August 3, 2011

Transmitted by First Class Mail

Records Custodian
Division of Capitol Police
B2N State Capitol
Madison, Wisconsin 53702

Re: Request Regarding Cell Phone Location Records

To the Records Custodian:

This is a request under the Wisconsin Open Records Law, Wis. Stat. §§ 19.31 et seq., by the American Civil Liberties Union of Wisconsin Foundation. The ACLU of Wisconsin defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and Wisconsin 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. 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 Capitol Police 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.” The ACLU of Wisconsin 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 Wisconsin seeks records regarding the Capitol
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 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 your 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

In this request, the term “records” includes all information recorded in any form whatsoever, including, but not limited to, papers, digital electronic media (such as computer discs, hard-drives, CDs, zip discs, USB or “jump” drives or media, or tape back-up), and analog recording media (such as audio and video tape recordings).

I request that the information be provided without charge pursuant to Wis. Stat. ' 19.35(3)(e). A waiver of processing and copying charges in this case is in the public interest. The ACLU of Wisconsin Foundation is a not-for-profit charitable and educational organization dedicated to the protection of students’ free speech rights. The records are not sought for commercial use. If charges for this request will exceed $50, please contact me prior to proceeding.

If any material responsive to this request is deemed to be exempt from disclosure, identify the material withheld and specify the asserted basis for the exemption. Please release all segregable portions of otherwise exempt material.

Note that Wisconsin law requires that requested documents be produced “as soon as practicable and without delay.” Wis. Stat. § 19.35(4)(a). The Wisconsin Department of Justice policy is that 10 days is ordinarily a reasonable time for response to an open records request. Wisconsin Department of Justice, Wisconsin Public Records Law Compliance Outline at 13 (Aug. 2010).

If you have any questions about this request, please contact me at (414) 272-4032, ext. 212. Thank you for your prompt attention to this matter.

Sincerely,

Laurence J. Dupuis
Legal Director