

Senator Marsha Blackburn
Questions for the Record to Beth Williams
Nominee for the U.S. Privacy and Civil Liberties Oversight Board

1. While you were at the Office of Legal Policy, you worked on the “Lawful Access” initiative at the Department of Justice. Law enforcement officers around the country have voiced their concerns about so-called “warrant-proof” encryption that hides threats to public safety and shields illegal activity, including online child sexual abuse. What is your perspective on how we can ensure that law enforcement has proper access to evidence necessary to protect the public while maintaining the privacy of law-abiding citizens?

Encryption is an essential tool that helps protect data, communications, devices, and infrastructure from cyber threats and contributes to user privacy. Law enforcement agencies—across Administrations—have emphasized, however, that the rapidly growing use of warrant-proof, sophisticated encryption in everyday devices and software means that criminals—including drug dealers, child predators, and terrorists—use encryption to shield their illicit activities from authorities.

Our legal framework provides that United States courts may lawfully issue warrants when it is proven that there is probable cause to believe a search is justified and evidence of a crime will be found. I am hopeful that the United States government and the private sector will find ways to work together collaboratively to protect both user privacy and safety.

SENATOR TED CRUZ U.S. Senate Committee on the Judiciary

Questions for the Record for Beth Ann Williams, to be Member of the Board of the Privacy and Civil Liberties Oversight Board

I. Directions

Please provide a wholly contained answer to each question. A question's answer should not cross-reference answers provided in other questions. Because a previous nominee declined to provide any response to discrete subparts of previous questions, they are listed here separately, even when one continues or expands upon the topic in the immediately previous question or relies on facts or context previously provided.

If a question asks for a yes or no answer, please provide a yes or no answer first and then provide subsequent explanation. If the answer to a yes or no question is sometimes yes and sometimes no, please state such first and then describe the circumstances giving rise to each answer.

If a question asks for a choice between two options, please begin by stating which option applies, or both, or neither, followed by any subsequent explanation.

If you disagree with the premise of a question, please answer the question as-written and then articulate both the premise about which you disagree and the basis for that disagreement.

If you lack a basis for knowing the answer to a question, please first describe what efforts you have taken to ascertain an answer to the question and then provide your tentative answer as a consequence of its reasonable investigation. If even a tentative answer is impossible at this time, please state why such an answer is impossible and what efforts you, if confirmed, or the administration or the Department, intend to take to provide an answer in the future. Please further give an estimate as to when the Committee will receive that answer.

To the extent that an answer depends on an ambiguity in the question asked, please state the ambiguity you perceive in the question, and provide multiple answers which articulate each possible reasonable interpretation of the question in light of the ambiguity.

II. Questions

1. If confirmed, what will your top priorities be for the Privacy and Civil Liberties Oversight Board (PCLOB)?

If confirmed as a member of the Privacy and Civil Liberties Oversight Board, I would work with fellow Board members to develop the Board's agenda. I would be interested in reviewing Board projects currently underway and how those projects may have been impacted by the current absence of a quorum. Topics that I believe could warrant the Board's attention include: continued oversight over the Department of Justice and FBI use of FISA authorities in counterterrorism investigations, especially with regard to factual accuracy reviews of FISA

applications; re-review of the Section 702 program to ensure program efficacy and protection of privacy and civil liberties in advance of the anticipated reauthorization proposal in December 2023; analysis of any gaps in intelligence collection resulting from the expiration in March 2020 of several FISA provisions, and further analysis of any additional privacy and civil liberties protections that could be proposed should these provisions be reauthorized.

2. What role should PCLOB take in assessing and recommending policy changes to address FISA abuses?

The Board is uniquely positioned to assist Congress further in its work of revising FISA to protect against future abuses. While the Inspector General conducts more granular investigations, the Board often takes a higher-level view of programs and authorities. An analysis by the Board, especially with regard to factual accuracy reviews of FISA applications for counterterrorism purposes, would be an appropriate and important subject for continued Board oversight.

3. Would you be in favor of reauthorizing the USA FREEDOM Act of 2015?

The USA FREEDOM Act of 2015 contained important reforms to protect privacy and civil liberties and reauthorized several authorities which had been part of FISA for many years but have now since expired. I am hopeful that, in setting the Board's agenda, PCLOB will consider conducting an analysis of any gaps in intelligence collection resulting from the expiration of these provisions, and offer further recommendations for additional privacy protections should Congress consider reauthorization. Such an analysis would inform my view of reauthorization.

4. Which aspects of current government surveillance do you believe present the greatest threats to American civil liberties or rights?

While I am not currently privy to classified aspects of government surveillance, and without knowing whether such collection in fact exists, bulk and indiscriminate collection of U.S. persons' data could pose a serious threat to Americans' civil liberties.

5. What are the greatest national security or terror threats currently facing the country?

Without access to classified information, I cannot say with personal knowledge what are the greatest national security or terror threats currently facing our country. A senior government official recently testified that so-called "lone actors" present the greatest immediate terrorist threat, whether they are individuals radicalized "by jihadist ideologies espoused by foreign terrorist organizations like ISIS and al Qaeda" or radicalized by other "personal grievances." However, if confirmed, I would want to understand how the broader intelligence community currently prioritizes terror threats in order to best assist the Board in prioritizing its work.

6. The political fault lines of privacy and surveillance policy are not always clear cut. If confirmed to be a board member on PCLOB, how do you intend to work with both political parties? Is it important to do so in a unified government?

The enabling statute for the Privacy and Civil Liberties Oversight Board requires that “in no event shall more than 3 members of the Board be members of the same political party.” In creating the Board, Congress made clear its desire that the Board’s work be conducted across the lines of any one party. If confirmed, I pledge to work with all Board members, irrespective of party. I further intend to work with members of Congress of both parties, whether the government is unified or not, as well as to listen to the voices of interested persons both inside and outside government. The issues that PCLOB faces are not partisan issues.

7. Do you plan to try to implement any improvements to PCLOB if confirmed? If so, how do you think that PCLOB should change its approach or functions and why?

Engagement with the public is one of the Board’s most critical functions. The Board’s authorizing statute requires it to make its reports available to the public to the greatest extent that is consistent with the protection of classified information, as well as to “hold public hearings and otherwise inform the public of its activities,” again consistent with the protection of classified information. Civil liberties are best protected when the public understands the decisions being made to protect national security and the efforts undertaken to minimize privacy incursions. The Board should work to strengthen and expand this transparency mission, and to encourage other agencies in the Executive Branch to do the same, including in responses to Congress that are as fulsome as possible.

8. Do you think that PCLOB has any role in assessing the possible threats that Big Tech and social media companies may play in data privacy concerns or curtailing free speech?

By statute, the Board’s role is limited to “analyz[ing] and review[ing] actions the executive branch takes to protect the Nation from terrorism” and “ensur[ing] that liberty concerns are appropriately considered in the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.” The PCLOB could play a role in assessing the threats mentioned in the question if they overlap with executive branch actions or other laws, regulations, or policies taken to protect the Nation from terrorism.

9. Does January 6 justify using additional surveillance measures to resolve open cases?

I have no personal knowledge that additional surveillance measures, especially with regard to U.S. persons, are needed or justified at this time.

10. How will your role working on national security policy at Office of Legal Policy during the Trump Administration inform your approach to serving on the PCLOB board if confirmed?

Having prior Executive Branch experience can be helpful for service on the Board, especially understanding the roles of the privacy and civil liberties officers of the agencies, with whom

PCLOB often works. The Office of Legal Policy worked closely with the Department of Justice's Office of Privacy and Civil Liberties, as well as the National Security Division, on a number of matters, including strengthening the privacy and civil liberties protections related to the Department's use of unmanned aircraft systems. This type of experience would be especially helpful in the advisory role the Board plays with regard to the development and implementation of laws, regulations, and policies related to efforts to protect the Nation against terrorism.

11. You worked in the Trump administration while revelations continued to come out about the FBI's errors and abuses in its applications to the FISA court to wiretap Carter Page. You had an upfront view. What is your impression of what went wrong?

The Office of Legal Policy, where I worked, did not conduct investigations or prosecutions at the Department of Justice, nor did it supervise any components that conducted investigations or prosecutions. I therefore do not have personal knowledge of these matters from my time at the Department. However, based on the Department's Inspector General's extensive report, it appears that errors occurred at multiple levels, and an FBI attorney was in fact convicted of providing false information to the FISC to sustain government surveillance. Decisionmakers at multiple levels were unacceptably provided with unreliable or false information in connection with this matter.

12. PCLOB held a public forum in June 2020 regarding the FISA process in light of this incident and the FBI Inspector General's findings. Do you think that PCLOB should take other steps to assess these FISA process errors and abuses?

In June 2021, former PCLOB Chairman Adam I. Klein published a white paper based on the Board's receipt of classified materials from the FBI and DOJ related to the use of FISA authorities in counterterrorism investigations. The paper provided numerous recommendations aimed at ensuring the factual accuracy of FISA applications, as well as considerations for future oversight, legislation, and internal reform aimed at the protection of privacy and civil liberties. Continued follow-up, especially with regard to factual accuracy reviews of FISA applications for counterterrorism purposes, would be an appropriate and important subject for continued Board oversight.

13. Will you participate in any of these oversight functions regarding the FBI's FISA deficiencies and abuses?
 - a. If so, what steps do you think PCLOB could or should take to accurately and objectively find out what happened with the FBI's FISA application into the Trump campaign?

Oversight of the FBI's use of the Foreign Intelligence Surveillance Act program for counterterrorism purposes is an appropriate and worthwhile subject of Board attention. If confirmed as a member of the Privacy and Civil Liberties Oversight Board, I would work with fellow Board members to develop the Board's agenda, which would, I hope, include such a project. While the Board does not have the authority to order reforms, it can and should shed

light on any systemic failures in order to ensure that the errors and abuses to which you refer do not occur again.

Senator Chuck Grassley, Ranking Member
Questions for the Record
Beth Ann Williams
Nominee to Chair the Privacy and Civil Liberties Oversight Board

1. The Privacy and Civil Liberties Oversight Board is charged with conducting oversight for Executive Branch policies, procedures, regulations, and information sharing practices relating to the government's efforts to protect our nation from terrorism. This oversight function is critical because it helps protect Americans' privacy and civil liberties. If you are confirmed to PCLOB, what will be your oversight priorities?

I agree that oversight over our nation's counterterrorism programs is critical to protecting Americans' privacy and civil liberties. If confirmed as a member of the Privacy and Civil Liberties Oversight Board, I would work with fellow Board members to develop the Board's agenda. I would be interested in reviewing Board projects currently underway and how those projects may have been impacted by the current absence of a quorum. Topics that I believe could warrant the Board's further attention include: continued oversight over the Department of Justice and FBI use of FISA authorities in counterterrorism investigations, especially with regard to factual accuracy reviews of FISA applications; re-review of the Section 702 program to ensure program efficacy and protection of privacy and civil liberties in advance of the anticipated reauthorization proposal in December 2023; analysis of any gaps in intelligence collection resulting from the expiration in March 2020 of several FISA provisions, and further analysis of any additional privacy and civil liberties protections that could be proposed should these provisions be reauthorized.

2. In addition to your prior tenure with PCLOB, what prior experiences do you have that you believe are relevant to the issues you would face while with PCLOB?

While I have not yet had the privilege of serving on the Privacy and Civil Liberties Oversight Board, I served as the Assistant Attorney General for the Office of Legal Policy at the Department of Justice from 2017 to 2020. In that capacity, among other things, I served on the Attorney General's Cyber-Digital Task Force, I advised on numerous national security issues, and I assisted in strengthening privacy and civil liberties protections concerning the Department's use of unmanned aircraft systems.

3. The USA Freedom Act enacted a number of reforms to Foreign Intelligence Surveillance Court proceedings, including requiring the appointment of at least five individuals to be amici curiae who are charged with helping to protect individual privacy and civil liberties.

What is your position on an outside amicus arguing against the government in FISC proceedings—and why do you take this position?

The USA Freedom Act enacted important privacy and civil liberties reforms to the FISC proceedings. Public reports that I have reviewed thus far suggest that amici offer a helpful and informative outside perspective to the FISC.

4. PCLOB plays a role in recommending individuals who are selected as amicus curiae. What experiences and qualities would you look for in recommending individuals to serve as amici in FISC proceedings?

The required qualifications of amici in FISC proceedings are set out in 50 U.S.C. § 1803. In addition to those requirements, which include “expertise in privacy and civil liberties, intelligence collection, communications technology, or any other area that may lend legal or technical expertise to a court,” it would be crucial that such persons are of the highest ethical caliber and have demonstrated commitment to the protections surrounding access to classified information.

5. Are there any ways you would like to see the amicus role change?

Currently, the law provides that the FISC shall appoint an amicus curiae to assist it “in the consideration of any application for an order or review that, in the opinion of the court, presents a novel or significant interpretation of the law, unless the court issues a finding that such appointment is not appropriate” and “may appoint an individual or organization to serve as amicus curiae, including to provide technical expertise, in any instance as such court deems appropriate or, upon motion, permit an individual or organization leave to file an amicus curiae brief.”

As part of the Board’s oversight functions, it would be appropriate for the Board to consider whether Congress could improve the statutory provisions authorizing amici participation in the Foreign Intelligence Surveillance Court and the Foreign Intelligence Surveillance Court of Review. Following the Board’s 2014 recommendation that “the FISC and the FISCR should develop procedures to facilitate amicus participation by third parties in cases involving questions that are of broad public interest, where it is feasible to do so consistent with national security,” Congress passed the USA FREEDOM Act in 2015 introducing amici more formally into the FISA courts’ process. Some recent suggested proposals by commentators to expand amici participation include the appointment of amici where the NSA asks for FISC approval for the use of new technologies and new applications of existing technologies, as well as authorization of new programs; when the government requests reauthorization of its programmatic surveillance; when individual electronic surveillance applications under Title I of FISA involve political or religious activities. As a member of the Board, I would hope to assess whether the courts’ experience with amici over the past several years prompts any recommendations for changes.

**Questions for the Record for Beth Ann Williams
From Senator Mazie K. Hirono**

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions:

a. Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

No.

b. Have you ever faced discipline, or entered into a settlement related to this kind of conduct?

No.

Questions for the Record for Beth Williams
From Sen. Jon Ossoff
January 19, 2022

FISA Section 702:

What information should Congress and the American people have about the impacts of Section 702 surveillance before we vote on whether to reauthorize the law next year?

The Privacy and Civil Liberties Board issued a Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act in 2014 which included recommendations to ensure that Section 702 programs appropriately balance national security with privacy and civil liberties. In January 2015, the PCLOB released an assessment of the status of these recommendations, which included descriptions of efforts that were being made by the government to implement them. In February 2016, the PCLOB updated the status of its recommendations, reporting that all had been implemented in full or in part. If confirmed, I would work with fellow Board members to develop the Board's agenda, which would, I hope, include an update to this project in advance of Congress's vote to reauthorize the program next year.

Based on your past experience with the Intelligence Community, is obtaining an estimate of Americans affected through a sample study logistically feasible, worth the time and resources it would require, and possible in a manner that is reasonably unobtrusive to the privacy of individuals within such a study?

Having not previously served on the Board, I do not yet have an opinion of whether such a study would be logistically feasible, cost- and time-effective, or possible in a manner that is reasonably unobtrusive to the privacy of individuals within such a study. However, I am aware that the Board's 2014 Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act contained an analysis of the government's minimization procedures, which cover the acquisition, retention, use, and dissemination of any non-publicly available U.S. person information acquired through the Section 702 program. It further recommended that the government should work with Internet service providers and other companies that regularly receive FISA production orders to develop rules permitting the companies to voluntarily disclose certain statistical information, and recommended that the government publicly disclose more detailed statistics to provide a more complete picture of government surveillance operations. An update on the analysis of the government's adherence to such procedures would be an appropriate and worthwhile subject of continued Board attention.

If confirmed, will you commit to working with the Intelligence Community, Congress, privacy experts, and other stakeholders to help obtain such an estimate before the 2023 sunset of Section 702?

Please see my response to the above question.

EO 12333:

What else can PCLOB do to provide public insights into how EO 12333 surveillance works and impacts Americans? Will you commit to working to provide such insights if you are confirmed? Will you commit to working with appropriately cleared congressional staff, to ensure that Congress has oversight over information, even if classified?

Executive Order 12333 is a foundational document that establishes a framework that applies broadly to the government's collection, analysis, and use of foreign intelligence and counterintelligence. In April 2021, the Board issued a public report of its more than six-year examination of the government's use of Executive Order 12333. In addition to this 2021 report, the Board can continue to examine and analyze in detail specific EO 12333 programs related to counterterrorism and make its reports available to the public to the greatest extent that is consistent with the protection of classified information. If confirmed, I am committed to working with my fellow Board Members to set the agenda to consider items such as this, and to working with appropriately cleared congressional staff to provide Congress with access to information.

PCLOB Authority and Resources:

Should the PCLOB's jurisdiction remain limited to oversight of the government's efforts to prevent terrorism? Would you recommend that Congress expand the PCLOB's jurisdiction to include oversight of the government's broader intelligence efforts? In your view, what are the benefits or drawbacks of expanding PCLOB's scope?

With the current resources and composition of the Board, I assume that it would be difficult to expand the Board's jurisdiction greatly. While it would be a benefit to have greater oversight of government programs to ensure adequate protection of privacy and civil liberties, the potential drawback could be dilution of efforts aimed at counterterrorism programs that most require oversight.

What are meaningful reforms that Congress could make to better ensure PCLOB can accomplish its goals of ensuring US counterterrorism policies are properly balanced with the need to protect privacy and civil liberties?

While my response to this question is limited by not having yet served on the Board, I would imagine PCLOB's work could be limited by the "unknown unknowns" that call for oversight. Required reports by intelligence agencies to PCLOB regarding programs that have the potential meaningfully to impact the privacy and civil liberties of U.S. persons could be helpful in this regard in appropriately setting the Board's agenda.

Questions from Senator Thom Tillis
for Beth Ann Williams
Nominee to be a Member of the
U.S. Privacy and Civil Liberties Oversight Board

1. The PCLOB's mission is to ensure that the federal government's efforts to prevent terrorism are balanced with the need to protect privacy and civil liberties.

a. What can PCLOB do better to ensure the protection of Americans' civil liberties?

PCLOB's oversight function is well-established in the national security and privacy communities, but engagement with the public is one of the Board's most critical functions. The Board's authorizing statute requires it to make its reports available to the public to the greatest extent that is consistent with the protection of classified information, as well as to "hold public hearings and otherwise inform the public of its activities," again consistent with the protection of classified information. Civil liberties are best protected when the public understands the decisions being made to protect national security and the efforts undertaken to minimize privacy incursions. The Board should work to strengthen and expand this transparency mission.

b. What are the challenges you see to fulfilling the mission of balancing public safety with protecting privacy?

The Privacy and Civil Liberties Oversight Board is a small agency with limited resources. This means that while there are many important issues, the Board will not be able to address them all. Directing the Board's agenda in a way so as to optimize its crucial mission will be a central challenge, and, if confirmed, I look forward to working with my fellow Board members to do so.

2. If confirmed, what do you think is the top issue that the PCLOB should address?

If confirmed as a member of the Privacy and Civil Liberties Oversight Board, I would work with fellow Board members to develop the Board's agenda. As discussed in more detail below, programs that are likely to come before Congress for renewal or revision in the next two years are especially important for Board oversight. For these programs, such as Section 702 and other provisions of FISA, the Board is uniquely positioned to assist Congress further in its work of evaluating program efficacy and protecting privacy and civil liberties.

3. If confirmed, what projects or priorities will you commit to pursuing as a commissioner?

If confirmed as a member of the Privacy and Civil Liberties Oversight Board, I would work with fellow Board members to develop the Board's agenda. I would be interested in reviewing Board projects currently underway and how those projects may have been

impacted by the current absence of a quorum. Topics that I believe could warrant the Board's further attention include: continued oversight over the Department of Justice and FBI use of FISA authorities in counterterrorism investigations, especially with regard to factual accuracy reviews of FISA applications; re-review of the Section 702 program to ensure program efficacy and protection of privacy and civil liberties in advance of the anticipated reauthorization proposal in December 2023; analysis of any gaps in intelligence collection resulting from the expiration in March 2020 of several FISA provisions, and further analysis of any additional privacy and civil liberties protections that could be proposed should these provisions be reauthorized.

4. Do you believe we should make any updates to the Foreign Intelligence Surveillance Act?

I am aware that there were a number of amendments proposed in 2020 to the Foreign Intelligence Surveillance Act in conjunction with the reauthorization of certain intelligence-related authorities, but that neither the reauthorization nor the amendments were ultimately passed. I am hopeful that, if confirmed as a member of the Privacy and Civil Liberties Oversight Board, the reconstituted Board would be able to analyze both the proposed amendments and authorities in order to provide helpful advice to Congress.