

Baltimore police often surveil cellphones amid US secrecy

April 9 2015, by Jack Gillum And Juliet Linderman



This undated handout photo provided by the U.S. Patent and Trademark Office shows the StingRay II, manufactured by Harris Corporation, of Melbourne, Fla., a cellular site simulator used for surveillance purposes. A police officer testified Wednesday, April 8, 2015, that the Baltimore Police Department has used Hailstorm, a upgraded version of the StringRay surveillance device, 4,300 times and believes it is under orders by the U.S. government to withhold evidence from criminal trials and ignore subpoenas in cases where the device is used. (AP Photo/U.S. Patent and Trademark Office)

The Baltimore Police Department has an agreement with the U.S. government to withhold certain information about secretive cellphone surveillance technology from the public and even the courts, according to a confidential agreement obtained by The Associated Press. On Wednesday, the department disclosed it has used the technology thousands of times since 2007.

The agreement between the [police](#) department and the Federal Bureau of Investigation also encourages the authorities and local prosecutors to sometimes dismiss cases instead of divulging details about the equipment. That arrangement, which was agreed to several years ago, has led police to believe that they can withhold evidence in criminal trials or ignore subpoenas in cases in which the devices are used.

The technology, using devices called Hailstorm or Stingray, can sweep up basic cellphone data from a neighborhood by tricking phones in the area that it's a cell tower and identifying unique subscriber numbers. That data is then transmitted to the police, allowing them to locate a phone without the user even making a call or sending a text message.

The Baltimore police entered into an agreement with the Justice Department in 2011, which calls for the department to withhold information about the device in "press releases, court documents, during judicial hearings or during other public forums and proceedings." The agreement states that the department must seek FBI approval before sharing any details with other [law enforcement agencies](#).

The agreement also makes clear that neither the police department nor prosecutors are permitted to divulge information about the surveillance technology in court, and warns that if either agency suspects that a prosecutor is planning to provide information about the device in open court, it must "notify the FBI in order to allow sufficient time for the FBI to intervene to protect the equipment/technology and information

from disclosure and potential compromise."

The FBI's agreement also says the agency can request the Baltimore police, in conjunction with local prosecutors, to seek dismissal of a case rather than "allowing others to use or provide" information about Harris Corp.'s [surveillance technology](#) if it would "potentially or actually" compromise the equipment.

In practice, Baltimore police officers are interpreting the non-disclosure agreement as instructing them to withhold evidence from the court, and ignore subpoenas relating to the technology.

Emmanuel Cabreja, a detective with the department's advanced technical team, testified Wednesday in a carjacking and robbery case. In that case, Cabreja's team used a Hailstorm to locate a stolen cellphone inside a group home where defendant Nicholas West was living. A juvenile was also charged in the case.

He said the department has deployed Hailstorm and similar technology roughly 4,300 times since 2007. Personally, Cabreja said he'd used it between 600-800 times in the past two years.

"Does (the document) instruct you to withhold evidence from the state's attorney and the circuit court of Baltimore city, even if upon order to produce?" defense attorney Joshua Insley asked Cabreja.

"Yes," he said. Cabreja also said he ignored a subpoena he received Tuesday to bring the device with him to court.

Police across the country have largely been kept silent on how they use the devices. Because documents about Stingrays and Hailstorms are regularly censored in public records requests by citizens and journalists, it's not entirely clear what information the devices could capture—such

as the contents of phone conversations and text messages, what they routinely capture based on how they're configured, or how often they might be used.

Cabreja on Wednesday said the Hailstorm can identify phones from a 360-degree antenna from about a city block away in distance. He said no data, or content, is captured in the process; however he said the device detects the unique identification numbers assigned to cellphones that have the same service provider as the targeted phone within that radius.

"Given what (Cabreja) said about the technology involved, and the way a Hailstorm device connects to and 'registers' non-targeted cellphones, it's likely that thousands of people in Baltimore have unknowingly impacted by police cellphone surveillance," defense attorney James Johnston told The Associated Press. Johnston represented the juvenile defendant in Wednesday's case.

The FBI declined to answer questions about the case late Wednesday.

This is not the first case to inspire a push-pull between prosecutors, defense attorneys and judges about revealing details of the Baltimore Police Department's use of the clandestine technology.

Baltimore Circuit Judge Barry Williams presided over an earlier trial in which the police apparently used a surveillance device to collect evidence on a robbery suspect. At a November 2014 hearing, Williams lost his patience with a state prosecutor after a police technician wouldn't answer defense attorney's questions about the device—citing the FBI nondisclosure agreement.

"You don't have a nondisclosure agreement with the court," Williams told police Det. John Haley, part of the department's advanced technical team. "Answer the question."

The prosecutors instead withdrew the evidence, avoiding the contempt citation and questions about the equipment's use.

Two months earlier, Williams threw out evidence in yet another criminal case involving cellphone tracking after a police sergeant said there were unspecified "homeland security" issues when asked why the suspect was stopped.

"If it goes into homeland security issues, then the phone doesn't come in," Williams said, telling the prosecutor: "You can't just stop someone and not give me a reason."

This week, officials in upstate New York released documents about their Stingray use after a state judge ordered them to do so.

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Citation: Baltimore police often surveil cellphones amid US secrecy (2015, April 9) retrieved 9 April 2024 from <https://phys.org/news/2015-04-baltimore-police-surveil-cellphones-secrecy.html>

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