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American Spies Have Their Very Own Phone Hacking Scandal

By Adam Clark Estes

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The National Security Agency [doesn't seem to be sure](#) if they have the authority to track Americans using cell phone location data, but they may be doing it anyways. At a confirmation hearing for the NSA's chief counsel Matthew Olson, who's been tapped to head the National Counterterrorism Center, Senator Ron Wyden wanted to know whether the intelligence community "use[s] cell site data to track the location of Americans inside the country." He asked Olson about phone tracking several times before he got an answer. And even then it wasn't entirely clear what the NSA is doing.

"There are certain circumstances where that authority may exist," said Olson. "It is a very complicated question."

Olson promised a follow up, and Wednesday afternoon, the Director of National Intelligence [delivered](#). However, the letter just said that Wyden's question is "difficult to answer," confirming that "the government has some authority to collect cell phone mobility data under appropriate circumstances."

The fact that the heads of American intelligence agencies couldn't manage more than an "it's complicated" answer to Wyden's questions has frustrated some bloggers. "The committee was promised a memo explaining those 'circumstances' by September," [wrote](#) Julian Sanchez at the Cato Institute. "That means that just about ten years after Congress approved the Patriot Act, a handful of legislators may get the privilege of learning what it does. Ah, democracy."

Wyden, a vehement critic of the Patriot Act, has been on a bit of a transparency rampage this year. "When the American people find out how their government has secretly interpreted the Patriot Act, they will be stunned and they will be angry," he [said](#) in a floor speech during the debate over renewing the law. In June, Wyden and Representative Jason Chavetz introduced the Geolocation Privacy Surveillance Act in June, a law that would require government agencies to get a warrant before tracking Americans with GPS technology.

Earlier this month, Wyden and Senator Mark Udall started scrutinizing the intelligence agencies. In a letter to the Director of National Intelligence James Clapper, the two legislators [asked](#) whether agencies like the NSA and CIA "have the authority to collect the geolocation information of American citizens for intelligence purposes" and if so, what "the specific statutory basis for this authority" would be. With a more direct question about spy agencies practice, they asked, "Have any apparently law-abiding Americans had their communications collected by the government...?"

Wyden's entire pursuit for privacy hearkens back to what TechCrunch's Jordan Cook calls "Locationgate," Senator Al Franken's grilling Google and Apple for tracking people using phone data in May. Cook notes how Locationgate and the NSA shady phone hacking practices showed that the government is all kinds of confused when it comes to upholding the Fourth Amendment, which protects citizens against unlawful search and seizure. Cook [writes](#):

The reason Locationgate was so upsetting to so many people is because it shattered the perception that our phones are locked down little safes that hold and guard all of our secrets. But Apple and Google both maintain that the data collected is encrypted and anonymous if sent back to the company, which again confirms our original thoughts: our phones are private and it is only reasonable to expect privacy when it comes to your phone.

"I think people have the right to know who is getting their information and how information is shared and used," [said](#) Franken in his closing remarks. "I still have serious doubts those rights are being respected in law or in practice."

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