

Senate letter exposes FBI domestic warrantless cellphone data mining

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In a letter addressed to Attorney General Eric Holder and Secretary of Homeland Security Jeh Johnson this week, leading US Senators requested information about the use of “StingRay” and “dirt box” devices and other cell phone surveillance and data mining systems by the Federal Bureau of Investigation (FBI) and other US government agencies.

The letter, co-signed by Senators Patrick Leahy and Charles Grassley, made clear that the FBI and other security agencies are deploying new surveillance technologies and methods under conditions of minimal to non-existent Congressional oversight. From all appearances, the Chairman and Ranking Member of the Senate Judiciary Committee—whose job it is, in theory, to insure that the FBI obeys the law—lack an understanding of the most basic facts about the FBI’s domestic cell phone data mining operations.

By mimicking cell phone towers and thereby inducing nearby phones to yield up their data, the cell phone surveillance technology used by the FBI collects data dragnet-style from tens of thousands of cell phones in a single deployment. The devices, technically known as IMSI catchers, can be mounted inside police vehicles or onboard small aircraft, enabling law enforcement to rapidly sweep an area, vacuuming up private data from entire crowds or neighborhoods in the process.

Leahy and Grassley’s letter directly implies that the FBI previously deployed these mass surveillance devices against the US population without following constitutionally-mandated warranting processes.

“The FBI recently changed its policy with respect to the type of legal process that it typically seeks before employing this type of technology. According to this new policy, the FBI obtains a search warrant before employing this type of technology,” the Senators wrote.

The FBI’s new regulations, while requiring the

bureau to seek a warrant in some cases, contain “overly broad” exceptions to the search warrant requirement, the Senators acknowledge. The new FBI regulations, as the letter notes, allow the bureau to engage in mass domestic spying in “cases that pose an imminent danger to public safety.”

The FBI may also conduct mass surveillance against US persons “in public places or other locations at which the FBI deems there is no reasonable expectation of privacy,” the letter notes.

In other words, FBI official policy empowers the FBI leadership to completely abandon Fourth Amendment warranting requirements, collecting data from US citizens virtually at will. According to the FBI rules, US persons have a right to privacy only when and where the FBI deems it appropriate. Top FBI officials are authorized to cast aside legal and democratic constraints on the basis of their own assertion that a “state of emergency” threatens public safety.

The Senatorial letter submits more than a dozen questions to Holder and Johnson regarding the extent of cell phone surveillance conducted by the FBI, DOJ, and DHS, and the legal process and regulations governing these activities.

In some cases, as the Senate committee questions show, the Senators are not even certain whether the bureau follows any legal process at all before vacuuming up cell phone data of US persons in bulk.

The questions submitted by the Senators to the bureau include:

***“How many times has the FBI used a cell-site simulator?”

***“In how many of these instances was the use of the cell-site simulator authorized by a search warrant?”

***“In how many of these instances was the use of the cell-site simulator authorized by some other form of

legal process? Please identify the legal process used.”

***“In how many of these instances was the cell-site simulator used without any legal process?”

***“How many times has each of the exceptions to the search warrant policy, including those listed above, been used by the FBI?”

***“What other DOJ and DHS agencies use cell-site simulators?”

***“Across all DOJ and DHS entities, what protections exist to safeguard the privacy interests of individuals who are not the targets of interception, but whose information is nevertheless being collected by cell-site simulators?”

In perhaps their most striking query, the Senators asked whether the FBI, unbeknownst to the Senate Judiciary Committee, may be utilizing “some other form of legal process” (other than the legal process mandated by the US Constitution, that is).

The Senators’ questions amount to an acknowledgement that the US government’s security agencies are carrying out sweeping expansions of their mass surveillance activities, with effectively zero meaningful oversight.

While the FBI has assured the public that agents are required to “purge” or “minimize” data collected by its bulk domestic surveillance activities when the data is not relevant to ongoing investigations or security matters, Senators Leahy and Grassley state in their letter that they are unsure of whether the FBI has established any mechanisms whatsoever to ensure that data obtained “incidentally” from US persons is deleted.

The Senators are not certain whether the bureau carries out any systematic removal of domestic surveillance data from its servers. For all they know, the Senators acknowledge, the FBI may be failing to remove data collected “incidentally” from “individuals who are not the targets of the interception, but whose information is nevertheless being collected when these devices are being used.”

Given the level of secrecy maintained by the FBI even from its own overseers, themselves leading members of the Senate, it can be safely assumed that the FBI, like the NSA, is collecting whatever data it so chooses, treating the laws as rough guidelines or suggestions.

The use of IMSI catcher technology by US police

departments to identify participants in demonstrations has been widely reported. According to WBBM, a local radio station, police in Chicago used the devices to mine the cell phones of individuals involved in protests against the police killing of Eric Garner in New York City. The devices have also been deployed in support of US covert operations inside Mexico, according to reporting in the *Wall Street Journal* .



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