

Lawless Domestic Spying: Homeland Security's National Applications Office (NOA)

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Years ago, domestic spying was common. Post-9/11, it became institutionalized. Police states do it. So do faux democracies. America is no exception.

In 2007, the Department of Homeland Security (DHS) established a new domestic spying operation. It's called the National Applications Office (NOA).

It's described as "the executive agent to facilitate the use of intelligence community technological assets for civil, homeland security and law enforcement purposes within the United States."

It provides sophisticated satellite imagery. Eye in the sky drone spying supplies more.

The FBI, CIA, NSA, and Pentagon spy domestically. So do state and local agencies.

In the new millennium, spies are us and other lawless practices define America's agenda. Obama exceeds the worst of his predecessors.

Everyone is suspect unless proved otherwise. It's a national sickness. With other repressive tools and harmful policies, it's destroying the fabric of society. America the beautiful doesn't exist.

It never did, in fact, except in songs, verses, slogans, and other rhetoric. They wore thin long ago.

On July 9, the [Electronic Frontier Foundation](#) (EFF) headlined "Law Enforcement Agencies Demanded Cell Phone User Info Far More Than 1.3 million Times Last Year."

On July 8, The [New York Times](#) covered the same story. It headlined "More Demands on Cell Carriers in Surveillance," saying:

In the last year, federal, state, and local law enforcement agencies demanded “text messages, caller locations and other information in the course of investigations.”

Rep. Edward Markey (D. MA) disclosed it. What’s going on reveals “an explosion in (domestic) cellphone surveillance.”

He expressed shock at how extensive and pervasive it’s become. He chairs the Bipartisan Congressional Privacy Caucus.

Much of the time it’s warrantless. The 1.3 million number way understates the pervasiveness of domestic spying. According to The Times:

“Because of incomplete record-keeping, the total number of law enforcement requests last year was almost certainly much higher than the 1.3 million the carriers reported to Mr. Markey.”

“Also, the total number of people whose customer information was turned over could be several times higher than the number of requests because a single request often involves multiple callers.”

“For instance, when a police agency asks for a cell tower “dump” for data on subscribers who were near a tower during a certain period of time, it may get back hundreds or even thousands of names.”

Markey learned that nine telecommunications companies cooperate in spying on subscribers. Over the past five years, demand for their services increased up to 16% annually.

Given advanced technology and widespread cell phone usage, Americans may be the world’s most spied on population.

In April, the [ACLU](#) covered the same issue. It reported unprecedented cell phone location tracking requests. “The threat to personal privacy presented by this technology is breathtaking,” it said.

Knowing where people are over time reveals much about their activities. According to the Washington-based US Court of Appeals for the federal circuit:

“A person who knows all of another’s travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups — and not just one such fact about a person, but all such facts.”

Tracking this type information and most others should require warrants based on probable cause. Otherwise, privacy rights are violated. Constitutional law mandates it.

In *United States v. Jones* (January 2012), the Supreme Court ruled that government-attached GPS devices to cars or trucks to track movements constitutes searches under the Fourth Amendment.

It follows that tracking personal cell phones applies the same way. Doing so violates privacy. Without warrants explaining probable cause, it's troublesome at least, illegal at worst.

What goes on mostly happens secretly. In August 2011, 35 ACLU affiliates filed over 380 public record requests. State and local law enforcement agencies were asked about their policies and procedures for tracking cell phones.

Information gotten was disturbing. Over 200 police departments said they track them. Few, however, obtain warrants or demonstrate probable cause. The ACLU said:

"The government's location tracking policies should be clear, uniform, and protective of privacy, but instead are in a state of chaos, with agencies in different towns following different rules — or in some cases, having no rules at all."

Demonstrable cause should accompany these type requests. Warrants should explain it. Congress, state legislatures, and city governments should update obsolete electronic privacy laws accordingly.

Everyone carrying a cell phone on or off is trackable. According to ACLU spokesman Christopher Calabrese:

"Whether they realize it or not, Americans are carrying tracking devices with them wherever they go. The cell phone data of innocent Americans is almost certainly swept up in (government) requests."

EFF also reported disturbing information. AT&T alone complies with "230 emergency requests" daily nationwide. Sprint last year processed 500,000 requests.

Real-time information provider Neustar handles law enforcement compliance for about 400 telecom and Internet companies.

EFF and ACLU both call what's going on a privacy disaster. Congress has been largely out to lunch. In recent years, cell phone surveillance exploded. Companies provide thousands of records daily.

They're handed over in response to emergency requests, court orders, law enforcement subpoenas, and other demands.

All levels of government are involved. Information requested runs the gamut from garden variety crimes to financial felonies and intelligence investigations.

Law enforcement agencies have their own tracking capability. They can bypass minimal carrier protections. In addition, telecom companies maintain personal records. They include cell phone use. In response to requests, they can provide it in massive quantities.

EFF says cell phone companies must start releasing regular transparency reports like Google and Twitter. Doing so is a step in the right direction. Sunshine is the best disinfectant.

Many companies, however, oppose transparency reports. They lobbied against a California measure. EFF and the ACLU of Northern California sponsored the California Location Privacy Act of 2012 (SB 1434).

Passage would require warrants based on probable cause to obtain electronic location information. A watered-down bill passed the California Senate Committee on Public Safety. It omitted a reporting requirement.

Wireless companies opposed it. According to the Wireless Association (CTIA), it would "unduly burden(s) member companies) and their employees, who are working day and night to assist law enforcement to ensure the public's safety and to save lives."

EFF and ACLU called CTIA's objections "baseless" and "laughable." One Sprint official, in fact, said its automated system can easily comply. It's "extremely inexpensive to operate and easy," he said.

At the same time, cell phone users have a right to know what legal basis government agencies have to violate their privacy.

Congressional legislation is needed. Mandating warrants based on probable cause is essential. Information gotten is very precise. Cell phones transmit locations to towers every seven seconds whether they're on or off.

Government can know user locations round-the-clock daily. In 2010, the DC Circuit court said:

A "person who knows all of another's travels can deduce whether he is a weekly churchgoer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups—and not just

one such fact about a person, but all such facts.”

EFF believes Fourth Amendment protections apply. Many federal courts agree. So does the Supreme Court with respect to attaching GPS devices to cars, trucks or other vehicles.

Markey and other congressional members are drafting legislation. He wants clarity on how law enforcement agencies can access this data. He calls requests made “digital dragnets.” He fears “we’ve already crossed the line.”

On June 14, HR 2168: Geological Privacy and Surveillance Act was introduced. Markey wasn’t one of 22 co-sponsors. On the same day, it was referred to committee. No further action was taken. It requires warrant authorization to conduct electronic tracking.

Obama officials oppose the law. They claim it’s “burdensome” to demand warrants. It’s easier spying covertly. No one then knows you’re doing it except complicit telecom companies.

The Obama administration exceeds Bush era lawlessness. It includes pervasive warrantless surveillance. It immunized government agencies and telecom companies. It blocked pesky lawsuits.

In January 2012, the San Francisco-based US Court of Appeals for the Ninth Circuit dismissed 33 warrantless suits. In doing so, it ignored rule of law inviolability. Telecom companies involved were absolved.

They’re concerned only about bottom line priorities and avoiding lawsuits. They’re well paid for cooperating with government authorities.

In 2006, they cooperated with Bush officials on matters alleging national security. They conducted warrantless eavesdropping. They were sued. Congress granted them immunity.

In 2007, the FBI was criticized for improperly using emergency letters. They required telecom companies to provide records on thousands of phone numbers. They allegedly related to counterintelligence investigations. Emergencies weren’t involved.

Normally, carriers require warrants, court orders, or subpoenas to release customer information. However, when law enforcement agencies claim emergencies, anything goes, including privacy and rule of law principles.

Federal, state and local authorities call cell tracking a powerful law enforcement tool. Many others fill their arsenals.

Emerging fascism grips America. It's on a fast track to tyranny. Techniques used would make despots proud.

Obama achieved the impossible. He exceeds the worst of George Bush. Arrogance and unaccountability define his presidency. Rule of law principles don't matter. Imagine what's ahead if he's reelected.

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