

OAKLAND POLICE DEPARTMENT

Surveillance Impact Report for the Cell Site Simulator

1. Information Describing the Cell Site Simulator and How It Works

Cellular site simulators, as governed by this policy, function by transmitting as a cell tower. In response to the signals emitted by the simulator, cellular devices in the proximity of the simulator identify it as the most attractive cell tower in the area and thus transmit signals to the simulator that identify the device in the same way that they would a networked tower.

A cellular site simulator receives signals and uses an industry standard unique identifying number assigned by a device manufacturer or cellular network provider to distinguish between incoming signals until the targeted device is located. Once the cellular site simulator identifies the specific cellular device for which it is looking, it will obtain the signaling information relating only to that particular phone, rejecting all others.

2. Proposed Purpose

The authorized purposes for using cellular communications interception technology and for collecting information using that technology to:

- a. Locate missing persons
- b. Locate at-risk individuals
- c. Locate victims of mass casualty incidents
- d. Assist in investigations involving danger to the life or physical safety of an individual
- e. Apprehend fugitives

3. Locations Where, and Situations in which the Cell Site Simulator May Be Deployed

Cellular site simulator technology may only be used by the Oakland Police Department (OPD) with a search warrant or for an identified exigency, with a concurrent application for a search warrant. A search warrant application shall be made no later than 48 hours after use in an identified exigency. When using cellular site simulator technology to assist in an investigation, OPD personnel may only attempt to locate cellular devices whose unique identifiers are already known to law enforcement unless used for a mass casualty event. Cellular site simulator technology will only be used in the City of Oakland and anywhere that OPD or other law enforcement personnel have legal and policy authorization to use this technology.

When making any application to a court, members of OPD shall disclose

appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. OPD personnel must consult with prosecutors when using a cell site simulator and applications for the use of a cell site simulator must include sufficient information to ensure that the courts are aware that the technology is being used.

- a. Regardless of the legal authority relied upon, at the time of making an application for use of a cell site simulator, the application or supporting affidavit shall describe in general terms the technique to be employed. The application or supporting affidavit shall indicate that investigators plan to send signals to the cellular phone that will cause it, and non-target phones on the same provider network in close physical proximity, to emit unique identifiers. The application or supporting affidavit shall indicate that these unique identifiers will be obtained by the technology, and investigators may only use the information collected to determine the physical location of the target cellular device.
- b. An application or supporting affidavit shall inform the court that the target cellular device (e.g., cell phone) and other cellular devices in the area might experience a temporary disruption of service from the service provider. The application or supporting affidavit may also note, if accurate, that any potential service disruption to non-target devices would be temporary and all operations will be conducted to ensure the minimal amount of interference to non-target devices
- c. An application for the use of a cellular site simulator shall inform the court about how law enforcement intends to address deletion of data not associated with the target phone. The application shall state that law enforcement will make no use of any non-target data, except to identify and distinguish the target device from other devices.

If cellular site technology is used based on an exigency, then the above requirements will be met by applying for a search warrant concurrently with use of the device whenever possible and no later than 48 hours after use. An exigency is defined as an imminent threat of death or bodily injury.

4. Potential Impact on Civil Liberties & Privacy

OPD recognizes that all people have an inalienable right to privacy and is committed to protecting and safeguarding this right by adhering to the strictest requirements of both state and federal law when operating cellular site simulator technology.

Although the cellular site simulator initially receives signals from multiple devices in the vicinity of the simulator while attempting to locate the target device, it does not display the unique identifying numbers of those other devices for the operator except when deployed in registration mode. Registration mode may only be used for mass casualty incidents. If the cellular site simulator equipment or software is modified or capable of displaying unique identifiers other than in registration mode, Oakland Police

personnel are prohibited from making use of, or saving, such information. To the extent that any unique identifier for the non-targeted device might exist in the software or simulator itself, it will be purged after operations in accordance with this policy.

OPD believes that the narrow use of the cell site simulator aligns with OPD's and the City's efforts to civil liberties and social equity. The equipment can only be used to geographically identify the location of specific individuals; the equipment will not be used to broadly identify people. This narrow prescriptive use only serves to leverage evidence and find known-individuals - with a search warrant. Therefore, the use of the cell site simulator will not infringe on the civil rights of the public.

When used in a mass casualty event, the cellular site simulator will obtain signaling information from all devices in the simulator's target vicinity for the limited purpose of locating persons in need of assistance or to further recovery efforts. Any information received from the cellular devices during this time will only be used for these limited purposes and all such information received will be purged at the conclusion of the effort in accordance with this policy. A mass casualty incident is a natural disaster such as an earthquake or fire; a terrorist attack; or any other event resulting in imminent loss of life or injury.

Cellular site simulator technology will not be used at crowd management events.

5. Mitigations

Government Code § 53166(b) requires all law enforcement organizations that use cellular communications interception technology, including cellular site simulator technology, to:

- a. Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect information gathered through the use of cellular communications interception technology from unauthorized access, destruction, use, modification, or disclosure.
- b. Implement a usage and privacy policy to ensure that 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. This usage and privacy policy shall be available in writing to the public, and, if the local agency has an Internet Web site, the usage and privacy policy shall be posted conspicuously on that Internet Web site. The usage and privacy policy shall, at a minimum, include all of the following:
 1. The authorized purposes for using cellular communications interception technology and for collecting information using that technology.

2. A description of the job title or other designation of the employees who are authorized to use, or access information collected through the use of, cellular communications interception technology. The policy shall identify the training requirements necessary for those authorized employees.
3. A description of how the local agency will monitor its own use of cellular communications interception technology to ensure the accuracy of the information collected and compliance with all applicable laws, including laws providing for process and time period system audits.
4. The existence of a memorandum of understanding or other agreement with another local agency or any other party for the shared use of cellular communications interception technology or the sharing of information collected through its use, including the identity of signatory parties.
5. The purpose of, process for, and restrictions on, the sharing of information gathered through the use of cellular communications interception technology with other local agencies and persons.
6. The length of time information gathered through the use of cellular communications interception technology will be retained, and the process the local agency will utilize to determine if and when to destroy retained information.

Members shall use only department-approved devices and usage shall be in compliance with department security procedures, the department's usage and privacy procedures and all applicable laws.

6. Data Types and Sources

By transmitting as a cell tower, cellular site simulators acquire identifying information from cellular devices. As employed by the Oakland Police Department, this information is limited. Cellular site simulators employed by the Oakland Police Department will be limited to providing only:

- a. Azimuth (an angular measurement in a spherical coordinate system)
- b. Signal strength
- c. Device identifier for the target device when locating a single individual or all device identifiers for a mass casualty incident.

Cellular site simulators do not function as GPS locators, as they will not obtain or download any location information from the device or its applications.

Cellular site simulators used by the Oakland Police Department shall not be used to collect the contents of any communication, in accordance with 18 U.S.C. § 3121(c).

The cellular site simulator employed by the Oakland Police Department shall

not capture emails, texts, contact lists, images or any other data contained on the phone. In addition, the cellular site simulators shall not be used by the Oakland Police Department to collect subscriber account information (for example, an account holder's name, address, or telephone number).

7. Data Security

Although the cellular site simulator initially receives signals from multiple devices in the vicinity of the simulator while attempting to locate the target device, it does not display the unique identifying numbers of those other devices for the operator except when deployed in registration mode. Registration mode may only be used for mass casualty incidents. If the cellular site simulator equipment or software is modified or capable of displaying unique identifiers other than in registration mode, Oakland Police personnel are prohibited from making use of, or saving, such information. To the extent that any unique identifier for the non-targeted device might exist in the software or simulator itself, it will be purged at the conclusion of operations in accordance with this policy.

8. Fiscal Cost

OPD does not have purchased cell site simulator technology and does not have any current plans to purchase such technology.

9. Third Party Dependence

The Oakland Police Department has a memorandum of understanding with the Alameda County District Attorney's Office for the shared use of cellular site simulator technology and the sharing of information collected through its use. The signatory parties are the County of Alameda and the City of Oakland.

10. Alternatives Considered

OPD officers and investigators rely primarily on traditional policing techniques to gather evidence related to criminal investigation such as speaking to witnesses and suspects, gathering information from observations, and using standard data aggregation systems. These methods will continue to be employed as primary investigative tools that will be supplemented by use of cell site simulator technology when authorized by law and policy.

Cell site simulator technology provides two great advantages to OPD that alternatives do not. First, the technology provides opportunities to save lives more quickly than alternative methods. Cell site simulator technology is capable of helping OPD locate missing persons, at-risk individuals, victims of mass casualty events, and violent individuals more quickly than alternative methods. Second, the technology provides an incredible efficiency in terms of dollars saved and priorities addressed compared to alternatives. Without cell site simulator technology, more OPD staff would take a longer time in attempting to locate wanted individuals and victims of mass casualty events. In addition to costing the City of Oakland more financially, dedicating more

staff to such tasks requires other critical priorities to go unaddressed.

11. Track Record of Other Entities

The Alameda County District Attorney's Office (ACDAO) published a report titled, "annual report regarding use of cell-site simulator technology 2017;" OPD is not aware of other government agency reports, as of the time of this report, on the use of cell site simulators. The ACDAO report explains that the Fremont Police Department as well as OPD are authorized to use the equipment. In 2017 there were three authorized requests to use the equipment (with a search warrant) "to effectuate an arrest." OPD was the one department that received information from the use of the ACDAO technology. The report explains that the required use audit revealed no instances of non-compliance with law or policy.

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