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May 12, 2015

By first-class mail and email

Michigan State Police
Freedom of Information Unit
P.O. Box 30634
Lansing, MI 48933
MSP-FOI@michigan.gov

Dear FOIA Coordinator:

I am writing on behalf of the American Civil Liberties Union of Michigan and the American Civil Liberties Union Fund of Michigan (together, the “ACLU of Michigan”) to seek public records regarding the purchase and use of cell site simulators by the Michigan State Police.

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 a leading model produced by the 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. Moreover, even when law enforcement is using a cell site simulator to locate a specific suspect, the device also sweeps up information about bystanders’ phones.

The use of cell site simulators by local, state, and federal law enforcement agencies has been the subject of sustained public interest because of the important privacy issues raised by the technology.² Despite widespread public interest in the use and abuse of cell site simulators, however, the public lacks information about the Michigan State Police’s policies and practices.

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/>.

² See, e.g., Devlin Barrett, *U.S. Will Change Stance on Secret Phone Tracking*, *Wall St. J.*, May 3, 2015, [, *USA Today*, June 13, 2014, <http://www.usatoday.com/story/news/nation/2013/12/08/cellphone-data-spying-nsa-police/3902809/>.](http://www.wsj.com/article_email/u-s-will-change-stance-on-secret-phone-tracking-1430696796-1MyQjAxMTI1NDAA0MzEwNjMzWj; Joel Kurth, Secret Military Device Lets Oakland Deputies Track Cellphones, <i>Detroit News</i>, Apr. 4, 2014, <a href=)

Information is needed so the public can determine whether MSP's use of cell site simulators complies with the Fourth Amendment to the U.S. Constitution and with Michigan law.

In light of the foregoing and pursuant to the Michigan Freedom of Information Act, Mich. Comp. Laws § 15.231, *et seq.*, the ACLU of Michigan hereby requests public records relating to the Michigan State Police's use of cell site simulators³ as detailed below:

1. Records regarding the Michigan State Police's acquisition of cell site simulators, including invoices, purchase orders, contracts, loan agreements, solicitation letters, correspondence with companies providing the devices, and similar documents. In furtherance of this request, please produce records of all contracts, agreements, and communications with Harris Corporation and Digital Receiver Technology (DRT).
2. Records regarding any offer, arrangement, or agreement with the Federal Bureau of Investigation ("FBI"), or any corporation to borrow or use cell site simulators owned or possessed by the FBI or corporation.
3. All memoranda of understanding, nondisclosure agreements, contracts, or other agreements with the FBI or any other state or federal agency regarding the Michigan State Police's possession and use of cell site simulators.
4. All nondisclosure agreements with Harris Corporation, Digital Receiver Technology, or any other companies regarding the Michigan State Police's possession and use of cell site simulators.
5. Records regarding policies and guidelines governing use of cell site simulators, including (but not limited to) 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.
6. Records regarding any communications, licenses, waivers, or agreements with the Federal Communications Commission or Michigan Public Service Commission regarding 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.

³ The ACLU of Michigan seeks records regardless of how they identify cell site simulators, including generic descriptions such as "cell site simulator," "IMSI catcher," "WITT Technology," "cell site emulator," or "digital analyzer" and specific model names such as "Stingray," "Triggerfish," "Kingfish," "Hailstorm," "DRT box," or "dirtbox."

8. Records reflecting a list of all criminal cases, with jurisdiction and 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, jurisdiction and docket number for each sealed document.
10. All records regarding the use of cell site simulators in closed investigations.⁴

The ACLU requests that MSP waive or reduce any fee associated with this request as permitted by section 4 of the Freedom of Information Act. Waiving or reducing the fee is in the public interest because, for the reasons set forth above, disclosure of the requested public records can be considered as primarily benefiting the general public in its understanding of law enforcement use of cell site simulators. If this request for waiver of fees is denied and it will cost more than \$50 to process the request please contact the undersigned before proceeding.

Please process and respond to this request pursuant to the requirements the Freedom of Information Act, including by responding within five business days of receiving this request, by separating exempt from non-exempt material, explaining the basis for any determination that any requested material is exempt from disclosure, and describing any material that is deleted, redacted or withheld.

Further, please provide the requested records in electronic form if it is feasible and economical to do so. Emails transmitting less than 10 MB of data may be sent to dkorobkin@aclumich.org, or arrangements can be made to supply you with a CD, flash drive, or email address capable of handling larger quantities of data.

Finally, 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 requested. I can be reached at (313) 578-6824.

Sincerely,



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⁴ This request does not seek records relating to open investigations. This request does seek records relating to investigations that have been closed, but where judicial proceedings relating to prosecution or appeal are still pending.