

1 AMERICAN CIVIL LIBERTIES UNION
2 FOUNDATION OF SOUTHERN
3 CALIFORNIA

4 Peter Bibring, SBN 223981
5 pbibring@aclusocal.org
6 Jessica Price, SBN 264053
7 jprice@aclusocal.org
8 1313 West Eighth Street
9 Los Angeles, California 90017
10 Telephone: (213) 977-9500
11 Facsimile: (213) 977-5297

12 LATHAM & WATKINS LLP
13 Sadik Huseny, SBN 224659
14 sadik.huseny@lw.com
15 Hanno Kaiser, SBN 262249
16 hanko.kaiser@lw.com
17 Kyle Virgien, SBN 278747
18 kyle.virgien@lw.com
19 505 Montgomery Street, Suite 2000
20 San Francisco, CA, 94111
21 Telephone: (415) 391-0600
22 Facsimile: (415) 395-8095

23 Lujing Liu, SBN 300769
24 gavin.liu@lw.com
25 140 Scott Drive
26 Menlo Park, CA, 94025
27 Telephone: (650) 463-4600
28 Facsimile: (650) 395-2600

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA

Michael Risher, SBN 191627
mrisher@aclunc.com
Linda Lye, SBN 215584
llye@aclunc.com
Nicole Ozer, SBN 228643
nozer@aclunc.com
Matthew Cagle, SBN 286101
mcagle@aclunc.com
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-1478

Attorneys for Petitioner

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

AMERICAN CIVIL LIBERTIES UNION OF
SOUTHERN CALIFORNIA, a non-profit corporation

Petitioner,

v.

ANAHEIM POLICE DEPARTMENT

Respondent

CASE NO.

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF
MANDATE ORDERING THE
ANAHEIM POLICE DEPARTMENT
TO COMPLY WITH ITS DUTIES
UNDER THE CALIFORNIA PUBLIC
RECORDS ACT**

[Cal. Gov. Code §§ 6250-6270]

INTRODUCTION

1. This case concerns the public's right to access basic information about how their local police use surveillance—what devices and technologies police use to gather information on residents, what policies govern their use of a particular surveillance technology, what kinds of crimes justify the use of a given surveillance device, what authorization the police get from courts, and what protections (if any) police have put in place to guard privacy and civil liberties.

2. IMSI catchers—commonly known by the brand name “Stingrays,” for one such device—are highly invasive surveillance devices. They mimic cell phone towers and force all cell phones within their range to register information regarding the phones’ location, data, and content with the IMSI catcher. IMSI catchers allow law enforcement to indiscriminately track the cell phones of everyone who happens to be within the device’s significant range, including suspects and bystanders. These devices are capable of not only gathering the phone numbers dialed or called by a cell phone, but can track individuals’ locations even when they are inside their homes. Using IMSI catcher technology, law-enforcement agencies can, without the assistance of wireless carriers, send signals to cell phones—whether they are located in individuals’ pockets, cars, or residences—and obtain information from those phones regardless of who the cell phone owner is, what data is on the phone, or whether the cell phone owner intends for the phones to be on, off, or transmitting any data whatsoever.

3. Law-enforcement agencies increasingly use this extraordinarily invasive technology in routine cases, a practice that has grave civil-liberties consequences. Moreover, local agencies have been unwilling to disclose even basic information about their use of these devices—information that would allow the public to understand these consequences and the extent and ramifications of the government’s invasion of their privacy.

4. In July of 2014, the American Civil Liberties Union of Southern California (“ACLU-SC”) sent the Anaheim Police Department (“Police Department”) a request for documents concerning the Police Department’s use of IMSI catcher technology under the California Public Records Act (“CPRA”).

5. The Police Department improperly withheld all of the documents the ACLU-SC

requested. By doing so, the Police Department violated established law.

6. In adopting the CPRA, the California legislature declared that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state.” Cal. Gov. Code § 6250. This principle of transparency has also been enshrined in Section 3(b) of Article 1 of the state’s constitution. The records the ACLU-SC seeks in this action lie at the core of this statutory and constitutional purpose: the people have the right to know the circumstances under which their government invades their privacy in their name. By this petition and pursuant to California Government Code §§ 6250–6270, the ACLU-SC now seeks a peremptory writ of mandate to compel the Police Department to produce documents in compliance with the CPRA.

THE PARTIES

7. Petitioner the ACLU-SC is a non-profit organization under the laws of the state of California, and is an affiliate of the American Civil Liberties Union (“ACLU”), a national organization of 500,000 members dedicated to the principles of liberty and equality embodied in both the United States and California Constitutions and our nations’ civil rights laws. Both the ACLU-SC and the ACLU have long been concerned about the impact of new technologies on the constitutional protections for privacy. *See, e.g., United States v. Jones*, 565 U.S. ___, 132 S.Ct. 945 (2012) (amicus curiae in case holding that police officers’ warrantless placement of GPS device on car to track its location violated Fourth Amendment); *City of Ontario v. Quon*, 560 U.S. 746 (2010) (amicus curiae in case addressing police officers’ expectation of privacy in messages on department-issued pagers). As part of its advocacy, the ACLU-SC routinely uses public-records laws to gather information about the policies and practices of local, state, and federal governments, in order to compile information for publication in reports published in hard copy and distributed electronically through the ACLU-SC’s website, in amicus briefs, and through the media. The ACLU-SC therefore has a strong interest in the outcome of these proceedings and in the Police Department’s performance of its legal duties.

8. The ACLU-SC is a person and a member of the public with the right under the CPRA to inspect public records and to seek relief in a court of competent jurisdiction to enforce that right. Cal. Gov. Code §§ 6252(b) and (c), 6253, 6258, 6259.

9. Respondent the Anaheim Police Department is located in Orange County, California. The Police Department is a local public agency within the meaning of the CPRA. Cal. Gov. Code § 6252(d).

JURISDICTION AND VENUE

10. This Court has jurisdiction under California Government Code §§ 6258 and 6259, California Code of Civil Procedure § 1085, and Article 6, § 10 of the California Constitution.

11. Venue is proper in this Court under California Code of Civil Procedure § 394 because the Police Department is a local agency situated in Orange County. Venue is additionally proper in this Court under California Code of Civil Procedure § 393 because the acts and omissions forming the basis of the cause of action occurred in Orange County and the Police Department is a public officer. The records in question, or some portion of them, are situated in Orange County. Cal. Gov. Code § 6259; Cal. Code Civ. Proc. § 401(l).

THE CALIFORNIA PUBLIC RECORDS ACT

12. Under the CPRA, upon request, any public agency must make publicly available for inspection and copying any record that it prepared, owns, uses, or retains that is not subject to the CPRA's statutory exemptions to disclosure. Cal. Gov. Code § 6253.

13. Before withholding any record responsive to a valid request under the CPRA, the agency must “demonstrat[e] that the record in question is exempt under [the CPRA’s] express provisions... or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.” Cal. Gov. Code § 6255.

14. Any person may institute proceedings by verified petition for a writ of mandate to enforce her right to inspect or receive a copy of any public record or class of public records. Cal. Gov. Code §§ 6258, 6259.

15. “The court shall decide the case after examining the record in camera, if permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and any oral argument and additional evidence as the court may allow.” Cal. Gov. Code § 6259(a). “If the court finds that the failure to disclose is not justified, it shall order the public official to make the record public.” Cal. Gov.

1 Code § 6259(b).

2 16. The court must award court costs and reasonable attorney fees to a prevailing petitioner,
3 to be paid by the agency from which the petitioner requested the records. Cal. Gov. Code § 6259(d).

4 **THE CALIFORNIA CONSTITUTION**

5 17. Section 3(b) of Article 1 of California's constitution entrenches and venerates the
6 public's right to access information as set forth in the CPRA. There is no ambiguity: "[t]he people have
7 the right of access to information concerning the conduct of the people's business, and, therefore, the
8 meetings of public bodies and the writings of public officials and agencies shall be open to public
9 scrutiny." Cal. Const. Art. 1, § 3(b)(1). Further, the California Constitution instructs that a CPRA
10 provision must "be broadly construed if it furthers the people's right of access, and narrowly construed if
11 it limits the right of access." See Cal. Const. Art. 1, § 3(b)(2).

12 **FACTUAL ALLEGATIONS**

13 18. An IMSI catcher is a surveillance device available to law enforcement entities and
14 capable of collecting information emitted by cellular devices including cell phones, all without the
15 knowledge or consent of device owners. "IMSI" refers to the unique "international mobile subscriber
16 identity" number assigned to cellular devices.

17 19. IMSI catchers function by masquerading as the cell phone towers used by wireless
18 companies such as AT&T and T-Mobile. By mimicking an actual cell phone tower, the IMSI catcher
19 forces cell phones within its range into emitting identifying signals. This information can be used to
20 identify each phone's unique numeric identifier and location, or to capture the communications content
21 of targets and bystanders alike. Law enforcement can also use the unique identifiers to demand
22 information about individuals from wireless companies.¹

23 20. IMSI catchers operate in a sweeping, dragnet manner. An IMSI catcher gathers
24 information from all locations within its range, including private spaces hidden behind walls.
25 Depending on an IMSI catcher's signal strength, its broadcast radius can reach up to several kilometers,

26
27 ¹ Jennifer Valentino-Devries, *How 'Stingray' Devices Work*, *Digits Tech News & Analysis From the*
28 *WSJ*, WALL STREET JOURNAL ONLINE (Sept. 21, 2011), <http://blogs.wsj.com/digits/2011/09/21/how-stingray-devices-work>.

1 allowing it to scoop up information from all private locations in the area. Because of the way they
2 function, IMSI catchers may result in prolonged electronic location tracking and the collection of data
3 associated with individuals not subject to any investigation.²

4 21. Law enforcement operates IMSI catchers in a manner that prevents individuals from
5 knowing that information emitted by their cell phones has been collected. IMSI catchers mimic the
6 cellular network infrastructure that individuals trust and rely on every day. Because IMSI catchers can,
7 on their own, force cell phones to transmit information, they do not require the knowledge or consent of
8 phone owners in order to operate. The ability of IMSI catchers to operate through building walls and
9 physical structures further prevents individuals from knowing when the devices are being used to
10 capture their private information.³

11 22. With the appropriate configuration, IMSI catchers can also capture the content of
12 communications, such as voice calls and text messages. And their sweep is vast: the device can be
13 maintained at police stations, other public venues, or mounted on cars or even airplanes.⁴

14 23. IMSI catchers are used freely by law-enforcement agencies throughout the country.
15 Law-enforcement agencies use these devices with little or no oversight by the public, legislative
16 agencies, or courts and can obtain cellular data and information by using IMSI catchers without the
17 assistance or even the knowledge of the cellular providers themselves. Some law-enforcement agencies
18 seek a warrant to authorize the use of an IMSI catcher; others seek a Pen Register and Trap and Trace

19 ² See Kate Klonick, *Stingrays: Not Just for the Feds!*, SLATE (Nov. 10, 2014),
20 [http://www.slate.com/articles/technology/future_tense/2014/11/stingrays_imsi_catchers_how_local_law](http://www.slate.com/articles/technology/future_tense/2014/11/stingrays_imsi_catchers_how_local_law_enforcement_uses_an_invasive_surveillance.html)
21 [_enforcement_uses_an_invasive_surveillance.html](http://www.slate.com/articles/technology/future_tense/2014/11/stingrays_imsi_catchers_how_local_law_enforcement_uses_an_invasive_surveillance.html) (“That’s every location and outgoing call and text
22 log of every phone within a certain radius—up to several kilometers . . .”); Kim Zetter, *Government*
23 *Fights for Use of Spy Tool That Spoofs Cell Towers*, WIRED (March 29, 2013),
24 <http://www.wired.com/2013/03/gov-fights-stingray-case/> (“It captures data from ‘all wireless devices in
the immediate area of the FBI device that subscribe to a particular provider’ according to government
documents—including data of innocent people who are not the target of the investigation.”).

25 ³ See Kim Zetter, *Secrets of FBI Smartphone Surveillance Tool Revealed in Court Fight*, WIRED (April
9, 2013), <http://www.wired.com/2013/04/verizon-rigmaiden-aircard/all/> (“The stingray then
‘broadcast[s] a very strong signal’ to force the [cellular device] into connecting to it . . .”).

26 ⁴ See Michael Bott and Thom Jensen, *Cellphone spying technology being used throughout Northern*
27 *California*, NEWS10 ABC (March 6, 2014),
28 [http://www.news10.net/story/news/investigations/watchdog/2014/03/06/cellphone-spying-technology-](http://www.news10.net/story/news/investigations/watchdog/2014/03/06/cellphone-spying-technology-used-throughout-northern-california/6144949/)
[used-throughout-northern-california/6144949/](http://www.news10.net/story/news/investigations/watchdog/2014/03/06/cellphone-spying-technology-used-throughout-northern-california/6144949/).

1 authorization from the court. Other law-enforcement agencies, however, may not seek judicial
2 authorization at all for the use of an IMSI catcher. When they do seek a warrant or court order, law
3 enforcement may not adequately explain the nature of IMSI catchers to the court: multiple news reports
4 have uncovered evidence of judges unwittingly signing hundreds of warrants authorizing the use of
5 IMSI catchers.⁵

6 24. Much is known about the existence and capabilities of IMSI catchers.⁶ The Department
7 of Justice has made publicly available extensive information on the agency's legal positions regarding
8 their use and hundreds of articles have been published about IMSI catchers, their capabilities, and
9 controversies in criminal cases in which the use of IMSI catchers may have been a factor in identifying a
10 suspect's location. These news articles describe how IMSI catchers work. They also describe the
11 technology underlying IMSI catchers, including technical background, descriptions of how they
12 function, estimates of their service range, and details about the information they are capable of
13 monitoring and collecting. However, little is known about how much public taxpayer money law-
14 enforcement agencies spend on these devices, and about their deployment: i.e., how and the extent to
15 which law-enforcement agencies use them, what law-enforcement agencies do with the data on innocent
16 bystanders that is collected by the devices, and whether certain law-enforcement agencies permit any

19 ⁵ See, e.g., Ellen Nakashima, *Secrecy around police surveillance equipment proves a case's undoing*,
20 WASHINGTON POST, Feb. 22, 2015; Adam Lynn, *Tacoma police change how they seek permission to use*
21 *cellphone tracker*, THE NEWS TRIBUNE, Nov. 15, 2014; Cyrus Farivar, *Legal experts: Cops lying about*
22 *cell tracking "is a stupid thing to do"*, ARS TECHNICA (June 20, 2014), [http://arstechnica.com/tech-](http://arstechnica.com/tech-policy/2014/06/legal-experts-cops-lying-about-cell-tracking-is-a-stupid-thing-to-do/)
23 [policy/2014/06/legal-experts-cops-lying-about-cell-tracking-is-a-stupid-thing-to-do/](http://arstechnica.com/tech-policy/2014/06/legal-experts-cops-lying-about-cell-tracking-is-a-stupid-thing-to-do/); Kim Zetter,
24 *Florida Cops' Secret Weapon: Warrantless Cellphone Tracking*, WIRED (March 3, 2014),
25 <http://www.wired.com/2014/03/stingray/>; Ellen Nakashima, *Little-known Surveillance Tool Raises*
26 *Concerns by Judges, Privacy Activists*, WASH. POST, March 27, 2013.

27 ⁶ Several academic papers explain the functioning of the technology. See, e.g., Daehyun Strobel, *IMSI*
28 *Catcher*, Seminararbeit, Ruhr-Universität, Bochum, Germany, 13, July 13, 2007; Juliam Dammann,
"IMSI-Catcher and Man-in-the-Middle Attacks," presentation at Seminar on Mobile Security,
University of Bonn at 5, Feb. 9, 2011. Security researchers have also duplicated and explained IMSI-
Catcher technology to the public. Sean Hollister, *Hacker intercepts phone calls with homebuilt \$1,500*
IMSI catcher, claims GSM is beyond repair, ENGADGET (July 31, 2010),
[http://www.engadget.com/2010/07/31/hacker-intercepts-phone-calls-with-homebuilt-1-500-imsi-](http://www.engadget.com/2010/07/31/hacker-intercepts-phone-calls-with-homebuilt-1-500-imsi-catcher/)
[catcher/](http://www.engadget.com/2010/07/31/hacker-intercepts-phone-calls-with-homebuilt-1-500-imsi-catcher/).

1 judicial oversight of their use of IMSI catchers.⁷

2 25. On July 29, 2014, the ACLU-SC sent a CPRA request to the Police Department for the
3 disclosure of certain public records. *See* Cal. Gov. Code §§ 6258, 6252(c) and (e), 6253. A true and
4 correct copy of this request is attached to this petition as Exhibit A. The request sought the following
5 records related to Police Department's use of IMSI catcher surveillance technology, all of which are
6 "public records" under the CPRA:

- 7 a. Records related to the number of Cell Site Simulators owned or used by the
8 agency;
- 9 b. Records related to the technical specifications of any such Cell Site Simulators⁸;
- 10 c. Records related to policies, practices, customs, or training on the use of such Cell
11 Site Simulators, including when and how to seek a warrant;
- 12 d. Records mentioning the number of times agency employees have used Cell Site
13 Simulators from January 1, 2008 to the present, including the number of times a
14 warrant was obtained for such use;
- 15 e. Records referring to any applications for grants or other funding for the
16 acquisition of such Cell Site Simulators;
- 17 f. Records referring to what information and data agency officials collect through
18 the use of Cell Site Simulators, such as IMSI numbers, names, PEN registers, text,
19 or audio communication;
- 20 g. Records related to policies, practices, customs, or training regarding the handling
21 of data obtained by Cell Site Simulators, including but not limited to access
22 restrictions on such data, security of such data, limitations on sharing data with

23
24 ⁷ *See, e.g.,* Fred Clasen-Kelly, *CMPD's cellphone tracking cracked high-profile cases*, CHARLOTTE
25 OBSERVER, Nov. 22, 2014; John Kelly, *Cellphone spying: It's not just the NSA*, USATODAY, June 13,
26 2014; 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-yourphones-data/>
(describing various models of Harris Corporation's cell site simulators and related equipment).

27 ⁸ This petition does not seek to enforce this one category of documents in the ACLU-SC's CPRA
28 request. It seeks to enforce all other categories in the request, including seeking documents that fall
under other categories of the request and also fall under this category.

1 other entities and oversight and auditing practices to ensure any restrictions on use
2 or access;

- 3 h. Records reflecting standard language, forms, or templates used by the agency for
4 obtaining a warrant or other court order, including subpoenas, authorizing the use
5 of StingRay devices or other Cell Site Simulator technologies;
- 6 i. Unsealed warrants or court orders reflecting the use of StingRay devices or other
7 Cell Site Simulator technologies from January 1, 2008 to the present;
- 8 j. The number of times each year that data gathered through the use of StingRay
9 devices or other Cell Site Simulator technologies was used in the investigation of
10 any crime from January 1, 2008 to the present;
- 11 k. Which departments and individuals currently have access to the data gathered by
12 Cell Site Simulator devices or technologies and for what purposes;
- 13 l. All other Records including but not limited to emails, notes, presentations,
14 manuals proposals, policies, maps, computer files, or other documents related to
15 Cell Site Simulators owned, operated, or used by the agency that are not
16 responsive to the other requests in this letter.

17 Exhibit A, 1-3.

18 26. For any records the Police Department contends are subject to a CPRA exemption, this
19 request instructed the Police Department to provide a written response describing with specificity each
20 record withheld and the specific exemption or exemptions that apply to that record. The request also
21 instructed the Police Department that, even if it contends that some records or portions of records are
22 subject to an exemption, it must provide the records and portions of records not subject to any
23 exemption. Exhibit A at 3.

24 27. The ACLU-SC requested that copying fees be waived and indicated its willingness to
25 pay fees in the event that Police Department would not waive the copying fees. Exhibit A at 3.

26 28. On August 11, 2014, the Police Department, through the City Attorney's Office of
27 Anaheim, responded to the ACLU-SC's request. A true and correct copy of this response is attached as
28

1 Exhibit B. This response took the position that the ACLU-SC's twelve enumerated requests did not
2 reasonably describe the records sought to be produced. Without further specificity, the Police
3 Department listed Cal. Gov. Code §§ 6254(f), 6254(k), and 6255, the Trade Secret Privilege (Evidence
4 Code § 1060), and the Official Information Privilege (Evidence Code §§ 1040(b)(2), 1041(a)(2)) as
5 support for its position that all of the requested records were exempt from disclosure. Despite the
6 ACLU-SC's explicit offer to speak with the Police Department to clarify its requests, the Police
7 Department still took the position that it would not produce because, among other reasons, the requests
8 were not adequately specific.

9 29. On September 29, 2014, the ACLU-SC replied to the Police Department's letter,
10 explaining that the Police Department's blanket objections were not adequate to justify withholding
11 under the CPRA. *See* Cal. Gov. Code § 6255. The ACLU-SC also responded to the Police
12 Department's claims that the requests did not reasonably describe the records sought to be produced,
13 offering to work with the Police Department to clarify or appropriately narrow the requests. A true and
14 correct copy of this letter is attached as Exhibit C.

15 30. Not having received a response from the Police Department, the ACLU-SC again reached
16 out on October 10, 2014 with a letter offering to clarify any confusion the Police Department might have
17 about the records sought. A true and correct copy of this letter is attached as Exhibit D.

18 31. On October 14, 2014, the Police Department replied with another letter, in which it
19 maintained the positions it set out in its initial letter, while acknowledging that records responsive to the
20 ACLU-SC's request existed. A true and correct copy of this letter is attached as Exhibit E.

21 32. To date, the Police Department has not produced a single document in response to the
22 ACLU-SC's requests.

23 **FIRST CAUSE OF ACTION**

24 (for a writ of mandate compelling production of documents under the California Public Records Act,
Cal. Gov. Code §§ 6250–6270)

25 33. The ACLU-SC incorporates by reference the allegations of paragraphs 1 through 32
26 above as though fully set forth herein.

27 34. Under the CPRA, the ACLU has a right to inspect, and the Police Department has a duty
28

1 to provide promptly and without delay, public records subject to disclosure.

2 35. The ACLU submitted a valid request for records under the CPRA on July 29, 2014. As it
3 stated in this request, the ACLU was at all times ready to pay any associated fees.

4 36. The Police Department admits that it possesses records responsive to the ACLU's
5 requests.

6 37. The Police Department cannot demonstrate that any record subject to the ACLU's
7 requests, or any portion of those records, is exempt under express provisions of the CPRA or any other
8 authority, or that on the facts of this particular case the public interest served by not disclosing the
9 record clearly outweighs the public interest served by disclosing the record.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the ACLU-SC prays as follows:

12 1. That the Court issue a peremptory writ of mandate directing the Police Department to
13 provide the ACLU-SC with all requested records;

14 2. That the ACLU-SC be awarded attorneys' fees and costs; and

15 3. For such and further relief as the Court deems proper and just.
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Dated: March 10, 2015

Respectfully submitted,

2
3 By:  _____

4 Jessica G. Price

1 AMERICAN CIVIL LIBERTIES UNION
2 FOUNDATION OF SOUTHERN CALIFORNIA
3 Peter Bibring, SBN 223981
4 pbibring@aclusocal.org
5 Jessica Price, SBN 26405
6 jprice@aclusocal.org
7 1313 West Eighth Street
8 Los Angeles, California 90017
9 Telephone:(213) 977-9500
10 Facsimile: (213) 977-5297

11 AMERICAN CIVIL LIBERTIES
12 UNION FOUNDATION OF
13 NORTHERN CALIFORNIA
14 Linda Lye, SBN 215584
15 llye@aclunc.com
16 Michael Risher, SBN 191627
17 mrisher@aclunc.com
18 Nicole Ozer, SBN 228643
19 nozer@aclunc.com
20 Matthew Cagle, SBN 286101
21 mcagle@aclunc.com
22 39 Drumm StStreet
23 San Francisco, CA 94111
24 Telephone:(415) 621-2493
25 Facsimile: (415) 255-1478

26 LATHAM & WATKINS LLP
27 Sadik Huseny, SBN 224659
28 sadik.huseny@lw.com
Hanno Kaiser, SBN 262249
hanno.kaiser@lw.com
Kyle Virgien, SBN 278747
kyle.virgien@lw.com
505 Montgomery St
San Francisco, CA, 94111
Telephone:(415) 391-0600
Facsimile: (415) 395-8095

Lujing Liu, SBN 300769
gavin.liu@lw.com
140 Scott Dr
Menlo Park, CA, 94025
Telephone:(650) 463-4600
Facsimile: (650) 395-2600

Attorneys for Petitioner

VERIFICATION

I, Jessica Price, am a Staff Attorney at the American Civil Liberties Union of Southern California. I have read the foregoing Verified Petition for Peremptory Writ of Mandate Ordering the Anaheim Police Department to Comply with its Duties under the California Public Records Act, and the facts alleged in paragraphs 4 and 25-32 are within my knowledge, and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: *March 10, 2015*

A handwritten signature in blue ink, appearing to be 'J. Price', is written over a horizontal line.

Jessica G. Price

VERIFICATION

I, Hector O. Villagra, am the Executive Director of the American Civil Liberties Union of Southern California. I have read the foregoing Verified Petition for Peremptory Writ of Mandate Ordering the Anaheim Police Department to Comply with its Duties under the California Public Records Act, and the facts alleged in paragraph 7 are within my knowledge, and I know them to be true. The allegations in paragraphs 1-6 and 8-41 are stated on information and belief and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated:

3/10/15


Hector O. Villagra

EXHIBIT A



¹ For purposes of
“IMSI catchers”
wireless carrier
telephones, incl
Amberjack, or l
²The term “Rec
is defined by G
photographing,

- (2) All Records related to the technical specifications of any Cell Site Simulators owned, operated, used or sought by the agency.
 - (3) All Records related to the policies, practices, customs, or training on the use of Cell Site Simulators, including but not limited to any policies, practices, customs, or training on when and how to seek a warrant to use the devices or whether there are any locations on where Cell Site Simulators can be used.
 - (4) All Records related to, referring to, or mentioning the number of times agency employees have used Cell Site Simulators from January 1, 2008 through present, as well as the number of those instances agency employees obtained a warrant to use the device.
 - (5) All Records relating or referring to any applications for grants or other funding seeking to pay, in part or in whole, for Cell Site Simulators to be operated or used by the agency from January 1, 2008 through present.
 - (6) All Records relating or referring to what information and data agency officials collect through the use of Cell Site Simulators (such as IMSI numbers, names, PEN registers, text or audio communications).
 - (7) All Records relating or referring to any policies, practices, protocols or training relating to the handling of data obtained by Cell Site Simulators, including but not limited to access restrictions on such data, security of such data, limitations on sharing data with other entities, and oversight and auditing practices to ensure any restrictions on use or access are followed.
 - (8) All Records reflecting standard language, form(s) or template(s) utilized by the agency for requesting a warrant or other court order, including subpoenas, authorizing use of the StingRay device or other cell site simulator technologies or technologies to detect radio signals emitted from wireless cellular telephones from January 1, 2008 through present.
 - (9) Unsealed warrants or court orders reflecting the use of the StingRay device or other cell site simulator devices or technologies to detect radio signals emitted from wireless cellular telephones from January 1, 2008 through present.
 - (10) The number of times each year that data gathered through use of the StingRay or other cell site simulator devices or technologies was used in the investigation of any crime, including the role, if any, it played in identifying, arresting and/or convicting suspects January 1, 2008 through present.
-

- (11) Which departments, units, assignments individuals currently have access to the data gathered by cell site simulator devices or technologies to detect radio signals emitted from wireless cellular telephones and for what purposes.
- (12) All Records, including but not limited to emails, notes, presentations, manuals, proposals, policies, maps, computer files, or other documents, related to cell site simulators owned, operated and/or used by the agency or its employees, not responsive to one of the other requests in this letter.

These requests are made pursuant to the California Public Records Act (“CPRA”), California Government Code § 6250 *et seq.* The CPRA requires responding agencies to provide a response within ten (10) days of receipt of a request. *See* Gov. Code § 6256.

In enacting the PRA, the Legislature recognized that “a requester, having no access to agency files, may be unable to precisely identify the documents sought. Thus, writings may be described by their content. . . . An agency is thus obliged to search for records based on criteria set forth in the search request.” *California First Amendment Coalition v. Superior Court*, 67 Cal. App. 4th 159, 165-66 (1998); *see also* § 6253(b). The PRA also requires the government to “assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records” by taking steps to “[a]ssist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated. § 6253.1(a). An agency that receives a request must also “[p]rovide suggestions for overcoming any practical basis for denying access to the records or information sought.” *Id.*

If any records are claimed to be exempt from disclosure, I request that: (1) you exercise your discretion to disclose some or all of the records notwithstanding the exemption; and (2) with respect to records containing both exempt and non-exempt content, you redact the exempt content and disclose the rest, consistent with California Government Code § 6253(a). Additionally, if any records are withheld or redacted, please provide a written response that describes with specificity each and every record that is being withheld or redacted and the claimed reason for exemption under the California Public Records Act, along with supporting legal authority or authorities.

I request that you waive any copying fees because the ACLU of Southern California is a non-profit civil rights organization. *See North County Parents Organization v. Department of Education*, 23 Cal. App. 4th 144 (1994). No part of the information obtained will be sold or distributed for profit. If you do not agree to waive the copying fees, please inform me of any potential duplication costs exceeding \$50.00 prior to copying.

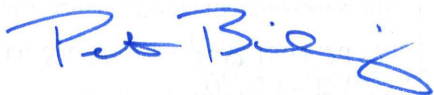
I also request that you provide any public record identified above that exists in the following electronic formats to me in that electronic format, instead of in paper format: PDF format or all Microsoft Office formats, including Word, Excel, and PowerPoint. *See* California Government Code § 6253.9.

I look forward to working with you to obtain the public records we have requested and look forward to your response to this request within ten days of receipt of this letter. *See*

California Government Code § 6253(c). Please send all public records responsive to this request to my attention, either by mail or email.

If you have any questions about this request, please do not hesitate to contact me at (213) 977-5295 or my legal assistant, Geneva Tien, at (213) 977-5279.

Sincerely,



Peter Bibring
Staff Attorney
ACLU of Southern California
1313 West 8th Street
Los Angeles, CA 90017
pbibring@aclusocal.org

EXHIBIT B



City of Anaheim
OFFICE OF THE CITY ATTORNEY

August 11, 2014

Mr. Peter Bibring
Staff Attorney
ACLU of Southern California
1313 West 8th Street
Los Angeles, CA 90017

Re: Public Records Act Request (Gov. Code § 6250, et seq.)
Request No. 07312014-3

Dear Mr. Bibring:

The City of Anaheim ("City") is in receipt of your Public Records Act request dated July 29, 2014 wherein you have requested the following records:

1. "All records related to the number of Cell Site Simulators owned, operated and/or used by the agency, unit, position and/or individuals with access to and/or control over the devices;"
2. "All records related to the technical specifications of any Cell Site Simulators owned, operated, used or sought by the agency;"
3. "All records related to the policies, practices, customs or training on the use of Cell Site Simulators, including but not limited to any policies, practices, customs or training n when and how to seek a warrant to use the devices or whether there are any locations where Cell Site Simulators can be used;"
4. "All records related to, referring to or mentioning the number of times agency employees have used Cell Site Simulators from January 1, 2008 through present, as well as the number of those instances agency employees obtained a warrant to use the device;"
5. "All records relating or referring to any applications for grants or other funding seeking to pay, in part or in whole, for Cell Site Simulators to be operated or used by the agency from January 1, 2008 through present;"
6. "All records relating or referring to what information and data agency officials collect through the use of Cell Site Simulators (such as IMSI numbers, names, PEN registers, text or audio communications);"
7. "All records relating or referring to any policies, practices, protocols or training relating to the handling of data obtained by Cell Site Simulators including, but not limited to, access restrictions on such data, security of such data, limitations on sharing data with other entities and oversight and auditing practices to ensure any restrictions on use or access or followed;"
8. "All records reflecting standard language, form(s) or template(s) utilized by the agency for requesting a warrant or other court order, including subpoenas, authorizing use of the StingRay device or other cell site simulator technologies or

technologies to detect radio signals emitted from wireless cellular telephones from January 1, 2008 through present;"

9. "Unsealed warrants or court orders reflecting the use of StingRay device or other cell site simulator devices or technologies to detect radio signals emitted from wireless cellular telephones from January 1, 2008 through present;"

10. "The number of times each year that data gathered through use of the StingRay or other cell site simulator devices or technologies was used in the investigation of any crime, including the role, if any, it played in identifying, arresting and/or convicting suspects from January 1, 2008 through present;"

11. "Which departments, units, assignments, individuals currently have access to the data gathered by cell site simulator devices or technologies to detect radio signals emitted from wireless cellular telephones and for what purposes;" and

12. "All records including, but not limited to, emails, notes, presentations, manuals, proposals, policies, maps, computer files or other documents related to cell site simulators owned, operated and/or used by the agency or its employees, not responsive to one of the other requests in this letter."

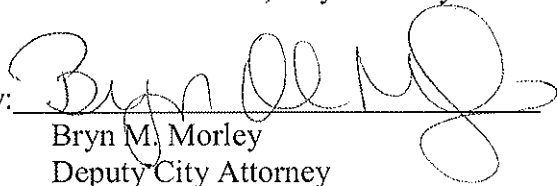
Overall, your request does not reasonably describe or identify the records sought to be produced. Government Code § 6253(b). In addition, the records you seek are exempt from disclosure pursuant to the following provisions of the Public Records Act:

- The records are subject to the Trade Secret Privilege (Evidence Code §1060 and Government Code §6254(k));
- The records are subject to the Official Information Privilege (Evidence Code §§1040(b)(2), 1041(a)(2));
- Documents reflecting police techniques or "security procedures" are expressly exempt from disclosure pursuant to Government Code §6254(f); and
- The records are subject to the public interest exemption provided by Government Code §6255.

Should you have any questions, please contact the undersigned. Thank you for your kind cooperation in this regard.

Very truly yours,

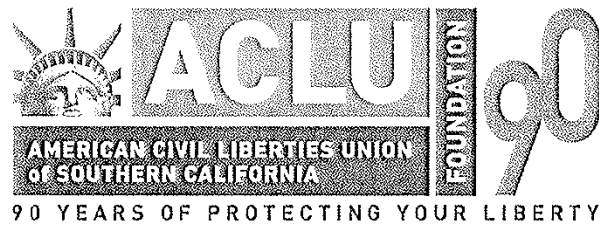
Michael R.W. Houston, City Attorney

By: 
Bryn M. Morley
Deputy City Attorney

cc: Jennifer Hall, City Clerk
Linda Andai, City Clerk
Barbara Nail, APD

104092

EXHIBIT C



Via United States Postal Service Certified Mail

September 29, 2014

Anaheim Police Department
c/o Bryn M. Morley
Office of the City Attorney
200 S. Anaheim Blvd., #365
Anaheim, CA 92805

Re: July 29, 2014 Public Records Act Request re: Cell Site Simulators, or "Stingrays"

To Whom It May Concern:

On July 29, 2014, the ACLU of Southern California ("ACLU SoCal") mailed to your agency a request for certain public records, pursuant to the California Public Records Act ("CPRA"), Cal. Gov't Code § 6250 *et seq.* The request concerned records of "cell site simulators," also known as StingRays, that are in the possession of your agency. Your response dated August 11, 2014, however, was not adequate to discharge your agency's statutory duties.

To the extent your agency has determined that part or all of the requested records are not disclosable or are exempt from disclosure, you must—in writing—"justify withholding" by specifically "demonstrating" that the records are exempt as applied to the "facts of the particular case." Cal. Gov't Code § 6255. Blanket objections and citations do not satisfy this statutory obligation. *See Am. Civil Liberties Union of N. Cal. v. Super. Ct.*, 202 Cal. App. 4th 55, 82 (Cal. Ct. App. 2011) ("[W]e do not believe an agency's bare conclusion that information is not responsive to a request is any more self-explanatory than its bare conclusion that information is exempt. . . . [T]he agency must be required to provide the requesting party 'adequate specificity . . . to assur[e] proper justification by the governmental agency.'" (citing *Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973))).

I look forward to working with you to obtain the public records we have requested. If you think that our request can be improved by any narrowing or clarification, please do not hesitate to write me at jprice@aclusocal.org or call me at (213) 977-5233.

Sincerely,



Jessica Price
Staff Attorney

Enclosures: Request dated July 29, 2014
Response dated August 11, 2014



City of Anaheim
OFFICE OF THE CITY ATTORNEY

August 11, 2014

Mr. Peter Bibring
Staff Attorney
ACLU of Southern California
1313 West 8th Street
Los Angeles, CA 90017

Re: Public Records Act Request (Gov. Code § 6250, et seq.)
Request No. 07312014-3

Dear Mr. Bibring:

The City of Anaheim ("City") is in receipt of your Public Records Act request dated July 29, 2014 wherein you have requested the following records:

1. "All records related to the number of Cell Site Simulators owned, operated and/or used by the agency, unit, position and/or individuals with access to and/or control over the devices;"
2. "All records related to the technical specifications of any Cell Site Simulators owned, operated, used or sought by the agency;"
3. "All records related to the policies, practices, customs or training on the use of Cell Site Simulators, including but not limited to any policies, practices, customs or training n when and how to seek a warrant to use the devices or whether there are any locations where Cell Site Simulators can be used;"
4. "All records related to, referring to or mentioning the number of times agency employees have used Cell Site Simulators from January 1, 2008 through present, as well as the number of those instances agency employees obtained a warrant to use the device;"
5. "All records relating or referring to any applications for grants or other funding seeking to pay, in part or in whole, for Cell Site Simulators to be operated or used by the agency from January 1, 2008 through present;"
6. "All records relating or referring to what information and data agency officials collect through the use of Cell Site Simulators (such as IMSI numbers, names, PEN registers, text or audio communications);"
7. "All records relating or referring to any policies, practices, protocols or training relating to the handling of data obtained by Cell Site Simulators including, but not limited to, access restrictions on such data, security of such data, limitations on sharing data with other entities and oversight and auditing practices to ensure any restrictions on use or access or followed;"
8. "All records reflecting standard language, form(s) or template(s) utilized by the agency for requesting a warrant or other court order, including subpoenas, authorizing use of the StingRay device or other cell site simulator technologies or

technologies to detect radio signals emitted from wireless cellular telephones from January 1, 2008 through present;"

9. "Unsealed warrants or court orders reflecting the use of StingRay device or other cell site simulator devices or technologies to detect radio signals emitted from wireless cellular telephones from January 1, 2008 through present;"

10. "The number of times each year that data gathered through use of the StingRay or other cell site simulator devices or technologies was used in the investigation of any crime, including the role, if any, it played in identifying, arresting and/or convicting suspects from January 1, 2008 through present;"

11. "Which departments, units, assignments, individuals currently have access to the data gathered by cell site simulator devices or technologies to detect radio signals emitted from wireless cellular telephones and for what purposes;" and

12. "All records including, but not limited to, emails, notes, presentations, manuals, proposals, policies, maps, computer files or other documents related to cell site simulators owned, operated and/or used by the agency or its employees, not responsive to one of the other requests in this letter."

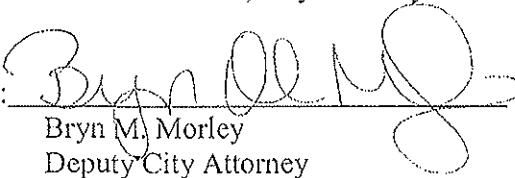
Overall, your request does not reasonably describe or identify the records sought to be produced. Government Code § 6253(b). In addition, the records you seek are exempt from disclosure pursuant to the following provisions of the Public Records Act:

- The records are subject to the Trade Secret Privilege (Evidence Code §1060 and Government Code §6254(k));
- The records are subject to the Official Information Privilege (Evidence Code §§1040(b)(2), 1041(a)(2));
- Documents reflecting police techniques or "security procedures" are expressly exempt from disclosure pursuant to Government Code §6254(f); and
- The records are subject to the public interest exemption provided by Government Code §6255.

Should you have any questions, please contact the undersigned. Thank you for your kind cooperation in this regard.

Very truly yours,

Michael R.W. Houston, City Attorney

By: 
Bryn M. Morley
Deputy City Attorney

cc: Jennifer Hall, City Clerk
Linda Andak, City Clerk
Barbara Nail, APD

104092

EXHIBIT D



Via United States Postal Service Certified Mail

October 10, 2014

Anaheim Police Department
c/o Bryn M. Morley
Office of the City Attorney
200 S. Anaheim Blvd., #365
Anaheim, CA 92805

Re: July 29, 2014 Public Records Act Request re: Cell Site Simulators, or “Stingrays”

To Whom It May Concern:

On July 29, 2014, we sent your agency a Public Records Act request for records related to Cell Site Simulators. On August 11, 2014, your agency responded, stating in part that the request did not reasonably describe or identify the records sought. Per the voicemail I left you today, I write to ensure we can communicate to reasonably describe or identify the records sought to be produced. Please do give me a call or send me a letter to the extent there is any confusion about the records sought. Thank you.

Sincerely,

Jessica Price
Staff Attorney
(213) 977-5233

EXHIBIT E



City of Anaheim
OFFICE OF THE CITY ATTORNEY

October 14, 2014

Ms. Jessica Price
Staff Attorney
ACLU of Southern California
1313 West 8th Street
Los Angeles, CA 90017

*Sent Via First Class Mail and
Email Transmission to:
jprice@aclusocal.org*

Re: *ACLU Public Records Act Request No. 07312014-3*

Dear Ms. Price:

The City of Anaheim ("City") is in receipt of your recent correspondence dated September 29, 2014 addressing the City's earlier response to the Public Records Act Request from the ACLU dated July 29, 2014 from Staff Attorney Peter Bibring.

The City has determined that records, which the ACLU has requested concerning "'cell site simulators,' also known as StingRays," that are in the City's possession are exempt from disclosure pursuant to the following provisions of the Public Records Act:

- The records are subject to the Trade Secret Privilege (Evidence Code §1060 and Government Code §6254(k));
- The records are subject to the Official Information Privilege (Evidence Code §§1040(b) (2), 1041(a)(2));
- Documents reflecting police techniques or "security procedures" are expressly exempt from disclosure pursuant to Government Code §6254(f); and
- The records are subject to the public interest exemption provided by Government Code §6255.

The City has not taken the position that it possesses no responsive records or that documents are being withheld because they contain non-responsive material as discussed in American Civil Liberties Union of Northern California v. Superior Court (2011) 202 Cal.App.4th 55, 82. Rather, the City is denying access to its records pursuant to exemptions enumerated by the Public Records Act. Fairley v. Superior Court (1998) 66 Cal.App.4th 1414.

The Public Records Act does not require local agencies to create a "privilege log" or list (i.e. a *Vaughn* Index as referenced in Vaughn v. Rosen 484 F.2d 820, 827 (D.C. Cir. 1973)) that identifies the specific records being withheld. Haynie v. Superior Court (2001) 26 Cal.4th 1061. See State Board of Equalization v. Superior


Ms. Jessica Price
October 14, 2014
Page 2

Court (1992) 10 Cal.App.4th 1177, 1193 ("The Public Records Act does not, like the FOIA, require the maintenance of an index of records available for public inspection and copying.") Furthermore, "a list of documents withheld may also reveal information ordinarily deemed exempt from disclosure." Haynie supra at 1075. The City's response only needs to identify the legal grounds for nondisclosure, which the City has done above and in the previous response to Mr. Bibring.

Should you have any questions, please contact the undersigned. Thank you for your kind cooperation in this regard.

Very truly yours,

Michael R.W. Houston, City Attorney

By: 
Kristin A. Pelletier
Sr. Assistant City Attorney

105451