



U.S. Department of Justice

Executive Office for United States Attorneys
Freedom of Information/Privacy Act Staff
600 E Street, N.W., Room 7300
Washington, D.C. 20530
202-616-6757 Fax 202-616-6478

Requester: Catherine Crump Request Number: 07-4122

Subject of Request: Mobile Phone Tracking (Items 3-5)/CAN

Dear Requester:

DEC 31 2008

This is in further response to your Freedom of Information Act request. This letter constitutes a final reply from the Executive Office for United States Attorneys ("EOUSA") in this request. To provide you the greatest degree of access authorized by the Freedom of Information Act and the Privacy Act, we have considered your request in light of the provisions of both statutes. The records you seek are located in a Privacy Act system of records that, in accordance with regulations promulgated by the Attorney General, is exempt from the access provisions of the Privacy Act, 28 C.F.R. § 16.81. We have also processed your request under the Freedom of Information Act.

The United States Attorneys Office for the Northern District of California ("USAO CAN") has completed a search for information responsive to your request, the terms of which are outlined in Defendant's Scheduling Report. The Court approved the search criteria contained in the Defendant's Scheduling Report on November 20, 2008. The results of that search found that with regard to item number four (4) of your request, the USAO CAN did not locate a compilation showing the number of times the government has applied for a court order based on less than probable cause, authorizing it to obtain mobile phone location information. However, after canvassing the Criminal Division Assistant U.S. Attorneys, the USAO CAN identified forty (40) cases, on or after September 12, 2001, in which the Court granted the government's application to permit it to obtain mobile phone location information without making a judicial finding of probable cause. This search also found that no applications were granted after November 16, 2007, to permit the government to obtain GPS or similarly precise location data on target cell phones without a judicial determination of probable cause. Certain of the identified cases are subject to court seals that prohibit disclosure. With regard to item number five (5) of your request, the EOUSA is withholding in its entirety all of the responsive information identified as a result of the search conducted by the USAO CAN. The exemption(s) cited for withholding this information are marked below. The USAO CAN found no records responsive to item number three (3) of your request.

Section 552

Section 552a

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| <input type="checkbox"/> (b)(1) | <input type="checkbox"/> (b)(4) | <input type="checkbox"/> (b)(7)(B) | <input checked="" type="checkbox"/> (j)(2) |
| <input type="checkbox"/> (b)(2) | <input type="checkbox"/> (b)(5) | <input checked="" type="checkbox"/> (b)(7)(C) | <input type="checkbox"/> (k)(2) |
| <input type="checkbox"/> (b)(3) | <input type="checkbox"/> (b)(6) | <input type="checkbox"/> (b)(7)(D) | <input type="checkbox"/> (k)(5) |
| _____ | <input checked="" type="checkbox"/> (b)(7)(A) | <input type="checkbox"/> (b)(7)(E) | <input type="checkbox"/> _____ |
| _____ | | <input type="checkbox"/> (b)(7)(F) | |

Although I am aware that this request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you that if you consider my response to be a denial of your request, you have the right to file an administrative

appeal by writing within 60 days from the date of this letter to the **Office of Information and Privacy, United States Department of Justice, 1425 New York Avenue, Suite 11050, Washington, D.C. 20530-0001.**

Sincerely,

A handwritten signature in cursive script that reads "Karen M Gunnegan for".

William G. Stewart II
Assistant Director

Enclosure(s)