

Is the White House Running an Illegal Surveillance Operation?

November 29, 2023 - A recently leaked letter from Sen. Ron Wyden to Attorney General Merick Garland has shed light on a long-running surveillance program known as the Data Analytics Service (DAS) or as law enforcement refers to it, the Hemisphere Project. The program gives law enforcement agencies the ability to search through trillions of phone call records, with no need for a search warrant; something which multiple courts have already declared illegal.

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DAS is funded by the White House Office of National Drug Control Policy (ONDCP) in cooperation with AT&T. AT&T's role provides a massive surveillance net for federal, state, local, and Tribal law enforcement agencies; allowing them the request searches of the company's data-mined phone records. Because DAS is under ONDCP its use is supposed to be related to cases involving drug trafficking. But enough information about it has been made public that it is clearly being used for other purposes.

According to disclosed documents, AT&T has been amassing call records since 1987, with a staggering 4 billion new records added daily. Referred to as "AT&T's Super Search Engine" or "Google on Steroids" by law enforcement officials, the program goes beyond just call records. It can identify alternate numbers used by a target, obtain location data, and provide detailed records for anyone communicating with the target. Even someone dialing a wrong number can be swept up in an investigation through the program if that wrong number happens to be a person of interest to law enforcement.

One alarming aspect of DAS is its funding and the route it takes to avoid federal privacy reviews. While federal funds support the program, they are funneled through an obscure grant program run out of the White House, enabling the program to bypass mandatory federal privacy assessments. If funds directly came from a federal agency, the Department of Justice (DOJ) would conduct a Privacy Impact Assessment, with findings made public.

However, ONDCP provides funding through regional organizations like the Houston High Intensity Drug Trafficking Area (HIDTA), allowing DAS to escape public scrutiny. This has raised questions about transparency and the ability of citizens to know how their data is being used.

The constitutional aspect of the Hemisphere Project is also under scrutiny. The letter reveals a pattern of funding suspension, resumption, and name changes under different administrations, raising doubts about its legality and adherence to constitutional principles. According to an article on Wired.com, some aspects of the program have been

declared unconstitutional by federal courts over the years, but the secrecy surrounding DAS and the fact that the White House is exempt from Freedom of Information Act requests has effectively created a loophole in which the program has escaped scrutiny and been allowed to continue its operations.

Senator Wyden emphasizes that the information he seeks to release is not classified, and the program's existence has been acknowledged by the DOJ in federal court. This prompts the question: Does the public's right to be informed about potential privacy violations outweigh the need to keep this information restricted?

In his letter, Senator Wyden urges the Department of Justice to release material related to DAS, emphasizing the public's right to know about government surveillance activities. The materials, labeled "Law Enforcement Sensitive," contain information that raises serious concerns about the legality of DAS.

Wyden is sponsoring new legislation called the Government Surveillance Reform Act, which has already passed in the Senate. The act would eliminate most, if not all of the loopholes in the law that have allowed DAS to operate as it has. At the very least, it would require anyone attempting to use the resources provided by DAS to obtain a search warrant first.

by Jim Malmberg

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