

August 3, 2011

VIA FACSIMILE AND FIRST CLASS MAIL

Ray Schultz, Chief of Police  
Nadine Hamby, Public Information Officer  
Albuquerque Police Department  
400 Roma N.W.  
Albuquerque, NM 87102  
Fax: (505) 768-2331

Re: Request Regarding Cell Phone Location Records

Police Chief Schultz and Officer Hamby:

This is a request under the New Mexico Statute Authority Public Records Act (“Public Records Act”) NMSA 1978 § 14-2-1 et. seq. by the American Civil Liberties Union of New Mexico. The ACLU of New Mexico defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Mexico 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.<sup>1</sup> 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 Albuquerque 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 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.”<sup>2</sup> The ACLU of New Mexico 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.

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

<sup>2</sup> *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).

Accordingly, the ACLU of New Mexico seeks records regarding Albuquerque Police Department's obtaining cell phone location records from cell phone companies.

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

We hereby request disclosure of all records in your possession relating to your acquisition of cell phone location records. 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. This request includes but is not limited to the following records:

- Policies, procedures and practices you follow to obtain cell phone location records
- 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
- The use of cell phone location records to identify "communities of interest (detailing those persons who have called or have been called by a target)" in investigations
- The use of cell phone location records to identify all of the cell phones at a particular location
- Your use of "digital fences" (systems whereby you are notified whenever a cell phone comes within a specific geographic area)
- The legal standard (e.g. probable cause, relevance) you proffer to obtain cell phone location records
- Judicial decisions and orders ruling on your applications to obtain cell phone location records
- Statistics regarding your use of cell phone location records, including the number of emergency requests for which no court order was obtained
- The form in which cell phone location records are provided (hard copy, through specific online databases)
- Communications with cell phone companies and providers of location-based services regarding cell phone location records, including
  - company manuals, pricing, and data access policies
  - invoices reflecting payments for obtaining cell phone location records

- instances in which cell phone companies have refused to comply with a request or order

Electronic documents are preferred and may be sent to [lknudsen@aclu-nm.org](mailto:lknudsen@aclu-nm.org). If your agency only has the capacity to produce hard copies, they are to be sent to me at the following address: ACLU of New Mexico, P.O. Box 566, Albuquerque, NM, 87103. Pursuant to Public Records Law, I agree to pay a reasonable fee for copying the public records. If the charges will exceed \$50.00, please telephone me in advance at 505.266.5915 extension 1004 so that I may review and agree to such charges. I would ask that a receipt indicating the copying charges for each document be provided.

Please do not hesitate to contact me if you have any questions or concerns. I can be reached by email at [lknudsen@aclu-nm.org](mailto:lknudsen@aclu-nm.org) or by phone at 505.266.5915 extension 1009. Thank you in advance for your assistance in this matter.

Sincerely,

Lissa M. Knudsen  
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