

No warrant needed to get cell phone location: US court

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A court ruling allows police to obtain location data from cellular carriers with a court order, with a lower standard than a warrant

Police don't need a warrant to obtain mobile phone location data for a criminal investigation, a US appeals court ruled Tuesday in a case closely watched for digital-era privacy implications.

The case decided by the US Court of Appeals for the Fourth Circuit in Virginia is among several pending in the courts on "location privacy," or whether using the digital data violates constitutional guarantees against unreasonable searches.

The case, which could still be appealed to the Supreme Court, represents a setback for a coalition of groups fighting for a right to location privacy, including the American Civil Liberties Union, Gun Owners of America and the Reporters Committee for Freedom of the Press.

The judges ruled 12-3 in the case, overturning an earlier three-judge panel's decision in the same circuit that found police violated the rights of the defendants in investigating a series of armed robberies.

Judge Diana Motz, writing for the majority, said a warrant is not needed to get location data because cell phone users "voluntarily" give that data to carriers whenever they make a call or send a text message.

The judge wrote that the constitution's Fourth Amendment, protecting against unreasonable searches and seizures, does not apply in this case, because the phone users have no reasonable expectation of privacy.

"The Fourth Amendment does not protect information voluntarily disclosed to a third party because even a subjective expectation of privacy in such information is not one that society is prepared to recognize as 'reasonable,'" the opinion read.

Dissenting view

But Judge James Wynn, in a dissenting opinion, said the majority stretched the view on what is being voluntarily handed over.

"Even if cell phone customers have a vague awareness that their location

affects the number of 'bars' on their phone... they surely do not know which cell phone tower their call will be routed through," Wynn wrote.

The dissenting opinion said the authorities went too far by obtaining 221 days of data and some 29,000 location-identifying data points.

"In my view, the sheer volume of data the government acquired here decides this case," Wynn said.

"By acquiring vast quantities of defendants' location information, spanning months, without defendants' consent, the government infringed their reasonable expectations of privacy and thereby engaged in a search. Because that search was warrantless, it violated the Fourth Amendment."

The ruling allows police to obtain location data from cellular carriers with a court order, with a lower standard than a warrant.

The major carriers receive tens of thousands of such requests each year, according to transparency reports.

Such court orders are "much faster, much easier" than warrants which require specific details of likely criminal activity, said Jadzia Butler of the Center For Democracy & Technology, one of the privacy groups participating in the case.

Butler said it was not clear if case would be appealed but said that "this is an incredibly important issue that the Supreme Court should look at."

"I don't think the average member of society expects to be handing over location data every time they take out their cell phone," she said.

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