



128 DORRANCE STREET, SUITE 220
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org

COMMENTS IN SUPPORT OF 15-H 5373 – CELL PHONE TRACKING

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The ACLU of Rhode Island strongly supports this legislation and its critical safeguards for the use of GPS location tracking by law enforcement.

Cell phones record a more complete record of our daily behavior than anything that has come before, with location tracking data available in real time and with great precision anytime a phone is turned on. Approximately every seven seconds, a cell phone searches for the nearest tower. This information becomes a complete record of the location of any cell phone user at any given time. Triangulation, or a record of the precise time and angle an individual's cell phone signal reaches a tower, further pinpoints the location of the cell phone to an accuracy of within 50 meters. Data from a GPS chip is even more precise, typically allowing an individual's location to be pinpointed within 10 meters.

It is no surprise that this information is of great interest to law enforcement, and can serve as a valuable investigatory tool. In October 2013, Verizon reported to Senator Markey of Massachusetts that police requests for customers' call records have approximately doubled over the last five years – in 2012, Verizon received approximately 270,000 requests for information from law enforcement in criminal cases. Thirty thousand of these requests were for location information, with more than two thousand of those requests for cell tower dumps, or information on every cell phone that reported its location to a specific cell phone tower. During the same year, AT&T received 297,500 requests for cell phone information. Nearly 78,000 of these requests were for historical geolocation information, and 31,000 were requests for real-time geolocation information. Sprint received 67,000 requests for real time or precise location information.

Given the significant detail of this information and the serious threat to privacy carried by its release, a warrant is not only reasonable but necessary. Yet as this information is released at overwhelming rates, the laws surrounding this information have failed to keep up. Telecommunications companies possess their own internal policies and procedures regarding the storage and release of this information, but those vary wildly and provide no real protection to the individuals who find their every move scrutinized solely because they carried a cell phone.

In fact, in 2013 Rhode Island made it even easier for telecommunications companies to release information to any person, for any reason, through vague language couched within the Kelsey Smith Act. As a result, passage of this legislation is now more critical than ever. This legislation serves to compliment laws like the Kelsey Smith Act, barring law enforcement from obtaining location information without a warrant, except in emergency situations including the risk of death or serious physical injury. Under this legislation, law enforcement may still obtain location information without a warrant when responding to an emergency call or if there is an

articulable concern of death or serious physical injury to any person. Following the disclosure of any location information, the individual affected must be notified of the disclosure, unless a court determines this notification may have an adverse result. With these privacy protections in place, Rhode Island will be able to appropriately balance the need for swift information by law enforcement with the privacy protections necessary for innocent cell phone users.

Courts nationwide have begun grappling with the use of cell phone location records – on February 18, 2014, the Massachusetts Supreme Judicial Court determined that, even though cell phone location information is owned by the telecommunications company, there is a reasonable expectation of privacy related to this information and a warrant is generally required before such information can be obtained. Rhode Islanders cannot wait for the long and costly process of court appeals to protect their rights, an opinion shared by Justice Alito in his 2012 opinion regarding GPS tracking of vehicles. In his concurring opinion, Justice Alito encouraged legislators not to wait for the courts to address these issues, writing:

“In circumstances involving dramatic technological change, the best solution to privacy concerns may be legislation ... A legislative body is well situated to gauge changing public attitudes, to draw detailed lines, and to balance privacy and public safety in a comprehensive way.”

Cell phone tracking represents both a powerful tool for law enforcement, and the most comprehensive surveillance of individuals we have faced to date. Passage of this legislation will preserve the legitimate use of this technology and the Fourth Amendment rights of all Rhode Islanders. For all of these reasons, we urge the committee to support this legislation.