

Technology

Boston Police Bought Spy Tech With a Pot of Money Hidden From the Public



Sophie Morse for WBUR

Massachusetts police can seize and keep money from drug-related arrests. No one has publicly reported how that money gets spent. A WBUR/ProPublica investigation found that Boston police used over \$600,000 of it on a controversial surveillance device.

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Across the country, some law enforcement agencies have deployed controversial surveillance technology to track cellphone location and use. Critics say it threatens constitutional rights, and members of Congress have moved to restrain its use.

Nonetheless, in 2019 the Boston Police Department bought the device known as a cell site simulator — and tapped a hidden pot of money that

kept the purchase out of the public eye.

A WBUR investigation with ProPublica found elected officials and the public were largely kept in the dark when Boston police spent \$627,000 on this equipment by dipping into money seized in connection with alleged crimes.

Also known as a “stingray,” the cell site simulator purchased by Boston police acts like a commercial cellphone tower, tricking nearby phones into connecting to it. Once the phones connect to the cell site simulator’s decoy signal, the equipment secretly obtains location and other potentially identifying information. It can pinpoint someone’s location down to a particular room of a hotel or house.

While this briefcase-sized device can help locate a suspect or a missing person, it can also scoop up information from other phones in the vicinity, including yours.

The Boston police bought its simulator device using money that is typically taken during drug investigations through what’s called civil asset forfeiture.

An August investigation by WBUR and ProPublica found that even if no criminal charges are brought, law enforcement almost always keeps the money and has few limitations on how it’s spent. Some departments benefit from both state and federal civil asset forfeiture. The police chiefs in Massachusetts have discretion over the money, and the public has virtually no way of knowing how the funds are used.

The Boston City Council reviews the BPD annual budget, scrutinizing proposed spending. But the surveillance equipment wasn’t part of the budget. Because it was purchased with civil forfeiture funds, BPD was able to circumvent the council.

According to an invoice obtained by WBUR, the only city review of the purchase — which was made with federal forfeiture funds — came from the Procurement Department, confirming that the funds were available.

In fact, it was only after sifting through hundreds of documents received through public records requests that WBUR discovered BPD had bought the device from North Carolina-based Tactical Support Equipment Inc., which specializes in surveillance technology.

Sgt. Detective John Boyle, spokesman for the Boston police, did not explain why the department used forfeiture dollars to buy the equipment instead of purchasing it through the regular budget process.

Requests for interviews with Boston police leaders were declined.

Boston city councilors interviewed by WBUR said they weren’t aware that the police had bought a cell site simulator. Councilor Ricardo Arroyo, who represents Mattapan, Hyde Park and Roslindale, said, “I couldn’t even tell you, and I don’t think anybody on the council can necessarily tell you ... how these individual purchases are made.”

State Rep. Jay Livingstone, who represents parts of Boston and Cambridge, says this kind of covert police spending is exactly why more oversight is

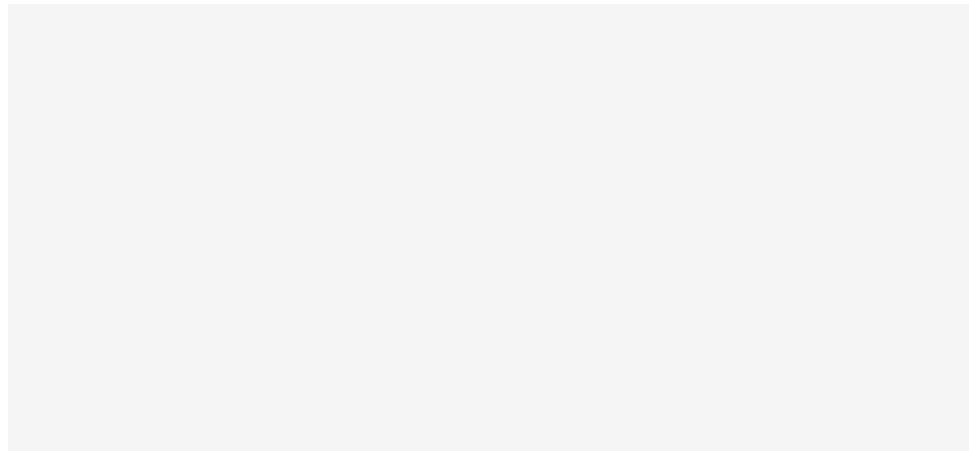
needed.

“Police chiefs just have these slush funds they can do whatever they want with,” Livingstone said.

Hidden Purchases

WBUR discovered the secret purchase of cell site simulator technology when it set out to identify how civil forfeiture money was being spent.

In April, WBUR requested from Boston police all invoices for purchases made with civil asset forfeiture money between 2017 and 2019. One transaction stood out: \$627,000 paid to Tactical Support Equipment, identified only as a “multi-channel, multi-band base station.” WBUR obtained model numbers from invoices to establish that this equipment was a stingray.



In an invoice from Tactical Support Equipment, the Boston Police Department was billed for the purchase of a cell site simulator. Robin Lubbock/WBUR

Boyle, the police department spokesperson, confirmed the technology was a cell site simulator.

This isn't the first time the BPD has bought spy equipment that is shrouded in mystery.

It paid Harris Corporation, a Florida-based defense contractor, more than \$400,000 for cell site simulator equipment in 2013-14. While the majority of that money came out of the regular police budget, much of its use and purpose has been redacted in past public records.

In unclassified documents obtained by MuckRock.com, the FBI in 2013 prohibited Boston police from communicating to the public about cell site simulator technology. Robin Lubbock/WBUR

At the time, the FBI deemed cell site simulators so specialized that it prohibited Boston police and other law enforcement from talking about the devices publicly, specifically with the media. Boston received stingray training and equipment as far back as 2009, according to a Harris invoice acquired by Muckrock.com.

When Harris discontinued the stingray equipment for local law enforcement use in 2019, Boston police turned to Tactical Support Equipment.

A Push to Regulate the Spy Technology

The proliferation of this technology among local law enforcement departments across the country concerns civil rights advocates.

Kade Crockford, who heads the Technology for Liberty program at the ACLU of Massachusetts, called the cell site simulator “extremely invasive” and was not surprised Boston police used forfeiture dollars to pay for it, which avoided scrutiny.

“For a long time, law enforcement has been extremely secretive about their acquisition and use of this particular kind of technology,” Crockford said.

Knowing precisely how many are being used by law enforcement across the country is impossible. By 2014, federal law enforcement purchased 434 devices totaling more than \$95 million, according to a congressional oversight committee. The ACLU reported a few years later that 75 local departments and state police also had the equipment in their hands.

Facing nationwide controversy about the stingray, legislators at the federal, state and local level want more oversight of how cell site simulators are purchased and some demand police get a warrant from a judge.

In June, U.S. Sen. Ron Wyden, D-Ore., co-sponsored a bipartisan bill

called the Cell-Site Simulator Warrant Act of 2021, which would require a warrant to use the technology except in cases of emergencies. It would also require federal law enforcement agencies to provide annual reports about how the devices were used.

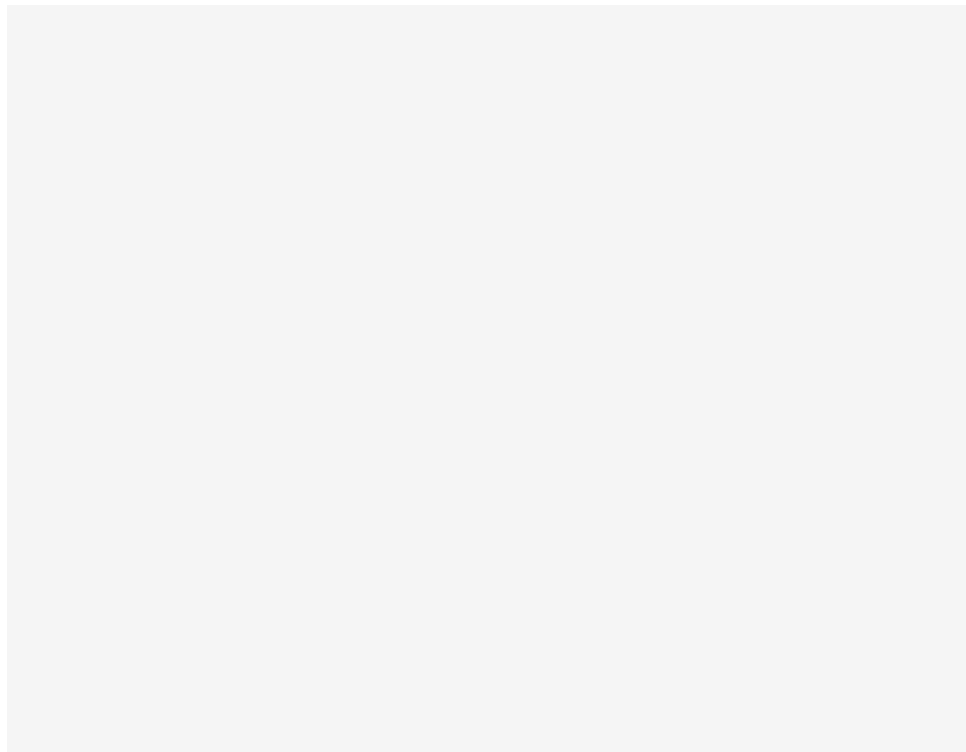
“Cell site simulators have existed in a kind of legal no-man’s land for far too long,” Wyden said in a statement when the legislation was introduced. The bill, he said, replaces “secrecy and uncertainty ... with clear, transparent rules for when the government can use these invasive surveillance devices.”

As of 2016, California was the only known state that requires city councils to approve written police procedures for use of stingrays before purchasing.

But even with that regulation in place, at least one police department tried to avoid the new rules.

A privacy advocacy group sued the city of Vallejo after the city approved the purchase of a \$766,000 cell site simulator in March 2020 without adopting a use policy. After a judge determined the city violated state law, the city required the Vallejo police to obtain a search warrant before using the technology, or immediately after in the case of an “exigent” or emergency situation involving the threat of physical harm or death.

From 2009-16, Boston police never obtained a warrant, claiming exigent circumstances when using a cell site simulator, a practice the ACLU heavily criticized.



The StingRay II, manufactured by Harris Corporation, a Florida-based defense contractor, is a cell site simulator used for surveillance purposes. U.S. Patent and Trademark Office via AP

Legislators in Massachusetts have tried pushing for more oversight of stingrays. In 2019, while the BPD was purchasing the new cell site simulator, legislation was pending for two electronic privacy bills. They

would have limited the use of cell site simulators and required warrants in most cases. Both bills died in committee.

That same year, the Massachusetts Supreme Judicial Court ruled that real-time surveillance of a person's cellphone constitutes a search under the state's Constitution and therefore requires a warrant, except in "exigent" circumstances.

Federal courts in Oakland, California, and New York City, as well as a Maryland state appellate court, also ruled that police use of spy technology is a violation of the Fourth Amendment right not to be unreasonably searched without a court-ordered warrant.

WBUR asked Boston police spokesman Boyle what policies and procedures the department has for the use of the powerful and controversial technology. He said it has none.

He said that according to internal investigative reports, there have been 98 instances since 2017 in which BPD has used a cell site simulator. Forty-one of those, he said, involved "exigent" circumstances in which a warrant wasn't necessary.

Boyle also confirmed that BPD's equipment is capable of collecting identifying information from cellphones in the area that are not being actively investigated. According to Boyle, that information is "discarded."

Shedding Light on How Money Is Spent

The details of how this technology is purchased and operated by Boston police fall mostly outside of the public's view, but the City Council is trying to change that.

Arroyo is a co-sponsor of a new city ordinance barring BPD from acquiring new surveillance technology without first receiving approval from the city council.

The current system, Arroyo said, is "just a bunch of folks in a room somewhere saying, 'We're going to buy this, or we're going to move on that.'"

There have been efforts at the state level to insert more transparency into the spending of civil forfeiture dollars.

The criminal justice reform act passed in 2018 mandated, for the first time, that Massachusetts district attorneys file annual reports to the state treasurer's office on how they spent their share of proceeds from civil forfeitures. The law also references that similar reports be created by police departments, but its interpretation varies. WBUR found only two out of more than 350 police departments in the state had filed reports with the office since 2018.

In an email sent days after it became law, Chelsea Police Chief Brian Kyes, head of the Massachusetts Major City Chiefs of Police Association, instructed more than 100 law enforcement officers from departments across the state to comply with the new reporting requirements "effective

immediately.” Nonetheless, some police departments told WBUR they thought it was voluntary.

When WBUR asked Boston police whether it files expenditures to the state, BPD said it would begin doing so.

Livingstone, the state representative who helped write the statute, said he believed police departments had been filing forfeiture spending reports to the treasurer’s office, until WBUR informed him that’s not the case. “It is incredibly disappointing to learn that police departments have just decided not to provide any information to the public,” Livingstone said.

He said the only long-term remedy is taking forfeiture dollars out of the hands of law enforcement and rerouting them into the state’s general fund. “Having these systems where police departments or DAs are nickel and diming some of the poorest people in the state to create this slush fund that they can use for whatever they want, it doesn’t make any sense to me.”

Saurabh Datar contributed reporting.

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