

US police expanding use of potentially warrantless cellphone trackers

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New documents reviewed by the *Wall Street Journal* reveal that law enforcement agencies are expanding their use of cellphone-tracking devices and purchasing ever-cheaper and smaller spying equipment. Some of these trackers may not require court orders.

These new devices—which are affordable for local police departments, and more portable—also use a different collection technique than the more commonly known “StingRay devices,” or IMSI catchers. IMSI catchers mimic cellphone towers to collect phone data, which the FBI now claims it seeks a warrant to use.

The more portable devices, such as Berkeley Varitronics Systems’ “Wolfhound,” instead “passively gather radio waves emitted whenever the phones communicate with a cell tower,” according to the *Journal*. This slightly less obtrusive technique, which has almost identical surveillance functionality, may not require a warrant under current federal laws.

Spokespersons from agencies that have purchased these new cellphone trackers have declined to provide details on their use or legality. Elise Armacost, a spokeswoman for the Baltimore County Police, told the *Journal*, “We can’t disclose any legal requirements associated with the use of this equipment. Doing so may disclose how we use it, which, in turn, interferes with its public-safety purpose.” The Baltimore County Police has purchased “Jugular” and “Trachea” trackers.

Behind this Orwellian language of “public-safety purpose” is the defense of the opacity and unaccountability of police agencies. After each disturbing revelation, spokespersons for the NSA, FBI and various police departments claim that they are following proper legal requirements, and frequently boast of obtaining warrants—often from the rubber-stamping FISA courts—before using these new technologies. The fact that none of the “dozens of state

and local agencies” contacted by the *Journal* even offered the lame excuse that they obtain warrants raises additional issues.

The largest purchaser of passive cellphone trackers in the partial records obtained by SmartProcure—which provides information on government purchases—was the federal government. Some of the equipment was supplied to the Drug Enforcement Administration and the Department of Defense.

Indiana State Police purchased tracking equipment from KEYW, a Maryland-based “cybersecurity and intelligence company,” although it was labeled as “recreational equipment.” Spokesman David Bursten said that this mislabeling was a mistake, and declined to comment on the legal requirements for the use of this equipment: “Unfortunately, the criminal element reads the paper as well.”

Bursten said that, irrespective of the legal requirements, the Indiana State Police nevertheless “seeks judicial review and follows court recommendations,” according to the *Journal*. This strategy of not declaring if a warrant is required but nevertheless following the court’s recommendations may be to forestall a court ruling declaring that these obtrusive techniques are unconstitutional.

The Florida Department of Law Enforcement also purchased this type of cellphone-tracking device from KEYW, saying that it “needs something which is more portable, more reliable and ‘covert’ in functionality, and is able to utilize advances in technology.”

KEYW’s products fill this bill, with the Jugular costing only \$6,500-8,500, compared to more than \$100,000 for StingRays. Some of the surveillance devices are small enough to be attached to clothing, and the fact that they apparently do not require a warrant under federal law is a major selling point. Scott

Schober, President and CEO of Berkeley Varitronics Systems, said that “A lot of the guys using it [police agencies] are saying, ‘I don’t have to tell anyone I’m using it...because your device is completely passive, so I’m not getting into any privacy issues.’”

On the contrary, advocates such as the American Civil Liberties Union have noted that these devices may violate the Constitution, and also that they are similar enough to StingRay devices that they should require a warrant federally. Linda Lye, an attorney for the ACLU in California, argues that, because these devices could be used to locate a cellphone inside a person’s home without the use of a warrant, they violate the Fourth Amendment.

The Fourth Amendment of the Constitution reads:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

These new cellphone trackers are just one part of a vast network of surveillance agencies, programs, equipment and techniques that violate Fourth Amendment rights and the privacy of every individual on the planet. The web of secrecy surrounding these programs was partially removed when NSA whistleblower Edward Snowden’s revelations increased public awareness of the scale of the spying apparatus.

These newest reports come only days after some of Snowden’s documents indicating the scale of telecom companies’ collaboration with the NSA were published by the *New York Times* and ProPublica.



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