



March 30, 2020

VIA EMAIL

Mayor Bob Sampayan
Bob.Sampayan@cityofvallejo.net

Vice Mayor Hermie R. Sunga
Hermie.Sunga@cityofvallejo.net

RE: KeyW Cell-Site Simulator Acquisition

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

I write today on behalf of the Electronic Frontier Foundation, a Bay Area-based non-profit legal advocacy organization that champions civil liberties in an age of widespread electronic surveillance.

On March 24, 2020, the Vallejo City Council—amid a public health crisis and a statewide order that Californians shelter-at-home—approved the purchase of cell-site simulator technology from KeyW Corporation.¹ This acquisition is in violation of state law and must be reversed immediately.

A cell-site simulator, or CSS, masquerades as a cell-phone tower to obtain information about cellular devices within the simulator’s radius.² Because it functions as a general search, it is one of the most controversial and invasive surveillance technologies available to police. Cell-site simulators have triggered Congressional investigations, high-profile legal challenges, a Federal Communications Commission complaint, and an immense amount of critical media coverage.³

¹ Vallejo City Council Regular Meeting Agenda, Consent Calendar 7.L., Mar. 24, 2020, <https://vallejoca.civicclerk.com/Web/GenFile.aspx?ar=2774>; Vallejo City Council, Resolution Authorizing the Chief of Police to Acquire Cell Site Simulator Equipment and to Implement a Usage and Privacy Policy Compliant with Government Code Section 51366, <https://vallejoca.civicclerk.com/Web/GenFile.aspx?ad=7968>.

² Electronic Frontier Foundation, Street-Level Surveillance Project: Cell-Site Simulators/IMSI Catchers, rev. Aug. 28, 2017, <https://www.eff.org/pages/cell-site-simulatorsimsi-catchers>.

³ Stephanie Lacambra, “Congressional Oversight Committee Wants Warrants to Rein in Police Abuse of Cell-Site Simulators,” Electronic Frontier Foundation, Feb. 22, 2017,

In 2015, the California State Legislature passed laws regulating law enforcement use of this technology due to inappropriate secrecy and abuse. The California Electronic Communications Privacy Act (CalECPA) 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.⁴ Meanwhile, SB 741 requires an open and transparent process before a local government agency may acquire CSS technology.⁵

This law lays out the process for acquiring 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...⁶

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."⁷

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 CalECPA).⁸

No policy was presented or voted upon at the March 24, 2020 hearing. Such a policy is absent from the agenda packet and the City of Vallejo's website. Rather, the city council

<https://www.eff.org/deeplinks/2017/02/bipartisan-congressional-oversight-committee-wants-probable-cause-warrants-0>; Electronic Frontier Foundation, "Cell-Site Simulator Case Inventory," rev. June 30, 2018,
<https://www.eff.org/criminaldefender/cell-site-simulators/cases>; Ian Duncan, "FCC complaint: Baltimore Police breaking law with use of stingray phone trackers," Baltimore Sun, Aug. 16, 2016, available at
<https://www.baltimoresun.com/news/crime/bs-md-ci-stingray-fcc-complaint-20160816-story.html>.

⁴ Cal. Penal Code §§ 1546.1(c), 1546.2(c), available at https://leginfo.ca.gov/faces/codes_displayText.xhtml?lawCode=PEN&division=&title=12.&part=2.&chapter=3.6.&article=

⁵ Cal. Govt. Code § 53166 *et seq.*, available at https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=53166.&lawCode=GOV.

⁶ *Id.* at § 53166(c)(1).

⁷ *Id.* at § 53166(b)(2).

⁸ *Id.*

simply approved a resolution “authorizing the Chief of Police to acquire cell site simulator equipment and to implement a usage and privacy policy.”⁹ The resolution further states that the “Chief of Police has directed the creation of a usage and privacy policy for the deployment of the equipment.”¹⁰ The law states that the city council must approve the policy itself; granting the police free rein to create a policy is insufficient.

We are further concerned that the non-disclosure agreement required by KeyW Corporation may interfere with the California Public Records Act,¹¹ since the agreement requires the agency to immediately alert KeyW of any records request and allow the company time to review the request.¹² This could result in delays of releasing information and improper redaction of public records.

Privacy and access to government information are both fundamental rights established under the California Constitution. The Vallejo City Council’s approval of the purchase undermines both of these rights. This is especially problematic considering the vote occurred during a period where both the State of California and Solano County have issued shelter-at-home orders, which severely curtailed the public’s ability to voice objection at the meeting.

Considering the extreme circumstances and the failure to follow the process mandated by statute, we urge the city of Vallejo to halt this purchase immediately. It should not be revisited until the COVID-19 emergency has passed and the California Governor’s office and the Bay Area counties lift the shelter-at-home orders.

Should you have further questions, please email me at dm@eff.org or leave a voicemail message at 415-436-9333 x151.

Sincerely,

Dave Maass
Senior Investigative Researcher
Electronic Frontier Foundation

⁹ Vallejo City Council Resolution, *supra* n.1.

¹⁰ *Id.*

¹¹ Cal. Govt. Code § 6250 *et seq.*, available at https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?division=7.&chapter=3.5.&lawCode=GOV&title=1.&article=1.

¹² Non-Disclosure Agreement Between KeyW Corporation and Vallejo Police Department, at 19, <https://vallejoca.civicclerk.com/Web/GenFile.aspx?ad=7967>.

CC:

Council Member Hakeem Brown
hakeem.brown@cityofvallejo.net

Council Member Pippin Dew
Pippin.Dew@cityofvallejo.net

Council Member Robert H. McConnell
Robert.McConnell@cityofvallejo.net

Council Member Katy Miessner
Katy.Miessner@cityofvallejo.net

Council Member Rozzana Verder-Aliga
Rozzana.Verder-Aliga@cityofvallejo.net