



**POLICE DEPARTMENT**  
**LEGAL BUREAU**  
FOIL UNIT, ROOM 110C  
ONE POLICE PLAZA  
NEW YORK, N.Y. 10038

October 30, 2015

Ms. Mariko Hirose  
New York Civil Liberties Union  
125 Broad Street  
New York, New York 10004

**RE: FREEDOM OF INFORMATION LAW REQUEST: #15-PL-3861**

Dear Ms. Hirose:

This letter is in further response to your letter dated April 13, 2015, wherein you requested, pursuant to the Freedom of Information Law (FOIL), N. Y. Public Officers Law (POL) §§ 84 *et seq.*, copies of records described in nine categorical requests relating to the NYPD's acquisition and use of equipment described as cell site simulators, and is issued pursuant to the letter of the Records Access Appeals Officer dated September 28, 2015.

Access to records that may be responsive to Item # 1 of the FOIL request must be denied pursuant to POL §§ 87(2)(a), 87(2)(c), 87(2)(d), 87(2)(e), 87(2)(f), 87(2)(g), 87(2)(i), 89(2), 18 USC § 3123, 6 USC §§ 482(e) and (f), 22 CFR Parts 120 - 130, and 47 CFR § 0.457.

Responsive to Item # 2 of the FOIL request, a search for responsive records was conducted with negative results.

Responsive to Item # 3 of the FOIL request, enclosed are 2 pages consisting of the non-disclosure agreement between the NYPD and Harris Corporation. Redactions have been made pursuant to POL §§ 87(2)(c) and (d) and pursuant to 22 CFR § 121.1 and 47 CFR 0.457.

Responsive to Item # 4 of the FOIL request, there is no written policy responsive to this request. It is the policy of the NYPD to comply with all applicable statutory provisions, including Article 705 of the NY Criminal Procedure Law (CPL). In practice, the policy followed by the NYPD is described in the response, below, to items 7, 8, and 9 of this request.

Item # 5 of the FOIL request must be denied, as disclosure of the records you seek is prohibited by CPL § 705.30, and therefore this information is exempt from disclosure pursuant to POL § 87(2)(a) and CPL § 705.30, as well as POL §§ 87(2)(b), (e), and 89(2).

A diligent search for records responsive to Item # 6 of the FOIL request was conducted with negative results.

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Responsive to Items # 7, 8, and 9 of the FOIL request, enclosed are 25 pages consisting of annual summaries of over the air intercepts. The annual summaries provide information in tabular form about all NYPD over the air intercepts from January 2, 2008, until May 21, 2015, and contain information about the investigations wherein over the air intercepts were attempted. The categories of investigative information reflected in this record are, for each over the air intercept, as follows:

- The NYPD unit conducting the investigation;
- The wireless carrier that serviced the target number;
- The results of the intercept (*e.g.*, whether an arrest was made, whether the subject was located or not located, etc.); and
- The top charge, in cases that led to an arrest.

Please note that exempt information has been redacted from the reports. This information consists of the date, the target telephone number, and the internal tracking number of each investigation. The redacted information is exempt from disclosure pursuant to POL § 87(2)(a) and CPL § 705.30, as well as POL §§ 87(2)(b), (e), 89(2) and other state and federal statutes.

Also redacted was the arrest location (or, in some cases, the location of the missing or suicidal person), which is exempt pursuant to POL § 87(2)(a) and CPL § 705.35, as well as pursuant to POL §§ 87(2)(b), (e), (f), and 89(2), in addition to being prohibited from disclosure pursuant to the court Order issued pursuant to the pen register application, which directed the sealing of the Order and the non-disclosure of the investigation and its modalities.

A list of the court names and index numbers for prosecutions resulting from these investigations is not maintained and cannot be compiled with reasonable efforts. Moreover, the court orders that directed each of the over the air intercepts prohibit, by their own terms, the disclosure of this information. This information is also exempt from disclosure pursuant to POL § 87(2)(a) and CPL § 705.35.

It is the policy of the NYPD to apply for and obtain a court order pursuant to Article 705 of the Criminal Procedure Law prior to attempting an over the air intercept, except where compellingly exigent circumstances exist. In such cases, the over the air intercept is attempted simultaneously with the preparation of an application for the court order. Investigations involving such exigent circumstances took place as follows:

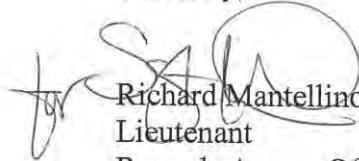
- 2008 - 4 investigations (kidnapping, homicide, assault).
- 2009 - 8 investigations (kidnapping, burglary, robbery, missing, suicidal, death threats).
- 2010 - 5 investigations (kidnapping, robbery, assault, suicidal).
- 2011 - 13 investigations (kidnapping, homicide, missing, suicidal, sexual assault).
- 2012 - 13 investigations (kidnapping, assault, missing, suicidal).
- 2013 - 8 investigations (kidnapping, homicide, missing, suicidal, assault, stalking).
- 2014 - 11 investigations (kidnapping, missing, suicidal, assault, robbery, unlawful imprisonment).
- 2015 (up to May 21) - 5 investigations (kidnapping, missing, assault).

Records responsive to Item # 9 of the FOIL request are specifically prohibited from disclosure by CPL § 705.30, and such records, if in existence, are therefore exempt from disclosure pursuant to POL § 87(2)(a) and CPL § 705.30, as well as POL §§ 87(2)(b), (e), and 89(2).

Accordingly, 27 pages are enclosed. Please send your remittance, by check or money order payable to the NYPD, in the amount of \$ 6.75.

You may appeal this decision or any portion thereof. Appeals must be made in writing, within 30 days of the date of this letter, and must be forwarded to: Jonathan David, Records Access Appeals Officer, New York City Police Department, One Police Plaza, Room 1406, New York, NY 10038.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Mantellino', is written over the typed name. The signature is stylized and somewhat cursive.

Richard Mantellino  
Lieutenant  
Records Access Officer