

WPD has tools to monitor phones

By Adam Wagner

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New Hanover County's chief public defender is worried about the Wilmington Police Department's access to and potential use of certain electronic surveillance equipment.

Chief Public Defender Jennifer Harjo recently wrote a letter to several local attorneys asking whether they knew anything about WPD's use of portable surveillance equipment that mimics cellphone towers to collect information.

"I have just begun my inquiries and have nothing to report today," Harjo wrote in a separate message. "I am quite con-

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cerned."

In November 2012, Wilmington City Council signed off on a \$33,000 maintenance agreement for five separate devices manufactured by Harris Corp., a Melbourne, Fla., company. Among the devices covered in the agreement were a StingRay, which mimics a cellphone tower to locate a cellphone and gather metadata; an AmberJack, an antenna system that can track and locate cellphones, according to Harris documents; a King-Fish, which gathers identity codes and shows the connections between phones and numbers being dialed; and three Harpoons, amplifiers for the StingRay devices.

In April 2008, the council signed off on a \$135,060 purchase agreement with Harris Corp. involving surveillance equipment, but it was not clear whether that money covered in whole or in part the StingRay, AmberJack or Harpoons.

According to a nationwide ACLU investigation, other cities in North Carolina that likely have similar tracking capabilities include the Charlotte and Durham police departments.

While the Wilmington City Council authorized the purchase of WPD devices, a WPD spokeswoman on Thursday referred all questions to the FBI.

While the reasons for that were not

immediately clear, Harris Corp. wrote a clause into its 2011 authorization agreement with the Federal Communications Commission requiring that local law enforcement "coordinate with the FBI the acquisition and use of the equipment," according to an Associated Press report.

An FBI spokeswoman wrote Thursday that the bureau protects information about the use and capabilities of equipment such as the StingRay because discussing it would allow criminals to understand how the technology works and render it useless. Shelley Lynch, the spokeswoman, added that the FBI only keeps information collected by such technology if it is relevant to a case.

The American Civil Liberties Union, though, wants more information about when and how the tower simulators are being used.

"In order for us to decide as a democratic society if we want to give law enforcement certain powers or what kind of regulations are needed, it's important to have information about what they're doing or what their capabilities are," said Mike Meno, a spokesman for the ACLU of North Carolina.

Meno also expressed concerns that the devices are being used without search warrants and could be collecting information that is not pertinent to investigations. It is also unclear, he added, how long local law enforcement agencies are keeping non-relevant information.

"Too often the technology outpaces

the law and it's a struggle to make sure the law keeps up with new advances in technology so people's privacy is protected," Meno said.

James Payne, a local defense attorney, expressed concern about what he called "the surreptitious interception of private cellphone communications."

"The Fourth Amendment protects all of our rights to privacy," Payne said, "and if communications are being intercepted like that without respecting the right to privacy, it just has bad implications for the rest of our civil rights."

New Hanover County District Attorney Ben David met, coincidentally Thursday with local law enforcement officials and representatives from the FBI and N.C. State Bureau of Investigation to clarify disclosure of information once a case reaches a trial stage.

When an investigation is ongoing for instance, a judge has to sign a search warrant, in part to ensure the right to privacy is being upheld, David said, with the only exception being if there is probable cause to believe a crime was committed.

But once someone is charged with a crime, the defense attorney has to have access to the entirety of the investigation under North Carolina's open discovery laws.

"We have to balance an individual's right to privacy versus a community's need to be protected," David said.

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