



Utah Bill Would Ban Warrantless Access to Data Stored in the Cloud

Utah state legislators will soon begin debate on a bill that would require law enforcement to get a warrant before accessing data stored in the cloud.

While such legislation should not be necessary and should not be news, in this era of nearly unlimited and unchecked growth of the federal surveillance state, a bill such as the one offered in Utah is both necessary and newsworthy.



This is particularly true in light of the gradual migration of all personal and public electronic information from databases stored on local servers to off-site servers colloquially referred to as “the cloud.” As I [reported](#) in June 2018:

Nearly all the data collected by the National Security Agency (NSA) is being transferred to the cloud. The database — Intelligence Community GovCloud — is reportedly classified and will help the federal surveillance organization to “connect the dots” among the scores of systems currently employed by the agency to store and sort data.

“Right now, almost all NSA’s mission is being done in [GovCloud], and the productivity gains and the speed at which our analysts are able to put together insights and work higher-level problems has been really amazing,” NSA Chief Information Officer Greg Smithberger told NextGov.

Smithberger explained GovCloud as a single integrated “big data-fusion environment,” technology that would allow the NSA and the myriad federal agencies participating in the surveillance of electronic communications to share data seamlessly and much more efficiently than before. The Central Intelligence Agency and National Geospatial-Intelligence Agency are two of the 16 agencies that will be given access to the cloud and the personal data stored there.

Utah State Representative Craig Hall is the primary sponsor of the surveillance bill (HB 57), which would require “issuance of a search warrant to obtain electronic information or data,” including data transmitted “to a remote computing service.” The bill explicitly applies these restrictions to “government entities.”

Rather than a complete re-writing of Utah’s law covering warrantless surveillance, Representative Hall’s proposal amends the Beehive State’s current surveillance statutes.

One notable provision of the current law is the prohibition on the deployment of so-called Stingray devices.

The function of the “Stingray” technology reveals its threat to the liberties of the law-abiding. The suitcase-sized stingray masquerades as a cell tower to trick cellphones into connecting to it. It can give police tracking identifiers for phones within a mile or more, depending on terrain. Given the mobility of the device, police who use it can triangulate a target’s location with better accuracy than if they relied



Written by [Joe Wolverton, II, J.D.](#) on January 10, 2019

on data transferred by traditional cell towers.

This equipment isn't cheap. According to published reports, each Stingray device costs about \$350,000. Despite the cost, however, it has been reported that nearly 30 police departments admit to owning a Stingray, with about 50 other cities refusing to disclose whether or not they own one of these expensive surveillance devices.

While the Fourth Amendment's protections of liberty arguably do not apply to state governments, the data obtained by state law-enforcement agencies nearly always end up being shared with departments of the federal government.

One of the fastest means of exchanging data is the development of so-called fusion centers, wherein local law enforcement is given millions of dollars by the federal Department of Homeland Security in exchange for the "fusion" of the management of the state or local police department with DHS.

Utah is home to a statewide fusion center called the Utah Statewide Information and Analysis Center, which attracted the [attention](#) of conservative media for issuing a bulletin in 2016 that informed the state's law-enforcement agencies that the display of a "Gadsden Flag" is a "visual indicator" of "domestic extremists."

Although the new bill would not mandate the shuttering of the fusion centers, it would apply the warrant requirement to them.

As I said, legislation of this sort should be unnecessary. It should be unnecessary because of the Fourth Amendment and the history behind the protections included in it.

The Founding Generation abhorred the British government's deprivation of liberty, particularly with regard to their personal effects. These men believed that "papers are often the dearest property a man can have" and that permitting the government to "sweep away all papers whatsoever," without any legal justification, "would destroy all the comforts of society."

In 1776, George Mason, the principal author of the Virginia Declaration of Rights — a document of profound influence on the construction of the federal Bill of Rights — upheld the right to be free from such searches, as well: "That general warrants, whereby any officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offence [sic] is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted."

Thus, the Fourth Amendment is in substantial part taken from Mason's Virginia Declaration of Rights.

The Fourth Amendment to the Constitution mandates:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

For nearly two decades, our elected representatives (and the courts, for that matter) have disregarded the Constitution and built a domestic spy apparatus that bears no resemblance whatsoever to the blueprint provided by our Founding Fathers in the Constitution.

The newly proposed bill in Utah would not, sadly, completely restore the Fourth Amendment's barricades between government and the individual, but it would, if passed, make it harder for law



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enforcement to collect data without a warrant.

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