



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

April 4, 2014

The Honorable David Medine
Chairman
Privacy and Civil Liberties Oversight Board
2100 K Street, NW, Suite 500
Washington, DC 20427

Dear Chairman Medine:

This letter is in response to the feedback of the Privacy and Civil Liberties Oversight Board (Board) on the Executive Order (EO) 13636 draft Privacy and Civil Liberties Assessment Report in the Board's March 21, 2014, letter to Karen Neuman, Chief Privacy Officer of the Department of Homeland Security (DHS), and Megan Mack, Civil Rights and Civil Liberties Officer of DHS. In particular, this letter addresses the Board's comments on the Department of Justice's privacy and civil liberties assessment of its cybersecurity activities under EO 13636.

At the outset, it may be helpful to provide the basis for the Department's approach to its assessment. As you are aware, EO 13636 states that "[s]enior agency privacy and civil liberties officials . . . engaged in activities under this order shall conduct assessments of their agency activities and provide those assessments to DHS for consideration and inclusion" in a government-wide report. *See* EO 13636 § 5(b). To facilitate the process of preparing assessments, guidance covering the scope and reporting period for the assessments was provided to departments and agencies. Consistent with this guidance, the Department's report covered activities undertaken pursuant to EO 13636 that were implemented during the reporting period. The iGuardian program was not implemented for purposes of EO 13636 during the February 12, 2013 to December 6, 2013 reporting period, and therefore a full assessment was not warranted. Indeed, it would have been premature to provide a full assessment given that the "the implementation plan [was] still evolving." As the program develops, the Department intends to conduct a more comprehensive analysis of the privacy risks and include the assessment in future reports. *See* Department of Justice, Initial Privacy and Civil Liberties Assessment Under Executive Order 13636 at 2.

Although the Department was not required to do so, it nevertheless provided an analysis of iGuardian, which incorporated consideration of the Fair Information Practice Principles (FIPPs) to the extent they were applicable. Specifically, the Department's analysis listed a number of privacy-protective measures that have been applied to the iGuardian system, including: a notice banner indicating the purpose of the system in order to provide notice and

transparency with regard to the information collected; that iGuardian itself does not store any of the information it collects, which is passed to a system called Guardian, thereby avoiding duplication of PII; that the information, once passed to the Guardian system, is covered by existing privacy documentation; that all information collected by iGuardian is reviewed to determine whether it is relevant to the complaint, and if it is not, then it is deleted; and, finally, because iGuardian is still being developed, the FBI is in the process of preparing privacy documentation for the system. *See* Department of Justice, Initial Privacy and Civil Liberties Assessment Under Executive Order 13636 at 2-4. It is important to reiterate that Guardian receives information from iGuardian, and Guardian has undergone a comprehensive privacy review by the Department, including a Privacy Impact Assessment and Privacy Act analysis.¹

We very much appreciate the Board's review of the assessment of the agencies' activities and suggestions for improvement. As the Board noted in its letter, there will be far greater opportunities in the next year for agencies to assess their activities and address how privacy and civil liberties have been protected. We look forward to engaging with the Board, DHS, and other agencies as we conduct future assessments pursuant to Executive Order 13636.

Sincerely,



Erika Brown Lee
Chief Privacy and Civil Liberties Officer
U.S. Department of Justice

¹ The Privacy Act analysis is reflected in the System of Records Notice for the FBI Data Warehouse system, FBI-022 available at <http://www.gpo.gov/fdsys/pkg/FR-2012-07-10/pdf/2012-16823.pdf>.