

DELUSIONAL DOJ CLAIMS DOCUMENTS DECLASSIFIED, RELEASED UNDER FOIA NOT DECLASSIFIED, NOT AUTHENTIC

Re: Compliance Incident Involving In Re Application of the Federal Bureau of Investigation for an Order Requiring the Production of Tangible Things from AT&T, the Operating Subsidiaries of Verizon Communications Inc., and Cellco Partnership d/b/a Verizon Wireless, and Sprint Relating to al Qaeda and Associated Terrorist Organizations and Unknown Persons in the United States and Abroad Affiliated with al Qaeda and Associated Terrorist Organizations and the Government of Iran and Associated Terrorist Organizations and Unknown Persons in the United States and Abroad Affiliated with the Government of Iran and Associated Terrorist Organizations, Docket Number BR 10-10 (TS)

Back in March, NYT's Charlie Savage sued to get the NSA to respond to a FOIA request asking for "copies of – and declassification review of, as necessary" a bunch of things, including IG reports on "bulk phone records collection activities under Section 215 of the PATRIOT Act."

In late August, they delivered an installment of their response to that suit to him including a series of IG Reports on the 215 program. Among other things, the FOIA response included an August 2, 2010 letter to FISC Judge John Bates referring to a compliance violation in Docket BR 10-10 (the order is dated February 26, 2010). In referring to the caption of that docket (and the caption redactions in other dockets are consistent in size), it named Verizon Wireless.

As I pointed out at the time, this provides Larry Klayman and other Verizon Wireless subscribers challenging the phone dragnet basis to establish standing to sue. While in the Klayman suit, Judge Richard Leon invited Klayman just to add a plaintiff who subscribed to Verizon Business Services, in Northern CA, EFF requested the 9th Circuit take judicial notice of the document.

So now DOJ has gone a bit batshit. (Josh

Gerstein first reported on this here.) It mocks that EFF head Cindy Cohn “apparently believes” it fair to conclude Verizon Wireless took part in the phone dragnet because of a reference to “a company name that includes the term ‘Verizon Wireless’ in the caption of a purported FISC filing” that happens to govern the entire phone dragnet. It suggests the accuracy of the document DOJ gave to Savage can be reasonably questioned, apparently disputing its own FOIA response to Savage. And it bitches that EFF “does not contend that this document was declassified,” even though it was given to Savage pursuant to his request for “declassification review [] as necessary.”

In short, in an effort to argue the document doesn’t say what it says (which may, I admit, not mean what it says, but such is the wackiness of the secret FISA Court and the secret phone dragnet), DOJ is saying that DOJ didn’t provide Charlie Savage authentic, declassified documents like he sued to get. DOJ uses words like “purported” to describe DOJ’s own FOIA response.

I mean, I’ll grant you, those of us outside DOJ often doubt the accuracy of their FOIA responses to us. But usually DOJ at least pretends they’re giving us authentic documents.