

Search Warrants in Complex Homicide Cases

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Obtaining a warrant

- Process to obtain a search warrant is governed by statute and depends on the state. In most states, it must be based upon probable cause and an affidavit by a law enforcement officer is usually required.
- General warrants are illegal, you **must** specify the location you’re going to search and what you will look for in a warrant.
- Filing a return of whatever you seized can be done at any time, although skipping this step won’t invalidate your warrant, but you should do it in order to eliminate arguments about how it was never filed.

Evaluating information provided by unnamed sources

- **Anonymous tipsters-**
 - People who call in and leave a tip.
 - You must include in a warrant with unnamed sources:
 - How accurate was the information they provided?
 - Do they provide accurate information?
 - How much have you corroborated?
 - How did they obtain their information?
- **Confidential Informants (CI)-**
 - Have usually been prosecuted in the past.
 - Often criminals themselves, that’s how they came across the criminal information.
 - In a warrant you should include:
 - How have they helped in the past?
 - Type of information provided in the past?
 - How has information been used in the past?
 - Has information been corroborated in the past?
 - Has CI been truthful?
 - How fresh is the current information, when did they see it?
 - What are their motivations in assisting law enforcement?
 - How did they obtain the information?

How to obtain this information?

Facebook

- For Facebook/Meta law enforcement access to preserve posts: Go to facebook.com/records, they will send you an email, it will take you to the law enforcement portal, click preservation request.
 - This stores it as it is, when you do the request, if they post after the request you need to do another request to save that.
- A non disclosure agreement must be included for social media warrants.

Cell Phones

- **18 USC 2703:** Provides means for law enforcement to obtain information from service providers.
 - This is a federal order signed by a judge
 - Pros:
 - Lower burden of proof
 - Chain of command/approval
 - Don't have to file a return
 - Cons:
 - No content of communications (no posts, text messages, etc).
 - Limited to transactional information (who pays the phone bill).
- With cell phones, think about putting language in the search warrant that allows extra time to extract the data you need.
- **Timing advance data:**
 - Timing advance value corresponds with the length of time a signal takes to reach the base station from a mobile phone.
 - By obtaining this data you can determine the distance from the base station to the phone.

Encryption and Passcodes

- You can't make someone give them your passcode, but you can make them give you their fingerprint or faceID to unlock the phone.

Do you need a separate warrant for each app?

- If the data is **held on the phone**, you can use the app to access it and do not need separate warrant.
- If the data is **on a server separate** from your phone (Facebook), you need a separate warrant.

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