

# Applications for Electronic Surveillance Orders

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Historical Information		
Type of Information	Constitutional Protection	Statutory Protection
Content	Most courts say content is subject to a reasonable expectation of privacy and is protected by the Fourth Amendment. <u>United States v. Warshak</u> , 631 f.3d 266 (6 <sup>th</sup> Cir. 2010). A search warrant is generally required.	Unclear. Courts disagree about the proper interpretation of the Stored Communications Act (SCA), 18 U.S.C. § 2701 <u>et seq.</u>
Basic Subscriber Information	None. This information is voluntarily shared by the subscriber with the service provider. <u>Smith v. Maryland</u> , 442 U.S. 735 (1979).	Protected by the SCA but may be disclosed pursuant to subpoena; court order based on “specific and articulable facts showing that there are reasonable grounds to believe that the . . . information sought [is] relevant and material to an ongoing criminal investigation,” 18 U.S.C. § 2703(d); or search warrant.
Other Non-Content (Except Location Information)	None. This information is voluntarily shared by the subscriber with the service provider. <u>Smith v. Maryland</u> , 442 U.S. 735 (1979).	Protected by the SCA but may be disclosed pursuant to court order based on “specific and articulable facts showing that there are reasonable grounds to believe that the . . . information sought [is] relevant and material to an ongoing criminal investigation,” 18 U.S.C. § 2703(d); or search warrant.
Location Information	Unclear. Courts disagree about whether this information is subject to a reasonable expectation of privacy. <u>In re Application of the U.S. for Historical Cell Site Data</u> , 724 F.3d 600 (5 <sup>th</sup> Cir. 2013) (no); <u>In re Application of the United States for an Order Authorizing the Release of Historical Cell-Site Information</u> , 809 F.Supp.2d 113 (E.D.N.Y. 2011) (yes).	Protected by the SCA but may be disclosed pursuant to court order based on “specific and articulable facts showing that there are reasonable grounds to believe that the . . . information sought [is] relevant and material to an ongoing criminal investigation,” 18 U.S.C. § 2703(d); or search warrant.
Real-Time/Prospective Information		
Type of Information	Constitutional Protection	Statutory Protection
Content	Subject to a reasonable expectation of privacy and protected by the Fourth Amendment. <u>Katz v. United States</u> , 389 U.S. 347 (1967). A search warrant is generally required.	‘Super warrant’ based on probable cause and necessity required by federal wiretapping and state electronic surveillance statutes. G.S. 15A-286 <u>et seq.</u>
Location Information	Unclear. Courts disagree about whether this information is subject to a reasonable expectation of privacy. <u>United States v. Skinner</u> , 690 F.3d 772 (6 <sup>th</sup> Cir. 2012) (no); <u>United States v. Powell</u> , 943 F.Supp.2d 759 (E.D. Mich. 2013) (yes, and asserting that is the majority rule)	Unclear. Courts disagree about the application of the SCA and the pen register/trap and trace statutes to this information.
Destinations of Outgoing/Origins of Incoming Communications	None. This information is voluntarily shared by the subscriber with the service provider. <u>Smith v. Maryland</u> , 442 U.S. 735 (1979).	Protected by federal and state pen register/trap and trace statutes. G.S. 15A-263 requires reasonable suspicion.
Other Non-Content	None. This information is voluntarily shared by the subscriber with the service provider. <u>Smith v. Maryland</u> , 442 U.S. 735 (1979).	Unclear. Courts disagree about the application of the SCA and the pen register/trap and trace statutes to this information.