

IN RESPONSE TO NYT LAWSUIT, FBI RECLASSIFIES 26 WORDS

Last week, a number of people hailed the further declassification of DOJ Inspector General's Report on FBI's use of Exigent Letters.

That enthusiasm is misplaced, however. What too few people noticed is the thankless work Charlie Savage did to identify what was newly declassified. He had FOIAed the IG Report, which is what set off the declassification review.

In fact, FBI redacted three things that had previously been visible. On page 55/PDF 68, it redacted the title, "Diagram 2.1: Calling Circle or "Community of Interest." On page 105/PDF 118 they redacted language indicating they use a certain kind of "language" to order what are probably also communities of interest. Finally, on page 207/PDF 220, FBI newly redacted the title, "Chart 4.3 Records for 10 Telephone Numbers Uploaded to FBI Databases With the Longest Periods of Overcollection."

So the NYT sued the FBI to declassify language that should be declassified, given everything we've learned about related programs subsequent to the Snowden leaks, and FBI responded by trying to pretend we don't know they were getting (and still get, per DOJ IG's most recently report) call chains from telecoms.

To be fair, FBI did declassify some new stuff. That includes:

- Roughly 44 uses of some form of the word "search"
- Roughly 33 uses of some form of "target"
- Roughly 24 references to

- years, either 2004 or 2005
- The names of 3 of a number of journalists whose records had been improperly collected and details of the collection

About the most interesting declassification was a citation to a Carrie Johnson story, published well over a year before the IG Report came out, describing the collection on those 3 journalists. The IG Report invoked this language in the story...

Mueller called the top editors at The Washington Post and the New York Times to express regret that agents had not followed proper procedures when they sought telephone records under a process that allowed them to bypass grand jury review in emergency cases.

... as evidence to support a footnote, which (except for the reference to Johnson's article) had been unclassified, explaining,

In addition to the letter, Director Mueller called the editors of the two newspapers to express regret that the FBI agents had not followed proper procedures when they sought the reporters' telephone records.

That is, they had classified reference to a published news article as S/NF! (Though I suppose it is possible that the fact they were hiding is that Glenn Fine had to read the WaPo to figure out what happened here, because Mueller wasn't speaking directly to him.)

Congratulations to Carrie Johnson who I guess now classifies as a state secret!

I asked the Savage (and through him, NYT's lawyer, David McCraw) how the NYT felt about FBI classifying, rather than declassifying language

in response to his suit, and he suggested NYT expects DOJ to pay them for their time. "We have incurred no outside counsel fees and anticipate that the government will be required to pay us for the time spent by in-house counsel."

Still, I think Savage (and FOIA requesters generally) should get finder's fees every time the government newly classifies stuff years later ... impose some kind of fine for stupid overclassification.

Update: Corrected timing on Johnson story which came out in August 2008, so 17 months before the IG Report.