

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

**AMERICAN CIVIL LIBERTIES UNION OF
FLORIDA, INC., and MICHAEL BARFIELD,**
Petitioners,

v.

Case No. 2014-CA-003248 NC

**CITY OF SARASOTA, and
MICHAEL JACKSON,**
Respondents.

**ORDER DISMISSING, WITHOUT PREJUDICE, PETITIONERS' PETITION FOR
WRIT OF MANDAMUS; ORDER DENYING AS MOOT PETITIONERS' MOTION
FOR TEMPORARY INJUNCTION**

Before the Court are Petitioners American Civil Liberties Union of Florida, Inc. and Michael Barfield's Verified Emergency Petition for Writ of Mandamus (the "Petition") and Verified Emergency Motion for Temporary Injunction (the "Motion"). The Court held a status conference on these matters on June 12, 2014. The United States Government made a limited appearance at the status conference.

The Petition seeks a writ of mandamus to compel production from the Respondents City of Sarasota and Michael Jackson of what is alleged to be public records related to the application for and state court orders approving the use of cell site simulator devices. These devices are referred to as "Stingray" devices. Petitioners allege in their Petition that Detective Jackson is a detective employed at the Sarasota Police Department. The Petition alleges non-compliance with Chapter 119, Florida Statutes by the City and by Detective Jackson. Chapter 119 contains Florida's "Sunshine Law," which governs public records. The definition of agency is found in Section 119.011(2), Florida Statutes. Agency is defined therein, in relevant part, as: "...any state, county, district, authority, or municipal officer, department, division, board, bureau,

commission, or other separate unit of government created or established by law...and any other public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency”. This statutory definition does not include federal entities. Section 119.011(12), Florida Statutes, defines the term “public record”. That provision defines a public record as: “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

At the status conference, the United States Government informed the Court that Detective Jackson is a sworn special deputy of the United States Marshal’s Office. He is assigned to a federally created regional task force. Petitioners did not indicate a challenge as a matter of fact to the representation of the United States Government as to the status of Detective Jackson.

Florida’s Sunshine Law does not apply to the federal government. The Sunshine Law is pre-empted by the United States Code. See 5 U.S.C.A.§301. And even if it were not preempted, the express definition of “agency” and “public records” would exclude documents created or maintained by an arm of the United States Government. Thus, the Sunshine Law would not appear to apply to records maintained by Detective Jackson while operating in his capacity as a sworn federal law enforcement agent.

In a separate portion of the Petition, Petitioners assert that this court has jurisdiction, in part, under Florida Rule of Judicial Administration 2.420 and identifies state judicial records as certain of the records being sought. Chapter 119, however, does not apply to court records. “It is well settled that courts are not agencies under Florida’s Public Records Act, Chapter 119,

Florida Statutes, and therefore the act does not govern access to judicial records.” Morris Pub. Group, LLC v. State, 13 So. 3d 120, 121 (Fla. 1st DCA 2009).

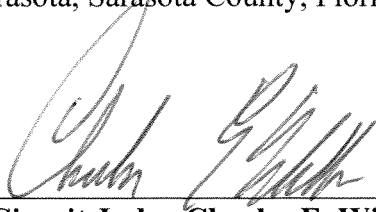
The Court does not have jurisdiction over the Petition as pled. Court records, federal documents and federal criminal investigations are not subject to Chapter 119. For that reason, the Petition as currently pled is due to be dismissed.

At the status conference the City represented that it has provided nineteen hundred documents, has provided an exemption privilege log and its document review efforts are ongoing. The United States Government voluntarily appeared and voluntarily stipulated to file with the issuing state court any Stingray applications and orders filed under seal and issued by Florida state court judges. The Court has jurisdiction to enforce this stipulation pursuant to Florida Rule of Judicial Administration 2.505.

Therefore, it is hereby **ORDERED** and **ADJUDGED** that:

1. The United States Government shall, on or before June 23, 2014, file with the issuing Florida state court those applications and orders approving the using of Stingray devices.
2. The Petitioners’ Petition for Writ of Mandamus is **DISMISSED**, without prejudice. Should Petitioners desire to file an Amended Petition, and are able to do so in good faith, the Petitioners may do so on or before July 7, 2014.
3. The Petitioners’ Motion for Injunction is **DENIED AS MOOT**.
4. The Court retains jurisdiction to further enforce this Order.


DONE AND ORDERED in chambers, in Sarasota, Sarasota County, Florida this 17th
day of June, 2014.



Circuit Judge Charles E. Williams

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing order has been furnished by U.S. Mail on this 17th day of June, 2014 to: **Benjamin James Stevenson**, ACLU Found. of Fla., PO Box 12723, Pensacola, FL 32591-2723; **Andrea Flynn Mogensen**, Law Office of Andrea Flynn Mogensen, P.A., 200 S. Washington Boulevard Suite 7, Sarasota, Florida 34236; **Maria Kayanan**, ACLU Foundation of Florida, Inc., 4500 Biscayne Boulevard, Miami, FL 33137; **Gregg D. Thomas**, 601 South Boulevard, Tampa, FL 33606; **Robert Fournier** and **Eric Werbeck**, 1 S. School Avenue, Suite 700, Sarasota, FL 34237; and **Sean Flynn**, Assistant United States Attorney, Department of Justice, 400 N. Tampa St., Ste. 3200, Tampa, FL 33602.



Judicial Assistant