



August 3, 2011

Transmitted by Email and First Class Mail To:

Warren Gall, Chief
Myrtle Beach Police Department
Ted. C. Collins Law Enforcement Center
1101 North Oak Street
Myrtle Beach, SC 29577
wgall@cityofmyrtlebeach.com

Re: Request Regarding Cell Phone Location Records

Dear Mr. Gall:

This is a request under the South Carolina Freedom of Information Act by the American Civil Liberties Union of South Carolina. The ACLU of South Carolina defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and South Carolina 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 Myrtle Beach 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."² The ACLU of South Carolina believes that the Constitution does not permit law

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

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) (combined with *U.S. v. Jones*, 625 F.3d 766, (D.C. Cir. 2010), cert. granted, 79 USLW 3610, 79 USLW 3718, 79 USLW 3727 (U.S. June 27, 2011) (NO. 10-1259, 10A760)).

enforcement agents to track the location of cell phones without obtaining a warrant and demonstrating probable cause.

Accordingly, the ACLU of South Carolina seeks records regarding Myrtle Beach 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 been called, or 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

Because the ACLU of South Carolina 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. Please inform us in advance if the cost will be greater than \$150.00.

Thank you for your prompt attention to this matter. Please send all applicable hard copy records to ACLU of South Carolina, P.O. Box 20998, Charleston, SC 29413 and all applicable electronic records to sdunn@aclusouthcarolina.org.

If you have questions, please contact me via email at the address listed above or by telephone at 843-720-1425.

Sincerely,

A handwritten signature in black ink, appearing to read 'Susan K. Dunn', with a long horizontal line extending to the right.

Susan K. Dunn
Legal Director
ACLU of South Carolina