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Transmitted via U.S. Mail and Facsimile

Nicole Taub
Senior Staff Attorney
Boston Police Department
One Schroeder Plaza
Boston, MA 02120
nicole.taub@pd.boston.gov

Re: Public Records Request Regarding Use of Cell Site Simulators

Dear Attorney Taub,

I hope this message finds you well. As you know, the Boston Police Department (BPD) in November 2015 publicly released a copy of a non-disclosure agreement (NDA) signed by members of the BPD, a representative of the Massachusetts State Police, and a representative of the FBI concerning the BPD's acquisition and deployment of Cell Site Simulators.^a Although it is dismaying that more than two years passed between the NDA's execution in June 2013 and its release in November 2015, we are pleased that BPD has now released this document to the public, where it belongs. We hope this disclosure is only the first wave of much needed transparency surrounding the department's acquisition and deployment of the controversial and highly invasive surveillance tool.

In particular, we respectfully urge the BPD to affirmatively inform the public and the courts about the capabilities of the Cell Site Simulators available to the BPD, how the BPD uses these devices, and whether the BPD believes there are any constitutional constraints on this use. This information is necessary to ensure that adequate accountability and oversight mechanisms are in place to protect civil liberties in Boston.

^a Cell Site Simulators, or 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. They are often referenced by the specific model names marketed by different companies, including Stingrays, Triggerfish, Kingfish, Hailstorm, or DRTbox. This request uses the term "Cell Site Simulators" to refer to all models of IMSI catchers.

In that spirit, and in case the BPD construes the NDA to prohibit it from disclosing information or documents about Cell Site Simulators unless compelled by law to do so, please consider this a public records request under M.G.L. ch. 66, § 10, made on behalf of the American Civil Liberties Union Foundation of Massachusetts (ACLU).

Please provide the following documents:

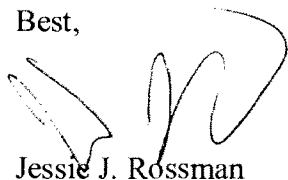
1. policies or guidelines, or records regarding policies or guidelines, governing use of Cell Site Simulators, including but not limited to:
 - a) when, where and how they may be used;
 - b) logging, retention and purging of data from the devices;
 - c) any legal memoranda or other documents concerning the justification or protocols for, or any state or federal legal constraints on, the BPD's use of Cell Site Simulators, including documents concerning whether and when the use of a Cell Site Simulator must be supported by a probable cause warrant, an order under 18 U.S.C. §§ 2703, 3127, an order under M.G.L. ch. 271, § 17B, an order under M.G.L. ch. 272, § 99, an order under M.G.L. ch. 276 § 1, or a common law warrant.
2. any training materials for use of Cell Site Simulators;
3. the police incident report (or "1.1"), application for criminal complaint (if any), criminal complaint (if any), and indictment (if any) for the 10 most recently closed or settled court cases or investigations involving BPD's use of Cell Site Simulators;
4. 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, and if available, the type of investigation (e.g. homicide, drugs, etc.);
5. all Boston Regional Intelligence Center (BRIC) intelligence reports that mention Cell Site Simulators;
6. the 10 most recent applications to state or federal courts for search warrants or orders in which the BPD used a Cell Site Simulator to obtain information used in support of the application, regardless of whether the term Cell Site Simulator was used in the application itself;
7. the 10 most recent applications submitted to state or federal courts for search warrants or orders authorizing the BPD's 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, regardless of whether the term Cell Site Simulator is used in the documents themselves.

Please don't hesitate to reach out if you need me to clarify any of the above. As you can see, we want to learn about how BPD deploys Cell Site Simulators—namely in what types of criminal investigations, and with what legal authority.

Because this request involves a matter of public concern and because it is made on behalf of a nonprofit organization, we ask that you waive any copying costs pursuant to 950 C.M.R. § 32.06(5), which encourages all custodians of public records to “waive fees where disclosure would benefit the public interest.” ACLUM is a nonprofit §501(c)(3) organization dedicated to the protection of civil rights and liberties for all persons in the Commonwealth of Massachusetts.

We prefer to receive the documents electronically (rather than in paper form). As you know, a custodian of public records shall comply with a request within ten days after receipt. If any part of this request is unclear, please contact us at 617-482-3170 ex 337 or jrossman@aclum.org.

Best,

A handwritten signature in black ink, appearing to read "JR", is written over a faint, light-colored signature line.

Jessie J. Rossman