

1 AMERICAN CIVIL LIBERTIES UNION
2 FOUNDATION OF NORTHERN
3 CALIFORNIA

Michael Risher, SBN 191627

4 mrisher@aclunc.com

Linda Lye, SBN 215584

llye@aclunc.com

Nicole Ozer, SBN 228643

nozer@aclunc.com

Matthew Cagle, SBN 286101

6 mcagle@aclunc.com

39 Drumm Street

7 San Francisco, CA 94111

Telephone: (415) 621-2493

8 Facsimile: (415) 255-1478

9 LATHAM & WATKINS LLP

Sadik Huseny, SBN 224659

10 sadik.huseny@lw.com

Hanno Kaiser, SBN 262249

11 hanno.kaiser@lw.com

Kyle Virgien, SBN 278747

12 kyle.virgien@lw.com

505 Montgomery Street, Suite 2000

13 San Francisco, CA, 94111

Telephone: (415) 391-0600

14 Facsimile: (415) 395-8095

15 Lujing Liu, SBN 300769

gavin.liu@lw.com

16 140 Scott Drive

Menlo Park, CA, 94025

17 Telephone: (650) 463-4600

18 Facsimile: (650) 395-2600

19 **SUPERIOR COURT OF CALIFORNIA**
20 **FOR THE COUNTY OF SACRAMENTO**

21 AMERICAN CIVIL LIBERTIES UNION OF
22 NORTHERN CALIFORNIA, a non-profit corporation

23 Petitioner,

24 v.

25 SACRAMENTO COUNTY SHERIFF'S
26 DEPARTMENT

27 Respondent

FILED

Superior Court Of California

Sacramento

03/10/2015

mrubalcaba

By _____, Deputy

Case Number:

34-2015-80002040

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
CALIFORNIA

Peter Bibring, SBN 223981

pbibring@aclusocal.org

Jessica Price, SBN 264053

jprice@aclusocal.org

1313 West Eighth Street

Los Angeles, California 90017

Telephone: (213) 977-9500

Facsimile: (213) 977-5297

Attorneys for Petitioner

CASE NO.

**VERIFIED PETITION FOR
PEREMPTORY WRIT OF
MANDATE ORDERING THE
SACRAMENTO COUNTY
SHERIFF'S DEPARTMENT TO
COMPLY WITH ITS DUTIES
UNDER THE CALIFORNIA PUBLIC
RECORDS ACT**

[Cal. Gov. Code §§ 6250-6270]

BY FAX

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 May of 2014, the American Civil Liberties Union of Northern California (“ACLU-NC”) sent the Sacramento County Sheriff’s Department (“Sheriff’s Department”) a request for documents concerning the Sheriff’s Department’s use of IMSI catcher technology under the California Public Records Act (“CPRA”).

5. The Sheriff’s Department improperly withheld most of the documents the ACLU-NC

requested. By doing so, the Sheriff's 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-NC 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-NC now seeks a peremptory writ of mandate to compel the Sheriff's Department to produce documents in compliance with the CPRA.

THE PARTIES

7. Petitioner the ACLU-NC 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-NC 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-NC 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-NC's website, in amicus briefs, and through the media. The ACLU-NC therefore has a strong interest in the outcome of these proceedings and in the Sheriff's Department's performance of its legal duties.

8. The ACLU-NC 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 Sacramento County Sheriff's Department is located in Sacramento County, California. The Sheriff's 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 §§ 6258–6259 and Article 6, § 10 of the California Constitution.

11. Venue is proper in this Court under California Code of Civil Procedure § 394 because the Sheriff's Department is a local agency situated in Sacramento 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 Sacramento County and the Sheriff's Department is a public officer. The records in question, or some portion of them, are situated in Sacramento 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 prepares, 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
25 the immediate area of the FBI device that subscribe to a particular provider’ according to government
26 documents—including data of innocent people who are not the target of the investigation.”).

27 ³ See Kim Zetter, *Secrets of FBI Smartphone Surveillance Tool Revealed in Court Fight*, WIRED (April
28 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”).

⁴ See Michael Bott and Thom Jensen, *Cellphone spying technology being used throughout Northern California*, NEWS10 ABC (March 6, 2014),
<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 these devices, and whether certain law-enforcement agencies permit any
17
18

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 May 29, 2014, the ACLU-NC sent a CPRA request to the Sheriff's Department for
3 the 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.

5 26. The request sought the following records related to the Sheriff's Department's use of
6 IMSI catcher surveillance technology, all of which are "public records" under the CPRA:

- 7 a. Contracts or agreements signed with Harris Corporation, a company that manufactures
8 IMSI catchers, since 2000 for the purchase of equipment, software, maintenance of
9 training for law-enforcement agencies as well as invoices, purchase orders, and any
10 supporting documentation collected in the procurement process.
- 11 b. Grant applications, funding requests, and correspondence with funding entities, related to
12 the above transactions since 2000, including but not limited to grant applications and
13 related documents submitted to and received from the CA Emergency Agency since
14 2000, the Sacramento County Office of Emergency Services, the California Office of
15 Emergency Services, or the Urban Areas Shield Initiative (UASI).
- 16 c. Documents referencing or relating to IMSI catchers or related terms including but not
17 limited to policies, procedures, practices, legal opinions, memoranda, briefs,
18 correspondence and training materials, template applications, template affidavits in
19 support of applications, template proposed court orders, or warrants.

20 Exhibit A, 1–2.

21 27. The letter further requested that, pursuant to Government Code § 6254(f)(2), the Sheriff's
22 Department summarize the information contained within any records it claims are exempt from
23 disclosure. Exhibit A, 2.

24 28. The ACLU-NC requested that the Sheriff's Department waive copying fees and

25 ⁷ *See, e.g.,* Fred Clasen-Kelly, *CMPD's cellphone tracking cracked high-profile cases*, CHARLOTTE
26 OBSERVER, Nov. 22, 2014; John Kelly, *Cellphone spying: It's not just the NSA*, USATODAY, June 13,
27 2014; Ryan Gallagher, *Meet the Machines That Steal Your Phone's Data*, ARS TECHNICA (Sept. 25,
28 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).

1 indicated its willingness to pay fees in the event that Sheriff's Department would not waive them. *Id.*

2 29. On June 5, 2014, the Sheriff's Department responded to the ACLU-NC's request. A true
3 and correct copy of this response along with the disclosed documents is attached as Exhibit B.

4 30. In response to the ACLU-NC's first request, *see supra* ¶ 25.a, the Sheriff's Department
5 admitted that responsive records exist but refused to produce them. Exhibit B, 1.

6 31. In response to the ACLU-NC's second request, *see supra* ¶ 25.b, the Sheriff's
7 Department produced four redacted documents and admitted that additional responsive documents exist
8 that it would not produce. Exhibit B, 1–7.

9 32. In withholding many and redacting other documents, the Sheriff's Department relied on
10 several CPRA exemptions (Cal. Gov. Code §§ 6254(k), 6255.23, 6255(a)), the Freedom of Information
11 Act (5 U.S.C. §§ 553(b)(4), (b)(6), (b)(7)(C), (b)(7)(E)), the Homeland Security Act (6 U.S.C. §§
12 482(e), (f)(1)); the Arms Export Control Act (22 U.S.C. § 2778), the International Traffic in Arms
13 Regulations (22 C.F.R. §§ 120-130), Executive Order 13637, and the United States Munitions List (22
14 C.F.R. § 121.1, Category XI, subpart (b)). Exhibit B, 1–2.

15 33. The Sheriff's Department's response did not discuss the ACLU-NC's third request, *see*
16 *supra* ¶ 28.c, and the Sheriff's Department did not produce documents in response to this request.
17 Exhibit B.

18 34. On June 20, 2014, the ACLU-NC replied to the Sheriff's Department's June 5 response,
19 explaining the ACLU-NC's position that the Sheriff's Department's response to the requests was
20 improper. A true and correct copy of this letter is attached as Exhibit C.

21 35. On July 21, 2014, the Sheriff's Department responded to the ACLU-NC's June 20th letter
22 and provided four additional redacted documents. The letter continued to cite all exemptions the
23 Sheriff's Department cited in its June 5th, 2014 letter, and also amended a previously cited exemption,
24 substituting Cal. Gov. Code § 6254.19 for § 6254.23. A true and correct copy of this response along
25 with the additional disclosed documents is attached as Exhibit D.

26 36. The Sheriff's Department has not provided the ACLU-NC any additional responsive
27 documents since July 21, 2014.

FIRST CAUSE OF ACTION

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

37. The ACLU-NC incorporates by reference the allegations of paragraphs 1 through 36 above as though fully set forth herein.

38. Under the CPRA, the ACLU-NC has a right to inspect, and the Sheriff's Department has a duty to provide promptly and without delay, public records subject to disclosure.

39. The ACLU-NC submitted a valid request for records under the CPRA on May 29, 2014. As it stated in this request, the ACLU-NC was at all times ready to pay any associated fees.

40. The Sheriff's Department admits that it possesses records responsive to the ACLU-NC's requests beyond the eight redacted documents that it has disclosed to date. On information and belief, the Sheriff's Department possesses unredacted versions of the eight documents that it has produced with redactions.

41. The Sheriff's Department cannot demonstrate that any record subject to the ACLU-NC's requests, or any portion of these records, is exempt under express provisions of the CPRA or any other authority, or that on the facts of this particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosing the record.

PRAYER FOR RELIEF

WHEREFORE, the ACLU-NC prays as follows:

1. That the Court issue a peremptory writ of mandate directing the Sheriff's Department to provide the ACLU-NC with all requested records;
2. That the ACLU-NC be awarded attorneys' fees and costs; and
3. For such and further relief as the Court deems proper and just.

1 Dated: March 10, 2015

Respectfully submitted,

2
3 By: 

4 AMERICAN CIVIL LIBERTIES
5 UNION FOUNDATION OF
6 NORTHERN CALIFORNIA
7 Michael Risher, SBN 191627

8 mrisher@aclunc.com

9 Linda Lye, SBN 215584

10 llye@aclunc.com

11 Nicole Ozer, SBN 228643

12 nozer@aclunc.com

13 Matthew Cagle, SBN 286101

14 mcagle@aclunc.com

15 39 Drumm Street

16 San Francisco, CA 94111

17 Telephone: (415) 621-2493

18 Facsimile: (415) 255-1478

19 AMERICAN CIVIL LIBERTIES UNION
20 FOUNDATION OF SOUTHERN CALIFORNIA

21 Peter Bibring, SBN 223981

22 pbibring@aclusocal.org

23 Peter Bibring, SBN 26405

24 jprice@aclusocal.org

25 1313 West Eighth Street

26 Los Angeles, California 90017

27 Telephone: (213) 977-9500

28 Facsimile: (213) 977-5297

LATHAM & WATKINS LLP

Sadik Huseny, SBN 224659

sadik.huseny@lw.com

Hanno Kaiser, SBN 262249

hanno.kaiser@lw.com

Kyle Virgien, SBN 278747

kyle.virgien@lw.com

505 Montgomery Street, Suite 2000

San Francisco, CA, 94111

Telephone: (415) 391-0600

Facsimile: (415) 395-8095

Lujing Liu, SBN 300769

gavin.liu@lw.com

140 Scott Drive

Menlo Park, CA, 94025

Telephone: (650) 463-4600

Facsimile: (650) 395-2600

Attorneys for Petitioner

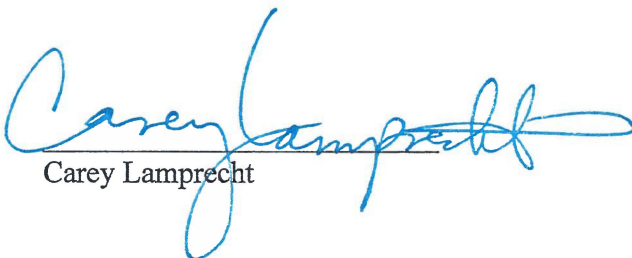
VERIFICATION

I, Carey Lamprecht, am a litigation assistant the American Civil Liberties Union of Northern California. I have read the foregoing Verified Petition for Peremptory Writ of Mandate Ordering the Sacramento County Sheriff's Department to Comply with its Duties under the California Public Records Act, and the facts alleged in paragraph 25 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


Carey Lamprecht

VERIFICATION

I, Christine Sun, am the Associate Director of the American Civil Liberties Union of Northern California. I have read the foregoing Verified Petition for Peremptory Writ of Mandate Ordering the Sacramento County Sheriff's 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: 3/10/2015



EXHIBIT A



May 29, 2014

VIA EMAIL AND U.S. MAIL

Deputy Teresa Deterding #48
Sacramento County Sheriff's Department
Professional Standards Bureau/Legal Affairs
P.O. Box 988
Sacramento, CA 95812-0988
tdeterding@sacsheriff.com

re: Public Records Act request regarding cellular telephone surveillance technology

Dear Deputy Deterding,

I am writing on behalf of the American Civil Liberties Union of Northern California to request records of the Sacramento County Sheriff's Department relating to cellular telephone surveillance technology. This request is made pursuant to the California Public Records Act (Government Code §§ 6250, et. seq.) and Article I § 3(b) of the California Constitution for the following records¹:

- 1) Contracts or agreements signed with Harris Corporation (headquartered in Melbourne, Florida) since 2000 for the purchase of equipment, software, maintenance or training for law enforcement agencies as well as invoices, purchase orders, and any supporting documentation collected in the procurement process.
- 2) Grant applications, funding requests, and correspondence with funding entities, related to the above transactions since 2000, including but not limited to grant applications and related documents submitted to and received from the CA Emergency Management Agency since 2000, the Sacramento County Office of Emergency Services, the California Office of Emergency Services, or the Urban Areas Shield Initiative (UASI).

¹"Records" covered by this request include but are not limited to: internal and external correspondence (including email), memoranda, drafts, notes, outlines, policies, procedures, regulations, directives, instructions, orders, bulletins, pamphlets or brochures, scripts, handouts, analyses, evaluations, reports, summaries, writings, logs and other written records or records by any other means, including but not limited to records kept on computers, computer source and object code, electronic communications, computer disks, CD-ROM, video tapes or digital video disks.

- 3) Documents referencing or relating to IMSI catchers (International Mobile Subscriber Identity catchers) or related terms as set forth below. This request includes but is not limited to policies, procedures, practices, legal opinions, memoranda, briefs, correspondence and training materials, template applications, template affidavits in support of applications, template proposed court orders or warrants.

The term "IMSI catcher" means technology that simulates a cell tower and triggers an automatic response from nearby wireless devices. It is typically used to identify the unique numeric identifier associated with a cellular phone, or to identify the location of a wireless device. Some IMSI catchers are also capable of recording incoming and outgoing telephone numbers, or capturing the content of telephone calls or data transmissions. An IMSI catcher is also referred to as a cell site simulator or digital analyzer. The device has the following Harris Corporation product names: StingRay, TriggerFish, AmberJack, HailStorm, Kingfish, and Loggerhead.

The California Public Records Act requires within ten (10) days either production of the requested documents and/or notice of the specific reasons why the materials requested (or portions thereof) are exempt from disclosure. Further, we request a summary of the information contained within any records you claim to be exempt under Government Code § 6254(f), as required by Government Code § 6254(f)(2).

Please send copies of the requested records to me at the address shown above, or email them to me at llye@aclunc.org. We request that you waive any fees that would be normally applicable to a Public Records Act request. In addition, if you have the records in electronic form you can simply email them to me without incurring any copying costs. *See* Gov't. Code § 6253.9. However, should you be unable to do so, the ACLU will reimburse your agency for the direct costs of copying these records plus postage. *See* Gov't. Code § 6253(b). If you have any questions regarding this request, please feel free to contact me at (415) 621-2493. Thank you in advance for your timely cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "L. Lye", with a stylized flourish at the end.

Linda Lye
Senior Staff Attorney

EXHIBIT B

SACRAMENTO COUNTY



SHERIFF'S DEPARTMENT

SCOTT R. JONES
Sheriff

June 5, 2014

American Civil Liberties Union
Attn: Linda Lye
39 Drumm Street
San Francisco, CA 94111

RE: PUBLIC RECORDS ACT REQUEST

Dear Ms. Lye,

Thank you for your Public Records Act Request dated May 29, 2014. I have been designated by the Sheriff, Scott R. Jones, to respond to your request. Our response to your requests are as follows:

Request 1: Contracts or agreements signed with Harris Corporation (headquartered in Melbourne, Florida) since 2000 for the purchase of equipment, software, maintenance or training for law enforcement agencies as well as invoices, purchase orders, and any supporting documentation collected in the procurement process.

Response: Documents exist that are responsive to this request; however, they are exempt from disclosure under:

- Government Code Sections 6254 (k), 6254.23, 6255 (a);
- Freedom of Information Act at 5 U.S.C. 552(b)(4), (b)(6), (b)(7)(C), and (b)(7)(E);
- Section 892 of the Homeland Security Act at 6 U.S.C 482 (e) and (f)(1);
- International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130, Arms Export Control Act, 22 U.S.C. 2778, Executive Order 13637 and/or the United States Munitions List, Category XI- Military Electronics, subpart (b).

Request 2: Grant applications, funding requests, and correspondence with funding entities, related to the above transactions since 2000, including but not limited to grant applications and related documents submitted to and received from the CA Emergency Management Agency since 2000, the Sacramento County Office of Emergency Services, or the Urban Areas Shield Initiative (UASI).

Response: We are disclosing five (5) documents in response to this request (see attached). Other documents exist that are responsive to this request; however, they are exempt from disclosure under:

- Government Code Sections 6254 (k), 6254.23, 6255 (a);
- Freedom of Information Act at 5 U.S.C. 552(b)(4), (b)(6), (b)(7)(C), and (b)(7)(E);
- Section 892 of the Homeland Security Act at 6 U.S.C 482 (e) and (f)(1);

ACLU CPRA
Linda Lye
June 5, 2014
Page 2

- International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130, Arms Export Control Act, 22 U.S.C. 2778, Executive Order 13637 and/or the United States Munitions List, Category XI- Military Electronics, subpart (b).

If you need any further assistance, please contact me at (916) 874-5098 or by email at tdeterding@sacsheriff.com.

Very truly yours,

SCOTT R. JONES, SHERIFF



Deputy Tess Deterding #48
Sacramento County Sheriff's Department
Legal Affairs Bureau

Sacramento Office of Emergency Services
Stephen Cantelme, Interim Chief of Emergency
Services



County Executive
Bradley J. Hudson

County of Sacramento

June 6, 2013

Captain Phil Brelje
Sacramento County Sheriff's Department
711 G Street
Sacramento, CA 95814

Dear Captain Brelje:

SUBJECT: NOTIFICATION OF APPROVAL AUTHORITY APPLICATION CONDITIONAL DECISION
FY 2013 STATE HOMELAND SECURITY GRANT PROGRAM
Federal Grantor Agency: US DEPARTMENT OF HOMELAND SECURITY CFDA # 97.067

Thank you for your application for the FY 2013 State Homeland Security Grant Program (SHSGP). As you are aware in March our office solicited proposals from our Operational Area for the FY 2013 SHSGP. As expected, our response was significant and the over \$4 million in funds requested exceeded our expected allocation.

The Approval Authority met on May 29, 2013 and made their decision after careful review of the applications submitted. The Approval Authority selected projects that best met the priorities established by FEMA and CalEMA for grant funding to move forward in the County's application process.

Due to limited funding this year, many worthy projects were not approved as the requests exceeded the anticipated allocation.

<i>Application #</i>	<i>Application Name</i>	<i>Amount Requested</i>	<i>Decision</i>
2013-026	[REDACTED]	\$300,275	Preliminarily Recommendation \$300,275

The Approval Authority has reviewed your proposal and is interested in funding your project; however, due to the limited funding the Approval Authority has preliminarily approved your project. As with all of the proposals this is a tentative finding, actual funding allocations will not be made until our Operational Area funding has been awarded. Projects and/or amount may change if the award is less than anticipated. You will be notified with a follow-up letter once a final decision has been reached. **This is not an award letter.**

Sincerely,

A handwritten signature in cursive script that reads "Stephen Cantelme".

Stephen Cantelme
Interim Chief of Emergency Services

cc: Sgt. Dan Morrissey
Lona Deaton

EDMUND G. BROWN JR.
GOVERNOR

MARK S. GHILARDUCCI
DIRECTOR



Cal OES
GOVERNOR'S OFFICE
OF EMERGENCY SERVICES



August 29, 2013

Mr. Stephen Cantelme
Interim Chief of Emergency Services
Sacramento County
3720 Dudley Boulevard
McClellan, CA 95652

SUBJECT: **APPROVAL OF** [REDACTED]
FY 2013 STATE HOMELAND SECURITY GRANT PROGRAM (SHSGP)
Grant #2013-00110, Cal OES ID#067-00000

Dear Mr. Cantelme:

The California Governor's Office of Emergency Services (Cal OES) has received, reviewed, and approved Sacramento County's request for the acquisition of [REDACTED]. The decision was based on the information you provided, detailing how this product will give Sacramento County the ability to prevent, plan for, respond to, and recover from a terrorism event.

If you have any questions about this letter, please contact your Program Representative, Rachel Magaña, at 916-845-8451 or by email at Rachel.Magana@CalEMA.Ca.Gov.

Thank you for your work in protecting California. We look forward to your continued collaboration towards our homeland security strategy and appreciate your cooperation and support.

Sincerely,

A handwritten signature in black ink, appearing to read 'Darren Tsang'.

Darren Tsang, Unit Supervisor
Homeland Security and Prop 1B

3650 SCHRIEVER AVENUE, MATHER, CA 95655
(916) 845-8506 TELEPHONE (916) 845 8511 FAX

Sacramento Office of Emergency Services
Stephen Cantelme, Interim Chief of Emergency
Services



County Executive
Bradley J. Hudson

County of Sacramento

October 18, 2013

Sheriff Scott R. Jones
Sacramento Sheriff's Department
711 G Street
Sacramento, CA 95814

SUBJECT: NOTIFICATION OF SUB-RECIPIENT AWARD
FY 2013 HOMELAND SECURITY GRANT PROGRAM
Federal Grantor Agency: US DEPARTMENT OF HOMELAND SECURITY CFDA # 97.067
Pass-Through Agency: CALIFORNIA EMERGENCY MANAGEMENT AGENCY GRANT # 2013-00110
Performance Period: August 29, 2013 to January 31, 2015

Dear Sheriff Jones:

The Sacramento Sheriff's Department has been awarded a FY 2013 Homeland Security Grant Program project in the amount of \$650,275. This project's funding is authorized for the purchase of Law Enforcement Surveillance Equipment. Funding is also authorized in support of the Sacramento CCIC/RTAC Fusion Center.

New Funding	
Project G: Law Enforcement ██████████	\$300,275
Project I: Sacramento CCIC/RTAC Fusion Center	\$350,000
Total Funding	\$650,275.00

By accepting this award, you acknowledge that this is a federal monetary award and your agency or department is a Sub-Recipient to Sacramento County OES, as Sub-Grantee to the State of California, who is the Grantee.

Sub-Recipients are responsible to comply with all federal statutes, regulations, policies, guidelines and requirements, including but not limited to:

- 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements To State and Local Governments
- All provisions of 2 CFR, including: Part 225 Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87); Part 230 Cost Principles for Non-Profit Organizations (OMB Circular A-122); Part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110); Part 220 Cost Principles for Educational Institutions (OMB Circular A-21)
- OMB Circulars A102 and A-133, E.O. 12372 and the current Administrative Requirements, Cost Principles, and Audit Requirements
- Applicable Federal, State and Local Laws including but not limited to those listed in grant assurances.
- Federal and State Supplemental Program Guidance.
- All sections of FY 2013 CalEMA Grant Assurances

Sub-Recipients are responsible to meet the following conditions:

1. Your agency accepts complete financial liability and will provide:
 - a. Signed Federal Grant Assurances, from the 2013 grant guidance, by an agency authorized signatory.
 - b. Check every contractor who will be paid \$25,000 or more against the federal debarment list before contracting with that entity. EO's 12549 and 12689
 - c. Repay any funds due to an over-payment for a non-eligible or unapproved activity, or as required by a negative audit finding.
2. All Sole Source procurements, projects requiring EHP reviews, Aviation/Watercraft request and EOC projects must receive prior approval from OES.
3. All project modifications require notification to OES and prior approval.
4. Reimbursement claims, status reports and updated workbooks are due every quarter. For quarters with no expense, a project progress report will be due.
5. All claims for reimbursement must be supported by source documentation, such as cancelled checks, paid bills, payroll records, signed time and attendance sheets, purchase orders, invoices, delivery receipts, contracts, etc. All documentation must be maintained and submitted upon request for monitoring or audit by our office, the state or federal government.
6. All claims must submit a canceled check or general ledger report to show that vendors were paid prior to reimbursement.
7. Ensure all original invoices are clearly labeled with the grant year and project(s) before they are copied and sent for payment to ensure subsequent copies are auditable and not double-billed to another grant/budget.
8. All equipment is to be labeled and tracked according to grant guidelines. Equipment will be tracked every two years and a tracking report will need to be updated by your agency. Equipment that is lost, stolen or destroyed needs to be reported to our office immediately and may need to be replaced by your agency at agency cost.
9. A project timeline will be set in collaboration with your agency and our Grant Administrator. This timeline must be followed and changes must be pre-approved. The Approval Authority may disencumber funds from any project that does not reasonably follow the agreed timeline.
10. Maintain complete and accurate records of all grant related activities for three years from the date of receipt of a closeout letter from the County. Letters will not be sent until after the state has closed the grant program.
11. Cost savings must be returned for reallocation by the Approval Authority and may not be expended on additional or unapproved items.

Sub-Recipients may not begin their projects until this notice and grant assurances have been signed, dated and returned to Sacramento OES. In the absence of an existing resolution identifying approved signatories, the department or agency head must sign.

We appreciate your interest in better preparing our community and we welcome your participation in our regional safety net. We are here to assist you so please feel free to contact Aleta Krull at 916-874-2280 with any questions.

Sincerely,



Chief Stephen Cantelme

cc: Captain Phil Brelje
Sgt. Dan Morrissey
Melody LaFond
Herb Brown
Lona Deaton

I acknowledge receipt of this Notification of Sub-Recipient Application Approval and requirements of participation in this federal grant program.

Signature

Name/Title

Date

Sacramento Office of Emergency Services
Stephen Cantelme, Interim Chief of Emergency
Services



County Executive
Bradley J. Hudson

County of Sacramento

October 18, 2013

Sheriff Scott R. Jones
Sacramento Sheriff's Department
711 G Street
Sacramento, CA 95814

SUBJECT: APPROVAL OF SOLE SOURCE PROCUREMENT
FY 2013 HOMELAND SECURITY GRANT PROGRAM
Federal Grantor Agency: US DEPARTMENT OF HOMELAND SECURITY CFDA # 97.067
Pass-Through Agency: CALIFORNIA GOVERNOR'S OFFICE OF EMERGENCY SERVICES # 2013-00110
Performance Period: August 29, 2013 to January 31, 2015

Dear Sheriff Jones:

The Sacramento Sheriff's Department: Law Enforcement Surveillance Equipment Project has been approved for [REDACTED] procurement with [REDACTED], based on the information submitted and reviewed by the California Governor's Office of Emergency Services. This decision was based on the information you provided, detailing how this product will give Sacramento County the ability to prevent, plan for, respond to, and recover from a terrorism event.

New Funding	
Project G: Law Enforcement [REDACTED]	\$300,275
Total Funding	\$300,275.00

Sincerely,

A handwritten signature in cursive script that reads "Stephen Cantelme".

Chief Stephen Cantelme

cc: Captain Phil Brelje
Sgt. Dan Morrissey

EXHIBIT C



June 20, 2014

VIA EMAIL AND U.S. MAIL

Deputy Teresa Deterding #48
Sacramento County Sheriff's Department
Professional Standards Bureau/Legal Affairs
P.O. Box 988
Sacramento, CA 95812-0988
tdeterding@sacsheriff.com

Re: California Public Records Act Request

Dear Deputy Deterding:

The American Civil Liberties Union of Northern California ("ACLU-NC") writes regarding the Sacramento County Sheriff's Department's ("your") June 12, 2014 letter responding to its California Public Records Act ("CPRA") request of May 29, 2014. Your response is insufficient under the CPRA; furthermore, the cited exemptions you invoke do not justify withholding the requested records. We therefore request that you release the requested records and provide a complete response by July 7, 2014.

I. FACTUAL BACKGROUND

On May 29, 2014, the ACLU-NC submitted a CPRA request to the Sacramento Sheriff's Department for the following records:

- *Contracts or agreements signed with Harris Corporation since 2000 for the purchase of equipment, software, maintenance or training for law enforcement agencies as well as invoices, purchase orders, and any supporting documentation collected in the procurement process.*
- *Related grant applications, funding requests and correspondence, including but not limited to, those submitted to the CA Emergency Management Agency, to the Sacramento County Office of Emergency Services, to the California Office of Emergency Services, or under the Urban Areas Shield Initiative (UASI).*
- *Documents referencing or relating to IMSI Catchers (International Mobile Subscriber Identity), including but not limited to, policies, procedures, practices, legal opinions, memoranda, briefs, correspondence and training materials,*

template applications, template affidavits in support of applications, template proposed court orders or warrants.

In response, on June 12, 2014, you provided 5 pages of material and withheld all other responsive records. In particular, your office declined to produce the requested documents, claiming that they are exempt from disclosure under Government Code Sections 6254 (k), 6254.23, 6255 (a), Freedom of Information Act at 5 U.S.C. 552(b)(4), (b)(6), (b)(7)(C), and (b)(7)(E), Section 892 of the Homeland Security Act at 6 U.S.C 482 (e) and (f)(1), International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130, Arms Export Control Act, 22 U.S.C. 2778, Executive Order 13637 and/or the United States Munitions List, Category XI-Military Electronics, subpart (b).

We address the inapplicability of each cited exemption, as well as the insufficiency of your response below.

II. LEGAL ARGUMENT

A. Because No Exemptions Apply, You *Must* Disclose the Requested Records.

Let us be clear about the fundamental legal framework governing the ACLU-NC's request and your response to it: The CPRA embodies strong public policy in favor of disclosure of public records, such that "[public] records *must* be disclosed unless they come within one or more of the categories of documents exempt from compelled disclosure." *Rogers v. Superior Court*, 19 Cal. App. 4th 469, 476 (2d Dist. 1993) (emphasis added). Furthermore, any exemptions must be "construed narrowly." *San Gabriel Tribune v. Superior Court*, 143 Cal. App. 3d 762, 773 (2d Dist. 1983). In other words, there is nothing voluntary, discretionary, or optional about your compliance with the ACLU-NC's request. You must disclose the requested records unless a narrowly construed exemption applies. Here, none of the cited exemptions applies to the requested material. We address the inapplicability of each cited exemption in turn.

1. CAL. GOV'T CODE § 6254.23

Your refusal to disclose records under CAL. GOV'T CODE § 6254.23 is puzzling. Under § 6254.23 only records that are "risk assessment[s]" or "railroad infrastructure protection program[s]" filed with the Public Utilities Commission, the Director of Homeland Security, and the Office of Emergency Services. . . ." are exempt. CAL. GOV'T CODE § 6254.23. Rail operators must submit "risk assessment[s]" and "railroad infrastructure protection program[s]" that describe rail facilities and various training and safety programs associated with those facilities. *See* CAL. PUB. UTIL. CODE § 7665.2-4.

Stating the obvious, Harris Corporation and the Sacramento County Sheriff's Department are *not* rail operators. And even if they were, contracts or agreements signed with Harris Corporation and related grant applications, funding requests and correspondence, as well as documents referencing or relating to IMSI Catchers, have nothing to do with railway operations. CAL. GOV'T CODE § 6254.23 plainly does not apply and we request that you release any records withheld under this exemption.

2. CAL. GOV'T CODE § 6254(k)

CAL GOV'T CODE § 6254(k) is not an independent exemption, but “merely incorporates other prohibitions established by [federal and state] law.” *CBS Broadcasting Inc. v. Superior Court*, 91 Cal. App. 4th 892, 907 (2d Dist. 2001). Under CAL. GOV'T CODE § 6254(k), federal or state non-disclosure requirements can apply under the CPRA, *only if* there is an independent basis for prohibiting disclosure of the requested information. *See San Diego County Employees Retirement Assn. v. Superior Court*, 196 Cal. App. 4th 1228 (4th Dist. 2011).

Here, none of the cited federal statutes provide an independent basis for exempting the requested records from disclosure. Specifically:

- a. **Freedom of Information Act**, 5 U.S.C. § 552(b)(4), (b)(6), (b)(7)(C), and (b)(7)(E), does not apply

State and local agencies are not subject to the Freedom of Information Act (“FOIA”) disclosure requirements. *See generally* 5 U.S.C. § 552; *see also Pennyfeather v Tessler*, 431 F.3d 54 (2d Cir. 2005) (finding that a public employee did not have the right to sue city department for disclosure of personal identifying information under FOIA because FOIA only applies to federal government agencies). In fact, FOIA’s scope is limited to “agenc[ies],” defined as “any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.” *See* 5 U.S.C. § 552(f)(1). State and local agencies, like the Sacramento County Sheriff’s Department, fall outside the ambit of FOIA; thus, FOIA exemptions cannot be used to prohibit disclosure under CAL GOV'T CODE § 6254(k).

- b. **Homeland Security Act of 2002**, 6 U.S.C. § 482(e), (f)(1), does not apply

The Homeland Security Act of 2002 prohibits state and local agencies from disclosing “homeland security information” *received* from a federal agency. *See County of Santa Clara v. Superior Court*, 170 Cal. App. 4th 1301, 1323-24 (6th Dist. 2009) (“[T]he federal statute’s prohibition on disclosure of protected confidential infrastructure information applies only when it has been ‘provided to a State or local government or government agency’ . . .”). In *County of Santa Clara*, the court found that the Homeland Security Act of 2002 only prohibited state and local governments from disclosing “protected critical infrastructure information” that it *received* from the federal government, but not such information that it *submitted* to the federal government. *See id.* at 1318-19.

Contracts or agreements signed with Harris Corporation and related grant applications, funding requests and correspondence, as well as documents referencing or relating to IMSI Catchers, are not “homeland security information.” *Cf. Strunk v. United States Dep’t of State*, 905 F. Supp. 2d 142, 146 (D.D.C. 2012) (computer transaction codes for a law enforcement and anti-terrorism database). Furthermore, even if the requested records could conceivably be classified as “homeland security information,” the Homeland Security Act exemption only applies to records *received* from a federal agency, and does not apply to any records *submitted* to

a federal agency or involving non-federal entities. *County of Santa Clara*, 170 Cal. App. 4th at 1318-19. Thus, you cannot rely on the Homeland Security Act to refuse disclosure of (a) materials submitted to a federal agency, or anyone else for that matter; (b) materials received from a non-federal agency actor, such as Harris Corporation, which is private company; or (c) materials generated or maintained by your office.

c. **Arms Export Control Act, 22 U.S.C. § 2778, does not apply**

The Arms Export Control Act (“AECA”), which regulates the “exports and imports of defense articles and services,” has no application to the records request for information related to IMSI Catchers. 22 U.S.C. § 2778. The Directorate of Defense Trade Controls, which implements the AECA pursuant to authority delegated by Executive Order 13,637, made a commodity jurisdiction determination that IMSI Catchers are *not* on the U.S. Munitions List, and therefore, not subject to regulation under the AECA and International Traffic in Arms Regulations (“ITAR”).¹ Furthermore, and quite obviously, even if IMSI Catchers were subject to AECA regulation, the disclosure of related records to an American journalist is not an “export.” See ITAR, 22 C.F.R. § 120.14 (defining “export” to require a disclosure or transmission of information to a “foreign person”). There is no basis for withholding records under the AECA.

Accordingly, your office cannot justify withholding the requested records pursuant to CAL GOV’T CODE § 6254(k), as none of the cited federal non-disclosure provisions apply. We therefore ask that you produce any records withheld under this exemption.

3. **CAL. GOV’T CODE § 6255(a)**

The Sheriff’s Department may not withhold documents under the public interest exemption because it has not identified any public interest in nondisclosure, let alone one that “clearly outweighs” the public interest in disclosure. See *City of San Jose v. Superior Court*, 74 Cal. App. 4th 1008, 1011 (6th Dist. 1999). Meanwhile, the public has a strong interest in the disclosure of documents demonstrating whether public funds are being spent on the public purposes for which they were intended. See, e.g., *American Civil Liberties Union of Northern California v. Superior Court*, 202 Cal. App. 4th 55, 67-69 (1st Dist. 2011) (public had strong interest in disclosure of identities of lethal objection drug suppliers to “assist in the detection of favoritism and fraud with respect to the use of state funds[.]”). Likewise, the public has a strong interest in contracts or agreements signed with Harris Corporation and related grant applications, funding requests and correspondence, which will shed light on whether the Sheriff’s Department has purchased IMSI Catchers (and related items) with public funds and whether those purchases are being used for the public purposes for which they were intended.

¹ On April 22, 2013, the Directorate of Defense Trade Controls found that a “Portable SIM Box Investigation Kit with IMSI/IMEI Catcher and Direction Finding Antenna” was not on the U.S. Munitions List, but was a “dual-use” item with both commercial and military applications subject to Export Administration Regulations with the Export Control Classification Number (ECCN5A001.e). See Commodity Jurisdiction Determinations, https://www.pmdtcc.state.gov/commodity_jurisdiction/determinationAll.html. Notably, ECCN5A001.f.2 explicitly describes IMSI devices. See ECCN5A001.f.2 (“Interception equipment not specified in 5A001.f.1, designed for the extraction of client device or subscriber identifiers (e.g., IMSI, TIMSI or IMEI), signaling, or other metadata transmitted over the air interface.”)

To be clear: The burden of showing a trumping interest in non-disclosure is on you. *See* Cal. Gov't Code §6255(a).² Without making this showing, you cannot withhold records based on § 6255(a). We request that you release records withheld under this exemption.

B. If You Continue to Withhold Records, the Non-Exempt Portions of Reasonably Segregable Records Must Be Produced.

Your reliance on *obviously* inapplicable exemptions to an American journalist's bona fide public records request is troubling. It is even more troubling that you also fail to comply with the law's requirements to produce the non-exempt portions of the records that you claim contain exempted information. Pursuant to CAL. GOV'T CODE § 6253(a), "[a]ny reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law." CAL. GOV'T CODE § 6253(a); *see also American Civil Liberties Union Foundation v. Deukmejian*, 32 Cal. 3d 440, 458 (1982). Furthermore, "the fact that a public record may contain some confidential information does not justify withholding the entire document." *State Bd. of Equalization v. Superior Court*, 10 Cal. App. 4th 1177, 1187 (3d Dist. 1992); *see also County of Santa Clara*, 170 Cal. App. 4th at 1321 (where non-exempt portions of homeland security information were produced); *Skinner v. United States Dep't of Justice et al.*, 893 F. Supp. 2d 109 (D.D.C. 2012) (same).

Again, this is not a matter of discretion on your part. You must produce all requested non-exempt records or non-exempt portions thereof.

III. CONCLUSION

For the foregoing reasons, we request that you release the requested records and provide a complete response by July 7, 2014.

Sincerely,



Linda Lye
Senior Staff Attorney

² Under the CPRA, "the burden is on the public agency to show that the records should not be disclosed." *San Gabriel Tribune*, 143 Cal. App. 3d at 773. In particular, the CPRA requires an agency to "justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter 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." *See* Cal. Gov't Code §6255(a). The California Supreme Court provided guidance on the justification required, and certified as sufficient, a response that explained: (1) why it withheld particular categories of records under particular exemptions, and (2) that certain categories of records did not exist. *See Haynie v. Superior Court*, 26 Cal. 4th 1061, 1066-74 (2001) (finding that "[w]hen an agency, in compliance with section 6255, articulates one or more of these exemptions, it will necessarily reveal the general nature of the documents withheld."). Accordingly, your letter response – consisting of a list of inapplicable statutes that purportedly exempt you from disclosing responsive records – did not comply with CPRA requirements.

EXHIBIT D

SACRAMENTO COUNTY



SHERIFF'S DEPARTMENT

SCOTT R. JONES
Sheriff

July 21, 2014

American Civil Liberties Union
Attn: Linda Lye
39 Drumm Street
San Francisco, CA 94111

RE: PUBLIC RECORDS ACT REQUEST

Dear Ms. Lye,

The Department has received and reviewed your letter dated June 20, 2014 in response to the Department's June 12, 2014 letter to you. Without altering our previously stated exemptions, the Department is providing additional redacted documentation (see attached).

Additionally, I misquoted a California Government Code Section that was provided in the Department's June 12, 2014 letter by using "Government Code Section 6254.23" when, in fact, the section should have read "Government Code Section 6254.19."

If you need any further assistance, please contact me at (916) 874-5098 or by email at tdeterding@sacsheriff.com.

Very truly yours,

SCOTT R. JONES, SHERIFF

A handwritten signature in black ink, appearing to read "Tess Deterding", written over a horizontal line.

Deputy Tess Deterding #48
Sacramento County Sheriff's Department
Legal Affairs Bureau

Jan 04 06 08:31a

SACCTYDGS

876 6395

916 876 6396

P.3

F.O.B. Dest., Freight Prepaid
Payment Terms: Payable Within 30 Days

Item	Order qty.	Unit	Price	Unit of	Extended
Mat Num		Description	/ Unit	Measure	Value

Please deliver to:
SURREY

711 G Street
Sacramento CA 95814
Attn: [REDACTED]

00010 1 Each [REDACTED] Equipmen

EQUIPMENT

FROM GSA SCHEDULE GS-35F-0203J -

[REDACTED]	CONFIGURED	\$82962.00
[REDACTED]	ANTENNA	\$20856.00
[REDACTED]		\$32443.00
PCC		\$ 5098.00
W/O LT PCC	W/O LAPTOP	\$ 3476.00

ITEMS

[REDACTED]	MAINTENANCE AGREEMENT FOR	\$ 3128.00
[REDACTED]	MAINT FOR	\$ 4856.00
[REDACTED]	MAINT FOR	\$12444.00
[REDACTED]	S/W FOR	
[REDACTED]	S/W ONLY	\$ 3750.00
[REDACTED]	S/W FOR	
[REDACTED]	SOFTWARE	
PA-KIT-10W	POWER AMP KIT - 10 WATT (2 EA)	\$ 9000.00
TRAIN-MLB	TRAINING-MELBOURNE (TUITION ONLY)	\$ 4000.00
TRAIN-MLB	TRAINING-MELBOURNE (TUITION ONLY)	\$ 4000.00
TRAIN-MLB	TRAINING-MELBOURNE (TUITION ONLY)	\$ 4000.00

Gross Price	224,773.00 /1 EA	224,773.00
Tax		17,419.91
Net incl. tax	242,192.91 /1 EA	242,192.91

*** Text changed ***

Jan 04 06 09:31a

SHCCN1Y069

8/6 6396

816 8/6 6396

p. 4

Item Mat Num	Order qty.	Unit Description	Price / Unit	Unit of Measure	Extended Value
Total item value excluding tax					224,773.00
Total item value including tax and discounts					242,192.91



Please Remit Payments:
Harris Corporation, GOSD
Citibank Delaware
P.O. Box 7247 - LB 8759
Philadelphia, PA 19170-6759 USA
Account No: [REDACTED]
ABA Rtg No: [REDACTED]
TIN: [REDACTED]

INVOICE	INV6778
DATE	4/13/2008
PAGE	1

Invoice

Bill To:

Sacramento County Sheriff's Dept
Sheriff, Attn: [REDACTED]
711 G. Street
Sacramento, CA 95814 95814

Ship To:

Sheriff, Attn: [REDACTED]
711 G. Street
Sacramento CA 95814

PA60944445		8080-001	WPG1	BEST WAY	Net 30	4/1/2008	ORD6778
1	1	[REDACTED]	[REDACTED]	Serial Number		\$82,962.00	\$82,962.00
1	1	[REDACTED]	[REDACTED]	Antenna Serial Number		\$20,858.00	\$20,858.00
1	1	[REDACTED]	[REDACTED]	Serial Number		\$32,443.00	\$32,443.00
1	1	[REDACTED]	[REDACTED]	Serial Number		\$5,098.00	\$5,098.00
1	1	[REDACTED]	W/O	Serial Number w/o Laptop		\$3,478.00	\$3,478.00
1	1	[REDACTED]	[REDACTED]	Maintenance Agreement for		\$3,128.00	\$3,128.00
1	1	[REDACTED]	[REDACTED]	Main for		\$4,888.00	\$4,888.00
1	1	[REDACTED]	[REDACTED]	Maint		\$12,444.00	\$12,444.00
1	1	[REDACTED]	[REDACTED]	SW for			
1	1	[REDACTED]	[REDACTED]	Serial Number			
1	1	[REDACTED]	[REDACTED]	SW Only		\$3,750.00	\$3,750.00
1	1	[REDACTED]	[REDACTED]	Serial Number			
1	1	[REDACTED]	SW	SW for			



Please Remit Payments:
 Harris Corporation, GOSD
 Citibank Delaware
 P.O. Box 7247 - LB 6759
 Philadelphia, PA 19170-6759 USA
 Account No: [REDACTED]
 ABA Rtg No: [REDACTED]
 TIN: [REDACTED]

INVOICE	INV6778
DATE	4/13/2006
PAGE	2

Invoice

Bill To:

Sacramento County Sheriff's Dept
 Sheriff, Attn: [REDACTED]
 711 G. Street
 Sacramento, CA 95814 95814

Ship To:

Sheriff, Attn: [REDACTED]
 711 G. Street
 Sacramento CA 95814

HARRIS CORPORATION - WIRELESS PRODUCTS GROUP							
PA9004445	GC92-001	WPG1	550T WAY	Net 30	4/4/2006	ORD6778-00592	
1	1	[REDACTED]	[REDACTED] Software			[REDACTED]	[REDACTED]
2	2	PA-KIT-10W	Power Amp Kit - 10 Watt			\$4,500.00	\$9,000.00

HARRIS CORP - WIRELESS PRODUCTS GROUP
 P.O. BOX 9800, M/S R6-11A
 MELBOURNE, FL 32902-9800
 PH: 000-358-8297, FAX: 321-309-7437, wpg@harris.com

Subtotal	
Discount	
Net Total	
Tax	
Total	
PAID	
DATE PAID	
BY	

HARRIS

SHIPPER

1. SHIPMENT NO. SAO 4448	PARTIAL	FINAL	2. CONTRACT NUMBER OR P.O. NUMBER PA80844445	3. SUPPLEMENTS & CHANGE ORDERS	4. PROJECT NUMBER
5. SHIPPED VIA DHL - AM			6. PREPAID XX	7. COLLECT	8. DATE SHIPPED 12-Apr-08
9. SHIPMENT INITIATED BY JRUDEL R6/11A X7320/DORVUDER R6/11A X7481			10. SHIPMENT AUTHORIZED BY LSHEA R6/11A X7408		
11. PRIME CONTRACTOR HARRIS CORPORATION, GOSD P.O. BOX 37 MELBOURNE, FL 32902			12. PRIME CONTRACT ADMINISTERED BY		

13. SHIPPED FROM (IF DIFFERENT THAN 11) HARRIS CORPORATION, GOSD 407 NORTH JOHN RODES BLVD MELBOURNE, FL 32934	14. PAYMENT WILL BE MADE BY
---	-----------------------------

15. SHIPPED TO CHERIE 711 G STREET SACRAMENTO, CA 95814	16. MARKED FOR ATTN: PHONE #: FAX #:
--	---

17. ITEM NO.	18. STOCK/PART NUMBER	DESCRIPTION	19. UNIT PRICE	20. EXTENDED PRICE	21. QUANTITY SHIPPED	22. UNIT
001			\$82,882.00	\$82,882.00	1	EA
002		ANTENNA S/N	\$20,858.00	\$20,858.00	1	EA
003		S/N	\$32,448.00	\$32,448.00	1	EA
004			\$5,098.00	\$5,098.00	1	EA
005			\$3,478.00	\$3,478.00	1	EA
006		SW SW FOR			1	EA
007		PPOD SW SW ONLY			1	EA
008		SW SW FOR	\$20,000.00	\$20,000.00	1	EA
009		SOFTWARE S/N			1	EA
010		PA-KIT-10W POWER AMP KIT - 10 WATT S/N 183,184	\$4,500.00	\$9,000.00	2	EA

DIMS & TRACKING #'s:
 1 CTN - 34 x 28 x 21 @ 98# - 15724844 656
 1 CTN - 25 x 25 x 25 @ 84# - 15724863 453
 1 CTN - 25 x 25 x 25 @ 64# - 15724875 751

23. REASON FOR SHIPMENT CUSTOMER REQUEST			24. CUSTOMER DESCRIPTION " SEE ABOVE	25. PACKAGES BY TO DATE 12-Apr-08	
26. HARRIS SHIPPING INSPECTOR				27. TYPED BY rhl DATE 12-Apr-08	
28. APPROPRIATION NUMBER	29. SHIPMENT CODE	30. BILLING CODE		31. NUMBER OF PIECES 32. WEIGHT	
33. I CERTIFY THAT THE ITEMS LISTED HEREIN HAVE BEEN INSPECTED AND/OR ACCEPTED BY US OR UNDER BY SUPERVISORY AS NOTED.				34. SHIPPER NUMBER R06-2548	
SIGNATURE OF AUTHORIZED CUSTOMER/GOVERNMENT REPRESENTATIVE DATE					

582
INV 01/19

Jan 04 08 08:13

SHLLN1YDUS

076 0000

010 076 0000

P.C.



County of Sacramento
Change to Purchase order

Contract and Purchasing
Services Division
10545 Armstrong Avenue
Suite 2025
Nathur, CA 95653
(916) 876-8360

Your Vendor number with us
622923

HARRIS CORP
PO BOX 8300
MELBOURNE FL 32902-8300

[Redacted]

[Redacted]
correspondence, and invoices.
PO number/foto

[Redacted] / 12/29/2005

Issuing Buyer/Telephone
[Redacted]

Signature: [Redacted]

I hereby authorize the order of the below articles or services
and I certify that they are necessary for use in this
department.

Delivery date: Day 03/31/2006

Jan 03 06 04:32p

SRCCTYD8S

876 6395

916 876 6396

P.2



County of Sacramento
Purchase order

Contract and Purchasing
Services Division
10645 Armstrong Avenue
Suite 202A
Mather, CA 95655
(916) 876-6360

Your Vendor number with us
622923

HARRIS CORP
PO BOX 8300
MILBOURNE FL 32902-8300

Purchase Order # 17305 / 12/29/2005

This number must appear on all packing slips, packages, correspondence, and invoices.

PO-number/date
/ 12/29/2005

Issued By/Telephone

Signature

I hereby authorize the order of the below articles or services and I certify that they are necessary for use in this department.

Delivery date: Day 03/30/2006

F.O.B. Dest., Freight Prepaid

Payment Terms: Payable Within 30 Days

THIS ORDER IS FOR THE PROCUREMENT OF EQUIPMENT
PER QUOTE NO. DATED 12/21/2005.

SOME ITEMS IDENTIFIED ON THIS ORDER ARE COVERED BY GSA CONTRACT NUMBER
OTHER ITEMS ARE IDENTIFIED AS OPEN MARKET. THIS ORDER
IS SUBJECT TO THE TERMS AND CONDITIONS OF IF THERE ARE
ANY INCONSISTENCIES BETWEEN THIS ORDER AND THE GSA CONTRACT, THE GSA
CONTRACT PREVAILS.

VENDOR IS TO CONTACT OR DELIVERY
INFORMATION AND APPOINTMENT. IF DELIVERY IS ATTEMPTED WITHOUT AN
APPOINTMENT, DELIVERY WILL BE REFUSED AT THE SHIPPER'S EXPENSE.

THE INVOICE MUST BE SENT TO THE DELIVERY ADDRESS. DO NOT SEND THE
INVOICE TO THE PURCHASING DIVISION. SENDING YOUR INVOICE TO THE
PURCHASING DIVISION WILL RESULT IN DELAY OF PAYMENT.

Alvarez, Liz (SF)


From: Handy-Jones, Monique (SF)
Sent: Tuesday, March 10, 2015 3:19 PM
To: Alvarez, Liz (SF)
Subject: FW: First Legal conf. for Ctrl# 7137482
Attachments: 2015.03.10 Civil Case Cover Sheet (MTR executed)pdf.pdf; 2015.03.10 FINAL with bigger font.pdf

Hey Liz

Here's the proof for the attached Writ filing we just completed in Stingray

-----Original Message-----

From: Luis Ortega Sf [<mailto:luiso2@dtac.firstlegalnetwork.com>]
Sent: Tuesday, March 10, 2015 2:09 PM
To: Handy-Jones, Monique (SF)
Subject: First Legal conf. for Ctrl# 7137482



****Please Do Not Reply To This Email****

FIRST LEGAL SUPPORT-SF

CTRL: 7137482

CSR : 346

ATTN: Monique Handy

DATE: 3/10/15 SERVICE TYPE: PDFRUSH

REF: AMERICAN V SACRAMENTO

CUST: 20044 LATHAM & WATKINS LLP

PU: LATHAM & WATKINS LLP DL: SCSC-SACRAMENTO

505 MONTGOMERY STREET 720 9TH STREET

SAN FRANCISCO CA 94111 SACRAMENTO CA 95814

RM:SUITE 1900

Case:AMERICAN V SACRAMENTO

AF / 435

Docs:WRIT,CCCS

Info:FILE/CONFORM/RETURN

DEL DATE: 3/10/15 TIME: 13:45 SIGN: FILED

Alvarez, Liz (SF)

From: Kelli Emmons <kemmons@dtrac.firstlegalnetwork.com>
Sent: Wednesday, March 11, 2015 1:42 PM
To: Handy-Jones, Monique (SF)
Subject: First Legal conf. for Ctrl# 7137983

****Please Do Not Reply To This Email****

FIRST LEGAL SUPPORT-SF

CTRL: 7137983

CSR : 279

ATTN: Monique Handy

DATE: 3/11/15 SERVICE TYPE: BRIMSOP

REF: AMERICAN V SACRAMENTO

CUST: 20044 LATHAM & WATKINS LLP

PU: LATHAM & WATKINS LLP DL: SACRAMENTO COUNTY SHERIFFS OFF
505 MONTGOMERY STREET 711 G STREET
SAN FRANCISCO CA 94111 SACRAMENTO CA 95814
RM:SUITE 1900

Case:AMERICAN V SACRAMENTO

Docs:WRIT,CCCS

DEL DATE: 3/11/15 TIME: 12:58 SIGN: OFFICER HIEHLE, 035

Attorney or Party without Attorney: MICHAEL RISHER, SBN 191627 AMERICAN CIVIL LIBERTIES UNION 39 DRUMM STREET 2ND FLOOR SAN FRANCISCO, CA 94111 Telephone No: 415-621-2493				For Court Use Only FILED ENDORSED 2015 MAR 11 PM 2:54 GDSSO COURTHOUSE SUPERIOR COURT OF CALIFORNIA SACRAMENTO COUNTY	
Attorney for: Plaintiff, Petitioner, American Civil Liberties Union of Northern California			Ref. No. or File No.:		
Insert name of Court, and Judicial District and Branch Court: SACRAMENTO COUNTY SUPERIOR COURT					
Plaintiff: AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA Defendant: SACRAMENTO COUNTY SHERIFF'S DEPARTMENT					
PROOF OF SERVICE		Hearing Date:	Time:	Dept/Div:	Case Number: 34-2015-80002040

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE ORDERING THE SACRAMENTO COUNTY SHERIFF'S DEPARTMENT TO COMPLY WITH ITS DUTIES; CIVIL CASE COVER SHEET; NOTICE OF CASE ASSIGNMENT; GUIDE TO PROCEDURES FOR PROSECUTING PETITIONS FOR PREROGATIVE WRITS

3. a. Party served: SACRAMENTO COUNTY SHERIFF'S DEPARTMENT
 b. Person served: OFFICER HIEHLE, BADGE #035

4. Address where the party was served: 711 G STREET
 SACRAMENTO, CA 95814

5. I served the party:
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Wed., Mar. 11, 2015 (2) at: 12:58PM

7. Person Who Served Papers:
 a. WILLIAM ODER

Recoverable Cost Per CCP 1033.5(a)(4)(B)

d. The Fee for Service was:

- e. I am: (3) registered California process server
- (i) Independent Contractor
 - (ii) Registration No.: 2014-50
 - (iii) County: Sacramento
 - (iv) Expiration Date: Thu, Apr. 09, 2015



1814 "I" Street
 Sacramento, CA 95814
 Telephone (916) 444-5111
 Fax (916) 443-3111
 www.firstlegallnetwork.com

Fax by

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

Date: Wed, Mar. 11, 2015

Will: 2/11
 (WILLIAM ODER)