

THE FISA DOCUMENT DUMP, AN INVENTORY

I've put together an excel file listing the documents included in Friday's document dump on the communications DNI McConnell had regarding the FISA amendment. I've still got a turkey hangover, so let me know if you spot any errors.

Here's what I've noticed:

- There's a weird chronology behind the response to the FOIA request
- The DNI's definition of duplicative is different than my definition of duplicative
- The DNI must consider Republican correspondence classified
- The DNI seems to lose Democratic correspondence

Weird Chronology

First, the chronology. EFF originally FOIAed documents on August 31, asking for records on both meetings with telecoms and discussions with Congress (there were actually two separate FOIA requests—see exhibits K and L here). On both FOIA requests, EFF asked for materials dating from April 2007 to "the present." On September 10, DNI responded to EFF saying it would expedite the EFF request.

Now look at the dates on the documents included. They start with one document from before the time frame—a March 23 letter from the SSCI leadership asking for a FISA bill. It's a pretty important document because it shows Congress taking the lead on this, which may be why they included it. But then the documents go through September 26—long after the August 31 request,

and more than two weeks after DNI said it was expediting the EFF request. But then, it stops short of what are likely to be some interesting events leading up the October 18 SSCI bill.

There is probably a very reasonable explanation: that DNI took "present" to mean that time when it started working on the request. Though if that's true, it suggests DNI sat on the request for almost two weeks, before it started expediting anything.

"Duplicative"

Now, when DNI explained why the review process took so long (and presumably, why they couldn't give us document through the "present" of late November), one of the things they claimed they would do is remove duplicate documents.

As the records are located and forwarded to the IMO, the FOIA analyst handling this case conducts a continual analysis and review of the documents located. **During the review process the analyst handling this case first removes any non-responsive and duplicative material from the records that are received.** She then creates working copies of the documents and document indexes and assesses whether there would be any necessary consultations and/or referrals with those entities maintaining equity in the documents. She also reviews the records for the application of any FOIA exemptions. [my emphasis]

Which is why I find it curious that there are two copies of McConnell's May 1 testimony before SSCI and two copies of his September 18 testimony before HJC. I'll need to go back and look closely to see if these are just two revisions. But if not, it appears that this analyst, who spent at least two months reviewing these documents, still couldn't find all the duplicative documents.

Also, what's with the date on McConnell's September testimony to SSCI? It took place on September 25, but is dated September 20.

Classified Republican Correspondence

One of the first things that sticks out about these documents is the absence of any documents primarily directed to Republicans. Partly that's just a reflection of the fact that the Democrats hold the majority in both Houses of Congress—so the scheduling correspondence will come exclusively from Democrats.

But there are two indications that there may—perhaps should—be more. First is a letter sent to Senators Jello Jay Rockefeller, Levin, and Leahy on July 24, reflecting a meeting with Josh Bolten, Ed Gillespie, and McConnell the previous day. The Republican counterparts to these three Senators (Bond, McCain, and Scottish Haggis Specter) are cc'ed. But the document itself is addressed rather pointedly to the Democrats. That's particularly interesting, given that Specter is his typical wishy washy self on these issues—did they feel they had no need to persuade Scottish Haggis?

So where's the counterpart document, the one addressed to Senators Bond, McCain, and Specter? Did they get their own briefing? Were they invited to the one on July 23? Or did they get a briefing from the folks actually running the show on this issue: Dick and Addington?

I'm just surmising that that document exists. But it appears clear there is some kind of communication between Crazy Pete Hoekstra and Alexander Joel, DNI's Civil Liberties Protection Officer that didn't make it into the document dump. Alexander writes a letter to Hoekstra and Silvestre Reyes on September 17, detailing how the PAA protects American civil liberties. Alexander explains that he is responding to a request from Hoekstra.

I am writing this letter in response to a request from the Ranking Member of the

House Permanent Select Committee on
Intelligence.

Now, it's possible that Hoekstra made the request in person or over the phone. But I find it doubtful that a government officer would accept such a request without memorializing it at all—there'd at least be a tracking sheet to track legislative requests. But, unlike every other example where a letter to Congress responds to a request that appears among the document requests, for this one the request is not present.

Taken together, I wonder whether the Republicans claimed privilege over their correspondence with DNI. After all, you don't want citizens to know that you've gamed the legislative process, nor do you want it made clear that the guy in charge of our intelligence is a partisan hack.

[Update: of course, it goes without saying that there is also no correspondence from telecom companies. I'm not surprised about that—after all, the name of every telecom is no doubt considered classified, so I bet we won't figure out who was lobbying McConnell until the year end lobbying disclosure forms. The question is—will we get telecom correspondence when the next dump comes, sometime before the 10th?]

Lost Democratic Correspondence

Mind you, just because they've included the Democratic correspondence doesn't mean they're responding to it quickly. There are at least three examples where there's a big delay in response. For example, Congressman Tom Udall wrote Bush a letter on May 3. We don't get a copy of that letter, but apparently Bush pawned the response off on McConnell, who finally responds to Udall on June 25. Worry not, though, McConnell gave him a very sweet response—a handwritten note saying,

Sir, I also would be happy to meet with you personally to discuss further.

I guess he doesn't want to get Bush in trouble for the delayed response?

Then there's a July 27 letter from Senator Whitehouse to McConnell. Under a stamped RECEIVED stamp, someone has written in the date, August 15. Now, perhaps that's misleading, but does that suggest McConnell never responded to Whitehouse's sincere attempt to craft the right language for the FISA amendment until after the bill was passed into law?

Far and away the most interesting delayed "response" (though it's not a response at all) is the letter from Reyes and Hoekstra to McConnell and Alberto Gonzales dated May 31. It lists all of the documents they say they need to be able to draft an amendment to FISA—you know, things like the presidential directives on the program and the legal authorization for it? Well, we know the Bush Administration didn't respond to any of these requests until October. ~~But what is most interesting about this document is that it was faxed on Friday August 1 at 15:13. In other words, it was faxed—it's not clear from whom or to whom right in the middle of the legislative wrangling over the PAA. Now, the most logical explanation for this is that Reyes raised the outstanding request during negotiations over the bill, and McConnell told them to re-fax it. Still, I find it curious that that document was sent, from someone to someone else, right in the middle of the debate.~~ [Update: William Ockham points out that the correct date for this—June 1, so presumably from Congress to DNI. But then he notes,

They OCR'ed that fax before they copied it into the document dump. Hmm...

That doesn't make any sense to me, though it might explain why Reyes' name looks so funky on this.]

Update: Link to correct Whitehouse letter fixed, per W0.