



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 08 2012

The Honorable Al Franken
Chairman
Subcommittee on Privacy, Technology and the Law
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your letter to the Attorney General dated May 10, 2012, regarding the Department's practices in requesting location information from wireless carriers during ordinary criminal investigations. This information is critical to such investigations into a wide variety of offenses, including murder, bank robbery, gang activity, fraud, sexual exploitation of children, and kidnapping. At the same time, the Department strongly values and respects the important privacy interests that Americans rightfully expect, and the Department's practices reflect its dedication to those values.

It is important to bear in mind that there is no single category of "location data." The types of data that law enforcement can compel a wireless carrier to disclose can vary widely in precision, and the data may be provided prospectively (revealing the location of a phone in real time) or on a historical basis, to the extent a provider maintains records of such data. These different types of information have different privacy implications.

In ordinary criminal investigations, the Department uses an order obtained from a court to compel a wireless carrier to disclose location information. The showing required increases with the implications for an individual's privacy interests. For comparatively imprecise historical cell-site information, which carriers maintain as records in the ordinary course of providing service, the Department relies on court orders under 18 U.S.C. § 2703(d), which requires a court to find "specific and articulable facts showing that there are reasonable grounds to believe" that the information sought is relevant and material to an ongoing criminal investigation. To obtain prospective cell-site information, a court must issue an order based on a finding that the Department has satisfied the requirements of both the pen register/trap and trace statute and 18 U.S.C. § 2703(d). Finally, to obtain prospective GPS information, Department guidance advises law enforcement components to seek and obtain from a court a warrant based on probable cause.

Courts are just beginning to consider the impact of *United States v. Jones* on the government's ability to compel location data obtained from a wireless carrier. As you know, in *Jones*, the Supreme Court held that there was a Fourth Amendment search because law enforcement had physically trespassed upon the defendant's vehicle for purposes of gaining information when it installed a GPS device. The Court did not address whether the search at issue in *Jones* required a probable cause warrant or could have been based upon the lesser reasonable suspicion showing. Nor did the Court address how the Fourth Amendment governs law enforcement access to location information that is obtained from a wireless carrier. As the *Jones* decision left intact the Fourth Amendment doctrines that support the Department's current practices, the Department's practices with respect to location requests from wireless carriers have not changed. The use of a GPS device in *Jones* most closely resembles obtaining prospective cell phone GPS information from a provider, and the Department continues to recommend using a warrant to obtain that information.

The Department does not maintain records for ordinary criminal investigations of the total number of requests for location information or of the total number of requests with which carriers complied. The Department also does not comprehensively track cost information across the various components that obtain the various types of location information from wireless carriers. The type of information the Department seeks in an individual case depends on the needs of the case, the information a carrier is able to provide, and the legal standard the Department can meet at a given time.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,



Judith C. Appelbaum
Acting Assistant Attorney General