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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
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WASHINGTON, DC 20515–6143
MAJORITY (202) 225–5074
MINORITY (202) 225–5051
http://oversight.house.gov

November 9, 2015

The Honorable Arne Duncan
Secretary
U.S. Department of Education
400 Maryland Avenue SW
Washington, DC 20202

Dear Mr. Secretary:

Cell-site simulation technology, commonly referred to as "Stingrays" or "dirtboxes,"[1] allows law enforcement agents to simulate a cell phone tower, which results in nearby mobile phones and other wireless communication devices connecting to the simulated tower instead of the phone carrier's legitimate tower. When the mobile device connects, the simulation device can see and record the mobile device's unique ID number and approximate location.

The Department of Justice (DOJ) and Department of Homeland Security (DHS) recently released enhanced policies governing those departments' use of cell-site simulation devices for domestic law enforcement activities.[2] Those policies require that, with limited exceptions, officers obtain a search warrant before using the devices. The policies also govern officer training, data retention policies, and statistics the departments are required to keep about the use of the devices.

Recent press reports indicate that federal law enforcement agencies other than DOJ and DHS may be using cell-site simulation devices, including the Internal Revenue Service (IRS).[3] In addition, the American Civil Liberties Union identified 12 other federal agencies with cell-site simulation devices.[4]

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[1] *Examining Law Enforcement Use of Cell Phone Tracking Devices, Hearing before the Subcomm. for Info. Tech. of the H. Comm. on Oversight and Gov't Reform*, 114th Cong. (Oct. 21, 2015); *see also* Letter from Hon. Jason Chaffetz, et al., Chairman, H. Comm. on Oversight and Gov. Reform, to Hon. Eric Holder, Att'y Gen., U.S. Dep't of Justice (Apr. 24, 2015), https://oversight.house.gov/wp-content/uploads/2015/05/2015-04-24-JEC-EEC-WH-RK-to-Holder-DOJ-stingrays-due-5-8.pdf.

[2] U.S. Dep't of Justice, *Department of Justice Policy Guidance: Use of Cell-Site Stimulator Technology* (Sept. 2014), http://www.justice.gov/opa/file/767321/download; U.S. Dep't of Homeland Security, *Department Policy Regarding the Use of Cell-Site Simulator Technology*, Policy Directive 047-02 (Oct. 2015), https://www.dhs.gov/sites/default/files/publications/Department%20Policy%20Regarding%20the%20Use%20of%20Cell-Site%20Simulator%20Technology.pdf.

[3] Nicky Woolf & William Green, *IRS possessed Stingray cellphone surveillance gear, documents reveal*, THE GUARDIAN (Oct. 26, 2015, 8:25 AM), http://www.theguardian.com/world/2015/oct/26/stingray-surveillance-technology-irs-cellphone-tower.

[4] American Civil Liberties Union, *Stingray Tracking Devices: Who's Got Them?*, https://www.aclu.org/map/stingray-tracking-devices-whos-got-them#agencies (accessed on Oct. 29, 2015).

As it was with DOJ and DHS before those agencies issued department-wide policies governing use of the devices, the Committee is concerned that other federal agencies may be governed by a patchwork of policies. Those policies may permit the use of cell-site simulator devices through a lower standard than a search warrant obtained after a showing of probable cause.

So that the Committee can better understand U.S. Department of Education's use, if any, of cell-site simulation technology, please provide the following documents as soon as possible, but no later than 5:00 p.m. on November 23, 2015:

1. All Agency-wide and component agency policies, guidance, or memoranda on the use of cell-site simulation technology.

2. All Agency-wide and component agency policies, guidance, or memoranda on the use and retention of information collected by cell-site simulation technology.

3. All Agency-wide and component agency policies, guidance, or memoranda on the use of cell-site simulation technology by any component agency of U.S. Department of Education (ED) in conjunction with joint law enforcement operations conducted at the State and local level.

4. All Agency-wide or component agency policies, memoranda of understanding, or non-disclosure agreements entered into by any component agency of ED with State and local law enforcement agencies regarding the use of cell-site simulation technology.

5. All policies, guidance, or memoranda on the use of ED grants and the total amount of money disbursed by ED to State or local law enforcement agencies to obtain cell-site simulation technology.

6. All documents referring or relating to any allegation of misuse of cell-site simulation technology by any component agency of ED regarding any misuse.

7. All documents related to the cost and possession of cell-site simulators in the possession of the component agencies of ED. In lieu of documents, ED can provide an inventory of the cell-site simulators in the possession of the component agencies of ED. The inventory is to show for each agency:

    a. the total number of such devices in possession of the agency;

    b. the name, make, and model of the devices used by or in possession of the agency;

    c. the total number of devices in possession of the agency for each make and model of device; and,

    d. the cost of each individual device and the total amount each agency spent in fiscal years 2010-2015 on acquiring and using cell-site simulation technology.

In addition, please contact the Committee as soon as possible to arrange a briefing on this matter by November 20, 2015.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X.

When producing documents to the Committee, please deliver production sets to the Majority staff in room 2157 of the Rayburn House Office Building and the Minority staff in room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format. An attachment to this letter provides additional information about responding to the Committee's request.

Please contact Troy Stock of the Majority staff at (202) 225-5074 or Brian Quinn of Ranking Member Cummings' staff at (202) 225-5051 with any questions about this request. Thank you for your attention to this matter.

Sincerely,

Jason Chaffetz
Chairman

Elijah E. Cummings
Ranking Member

Will Hurd
Chairman
Subcommittee on
Information Technology

Robin Kelly
Ranking Member
Subcommittee on
Information Technology

Enclosure

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.