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December 8, 2014

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VIA E-MAIL

Freddy Martinez
5810 S. Kenneth
Chicago, IL 60629
Freddymartinez9@gmail.com

Re: NOTICE OF RESPONSE
REQUEST RECEIVED: November 13, 2014
FOIA FILE NO. 14-5298

Dear Mr. Martinez:

The City of Chicago has retained Drinker Biddle & Reath LLP to assist in responding to your Illinois Freedom of Information Act request dated November 13, 2014, a copy of which is attached. The City of Chicago provided an initial response to your request on December 2, 2014. Based on a conversation with your counsel, Matthew Topic, on December 4, 2014, during which particular requests were clarified, the City of Chicago hereby provides a supplemental response to the above-referenced request.

Your request was reviewed by the Chicago Police Department's (CPD) Organized Crime Division and Drinker Biddle & Reath LLP. Upon review, the City of Chicago hereby responds to your requests as follows:

+ Any and all contracts, invoices, purchase orders, proposals, sales or marketing materials, and contract negotiation records for Hailstorm IMSI Catchers.

The enclosed documents appear to be responsive to this request, to the extent it requests contracts, invoices, purchase orders, proposals, and contract negotiation records.

Section 7(1) provides that "[w]hen a request is made to inspect or copy a public record that contains information that is exempt from disclosure under this Section, but also contains information that is not exempt from disclosure, the public body may elect to redact the information that is exempt. The public body shall make the remaining information available for inspection and copying." Portions of the enclosed documents have been redacted under the following exemptions:

Section 7(1)(d)(v) of the Illinois FOIA exempts documents that "disclose unique or specialized investigative techniques other than those generally used and known" 5 ILCS 7(1)(d)(v). Portions of the enclosed documents disclose unique and specialized

investigative techniques not generally used or known and the circumstances in which those techniques may be used (in particular, the types of investigations in which a specialized investigative technique may be used). Those with criminal intent could use this information in an attempt to circumvent the investigative technique at issue. As such, the redacted information is exempt from disclosure under 5 ILCS 140/7(1)(v).

Section 7(1)(f) of the Illinois FOIA exempts “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated” 5 ILCS 7(1)(d)(v). Portions of the enclosed documents fall within this exemption because they contain an internal policy discussion regarding the purchase of the equipment subject to the request, which portions have been redacted.

Section 7(1)(g) of the Illinois FOIA exempts “[t]rade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.” 5 ILCS 7(1)(g). The enclosed documents contain commercial and financial information obtained from a business under a claim that the information is confidential and proprietary. Accordingly, that commercial and financial information has been redacted.

In addition, sales and marketing documents responsive to this request are being withheld pursuant to the following exemptions:

Section 7(1)(a) of the Illinois FOIA provides that “information specifically prohibited from disclosure by federal or State law or rules and regulations implementing federal or State law” is exempt from release under the Act. 5 ILCS 104/7(1)(a). Specifically, your requests seeks information prohibited from disclosure by the following federal and state laws:

(i) 6 U.S.C. § 482. Cell site simulator technology, such as IMSI Catchers, obtained and used by local law enforcement is done solely with the permission of federal law enforcement, which places any such technology within the ambit of the Homeland Security Act. The Homeland Security Act, in turn, prohibits the disclosure of any such information obtained by local law enforcement regarding that technology. Indeed, the Homeland Security Act specifically provides that “State or local law authorizing or requiring such a [State or local] government to disclose information shall not apply to such information [obtained under the Act].” 6 U.S.C. § 482(e). Your requests for sales and marketing documents for Hailstorm IMSI Catchers seek technical and other information protected by the Homeland Security Act.

(ii) 22 U.S.C. § 2778. The Arms Export Control Act and implementing regulations restrict the dissemination of technical information relating to regulated defense articles, including the equipment that is the subject of your request. Specifically, technical details concerning this equipment are subject to the non-disclosure provisions of the International Traffic in Arms Regulations (ITAR), 22 C.F.R. Parts 120-130. The ITAR requires anyone, prior to making an export of technical information, to obtain a license from the Department of State. Technical information need not leave the borders of the United States to be deemed an export. Providing technical information without a license to anyone intending to publicize the information could constitute a violation of the Arms Export Control Act. Your request for sales and marketing documents for Hailstorm IMSI Catchers seeks information prohibited from disclosure by ITAR.

Section 7(1)(d)(v) of the Illinois FOIA exempts documents that “disclose unique or specialized investigative techniques other than those generally used and known . . .” 5 ILCS 7(1)(d)(v). Your request for sales and marketing materials for Hailstorm IMSI Catchers seeks documents that disclose unique and specialized investigative techniques not generally used or known; specifically, technical information regarding the capabilities of Hailstorm IMSI Catchers.

Section 7(1)(g) of the Illinois FOIA exempts “[t]rade secrets and commercial or financial information obtained from a person or business where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.” 5 ILCS 7(1)(g). Your request for sales and marketing materials for Hailstorm IMSI Catchers seeks documents that disclose trade secrets and commercial information, and disclosure of this information would cause competitive harm to the business providing such information.

Section 7(1)(i) of the Illinois FOIA exempts “[v]aluable formulae, computer geographic systems, designs, drawings and research data obtained or produced by any public body when disclosure could reasonably be expected to produce private gain or public loss. . . .” 5 ILCS 7(1)(i). Your request for sales and marketing materials for Hailstorm IMSI Catchers seeks information exempt under this provision.

Section 7(1)(v) of the Illinois FOIA exempts “[v]ulnerability assessments, security measures, and response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community’s population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community . . .” 5 ILCS 7(1)(v). Your request for sales and marketing materials for Hailstorm IMSI Catchers seeks information exempt under this provision.

+ *Invoices related to Hailstorm training.*

To the extent the enclosed documents are not responsive to this request, CPD has been unable to locate any documents responsive to this request.

+ *Documents sufficient to show where the funding for Hailstorms came from. Included in this request in any grants, programs, budget allocation, or federal program that funded the purchase, training, or continued use of Hailstorms.*

To the extent the enclosed documents are not responsive to this request, CPD has been unable to locate any documents responsive to this request.

+ *Documents sufficient to show reception of Hailstorms.*

Based on a December 4, 2014, conversation with your counsel, CPD understands this request as asking for any documents sufficient to show that CPD has received Hailstorm IMSI Catchers. To the extent the enclosed documents are not responsive to this request, CPD has been unable to locate any documents responsive to this request.

Very truly yours,



Elizabeth V. Lopez

Encl.

cc: Daniel J. Collins
Jeff Perconte
Matthew Topic

You have the right of review of this denial by the Illinois Attorney General's Public Access Counselor (PAC). You can file a request for review by writing to:

Public Access Counselor
Office of the Attorney General
500 2nd Street
Springfield, Illinois 62706

You may also seek judicial review of a denial under 5 ILCS 140/11 by filing a lawsuit in the State Circuit Court.

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