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[Opinion](#) > [Commentary](#)

Guest commentary: Without public discussion, Alameda County must nix Stingray system

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On Oct. 13, the Alameda County Board of Supervisors faces an age-old dilemma: Do the ends justify the means? Unfortunately, the county is not even asking the question.

The board is being asked for authorization to purchase a Stingray, cellular communications interception technology originally designed for military use overseas. The device, when paired with software like joint applicant Oakland Police Department uses, can intercept the content of voice, text, email, contact lists and data sent to and from your phone. It can also locate a phone with remarkable precision.

It operates in a dragnet fashion, scooping up information from cellphone users within its range suspected of no wrong doing. It works by mimicking a cellphone tower, sending out a signal so strong that it forces phones to connect to it. The signal can penetrate walls, placing all private communications at risk.

Across the country, jurisdictions are moving to regulate this controversial equipment due to concerns regarding compliance with the First and Fourth Amendments and, in California, our constitutional right to privacy. Law enforcement takes the position that because a Stingray is effective in locating criminals via their cellphones, we should give up privacy rights and ignore the Fourth Amendment. Yet we're not even being offered the choice to waive our rights due to the secrecy surrounding these devices and lack of public process regarding their acquisition and use.

Nondisclosure agreements prevent law enforcement officials from fully informing both the legislative and judiciary branches of federal, state and local governments as to the capabilities of the equipment, or if it has been used, resulting in a "just trust us" scenario. That trust evaporated in June 2013, when Edward Snowden revealed that mass domestic spying by U.S. law enforcement agencies is occurring.

The U.S. Department of Justice revised its Stingray policy last month, prohibiting interception of cellular communications content, requiring a warrant to be obtained prior to use and that all third-party data be deleted on a daily basis. In May, Washington state enacted legislation regulating Stingrays, which cleared both legislative houses by unanimous vote.

California state Sen. Jerry Hill's Senate Bill 741, which requires that every local entity, like the county of Alameda, adopt use policies with safeguards built in, including specific allowable uses, data retention limits and restrictions on sharing of data and authorized users, easily cleared both the Assembly and Senate and was signed into law by Gov. Jerry Brown on Oct. 8.

The larger issue is that Alameda County has no public process for dealing with surveillance equipment. The ACLU has released a model ordinance that would resolve this concern. It requires an informed public debate at the earliest stage of the process, a determination that benefits outweigh costs and concerns, that a robust enforceable use policy be put in place and that ongoing oversight and accountability through annual reporting and policymaker review occur. It is good public policy.

Santa Clara County has taken the lead in working on this approach. When the Stingray manufacturer refused to meet basic transparency requirements, Santa Clara sent the equipment back and continued working with the ACLU to strengthen its ordinance. San Francisco has also begun discussions regarding a possible ordinance. Alameda County should do the same. Without a public discussion regarding this controversial equipment, there can be no place in our community for a Stingray.

Brian Hofer is a member of Oakland Privacy Working Group and chair of Oakland Domain Awareness Center Ad Hoc Privacy Committee.