



VIA FAX

September 28, 2015

Dear Alameda County Board of Supervisors,

The Electronic Frontier Foundation (EFF) is a non-profit member-supported civil liberties organization based in San Francisco, California, that works to protect rights in the digital world. EFF has more than 22,000 dues-paying members and supporters across the country.

We write to urge you to vote no on Item 25 at your Sept. 29 meeting. You should deny Sheriff Greg Ahern's request that you authorize an agreement with Harris Corporation to upgrade the "Stingray" cell phone tracking equipment currently being shared by Oakland Police Department, the Alameda County District Attorney, and the Fremont Police Department. This technology has been used in secret in Alameda County as a result of non-disclosure agreements with Harris Corporation. The Sheriff now seeks to upgrade this equipment to account for changes in cellular technology, including the widespread implementation of 4G technology. But this invasive technology should not be upgraded until residents of Alameda County have an opportunity to provide input about its use. In fact, SB 741, which is currently waiting for a signature from Governor Brown, would make this a *requirement* for any locality going forward. But Alameda County doesn't have to wait for SB 741 to become law—you can do the right thing today.

Cellular communications interception technology—sometimes known as a "Stingray" or "IMSI catcher"—has been used in Alameda County for years in potentially unconstitutional ways. As EFF explained in 2013:

The device, which acts as a fake cell phone tower, essentially allows the government to electronically search large areas for a particular cell phone's signal—sucking down data on potentially thousands of innocent people along the way. At the same time, law enforcement has attempted to use them while avoiding many of the traditional limitations set forth in the Constitution, like individualized warrants. This is why we called the tool "an unconstitutional, all-you-can-eat data buffet."¹

"Stingrays" have been the subject of immense media attention and concern from activists at the local level. Yet law enforcement—aware of the constitutional problems

¹ Trevor Timm, *As Secretive "Stingray" Surveillance Tool Becomes More Pervasive, Questions Over Its Illegality Increase*, EFF (Feb. 12, 2013), <https://www.eff.org/deeplinks/2013/02/secretive-stingray-surveillance-tool-becomes-more-pervasive-questions-over-its>

with IMSI catchers—has been incredibly secretive about their use and acquisition.² In fact, the Harris Corporation, the vendor of “Stingrays,”

requires police departments sign a non-disclosure agreement³ promising not to reference Stingrays. Federal agencies like the US Department of Justice and the US Marshals Service have instructed local cities and police to keep details of Stingray surveillance secret, with the Marshals physically intervening in one instance to prevent information from becoming public. There have been repeated instances of police agencies across the country hiding their use of IMSI catchers from the judges entrusted to provide police oversight[.]⁴

Law enforcement agencies across California have improperly denied public records act requests about the use of “Stingrays.”⁵ That governments would work with surveillance vendors to hide technology from both the general public and the judges charged with protecting our constitutional rights is truly disturbing. Sheriff Ahern is asking for approval to sign an agreement with this company. You should deny it.

In early September, the Justice Department finally reversed its course on the use of “Stingrays” at the Federal level.⁶ Under a new DOJ policy statement, the DOJ⁷ will require federal law enforcement agents to obtain a search warrant supported by probable cause before using a cell-site simulator in a law enforcement context. While the change is riddled with myriad loopholes, it is still a huge shift from the

² See, Larry Greenemeier, *What Is the Big Secret Surrounding Stingray Surveillance?*, SCIENTIFIC AMERICAN (Jun. 25, 2015), <http://www.scientificamerican.com/article/what-is-the-big-secret-surrounding-stingray-surveillance/>.

³ See Jessica Glenza and Nicky Woolfe, *Stingray spying: FBI's secret deal with police hides phone dragnet from courts*, THE GUARDIAN (Apr. 10, 2015), <http://www.theguardian.com/us-news/2015/apr/10/stingray-spying-fbi-phone-drag-net-police>.

⁴ Hanni Fakhoury, *Stingrays Go Mainstream: 2014 in Review*, EFF (Jan. 2, 2015), <https://www.eff.org/deeplinks/2015/01/2014-review-stingrays-go-mainstream>.

⁵ See, Candice Nguyen, *First Amendment Coalition Files Lawsuit About Stingray Surveillance*, NBC SAN DIEGO (Dec. 17, 2014), <http://www.nbcsandiego.com/news/local/First-Amendment-Coalition-Files-Lawsuit-About-Stingray-Surveillance--286092741.html>; Richard Winton, *Anaheim police, Sacramento sheriff sued over surveillance device*, LA TIMES (Mar. 10, 2015), <http://www.latimes.com/local/lanow/la-me-l-secret-phone-surveillance-device-20150310-story.html>.

⁶ Nate Cardozo, *Finally! DOJ Reverses Course and Requires Warrants for Stingrays!*, EFF (Sep. 3, 2015), <https://www.eff.org/deeplinks/2015/09/finally-doj-reverses-course-and-will-get-warrants-stingrays>.

⁷ U.S. Department of Justice, *Department of Justice Policy Guidance: Use of Cell-Site Simulator Technology* (Sep. 3, 2015), available at https://www.eff.org/files/2015/09/03/doj_cell_site_simulator_policy_9-3-15.pdf.

Department's position to this point —and it reflects a growing public concern about this technology.

This public concern is changing policy and making lawmakers think twice about acquiring “Stingrays.” In fact, after Santa Clara County’s Sheriff tried to rush a “Stingray” purchase through the Board of Supervisors, the Board put the acquisition on hold, and ultimately decided against it. Santa Clara County Executive Jeffrey Smith says this was due to Harris’ overly restrictive contract terms, noting, “we couldn't get them to agree to even the most basic criteria we have in terms of being responsive to public records requests.”⁸

Alameda County residents deserve no less. As demonstrations against Urban Shield, activism around Oakland’s Domain Awareness Center, and packed public hearings about Sheriff Ahern’s purchase of a drone demonstrate, Alameda County residents are clearly concerned about the use of surveillance technology in their community.⁹ Sheriff Ahern ignored public sentiment against drones when he decided to circumvent your authority and use taxpayer dollars to purchase a drone in December.¹⁰

This is a chance to do better. Instead of voting to approve this equipment upgrade, we urge you to take this as an opportunity to require Sheriff Ahern and the Alameda County law enforcement agencies he is representing to publicly answer questions about the use of “Stingrays” in your community.

Please do not hesitate to contact me if you have any questions. I can be reached at 415.436.9333 ext 104 or nadia@eff.org.

Sincerely,
Nadia Kayyali

⁸ Cyrus Farivar, *In rare move, Silicon Valley county gov't kills stingray acquisition*, ARS TECHNICA (May 7, 2015), <http://arstechnica.com/tech-policy/2015/05/in-rare-move-silicon-valley-county-govt-kills-stingray-acquisition/>.

⁹ Parker Higgins, *California Sheriff Faces Loud Privacy Protests Against Drone Plans*, EFF (Feb. 15, 2013) <https://www.eff.org/deeplinks/2013/02/alameda-county-california-sheriff-drone-protests>; Nadia Kayyali, *Community to Lawmakers: Stop the Showcase of Military and Surveillance Technology in Alameda County*, EFF (Sep. 10, 2015), <https://www.eff.org/deeplinks/2015/09/community-lawmakers-stop-showcase-military-and-surveillance-technology-alameda>; Nadia Kayyali, *EFF Fights Back Against Oakland's Disturbing Domain Awareness Center*, EFF (Mar. 4, 2014) <https://www.eff.org/deeplinks/2014/03/eff-fights-back-against-oaklands-disturbing-domain-awareness-center>.

¹⁰ Nadia Kayyali, *Can't Get Public Approval to Buy a Drone? Do it in Private!*, EFF (Dec. 3, 2014), <https://www.eff.org/deeplinks/2014/12/cant-get-public-approval-buy-drone-do-it-private>.