

Court Sides with U.S. in Cell-Tracking Records Case

Eric Tucker, Associated Press

WASHINGTON (AP) — The Justice Department does not have to turn over information on cases involving warrantless cellphone tracking if the cases ended without a defendant's conviction, a divided federal appeals court ruled Friday in upholding privacy protections for people acquitted of crimes.

The ruling came in a public records lawsuit brought by the American Civil Liberties Union, which had requested information on federal cases in which law enforcement had obtained cellphone tracking data without a warrant to track a user's whereabouts.

The U.S. Court of Appeals for the District of Columbia Circuit had previously held that the Justice Department was obligated under the Freedom of Information Act to disclose case names and docket numbers for warrantless cellphone tracking prosecutions that ended with a conviction. But in a separate 2-1 decision Friday, a three-judge panel of the court said defendants who have been acquitted or who have had charges against them dropped enjoy extra privacy protections that outweigh the public benefit in disclosing that information.

"While this attention would have been warranted at the time of indictment, now that these defendants have been acquitted or had the relevant charges dismissed they have a significant and justified interest in avoiding additional and unnecessary publicity," Judge David Tatel wrote. He said a person acquitted of financial fraud looking to rebuild his life "might be especially dismayed" to learn of the information's release.

Though the appeal centered on a small number of cases, the dispute nonetheless unfolded against the backdrop of ever-advancing law enforcement technologies and the ongoing debate over privacy protections.

"Once a person has been publicly indicted, and that information is easily available on the Internet, it's just unrealistic to say that the person has an ongoing interest in the privacy of his public indictment" that outweighs the public's right to know what happened, said Arthur Spitzer, the legal director of the ACLU of Washington, who said he was disappointed by the decision.

The Justice Department, in responding to the ACLU lawsuit, identified 229 prosecutions since 2001 in which a judge had approved the government's request to obtain cellphone tracking data without making a finding of probable cause. The department refused to turn the list over, but after an earlier appeals court decision, ultimately released docket information for 214 cases that had resulted in guilty pleas or convictions.

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The remaining 15 cases ended with an acquittal or dropped charges or had been sealed. Since the ACLU didn't challenge the Justice Department's authority to withhold information on sealed cases, the only cases at issue in the appeal were six — two that ended in acquittal, four where the charges were dropped.

Judge Janice Rogers Brown dissented from the majority opinion, saying the six disputed cases already exist in the public domain and can easily be accessed through a Google search or other means.

"An individual who is indicted and tried has no privacy interest that can protect the public record of prosecution from disclosure — even if the ultimate outcome was acquittal or dismissal," she wrote.

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