

# Cellphone (Mobile Device) Search Warrant Affidavit

***N.B.:***

**This sample warrant affidavit is intended for those situations where the *sole subject of the search is a portable electronic device*, such as a cell phone, blackberry, or PDA. Of course, language from this sample could be included in an affidavit for a search of computers where a search scene may include both kinds of devices.**

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IN THE MATTER OF THE SEARCH OF:

CASE NUMBER: \_\_\_\_\_

## **APPLICATION AND AFFIDAVIT FOR SEARCH WARRANT**

Detective [Name] of the [Law Enforcement Agency], who is currently assigned to [office/squad], being of lawful age and first duly sworn upon my oath, states as follows:

1. I am submitting this Affidavit in support of an application for a warrant to search and seize the following portable electronic device: **[DESCRIBE DEVICE HERE]**.

2. I am a detective with the [Law Enforcement Agency], and have been so employed for approximately \_\_\_\_\_.

3. During my career as a detective of [Law Enforcement Agency], I have participated in the execution of a [ ] search warrants.

4. Because this affidavit is being submitted for the limited purpose of securing a warrant, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the

portable electronic device described above **[is evidence of violations of . . . ] [is contraband]**  
**[is the fruit of a violation of . . . ] [was used in committing violations of . . . ] [and/or contains**  
**evidence/contraband/fruits/instrumentality of violations of . . . ].**

### Summary of Relevant Technology

**[If the exact brand and model of the device is known, identify the device as such and tailor a description of its specific capabilities here. Often this information is available from the manufacturer or on-line. Otherwise, insert one or more of the following generic descriptions as necessary depending on target of warrant]**

#### **[For a Blackberry]**

#. “Blackberry” is a brand of handheld wireless electronic communications devices made by Research in Motion. Blackberries generally enable users to send email, make and receive telephone calls, access the Internet, and organize appointments and contact information. Certain Blackberries can also send instant messages, take digital pictures or moving video, or store and play digital music or video files. Blackberries may also contain GPS technology for determining the location of the device.

#### **[For a Cell Phone]**

#. A cellular telephone or mobile telephone is a handheld wireless device used primarily for voice communication through radio signals. These telephones send signals through networks of transmitter/receivers called “cells,” enabling communication with other cellular telephones or traditional “land line” telephones. A cellular telephone usually includes a “call log,” which records the telephone number, date, and time of calls made to and from the phone.

#. In addition to enabling voice communications, cellular telephones now offer a broad range of capabilities. These capabilities include, but are not limited to: storing names and phone numbers in electronic “address books;” sending, receiving, and storing text messages and email; taking, sending, receiving, and storing still photographs and moving video; storing and playing back audio files; storing dates, appointments, and other information on personal calendars; and accessing and downloading information from the Internet. Cellular telephones may also include global positioning system (“GPS”) technology for determining the location of the device.

**[For a Digital Camera]**

#. A digital camera is a device that records still and moving images digitally. Digital cameras use a variety of fixed and removable storage media to store their recorded images. Images can usually be retrieved by connecting the camera to a computer or by connecting the removable storage medium to a separate reader. Removable storage media include various types of flash memory cards or miniature hard drives. Most digital cameras also include a screen for viewing the stored images. This storage media can contain any digital data, including data unrelated to photographs or videos.

**[For a Portable Media Player]**

#. A portable media player (or “MP3 Player” or iPod) is a handheld digital storage device designed primarily to store and play audio, video, or photograph files. However, a portable media player can also store any digital data, such as word processing documents, even if the device is not designed to access such files. Some portable media players can use removable storage media. Removable storage media include various types of flash memory cards or miniature hard drives. This removable storage media can also store any digital data. Depending

on the model, a portable media player may have the ability to store very large amounts of electronic data and may offer additional features such as a calendar, contact list, clock, or games.

**[For a PDA, e.g. i-Phone, etc]**

#. A personal digital assistant, or PDA, is a handheld electronic device used for storing data (such as names, addresses, appointments or notes) and utilizing computer programs. Some PDAs also function as a wireless communication device and are used to access the Internet and send and receive email. PDAs usually include a memory card or other removable storage media for storing data and a keyboard and/or touch screen for entering data. Removable storage media include various types of flash memory cards or miniature hard drives. This removable storage media can store any digital data. Most PDAs run computer software, giving them many of the same capabilities as personal computers. For example, PDA users can work with word-processing documents, spreadsheets, and presentations. PDAs may also include global positioning system (“GPS”) technology for determining the location of the device.

**[For a Pager]**

#. A pager is a handheld wireless electronic device used to contact an individual through an alert, or a numeric or text message sent over a telecommunications network. Some pagers enable the user to send, as well as receive, text messages.

### **Summary of the Investigation**

**Describe investigation and the device’s role in the offense. Establish probable cause that the relevant electronic device is**

- **evidence of a crime,**
- **contraband,**

- **the fruit of a crime, or**
- **an instrumentality of a crime,**
- **or that the device is a storage container for evidence, contraband, fruits, or instrumentalities.**
- **If the device both contains evidence, contraband, fruit, or instrumentalities AND is *itself* evidence, contraband, fruit, or instrumentality, be sure to describe both roles. <sup>1</sup>**

Also Note: As indicated above, there obviously must be a connection between the crime and the evidence sought with probable cause to believe the e-device will contain such evidence. However, where appropriate and accurate and as part of the “connection”, the law enforcement officer can state that such e-device is frequently used by persons engaged in such criminal conduct – as per the below example:

*# Upon his arrest by the Police Department, Smith was found to be in possession of 2 cell phones: a Motorola T-Mobile phone with a built-in digital camera and a Motorola “Boost” Mobile phone. Officer Jones of the Police Department advised me that Smith had talked on the cell phone during the traffic stop referred to above. Further, CI #1 has advised me that Smith was frequently using the cell phones to speak to persons throughout the trip from Phoenix to New York. These 2 cell phones are now in the custody of the Police Department after having been seized incident to arrest of the defendant Smith.*

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# *Based on my training and experience and discussion with other officers, it is known that persons who smuggle and transport drugs frequently use cell phones to maintain contact with his associates during travel and also use cell phones to contact persons where the drugs are destined. This frequently occurs due to the transient nature of these smuggling operations and because members of these conspiracies frequently travel and require coordination of their movements in order to pick up and drop off drugs at designated times and places.*

**If the device is being seized only as a container of evidence, contraband, fruit or instrumentality, insert the following 2 paragraphs to justify seizing the device and searching it off-site. (If the device itself is [evidence] [contraband], [fruit of crime] or an [instrumentality of the crime], it is already subject to seizure.**

#. Based on my knowledge and training and the experience of other agents with whom I have discussed this investigation, I know that in order to completely and accurately retrieve data maintained in [device's] hardware or software, to ensure accuracy and completeness of such data, and to prevent the loss of the data either from accidental or intentional destruction, it is often necessary that the [device], related instructions in the form of manuals and notes, as well as the software utilized to operate such a device, be seized and subsequently processed by a qualified specialist in a laboratory setting.

#. Analyzing electronic handheld devices for criminal evidence is a highly technical process requiring expert skill and a properly controlled environment. Such devices utilize a vast array of different operating systems, software, and set-ups. The variety of hardware and

software available requires even experts to specialize in some systems and applications. Thus it is difficult to know prior to the search which expert possesses sufficient specialized skill to best analyze the system and its data. No matter which system is used, however, data analysis protocols are exacting scientific procedures, designed to protect the integrity of the evidence and to recover even “hidden,” erased, compressed, password-protected, or encrypted files. Since electronic evidence is extremely vulnerable to tampering or destruction (both from external sources or from destructive code imbedded in the system as a “booby trap”), a controlled environment is essential to its complete and accurate analysis. Furthermore, there are often no software tools designed for forensic searches of particular handheld devices. Thus, searching for and retrieving data from a **[device]** can be even more complicated than searching a computer, even if the device has a much smaller memory capacity than a computer. For the foregoing reasons, the **[device]** will be removed from the searched premises if the agent deems it necessary in order to conduct an efficient, complete, secure, and accurate search of the device.

### **Analysis of Electronic Data**

#. Searching **[the device]** for the evidence described above may require a range of data analysis techniques. In some cases, it is possible for agents to conduct carefully targeted searches that can locate evidence without requiring a time-consuming manual search through unrelated materials that may be commingled with criminal evidence. For example, agents may be able to execute a "keyword" search that searches through the files stored in a computer for special words that are likely to appear only in the materials covered by a warrant. Similarly, agents may be able to locate the materials covered in the warrant by looking for particular directory or file names. In other cases, however, such techniques may not yield the evidence

described in the warrant. Criminals can mislabel or hide files and directories; encode communications to avoid using key words; attempt to delete files to evade detection; or take other steps designed to frustrate law enforcement searches for information. These steps may require agents to conduct more extensive searches, such as scanning areas of the device's memory not allocated to listed files, or opening every file and scanning its contents briefly to determine whether it falls within the scope of the warrant. In light of these difficulties, your affiant requests permission to use whatever data analysis techniques appear necessary to locate and retrieve the evidence described above.

**Conclusion**

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Detective

Sworn to before me and subscribed in my presence this        day of

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HONORABLE  
JUDGE