

KEITH ALEXANDER'S IGNORANCE BY DESIGN

Oops! Forgot to encourage you all to support this work with a donation.

One of the most publicized lines from yesterday's FOIA disclosures comes from Keith Alexander's declaration to Reggie Walton on how the Section 215 dragnet went so horribly awry. He claims – without explaining the basis for his knowledge – that no one knew how all this worked.

Furthermore, from a technical standpoint, there was no single person who had a complete technical understanding of the BR FISA system architecture. (Alexander 19)

The comment comes amidst a section that discusses not system architecture, but simple legal compliance, in which Alexander describes how,

- NSA's lawyers consistently gave incorrect data to FISC over 3 years time
- NSA's lawyers exempted a whole class of data – that not yet “archived” – from the plain meaning of the law

At the beginning of this particular section, he says his knowledge comes from,

Reviews of NSA records and discussions with relevant NSA personnel (Alexander 16)

But at the beginning of Alexander's declaration, he states his statements,

are based on my personal knowledge,

information provided to me by my subordinates in the course of my official duties, advice of counsel, and conclusions reached in accordance therewith. (Alexander 2)

That is, for the declaration overall, Alexander says he only spoke to “counsel” and other NSA people in “the course of [his] official duties,” and there only with subordinates. Admittedly, all NSA personnel should be his subordinates, but it is curious he doesn’t describe the NSA personnel he spoke with as such.

That’s important, because throughout this section, Alexander’s statements are caveated with “it appears” introductions.

... the inaccurate description of the BR FISA alert list initially appears to have occurred to a mistaken belief ... (Alexander 17)

... Therefore, it appears there was never a complete understanding among the key personnel who reviewed the report ... (Alexander 18)

... Nevertheless, it appears clear in hindsight from discussions with the relevant personnel as well as reviews of NSA’s internal records that the focus was almost always on whether analysts were contact chaining the Agency’s repository of BR FISA data in compliance ... (Alexander 18)

Now perhaps Alexander spoke to the people who actually knew what went on. It turns out they would, in significant part, be lawyers. Counsel.

Though that’s rarely reflected in his descriptions. In perhaps just one sentence, he makes an assertion about what the SIGINT Directorate and the OGC [counsel] “realized,” though note he doesn’t specify a single human subject for that realization.

Or perhaps he spoke only to "relevant personnel" who provided him information in the course of his normal duties.

But one thing is clear: he either doesn't claim actual knowledge about the subject he is addressing beyond what actually got documented, the most important topic in his declaration. Or he does, but for some reason he was, in this matter alone, uncomfortable asserting that as a clear fact.

Yet somehow, having spoken to remarkably few people, he somehow feels confident claiming no one knew about the entire architecture (an irrelevant issue to the legal and management problem at hand)?

I would suggest Alexander's lawyers [counsel!] – the very people who provided false information to the court and false advice to NSA personnel – might have a good deal more certainty about what happened than Alexander. But somehow they managed to avoid making sworn declarations to the court about those subjects.

Update: The list of people who knew about this stuff on Alexander 25-26 is of particular interest. Two OGC lawyers and 3 program managers had access to both what was allowed to analysts and what was reported to the court (though Alexander helpfully notes, "[t]his does not mean that an individual who was on distribution for the reports was actually familiar with the contents of the reports."

Alexander also says he had conversations with the people on distribution of the original email drafting language for the court.

Alexander goes on to note there were a lot of people that knew of how the alerts worked but, "[b]ased on information available to me, I conclude it is unlikely that this category of personnel knew how the Agency had described the alert process to the Court."