

DICK DURBIN'S OBSCURE TRANSPARENCY BID

Steven Aftergood notes that the Senate Appropriations Committee has included a reporting requirement on NSA on its “bulk collection” programs.

That’s all well and good, if the language isn’t stripped before final passage. But there are a couple of limits to the language.

First, the reporting requirements on Section 215 only go back to 2009.

For the last 5 years, on an annual basis, the number of records acquired by NSA as part of the bulk telephone metadata program authorized by the Foreign Intelligence Surveillance Court, pursuant to section 215 of the USA PATRIOT Act, and the number of such records that have been reviewed by NSA personnel in response to a query of such records;

Of course, the program changed significantly in 2009; the collection scope may have narrowed at that point. And many of the abuses were ended in that year.

And there are two problems with the requirement to provide a list of all “bulk collection” programs.

A report, unclassified to the greatest extent possible, and with a classified annex if necessary, describing all NSA bulk collection activities, including when such activities began, the cost of such activities, what types of records have been collected in the past, what types of records are currently being collected, and any plans for future bulk collection.

We know the intelligence community only includes programs that use no discriminator as “bulk collection.” So the report would list what the IC considers bulk collection, not what normal human beings do.

In addition, only NSA would have to report its bulk programs. We know, for example, that the FBI has a Pen Register program that presumably involves some bulk. That would not show up in this list.

So, great! Transparency!

But not transparency that will tell us what we need to know.