

TEXAS HOUSTON

CROSS-ROADS OF TECH AND LITIGATION: CELL PHONE DISCOVERY

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Cell phone data discovery requests have become a common place in recent years. In December 2022, the Texas Supreme Court provided key principles that should guide trial courts' management of these requests. See *In re Kuraray America, Inc.*

The Texas Supreme Court notes that to be entitled to production of cell phone data, the party seeking it must first allege or provide some evidence of cell-phone use by the person whose data is sought at a time when it could have been a contributing cause of the incident on which the claim is based. If the party seeking the discovery satisfies this initial burden, the trial court may order production of cell-phone data, provided its temporal scope is tailored to encompass only the period in which cell-phone use could have contributed to the incident. A trial court may not, at this stage, order production of a person's cell-phone data for a time at which his use of a cell phone could not have been a contributing cause of the incident.

Only if this initial production indicates that cell-phone use could have contributed to the incident may a trial court consider whether additional discovery regarding cell-phone use beyond that timeframe may be relevant. Mandamus relief may be available to a party where a trial court ordered production of cell-phone data in violation of these principles. The attorneys at Ramey Chandler Quinn, P.C. are proud to assist their clients in navigating the cross-roads of technology and litigation.



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