

IRS and DIA Have Been Using Cell Phone Data to Track Americans Without Search Warrants

January 25, 2021 - A report in the Wall Street Journal states that the Defense Intelligence Agency has used commercially available cell phone data to track people without first securing a search warrant. The position that the agency has taken is that the data can be used because it was purchased from commercial sources and freely available to anyone who was willing to make the purchase. But that determination may be in violation of a recent Supreme Court ruling and it clearly violates the spirit of the Fourth Amendment which requires the government to obtain a search warrant before going through the records of average citizens. Perhaps more troubling than the DIA's position is the fact that the IRS has also used this method to track people down.

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According to the report, the DIA has used this technique five times over the past two and a half years. The report doesn't give specifics on how or why the agency used cell phone tracking data. But its use clearly skirts the legal requirement for obtaining a search warrant.

In 2018, the Supreme Court ruled that the government needed a search warrant to obtain cellular phone tower data to be able to track individuals. Prior to that time, government agencies routinely used subpoenas to obtain such data. It isn't clear if that ruling is applicable to the use of data that is sold on the commercial market but the DIA claims that it isn't subject to the ruling.

From 2017 through 2018 the IRS used a similar tool in a trial program that, according to the agency, is no longer in use. Some of the IRS findings are more than a little troublesome. For instance, according to the information published by the WSJ, they were able to determine the location of people, even when they used so-called burner phones. They did this by looking through purchased data at these phones and then determined when those phones were in close proximity to other known phones on a regular basis.

Using that technique, the IRS was also able to piece together other associates of the people they were tracking, and map their social and business networks.

All of this is troublesome for anyone who values their privacy. Report provides a window into efforts used by the government that can be used to monitor the everyday activities of normal Americans simply trying to mind their own

business.

There are things that people can do to protect their privacy, but they may not be convenient or offer complete protection. For instance, you can turn off "location services" on your cell phone. But if you do that, you won't be able to use GPS on the device. You can also purchase a burner phone of your own, but don't use it anywhere near your regular cell phone, or use it regularly around other people that you are in regular contact with.

Even these steps can't provide complete protection. The only real way to do that would be to stop using cell phones altogether. That's something that most people can't even consider. Given that, it's time for legislation that protects us from this type of tracking; both by commercial entities and by the government.

by Jim Malmberg

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