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VIA FACSIMILE & REGULAR MAIL

August 3, 2011

Karin DiMichele, Chief  
Berkeley Police Department  
P.O. Box B, 627 Pinewald-Keswick Road  
Bayville, NJ 08721

Re: Request Regarding Cell Phone Location Records

Dear Chief DiMichele,

The American Civil Liberties Union of New Jersey has growing concerns about cell phone tracking by law enforcement. Accordingly, we are sending this request to the 50 largest police departments in New Jersey to learn more about each department's cell phone location records. The requested records are not exempt from public access as security measures or surveillance techniques because the information, if disclosed, would not create a risk to the safety of any persons, property, electronic data or software.

This request for information is made pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law right of citizens of the state to obtain access to public documents. South Jersey Publishing Co. v. New Jersey Expressway Auth., 124 N.J. 478, 487-89 (1991). Please note that this letter contains the statutory requirements for a written OPRA request, and I am not required to fill out an official form. Tina Renna v. County of Union, 407 N.J.Super.230 (App. Div. 2009).

This request encompasses records regarding real-time tracking and records regarding where cell phones have been in the past, and it encompasses all available methods of locating cell phones, including "cell site," triangulation, and GPS.

Please provide copies of the following public records:

- 1) Policies, procedures and practices followed when obtaining cell phone location records. If your agency does not utilize cell phone location records, please confirm such fact in writing.
- 2) Criteria as to when, how, and/or under what circumstances cell phone location records are utilized by your agency.
- 3) Pertaining to the cell phone location records obtained by your agency, documents reflecting:
  - i) the retention and destruction policies of cell phone location records. If the Township follows a retention and disposition schedule for this information, please provide a copy of such schedule;
  - ii) what person or persons are permitted access to and/or use of the cell phone location records;
  - iii) who is prohibited access to such records; and

- iv) the databases in which the information is placed or stored, and agencies (federal, state and local) with which the information is shared.
- 4) Records reflecting your agency's use of cell phone location records to identify:
- i) "communities of interest" (detailing those persons who have been called, or called by a target) in investigations; and
  - ii) all cell phones at a particular location.
- 5) Records reflecting your agency's use of "digital fences" (i.e. systems whereby you are notified whenever a cell phone comes within a specific geographic area).
- 6) Statistical information or reports regarding your agency's use of cell phone location records, reflecting:
- i) The number of judicial decisions and orders ruling on your applications to obtain cell phone location records; and,
  - ii) The number of emergency requests for which no court order was obtained.
- 7) Judicial decisions and orders ruling on applications to obtain cell phone location records.
- 8) Pertaining to the cell phone companies and providers of location-based services that are utilized by your agency:
- i) correspondence (including written and electronic) between your agency and any cell phone companies and providers of location-based services regarding cell phone tracking;
  - ii) company manuals, pricing, and data access policies cell phone companies and providers of location-based services;
  - iii) invoices reflecting payments for obtaining cell phone location records;
  - iv) instances in which cell phone companies have refused to comply with a request or order; and,
  - v) The form in which cell phone location records are provided (hard copy, through specific online databases).

If you determine that any portion of the requested materials are exempt from release, we request that you redact the portion that you believe exempt and provide us with copies of the remaining, non-exempt portions. Also, if any or part of this request is denied, please send us a letter describing the material and listing the specific exemption(s) on which you rely. If the cost of copies for this request does not exceed \$50, proceed without further approval and send me an invoice with the records. Otherwise, please advise me of the costs before filling the request so that we can discuss arrangements.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me at 973-854-1713.

Sincerely,



Bobby Conner

Open Governance Attorney

cc: Beverly M. Carle, Berkeley Township Clerk