

January 29, 2016

Jessie J. Rossman, Esq. ACLU Foundation of Massachusetts 211 Congress Street, Suite 301 Boston, MA 02110

Re: Freedom of Information Request

Cell Site Simulators

Dear Attorney Rossman,

This letter is in response to your request for documents potentially in the possession, custody or control of the Boston Police Department under the Freedom of Information Act (FOIA [5 U.S.C. § 552]) and/or Massachusetts Public Records Law (M.G.L. c. 66, § 10). Specifically you requested information regarding the use of cell site simulators.

The first enumerated request in your letter seeks any policies or guidelines, or records regarding policies or guidelines, governing use of Cell Site Simulators, including but not limited to: when, where and how they may be used; logging, retention and purging of data from the devices; 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. c. 271 §17B, an order under M.G.L. c. 272 §99, an order under M.G.L. c. 276 §1, or a common law warrant.

Please be advised that the Department only utilizes Cell Site Simulators subject to a search warrant or where exigent circumstances exist that require immediate law enforcement action. Rule 334 (Search Warrant Application and Execution) of the Department's Rules and Procedures sets forth the protocol for obtaining and executing a search warrant in order to meet constitutional requirements and properly safeguard the rights and safety of all parties involved. The processes set forth in Rule 334 would include search warrants obtained for the use of Cell Site Simulators. A copy of Rule 334 is enclosed herein in response to this portion of your request. Additionally, the Department has documents regarding the use of cell phone tracking; however, these materials are exempt from disclosure by M.G.L. c. 4 §7(26)(b), (d) and (f). Specifically, the draft documents relate to the internal practices of the Department and are part of the development of policy positions within the Department. Additionally, disclosure of the information contained in the guidelines for use would not be in the public interest and would prejudice the possibility of effective law enforcement. The protection of such investigatory materials and reports is essential to ensure that the Department can continue to effectively monitor and control criminal activity and thus protect the safety of private citizens. More specifically, disclosing the specific circumstances in which this equipment

can be utilized, as well as the process in place for doing so, would reveal sensitive technological and investigative capabilities possessed by the Department Such disclosure may allow individuals who are the subject of investigation wherein this equipment/technology is used to employ countermeasures to avoid detection by law enforcement. This would not only potentially endanger the lives and physical safety of law enforcement officers and other individuals, but also adversely impact criminal investigations.

The second paragraph of your request seeks any training materials for the use of Cell Site Simulators. Members of the Department have received training regarding the use of this equipment and a search is being conducted to identify any related documents in our possession, custody or control.

Request number five (5) in your letter seeks all Boston Regional Intelligence Center intelligence reports that mention Cell Site Simulators. Please be advised that a diligent search was completed in response to this portion of your request and yielded negative results.

Finally, requests three (3), four (4), six (6) and seven (7) seek information regarding the use of Cell Site Simulators during criminal investigations. The Department is in the process of identifying any information responsive to these requests and making a determination as to whether or not such material is subject to disclosure as a public record. Upon completion of its search for potentially responsive information for these portions of your request, the Department will provide further response. In the interim, please note that this type of equipment is commonly used in critical search and/or rescue incidents, including, for example, kidnapping, custodial interference, missing persons, Amber alerts, and other situations where a person is in immediate danger of harm, that may not result in a criminal prosecution.

Please do not hesitate to contact me if you have any questions about the information contained herein or would like a status on the remaining portions of the request. If you have been denied records by the Boston Police Department, you have the right to appeal this decision with the Supervisor of Public Records at the Public Records Division of the Secretary of the Commonwealth.

Sincerely,

Nicole I. Taub

**Enclosures**