

**UNITED STATES
DATA PROTECTION REVIEW COURT
Washington, D.C.**

**RULES OF PROCEDURE
*Effective May 19, 2025***

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Authority for Promulgation of Rules

On October 7, 2022, in accordance with Executive Order 14086, *Enhancing Safeguards for United States Signals Intelligence Activities* (Executive Order 14086), the Attorney General issued Attorney General Order No. 5517-2022, *Data Protection Review Court*, codified at 28 C.F.R. part 201 (the Attorney General regulations), which established the Data Protection Review Court (DPRC or Court). Under 28 C.F.R. § 201.3(d), the Court has the obligation and authority to adopt rules of procedure consistent with Executive Order 14086 and the Attorney General regulations.

Title I. Scope of Rules; Amendment; Definitions

Rule 1. Scope of Rules.

These Rules govern proceedings in the Data Protection Review Court.

Rule 2. Suspension of Rules.

On its own or on motion, the Court may, to expedite its decision or for other good cause, suspend any provision of these Rules in a particular case and order proceedings as it directs, except as otherwise provided in Rules 5, 6(a), (c), and (f), 7, 9, 14, 16, and 18(a), (b), (d), and (e), provided that all court proceedings shall continue to be governed by the Attorney General regulations.

Rule 3. Amendment.

Any amendment to these Rules must be promulgated in accordance with 28 C.F.R. § 201.3(d).

Rule 4. Definitions.

The terms “appropriate remediation,” “covered violation,” “national security,” “qualifying complaint,” and “qualifying state” shall have the same meanings as they have in Executive Order 14086. The term “classified *ex parte* record of review” shall mean the documentation referenced in section 3(c)(i)(F)-(G) of Executive Order 14086 that is maintained by the Civil Liberties Protection Officer (CLPO) of the Office of the Director of National Intelligence regarding the CLPO’s review of a qualifying complaint. The terms “Intelligence Community” or “elements of the Intelligence Community” shall have the same meanings as they have in Executive Order 12333.

Title II. National Security Information

Rule 5. National Security Information.

In all matters, the Court and its staff, including personnel from the U.S. Department of Justice, Office of Privacy and Civil Liberties (OPCL), and the Special Advocates appointed pursuant to 28 C.F.R. § 201.4, shall comply with all

applicable laws and regulations including, but not limited to, those set forth in 28 C.F.R. §§ 201.1, 201.5(b)(4) and (6), and 201.11; as well as Executive Order 14086, Executive Order 13526 (or its successor). Each member of the Court and its staff, including personnel from OPCL and the Special Advocates, shall possess security clearances at a level commensurate with their responsibilities and need to know.

All information made accessible to or maintained by the Court and its staff, including personnel from OPCL, and the Special Advocates shall be accessed or maintained in accordance with security procedures established by the Department of Justice Security Officer, in consultation with the Office of the Director of National Intelligence. Information generated by or about an element of the United States Intelligence Community may not be further disseminated without the consent of that element.

The Court and its staff, including personnel from OPCL, and the Special Advocates shall obtain the necessary authorization(s) from the relevant elements of the United States Intelligence Community before granting any person access to classified or otherwise privileged or protected information, including the information reviewed in or information about the existence or outcome of any proceedings before the Court or any information that would tend to reveal whether a complainant was subject to signals intelligence activities.

Title III. Structure and Independence of the Court

Rule 6. Structure.

- (a) Composition of the Court.** The Court consists of no fewer than six judges appointed by the Attorney General pursuant to 28 C.F.R. § 201.3.
- (b) Chief Judge of the Court.** The Court may, in its discretion, designate a judge of the Court to serve as Chief Judge of the Court. The term of office, the method of selection, and the assigned duties will be specified by the Court in a General Order adopted by a majority of the judges then serving.
- (c) Convening a Panel of the Court.** Upon receipt of an application for review (application), OPCL shall convene a panel by selecting three judges on a rotating basis while ensuring if possible that at least one of the judges has prior judicial experience.
- (d) Selecting Other Judges.** If a judge is unable or determines that he or she has good cause not to serve on a particular panel, the judge will notify OPCL, and OPCL will select the next judge in the rotation for the panel consistent with the provisions of 28 C.F.R. § 201.7(a) and Rule 6(c).
- (e) Presiding Judge of a Panel.** Each panel of the DPRC shall unanimously select a presiding judge for that panel. If unanimous agreement is not reached within five days of the convening of the panel,

the presiding judge shall be the judge who was selected first by OPCL who has prior judicial experience; if no judge on the panel has such experience, the presiding judge shall be the judge who was selected first by OPCL.

- (f) Special Advocate.** The presiding judge for each panel shall select a Special Advocate, appointed by the Attorney General pursuant to 28 C.F.R. § 201.4, to assist the panel in consideration of the application, including by advocating regarding the complainant's interest in the matter and by ensuring that the DPRC panel is well informed of the issues and the law with respect to the matter. Consistent with Rule 5, the Special Advocate shall hold the requisite security clearance to access classified national security information and shall be granted access by the United States Intelligence Community only to the information and materials necessary to assist the panel to which the Special Advocate is assigned, as provided in 28 C.F.R. § 201.8(b) and (c).

Rule 7. Independence of the Court.

The Attorney General shall not interfere with a DPRC panel's review of a determination the CLPO made regarding a qualifying complaint. The Court's judges shall not be subject to the day-to-day supervision of the Attorney General, and the Attorney General shall not remove a judge from a panel, remove a judge from the DPRC before the end of the judge's term of appointment, or take any other adverse action against a judge arising from service on the DPRC, except for the reasons provided in section 201.7(d) of the Attorney General regulations. Judges of the Court shall conduct themselves in accordance with the Code of Conduct for United States Judges, subject to allowance for the extrajudicial activities set forth in section 201.7(c) of the Attorney General regulations.

Title IV. Matters Presented to the Court

Rule 8. Means of Requesting Review of CLPO Determinations from the Court.

- (a) Application for Review.** A complainant or an element of the United States Intelligence Community may file an application for review by the Court of a determination made by the CLPO on a qualifying complaint and, if applicable, appropriate remediation. No filing fee is required when filing an application for review.

- (1) Application Submitted by Complainant.** Consistent with Rule 11, a complainant seeking review of a determination made by the CLPO on a qualifying complaint must file an application for review with the appropriate public authority in the complainant's qualifying state. The complainant may be represented by counsel. If the application is filed in a foreign language, the

appropriate public authority shall arrange for a certified translation into English and transmit the application to the Court through an encrypted electronic communication to an electronic mail address established and maintained by OPCL. The transmitted application package for the Court must indicate whether a translation was needed and must include the original, untranslated application.

- (2) Application Submitted by an element of the United States Intelligence Community.** Consistent with Rule 11(b), an element of the United States Intelligence Community may submit a written application to the Court. On behalf of the Court, OPCL shall accept and file applications submitted by an element of the United States Intelligence Community only through appropriate, secure means. Upon distribution of the application to the panel and the Special Advocate, OPCL shall include a statement that to prevent the disclosure of classified or otherwise privileged or protected information, no information may be provided to the complainant, or to any other individuals or entities lacking requisite security clearances and a need to know, relating to the existence, review, or outcome of the application.

Rule 9. Time and Manner of Submission of Applications; Content of Applications.

- (a) Applications Submitted by the Complainant.** A complainant may submit an application for review by the Court with the appropriate public authority, no later than sixty (60) days after the date, as reported to OPCL by the appropriate public authority, on which the complainant receives notification that the CLPO has completed its review of the complainant's qualifying complaint. Applications shall be transmitted to the Court pursuant to the procedures set forth in Rules 8(a)(1) and 11.
- (b) Applications Submitted by an element of the United States Intelligence Community.** An element of the United States Intelligence Community may submit an application for review by the Court with OPCL no later than sixty (60) days after the date on which it receives notification from the CLPO that the CLPO has completed its review of the qualifying complaint. Applications shall be submitted pursuant to the procedures set forth in Rules 8(a)(2) and 11.
- (c) Contents.** Each application submitted by a complainant or an element of the United States Intelligence Community must include a copy of the qualifying complaint to which the determination relates. Applications may be accompanied by any information, including argument on questions of

law or the application of law to the facts, that the complainant or element of the United States Intelligence Community wishes to provide to the Court.

(1) Applications shall not be frivolous, vexatious, or made in bad faith.

(2) Applications filed by the complainant, through the appropriate public authority, shall:

A. Be brought on behalf of the complainant, acting on that person's own behalf, and not as a representative of a governmental, nongovernmental, or intergovernmental organization; and

B. Contain a verification by the appropriate public authority:

i. Of the identity of the complainant;

ii. That the application is being brought on behalf of the complainant, acting on that person's own behalf, and not as a representative of a governmental, nongovernmental, or intergovernmental organization;

iii. Of the date on which the complainant received notification from the appropriate public authority that the CLPO completed its review of the complainant's qualifying complaint; and

iv. That the application was submitted to the appropriate public authority not more than sixty (60) days after the date on which the complainant received notification that the CLPO completed its review of the complainant's qualifying complaint.

(3) Applications submitted by an element of the United States Intelligence Community shall be submitted to OPCL through an appropriate, secure means and contain:

A. A statement of the issue presented for review;

B. A concise statement of the case setting out the facts relevant to the issues submitted for review, with appropriate references to the record;

C. A summary of the argument which must contain a succinct, clear, and accurate statement of the arguments made, and which must not merely repeat the argument headings;

D. The argument, which must contain: the element's contentions and the reasons for them, with citation to the authorities and parts of the record on which the element relies; and, for each issue, a concise statement of the applicable standard of review;

- E. A short conclusion stating the precise relief sought; and
- F. A certificate of compliance with the provisions of Rule 11(c).

Rule 10. Record of Review; Supplementation of the Record of Review.

- (a) **Record of Review.** The CLPO must provide OPCL with the classified *ex parte* record of review for an application as expeditiously as possible, but no later than thirty (30) days after the CLPO receives notice from OPCL that an application for review of a determination made by the CLPO has been filed with the Court. The CLPO shall transmit the classified *ex parte* record of review to OPCL through appropriate, secure means.
- (b) **Supplementation of the Record of Review.** Consistent with Rule 5, the CLPO shall, at the Court's request at any stage, supplement the record with specific explanatory or clarifying information or make additional factual findings where appropriate to assist the Court in conducting its review. Supplemental information that the CLPO transmits to the Court will be transmitted to OPCL through appropriate, secure means. Elements of the United States Intelligence Community shall assist the CLPO in supplementing the record. Only the CLPO will supplement the record with additional factual information at the Court's request. In supplementing the record with additional factual information, the CLPO shall not knowingly fail to disclose all material facts known to the CLPO that will enable the Court to make an informed decision, including factual assertions from elements of the United States Intelligence Community that may differ from CLPO's understanding of the facts.
- (c) **Duty to correct errors and omissions.** The CLPO, any element of the United States Intelligence Community, and any other person or entity appearing before or communicating with the Court shall immediately upon identification correct any misstatements or omissions of material fact in any of such entity's or person's submissions to the Court, including the classified *ex parte* record of review.

Rule 11. Form of Submissions.

- (a) **Unclassified Submissions.** Applications, responses, or other information submitted to the Court by a complainant through the appropriate public authority and any unclassified submissions by an element of the United States Intelligence Community or a Special Advocate must be submitted through an encrypted electronic communication to the electronic mail address provided for the submission of an application as described in Rule 8.

- (b) Classified Submissions.** An element of the United States Intelligence Community or the Special Advocate selected by a panel in a particular application for review shall transmit any classified information to OPCL consistent with Rules 5 and 10.
- (c) Form.** Unless otherwise ordered by the Court, all electronic submissions must be formatted as follows:
- (1) Line Spacing and Margins.** Documents must be typed or reproduced in a manner that produces a clear black image, in portrait or landscape layout. The text must be double-spaced, but quotations more than two lines long may be indented or single-spaced. Headings and footnotes may be single-spaced. Margins must be at least one inch on all four sides. Page numbers must be used and may be placed in the margins, but no text may appear there, except that classification markings, when required, may appear in the top and bottom margins of each page.
 - (2) Typeface.** Either a proportionally spaced or a monospaced face may be used. A proportionally spaced font must include serifs, but sans-serif type may be used in headings and captions. A proportionally spaced face must be 14-point or larger. A monospaced face may not contain more than 10 ½ characters per inch.
 - (3) Type Styles.** Documents must be set in a plain, roman style, although italics or boldface may be used for emphasis.
 - (4) Type-Volume Limitation.** An application (including submissions submitted by a complainant's counsel), an initial response filed by the CLPO and any affected element of the United States Intelligence Community, or the submission of the Special Advocate to the Court is acceptable if it contains no more than 13,000 words or uses a monospaced face and contains no more than 1,300 lines of text. Any reply by the CLPO and any affected element of the United States Intelligence Community to the submission of the Special Advocate to the Court is acceptable if it contains no more than 6,500 words or uses a monospaced face and contains no more than 650 lines of text.
 - (5) File Formats.** Only PDF, JPG, and JPEG files are allowed. PDF files are preferred. JPG and JPEG files should be limited to information that cannot be submitted in PDF, such as photographs. Submission of material in any other format must be coordinated and approved by the Court through OPCL.
- (d) Citations.** Each submission should, to the extent practicable, contain appropriate citations to pertinent legal authorities.

(e) Signatures. The Court will accept submissions bearing an electronic signature.¹ Upon acceptance, a submission bearing an electronic signature is the original Court record.

(f) Contact Information.

(1) Application by a Complainant. A complainant must include in the application the complainant's full name and, if the complainant is represented by counsel, the full name of the complainant's counsel, as well as counsel's electronic mail address and any other information as required by the appropriate public authority to process the application.

(2) Application by an element of the United States Intelligence Community. Consistent with Rule 5, an application submitted by an element of the United States Intelligence Community must include the full names of the attorneys representing the particular element of the United States Intelligence Community and their mailing addresses, telephone numbers, and electronic mail addresses. Consistent with applicable law, the names and contact information for employees of the United States Intelligence Community will remain protected from public disclosure.

(g) Other submissions. In other submissions the United States Intelligence Community and the Special Advocate:

- (1)** Shall present argument based on the record and the application of relevant law to the facts;
- (2)** May not introduce new facts to the record; and
- (3)** May propose to the DPRC that the DPRC ask the CLPO to supplement the record in accordance with Rule 10(b).

Rule 12. Schedule of Submissions.

(a) Schedule of Submissions when a Complainant Files an Application.

Unless otherwise provided by the Court through a scheduling order, when a complainant files an application for review, submissions to the panel reviewing the application shall proceed in the following sequence:

- (1)** The application filed by the complainant.
- (2)** The transmission of the record of review.
- (3)** The response to the application by an affected element of the United States Intelligence Community.

¹ An electronic signature is the electronic equivalent of a handwritten signature. Acceptable forms of electronic signatures include a digital signature (using a Public Key Infrastructure (PKI) and encryption software at the time of signing), a digital image of a handwritten signature, a typed signature, or a signature created using a stylus or touchpad.

- (4) The submission of the Special Advocate to the Court, which shall include the information and responses to questions received by the Special Advocate from the complainant in accordance with the provisions of Rule 14(c).
 - (5) Any reply by any affected element of the United States Intelligence Community to the Special Advocate's submission.
 - (6) Any other submissions requested or authorized by the panel.
- (b) Schedule of Submissions when an Element of the United States Intelligence Community files an Application.** Unless otherwise provided by the Court through a scheduling order, when an element of the United States Intelligence Community files an application, submissions to the panel reviewing the application shall proceed in the following sequence:
- (1) The application filed by the element of the United States Intelligence Community. This may also include any submission by the CLPO.
 - (2) The transmission of the record of review.
 - (3) The submission of the Special Advocate to the Court.
 - (4) Any reply by the CLPO and any affected element of the United States Intelligence Community to the Special Advocate's submission.
 - (5) Any other submissions requested or authorized by the panel.
- (c) Requests to supplement.** The Court may at any time request that the CLPO supplement the record in accordance with Rule 10(b).

Rule 13. Motions.

- (a) Application for Relief.** Where an application for relief is consistent with the Attorney General regulations, it shall be made by motion unless these Rules prescribe another form.

Rule 14. Special Advocates.

- (a) Special Advocate Access to Information.** Consistent with Rule 5, the Special Advocate shall have access to the record of review and, consistent with 28 C.F.R. §201.5(b)(6), shall receive a copy of the application and any information received by the Court in connection with the application.
- (b) Special Advocate Communication with the Complainant.**
 - (1)** If the complainant filed the application, the Special Advocate may, at any time before the Court's decision, submit written questions to OPCL for the complainant or the complainant's counsel. Providing such questions to the complainant shall be consistent with 28 C.F.R. § 201.8(d)(2) as follows:
 - A.** Any questions shall first be provided to OPCL to ensure, in consultation with the CLPO and the relevant elements of the

United States Intelligence Community, that no classified, privileged, or protected information is disclosed. After this consultation, OPCL shall convey the questions, subject to any limitations from the consultation, to the complainant, or the complainant's counsel or representative, through the appropriate public authority with an invitation to provide responses to the Special Advocate through the public authority.

B. Unless otherwise permitted by the Court, responses are due from the complainant or the complainant's counsel to the public authority no later than thirty (30) days from the complainant's receipt of the questions from the appropriate public authority. The public authority shall endeavor to transmit the responses to OPCL for the Special Advocate within fifteen (15) days of receipt. If the responses are provided in a language other than English, the appropriate public authority shall arrange for certified translation of the responses into English on behalf of the complainant. The transmittal of the responses must note if the responses were translated and must the original, untranslated responses.

(2) If an element of the United States Intelligence Community filed the application, the Special Advocate shall not provide to the complainant or the complainant's counsel or representative any information related to the existence, review, or outcome of the application.

(c) Complainant Access to the Record. Consistent with the security measures set out in Rule 5, neither a complainant nor a complainant's counsel or representative will be provided access to the classified *ex parte* record of review or supplementation of the record, or any classified, privileged, or protected material in submissions by an element of the United States Intelligence Community or a Special Advocate, or the materials prepared by the Court. If an element of the United States Intelligence Community filed the application, neither the complainant nor the complainant's counsel or representative shall receive or be provided with any information related to the existence, review, or outcome of the application.

Rule 15. Computation of Time.

The following Rules apply in computing a time period specified by these Rules or by Court order:

(a) Period Stated in Days or a Longer Unit. When the period is stated in days or a longer unit of time:

(1) Exclude the day of the event that triggers the period;

(2) Count every day, including intermediate Saturdays, Sundays, and legal holidays; and

- (3) Include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

Title V. Hearings, Court Decisions, and Notice

Rule 16. Hearings.

- (a) **Scheduling.** The panel reviewing an application will determine whether a hearing is necessary and, if so, set the time and place of the hearing.
- (b) **Conduct of Hearings.** Any hearings conducted by a panel shall comply with Rule 5 for the protection of classified, privileged, or protected information, and shall comply with all applicable requirements including, but not limited to, those set forth in 28 C.F.R. §§ 201.1, 201.5(b)(4) and (6), and 201.11; as well as Executive Order 14086, Executive Order 13526 (or its successor), and all other applicable laws and regulations.
- (c) **Oral Argument.** The Special Advocate appointed to the matter and counsel representing the affected element(s) of the United States Intelligence Community shall attend hearings to provide oral argument on questions of law or the application of law to the facts.
- (d) **Supplementation of Record.** The CLPO shall attend a hearing to address any questions from the panel about the CLPO's record of review and any supplemental information or factual findings requested by the Court prior to the hearing in accordance with Rule 10(b).
- (e) **Recording of Hearings.** A hearing may be recorded electronically or as the Court may otherwise direct, consistent with the security measures referenced in Rule 5.

Rule 17. Plenary Meetings of the Court.

The Chief Judge may convene the members of the full Court to consider procedural and organizational matters in appropriate circumstances, such as when large numbers of applications appear to raise similar issues, and determine how, in such circumstances, applications might best be assigned to panels and decided consistent with the Attorney General regulations.

Rule 18. Court Decisions.

- (a) **Content of Decisions.** Panels of the DPRC will issue a written decision in every case. Each panel shall make its decision by majority vote setting out its determinations and any appropriate remediation. All decisions shall comply with Rule 5 for the protection of classified, privileged, or protected information, and shall comply with all applicable requirements including, but not limited to, those set forth in 28 C.F.R.

§§ 201.1, 201.5(b)(4) and (6), and 201.11, as well as Executive Order 14086, Executive Order 13526 (or its successor), and all other applicable laws and regulations.

- (1) If the Court finds no evidence in the record that signals intelligence activities occurred involving personal information of or about the complainant, it shall issue a decision to that effect.
- (2) If the Court finds evidence in the record that signals intelligence activities occurred involving personal information of or about the complainant, it shall determine whether the CLPO's determination concerning a covered violation is legally correct and supported by substantial evidence.
- (3) In the event of a covered violation, the Court shall determine whether the CLPO's determination as to the appropriate remediation is consistent with Executive Order 14086.
- (4) If the Court decides that the CLPO's determination is legally incorrect, unsupported by substantial evidence, or that the remediation is not appropriate under Executive Order 14086, then the Court shall issue its own determination.

(b) Opportunity of Affected Elements of the United States Intelligence Community to Submit Views on Appropriate Remediation. Before determining an appropriate remediation, the Court shall seek, through the CLPO, the views of affected elements of the United States Intelligence Community regarding the appropriate remediation, including an assessment of impacts on the operations of the United States Intelligence Community and national security. The Court shall take due account of these views as well as customary ways of addressing a violation of the type identified.

(c) Signatures. The judges may sign an order by any reliable, appropriately secure electronic means.

(d) Finality of the Decision. The decision of each DPRC panel shall be final and binding with respect to the application before it and shall be controlling only as to that application. For each application, OPCL shall maintain a record of the information reviewed by the DPRC panel and the decision of the DPRC panel, which records shall be made available for consideration as non-binding precedent to future DPRC panels considering applications for review.

(e) Issuance of the Decision. OPCL shall forward the written decision to the Special Advocate and to the CLPO to provide to the affected elements of the United States Intelligence Community. If the complainant submitted the application, OPCL shall notify the complainant through the appropriate public authority, without confirming or denying whether the complainant was subject to signals

intelligence activities, and at an appropriate time, taking into account that the timing of notification might itself tend to reveal whether a complainant was subject to signals intelligence activities, that:

- (1) The Court completed its review;
- (2) The review either did not identify any covered violations or the Court issued a determination requiring appropriate remediation; and
- (3) The notification to the complainant constitutes the final agency action in the matter.

Title VI. Administrative Provisions

Rule 19. Coordination with Other U.S. Government Entities.

- (a) **Provision of Information to the Foreign Intelligence Surveillance Court (FISC).** The Court shall provide a classified report on information indicating a violation of any authority subject to the oversight of the FISC to the Assistant Attorney General for National Security. Such disclosures must be made in conformance with the security measures referenced in Rule 5.
- (b) **Provision of Court Records to the U.S. Privacy and Civil Liberties Oversight Board (PCLOB).** The Court shall provide the PCLOB with access to information necessary to conduct the annual review of the redress process described in Section 3(e) of Executive Order 14086. Such disclosures must be made in conformance with the security measures referenced in Rule 5.
- (c) **Provision of Court Records to the U.S. Department of Commerce (Department of Commerce).** The Court shall provide the Department of Commerce with access to information necessary for it to conduct the duties assigned to it in section 3(d)(v) of Executive Order 14086. Such disclosures must be made in conformance with the security measures referenced in Rule 5.
- (d) **Lawful Oversight.** Subject to the provisions of Rule 5, nothing in these Rules shall restrict the Court's lawful oversight of its personnel or systems, or the lawful oversight functions of the U.S. Department of Justice, Office of Inspector General. Additionally, subject to the provisions of Rule 5 and any applicable U.S. Department of Justice policy, nothing in these Rules shall prohibit the retention or dissemination of information necessary to comply with a specific congressional mandate or order of a court within the United States.

Rule 20. Practice Before Court.

An attorney who is employed by and represents the United States or any of its agencies who appears in a matter before the Court must be a licensed attorney and a member, in good standing, of the bar of a State, Commonwealth, Territory, or Possession, or of the District of Columbia.

Rule 21. Counsel to the Court; OPCL Support to the Court.

There shall be a Counsel to the Court, who shall be designated to act as such by OPCL consistent with 28 C.F.R. § 201.5 and who shall act at the direction of the Court. The Court may define the role and activities of the Counsel to the Court by way of Orders not otherwise inconsistent with the Attorney General regulations or other applicable law.