

WHY DO ALL THE STINGRAY NDAS DATE TO 2011 TO 2012?

~~The other day, the Baltimore Sun continued its great work on Stingrays with a report on the most recent court disclosure from the Baltimore Police Department, revealing that instead of the 4,300 uses of its Stingray that it testified to earlier this month, it had in fact used the Stingray 25,000 times, not counting the times it has used it in exigent situations.~~

~~While police said earlier this month that the agency had deployed a “Stingray” cell simulator device more than 4,300 times since 2007 Det. Michael Dressel testified Monday that the actual number of times used with a court order was north of 25,000 times. The lesser figure reflected the amount since the department changed the way it documents its use of the device.~~

~~[snip]~~

~~Dressel said there are a number of scenarios in which police can cite exigent circumstances and proceed without a court order or search warrant. He said he did not know the number of such instances.~~

~~The revelation, on its face, reveals two important points. That BPD, at least, doesn't track all its uses of its Stingray. But also that at some point in time (the original count purported to date back to 2007), the department changed the way it counted Stingrays.~~

~~This post started as a reflection on the changing numbers Baltimore Police Department has given for its use of Stingrays. I learned after I posted that the Sun had retracted the 25,000 number.~~

That said, the now retracted article got me thinking about the data of all the Stingray NDAs.

The two complete non-disclosure agreements we've seen – from Erie (June 29, 2012) and Baltimore (July 13, 2011) – as well as some of the partial ones we've seen – Tacoma (December 19, 2012), Minneapolis (June 12, 2012), San Bernadino (December 7, 2012), Hillsborough, FL (around March 6, 2012) – all date to around the same 2011 to 2012 time period. But Stingray use goes back well before that, as the contracts released make clear. That's all not long after the government started trying to protect its use of Stingray to find Daniel Rigmaiden (see the docket starting at document 465 and this contemporaneous coverage of it), which Stephanie Pell and Chris Soghoian point to as the first time use of a Stingray showed up in a criminal proceeding (see 29 ff).

That may not be the explanation – I can think of a number of other possibilities why, starting in 2011, the government changed how it approached Stingray secrecy – but it is a possibility. 2011 is also the year US v. Jones was briefed to SCOTUS, and also the year NSA ultimately gave up its efforts to get location as part of its phone dragnet. It at least appears possible that FBI started pushing out NDAs (or new NDAs) starting in 2011.

Is that what led to the change in how BPD counted these?

In any case, I'm increasingly wondering whether there's a significant change that took place in 2011 with how the FBI administered Stingray use at the local level, which led, in that year and the next, to a whole new Nondisclosure regime.