

JOHN BRENNAN REFUSES TO DENY THE GOVERNMENT COLLECTS US PERSON DATA WITH NO PREDICATE

John Brennan pointedly refused to answer Mark Udall's question about whether the government collects information on Americans without a predicate.

In 2008, you stated, "I would argue the government needs to have access to only those nuggets of information that have some kind of predicate. That way the government can touch it and pull back only that which is related." You also stated that the issue needed to be discussed, "not to the point of revealing sources and methods and giving the potential terrorists out there insights into our capability – but to make sure there is a general understanding and consensus that these initiatives, collections, capabilities, and techniques comport with American values and are appropriately adjusted to deal with the threat we face." Do you believe the U.S. government currently has access to only nuggets of information that have some kind of predicate? Do you believe that the public has adequate information on this topic?

I believe your first question is referencing statements I made about the need to balance security, privacy, and civil liberty interests in connection with the then ongoing public debate over changes to the Foreign Intelligence Surveillance Act. With respect to FISA, this Administration has worked hard to

ensure that any electronic surveillance that targets the American people is subject to judicial review through the Foreign Intelligence Surveillance Court to ensure, among other things, that such surveillance complies with the Constitution, and I strongly supported these efforts. I believe it is important that the Judicial Branch act as a check on the Executive Branch to ensure there is an adequate factual predicate to conduct lawful electronic surveillance that targets the American people. I have also supported – and will continue to support – the Administration’s efforts to ensure that Congress is kept informed of our surveillance practices and processes.

Moreover, the Act provides the process and procedures the Government must follow to undertake surveillance, as well as the role the Judicial Branch and the Congress play in that process. As I have stated publicly, I support as much transparency as possible on our counterterrorism efforts, consistent with our obligation to protect sources and methods. **Thus, to the extent we could discuss with the public some of the factual predicates that have been deemed by courts as sufficient to justify surveillance, I would support doing so.** Indeed I do believe, as I said in my September 2011 speech at Harvard Law School that an “open and transparent government” is one of the values our democratic society expects and demands. [my emphasis]

As a threshold matter, Brennan is addressing underlying predicates only with regards to the FISA Amendments Act, not to Section 215, which uses the relevance standard to collect information – from acetone and hydrogen peroxide purposes, probably to geolocation – of totally

innocent Americans.

But even so, this answer not only doesn't answer Udall's question – didn't you once believe that we should only collect intelligence for which there is a predicate so we don't conduct fishing expeditions – but it points to the inadequate role of the FISA Court in limiting who the US can spy on.

I guess John Brennan has become a fan of fishing expeditions into US person data.

In any case, unlike Lisa Monaco, Brennan isn't going to promise to release the secret law.

In 2008, you stated that it was important that there be a public airing, including public congressional hearings, related to the predicate for the surveillance of U.S. persons. Do you believe there is more on this topic that could be declassified?

[snip]

And while I am not aware of any particular information on this topic that could be declassified, I do believe any such information should be disclosed to the extent that such a disclosure could be done consistent with our national security.