

ED MARKEY MAY NOT BE ADEQUATELY PREPARED TO VOTE ON USA FREEDOM ACT

Update: I realize something about this classification guide. While it was updated in 2012 (so after the Internet dragnet got shut down) it was dated August 2009, so while it was still running. So that part of this may not be location data. But the FBI almost certainly still does do fun stuff w/PRTT because it's the one part of PRTT that remains classified.

1.8. (S//REL TO USA, FVEY) The fact that FBI obtains FISA counterterrorism court orders on behalf of NSA.	SECRET//REL TO USA, FVEY	1.4(c)*	25 Years*	(TS//SI//NF) For FBI Pen Register Trap Trace (PR/TT), classification is TOP SECRET//SI//NOFORN.
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Ed Markey, who is absolutely superb on tracking Title III surveillance, continues that tradition today with a letter to Eric Holder asking about the US Marshall Program DirtBox surveillance program revealed last week by WSJ.

Among his questions are:

Do other agencies within DOJ operate similar programs, in which airplanes, helicopters or drones with attached cellular surveillance equipment are flown over US airspace?

What types of court order, if any, are sought and obtained to authorize searches conducted under this program?

In what kind of investigations are the "dirtbox" and similar technology used to locate targets? Are there any limitations imposed on the kinds of investigations in which the dirtbox and similar technology can be used?

According to media reports, the dirtbox technology, which is similar to a so-called "stingray" technology, works by

mimicking the cellular networks of U.S. wireless carriers. Upon what specific legal authority does the Department rely to mimic these cellular networks?

Do the dirtbox and stingray send signals through the walls of innocent people's homes in order to communicate with and identify the phones within?

What, if any, policies govern the collection, retention, use and sharing of this information?

Are individuals—either those suspected of committing crimes or innocent individuals—provided notice that information about their phones was collected? If yes, explain how. If no, why not?

I could be spectacularly wrong on this point, but I very very strongly believe the answer to some of his questions lie in a bill Markey is all set to vote for tomorrow.

We know that the government – including the FBI – uses Title III Pen Registers to obtain authorization to use Stingrays; so one answer Markey will get is “Title III PRTT” and “no notice.”

Given that several departments at DOJ use PRTT to get Stingrays on the criminal side, it is highly likely that a significant number of the 130-ish PRTT orders approved a year are for Stingray or related use.

Using that logic gets us to the likelihood that FBI's still unexplained PRTT program – revealed in this 2012 NSA declassification guide – also uses Stingray technology to provide location data. That's true especially given that NSA would have no need to go to FBI to get either phone or email contacts, because it has existing means to obtain that (though if the cell phone coverage of the Section 215 dragnet is as bad as they say, it may require pen registers for

that).

2.19. (TS//SI//NF) The fact that NSA receives or requests from FBI Pen Register Trap Trace (PR/TT) FISA warrants in order to get data about terrorist groups.	TOP SECRET//SI//NOFORN	1.4(c)*	25 Years*	(TS//SI//NF) The classification level is TOP SECRET//SI//NOFORN regardless of whether the terrorist group is specified for which NSA is seeking or obtaining FISA PR/TT authority.
2.24. (S//REL TO USA, FVEY) Statistics or statistical trends relating to FBI FISA targets, including numbers of court orders, targets, facilities, or selectors, or combinations or subcategories thereof, without mention of techniques involved.	SECRET//REL TO USA, FVEY	1.4(c)*	25 Years*	(TS//SI//NF) For FBI Pen Register Trap Trace (PR/TT), the classification is TOP SECRET//SI//NOFORN.
3.13. (TS//SI//NF) Minimized evaluated FBI PR/TT FISA data that does not disclose specific methods or techniques.	TOP SECRET//SI//NOFORN	1.4(c)*	25 Years*	(U) Methods are governed by the classification guides applicable to the specific methods involved.

The guide distinguishes between individual orders, which are classified SECRET, and “FBI Pen Register Trap Trace,” which therefore seems to be more programmatic. The FBI PRTT is treated almost exactly like the then undisclosed phone dragnet was in the same review, as a highly classified program where even minimized information is TS/SCI.

Now, it’s possible (ha!) that this is a very limited program, just targeting individual targets in localized spots for a brief period of time.

It’s also possible the government scaled this back after the *US v. Jones* decision.

But it’s equally possible that this is a bulky dragnet akin to the phone dragnet, one that will be invisible in transparency measures under USA Freedom Act because location trackers are excluded from that reporting.

I do hope Markey insists on getting answers to his questions before he votes for this bill tomorrow.