

# Cellular Site Simulator Usage and Privacy

## 620.1 PURPOSE AND SCOPE

The purpose 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 Pasadena Police Department - will be made in compliance with California Government Code Section 53166 and in consultation with the Community Police Oversight Commission and the Independent Police Auditor.

## 620.2 POLICY

It is the policy of the Pasadena 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.

## 620.3 BASIS FOR POLICY

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

1. 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.
2. 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. The usage and privacy policy shall be available in writing to the public, and, if the local agency has an internet website, the usage and privacy policy shall be posted conspicuously on that internet website. The usage and privacy policy shall, at a minimum, include all of the following:
  - a. The authorized purposes for using cellular communications interception technology and for collecting information using that technology
  - b. 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
  - c. 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
  - d. 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
  - e. The purpose of, the process for, and restrictions on the sharing of information gathered through the use of communications interception technology with other local agencies and persons

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- f. The length of time information gathered through the use of 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.

#### **620.4 HOW THE TECHNOLOGY WORKS**

Cellular site simulator technology relies on the use of cellular site simulators. 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 proximity of the simulator identify it as the most attractive cell tower in the area and thus transmit signals to the simulator that identifies the device in the same way that they would a networked tower. **Cellular site simulator technology does not capture nor receive any content such as text messages, voicemails, applications, multimedia messages, etc. It does not have the capability of listening to phone calls. The City of Pasadena will not add software or otherwise modify the equipment in any way to enable these capacities.**

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 the 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.

CSS technology may be used to gather information leading to the identity or whereabouts of missing persons, at-risk individuals, victims of mass casualty incidents, suspects, and fugitives. Authorized department investigators can use the CSS to help locate cellular devices whose unique identifiers are already known to law enforcement, or to determine the unique identifiers of an unknown device by collecting limited signaling information from the devices in the simulators user's vicinity. Once law enforcement discovers the unique identifiers of an unknown device, investigators are required to obtain a subsequent search warrant to allow them to gather additional information relevant to that unique identifier.

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 event resulting in imminent loss of life or injury.

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### 620.5 INFORMATION OBTAINED

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

1. Azimuth (an angular measurement in a spherical coordinate system)
2. Signal strength
3. Device identifier for the target device when locating a single individual or all device identifiers to determine the unique identifiers of an unknown device

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 Pasadena Police Department shall not be used to collect the contents of any communication, in accordance with 18 U.S.C. § 3121(c).**

Cellular site simulators employed by the Pasadena 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 Pasadena Police Department to collect subscriber account information (for example, an account holder's name, address, or telephone number).

### 620.6 AUTHORIZED PURPOSES

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

1. Locate missing persons (endangered juveniles and elderly, Amber/Ebony/Silver alerts, abducted individuals, etc.)
2. Locate at-risk individuals (suicidal, mentally distressed, WIC 5150 / 5585 criteria, etc.)
3. Locate victims of mass casualty incidents (active shooter victims, natural disaster victims, search and rescue victims, etc.)
4. Assist in felony investigations
5. Apprehend fugitives

The cellular site simulator shall not be used to target First Amendment activities, such as protests and gatherings at places of worship. The cellular site simulator also shall not be used for immigration enforcement purposes, including the sharing of information derived from the equipment with federal immigration authorities including Immigrations and Customs Enforcement (ICE) and Customs and Border Patrol (CPB).

#### 620.6.1 LEGAL AUTHORITY

**Cellular site simulator technology may only be used by the Pasadena Police Department with a search warrant or for an identified exigency, with a subsequent application for a search warrant.** A search warrant application shall be made no later than 72 hours after use in an identified exigency. When using cellular site simulator technology to assist in an investigation, Pasadena Police personnel may only attempt to locate cellular devices whose unique identifiers are already known to law enforcement, or to determine the unique identifiers of an unknown device.

When making any application to a court, members of the Pasadena Police Department shall disclose appropriately and accurately the underlying purpose and activities for which an order or authorization is sought. Search warrants for the use of a cellular site simulator must include

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sufficient information to ensure that the courts are aware that the technology is being used. An application for the use of a cellular site simulator shall inform the court about how law enforcement intends to address the deletion of data not associated with the target phone.

1. The search warrant shall include:

- a. An advisement that the CSS sends signals to all cellular devices within range, which will cause the devices to emit unique identifiers
- b. An advisement when the intent is to determine unique identifiers at multiple locations and/or multiple times
- c. An advisement that all data collected during use of the CSS will be deleted at the conclusion of the mission

If cellular site technology is used based on exigency, then the above requirements will be met by applying for a search warrant no later than 72 hours after use. The search warrant shall set forth the facts and probable cause giving rise to the exigency. An exigency is defined as an emergency involving danger of death or serious physical injury.

#### **620.7 JOB TITLES, DESIGNATIONS, AND TRAINING REQUIREMENTS**

The Pasadena Police Department's cellular site simulator shall be operated and maintained by the Pasadena Police Department's Criminal Investigations Division. Personnel shall be specifically trained in such technology and authorized for its use by the Chief of Police or their designee. Such personnel shall be limited to designated CSS investigators. No other personnel shall be allowed to use this technology or access information collected through the use of this technology. The Chief of Police may withdraw authorization for use of the technology as a consequence of a disciplinary proceeding, or as appropriate under any circumstances consistent with law.

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 identified by the Pasadena Police Department. Such training shall include and follow applicable State and Federal laws, including California privacy laws. Investigators assigned to the Criminal Investigations Division at the time of the approval of this policy shall be trained by the manufacturer regarding use of the cellular site simulator. Prior to its use by subsequent investigators assigned to the Criminal Investigations Division, those investigators shall receive instruction from an individual previously trained by the manufacturer, or appropriate subject matter experts, and designated by the Criminal Investigations Division Commander or their designee. The Criminal Investigations Division Commander or their designee shall maintain a record of individuals who have completed training and are authorized to use the cellular site simulator.

#### **620.8 AGENCY MONITORING AND CONTROLS**

The Pasadena 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. Prior to approving use of the cellular site simulator, the Criminal Investigations Division Commander or their designee shall ensure that the proposed use complies with all applicable laws and this policy. The Criminal Investigations Division Commander or their designee and the Independent Police Auditor shall quarterly review all deployment logs for compliance with applicable laws and policy and shall conduct any further audits required by law. The Criminal Investigations Division Commander or their designee and the Independent Police Auditor shall ensure that process and time period system audits are conducted in accordance with law and this policy.

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### **620.9 DEPLOYMENT LOG**

Prior to deployment of the technology, the use of a cellular site simulator by the Pasadena Police Department must be approved by the Criminal Investigations Division Commander or their designee. Each use of the cellular site simulator device requires the completion of a log by the user. The log shall include the following information at a minimum:

1. The name of the search warrant affiant/operator
2. The reason for each use (fugitive, investigation, etc.), list authorized use
3. Whether the target phone was located or not, and if not the reason the search was unsuccessful or incomplete
4. Whether the equipment was used pursuant to a warrant or legally permissible exigency with a warrant subsequently obtained

The effectiveness of each deployment: The deployment log will be made available to the Independent Police Auditor (IPA) quarterly for audit purposes with redaction of information related to any ongoing investigations or other exempt material.

### **620.10 ANNUAL REPORT**

The Criminal Investigations Division Commander or their designee shall provide the Chief of Police, Independent Police Auditor, the Public Safety Committee and/or City Council, and Community Police Oversight Commission with an annual report that contains all of the above information. The report shall also contain the following information for the preceding 12-month period:

1. The number of times cellular site simulator technology was used
2. The number of times the Pasadena Police Department used the cellular site simulator for another agency
3. The existence of any memoranda of understanding or other agreement with other agencies for the use of cellular site simulator technology or the sharing of information collected through its use, and signatory parties
4. 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

### **620.11 INTER-AGENCY COOPERATION**

Any request from an outside agency to use the Pasadena Police Department's cellular site simulator must be approved, in writing, by the Criminal Investigations Division Commander or their designee through the agreement described herein. Prior to the device being used on behalf of the requesting agency, there must be an agreement between the requesting agency and the Pasadena Police Department. The Criminal Investigations Division Commander or other staff designated in writing by the Chief are authorized to sign such agreement, which shall be approved as to form by the City Attorney. The requesting agency must agree to adhere to this policy, which shall be provided to them. The cellular site simulator will be operated by trained members of the Pasadena Police Department. No outside agency members shall operate the cellular site simulator.

Upon approval, the cellular site simulator will be utilized for the requesting agency pending availability and only for the purposes authorized under Section 620.6.

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Should there be simultaneous requests from outside agencies to utilize the cellular site simulator, the Criminal Investigations Division Commander or their designee will determine which agency incident has priority.

### **620.12 SHARING OF INFORMATION**

The Pasadena 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 Pasadena 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 Criminal Investigations Division Commander or other individual as designated by the Chief of Police.

The agency with which the 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 the information including the prevention of unauthorized use, retention of information and destruction of information.

### **620.13 RETENTION AND DISPOSAL OF INFORMATION**

The Pasadena Police Department may keep captured data as evidence for use in a felony criminal investigation only when specifically authorized in a search warrant and in accordance with applicable state laws regarding search warrants and electronic information. The storage of this information shall be documented in a Pasadena Police Department crime report.

In all other circumstances where it is not specifically authorized by a search warrant, the Pasadena Police Department shall destroy all information intercepted by the cellular site simulator equipment as soon as the objective of the information request is accomplished in accordance with the following:

1. 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
2. When the cellular site simulator equipment is used to determine the unique identifiers of an unknown device, all data must be deleted at the conclusion of the mission, and in any event no less than once every ten days
3. Prior to deploying the cellular site simulator equipment for a subsequent operation, ensure the equipment has been cleared of any previous operational data
4. 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