



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: 07-4132

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

Dear Requester:

DEC 31 2008

This is in further response to your request for records under the Freedom of Information Act. 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.

The United States Attorneys Office for the District of New Jersey ("USAO DNJ") completed a search with regard to items 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 DNJ 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 DNJ identified seventy-nine (79) 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. The USAO DNJ determined that sixty-six (66) of these cases resulted in a criminal prosecution. This search also found that nineteen (19) 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. Seventeen (17) of these cases resulted in a criminal prosecution. The USAO DNJ also advised that two of the identified cases remain under a court seal that prohibits 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 DNJ. The exemption(s) cited for withholding this information are marked below. The USAO DNJ found no records responsive to item number three (3) of your request. With regard to EOUSA's letter dated November 24, 2008, please note that Exemption (b)(7)(F) was marked in error. EOUSA intended to assert Exemption (b)(7)(E) to withhold certain information contained in the material that was withheld in its entirety.

Section 552

Section 552a

(b)(1)       (b)(4)       (b)(7)(B)  
 (b)(2)       (b)(5)       (b)(7)(C)  
 (b)(3)       (b)(6)       (b)(7)(D)  
\_\_\_\_\_  (b)(7)(A)       (b)(7)(E)  
\_\_\_\_\_  (b)(7)(F)

(j)(2)  
 (k)(2)  
 (k)(5)  
 \_\_\_\_\_

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**. In light of the fact that this is an interim response, I would ask that you wait until the EOUSA has issued its final response in this request before you file an appeal.

Sincerely,



William G. Stewart II  
Assistant Director

Enclosure(s)