



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535-0001

December 7, 2012

[REDACTED]  
Captain  
San Bernardino Sheriff's Department  
[REDACTED]  
San Bernardino, CA 92402

Re: Acquisition of Wireless Collection Equipment/Technology and Non-Disclosure Obligations

*LAW ENFORCEMENT SENSITIVE (LES): The information in this document is the property of the Federal Bureau of Investigation (FBI) and may be distributed within the Federal Government (and its contractors), U.S. intelligence, law enforcement, public safety or protection officials and individuals with a need to know. Distribution beyond these entities without FBI Operational Technology Division authorization is prohibited. Precautions should be taken to ensure this information is stored and/or destroyed in a manner that precludes unauthorized access. Information bearing the LES caveat may not be used in legal proceedings without first receiving authorization from the originating agency. Recipients are prohibited from subsequently posting the information marked LES on a website on an unclassified network.*

Dear [REDACTED]

We have been advised by Harris Corporation of the San Bernardino Sheriff's Department's request for acquisition of certain wireless collection equipment/technology manufactured by Harris Corporation. Consistent with the conditions on the equipment authorization granted to Harris Corporation by the Federal Communications Commission (FCC), state and local law enforcement agencies must coordinate with the Federal Bureau of Investigation (FBI) to complete this non-disclosure agreement prior to the acquisition and use of the equipment/technology authorized by the FCC authorization.

As you are aware, law enforcement agencies increasingly rely on wireless collection equipment/technology to conduct lawfully-authorized electronic surveillance. Disclosing the existence of and the capabilities provided by such equipment/technology to the public would reveal sensitive technological capabilities possessed by the law enforcement community and may allow individuals who are the subject of investigation wherein this equipment/technology is used to employ countermeasures to avoid detection by law enforcement. This would not only potentially endanger the lives and physical safety of law enforcement officers and other

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individuals, but also adversely impact criminal and national security investigations. That is, disclosure of this information could result in the FBI's inability to protect the public from terrorism and other criminal activity because, through public disclosures, this technology has been rendered essentially useless for future investigations. In order to ensure that such wireless collection equipment/technology continues to be available for use by the law enforcement community, the equipment/technology and any information related to its functions, operation, and use shall be protected from potential compromise by precluding disclosure of this information to the public in any manner including but not limited to: in press releases, in court documents, during judicial hearings, or during other public forums or proceedings. Accordingly, the San Bernardino Sheriff's Department agrees to the following conditions in connection with its acquisition and use of the Harris Corporation equipment/technology:

1. By entering into this agreement, the San Bernardino Sheriff's Department affirms that it has statutory authority to lawfully employ this technology and will do so only in support of public safety operations or criminal investigations.
2. The San Bernardino Sheriff's Department assumes responsibility for operating the equipment/technology in accordance with Federal law and regulation and accepts sole liability for any violations thereof, irrespective of the Federal Bureau of Investigation approval, if any, for the sale of the equipment/technology.
3. The San Bernardino Sheriff's Department will ensure that operators of the equipment have met the operator training standards identified by the FBI and are certified to conduct operations.
4. The San Bernardino Sheriff's Department will coordinate with the FBI in advance of its use of the wireless collection equipment/technology to ensure de-confliction of respective missions.
5. The San Bernardino Sheriff's Department will not distribute, disseminate, or otherwise disclose any information concerning the wireless collection equipment/technology or any software, operating manuals, or related technical documentation (including its technical/engineering description(s) and capabilities) to the public, including to any non-law enforcement individuals or agencies.
6. The San Bernardino Sheriff's Department will not distribute, disseminate, or otherwise disclose any information concerning the wireless collection equipment/technology or any software, operating manuals, or related technical documentation (including its technical/engineering description(s) and capabilities) provided to it to any other law enforcement or government agency without the prior written approval of the FBI. Prior to any approved distribution, dissemination, or comparable disclosure of any information concerning the wireless collection equipment/technology or any software, manuals, or related technical documentation related to such equipment/technology, all materials shall be marked "Law Enforcement Sensitive, For Official Use Only - Not to be Disclosed Outside of the San Bernardino Sheriff's Department."

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7. The San Bernardino Sheriff's Department shall not, in any civil or criminal proceeding, use or provide any information concerning the Harris Corporation wireless collection equipment/technology, its associated software, operating manuals, and any related documentation (including its technical/engineering description(s) and capabilities) beyond the evidentiary results obtained through the use of the equipment/technology including, but not limited to, during pre-trial matters, in search warrants and related affidavits, in discovery, in response to court ordered disclosure, in other affidavits, in grand jury hearings, in the State's case-in-chief, rebuttal, or on appeal, or in testimony in any phase of civil or criminal trial, without the prior written approval of the FBI. If the San Bernardino Sheriff's Department learns that a District Attorney, prosecutor, or a court is considering or intends to use or provide any information concerning the Harris Corporation wireless collection equipment/technology, its associated software, operating manuals, and any related documentation (including its technical/engineering description(s) and capabilities) beyond the evidentiary results obtained through the use of the equipment/technology in a manner that will cause law enforcement sensitive information relating to the technology to be made known to the public, the San Bernardino Sheriff's Department will immediately notify the FBI in order to allow sufficient time for the FBI to intervene to protect the equipment/technology and information from disclosure and potential compromise.

Notification shall be directed to the attention of:

Assistant Director  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility  
[REDACTED]  
Quantico, Virginia 22135  
[REDACTED]

and

Unit Chief  
Tracking Technology Unit  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility  
[REDACTED]  
Quantico, Virginia 22135  
[REDACTED]

8. In addition, the San Bernardino Sheriff's Department will, at the request of the FBI, seek dismissal of the case in lieu of using or providing, or allowing others to use or provide, any information concerning the Harris Corporation wireless collection equipment/technology, its associated software, operating manuals, and any related documentation (beyond the evidentiary results obtained through the use of the equipment/technology), if using or providing such information would potentially or actually compromise the equipment/technology. This point supposes that the agency has some control or influence over the prosecutorial process. Where such is not the case, or is limited so as to be inconsequential, it is the FBI's expectation that the law enforcement

agency identify the applicable prosecuting agency, or agencies, for inclusion in this agreement.

9. A copy of any court order in any proceeding in which the San Bernardino Sheriff's Department is a party directing disclosure of information concerning the Harris Corporation equipment/technology and any associated software, operating manuals, or related documentation (including its technical/engineering description(s) and capabilities) will immediately be provided to the FBI in order to allow sufficient time for the FBI to intervene to protect the equipment/technology and information from disclosure and potential compromise. Any such court orders shall be directed to the attention of:

Assistant Director  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility

[REDACTED]  
Quantico, Virginia 22135  
[REDACTED]

and

Unit Chief  
Tracking Technology Unit  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility

[REDACTED]  
Quantico, Virginia 22135  
[REDACTED]

10. The San Bernardino Sheriff's Department will not publicize its acquisition or use of the Harris Corporation equipment/technology or any of the capabilities afforded by such equipment/technology to the public, other law enforcement agencies, or other government agencies, including, but not limited to, in any news or press releases, interviews, or direct or indirect statements to the media.
11. In the event that the San Bernardino Sheriff's Department receives a request pursuant to the Freedom of Information Act (5 U.S.C. § 552) or an equivalent state or local law, the civil or criminal discovery process, or other judicial, legislative, or administrative process, to disclose information concerning the Harris Corporation wireless collection equipment/technology, its associated software, operating manuals, and any related documentation (including its technical/engineering description(s) and capabilities), the San Bernardino Sheriff's Department will immediately notify the FBI of any such request telephonically and in writing in order to allow sufficient time for the FBI to seek to prevent disclosure through appropriate channels. Notification shall be directed to the attention of:

Assistant Director  
Operational Technology Division

Federal Bureau of Investigation  
Engineering Research Facility

[REDACTED]  
Quantico, Virginia 22135  
[REDACTED]


and

Unit Chief  
Tracking Technology Unit  
Operational Technology Division  
Federal Bureau of Investigation  
Engineering Research Facility


[REDACTED]  
Quantico, Virginia 22135  
[REDACTED]

The San Bernardino Sheriff's Department's acceptance of the above conditions shall be evidenced by the signatures below of an authorized representative and wireless collection equipment operators of the San Bernardino Sheriff's Department.

Sincerely,

  
Assistant Director  
Operational Technology Division  
Federal Bureau of Investigation

Acknowledged and agreed to this 19 day of December, 2012.

  
Captain  
San Bernardino Sheriff's Department  
San Bernardino, CA

  
Detective