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Description of document: Privacy and Civil Liberties Oversight Board (PCLOB) Pre-Publication/Classification Review Policy 2014-003, 2016

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Privacy and Civil Liberties Oversight Board  
800 N Capitol St. NW  
Washington DC 20002  
Fax: (202) 296-4395  
Email: [foia@pclob.gov](mailto:foia@pclob.gov)

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PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD  
WASHINGTON, D.C. 20511

October 23, 2017

Re: PCLOB FOIA 2017-033

This letter responds to your Freedom of Information Act ("FOIA") request dated October 4, 2017, in which you seek "a copy of the PCLOB Pre-Publication Policy and a copy of the PCLOB Sub-Quorum Policy."

Please be advised that a search was conducted and documents were located that are responsive to your request. I have attached the PCLOB's Pre-Publication/Classification Review Policy.

However, I have determined that it is appropriate to withhold in full the PCLOB Sub-Quorum policy pursuant to Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5), which pertains to certain inter- and intra-agency memorandums or letters protected by the deliberative process privilege. I have further determined that disclosure of the draft policy would harm the Board's deliberative process privilege and that no information may be segregated and released at this time.

You may contact me or the PCLOB's FOIA Public Liaison Eric Broxmeyer at (202) 331-1986 or [foia@pclob.gov](mailto: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 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](mailto: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 MS2 Room 2C104, Washington, DC 20511, or you may submit an appeal via email to [foia@pclob.gov](mailto:foia@pclob.gov). Your appeal must be postmarked or electronically transmitted within ninety calendar days from the date of this letter.

Sincerely,

A handwritten signature in blue ink that reads "Mason C. Clutter".

Mason C. Clutter

Freedom of Information Act Officer

Attorney-Advisor

(202) 296-4729



## Privacy & Civil Liberties Oversight Board

### Pre-Publication/Classification Review

#### Policy 2014-003

(Revised Nov. 11, 2016)

- I. Scope. This policy establishes the Privacy and Civil Liberties Oversight Board's process for pre-publication/classification review of information or material prepared for public dissemination.
- II. Definitions.
  - A. *Board* means the Privacy and Civil Liberties Oversight Board.
  - B. *Board Member or Member* means any of the individual members of the Board, including the Chairman.
  - C. *Chairman* means the Chairman of the Board.
  - D. *Chief Security Officer* means the employee designated by the Board as responsible for the Board's physical security and the security of classified information at the Board.
  - E. *Employee* means a Board employee or an employee of another government agency assigned or detailed to the Board. As used in this policy, the term "employee" includes Board Members, unless specifically excluded.
  - F. *Executive Director* means the individual appointed by the Chairman to act as the Executive Director (or, in the event the Chairman position is vacant, the individual designated by the Board) to discharge the responsibilities assigned to the Executive Director.
  - G. *General Counsel* means the individual appointed by the Chairman to act as the chief legal officer of the Board or, if the General Counsel is absent or unavailable, the Deputy General Counsel, or in the event that both positions are vacant, the individual(s) designated by the Chairman (or, in the event the Chairman position is vacant, by the Board) to discharge the responsibilities assigned to the General Counsel. If both the General Counsel and Deputy General Counsel are absent and unavailable for a prolonged period of time, the Chairman (or the Board in the event the Chairman position is vacant) may designate any Staff Member who is an active member of the bar of any state, territory, or the District of Columbia to temporarily discharge the responsibilities assigned to the General Counsel until

the General Counsel or Deputy General Counsel is again available or a successor has been duly appointed.

III. General Provisions. Board Members and employees who hold a security clearance may not disclose classified information without prior authorization or as otherwise permitted by law.<sup>1</sup> It is the Board's policy to protect classified information from disclosure in publicly disseminated materials.

IV. Procedures for Pre-Publication/Classification Review.

- A. The following procedures are to be followed when an employee has a reason to believe that any information intended for public disclosure might be derived from classified and/or SCI (sensitive compartmented information) (hereinafter "classified information").<sup>2</sup> To safeguard against the accidental or unauthorized disclosure of classified information, employees shall submit to the General Counsel for approval prior to the proposed public dissemination any material prepared for public dissemination, including material that would be communicated in writing, speeches, electronically, or any other means, that the employee has a reason to believe may contain classified information obtained by the employee in the performance of his or her official duties. The purpose of the General Counsel's review is solely to determine whether the material contains any classified information; this review is not for the purposes of approving or disapproving the material's content. During this classification review, the General Counsel may consult with the Chief Security Officer, the Executive Director, or other employees to address classification issues. In the unique situation that the General Counsel is submitting the pre-publication/classification review request, the Board Members will identify which Board Member or employee will be the review authority (but in no circumstances will it be the Chairman).
- B. Employees may request expedited review by the General Counsel. Expedited review shall be granted by the General Counsel if the need for the expedited review is based upon factors outside of the employee's control, such as a late request to participate in a public event as a speaker. The General Counsel shall make a decision within 1 day of submission on an expedited schedule.
- C. If needed, the General Counsel will consult with the Office of the Director of National Intelligence, the original classification authority, and/or derivative classifier regarding all pertinent classified information related to the material submitted for review for the purpose of avoiding the inappropriate or inadvertent disclosure of classified information. The General Counsel will make a decision immediately following this consultation.

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<sup>1</sup> 18 U.S.C. § 798; Executive Order 13526.

<sup>2</sup> This language is from the standard Nondisclosure Agreement signed by all Top Secret Sensitive Compartmented Information (SCI) security clearance holders; this SCI Nondisclosure Agreement is attached to this Policy.

- D. In recognition of the independent status of each Member of the Board and the short timeframes in which Board Members may be asked to speak or testify on subjects related to the Board's ongoing work, in the case of requests by sitting Members of the Board, the General Counsel shall make a decision as soon as possible and no later than 3 days. The General Counsel shall prioritize such requests over requests by other employees or former employees.
- V. Revision to Policy. The General Counsel shall review this policy annually and recommend revisions. Revisions shall be approved by the Board.

Effective Date:

Nov. 11, 2016

Certification:

