

**William P. Kenoi**  
*Mayor*



**Harry S. Kubojiri**  
*Police Chief*

**Paul K. Ferreira**  
*Deputy Police Chief*

## **County of Hawai`i**

### **POLICE DEPARTMENT**

349 Kapi`olani Street • Hilo, Hawai`i 96720-3998  
(808) 935-3311 • Fax (808) 961-2389

August 17, 2011

Ms. Laurie A. Temple  
Staff Attorney  
ACLU of Hawaii  
P.O. Box 3410  
Honolulu, Hawai'i 96801

Dear Ms. Temple:

RE: OPEN RECORDS REQUEST RECEIVED AUGUST 4, 2011

Your identified requests and our responses to same are as follows:

1. Policies, procedures and practices you follow to obtain cell phone location records.

Response: The policy is for us to obtain a search warrant based upon probable cause – thus the Fourth Amendment of the Constitution is the overriding policy.

2. Data 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.

Response: The location records received in conjunction with a search warrant would be retained within the official Police Report and our policy is to retain copies of all police reports within our Records Management System (RMS) database. We have not as yet shared any of this information with other agencies.

3. The use of cell phone location records to identify "communities of interest" (detailing those persons who have been called, or called by a target) in investigations.

Response: We have not utilized cell phone locations records in the above-described manner.

4. The use of cell phone location records to identify all of the cell phones at a particular location.

Response: To date, our department has never sought to utilize cell phone location records in the above-described manner.

5. Your use of "digital fences" (systems whereby your [sic] notified whenever a cell phone comes within a specific geographic area).

Response: We have no records nor have we attempted to use "digital fences" in the above-described manner.

6. The legal standard (e.g. probable cause, relevance) you proffer to obtain cell phone location records.

Response: The legal standard we utilize is probable cause in pursuit of a search warrant/court order and the relevance is seeking the location of a person in immediate danger of death or serious bodily injury.

7. Judicial decisions and orders ruling on your applications to obtain cell phone location records.

Response: Enclosed you will find a court order (Search Warrant 2009-142) relative to a record regarding where a cell phone had been in the past as part of an investigation.

8. Statistics regarding your use of cell phone location records, including the number of emergency requests for which no court order was obtained.

Response: In terms of statistics none are kept. We did locate a total of two cell phone use location records, one based on a court order (Search Warrant 2009-142 see response to #7) and the second involving an emergency request (copy of pertinent report enclosed) in which no court order was obtained in trying to locate a reported kidnapping victim.

9. The form in which cell phone location records are provided (hard copy, through specific online databases)

Response: These would be received either through email, compact disc or verbally.

10. Communications with cell phone companies and providers of location-based services regarding cell phone location records, including

- Company manuals, pricing and data access policies
- Invoices reflecting payments for obtaining cell phone location records
- Instance in which cell phone companies have refused to comply with a request or order

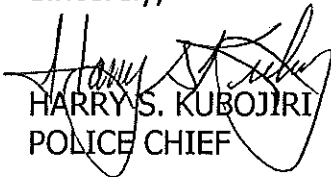
Response: We do not possess any company manuals, pricing, and/or data access policies. We have not been charged for obtaining cell phone location records. We have not been refused a request or order for cell phone location records.

11. In closing, our department takes the community's right to privacy very seriously and has been and will continue to be judicious in the use of this tool.

Please note the two enclosed documents being forwarded per your request have been redacted to remove items that an individual maintains a significant personal privacy interest in to include names, addresses, and phone numbers.

Should you have any questions or concerns regarding this matter, please contact Major Samuel Thomas of our Administrative Services Division at 808 961-2247.

Sincerely,

  
HARRY S. KUBOJIRI  
POLICE CHIEF

ST:jh

Enclosures

[REDACTED]  
[REDACTED]  
[REDACTED]

02-06-2011  
Det.R.MAHUNA

C11003425  
HL  
KIDNAPPING

PAGE 1 OF 2 PAGES

ASSIGNMENT

02-06-2011/0930hrs.: I was assigned by Area I Criminal Investigation Section commander Lt. G. ESTEBAN to assist Det. P. FUKUDA with a possible kidnapping case.

I then made contact with Det. FUKUDA who gave me the facts of the case and I proceeded to the Hilo Police Station.

CELL PHONE TOWER INFORMATION

Upon my arrival at the Hilo Police Station I made contact with Captain Randal MEDEIROS who gave me a cell phone number that the suspect and the victim apparently share. The number is [REDACTED]. I determined that that cell phone number is assigned to Verizon Wireless. I made contact with Yajaira at Verizon law enforcement assistance (800) 451-5242. I faxed her over an emergency information request and was provided with the following information.

The cell phone is a pre-paid phone and there is no subscriber information. The last outgoing call was made yesterday and the phone has been receiving phone calls and text messages.

At 02-06-2011/1053hrs: The phone addressed a tower located at 73-5573 Lawehana Street in Kailua Kona (3.93 miles North West of that tower). That is generally in the Kona Industrial Area near Costco, and 3.93 miles N/W would put the phone near Route 190 and Kaiminani Drive intersection.

At 02-06-2011/1154hrs: The phone addressed a tower located near OTEC at Keahole, 4.67 miles North East of that tower. That would put the phone some where in the area of the Kona Palisades subdivision.

At 02-06-2011/1240hrs: The phone was in the same location.

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Reviewed By: MAHUNA, REED  
Approved By: ESTEBAN, GREGORY

[184978] on 02/06/2011  
[181850] on 03/17/2011

[REDACTED]

02-06-2011  
Det.R.MAHUNA

C11003425  
HL  
KIDNAPPING

PAGE 2 OF 2 PAGES

During this time Captain MEDEIROS was in contact with Kona CIS and Patrol personnel coordinating the search.

DISPOSITION

This case is continuing.

INV: CONTINUING

FILED

COPY

2009 JUL 20 PM 1:04

P. ANTIDA, CLERK  
DISTRICT COURT OF  
3RD CIRCUIT  
STATE OF HAWAII

Search Warrant No.

2009-1142

COUNTY AND STATE OF HAWAII

SEARCH WARRANT

To the Chief of Police of the County of Hawaii, his Deputy, or any Police Officer in the County of Hawaii, State of Hawaii, or any Police Officer in the State of Hawaii authorized by law to execute this warrant at the place designated hereinafter.

Affidavit(s) having been made before me that the property described herein may be found at the locations set forth herein and that it falls within the grounds specified by said affidavit(s).

And as I am satisfied that there is probable cause to believe that the property described herein is being concealed on the premises or person described below and that the foregoing grounds for application for issuance of the search warrant exist.

YOU ARE COMMANDED forthwith to SEARCH:

1. AT&T Wireless' database of available information;

for the following property:

1. Cellular telephone towers that [REDACTED], [REDACTED] and [REDACTED] addressed during the time period from June 29, 2009, at 0600 hours through July 1, 2009, 0600 hours, including call details;
2. Voice mail messages remaining on cellular telephone numbers [REDACTED] and [REDACTED]

I hereby certify that this is a full, true,  
and correct copy of the original on-filed  
in this office.

*P. Antida*  
Clerk, District Court of the Third Circuit,  
State of Hawaii

giving to the person from whom or from whose premises the property was taken a copy of this warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken, and to seize it if found there, and prepare a written inventory of the property seized and return this warrant and inventory before me within ten days of this date, as required by law.

This warrant shall be executed at the time indicated below by an "x."

           only during the period of time between 7:01 A.M. until 9:59 P.M.;

  X   at any time of day or night.

DATED: Hilo, Hawaii, 7-13-09

  
JUDGE

WAYNE C. METCALF III

District Court of the Third Circuit  
Circuit Court of the Third Circuit

STATE OF HAWAII

# REQUEST TO ACCESS A GOVERNMENT RECORD

DATE: August 3, 2011

TO: Harry S. Kubojiri, Chief of Police, Hawaii Police Department

FROM: Laurie A. Temple  
Name or Alias  
ACLU of Hawaii, P.O. Box 3410, Honolulu, HI 96801  
Phone: (808) 522-5905 e-mail: lt@acluhawaii.org  
Contact Information

Although you are not required to provide any personal information, you should provide enough information to allow the agency to contact you about this request. The processing of this request may be stopped if the agency is unable to contact you. Therefore, please provide any information that will allow the agency to contact you (name or alias, telephone or fax number, mailing address, e-mail address, etc.).

## I WOULD LIKE THE FOLLOWING GOVERNMENT RECORD:

Describe the government record as specifically as possible so that it can be located. Try to provide a record name, subject matter, date, location, purpose, or names of persons to whom the record refers, or other information that could help the agency identify the record. A complete and accurate description of the government record you request will prevent delays in locating the record. Attach a second page if needed.

We hereby request disclosure of all records in your possession relating to your acquisition of cell phone location records. This request encompasses records regarding real-time tracking and records regarding where cell phones have been in the past, and it encompasses all available methods of locating cell phones, including "cell site," triangulation, and GPS. This request includes but is not limited to the following records:

- Policies, procedures and practices you follow to obtain cell phone location records
- Data 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 use of cell phone location records to identify "communities of interest" (detailing those persons who have been called, or called by a target) in investigations
- The use of cell phone location records to identify all of the cell phones at a particular location
- Your use of "digital fences" (systems whereby you are notified whenever a cell phone comes within a specific geographic area)
- The legal standard (e.g. probable cause, relevance) you proffer to obtain cell phone location records
- Judicial decisions and orders ruling on your applications to obtain cell phone location records
- Statistics regarding your use of cell phone location records, including the number of emergency requests for which no court order was obtained
- The form in which cell phone location records are provided (hard copy, through specific online databases)



- Communications with cell phone companies and providers of location-based services regarding cell phone location records, including
  - company manuals, pricing, and data access policies
  - invoices reflecting payments for obtaining cell phone location records
  - instances in which cell phone companies have refused to comply with a request or order

**I WOULD LIKE:** (please check one or more of the options below)

- To inspect the government record.
- A copy of the government record: (Please check one of the options below.) See the back of this page for information about fees that you may be required to pay for agency services to process your record request. Note: Copying and transmission charges may also apply to certain options.
  - Pick up at agency (date and time): \_\_\_\_\_
  - Mail
  - Fax (toll free and only if available)
  - Other, if available (please specify): \_\_\_\_\_
- If the agency maintains the records in a form other than paper, please advise in which format you would prefer to have the record.
  - Electronic     Audio     Other (please specify): However the records are maintained
- Check this box if you are attaching a request for waiver of fees in the public interest (see waiver information on back).

**SEE BACK FOR IMPORTANT INFORMATION**

## FEES FOR PROCESSING RECORD REQUESTS

You may be charged fees for the services that the agency must perform when processing your record request, including fees for making photocopies and other lawful fees. **The first \$30 of fees charged for searching for a record, reviewing, and segregating will not be charged to you. Any amount over \$30 will be charged to you. Fees are as follows:**

Search for a Record	\$2.50 for 15 minutes
Review and Segregation of a Record	\$5.00 for 15 minutes

## WAIVER OF FEES IN THE PUBLIC INTEREST

Up to \$60 of fees for searching for, segregating and reviewing records may be waived when the waiver would serve the public interest as described in section 2-71-32, Hawaii Administrative Rules. If you wish to apply for a waiver of fees in the public interest, you must attach to this request a statement of facts, including your identity as the requester, to show how the waiver of fees would serve the public interest. The criteria for this waiver, found at section 2-71-32, Hawaii Administrative Rules, are:

- (1) The requested record pertains to the operations or activities of an agency;
- (2) The record is not readily available in the public domain; and
- (3) The requester has the primary intention and the actual ability to widely disseminate information from the government record to the public at large.

## AGENCY RESPONSE TO YOUR REQUEST FOR ACCESS

The agency to which you addressed your request must respond within a set time period. The agency will normally respond to you within 10 business days from the date it receives your request; however, in *extenuating circumstances* the agency must respond within 20 business days from the date of your request. If you have questions about the response time, you may contact the agency's UIPA contact person. If you are not satisfied with the agency's response, you may call the Office of Information Practices at 808-586-1400.

## REQUESTER'S RESPONSIBILITIES

You have certain responsibilities under §2-71-16, Hawaii Administrative Rules. You may obtain a copy of these rules from the Lieutenant Governor's Office or from the Office of Information Practices. These responsibilities include making arrangements to inspect and copy records, providing further clarification or description of the requested record as instructed by the agency's notice, and making a prepayment of fees, if assessed.

ACLU of Hawaii Foundation Request to Access Government Records

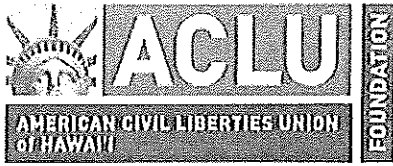
Request for Waiver of Fees in the Public Interest

August 3, 2011

Pursuant to section 2-71-32 of the Hawaii Administrative Rules, the American Civil Liberties Union of Hawaii Foundation ("ACLU") hereby requests a waiver of \$60 of the fees that may be assessed under section 2-71-31. The ACLU is a nonprofit, public-interest law firm; our mission is to protect individual freedoms guaranteed under the federal and state constitutions. The ACLU has been engaged in legal action and public education in Hawaii since 1965 on issues affecting constitutional rights.

Public dissemination of the information contained in these documents will contribute significantly to public knowledge and understanding of the Hawaii Police Department's use of cell phone location records. The ACLU has no commercial interest in the documents requested. These documents are not readily available in the public domain. As a public-interest organization, the ACLU has both the primary intention and the actual ability to disseminate widely this information to the public at large.

Requester respectfully asks that, if the total fees for this request (including copying charges) are anticipated to exceed \$250.00, Respondent notify Requester and obtain express written permission to proceed with the request.



RECEIVED  
2011 AUG -4 AM 11:48  
HAWAII POLICE

August 3, 2011

Harry S. Kubojiri  
Hawaii Police Department  
349 Kapi'olani Street  
Hilo, HI 96720

Re: Open Records Request

Dear Chief Kubojiri:

Enclosed is a request to access government records. Please feel free to contact me at (808) 522-5905 or [lt@acluhawaii.org](mailto:lt@acluhawaii.org) if you have any questions about this request. Thank you for your assistance.

Sincerely,

Laurie A. Temple  
Staff Attorney

Post Office Box 3410  
Honolulu, Hawaii 96801  
T: 808 • 522-5900  
F: 808 • 522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

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110519