

RON WYDEN
OREGON

CHAIRMAN OF COMMITTEE ON
FINANCE

221 DIRKSEN SENATE OFFICE BUILDING
WASHINGTON, DC 20510
(202) 224-5244

United States Senate
WASHINGTON, DC 20510-3703

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November 20, 2023

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland:

I write to request that you clear for public release additional information about the Hemisphere Project. This is a long-running dragnet surveillance program in which the White House pays AT&T to provide all federal, state, local, and Tribal law enforcement agencies the ability to request often-warrantless searches of trillions of domestic phone records.

In 2013, the New York Times revealed the existence of a surveillance program in which the White House Office of National Drug Control Policy (ONDCP) pays AT&T to mine its customers' records for the benefit of federal, state, local, and Tribal law enforcement agencies. According to an ONDCP slide deck, AT&T has kept and queries as part of the Hemisphere Project call records going back to 1987, with 4 billion new records being added every day. That slide deck was apparently disclosed by a local law enforcement agency in response to a public information request and was published by the New York Times in 2013.

The scale of the data available to and routinely searched for the benefit of law enforcement under the Hemisphere Project is stunning in its scope. One law enforcement official described the Hemisphere Project as "AT&T's Super Search Engine" and ... "Google on Steroids," according to emails released by the Drug Enforcement Administration (DEA) under the Freedom of Information Act. The ONDCP slide deck and an email released by the DEA also reveal that AT&T searches records kept by its wholesale division, which carries communications on behalf of other communications companies and their customers. Another slide deck released by ONDCP and published by the press in 2014 describes the specific capabilities of Hemisphere, including that it can be used to identify alternate numbers used by a target, obtain location data and "two

911 NE 11TH AVENUE
SUITE 630
PORTLAND, OR 97232
(503) 326-7525

405 EAST 8TH AVE
SUITE 2020
EUGENE, OR 97401
(541) 431-0229

SAC ANNEX BUILDING
105 FIR ST
SUITE 201
LA GRANDE, OR 97850
(541) 962-7691

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MEDFORD, OR 97501
(541) 858-5122

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BEND, OR 97701
(541) 330-9142

707 13TH ST, SE
SUITE 285
SALEM, OR 97301
(503) 589-4555

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levels of call detail records for one target number” (meaning the phone records of everyone who communicated with the target).

The Hemisphere Project has been supported by regular funding from the White House ONDCP since 2009, according to the attached undated white paper that ONDCP provided to my office on October 27, 2022 (Appendix A). That same document reveals that White House funding for this program was suspended by the Obama Administration in 2013, the same year the program was exposed by the press, but continued with other federal funding under a new generic sounding program name, “Data Analytical Services.” ONDCP funding for this surveillance program was quietly resumed by the Trump Administration in 2017, paused again in 2021, the first year of the Biden Administration, and then quietly restarted again in 2022.

Although the Hemisphere Project is paid for with federal funds, they are delivered to AT&T through an obscure grant program, enabling the program to skip an otherwise mandatory federal privacy review. If the funds came directly from a federal agency, such as the DEA, Hemisphere would have been subjected to a mandatory Privacy Impact Assessment conducted by the Department of Justice (DOJ) Office of Privacy and Civil Liberties, the findings of which would be made public. Instead, ONDCP provides funding for the program through the Houston High Intensity Drug Trafficking Area (HIDTA), one of 33 regional funding organizations as a part of a grant program created by Congress and administered by ONDCP. The HIDTAs distribute federal anti-drug law enforcement grants to state and local agencies, and are governed by a board made up entirely of federal, state and local law enforcement officials.

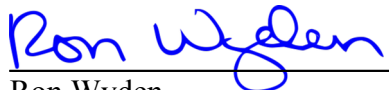
ONDCP provided my staff with an undated white paper describing the program and its historical funding levels, but ONDCP directed all questions about Hemisphere to the Houston HIDTA. Officials at the Houston HIDTA provided my office with a briefing on November 7, 2022, and spoke again with my staff by phone on December 1, 2022. The Houston HIDTA officials told my staff that all Hemisphere requests are sent to a single AT&T analyst located in Atlanta, Georgia, and that any law enforcement officer working for one of the federal, state, local and Tribal law enforcement agencies in the U.S. can contact the AT&T Hemisphere analyst directly to request they run a query, with varying authorization requirements. The Houston HIDTA officials confirmed that Federal and state law enforcement agencies can request a Hemisphere search with a subpoena, which is a directive that many law enforcement agencies can issue themselves (except in California and Texas, where a court order is required by state law). They also explained that Hemisphere searches are not required to be in support of drug-related investigations.

For the past year, I have urged the DOJ to release dozens of pages of material related to the Hemisphere Project, which it first provided to my office in 2019. This information has been designated “Law Enforcement Sensitive,” which is meant to restrict its public release. I have serious concerns about the legality of this surveillance program, and the

materials provided by the DOJ contain troubling information that would justifiably outrage many Americans and other members of Congress. While I have long defended the government's need to protect classified sources and methods, this surveillance program is not classified and its existence has already been acknowledged by the DOJ in federal court. The public interest in an informed debate about government surveillance far outweighs the need to keep this information secret. To that end, I urge you to promptly clear for public release the material described in Appendix B.

Thank you for your attention to this important matter. If you have any questions about this request, please contact Chris Soghoian in my office.

Sincerely,



Ron Wyden
United States Senator

CC: Dr. Rahul Gupta, Director of National Drug Control Policy.
Jessica Rosenworcel, Chairwoman, Federal Communications Commission.
John Stankey, Chief Executive Officer, AT&T Inc.

Appendix A begins on following page

DATA ANALYTICAL SERVICES

DESCRIPTION

Data Analytical Services (DAS) is a service available to High Intensity Drug Trafficking Areas (HIDTA) initiatives (task forces) through a contractual agreement with a telecommunications provider.¹ Under this agreement, the telecommunications provider furnishes investigators with information and technical assistance to precisely and accurately identify telephone numbers linked to illegal drug trafficking and related crimes.

Services provided include the following:

- Determining whether phones associated with international targets of investigation have entered the United States;
- Linking multiple devices/phone numbers to an identified target;
- Identifying devices that have had SIM (Subscriber Identity Module) cards substituted or replaced;
- Identifying and deconflicting international telephone numbers associated with targets; and
- Assisting investigators in understanding evolving telecommunications technology and ways in which that technology can be exploited by criminal organizations.

LEGAL AUTHORITIES

Under the terms of its agreement, the telecommunications provider requires legally compelling authority to respond to requests for information. That legal authority must comport with applicable state laws. Before responding to any request for information, the telecommunications provider reviews the material submitted and ensures that the authority required by the respective state's law accompanies the request. If the legal authority is not provided or is insufficient, the telecommunications provider will not respond to the information request.

ONDCP'S ROLE

The Office of National Drug Control Policy (ONDCP) has provided funding through the annual HIDTA discretionary process to support DAS. (Funding details are provided in the table below.) Because DAS is a service available only to law enforcement undertaking active investigations under legally compelling authority, ONDCP does not have access to DAS or to the services or information it provides.

Currently, ONDCP awards funding to support DAS to the Houston HIDTA, which engages in the contractual agreement with the telecommunications provider. Both the Houston HIDTA and the telecommunications provider undertake routine audits to ensure that the service is used appropriately and strictly limited to counternarcotics investigations conducted by regional HIDTA initiatives.

¹ From 2009 through 2013, this service was known under the title "Hemisphere."

FUNDING INFORMATION

The table below depicts HIDTA discretionary funding awarded by ONDCP to support DAS.

YEAR	HIDTA DISCRETIONARY FUNDING AWARDED
2009	\$1,400,000
2010	\$1,450,000
2011	\$1,000,000
2012	\$500,000
2013	*
2014	*
2015	*
2016	*
2017	\$300,000
2018	\$300,000
2019	\$485,000
2020	\$485,000
2021	**
2022	\$270,000

* From 2013 through 2016, ONDCP did not allocate HIDTA discretionary funding to support DAS; however, some individual regional HIDTA programs contracted directly with the telecommunications provider to acquire these services

** In 2021, funds carried over from 2020 supported DAS services.