

14 October 2015

VIA - Email

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Office of the Information and Privacy Commissioner  
P.O. Box 9038 Stn. Prov. Govt.  
Victoria, BC V8W 9A4

**Re: Request for Review - Stingray Surveillance Device  
FOI Request to Vancouver Police Department - July 23, 2015**

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We are writing to request a review of the response from the Vancouver Police Department (“VPD”) regarding a Freedom of Information Request made pursuant to the *Freedom of Information and Protection of Privacy Act*. On July 23<sup>rd</sup>, 2015, our office sent a request to the VPD for any documents pertaining to the purchase, use, or acquisition of cell site simulator devices, often referred to as the “Stingray” or “Kingfish”.

On September 15, 2015 we received a response from the VPD which denied our request on the basis that the release of this information could harm the effectiveness of investigative techniques and procedures, pursuant to section 15(1)(c) of *FIPPA*. We believe this refusal is unjustified for the following reasons:

1. The recent case of *British Columbia (Justice)(Re)*, 2015 BCIPC 12, addressed a very similar request for information on the name of software device used by the Ministry. In that decision adjudicator Flanagan stated the following:

[62] The standard of proof applicable to harms-based exceptions like s. 15 is whether disclosure of the information could reasonably be expected to cause the specific harm. Although there is no need to establish certainty of harm, it is not sufficient to rely on speculation. In Order F07-15, former Commissioner Loukidelis outlined the evidentiary requirements to establish a reasonable expectation of harm:

...there must be a confident and objective evidentiary basis for concluding that disclosure of the information could reasonably be expected to result in harm... Referring to language used by the Supreme Court of Canada in an access to information case, I have said ‘there must be a clear and direct connection between disclosure of specific information and the harm that is alleged’.

It is the obligation of the respondent VPD in this case to provide a clear and direct connection between disclosure of the information requested and a harm that is alleged. It is unclear how simple disclosure of the acquisition of the device, or the terms of purchase, could possibly lead to harm. On the contrary it appears as if the VPD is relying on speculation, and the same basis for refusal which was expressly denied in the above case. In principle this issue is the same as the case above, and the mere existence or name of an investigative tool should be disclosed. Our office has not asked for documents on how the

device is used, the device's capabilities, or how the VPD specifically employs the device, we are simply asking for a response to the query of whether or not the VPD has purchased this device and is using or intends on using it. Clearly this does not meet the threshold of a harm-based exception like section 15(1)(c).


2. There are significant public policy reasons for why this information should be released. Firstly, there have been media reports indicating that the acquisition of this device comes with a requirement that the department purchasing it sign a confidentiality clause which states it will not acknowledge its existence. This is in and of itself an attempt to contract out of a statutory obligation to be open and transparent under *FIPPA*, and should not be allowed. Secondly, this device has been reported to have the capability of monitoring large groups of individuals at once, and can provide access to their information without their consent. There have been indications that the way the device is used may lead to widespread infringements on citizen privacy and *Charter* rights. While we are not asking for specifics on how the VPD uses this device, the public has a right to know what tools the government may be using to conduct surveillance, and what they are capable of. This is one of the fundamental tenants of a democracy and should be respected.

For the above reasons we are asking the OIPC to review this file and order disclosure of the relevant information and documents. In support of this appeal following are attached:

- Article from the New York Times regarding cell-site simulators dated March 15, 2015
- *British Columbia (Justice)(Re)*, 2015 BCIPC 12

Sincerely,

**PIVOT LEGAL SOCIETY**



per:

Douglas King  
*Barrister & Solicitor*