

ALBERTO GONZALES REJECTED DHS' EO 12333 PROCEDURES IN 2006

I'm lost down a rabbit hole of declarations relating to ACLU's FOIA on EO 12333 documents (through which John Yoo's Stellar Wind justification for Colleen Kollar-Kotelly was released). Arthur Sepeta, DHS' declarant, had to explain the withholding of just one document, something that shows up on DOJ National Security Division's Vaughn Index.

Sepeta's explanation reveals that in 2006, DHS Secretary Michael Chertoff submitted some guidelines on the collection, retention, and dissemination of US person person information to comply with EO 12333. But Attorney General Alberto Gonzales rejected those guidelines. And, as Sepeta makes clear, DHS *still* doesn't have any guidelines.

In this case, NSD 2 is a draft of the DHS Procedures Governing Activities of the Office of Intelligence and Analysis that Affect United States Persons. Section 2.3 of Executive Order No. 12,333 requires the head of an Intelligence Community element or the head of a Department containing an Intelligence Community element to issue "procedures" concerning the collection, retention, and dissemination of information concerning United States persons, after the Attorney General approves the procedures. On April 3, 2006, as required by section 2.3 of Executive Order No. 12,333, the Secretary of Homeland Security, as the head of a Department containing an Intelligence Community element, submitted draft Procedures Governing Activities of the Office of Intelligence

and Analysis that Affect United States Persons for approval by the Attorney General. The Attorney General subsequently declined to approve the draft procedures submitted by the Secretary of Homeland Security and inter-agency negotiations over the content of these procedures remain ongoing to this day.

As I noted a year ago, in 2008, DHS adopted interim procedures, but they still haven't finalized any.

Mind you, given the people involved, it's unclear whether Gonzales' rejection of DHS' initial attempt is a good sign or bad sign.

Still, you'd think after 10 years, they would have adopted something?