

Exhibit M

March 26, 2020

Nathan Freed Wessler
American Civil Liberties Union Foundation
125 Broad Street – 18th Floor
New York, NY 10004

Re: CBP-2017-058684

Dear Mr. Wessler:

This is a final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP), dated May 19, 2017. You requested the following records:

1. Any policy directives, guidance documents, memoranda, training materials, or similar records created on or after October 19, 2015, governing or concerning use of cell site simulators by Immigrations and Customs Enforcement and Customs and Border Protection agents, employees, or partners, including any policy or guidance document that cites Department of Homeland Security Policy Directive 047-02 (“Department Policy Regarding Use of Cell-Site Simulator Technology”),⁷ as well as any communications with Congress concerning implementation of or updates to DHS Policy Directive 047-02 and other policies governing cell site simulator use;
2. Any records reflecting whether ICE or CBP does use or is permitted to use cell site simulators in furtherance of civil immigration enforcement operations, as opposed to in furtherance of criminal investigations, and any guidance concerning whether and how DHS Policy Directive 047-02 applies to uses of cell site simulators in furtherance of immigration-related investigations that are not criminal in nature;
3. From October 19, 2015 to the present, annual records reflecting the total number of times a cell-site simulator is deployed in the jurisdiction of each field office, the numbers of deployments at the request of other agencies, and the number of times the technology is deployed in emergency circumstances (collection of this information is required by DHS Policy Directive 047-02);
4. Since the date of the last annual record described in item 3, above, records reflecting the number of ICE and CBP investigations or operations in which cell site simulators have been deployed, including information about the field office deploying the cell site simulator and whether those deployments were in support of criminal investigations of non-immigration-related offenses, criminal investigations of immigration-related offenses, or civil immigration enforcement operations;

5. Records reflecting the number of times ICE and CBP have requested the assistance of other law enforcement agencies (including federal, state, local, and foreign) in deploying cell site simulators;
6. Records regarding implementation of an auditing program to ensure deletion of data collected by cell site simulators, as required by DHS Policy Directive 047-02;
7. All applications submitted to state and federal courts since January 1, 2013, for orders or search warrants authorizing the use of cell site simulators in ICE and CBP investigations or operations (including investigations or operations as part of task forces or partnerships with other agencies), 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, court, and docket number for each sealed document;
8. All requests to persons or offices within the Department of Homeland Security for supervisory or legal authorization to deploy cell site simulators;
9. Records dated or created on or after January 1, 2013 concerning the purchase of cell site simulator equipment and related software and hardware, including purchase orders, invoices, documentation of selection, sole source or limited source justification and approval documentation, communications, and other memoranda and documentation. This should include any purchase of cell site simulator equipment from the Harris Corporation (including, but not limited to, Stingray, Stingray II, Hailstorm, Triggerfish, Kingfish, Amberjack, and Harpoon devices), DRT (also known as Digital Receiver Technology), and other companies. At a minimum, please search the ICE Office of Acquisition Management for these records; and
10. Records concerning the use of evidence derived or resulting from use of a cell site simulator in immigration court proceedings, and the provision of notice to respondents in immigration court proceedings informing them that a cell site simulator was used.

CBP FOIA has completed a supplemental search for records responsive to your request, and no responsive records were identified. CBP FOIA also conducted two prior searches for responsive records – one after receiving your initial request and another after submission of your administrative appeal. These searches also did not identify any records responsive to your request.

Additional information regarding the FOIA process is available at www.dhs.gov/foia.

As this matter is currently in litigation, if you need further assistance or would like to discuss any aspect of this response, please contact AUSA Jennifer Simon, Trial Attorney.

Sincerely,

Patrick Howard

Patrick Howard
Branch Chief
U.S. Customs and Border Protection, FOIA Division
Privacy and Diversity Office
Enclosure(s)