



## Gastonia Police Department Office of the Chief of Police

August 25, 2011

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

Re: Request Regarding Cell Phone Location Records

Dear Ms. Parker:

I am writing in response to your letter dated August 3, 2011 identified as a "Request Regarding Cell Phone Location Records." The background information you provided indicates your interest in obtaining Gastonia Police Department (GPD) records related to real time tracking of cell phones, GPD records related to past travels of cell phone customers by law enforcement, and GPD records of cell phone location records obtained from cell phone companies. As an initial matter, please note the following: (1) The GPD does not possess technology or equipment that would permit officers to track cell phone users; (2) Officers of the GPD adhere to Constitutional and statutory requirements in any instance in which cell phone records are sought in the course of a criminal investigation; and (3) any cell phone records obtained by members of the GPD would have been obtained in the course of a criminal investigation pursuant to appropriate process and thus, would be categorized as either a "record of criminal investigation" or a "record of criminal intelligence information." As such, these records are not subject to public access under N.C. Gen. Stat. § 132-1.4. That having been said, I will respond to your specific requests below:

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

Response: The GPD does not possess any written documents responsive to this request.

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*



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Phone: (704) 866-6890 • Fax: (704) 866-6892 • [GastoniaPD.org](http://GastoniaPD.org)

Response: Retention of records by the Gastonia Police Department is governed by the Municipal Records Retention and Disposition Schedule established by the North Carolina Department of Cultural Resources, Division of Historical Resources, Archives and Records Section, Government Records Branch. The schedule can be found at the following link: [http://www.records.ncdcr.gov/local/municipal\\_2009.pdf](http://www.records.ncdcr.gov/local/municipal_2009.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*

Response: This is a request for information and does not describe a "public record" as defined in N.C. Gen. Stat. § 132-1. If this request 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 #4: *The use of cell phone location records to identify all of the cell phones at a particular location*

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

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

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

Response: Any such document in the possession of the GPD is a "record of criminal investigation" or a "record of criminal intelligence information." Such documents are not subject to public access under N.C. Gen. Stat. § 132-1.4 and do not have to be disclosed.

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

Response: This is not a request for a "public record" as defined in N.C. Gen. Stat. § 132-1. Further, the GPD has not compiled statistics reflecting the requested information.

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

Response: 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*

Response: The GPD does not possess responsive records. In order to obtain such information and records, you may wish to contact individual cell phone service providers.

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 not located any such items. However, if invoices responsive to this request are located which are subject to disclosure, this response will be supplemented.

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*

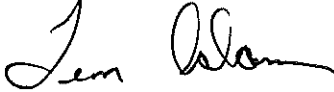
If any such "communications" are in our possession and not prohibited from disclosure by Article 16 of Chapter 15A of the General Statutes, Electronic Surveillance Act, they are

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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.

Please let me know if you have any questions concerning the information provided above.

Sincerely,

A handwritten signature in black ink, appearing to read "Tim Adams", written in a cursive style.

Tim Adams  
Chief of Police