

Statement of

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Regarding

**“Internet Data Brokers and Pretexting: Who has Access to Your
Private Records”**

Before The

**House Energy and Commerce Committee
Subcommittee on Investigations and Oversight**



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INTRODUCTION

Chairman Whitfield and distinguished members of the House Energy and Commerce Committee - Subcommittee on Oversight and Investigations, on behalf of the Drug Enforcement Administration (DEA), I appreciate your invitation to testify today regarding Internet Data Brokers (IDBs).

OVERVIEW

The DEA, in its unique capacity as the world's preeminent drug law enforcement agency, identifies, investigates, and targets for prosecution organizations and individuals responsible for the production and distribution of illegal drugs. DEA's mandate is to enforce the provisions of the controlled substances and chemical diversion trafficking laws and regulations of the United States and to serve as the nation's competent authority with regard to national compliance with provisions of international drug control treaties. Further, DEA serves as the single point of contact for the coordination of all international drug investigations by providing clear, concise, and dynamic leadership in the national and international drug and chemical control effort.

Drug syndicates operating today are far more sophisticated and dangerous than any of the other organized criminal groups in America's law enforcement history. These new criminals operate globally by establishing transnational networks to conduct illicit enterprises simultaneously in many countries. DEA is strictly focused on the drug trafficking organizations and their facilitators at every juncture of their operation—from cultivation and production of drugs, passage through transit zones, to distribution on the streets of America's communities. Our investigations and strategies seek to disrupt and dismantle these organizations by identifying and attacking vulnerabilities in their methods of operation.

POLICY AND PROCEDURE

The DEA *Agents Manual* is the primary document for operational policies and procedures governing the conduct of investigative and enforcement operations. Within this document are the rules and regulations that guide our Special Agents and Task Force Officers as they go about the business of disrupting and dismantling drug trafficking organizations.

DEA Basic Agent Trainees (BATs) receive instruction on policy and procedure, constitutional law, and the rules of criminal procedure, during Basic Agent Training. The curriculum is a 16-week resident program designed to train newly recruited agent-trainees. The course places a strong emphasis upon leadership and ethics within the framework of rigorous academic, physical, weapons and operational training. Throughout Special Agents' careers, the investigators receive advanced and specialized training to enhance the knowledge, skills, and abilities necessary to successfully perform assigned duties.

DEA maximizes its force multiplier effect by managing the State and Local Task Force Program, whereby almost two thousand State and local law enforcement officials work as full partners in DEA Task Forces. Combining Federal leverage and DEA's expertise with state and local officers' investigative talents and detailed knowledge of their jurisdiction leads to highly effective drug law enforcement investigations. Participating state and local officers are deputized to perform the same functions as DEA Special Agents under the Controlled Substances Act (Chapter 13 of Title 21 of the United States Code). Upon entering on duty with DEA, Task Force Officers (TFOs) attend a two-week TFO school at their respective local DEA field division. During the two-week school, TFOs learn how to conduct DEA enforcement operations, prepare investigations for prosecution in federal court, and DEA operational policies and procedures. TFOs also work closely with DEA Special Agents and are normally supervised by a DEA Group Supervisor. For those task force groups not supervised by a DEA Group Supervisor, the State or local law enforcement supervisor also attends the TFO School and the four-week DEA Group Supervisor Institute (GSI). At the GSI, supervisors are exposed to leadership and management principles, DEA personnel policy, and are taught how to supervise a DEA enforcement group.

Telephone Communications

The *DEA Agents Manual* contains a specific section which details DEA's policy regarding subscriber/toll information; use of telephone decoders; consensual monitoring; and nonconsensual

monitoring. These policies have been developed and refined to ensure the information gathered during the course of an investigations is collected in a legal manner that will withstand court scrutiny and to establish adequate, appropriate oversight. The policies also protect the investigators and the agency from any legal liability.

The use of electronic surveillance in drug investigations, specifically telephone wire intercept operations, is an investigative technique which the DEA uses to decimate drug trafficking organizations. By linking co-conspirators through their telephone conversations and physical surveillance, drug trafficking groups are more susceptible to prosecution than in undercover investigation which may yield only a small percentage of the organization. In order to justify the use of a telephone wiretap, a criminal investigator must be able to articulate his probable cause in an affidavit to the court. The success of this affidavit is dependent upon the field work that the Special Agent or TFO conducts, prior to seeking the courts approval for the collection of this information.

When targeting a telephone number for exploitation, investigative personnel must acquire telephone subscriber information and telephone toll records. The *DEA Agents Manual* requires the use of an administrative subpoena, grand jury subpoena, court order, or consent of the subscriber or customer to obtain telephone transactional records. Because the DEA conducts numerous telephone wiretap investigations, our personnel are very cognizant of how and from whom they collect telephone information. DEA has been granted administrative subpoena authority for use in drug investigations, and Special Agents and TFOs are trained to use that authority.

When a criminal investigator acquires a telephone number for which the subscriber information is not immediately known, the investigator must first identify the telephone company (e.g., Verizon, Sprint, AT&T, etc.) that owns or controls that number. Once the telephone company is identified, the investigator will obtain an administrative subpoena, requesting subscriber name, billing information, and telephone toll records for a specific time frame. The administrative subpoena must have a DEA case file number, be signed by the investigator's supervisor, and be given a sequential number for recording in a

log book or computer database so that a particular field office can track and account for any administrative subpoenas issued by that office. The telephone companies are given a period of ten days, from the date of issuance, to respond with the requested information. Furthermore, each subpoena usually has an attached letter, signed by the office head, requesting the telephone company not to disclose the existence of the subpoena for a period of 90 days; as such disclosure could possibly interfere with an ongoing criminal investigation. The investigator also has the option of seeking a court order to mandate that the telephone company comply with the non-disclosure request.

The *DEA Agents Manual* does not specifically address IDBs or their use in criminal investigations. Rather, DEA policy specifically enumerates the authorized methods for DEA personnel to obtain telephone subscriber or transactional records which are limited to administrative subpoenas, grand jury subpoenas, court orders, or consent of the subscriber or customer. The criminal investigator works directly with the custodian of the records and there is no question as to the authenticity of the data or how the company acquired the data.

CONCLUSION

In conclusion, the DEA relies upon lawful means to gather evidence regarding telephone transactional records directly from telephone service providers. The Congress has granted DEA this authority, and DEA is cognizant that its investigations must be conducted within the constraints of law. DEA has adopted policy and procedures and implemented practices through training of our investigative and TFO workforces to ensure information and evidence are appropriately obtained. Moreover, the Department has created a Privacy and Civil Liberties Board to ensure that Departmental programs and efforts adequately consider civil liberties and privacy. The Data Committee of the Privacy and Civil Liberties Board, on which DEA is represented, was established earlier this year to address issues related to information privacy within the Department. Its first task is to respond to recommendations in the April 2006 GAO report entitled "Personal Information Agency and Reseller Adherence to Key Privacy Principles." The Data Committee members are analyzing the Department's use of all information

reseller data, including internet data brokers, and will evaluate potential Department-wide policy with regard to such use. Specifically, all members of the committee are currently assessing their agencies' use of information reseller data, including the Internet data brokers identified by the Subcommittee as employing pretexting and fraud to obtain information. While the inquiry is ongoing, to this point, there is no evidence of widespread use of such services. The Data Committee meets on a monthly basis and expects to make recommendations to the Attorney General on this issue upon completion of its review.

Thank you for the opportunity to appear before you today to discuss this important issue. I will be happy to answer any questions that you may have.