

NYT MISCHARACTERIZES PCLOB REPORT WHILE TRANSCRIBING NSA PUSHBACK TO WAPO

The NYT has a story transcribing Administration efforts to “play down new disclosures” from the WaPo showing that the bulk of people whose communications were collected in a sample provided by Edward Snowden were not targets. The key claim NYT transcribes is that NSA “filters out” US person communications.

Administration officials said the agency routinely filters out the communications of Americans and information that is clearly of no intelligence value.

In addition, the NYT claims that PCLOB had no problems with the way the government minimized all this data.

Just days before the Post article, an independent federal privacy board had largely endorsed the N.S.A.’s execution of the program. The Privacy and Civil Liberties Oversight Board concluded last week that the “minimizing” of that data was largely successful, at least under the current law, which Congress passed six years ago.

Um, no.

I hope to explain this at more length, but the WaPo suggests that the government did not comply with targeting and minimization requirements in two ways: first, because the standards for foreignness were not as stringent as witnesses have claimed for a year (something which NYT’s sources apparently don’t even try to rebut). But also, WaPo showed the NSA was not destroying communications that – at least from their own

and even some of the analysts' own descriptions of it – had no foreign intelligence value. Here are some analysts judging the data collected irrelevant.

“None of the hits that were received were relevant,” two Navy cryptologic technicians write in one of many summaries of nonproductive surveillance. “No additional information,” writes a civilian analyst.

It's this second detail NYT's sources attempt to rebut.

But NYT's claim that PCLOB concluded minimization “was largely successful” ignores a number of concerns they raised about it, a number of which pertain to back door searches and upstream collection.

In addition to those concerns (which about four of PCLOB's recommendations address), PCLOB raised this issue:

Therefore, although a communication must be “destroyed upon recognition” when an NSA analyst recognizes that it involves a U.S. person and determines that it clearly is not relevant to foreign intelligence or evidence of a crime,⁵³¹ in reality this rarely happens. Nor does such purging occur at the FBI or CIA: although their minimization procedures contain age-off requirements, those procedures do not require the purging of communications upon recognition that they involve U.S. persons but contain no foreign intelligence information.

A communication must be destroyed upon recognition if it's a US person communication with no intelligence value – PCLOB restates the standard that NYT's sources claim is actually used. But after laying out that standard, PCLOB immediately says meeting that requirement “rarely happens.”

NYT's sources say it routinely happens. PCLOB says it rarely happens at NSA, and not at all at CIA and FBI.

PCLOB, incidentally, recommends addressing this issue by having FISC review what tasking standards are actually used and then reviewing a subset of the data returned – precisely what the WaPo just did, though we have no way of knowing if WaPo had a representative sample.

But the story here should have been, "Administration's rebuttal has already been refuted by PCLOB's independent review."

PCLOB and WaPo disagree about the tasking – PCLOB sides with past Administration witnesses on the assiduousness of NSA's targeting.

But PCLOB entirely backs WaPo on how many worthless communications NSA is keeping and documenting.