



Wireless surveillance: Bringing the Fourth Amendment to the 21st century

By Laura Ingle
October 04, 2012

When Congressman Edward Markey discovered that the cellphone information of more than 1.3 million people was handed over to U.S. law enforcement last year, often without a judge's consent, he felt something had to be done.

Markey (D-Mass.), the senior member of the House Energy and Commerce Committee, says the information prompted him to draft legislation to, "Update the Fourth Amendment for the 21st century."

Representative Markey recently introduced the "Wireless Surveillance Act of 2012," calling for regulation law enforcement says is unnecessary and could challenge how they perform their duties.

If signed into law, the bill would limit how and why agencies can ask for so-called tower dumps - a law enforcement tool used to collect data from every cellphone in range of a cell tower at a particular time. Tower dumps are often used when location and time are of the essence, like to help solve kidnappings. Under Markey's bill, police would still be able to track phones through cell towers in an emergency, but they would be required to get a signed, sworn statement within 48 hours of receiving the information to justify the access.

Markey, who says he has strong bipartisan support for his bill, also is concerned about how long government agencies hold on to the personal information they gather. "Law enforcement agencies should not have information about millions of innocent Americans with no standards for how long they can keep it and for what use they can put it, if it is unrelated to any crime that has been committed," he said.

Many in law enforcement argue the way they gather information now is vital, saves lives and doesn't need change. Peter Modafferi, The chairman of the Police Investigative Operations Committee for the International Police Association of Chiefs of Police, says, "It's not a matter of curiosity, it's not a matter of 'oh, we want to be nosy'; it's a matter of getting the right evidence to put the right person in jail."

The Cato Institute, a public policy research organization, supports a change. Julian Sanchez, a Research Fellow with the Institute, tells Fox, "When we surrender privacy -- not just one at a time, but to whole technology architectures that enable large scale population surveillance -- we really enable much vaster types of control over our personal lives."

Additionally Sanchez argues: "If an ordinary person -- you know, some stranger off the street -- placed a tracking device on you so that they could know everywhere you go 24 hours a day for as long as they cared to monitor it, would you consider it an invasion of your privacy? Would you consider that something intrusive? And if you would, then I think that's the kind of thing that when the state wants to do it, when the police want to do it, it's not that they shouldn't be able to do it, but that it should require due process and judicial approval."

As of now, there are no time limits on how long law enforcement agencies can hold on to a person's cellphone data, something the Federal Communications Commission would regulate if Markey's bill is approved.