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April 13, 2011

Col. Kriste Etue, Director  
Michigan State Police  
P.O. Box 30634  
Lansing, MI 48909

Re: Cell Phone Extraction Devices

Dear Col. Etue:

Several years ago the Michigan State Police (MSP) acquired several devices that have the potential to quickly download data from cell phones without the owner of the cell phone knowing it. We write to ask how the MSP is using these devices.

According to CelleBrite, the manufacturer of at least some of the devices acquired by MSP, the product can be used to extract data in the field to “insure that a suspect’s phone can be examined before the individual has a chance to destroy or erase data.”

The company’s promotional materials further explain that the cell device:

“allows you to extract a wide variety of data types from the handset: Phonebook; Text messages; Call History (Received, Dialed, Missed); Deleted Text Messages off SIM/USIM; Audio Recordings; Video; Pictures and Images; Ringtones; Phone Details (IMEI/ESN, phone number); Complete File System Memory Dump on selected handsets.”

The Fourth Amendment protects citizens from unreasonable searches. With certain exceptions that do not apply here, a search cannot occur without a warrant in which a judicial officer determines that there is probable cause to believe that the search will yield evidence of criminal activity. A device that allows immediate, surreptitious intrusion into private data creates enormous risks that troopers will ignore these requirements to the detriment of the constitutional rights of persons whose cell phones are searched. Additionally, if racially disproportionate incarceration rates in this state are the result of racially disproportionate contact with law enforcement officers, then there is reason to be concerned that Michigan residents of color are more likely to have their cell phones searched by Michigan State Police. Given these and other circumstances the ACLU of Michigan’s concern about the potential abuse of such devices should be obvious and understandable. Recently, the National ACLU was forced to bring a lawsuit to learn to what extent officials at airports and border crossings were, without reasonable suspicion, downloading laptops and smartphones of individuals entering this country.<sup>1</sup>

<sup>1</sup> See <http://www.aclu.org/national-security/government-data-about-searches-international-travelers-laptops-and-personal-electr>.

For more than two and a half years the ACLU of Michigan has attempted to obtain information about the use of these devices through the Michigan Freedom of Information Act. Specifically, we have asked for records, reports and logs of actual use. The MSP's estimated cost of \$544,680 for retrieval and assembly of these documents for the entire period that five of these devices have been in the MSP's possession is, in our view, extraordinarily high. In fact, we were told that no part of that set of documents would be provided unless we agreed to pay a \$272,340 deposit.

With an eye toward saving both MSP and ACLU resources, we repeatedly asked for the MSP to assist in narrowing the scope of our document request to a window of time when it is certain that the devices were actually used. However, MSP personnel have refused to provide such assistance. As a result, we have filed a long series of separate FOIA requests. In fact, last November, we filed nearly 70 separate FOIA requests concerning the use of two specific devices. Each request was limited to very limited time periods, but nevertheless we were told in each case that there were either no documents available for the period we identified, or that we would be required to pay in advance for MSP personnel to ascertain whether requested documents exist.

Not long ago, our country celebrated National Sunshine Week, during which the news media, civic groups, schools and libraries stressed the "importance of open government and freedom of information" and "the public's right to know." See [www.sunshineweek.org](http://www.sunshineweek.org). Democracies depend on the principle of transparency in government in order to prevent abuse of power. Given its role as a government watchdog, the ACLU should not have to go on expensive fishing expeditions in order to discover whether the police are violating the privacy of individuals through the use of new, sophisticated technology.

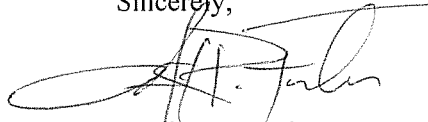
Accordingly, in the spirit of transparency and open government:

- 1) Please provide the date(s) when the MSP obtained the cellphone and smartphone data extraction devices and specify the number of devices acquired.
- 2) Please disclose the total amount spent in purchasing the devices as well as the total cost thus far of maintaining the devices;
- 3) Please explain how and when the devices are used, including when the devices are used in the field.
- 4) Please explain whether officers using the extraction devices extract data without informing owners of cell phones or smart phones that the devices are being used.
- 5) Please explain whether officers use the extraction devices to extract data without the consent of the owners of phones and without search warrants.
- 6) Please instruct your FOIA coordinator and other relevant personnel to specify when the devices have been used and to provide us with instructions about how to narrow our FOIA requests in a way that will make it possible for us to seek and actually obtain at a reasonable cost the documents reflecting the information requested above.

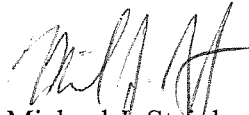
Law enforcement officers are known, on occasion, to encourage citizens to cooperate if they have nothing to hide. No less should be expected of law enforcement, and the Michigan State Police should be willing to assuage concerns that these powerful extraction devices are being used illegally by honoring our requests for cooperation and disclosure.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. P. Fancher', written over a horizontal line.

Mark P. Fancher  
Staff Attorney/Racial Justice Project  
(313) 578-6822  
mfancher@aclumich.org

A handwritten signature in black ink, appearing to read 'Michael J. Steinberg', written over a horizontal line.

Michael J. Steinberg  
Legal Director

Cc: Judith E. Levy, Asst. U.S. Attorney