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NSA surveillance: privacy board denies being sidelined by Obama

President to deliver key speech on surveillance before PCLOB watchdog officially hands down its findings

The head of the US government's independent privacy watchdog has denied that his organization has been neutered by Barack Obama's decision to deliver a major speech on surveillance before it completes its examination into the National Security Agency.

Obama is due to announce his proposed reforms on surveillance activities on Friday, before the Privacy and Civil Liberties Oversight Board has had a chance to deliver its final report.

But the chairman of the task force, David Medine, told the Guardian on Thursday that he did not feel undercut. "We felt we accomplished our goal of having input to the president's decision-making process," he said.

Medine and his four colleagues on the board have given the White House drafts of their recommendations, which will be published on 23 January, for reforms to the bulk collection of domestic phone records and the composition of the Fisa court. They met with Obama and the vice-president, Joe Biden, last week ahead of Obama's widely anticipated speech on Friday about the future course of the NSA's sweeping surveillance powers.

It has struck some observers as awkward that Obama is delivering his speech before the so-called PCLOB delivers its own assessment of US surveillance and its implications for civil liberties, a subject central to its existence.

Additionally the PCLOB has been overshadowed by a surveillance review panel Obama handpicked in August, whose recommendations have captivated a Washington debate the PCLOB has yet to influence – and one of those recommendations was to replace the PCLOB with a more institutionally powerful organization.

"It appears as if the president is thumbing his nose at the PCLOB's recommendations," said Angela Canterbury of the Project on Government Oversight, a watchdog group.

Julian Sanchez, a privacy researcher at the Cato Institute, said: "The timing here really seems like a bit of a slap to the PCLOB; you would think if only for the sake of appearances the White

House would have waited a few weeks for the publication of their full analysis before announcing a policy agenda.

“But the president may have decided it would be even more awkward to announce the rather flaccid reforms we've been led to expect after two of the government's own expert panels have concluded a more serious overhaul is needed.”

While the PCLOB gave Obama and Biden their recommendations about bulk domestic phone records collection and the Fisa court, the board did not advise the president about its recommendations on the NSA's foreign-directed mass surveillance under Section 702 of the Fisa Amendments Act.

That surveillance dragnet – which includes communications between foreigners and Americans, and through which the NSA has authority to search for Americans' identifying information – will be the subject of a follow-on report from the PCLOB. Medine said the board still did not have a publication date.

“When I say we're going to turn to 702 it's not that as if we're turning from scratch, it's based on the study, the research, the input we've received. We'll turn to the 702 report as soon as we finish the 215 report,” Medine said, using a bureaucratic shorthand for mass domestic phone metadata collection.

The PCLOB has had a rocky first decade. Despite being created in 2004 as a post-9/11 intelligence reform the board has not done any substantive work until this year, struggling with independence from the White House and persistent vacancies that have left it unable to function as intended.

“It's just been a total frustration,” former New Jersey governor and 9/11 commissioner Tom Kean, one of the architects of the board, said in 2012 for a New York Times story about the board's “troubled life”.

Obama did not finish nominating the board's full membership until December 2011 including Medine, whose nomination was held up in the Senate for 510 days due to ongoing fights between Obama and chamber Republicans. Since only the PCLOB's chairman has the power to appoint staff the board did not get properly under way until Medine finally arrived in May of 2013, just days before the Guardian published the first Edward Snowden leak about the NSA.

“My first week on the job, you published your story, so you made my job a lot more exciting,” Medine said.

The board has had an opportunity to add staff – it has six staffers now, up from two – and has held two marathon public hearings into the NSA disclosures, in July and November. Medine said he was satisfied the PCLOB had received a comprehensive look inside the NSA and associated intelligence agencies; it had received briefings not only on the agencies' bulk domestic phone records collection and foreign internet communications collection but also its broader foreign

intelligence activities that operate under an executive order called 12333, which officials cite to justify, among other things, collecting data transiting between Google and Yahoo data centers.

Medine is aware that the PCLOB's performance reviewing the controversial surveillance activities has implications for his organization's prestige – and even its existence given the surveillance review board's recommendation to replace it.

“It was certainly a very challenging first project for us,” Medine said.

“But I believe we've risen to the task, and are demonstrating both in the United States and around the world that the United States has a vigorous oversight body that will take a close look at these programs, have full access to them, and will be able to advise whether the programs do strike the right balance.”

Regardless of the timing of Obama's speech, privacy advocates hope the PCLOB's recommendations – which Medine would not discuss – would arrive in time to influence a congressional debate on surveillance likely to intensify in the wake of Obama's remarks.

“Hopefully his speech and his recommendations are just the beginning of a back and forth between the Hill and the administration, so the PCLOB will still have an opportunity to weigh in,” said ACLU surveillance lobbyist Michelle Richardson.

“In terms of both the public and Congress, the fact that we're issuing our report in close proximity to the president's speech gives everyone a chance to evaluate the president's conclusions and recommendations with our conclusions and recommendations,” Medine said.

“To the extent there's a congressional process, it's just starting, and we will have put into that process, both in terms of our report and, if requested, any testimony that we give congressional committees on these issues.”