

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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In the Matter of the Application of

UPTURN, INC.,

**AFFIDAVIT OF JOHN  
LOGAN KOEPKE**

For a Judgment Pursuant to Article 78 of the  
New York Civil Practice Law and Rules,

Index No. \_\_\_\_\_

Petitioner,

-against-

NEW YORK CITY POLICE DEPARTMENT,

Respondent.

.....X

**AFFIDAVIT OF JOHN LOGAN KOEPKE**

John Logan Koepke, being duly sworn, deposes and says:

1. I am a Senior Policy Analyst at Upturn, Inc. (“Upturn”). I have worked at Upturn since February 2015. As part of my job as a Senior Policy Analyst, I routinely file records requests, including Freedom of Information Law “FOIL” requests on behalf of Upturn to advance its mission.

2. Upturn is a 501(c)(3) nonprofit organization located in Washington, D.C. Our mission is to advance equity and justice in the design, governance, and use of technology. Our research and advocacy combine technical fluency and creative policy thinking to confront patterns of inequity, especially those rooted in race and poverty.

3. Every day, law enforcement across the country forensically search hundreds — and potentially thousands — of Americans’ cell phones. To do so, law enforcement frequently

use mobile device forensic tools (“MDFTs”). Simply put, MDFTs use software and hardware to extract data from cell phones and create a forensic copy.<sup>1</sup>

4. Cellebrite, Grayshift, MSAB, and other vendors provide MDFTs to law enforcement, enabling more data collection than possible through a manual inspection of a phone (when an investigator manipulates a cell phone in the same manner as a typical user). Manual inspection is time-consuming and can compromise phone data integrity and admissibility at trial. Therefore, MDFTs are used in the vast majority of cellphone searches. Additionally, some MDFTs can circumvent a cell phone’s security features and access otherwise inaccessible data.

5. Currently, there is little public information on law enforcement policies and practices for MDFTs. But understanding the use of MDFTs is crucial given that cell phones store immense volumes of sensitive information. The public has a pronounced interest in knowing when and how police use MDFTs and any impact on historically marginalized communities.

6. In 2019 to date, I filed over 100 records requests across the country with state and local law enforcement agencies — including police departments, sheriff’s offices, and district attorneys — for information on their use MDFTs.

7. As part of this broader project, on February 13, 2019, I submitted a FOIL request on behalf of Upturn to the New York City Police Department (“NYPD”) for its records on MDFTs, including any software, hardware, process, or service that is capable of:

- extracting any data from a mobile device,
- recovering deleted files from a mobile device, or
- bypassing mobile device passwords, locks, or other security features.

8. This request specifically enumerated and requested seven categories of documents

1. Purchase records and agreements

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<sup>1</sup> National Institute of Standards and Technology, U.S. Department of Commerce, *Guidelines on Mobile Device Forensics*, May 2014, p. 26. (“An important characteristic of a forensic tool is its ability to maintain the integrity of the original data source being acquired and also that of the extracted data.”)

2. Records of use
3. Policies governing use
4. Federal communications
5. Intrastate or Regional communications
6. Vendor communications
7. Nondisclosure agreements.

9. On February 18, 2019 the NYPD acknowledged the request. The request was given a reference number (FOIL-2019-056-02554) and a case officer (Detective Halk). I was informed to expect a response from the NYPD by July 1, 2019.

10. On July 19, 2019, more than two weeks after the original deadline, the NYPD closed the FOIL request, stating: "In regard to the document(s) which you requested, this unit is unable to locate records responsive to your request based on the information you provided."

11. On August 16, 2019, I submitted an administrative appeal on behalf of Upturn to the NYPD's Records Access Appeals Officer, Officer Sgt. Jordan Mazur.

12. On August 26, 2019, the Records Access Appeals Officer denied the appeal.

13. Other than the forgoing documents, I received no communication from the NYPD. The NYPD did not update me on my request's status or ask any clarifying questions.

14. Facing obstruction from the NYPD, I sought to obtain records from other New York City agencies. On September 6, 2019, I filed a FOIL request on behalf of Upturn with the Records Access Officer of the New York City Comptroller's Office for records of NYPD agreements for purchase, acquisition, or license of MDFTs, or permission to use, test, or evaluate MDFTs.

15. On that same day, the Comptroller's FOIL Unit denied the request. In so doing, the office indicated that I should provide the city agency that is party to the agreement, the vendor's name, and/or the contract number.

16. On September 13, 2019, I sent the Comptroller's FOIL Unit several instances of contracts between the NYPD and MDFT vendors, like Cellebrite, Magnet Forensics, and MSAB Incorporated.

17. On September 27, 2019, the Comptroller's FOIL Unit indicated that "[d]ue to the volume of the documents requested, we anticipate completing our response to your request on or about DECEMBER 4TH, 2019."

18. On October 1, 2019, I emailed the Comptroller's FOIL Unit, limiting my FOIL request with the Unit to 14 contract IDs/purchase orders.

19. On October 2, 2019, the Comptroller's FOIL Unit denied the amended and original requests indicating that it was not in possession of the specified NYPD purchase orders or contracts. The denial further stated:

This agency is not in possession of these contracts and again you should consider requesting these contracts directly from the NYPD. This agency does not maintain all city contracts. This agency typically only maintains copies of contracts that are required to be registered with the Comptroller.

20. On December 18, 2019, I performed a search of "Cellebrite USA Corp." and "Cellebrite Inc." on checkbooknyc.com and filtered by the Police Department. More than 70 entries were returned, totaling over \$250,000; however, Cellebrite is just one of several MDFT vendors that the NYPD may use.

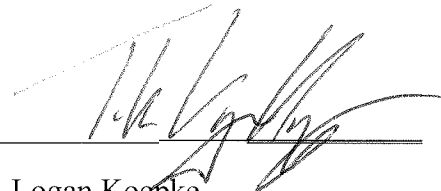
21. Hundreds of pages produced to Upturn from other law enforcement agencies demonstrate that law enforcement routinely use MDFTs. In fact, the NYPD admits as much in its denial of Upturn's administrative appeal: "the software is accessible by detectives assigned to certain specialized units within the Department and **regularly used in the course of an investigation** when necessary." (emphasis added).

22. Indeed, records obtained from other law enforcement agencies indicate that law enforcement use MDFTs to investigate offenses such as graffiti, possession of marijuana, unauthorized use of a motor vehicle, parole violations, auto theft, assault, insurance fraud, online solicitation, suicide, human trafficking, robbery, burglary of a motor vehicle, money laundering, homicide, and more. Records obtained from a FOIL request to the Manhattan District Attorney's Office show that the District Attorney's office has used MDFTs in a similarly broad array of cases.

23. There is significant public interest in understanding the NYPD's policies and practices for MDFTs. MDFTs are more invasive than any prior police surveillance tool, and it is critical that the public understands the scale at which the NYPD uses MDFTs to pry into New Yorkers' most intimate information.

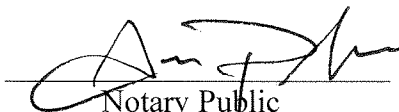
I declare under penalty of perjury that the foregoing is true and correct.

Dated: Washington, D.C.  
December 20, 2019

  
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Logan Koepke

Upturn, Inc.  
1015 15th St NW, Suite 600  
Washington, DC 20005  
Telephone: +1.214.801.4499  
logan@upturn.org

Sworn to me this 20<sup>th</sup> day  
of December 2019

  
\_\_\_\_\_  
Notary Public

State of DC County of District of Columbia  
Subscribed and sworn to (or affirmed) before me on this  
20<sup>th</sup> day of December, 20 19 by  
Logan Koepke proved to me on the basis  
of satisfactory evidence to be the person(s) who appeared before me.  
Notary Signature 