

NSA'S NEW-AND-IMPROVED CALL CHAINING PROCESS, NOW WITH NO CALLS REQUIRED

As I noted, last night I Con the Record released the phone dragnet orders from last week and from March.

There are two significant changes (which may well be related).

First, perhaps in anticipation of shifting to production from the providers, perhaps because the Court has rethought its authorization granted in November 2012, the government appears to have given up its effort to introduce an automated query.

Queries of the BR metadata using RAS-approved selection terms for purposes of obtaining foreign intelligence information may occur by manual analyst query only.

PCL0B provided the only unclassified description of what the government had been trying to do with its automated query.

In 2012, the FISA court approved a new and automated method of performing queries, one that is associated with a new infrastructure implemented by the NSA to process its calling records.⁶⁸ The essence of this new process is that, instead of waiting for individual analysts to perform manual queries of particular selection terms that have been RAS approved, the NSA's database periodically performs queries on all RAS-approved seed terms, up to three hops away from the approved seeds.

But, as I reported in February, NSA has never been able to pull off its automated alert, purportedly for technical reasons (which usually means it could not technically meet the requirements imposed by the court).

The Court understands that to date NSA has not implemented, and for the duration of this authorization will not as a technical matter be in a position to implement, the automated query process authorized by prior orders of this Court for analytical purposes. Accordingly, this amendment to the Primary Order authorizes the use of this automated query process for development and testing purposes only. No query results from such testing shall be made available for analytic purposes. Use of this automated query process for analytical purposes requires further order of this Court.

The government revealed NSA's failure to implement its automatic alert in its motion to amend this year's first dragnet order.

In that same motion it implemented the change in standard dragnet language that has been retained in these more recent dragnet orders: the NSA is chaining on "connections" as well as actual calls.

14 The first "hop" from a seed returns results including all identifiers (and their associated metadata) with a contact and/or connection with the seed. The second "hop" returns results that include all identifiers (and their associated metadata) with a contact and/or connection with an identifier revealed by the first "hop."

Now, it may be that the entire time one after another government witness has testified to Congress that this phone dragnet only returns on

calls, they've been doing this connection-based chaining as well. As I noted in this post, connection-based chaining has been in a redacted section of phone dragnet orders describing their automated query. (They seem to have ditched the automation but retained the connection based chaining.) And Dianne Feinstein's Fake FISA Fix also would have permitted connection chaining.

Whether Administration witnesses were being deliberately deceitful when testifying about call-based chaining ("not wittingly!") or the NSA only recently resumed doing connection based chaining manually, having given up on doing it automatically, one thing is clear. The NSA has been doing connection based chaining since at least February, and very few people in Congress know what that means. Nevertheless, they're about to authorize that formally.