



Federal Communications Commission
Washington, D.C. 20554

February 29, 2012

Christopher Soghoian
Center for Applied Cybersecurity Research
Indiana University
P.O. Box 2366
Washington, D.C. 20013

By email to chris@soghoian.net

Re: FOIA Control No. 2011-586

Dear Mr. Soghoian:

This responds to your Freedom of Information Act (FOIA) request filed September 28, 2011, seeking “copies of all legal opinions, memoranda, briefs, training manuals, emails and as any other documents including communications with other federal and state agencies, including but not limited to the Department of Justice relating to the use of ‘cell site simulators’, ‘IMSI catchers’, ‘digital analyzers’, ‘Triggerfish’, ‘StingRay’, Amberjack or other similar mobile phone surveillance and tracking devices.” You also specifically requested any documents that detail:

1. “Whether law enforcement and intelligence agencies have obtained permission from the FCC to use such technologies, and if so, what is required to gain such permission.
2. The legality of the use of these devices by law enforcement agencies, intelligence agencies, the military, as well as private individuals.
3. Whether these technologies interfere with the normal operation of wireless telephone networks.”

You request all records created between January 1, 2005 and September 28, 2011.

Much of the information you seek is associated with equipment authorizations issued to the Harris Corporation (“Harris”) and Digital Receiver Technology, Inc. (“DRT”). Harris and DRT requested confidential treatment for the documents you seek, and such treatment was afforded in the handling of those equipment authorization applications and grants by the FCC.

The publicly available information submitted with the DRT and Harris applications is available from the Commission’s Equipment Authorization System (EAS) database at <http://transition.fcc.gov/oet/ea/fccid/>, using the FCC IDs XLM201B and XLM9955B1 for DRT and NK73092523, NK73100176, NK73186795 and NK73166210 for Harris grants. With respect to the Harris equipment authorization applications, we are providing four letters in support of one of the applications, variously dated August 21 and 22, 2007, attached to this email and named “Soghoian Document 1” through “Soghoian Document 4.”

With respect to other documents related to the equipment applications by DRT and Harris, we are withholding several application components and exhibits and emails both to and from the FCC and the above parties and emails within the FCC under 47 C.F.R. § 0.457(d), as it relates to confidential commercial information and trade secrets; 0.457(e) which covers interagency and interagency communications; and 0.457(g)(5) as it relates to law enforcement investigative techniques and procedures.¹ See e.g., *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974) and *Critical Mass Energy Project v. NRC*, 975 F.2d 871 (D.C. Cir. 1992) (establishing standards for determining whether information submitted to an agency is confidential under FOIA Exemption 4); *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 151 (1975) (Exemption 5 is intended to “prevent injury to the quality of agency decisions”); *Public Citizen v. Office of Management and Budget*, 569 F.3d 434 442-43 (D.C. Cir. 2009), citing *Judicial Watch v. FDA*, 449 F.3d 141, 151 (D.C. Cir. 2006) (Exemption 5 applies to materials that are both predecisional and reflect the agency “give-and-take” of the consultative process); and *Tax Analysts v. IRS*, 294 F.3d 71, 79 (D.C. Cir. 2002) (holding that Exemption 7(E) applies to internal agency materials relating to guidelines, techniques, sources, and procedures for law enforcement investigations or procedures, such as internal IRS memorandums).

We have also discovered information associated with license applications, experimental license or special temporary authority applications by ShawnTech Communications, Inc., InlustroTech LLC, DRT, and Tecore, Inc., and other companies. In some cases, those parties requested confidential treatment of some or all of the information they supplied in pursuit of those licenses. In addition, we located memoranda, internal FCC emails, and interagency emails that are responsive to your request.

With respect to several applications for and grants of Special Temporary Authorization (STA) or experimental licenses by Shawntech Communications, Inc., for “managed access” systems, we are withholding certain application materials and emails to and from the FCC under Sections 0.457(d) as it relates to trade secrets. You can access the publicly available material for these applications from the Commission’s ELS database at <https://apps.fcc.gov/oetcf/els/reports/CallsignSearch.cfm>, using the call signs WE9XNZ, WE9XRO, WE9XNZ, and WD9XMZ and the File No. 034-EX-PL-2011.

With respect to an application for Special Temporary Authorization (STA) by Tecore, Inc. for a “managed access” system (subsequently dismissed at the request of applicant), we are withholding certain application materials and emails to and from the FCC under Sections 0.457(d) as it relates to trade secrets. You can access the publicly available material for this application from the Commission’s ELS database at <https://apps.fcc.gov/oetcf/els/reports/CallsignSearch.cfm>, using the File Number 0352-EX-PL-2010.

With respect to these applications for special temporary authority, certain internal emails are withheld as deliberative and predecisional pursuant to Section 0.457(e) of the FCC’s rules.

¹ These sections correspond to FOIA Exemptions 4, 5, and 7(E), 5 U.S.C. §§ 552(b)(4), (b)(5), and (b)(7)(E)..

In addition, there are experimental applications for “managed access” systems that were ultimately withdrawn by the respective applicants, Inlustro Tech LLC and Digital Receiver Technology. The Inlustro Tech LLC application is available in full, and can be accessed at <https://apps.fcc.gov/oetcf/els/reports/CallsignSearch.cfm>, using the file number 0027-EX-ST-2010. Certain applications materials related to the DRT application are withheld under Section 0.457(s) as it relates to trade secrets. The publicly available information associated with the DRT application can be accessed at the same site using the File Number 0108-EX-PL-2010.

With respect to these applications for experimental licenses, certain internal emails are withheld as deliberative and predecisional pursuant to Section 0.457(e) of the FCC’s rules.

In addition, we are withholding certain intra-agency and interagency emails and documents because they are classified or because taken together with other information they could endanger national and homeland security. These documents are withheld under FOIA Exemption 1, 5 U.S.C. § 552(b)(1), which protects classified information from disclosure, Exemption 7(A), 5 U.S.C. § 552(b)(7)(A), which protects from disclosure information compiled for law enforcement purposes whose production could reasonably be expected to interfere with enforcement proceedings, and Exemption 7(E) which protects from disclosure information compiled for law enforcement purposes whose production would disclose techniques and procedures for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. See *National Security Studies v. DOJ*, 331 F.3d 918, 926-929 (D.C. Cir. 2003) (applying Exemption 7(A) in national and homeland security context where bits and pieces of data may aid in piecing together other bits of data); *Lewis-Bay v. DOJ*, 595 F.Supp.2d 120, 137 (D.D.C. 2009) (applying Exemption 7(E) to details of electronic surveillance techniques).

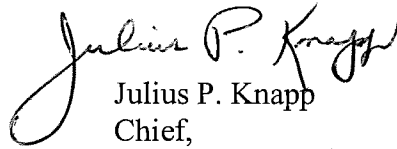
We also reviewed the records to determine if discretionary release is appropriate. See *Memorandum to Heads of Executive Departments and Agencies, Freedom of Information Act*, 74 FR 4683 (2009) (President Obama’s memorandum concerning the FOIA); *The Freedom of Information Act (FOIA)*, available at <<http://www.usdoj.gov/ag/foia-memo-march2009.pdf>> (Attorney General Holder’s FOIA Memo). We have determined that the portions withheld here are not appropriate for discretionary release.

Because there are no fees assessed for processing your request, there is no need to rule on your request for a fee waiver. 47 C.F.R. § 0.470 (e)(5).

If you consider this to be a denial of your FOIA request, you may seek review by filing an application for review with the Office of General Counsel within 30 days of the date of this letter. See 47 C.F.R. § 461(j).

As you have requested we are providing our response and the responsive documents by email to the email address you provided.

Sincerely,

A handwritten signature in black ink that reads "Julius P. Knapp". The signature is written in a cursive style with a large, looping initial 'J'.

Julius P. Knapp

Chief,

Office of Engineering and Technology

cc: FOIA Officer



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

J.B. VAN HOLLEN
ATTORNEY GENERAL

Raymond P. Taffora
Deputy Attorney General

17 West Main Street
P.O. Box 7857
Madison, WI 53707-7857

James R. Warren
Administrator
Division of Criminal Investigation

21 August 2007

Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

SUBJECT: Equipment Application for Harris StingRay Product

Dear Chairman Martin:

I am writing to request that the Federal Communications Commission expeditiously grant the pending Harris Corporation equipment authorization application for the StingRay product. Providing state and local law enforcement officials with access to this equipment is critical to ensuring that we meet our public safety mission. Section 2.803(a)(1) of the Commission's rules prohibit persons from selling or offering for sale any radio frequency device unless the device is authorized by the Commission through its certification procedures. Specifically the regulation states:

No person shall sell or lease, or offer for sale or lease (including advertising for sale or lease), or import, ship or distribute for the purpose of selling or leasing or offering for sale or lease, any radio frequency device unless ... [i]n the case of a device subject to certification, such device has been authorized by the Commission in accordance with the rules in this chapter and is properly identified and labeled as required by § 2.925 and other relevant sections in this chapter. 47 C.F.R. § 2.803(a)(1).

Moreover, products, such as intentional radiators must be authorized in accordance with the FCC's certification procedures prior to the initiation of marketing in the U.S.

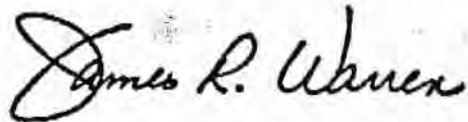
Granting Harris Corporation's equipment authorization application would enable state and local law enforcement officials to utilize the StingRay product to support detection, tracking and location missions, and search and rescue missions. The use of this technology by local and state law enforcement officials would enable us to more efficiently and effectively protect and serve the public.

State and local law enforcement's use of such equipment is typically narrow in scope, isolated, and of relatively short duration. Interference to users outside a predetermined target list is very limited and this device employs a "catch and release" technology that is localized and fixated on a particular signal of interest.

Moreover, the StingRay product provides for an automatic release for emergency calls. Also, we ask that the Commission keep in mind that state and local law enforcement agencies comply with all applicable laws including approved court orders for use of such **equipment**.

We respectfully request that the Commission grant the application and consider the benefits this equipment would provide to state/local law enforcement agencies. The Commission's time and attention to this matter is greatly appreciated. Please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in black ink that reads "James R. Warren". The signature is written in a cursive style with a large initial "J".

James R. Warren
Administrator
Wisconsin Department of Justice
Division of Criminal Investigation



CITY OF HOUSTON

Bill White, Mayor

Houston Police Department

1200 Travis Houston, Texas 77002-6000 713/247-1000

CITY COUNCIL MEMBERS:

Toni Lawrence Jarvis Johnson Anne Clutterbuck Ada Edwards Addie Wiseman M J Khan, P E Pam Holm Adrian Garcia

Carol Alvarado Peter Brown

Sue Lovell

Melissa Noriega

Ronald C Green

Michael Berry

CITY CONTROLLER: Annise D Parker

August 22nd, 2007

Harold L. Hurtt
Chief of Police



Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

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We respectfully request that the Commission grant the application and consider the benefits this equipment would provide to state/local law enforcement agencies. The Commission's time and attention to this matter is greatly appreciated.

Please do not hesitate to contact me if I may be of assistance, I may be reached at bcmcdaniel@houstonpd.us and at (713) 254-0574.

Sincerely,



Breck C. McDaniel, Sergeant
Homicide Division





David P. Baker
Chief of Police

City of Alexandria, Virginia

Department of Police
2003 Mill Road
Alexandria, Virginia 22314
www.alexandriava.gov



Telephone 703 838 4700
Fax 703 838 6345

22 August 2007

Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

SUBJECT: Equipment Application for Harris StingRay Product

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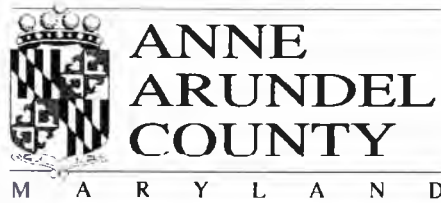
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Sincerely,

EXEC. NO Earl Cook 8/22/07

Name: Earl Cook
Title: Executive Deputy Chief
Date: 22 August 2007
Organization: Alexandria Police Department

Colonel James Teare, Sr.
Chief of Police



Police Department
8495 Veterans Hwy.
Millersville, MD 211
(410) 222-8050

August 22, 2007

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445 12th Street, S.W.
Washington, D. C. 20554

SUBJECT: Equipment Application for Harris StingRay Product

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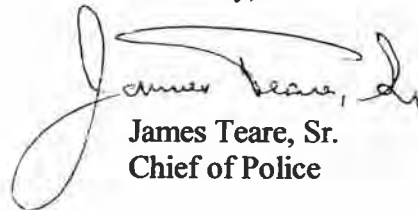
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Nationally Accredited Law Enforcement Agency

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Sincerely,

A handwritten signature in black ink, appearing to read "James Teare, Sr.", with a large, stylized initial "J" on the left and a flourish on the right.

James Teare, Sr.
Chief of Police

JT/ksm

Nationally Accredited Law Enforcement Agency