



## ACLU Wins FOIA Appeal on Prosecutors' Use of Cell Phone Location Data

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For some time now, the American Civil Liberties Union has been concerned about some federal prosecutors' practice of seeking court orders to track the location of people's cell phones without probable cause, arguing that this practice infringes on privacy rights and violates the Fourth Amendment. Last month, the ACLU claimed victory in one of several cases making its way through the court system.

After a four-year battle, the U.S. Court of Appeals for the D.C. Circuit ordered the Department of Justice to comply with a 2007 Freedom of Information Act request from the ACLU and turn over the names and docket numbers of numerous cases in which the government accessed cell phone location data without probable cause or a warrant.

Using a GPS chip inside a cell phone, law enforcement agency can locate a person to within about 30 feet. They are also able to gather less exact location data by tracing mobile phone signals as they ping off cell towers. In 2007, the ACLU filed a FOIA request seeking the policies and procedures used by the DOJ in obtaining this cell phone data.

This request was part of a campaign undertaken by 34 ACLU affiliates that filed more than 375 requests in 31 states with law enforcement agencies large and small, seeking to uncover when, why, and how law enforcers were using cell phone location data to track people. Applications by law enforcement for court orders tracking the location of people's cell phones are generally filed under seal, and the court's response to such requests is also generally secret. The result, the ACLU argues, is that the law governing when the government may secretly track a person's cell phone is itself largely secret.

When the government refused to respond adequately to the FOIA request, the ACLU, along with the Electronic Frontier Foundation, sued for the case names and docket numbers for cases where individuals were criminally prosecuted after cell phone location data was accessed without a warrant. U.S. District Judge James Robertson ordered the DOJ to produce the information, at least in cases that ended in a conviction or guilty plea. The DOJ appealed, but last month, the U.S. Court of Appeals for the D.C. Circuit upheld the lower court and ordered the DOJ to make that information public. The ACLU had also requested information on cases where the defendant was not convicted. The court sent that question back to the District Court, and it remains unresolved.



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The DOJ could possibly appeal to the Supreme Court, [which already has agreed to consider another privacy case](#) involving GPS technology. [We have written about that case before.](#) In that case, which will be argued later this year, the issue is whether police should have obtained a warrant before attaching a GPS device to a suspect's vehicle.

With advancing technology, this type of case will continue to dot the legal landscape, as courts try to balance law enforcement needs with individual privacy rights. Given the importance of these cases, legislation governing cell phone tracking is in order.

*Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.*

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