



505 Fifth Avenue, Suite 901
Des Moines, IA 50309-2316
www.aclu-ia.org

August 3, 2011

Transmitted by First Class Mail To:

Public Records Custodian
Des Moines Police Department
25 East 1st Street
Des Moines, Iowa 50309

Re: Request Regarding Cell Phone Location Records

Dear Records Custodian:

This is a request under the Iowa Code Chapter 22 by the American Civil Liberties Union of Iowa Foundation, Inc [ACLU]. The ACLU of Iowa defends and promotes individual freedoms and rights recognized under the U.S. and Iowa constitutions.

I. Background of this request.

This request concerns the ability of law enforcement agents to obtain records from cell phone companies that reveal the past or present travels of cell phone users.

Cell phone technology has given law enforcement agents the unprecedented ability to track individuals' movements. As of December 2010, over 96% of the overall population of the United States carried a cell phone—an estimated 302.9 million people.¹ Even the most basic cell phones can be tracked. Cell phones can be tracked in real time, and cell phone companies frequently retain records on the past travels of their customers.

The Constitution protects against unreasonable searches, and if the Des Moines Police Department obtains cell phone location records, the conditions under which it does so are of great public interest. This is because records of a person's travels can be very revealing. As one court recently explained, "A person who knows all of another's travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an

¹ CTIA The Wireless Association, US Wireless Quick Facts, <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>

unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups — and not just one such fact about a person, but all such facts.”² The ACLU of Iowa believes that the Constitution does not permit law enforcement agents to track the location of cell phones without obtaining a warrant and demonstrating probable cause.

Accordingly, the ACLU of Iowa seeks records regarding the Des Moines Police Department’s obtaining cell phone location records from cell phone companies.

II. Request for records regarding acquisition of cell phone location records.

We request disclosure of all records in your possession relating to your policies and practices in obtaining cell phone location records of private individuals.

This request encompasses both 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. This request includes but is not limited to the following records:

1. Policies, procedures and practices you follow in the course of obtaining cell phone location records
2. Data retention policies, detailing how long cell phone location records are kept, databases in which they are placed, and agencies (federal, state and local) with which they are shared
3. The use of cell phone location records to identify “communities of interest (detailing those persons who have been called, or called by a target)” in investigations
4. The use of cell phone location records to identify all of the cell phones at a particular location
5. Your use of “digital fences” (systems whereby you are notified whenever a cell phone comes within a specific geographic area)
6. The legal standard (e.g. probable cause, relevance) you require to exist before attempting to obtain cell phone location records

² *United States v. Maynard*, 615 F.3d 544 (D.C. Cir. 2010), petition for cert. filed, 79 USLW 3610 (Apr 15, 2011)(NO. 10-1259, 10A760).

7. Judicial decisions and orders ruling on the sufficiency of your applications to obtain cell phone location records
8. Statistics regarding your use of cell phone location records, including the number of emergency requests for which no court order was obtained
9. Describing or evidencing form in which cell phone location records are provided (hard copy, through specific online databases)
10. Communications with cell phone companies and providers of location-based services regarding procedures to obtain cell phone location records, including
 - a. company manuals, pricing, and data access policies
 - b. invoices reflecting expenditures for obtaining cell phone location records over a typical, recent 6 month or 1 year period.
 - c. instances in which cell phone companies have refused to comply with a request or order

We would prefer electronic copies. DVDs are a preferred format. Additionally, because the ACLU of Iowa is a non-profit public interest organization, we request a fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying per statute. Please inform us in advance if the projected cost will be greater than \$50.

If you feel you are unable to comply with all or part of this request, please contact us to discuss options. Note that Iowa Code Ch. 22.8 requires a response within 10 business days, so any assertion of a privilege against disclosures of the information requested should be made in writing and within that period.

Also, please notify us if there is a cost of more than \$200 associated with this request. If there are any other questions, please feel free to contact our counsel, Randall Wilson at 515 243 3988 x20 or randall.wilson@aclu-ia.org.

Thank you for your prompt attention to this matter. Please furnish all applicable records to:

American Civil Liberties Union of Iowa
505 5th Avenue, Suite 901
Des Moines, Iowa 50309

Respectfully,

A handwritten signature in black ink, appearing to read "R. Ben Stone". The signature is written in a cursive style with a large, prominent "R" and "S".

R. Ben Stone
Executive Director
ACLU of Iowa Foundation, Inc.