

# THE FBI'S NON-EMERGENCY EXIGENT LETTERS

The WaPo has a story out describing how the FBI, from 2002 until 2006, used exigent letters to collect phone records without the proper underlying terrorist justification.

The FBI illegally collected more than 2,000 U.S. telephone call records between 2002 and 2006 by invoking terrorism emergencies that did not exist or simply persuading phone companies to provide records, according to internal bureau memos and interviews. FBI officials issued approvals after the fact to justify their actions.

[snip]

FBI officials told The Post that their own review has found that about half of the 4,400 toll records collected in emergency situations or with after-the-fact approvals were done in technical violation of the law. The searches involved only records of calls and not the content of the calls. In some cases, agents broadened their searches to gather numbers two and three degrees of separation from the original request, documents show.

MadDog has helpfully linked to a collection of all the emails included individually in the WaPo story.

There are a couple of details I find particularly interesting in this story. First, the exchange showing top FBI officials trying to collect phone records “related to a terrorist organization with ties to the US,” based on an underlying cable that FBI refused to share internally.

Separately, Kopistansky in the FBI general counsel's office learned in mid-December 2004 that toll records were being requested without national security letters. She handled a request that originated from then-Executive Assistant Director Gary Bald, who had "passed information regarding numbers related to a terrorist organization with ties to the US" and obtained toll records, the memos show.

The communications analysis unit asked Kopistansky to "draw up an NSL" to cover the search, but she was unable to get superiors to tell her which open terrorism case it involved.

Call me crazy, but since we know the FBI and NSA were illegally wiretapping organizations like al-Haramain in 2004, you have to wonder whether this was an attempt to clean up poison fruit from earlier, even more illegal surveillance.

Then there's the detail that the FBI "shut down" this program when the IG started investigating.

Phone record searches covered by exigent letters ended in November 2006 as the Justice Department inspector general began investigating.

I can't help but recall that Section 215 of the PATRIOT Act—which would allow for the collection of phone records—started to be used for a classified collection program in 2006.

Finally, there's the way this story feels like a limited hang-out. The story notes that this will all be revealed in an IG report coming out later this month.

A Justice Department inspector general's report due out this month is expected to conclude that the FBI frequently violated the law with its emergency requests, bureau officials confirmed.

So this just tells us what Glenn Fine will presumably tell us in a matter of weeks?

And John Solomon, fresh off his stint with the Moonie Times, helpfully offers this (false) excuse.

The failure to obtain timely and actionable information has been a recurrent theme in the U.S. counterterrorism effort, up to and including the recent shootings at Fort Hood, Tex.

(After all, the problem with Nidal Hasan was not that the FBI and others hadn't collected information, it's that they didn't share it properly.)

And then there's the PATRIOT Act renewal that is still pending (and FBI Director Mueller will testify before Senate Judiciary Committee tomorrow on information sharing).