

# WILL DOJ'S 1,265-DAY OLD SECTION 215 REVIEW BE SQUELCHED BY PAST CLASSIFICATIONS?

DOJ's Inspector General Michael Horowitz released his annual list of challenges today (which includes a focus on prison problems). In his section on national security and civil liberties he spends 4 paragraphs calling for more information sharing before he turns to civil liberties. In that section, he once again promises the report on the use of Section 215 his office has been working on for 1,265 days.

But he adds something new. He suggests this report may be limited by whether or not DOJ and ODNI declassify sections of the past reports.

The OIG's ongoing reviews also include our third review of the Department's requests for business records under Section 215 of the *Foreign Intelligence Surveillance Act* (FISA), as well as our first review of the Department's use of pen register and trap-and-trace devices under FISA. Although the full versions of our prior reports on NSLs and Section 215 all remain classified, we have released unclassified versions of these reports, and we have requested that the Department and the Office of the Director of National Intelligence (ODNI) conduct declassification reviews of the full classified versions. The results of any declassification review may also affect how much information we will be able to publish regarding our pending reviews when they are complete.

As I have noted in the past, the 2008 report includes two appendices on then-secret uses of

Section 215, one of which almost certainly pertains to the phone dragnet. In addition, it includes a sharply critical section on DOJ's failure to institute new minimization procedures specific to Section 215 (which would dramatically affect its use for the phone dragnet).

Now Horowitz is saying that, unless DOJ and ODNI declassify these past reports, he won't be able to present in unclassified form all the findings in his current report (which covers the period through 2009, and therefore the violations discovered in that year).

Horowitz suggests something similar is going on with DOJ IG's work on content collection as well. Both a report he did last year on the FISA Amendments Act (which may suggest the FBI has not always abided by its targeting and minimization procedures) and Glenn Fine's DOJ-specific review on the illegal wiretap program remain classified.

The OIG has also conducted oversight of other programs designed to acquire national security and foreign intelligence information, including the FBI's use of Section 702 of the *FISA Amendments Act* (FAA), which authorizes the targeting of non-U.S. persons reasonably believed to be located outside the United States to acquire foreign intelligence information. The OIG's 2012 review culminated in a classified report released to the Department and to Congress that assessed, among other things, the number of disseminated FBI intelligence reports containing a reference to a U.S. person identity and the FBI's compliance with the targeting and minimization procedures required under the FAA.

Especially in light of the fact that Congress reauthorized the FAA for another 5 years last session, we believe the findings and recommendations in our

report will be of continuing benefit to the Department as it seeks to ensure the responsible use of this foreign intelligence tool. This report also was included in our request to the Department and ODNI for a declassification review, as was the full, classified version of our 2009 report on the President's Surveillance Program, which described certain intelligence-gathering activities that took place prior to the enactment of the FAA. [my emphasis]

Elsewhere, Horowitz alludes to the Snowden leaks. Clearly, much of what appears in the 2009 and 2012 reports has been covered in leaks and releases to Congress. And yet, it seems, someone is stalling the declassification of DOJ IG's work.

What has DOJ's IG found that Eric Holder and James Clapper are trying to hide?