



October 16, 2012

Via Email and First-Class Mail

Commissioner Edward Davis  
Boston Police Department  
One Schroeder Plaza  
Boston, MA 02120

Dear Commissioner Davis:

We write on behalf of the ACLU of Massachusetts and the National Lawyers Guild of Massachusetts regarding the monitoring and investigation of political protest in Boston.

As a result of a lawsuit we filed for access to public records, we have obtained records demonstrating that the Boston Police Department (BPD) monitors demonstrations of groups having no connection to terrorism or other serious crime, tracks the beliefs and internal dynamics of those groups, interrogates peaceful activists about their beliefs and activism, and documents this information in presumably searchable "Intelligence Reports." We urge you to end these practices immediately and to put into place procedures that ensure transparency, accountability, and respect for political expression.

In August 2011, several groups and activists sued the Department for records relating to its expanded intelligence operations and surveillance of peaceful protest activities. The Department has now turned over hundreds of pages of documents, including incident reports, privacy policies, statistics, information about the Suspicious Activity Program, and intelligence reports, along with video footage taken at demonstrations.

The disclosures reveal that for years, despite policies to the contrary, the Department and the Boston Regional Intelligence Center (BRIC) have conducted extensive surveillance and investigation of lawful political activity. This includes: (1) the monitoring and recording of demonstrations, rallies, and other public gatherings; (2) the investigation, tracking and reporting of the beliefs and

internal dynamics of peaceful groups to whom the Department nevertheless assigns labels such as “extremist”; and (3) the retention of this information and the possible sharing of it with other agencies. This practice violates BPD rules and federal regulations, chills constitutionally-protected speech, and diverts scarce resources away from true crime-fighting.

These revelations are particularly worrying in light of an October 2012 report by a bipartisan Senate subcommittee, which found that the federal government’s work with state and local fusion centers — such as the BRIC — “has not produced useful intelligence to support Federal counterterrorism efforts.”<sup>1</sup> Instead, fusion centers have “forwarded ‘intelligence’ of uneven quality — oftentimes shoddy, rarely timely, sometimes endangering citizens’ civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and more often than not unrelated to terrorism.”<sup>2</sup>

The Department’s monitoring of peaceful demonstrations is reflected in police “Intelligence Reports” and video recordings. This monitoring occurred even when demonstrators were not linked to any crime. BPD officers assigned to the BRIC filed “Intelligence Reports” where they listed peaceful activities as criminal acts and categorize them as “Groups-Extremists,” “HomeSec-Domestic,” and “Groups-Civil Disturbance.”

Yet, instead of focusing on public safety, the “Intelligence Reports” focus on political activity. For example, one Report describes an anti-war demonstration as “generally peaceful,” but categorizes the action under the “Criminal Act” field as “Groups-Extremists.” The report details no criminal activity or any indication that those involved were “extremists.”

Other reports categorize individuals and groups involved in anti-war or related demonstrations as “extremists” without explanation. A report filed under “Groups-Extremists” details a speaking event arranged by a former Boston City Councilor and featuring the late Boston University Professor Emeritus, Howard Zinn. Reports categorized under “Homeland Security” likewise fail to demonstrate any homeland security threat or other threat to public safety. One report details an upcoming anti-war rally involving “participants who are generally peaceful.”

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<sup>1</sup> Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, “Federal Support for and Involvement in State and Local Fusion Centers,” at 2, Oct. 3, 2012, at [http://www.hsgac.senate.gov/download/report\\_federal-support-for-and-involvement-in-state-and-local-fusions-centers](http://www.hsgac.senate.gov/download/report_federal-support-for-and-involvement-in-state-and-local-fusions-centers).

<sup>2</sup> *Id.* at 1.

But the materials do not merely reveal the surveillance of peaceful demonstrators during peaceful protests; they also reveal investigations of demonstrators' ideas and communications. One Report discusses a group's "infighting" about whether it "should stop its anti-war actions during the election year in an effort not to harm the Democratic Party." Another Report describes a group's internal debate about whether "to plan for an increase in anti-war actions leading up to the November elections." The Reports also show that when demonstrators are arrested for minor crimes, such as trespass, they are interrogated not about those crimes but instead about their political beliefs and associations.

In addition to monitoring, investigating, and mischaracterizing political activity, the Department seems to be keeping searchable files on it. The BRIC's *Criminal Intelligence File Guidelines* state that while officers may create "interim reports" with information about an anticipated event or incident with potential for criminal conduct, the interim reports must be destroyed within 90 days if no criminal conduct occurs. Yet we received eleven intelligence reports that contained no criminal activity but had been kept since 2007. To the Department's credit, it acknowledged in a letter that the reports should have been purged, but attributed the error to a computer glitch.

Even if these Reports were properly purged from the BRIC database, it is unclear with whom they might have been shared beforehand. For the most part, the Department's surveillance and investigation of political activity seems to be carried out by officers assigned to the BRIC. The BRIC, in turn, is a conduit for sharing information with other law enforcement agencies because it is designed to be part of a national information sharing network. Moreover, the policies that have been made available to us show that the BRIC participates in a "Suspicious Activity Reporting" initiative requiring officers to "keep an eye out for events and information pertaining to or applicable to Boston." It comes as no surprise, then, that officers document the kind of information that is found in intelligence reports, even though it may have no link to terrorism or crime.

We believe that there are important reasons why these practices should be ended. First, they conflict with the freedoms of speech and association guaranteed under state and federal constitutional law. As the Supreme Court has warned, the rights of speech and association are fundamental and highly prized, and should be "protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference."<sup>3</sup> This kind of monitoring of political groups is just the kind of subtle interference that threatens to chill legitimate constitutionally-protected speech. When police surveillance penetrates the internal workings of peaceful organizations, some Bostonians will

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<sup>3</sup> *Bates v. Little Rock*, 361 U.S. 516, 523 (1960).

be less likely to exercise those fundamental rights.

Second, the Department's practices contravene applicable policies and federal regulations. As you know, the BRIC's *Privacy, Civil Rights and Civil Liberties Protection Policy* states that BRIC will not seek or retain information gathered "solely on the basis of religious, political, or social views or activities" or participation in "noncriminal organization[s] or lawful event[s]." In addition, applicable federal guidelines state that a federally-funded criminal intelligence "project," such as BRIC, "shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity." 28 C.F.R. § 23.20(a).

Third, the practices cannot be justified by any significant interest in effective law enforcement. Surveilling, investigating, and reporting on peaceful protesters is simply a waste of the Department's time and the taxpayers' money. According to the Senate report released earlier this month, the millions of dollars poured into fusion centers like the BRIC have failed to uncover a single terrorist plot.

This week, we will release a report analyzing the information learned from the disclosure of the public records and giving detailed recommendations. Together, the materials we obtained and the Congressional report raise fundamental questions about the BRIC's value to the Commonwealth's taxpayers. At the very least, they warrant the following remedial steps:

- The Department should cease the routine surveillance and recording of public demonstrations and the routine monitoring and investigation of groups and individuals who engage in them. Under federal regulations, those police actions should occur only when officers reasonably suspect criminal activity.
- The Department should undertake a review of practices that involve monitoring expressive activity and the Department's adherence to internal policies and other governing policies and laws.
- The Department should ensure that investigations into constitutionally-protected speech relate to the suspected crime. For example, if a demonstrator trespasses or engages in civil disobedience, officers would be justified in investigating those minor offenses. But officers must not use those minor crimes as an excuse to collect information about the beliefs and speech of peaceful demonstrators.

Commissioner Edward Davis

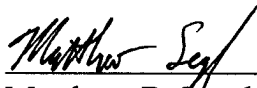
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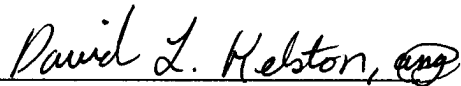
- The Department should create an independent public auditing system to ensure that the BPD and the BRIC abide by the reasonable suspicion standard. The auditing system should flag any incoming information or reports on expressive activity, determine whether the expressive activity is related to a crime, and purge within 90 days information about expressive activity unrelated to a crime. The auditing system should log the fact that such information was collected and purged so that the public can evaluate compliance with the reasonable suspicion standard.
- The BRIC should improve transparency. The BRIC Privacy Policy should be available online, and there should be an online procedure enabling members of the public to request and correct information that the BRIC has obtained on them.

We would appreciate an opportunity to meet with you soon to discuss how the Boston Police Department can keep the city safe while respecting the important role of protest and dissent.

Sincerely,



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