

HOUSE INTELLIGENCE COMMITTEE MOVES TO LEARN HOW OTHER SERVICES DON'T THROW AWAY INCIDENTAL US PERSON DATA

I've long been tracking the implications of the Air Force's policy to keep US person data incidentally collected using domestic drones. Effectively, it would allow the government to collect data on select locations (such as a likely drug trafficking route), so long as it didn't target any particular American, and then refer back to or data mine that information in the future.

The policy is (not surprisingly, since both are DOD) very nearly parallel to what we think is happening with the NSA's collections. So long as they weren't originally targeting a US person, the government seems to be saying, nothing prevents them from going back to use the data in the future.

Which is why I'm not all that impressed by the House Intelligence Committee's push, in this year's appropriations bill, to require other services and DOD agencies to lay out what they're doing with domestic collections.

Congress has directed the Secretary of Defense to report on the handling of surveillance data collected by military unmanned aerial systems operating in domestic airspace. A provision in the 2013 continuing appropriations conference bill approved by the House yesterday explained:

"The conferees are aware of concerns that have been raised regarding the use of unmanned aerial vehicles (UAV) and

their sensors in domestic airspace. The conferees understand that the Air Force has policies and procedures in place governing the disposition of UAV collections that may inadvertently capture matters of concern to law enforcement agencies. **These policies and procedures are designed to ensure constitutional protections and proper separation between the military and law enforcement.** However, it is unclear if other Services and Defense agencies have similar policies and procedures in place, or if these policies and procedures need to be revised or standardized. Therefore, the conferees direct the Secretary of Defense to report to the congressional defense committees on the policies and procedures in place across the Services and Defense agencies governing the use of such collections and to identify any additional steps that need to be taken to ensure that such policies and procedures are adequate and consistent across the Department of Defense. This report shall be submitted not later than 90 days after the enactment of this Act.” [my emphasis]

Given the liberal policies the Air Force uses on “incidentally” collected information, it doesn’t seem to offer much protection under the Fourth Amendment (not least because the Clapper decision means we would never be able to challenge such collection). Rather, this effort seems designed to placate concerns about violations of Posse Comitatus and potentially stave off real privacy efforts.

When the Michael Chertoff threatened to use satellites to conduct this kind of surveillance 5 years ago, Democrats (led by Bennie Thompson and Jane Harman) balked, and forced Chertoff to back down. Since then, however, drones that can and do conduct the same kind of surveillance (in

the guise of training, mind you!) have been rolled out without, until just recently, any focus on the same issues.

Yet another example of what a Democratic President can get away with that a Republican cannot.