

12. Based on information and belief, the records are never filed with the Clerk of the Court or retained by any judicial officer. Rather, Detective Jackson maintains exclusive physical custody and control of the records at SPD.

13. On May 19, 2014, Barfield made a request of SPD for records relating to cell phone tracking and sought the following records:

- a. 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;
- b. All email communications concerning the use of cell phone tracking equipment, including, but not limited to, any device known as Stingray or Stingray II;
- c. 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;
- d. 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;
- e. Any record indicating that cell phone tracking equipment, including, but not limited to any device known as Stingray or Stingray II; and
- f. 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.

See Exhibit 1, attached hereto.

14. Through this request, Mr. Barfield requested copies of the originals (or copies of originals) and drafts of the records.

15. On or about May 22, 2014, Mr. Barfield contacted Detective Jackson and requested an appointment to inspect records in his possession, including the trap and trace applications and orders.

16. Detective Jackson acknowledged to Mr. Barfield that he had sole possession, custody and control of the trap and trace applications and orders and scheduled an appointment for Mr. Barfield to inspect same at SPD on Tuesday, May 27, 2014, at 2:30 p.m.

17. On Tuesday, May 27, 2014, just a few hours before the scheduled inspection of the records, Assistant City Attorney Eric Werbeck sent Mr. Barfield an email stating that a federal agency instructed the City not to release the requested documents because any “trap and trace” orders kept by Detective Jackson were pursuant to his duties as a Special Deputy with the U.S. Marshal’s Service. See Exhibit 2, attached hereto.

18. On May 28, 2014, Mr. Barfield requested Mr. Werbeck to comply with the provisions of § 119.07(1)(h), Fla. Stat., to maintain the records until such time as a court of competent jurisdiction could determine whether or not the records are public records subject to inspection under Chapter 119. See Exhibit 3, attached hereto.

19. In a telephone conversation with Mr. Barfield on May 28, 2014, and again on May 29, 2014, Mr. Werbeck stated that he would not guarantee that the requested records would be maintained in the custody of Detective Jackson or that the provisions of § 119.07(1)(h), Fla. Stat., applied to the records.

20. The City and Detective Jackson have not asserted any statutory exemption to the requested in writing as required by § 119.07(1)(e) and (f), Fla. Stat.

21. On or about May 30, 2014, the City notified Petitioners that a federal agency had physically moved the records in Detective Jackson’s possession from Sarasota to an unknown location. See Exhibit 4, attached hereto.

22. In a second email dated May 30, 2014, the City sought clarification on the remaining records identified in response to the original May 19th request.<sup>1</sup> See Exhibit 5, attached hereto.

23. Based on information and belief, the City and Detective Jackson have possession of digital records relating to the trap and trace applications. For example, when Detective Jackson drafted any applications and proposed orders, SPD's servers would likely retain an electronic version of the documents or draft documents. Additionally, when Detective Jackson sent a signed order to any cell phone service provider, the record would have been transmitted via email or facsimile. The transmission via email or facsimile would remain on SPD's servers or Detective Jackson's individual computer.

24. Petitioners reasonably believe that if the City or Detective Jackson identify any additional records relating to the Stingray technology or trap and trace applications and orders submitted to a state court judge, they will notify the federal government, who will again take custody of public records as well as judicial court records not maintained anywhere else.

25. Under these circumstances, there is a legitimate concern that any additional records identified in response to Petitioners' records request will be transferred to the custody of federal agents before this Court makes a determination of whether they are or are not a public record or alternatively, a court or judicial record.

26. The applications and orders submitted to a judge under §§ 934.32 and 934.33, Fla. Stat., are records of the judicial branch within the meaning of Fla. R. Jud. Admin. Rule 2.420(1).

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<sup>1</sup> As indicated in the email, the original records request was supplemented with keyword search terms.