



Legislative Affairs  
One Whitehall Street  
New York, NY 10004  
212-607-3300  
www.nyclu.org

## 2021-2022 Legislative Memorandum

**Subject: Relates to prohibiting the release of consumption data -  
A.7871 (Cahill) / S.3019 (Parker)**

**Position: SUPPORT**

---

Utility data – such as electrical and gas consumption – can reveal highly sensitive information from people’s homes. And newer smart meters increase this risk immensely by reading consumption data at much higher frequency and detail. Such fine-grained data collection allows for the tracking of when and how many people are at home, their activities, behaviors, sleep patterns, and even what type of devices are used. Already, an estimated 107 million smart meters were deployed by 2020, covering 75 percent of U.S. households.<sup>1</sup>

Without proper safeguards in place to prevent misuse of this information, utility data can easily become an attractive target for undirected law enforcement fishing expeditions. Even less-detailed analog meters have been misused by law enforcement; the Austin Police Department used electrical consumption data from thousands of people to search for potential cannabis growers based on their assumed higher electricity usage.<sup>2</sup>

Courts have begun to recognize the dangers that these practices pose to our civil liberties. In a unanimous decision, the Seventh Circuit ruled that the Fourth Amendment protects energy consumption data collected by smart meters.<sup>3</sup> New Yorkers deserve these protections, too.

---

<sup>1</sup> Adam Cooper & Mike Shuster, *Electric Company Smart Meter Deployments: Foundation for a Smart Grid*, THE EDISON FOUNDATION (2021), [https://www.edisonfoundation.net/-/media/Files/IEI/publications/IEI\\_Smart\\_Meter\\_Report\\_April\\_2021.ashx](https://www.edisonfoundation.net/-/media/Files/IEI/publications/IEI_Smart_Meter_Report_April_2021.ashx).

<sup>2</sup> Jordan Smith, *APD Pot-Hunters Are Data-Mining at AE: Are you using “too much” energy? Inquiring drug cops want to know.*, THE AUSTIN CHRONICLE (2007), <https://www.austinchronicle.com/news/2007-11-16/561535/>.

<sup>3</sup> *Naperville Smart Meter Awareness v. City of Naperville*, 900 F.3d 521 (7th Cir. 2018), available at <http://media.ca7.uscourts.gov/cgi-bin/rssExec.pl?Submit=Display&Path=Y2018/D08-16/C:16-3766:J:Kanne:aut:T:fnOp:N:2203659:S:0>.

The legislature can establish affirmative guardrails around sensitive utility data to protect New Yorkers' right to privacy. A.7817/S.3019 would ensure that electricity and gas consumption data is not shared with law enforcement absent a court ordered subpoena, warrant, or the affected person's written, informed consent.

Access to basic necessities like electricity and gas should not mean opening up one's home to the prying eyes of law enforcement. And while smart meters might have certain benefits, they should not become a tool to circumvent constitutional privacy protections.

**The New York Civil Liberties Union supports A.7871/S.3019 and urges lawmakers to pass it promptly.**