



LEXINGTON DIVISION OF POLICE

150 East Main Street • Lexington, KY 40507 • (859) 258-3600

OR-11-315-B

August 16, 2011

Mr. William E. Sharp, Staff Atty.
ACLU of Kentucky
315 Guthrie Street, Ste. 300
Louisville, KY 40202-03820
502-581-9746

Re: Various records related to use of cell phone records

Dear Mr. Sharp,

You have made the following open records request:

We specifically request disclosure of all public records (which include books, papers, documents, discs, diskettes, recordings, policies, memoranda, or other documentation regardless of physical form or characteristics) that are prepared, owned, used, in the possession of or retained by LDP "relating to LDP's obtaining cell phone location records from cell phone companies." This request includes, but is not limited to the following:

Before addressing each of your specific requests, I want to note that, as a general matter, some of your requests ask for information or require research to answer your questions. The Attorney General has stated that agencies do not have to provide documents that do not exist, honor requests for information as opposed to requests for specifically described documents, nor create records that do not already exist in order to answer questions, nor are they required to do research to make lists or compile information to answer questions. 00-ORD-04, 99-ORD-71, 01-ORD-216.

1. LDP policies, procedures, education or training materials, memoranda and/or other documentation relating to the following:

a. the acquisition of cell phone location records, data, and/or information;

In regard to the acquisition of cell phone location records, data, and/or information, such items can be obtained only with a search warrant. The courts have requirements that must be met. Information regarding court requirements can be obtained from the court system. Federal law dictates what constitutes an emergency or exigent situation. In addition, cell phone companies have their own requirements for exigent circumstances. Please contact cell phone companies for their requirements.

b. real-time tracking of cell phone location data;

We have no policy which directly addresses real-time tracking of cell phone location data. Three items that respond in general to your request are **S.O.P 92-38/B on Criminal Investigation Procedures**, **G.O.78-1/C on Legal Process**, and the **Records Retention Policy** (Division of Police). These will be made available to you.

c. the available methods of locating cell phones including "cell site," triangulation, and/or the Global Positioning System (GPS);

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We have no training program or policy which addresses these methods. Any "training" received would have been through a seminar or program from another agency. No documents exist for this request.

- d. data retention policies governing 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 **Records Retention Policy** is available to you. While it does not address cell phone records directly, it is the retention schedule used for all records here.

- e. the use of cell phone location records to identify all of the cell phones at a particular location*

We have no policy or training document which directly addresses using location records to identify all cell phones at a particular location. The only related documents are **S.O.P 92-38/B on Criminal Investigation Procedures, G.O.78-1/C on Legal Process, and the Records Retention Policy** (Division of Police).

- f. the use of "digital fences" or other systems whereby law enforcement officers are notified whenever a cell phone comes within a specified geographical area;*

This is not something that is in use here, and there are no policies or documents regarding "digital fences" or other systems to notify officers when a cell phone comes within a specified geographical area.

2. *public records relating to the use of cell phone location records to identify "communities of interest," i.e., persons who have called or been called by, a target of an investigation;*

Our database does not capture this information, and a manual search through all reports between August 2009 and August 2011 would be required in order to determine whether records responsive to this request exist.

Additionally, I cannot ascertain the nature and scope of your open records request for "*public records relating to . . .*". Given the lack of specificity in your request, I cannot estimate the number of records it encompasses or the amount of time I would expend in locating, retrieving, and producing the records. In order to comply with such a request, I would have to review every record regardless of physical form or characteristics, which was prepared, owned, used, in the possession of, or retained by Lexington-Fayette Urban County Government to determine if this information appears on the record. The request places an unreasonable burden on the public agency and will not be honored. KRS 61.872(6). You may renew your request by identifying a specific investigation and the records you seek. We will then attempt to determine if there are responsive records and, if so, whether the records are subject to disclosure.

3. *copies of judicial decisions and orders ruling on applications to obtain cell phone location records submitted by LDP officers or agents between January 1, 2009 through August 3, 2011;*

Any such information would be case specific and would be retrievable only by a manual search through all records within the requested time frame. This request places an unreasonable burden on the public agency and will not be honored. KRS 61.872(6). You may renew your request by

identifying a specific investigation. We will then attempt to determine if there are responsive records and, if so, whether the records are subject to disclosure.

4. *statistical compilations (whether stored in an electronic spreadsheet or otherwise) regarding the frequency of LDP's request for, and use of, cell phone location records, including the number of such requests for which no court order was obtained, between January 1, 2009, through August 3, 2011;*

This is information which our database does not capture. No statistical compilations are made and no form of documentation exists. The Attorney General has stated that agencies do not have to provide documents that do not exist, honor requests for information as opposed to requests for specifically described documents, nor create records that do not already exist in order to answer questions, nor are they required to do research to make lists or compile information to answer questions. 00-ORD-04, 99-ORD-71, 01-ORD-216.

5. *communications, whether written or electronic, between any officer or detective of LDP and any cell phone companies or providers of location-based services regarding a request for, acquisition, or purchase of cell phone location information between January 1, 2009, through August 3, 2011;*

This is information which our database does not capture. Any such information would be case specific and would be retrievable only by a manual search through all records within the requested time frame. This request places an unreasonable burden on the public agency and will not be honored. KRS 61.872(6). You may renew your request by identifying a specific investigation.

6. *copies of manuals, pricing, and/or data access policies of any cell phone companies or providers of location-based services within the possession of LDP, its employees and/or agents*

No responsive documents exist. You may want to check with cell phone companies or providers of location-based services to obtain their information.

7. *invoices reflecting payments for LDP's acquisition of cell phone location records between January 1, 2009, through August 3, 2011; and copies of any subpoenas or subpoenas duces tecum issued to any cell phone companies or providers of locations-based services regarding cell phone location information, data, or records issued between January 1, 2009, through August 3, 2011.*

Any such information would be case specific and would be retrievable only by a manual search through all records within the requested time frame. This request places an unreasonable burden on the public agency and will not be honored. KRS 61.872(6). You may renew your request by identifying a specific investigation. We will then attempt to determine if there are responsive records and, if so, whether the records are subject to disclosure

Because you are not a resident of Fayette County, you are entitled to receive a copy of the requested document(s) by mail, KRS 61.872(3)(b):

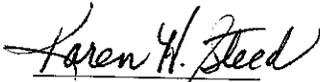
S.O.P 92-38/B on Criminal Investigation Procedures
G.O.78-1/C on Legal Process
Records Retention Policy (Division of Police)

Please send me a check or money order payable to the Lexington-Fayette Urban County Government (LFUCG) Division of Police in the amount of \$1.00 for a CD with the scanned documents. Mail it to my attention at Central Records, Division of Police, 150 East Main Street, Lexington, KY 40507, and I will send the documents to you by

return mail. The documents will be available for thirty days. If you have not paid for the documents within the allowed thirty days, they will no longer be available to you, and the matter will be considered closed.

If I can be of any further assistance, please feel free to contact me at (859) 425-2243.

Respectfully,



Karen H. Steed
Assistant Records Custodian
Lexington Fayette Urban County Division of Police
150 E. Main
Lexington, KY 40507
(859) 425-2243

xc: File OR-11-315-B (107-B)