

EVEN AS CONGRESS PREPARES TO LEGISLATE, INTELLIGENCE COMMUNITY STALLING ON SECTION 215 IG REPORT

I've been covering the DOJ Inspector General's billion-day old review of Section 215.

- **June 2010:** Then DOJ IG Glenn Fine lays out investigation
- **June 2013:** Transition to Michael Horowitz stalls PATRIOT investigation
- **August 2013:** The investigation has been ongoing
- **September 2013:** Pat Leahy calls for an IC IG investigation into 215 and 702; IC IG Charles McCullough **declines**
- **December 2013:** Horowitz states current investigation limited by AG/DNI declassification of earlier reports
- **April 2014:** The Section 215 review has a baby!

If my calculation is correct, that report has been pending for 1,616 days.

Today, in a report on the most significant

challenges faced by the government, the IG explains what happened to the review: it is caught up in declassification review.

Ongoing OIG work, such as our reviews of the Department's requests for and use of business records under Section 215 of the USA PATRIOT Reauthorization Act and the Department's use of pen register and trap-and-trace devices under the Foreign Intelligence Surveillance Act (FISA), also address privacy concerns implicated by the use of national security authorities to collect data. Although the OIG completed both of these reviews months ago, and we have provided classified briefings to Congress regarding them, we have been unable to release the classified reports to Congress or non-classified reports to the public because the classification review being conducted by the intelligence community, which includes the FBI, is still ongoing.

This is craziness! Congress is actively legislating on this topic ... tomorrow! There's also the matter of the secret FBI PRTT program, that I strongly suspect is a location dragnet, which this report likely covers.

But the IC is suppressing a report that has been in the works for over 4 years with a slow declassification review?

Update: From Glenn Fine's original letter scoping out the review, here's some of what it includes.

It will examine the number of Section 215 applications filed from 2007 through 2009, how the FBI is using the tool today, and describe any reported improper or illegal uses of the authority. Our review also will examine the progress the FBI has made in addressing recommendations contained in

our prior reports that the FBI draft and implement minimization procedures specifically for information collected under Section 215 authority.

We also intend to conduct a programmatic review of the FBI's use of its pen register and trap and trace authority under the FISA. That part of the review will examine issues such as how the FBI uses the authority to collect information, what the FBI does with the information it collects, and whether there have been any improper or illegal uses of the authority either reported by the FBI or identified by the OIG.

In addition to identifying any improper uses of these authorities (the report should provide some sense of how rigorous the First Amendment review is), it will certainly lay out how FBI has refused to implement minimization procedures are required by law and recommended in DOJ IG's last Section 215 report (we know this to be the case because the FISC is imposing minimization procedures itself, and requiring compliance reviews).

All that would be rather important to know before extending Section 215 for another 3 years.