



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: 07-4126

Subject of Request: Mobile Phone Tracking (Items 1-5)/DDC DEC 31 2008
Dear Requester:

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 in this request. To provide you with 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 District of Columbia ("USAO DDC") located the enclosed material, consisting of nine (9) pages, in response to item number 1 of your request. Excisions have been made on five (5) pages of the enclosed material. In addition, the USAO DDC has completed a search for information responsive to items numbered 3-5 of 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 DDC 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 DDC identified twenty-one (21) 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.

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 DDC. The exemption(s) cited for withholding this information are marked below. . The USAO DDC 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 checked="" type="checkbox"/> (b)(3) | <input type="checkbox"/> (b)(6) | <input type="checkbox"/> (b)(7)(D) | <input type="checkbox"/> (k)(5) |
| <u>F.R.Cr.P. 6(e)</u> | <input checked="" type="checkbox"/> (b)(7)(A) | <input checked="" 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. Yunnegan for".

William G. Stewart II
Assistant Director

Enclosure(s)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF THE APPLI- :
CATION OF THE UNITED STATES : CRIMINAL
OF AMERICA FOR AN ORDER : NO.: [E 100]
FOR CELLULAR SITE INFORMATION : (UNDER SEAL)
FOR TELEPHONE (XXX) XXX-XXXX :

**APPLICATION FOR ORDER REQUIRING
DISCLOSURE OF CELLULAR SITE INFORMATION**

COMES NOW the United States, by and through counsel, XXXXXXXXXXXXX, United States Attorney for the Northern District of Georgia, and XXXXXXXXXXXXX, Assistant United States Attorney, an attorney of the United States Department of Justice, and hereby applies to the Court, pursuant to 18 U.S.C. § 2703(d), for disclosure of cellular site information based on contemporaneous billing records, and in support of this application respectfully shows as follows:

1. Applicant is an "attorney for the Government" as defined in Rule 54(c) of the Federal Rules of Criminal Procedure.
2. Applicant certifies that the Drug Enforcement Administration is conducting a criminal investigation involving the distribution of controlled substances, in violation of federal laws, including, but not limited to, Title 21, United States Code, Sections 841, 843 and 846, and that the unidentified user(s) of the cellular telephone identified below is/are the subjects of the investigation. The investigation to date has revealed that the user(s) of the cellular telephone is/are associated with an organization believed to be distributing large quantities of cocaine throughout the United States,

including Atlanta, Georgia. Since [b7c] more than 1,000 kilograms of cocaine have been seized from members of this organization, including approximately [b7c]

[b7c] Moreover, [b7c]
[b7c]
[b7c]

[b7c] The cellular telephone being used by the organization is presently operating as a Sprint PCS prepaid cellular telephone bearing Electronic Serial Number (ESN) XXXXXXXXXXXX, subscribed to by XXXXXXXXXXXX XXXXXXXXXXXX, [b7c] Georgia.

3. Applicant further certifies that cellular site information is necessary to identify the cellular tower(s) in the Atlanta metropolitan area with which cellular telephone (XXX) XXX-XXXX is connecting. To date, investigating agents have been unable to fully identify the user(s) of the cellular telephone. Specific disclosure of cellular site information for the telephone, therefore, will assist the agents in tracking and locating the user(s) and, potentially, in locating stash houses or other areas used to store drugs or drug proceeds. Moreover, [b7c]

[b7c]

4. Applicant submits that there are specific and articulable facts, as set forth in paragraphs 2 and 3, above, to show that there are reasonable grounds to believe that the cellular site information sought, including cell site activations as well as the physical location and/or address of the cellular tower(s), is relevant and material to the ongoing criminal investigation of the targets named herein.

5. Applicant further certifies that the investigation currently being conducted by the Drug Enforcement Administration, Atlanta Field Division, is part of a multi-district investigation, involving investigating agencies in [b7C] In the experience of the investigating agents, members of such large-scale drug distribution organizations often discontinue use of communication devices as a result of law enforcement action. Accordingly, your applicant requests

that the Court's order apply not only to telephone number (XXX) XXX-XXXX, [b7E]

[b7E]

[b7E]

[b7E] within the period of the Order.

6. Given that members of this organization are likely to change telephones and/or alter their methods of operation in response to law enforcement action, agents believe that disclosure of this request for information or of this investigation could seriously jeopardize integrity of the investigation.

7. This Court already has authorized the installation and use of a pen register and trap and trace device upon the above-referenced cellular telephone. Your applicant, thus, requests that this Court expand its order to include the cellular site information requested herein.

WHEREFORE the Government respectfully requests that, pursuant to 18 U.S.C. §§ 2703(c)(ii) and 2703(d), the court direct that Sprint Spectrum, LP ("Sprint") forthwith, and on a continuing basis, provide to the Drug Enforcement Administration all cellular site information based on contemporaneous billing records for telephone number (XXX) XXX-XXXX for a period of sixty (60) days, beginning from the date of this Order. Because the investigation discussed in this application is a multi-district drug investigation, and because disclosure of this request to the listed

subscriber and/or to the targets of the investigation may seriously jeopardize that investigation, the Government further requests that this application and order be placed under seal, and

that, pursuant to 18 U.S.C. § 2705(b), Sprint and its agents and employees, be directed not to disclose to the subscriber or any other person the existence of this application, order or the investigation.

Respectfully submitted,

XXXXXXXXXXXXX
UNITED STATES ATTORNEY

XXXXXXXXXXXXX
ASSISTANT UNITED STATES ATTORNEY
XXXXXXXXXXXXX
XXXXXXXXXXXXX
Atlanta, Georgia 30335
XXX/XXX-XXXX
Georgia Bar No. XXXXXXXXXXXXX

VERIFICATION

I, Special Agent XXXXXXXXXXXX, declare under penalty of perjury that I have read the foregoing application, and that the facts stated therein are true and correct to the best of my knowledge and belief.

S/A XXXXXXXXXXXX
Drug Enforcement Administration

EXECUTED on this 15th day of August, 2001.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN THE MATTER OF THE APPLI :
CATION OF THE UNITED STATES : CRIMINAL
OF AMERICA FOR AN ORDER : NO. [b7c]
FOR CELLULAR SITE INFORMATION : (UNDER SEAL)
FOR TELEPHONE (XXX) XXX-XXXX :

ORDER

This matter having come before the Court pursuant to an application under Title 18, United States Code, Sections 2703(c)(ii) and (d), by XXXXXXXXXXXXX, an attorney for the Government, which Application requests an Order under Title 18, United States Code, Section 2703(d), providing for the disclosure of cellular site information based on contemporaneous billing records, the Court finds, based on specific and articulable facts, that there are reasonable grounds to believe that the requested information is relevant and material to an ongoing criminal investigation into possible violations of federal law, including Title 21, United States Code, Sections 841, 843 and 846. The court also finds that there is reason to believe that disclosure to the subscriber or to other persons of the application, this order or the investigation could seriously jeopardize the investigation.

ACCORDINGLY, IT IS ORDERED, pursuant to Title 18, United States Code, Sections 2703(c)(ii) and 2703(d), and in addition to the installation and use of a pen register and trap and trace device as previously authorized by this Court, that Sprint Spectrum, LP ("Sprint") shall provide forthwith, and on a continuing basis, to the Drug Enforcement Administration all cellular site information based on contemporaneous billing records, to include cell site activations and the

physical location and/or address of cellular tower(s), for telephone number (XXX) XXX-XXXX, a Sprint PCS prepaid cellular telephone bearing Electronic Serial Number (ESN) XXXXXXXXXXXX, subscribed to by XXXXXXXXXXXX XXXXXXXXXXXX XXXXXXX, XXXXXXXXXXXX, XXXXXXXXXXXX Georgia, XXXXXXXXXXXX, for a period of sixty (60) days from the date of this Order.

IT IS FURTHER ORDERED that this Order shall apply not only to telephone number (XXX)

XXX-XXXX, [

b7E]

[

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b7E]

within the period of the Order.

IT IS FURTHER ORDERED that this Order and the Application be sealed until otherwise ordered by the Court, and that Sprint or its agents and employees shall not disclose the existence of the

application, this order, or the investigation to the listed subscriber, or to any other person, unless or until otherwise ordered by the Court.

SO ORDERED this ___ day of August, 2001.

UNITED STATES MAGISTRATE JUDGE

Presented by:

XXXXXXXXXXXXX