

Gudiel, Frankie

From: Yadi [REDACTED]
Sent: Thursday, November 02, 2023 8:11 AM
To: Community Police Oversight Commission
Subject: Public comment - Pasadena CPOC meeting - 11/02/23
Attachments: Public Comment - Community Police Oversight Commission -11-02-2023 - cell site simulator.pdf

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Hi,

Please find attached my public comment for the November 2, 2023 Pasadena Community Police Oversight Commission meeting, for agenda item 7. Pasadena Police Department request to purchase a cell site simulator and draft policy.

Thanks,

Yadi
(Attachments: 1)

7. Pasadena Police Department request to purchase a cell site simulator and draft policy

The CPOC should review two general areas of the Pasadena Police Department's purchase of a cell site simulator (CSS).

1. What is the justification for purchasing a cell site simulator?

At the high level, PPD should provide justification and rationale for acquiring a CSS. PPD has stated that it has deployed a borrowed CSS several times in the past, and should provide factual details of prior uses, such as how many times a CSS was used in the past year, and the outcome of those uses. In addition, how many search warrants were obtained either before the use of a CSS and how many times was it used under exigent circumstances. PPD should also furnish any MOUs, NDAs, or other agreements with other law enforcement agencies and vendors in relation to their prior use of CSS.

2. Does the use policy meet the legal requirements as set forth under CalECPA, as well as sufficiently outline privacy protections and provide for robust oversight and transparency?

In 2015, the California State Legislature passed laws regulating law enforcement acquisition and use of CSS. The California Electronic Communications Privacy Act (CalECPA) requires law enforcement to obtain a warrant before using a CSS (except in exigent circumstances) and to disclose the use of CSS to the California Department of Justice.¹ Moreover, SB 741 requires an open and transparent process before a local government agency may acquire CSS technology.² The law requires an agency to articulate and publish online for public review a policy that ensures "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."³ Such a policy must include - at a minimum - the authorized purposes for using the technology, the retention period for data collected with a CSS, information about with whom data will be shared, and an explanation of how the agency will ensure accuracy and compliance with laws (such as CalECPA). Oversight, transparency and reporting is essential.

Cell site simulator is an extremely powerful tool with the capability to eavesdrop on calls, intercept emails and text messages, and create interference during calls, such as to 911. The potential for misuse is significant and the use of this technology should not be shrouded in secrecy. On the contrary, the public should be made aware of this technology, and have assurances against misuse and protection of privacy and other civil liberties and compliance with relevant laws.

Yadi

Community Police Oversight Commission

November 2, 2023

7. Pasadena Police Department request to purchase a cell site simulator and draft policy

¹ Cal. Penal Code §§ 1546.1(c), 1546.2(c), available at https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1546.1.&lawCode=PEN.

² Cal. Govt. Code § 53166 et seq., available at https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=53166.&lawCode=GOV.

³ Id. at § 53166(b)(2).



October 20, 2023

VIA EMAIL

Mayor Victor Gordo, Vice Mayor Felicia Williams and Honorable Members of the Pasadena City Council: Tyron Hampton, Justin Jones, Gene Masuda, Jess Rivas, Steve Madison, Jason Lyon

Re: Proposed Purchase of Cell Site Simulator

Dear Mayor Gordo and Honorable Members of the Pasadena City Council,

We write to ask you to deny the proposed purchase of a cell site simulator (CSS) as it is not in the best interests of the community and fails to comply with California state law.

Oakland Privacy is a citizens' coalition that works regionally to defend the right to privacy and enhance public transparency and oversight regarding the use of surveillance techniques and equipment. We were instrumental in the creation of the first standing municipal citizens' privacy advisory commission in the City of Oakland, and we have engaged in privacy enhancing legislative efforts with several Northern California cities and regional entities. As experts on municipal privacy reform, we have written use policies and impact reports for a variety of surveillance technologies, conducted research and investigations, and developed frameworks for the implementation of equipment with respect for civil rights, privacy protections and community control.

The staff report fails to note that use of a CSS can interfere with cell phone service for cell phones within the device's vicinity. The potential for disruption of cell phone service when people are attempting to call 911 or their doctor is something about which the City Council and public should be aware.

The purchase of this expensive tracking device is being put forward without a requirement to report on a regular basis about how the technology was used and whether the use of the technology achieved the goals. How will the City Council know if the technology is being properly utilized in conformance with a policy that doesn't yet exist? As surveillance experts, we always advise the City Council be presented with the usage policy for new equipment at the time of approval of the purchase.

In 2015, the California State Legislature passed laws regulating law enforcement use of CSSs due to inappropriate secrecy and abuse. The California Electronic Communications Privacy Act requires officers to obtain a warrant before using CSSs (except in exigent circumstances) and to disclose the use of CSSs to the California Department

of Justice.¹ Meanwhile, SB 741 requires an open and transparent process before a local government agency may acquire CSS technology.²

This law lays out the process for acquiring a CSS:

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 ... of a resolution or ordinance authorizing that acquisition and the usage and privacy policy...³

The law requires an agency to articulate and publish online for public review a policy that ensures “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.”⁴

Such a policy must include, at a minimum, the authorized purposes for using the technology, the retention period for data collected with the CSS, information about with whom data will be shared, and an explanation of how the agency will ensure accuracy and compliance with laws (such as the California Electronic Communications Privacy Act).⁵

No policy has been presented for the October 23, 2023, City Council meeting. Such a policy is absent from the agenda packet and the City of Pasadena’s website.

We believe there is no pressing need for Pasadena to purchase its own CSS. The Alameda County District Attorney, the Oakland Police Department and the Fremont Police Department all share one CSS without any problem - it has been used a total of 11 times from 2019-2022.

The combined populations of Oakland and Fremont alone are nearly five times that of the City of Pasadena: it seems a waste of taxpayer funds to purchase equipment which should need to be used so infrequently.

Cell site simulators pose profound civil liberties issues. While we are not opposed to using the technology in limited circumstances, under warrant, to locate and apprehend those posing a significant risk to the community, the potential for abusing this powerful tool is high. Cell site simulators have the ability to eavesdrop on calls and text messages, limited not by hardware but by software configuration.

Finally, the City Council should not be approving the purchase of any surveillance equipment, let alone a piece of hardware costing more than \$1 million,

- without prior publication, for public comment and input, of a usage and privacy policy;
- without a requirement for reporting back annually on the use of the equipment, as is now being done in Oakland and Alameda County, so as to gauge the appropriateness and effectiveness of the technology.

We ask you to delay the purchase of this item until it can be discussed with a prepared draft usage and privacy policy for review as required by state law and with an annual reporting requirement.

¹ Cal. Penal Code §§ 1546.1(c), 1546.2(c), *available at* https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=1546.1.&lawCode=PEN.

² Cal. Govt. Code § 53166 *et seq.*, *available at* https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=53166.&lawCode=GOV.

³ *Id.* at § 53166(c)(1).

⁴ *Id.* at § 53166(b)(2).

⁵ *Id.*

Thank you for your consideration.

Sincerely,

Mike Katz-Lacabe
Director of Research, Oakland Privacy



<https://oaklandprivacy.org>

Gudiel, Frankie

From: Yadi [REDACTED]
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To: Community Police Oversight Commission
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Hi,

Please find attached my additional public comment for the November 2, 2023 Pasadena Community Police Oversight Commission meeting, for agenda item 7. Pasadena Police Department request to purchase a cell site simulator and draft policy.

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Suggested reporting requirements for cell site simulator (CSS):

- Authorized purposes for using CSS interception technology and for collecting information using a CSS
- A description of how the CSS technology was used, including the type and quantity of data gathered or analyzed by the CSS
- Whether and how often data acquired through the use of CSS technology is shared with outside entities, the name of any recipient entities, the type(s) of data disclosed, under what legal standard(s) the information was disclosed, and the justification for the disclosure(s)
- Where applicable, a breakdown of what physical objects the CSS technology hardware was installed upon; for CSS software, a breakdown of what data sources the CSS technology was applied to
- Where applicable, a breakdown of where the CSS technology was deployed geographically
- Records or log of community complaints or concerns about CSS technology, and an analysis of the technology's adopted use policy and whether it is adequate in protecting civil rights and civil liberties and relevant laws and regulations
- The results of internal audits conducted, any information about violations or potential violations of the the relevant use policy, and any actions taken in response unless the release of such information is prohibited by law
- Information about any data breaches or other unauthorized access to the data collected by the CSS technology, including information about the scope of the breach and the actions taken in response
- Information, including crime statistics, that helps the community assess whether the CSS technology has been effective at achieving its identified purposes
- Statistics and information about public records act requests regarding the CSS technology, including response rates
- Total annual costs for the CSS technology, including personnel and other ongoing operational costs, and source(s) of funding

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