



**OFFICE OF THE SHERIFF  
BUNCOMBE COUNTY, NORTH CAROLINA**

202 Haywood Street  
Asheville, N.C. 28801

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Van Duncan, Sheriff

Sheriff J. Van Duncan  
Buncombe County Sheriff's Office  
202 Haywood Street  
Asheville, NC 28801

September 25, 2011

Katherine Lewis Parker  
Legal Director  
American Civil Liberties Union of North Carolina Foundation  
Post Office Box 28004  
Raleigh, North Carolina 27611-8004

Re: Request regarding cell phone location records

Dear Ms. Parker:

This will acknowledge receipt of your letter dated August 3, 2011 identified as a "Request Regarding Cell Phone Location Records."

Item #1: *Policies, procedures and practices you follow to obtain cell phone location records*

Any such items in the possession of our office in writing, if any, are enclosed with this letter. If no such items are enclosed, this office does not have any such items in writing.

Item #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*

Retention of records is governed by the Records Retention and Disposition Schedule for a County Sheriff's Office issued by the North Carolina Department of Cultural Resources, Division of Historical Resources, Archives and Records Section, Government Records Branch. The most recent copy is dated November 10, 2008 and is located at:

[www.records.ncdcr.gov/local/sheriffschedule2008.pdf](http://www.records.ncdcr.gov/local/sheriffschedule2008.pdf)

Item #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*

This is a request for information and does not describe a "public record" as defined in N.C. Gen. Stat. § 132-1. If it is intended to be a request for a public record, it is

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insufficiently specific to identify what record is being requested. Records relating to this issue that are a "record of criminal investigation" or a "record of criminal intelligence information" are not subject to public access under N.C. Gen. Stat. § 132-1.4 and do not have to be disclosed. If the request is revised to describe the specific records requested, we will review any records that correspond to the revised request to determine whether or not they may be released.

Item #4: *The use of cell phone location records to identify all of the cell phones at a particular location*

This is a request for information and does not describe a "public record" as defined in N.C. Gen. Stat. § 132-1. If it is intended to be a request for a public record, it is insufficiently specific to identify what record is being requested. Records relating to this issue that are a "record of criminal investigation" or a "record of criminal intelligence information" are not subject to public access under N.C. Gen. Stat. § 132-1.4 and do not have to be disclosed. If the request is revised to describe the specific records requested, we will review any records that correspond to the revised request to determine whether or not they may be released.

Item #5: *Your use of "digital fences" (systems whereby you are notified whenever a cell phone comes within a specific geographic area)*

This is a request for information and does not describe a "public record" as defined in N.C. Gen. Stat. § 132-1. If it is intended to be a request for a public record, it is insufficiently specific to identify what record is being requested. Records relating to this issue that are a "record of criminal investigation" or a "record of criminal intelligence information" are not subject to public access under N.C. Gen. Stat. § 132-1.4 and do not have to be disclosed. If the request is revised to describe the specific records requested, we will review any records that correspond to the revised request to determine whether or not they may be released.

Item #6: *The legal standard (e.g. probable cause, relevance) you proffer to obtain cell phone location records*

This is a request for information and does not describe a "public record" as defined in N.C. Gen. Stat. § 132-1. If it is intended to be a request for a public record, it is insufficiently specific to identify what record is being requested. Records relating to this issue that are a "record of criminal investigation" or a "record of criminal intelligence information" are not subject to public access under N.C. Gen. Stat. § 132-1.4 and do not have to be disclosed. If the request is revised to describe the specific records requested, we will review any records that correspond to the revised request to determine whether or not they may be released.

Item #7: *Judicial decisions and orders ruling on your applications to obtain cell phone location records*

If any such documents are in the possession of our office, they are enclosed, except for any such documents that: (1) have been sealed by court order, (2) are protected by Article 16 of Chapter 15A of the North Carolina General Statutes, Electronic Surveillance Act, or (3) are search warrants that have not yet been served and returned to the Clerk of Court.

Item #8: *Statistics regarding your use of cell phone location records, including the number of emergency requests for which no court order was obtained*

This is not a request for a "public record" as defined in N.C. Gen. Stat. § 132-1. If our office has previously compiled a list of such "statistics," the previously compiled statistics are enclosed. If none have been previously compiled, none are enclosed.

Item #9: *The form in which cell phone location records are provided (hard copy, through specific online databases)*

This is a request for information and does not describe a "public record" as defined in N.C. Gen. Stat. § 132-1.

Item #10a: *Communications with cell phone companies and providers of location-based services regarding cell phone location records, including company manuals, pricing, and data access policies*

Any such items in the possession of our office are enclosed. If no such documents are enclosed, our office has no such items in our possession.

Item #10b: *Communications with cell phone companies and providers of location-based services regarding cell phone location records, including invoices reflecting payments for obtaining cell phone location records*

If any such "communications" or invoices are in our possession and not prohibited from disclosure by Article 16 of Chapter 15A of the General Statutes, Electronic Surveillance Act, they are enclosed but may have been redacted to remove any information pursuant to N.C. Gen. Stat. § 132.1.4 that is a "record of criminal investigation" or a "record of criminal intelligence information." If no such documents are enclosed, our office has no such items in our possession.

Item #10c: *Communications with cell phone companies and providers of location-based services regarding cell phone location records, including instances in which cell phone companies have refused to comply with a request or order*

If any such "communications" are in our possession and not prohibited from disclosure by Article 16 of Chapter 15A of the General Statutes, Electronic Surveillance Act, they are enclosed but may have been redacted to remove any information pursuant to N.C. Gen. Stat. § 132.1.4 that is a "record of criminal investigation" or a "record of criminal intelligence information." If no such documents are enclosed, our office has no such items in our possession.

Sincerely,



Sheriff J. Van Duncan  
Sheriff Buncombe County