



Cops Need Warrant for Cellphone Location Data, Judge Rules

Ruling Deals Blow to Investigators

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The government cannot force your cellphone provider to turn over stored records about your location without proving to a judge there is probable cause you have violated the law, a federal district court ruled Wednesday.

The ruling from Judge Terrence McVerry of the Western Pennsylvania U.S. District Court deals a blow to investigators who have been getting cellphone location data on in the past simply by proving to a judge that the information would be relevant to an investigation. That's the same standard used to force a telephone company to reveal the name and address of a subscriber.

McVerry upheld a February decision written by five magistrate judges, who found that the government's request for historic cellphone location data for a person required a stricter standard. Little is known about how often investigators ask for such data, since the hearings are one-sided and the decisions are almost never published so as not to tip off the targets.

However, the ruling does not hold force across the country, and as the government's objection to the ruling noted, other judges have disagreed with the logic of protecting this data as if it were very sensitive.

The original decision(.pdf) found that "location information so broadly sought is extraordinarily personal and potentially sensitive; and that the ex parte nature of the proceedings, the comparatively low cost to the Government of the information requested, and the undetectable nature of a [cellular service provider]'s electronic transfer of such information, render these requests particularly vulnerable to abuse."

The government appealed, arguing the records only reveal a phone's location when it is actually used and that there's no constitutional right to have these stored records protected.

"Wireless carriers regularly generate and retain the records at issue, and because these records provide only a very general indication of a user's whereabouts at certain time in the past, the requested cell-site records do not implicate a Fourth Amendment privacy interest," the government wrote (.pdf).

But the friend-of-the-court brief (.pdf) from the Electronic Frontier Foundation and the Center for Democracy and Technology and others disagree -- arguing that law enforcement wants the data to pinpoint where a person was or is and that the data will only get more precise in the future.

"Law enforcement uses the fact that the suspect's phone contacted the cell tower nearest his home to

infer he is home, nearest the narcotic's kingpin's house to infer that they are together, nearest the drop off point to argue that he was present when the contraband was delivered," the groups wrote. "One can also imagine that the government can ask for all the numbers that made calls through the tower nearest a political rally to infer that those callers attended the rally."

The distinction matters since generally speaking police officers don't need a warrant to plant a tracking device on a car, unless that vehicle goes onto private property. Tracking someone onto private property requires a warrant.

As for what the police need to prove to a judge in order to turn your cellphone into a tracking device -- that's a question that federal judges remain split on, despite the Justice Department's own recommendation that investigators get warrants based on probable cause.

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