

DOJ'S IG HINTS AT CONCERNS ABOUT BACK DOOR SEARCH ISSUES

In addition to focusing on whether the classification of past IG Reports will limit what he can release about the Section 215 dragnet and Section 702 content collection, DOJ Inspector General Michael Horowitz laid out one more significant civil liberties concern related to national security investigations.

Additional concerns about civil rights and liberties are likely to arise in the future. For example, significant public attention has been paid to programs authorizing the acquisition of national security information, but relatively less has been paid to the storing, handling, and use of that information. Yet after information has been lawfully collected for one investigation, crucial questions arise about whether and how that information may be stored, shared, and used in support of subsequent investigations. Similar questions arise about the impact on civil rights and liberties of conducting electronic searches of national security information and about whether and how information obtained in a national security context can be used for criminal law enforcement. As the Department continues to acquire, store, and use national security information, these issues will arise more and more frequently, and the Department must ensure that civil rights and liberties are not transgressed.

I don't guarantee this is a reference to back door searches.

But we know that FBI has been permitted to

conduct searches on content collected under traditional FISA or FISA Amendments Act since at least 2008. We know that the Intelligence Community does not believe it needs even Reasonable Articulable Suspicion – of a national security concern or of a crime – to search this data. And in the past, DOJ has argued it can use FISA-collected information to find things like evidence of rape to use to coerce people to turn informant.

So I'm going to wildarseguess that at least part of what Horowitz alludes to here pertains to whether DOJ can search this incidentally collected information in support of criminal investigations. That would of course violate the spirit of every wiretap law in the country, but given the government's past interpretations of what the elimination of the wall between NSA and FBI means and their claims they don't need RAS to search these databases, it is a real possibility that's what they doing (though they may be claiming that the crimes in question are "related" to the national security claims – things like money laundering and drug sales and so forth).

I'm also interested in Horowitz' allusion to "national security information." Does this go beyond content? Is he worried about the use of bulk-collected data in criminal investigations?

OK, now he's got me worried.

But note what he doesn't say: that he's investigating this.