Dear Ms. Parker:

This will acknowledge receipt of your letter dated September 27, 2011 identified as a “Request Regarding Correspondence with Any Outside Organizations Regarding Cell Phone Location Records.” After reviewing your request with our City Attorney, the City of Goldsboro Police Department has the following reply.

Item(s) Requested: 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.

Any such items in the possession of our office in writing, if any, are enclosed with this letter.

Sincerely,

Jeffrey R. Stewart
Interim Chief of Police
August 3, 2011

VIA FIRST CLASS MAIL

Chief Timothy J. Bell
Goldsboro Police Department
204 South Center Street
Goldsboro, NC 27530

Re: Request Regarding Cell Phone Location Records

Dear Chief Bell:

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.

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 U.S. and North Carolina Constitutions protect against unreasonable searches, and if the Goldsboro Police Department 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 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 Goldsboro Police Department’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” (detailed 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
- 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 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.

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,

[Signature]

Katherine Lewis Parker
Legal Director
September 27, 2011

VIA FIRST CLASS MAIL

Interim Chief of Police Jeffrey R. Stewart
City of Goldsboro Police Department
P.O. Drawer A
Goldsboro, NC 27530-9700

Re: Request Regarding Correspondence with Any Outside Organizations Regarding Cell Phone Location Records

Dear Interim Chief of Police Stewart:

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").

Thank you for the responses you sent on August 19, 2011 to our original public records request about cell phone location records. This letter serves as a follow-up public records request for:

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.

Thank you for your prompt attention to this matter. Please furnish all applicable correspondence to the mailing address indicated on this letter or to KParker@acluofnc.org.

We appreciate your attention to this matter and would appreciate receiving a response to this request by October 11, 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
August 3, 2011

VIA FIRST CLASS MAIL

Chief Timothy J. Bell
Goldsboro Police Department
204 South Center Street
Goldsboro, NC 27530

Re: Request Regarding Cell Phone Location Records

Dear Chief Bell:

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. 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 Goldsboro Police Department 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

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such fact about a person, but all such facts. 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 Goldsboro Police Department’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 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

• 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)

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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 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.

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
From: Gregg Jarvies [mailto:ncpolex@aol.com]
Sent: Monday, August 08, 2011 3:30 PM
To: Jeff Stewart
Subject: FW: Public Records Request for Cell Phone Records --- by the American Civil Liberties Union (ACLU)

TO NCPEA MEMBERS:

See message and attachment from Eddie Caldwell to NC Sheriffs re, Public Records Request for Cell Phone Records by ACLU.

Gregg E. Jarvies, Executive Director
North Carolina Police Executives Association
PO Box 1557
Hillsborough, North Carolina 27278
919-732-6080

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.
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. 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

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such fact about a person, but all such facts." 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:

- 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 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)

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• Communications with cell phone companies and providers of location-based services regarding cell phone location records, including
  
  o company manuals, pricing, and data access policies
  
  o invoices reflecting payments for obtaining cell phone location records
  
  o 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.

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,

[Signature]

Katherine Lewis Parker
Legal Director
From: Jeff Stewart
Sent: Friday, August 12, 2011 8:07 AM
To: Kathy Bass
Subject: FW: Public Records Request for Cell Phone Records --- by the American Civil Liberties Union (ACLU)

From: Mike Yaniero [mailto:myaniero@ci.jacksonville.nc.us]
Sent: Wednesday, August 10, 2011 5:59 PM
To: Fred Baggett
Cc: (gosborne@gcps.org); (jbuie@gcps.org); Bill Farley (E-mail); Carl W. Robbins; Chief Monroe (monroe@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 (ncpox@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); Jeff Stewart; McLeod, Greg; Medlock, Harold, Jr.; Mercer 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; Tim Adams ; Goldsboro Chief of Police; 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.

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)

Edie convened a mtg tomorrow among LE attorneys to discuss. yes, aware.

---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--

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: Ali 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 Webpage: www.ncsheriffs.org

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

9/30/2011
RS 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.
From: Jeff Stewart
Sent: Friday, August 19, 2011 10:43 AM
To: Darrell Brown
Cc: Jay R. Memmelaar Jr; Kathy Bass
Subject: FW: Public Records Request for Cell Phone Records --- by the American Civil Liberties Union (ACLU)

From: Carey Winders [mailto:Carey.Winders@waynegov.com]
Sent: Friday, August 19, 2011 10:36 AM
To: Borden Parker; Jeff Stewart; Tom Effler
Subject: FW: Public Records Request for Cell Phone Records --- by the American Civil Liberties Union (ACLU)

From: Eddie Caldwell [mailto:ecaldwell@ncsheriffs.net]
Sent: Friday, August 19, 2011 9:57 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

A legal memo and a draft reply letter to the ACLU for your information and consideration that are discussed below will be provided to you on Monday, August 22.

have been talking to numerous attorneys who are experts in this area of the law and all of their input is being incorporated into the final version of the documents and the documents will be sent to you on Monday.

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 Webpage: www.ncsheriffs.org

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

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  Webpage: www.ncsheriffs.org

North Carolina Sheriffs' Association
Serving the Sheriffs and Citizens of North Carolina since 1922
From: Kathy Bass
Sent: Tuesday, September 06, 2011 11:17 AM
To: Kathy Bass
Subject: FW: ACLU Letter Requesting Cell Phone Location Records
Attachments: ACLU Reply to Requests for Cell Info.docx

Jeff Stewart

FW: ACLU Letter Requesting Cell Phone Location Records

From: Mike Yaniero [mailto:myaniero@ci.jacksonville.nc.us]
Sent: Monday, August 22, 2011 10:42 AM
To: (gosborne@gcps.org); (jbuie@gcps.org); Bill Farley (E-mail); 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 Jaggett; Greg Jarvis (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 _opez Sr. (E-mail); Julie White; Kelli Kukura; Ken Miller (ken.miller@greensboro-nc.gov); Jeff Stewart; 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.Potter@wilmingttonnc.gov; Rob -unter (E-mail); Rory Collins (Rcoll@salisburyc.gov); 'Scott Cunningham'; Tarasovic, Ray; Tim Adams; Soldsboro Chief of Police; 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

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
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.
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.” After reviewing your request with our City Attorney, the City of Goldsboro Police Department has the following reply.

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. The Goldsboro Police Department does not have any written policies, procedures or practices. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation.

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 Municipal Records 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 May 19, 2009 and is located at:


The Goldsboro Police Department maintains records pursuant to the policies set forth in the Records Retention and Disposition Schedule for Municipal Records. Any information obtained through duly entered search warrants for cellular phone information are only shared with other investigative units that are involved in the investigation.
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, we will review any records that correspond to the revised request to determine whether or not they may be released. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation.

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. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation.

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. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation.

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. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation.
Item #7: Judicial decisions and orders ruling on your applications to obtain cell phone location records

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. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation. Said request is overly broad and covers information that may or may not be in the process of investigation or prosecution and as such the request cannot be reasonably responded to. All search warrants would be included as part of any investigative or prosecution file.

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. The Goldsboro Police Department does not keep statistics regarding the request of cellular phone information. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation. All search warrants would be included as part of any investigative or prosecution file.

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. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation. All search warrants would be included as part of any investigative or prosecution file.

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. As a matter of custom, the Goldsboro Police Department requests court orders or search warrants to obtain any cellular phone information during an investigation. All search warrants and information provided would be included as part of any investigative or prosecution file.

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

Sincerely,

Jeffery R. Stewart
Interim Chief of Police