August 15, 2011

Richard H. Morse, Esq.  
Legal Director  
American Civil Liberties Union  
100 West 10th Street, Suite 603  
Wilmington, DE 19801  

RE: FOIA Request – Cell Phone Location Records  

Dear Mr. Morse:  

I write in response to your July 25, 2011 FOIA request for cell phone location records. I will respond to the enumerated items in the exhibit attached to your request as follows:  

1. The Police Department has no enumerated policies, procedures and/or practices to obtain cell phone location records.  

2. The Police Department has no data retention policies regarding cell phone location records.  

3. The Police Department has no general policies or documents which refer to the use of cell phone location records to identify “communities of interest” in investigations. Such documents which pertain to specific criminal investigations are not public records subject to FOIA disclosure. 29 Del. C. § 1002 (g) (3) excludes the following from the definition of a public record: “Investigatory files compiled for civil or criminal law enforcement purposes.”  

4. The Police Department has no documents which generally refer to the use of cell phone location records to identify all of the cell phones at a particular location. Such documents which pertain to specific criminal investigations are not public records subject to FOIA disclosure. 29 Del. C. § 1002 (g) (3) excludes the following from the definition of a public record: “Investigatory files compiled for civil or criminal law enforcement purposes.”  

5. The Police Department has no documents which refer to its use of “digital fences.”
6. The Police Department has no documents which reference the legal standard proffered to obtain cell phone location records.

7. The Police Department has no judicial decisions or orders ruling on applications to obtain cell phone location records.

8. The Police Department has no statistics regarding use of cell phone location records.

9. The Police Department has no form in which cell phone location records are provided.

10. The Police Department has no general documents regarding communications with cell phone companies and providers of location-based services regarding cell phone location records. Such documents which pertain to specific criminal investigations are not public records subject to FOIA disclosure. 29 Del. C. § 1002 (g) (3) excludes the following from the definition of a public record: "Investigatory files compiled for civil or criminal law enforcement purposes."

Please contact me if you have any questions.

Very truly yours,

[Signature]
Bruce C. Herron
City Solicitor

BCH:av
cc: Chief Paul Tiernan, NPD