



COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

November 25, 2015

The Honorable Ron Wyden
United States Senate
Washington, D.C. 20510

Dear Senator Wyden:

I am responding to a question you asked during the October 27, 2015 hearing about the use of cell-site simulator technology.

IRS use of cell-site simulation technology is limited to the federal law enforcement arm of the IRS, our Criminal Investigation (IRS-CI) division. Only trained law enforcement agents have used cell-site simulation technology, carrying out criminal investigations in accordance with all appropriate federal and state judicial procedures.

IRS-CI possesses one cell-site simulator, procured in October of 2011. IRS-CI first deployed the cell-site simulator in early 2012. In July 2015, IRS-CI began the process of procuring an additional cell-site simulator, but as of this date, it has not been received.

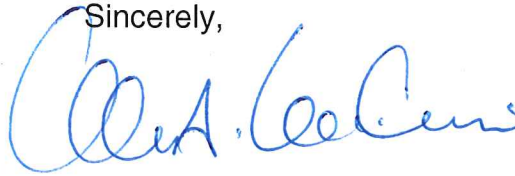
IRS-CI used the simulator in support of eleven federal grand jury investigations--in particular, Stolen Identification Refund Fraud and money laundering investigations--led by the U.S. Attorney's Office (USAO), which provided oversight and guidance in obtaining appropriate authorization, such as court orders and/or tracking warrants. IRS-CI tracked 37 cellular devices as part of these investigations.

In addition, IRS-CI has used the cell-site simulator to assist in four non-IRS-CI investigations, one other federal and three state investigations. The federal case was a Drug Enforcement Agency (DEA) federal grand jury narcotics investigation, and tracked one cellular device. In this instance, IRS-CI operated the cell-site simulator, based upon the appropriate federal court order obtained by DEA, and followed all applicable laws under the guidance of an Assistant United States Attorney. The three state cases were non-grand jury investigations involving attempted murder, murder, and gun trafficking, and tracked six cellular devices. In each instance, IRS-CI followed guidance from the USAO or state prosecutors, as well as IRS-CI's underlying policies for securing appropriate authorization (that is, court orders and/or tracking warrants) for the type of information captured by cell-site simulation technology.

On September 3, 2015, the Department of Justice (DOJ) issued DOJ Policy Guidance: Use of Cell-Site Simulator Technology, requiring federal agencies to obtain a search warrant supported by probable cause prior to using the technology except in exigent or exceptional circumstances, and addressing the use and retention of the information collected using this technology. The IRS distributed the DOJ policy to IRS-CI personnel trained in the use of this equipment that same week, and we are currently drafting a policy which will be issued by November 30, 2015. This policy will mirror the DOJ policy's requirement to obtain a search warrant supported by probable cause prior to using the technology except in exigent or exceptional circumstances. IRS-CI has not used this technology since the issuance of the DOJ policy, and has placed a hold on its use until the new policy is issued.

I hope this information is helpful. If you have questions, please contact me, or a member of your staff can contact Leonard Oursler, Director, Legislative Affairs at (202) 317-6985.

Sincerely,

A handwritten signature in blue ink, appearing to read "John A. Koskinen". The signature is fluid and cursive, with a large initial "J" and "K".

John A. Koskinen