October 26, 2012

Privacy and Civil Liberties Oversight Board
via email to matthew.conrad@gsa.gov

Re: Sunshine Act; Notice of Meeting (77 FR 64835)

Dear Board Members:

OMB Watch welcomes the opportunity to comment on the Privacy and Civil Liberties Oversight Board's forthcoming agenda. As a nonprofit organization dedicated to open government, accountability, and citizen participation since 1983, OMB Watch has long worked for effective government oversight.

OMB Watch strongly supports the purpose for which Congress created the Board: to conduct oversight with the intent of ensuring that privacy and civil liberties are protected in counterterrorism activities. We encourage the Board to pursue a vigorous oversight agenda.

As a new federal agency, we recommend the Board adopt strong open government measures. As the Board's credibility is critical to the effectiveness of its oversight functions, a rigorous use of transparency for the Board's own activities and operations would be helpful. Additionally, the Board has the opportunity to start with policies and programs that build on the successes of other agencies and avoid their mistakes.

In addition to compliance with minimum requirements in all openness statutes, such as the Freedom of Information Act (FOIA), we encourage the Board to aspire to the "unprecedented level of openness" called for in President Obama's transparency memorandum.[1] We would like to call particular attention to a few key issues:

Proactive disclosure

The Board should follow Attorney General Holder's FOIA guidelines, which directed agencies to "readily and systematically post information online in advance of any public request."[2] Proactive disclosure makes information more widely available and reduces the need for individual FOIA requests. By designing a record-keeping system with proactive disclosure in mind, the Board will have the capability to easily post online all records of interest to the public.

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[1] Barack Obama, Presidential Memorandum, "Transparency and Open Government," The White House, January 21, 2009, *available at* http://www.whitehouse.gov/the_press_office/TransparencyandOpenGovernment.
[2] Eric Holder, "The Freedom of Information Act (FOIA), ")," Office of the Attorney General, March 19, 2009, *available at* http://www.justice.gov/ag/foia-memo-march2009.pdf.

In particular, the Board should develop website for informing the public about its activities and operations. The Board should identify key information to routinely post online, such as the Board's communications with Congress, as well as documents related to public meetings such as agendas, minutes, and lists of participants.[3]

FOIA implementation

In developing its FOIA program, the Board should adopt best practices, such as those developed by the National Archives and Records Administration's Office of Government Information Services.[4] The Board should strive to apply the presumption of openness and narrowly limit withholdings, while providing prompt and high-quality service to requesters.

We urge the Board to consider adopting FOIAonline, a multi-agency system developed by the U.S. Environmental Protection Agency, Department of Commerce, and National Archives and Records Administration.[5] FOIAonline allows the public to submit and track requests, receive responses, and search others' requests through a single website. The system also provides agencies with modern features to assist with processing requests in a timely fashion. Agencies can also use the system to publish their responses to FOIA requests, which makes this information more widely accessible.

Conclusion

OMB Watch appreciates the opportunity to comment on the Board's forthcoming agenda. We hope you take our recommendations into consideration. If you have questions about our comments or want to discuss the issues further, please feel free to contact us.

Sincerely,

Sean Moulton
Director, Federal Information Policy
OMB Watch

Gavin R. Baker
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OMB Watch

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[3] The open government community has identified several types of information that agencies should regularly post online; *see* http://www.ombwatch.org/files/info/OpennessFloor-aug2012.pdf.
[4] Office of Government Information Services, "FOIA Requirements, Agency Best Practices, and OGIS Recommendations," *available at* https://ogis.archives.gov/Assets/Best+Practices+Chart+Agencies.pdf.
[5] *See* http://foiaonline.regulations.gov/.