



Pennsylvania State Police  
Bureau of Records & Identification  
RIGHT-TO-KNOW OFFICE  
1800 Elmerton Avenue  
Harrisburg, PA 17110

Mailing Date: March 30, 2015

Mike Katz-Lacabe  
46 Eastbrook Street  
San Leandro, California 94577

PSP/RTKL Request N° 2015-0122

Dear Mr. Katz-Lacabe:

On February 19, 2015, the Pennsylvania State Police (PSP) received your request for information pursuant to the Pennsylvania Right-to-Know Law (RTKL), 65 P.S. §§ 67.101 - 3104, wherein you wrote:

“Pursuant to Pennsylvania Right to Know Law 65 Pa. Stat. Section 66. et. seq., I am writing to request copies of the following:

The non-disclosure agreement between the Pennsylvania State Police and the FBI concerning cellular telephone surveillance and monitoring equipment from Harris Corporation (KingFish, StingRay, Hallstorm, etc.) or Boeing (DRTBox).

Harris Corporation or Boeing Company Terms and Conditions.

Any notifications about public records act requests regarding Stingray or other Harris equipment or Boeing Company equipment sent by the Pennsylvania State Police to the Federal Bureau of Investigation (FBI) since January 1, 2012 and responses from the FBI since January 1, 2012.

Any notifications about public records act requests regarding Stingray or other Harris equipment or Boeing Company equipment sent by the Pennsylvania State Police to Harris Corporation or Boeing Company since January 1, 2012 and responses from Harris Corporation or Boeing Company since January 1, 2012.”

By letter dated February 26, 2015 you were notified in accordance with RTKL section 67.902(b) and 1 PA. CONS. STAT. § 1908 that PSP required an additional thirty days to prepare this final response to your request.

Your request is respectfully denied because the records you seek are not available to the public. The RTKL only requires Commonwealth agencies to provide documents that are public records. Tit. 65, § 67.301. It is well settled that the PSP is a Commonwealth agency within the meaning of the RTKL. *See id.* § 67.101; *Dekok v. PSP*, OOR Dkt. AP 2011-0086 at 4. A document is not a public record if: (1) it is

specifically exempted from disclosure in section 67.708 of the RTKL; (2) it is not otherwise exempt under other federal or state law; or (3) it is protected by a privilege. Tit. 65, § 67.102 (defining "Public Record").

With regard to, "The non-disclosure agreement between the Pennsylvania State Police and the FBI concerning cellular telephone surveillance and monitoring equipment from Harris Corporation (KingFish, StingRay, Hailstorm, etc.) or Boeing (DRTBox)," and "Harris Corporation Or Boeing Company Terms and Conditions, PSP has identified two responsive records, a four page correspondence dated August 18, 2011, from the FBI to PSP marked law enforcement sensitive and a two page agreement between Harris and PSP. Following the first classification, the RTKL specifically limits disclosure of these records. Thus, these records constitute a, "A record maintained by an agency in connection with the homeland security, law enforcement or other public safety activity that is disclosed would reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity," which is exempt from public disclosure under RTKL section 67.708(b)(2).

Additionally, with regard to your request for, "Any notifications about public records act requests regarding Stingray or other Harris equipment or Boeing Company equipment sent by the Pennsylvania State Police to the Federal Bureau of Investigation (FBI) since January 1, 2012 and responses from the FBI since January 1, 2012," PSP has identified various email correspondences between Federal Bureau of Investigation (FBI) and the PSP. These correspondences are exempt from disclosure as, "A record that reflects the internal, predecisional deliberations of an agency, its members, employees or officials and employees of another agency relating to a contemplated course of action used in predecisional deliberations pursuant to Section 708(b)(10)(i)(A). The PSP, upon receipt of a request(s) for cellular telephone surveillance records, confers with the FBI in contemplation of a response to the request(s) as the FBI provides guidance as to the legal dissemination of records pertaining to cellular telephone surveillance request(s).

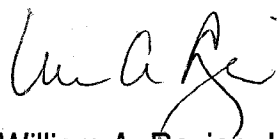
Finally, with regard to your request for, "Any notifications about public records act requests regarding Stingray or other Harris equipment or Boeing Company equipment sent by the Pennsylvania State Police to Harris Corporation or Boeing Company since January 1, 2012 and responses from Harris Corporation or Boeing Company since January 1, 2012." The PSP determined it does not have any records in its possession, custody, or control that respond to your request. A supporting verification confirming this assertion accompanies this final response letter. Pursuant to the decision in *Jenkins vs. Pennsylvania Department of State*, "It is not a denial of access when an agency does not possess records and [there is no] legal obligation to obtain them (see, e.g. section 67.506 (d)(1)." *Jenkins vs. Pa. Dep't of State*, Docket No. AP 2009-065 (available at, <http://openrecords.state.pa.us>). PSP has had telephone contact with Harris Corporation. PSP notifies the FBI upon receipt of request(s) for information on cellular telephone surveillance records. Any notification of a request(s) to Harris Corporation is conducted by the FBI.

To the extent that your request seeks or may be construed to seek records pertaining to covert law enforcement investigations, including, intelligence gathering and analysis, the PSP can neither confirm nor deny the existence of such records without risk of compromising investigations and imperiling individuals. Under No Circumstances, therefore, should this final response be interpreted as indicating otherwise. In all events, should such records exist, they are entirely exempt from public disclosure under the RTKL and Criminal History Record Information Act, 18 PA. CONS. STAT. §§ 9101-9183.

In closing, you have a right to appeal this response in writing to the Office of Open Records, Commonwealth Keystone Building, 400 North Street, 4th Floor, Harrisburg, Pennsylvania 17120. The appropriate OOR appeal form is available for your use at, <https://www.dced.state.pa.us/public/oor/appealformgeneral.pdf>. If you choose to appeal, you must do so within 15 business days of the mailing date of this response, and send to the OOR: 1) this response; 2) your request; 3) the reason or reasons why you think PSP wrongfully denied your access to the requested records. *(a statement identifying any flaws in the reasons provided above as to why a requester is not subject to access the requested records under the RTKL).*

If you have any questions, please feel free to contact our office at the telephone number listed below.

Sincerely yours,



William A. Rozier, J.D.  
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Agency Open Records Officer  
Bureau of Records and Identification  
Right to Know Law/Subpoena Unit  
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Enclosure: Request 2015-0122

PENNSYLVANIA STATE POLICE  
BUREAU OF RECORDS & IDENTIFICATION  
RIGHT-TO-KNOW OFFICE

VERIFICATION OF  
WILLIAM A. ROZIER  
AGENCY OPEN RECORDS OFFICER

I, William A. Rozier, Agency Open Records Officer of the Pennsylvania State Police (PSP or Department), am authorized to prepare this verification on the Department's behalf in response to PSP/RTKL Request N° 2015-0122. Accordingly, on this 30<sup>th</sup> day of March, 2015, I verify the following facts to be true and correct, to the best of my knowledge or information and belief:

1. I am familiar with PSP/RTKL Request N° 2015-0122, which is attached to this verification.
2. Utilizing the information contained in the request, I searched all Department databases to which I have access for evidence of any PSP records that may respond to the request.
3. With regard to, "The non-disclosure agreement between the Pennsylvania State Police and the FBI concerning cellular telephone surveillance and monitoring equipment from Harris Corporation (KingFish, StingRay, Hailstorm, etc.) or Boeing (DRTBox)," and "Harris Corporation Terms and Conditions," these records are exempted as "A record maintained by an agency in connection with the homeland security, law enforcement or other public safety activity that is disclosed would reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity," which is exempt from public disclosure under RTKL section 67.708(b)(2).
4. With regard to, "Any notifications about public records act requests regarding Stingray or other Harris equipment or Boeing Company equipment sent by the Pennsylvania State Police to the Federal Bureau of Investigation (FBI) since January 1, 2012 and responses from the FBI since January 1, 2012," these correspondences are exempt from disclosure as, "A record that reflects the internal, predecisional deliberations of an agency, its

members, employees or officials and employees of another agency relating to a contemplated course of action used in predecisional deliberations pursuant to Section 708(b)(10)(i)(A).

3. Finally, with regard to, "Any notifications about public records act requests regarding Stingray or other Harris equipment or Boeing Company equipment sent by the Pennsylvania State Police to Harris Corporation or Boeing Company since January 1, 2012 and responses from Harris Corporation or Boeing Company since January 1, 2012," finding neither records nor any evidence that suggests PSP is in possession of the requested records, I have determined PSP does not have any records responsive to this RTKL request in its possession, custody, or control.

**I understand that false statements made in this verification are subject to penalties of 18 PA. CONS. STAT. § 4904, relating to unsworn falsification to authorities.**



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William A. Rozier, J.D.  
Deputy Agency Open Records Officer  
Pennsylvania State Police