

CHAIR

Ezra Cohen



**PUBLIC INTEREST
DECLASSIFICATION BOARD**

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Trey Gowdy
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John Tierney

MEMBERS

Paul-Noel Chretien
Laura DeBonis
Michael Lawrence
Benjamin Powell

January 10, 2022

The Honorable Nancy Pelosi
Speaker of the House of Representatives
U.S. Capitol
Washington D.C. 20515

Dear Madame Speaker:

This letter serves as the Public Interest Declassification Board's (PIDB) annual report under the provisions of section 706(e) of the Public Interest Declassification Act of 2000, as amended (P.L. 106-567) (the Act). It reports on the activities of the PIDB and covers our activities during fiscal year 2021.

The PIDB began the year with only three congressionally-appointed members, as the terms of all five of the President's appointments and the Senate Majority Leader's appointment lapsed. President Donald J. Trump appointed Benjamin Powell and Michael Lawrence in October 2020, Paul-Noel Chretien in December 2020, and myself in January 2021. President Joseph R. Biden appointed Laura DeBonis on November 30, 2021. One appointment remains to be filled, from the Senate Majority Leader.

Before detailing our activities, I want to draw your attention to a matter of concern that impacts the PIDB's ability to function as a duly constituted Board. The PIDB lacks independent funding for its operations. In the Act, Congress established the PIDB as a temporary board, and President George H.W. Bush signed it into law. Initially set to sunset at the end of 2004, legislation extended the life of the PIDB five times until our authorization finally expired on December 31, 2018. However, Congress reauthorized the PIDB as part of the fiscal year 2020 National Defense Authorization Act and removed the sunset provision, formally establishing the PIDB as a permanent board. As such, the PIDB has requested a dedicated budget, enabling it to accomplish the expanding requirements set forth by Congress.

The Information Security Oversight Office (ISOO) at the National Archives and Records Administration (NARA) has provided administrative and logistical support to the PIDB since its inception. ISOO's Director serves as the PIDB's Executive Secretary, and its staff provides support.

As Congress has levied additional requirements on the Board, most recently via the Fiscal Year 2022 National Defense Authorization Act, ISOO no longer has the capacity to support our functions.

Concurrently, due to budget constraints, NARA has cut full-time equivalents at ISOO by almost half – from 32 FTEs a decade ago to only 18 FTEs today. Additionally, NARA has also reduced ISOO’s budget to a point where it is challenged to implement Government-wide standards for the handling of classified information. These changes have made it challenging for ISOO to conduct its essential oversight mission of protecting and providing proper access to national security information across the entire Government, let alone to support the work of the PIDB.

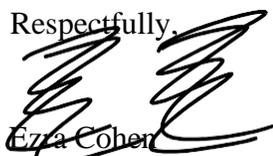
A decade ago, and prior to Congress assigning additional responsibilities, the PIDB met monthly and in person; holding regular public meetings, receiving classified briefings, and engaging with senior agency leaders, agency declassifiers and historians, and representatives from civil society organizations. Today, however, ISOO’s budget constraints severely limit onsite meetings and only permit the PIDB to meet in person four times per year. Previously, in-person meetings were all-day or multi-day events, allowing the PIDB to maximize its work. Today, virtual executive session meetings and public meetings are constrained to brief, unclassified video teleconferences, making it nearly impossible to respond in a timely manner to congressional requests for opinions regarding classification of specific documents.

In October 2021, our members met virtually with the chairman and ranking minority member of the Subcommittee on Financial Services and General Government of the House Appropriations Committee to provide them with information on the PIDB and its work. We also sought their support in providing sufficient and dedicated funds to allow the PIDB to operate as Congress intended. Both the chairman and the ranking member reacted positively. We are grateful for this support and hope that the budget justification we have provided to the Subcommittee staff will result in independent funding.

On behalf of the members of the PIDB, I am pleased to provide you with the following report of our activities and operations in 2021. Despite the pandemic, it was a productive year and we provided recommendations that led to Presidential decisions about access to historically significant Government information related to President John F. Kennedy’s assassination and the September 11, 2001, terrorist attacks.

We value your continued support of the PIDB’s mission of advocating for increased public transparency and access to the historical record. The Board would welcome the opportunity to provide you or your staff with additional information on our work and plans for 2022.

Respectfully,



Ezra Cohen
Chair

cc. The Honorable Kevin McCarthy
The Honorable Charles Schumer
The Honorable Mitch McConnell

Summary of 2021 Activities

Appointments

As specified in section 703(c) of the Act, the PIDB is composed of nine members: five appointed by the President and four appointed by the leaders in Congress. Each member serves for a three-year term and may be reappointed twice. The PIDB began the fiscal year with only three members, the bare minimum required for a quorum. There were five Presidential vacancies and one Congressional vacancy.

To alleviate this challenge, the PIDB recommends that Congress consider amending the PIDB's authorizing legislation to permit appointees to serve until their replacements are appointed. This action will ensure continuity and permit the full membership to deliberate, discuss, and decide on activities that support the PIDB's purposes in section 703(b).

President Trump appointed Michael Lawrence and Benjamin Powell on October 9, 2020. He appointed Paul-Noel Chretien and Adam Telle on December 30, 2020, and he appointed Ezra Cohen on January 11, 2021, and appointed him to serve a two-year term as Chair. In accordance with section 703(c)(2)(D), each member was appointed to serve a three-year term.

In March 2021, Mr. Telle declined the nomination. President Biden appointed Laura DeBonis on November 30, 2021, to fill the remainder of Mr. Telle's term. The Senate Majority Leader's appointment to the PIDB remains vacant.

COVID-19 Pandemic Impact

The COVID-19 pandemic limited the PIDB's operations, including delaying the PIDB's ability to review three classified records requested by Senator Chris Murphy in October 2020 under section 704(e) of the Act. The PIDB was unable to meet in-person in FY 2021. Instead, it held monthly virtual teleconferences and video teleconferences.

Letters to the President

The PIDB wrote and delivered three letters to the President in 2021. All three are publicly available on the PIDB's website, www.archives.gov/declassification/pidb.

The three letters are:

- A May 3, 2021, [letter to the President](#) informing him of the PIDB's June 2020 Report to the President titled, *[A Vision for the Digital Age: Modernization of the U.S. National Security Classification and Declassification System](#)*. The letter highlighted challenges hindering U.S. national security and limiting Government transparency and made recommendations for reforming the system. It also indicated the PIDB's support for investments in the Technology Modernization Fund to integrate advanced technologies into classification and declassification processes across the federal government. Lastly, it included an offer to assist the President in developing new policies or processes to improve public access to information.

- A July 30, 2021, [letter to the President](#) advocating for the declassification of historically significant records related to the terrorist attacks on September 11, 2001. It provided background information from the PIDB’s May 2021 virtual public meeting which included testimony from 9/11 Commission member Jamie Gorelick and 9/11 Commission Executive Director Phillip Zelikow. In the letter, the PIDB made a recommendation for the President to direct Executive branch agencies to prioritize the declassification of records related to 9/11, including records created by the 9/11 Commission. It singled out several records created by the 9/11 Commission that the members felt were historically significant and should be prioritized for a word-for-word declassification review. They included:
 - A report created by former 9/11 Commission Director Secretary Philip Zelikow and former 9/11 Commission member Jamie Gorelick, which provided a summary and analysis of intelligence information contained in the President’s Daily Briefs from the Clinton and Bush administrations pertaining to al Qaida’s efforts to conduct terrorist attacks in the United States;
 - 9/11 Commission interviews of President George W. Bush and Vice President Richard B. Cheney, President William J. Clinton, and Vice President Al Gore;
 - 9/11 Commission interviews of Sandy Berger and Condoleezza Rice, the National Security Advisors from the Clinton and Bush administrations; and
 - 9/11 Commission interviews of counterterrorism officials at the Central Intelligence Agency and on the National Security Council staff.

On September 3, 2021, President Biden issued [Executive Order 14040](#), “Declassification Reviews of Certain Documents Concerning the Terrorist Attacks of September 11, 2001,” directing the declassification review and public release of certain records of the Federal Bureau of Investigation regarding the investigation of the 9/11 attacks. Agencies are currently reviewing several of the records listed above for declassification and public release as a result of the PIDB’s recommendation.

- A September 27, 2021, [letter to the President](#) advocating for the declassification and public disclosure of still-classified records under the John F. Kennedy Assassination Records Collection Act (JFK Act). Passed in 1992, the JFK Act allowed certain records to be temporarily withheld (the JFK Act uses the term “postponement”) from public disclosure until October 25, 2017, and then permitted the President to certify and extend the postponement of records beyond that date using criteria in the JFK Act. President Trump authorized the declassification of thousands of records in October 2017, but he agreed to postpone other records until October 26, 2021. President Biden could have extended the postponement beyond this date.

The letter detailed the PIDB’s engagements with civil society organizations, historians and researchers, and others interested in public access to the postponed records. It urged the President to require the “maximum public release” of these records. Following receipt of the PIDB’s letter, on October 22, 2021, President Biden issued a [memorandum](#) that briefly extended the postponements until December 15, 2022, while establishing a detailed process and specific requirements for postponing records beyond that date. These agency requirements increase transparency and public scrutiny of agency requests to extend postponement on a record-by-record basis.

Engaging with the Public

Despite pandemic-related restrictions, in fiscal year 2021, the PIDB focused on engaging with the public and other stakeholders, seeking non-traditional methods to increase public interest and involvement. They included hosting virtual public meetings and broadcasting them on YouTube Live, increasing the frequency of posts on the PIDB's blog, [Transforming Classification](#), and conducting outreach to civil society organizations and others interested in modernizing the classification and declassification system.

- **Virtual Public Meetings:**

The PIDB hosted two virtual public meetings in fiscal year 2021. First, on [October 7, 2020](#), the PIDB hosted Senator Ron Wyden to discuss the need for secrecy reform. His presentation included details of [legislation](#) he co-sponsored with Senator Jerry Moran on reforming the secrecy system. Several of their proposed reforms were based on recommendations included in the PIDB's June 2020 Report to the President.

The PIDB hosted a second virtual public meeting on May 18, 2021. It featured discussions of historically significant records relating to the terrorist attacks on the United States of September 11, 2001, by 9/11 Commission member Jamie Gorelick and 9/11 Commission Executive Director Phillip Zelikow. Using YouTube Live for the first time, the meeting was the PIDB's most-attended event ever. Over 1,200 pre-registered members of the public attended. It is permanently accessible on [YouTube](#)—where it has received over 50,000 views to date. The discussions by Dr. Zelikow and Ms. Gorelick provided detail and perspective that led to the PIDB's subsequent recommendations to President Biden.

- *Transforming Classification* blog:

The PIDB increased the frequency of its social media activity during the pandemic. Over the past year, the PIDB posted 41 blog entries. Each invited feedback and public comments. The posts covered the range of PIDB activities, including timely notices of PIDB events and PIDB Executive Session agendas, discussions about the public release of declassified records, and comments on issues relating to the need to modernize the classification and declassification system. The posts also publicized the PIDB's three letters to the President. Our blog also served as a platform for posting and responding to comments and letters received from the public, researchers, and civil society organizations, as well as through direct postings by readers who were encouraged to leave comments after each blog post.

- 10 Virtual Executive Session meetings:

The PIDB held 10 virtual Executive Session meetings during the past year. These meetings focused on actions and activities that supported the PIDB's interest in increasing government transparency, prioritizing the declassification of historically significant records, reducing over-classification, developing new policies and practices for modernizing the classification and declassification system, and for PIDB operations. All meeting agendas were introduced by a blogpost on *Transforming Classification* and posted on the [PIDB's website](#).

Congressional Requests

Section 704(e) of the Act permits Members of Congress serving on a committee of jurisdiction to request the PIDB to review classified records and then make recommendations to the President on their classification status. With current staffing and resources, the PIDB has limited capacity to address these requests.

In fiscal year 2021, the PIDB received two requests. In October 2020, Senator Chris Murphy requested that the PIDB review five classified records and make declassification recommendations to the President. His request included three federal records and two Presidential records, as defined by the Federal Records Act and the Presidential Records Act (PRA).

His request posed two challenges. The first challenge was due to the pandemic. The PIDB and its staff were unable to work onsite in ISOO's only classified secure compartmented information facility; this prevented it from reviewing classified records. The members were only able to meet with Office of the Director of National Intelligence officials to discuss the contents of the records last month, November 2021.

The second challenge concerned the two Presidential records requested by Senator Murphy. Both records were generated by the National Security Council (NSC) during the Trump Administration. In accordance with the PRA and 44 U.S.C. Chapter 22, access to them is limited and requires permission from the White House Counsel. The PIDB wrote the White House Counsel in November 2020 seeking access to the records but did not receive a reply.

The PIDB renewed its request for access to the current White House Counsel in April 2021 but has not received a response. This summer, one of the records requested, a classified War Powers Act notification to Congress from January 4, 2020, was declassified. The members hope to complete their assessment of the remaining three federal records and then provide their recommendations to the President in early 2022.

The PIDB also received a request from Representative Mike Gallagher in June 2021. He requested that the PIDB review all underlying Intelligence Community reports and Intelligence Community assessments regarding the origin of COVID-19 in Wuhan province in the People's Republic of China.

Modernizing the Classification and Declassification System

The PIDB remains interested in investigating what leads to over-classification. Consistent with recommendations submitted in previous [*PIDB Reports to the President*](#), the PIDB remains concerned about the increasing range of complaints from the Executive branch, Congress, federal contractors, civil society organizations, and the public regarding the over-classification of government information.

For example, the PIDB continued to hear concerns about the over-classification of space-related information. It learned that over-classification of this information hinders information sharing, increases government costs, fosters unnecessary duplication of programs, harms innovation, reduces private sector and ally participation, and greatly reduces transparency. Throughout fiscal year 2021, the PIDB highlighted these concerns on its blog and publicized speeches and testimony by Executive branch officials, industry, and stakeholders on the negative impacts of over-classification.

The NSC recently asked the PIDB for its recommendations for drafting a new executive order to amend or replace Executive Order 13526, "Classified National Security Information." The PIDB has

started its work and is committed to providing a response in February 2022. Finally, the PIDB plans to continue its engagements with stakeholders in 2022, including through public meetings, executive session briefings, and research.