

The police want access to your cell phone! And [courts across the country are unsure](#) about whether you are protected. What, exactly, is on your cell phone that you hope will remain private from government intrusion? Most everything, I am sure.



The [Fourth Amendment](#) of the United States Constitution protects us from warrantless searches and seizures by the government. A search can include reaching into your pocket, collecting a blood sample, or opening the trunk of your car. What is unclear is whether looking through your phone is a “search.” If it is a search, the police must first obtain a search warrant (which requires showing probable cause to a neutral judicial magistrate). If not, the police may freely look through your phone.

Whether something is a “search” depends on whether you had a “reasonable expectation of privacy” in the thing “searched.” As an illustration, if you put something on the dashboard of your car, and park it in a public place, any person walking by can look through your windshield, and see the item. You have no reasonable expectation of keeping that item “private.” However, when you put something in your wallet, or in your nightstand, you can reasonably expect that item to remain out

of the public view. Thus, the police must have a search warrant to look in your wallet, but not through the windows of your car.

When it comes to a cell phone, some courts consider it similar to a “container” which can be opened by the police during an arrest. Other courts analogize a cell phone to a repository of private conversations, which would require the police to obtain a search warrant to inspect.

Maryland's appellate courts have not ruled on the issue, but there is precedent suggesting that the contents of a cell phone require a search warrant for police to access. *See, Carpenter v. State*, 196 Md.App. 212 (2010) (where police obtained a search warrant to retrieve pictures, text messages, and call logs from defendant's cell phone).

And so, be mindful of your cell phone. It may be smart enough to remember all your essential information, but too dumb to forget the incriminating stuff.