February 27, 2014

Transmitted via U.S. Mail and Email

Chief of Police Michael DeLeo
Attn: Public Records Custodian
Tallahassee Police Department
234 East Seventh Avenue
Tallahassee, FL 32303
tpdpublicinfo@talgov.com

Re: Public Records Request Regarding Use of Cell Site Simulators

Dear Chief DeLeo,

I am writing on behalf of the American Civil Liberties Union ("ACLU") to seek records regarding use of cell site simulators by the Tallahassee Police Department ("TPD"). It is our understanding that the TPD has used such devices in the course of criminal investigations in the past without obtaining warrants.

Cell site simulators, also called IMSI catchers (in reference to the unique identifier—or international mobile subscriber identity—of wireless devices), impersonate a wireless service provider's cell tower, prompting cell phones and other wireless devices to communicate with them. These devices are often called "Stingrays," after the leading model produced by the Melbourne, Florida-based Harris Corporation.¹ Cell site simulators are commonly used in two ways: to collect unique numeric identifiers associated with phones in a given location, or to ascertain the location of a phone when the officers know the numbers associated with it but don't know precisely where it is. Both of these uses raise privacy concerns. Collecting unique identifiers of all phones in a particular location inherently collects location data on many innocent people. And using a cell site simulator to ascertain the location of a specific cell phone can reveal that it is in a constitutionally protected place, such as a home, that has traditionally been immune from search unless law enforcement agents obtain a warrant based on probable cause.

¹ Other models of cell site simulators marketed by Harris Corp. include the “Triggerfish,” “Kingfish,” and “Hailstorm.” See Ryan Gallagher, Meet the Machines that Steal Your Phone’s Data, Ars Technica (Sept. 25, 2013), http://arstechnica.com/tech-policy/2013/09/meet-the-machines-that-steal-your-phones-data/.
A recent opinion of the First District Court of Appeal, *Thomas v. State*, 127 So. 3d 658 (Fla. 1st DCA 2013), indicates that the TPD has been using a Stingray or similar device to track the location of cell phones in the course of criminal investigations since at least 2008. The device was apparently provided to the TPD on loan by an unnamed company, and the TPD has signed a nondisclosure agreement with that company concerning use of the device. *Id.* at 660. The TPD has apparently relied on the nondisclosure agreement as justification for concealing the use of the Stingray not only from the public, but also from judges. It seems that the TPD has never gotten a judicial warrant before using a cell site simulator to obtain Floridians’ sensitive cell phone location information, and has not disclosed the use of the device to judges when seeking warrants at later stages of investigations. *Id.* According to one judge, the TPD has used cell site simulators at least 200 times without getting a warrant or disclosing their use to a judge. See Oral Argument at 18:00, *Thomas v. State*, No. 1D11-6156 (argued May 14, 2013), available at http://oavideo.1dca.org/OAPlayer.aspx?ID=1416&CaseID=30919&File=116156.smil.

Despite widespread public interest in the use and abuse of cell site simulators, the public lacks information about the TPD’s policies and practices. Information is needed so the public can determine whether the TPD’s use of cell site simulators complies with the Fourth Amendment to the U.S. Constitution and with Florida law.

**PUBLIC RECORDS REQUEST**

In light of the foregoing and pursuant to the Florida Public Records Law, Chapter 119, Florida Statutes, and Article 1, Section 24 of the Florida Constitution, the American Civil Liberties Union hereby requests records relating to the TPD’s use of cell site simulators as detailed below:

1. Records regarding the TPD’s acquisition of cell site simulators, including invoices, purchase orders, contracts, loan agreements, solicitation letters, correspondence with companies providing the devices, and similar documents.

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3 The ACLU seeks records regardless of how they identify cell site simulators, including generic descriptions such as “cell site simulator,” “IMSI catcher,” or “digital analyzer” and specific model names such as “Stingray,” “Triggerfish,” “Kingfish,” or “Hailstorm.”
2. Records regarding any offer, arrangement, or agreement with the Florida Department of Law Enforcement ("FDLE"), Federal Bureau of Investigation ("FBI"), or any corporation to borrow or use cell site simulators owned or possessed by the FDLE, FBI, or corporation.

3. All nondisclosure agreements with Harris Corporation, Boeing Corporation (DRT), other companies, and any state or federal agencies regarding the TPD’s possession and use of cell site simulators.

4. Records regarding policies and guidelines governing use of cell site simulators, including restrictions on when, where, how, and against whom they may be used, limitations on retention and use of collected data, guidance on when a warrant or other legal process must be obtained, and rules governing when the existence and use of cell site simulators may be revealed to the public, criminal defendants, or judges.

5. Records regarding any communications or agreements with wireless service providers (including AT&T, T-Mobile, Verizon, Sprint Nextel, and U.S. Cellular) concerning use of cell site simulators.

6. Records regarding any communications, licenses, waivers, or agreements with the Federal Communications Commission or Florida Public Service Commission concerning use of cell site simulators.

7. Records reflecting the number of investigations in which cell site simulators have been used, and the number of those investigations that have resulted in prosecutions.

8. Records reflecting a list of all criminal cases, with docket numbers if available, in which law enforcement officers used a cell site simulator as part of the underlying investigation.

9. All applications submitted to state or federal courts for search warrants or orders authorizing use of cell site simulators in criminal investigations, as well as any warrants or orders, denials of warrants or orders, and returns of warrants associated with those applications. If any responsive records are sealed, please provide the date and docket number for each sealed document.
10. All records regarding the use of cell site simulators in closed investigations.\(^4\)

We welcome the opportunity to answer any questions you might have about this request in order to better facilitate the production of the public records.

**INFORMATION ABOUT THE REQUEST**

As required by law, please acknowledge that you have received this public records request and provide an estimated timeframe in which you believe that you will be able to produce the requested records. See § 119.07(1)(e), Fla. Stat. ("A custodian of public records and his or her designee must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith.").

The ACLU is a non-profit organization and the disclosure of the requested records will "promote public awareness and knowledge of governmental actions in order to ensure that governmental officials and agencies remain accountable to the people." *Forsberg v. Hous. Auth. of City of Miami Beach*, 455 So. 2d 373, 378 (Fla. 1984) (Overton, J., concurring in result). Therefore, we request that you produce the requested records free of charge. However, if you are unable to do so, the ACLU will reimburse you for the reasonable costs associated with fulfilling this request, if your office has a policy of requiring the payment of a copying charge for such records. The fees and costs you may charge are governed by Section 119.07(4), Florida Statutes. **If you anticipate that the total costs associated with fulfilling this request will exceed $35, please contact me with an estimate of the likely cost before proceeding.**

If you are unable or refuse to provide part or all of the requested public records, please explain in writing and with particularity the reasons for not providing the requested public information in its entirety, as required by Section 119.07(1), Florida Statutes. If any exemption that you assert applies to only a portion of the records (as opposed to the entire record), please redact the portion you claim is exempt, provide copies of the remainder of the record or records, and detail your reasons for the modification as required by Section 119.07(1), Florida Statutes.

We request that you produce responsive materials in their entirety, including all attachments, appendices, enclosures, and/or exhibits. To the extent that a response to this request would require you to provide multiple

\(^4\) The ACLU does not seek records relating to open investigations. The ACLU does seek records relating to investigations that have been closed, but where judicial proceedings relating to prosecution or appeal are still pending.
copies of identical material, the request is limited so that only one copy of the identical material is requested.

If any of the requested records are maintained in a common-format electronic medium, please provide these records in such native electronic medium and not in paper form. For purposes of this request, common electronic formats include (1) American Standard Code for Information Interchange ("ASCII"), (2) files formatted in one of the Microsoft Office Suite, Corel Suite, or OpenOffice Suite (.doc, .xls, .ppt, .mdb, .wpd, etc.), (3) a text file (.txt), or (4) hypertext markup language (.html) or similar web page language. This is the preferred format. However, if any of the requested records are only maintained or only can be produced as electronic images, for example a portable document format (.pdf), (n.b., it is possible to print documents into a PDF format either using Acrobat Professional or a free PDF driver like pdf995.com), then as an alternative, we request this electronic image format. See § 119.01(2), Fla. Stat.

Section 119.07(1)(h–i), Florida Statutes, prohibits the destruction of any of the requested records, including any which you may claim are exempt, for a period after the date on which you receive this written request. If we institute a civil action to enforce the Public Records Law with respect to the requested records, you may not dispose of the records except by court order after notice to all affected parties.

Thank you for your prompt attention to this request. If you have any questions, wish to obtain further information about the nature of the records in which we are interested, or need more information in order to expedite this request, please do not hesitate to contact me at (212) 519-7847.

Sincerely,

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cc: City Attorney Lewis E. Shelley
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