



CITY OF ORLANDO



POLICE DEPARTMENT

March 18, 2014

Mr. Nathan Freed Wessler, Esq.
Staff Attorney, ACLU
125 Broad Street, 18th Floor
New York, NY 10004

RE: Public Record Request #20435 concerning cell site simulators

Dear Mr. Wessler:

This letter addresses your February 28 record request and your March 4 email clarifying that the subject matter of the request by the ACLU included all records, past or present, relating to use or acquisition of cell site simulators by the Orlando Police Department (OPD).

Please note that OPD responded to a similar request made by Ms. Julie A. Ebenstein, ACLU-Florida, on August 25, 2011, copy enclosed. Accordingly, this response is confined to records since August 25, 2011.

With regard to item 1 of your request, our March 4 response remains unchanged: we have no responsive records. OPD does not own or possess, has not owned or possessed, and has not sought to acquire, own or possess, a cell site simulator.

As to item number 2 of your request, enclosed is a copy of the voluntary cooperation mutual aid agreement between OPD and the Florida Department of Law Enforcement relating to electronic surveillance support, sans exempt confidential information. §119.071(2)(c), Fla. Stat. (2013).

There is no record responsive to item 3 of your request regarding nondisclosure agreements between OPD and Harris Corporation, Boeing Corporation (DRT), other companies, or any state or federal agencies regarding OPD's possession or use of cell site simulators.

In response to item 4, Written Directive 10-04 is enclosed; also enclosed are copies of the State Attorney's current designations to OPD law enforcement personnel authorized to seek emergency communication interception pursuant to §§934.09 and 934.31, Florida Statutes.

There are no records responsive to items 5 and 6 of your request; OPD has no communications or agreements with wireless service providers, the Federal Communications Commission, or the Florida Public Service Commission concerning cell site simulator use.

POLICE LEGAL ADVISOR

P.O. BOX 913 • ORLANDO, FL 32802-0913
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With regard to items 7 – 10, OPD does not create or maintain separate records which:

- Reflect the number of investigations in which cell site simulators were used or that reflect or contain the number of those investigations that have resulted in prosecution;
- Reflect criminal cases, with or without docket numbers, for which OPD used a cell site simulator as part of the investigation;
- Reflect applications submitted to state or federal courts for search warrants or orders authorizing cell site simulators in criminal investigations, associated orders or warrants, associated denials of orders, warrants, or applications, or any associated returns;
- Reflect or indicate the use of cell site simulators in closed investigations.

Any records in our possession related to applications for use or use of cell site simulators; applications for warrants or orders authorizing such use; denials of warrants or orders; or associated returns would be classified as case-specific records and maintained with the particular investigative records to which such records pertain.

The copy fee for the enclosed records is \$2.25 (15 cents per page x 15 pages); legal expertise was required to research, identify, retrieve, and redact responsive records; I devoted at least 1 hour of my time to those tasks at \$61.40 per hour; total due for the record production is \$63.65. Please reference PRR#20435 and direct payment of \$63.65 to The City of Orlando, Office of the City Clerk, Records & Archives, 400 South Orange Avenue, Orlando, Florida 32801.

Sincerely,



Lee Ann Freeman
Police Legal Advisor

cc: John W. Mina, Chief of Police
Jody Litchford, Deputy City Attorney
Alana Brenner, City Clerk
Natasha Williams, Chief Assistant City Attorney
David Margolis, Regional Advisor, Florida Department of Law Enforcement, Orlando
Thomas Kirwin, General Counsel, Florida Department of Law Enforcement, Tallahassee
Linda Drane-Burdick, Chief Assistant State Attorney
Office of Jeffrey L. Ashton, State Attorney, Ninth Judicial Circuit

ORLANDO POLICE DEPARTMENT WRITTEN DIRECTIVE		TO: ALL SWORN PERSONNEL	NUMBER: WD10-04
SUBJECT: POLICY / REGULATION CHANGES		REFERENCE: EMERGENCY WIRETAP ORDERS EMERGENCY PEN REGISTER ORDERS	
ISSUING AUTHORITY: VAL B. DEMINGS <i>USD</i> CHIEF OF POLICE		AMENDS:	
EFFECTIVE DATE: 04/02/2010	CANCELLATION DATE:	RESCINDS:	

Chapter 934, Florida Statutes, protects Wire Communications, Oral Communications, Electronic Communications and Records regarding Communications. Court orders are needed for Tracking devices, Trap and Trace, pen registers-numbers dialed, and Interception of communications.

1. PURPOSE

The purpose of this Written Directive is to advise sworn personnel about procedures pertaining to "emergency" wiretap orders and pen registers. State law allows law enforcement officers to intercept wire, oral or electronic communications in limited "emergency" situations without first obtaining a court order, but they **must** secure a court order based upon probable cause **within 48 hours** of the date on which the emergency interception occurred or began to occur.

2. DEFINITIONS

A. Designated Law Enforcement Officer (DLEO) – an Orlando Police Department officer named by the Chief of Police, and authorized by the State Attorney for the Ninth Judicial Circuit, the Florida Attorney General, or the Governor, to apply for an emergency wiretap order within 48 hours of the date on which the interception of wire, oral or electronic communication occurred or began to occur.

B. Emergency – consistent with sections 934.09(7), and 934.31(4), Florida Statutes, a situation involving immediate danger of death or serious physical injury to any person; danger of a prisoner's escape; or conspiratorial activities threatening the security interest of the nation or state that require intercepting a wire, oral, or electronic communication before an authorizing court order can be obtained with due diligence, and there are grounds upon which a wiretap order could otherwise be entered under Chapter 934, Florida Statutes.

3. PROCEDURE

A. **Only** those OPD officers who are Designated Law Enforcement Officers as defined above may authorize an emergency wiretap. Officers may locate a DLEO to authorize an emergency wiretap by contacting Communications. In the alternative, an officer may, in furtherance of a criminal investigation, obtain a court order authorizing an interception as provided in Chapter 934, Florida Statutes, or intercept or record a communication with the consent of one of the parties to the conversation pursuant to section 934.03(2)(c), Florida Statutes (e.g., controlled telephone call).

B. A DLEO is prohibited from authorizing, ordering or implementing an emergency wiretap unless authorized by state law and as provided herein.

C. If a DLEO determines that an emergency exists, he or she may authorize an emergency wiretap. The officer acting at the DLEO's direction **shall** obtain a court order authorizing the interception **within 48 hours** of the date upon which the interception occurred or began to occur. The application shall be in writing and provide a full and complete statement of the facts and circumstances justifying an emergency wiretap order, including, but not limited to:

1. The particular offense that has been, is being or is about to be committed.
2. The identity of the person, if known, committing the offense and whose communications are to be intercepted.
3. The type of communication sought to be intercepted.
4. The facts and circumstances providing probable cause for the belief that the facilities from which, or the place where, the wire, oral or electronic communication are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or that they are leased to, listed in the name of, or commonly used by such person.
5. The place where, or nature and location of the facilities from which, the communications are to be intercepted.

D. The "Emergency Wiretap Affidavit," "Emergency Wiretap Application," "Emergency Wiretap Authorization Form," and "Emergency Wiretap Order" are available through the DLEO, the Fugitive Investigative Unit, or MBI.

E. After an appropriate court order has been issued, the emergency wiretap may continue until all targeted communications have been intercepted.

F. The officer or detective conducting an authorized wiretap shall ensure it is immediately terminated when the targeted communication is obtained or the application for court order is denied, whichever is earlier.

G. The officer or detective who conducts a DLEO-authorized operation shall ensure the application and court order are reported to the Administrator of the United States Courts on specified forms. This is a requirement of **federal** law. The DLEO or designee may consult with the Metropolitan Bureau of Investigation for additional information.

H. Recordings

1. An officer or detective conducting an authorized emergency wiretap shall ensure the intercepted communications are recorded on tape, wire or other comparable device.
2. The recordings shall be maintained in ways that protect them from editing or other alterations.
3. Immediately upon the expiration of the time period authorized by the order, including any extensions, the original recordings shall be made available to the issuing judge and sealed under his or her direction. Custody of the recordings shall be determined by the judge's order. Recordings shall not be destroyed unless ordered by a court. In any event, recordings of intercepted communications must be kept for a minimum of 10 years.
4. The presence of the seal, or a satisfactory explanation for its absence, is required for using or disclosing the contents of wire, oral or electronic communications captured in an emergency wiretap, or evidence derived there from, under section 934.08(3), Florida Statutes.
5. Duplicate recordings may be made under sections 934.08(1) and (2), Florida Statutes, for criminal investigations.

I. Inventories - The court will order that an inventory be served upon the subject named in the emergency wiretap order, and such other parties to the intercepted communications, as the judge may determine to be in the interest of justice, within a reasonable period of time, but no later than 90 days after the interception occurred. A law enforcement officer may petition the court at an *ex parte* hearing for an exemption to this requirement. At that hearing, the officer must present evidence that delivering an inventory may interfere with, or otherwise adversely impact, a pending criminal investigation (e.g., hinder gathering evidence from additional anticipated wiretaps). If the judge finds good cause not to serve the inventory, he or she will issue an order to that effect.

J. Sealing Applications and Orders - State law requires a judge to seal applications and orders pertaining to emergency wiretaps. The judge will determine custody of the documents. The documents shall not be disclosed unless ordered by a court for good cause shown. They shall not be destroyed unless ordered by a court. In any event, the documents must be kept for a minimum of 10 years.

K. Penalties for Non-Compliance

1. If an electronic, wire or oral communication is intercepted in violation of Chapter 934, F.S., any information or evidence obtained from it is **inadmissible** at a criminal, civil, administrative, or other proceeding before a governmental entity.
2. Any violation of the procedures governing emergency wiretap interceptions under Chapter 934, Florida Statutes, may be punished as contempt of court. In addition, violations may be subject to felony criminal sanctions under section 934.03(4), Florida Statutes, and civil liability under section 934.10, Florida Statutes.

L. Hostage or Barricade Situations

1. Pursuant to section 934.15, Florida Statutes, a Uniform Patrol Division Commander or High Risk Incident Commander at the scene of an incident may order law enforcement officers or telephone company personnel to cut, divert or reroute telephone lines to prevent telephone communications between the suspect and any person other than a law enforcement officer or designee, if such cutting, rerouting or diverting of telephone lines is technically feasible and can be performed without endangering the lives of telephone company or other utility personnel, and there is reasonable cause to believe that:
 - a. The subject is holding one or more hostages; or
 - b. The subject has barricaded herself or himself and taken a position of confinement to avoid apprehension; or
 - c. A probability exists that the subject about to be arrested will resist with weapons; or
 - d. The barricaded subject is armed and threatening suicide.
2. An emergency wiretap order is not required in this situation.

M. Assistance from Communication Providers - A wire, oral or electronic communication service provider (e.g., a telephone company), landlord, custodian, or other person may provide information, facilities or technical assistance to a person authorized by law to intercept a wire, oral or electronic communication if provided with:

1. A copy of a court order signed by an authorized judge directing such assistance; or
2. A certified document provided by a designated law enforcement officer indicating that no court order is needed to intercept the targeted communication and all statutory requirements have been met. The document must also specify the type of assistance needed and the period of time during which assistance is required.

4. **PEN REGISTERS**

Law enforcement officers seeking information relating to precise GPS coordinates of cellular telephone handsets must apply to the court for an order pursuant to Florida's PEN register statute. Emergency pen registers are available in limited, exigent, circumstances:

A. The ability to establish an emergency pen register is reserved for investigative and emergency purposes. Some cellular carriers do not operate 24/7; i.e. Metro PCS will only provision a Pen Register or Wiretap in an emergency, as defined above. Section 934.31(4)(a)1, Florida Statutes, requires that the "emergency" criteria must be met and that there is insufficient time in which to obtain a court order.

B. Once a declaration has been issued (by a designee authorized by the State Attorney), a Pen Register Order must be obtained within 48 hours of the pen register intercept. Failure to do so may result in criminal prosecution for the authorizing entity.

C. Officers must be able to establish probable cause that the suspect is an imminent threat to public safety; the suspect's past criminal violence may be insufficient to meet this burden. However, if there is evidence that a witness saw a gun in the suspect's hand or the suspect made a statement he or she was going to kill someone, than that may be sufficient evidence of a credible threat to an individual or to public safety. If there is any doubt, the designee should discuss the circumstances with the Police Legal Advisor. If doubt remains, the designee should not authorize a Pen Register or Wiretap. Instead, an advance pen register order should be obtained through the normal protocol.



JEFFREY L. ASHTON
STATE ATTORNEY
NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK
CHIEF ASSISTANT STATE ATTORNEY

RICHARD I. WALLSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

DESIGNATION of LAW ENFORCEMENT OFFICER
TO AUTHORIZE the EMERGENCY INTERCEPTION of COMMUNICATIONS

Pursuant to Florida Statutes 934.09(7) and 934.31(4), the following named investigative or law enforcement officer: *Detective Jerome Kenon of the Orlando Police Department* is specially designated by the undersigned **State Attorney** to authorize and implement the emergency installation and use of a **pen register, or trap and trace, device or process**, subject to the following conditions:

The law enforcement officer reasonably determines that:

(a) An **emergency** exists that:

1. Involves the immediate **danger of death or serious physical injury** to a person, or the danger of an escape of a prisoner, and
2. Requires that a **pen register or trap and trace device or process** be installed and used, before an order authorizing such device or process can, with due diligence, be obtained;

(b) There are **grounds**, under Chapter 934 of the Florida Statutes, upon which an order could be entered to authorize the installation and use of a pen register or trap and trace device or process; and

(c) An **application will be made for a court order** approving the installation and use of a pen register or tap and trace device or process under Florida Statute 934.31(4) **within 48 hours** after the use of the device or process begins.

Note: The application narration shall be thorough and clearly express the circumstances establishing the exigency.

(d) Notification of **who** authorized the action and **who** authored the application shall be made, via electronic mail, to Chief Assistant Linda Drane Burdick (ldrane-burdick@sao9.org) within **six** hours of authorization.

Note: A copy of both the affidavit application and the court order shall be electronically mailed to Chief Assistant Linda Drane Burdick (ldrane-burdick@sao9.org) within **72** hours of receipt of the order.

This designation is effective immediately, until revoked, or until the separation of the named law enforcement officer from the named law enforcement agency. Signed and dated at Orlando, Orange County, Florida, on this 26th day of June, 2013.

STATE ATTORNEY



JEFFREY L. ASHTON



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STATE ATTORNEY
NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK
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DESIGNATION of LAW ENFORCEMENT OFFICER
TO AUTHORIZE the EMERGENCY INTERCEPTION of COMMUNICATIONS

Pursuant to Florida Statutes 934.09(7) and 934.31(4), the following named investigative or law enforcement officer: *Detective Chris Bowlin of the Orlando Police Department* is specially designated by the undersigned **State Attorney** to authorize and implement the emergency installation and use of a **pen register, or trap and trace, device or process**, subject to the following conditions:

The law enforcement officer reasonably determines that:

- (a) An **emergency** exists that:
1. Involves the immediate **danger of death or serious physical injury** to a person, or the danger of an escape of a prisoner, and
 2. Requires that a **pen register or trap and trace device or process** be installed and used, before an order authorizing such device or process can, with due diligence, be obtained;
- (b) There are **grounds**, under Chapter 934 of the Florida Statutes, upon which an order could be entered to authorize the installation and use of a pen register or trap and trace device or process; and
- (c) An **application will be made for a court order** approving the installation and use of a pen register or tap and trace device or process under Florida Statute 934.31(4) **within 48 hours** after the use of the device or process begins.

Note: The application narration shall be thorough and clearly express the circumstances establishing the exigency.

- (d) Notification of **who** authorized the action and **who** authored the application shall be made, via electronic mail, to Chief Assistant Linda Drane Burdick (ldrane-burdick@sao9.org) within **six** hours of authorization.

Note: A copy of both the affidavit application and the court order shall be electronically mailed to Chief Assistant Linda Drane Burdick (ldrane-burdick@sao9.org) within **72** hours of receipt of the order.

This designation is effective immediately, until revoked, or until the separation of the named law enforcement officer from the named law enforcement agency. Signed and dated at Orlando, Orange County, Florida, on this 26th day of June, 2013.

STATE ATTORNEY



JEFFREY L. ASHTON



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ORANGE AND OSCEOLA COUNTY, FLORIDA

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CHIEF ASSISTANT STATE ATTORNEY

RICHARD I. WALLSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

DESIGNATION of LAW ENFORCEMENT OFFICER
TO AUTHORIZE the EMERGENCY INTERCEPTION of COMMUNICATIONS

Pursuant to Florida Statutes 934.09(7) and 934.31(4), the following named investigative or law enforcement officer: *Deputy Chief Robert Pigman of the Orlando Police Department* is specially designated by the undersigned **State Attorney** to authorize and implement the emergency installation and use of a **pen register, or trap and trace, device or process**, subject to the following conditions:

The law enforcement officer reasonably determines that:

- (a) An **emergency** exists that:
1. Involves the immediate **danger of death** or **serious physical injury** to a person, or the danger of an escape of a prisoner, and
 2. Requires that a **pen register or trap and trace device or process** be installed and used, before an order authorizing such device or process can, with due diligence, be obtained;
- (b) There are **grounds**, under Chapter 934 of the Florida Statutes, upon which an order could be entered to authorize the installation and use of a pen register or trap and trace device or process; and
- (c) An **application will be made for a court order** approving the installation and use of a pen register or trap and trace device or process under Florida Statute 934.31(4) **within 48 hours** after the use of the device or process begins.

Note: The application narration shall be thorough and clearly express the circumstances establishing the exigency.

- (d) Notification of **who** authorized the action and **who** authored the application shall be made, via electronic mail, to Chief Assistant Linda Drane Burdick (ldrane-burdick@sao9.org) within **six** hours of authorization.

Note: A copy of both the affidavit application and the court order shall be electronically mailed to Chief Assistant Linda Drane Burdick (ldrane-burdick@sao9.org) within **72** hours of receipt of the order.

This designation is effective immediately, until revoked, or until the separation of the named law enforcement officer from the named law enforcement agency. Signed and dated at Orlando, Orange County, Florida, on this 26th day of June, 2013.

STATE ATTORNEY

JEFFREY L. ASHTON



JEFFREY L. ASHTON
STATE ATTORNEY
NINTH JUDICIAL CIRCUIT
ORANGE AND OSCEOLA COUNTY, FLORIDA

LINDA DRANE BURDICK
CHIEF ASSISTANT STATE ATTORNEY

RICHARD I. WALLSH
CHIEF ASSISTANT/EXECUTIVE DIRECTOR

DESIGNATION of LAW ENFORCEMENT OFFICER
TO AUTHORIZE the EMERGENCY INTERCEPTION of COMMUNICATIONS

Pursuant to Florida Statutes 934.09(7) and 934.31(4), the following named investigative or law enforcement officer: *Deputy Chief John Mina of the Orlando Police Department* is specially designated by the undersigned **State Attorney** to authorize and implement the emergency installation and use of a **pen register, or trap and trace, device or process**, subject to the following conditions:

The law enforcement officer reasonably determines that:

(a) An **emergency** exists that:

1. Involves the immediate **danger of death** or **serious physical injury** to a person, or the danger of an escape of a prisoner, and
2. Requires that a **pen register or trap and trace device or process** be installed and used, before an order authorizing such device or process can, with due diligence, be obtained;

(b) There are **grounds**, under Chapter 934 of the Florida Statutes, upon which an order could be entered to authorize the installation and use of a pen register or trap and trace device or process; and

(c) An **application will be made for a court order** approving the installation and use of a pen register or trap and trace device or process under Florida Statute 934.31(4) **within 48 hours** after the use of the device or process begins.

Note: The application narration shall be thorough and clearly express the circumstances establishing the exigency.

(d) Notification of **who** authorized the action and **who** authored the application shall be made, via electronic mail, to Chief Assistant Linda Drane Burdick (ldrane-burdick@sao9.org) within **six** hours of authorization.

Note: A copy of both the affidavit application and the court order shall be electronically mailed to Chief Assistant Linda Drane Burdick (ldrane-burdick@sao9.org) within **72** hours of receipt of the order.

This designation is effective immediately, until revoked, or until the separation of the named law enforcement officer from the named law enforcement agency. Signed and dated at Orlando, Orange County, Florida, on this 26th day of June, 2013.

STATE ATTORNEY



JEFFREY L. ASHTON

**ELECTRONIC SURVEILLANCE SUPPORT TEAM
MULTI-AGENCY VOLUNTARY COOPERATION
MUTUAL AID AGREEMENT**

This Voluntary Cooperation Mutual Aid Agreement (MAA hereinafter) is entered into by and between the below subscribed law enforcement agencies, to wit: the Florida Department of Law Enforcement (FDLE) and those agencies that, with approval of FDLE, choose to enter into this agreement pursuant to the Florida Mutual Aid Act, Section 23.12 -23.127, in furtherance of their respective duties under law for the purpose of facilitating and providing technical assistance and equipment in criminal investigations in Florida. The parties have determined that they can make efficient use of their powers and resources, in certain criminal cases which may require specialized expertise and have the potential to cross jurisdictional lines, through coordination and sharing of specialized technical resources and personnel of the parties. The parties agree to carry out their respective duties and responsibilities as outlined below, subject to controlling law, policies or procedures, and in consideration of the mutual interests and understandings herein expressed:

1. FDLE and each agency party to this agreement have executed the signature page attached hereto as Addendum A, which includes specific information concerning the geographic scope of this agreement, identification of the agency party entering into this agreement, and other particular information all of which is incorporated herein as though fully set out in the text of the main agreement.
2. FDLE and each agency party to this agreement has custody and control of technical assets including but not limited to

§ 119.071(2)(c), Fla. Stat. (2013)

3. Technical assistance is necessary for the deployment and effective use and operation of these technical assets, and certain requests for ESS services may require more resources, specially trained personnel or advanced technical equipment than a single agency can provide.
4. This MAA establishes and governs regional Electronic Surveillance Support Teams (ESST) in the state of Florida that may provide resources and equipment and the personnel to operate them anywhere in Florida upon request by any law enforcement agency within the state; however it is understood that such teams will normally operate within the geographical areas that comprise one or two FDLE Operations Center Regions. These "standard operational areas" for the teams are set forth in Addendum A. This assistance will include

§ 119.071(2)(c), Fla. Stat. 2013

5. Each agency party to this MAA agrees to provide ESS upon request within their "standard operational area" as set forth in Addendum A, and may provide assistance elsewhere in the state contingent upon availability and approval of their agency.
6. Nothing contained in this MAA is intended to prevent personnel from performing their normal duties as assigned by their respective agencies.
7. Each party agrees that all unit members assigned to the ESST must be knowledgeable on the deployment and lawful use of the ESS equipment before utilizing it in the field.

8. Jurisdiction.

- 8.1. When engaged in ESST operations that have been approved by and involve FDLE, as contemplated by this MAA, ESST members who do not otherwise have jurisdictional authority shall have full jurisdictional authority anywhere in the State of Florida, although principally focused within their "standard operational area" as set forth in Addendum A, with full power to enforce Florida laws and to avail themselves of the provision of this Agreement
 - 8.2. Officers assigned to ESST operations pursuant to this MAA shall be empowered to render law enforcement assistance and take law enforcement action in accordance with the law and the terms of this MAA.
 - 8.3. Execution of this MAA and continued participation by FDLE and each Party Agency shall constitute a general reciprocal, continuing request for and granting of assistance between the members of the Team that shall be considered authorized in accordance with the provisions of this MAA. No additional or specific formal request for assistance is required.
 - 8.4. ESST members operating outside their agency's jurisdiction shall not enjoy extra-jurisdictional authority as law enforcement officers unless engaged in approved ESST activities as stated herein.
 - 8.5. Pursuant to Section 23.127(1), Florida Statutes, employees of agencies that are parties to this agreement participating in the ESST shall, when engaging in authorized mutual cooperation and assistance pursuant to this MAA, have the same powers, duties, rights, privileges and immunities as if the employees were performing duties inside the law enforcement jurisdictional area of their respective agencies.
 - 8.6. Activities shall be considered authorized only when approved and directed as provided herein by an FDLE supervisor or command designee. If at anytime an FDLE supervisor or command designee determines that ESS assistance pursuant to this MAA should be terminated, it shall be promptly terminated in a manner assuring the safety of all involved law enforcement officers.
 - 8.7. No ESST member shall engage in activities outside the jurisdictional territory of his or her agency, except as approved by the ESST coordinator or designee and any such activity must be documented as provided herein. The ESST coordinator or designee shall maintain activities logs that will demonstrate the involvement of specific employees or agents provided by the parties to this MAA, including each operation's supervisor or designated leader. Specific authorization and approval from both FDLE and the respective Party Agency supervisory personnel shall be obtained when non-FDLE team members will be acting with FDLE outside of their "standard operational area" as set forth in Addendum A. FDLE shall be entitled to conduct audits and inspections of task force operations and records.
 - 8.8. Whenever an operation occurs outside of a team's "standard operational area" set forth in Addendum A, the SAC for the FDLE office in the region affected shall be notified about the presence of the ESST personnel in his or her region.
 - 8.9. Nothing herein shall otherwise limit the jurisdiction and powers normally possessed by an employee or member of a Party Agency.
9. Each party hereto agrees that all unit members participating in any ESST team shall comply with all applicable FDLE policy and procedures while in any FDLE workplace. However, Party Agency policy and procedures shall govern such members if there is a conflict. Any such conflict regarding rules, standards, policies or procedures shall be promptly reported to the ESST coordinator or designee, and the ESST Unit Commander, if one has been

designated. FDLE and the respective agency shall attempt to resolve the conflict in a manner that will allow this MAA to continue in full effect.

10. Each party hereto agrees that all unit members assigned to any ESST team during ESST activities will remain under the supervision of the FDLE ESST coordinator or designee. ESST unit members will for all other purposes remain agents and employees of their respective agencies and are not FDLE employees.
11. Each party hereto, agrees that each will retain full responsibility for and payment of salary (including overtime compensation or compensatory time), retirement/pension, insurance, disability, worker's compensation benefits and any other employment benefits for the respective agency's members participating in an ESST team.
12. Each party acknowledges that its employees acting pursuant to the MAA are obligated to follow applicable law regarding their activities and are to seek legal guidance and approval prior to engaging in activity that has not been clearly addressed by statute or case law. Each party agrees that each party will assume its own liability and responsibility for the acts, omissions or conduct of such its own employees while such employees are engaged in activities or initiatives pursuant to this MAA.
13. Each party agrees to maintain its own comprehensive general liability insurance, professional liability insurance, and automotive liability insurance or maintain a self-insuring fund for the term of this MAA in the amounts determined by each party to insure adequately such party's liability assumed herein. However, in no event shall such coverage be less than the statutory waiver of sovereign immunity. Each party agrees to provide the other parties with a copy of the respective insurance required hereunder, including the endorsements thereto and renewals thereto. In the event a party maintains a self-insurance fund, such party agrees to provide the other parties with documentation to substantiate the existence and maintenance of such self-insurance fund.
14. Each party agrees that except as otherwise provided herein, each agency will furnish to its own employees the necessary property, police equipment, vehicles, resources and training in order to effect the purposes of this MAA and further agree to bear the costs of expenses associated with the operation, maintenance, loss or damage to its equipment, vehicles or property so provided.
15. Each party agrees that the privileges and immunities from liability, exemption from laws, ordinances and rules and application of all pension, insurance, relief, disability, worker's compensation, salary (including overtime compensation or compensatory time), death and other benefits that apply to the activity of an employee when performing the employee's duties shall apply to the employee to the same degree, manner and extent while such employee acts under this MAA.
16. Each party hereto agrees that all unit members assigned to an ESST must pass a FDLE background investigation. Members may be issued keys and/or access cards to limited areas within the FDLE facilities by FDLE, if approved by the FDLE Regional Special Agent in Charge, and that thereafter assigned ESST members will abide by all FDLE building security procedures. Each party agrees that its members, other than unit members, must be escorted while inside FDLE buildings, in accordance with FDLE building security protocols.
17. This MAA shall become effective upon signature of the authorized representative of the parties, and shall remain in effect unless otherwise terminated until June 30, 2016. Any party, upon ninety (90) days written notice, may terminate this MAA. This agreement may be renewed every four years.

18. This MAA represents the entire agreement between the parties. Any alteration or amendment of the provisions of this MAA shall only be valid upon being reduced to writing, duly signed by authorized personnel of each of the parties and attached to the original.
19. This Agreement shall remain in full force as to all participating Agency Parties until or unless earlier canceled in writing by the Florida Department of Law Enforcement as to all or separate Parties, or as canceled in writing by an individual Party as provided herein. However, if the ESST continues operations beyond June 30, 2016, the Agreement shall be automatically extended on a month-by-month basis, not to extend past December 31, 2016, until such time as each participating Party has ratified a revised or subsequent written Agreement.
20. This Agreement may be duplicated for dissemination to all Parties, and such duplicates shall be of the same force and effect as the original. Execution of this Agreement may be signified by properly signing a separate signature page, the original of which shall be returned to, and maintained by, the Office of the Special Agent in Charge (SAC), Florida Department of Law Enforcement for the areas as specified in Addendum A attached hereto and made a part hereof. Under no circumstances may this agreement be renewed, amended, or extended except in writing. A copy of this agreement, with all signature pages, will be filed with the FDLE Mutual Aid Office pursuant to statute.

IN WITNESS WHEREOF, the Commissioner of FDLE has signed below and the authorized representative of the Agency Party has signed Addendum A (attached) on the date specified.



Gerald Bailey, Commissioner,
Florida Department of Law Enforcement

4/10/17
Date signed

Legal Review by  (attorney initials)

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ADDENDUM A

**Party Agency's Acceptance of the Electronic Surveillance Team (ESST) Voluntary
Cooperation Mutual Aid Agreement**

(Duration: Signature date to June 30, 2016)

Pursuant to F.S. 23.1225(3), this mutual aid agreement may be entered into by a chief executive officer of the agency that is authorized to contractually bind the agency. By signing below, an indication of such authorization is being made. Any signatory may attach to this signature page and any further evidence of authorization you wish to remain on file at FDLE along with this signature page.

Team standard operational area:

Agency Party: City of Orlando Police Department



Agency Head: Paul Rooney, Chief of Police

05.25.12

Date signed

Approved as to form and legality
this 23rd day of May, 2012



Lee Ann Freeman
Police Legal Advisor
Orlando Police Department



CITY OF ORLANDO

August 25, 2011

Ms. Julie A. Ebenstein, Esq.
ACLU of Florida
4500 Biscayne Boulevard, Suite 340
Miami, Florida 33137-3327

COPY
@ no charge
3/15/14

RE: Public Records Request #14627; cell phone location records

Dear Ms. Ebenstein:

This letter is in response to your request for records relating to cell phone location. Each request is addressed as follows:

- A copy of OPD Written Directive 10-04 is enclosed, along with a copy of the most recent designations from Lawson Lamar, State Attorney for the Ninth Judicial Circuit;
- We have no data retention policies responsive to your request; cell phone location records are case-specific and maintained accordingly; minimum record retention is set forth in the Florida Department of State's schedule GS02 for law enforcement;
- We have no records regarding the use of cell phone location records to identify "communities of interest" described in your request;
- We have no records regarding the cell phone location records that identify all cell phones at a particular location;
- We have no records regarding the use of "digital fences" as described in your request;
- Other than that which is enclosed, we have no records regarding the legal standard proffered to obtain cell phone records;
- We do not maintain separate records of judicial orders issued pursuant to applications for cell phone location records; such records would be filed with case-related records specific to the investigations in which such orders were sought;
- We have no statistical records regarding emergency requests for cell phone location records;
- We have no records regarding the form in which cell phone records are provided;

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3/18/14

- Any records regarding cell phone company manuals, pricing, and data access policies, is confidential and prohibited from disclosure pursuant to section 119.071(2)(d), Florida Statutes.
- Based on the information you provided, we cannot identify records of correspondence with cell phone companies or providers regarding invoices for cell phone location services; any such invoice would have to be identified based on vendor/payee identifiers or taxpayer IDs, or by investigative case-specific information;
- We have no record reflecting instances in which cell phone companies refused to comply with a request or order for cell phone location information; any such record would be contained within case-specific records.

Sincerely,



Lee Ann Freeman
Police Legal Advisor

cc: Paul Rooney, Chief of Police
Jody Litchford, Chief Assistant City Attorney
Natasha Williams, Police Legal Advisor
Alana Brenner, City Clerk

Enclosures
LAF:laf