

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

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

No. 2014 CH 09565

FILED - CH  
CIRCUIT COURT OF COOK COUNTY  
2014 SEP -3 PM 1:01  
DOROTHY BROWN CLERK

MOTION TO DISMISS

Defendant Chicago Police Department, by its counsel, Drinker Biddle & Reath LLP, moves to dismiss the Complaint of Freddy Martinez pursuant to 735 ILCS 2-619(a)(9). In support thereof, the CPD states as follows:

*Summary*

Because the Chicago Police Department responded to Plaintiff's Freedom of Information request, this Court should dismiss Plaintiff's Complaint. As described in detail in the attached affidavit from Chicago Police Officer Jack Enter, the Chicago Police Department did, in fact, respond to Plaintiff's request for information, contrary to the allegations of the Complaint. More specifically, the Chicago Police Department produced a quotation and two separate invoices in response to Plaintiff's specific request for purchase orders. Based on Officer Enter's affidavit, the Chicago Police Department respectfully requests that this Court dismiss Plaintiff's Complaint with prejudice pursuant to 735 ILCS 2-619(a)(9).

*Background*

On March 22, 2014, Plaintiff submitted a request pursuant to FOIA for information relating to IMSI catchers. (Exhibit 1-A). In his request, Plaintiff stated: "I am specifically writing for any purchase orders for any equipment that could be used to intercept GSM or

CDMA (cell phone) communication.” (Exhibit 1-A). Following this specific request, Plaintiff identified a range of products for which he was seeking this information. (*Id.*).

As outlined in the attached affidavit, Officer Jack Enter prepared the response to Plaintiff’s request. (Exhibit 1). Officer Enter consulted with the Department’s Bureau of Organized Crime, from which he received responsive documents on April 8, 2014. The documents included two invoices and one quotation relating to the equipment identified in Plaintiff’s FOIA request. (Exhibit 1-B). Approximately one or two days later, Officer Enter then sent those documents to Plaintiff by United States mail. (Exhibit 1, ¶6; 1-B).

#### *Argument*

Section 2-619(a)(9) of the Illinois Code of Civil Procedure provides that the Court may dismiss an action if it is barred by other affirmative matter. 735 ILCS 2-619(a)(9). A motion to dismiss a claim under the Illinois Freedom of Information Act, 5 ILCS 140/1, *et seq.*, is properly brought pursuant to section 2-619(a)(9). *See, e.g., David Blumenfeld, Ltd. v. Dept. of Prof. Reg’n*, 263 Ill. App. 3d 981 (1st Dist. 1993) (affirming dismissal of FOIA claim under section 2-619); *Lucas v. Prisoner Review Bd.*, 2013 IL App (2d) 110698 (affirming dismissal of FOIA claim under section 2-619).

The purpose of section 2-619 is to afford litigants a means of disposing of issues of law and easily proved issues of fact at the outset of a case and therefore permits a trial court to consider pleadings, depositions, and affidavits. *Miner v. Fashion Enter., Inc.*, 342 Ill. App. 3d 405, 413 (1st Dist. 2003). A section 2-619 motion “shall be supported by an affidavit” if the grounds for moving do not appear on the face of the complaint. 735 ILCS 2-619(a). In support of its motion, the Chicago Police Department submits the affidavit of Chicago Police Officer Jack Enter, attached hereto as Exhibit 1.

In his Complaint, Plaintiff alleges that the Chicago Police Department “willfully and intentionally violated FOIA by refusing to produce financial records regarding its purchase of cellular tracking equipment.” As Officer Enter attests, the Department did, in fact, respond to Plaintiff’s FOIA request by producing the financial records that Mr. Martinez requested. For this reason, the Department submits that this Court should dismiss his complaint pursuant to section 2-619.

*Conclusion*

Wherefore, for the reasons stated above, defendant respectfully requests that this Court dismiss Plaintiff Freddy Martinez’s Complaint with prejudice.

Dated: September 8, 2014

Respectfully submitted,

**CHICAGO POLICE DEPARTMENT**

  
\_\_\_\_\_

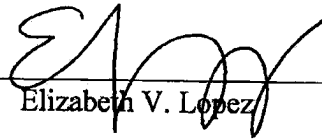
Daniel J. Collins (6224698)  
Elizabeth V. Lopez (6293255)  
**DRINKER BIDDLE & REATH LLP**  
191 N. Wacker Dr., #3700  
Chicago, IL 60606  
312.569.1000  
Daniel.Collins@dbr.com  
Elizabeth.Lopez@dbr.com

ACTIVE/ 76928150.1

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that on September 8, 2014, she caused the foregoing *Motion to Dismiss* to be served U.S. Mail, postage prepaid, upon the individual listed below:

Matthew Topic  
Loevy & Loevy  
312 N. May Street, Ste. 100  
Chicago, IL 60607



Elizabeth V. Lopez

# **Exhibit 1**

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

FREDDY MARTINEZ, )  
 )  
 Plaintiff, )  
 )  
 v. ) No. 2014 CH 09565  
 )  
 CHICAGO POLICE DEPARTMENT, )  
 )  
 Defendant. )

AFFIDAVIT OF JACK ENTER

Jack Enter, being duly sworn, states:

1. I am employed as a Police Officer at the Chicago Police Department ("CPD"). I am over the age of 18 years and without legal disability. If called as a witness, I could competently testify to the facts set forth below.

2. I am responsible for preparing responses to FOIA requests that are submitted to CPD. I was the FOIA Officer who prepared the response to the FOIA request submitted by Freddy Martinez on Saturday, March 22, 2014, through the CPD's website and by e-mail. See Exhibit A. The request was logged by CPD on March 24, 2014, and assigned File No. 14-1161.

3. On Thursday, March 27, 2014, I forwarded by email Mr. Martinez's request to the Bureau of Organized Crime. In response to my email, I initially received an automatic out of office reply. About a day later, I met with two employees assigned to Organized Crime and discussed Mr. Martinez's request. Organized Crime indicated that they would search for potentially responsive records.

4. On or about March 31, 2014, I received a follow-up email from Mr. Martinez, requesting a response to his March 22nd FOIA request. On April 1, 2014, I responded by email,

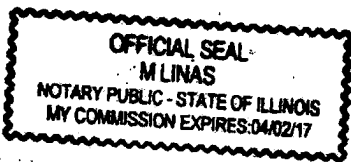
telling Mr. Martinez that the Department was processing his request and expected to respond that week.

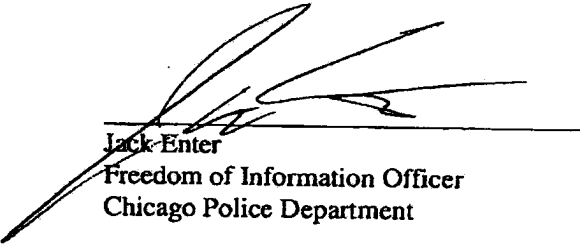
5. On Tuesday, April 8, 2014, I sent a follow-up request by email to the Bureau of Organized Crime. In response, I received an email indicating that Organized Crime was in possession of some potentially responsive records. I met with an employee assigned to Organized Crime that day, and picked up the potentially responsive documents.

6. On April 9th or 10th, I then prepared a response to Mr. Martinez's FOIA request, producing three invoices from the Harris Corporation. See Exhibit B. It is my practice when preparing responses to FOIA requests to draft a letter using Microsoft Word. Instead of formatting each new response, I open a previously-sent letter, change the addressee's name and contact information, revise the date, and draft the text to address the particular request. This is what I did in response to Mr. Martinez's request, except I inadvertently failed to change the date. Although the response to Mr. Martinez' letter is dated March 31, 2014, I prepared the response on or about April 9th or 10th. Once the letter was prepared, I printed an envelope and placed the response in an outgoing mail bin. I have reviewed Exhibit B, and this is the response that I prepared and placed into the outgoing mail bin on or about April 9th or 10th.

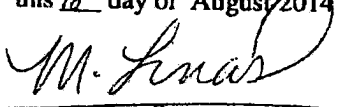
I declare under penalty of perjury that the foregoing facts are true and correct.

FURTHER AFFIANT SAYETH NOT.



  
Jack Enter  
Freedom of Information Officer  
Chicago Police Department

Signed and sworn to before me  
this 18<sup>th</sup> day of August 2014

  
NOTARY PUBLIC

# **Exhibit 1-A**



**CITY OF CHICAGO  
Freedom of Information Request**

Requestor's Name:	<b>Freddy Martinez</b>	Address:	<b>5810 S Kenneth</b>				
Telephone Number:		City	<b>Chicago</b>	State	<b>IL</b>	Zip	<b>60647</b>
Fax Number:		Email	<b>freddymartinez9 AT gmail DOT com</b>				
Organization (if any):							

Records sought (be specific):

I am writing to request all records under a Freedom of Information Act Request for any information about "IMSI catchers"

I am specifically writing for any purchase orders for any equipment that could be used to intercept GSM or CDMA (cell phone) communication.

**I am looking for any and all records for any of the following hardware products**

StringRay, StingRay II, Amberjack, TriggerFish, Goesamer, Hailstorm, Harpoon or Kingfish as well as any software products used to interface with them.

Records of any system that detects mobile identities including "IMSI catchers". These systems can also capture information related to IMEI, TMSI, MSISDN etc

This request is being made for a commercial purpose. Section 2(c-10) of FOIA defines "commercial purpose" as the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services. For purposes of this definition, requests made by news media and non-profit, scientific, or academic organizations shall not be considered to be made for a "commercial purpose" when the principal purpose of the request is (i) to access and disseminate information concerning news and current or passing events, (ii) for articles of opinion or features of interest to the public, or (iii) for the purpose of academic, scientific, or public research or education.

This request is not being made for a commercial purpose.

Signature **Freddy Martinez**

*[For optional use only]*

**FOIA Request ATTN: Freedom of Information Officer**

Freddy Martinez [freddymartinez9@gmail.com]

Sent: Saturday, March 22, 2014 4:52 PM

To: CPDfoia@cityofchicago.org

Attachments: CPDStingRayFOIA.pdf (150 KB)

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Hello,

I am seeking any records pertaining to the purchase or reception of any IMSI catchers, commonly known as Stingrays (a trademark of Harris Corporation). The purpose of these IMSI catches is to intercept and log GSM and or CDMA (cell phone communications). I am looking for any and all records related to the following (but not limited) commercial products: Stingray, StingRay II, Amberjack, TriggerFish, Gossamer, Hailstorm, Harpoon or Kingfish. These devices (and devices like them which I am also seeing records for) can capture IMEI codes, TMSI, MSISDN and related phone data.

I am looking for any and all records related to the purchase, billing, on-going costs and how they are paid for.

Please see the attached FOIA request and please don't hesitate to contact me if needed.

Thank you

Freddy Martinez  
freddymartinez9 AT gmail DOT

This e-mail, and any attachments thereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail (or the person responsible for delivering this document to the intended recipient), you are hereby notified that any dissemination, distribution, printing or copying of this e-mail, and any attachment thereto, is strictly prohibited. If you have received this e-mail in error, please respond to the individual sending the message, and permanently delete the original and any copy of any e-mail and printout thereof.

# **Exhibit 1-B**



Rahm Emanuel  
Mayor

Department of Police · City of Chicago  
3510 S. Michigan Avenue · Chicago, Illinois 60653

Garry P. McCarthy  
Superintendent of Police

March 31, 2014

Freddy Martinez  
5810 S Kenneth  
Chicago, IL 60647

Re: NOTICE OF RESPONSE  
REQUEST DATE: March 24, 2014  
FOIA FILE NO.: 14-1161

Dear Mr. Martinez :


The Chicago Police Department is in receipt of your Freedom of Information Act (FOIA) request. In it, you ask to be provided with access to "records relating to the purchase or reception of any IMSI catchers." Specifically, you ask to be provided with "purchase orders" for these items.

Your request was reviewed by the undersigned. After contacting the Bureau of Organized Crime, three (3) separate billing invoices from the Harris Corporation were located that appear to be responsive to this request. These records are attached.

If I can be of further assistance, you may contact me at (312) 745-5308, or by mail at the below address:

Chicago Police Department  
Office of Legal Affairs  
Attention: Freedom of Information Officer  
3510 S. Michigan Ave.  
Chicago, IL 60653

Sincerely,

  
P.O. Jack Enter  
Freedom of Information Officer  
Department of Police

Emergency and TTY: 9-1-1 · Non Emergency and TTY: (within city limits) 3-1-1 · Non Emergency and TTY: (outside city limits) (312) 746-6000

E-mail: [police@cityofchicago.org](mailto:police@cityofchicago.org) · Website: [www.cityofchicago.org/police](http://www.cityofchicago.org/police)



Please Remit Payments:  
 Harris Corporation, GCSD  
 Citibank Delaware  
 P.O. Box 7247 - LB 6759  
 Philadelphia, PA 19170-6759 USA  
 Account No: 30523167  
 ABA Rtg No: 021000089  
 TIN: 340276860

Invoice	INV6779-02239
Date	10/13/2009
Page:	1

# Invoice

**Bill To:**

Chicago Police Department  
 James Washburn  
 3340 W. Fillmore Ave  
 james.washburn@chicagopolice.org  
 Chicago IL 60624

**Ship To:**

SGT James Washburn  
 Chicago Police Dept  
 3340 W. Fillmore Ave  
 Chicago IL 60624

Purchase Order No.		Customer ID		Salesperson		Shipping Method		Pmt Terms		Req Ship Date		Harris Ord No.	
15457		CPB-CHGIL-001		WPG3		BEST WAY		Net 30		6/8/2009		ORD6779-01271	
Ordered	Shipped	B/O	Item Number	Description	Discount	Unit Price	Ext. Price						
1	1		AJ-W-UG 3049	AmberJack-X or G to AmberJack W Upgrade Serial Number		\$18,000.00	\$18,000.00						
			<del>SPURDGE</del>	<del>Handheld Passive DF-Tool</del>		<del>\$12,000.00</del>	<del>\$9.00</del>						

All above items received in good working order

X *J. Washburn*

2ND SHIPMENT - THIS C/C.  
 BAL. \$12,000.

HARRIS CORP - WIRELESS PRODUCTS GROUP  
 P.O. BOX 9800, MS R5-11A  
 MELBOURNE, FL 32902-9800  
 PH: 800-358-5297, FAX: 321-309-7437, wpg@harris.com

Subtotal	\$18,000.00
Deposit	\$0.00
Misc.	\$0.00
Tax	\$0.00
Freight	\$0.00
Trade Discount	\$0.00
Purchase Price	\$18,000.00



Quote	QTE6779-01929
Date	12/22/2008
Page:	1

Quotation

Bill To:

Chicago Police Department  
 Sgt. Jim Washburn  
 james.washburn@chicagopolice.org  
 312-746-7922

Ship To:

Sgt. Jim Washburn  
 james.washburn@chicagopolice.org  
 312-746-7922

Purchase Order No.	Customer ID	Salesperson ID	Shipping Method	Payment Terms	Req Ship Date	Maste
	CPB-CHGIL-001	WPG2		Net 30	0/0/0000	2
Quantity	Item Number	Description	UOM	Discount	Unit Price	Ext. Price
1	STINGRAY II - UP	StingRay II - Upgrade	EA		\$65,000.00	\$65.00
1	STINGRAY II-IDEN-SW	StingRay II IDEN Software Package	EA		\$22,000.00	\$22.00
1	PA-KIT-30W IDEN 000	PA-KIT-30W Single Band IDEN 000	EA		\$14,000.00	\$14.00
1	PA-KIT-30W DUAL-BAND	PA-KIT-30W Dual-Band CONUS 850/1900	EA		\$17,500.00	\$17.50
1	PA-KIT-30W 2100	PA-KIT-30W Single Band 2100 MHz	EA		\$16,000.00	\$16.00
1	A.LW-US	AmberJack-X or G to AmberJack-W Upgrade (WideB	EA		\$18,000.00	\$18.00
1	SPURDOG	Handheld Passive DF Tool	EA		\$12,000.00	\$12.00
	NOTE	Delivery will be 120 days ARO unless otherwise stated. Please see attached Terms and Conditions.				\$

HARRIS CORP - WIRELESS PRODUCTS GROUP  
 P.O. BOX 9800, M/S R5-11A  
 MELBOURNE, FL 32902-9800  
 PH: 800-350-5297, FAX: 321-309-7437, wpg@harris.com

Approved By:

Subtotal	\$164,500
Misc	\$0
Tax	\$0
Freight	\$0
Trade Discount	\$0
Purchase Price	\$164,500



Please Remit Payments:  
 Harris Corporation, GCSD  
 Citibank Delaware  
 P.O. Box 7247 - LB 6759  
 Philadelphia, PA 19170-6759 USA  
 Account No: 30523187  
 ABA Rtg No: 021000089  
 TIN: 340276860

Invoice #	INV6779-02106
Date	8/20/2009
Page	1

# Invoice

Bill To:

Chicago Police Department  
 Sgt. Jim Washburn  
 james.washburn@chicagopolice.org  
 3340 W. Fillmore Ave,  
 Chicago, IL 60624

Original Invoice

Ship To:

Sgt. Jim Washburn  
 james.washburn@chicagopolice.org  
 3340 W. Fillmore Ave  
 Chicago, IL 60624

Order No.	Customer ID	Salesperson	Shipping Method	Pmt Ter	3rd No.
15457	CPB-CHGIL-001	WRGZ		Net 30	9-01271
Ordered	Shipped	QTY	Item Number	Description	Unit Price
1	1		STINGRAY II - UP 2046	StingRay II - Upgrade Serial Number	\$65,000.00
1	1		2009323-101	Laptop PC	\$0.00
1	1		STINGRAY II-IDEN-SW 2046	StingRay II IDEN Software Package Serial Number	\$22,000.00
1	1		PA-KIT-30W IDEN 800	PA-KIT-30W Single Band IDEN 800	\$14,000.00
1	1		PA-KIT-30W DUAL-BAN	PA-KIT-30W Dual-Band CONUS 050/1900	\$17,500.00
1	1		PA-KIT-30W 2100	PA-KIT-30W Single Band 2100 MHz	\$16,000.00
1	1		AJ-W-UG	AmberJack X or G to AmberJack-W Upgrade	\$0.00
1	1		SPURDOG	Handheld Passive DF Tool	\$0.00

FOR TRACKING PURPOSES

SHOULD THESE ITEMS BE INVENTORIED NOW?  
 7-28-09

All above items received in good working order EXCEPT HIGH JUMP ITEMS

X J. Washburn  
 GCSD #5 PENN/VA

HARRIS CORP - WIRELESS PRODUCTS GROUP  
 P.O. BOX 9800, M/S RS-11A  
 ELBOURNE, FL 32902-9800  
 T 800-358-5297, FAX 321-309-7437, wpg@harris.com

Subtotal	\$134,500.00
Deposit	\$0.00
Miss	\$0.00
Tax	\$0.00
Freight	\$0.00
Trade Discount	\$0.00
Purchase Price	\$134,500.00