

SURPRISE! DOJ IG'S 1,403 DAY OLD SECTION 215 INVESTIGATION HAD A BABY!

As longtime readers know, I have long tracked a DOJ Inspector General investigation into FBI's use of Section 215 and other PATRIOT Act authorities.

- June 2010: Then DOJ IG Glenn Fine lays out investigation
- June 2013: Transition to Michael Horowitz stalls PATRIOT investigation
- August 2013: The investigation has been ongoing
- September 2013: Pat Leahy calls for an IC IG investigation into 215 and 702; IC IG Charles McCullough declines
- December 2013: Horowitz states current investigation limited by AG/DNI declassification of earlier reports

A good healthy obsession!

Since it's been a while – the investigation is now 1,403 days old – yesterday I decided to nag the IG office.

They were mum on when we might finally see the report. Instead of offering details, they directed me to their new (apparently brand spanking new) “in the interest of transparency” page on their ongoing work.

It shows the long-promised report, still focusing on Section 215 use through 2009, as well as NSLs and pen register.

Use of National Security Letters, Section 215 Orders, and Pen Register and Trap-and-Trace Authorities under FISA from 2007 through 2009

The OIG is again examining the FBI's use of NSLs and Section 215 orders for business records. This review is assessing the FBI's progress in responding to the OIG's recommendations in its first and second reports on the FBI's use of NSLs and its report on the FBI's improper use of exigent letters and other informal means to obtain telephone records. A focus of this review is the NSL subsystem, an automated workflow system for NSLs that all FBI field offices and headquarters divisions have been required to use since January 1, 2008, and the effectiveness of the subsystem in reducing or eliminating noncompliance with applicable authorities. The current review is also examining the number of NSLs issued and Section 215 applications filed by the FBI between 2007 and 2009, and any improper or illegal uses of these authorities. In addition, the review is examining the FBI's use of its pen register and trap-and-trace authority under FISA.

But it also shows a report not mentioned in Michael Horowitz' last report.

A report on the dragnet.

Bulk Telephony Review

The OIG is reviewing the FBI's use of information derived from the National Security Agency's (NSA) collection of telephony metadata obtained from certain telecommunications service providers under Section 215 of the Patriot Act. The review will examine the FBI's procedures for receiving, processing, and disseminating leads the NSA develops from the metadata, and any changes that have been made to these procedures over time. The review will also examine how FBI field offices respond to leads, and the scope and type of information field offices collect as a result of any investigative activity that is initiated. In addition, the review will examine the role the leads have had in FBI counterterrorism efforts.

In truth, this investigation may not be all that distinct from the known PATRIOT authorities investigation. The minimization procedures for both – and therefore the way the information gets used, an issue central to both investigations – appear to be the same. And to the extent that the number of 215 orders with minimization procedures has been growing since 2010 indicates the FBI is collecting other information in bulk, the programs may well interrelate.

At first, I thought that this investigation, with the very significant exception of the way the dragnet serves to identify informants, might not reveal anything that problematic. Upon review, I'm not so sure. I'll explain why in a follow-up report.

The one big difference between the two investigations, however (and I'll discuss this at more length in the follow-up), is that dragnet investigation, unlike the PATRIOT Authority one, appears not to be time delimited. Whereas the older investigation only looks at

practices through 2009, the dragnet investigation appears to be examining on-going practices. It seems to be investigating all the 215-related issues identified by Pat Leahy that the IC IG should investigate that come under DOJ's jurisdiction.

So bad news good news! DOJ is still, 1,403 days later, investigating how the FBI used PATRIOT Act authorities 5 years ago, meaning more recent developments are not getting much attention.

But there is a potentially related investigation looking at what the FBI ingests from the phone dragnet (at least the small part relating to Section 215) right now.