

INTELLIGENCE COMMITTEES STILL TRYING TO FORCE AGENCIES TO FOLLOW REAGAN'S RULES

34 years ago Ronald Reagan issued the Executive Order that still governs most of our country's intelligence activities, EO 12333.

As part of it, the EO required any agency using information concerning US persons to have a set of procedures laying out how it obtains, handles, and disseminates information (see the language of 2.3 below).

Only – as the Privacy and Civil Liberties Oversight Board started pointing out in August 2013 – some agencies have never complied. In February, PCLOB revealed the 4 agencies that are still flouting Reagan's rules, along with what they have been using:

The Department of Homeland Security's notoriously shoddy Office of Intelligence and Analysis: Pending issuance of final procedures, I&A is operating pursuant to Interim Intelligence Oversight Procedures, issued jointly by the Under Secretary for Intelligence and Analysis and the Associate General Counsel for Intelligence (April 3, 2008).

United States Coast Guard (USCG)- Intelligence and counterintelligence elements: Pending issuance of final procedures, operating pursuant to Commandant Instruction – COMDINST 3820.12, Coast Guard Intelligence Activities (August 28, 2003).

Department of Treasury Office of Intelligence and Analysis (OIA): Pending

issuance of final procedures. While draft guidelines are being reviewed in the interagency approval process, the Office of Intelligence and Analysis conducts intelligence operations pursuant to EO 12333 and statutory responsibilities of the IC element, as advised by supporting legal counsel.

Drug Enforcement Administration, Office of National Security Intelligence (ONSI): Pending issuance of final procedures, operates pursuant to guidance of the Office of Chief Counsel, other guidance, and: Attorney General approved "Guidelines for Disclosure of Grand Jury and Electronic, Wire, and Oral Interception Information Identifying United States Persons" (September 23, 2002); Attorney General approved "Guidelines Regarding Disclosure to the Director of Central Intelligence and Homeland Security Officials of Foreign Intelligence Acquired in the Course of a Criminal Investigation" (September 23, 2002).

Last year's House Intelligence Committee version of NSA reform (the one I called RuppRoge) would have included language requiring agencies to finish these procedures – mandated 34 years ago – within 6 months. And now, over a year later, Dianne Feinstein's latest attempt at reform echoed that language.

Which strongly suggests these agencies are still deadbeats.

As I said in February, I'm most concerned about DEA (because DEA is out of control) and, especially, Treasury (because Treasury's intelligence activities are a black box with little court review). Treasury is making judgements that can blacklist someone financially, but it has thus far refused to institute procedures to protect Americans' privacy while it does so.

And no one seems to be rushing to require them to do so.

2.3 Collection of Information. Agencies within the Intelligence Community are authorized to collect, retain or disseminate information concerning United States persons only in accordance with procedures established by the head of the agency concerned and approved by the Attorney General, consistent with the authorities provided by Part 1 of this Order. Those procedures shall permit collection, retention and dissemination of the following types of information:

- (a) Information that is publicly available or collected with the consent of the person concerned;
- (b) Information constituting foreign intelligence or counterintelligence, including such information concerning corporations or other commercial organizations. Collection within the United States of foreign intelligence not otherwise obtainable shall be undertaken by the FBI or, when significant foreign intelligence is sought, by other authorized agencies of the Intelligence Community, provided that no foreign intelligence collection by such agencies may be undertaken for the purpose of acquiring information concerning the domestic activities of United States persons;
- (c) Information obtained in the course of a lawful foreign intelligence, counterintelligence, international narcotics or international terrorism investigation;
- (d) Information needed to protect the safety of any persons or organizations, including those who are targets, victims or hostages of international terrorist organizations;
- (e) Information needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure. Collection within the United States shall be undertaken by the FBI except that other agencies of the Intelligence Community may also collect such information concerning present or former

employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting;

(f) Information concerning persons who are reasonably believed to be potential sources or contacts for the purpose of determining their suitability or credibility;

(g) Information arising out of a lawful personnel, physical or communications security investigation;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Incidentally obtained information that may indicate involvement in activities that may violate federal, state, local or foreign laws; and

(j) Information necessary for administrative purposes.

In addition, agencies within the Intelligence Community may disseminate information, other than information derived from signals intelligence, to each appropriate agency within the Intelligence Community for purposes of allowing the recipient agency to determine whether the information is relevant to its responsibilities and can be retained by it.