

NSA IS STILL HIDING WHERE THEY'RE HIDING THE INTERNET DRAGNET

On Friday, ACLU got a mystery declaration in their FOIA lawsuit for Section 215 records: a declaration from NSA Deputy Associate Director for Policy and Records Diane Janosek. It was filed back on February 8, 2013, along with a bunch of FBI declarations, though it was not reflected in the docket. In it, Janosek basically explains why certain documents pertaining to the phone dragnet were effectively being Glomared because they revealed the NSA's involvement in the phone dragnet. It was just handed over, presumably because the claim it classified anymore is so nonsensical.

Still, there are details, particularly pertaining to the Internet dragnet program, that I find to be of particular interest.

The declaration invokes the Internet dragnet in a footnote, noting that several of the documents being withheld pertain to that too.

⁴ (S//SI//NF) In addition to NSA's activities under Section 215, several of the responsive documents address a similar but different NSA counterterrorism program that operated under the authority of the Foreign Intelligence Surveillance Court from July 2004 until December 2011. This highly sensitive program was conducted pursuant to Section 402 of the FISA. Under orders of the FISC issued pursuant to the authority of Section 402 of the FISA, NSA was authorized to collect in bulk certain Internet metadata through the use of a pen register and trap and trace (PR/TT) device. Like its collection under Section 215, NSA did not collect the content of any Internet communications pursuant to Section 402 of the FISA. While the NSA's PR/TT FISA program is no longer active (it was discontinued in December 2011), [REDACTED]

Accordingly, any disclosure that NSA [REDACTED] could cause our adversaries to take steps to deny NSA this important source of collection.

It notes that "several" of the documents also address the Internet metadata. We've seen a number of these: PATRIOT-Reauthorization notices to Congress, some training programs, a few FISC documents from 2009, as well as the opinions from Colleen Kollar-Kotelly and John Bates authorizing bulk collection under Section 402.

The footnote notes that "NSA's PR/TT FISA program" was discontinued. Immediately thereafter, there's a full redacted sentence, followed by a partially redacted sentence making it clear that some similar source of collection remains active.

Several pages later, there's a similar reference explaining why NSA can't disclose the PRTT program even though it has been discontinued.

Similarly, while NSA no longer collects NSA metadata pursuant to section 402 of the FISA, the Agency does [over a line redacted].

In other words, the NSA argued they couldn't reveal the defunct Internet dragnet because it still collects Internet metadata, just via other means.

Which is why I'm interested in another redaction, in a paragraph full of the things they're trying to hide: the types of metadata they get, that "records of our adversaries' communications are vulnerable to NSA collection operations," and that they were collecting under USA PATRIOT [redacted].

24. (TS//SI//NF) Accordingly, any disclosure of the responsive materials would provide our adversaries with information about the types of communications information NSA is collecting (e.g., only metadata, as opposed to the content of communications, is collected and analyzed under these programs), the fact that NSA collects communications metadata under the USA PATRIOT Act [redacted] the types of metadata that NSA believes are relevant in its counterterrorism mission (and the FISC has found to be relevant), and the fact that records of our adversaries' communications are vulnerable to NSA collection operations. With such information [redacted] could evade NSA detection as well as alert other foreign adversaries to these critical intelligence-gathering methods.

I think it's possible that redaction hides the new authority under which they're conducting Internet dragnet. FISA Amendments Act (or FAA) wouldn't seem to fit. EO 12333 might.

Mind you, all that's separate (maybe) from the question of whether FBI has its own PRTT program it feeds to the NSA, as NSA's own classification guide indicated it did.

One thing is fairly clear: the Internet dragnet isn't dead. It moved somewhere or somewhere. We just don't know where yet.