August 31, 2011

Katherine Lewis Parker, Esq.
ACLU of North Carolina
P.O. Box 28004
Raleigh, NC 2761108004

Re: Public Records Request to Sheriff Johnson – Cell Phone Location Records

Dear Ms. Parker,

Responding in general to your most recent public records request, N.C.G.S. § 132-1.4 (a) states that records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records. The ACLU states that the cell phone companies are the custodians of these records. We are not required to request records from cell phone companies in response to a public records request and we cannot provide what we do not have.

The law does not require us to create lists or gather records from other agencies, such as the District Attorney or the North Carolina State Bureau of Investigation (S.B.I.), in order to respond to a public record request. Furthermore, SBI records are not public records and access to them is not available under the Public Records Law. Case law has held that access to S.B.I. records is controlled entirely by N.C.G.S. § 114-15.

The case that you cite from the DC Circuit, U.S. v Maynard, apparently in support of your statement that the cell phone tracking violates the United States Constitution and the North Carolina Constitution, is not binding precedent in North Carolina. There is no case, of which I am aware, holding that such cell phone tracking is unconstitutional here in North Carolina.

Responding to each bullet set forth on page two of your letter;

- We have no policies, procedures and practices since any such request is made to state or federal authorities that obtain court orders and provide the location to us by telephone communication.
- Retention of records by the Sheriff’s Department is governed by NC Department of Cultural Resources Archives and Records Section.
• This is a request for information and does not describe a public record. 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.
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• This is a request for information and does not describe a public record. The Sheriff does not make any such applications. 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.
• None
• This is a request for information and does not describe a public record as defined in N.C.G.S. Section 132-1.
• The information requested is not in our possession.

Sincerely,

Clyde B. Albright
Alamance County Attorney

Cc: Sheriff Johnson