



# EXHIBIT A

**Subject:** Freedom of Information Request: Stingray usage (Delaware State Police)  
**From:** 17984-74888306@requests.muckrock.com  
**To:** kimberly.chandler@state.de.us  
**Date:** Fri, 15 May 2015 18:53:48 -0000

May 15, 2015  
Delaware State Police  
Delaware State Police  
1441 N. DuPont Highway  
P.O. Box 430  
Dover, Delaware 19903-0430

To Whom It May Concern:

Pursuant to Delaware's Freedom of Information Act, I hereby request the following records:

1. Records regarding the State Police's acquisition of cell site simulators, including invoices, purchase 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.
2. Records regarding any arrangement or agreement between the State Police and other law enforcement agencies in Delaware to share the use of cell site simulators, or any offers by the State Police to share the use of cell site simulators with other law enforcement agencies in Delaware.
3. All requests by the Harris Corporation or any other corporation, or any state or federal agencies, to the State Police to keep confidential any aspect of the State Police's possession and use of cell site simulators, including any non-disclosure agreements between the State Police and the Harris Corporation or any other corporation, or any state or federal agencies, regarding the State Police's possession and use of cell site simulators.
4. 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.

5. Any communications or agreements between the State Police and wireless service providers (including AT&T, T-Mobile, Verizon, Sprint Nextel, and U.S. Cellular) concerning use of cell site simulators.
6. Any communications, licenses, or agreements between the State Police and the Federal Communications Commission or the Delaware Public Service Commission concerning use of cell site simulators.
7. 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.
8. 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.
9. 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.

Stingrays and other cell site simulators impersonate a wireless service provider's cell tower, prompting cell phones and other wireless devices to communicate with them. Cell site simulators are commonly used in two ways: to collect information on all phones in a given location, or to track and locate particular phones.

The requested documents will be made available to the general public, and this request is not being made for commercial purposes.

In the event that fees cannot be waived, I would be grateful if you would inform me of the total charges in advance of fulfilling my request. I would prefer the request filled electronically, by e-mail attachment if available or CD-ROM if not.

Thank you in advance for your anticipated cooperation in this matter. I look forward to receiving your response to this request within 15 business days, as the statute requires.

Sincerely,

Jonathan Rudenberg

Filed via MuckRock.com

E-mail (Preferred): 17984-74888306@requests.muckrock.com

For mailed responses, please address (see note):

MuckRock News

DEPT MR 17984

PO Box 55819

Boston, MA 02205-5819

PLEASE NOTE the new address as well as the fact that improperly addressed (i.e., with the requester's name rather than MuckRock News) requests might be returned by the USPS as undeliverable.

**Subject:** RE: Freedom of Information Act Request: Stingray usage (Delaware State Police)  
**From:** Fortune, Katisha D (DOJ) <Katisha.Fortune@state.de.us>  
**To:** 17984-74888306@requests.muckrock.com  
**Date:** Mon, 12 Oct 2015 14:02:15 +0000

Dear Mr. Rudenberg:

Please provide a phone number so that I may discuss the status of your petition with you by telephone.

Best regards,

Katisha Fortune

Katisha D. Fortune  
Deputy Attorney General  
820 N. French Street, 6th Floor  
Wilmington, DE 19801  
(302) 577-8375  
Katisha.Fortune@state.de.us

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**From:** General, Attorney (DOJ)  
**Sent:** Monday, October 12, 2015 9:03 AM  
**To:** Fortune, Katisha D (DOJ)  
**Subject:** Fw: Freedom of Information Act Request: Stingray usage (Delaware State Police)

Here ya go. Happy Monday!

Julia

**From:** 17984-74888306@requests.muckrock.com  
**Sent:** Friday, October 9, 2015 7:31 PM  
**To:** General, Attorney (DOJ)  
**Subject:** RE: Freedom of Information Act Request: Stingray usage (Delaware State Police)

October 9, 2015  
Delaware State Police  
Delaware State Police  
1441 N. DuPont Highway  
P.O. Box 430  
Dover, Delaware 19903-0430

This is a follow up to a previous request:

Katisha D. Fortune  
Department of Justice

Dear Ms. Fortune:

This is a follow-up about my petition about the FOIA request I sent to the Delaware State Police on May 15, 2015.

You received the petition on June 22, and it has now been 12 weeks since the 20-day deadline (July 12) for your response to my petition specified in 29 Del. C. § 10005(e). Would you please provide the date that I can expect an opinion?

In addition, the letter you sent to me dated July 16 was missing the attached copy of the July 6 DSP response. Please re-send this attachment along with any subsequent correspondence at your earliest convenience.

Thank you,

Jonathan Rudenberg

# EXHIBIT B



**MATTHEW P. DENN**  
ATTORNEY GENERAL

**DEPARTMENT OF JUSTICE**  
KENT COUNTY  
102 WEST WATER STREET  
DOVER, DELAWARE 19904

CIVIL DIVISION (302) 739-7641  
FAX (302) 739-7652  
CRIMINAL DIVISION (302) 739-4211  
FAX (302) 739-6727

April 22, 2016

**VIA EMAIL**

Ryan Tack-Hooper, Esq.  
American Civil Liberties Union of Delaware  
100 West 10<sup>th</sup> 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