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May 13, 2014

**VIA U.S. MAIL**

Nathan F. Webster  
American Civil Liberties Union Foundation  
National Office  
125 Broad Street  
18<sup>th</sup> Floor  
New York, New York 10004-2740

Re: Public Records Request  
Use of Cell Site Simulators

Dear Mr. Webster:

I am in receipt of your letter seeking additional information about a claimed exemption to the public records law. Florida law requires that the custodian of a record, including the statutory basis for an exemption created or afforded by statute, Fla. Stat. § 119.07(2) (2010).

The reply to your public records request stated both the basis of the exemption and created by statute. The Florida law requires providing additional information on why the exemption was claimed.

Further, your letter states that the exemption is fantasy. Rather, Florida law states that a person who asserts an exemption must state the basis of the exemption and cite the statute. The fact that an exemption was claimed indicates that records are in existence, but are exempt from public release.

Your request for information regarding the equipment used by the BCSOs and the methods of such use, which is maintained in exempt records, is not subject to public release under Florida law (11<sup>th</sup> Cir. 1986):



specific surveillance measures used by the BCSO which may jeopardize present and future investigations, and personnel.

4. Records regarding policies and guidelines governing use of cell site simulators, including any limitations or 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.

Records regarding policies and procedural rules for the use of surveillance equipment are exempt per Fla. Stat. § 119.07(2)(d) regarding surveillance techniques, procedures, and personnel. The disclosure of this information would reveal specific surveillance measures used by the BCSO which may jeopardize present and future investigations, and personnel.

Regarding the legal process for the use of cell site simulators, the use generally of electronic surveillance equipment in investigations is governed by Sections 934.33 and 934.42, Florida Statutes.

5. Records regarding any communications or agreements with wireless service providers (including AT&T, T-Mobile, Verizon Sprint Nextel and U.S. Cellular) concerning use of cell site simulators.

No records responsive to this request.

6. Records regarding any communications, licenses, waivers, or agreements with the Federal Communications Commission or Florida Public Service Commission concerning use of cell site simulators.

No records responsive to this request.

7. Records reflecting the number of investigations in which cell site simulators have been used, and the number of those investigations that resulted in prosecutions.

The BCSO does not maintain documents reflecting the number of investigations or prosecutions where cell site simulators have been used, and as such there are no records responsive to this request.

8. Records reflecting a list of criminal cases, with docket number if available, in which law enforcement officers used a cell site simulator as part of the underlying investigation.

The BCSO does not maintain a list or log of cases in which cell site simulators have been used, and as such there are no records responsive to this request.

9. All applications submitted to state or federal courts for search warrants or orders authorizing use of cell site simulators in criminal investigations, as well as any warrants or orders, denials of warrants, and returns of

warrants associated with these applications. If any records are sealed, please provide the date and date of or waiver number sealed document.

As noted above, the BCSO cell site simulators have been used. To obtain the requested information would require a significant clerical, communication, and/or technical effort for which a special lab invoice will be required in advance. By narrowing the time frame for this request you may be able to significantly reduce the production of information that is not relevant to the information sought.

10. All records relating to the use of cell site simulators in closed investigations

Please see response to request number 9 above. Additionally, the fact that an investigation for which this information may have been used is no longer active does not automatically exempt this information from disclosure. As explained above, this agency could compromise present and future investigations, which is the precise reason that the Florida legislature saw fit to exempt this information from public disclosure.

Should you have any questions or concerns, please do not hesitate to contact me at the above address.

Sincerely,



Terrence O. Lynch  
Senior Assistant General Counsel

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