



## 2-108 ELECTRONIC COMMUNICATIONS PRIVACY ACT PROCEDURES

### Related SOP(s), Form(s), Other Resource(s), and Rescinded Special Order(s):

A. Related SOP(s)

[2-70 Execution of Search Warrants \(Formerly 2-16\)](#)

[2-73 Collection, Submission, and Disposition of Evidence and Property](#)

B. Form(s)

Application for the Order

ECPA Tracking Form

Order of Delayed Notification/Non-Disclosure

[PD 1308 Notification Letter](#)

Return and Inventory Form

C. Other Resource(s)

NMSA 1978, §§ 10-16F-1 to 10-16F-6 Electronic Communications Privacy Act

D. Rescinded Special Order(s)

None

### 2-108-1 Purpose

The purpose of this policy is to provide guidance to Albuquerque Police Department (Department) personnel to ensure compliance with the provisions of the Electronic Communications Privacy Act (ECPA).

### 2-108-2 Policy

It is the policy of the Department to articulate, in writing, to educate Department personnel regarding, and to enforce agency policies and procedures governing the procurement, testing adoption, deployment, use, access, and retirement of the technology and the data it provides, consistent with the ECPA. It is also the policy of the Department to review and update ECPA policies and procedures on a regular basis and whenever the technology or its use, or use of the data it provides, significantly changes.

### N/A 2-108-3 Definitions

A. Authorized Possessor

A natural person who owns and possesses an electronic device or a natural person who, with the owner's consent, possesses an electronic device.



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B. Electronic Communication

The transfer of a sign, a signal, a writing, an image, a sound, a datum or intelligence of any nature in whole or in part by wire, radio, electromagnetic, photoelectric or photo-optical system.

C. Electronic Communication Information

Information about an electronic communication or the use of an electronic communication service, excluding subscriber information, but including the contents, sender, recipients, format or the sender's or recipients' precise or approximate location at any point during the communication; the time or date the communication was created, sent or received; and, any information, including an internet protocol address, pertaining to a person or device participating in the communication.

D. Electronic Communications Privacy Act (ECPA)

NMSA 1978, §§ 10-16F-1 to 10-16F-6, which provides protections for electronic communications and imposes requirement on law enforcement when dealing with electronic communication.

E. Electronic Device

A device that stores, generates, or transmits information in electronic form.

F. Electronic Device Information

Information stored on or generated through the operation of an electronic device. This includes current or prior locations of the device.

G. Electronic Information

Electronic Communication Information and Electronic Device Information.

H. Government Entity

A department, agency, or political subdivision of the state. A "government entity" can also refer to a natural person acting for or on the behalf of the state or a political subdivision of the state.

I. Service Provider

An entity or person offering an electronic communication service.

J. Specific Consent



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Consent provided directly to a government entity seeking information. "Specific consent" has also been defined by the ECPA as including consent provided when the government entity is the addressee, the intended recipient or a member of the intended audience of an electronic communication, regardless of whether the originator of the communication had actual knowledge that the addressee, intended recipient or member of the specific audience is a government entity, except where the government entity has taken deliberate steps to hide the government entity's government association.

K. Subscriber Information

The name, street address, telephone number, email address or other similar type of contact information provided by a subscriber to a service provider to establish or maintain an account or communication channel; a subscriber or account number or identifier; or, the length and type of service used by a user or a service-provider subscriber.

**6** 2-108-4 Procedures

A. Electronic Information Search Warrant Procedures

1. Department personnel shall:

- a. Complete an affidavit for a search warrant for electronic information, which will include all pertinent data as well as any court orders for delayed notification and non-disclosure if they exist;
- b. Brief their supervisor about the circumstances of the warrant and obtain the District Attorney's approval;
- c. Present the warrant to a District Court judge for review;
- d. If the warrant is approved by the judge, the officer shall consult with their supervisor. After consulting with their supervisor, Department personnel shall execute the search warrant (refer to SOP Execution of Search Warrants for sanction classifications and additional duties);
- e. Complete the Return and Inventory Form, including the date, which is when the Electronic Information is received;
- f. Give notice to the target of the search warrant the day the warrant is executed, which is the day the Electronic Information is extracted and received, unless the court signs an order allowing delayed notification. The process for giving notice to the target is as follows:
  - i. Department personnel shall submit each of the following items immediately upon issuance to [warrants@cabq.gov](mailto:warrants@cabq.gov):
    1. Copy of the signed warrant with affidavit;
    2. A copy of any signed orders from the judge; and
    3. Copy of the letter(s) giving notice to the target;
  - ii. The Electronic Support Unit (ESU) shall contact the case agent for additional information as needed.

N/A



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- g. Review the Electronic Information received and determine what information is unrelated to the objective of the warrant or is not exculpatory to the target of the warrant; and
  - i. The case agent shall tag unrelated information into evidence as “sealed”.
- h. If an investigation requires review of information sealed into evidence, seek a subsequent warrant and include an updated affidavit with probable cause on why a review is needed.
  - i. If a review of information sealed into evidence is conducted, Department personnel shall repeat the notification and sealing processes.

2. Department personnel shall not destroy or dispose of sealed Electronic Information without first obtaining a letter of declination from the District Attorney’s Office indicating their approval.

B. Notification to the Target of an Electronic Information Warrant

1. When a warrant for Electronic Information is executed and where an individual is identified, on the same day the warrant is executed or in the case of emergency involving danger of death or serious physical injury to a natural person, within seventy-two (72) hours after obtaining the Electronic Information, Department personnel shall:
  - a. Send a letter to all identified targets of the investigation using the Letter of Notification;
  - b. Include a copy of the signed warrant with affidavit or, in the case of an emergency involving danger of death or serious physical injury to a natural person, a written statement of the facts giving rise to the emergency; and
  - c. Complete a Uniform Incident Report when notice was sent and how it was sent (e.g., email, certified mail, etc.), including any documents showing proof of notice.
2. When a warrant for Electronic Information is executed and where an individual is NOT identified or deceased, Department personnel shall do the following the same day the warrant is executed:
  - a. Send the following to [ecparecords@nmaq.gov](mailto:ecparecords@nmaq.gov) and [warrants@cabq.gov](mailto:warrants@cabq.gov); and
    - i. The Letter of Notification shall be addressed to the Attorney General stating a warrant was issued for Electronic Information as part of an investigation or an emergency requiring immediate access. The Letter of Notification shall include a description of the Electronic Information, as well as a description of the investigation or emergency; and
    - ii. Copy of signed warrant with affidavit.
  - b. Complete a Uniform Incident Report when notice was sent including any documents showing proof of notice.



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3. When a warrant for Electronic Information is executed, which includes a delay of notification granted by the court, Department personnel shall send the following documents to the target of the warrant before the delay of notification expires:
  - a. Letter of Notification;
  - b. Copy of the signed warrant with affidavit;
  - c. Summary of the Electronic Information obtained, including:
    - i. The number and type of records; and
    - ii. Statement of the grounds why the court delayed notification.
  - d. Completed Uniform Incident Report when notice was sent and how the notice was sent; and
4. If no target is identified, or the target is deceased, Department personnel shall send the above documents to the Attorney General's Office at [ecparecords@nmag.gov](mailto:ecparecords@nmag.gov).

C. Sealing Process for Electronic Information

1. Department personnel shall:
  - a. Place Electronic Information onto a CD, DVD, or thumb/flash drive and into an envelope;
    - i. The CD or DVD shall be placed into a six-by-nine (6x9) manila envelope with the tagging officer's initials and date across the seal using a permanent type marker.
    - ii. The thumb/flash drive shall be placed into a small plastic bag and heat-sealed with the officer's initials and date across the seal.
  - b. Write "ECPA" on the bottom of the label;
  - c. Complete the evidence process, consistent with SOP Collection, Submission, and Disposition of Evidence and Property (refer to SOP Collection, Submission, and Disposition of Evidence and Property for sanction classifications and additional duties); and
  - d. List the item type for evidence as "ECPA".
2. In addition to normal viewing and the check-out procedures outlined in SOP Collection, Submission, and Disposition of Evidence and Property, Department personnel must have probable cause and a court order to view ECPA evidence.
  - a. Department personnel shall have an order signed by a judge and present the order to Evidence Unit personnel before Evidence Unit personnel may release the evidence.

N/A

**7 2-108-5 Tracking and Reporting Requirements**

- A. Department personnel shall:
1. Forward all warrants which fall under the provisions of the ECPA to the ESU;



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2. Complete an ECPA Tracking Form within seventy-two (72) hours of executing any ECPA related search warrant, which is the day the Electronic Information is extracted and received, and forward the completed form to the ESU; and
  - a. Sworn personnel do not need to list the full name of identified targets for the ECPA Tracking Form. Sworn personnel may use an identifier of their choosing.
3. Count the number of records received.
  - a. A record is a single piece of Electronic Information and not a collection of Electronic Information such as a download, CD, or DVD. Examples of records include the following but are not limited to:
    - i. One (1) text message;
    - ii. One (1) Global Positioning System (GPS) ping;
    - iii. One (1) photograph;
    - iv. One (1) email; and
    - v. One (1) Facebook message.

**6** 2-108-6 **Procedures for Court Order Requests**

A. Department personnel shall:

1. Obtain an Order of Delayed Notification and/or Non-Disclosure using the Order of Delayed Notification/Non-Disclosure Form, if the absence of such an order would produce an adverse result, such as:
  - a. Danger to life or physical safety of a natural person;
  - b. Flight from prosecution;
  - c. Destruction of or tampering with evidence;
  - d. Intimidation of a potential witness; or
  - e. Serious jeopardy to an investigation.
2. File any proposed Order of Delayed Notification and/or Non-Disclosure and ensure the warrant affidavit articulates grounds for the delay of notification/non-disclosure;
3. Forward any signed ECPA court order to [warrants@cabq.gov](mailto:warrants@cabq.gov) for tracking purposes; and
4. Seek an Order to Seal in situations where an investigation will be compromised or evidence will be destroyed if the warrant is publicly available.
  - a. The warrant affidavit must articulate grounds for sealing the warrant and any related documents.

**6** 2-108-7 **Cellular Phone Pings**



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- A. Department personnel shall not use emergency pings until they have made alternative attempts to locate their target, including, but not limited to:
  1. Providing all known facts to the Real Time Crime Center (RTCC) for assistance; and
  2. Checking known residences and/or workplaces.
- B. Department personnel shall obtain supervisory approval prior to requesting cellular phone location information or “pings” through the Emergency Communications Center (ECC).
- C. Once the incident has concluded, the officer who requests a ping shall write the Application for the Order using the Application for the Order Form and email it to Judge Cindy Leos at [albdcal@nmcourts.gov](mailto:albdcal@nmcourts.gov) or the on-call judge.
  1. The judge will call the officer, swear them in, and if satisfied, sign and e-file the warrant, as well as provide the officer with a copy of the warrant.
- 7 D. The officer shall forward a copy of the signed warrant to the ESU along with a completed ECPA Tracking Form.
- 7 E. In the event that an officer requests cellular phone pings from the ECC, the ECC Dispatcher shall add the ping information to the call to include location information, as well as the number of pings.
  1. The ECC Dispatcher shall forward the Computer-Aided Dispatch (CAD) number and any related supporting documents to [warrants@cabq.gov](mailto:warrants@cabq.gov) at the conclusion of any call for which an officer has requested pings.
- F. On the same day the warrant is executed or in the case of an emergency involving danger of death or serious physical injury to a natural person, within seventy-two (72) hours after obtaining Electronic Information, sworn personnel shall:
  1. Send a letter to all identified targets of the investigation using Target Notification Template;
  2. Include a copy of signed warrant with affidavit or, a written statement of the facts giving rise to the emergency; and
  3. Complete a Uniform Incident Report when and how the notice was sent.
- G. If a target is not identified or deceased, on the same day the warrant is executed or information is obtained in an emergency unless delayed notification is granted, sworn personnel shall:
  1. Send the following to [ecparecords@nmag.gov](mailto:ecparecords@nmag.gov) and [warrants@cabq.gov](mailto:warrants@cabq.gov):



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- a. A letter to the Attorney General stating “a warrant was issued for (describe data) as part of a (name charge(s)) investigation” or describing the emergency requiring immediate access; and
  - b. A copy of signed warrant with affidavit.
2. Complete a Uniform Incident Report when notice was sent, including any documents showing proof of notice.
- H. If a delay of notification is granted by the court, before the delay of notification expires, sworn personnel shall send the following documentation to the target:
1. Notification Letter;
  2. Copy of signed warrant with affidavit;
  3. Summary of the information obtained, including:
    - a. The number and type of records; and
    - b. Statement of the grounds for which the court delayed the notification.
  4. Complete a Uniform Incident Report when and how notice was sent.

**4** 2-108-8 **Annual Reporting of ECPA Data**

- A. Consistent with the provisions of the ECPA, the ESU Sergeant shall be responsible for ensuring an annual report of all ECPA-related data are compiled and sent to the New Mexico Attorney General’s Office prior to February 1<sup>st</sup> of each calendar year.