



March 27, 2020

VIA EMAIL

Mayor Bob Sampayan, Vice Mayor Hermie Sunga and Honorable Members of the Vallejo City Council: Hakeem Brown, Pippin Dew, Robert McConnell, Katy Miessner, Rosanna Verder-Aliga

Re: Follow-Up Letter On Purchase of Cell Site Simulator

Dear Mayor Sampayan and Honorable Members of the Vallejo City Council,

Thank you for accepting our letter and reading it into the record at your March 24 meeting. We regret that the public health situation prevented us from attending and commenting in person.

Having viewed the meeting online, we have two further pieces of information that we'd like to convey to you:

- 1) **The statement made during the meeting that cell phone simulators do not interfere with the cellular phone traffic of untargeted phones in the vicinity is incorrect.** They can and they do, as the Department of Justice disclosed in 2015. Here are some links for your review.

<https://www.justice.gov/opa/file/767321/download>

“An application or supporting affidavit should inform the court that the target cellular device (e.g., cell phone) and other cellular devices in the area might experience a temporary disruption of service from the service provider”.

<https://www.wired.com/2015/03/feds-admit-stingrays-can-disrupt-cell-service-bystanders/>

“But a court filing recently uncovered by the ACLU suggests another reason for the secrecy: the fact that stingrays can disrupt cellular service for any phone in their vicinity—not just targeted phones—as well as any other mobile devices that use the same cellular network for connectivity as the targeted phone.”

- 2) **Your process on March 24 was not compliant with state law**

2016 State of California Legislation (then called [Senate Bill 741 authored by Senator Jerry Hill](#)) set up requirements for the acquisition of cell site simulators by public agencies. SB 741 requires that the use policy for the equipment be available to the public, which it does not seem to be, and posted conspicuously on the agency's website, which it is not. SB 741 also requires that the City Council that oversees the agency receive, review and formally approve of the use policy by resolution or ordinance, prior to acquisition.

SECTION 1.

Article 11 (commencing with Section 53166) is added to Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code, to read:

Article 11. Cellular Communications Interception

53166.

(a) For purposes of this article, the following terms have the following meanings:

(1) "Cellular communications interception technology" means any device that intercepts mobile telephony calling information or content, including an international mobile subscriber identity catcher or other virtual base transceiver station that masquerades as a cellular station and logs mobile telephony calling information.

(2) "Local agency" means any city, county, city and county, special district, authority, or other political subdivision of the state, and includes every county sheriff and city police department.

(b) Every local agency that operates cellular communications interception technology shall do both of the following:

(1) Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect information gathered through the use of cellular communications interception technology from unauthorized access, destruction, use, modification, or disclosure.

(2) Implement a usage and privacy policy to ensure that the collection, use, maintenance, sharing, and dissemination of information gathered through the use of cellular communications interception technology complies with all applicable law and is consistent with respect for an individual's privacy and civil liberties. **This usage and privacy policy shall be available in writing to the public, and, if the local agency has an Internet Web site, the usage and privacy policy shall be posted conspicuously on that Internet Web site.** The usage and privacy policy shall, at a minimum, include all of the following:

(A) The authorized purposes for using cellular communications interception technology and for collecting information using that technology.

(B) A description of the job title or other designation of the employees who are authorized to use, or access information collected through the use of, cellular communications interception technology. The policy shall identify the training requirements necessary for those authorized employees.

(C) A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits.

(D) The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.

(E) The purpose of, process for, and restrictions on, the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.

(F) The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

(c) (1) Except as provided in paragraph (2), a local agency shall not acquire cellular communications interception technology unless approved by its legislative body by adoption, at a regularly scheduled public meeting held pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), of a resolution or ordinance authorizing that acquisition and the usage and privacy policy required by this section.

(2) Notwithstanding paragraph (1), the county sheriff shall not acquire cellular communications interception technology unless the sheriff provides public notice of the acquisition, which shall be posted conspicuously on his or her department's Internet Web site, and his or her department has a usage and privacy policy required by this section.

(d) In addition to any other sanctions, penalties, or remedies provided by law, an individual who has been harmed by a violation of this section may bring a civil action in any court of competent jurisdiction against a person who knowingly caused that violation. The court may award a combination of any one or more of the following:

(1) Actual damages, but not less than liquidated damages in the amount of two thousand five hundred dollars (\$2,500).

(2) Punitive damages upon proof of willful or reckless disregard of the law.

(3) Reasonable attorney's fees and other litigation costs reasonably incurred.

(4) Other preliminary and equitable relief as the court determines to be appropriate.

We hope that the provision of correct information about the capabilities of the equipment was helpful and we encourage you to be very clear with the police department that usage of the equipment can interfere with cellular communications in the impacted area.

We expect the cell site simulator use policy to be publicly posted on the City's website, compliant with Senate Bill 741 in its particulars, and noticed on the next municipal agenda for approval by the City Council of the use policy, and for the purchase to wait until full compliance with state law is achieved. We note that residents of Vallejo have standing to pursue injunctive relief and damages under state law, if there is not municipal compliance.

Sincerely,

James P. Massar
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Tracy Rosenberg
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