

FBI SUCCESSFULLY RUNS OUT THE CLOCK ON DOJ'S INSPECTOR GENERAL REVIEW OF USE OF PHONE METADATA

While everyone was focused on USA F-ReDux last week, DOJ's Inspector General submitted its semiannual report. In it, Michael Horowitz reiterated his complaint that FBI was stonewalling on document production. He listed 4 requests made after Congress defunded such stonewalling on which FBI was still stonewalling at the end of March.

The OIG has sent four letters to Congress to report that the FBI has failed to comply with Section 218 by refusing to provide the OIG, for reasons unrelated to any express limitation in Section 6(a) of the IG Act, with timely access to certain records in ongoing OIG reviews. Those reviews are:

- *Two FBI whistleblower retaliation investigations, letter dated February 3, 2015, which is available [here](#);*
- *The FBI documents related to review of the DEA's use of administrative subpoenas, letter dated February 19, 2015, which is available [here](#);*

- *The FBI's use of information derived from collection of telephony metadata under Section 215 of the Patriot Act, letter dated February 25, 2015, which is available [here](#); and*
- *The FBI's security clearance adjudication process, letter dated March 4, 2015, which is available [here](#).*

As of March 31, 2015, the OIG document requests were outstanding in every one of the reviews and investigations that were the subject of the letters above. The OIG is approaching the 1 year anniversary of the Deputy Attorney General's request in May 2014 to the Office of Legal Counsel for an opinion on these matters, yet that opinion remains outstanding and the OIG has been given no timeline for the issuance of the completed opinion. Although the OIG has been told the opinion is a priority for the Department, the length of time that has now passed suggests otherwise. Instead, the status quo continues, with the FBI repeatedly ignoring the mandate of Section 218 and the Department failing to issue an opinion that would resolve the matter. The result is that the OIG continues to be prevented from getting complete and timely access to records in the Department's possession. The OIG's ability to conduct effective and rigorous oversight is being undercut every day that goes by without a resolution of this dispute.

Of particular note, as of March 31, FBI was still stonewalling an October 10, 2014 request (and January 2015 deadline) connected with DOJ IG's review of how FBI has been using metadata from phone dragnets.

The OIG requested these records in connection with its pending review of the FBI's use of information derived from the National Security Agency's collection of telephony metadata obtained from certain telecommunications service providers under Section 215 of the Patriot Act. The timeliness of production is particularly important given that Section 215 of the Patriot Act is set to expire in June of this year.

FBI was also still stonewalling records of how it used DEA's dragnet, but in the case of phone metadata, Horowitz specifically tied the investigation to the upcoming sunset of Section 215 authority.

DOJ's IG wanted to review what was happening with the 2-hop dragnet data that got turned over to FBI before Congress reauthorized Section 215. And FBI successfully stalled that effort until after Congress passed a bill that will almost certainly result in far more phone metadata being turned over to FBI, and under far more permissive rules than they had been under.

I'll explain why that was probably important in a follow-up post. But for the moment, as pundits declare winners and losers on yesterday's passage of USA F-ReDux (I'll do my own version of that too, shortly!), it's worth noting that FBI successfully ran out the clock on its own IG, preventing us from learning about the privacy impact of one little-considered aspect of the dragnet.