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DEFENSE INTELLIGENCE AGENCY

U-21-0002/OCC-1

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**(U) Clarification of information briefed during DIA's 1 December briefing on CTD**

*(U) This paper responds to a request for information from Chris Soghoian, Senior Advisor for Privacy and Cybersecurity, Office of Senator Ron Wyden (D-OR).*

(U) Question 1. Please confirm "DIA purchases commercial location data, which originates from apps installed by consumers on their smartphones. DIA purchases location data generated by phones located outside the United States and inside the United States. DIA's data provider does not supply separate streams of US and foreign location data, and so DIA processes the location data as it arrives to identify U.S. location data points, which it segregates in a separate database. DIA personnel can only query this database of U.S. location data when authorized by the DIA chief of staff and DIA's office of general counsel. Permission to query DIA's database of commercially acquired U.S. device location data has been granted five times in the past two and a half years, when DIA first started buying this source of data."

(U) DIA currently provides funding to another agency that purchases commercially available geolocation metadata aggregated from smartphones. The data DIA receives is global in scope and is not identified as "U.S. location data" or "foreign location data" by the vendor at the time it is provisioned to DIA. DIA processes the location data as it arrives to identify U.S. location data points, that it segregates in a separate database. DIA personnel can only query the U.S. location database when authorized through a specific process requiring approval from the Office of General Counsel (OGC), Office of Oversight and Compliance (OOC), and DIA senior leadership. Permission to query the U.S. device location data has been granted five times in the past two-and-a-half years for authorized purposes.

(U) Question 2. Please confirm "DIA has interpreted the Supreme Court's *Carpenter* decision as only applying to location data obtained through compulsory legal process and that *Carpenter* does not apply to data purchased by the government."

(U) We confirm that DIA does not construe the *Carpenter* decision to require a judicial warrant endorsing purchase or use of commercially-available data for intelligence purposes. *Carpenter* involved an administrative subpoena from law enforcement authorities to secure cell-site records revealing the whereabouts of a

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specific U.S. person over an extended period. The Supreme Court held, *inter alia*, that the government's acquisition of the cell-site information under such circumstances - even though the information came from a third party - qualified as a search under the Fourth Amendment. By its terms, the decision in *Carpenter* is "a narrow one." The Court expressly did not "consider...collection techniques involving...national security." By extension, the Court did not address the process, if any, associated with commercial acquisition of bulk commercial geolocation data for foreign intelligence/counter-intelligence purposes. Nonetheless, the privacy concerns raised by *Carpenter* in the law enforcement context bear on procedures DIA has put into place to control access to and use of commercial data collected from geolocations within the U.S. In this regard, DIA's acquisition, use, and storage of commercial geolocation data is governed by the Department of Defense's Attorney General-approved data handling requirements (Department of Defense Manual 5240.01), which by its terms "[e]stablishes procedures to enable DoD to conduct authorized intelligence activities in a manner that protects the constitutional and legal rights and the privacy and civil liberties of U.S. persons." We continue to monitor court decisions applying to *Carpenter* for indications that members of the IC are required to secure some form of warrant to acquire commercial geolocation data or use such data for foreign intelligence/counter-intelligence purposes.

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