



September 29, 2015

Alameda Board of Supervisors

Re: Item 25, September 29, 2015 Board of Supervisors Meeting

Dear Alameda County Board of Supervisors,

The American Civil Liberties Union of Northern California urges you to vote no on Item 25 of your September 29, 2015 meeting. The Sheriff is requesting authorization to upgrade its so-called “stingray” equipment. Stingrays, also known as IMSI catchers, are a highly intrusive cell phone surveillance technology that intercepts information from a target cell phone as well as third party cell phones that have nothing to do with any investigation. The ACLU has grave concerns about these devices. But at a minimum, the Board of Supervisors should not approve this request without greater public input and discussion and without a publicly available and binding policy that, at a minimum, requires a warrant before this intrusive device is used. In addition, the County should have consistent mechanisms in place to ensure transparent public processes, informed debate, and adoption of enforceable policies when this, or any other surveillance technology, is considered.

Stingrays are devices that mimic a cell tower and thereby trick wireless devices into communicating with them. There are many aspects of the technology that raise constitutional concerns. We note only two. First, Stingrays can be used to locate a particular device when it is inside a home, or other private space. As a result, Stingrays should not be used without a warrant based on probable cause. *See United States v. Karo*, 468 U.S. 705 (1984) (warrant required to use electronic device that reveals information about interior of home). Second, Stingrays obtain information from innocent third parties not suspected of any wrongdoing whatsoever. These devices thus engage in the electronic version of the “general, exploratory rummaging” that the Fourth Amendment was adopted to prohibit. *See Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971).

Given the enormous controversy around these devices, the United States Department of Justice recently required federal prosecutors to seek warrants based on probable cause before using this device.¹ And SB 741, which passed the Legislature and is now awaiting the Governor’s signature, would, among other things, (a) require local agencies to obtain the

¹ *See* Dept. of Justice, Press Release “Justice Department Announces Enhances Policy for Use of Cell-Site Simulators,” available at <http://www.justice.gov/opa/pr/justice-department-announces-enhanced-policy-use-cell-site-simulators>.

approval of its legislative body in order to acquire the device and (b) implement and make public and usage and privacy policy.

At present, there is no information about whether law enforcement will seek a warrant to use the device, the circumstances in which the device will be used, and the protocols for handling third-party data. Instead, the device and the manner in which it has been used has been shrouded in secrecy. Given the many concerns surrounding this intrusive technology, the Santa Clara Board of Supervisors recently halted a plan to approve the purchase of this device.² We urge you to vote no on Item 25.

Sincerely,



Linda Lye
Senior Staff Attorney

² See <http://arstechnica.com/tech-policy/2015/05/in-rare-move-silicon-valley-county-govt-kills-stingray-acquisition/>.