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U.S. SENATE CLIMATE CHANGE CLEARING HOUSE

United States Senate

November 14, 2014

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The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

According to a recent article in the Wall Street Journal (“Americans’ Cellphones Targeted in Secret U.S. Spy Program”, November 14, 2014), the Department of Justice (DOJ) has deployed equipment on aircraft to mimic the operations of cell phone towers in an effort to intercept the mobile phone information of Americans. While such data can serve as an important tool for law enforcement to detect and deter criminal or terrorist activity, the sweeping nature of this program and the likely collection of sensitive records belonging to innocent consumers raise a number of important questions about how the Department protects the privacy of Americans, particularly those with no connection to unlawful activities.

In order to better understand this program, I ask that you provide responses to the following questions:

- 1) When did this program begin operating? Do any other agencies within DOJ operate similar programs, in which airplanes, helicopters or drones with attached cellular surveillance equipment are flown over US airspace?
- 2) How many times have DOJ agencies conducted operations over US cities with cellular surveillance technology attached to an airplane, helicopter or drone? How many under this program?
- 3) What types of court order, if any, are sought and obtained to authorize searches conducted under this program? What are judges told about how the technology works and the number of innocent people whose information may be swept up? Please provide a representative sample of the applications for these court orders.
- 4) In what kind of investigations are the “dirtbox” and similar technology used to locate targets? Are there any limitations imposed on the kinds of investigations in which the dirtbox and similar technology can be used?

- 5) According to media reports, the dirtbox technology, which is similar to a so-called “stingray” technology, works by mimicking the cellular networks of U.S. wireless carriers. Upon what specific legal authority does the Department rely to mimic these cellular networks? Do the applications for court orders authorizing the use of this technology inform judges of this practice?
- 6) According to the Wall Street Journal, the dirtbox can interrupt calls. Even if such jamming is incidental and unavoidable, under what legal authority does it take place? Are judges told that the surveillance operations they are authorizing may also disrupt or jam the phone calls of innocent people?
- 7) Do the dirtbox and stingray send signals through the walls of innocent people's homes in order to communicate with and identify the phones within? If so, are judges informed of this fact in applications for court orders?
- 8) What information is collected about these phones by the surveillance technology?
- 9) What, if any, policies govern the collection, retention, use and sharing of this information?
 - a. Where is this information stored (i.e., on the device itself or transmitted to a different device)?
 - b. For how long is this information retained?
 - c. How is the information associated with consumers who are not the subject of an investigation handled?
 - d. How much of this information is retained after the conclusion of the operation?
- 10) In a typical operation, how many innocent peoples' phones are probed by the dirtbox equipment?
- 11) Are individuals – either those suspected of committing crimes or innocent individuals – provided notice that information about their phones was collected? If yes, explain how. If no, why not?

Thank you for your attention to this important matter. Please provide responses to these questions no later than December 8, 2014. If you have any questions, please have a member of your staff contact Joseph Wender at 202-224-2742.

Sincerely,



Edward J. Markey
United States Senator