

“Crash Data Access and Authority - Consent, Court Orders, and more” – W.R. Rusty Haight

Suggested Search Warrant Application text/content as described in
Collision Magazine, Volume 12, Issue 2 (2018)

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**“Model Content for an Effective Application
in Support of a Search Warrant Application”**

It should be said, first, that this document is not and cannot be “all-inclusive” and, while there may well be other applications, is geared toward a search warrant application centered around EDR data. The reasonable, experienced end user would or should quickly realize that there would be no way to address all the various nuances and specific requirements of every possible jurisdiction; however, as noted in the source article for this “Model Content” document (Collision Magazine, Volume 12, Issue 2, “Crash Data Access and Authority - Consent, Court Orders, and more”) there are some generally recognized topic areas which should be addressed and pitfalls which should be avoided in the development of this sort of document. The reader should refer back to the original article (content included by reference herein) for further discussion on this point.

Undeniably, creating a generic template for an affidavit that might be used as a guideline for affidavits which then might be used from one crash data warrant application to the next is part of the underlying goal of this article; however, the act of “cut and paste” is not “the trap.” The “trap” is actually two parts. The first part is the potential for developing a good template or guideline document and then, from one case to the next, copying information from “warrant application #1” to “warrant application #2” which doesn’t really apply. For example, using one manufacturer’s terminology on another manufacturer’s vehicle/system. The second trap, similar to the first, is where specific technical information or information which might relate to the crash from “last week” is copied into an affidavit for a crash “this week” but there are significant technical differences between the vehicles from “last week” versus “this week.” Additional considerations found in the previously mentioned article should be applied as each of these sections below are considered or adapted for your local use (in whatever order is appropriate for local application).

1. There should be an introduction of some sort; an “executive summary” for the court.

There will be an opportunity to describe the details of the application in other sections of the affidavit; however, one way to lay out for the Court an overview of the application is to start off with a summary of sorts. Something to consider here is, where this has been done, this summary may largely be the way the application will be framed later in a challenge or a ruling in support of the application. For this and other reasons, this summary should be fairly short and to the point and, in large part, can be generic to most applications. This is a good opportunity to reference 49CFR563 (Title 49, Code of Federal Regulations, Part 563) for definitions, terminology and other reasons. For example:

The undersigned Applicant states under oath that a search is requested in relation to potential crash data associated with a motor vehicle traffic collision which occurred on or about [date and time] in the area of [location] and which involved the motor vehicle which is the central focus of this application identified as a [year, make model, tag number and/or VIN]. This application is for access to what is often referred to in the relevant auto industry, government regulation and law enforcement communities as Event Data Recorder (EDR) data (as defined in 49CFR563) and other associated or related data which is or may be electronically stored in the subject motor vehicle identified in this application. This application seeks authority from the Court to access, retrieve and translate (report) the recovered data for its further use in the traffic collision detailed in this application and collect certain relevant tangible things in, on and around the subject vehicle.

This summary may have to be modified where, for example, one is seeking to access data from an “infotainment” system or collect seat belts or airbag fabric for later DNA testing. Remember: this is an example and it cannot be written for all circumstances.

Having said that, a word of caution, mixing terms and concepts as it relates to data stored in an airbag control module’s EDR subcomponent and what might be retrieved from an “infotainment” system is a potential recipe for problems later. Mixing, for example, a discussion of GPS data in the infotainment center with data from the EDR lacking GPS data has an enormous potential for being more confusing than necessary. Perhaps the safest approach would be to develop a separate application for EDR data from that used for infotainment data.

2. Describe the affiant’s qualifications and experience which would be the basis for a judge to evaluate the reliability of the information contained in the warrant application and the credibility of the affiant (witness) to provide the information the judge may then rely on when granting (or denying) the warrant application.

All too often, in the reviewed examples, this topic was left to overly simplified summaries such as:

(Affiant) has been a police officer with the Anytown Police Department for 12 years and has worked in the traffic crash investigation section for the last 4 years. During that time, (Affiant) has had training in crash investigation and analysis including subject matter related to Event Data Recorder data retrieval and analysis.

While that’s a good start and clearly not the worst such offering observed in the many such affidavits reviewed, in anticipation of a more aggressive challenge by the defense, remember: “more is better.” Detailing specific courses and the dates of those courses as they relate to Technician and Data Analyst training on top of more “generic” crash investigation topics only makes for a more solid foundation for the Court to evaluate the credibility of the witness (affiant).

Another recommendation in this regard would be that those in a section (or bureau, squad or division) who would potentially be affiants for this type of search warrant application should develop a Curriculum Vitae (“CV” or resume) which can be - and should be - individually updated as training occurs over time and which could be an attachment to the underlying application to (a) make the application a little “shorter” and (b) personalize the training and experience by individual while also keeping it current to include a list of recent cases where the affiant may have offered testimony.

An example of a narrative regarding training and experience in this regard is:

(Affiant) has been a police officer with the Anytown Police Department for 12 years and has worked in the Traffic Crash Investigation Section for the last 4 years. During his time in the Traffic Crash Investigation Section, (Affiant) has participated in the investigation of more than 150 traffic collisions of various types including single vehicle, multiple vehicle, injury and fatal collisions both as part of the crash investigation team or on his own as part of his job description as a police officer with the Anytown Police Department.

(Affiant) has completed training in crash investigation and analysis (reconstruction) including specific training related to Event Data Recorder data retrieval and analysis as found in the attached copy of his current Curriculum

Vitae. (Affiant) has been trained as both a Crash Data Retrieval (CDR) Technician (one who would be trained to properly use the Crash Data Retrieval tool to access and retrieve Event Data Recorder data) and as a Crash Data Retrieval Data Analyst (one who would be trained to read, understand and apply the retrieved data to a given crash) as detailed in (Affiant's) CV which is offered here for more detailed review as deemed necessary by the Court. (Affiant's) traffic collision investigation training background includes training officer lead field training as well as more than 200 hours of crash specific classroom training in addition to attendance at crash investigation organization conferences and in service training opportunities.

(Affiant) has been offered as an expert in traffic crash investigation and analysis (reconstruction) before the Court in Anytown at the local level and State Courts in Anytown and Biggertown, Thistate. Having been offered as an expert in traffic crash investigation and analysis (reconstruction), (Affiant) has been accepted by the relevant Courts as an expert after detailing his training and experience (see attached CV).

Some of this suggested narrative can be generic and reused for several officers (detectives) in the same unit where it is carefully edited to accurately reflect what's in their individual CVs. Consideration should be to expanding on his narrative where, for example, the affiant may have worked for more than one department over his career.

3. Identify the individual / suspect and their relationship to the underlying object of the search and/or seizure of property or things and the violation(s) claimed or believed to have occurred thus far. This should also be where one articulates the probable cause for the search.

It might seem like “common sense” but, particularly where we’re talking about roadway crashes, there may (will?) come a point where “putting someone behind the wheel” is a goal if not **the** goal of searching for and seizing certain things. To that end, laying out what thing(s) to be searched for when it relates to identifying a driver may mean giving a little more detail in terms of experience and training, for example, where the affiant has had training in collecting (accessing and retrieving).

This is another good time to mention that infotainment system data which may have to be retrieved using a third part in some cases and which uses different technology than EDR data from an airbag system related component should probably be addressed separately. Having said that consider these examples and keep in mind that listing the things to be retrieved would often be a whole separate section of the affidavit:

(Affiant) has been trained to collect, preserve and evaluate electronically stored information and tangible things which may assist in the identification of the driver of the motor vehicle involved in a traffic collision. While not an exhaustive list, electronically stored information may include crash data associated with a motor vehicle’s EDR subcomponent. Related tangible things may include seat belt fabric or webbing, airbag fabric, hair or fibers embedded in or caught in/by glass, plastic or metal components on and around the interior or exterior of a motor vehicle.

Based on the investigation of the collision which occurred on or about [date and time] in the area of [location] and which involved the motor vehicle which is the central focus of this application identified as a [year, make model, tag number and/or VIN] hereinafter referred to as “the subject vehicle,” (Affiant) has found, through state Department of Motor Vehicle records that the subject vehicle is registered to Ignatius B. Motrist. The individual identified by his driver license as Ignatius B. Motrist was found at the scene of the subject collision within minutes of the collision by [list of individuals and how they are identified as witnesses or attach a list and reference it here]. At the scene of the collision, subject Motrist claimed he was in the right front seat of the vehicle registered to him at the time of the subject collision and that an individual he only met that evening identified as “Joe” was driving.

Inspecting the subject vehicle, (Affiant) observed that the driver airbag deployed in the subject vehicle and the passenger airbag was not deployed. (Affiant) has training and experience in airbag system performance as a function of his training

reading reports translated from electronically stored crash data in the EDR subcomponent of airbag control modules and has reason to believe that, in this vehicle, the passenger airbag not deploying suggests there was no one in the passenger seat of the car at the time of the crash. (Affiant) observed that Motrist has a bloody nose and also observed blood on the driver’s seat belt in the subject vehicle but no blood on the passenger side of the interior of the car. Witnesses [names] who reported to (Affiant) that they were at the subject vehicle within seconds of the crash told (Affiant) that Motrist was the only person they saw in the vehicle and that he left the vehicle through the driver side door of the subject vehicle.

(Affiant) believes, based on his training and experience, that the electronically stored data and tangible things to be removed from the car would aid in identifying who the driver of the subject vehicle was at the time of the crash.

Or, assuming the driver has been identified, explaining that identification then leading into justification for the warrant might look like ...

(Affiant) has been trained to collect, preserve and evaluate electronically stored information and tangible things which may assist in the investigation and analysis of a traffic collision. While not an exhaustive list, electronically stored information may include crash data associated with a motor vehicle's EDR subcomponent. Related tangible things may include seat belt fabric or webbing, airbag fabric, hair or fibers embedded in or caught in/by glass, plastic or metal components on and around the interior or exterior of a motor vehicle.

Based on the investigation of the collision which occurred on or about [date and time] in the area of [location] and which involved the motor vehicle which is the central focus of this application identified as a [year, make model, tag number and/or VIN] hereinafter referred to as “the subject vehicle,” (Affiant) has found, through state Department of Motor Vehicle records that the subject vehicle is registered to Ignatius B. Motrist. During an interview with Motrist, he voluntarily identified himself of the driver of the subject vehicle at the time of the collision. Statements from witnesses to this collision [list of individuals and how they are identified as witnesses or attach a list and reference it here] reaffirm that Motrist was the driver of the subject vehicle at the time of the collision. Given that Motrist is identified as the registered owner of the subject vehicle, within the meaning of the Driver Privacy Act of 2015 [and local applicable law(s) identified here] Motrist would be the individual properly positioned to grant consent to access and retrieve electronically stored information and tangible things which would assist (Affiant) in evaluating and analyzing (reconstructing) the collision involving the subject vehicle.

The electronically stored data and tangible objects to be retrieved potentially constitute admissible evidence or the basis for an expert opinion supporting the allegation of the commission of the violations detailed herein.

Motrist; however, has declined to give consent to the access to or retrieval of electronically stored data and tangible things to be removed from the car and, for this reason, (Affiant) brings this request for a search warrant to collect, preserve and evaluate electronically stored information and tangible things which may assist in the of the traffic collision involving the subject vehicle.

But, in both instances, the declaration should go on to identify the offense(s) in some fashion which brings about the rationale for the search warrant. In this first example, where a violation or violations may not be fully identified, something like this might be a good starting place:

(Affiant) has been tasked by department policy, his assignment within the department and the department's responsibility under the [local applicable Vehicle Code section(s) listed here] to investigate and analyze traffic collisions including the one involving the subject vehicle. To complete that assignment and meet the responsibilities of the department with respect to promoting traffic safety, (Affiant) believes that electronically stored crash data and tangible things as detailed further in this affidavit may assist in the investigation and analysis of a traffic collision.

Based on (Affiant's) training and experience and the evaluation of the available information related to the subject collision and subject vehicle, (Affiant) asserts that there is reason to believe that Ignatius B. Motrist operated the subject vehicle in a manner proscribed by law. (Affiant) believes that, in addition to other potential violations of law yet to be fully identified, Motrist operated the subject vehicle in violation if [list of major violated sections here].

(Affiant) asserts, based on his training and experience as previously outlined, that the retrieval of electronically stored information and tangible things to be outlined in this affidavit may assist in the further investigation and analysis of the subject traffic collision and either provide evidence of one or more violation(s) committed by Motrist as the driver of the subject vehicle.

Inasmuch as (Affiant) has not yet collected the information or things sought in the instant application, (Affiant) asserts and believes that it is his responsibility to collect information which may demonstrate that a violation or violations were committed as previously outlined just as it is (Affiant's) responsibility to recover potentially exculpatory information which should then be considered in the larger

analysis of the collision. Until all the available information is retrieved, one would not know for sure either way the information may be applied.

As a note here, we should remember that it *is* entirely appropriate to point out to the Court that some of this information may be used to prove that the driver *did not do* some of the things alleged thus far. In all fairness, since the applicant hasn't yet seen the crash data, and not knowing what it might actually show, it's reasonable and fair to point out that just easily as the data could help prove the violation, it may change the analysis and eliminate one or more potential charges.

The affidavit, in this section, should include a discussion of the specific section(s) which appear to have been violated. If there are lesser included offenses, that information should be addressed not necessarily by code number but in a descriptive form. For example:

(Affiant) reasonably believes, based on his training, experience and the investigation of the instant collision thus far, that the driver Motrist committed or may have committed a violation of Thistate Vehicle Code section 123.1 by operating the subject vehicle in such a manner that [detail the violation(s) as descriptions such as “failed to stop for the red light at the intersection of ... while traveling at a speed in excess of the posted limit of ... and/or at a speed in excess of that which is safe for the prevailing conditions on Thisstreet Road.”].

4. The place person or things to be searched would have been previously minimally addressed as a function of identifying the car; however, there should be more specificity.

If this were a “drug case,” the “place” would be, for example, the address of the house or apartment to be searched. Here, to address the Driver Privacy Act and local laws, some verbiage like this might be a good way to address the place:

During the course of the investigation of the instant traffic collision, (Affiant) has identified the subject vehicle registered to I. B. Motrist as having been involved in that collision. That vehicle was found, disabled at the scene of the collision with damage consistent with having been involved in the collision. Based on his training and experience, (Affiant) has developed reliable and credible information which (Affiant) believes would reasonably lead to the discovery of electronically stored information and/or data and/or tangible things which are located in and/or on the subject vehicle and, when retrieved, would lead to a more reliable and complete analysis of the collision. The subject vehicle is listed as one of the many vehicles support for crash data access and retrieval using the Bosch Crash Data Retrieval (CDR) Tool, a system which (Affiant) has been trained to use. This listing in the documentation of the CDR Tool suggests there is, may or should be retrievable and relevant crash data stored in one or more systems within the subject vehicle including but not limited to the airbag control module, rollover sensor, powertrain control module, pedestrian protection module or active safety control module. The modules and components would also be considered tangible things within the subject vehicle which may have to be physically removed to access and retrieve the electronically stored data contained within.

Other tangible things in, on and around the subject vehicle which (Affiant) asserts based on his training and experience might lead to reasonably relevant information applicable to the analysis of this collision include but are not limited to seat and seat belt fabric or webbing, airbag fabric and/or coverings, hair or fibers embedded in or caught in/by glass, plastic or metal components on and around the interior or exterior of a motor vehicle. These things may be photographed and left in place in or around the vehicle or may have to be physically removed and preserved to complete a competent and reliable analysis of the item.

(Affiant) reasonably believes and asserts that the proper and timely preservation of electronically stored data and relevant tangible things in, on and around the subject vehicle makes those things available for analysis during the course of the remaining investigation into the subject collision as well as for later reexamination by a defendant and/or their representative(s).

As noted before, applicants should keep in mind that a really good reason for granting the search warrant and ordering the collection of data or tangible things under the authority of this warrant

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serves not only the prosecution but, potentially, the defendant. Whether or not that’s laid out in the application,. It is a fundamental truth that from blood samples to CDRx files, the defendant can and often will order a reexamination of potential evidence collected by the police. Laying out up front that the timely collection and preservation of this data and these things serves not only the prosecution but potentially the defense doesn’t “give the defendant an idea” it makes clear the objectivity of the collection of data and things that, in and of themselves “have no dog in this hunt.”

This suggested “Model Content for an Effective Application in Support of a Search Warrant Application” has been presented in sections with a discussion of each and points which, taken with the text/content as found in Collision Magazine, Volume 12, Issue 2 (2018) “Crash Data Access and Authority - Consent, Court Orders, and more” should lead to more complete, effective and, ideally, more “bulletproof” affidavits for search warrants.

To ties this together in a single example, using the sections outlined thus far in this document, “Officer John Iuris” is the affiant for a search warrant for crash data in an imaginary single vehicle crash in the city of Corpus Juris. This is an example only and, again, the facts of a given would almost assuredly be different than the imaginary crash set out in this example application.

[Insert locally required formatting and verbiage here]

The undersigned Applicant states under oath that a search is requested in relation to potential crash data associated with a motor vehicle traffic collision which occurred on or about *[date and time]* in the area of *[location]* and which involved the motor vehicle which is the central focus of this application identified as a *[year, make model, tag number and/or VIN]*. This application is for access to what is often referred to in the relevant auto industry, government regulation and law enforcement communities as Event Data Recorder (EDR) data (as defined in 49CFR563) and other associated or related data which is or may be electronically stored in the subject motor vehicle identified in this application. This application seeks authority from the Court to access, retrieve and translate (report) the recovered data for its further use in the traffic collision detailed in this application and collect certain relevant tangible things in, on and around the subject vehicle.

The affiant, Officer John Iuris, has been a police officer with the Corpus Juris Police Department for 12 years and has worked in the Traffic Crash Investigation Section for the last 4 years. During his time in the Traffic Crash Investigation Section, Officer Iuris has participated in the investigation of more than 150 traffic collisions of various types including single vehicle, multiple vehicle, injury and fatal collisions both as part of the crash investigation team or on his own as part of his job description as a police officer with the Corpus Juris Police Department.

Officer Iuris has completed training in crash investigation and analysis (reconstruction) including specific training related to Event Data Recorder data retrieval and analysis as found in the attached copy of his current Curriculum Vitae. Officer Iuris has been trained as both a Crash Data Retrieval (CDR) Technician (one who would be trained to properly use the Crash Data Retrieval tool to access and retrieve Event Data Recorder data) and as a Crash Data Retrieval Data Analyst (one who would be trained to read, understand and apply the retrieved data to a given crash) as detailed in Officer Iuris' CV which is offered here for more detailed review as deemed necessary by the Court. Officer Iuris traffic collision investigation training background includes training officer lead field training as well as more than 200 hours of crash specific classroom training in addition to attendance at crash investigation organization conferences and in service training opportunities.

Officer Iuris has been offered as an expert in traffic crash investigation and analysis (reconstruction) before the Court in Anytown at the local level and State Courts in Corpus Juris and Biggertown, Thistate. Having been offered as an expert in traffic crash investigation and analysis (reconstruction), Officer Iuris has been accepted by the relevant Courts as an expert after detailing his training and experience (see attached CV).

Officer Iuris has been trained to collect, preserve and evaluate electronically stored information and tangible things which may assist in the investigation and analysis of a traffic collision. While not an exhaustive list, electronically stored information may include crash data associated with a motor vehicle's EDR subcomponent. Related tangible things may include seat belt fabric or

webbing, airbag fabric, hair or fibers embedded in or caught in/by glass, plastic or metal components on and around the interior or exterior of a motor vehicle.

Based on the investigation of the collision which occurred on or about *[date and time]* in the area of *[location]* and which involved the subject motor vehicle which is the central focus of this application. Officer Iuris has found, through state Department of Motor Vehicle records that the subject vehicle is registered to Ignatius B. Motrist. During an interview with Motrist, he voluntarily identified himself as the driver of the subject vehicle at the time of the collision. Statements from witnesses to this collision *[list of individuals and how they are identified as witnesses or attach a list and reference it here]* reaffirm that Motrist was the driver of the subject vehicle at the time of the collision. Given that Motrist is identified as the registered owner of the subject vehicle, within the meaning of the Driver Privacy Act of 2015 *[and local applicable law(s) identified here]* Motrist would be the individual properly positioned to grant consent to access and retrieve electronically stored information and tangible things which would assist Officer Iuris in evaluating and analyzing (reconstructing) the collision involving the subject vehicle.

The electronically stored data and tangible objects to be retrieved potentially constitute admissible evidence or the basis for an expert opinion supporting the allegation of the commission of the violations detailed herein.

Motrist; however, has declined to give consent to the access to or retrieval of electronically stored data and tangible things to be removed from the car and, for this reason, Officer Iuris brings this request for a search warrant to collect, preserve and evaluate electronically stored information and tangible things which may assist in the of the traffic collision involving the subject vehicle.

Officer Iuris has been tasked by department policy, his assignment within the department and the department's responsibility under the *[local applicable Vehicle Code section(s) listed here]* to investigate and analyze traffic collisions including the one involving the subject vehicle. To complete that assignment and meet the responsibilities of the department with respect to promoting traffic safety, Officer Iuris believes that electronically stored crash data and tangible things as detailed further in this affidavit may assist in the investigation and analysis of a traffic collision.

Based on Officer Iuris training and experience and the evaluation of the available information related to the subject collision and subject vehicle, Officer Iuris asserts that there is reason to believe that Ignatius B. Motrist operated the subject vehicle in a manner proscribed by law. Officer Iuris believes that, in addition to other potential violations of law yet to be fully identified, Motrist operated the subject vehicle in violation if *[list of major violated sections here]*.

Officer Iuris asserts, based on his training and experience as previously outlined, that the retrieval of electronically stored information and tangible things to be outlined in this affidavit may assist in the further investigation and analysis of the subject traffic collision and either

provide evidence of one or more violation(s) committed by Motrist as the driver of the subject vehicle.

Inasmuch as Officer Iuris has not yet collected the information or things sought in the instant application, Officer Iuris asserts and believes that it is his responsibility to collect information which may demonstrate that a violation or violations were committed as previously outlined just as it is Officer Iuris responsibility to recover potentially exculpatory information which should then be considered in the larger analysis of the collision. Until all the available information is retrieved, one would not know for sure either way the information may be applied.

Officer Iuris reasonably believes, based on his training, experience and the investigation of the instant collision thus far, that the driver Motrist committed or may have committed a violation of Thistate Vehicle Code section 123.1 by operating the subject vehicle in such a manner that (1) Motrist failed to stop for the red light at the intersection of *[location]* while (2) traveling at a speed in excess of the posted limit of 35mph and/or (3) at a speed in excess of that which is safe for the prevailing conditions on *[location]*.

During the course of the investigation of the instant traffic collision, Officer Iuris has identified the subject vehicle registered to I. B. Motrist as having been involved in that collision. That vehicle was found, disabled at the scene of the collision with damage consistent with having been involved in the collision. Based on his training and experience, Officer Iuris has developed reliable and credible information which Officer Iuris believes would reasonably lead to the discovery of electronically stored information and/or data and/or tangible things which are located in and/or on the subject vehicle and, when retrieved, would lead to a more reliable and complete analysis of the collision. The subject vehicle is listed as one of the many vehicles support for crash data access and retrieval using the Bosch Crash Data Retrieval (CDR) Tool, a system which Officer Iuris has been trained to use. This listing in the documentation of the CDR Tool suggests there is, may or should be retrievable and relevant crash data stored in one or more systems within the subject vehicle including but not limited to the airbag control module, rollover sensor, powertrain control module, pedestrian protection module or active safety control module. The modules and components would also be considered tangible things within the subject vehicle which may have to be physically removed to access and retrieve the electronically stored data contained within.

Other tangible things in, on and around the subject vehicle which Officer Iuris asserts based on his training and experience might lead to reasonably relevant information applicable to the analysis of this collision include but are not limited to seat and seat belt fabric or webbing, airbag fabric and/or coverings, hair or fibers embedded in or caught in/by glass, plastic or metal components on and around the interior or exterior of a motor vehicle. These things may be photographed and left in place in or around the vehicle or may have to be physically removed and preserved to complete a competent and reliable analysis of the item.

Officer Iuris reasonably believes and asserts that the proper and timely preservation of electronically stored data and relevant tangible things in, on and around the subject vehicle

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makes those things available for analysis during the course of the remaining investigation into the subject collision as well as for later reexamination by a defendant and/or their representative(s).

[End with locally required verbiage asking for the granting of the warrant by the court or the order(s) of the court]