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Transmitted by First Class Mail

Mary Elizabeth Heffernan
Secretary of Public Safety
Executive Office of Public Safety
One Ashburton Place
Boston, MA 02108

Re: Request Regarding Cell Phone Location Records

Dear Secretary Heffernan:

This is a request under the Public Records Law. G.L. c. 66, § 10 by the American Civil Liberties Union Foundation of Massachusetts. The ACLU of Massachusetts is a non-profit organization that defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and Massachusetts 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 Massachusetts State Police obtains cell phone location records, the conditions under which it does so are

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

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 Massachusetts 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.

Accordingly, the ACLU of Massachusetts seeks records regarding the Massachusetts State Police'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 the 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

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).

- 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 this request involves a matter of public concern and because it is made on behalf of a nonprofit organization, we ask that you waive any copying costs pursuant to 950 C.M.R. § 32.06(5). If you decide not to waive copying costs, we request that you permit us to examine, at our election, the responsive documents before deciding which portions to photocopy. We also request electronic copies of records, whenever possible.

Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt.

Thank you for your prompt attention to this matter. Please furnish all applicable records to Laura Rótolo, ACLUM, 211 Congress St. 3rd Floor, Boston, MA 02110. If you have questions, please contact me at 617.482.3170 x311 or lrotolo@aclum.org. To save paper and trim cost, we would appreciate it if you could send the documents in digital form, wherever possible.

Sincerely,

Laura Rótolo
Staff Attorney
ACLU of Massachusetts

Cc: Greg Massing, General Counsel