

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT  
IN AND FOR SARASOTA COUNTY, FLORIDA

AMERICAN CIVIL LIBERTIES UNION OF  
FLORIDA, INC., and MICHAEL BARFIELD,

Petitioners,

v.

Case No. 2014-CA-\_\_\_\_\_

CITY OF SARASOTA, and  
MICHAEL JACKSON,

Respondents.

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**NOTICE OF FILING EXHIBITS 1 – 5 OMITTED FROM**  
**VERIFIED EMERGENCY PETITION FOR WRIT OF MANDAMUS**  
**and**  
**VERIFIED EMERGENCY MOTION FOR TEMPORARY INJUNCTION**

Petitioners, through counsel, give notice of filing Exhibits 1 through 5 of documents referenced within, but inadvertently omitted from, the Verified Emergency Petition for Writ of Mandamus and Verified Emergency Motion for Temporary Injunction.

Respectfully submitted,

*s/Benjamin James Stevenson*

**Benjamin James Stevenson**

Fla. Bar. No. 598909

ACLU Found. of Fla.

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*Counsel for ACLU*

*/s/ Andrea Flynn Mogensen*

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*Counsel for ACLU*

***Maria Kayanan***

**MARIA KAYANAN**

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*Counsel for ACLU*

**THOMAS & LOCICERO PL**

***/s/ Gregg D. Thomas***

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Attorney for Michael Barfield

**From:** [mbarfield@sunshinelitigation.com](mailto:mbarfield@sunshinelitigation.com)  
**To:** [Rhonda Graham](#)  
**Subject:** Records request  
**Date:** Monday, May 19, 2014 9:35:25 AM

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This is a request under Chapter 119 for the following records in the possession of the Sarasota Police Department (SPD), including any employee, personnel, officer, attorney or agent of the SPD:

1. Any records made or received by SPD related to the use of cell phone tracking equipment, including, but not limited to, any device known as Stingray or Stingray II;
2. All email communications concerning the use of cell phone tracking equipment, including, but not limited to, any device known as Stingray or Stingray II;
3. Any record relating to equipment or electronic devices used to track or locate cell phones, including, but not limited to, any device known as Stingray or Stingray II;
4. Any purchase orders or financial transactions related to the purchase of cell phone tracking equipment, including, but not limited to, purchases or lease agreements from the Harris Corporation, its agents or subsidiaries;
5. Any record indicating that cell phone tracking equipment, including, but not limited to any device known as Stingray or Stingray II; and
6. Any non-disclosure agreement between the SPD and any entity relating to cell phone tracking equipment, including, but not limited to, any device known as Stingray or Stingray II.

If you contend that any record responsive to this request is exempt or confidential, please state in writing the applicable statutory exemption along with the particular reasons for the conclusion that the requested records are exempt or confidential.

I would direct your attention to the following statutory requirements set forth in section 119.07(1), Fla. Stat.:

(h) Even if an assertion is made by the custodian of public records that a requested record is not a public record subject to public inspection or copying under this subsection, the requested record shall, nevertheless, not be disposed of for a period of 30 days after the date on which a written request to inspect or copy the record was served on or otherwise made to the custodian of public records by the person seeking access to the record. If a civil action is instituted within the 30-day period to enforce the provisions of this section with respect to the requested record, the custodian of public records may not dispose of the record except by order of a court of competent jurisdiction after notice to all affected parties.

(i) The absence of a civil action instituted for the purpose stated in paragraph (g) does not relieve the custodian of public records of the duty to

maintain the record as a public record if the record is in fact a public record subject to public inspection and copying under this subsection and does not otherwise excuse or exonerate the custodian of public records from any unauthorized or unlawful disposition of such record.

If any of the requested documents are maintained in a common-format electronic-medium, please provide these documents in such electronic medium and not in paper form. For purposes of this request, common electronic-formats include (1) American Standard Code for Information Interchange ("ASCII"), (2) email files formatted in Microsoft Outlook known as a .pst file; (3) files formatted in one of the Microsoft Office Suite, Corel Suite, OpenOffice Suite, or IBM's Lotus Suite applications (.doc, .xls, ppt, .mdb, .wpd, etc.), (4) a text file (.txt), or (5) hypertext markup language (.html) or similar web page language. This is the preferred format. However, if any of the requested documents are only maintained or can only be produced as electronic images, for example a portable document format (.pdf), then as an alternative, I request this electronic-image format. See § 119.01(2)(f), Fla. Stat.

**THINK BEFORE YOU PRINT**

## **IMPORTANT NOTICE**

**Please be advised that I am not an attorney and not authorized to render any legal advice or recommendation.**

This message, together with any attachments, is intended only for the addressee. It may contain information which is legally privileged, confidential and exempt from disclosure. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, use, or any action or reliance on this communication is strictly prohibited. If you have received this e-mail in error, please notify the sender immediately by telephone (941) 228-1575 or by return e-mail and delete the message, along with any attachments.

Tax Advice Disclosure: To ensure compliance with requirements imposed by the **IRS** under **Circular 230**, we inform you that any U.S. federal tax advice contained in this communication (including any attachments), unless otherwise specifically stated, was not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing or recommending to another party any matters addressed herein.

**From:** [Eric Werbeck](#)  
**To:** [mbarfield@sunshinelitigation.com](mailto:mbarfield@sunshinelitigation.com)  
**Cc:** [Robert Fournier](#)  
**Subject:** FW: Public records request for "tap and trace" orders  
**Date:** Tuesday, May 27, 2014 12:20:04 PM  
**Importance:** High

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Forwarded per Lt. Ledwith's request... I understand he would like to cancel the appointment you have with Det Jackson re: below.

-----Original Message-----

From: Eric Werbeck [Eric.Werbeck@sarasotagov.com]  
Received: Tuesday, 27 May 2014, 11:12AM  
To: Pat Ledwith [Patrick.Ledwith@sarasotagov.com]; Michael Jackson [Michael.Jackson@sarasotagov.com]  
CC: Robert Fournier [Robert.Fournier@sarasotagov.com]  
Subject: Public records request for "tap and trace" orders

Lt. Ledwith,

I have discussed Mr. Barfield's request with the US Marshal's Service Office of General Counsel and the US Attorney's Office. We have been instructed not to release the documents requested, as any "tap and trace" orders kept by Special Deputy US Marshal Jackson pursuant to his duties with the Marshal's Service belong to the Marshal's Service. The request should be made of the federal government through the Freedom of Information/Privacy Act. Information here: <http://www.usmarshals.gov/foia/>.

Feel free to forward as necessary. I will be back in the office tomorrow, reachable today by telephone if necessary.

Regards,

Eric F. Werbeck  
Assistant City Attorney  
City of Sarasota, Florida  
1 S. School Avenue, Ste. 700  
Sarasota, FL 34237  
Phone: (941) 906-1199  
Facsimile: (941) 906-1890  
[Eric.Werbeck@sarasotagov.com](mailto:Eric.Werbeck@sarasotagov.com)

Please consider the environment before printing this e-mail.

**From:** [mbarfield@sunshinelitigation.com](mailto:mbarfield@sunshinelitigation.com)  
**To:** [Eric Werbeck](mailto:Eric.Werbeck)  
**Cc:** [Robert Fournier](mailto:Robert.Fournier)  
**Subject:** Re: FW: Public records request for "tap and trace" orders  
**Date:** Wednesday, May 28, 2014 8:17:38 AM

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Eric:

I also wanted to make sure the provisions of section 119.07(1)(h) and (i) are observed and that the responsive records are maintained in the possession of Detective Jackson and/or the agency until such time as a court of competent jurisdiction makes a determination about whether the documents are or are not a public record.

Please confirm that documents are still in the possession of the agency or Detective Jackson. Thank you.

Michael

On May 27, 2014 12:20 PM, "Eric Werbeck" <[Eric.Werbeck@sarasotagov.com](mailto:Eric.Werbeck@sarasotagov.com)> wrote:

Forwarded per Lt. Ledwith's request... I understand he would like to cancel the appointment you have with Det Jackson re: below.

-----Original Message-----

From: Eric Werbeck [[Eric.Werbeck@sarasotagov.com](mailto:Eric.Werbeck@sarasotagov.com)]  
Received: Tuesday, 27 May 2014, 11:12AM  
To: Pat Ledwith [[Patrick.Ledwith@sarasotagov.com](mailto:Patrick.Ledwith@sarasotagov.com)]; Michael Jackson [[Michael.Jackson@sarasotagov.com](mailto:Michael.Jackson@sarasotagov.com)]  
CC: Robert Fournier [[Robert.Fournier@sarasotagov.com](mailto:Robert.Fournier@sarasotagov.com)]  
Subject: Public records request for "tap and trace" orders

Lt. Ledwith,

I have discussed Mr. Barfield's request with the US Marshal's Service Office of General Counsel and the US Attorney's Office. We have been instructed not to release the documents requested, as any "tap and trace" orders kept by Special Deputy US Marshal Jackson pursuant to his duties with the Marshal's Service belong to the Marshal's Service. The request should be made of the federal government through the Freedom of Information/Privacy Act. Information here: <http://www.usmarshals.gov/foia/>.

Feel free to forward as necessary. I will be back in the office tomorrow, reachable today by telephone if necessary.

Regards,

Eric F. Werbeck  
Assistant City Attorney  
City of Sarasota, Florida

1 S. School Avenue, Ste. 700  
Sarasota, FL 34237  
Phone: [\(941\) 906-1199](tel:(941)906-1199)  
Facsimile: [\(941\) 906-1890](tel:(941)906-1890)  
[Eric.Werbeck@sarasotagov.com](mailto:Eric.Werbeck@sarasotagov.com)

Please consider the environment before printing this e-mail.

**From:** [Eric Werbeck](mailto:Eric.Werbeck)  
**To:** [mbarfield@sunshinelitigation.com](mailto:mbarfield@sunshinelitigation.com)  
**Cc:** [Robert Fournier](mailto:Robert.Fournier); [Andrea Mogensen](mailto:Andrea.Mogensen); [john.rudy@usdoj.gov](mailto:john.rudy@usdoj.gov); [harvey.smith@usdoj.gov](mailto:harvey.smith@usdoj.gov)  
**Subject:** RE: Det. Jackson  
**Date:** Friday, May 30, 2014 11:18:13 AM

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The City's position is as discussed last night; the City never had custody of any orders, the US Marshal's Service maintained custody of them. After our phone call last night, I learned that the Marshal's Service had physically moved the subject record(s) from Sarasota to Tampa--though I am unaware of the location of any record(s) at this point. Regarding whether Special Deputy Jackson filed orders with the Clerk after being signed by a judge, he is the best person to answer that. I don't know how many orders Special Deputy Jackson sought at the direction of the US Marshal's Service, how many orders were signed, nor can I say whether a signing judge might have asked an assistant to file an original with the clerk of court and gave Deputy Jackson a copy, or filed it himself/herself. So, I do not believe I can answer your question.

Regards,

Eric F. Werbeck  
Assistant City Attorney  
City of Sarasota, Florida  
1 S. School Avenue, Ste. 700  
Sarasota, FL 34237  
Phone: (941) 906-1199  
Facsimile: (941) 906-1890  
[Eric.Werbeck@sarasotagov.com](mailto:Eric.Werbeck@sarasotagov.com)

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**From:** [mbarfield@sunshinelitigation.com](mailto:mbarfield@sunshinelitigation.com) [[michael@sarasotacriminallawyer.com](mailto:michael@sarasotacriminallawyer.com)]  
**Sent:** Friday, May 30, 2014 10:08 AM  
**To:** Eric Werbeck  
**Cc:** Robert Fournier; Andrea Mogensen  
**Subject:** Det. Jackson

Eric:

I wanted to confirm the representation of Detective Jackson that the applications and trap and trace orders in his possession that I was scheduled to inspect were ***not*** filed with the Clerk of Court and that he is the sole custodian of those records. If this is incorrect, please notify me immediately.

Michael

Please consider the environment before printing this e-mail.



**From:** [Eric Werbeck](mailto:Eric.Werbeck@sunshinelitigation.com)  
**To:** [mbarfield@sunshinelitigation.com](mailto:mbarfield@sunshinelitigation.com)  
**Cc:** [Robert Fournier](#); [Karen McGowan](#); [Cheri Potts](#)  
**Subject:** RE: Additional records  
**Date:** Friday, May 30, 2014 4:51:28 PM  
**Attachments:** [email requests.pdf](#)  
**Importance:** High

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Michael,

Are you referring to your separate public records request dated 5/19/2014, modified on 5/22/14, made to Rhonda Graham and Karen McGowan? If so, I have been involved with reviewing the provided emails under paragraph 2 of your request. As I indicated previously, there are 1900 emails in that request alone. I have been reaching out to various personnel in determining if certain emails are still active investigations, active intelligence, etc. I have heard back from many, but still have emails to go through. As they work various shifts, it is hard to contact some. It has taken many hours of time here.

On Friday, 5/29, you submitted an additional request for additional search terms... If that is for emails, City IT will have to run that search and depending on how many emails are found, I'll have to go through those for exemptions as well. Speaking of, could you let me know if the additional terms you sent on 5/29 apply only to paragraph two of your original request? Karen McGowan called me earlier, I assume about your additional terms, and I called her back and left a message. She's been in meetings but I expect she'll call me shortly.

If you are asking for more than emails re: the additional terms, then we'll have to have Cheri Potts respond with other records that might be in the possession of the police department.

An additional concern is brought forth by your question in the attached email chain "can we check for any electronically stored data at SPD, including, for example, Word versions of documents?" That portion of the email chain was not forwarded in your recent email, sent 5/29, when you added additional search terms to your original request. I'm unclear as to whether that is part of your public records request... and if it is, if that request applies to all terms you have listed in all emails. Your question calls for a yes/no response, but I'm not sure if you meant it that way. If you are indeed requesting electronically stored documents, then I will have to conference with Bob and the SPD information technology manager as to an estimate of time for retrieval and examination of those records, so we can come up with an estimate of costs associated with the request. I'll definitely need to know if all these terms are to be searched on SPD servers.

I'm not trying to be difficult at all and want to help fulfill this request... but because requests were made upon requests, modifying previous requests, and there are now two email chains, I'm having difficulty determining what exactly you are requesting. Please let me know if I have this right or if you'd like to clarify, that'd be great. I have attached the request(s) to which I believe you are referring... please follow up when you can.

Thanks,

Eric F. Werbeck  
Assistant City Attorney  
City of Sarasota, Florida  
1 S. School Avenue, Ste. 700  
Sarasota, FL 34237  
Phone: (941) 906-1199  
Facsimile: (941) 906-1890  
[Eric.Werbeck@sarasotagov.com](mailto:Eric.Werbeck@sarasotagov.com)

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**From:** [mbarfield@sunshinelitigation.com](mailto:mbarfield@sunshinelitigation.com) [[michael@sarasotacriminallawyer.com](mailto:michael@sarasotacriminallawyer.com)]  
**Sent:** Friday, May 30, 2014 3:27 PM  
**To:** Eric Werbeck

**Cc:** Robert Fournier

**Subject:** Additional records

Eric:

Setting aside the Marshal's taking custody of public records as well as state court judicial records, where do we stand on the balance of the records I requested that you indicated you were reviewing? I've called twice trying to get an answer. Please let me know.

Michael

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