

(DEA Member Name)  
(DEA Member Address)  
(DEA Member Account/Phone #)

(Date)

Subpoena Compliance Center  
(Your Cellular Phone Provider)  
(Your Cellular Phone Provider's Address)  
(Your Cellular Phone Provider's Address)  
(Your Cellular Phone Provider's Address)

To Subpoena Compliance Center:

As a cellular service customer, I demand that wireless phone records or call detail records related to my account only be released to a “government entity”<sup>1</sup> when such entity provides either a search warrant supported by probable cause; a pen register or trap and trace authorization order supported by reasonable suspicion, as required by New York State law; or an administrative subpoena, when authorized by the Stored Communications Act, 18 U.S.C. Chapter 121 §§ 2701–2712.

To be valid, an administrative subpoena compelling a wireless service provider to disclose wireless phone records/call detail records<sup>2</sup> must be “authorized by a *Federal or State statute* or a federal or state grand jury or trial subpoena.”<sup>3</sup> [emphasis added]. My employer, the New York City Police Department, which is a “governmental entity” under the statute, bases the authority for their administrative subpoenas in the New York City Administrative Code. Specifically, N.Y.C. Admin Code § 14-137<sup>4</sup> grants the New York City Police Commissioner with the power to issue subpoenas. However, this is a local, city law. It is not a “*Federal or State statute*” as required by the Stored Communications Act. Any subpoena that your subpoena compliance center receives using the New York City Administrative Code as authority for its issuance is therefore facially invalid and has no lawful effect.

*Continued on next page*

---

<sup>1</sup> 18 U.S.C. 2711 (4) “the term ‘governmental entity’ means a department or agency of the United States or any State or political subdivision thereof.”

<sup>2</sup> 18 U.S.C. 2703 (c)(2) “A provider of electronic communication service or remote computing service shall disclose to a governmental entity the—(A) name;(B) address;(C) local and long distance telephone connection records, or records of session times and durations;(D) length of service (including start date) and types of service utilized;(E) telephone or instrument number or other subscriber number or identity, including any temporarily assigned network address; and(F) means and source of payment for such service (including any credit card or bank account number)”

<sup>3</sup> 18 U.C.S. 2703 (c)(2)

<sup>4</sup> 14-137 Subpoenas; administration of oaths. a. The commissioner, and his or her deputies shall have the power to issue subpoenas, attested in the name of the commissioner and to exact and compel obedience to any order, subpoena or mandate issued by them and to that end may institute and prosecute any proceedings or action authorized by law in such cases. The commissioner, and his or her deputies may in proper cases issue subpoena duces tecum. The commissioner may devise, make and issue process and forms of proceedings to carry into effect any powers or jurisdiction possessed by him or her.

The NYPD has recently come under highly publicized criticism from the public, the press, and elected officials, including the New York City Mayor,<sup>5</sup> for abusive and potentially illegal use of administrative subpoenas. One of the most troubling areas is the practice of the NYPD Internal Affairs Bureau (“IAB”) to use its name and reputation as a legitimate police investigative body to issue an administrative subpoena under the guise of investigating crime. However, IAB is instead conducting disciplinary and/or work rules violation investigations into its employees. I am an employee of the NYPD and I am gravely concerned that my employer will continue to misuse its administrative subpoena powers (which has no compelling authority over your company, as discussed above) to conduct such investigations into non-criminal workplace matters. This is a repugnant abuse of the authority and an affront to the good name of the New York City Police Department. I implore you to repudiate administrative subpoenas derived from IAB’s misrepresentation of their intentions and their disregard for good faith dealing.

If, after reflection, your general counsel concludes that these administrative subpoenas are legitimate, I demand that you immediately notify me of your receipt of any such subpoena related to my account to provide me the ability to exercise my due process rights. For context, the New York State Police are empowered by the New York State Public Officers Law to issue subpoenas to conduct investigations into subordinate employees of the State Police.<sup>6</sup> Importantly, the New York State legislature has limited that power by requiring that the notice requirements of the New York State Civil Practice Laws and Rules be complied with, namely “the party issuing a subpoena *duces tecum* ... shall at the same time serve a copy of the subpoena upon all other parties[.]”<sup>7</sup> The NYPD cannot unilaterally frustrate due process simply because the N.Y.C Administrative Code 14-137 permits the Commissioner to “devise, make and issue process and forms of proceedings to carry into effect any powers or jurisdiction possessed by him or her.” Unfortunately, the NYPD has a historical pattern and practice of both failing to notify the subject of the subpoena and also demanding that telecommunications providers refrain from notifying their customers about the subpoena. If the NYPD fails to appropriately provide me notice of such a subpoena, then you, as a reputable business, must take appropriate measures to rectify the NYPD’s legal and ethical failures in this regard.

Thank you for your anticipated cooperation. Any correspondence, questions, or concerns may be addressed to my attorney (see carbon copy below).

Sincerely,

(Member’s Signature)

(Member’s Name)

CC: Karasyk and Moschella, LLP  
233 Broadway, Suite 2340  
New York, New York 10279  
info@kmattorneys.com  
Counsel to the Detectives’ Endowment Association, Inc.

---

<sup>5</sup> Craig McCarthy, New York Post, *Mayor ‘concerned’ about NYPD’s sprawling use of questionable subpoenas*, Nov. 17, 2020, <https://nypost.com/2020/11/17/mayor-concerned-about-nypds-use-of-questionable-subpoenas/>

<sup>6</sup> NY PBO § 61. Investigations by state officers. Every state officer, in any proceeding held before him, or in any investigation held by him for the purpose of making inquiry as to the official conduct of any subordinate officer or employee, shall have the power to issue subpoenas for and require the attendance of witnesses and the production of all books and papers relating to any matter under inquiry... A subpoena issued under this section shall be regulated by the civil practice law and rules.

<sup>7</sup> NY CPLR Rule 3120 (3)