



**Gastonia Police Department**  
**Office of the Chief of Police**

October 6, 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 September 27, 2011 in which you requested that I provide you with the following records:

Any and all correspondence, from August 1, 2011 through the present, to or from your office and any outside organization(s) regarding the issue of cell phone location records, including, but not limited to correspondence with the North Carolina Sheriffs' Association.

I am enclosing all such correspondence for your review.

Please let me know if you have any additional questions.

Sincerely,

A handwritten signature in black ink that reads "Tim Adams".

Tim Adams  
Chief of Police



200 East Long Avenue • PO Box 1748 • Gastonia, NC 28053-1748  
Phone: (704) 866-6890 • Fax: (704) 866-6892 • [GastoniaPD.org](http://GastoniaPD.org)

## Adams, Tim

---

**From:** Mike Yaniero [myaniero@ci.jacksonville.nc.us]  
**Sent:** Monday, August 08, 2011 4:43 PM  
**To:** 'Mike Williams'  
**Cc:** Osborne, George; Buie, James; Farley, William; Carl W. Robbins; Chief Monroe (rmonroe@cmpd.org); Chris Blue (cblue@townofchapelhill.org); Conference of District Attorneys Peg Dorer (Peg.Dorer@nccourts.org); Debra Duncan (E-mail); 'Edmond W. (Eddie) Caldwell Jr. (E-mail)'; Fred Baggett; Greg Jarvies (ncpalex@aol.com); Guy Smith (smithg@ci.concord.nc.us); Harry Patrick Dolan (E-mail); J. W. (Woody) Chavis (E-mail) (jwchavis@cityofkannapolis.com); 'jack.lewis@apexnc.org'; James Fealy (E-mail); Joanne Calzaretta; John H. Manley (E-mail) (John.Manley@rockymountnc.gov); Jose Lopez Sr. (E-mail); Julie White; Kelli Kukura; Ken Miller (ken.miller@greensboro-nc.gov); Major Jeff Stewart (jrstewart@ci.goldsboro.nc.us); McLeod, Greg; Medlock, Harold, Jr.; Merl Hamiltom (E-mail); Palombo, Chief Frank; Pat Bazemore (E-mail); Phillip K. Potter (E-mail); Ralph.Evangelous@wilmingtonnc.gov; Rob Hunter (E-mail); Rory Collins (Rcoll@salisburync.gov); 'Scott Cunningham'; Tarasovic, Ray; Adams, Tim; Timothy J. Bell (E-mail); Tom Adkins; Tom Bergamine (E-mail); Tom Hopkins (thopkins@wilsonnc.org); Wayne Woodard (E-mail); William J. Anderson (E-mail) (WAnderson@greenvillenc.gov)  
**Subject:** RE: PUBLIC RECORDS REQUEST MADE TO POLICE/SHERIFFS

Yes I received one. The North Carolina Sheriff's Association is working on a response to help understand the request, I will let know as soon as soon as we get it.

Michael G. Yaniero  
Chief of Police  
City of Jacksonville  
206 Marine Blvd.  
Jacksonville, NC 28541  
910-938-6403  
Fax: 910-455-9987  
[myaniero@ci.jacksonville.nc.us](mailto:myaniero@ci.jacksonville.nc.us)

### DISCLAIMER:

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

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**From:** Mike Williams [mailto:mwilliams@ci.burlington.nc.us]  
**Sent:** Monday, August 08, 2011 3:53 PM  
**To:** Mike Yaniero  
**Subject:** FW: PUBLIC RECORDS REQUEST MADE TO POLICE/SHERIFFS

Chief Yaniero,

Are you aware of other Metro Chiefs having received this request? I received it Friday.

Thanks,

Mike

---

**From:** N.C. League of Municipalities [mailto:LeagueLINC@ncim.org]  
**Sent:** Monday, August 08, 2011 1:20 PM

**To:** Harold Owen  
**Subject:** PUBLIC RECORDS REQUEST MADE TO SHERIFFS

*[View this message Online or in your Mobile Device](#)*



## **NCLM ALERT**

We wanted you to be aware that last week a letter was sent by the ACLU to the sheriffs of our cities and towns with populations greater than 30,000. The letter is a request with regard to the acquisition of cell phone records. Below is the note sent by the NC Sheriffs' Association to the sheriffs regarding the request and it includes a [link to the ACLU letter to Sheriffs](#).

Kelli H. Kukura  
Director of Governmental Affairs  
North Carolina League of Municipalities  
919-889-9040 Cell  
919-715-3942 Office

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Friday, August 5, 2011  
To: All Sheriffs

This week, a letter was received by many sheriffs from the American Civil Liberties Union (ACLU). The letter said that it had been sent to all 100 North Carolina sheriffs and to police chiefs in cities with a population over 30,000. The letter alleges that, pursuant to the Public Records Law, it is requesting "records regarding acquisition of cell phone location records." [ACLU Letter to Sheriffs \(link here\)](#)

Many sheriffs have contacted the North Carolina Sheriffs' Association requesting legal advice on how to respond to this letter in compliance with General Statutes Chapter 132, Public Records.

An initial review of the letter indicates that much of what is requested is not a public record at all, or is a public record that is not subject to disclosure under the law.

In response to the requests received by the Association from many sheriffs for legal advice on how to respond to the letter in compliance with the law, I have talked to Sheriff Richard Webster, NCSA President. Based on that conversation, the NC Sheriffs' Association (in consultation with other interested parties) will be preparing a legal analysis of the ACLU's letter and the applicable law. At the conclusion of that analysis, we will distribute a legal memo to all sheriffs concerning the letter and the applicable law. We anticipate distributing this memo to all sheriffs no later than August 19, and possibly sooner.

If you have called, emailed or faxed the Association requesting information about the ACLU letter, or plan to do so, please await this

*Do you have 5 minutes?*

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memo in lieu of an individual response from the Association to your inquiry as we will be devoting our efforts to legal research and preparation of the memo designed to assist all 100 sheriffs in replying to the ACLU letter. If your sheriff's office legal advisor or county attorney has recommendations on how to reply to the ACLU letter, please ask them to contact me directly so we can incorporate their guidance in our evaluation of the legal issues involved in this matter.

Thanks,  
Eddie C.

Executive Vice President and General Counsel  
North Carolina Sheriffs' Association, Inc.  
Post Office Box 20049  
Raleigh, North Carolina 27619-0049  
Telephone: (919) 459-1052 Fax: (919) 783-5272  
Email: [ecaldwell@ncsheriffs.net](mailto:ecaldwell@ncsheriffs.net) Webpage: [www.ncsheriffs.org](http://www.ncsheriffs.org)  
North Carolina Sheriffs' Association  
Serving the Sheriffs and Citizens of North Carolina since 1922

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Click [here](#) to unsubscribe.

NC League of Municipalities, 215 North Dawson Street, Raleigh, NC 27603

## Adams, Tim

---

**From:** Mike Yaniero [myaniero@ci.jacksonville.nc.us]  
**Sent:** Wednesday, August 10, 2011 5:59 PM  
**To:** Fred Baggett  
**Cc:** Osborne, George; Buie, James; Farley, William; Carl W. Robbins; Chief Monroe (rmonroe@cmpd.org); Chris Blue (cblue@townofchapelhill.org); Peg.Dorer@nccourts.org; Debra Duncan (E-mail); 'Edmond W. (Eddie) Caldwell Jr. (E-mail)'; Fred Baggett; Greg Jarvies (ncpalex@aol.com); Guy Smith (smithg@ci.concord.nc.us); Harry Patrick Dolan (E-mail); J. W. (Woody) Chavis (E-mail) (jwchavis@cityofkannapolis.com); 'jack.lewis@apexnc.org'; James Fealy (E-mail); Joanne Calzaretta; John H. Manley (E-mail) (John.Manley@rockymountnc.gov); Jose Lopez Sr. (E-mail); Julie White; Kelli Kukura; Ken Miller (ken.miller@greensboro-nc.gov); Major Jeff Stewart (jrstewart@ci.goldsboro.nc.us); McLeod, Greg; Medlock, Harold, Jr.; Merl Hamiltom (E-mail); Mike Williams (E-mail); Palombo, Chief Frank; Pat Bazemore (E-mail); Phillip K. Potter (E-mail); Ralph.Evangelous@wilmingtonnc.gov; Rob Hunter (E-mail); Rory Collins (Rcoll@salisburync.gov); 'Scott Cunningham'; Tarasovic, Ray; Adams, Tim; Timothy J. Bell (E-mail); Tom Adkins; Tom Bergamine (E-mail); Tom Hopkins (thopkins@wilsonnc.org); Wayne Woodard (E-mail); William J. Anderson (E-mail) (WAnderson@greenvillenc.gov)  
**Subject:** RE: Public Records Request for Cell Phone Records --- by the American Civil Liberties Union (ACLU)

Thanks Fred, we look forward to your response.

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**From:** Fred Baggett [Fred.Baggett@smithmoorelaw.com]  
**Sent:** Wednesday, August 10, 2011 5:32 PM  
**To:** Kelli Kukura; Mike Yaniero  
**Cc:** Eddie Caldwell; Kim Hibbard; Jennifer Webb; Lori Moye  
**Subject:** RE: Public Records Request for Cell Phone Records --- by the American Civil Liberties Union (ACLU)

eddie convened a mtg tomoorow among LE attorneys to discuss. yes, aware.  
fred

-----Original Message-----

**From:** Kelli Kukura [mailto:kkukura@NCLM.ORG]  
**Sent:** Wed 8/10/2011 5:09 PM  
**To:** Mike Yaniero; Fred Baggett  
**Cc:** Eddie Caldwell; Kim Hibbard; Jennifer Webb; Lori Moye  
**Subject:** FW: Public Records Request for Cell Phone Records --- by the American Civil Liberties Union (ACLU)

Mike, Fred--

I wanted to be sure you and the Chiefs have discussed this?

**From:** Eddie Caldwell [mailto:ecaldwell@ncsheriffs.net]  
**Sent:** Friday, August 05, 2011 10:46 AM  
**To:** NCSA List --- Sheriffs and Sheriffs' Personnel  
**Cc:** NC Assn. of Police Attorneys  
**Subject:** Public Records Request for Cell Phone Records --- by the American Civil Liberties Union (ACLU)

To: All Sheriffs

This week, a letter was received by many sheriffs from the American Civil Liberties Union (ACLU). The letter said that it had been sent to all 100 North Carolina sheriffs and to police chiefs in cities with a population over 30,000. The letter alleges that, pursuant to the Public Records Law, it is requesting "records regarding acquisition of cell phone location records." A copy of that letter is attached to this email.

Many sheriffs have contacted the North Carolina Sheriffs' Association requesting legal advice on how to respond to this letter in compliance with General Statutes Chapter 132, Public Records.

An initial review of the letter indicates that much of what is requested is not a public record at all, or is a public record that is not subject to disclosure under the law.

In response to the requests received by the Association from many sheriffs for legal advice on how to respond to the letter in compliance with the law, I have talked to Sheriff Richard Webster, NCSA President. Based on that conversation, the NC Sheriffs' Association (in consultation with other interested parties) will be preparing a legal analysis of the ACLU's letter and the applicable law. At the conclusion of that analysis, we will distribute a legal memo to all sheriffs concerning the letter and the applicable law. We anticipate distributing this memo to all sheriffs no later than August 19, and possibly sooner.

If you have called, emailed or faxed the Association requesting information about the ACLU letter, or plan to do so, please await this memo in lieu of an individual response from the Association to your inquiry as we will be devoting our efforts to legal research and preparation of the memo designed to assist all 100 sheriffs in replying to the ACLU letter. If your sheriff's office legal advisor or county attorney has recommendations on how to reply to the ACLU letter, please ask them to contact me directly so we can incorporate their guidance in our evaluation of the legal issues involved in this matter.

Thanks. Eddie C.

---

Edmond W. (Eddie) Caldwell, Jr.  
Executive Vice President and General Counsel

North Carolina Sheriffs' Association, Inc.  
Post Office Box 20049  
Raleigh, North Carolina 27619-0049

Telephone: (919) 459-1052 Fax: (919) 783-5272

Email: [ecaldwell@ncsheriffs.net](mailto:ecaldwell@ncsheriffs.net) <<mailto:ecaldwell@ncsheriffs.net>>

Webpage: [www.ncsheriffs.org](http://www.ncsheriffs.org) <<http://www.ncsheriffs.org/>>

North Carolina Sheriffs' Association  
Serving the Sheriffs and Citizens of North Carolina since 1922

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**IRS CIRCULAR 230 NOTICE:** To ensure compliance with the requirements of IRS Circular 230, we inform you that any U.S. tax advice contained in this communication or attachment hereto is not intended or written to be used and cannot be used for the purpose of avoiding penalties under the Internal Revenue Code or for promoting, marketing or recommending to another party any transaction or matter addressed in this communication or attachment.

## Adams, Tim

---

**From:** Mike Yaniero [myaniero@ci.jacksonville.nc.us]  
**Sent:** Wednesday, August 17, 2011 3:14 PM  
**To:** Osborne, George; Buie, James; Farley, William; Carl W. Robbins; Chief Monroe (rmonroe@cmpd.org); Chris Blue (cblue@townofchapelhill.org); Conference of District Attorneys Peg Dorer (Peg.Dorer@nccourts.org); Debra Duncan (E-mail); 'Edmond W. (Eddie) Caldwell Jr. (E-mail)'; Fred Baggett; Greg Jarvies (ncpolex@aol.com); Guy Smith (smithg@ci.concord.nc.us); Harry Patrick Dolan (E-mail); J. W. (Woody) Chavis (E-mail) (jwchavis@cityofkannapolis.com); 'jack.lewis@apexnc.org'; James Fealy (E-mail); Joanne Calzaretta; John H. Manley (E-mail) (John.Manley@rockymountnc.gov); Jose Lopez Sr. (E-mail); Julie White; Kelli Kukura; Ken Miller (ken.miller@greensboro-nc.gov); Major Jeff Stewart (jrstewart@ci.goldsboro.nc.us); McLeod, Greg; Medlock, Harold, Jr.; Merl Hamiltom (E-mail); Mike Williams (E-mail); Palombo, Chief Frank; Pat Bazemore (E-mail); Phillip K. Potter (E-mail); Ralph.Evangelous@wilmingtonnc.gov; Rob Hunter (E-mail); Rory Collins (Rcoll@salisburync.gov); 'Scott Cunningham'; Tarasovic, Ray; Adams, Tim; Timothy J. Bell (E-mail); Tom Adkins; Tom Bergamine (E-mail); Tom Hopkins (thopkins@wilsonnc.org); Wayne Woodard (E-mail); William J. Anderson (E-mail) (WAnderson@greenvillenc.gov)  
**Subject:** FW: ACLU letter

Metro Chiefs,  
Just keeping you all in the loop.

Michael G. Yaniero  
Chief of Police  
City of Jacksonville  
206 Marine Blvd.  
Jacksonville, NC 28541  
910-938-6403  
Fax: 910-455-9987  
[myaniero@ci.jacksonville.nc.us](mailto:myaniero@ci.jacksonville.nc.us)

### DISCLAIMER:

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

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**From:** Eddie Caldwell [<mailto:ecaldwell@ncsheriffs.net>]  
**Sent:** Wednesday, August 17, 2011 10:33 AM  
**To:** Mike Yaniero  
**Subject:** Re: ACLU letter

I sent a draft to various legal advisers and am getting their input, and will be finalizing it and sending it out (including you on the distribution list) by Friday.

Let me know if you have additional questions.

Eddie C.

Eddie Caldwell

----- Original Message -----

From: Mike Yaniero <[myaniero@ci.jacksonville.nc.us](mailto:myaniero@ci.jacksonville.nc.us)>  
To: Eddie Caldwell  
Sent: Wed Aug 17 09:09:14 2011



Subject: ACLU letter

Eddie,  
Did you ever send out the brief on the ACLU letter.

Michael G. Yaniero  
Chief of Police  
City of Jacksonville  
206 Marine Blvd  
Jacksonville, NC. 28541  
910-938-6403

## Adams, Tim

---

**From:** Mike Yaniero [myaniero@ci.jacksonville.nc.us]  
**Sent:** Monday, August 22, 2011 10:42 AM  
**To:** Osborne, George; Buie, James; Farley, William; Carl W. Robbins; Chief Monroe (rmonroe@cmpd.org); Chris Blue (cblue@townofchapelhill.org); Conference of District Attorneys Peg Dorer (Peg.Dorer@nccourts.org); Debra Duncan (E-mail); 'Edmond W. (Eddie) Caldwell Jr. (E-mail)'; Fred Baggett; Greg Jarvies (ncpolex@aol.com); Guy Smith (smithg@ci.concord.nc.us); Harry Patrick Dolan (E-mail); J. W. (Woody) Chavis (E-mail) (jwchavis@cityofkannapolis.com); 'jack.lewis@apexnc.org'; James Fealy (E-mail); Joanne Calzaretta; John H. Manley (E-mail) (John.Manley@rockymountnc.gov); Jose Lopez Sr. (E-mail); Julie White; Kelli Kukura; Ken Miller (ken.miller@greensboro-nc.gov); Major Jeff Stewart (jrstewart@ci.goldsboro.nc.us); McLeod, Greg; Medlock, Harold, Jr.; Merl Hamilton (E-mail); Mike Williams (E-mail); Palombo, Chief Frank; Pat Bazemore (E-mail); Phillip K. Potter (E-mail); Ralph.Evangelous@wilmingtonnc.gov; Rob Hunter (E-mail); Rory Collins (Rcoll@salisburync.gov); 'Scott Cunningham'; Tarasovic, Ray; Adams, Tim; Timothy J. Bell (E-mail); Tom Adkins; Tom Bergamine (E-mail); Tom Hopkins (thopkins@wilsonnc.org); Wayne Woodard (E-mail); William J. Anderson (E-mail) (WAnderson@greenvillenc.gov)  
**Subject:** FW: ACLU Letter Requesting Cell Phone Location Records  
**Attachments:** Ltr. to Sheriff Webster from ACLU 8.3.2011.pdf; Memo.All Sheriffs. ACLU Records Request.pdf; Ltr.Sample.ACLU Response 8-19-11.docx

Michael G. Yaniero  
Chief of Police  
City of Jacksonville  
206 Marine Blvd.  
Jacksonville, NC 28541  
910-938-6403  
Fax: 910-455-9987  
[myaniero@ci.jacksonville.nc.us](mailto:myaniero@ci.jacksonville.nc.us)

### DISCLAIMER:

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties.

---

**From:** Roxanne Ravenel [<mailto:rravenel@ncsheriffs.net>] **On Behalf Of** Eddie Caldwell  
**Sent:** Monday, August 22, 2011 10:25 AM  
**To:** NCSA List --- Sheriffs and Sheriffs' Personnel  
**Cc:** NC Assn. of Police Attorneys  
**Subject:** ACLU Letter Requesting Cell Phone Location Records

### To: All Sheriffs

A letter from the American Civil Liberties Union (ACLU) dated August 3, 2011 requested copies of various "cell phone location records." The letter indicated that it was sent to all 100 North Carolina sheriffs and to all chiefs of police of cities with populations over 30,000. Many of you contacted the North Carolina Sheriffs' Association for legal advice under Chapter 132 of the General Statutes, Public Records.

In an email to you from the North Carolina Sheriffs' Association on August 5, 2011, and again on August 19, 2011, we indicated that we would provide you with a legal analysis of the ACLU's letter and the applicable law in a memo.

Attached to this email are:

1. A confidential legal memo discussing each of the items requested in the ACLU letter and their status under the public records law.
2. A DRAFT letter that you may wish to consider using to prepare your own response to the ACLU letter, with an item by item explanation of the status of the records that may be in your custody.
3. A copy of the original ACLU letter.

**NOTE:** Prior to responding to the ACLU letter, each sheriff is encouraged to check with your own sheriff's office legal advisor, if you have one, and with your county attorney for specific legal advice relating to your individual sheriff's office.

If you have a question about whether or not a specific record in your custody is "confidential" and not subject to the public records law, you should discuss those issues with your sheriff's office legal advisor or with your county attorney.

If you have any questions or need any additional information about the documents attached to this email, please do not hesitate to call me at 919-459-1052.

Thanks....Eddie C.

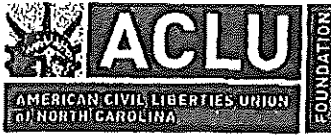


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**Edmond W. (Eddie) Caldwell, Jr.**  
*Executive Vice President and General Counsel*  
North Carolina Sheriffs' Association, Inc.  
Post Office Box 20049  
Raleigh, North Carolina 27619-0049  
Telephone: (919) 459-1052 Fax: (919) 783-5272  
Email: [ecaldwell@ncsheriffs.net](mailto:ecaldwell@ncsheriffs.net) Webpage: [www.ncsheriffs.org](http://www.ncsheriffs.org)

**North Carolina Sheriffs' Association**  
*Serving the Sheriffs and Citizens of North Carolina since 1922*

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P.O. Box 28004 • Raleigh, North Carolina 27611-8004  
Phone (919) 834-3390 • Fax (866) 511-1344

August 3, 2011

**VIA FIRST CLASS MAIL**

Sheriff Richard H. Webster  
Chatham County Sheriff's Office  
P.O. Box 429  
Pittsboro, NC 27312

Re: Request Regarding Cell Phone Location Records

Dear Sheriff Webster:

This letter is a request under the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1, by the American Civil Liberties Union of North Carolina Legal Foundation ("ACLU-NCLF"). ACLU-NCLF defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and North Carolina Constitutions. **This request is being made to all one hundred North Carolina county sheriffs' offices and police departments in towns and cities with populations over 30,000. We are not singling out your office in making this request.**

**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 U.S. and North Carolina Constitutions protect against unreasonable searches, and if the Chatham County Sheriff's Office 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

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

such fact about a person, but all such facts.”<sup>2</sup> The U.S. and North Carolina Constitutions do not permit law enforcement agents to track the location of cell phones without obtaining a warrant and demonstrating probable cause.

Accordingly, we seek records regarding the Chatham County Sheriff’s Office’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:

- ① • Policies, procedures and practices you follow to obtain 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 proffer to obtain cell phone location records
- ⑦ • Judicial decisions and orders ruling on 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 • The form in which cell phone location records are provided (hard copy, through specific online databases)

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<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).

- Communications with cell phone companies and providers of location-based services regarding cell phone location records, including

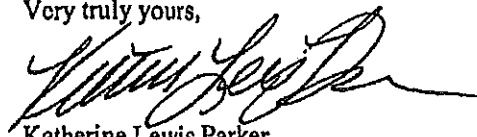
- (10a) ○ company manuals, pricing, and data access policies
- (10b) ○ invoices reflecting payments for obtaining cell phone location records
- (10c) ○ instances in which cell phone companies have refused to comply with a request or order

Because ACLU-NCLF 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 \$50.00.

Thank you for your prompt attention to this matter. Please furnish all applicable records to the mailing address indicated on this letter or to [KParker@acluofnc.org](mailto:KParker@acluofnc.org).

We sincerely appreciate your attention to this matter and would appreciate receiving a response to this request by **Friday, August 19, 2011**. Please do not hesitate to contact me at (919) 834-3466 with any questions, comments, or concerns you may have.

Very truly yours,



Katherine Lewis Parker  
Legal Director



NORTH CAROLINA SHERIFFS' ASSOCIATION  
LAW ENFORCEMENT OFFICERS AND STATE OFFICIALS  
OF NORTH CAROLINA



President  
SHERIFF RICHARD WEBSTER  
Chatham County

First Vice President  
SHERIFF TONY PERRY  
Camden County

Second Vice President  
SHERIFF KEVIN FRYE  
Avery County

Third Vice President  
SHERIFF ASA B. BUCK, III  
Carteret County

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SHERIFF BRAD RILEY  
Catawba County

Chairman - Executive Committee  
SHERIFF SAM PAGE  
Rockingham County

Executive Vice President  
and General Counsel  
EDMOND W. CALDWELL, JR.

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MEMBERS  
(Past Presidents)

SHERIFF W. E. "BILLY" SMITH  
Lenoir County

SHERIFF EARL BUTLER  
Cumberland County

SHERIFF WORTH HILL  
Durham County

SHERIFF STEVE BIZZELL  
Johnston County

SHERIFF JERRY G. MONETTE  
Craven County

SHERIFF JAMES L. KNIGHT  
Edgecombe County

## Confidential Legal Memo

**TO:** All Sheriffs  
**FROM:** Eddie Caldwell  
Executive Vice President and General Counsel  
North Carolina Sheriffs' Association  
**SUBJECT:** 8/3/11 ACLU Letter Regarding Cell Phone Location Records  
**DATE:** August 19, 2011

Several sheriffs sent me a copy of a letter dated August 3, 2011 from the American Civil Liberties Union (ACLU). That letter indicated that it was sent to all 100 North Carolina Sheriffs and was also sent to Chiefs of Police in cities with a population of at least 30,000. Accompanying this memo is a copy of the version of that letter received by NCSA President, Sheriff Richard Webster.

In preparation of this memorandum, I have met with or consulted with attorneys representing the North Carolina Association of County Commissioners, North Carolina League of Municipalities, North Carolina Association of Chiefs of Police, UNC-CH School of Government, and numerous legal advisors from sheriffs' offices and police departments across the state. The information provided in this memorandum is based upon the collective advice of those persons with whom I have consulted.

- Information is provided below in response to each of the ten different items specified in the ACLU letter.
- Note: The terms "in writing" and "written" include emails or other electronic records in addition to printed or handwritten documents.
- Prior to responding to the ACLU letter, each sheriff should check with your own sheriff's office legal advisor (if you have one) and with your county attorney.



Post Office Box 20049 • Raleigh, N.C. 27619-0049 • Telephone: (919) SHERIFF (743-7433)

Fax: (919) 783-5272 • E-mail: ncsa@ncsheriffs.net • www.ncsheriffs.org

The North Carolina Sheriffs' Association is a Non-Profit, tax exempt organization recognized by the I.R.S.

## CONFIDENTIAL LEGAL MEMO

- Note that the letter you send to the ACLU will also be a public record subject to disclosure.
- Accompanying this memo is a sample reply letter to the ACLU. Prior to using it, you should review it carefully to determine whether or not it fully and accurately responds based on the written documents contained in your sheriff's office. Before using the sample reply letter, you should make any necessary amendments to the letter to make sure that the responses that you provide are accurate.

As always, if you have any questions or need any additional information, please do not hesitate to call me at 919-459-1052.

### Items in ACLU Letter Regarding Cell Phone Location Records

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

If your sheriff's office has any such materials in writing, they should be disclosed. Any such information that is not in written form does not need to be provided.

If your sheriff's office does not have any such materials in writing, you are not required to obtain them nor to provide them.

**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:

<http://www.records.NCDCCR.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 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, you should review any records that correspond to the revised request to determine whether or not they may be released.



## CONFIDENTIAL LEGAL MEMO

**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, you should 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, you should 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, you should 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*

- Any documents obtained as a part of a "wire tap" investigation are confidential pursuant to the Electronic Surveillance Act [Article 16 of Chapter 15A of the North Carolina General Statutes]. Improper disclosure is a criminal offense under N.C. Gen. Stat. § 15A-287. A public officer who improperly discloses information protected under this law "shall be removed from office."
- Any court orders that have been "sealed" by the court cannot be disclosed.
- Any court orders, applications for court orders, or copies of either that were filed by another agency, such as the SBI or FBI, that are not in the possession of the sheriff's office are not required to be obtained nor disclosed.

## CONFIDENTIAL LEGAL MEMO

- If a search warrant was applied for but not actually issued, the application or any copies of the application for the search warrant submitted by your office or by other agencies are not be required to be disclosed if they contain information protected by the Electronic Surveillance Act [Article 16 of Chapter 15A of the North Carolina General Statutes] or if they contain information under N.C. Gen. Stat. § 132-1.4 which constitutes "records of criminal investigation" or "records of criminal intelligence information."
- If a search warrant was issued, the search warrant and the accompanying application for the search warrant to obtain cell phone location records does not have to be provided if it:
  - (1) has been sealed by court order;
  - (2) has not yet been returned to the clerk of court's office; or
  - (3) is protected by the Electronic Surveillance Act [Article 16 of Chapter 15A of the North Carolina General Statutes].

If neither of the exceptions in (1) through (3) above applies, the search warrant and accompanying application are a public record. If a copy is in your possession, it must be provided.

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

If your office has already compiled such a list of "statistics," the previously compiled list of "statistics" must be provided. If you have not previously compiled such a list of "statistics," you are not required to do so.

**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*

If you do not have any such written documents, you are not required to obtain them nor to provide them.

If you currently have in your possession any of these documents that are related to "cell phone location records," you must provide copies of them to the ACLU.

## CONFIDENTIAL LEGAL MEMO

**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 you do not have any such written "communications" or invoices, you are not required to obtain them nor to provide them.

If you do have such written "communications" or invoices, all information that is protected by N.C. Gen. Stat. §132-1.4 as a "record of criminal investigation" or as a "record of criminal intelligence information" should be removed from the document. Once all confidential information that is protected by statute is removed from the document, any remaining portions of the document are a public record and should be disclosed.

**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 you do not have any such written "communications," you are not required to obtain them nor to provide them.

If you do have such "communications," all information that is protected by N.C. Gen. Stat. §132-1.4 as a "record of criminal investigation" or as a "record of criminal intelligence information" should be removed from the "communications." Once all confidential information that is protected by statute is removed from the "communications," any remaining portions of the "communications" are a public record and should be disclosed.

**DRAFT**  
**8/19/11**

Potential Response to ACLU Letter

Sheriff John Doe  
Sheriff of XYZ County  
123 Main Street  
Anytown, NC 12345

[To be on sheriff's office letterhead]

August 19, 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:

<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*

**DRAFT**  
**8/19/11**

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 #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*

**DRAFT**  
**8/19/11**

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

Sheriff's Letter to ACLU  
August 19, 2011  
Page 4 of 4

**DRAFT**  
**8/19/11**

intelligence information." If no such documents are enclosed, our office has no such items in our possession.

Sincerely,

Sheriff John Doe  
Sheriff of XYZ County