

FISA COURT FINALLY DISCOVERS A LIMIT TO THE WORD “RELEVANT”

A few weeks back I laughed that, in a probable attempt to score political points against those challenging the phone dragnet by asking to retain the phone dragnet longer than 5 years, DOJ had shown a rather unusual concern for defendant’s rights.

Judge Reggie Walton has just denied DOJ’s motion. In doing so he has found limits to the word “relevant” that otherwise seem unheard of at the FISC in recent memory.

For its part, the government makes no attempt to explain why it believes the records that are subject to destruction are relevant to the civil cases. The government merely notes that “[r]elevant’ in this context means relevant for purposes of discovery, ... including information that relates to the claims or defenses of any party, as well as information that is reasonably calculated to lead to the discovery of admissible evidence.” Motion at 6. Similarly, the government asserts that “[b]ased on the issues raised by Plaintiffs,” the information must be retained, but it fails to identify what those issues are and how the records might shed light on them. *Id.* at 7. Finally, the motion asserts, without any explanation, that “[b]ased on the claims raised and the relief sought, a more limited retention of the BR metadata is not possible as there is no way for the Government to know in advance and then segregate and retain only the BR metadata specifically relevant to the identified lawsuits.” *Id.* Of course, questions of relevance are ultimately matters for the courts entertaining the

civil litigation to resolve. But the government now requests this Court to afford substantial weight to the purported interests of the civil litigants in retaining the BR metadata relative to the primary interests of the United States persons whose information the government seeks to retain. The government's motion provides scant basis for doing so.

Shew. Given the way FISC has been defining the word "relevant" since 2004 to mean "virtually all," I had thought the word had become utterly meaningless.

At least we know the word "relevant" has some limits at FISC, even if they're unbelievably broad.

Mind you, I'm not sure whether FISC or the government is right in this case, as I do have concerns about the data from the troubled period during 2009 aging off.

But I will at least take some Friday afternoon amusement that the FISC just scolded the government about the word "relevant."