



## DEPARTMENTAL GENERAL ORDER

### I-11: Cellular Site Simulator Usage and Privacy

Effective Date: XX Jan 19

Coordinator: Intelligence Unit

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It is the policy of the Oakland Police Department to respect the privacy rights and civil liberties of individuals and to follow the Constitution, particularly the First and Fourth Amendments, the California Constitution, and all applicable laws.

#### COMMAND INTENT

The intent of this policy is to set guidelines and requirements pertaining to cellular site simulator technology usage and privacy. Any changes to this policy – including authorized uses of the cellular site simulator technology by the Oakland Police Department – will be made in consultation with the Oakland Privacy Commission.

#### A. Definitions

##### A - 1. Fugitive

An individual who is wanted because the individual is suspected of committing a crime and may be evading contact by law enforcement.

##### A - 2. Missing Person

Any juvenile or adult who is missing voluntarily or involuntarily under circumstances not conforming to his or her ordinary habits or behavior and who may be in need of assistance.

##### A - 3. At-Risk Individual

An at-risk individual is a missing person who is believed to:

- Be a victim of a crime or foul play
- Be in need of medical attention
- Has no pattern of running away or disappearing
- Be the victim of parental abduction
- Be mentally impaired

#### B. Purpose of the Technology

##### B – 1. Authorized Use

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

1. Apprehend fugitives
2. Locate missing persons
3. Locate at-risk individuals
4. Locate victims of mass casualty incidents
5. Assist in investigations involving danger to the life or physical safety of an individual

**B – 2. Prohibited Use**

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

**B – 3. Legal Authority**

Cellular site simulator technology may only be used by the Oakland Police Department 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, Oakland Police personnel may only attempt to locate cellular devices whose unique identifiers are already known to law enforcement unless used for a mass casualty event.

When making any application to a court, members of the Oakland Police Department shall disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Oakland Police Department 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.

1. 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.
2. 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.
3. 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.

### **C. Description of the Technology**

#### **C – 1. General Description of Cellular Site Simulator Technology**

Cellular site simulators, as governed by this policy, function by transmitting as a cell tower.

#### **C – 2. How Cellular Site Simulator Technology Works – Unique Identifier**

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; use of the cellular cite simulator may cause temporary service disruption to non-target devices. 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. 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.

#### **C – 3. How Cellular Site Simulator Technology Works – Mass Casualty**

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.

### **D. Data Collection**

#### **D – 1. Information Collected**

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:

1. Azimuth (an angular measurement in a spherical coordinate system);
2. Signal strength; and
3. Device identifier for the target device when locating a single individual or all device identifiers for a mass casualty incident.

#### **D – 2. Limitations on Information Collected**

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).

#### **E. Data Access**

##### **E - 1. Oakland Police Department Personnel**

Personnel authorized to use or access information collected through the use of cellular communications interception technology shall be specifically trained in such technology and authorized by the Chief of Police or designee. Such personnel shall be limited to designated sergeants and officers unless otherwise authorized.

Training requirements for the above employees include completion of training by the manufacturer of the cellular communications interception technology or appropriate subject matter experts as designated by the Oakland Police Department. Such training shall include Federal and state law; applicable policy and memoranda of understanding; and functionality of equipment. Training updates are required annually.

##### **E - 2. Third Party Data Sharing**

The Oakland Police Department will share information gathered through the use of cellular site simulator technology with other law enforcement agencies that have a right to know and a need to know the information requested. A right to know is the legal authority to receive information pursuant to a court order, statutory law, or case law. A need to know is a compelling reason to request information such as direct involvement in an investigation.

Information will be shared only with agencies in accordance with a lawful purpose and limited to a court order, search warrant, or identified exigency on the part of the agency. The Oakland Police Department will not share information outside of the legal parameters necessary for the lawful purpose. All requests for information shall be reviewed by the Cellular Site Simulator Program Coordinator or other individual as designated by the Chief of Police. Information will be shared only upon approval of the Cellular Site Simulator Program Coordinator or other individual as designated by the Chief of Police.

The agency with which information is shared (“recipient agency”) shall be designated as the custodian of such information. The recipient agency shall be responsible for observance of all conditions of the use of information including the prevention of unauthorized use, retention of information, and destruction of information.

Every law enforcement agency and officer requesting use of the cell- site simulator, shall be provided with a copy of this Policy and specialized training in the use of this technology. Such agencies shall also provide copies of this Policy and training, as appropriate, to all relevant employees who may be involved in the use of this technology.

#### **F. Data Protection**

Once the cellular phone tracking operation has been completed, all data is purged/deleted from the system.

#### **G. Data Retention**

The Oakland Police Department shall destroy all information intercepted by the cellular site simulator equipment as soon as the objective of the information request is accomplished and shall record this destruction in accordance with the below.

##### **G – 1. Unique Identification Mode**

When the cellular site simulator equipment is used to locate a known cellular device, all data shall be deleted upon locating the cellular device and no fewer than once daily for a known cellular device.

##### **G – 2. Mass Casualty Mode**

When the cellular site simulator equipment is used in a search and rescue operation, all data must be deleted as soon as the person or persons in need of assistance have been located, and in any event no less than once every 10 days.

##### **G – 3. Additional Requirements**

Prior to deploying the cellular site simulator equipment for a subsequent operation, ensure the equipment has been cleared of any previous operational data.

No data derived or recorded by cellular site simulator software or equipment will be stored on any server, device, cloud-based storage system, or in any capacity.

## **H. Public Access**

Data retrieved from the use of the cellular site simulator shall only be used for criminal investigations and locating individuals. There is no public access to this information. Only the target telephone number becomes part of the investigation, as it is used to locate a subject in the individual locator mode. In a criminal case, this becomes an evidentiary item and is required for court proceedings.

## **I. Auditing and Oversight**

The Oakland Police Department will monitor its use of cellular site simulator 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. The Chief of Police shall designate a Cellular Site Simulator Program Supervisor who shall ensure such audits are conducted in accordance with law and policy.

### **I – 1. Deployment Log**

Prior to deployment of the technology, use of a cellular site simulator by the Oakland Police Department must be approved by the Chief of Police or the Assistant Chief of Police. Any emergency use of a cellular site simulator must be approved by a Lieutenant of Police or above. Each use of the cellular site simulator device requires completion of a log by the user. The log shall include the following information at a minimum:

1. The name and other applicable information of each user.
2. The reason for each use.
3. The results of each use including the accuracy of the information obtained.

### **I – 2. Annual Report**

The Cellular Site Simulator Program Coordinator shall provide the Chief of Police, the Privacy Advisory Commission, and Public Safety Committee with an annual report that contains all of the above information. The report shall also contain the following for the previous 12-month period:

1. The number of times cellular site simulator technology was requested.
2. The number of times cellular site simulator technology was used.
3. The number of times that agencies other than the Oakland Police Department received information from use of the equipment by the Oakland Police Department.
4. The number of times the Oakland Police Department received information from use of this equipment by other agencies.

5. Information concerning any violation of this policy including any alleged violations of policy.
6. Total costs for maintenance, licensing and training, if any.
7. The results of any internal audits and if any corrective action was taken, subject to laws governing confidentiality of employment actions and personnel rules.
8. The number of times the equipment was deployed:
  - a. To make an arrest or attempt to make an arrest.
  - b. To locate an at-risk person.
  - c. To aid in search and rescue efforts.
  - d. For any other reason.
9. If cellular site simulator technology was used in relation to a crime, the type of crime.
10. If cellular site simulator technology was used to locate a suspect, the race of the suspect.
11. The effectiveness of the technology in assisting in investigations based on data collected.
12. Final location of use in specific deployments as long as such information does not compromise an investigation. Location information shall be as specific as possible without compromising an investigation.
13. Information in the deployment log that does not violate individual privacy rights or compromise an investigation, including:
  - a. The name and other applicable information of each user.
  - b. The reason for each use.
  - c. The results of each use including the accuracy of the information obtained.

The above information and reporting procedures will assist in evaluating the efficacy of this policy and equipment.

#### **J. Maintenance**

The Alameda County District Attorney's Office owns the cellular site simulator equipment and maintains responsibility for all maintenance. OPD does not bear any costs for use of the technology.

#### **K. Memorandum of Understanding**

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.

By order of

Anne E. Kirkpatrick  
Chief of Police

Date Signed: \_\_\_\_\_