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April 22, 2016

VIA EMAIL

Ryan Tack-Hooper, Esq.
American Civil Liberties Union of Delaware
100 West 10th Street, Suite 706
Wilmington, DE 19801

RE: Supplemental Response to FOIA Petition

Dear Mr. Tack-Hooper:

Pursuant to our phone discussion last month, I am writing to further detail the efforts made by Delaware Division of State Police (DSP) to determine whether any of the documents requested in your June 17, 2015 petition exist. In addition, I am writing to clarify the position of the DSP concerning certain proprietary and investigative documents as you requested.

Records regarding the State Police's acquisition of cell site simulators, including invoices, purchases orders, contracts, loan agreements, solicitation letters, correspondence with companies providing the devices and similar documents. In response to this request, please include records of all contracts, agreements, and communications with Harris Corporation.

DSP provided copies of multiple redacted purchase orders to the Harris Corporation. No other records responsive to this request exist. Sworn personnel assigned to the Electronic Surveillance Unit (ESU) within the Criminal Intelligence Section operate all cell site simulator equipment. Under the leadership of the Officer in Charge (OIC), the section is comprised of the Homeland Security Unit and the Investigations and Support Unit. Each has statewide operational responsibility, providing investigative and technical assistance to patrol and criminal investigation troops and other law enforcement agencies throughout Delaware.

Any documents concerning cell site simulator equipment would be housed with the Criminal Intelligence Section. The OIC checked through all files and contacted an analyst in DSP's Fiscal Unit for any documents responsive to this request. The purchase orders were the only documents located. The Harris Corporation serves as the manufacturer of the FBI

technology. Other than the purchase orders, there is no on-going correspondence between DSP and Harris.

You had requested that the DSP identify the specific model names that have been redacted from the purchase orders provided. DSP provided a copy of the non-disclosure agreement between the agency and the Federal Bureau of Investigation. The FBI required state and local law enforcement to sign this agreement prior to purchasing the technological equipment. The FBI redacted the names of the software on the purchase orders and is vehement that this information is proprietary. Moreover, the release of the specific model names may allow individuals to develop technologies to impede or negate the operation of particular cell site simulator systems. As the FBI also uses this technology, such disclosure would have negative repercussions across the country and would put the public and the national security at risk as criminals and terrorists could actively work to thwart law enforcement efforts by developing defensive technologies to combat the effectiveness of this surveillance equipment or render it non-functional all together. This public safety concern greatly outweighs any private interest in obtaining specific model names of law enforcement equipment off of purchase orders.

Policies and guidelines of the State Police governing use of cell site simulators, including restrictions on when, where, how, and against whom they may be used, limitations on retention and use of collected data, guidance on when a warrant or other legal process must be obtained, and rules governing when the existence and use of cell site simulators may be revealed to the public, criminal defendants, or judges.

The OIC conducted a thorough review of all documents and files and there are no written policies concerning the use, limitations, retention or guidance when the cell site simulators may be used. Further, undersigned counsel reviewed the DSP Policy Manual and found no such policy. DSP sends officers assigned to the ESU to a two-week hands-on training on the use of the equipment. If there are any questions as to how to use the equipment, officers telephone their training coordinator. No other documents exist concerning guidance, retention or legal processes.

Records reflecting the number of investigations in which cell site simulators were used by the State Police or in which cell site simulators owned by the State Police were used and the number of those investigations that have resulted in prosecutions.

The OIC states the majority of their efforts using the cell site simulator -- about 95 percent -- involve fugitive apprehension. DSP does not use the technology as an investigative tool. Criminal investigation detectives throughout DSP contact ESU when they cannot locate a suspect or defendant in an individual case. That detective crafts the application and affidavit for the court order. This documentation stays with the criminal case file. ESU does not maintain any of that investigative documentation at their office. The detective assigned to the criminal case has no indication once the case is sent to the Office of the Attorney General of whether an investigation forwarded resulted in prosecution. No sworn member of the DSP receives notice from the prosecuting attorney general of a final disposition. Whether or not a cell site simulator

was used in a particular investigation is not information that is maintained by DSP above an investigation-specific level.

Records reflecting a list of all cases, with docket numbers if available, in which cell site simulators were used as part of the underlying investigation by the State Police or in which cell site simulators owned by the State Police were used as part of the underlying investigation.

The answer is the same as above. ESU officers are the only officers that use cell site simulators and this unit does not conduct its own investigations. Any records in which cell site simulators were part of an underlying investigation would be part of the investigative file where the case was assigned. This information is not collected above an individual investigative file level.

All applications submitted to state or federal courts for search warrants or orders authorizing use of cell site simulators by the State Police in criminal investigations or authorizing use of cell site simulators owned by the State Police in criminal investigations, as well as any warrants or orders, denials of warrants or orders and returns of warrants associated with those applications. If any responsive records are sealed, please provide documents sufficient to identify the court, date and docket number for each sealed document.

The answer is the same as stated above. ESU does not investigate nor do they maintain any of these records. The individual investigating detective maintains the application and affidavit and sealed court order.

I hope that this clarifies the scope of the search conducted by DSP.

Respectfully,

/s/ Rae M. Mims

Rae Meredith Mims
Patricia Davis-Oliva
Deputy Attorneys General