

DEA LIKELY HAS MORE THAN ONE DRAGNET

As yesterday's USAT story on the DEA dragnet reported, DOJ's Inspector General is investigating DEA's dragnet. I first reported that in April 2014.

As I also reported in February, FBI is obstructing that investigation – so much so, that DOJ's Inspector General Michael Horowitz encouraged Congress to start using appropriations to force it to stop.

The unfulfilled information request that causes the OIG to make this report was sent to the FBI on November 20, 2014. Since that time, the FBI has made a partial production in this matter, and there have been multiple discussions between the OIG and the FBI about this request, resulting in the OIG setting a final deadline for production of all material of February 13, 2015.

On February 12, 2015, the FBI informed the OIG that it would not be able to produce the remaining records by the deadline. The FBI gave an estimate of 1-2 weeks to complete the production but did not commit to do so by a date certain. The reason for the FBI's inability to meet the prior deadline set by the OIG for production is the FBI's desire to continue its review of emails requested by the OIG to determine whether they contain any information which the FBI maintains the OIG is not legally entitled to access, such as grand jury, Title III electronic surveillance, and Fair Credit Reporting Act information.

DOJ IG's comments about this investigation are worth reconsideration for two reasons.

First, FBI's obstruction of the investigation emphasize what we already knew from the Shantia Hassanshahi case (via which we first learned about this database). The FBI is (was) also using this database, and for purposes that far exceed counter-narcotics (Hassanshahi was busted for sanctions violations). And, as the Homeland Security investigator's dramatically changing stories about how he first identified Hassanshahi suggest, for each of those usages, there's likely some kind of parallel construction going on.

How many cases have been based off this giant dragnet?

But also look at how DOJ's IG has described this investigation.

Administrative Subpoenas

The OIG is examining the DEA's use of administrative subpoenas to obtain broad collections of data or information. The review will address the legal authority for the acquisition or use of these data collections; the existence and effectiveness of any policies and procedural safeguards established with respect to the collection, use, and retention of the data; the creation, dissemination, and usefulness of any products generated from the data; and the use of "parallel construction" or other techniques to protect the confidentiality of these programs.

DOJ IG is investigating DEA's use of subpoenas to obtain *broad collections of data or information*. Its review will address the legal authority underlying *these data collections*.

Collections, plural.

Admittedly, we already know of two DEA dragnets: the international dragnet described by the USAT,

and the domestic one – Hemisphere – though that resides at least partially with the White House Drug Czar.

But the authority used in the USAT dragnet, 21 USC 876, is the drug equivalent of Section 215, permitting the agency to obtain “tangible things” relevant to (that phrase again) an investigation. We know FBI used equivalent language under Section 215 to collect financial and Internet records as well.

Hell, the DEA couldn’t very well track drug cartels without following the money, via whatever means. Plus, we know cartels have used things like travelers checks and gift cards to move money in recent years.

So I would be willing to bet more than a few quarters that DOJ IG’s use of the term “collections” suggests there’s more than just these telecom dragnets hiding somewhere.