

Office of the General Counsel  
2601 West Broward Boulevard  
Fort Lauderdale, Florida 33312  
954.831.8920 (Telephone)  
954.321.5040 (Fax - Legal)  
954.797.0937 (Fax - Confiscations Unit)  
[www.sheriff.org](http://www.sheriff.org)



May 13, 2014

**VIA U.S. MAIL**

Nathan Freed Wessler  
American Civil Liberties Union Foundation  
National Office  
125 Broad Street  
18<sup>th</sup> Floor  
New York, New York 10004-2400

Re: Public Records Request  
Use of Cell Site Simulators

Dear Mr. Wessler:

I am in receipt of your letter seeking additional information about this agency's claimed exemption to the above referenced public records request. Your assertion that Florida law requires more detail about the claimed exemption is inaccurate. Rather, Florida law requires that the custodian "state the basis of the exemption that he or she contends is applicable to the record, including the statutory citation to an exemption created or afforded by statute." See Fla. Stat. §119.07(1)(e) (2013).

The reply to your public records request was in accordance with Florida law as it stated both the basis of the exemption and the statutory citation to the exemption created by statute. The reply met the particularity requirements of §119.07(1)(f) by providing additional information on why the exemption was being asserted.

Further, your assertion that "[t]he BCSO's blanket assertion of an exemption . . . is tantamount to a refusal to confirm the existence of responsive records . . ." is misplaced. Rather, Florida law states that a person *who has custody of a public records* and who asserts an exemption must state the basis of the exemption and the statutory citation. The fact that an exemption was claimed indicates that records are in existence, but that they are not subject to public disclosure.

Your request clearly seeks information regarding specific cell site simulator equipment used by the BCSO and the methods of such use, which this agency maintains is exempt under Florida law. As was explained in U.S. v. Van Horn, 789 F.2d 1492 (11<sup>th</sup> Cir. 1986):

Electronic surveillance is an important tool of law enforcement, and its effectiveness should not be unnecessarily compromised. Disclosure of such information will also educate persons on how to employ such techniques themselves, in violation of Title III.

The risk of circumvention of an investigative technique if information is released has been widely accepted by courts when reviewing exceptions for law enforcement sensitive information. *See generally*, James v. U.S. Customs and Border Protection, 549 F.Supp.2d 1, 10 (D.D.C. 2008); Judicial Watch v. U.S. Dept. of Commerce, 337 F.Supp.2d 146, 181 (D.D.C. 2004); United States v. Cintolo, 818 F.2d 980, 1002 (1<sup>st</sup> Cir. 1987); U.S. v. Van Horn, 789 F.2d 1492 (11<sup>th</sup> Cir. 1986). The disclosure of sensitive law enforcement surveillance measures would allow criminal defendants, criminal enterprises or foreign powers, should they gain access to the information, to determine techniques, capabilities, and limitations in this area. This knowledge could lead to the development of countermeasures by subjects of investigations and block law enforcement's ability to obtain electronic surveillance in criminal cases. This, in turn, could completely prevent the successful prosecution of a wide variety of criminal cases in which such equipment is used.

Notwithstanding the above, and in the interest of providing you with additional information about the specific records you have requested and the claimed exemptions, I have provided a more detailed response below.

1. Records regarding the Broward SO'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 all agreements with the Harris Corporation.

Exempt per Fla. Stat. §119.071(2)(d) regarding surveillance techniques, procedures, and personnel. The disclosure of this information would reveal specific surveillance measures used by the BCSO, which may jeopardize present and future investigations, and personnel.

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.

Exempt per Fla. Stat. §119.071(2)(d) regarding surveillance techniques, procedures, and personnel. The disclosure of this information would reveal specific surveillance measures used by the BCSO, which may jeopardize present and future investigations, and personnel.

3. All non-disclosure agreements with Harris Corporation, Boeing Corporation (DRT), other companies, and any state or federal agencies regarding the Broward SO's possession and use of cell site simulators.

Exempt per Fla. Stat. §119.071(2)(d) regarding surveillance techniques, procedures, and personnel. The disclosure of this information would reveal

specific surveillance measures used by the BCSO, which may jeopardize present and future investigations, and personnel.

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 or 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.

Records regarding policies and procedures on the use of surveillance equipment are exempt per Fla. Stat. §119.071(2)(d) regarding surveillance techniques, procedures, and personnel. The disclosure of this information would reveal specific surveillance measures used by the BCSO, which may jeopardize present and future investigations, and personnel.

Regarding the legal process for the use of cell site simulators, the use generally of electronic surveillance equipment in investigations is governed by Sections 934.33 and 934.42, Florida Statutes.

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.

No records responsive to this request.

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.

No records responsive to this request.

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.

The BCSO does not maintain documents reflecting the number of investigations or prosecutions where cell site simulators have been used, and as such there are no records responsive to this request.

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.

The BCSO does not maintain a list or log of cases in which cell site simulators have been used, and as such there are no records responsive to this request.

9. All applications submitted to state or federal courts for search warrants or order 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 records are sealed, please provide the date and docket number for each sealed document.

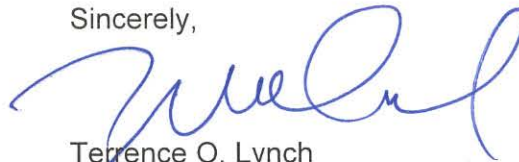
As noted above, the BCSO does not maintain a log or list of cases in which cell site simulators have been used. To obtain the requested information would require a manual search of thousands of cases, and would incur significant clerical, supervisory, and/or technical assistance for which special labor service charges would apply. If you agree to incur such costs, an invoice with the estimated costs will be provided to you, and payment will be required in advance. By narrowing the time frame for this request, you may be able to significantly reduce the anticipated costs. Please note that prior to production of any records located that are responsive to this request, exempt information may be redacted or removed as required by law.

10. All records regarding the use of cell site simulators in closed investigations.

Please see response to request number 9, above. Additionally, the fact that an investigation for which such equipment may have been used is no longer active does not automatically require disclosure of such records. As was explained above, disclosure of the specific surveillance measures used by this agency could compromise present and future investigations, which is the precise reason that the Florida legislature saw fit to exempt this information from public disclosure.

Should you have any questions or concerns, please do not hesitate to contact me at the above address.

Sincerely,



Terrence O. Lynch  
Senior Assistant General Counsel

TOL/dr

H:\lynch\letters\2014\aclu-cell site-3