

Hawaii: County of Hawai'i (B202), County of Kauai (B215), County of Maui (B218), Honolulu (B227).

Iowa: It appears that most if not all cell phone tracking for investigative purposes is coordinated through the Iowa Department of Public Safety (B276). Cedar Rapids (B276), Des Moines (B278), Iowa City (B270).

Kansas Sedgwick County (B294), Wichita (B296).

Kentucky Kentucky State Police (B321), Lexington (B345), Louisville (B350, 362-383).

Massachusetts Fall River (B412).

Nebraska Lincoln (B427), Nebraska State Patrol (B2655).

Nevada: North Las Vegas (B434), Reno (B3657).

New Hampshire:

x Only ten law enforcement agencies reported that they do not track cell phones:

State of Hawaii Department of Public Safety (B225), Nashua, NH (B442), Bloomfield, NJ (B2176), Hoboken, NJ (B2256), Irvington, NJ (B2279), Perth Amboy, NJ (B2435), West New York, NJ (B2563), Greensboro, NC (B2570), Wyoming Division of Criminal Investigation (B2157), Natrona County, WY (B2156). Three of these agencies, Greensboro, NC, Nashua, NH, and the Wyoming Division of Criminal Investigation, report participating in joint activities in which other law enforcement agencies tracked cell phones. (B442, B2157, B2570).

NOTE: Some other law enforcement agencies responded to the ACLU's request by refusing to answer our question or, more rarely, in such a manner that it was unclear whether they track cell phones.

II. The legal standards that law enforcement agencies establish to engage in cell phone tracking vary widely

x The following law enforcement agencies require a warrant and probable cause to track cell phones for investigative purposes:

- o County of Hawai'i, HI (B202). "The policy is for us to obtain a search warrant based upon probable cause - thus the Fourth Amendment of the Constitution is the overriding policy."
- o Honolulu, HI (B227). "[T]he legal standard utilized is probable cause."
- o Wichita, KS (B296). "No set policies exist to seek cell phone records. These are handled through affidavits all based on probable cause in each individual case and submitted for court review and potential approval."
- o Lexington, KY (B345). "In regard to the acquisition of cell phone location records, data, and/or information, such items can be obtained only with a search warrant."
- o Lincoln, NE (B427). "LPD utilizes cell phone information pursuant to warrant and in cases of emergency situations."
- o North Las Vegas, NV (B434). "To the extent that the North Las Vegas Police Department needs to obtain cell phone location records, its officers obtain a warrant based on probable cause, as required by law."

x The following are examples of law enforcement agencies that do not always demonstrate probable cause to track cell phones:

- o Delaware Department of Justice (B2870). "If the information being sought does not call for the content of communications, such information may be obtained through an Attorney General's Subpoena."
- o Dover, DE (B166). "Our agency practices to obtain an Attorney General's Subpoena, and in rare cases a search

¹ Danbury, CT (B141), Bethany Beach, DE (B16)

warrant, and submit these to the cell phone provider to obtain cell phone records.”

- County of Kauai, HI (B215). “KPD uses the ‘probable cause’ standard in criminal investigations, and a standard of ‘relevance’ in missing persons cases. . . . KPDs obtain cell phone records, from time to time, via administrative subpoena. This process does not require a court order.”
- Des Moines, IA (B288). It utilizes “the legal standard of probable cause and the legal tools of a search warrant in accordance with the U.S. and Iowa Constitutions or a court attorney subpoena issued according to the State Code of Iowa and the Iowa Rules of Court.”
- Kentucky State Police (B321). “For electronic records of this type, Officers must obtain a subpoena and/or search warrant from a court of competent jurisdiction directing the cell phone service provider to release the data sought. To initiate this process, the officer must contact the service provider in question to determine what information the officer must include in the subpoena and/or search warrant so that the service provider can release the necessary data to KSP.”
- Nebraska State Patrol (B2655-2656). “Although we do not have a specific policy related to cellular phone location records, it is our practice to require officers to obtain a warrant or subpoena before gathering any cell phone location records. The only exception is for exigent circumstances”
- Manchester, NH (B440). “If we have needed to try and do a ‘real-time’ track of someone’s cellular phone or obtain their records, we do so by subpoena or search warrant.”
- Brick, NJ (B2182). “If ‘pinging’ were to be used during criminal investigation a subpoena or warrant would be sought and sent to the cell phone provider to obtain the information.”
- Apex, NC (B2576-77). Obtains historical cell site information on a relevance and materiality standard.
- Chatham County, NC (B529-530). Requires GPS tracking of cell phone on a “reasonable suspicion” standard.
- Onslow County, NC (B849). “The Onslow County Sheriff’s Office obtains subpoenas for cell phone records.”
- Samson County, NC (B1495). “In the event that we need to obtain cell phone records from companies we obtain a court order or a subpoena through the District Attorney’s Office.”
- Wilson County, NC (B1774). Court order authorizing it to obtain historical cell site/signaling information because it is “relevant to an ongoing investigation.”

Although not systematically documented above, a number of law enforcement agencies report relying on cell phone providers to tell them what legal process is necessary to obtain location records. See, e.g., Weber County, UT (B1996) (“Each provider has a different system for authorizing police use of location information and we comply with whatever that cell phone provider requests We have no policies or forms.”).

III. The scope of information law enforcement agencies request also varies dramatically.

- x Some requests ask just for information about one target phone. See, e.g., Hickory, NC (B733) (“GPS location and or cell tower location of mobile number [target number] for 3/1/2011 to present.”).
- x Others seek to track every telephone that called or was called by a specific phone. Chatham County, NC (B529-531) obtained “GPS and other information relevant to [the target number] and other telephones of whatever type with which [target number] communicates. . . .” A request in Surry County, North Carolina sought “a party GPS of other telephones, of whatever type, with which [the target phone] communicates” (B1544). (Note: the government did get a warrant in this case, although the ACLU believes the judge was wrong to conclude there was probable cause to track every phone that called the target phone.)

IV. While most law enforcement agencies report relying on cell phone companies to track their customers, some have purchased their own cell tracking technology.

Agencies that report owning their own cell tracking equipment include:

- x Gilbert, AZ disclosed an invoice reflecting the purchase of such equipment. (B23).
- x Glendale, AZ reports borrowing such equipment from other agencies. (B27).

V. Law enforcement agents can and do get the cell phone numbers of all individuals located at a particular location at a particular time.

- x Records from Tucson, AZ explain how law enforcement agents should go about obtaining this information. For example, the documents show that T-Mobile charges \$150 for one hour's worth of data about what phones were near one particular tower. (B87-89). The documents show that Verizon Wireless charges \$30-\$60 for 15 minutes worth of tower data. (B87-89).
- x The Delaware Department of Justice seeks this type of information only of Delaware law enforcement agencies (B2753).
- x Cary, NC (B504-505) made a request for phones that utilized particular towers.
- x Guilford County, NC (B2935-2936) provided us with an invoice demonstrating searching for historical data about a particular tower.
- x Raleigh, NC (B921, 923) provided us with two invoices listing a "Historic Tower Search."
- x Randolph, NC (B1446-1454) disclosed two separate search applications for all telephone numbers transmitted from particular towers.

VI. Cell phone companies keep Americans' location data for a very long time—but do not disclose this in their privacy policies.

U.S. Department of Justice, "Retention Periods of Major Cellular Service Providers," Aug. 2010, supplied by Orange County, NC (B860). According to the Justice Department, Verizon keeps location records for "1 rolling year." T-Mobile keeps them for "officially 4-6 months, but really a year or more." Sprint keeps these records for 18-24 months. AT&T retains location data "s

x AT&T

- o Charges, retention information 7/2009 (supplied by Tucson, AZ B99-105).
- o Subpoena Compliance, 10/2009 (supplied by Concord, NC B536).

x BellSouth

- o Subpoena Compliance, 10/2009 (supplied by Concord, NC B537).

x Cricket

- o Charges, retention information 2/2009 (supplied by Tucson, AZ B129-138).
- o Subpoena Compliance (supplied by Concord, NC B557, also Hickory, NC B825, and Guilford, NC B2952).
- o How To Read Cricket Call Detail Records (supplied by Guilford, NC B2949)
- o Updated Guidelines for Response to Legal Process (supplied by Guilford, NC B2953-2954). Explains legal process necessary to obtain various types of customer records.
- o Records Request FAQ (supplied by Guilford, NC B2956) Overview of the types of records Cricket can and cannot produce.

x metroPCS

- o Charges, retention information 7/2009 (supplied by Tucson, AZ B139).

x Sprint

- o Charges, retention information 2/2009 (supplied by Tucson, AZ B111-114).
- o Legal Compliance Guidebook, Version 1.0 (2008) (supplied by Concord, NC B565). This describes Sprint's L-Site program, which allows electronic access to customers' records. This guidebook may well be helpful in deciphering the many Sprint records released by de

