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NSA had test project to collect data on Americans' cellphone locations, director says

By Ellen Nakashima

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The National Security Agency began a test project in 2010 to collect data on ordinary Americans' cellphone locations, but later discontinued it because it had no "operational value," the agency's director said Wednesday.

In response to questioning at a Senate hearing, Gen. Keith Alexander said that the secret effort ended in 2011 and that the data collected were never available for intelligence analysis purposes.

Director says two-year effort was discontinued and that data were not used for intelligence analysis.

"This may be something that is a future requirement for the country, but it is not right now," given that the FBI is able to gather the location of suspects' cellphones by obtaining warrants from a court, Alexander told the Senate Judiciary Committee.

The disclosure came just a week after Alexander declined to answer whether the NSA had ever sought the authority to obtain such data. But Sen. Ron Wyden (D-Ore.), an Intelligence Committee member who has been pressing this issue for at least two years, suggested Wednesday that officials were still withholding significant information.

"After years of stonewalling on whether the government has ever tracked or planned to track the location of law abiding Americans through their cell phones, once again, the intelligence leadership has decided to leave most of the real story secret — even when the truth would not compromise national security," Wyden said in a statement.

The NSA received "samples" of cellphone location data "to test the ability of its systems to handle the data format, but that data was not used for any other purpose," Alexander said, reading from a one-paragraph statement that was provided to the congressional intelligence committees.

In a brief interview after his testimony, Alexander said the NSA ended the test program because "we couldn't find . . . operational value out of it."

Civil liberties advocates said Alexander's remarks left questions.

"What we clearly haven't heard is a straightforward denial [from the NSA] that we have ever gotten or made plans to get location data in bulk," said Julian Sanchez, a research fellow at the Cato Institute. "Wyden's continuing concern would be really puzzling if the only thing that had ever happened was a data format test with a small sample of records that was thrown out."

Elizabeth Goitein, co-director of the Brennan Center for Justice's Liberty and National Security Program, noted that the FBI always had the ability to obtain the location data with a court order. The NSA admits it didn't need this data, she said.

"For the NSA to collect information that touches on constitutionally protected interests of Americans just to see if it can is indefensible," she said.

In the wake of leaks by former NSA contractor Edward Snowden, U.S. officials have faced growing questions about the kinds of information they are collecting about Americans, at what scale and under what authority. The British newspaper the Guardian first disclosed that a federal surveillance court had authorized the NSA to collect the records of phone calls placed by millions of Americans.

Intelligence officials have said that such collection efforts are important counterterrorism measures and are legal. They also have said that the collection does not involve the NSA listening to phone calls. The call database contains only phone numbers and the time and duration of calls, but no conversation content, subscriber names or cell site location.

At the hearing, Director of National Intelligence James R. Clapper Jr. acknowledged that the agencies need to be more transparent to restore public trust. But he said the government did not want technology companies to disclose how many orders they receive "on a company-by-company" basis "because then that gives the adversaries, the terrorists, the prerogative of shopping around for providers that aren't covered."

Government lawyers made that argument formally in papers filed Sept. 30 with the Foreign Intelligence Surveillance Court and made public Wednesday.

At the hearing, Sen. Sheldon Whitehouse (D-R.I.) asked Alexander whether the agency was exploring legal action against the contractors who employed Snowden.

Alexander said when the first leak took place in June, he flew to Hawaii, where Snowden had worked at an NSA facility, and talked with the contractor representatives. One, in particular, he said, "did exactly what you would expect her to do." When Snowden asked her for access to systems he was not privileged to access, "she denied it to Snowden formally."