

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

FREDDY MARTINEZ,)
)
Plaintiff,)
)
v.)
)
CHICAGO POLICE DEPARTMENT,)
)
Defendant.)

COMPLAINT

NOW COMES Plaintiff, FREDDY MARTINEZ, by his undersigned attorneys, LOEVY & LOEVY, and brings this Freedom of Information Act suit to force Defendant CHICAGO POLICE DEPARTMENT to reveal the full extent to which it has secretly used “IMSI catcher” or “stingray” equipment to force the cellular phones of Chicago residents and visitors to transmit sensitive and Constitutionally protected personal information to the police and to show what CHICAGO POLICE DEPARTMENT procedural safeguards (if any) exist to protect the public’s Constitutional rights. In support of his Complaint, MARTINEZ alleges:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act (“FOIA”). 5 ILCS 140/1.
2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people. *Id.*

3. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.
4. If the court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence. 5 ICS 140/11.
5. Under FOIA Section 11(h), “except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.”
6. Defendant CHICAGO POLICE DEPARTMENT has willfully and intentionally violated FOIA by refusing to produce records that would show the full extent to which it has secretly used “IMSI catcher” or “stingray” equipment to trick the cellular phones of Chicago residents and visitors to transmit sensitive and Constitutionally protected personal information to the police and what CHICAGO POLICE DEPARTMENT procedural safeguards (if any) exist to protect the public’s Constitutional rights.

PARTIES

7. Plaintiff FREDDY MARTINEZ is the FOIA requester in this case.
8. Defendant CHICAGO POLICE DEPARTMENT is a public body located in Cook County, Illinois.

BACKGROUND ON THE “IMSI CATCHER” SPYING EQUIPMENT AT ISSUE

9. There currently exists a variety of equipment commonly known as IMSI catchers, cell site simulators, or stingrays, which masquerade as cellphone towers to obtain data secretly from nearby cellular user devices. IMSI is short for international mobile subscriber identity, and is used to identify a user on a cellular network.

10. According to USA Today, this equipment is used to trick cellular devices into providing it with data, including device identification numbers, numbers dialed by a device, and the location of a device. (Exhibit A)
11. The ACLU and others have raised Constitutional and transparency concerns regarding the use of this equipment and attempts by government to keep it secret, including law enforcement efforts to hide the use of this equipment even from the courts and even when it has been used to gather evidence used in a criminal case. (Exhibits B and C)
12. The Electronic Frontier Foundation describes this equipment as “the biggest technological threat to cell phone privacy you don’t know about” and documented instances of alleged abuse by law enforcement. (Exhibit D)
13. Records that CHICAGO POLICE DEPARTMENT recently produced to MARTINEZ show that CHICAGO POLICE DEPARTMENT has owned ISMI catcher equipment since 2008.

MARTINEZ’S FOIA REQUEST AND CHICAGO POLICE DEPARTMENT’S REFUSAL TO COMPLY

14. On September 2, 2014, MARTINEZ requested the following records from CHICAGO POLICE DEPARTMENT:

Documents sufficient to show, for each individual occurrence, when, where, how, why, and by whom Chicago Police deployed any devices commonly known as IMSI catchers or "stingrays" (including but limited to Stingray, StingRay II, Amberjack, TriggerFish, Gossamer, Hailstorm (4G LTE upgrade), Harpoon or Kingfish, collectively "IMSI Catchers" as used in any of the requests in this email)).

All court orders for any instances in which Chicago Police deployed IMSI Catchers.

All formal or informal policies, procedures, orders, directives, or other such records that pertain to when, why, where, how, and by whom IMSI Catchers may be deployed.

All records discussing the constitutionality of deploying IMSI Catchers.

All records explaining what happens to data collected by Chicago Police IMSI Catchers, including but not limited to what data is stored and where, retention of collected data, and purging of collected data for both targets and nontargets of the use of IMSI Catchers.

(Exhibits E (original request) and F (correcting “search warrant” to “court orders”))

15. CHICAGO POLICE DEPARTMENT refused to produce a single record in response to the request or even to state whether such records exist, citing myriad inapplicable exemptions and disregarding the public's right to know the extent to which its government is using its own tax dollars to spy on it, under what circumstances, and with what Constitutional safeguards. (Exhibit G)
16. The records MARTINEZ requested are not exempt, and go to the very core of why the General Assembly enacted FOIA: to allow members of the public to monitor their government and prevent abuse. 5 ILCS 140/1.
17. In 2009, a federal court agreed to dissolve the infamous "red squad" 1982 consent decree that had been entered in the ACLU's suit against CHICAGO POLICE DEPARTMENT for decades of illegally spying on political activists in violation of the Constitution.
18. Based on CHICAGO POLICE DEPARTMENT's past violations of the Constitutional rights of political activists and the clear legal obligation to produce the requested records, CHICAGO POLICE DEPARTMENT's refusal to produce the records can only be the result of its desire to hide its misconduct in using this spying equipment, and therefore CHICAGO POLICE DEPARTMENT has willfully and intentionally violated FOIA and acted in bad faith. At the very least, CHICAGO POLICE DEPARTMENT has withheld these records while knowing they are not exempt.

COUNT I – WILLFUL VIOLATION OF FOIA

19. The above paragraphs are incorporated by reference.
20. CHICAGO POLICE DEPARTMENT is a public body under FOIA.
21. The records sought in MARTINEZ'S FOIA request are non-exempt public records of CHICAGO POLICE DEPARTMENT.
22. CHICAGO POLICE DEPARTMENT has violated FOIA by refusing to produce the requested records.
23. CHICAGO POLICE DEPARTMENT'S violation was willful and intentional and in bad faith.

WHEREFORE, MARTINEZ asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that CHICAGO POLICE DEPARTMENT has violated FOIA;
- iii. order CHICAGO POLICE DEPARTMENT to produce the requested records under FOIA;
- iv. enjoin CHICAGO POLICE DEPARTMENT from withholding non-exempt public records under FOIA;
- v. award MARTINEZ reasonable attorneys' fees and costs; and
- vi. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,

Attorneys for Plaintiff
FREDDY MARTINEZ

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