

USA FREEDUMBER WEAKENS FISC'S AUTHORITY OVER ABUSE OF EMERGENCY QUERIES

I Con the Record just released the most recent dragnet orders – I'll have more comment on them later.

But for now, I wanted to show how HR 3361 – AKA the USA Freedumber Act – weakened FISA Court authority in yet another way.

I have repeatedly pointed to how pathetic the “prohibition” against using information, obtained via an Attorney General emergency order, but then ruled by the FISA Court to be an improper use of the Section 215 authority. It reads:

(5) If such application for approval is denied, or in any other case where the production of tangible things is terminated and no order is issued approving the production, no information obtained or evidence derived from such production shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such production shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person.

'(6) The Attorney General shall assess

compliance with the requirements of paragraph (5).

The bill would prohibit the government from using the improperly obtained information in trials and other proceedings. And the information is not supposed to be used in any manner – except if the Attorney General deems the information tin indicate a threat of death or bodily harm (which we know the government has secretly redefined to include threat to property).

But it's the Attorney General – the same guy who approved the illegal production – who ensures the government follows that role.

Moreover, the bill does not require the government to destroy this data. They get to keep it.

Compare that with the status quo (see footnote 8).

In the event the Court denies such motion [retroactively seeking approval for emergency production], the government shall take appropriate remedial steps, including any steps the Court may direct.

Call me crazy, but I think the FISA Court judge who deemed the collection to be improper is a better person to determine what the remedy is to fix that improper collection.

I guess even that basic concept of separation of powers was too burdensome for Bob Litt.