

United States Senate

WASHINGTON, DC 20510

March 29, 2023

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

Dear Attorney General Garland:

We write to urge you to prohibit the Department of Justice's (DOJ) components from recruiting and paying employees of U.S. government agencies, companies and nonprofits to covertly obtain datasets containing records on Americans' except in very narrow circumstances.

The Drug Enforcement Administration (DEA) has for years paid confidential sources, commonly known as informants, employed by other U.S. government agencies and companies as a means to access data held by those agencies and companies rather than using compulsory legal processes, such as an administrative subpoena or warrant, to request that data. The DOJ's Office of the Inspector General's (OIG) 2016 audit of the DEA's confidential source program revealed agents were paying travel and parcel industry employees millions of dollars to covertly obtain Americans' data, which the DEA could have readily obtained through a subpoena or court order.

The OIG warned that these practices potentially infringed on Americans' Fourth Amendment rights as they could have "violated individuals' protection against unreasonable searches and seizures if it led to a subsequent DEA enforcement action." As then-Acting Assistant Attorney General for National Security at the Department of Justice, Todd Hinnen, testified before Congress in 2011, companies "take the privacy of their customers and subscribers very seriously and I think are often an effective proxy for defending those rights." The DEA's practice of paying low-level employees for data denies those companies and their legal teams the opportunity to push back on government requests that may be overbroad, violate the law, or otherwise infringe on their customers' privacy. The DEA's actions also risk causing serious harm to the reputations of these other organizations for not preventing or at least discovering their employees' misuse of customer data and exposing the organizations to lawsuits from their customers, investors, State Attorneys General, as well as Federal regulators such as the Securities Exchange Commission and the Federal Trade Commission.

According to a letter sent by the DEA to Senator Grassley in 2016, it has updated its policy to prevent agents from paying employees of other government agencies and quasi-government agencies, such as Amtrak. However, the Congressional Research Service informed Senator Wyden's office that DEA officials said the agency does not apply the prohibition on payment for information obtained in the course and scope of a source's employment to employees of private companies.

The OIG found that DEA agents were regularly paying for and receiving private customer information from these sources. One agent reportedly received daily passenger manifests for

buses traveling to and from a specific station or manifests of all passengers who purchased bus fare in cash. Another agent received passenger itineraries, ticket and baggage information, origin and departure airports, connecting flights, dates of birth and seat numbers from an airline industry source. The OIG found that agents would establish confidential sources “solely because the sources have access to private company databases and facilities.”

The OIG also revealed that one DEA Special Agent recruited a parcel industry source who had unique administrative privileges to open packages en route to their destination. This source would search packages and report to the agent when packages contained currency. At the agent’s request, the source would rebox the package to be sent to the agent. While the government would normally need a warrant to open a package sent by the Postal Service, these packages in the care of a private package delivery company were inspected and shared with the DEA with no judicial oversight.

The DOJ must explicitly prohibit these practices to ensure that all of its components, such as the Federal Bureau of Investigation (FBI), the U.S. Marshals Service, and the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) do not use confidential sources to avoid using appropriate legal processes to obtain Americans’ data.

When DOJ components seek to acquire and use a U.S. company’s customer datasets, they should direct all requests for such data to the organization’s lawyers, and should not instead pay low-level employees. To that end, we urge you to strengthen the DOJ’s policies to prevent this outrageous practice, which undermines the rule of law, violates Americans’ privacy and harms the reputations of American companies. We also request that you provide us with unclassified answers to the following questions by May 8, 2023:

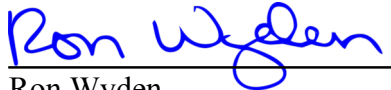
1. In a June 2016 letter to Senator Grassley, the DEA claimed it had revised its policies on the use of confidential sources. Please provide us with a copy of the revised policy and whether it is still being applied.
2. The Attorney General’s Guidelines for Domestic FBI Operations state that the DOJ Office of Privacy and Civil Liberties assists with oversight and ensuring the activities of all DOJ components are lawful, appropriate, and ethical. Has the Office of Privacy and Civil Liberties reviewed and approved the DEA’s revised policy on the use of confidential sources?
3. Please identify each of the companies and non-profit organizations from whom the DEA is currently, or has in the past ten years, obtained customer data through a confidential source, rather than through an official disclosure authorized by that organization’s legal department.
4. Has the DEA or any other DOJ component paid a telephone, internet service, or other communications provider’s employees for customer data between 2010 and 2023? If yes, please identify the provider, the number of users whose information was obtained by the government, and whether those individuals were ever told about the government’s extra-judicial surveillance of their communications data?
5. Has the DEA offered legal immunity to the employees of U.S. companies and government agencies from whom customer data was purchased by DEA agents in violation of the informants’ employment agreements, and potentially state, federal, or

foreign law? If yes, were these offers of immunity approved by officials within the DOJ, and if so, please identify them and their position at DOJ.

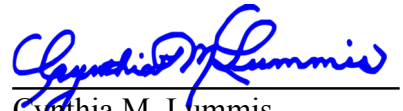
6. Based on the DOJ's Guidelines on Communications with Represented Persons, discussions about an organization's private records should go through corporate counsel or the organization's general counsel's office. How is the DEA's practice of circumventing counsel by hiring confidential sources to gain access to private records in line with the DOJ's guidelines?

Thank you for your attention to this important matter.

Sincerely,



Ron Wyden
United States Senator



Cynthia M. Lummis
United States Senator