



OFFICE OF THE INSPECTOR GENERAL

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DOJ OIG Releases Report on the Drug Enforcement Administration's Use of Administrative Subpoenas to Collect or Exploit Bulk Data

The Department of Justice (DOJ) Office of the Inspector General (OIG) announced today the release of a report examining the Drug Enforcement Administration's (DEA) use of its administrative subpoena authority under 21 U.S.C. § 876(a) to collect or exploit "bulk collections" of data. Section 876(a) authorizes the DEA to issue administrative subpoenas, without court or other approval outside the agency, requiring the production of records that are "relevant or material" to certain drug investigations. A "bulk collection" of data is a collection of a significant amount of data that is unrelated to an individual, group, or entity that is the target of an investigation.

The OIG's report examines three programs in which the DEA used its administrative subpoena authority to collect or exploit bulk collections of data in recent years. Two of the programs involved the collection or exploitation of non-content bulk telephone records. The third program involved the collection of bulk purchase transaction data for a particular good or service.

The specific findings in the report released today include:

- **Legal Authority and Use.** DEA (and DOJ with respect to one program) failed to conduct a comprehensive legal analysis of the use of DEA's administrative subpoena authority to collect or exploit bulk data. The OIG found this failure particularly troubling with respect to two of the programs because they involved a uniquely expansive use of Section 876(a) authority to collect data in bulk without making a prior finding that the records were relevant to any specific defined investigation, and because the bulk data collected under these two programs was used on an unknown number of occasions in support of non-drug investigations.
- **Procedural Safeguards and Audits.** The procedural safeguards and audits for two of the programs were not sufficiently robust to ensure compliance with the requirements under Section 876(a) that the information being demanded by subpoena is relevant or material to an investigation and that the particular investigation is, in fact, a drug investigation. With respect to the third program, the DEA collected the bulk data

without first developing a plan for the disposition or retention of the data, creating a risk that purchaser information unconnected to illicit activity will be retained in government electronic systems for a long duration.

- **Parallel Construction and Other Techniques to Maintain Confidentiality.** To protect the unique capabilities of two of the programs, agents and analysts were instructed not to use the information from these programs in affidavits, court pleadings, or the like, and to keep the information isolated from official files. They were instead instructed to “parallel construct” the information by, for example, issuing a new administrative subpoena for the specific investigation. Although we found that there is nothing inherently inappropriate about using parallel construction or other techniques to maintain the confidentiality of a sensitive program, such techniques must be used consistent with the Department’s discovery and disclosure obligations in criminal cases.

The report makes 16 recommendations to DEA and DOJ to address the issues and concerns the OIG identified in this review. The Department and the DEA agreed with all of the recommendations.

As noted in the report, DOJ Inspector General Michael E. Horowitz recused himself from this review because he occupied senior management positions within the Criminal Division from 1999 through 2002, a time period during which DEA operated, with Criminal Division involvement, one of the programs examined in today’s report.

Report: The public version of today’s report, which contains redactions to mask information that the DEA and another government entity identified as Law Enforcement Sensitive, is available under “Recent Reports” on the OIG’s website and at the following link:

<https://oig.justice.gov/reports/2019/o1901.pdf>.

Video: To accompany today’s report, the OIG has released a 2-minute video featuring the Deputy Inspector General discussing the report’s findings. The video and a downloadable transcript are available at the following link: <https://oig.justice.gov/multimedia/video-03-28-19.htm>.

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