Who is minding the Fourth Amendment gate?

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For all the cool and exciting features that our smart phones provide, it’s easy to forget that these pocket-sized computers/entertainment centers aren’t always as liberating as they seem – and I’m not just talking about the burdens that come with the data plans.

Recently, Rep. Edward J. Markey, co-chairman of the Bipartisan Congressional Privacy Caucus, requested the 2011 surveillance records from the nation’s cellular carriers. From the nine companies that responded, the statistic that stood out was that among law enforcement across federal, state and local jurisdictions, a whopping 1.3 million demands were made for cell phone records. These ranged from phone calls sent and received, to text messages, geo-location records and wiretaps.

While the cellular carriers generally help authorities when a court order or subpoena is involved, the massive number of surveillance requests suggests that law enforcement's use of cell data may be routine enough so as to transcend typical street crimes, emergencies and criminal investigations where the data may be most helpful. Indeed the carriers reported that some requests were denied, such as when emergencies apparently did not exist or that certain protocols were not met.

A myriad of troubling questions come to mind, particularly regarding user privacy. What happens to the data gleaned from cellular subscribers who are not involved with any wrongdoing? That's certainly pertinent to the cell tower "dumps," in which data for hundreds of users near a specific cell tower is released to the police. Where does it all go? As Rep. Markey asks in a statement, "Law enforcement agencies are looking for a needle, but what are they doing with the haystack?" And what about the costs that get passed on to the consumer for all the technicians and legal experts needed to process these requests? The carriers say they don't recoup all their expenses.

But most importantly, do we really want the cellular carriers to be the gatekeepers of the Fourth Amendment to the Constitution, which guarantees against unreasonable searches and seizures? A bigger assist to the authorities might make for a more cozy relationship and, conceivably in turn, enhance the bottom line. Remember that the carriers need certain favors from the government such as when they petition the FCC regarding frequency allocations or as they try to carve out their own slice of the Internet in seeming contradiction to net neutrality principles (http://bit.ly/M52Xd0 [1]).

Armed with Rep. Markey's statistics, it is up to the public to demand our elected officials – and this matter is too important to simply trust one political party over the other – to put uniform standards in place to eliminate the inconsistencies in cellular

surveillance, add transparency to the process, and put checks on law enforcement's perceived entitlement to cellular records. Failure to do so will lead to further erosions of our privacy and more potential for abuse of data if not an all-out police state. Protecting the Fourth Amendment supersedes the safety gains from law enforcement's increasingly routine access to cellular data. It's too important to leave to the carriers, and it's even more important to remember every time we use our phones.

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