

TWO OF OBAMA'S INDEPENDENT INTELLIGENCE ADVISORS HAVE SUPPORTED OVERSIGHT IN PAST; WHY NOT NOW?

I've written recently about Obama's refusal to appoint anyone to the Privacy and Civil Liberties Oversight Board, which is supposed to ensure the government protects privacy while laying out a dragnet to catch terrorists, most recently when Thomas Kean and Lee Hamilton issued their 10-year report card on the 9/11 Commission's recommendations. And I wrote about Bush's efforts to bypass the intelligence oversight that is supposed to be exercised by the Intelligence Oversight Board by simply eliminating the part of the Presidential Foreign Intelligence Advisory Board that did that oversight, the IOB.

But it seems Obama has ensured—as he has with PCLOB—that IOB can't do its job. Or at least that's the appearance from the government's stone-walling on information about the board.

The Electronic Frontier Foundation has been trying to see whether Obama has fulfilled his promise to restore the IOB to functionality by FOIAing who is on it and what they've been doing (and whether they've been ignoring the National Security Letters the Army has been sending out). Thus far, the government has denied their FOIA.

The IOB is supposed to alert the president and attorney general when it spots behavior that is unlawful or contrary to executive order. However, in his nearly three years in office, President Obama has not yet

announced any appointments to the IOB. EFF's suit comes after the ODNI refused to respond to a Freedom of Information Act (FOIA) request for membership, vacancies, and other information about the IOB made earlier this year.

"The IOB has a critically important mission – civilian oversight of America's intelligence activities. The board exists to make sure government agencies are not overstepping their authority and abusing citizens' rights," said EFF Open Government Legal Fellow Mark Rumold. "History has shown that intelligence agencies overseeing their own behavior is like the fox guarding the henhouse. If the IOB is ineffective, impaired, or short-staffed, that's information Americans need to know."

So now they're suing to get that information.

But there's something else weird about Obama's stone-walling here. Here's the list of people Obama has appointed to the President's Intelligence Advisory Board, the board that oversees the IOB.

- Chuck Hagel (10/28/2009)
- David Boren (10/28/2009)
- Roel Campos (12/23/2009)
- Lee Hamilton (12/23/2009)
- Rita Hauser (12/23/2009)
- Paul Kaminski (12/23/2009)
- Ellen Laipson (12/23/2009)
- Les Lyles (12/23/2009)
- Jami Miscik (12/23/2009)
- Richard Danzig (12/1/2010)
- Daniel Meltzer (12/1/2010)
- Thomas Wheeler (4/17/2011)
- Mona Sutphen (9/6/2011)
- Phillip Zelikow (9/6/2011)

You know, Lee Hamilton, the 9/11 Commission

Chair who just weeks ago was nagging the Administration that, "there should be a board within the executive branch to oversee adherence to the [privacy] guidelines we recommend and the commitment the government makes to defend our civil liberties." And Phillip Zelikow, who wasn't involved in the anniversary nagging, but who was involved in the original recommendation? (FWIW, Chuck Hagel voted for PCLOB as part of the larger counterterrorism reform package of which it was a part.)

These men obviously think (or at least used to think) our intelligence community needs some oversight. I realize PCLOB isn't the same thing as IOB (as originally conceived and even as statutorily defined PCLOB was supposed to be stronger in some ways than IOB, though it was targeted at privacy, not intelligence violations). So why not push for oversight designated to be a part of the board on which they serve?

Seven years ago, Hamilton and Zelikow signed off on the this language:

[W]hile protecting our homeland, Americans should be mindful of threats to vital personal and civil liberties. This balancing is no easy task, but we must constantly strive to keep it right.

This shift of power and authority to the government calls for an enhanced system of checks and balances to protect the precious liberties that are vital to our way of life.

Right now, even as Hamilton and Zelikow serve as Obama's handpicked independent intelligence advisors, the checks and balances on our intelligence system are actually worse than when they signed off on those words. They may not be able to do anything about EFF's FOIA to learn what has become of the IOB. But it'd be nice if they used their advisory position to implement checks and balances more generally on the intelligence community.