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March 20, 2014

VIA EMAIL (nwessler@aclu.org)

Mr. Nathan Freed Wessler, Esq.
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004-2400

Re: Public Records Request Submitted to City of Sunrise
Request #140122

Dear Mr. Wessler:

As you know, this firm represents the City of Sunrise (“City”) with respect to the public records request (the “Request”) submitted by the ACLU in your February 28, 2014 letter to Chief Brooks. The Request seeks records regarding cell site simulators, in ten (10) separately listed sub-categories. Please consider this firm as the designee of the custodian of the City’s records pursuant to §119.07, Florida Statutes for this and any future requests you may have.

The City cannot and will not acknowledge whether any records responsive to the Request exist and, if any responsive records do exist, cannot and will not publicly disclose those records. Not only would the mere production of a single record responsive to these requests, even if entirely redacted, reveal the existence of confidential surveillance techniques,¹ but it would also compromise both active and future criminal investigations. Accordingly, the requested records,

¹ As the articles you cited in your letter demonstrate, “cell site simulators,” in varying forms, are used for surveillance. See, e.g., Ryan Gallagher, *Meet the Machines that Steal Your Phone’s Data*, ArsTechnica (Sept. 25, 2013), <http://arstechnica.com/tech-policy/2013/09/meet-themachines-that-steal-your-phones-data/> (describing various surveillance devices and the purposes therefor).

to the extent they even exist, would be exempt from production as they relate to: (1) surveillance techniques, procedures and personnel;² and (2) active criminal investigations.³

While your letter states that the ACLU does not seek records relating to “open investigations,” your implicit assumption that records related to other investigations, to the extent they even exist, have lost their exempt status is mistaken. Simply because a single arrest may have been made or the investigation of a particular individual terminated does not mean that records are no longer exempt from disclosure where the records include leads to other cases and other suspects. On this point, the Florida Supreme Court has stated:

We must also bear in mind that police reports and documents often include leads to other cases and other suspects. This information must be protected in order to afford fair pursuit of such involvement by others and the solution of other offenses. These important objectives can be destroyed or defeated if police reports are made so readily available; the police would understandably be hesitant to enter freely in reports what might be of help later on if they were not generally protected.

State v. Johnson, 284 So. 2d 198, 200 (Fla. 1973). *See also Barfield v. City of Ft. Lauderdale Police Dept.*, 639 So. 2d 1012, 1014 (Fla. 4th DCA 1994) (“the sanctity of police records compiled during a criminal investigation also has a long heritage in Florida”). Moreover, the production of the requested records, to the extent they even exist, would hamper future law enforcement efforts by enabling adversaries of law enforcement to evade detection. *See U.S. v. Rigmaiden*, 844 F. Supp. 2d 982, 1002 (U.S.D.C. Ariz. 2012).

As such, because the requested records, to the extent they even exist, would reveal information vital to other cases and suspects, the requested records remain exempt from production in order to avoid the destruction and defeat of the City’s essential police objectives.

If you have any questions or comments, please do not hesitate to contact us.

Very truly yours,


Daniel L. Abbott
Samuel I. Zeskind

² “Any information revealing surveillance techniques or procedures or personnel is exempt from (public records law disclosure.)” §119.071.2(d), Fla. Stat.

³ “Active criminal intelligence information and active criminal investigative information are exempt from (public records law disclosure.)” §119.071(2)(c)1, Fla. Stat.