mr. Eddington—

Thank you for your email and request for update. We have reached out to the agencies with whom we are engaged in the consultation process. We will provide an estimated completion date when we receive their responses.

Thank you.

From: Patrick Eddington <PEddington@cato.org>

Sent: Thursday, September 5, 2019 1:41 PM

To: FOIA <foia@pclob.gov>

Subject: Status update for PCLOB FOIA 2019-12?

Importance: High

To the PCLOB FOIA staff:

The last communication I received from Board staff regarding my FOIA request was June 14, 2019. Please provide an update on the status of my request, including an estimated completion date for processing of material identified as releasable and the status of the review of the underlying reports referred to the other government agencies vis a vis the EO 12333 reports prepared by the Board.

With thanks,

Patrick G. Eddington
Research Fellow
Cato Institute
1000 Massachusetts Ave, NW
Washington, DC 20001
peddington@cato.org
571-215-3468 (cell)

Subject: RE: Status update for PCLOB FOIA 2019-12?

From: Patrick Eddington - To: FOIA - Cc: - Date: September 20, 2019 at 2:42 PM, Attachments:
image001.jpg@01D564D6.966B21C0

To the PCLOB FOIA staff:

Another follow up on the request in question. Do you have an estimated completion date for this request? The first USA Freedom Act oversight hearing was this week.

With thanks,

Pat

...

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD
WASHINGTON, DC. 20002

September 23, 2019

Patrick Eddington
Cato Institute
1000 Massachusetts Ave., NW
Washington, DC 20001
peddington@cato.org

Re: PCLOB FOIA 2019-12

Dear Mr. Eddington,

This letter is an update to your request for documents requested under the Freedom of Information Act (“FOIA”) in which you request copies of the following from the Privacy and Civil Liberties Oversight Board (“PCLOB”):

1. Any Board reports issued on federal department and agency activities conducted pursuant to Executive Order 12333, as amended; and
2. Any correspondence in any form to or from the Board regarding alleged or actual violations of laws, regulations, or executive orders by any federal department or agency under the purview of the Board; [and]
3. Any correspondence in any form to or from the Board regarding refusals by any federal department or agency to provide information requested by the Board pursuant to its statutory oversight mission.

Regarding your first request, the PCLOB has heard back from the relevant agency as part of the consultation process. The agency has determined that the PCLOB’s completed deep dive report under Executive Order 12333 is not segregable and no information from the report may be released. Accordingly, the completed report is withheld pursuant to Exemptions], 3, and 5 of the FOIA, 5 U.S.C. § 552(b)(1), (b)(3), (b)(5).

Regarding your second request, the PCLOB has reached out to appropriate agencies and is awaiting response for the documents that remain in consultation. We should receive a response in October and will provide documents on a rolling basis as expeditiously as possible, if releasable, once they’re through the consultation process.

The PCLOB’s Chief FOIA Officer denied your appeal regarding your third request in the PCLOB’s appeal letter to you dated June 14, 2019.

You may contact me directly or write foia@pclob.gov for further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (“OGIS”) at the National Archives and Records Administration (“NARA”) to inquire about the FOIA mediation services they offer. The contact information for OGIS is Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the PCLOB Freedom of Information Act Appeal Authority, at 800 N. Capitol St., NW, Washington, DC 20002, or you may submit an appeal via email to foia@pclob.gov. Your appeal must be postmarked or electronically transmitted within ninety calendar days from the date of this letter.

Sincerely,

/S/

Logan O'Shaughnessy
Freedom of Information Act Officer
General Attorney
(202) 296-4649



PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

800 NORTH CAPITOL STREET N.W., SUITE 565

WASHINGTON, D.C. 20002

November 18, 2019

Patrick Eddington
Cato Institute
1000 Massachusetts Avenue, N.W.
Washington, D.C. 20001
peddington@cato.org

Re: PCLOB FOIA 2019-12

Dear Mr. Eddington,

The Privacy and Civil Liberties Oversight Board ("PCLOB") is in receipt of your second appeal dated November 1, 2019. For the reasons previously stated in the PCLOB's June 14, 2019 appeal letter (pages 2-3), I grant your requests for expedited review and fee waiver here.

The present appeal concerns the FOIA Officer's September 23, 2019 second denial of your request for the PCLOB's completed deep dive report under Executive Order 12333. In the June 14 appeal letter (page 3), I granted your appeal in part by sending the report back to the relevant agency for consultation to determine whether any part of the classified report was segregable and releasable. In response, the agency determined that the report is neither segregable nor releasable, citing Freedom of Information Act ("FOIA") exemptions 1, 3, and 5. While there is a duty to segregate releasable from classified information with respect to Exemption 1,¹ that is not always possible and some reports must remain classified.² Based on the response from the agency, this is such a report.³ I therefore deny your appeal.

Since I have denied your appeal, you are hereby advised of your right to seek judicial review of my determination pursuant to 5 U.S.C. § 552. You may seek judicial review in the United States District Court in the district in which you reside, in which you have a principal place of business, in which the agency records are situated, or in the District of Columbia.⁴

You may contact the PCLOB's FOIA Officer/FOIA Public Liaison Logan O'Shaughnessy at foia@pclob.gov for further assistance. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA services they offer. The contact information for OGIS is Office of Government Information Services, National Archives and Records Administration,

¹ *Nat'l Sec. Counselors v. CIA*, 960 F. Supp. 2d 101, 206-208 (D.D.C. 2013).

² *EPIC v. ODNI*, 281 F. Supp. 3d 203, 211-12 (D.D.C. 2017).

³ In the PCLOB's E.O. 12333 project description, the Board anticipated that the deep dive reports "will be largely or entirely classified." https://www.pclob.gov/library/20150408-EO12333_Project_Description; see also PCLOB Semi-Annual Report, at 7 (Jan. 2017), <https://www.pclob.gov/library/Semi-Annual-Report-Apr-Sept2016>.

⁴ 5 U.S.C. § 552(a)(4)(B).

8601 Adelphi Road - OGIS, College Park, Maryland, 20740-6001; email at ogis@nara.gov;
telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

/S/

Eric J. Broxmeyer
General Counsel Chief
FOIA Officer FOIA
Appeals Authority