



RHODE ISLAND DEPARTMENT OF PUBLIC SAFETY

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Commissioner, Department of Public Safety
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Department of Public Safety

September 16, 2011

Steven Brown, Executive Director
Rhode Island Affiliate
American Civil Liberties Union
128 Dorrance Street Suite 220
Providence, RI 02903

RE: Records Request

Dear Mr. Brown:

As I previously indicated, I am in receipt of your records request dated August 3, 2011, and received by the Department of Public Safety (hereinafter "Department") via facsimile on August 3, 2011, and by regular mail on August 4, 2011. In my letter to you dated August 4, 2011, I extended the date within which to answer your request pursuant to R.I.G.L. Section 38-2-7(b) an additional twenty (20) days due to the breadth and volume of your request.

As you are aware, your request is governed by the Access to Public Records Act contained in R.I.G.L. Chapter 38-2. In response to a request for public records, an agency is required to make available for public disclosure those records that are responsive to a request, are in possession of the agency and are not otherwise exempted from disclosure. You have enumerated six (6) separate record requests in your letter. As such, each of your enumerated requests is addressed individually below.

As to Request No. 1, you are seeking "[a]ll policies, procedures and practices followed by RISP to obtain cell phone location records, including, but not limited to, the standard of proof used to initiate a request for such information and whether such information is obtained by judicial warrant or other means[.]" The Department of Public Safety is not in possession of written records pertaining to "policies, procedures and practices" used to obtain cell phone location records. Notwithstanding that fact, the Department is in possession of the Rhode Island State Police general policy entitled, "Search Warrant Procedures" (6 pages). Since this policy could arguably be applied to the search warrant process for obtaining cell phone records, and may arguably be responsive to your request, it is being provided to you in redacted format. The redacted portions concern areas of search warrant procedure and execution that are neither applicable nor responsive to your request. Additionally, redactions are made pursuant to R.I.G.L. Section 38-2-2(5)(i)(D)(a) (law enforcement records that could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings are exempt),

Section 38-2-2(5)(i)(D)(e) (law enforcement records that could disclose techniques, procedures, or guidelines for law enforcement investigations or prosecutions are exempt), and Section 38-2-2(5)(i)(D)(f) (law enforcement records that could reasonably be expected to endanger the life or physical safety of any individual are exempt).

As to Request No. 2, you are seeking "[d]ata retention policies, detailing how long cell phone location records are kept, databases in which they are placed, and agencies (federal, state and local) with which they are shared." The Department does not maintain a specific data retention policy or policies relating to specifically to cell phone records. Furthermore, this Department does not maintain databases in which data retention policies are placed and databases of agencies (federal, state and local) with which they are shared. However, please refer to the Rhode Island State Police Record Retentions Schedule attached hereto (twenty-one (21) pages).

As to Request No. 3, you are seeking "[d]ocuments indicating whether, and to what extent, RISP seeks cell phone location records to identify all of the cell phones at a particular location or uses "digital fences" (systems whereby RISP is notified whenever a cell phone comes within a specific geographic area)." Although this request does not indicate a timeframe, please be advised that the Department of Public Safety is not in possession of any documents that would address this request.

As to Request No. 4, you are seeking "[a]ny judicial decisions and orders within the past twelve (12) months, with all personally-identifiable information redacted, ruling on RISP applications to obtain cell phone location records." Please be advised that the Department of Public Safety is aware of one (1) judicial order that would address this request. However, said order has been sealed by the court and is not subject to release. See R.I.G.L. Section 38-2-2(5)(i)(E) (exempts any records that would not be available by law or rule of court) and Section 38-2-2(5)(i)(S) (exempts records, reports, opinions, information, and statements required to be kept confidential by federal law or regulation or state law, or rule of court). Additionally, enclosed herein please find nine (9) copies of search warrants with redactions for cell phone records (80 pages). All of the enclosed search warrants were approved by a Rhode Island judge within the past twelve (12) month period that you specify herein. All redactions have been made following your explicit request that all "personally-identifiable information be redacted." See R.I.G.L. Section 38-2-2(5)(i)(A)(I) (exempting records identifiable to an individual).

As to Request No. 5, you are seeking "[s]tatistics from the past twelve (12) months regarding RISP use of cell phone location records, including, but not limited to, the frequency with which such information has been obtained, the outcomes of their use and the number of emergency requests for which no court order was obtained." Please be advised that the Department does not keep records of statistics as requested herein. There is no requirement to reorganize consolidate, or compile data not maintained in the requested form. See R.I.G.L. Section 38-2-3(f). Notwithstanding the fact that the Department of Public Safety does not maintain records of statistics, the Department does maintain invoices relative to such requests from cell phone companies. As such, please see the records provided within Request Number 6 and incorporated herein as the Department's response to this Request Number 5 (totally 27 pages). From the invoices provided, it may be possible for you to glean the statistics that you

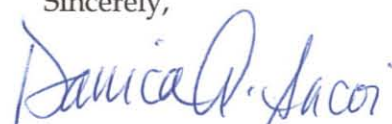
are seeking regarding the frequency for such requests, the outcomes of their use and the number of emergency requests for which no court order was obtained.

As to Request No. 6, you state [“r]egarding RISP’s communications with cell phone companies and providers of location-based services involving cell phone location records: company policies, pricing, and data access policies; invoices reflecting payments for obtaining cell phone location records; and any records (with personally-identifiable information redacted) involving instances in which cell phone companies have refused to comply with a request or order,” please be advised that the Department of Public Safety is not in possession of records reflecting private cell phone company policies, pricing or data access policies. Additionally, the Department of Public Safety is not in possession of any records pertaining to a cell phone company’s refusal to comply with a request or order.

As to the portion of Request No. 6 seeking “invoices reflecting payments for obtaining cell phone location records,” please find redacted copies of invoices (totaling 27 pages) from Sprint and MetroPCS, which specifically reference your request and are also provided in response to Request No. 5. Said invoices have been redacted following your explicit request that all “personally-identifiable information be redacted” and pursuant to R.I.G.L. Section 38-2-2(5)(i)(A)((I) (exempting records identifiable to an individual) and R.I.G.L. Section 38-2-2(5)(i)(B) (exempting trade secrets and commercial or financial information obtained from a person, firm, or corporation that is of a privileged or confidential nature, including but not limited to account numbers, vendor codes, invoice numbers, reference numbers, bar codes, supplier numbers, receipt and requisition numbers, and tax identification numbers.) Redactions were also made after a careful application of the balancing test wherein the privacy interests of the affected individual/s outweigh the public interests in disclosure. Direct Action for Rights and Equality v. Gannon, 713 A.2d 218 (R.I. 1998) and Providence Journal Company v. Kane, 577 A.2d 661 (R.I. 1990). Noting that this request does not have a timeframe, our response covers and is consistent with the same twelve (12) month period as referenced by you in Request Numbers 4 and 5.

The search and retrieval process to fulfill this request has taken approximately ten (10) hours, the first hour of which is at no charge. The remaining nine (9) hours are billed at a rate of \$15.00 per hour. In addition, the enclosed records total 134 pages at 0.15 cents per page. Kindly remit a check at your earliest convenience made payable to the Rhode Island State Police for \$155.10 for search and retrieval to date. See R.I.G.L. Section 38-2-4. Lastly, any final decision pursuant to this request can be appealed pursuant to R.I.G.L. Section 38-2-8, a copy of which is enclosed herein.

Sincerely,



Danica A. Iacoi, Esq.
Legal Counsel

Enclosures