

ERIE COUNTY LEGISLATURE

PATRICK B. BURKE
7th District Legislator



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May 6, 2014

Hon. John J. Mills
Chairman of the Erie County Legislature
92 Franklin Street, Fourth Floor
Buffalo, NY 14202

Chairman Mills,

The recent news report on the use of spying equipment by the Erie County Sheriff's office is incredibly alarming. I request that you call a public hearing as soon as possible on this matter in order to determine how this equipment is being used by the sheriff's office and what safe guards are being put into place to protect against abuse.

Sincerely,

A handwritten signature in black ink that reads "Patrick B. Burke".

Patrick B. Burke
Erie County Legislator, 7th District

Erie Co. Sheriff Spent \$350,000+ To Spy On Cell Phones

The Erie County Sheriff's Office spent more than \$350,000 on equipment to spy on cell phones.

Michael Wooten, WGRZ 7:34 p.m. EDT May 5, 2014



(Photo: WGRZ)

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BUFFALO, N.Y. -- The Erie County Sheriff's Office spent more than \$350,000 on equipment to spy on citizens' cell phones, according to documents obtained by 2 On Your Side.

The devices mimic a cell phone tower that convinces the phone to share private information, including exact locations as well as numbers of those calling or texting and receiving calls or texts.

In most cases, the devices receive information from all phones within a one-mile radius, meaning potentially thousands of innocent people could have their data shared without ever knowing.

The Sheriff's Office repeatedly refused to acknowledge if it owned the spying devices or make any comment at all, saying that could jeopardize investigations or "reveal criminal investigative techniques."

The agency, headed up by Erie County Sheriff Tim Howard, denied our Freedom of Information Law (FOIL) request. So 2 On Your Side filed a request with the Erie County Department of Purchasing. After an initial denial and appeal, the county finally handed over the information, saying it had consulted with the county attorney, the manufacturer Harris Corporation (<http://harris.com/>) and the U.S. Department of Justice.

The documents show the first purchases came in late 2008, when the county spent \$282,993 on a KingFish system, StingRay system and training classes. In December 2012, a purchase order shows the county spent another \$71,300 on a StingRay II Upgrade and a laptop. This brings the overall total to more than \$350,000.

Buffalo Attorney Barry Covert called that expense "money wasted", because without a court order, he said any evidence obtained from the devices would not be admissible in court.

"If they are ever utilizing it without a warrant, they're absolutely violating the constitutional rights of everyone whose information they're collecting," Covert said.

One of the biggest concerns is what happens with all the stored data. The Sheriff's Office wouldn't discuss any policies or procedures.

"Any information that makes it onto a computer is now going to be preserved forever," Covert said. "So they can claim that they had the device up and they only wanted to pinpoint one person and get that information, but they're going to absolutely collect information for thousands of people."

The Sheriff's Office also would not say what safeguards are in place to prevent abuse.

NATIONAL COVERAGE: Cell Phone Spying Investigation from USA TODAY (/story/news/nation/2013/12/08/cellphone-data-spying-nsa-police/3902809/)

Other police agencies across the country have also been secretive about the devices. According to the disclosed documents obtained by 2 On Your Side, part of the agreement with Harris says, "Neither party will, without the prior written consent of the other party... issue any news release, public announcement, denial or confirmation" of the purchase.

Several states are now debating laws that would require a law enforcement agency to get a court order from a judge before these devices could be used. As far as we know, New York is not among them.

Covert is heavily involved in criminal and First Amendment cases. He said he has never heard of these devices until now, and he suspects the Erie County Sheriff's Office is using them without court orders.

"It's scary," Covert said.

2 On Your Side will be reaching out yet again to the Sheriff's Office to get answers to the many questions raised in this report.

You can join the conversation on Twitter by using **#cellphonespying**. **Contact me @wgrzMichael** (<https://twitter.com/wgrzMichael>) or on **Facebook** (<https://www.facebook.com/michael.wootenwgrz>).

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