



U.S. Department of Justice

United States Marshals Service

Office of General Counsel

*CS-4, 10th Floor
Washington, DC 20530-1000*

November 18, 2015

Nathan Wessler
ACLU National Office
125 Broad Street, 18th Floor
New York, NY 10004-2400

Re: Freedom of Information Act Request No. 2015USMS27216
Subject: Cell Site Simulators Deployed on Aircraft

Dear Requester:

The United States Marshals Service (USMS) is responding to your request for copies of records created from January 1, 1997 to the present for the following: "1. all policies, guidelines, rules, practices, or legal analysis regarding the use of cell site simulators deployed on aircraft, including those concerning: a. restrictions on when, where, how, and against whom they may be used; b. what information can be acquired using this technology; c. the possibility of disruption of lawful phone calls; d. protections for non-targets; e. limitations on retention and use of collected data; ; f. when a warrant or other legal process must be obtained; g. deployment of this technology in investigations conducted with other agencies or at the request of other agencies; h. disclosure of information acquired using this technology to other agencies; and i. when the existence and use of cell site simulators may be revealed to the public, criminal defendants, or judges; 2. records regarding the acquisition of cell site simulators that were meant for aircraft deployment or were used on aircraft including invoices, purchase orders, contracts, loan agreements, procurement documents (including but not limited to solicitation documents or notices of proposed contracts, proposed bids, unsolicited proposals, and/or documents justifying contracting without full and open competition), correspondence with companies providing the devices (including, but not limited to, Boeing DRT and Harris Corporation) and similar documents; 3. all applications submitted to state or federal courts for search warrants or orders authorizing use of cell site simulators deployed on an aircraft in criminal investigations, as well as any affidavits or other documents filed in support thereof, warrants or orders, denials of warrants or orders, and returns of warrants associated with those applications. If any responsive records are sealed, please provide a record containing the date and docket number for each sealed document; 4. records reflecting the docket numbers-or, if unavailable, other identifying

information---of all criminal cases in which law enforcement officers sought permission to use, were authorized to use, or in fact used a cell site simulator deployed on an aircraft as part of the underlying investigation; and 5. records reflecting the number of investigations in which cell site simulators deployed on aircraft have been used, and the number of those investigations that have resulted in prosecutions.”

Pursuant to item one (1) of your request, the USMS conducted a search of the Headquarters Investigative Operations Division (IOD) and located the USMS forty one page technical operations policy which is enclosed. Exemption (b)(7)(E) has been applied to withhold portions of the 41 pages. .

With respect to items 2, the USMS conducted a search of its files and located the contracts between the USMS and the Harris Corporation consisting of 187 pages. We have determined to grant you access the 187 pages of documents with deletions pursuant to exemptions (b)(4), (b)(6), (b)(7)(C), (b)(7)(E), and (b)(7)(F) of the Freedom of Information Act, 5 U.S.C. § 552(b).

With respect to items 3 and 4 of your request, please be advised that all case names and dockets are sealed and the sealing order would preclude disclosing the existence of the investigative techniques used including the application and affidavit. The USMS does not maintain copies of orders to unseal. While this material might also be exempt from disclosure under the FOIA pursuant to (b)(7)(C), U.S.C. § 552 (b)(3), in this instance, the USMS lacks the discretion to consider releasing this information to you. See *GTE Sylvania, Inc. v. Consumers Union*, 445 U.S. 375, 384-86 (1980) (finding "no discretion for the agency to exercise" when records are sealed, thus no improper withholding).


With respect to item 5 of your request, the USMS has no central database which tracks the requested information.

Exemption 4 allows an agency to withhold trade secrets and commercial or financial information obtained from a person that is privileged or confidential. Exemption 6 allows an agency to withhold personnel, medical and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Exemption 7 allows an agency to withhold records or information compiled for law enforcement purposes, to the extent that the production of such records or information could reasonably be expected to (A) interfere with ongoing proceedings and (C) constitute an unwarranted invasion of personal privacy, (E) would disclose techniques and procedures for law enforcement investigation or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law, and (F) could reasonably be expected to endanger the life or physical safety of any individual. A discretionary release of records or information is not appropriate. See also *United States Department of Justice v. Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989).

If you are not satisfied with my response to your request, you may administratively appeal by writing to the Director, Office of Information Policy, United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's eFOIA portal at <http://www.justice.gov/oip/efoia-portal.html>. Your appeal must be postmarked or transmitted electronically within sixty days from the date of this letter. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006), & Supp. IV (2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Sincerely,


William E. Bordley
Associate General
Counsel/ FOIPA Officer
Office of General Counsel