



KANSAS JUSTICE INSTITUTE

April 1, 2020

The Honorable Laura Kelly
Governor of the State of Kansas
Capitol, 300 SW 10th Avenue, Suite 241S
Topeka, Kansas 66612

Dear Governor Kelly,

According to a recent report,¹ the Kansas Department of Health and Environment is using a GPS program to track residents' locations through their phones. The KDHE communications director did not identify the legal basis for the program or reveal when the program began. It is also unclear who has access to the data, other than the KDHE, whether the program is temporary, and whether Kansas residents can opt-out.

Kansas Justice Institute² has grave concerns regarding this tracking program. The wholesale collection of cellular and GPS data raises significant privacy issues. According to other media reports, "academic research published last year suggested it is possible to 're-identify' the majority (99.8 percent) of people who had featured in anonymized datasets[.]"³ Other researchers suggest "true anonymization of location data is nearly impossible[.]"⁴

Moreover, as the United States Supreme Court made clear, "[m]odern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans the privacies of life[.] The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought."⁵

¹ Tobias Hoonhout, *Kansas Says It's Using Residents' Cell-Phone Location Data to Fight Pandemic*, Nat'l Review (April 1, 2020). Accessible at <https://www.nationalreview.com/news/coronavirus-kansas-using-resident-cell-phone-location-data-fight-pandemic/>

² Kansas Justice Institute is a non-profit, public-interest litigation firm committed to protecting individual liberty and the constitutional rights of all Kansans.

³ Jason Murdock, *Mobile Phone Location Data of Florida Beachgoers During Spring Break Tracked to Show Potential Coronavirus Spread*, Newsweek (March 27, 2020). Accessible at <https://www.newsweek.com/x-mode-tectonix-coronavirus-heat-map-tracking-mobile-data-covid-19-spring-break-1494663>

⁴ Byron Tau, *Government Tracking How People Move Around in Coronavirus Pandemic*, Wall Street Journal (March 28, 2020). Accessible at <https://www.wsj.com/articles/government-tracking-how-people-move-around-in-coronavirus-pandemic-11585393202>

⁵ *Riley v. California*, 573 U.S. 373, 403 (2014) (analyzing warrant requirement involving cell phones seized incident to an arrest (cleaned up)).

The COVID-19 pandemic, while serious, does not justify the lack of transparency regarding this tracking program.

Kansas Justice Institute urges you to immediately and publicly reveal the details of this tracking program and how it is used. This should include, at the very minimum, all measures taken to assure no personal information is obtained, utilized, shared, or retained.

Kansas Justice Institute insists you publicly—and immediately—provide a detailed and thorough memorandum regarding the tracking program’s purported legal justification. Executive powers during emergencies are not absolute. The Kansas and United States Constitutions do not tolerate or permit unfettered access to private, confidential information.

Respectfully,



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Cc: Kansas Attorney General
Legislative Coordinating Council
Kansas Department of Health and Environment