August 22, 2011

Laurence J. Dupuis
Legal Director
American Civil Liberties Union of Wisconsin Foundation
207 E. Buffalo Street, Suite 325
Milwaukee, WI 53202-5774
(via facsimile and USPS)

Mr. Dupuis,

I am writing in response to your open records request relating to cell phone location records that I received on Friday, August 5, 2011. Following, I have addressed each of your requests individually.

- The Superior Police Department does not have any written policies or procedures we follow when we obtain cell phone location records. Our investigative staff makes the determination for the need for cell phone location records on a case-by-case basis, which is then evaluated by Supervisory staff prior to such a request being made to the District Attorney’s Office.
- The Superior Police Department does not maintain a database on cell phone location records. We do not recall ever having received cell phone location records, even in the limited amount of times that we’ve obtained a court issued subpoena for such information. In the limited number of times that we have requested cell phone location records, those records have been conveyed directly from the cellular provider to the Wisconsin Department of Justice - Division of Criminal Investigation (WI DOJ-DCI) who was assisting us with the investigation(s).
- To date the Superior Police Department has not used cell phone location records to identify “communities of interest.”
- To date the Superior Police Department has not used cell phone location records to identify all of the cell phones at a particular location.
- To date the Superior Police Department has not made use of cellular “digital fences.”
- The legal standard the Superior Police Department uses when requesting a subpoena for cell phone location records is probable cause. In Wisconsin, as you are likely aware, law enforcement completes a supporting affidavit and request for a subpoena, however, the actual subpoena request to the court is made either by the Attorney General’s Office or the District/Assistant District Attorney (Wis. Stats. §968.35).
- Within the last few years the Superior Police Department was advised that subpoenas obtained under Wis. Stats. §968.35 were required to be filed with the Clerk of Courts in the county where the subpoena was obtained. Prior to that time there was no filing requirement, so the subpoenas, if obtained, were filed with the original incident reports in the Police Department records bureau. Due to that fact we would be unable to search for specific subpoenas or related paperwork without a specific case number, or names related
to the case. In those instances the reports are kept at least 7 years per Wis. Stats. §19.21(4)(b).

- The Superior Police Department does not maintain a formal log or tracking mechanism to determine the number cell phone location subpoenas that we have requested and/or received (refer to prior bullet point). I can, however, tell you that we are aware that between 2007 and 2008 our agency obtained four court ordered subpoenas for cell phone location tracking records (one of which was not accepted by the cellular provider as it was signed by a Court Commissioner and not a Judge).

- As already stated, because we have received no records as a result of these subpoenas (information was provided by cellular company direct to WI DOJ-DCI), we are unable to answer as to what form the records were provided.

- The Superior Police Department does not have any records for invoices when we have obtained cell phone location records. We are unaware of a cellular provider ever refusing to comply with a request or order (other than the previously referenced Commissioner signed order) that our Department has requested. Our Department does not possess any company manuals, pricing or data access policies of cellular providers in regards to cellular track.

If you have any questions regarding this response please contact my office at 715-395-7530.

Sincerely,

Captain Chad C. La Lor
Investigations Division Commander
DATE: August 22, 2011

TO: ACLU – WI 414-272-0182

ATTN: Laurence Dupuis

FROM: Captain Chad La Lor

WE ARE TRANSMITTING 3 PAGES INCLUDING THIS COVER SHEET. IF YOU HAVE ANY QUESTIONS OR FAIL TO RECEIVE THE ENTIRE DOCUMENT, PLEASE CONTACT THE SENDER.

Comments:

Response re: Open records request for cell phone location records.

Hardcopy sent via USPS.
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