

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civil Action No.

11-3020 H

AMERICAN CIVIL LIBERTIES UNION)
OF MASSACHUSETTS, POLITICAL)
RESEARCH ASSOCIATES, NATIONAL)
LAWYERS GUILD MASSACHUSETTS)
CHAPTER, INC., CODEPINK OF)
GREATER BOSTON, VETERANS FOR)
PEACE - CHAPTER 9 SMEDLEY BUTLER)
BRIGADE, BOSTON STOP THE WARS)
COALITION, BOSTON COALITION FOR)
PALESTINIAN RIGHTS, UNITED FOR)
JUSTICE WITH PEACE, SUSAN BARNEY)
RIDGELY FULLER, PATRICK KEANEY)
and RICHARD HESS,)

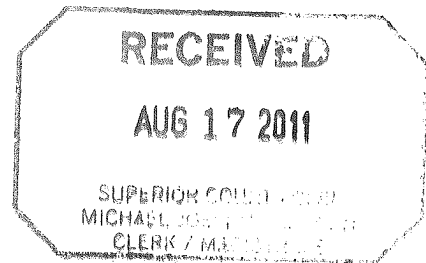
Plaintiffs,)

v.)

EDWARD DAVIS, Police Commissioner of the)
City of Boston, and BOSTON POLICE)
DEPARTMENT,)

Defendants.)

COMPLAINT



Preliminary Statement

1. This is an action under the Public Records Law, G. L. c. 66, § 10, in which Plaintiffs seek an order requiring disclosure of public records concerning the expanded intelligence activities of the Boston Police Department (“BPD”) through its intelligence arm, the Boston Regional Intelligence Center (“BRIC”). Plaintiffs are political organizations and individuals who have, in separate requests to the Boston Police Department, sought disclosure of public records concerning (a) BPD surveillance and recording of protest activities and other public

assemblies, (b) the monitoring of political organizations and political activists, and (c) the collection and sharing of intelligence information with federal, state and local law enforcement agencies and, in particular, the Department's participation in the FBI's Suspicious Activity Reporting Initiative. In response, the BPD has either refused to disclose requested records, denied that the records exist or failed to respond within the time allowed by law.

Parties

2. Plaintiff American Civil Liberties Union of Massachusetts ("ACLUM") is a non-profit membership organization dedicated to the protection of civil rights and civil liberties. To advance the interests of open government and political rights, ACLUM works to shed light on law enforcement practices that affect civil liberties and is currently engaged in an effort to obtain release of documents related to expanded intelligence activities at all levels of government.

3. Plaintiff Political Research Associates ("PRA") is a progressive think tank devoted to supporting political movements that are building a more just and inclusive democratic society. PRA provides research-based information, analysis, and referrals to assist in the exposure of movements, institutions, and ideologies that undermine human rights.

4. Plaintiff National Lawyers Guild Massachusetts Chapter, Inc. ("NLG of Massachusetts") is a non-profit organization that supports progressive political organizations and advocates for social change. NLG of Massachusetts is part of a national organization of lawyers, law students, and legal workers.

5. Plaintiff CODEPINK of Greater Boston is a political organization that works to end U.S.-funded wars and occupations, to challenge militarism globally, and to redirect resources into health care, education, green jobs and other life-affirming activities.

5. Plaintiff Veterans for Peace - Chapter 9 Smedley D. Butler Brigade is a political organization founded in 1985 and dedicated to the abolishment of war. It is structured around a national office in Saint Louis, MO and comprised of members across the country organized in chapters or as at-large members. The Chapter 9 Smedley Butler Brigade is the Boston area chapter of Veterans For Peace.

6. Plaintiff Greater Boston Stop the Wars Coalition is a political organization that calls for an end to the wars in Afghanistan, Pakistan, and Iraq, the immediate and unconditional withdrawal of all U.S. occupation forces and the closing of all U.S. military bases.

7. Plaintiff Boston Coalition for Palestinian Rights is a political organization working for justice for the Palestinian people. The organization sponsors rallies, vigils, teach-ins, forums and other events throughout the Boston area to educate people about the history of the Palestinian-Israeli conflict.

8. Plaintiff United for Justice with Peace is a Boston-area coalition that is committed to nonviolence in all its actions and works to further the cause of global peace and social and economic justice.

9. Plaintiff Susan Barney is a resident of Arlington, Massachusetts.

10. Plaintiff Ridgely Fuller is a resident of Waltham, Massachusetts.

11. Plaintiff Patrick Keaney is a resident of Boxborough, Massachusetts.

12. Plaintiff Richard Hess is a resident of Cambridge, Massachusetts.

13. Defendant Edward Davis is the Police Commissioner of the City of Boston. As such, Davis has overall responsibility for the administration and command of the Boston Police Department and is the formal custodian of all records made or received by the Boston Police Department. Davis's usual place of employment is at 1 Schroeder Plaza, Boston, Massachusetts.

14. Defendant Boston Police Department has physical custody of the records sought.

Facts

15. In 2005, the Boston Police Department, with assistance from the Department of Homeland Security and the Department of Justice, reorganized and expanded its intelligence gathering operations with the establishment of the Boston Regional Intelligence Center (“BRIC”), including within its focus the collection and sharing of intelligence on terrorist threats and subversive activities in the Boston area. BRIC is one of two “intelligence fusion centers” in Massachusetts and collects, analyzes and shares information obtained by Boston police officers, eight other police departments within the Metro-Boston Homeland Security Region, and other federal, state and local law enforcement entities.

16. As part of its intelligence operations, the BPD has for many years conducted surveillance of political protests in the city of Boston, openly recording rallies, marches and demonstrations in public areas. Boston police officers have attended these public gatherings with video cameras and photography equipment and set up stationary video recording devices to capture political events. Officers assigned to BRIC have also sought information about specific groups engaged in political protests.

17. In 2008, the Boston Police Department was designated by the U.S. Department of Justice as one of twelve law enforcement agencies to participate in the Nationwide Suspicious Activity Reporting (SAR) Initiative, a pilot project requiring the collection and sharing of information concerning broadly defined “suspicious activities,” which can include lawful political activity. Boston police officers are directed to report “suspicious activity that relates to Homeland Security.”

18. Beginning in 2009, Plaintiffs made three separate public records requests to the

Boston Police Department for records containing information on surveillance of political activity and the sharing of information with the federal government and other law enforcement agencies.

A. Suspicious Activity Reporting

19. By letter dated December 28, 2009, Plaintiffs ACLUM and PRA made a public records request to the Boston Police Department for records concerning the Department's involvement in the Suspicious Activity Reporting Initiative and the process by which Suspicious Activity Reports (SARs) are created, analyzed and shared. The ACLUM/PRA letter is attached to this Complaint as Exhibit A. The requested documents fell into eight distinct categories:

1. Statistics on the use of SARs;
2. Inter-agency agreements on the use of SARs;
3. Policies and procedures;
4. Intra-agency correspondence;
5. Records concerning evaluations of the pilot program;
6. Records concerning complaints or investigations relating to the misuse or abuse of SARs;
7. Templates used to record SARs;
8. The Boston Police Department's Privacy and Civil Liberties Policy.

20. On March 2, 2010, the BPD released a single responsive document, the Boston Regional Intelligence Center Policy and Procedure Guidelines. After eight months of communications between ACLUM/PRA and BPD concerning the request for the remaining documents, counsel for the BPD responded in a letter dated November 3, 2010, that all other documents requested were being withheld on the grounds that they were either investigatory records within the meaning of G.L. c. 4, § 7 cl. 26(f) or records relating to security the disclosure of which would jeopardize public safety within the meaning of G.L. c. 4, § 7 cl. 26(n). The Department did not identify specific records that were being withheld and did not provide information supporting the claims of exemption. The claims were asserted with respect to each of the requested records in its entirety. The BPD letter is attached to this Complaint as Exhibit B.

The BPD separately made available a revised version of the departmental regulation governing field interrogation and observation reports that included guidelines for reporting matters related to homeland security.

B. Surveillance of Political Activities

21. By letter dated June 24, 2011 and sent by e-mail to counsel for the Defendants, Plaintiffs ACLUM, CODEPINK of Greater Boston, Veterans for Peace - Chapter 9 Smedley Butler Brigade, Greater Boston Stop the Wars Coalition, Boston Coalition for Palestinian Rights and United for Justice with Peace made a request for public records relating to the surveillance and intelligence collection concerning political activities. In particular, the Plaintiffs requested (a) records concerning the direct surveillance and recording of political events including applicable rules and regulations of the Department, copies of photo, audio and video recordings of 26 enumerated events in Boston, and written reports relating to those events, and (b) intelligence records or dossiers maintained by the Department concerning five of the organizations making the request: CODEPINK, Veterans for Peace, Greater Boston Stop the Wars Coalition, Boston Coalition for Palestinian Rights and United for Justice with Peace. The letter is attached to this Complaint as Exhibit C.

22. By letter dated July 13, 2011, Defendants responded confirming the receipt of the request, but failing to respond to the substance of the request. The letter is attached to this Complaint as Exhibit G. Plaintiffs are informed and believe that Defendants have previously refused to disclose video recordings of political protests.

C. Intelligence Gathering About Political Activists

23. Plaintiffs Barney, Fuller, Keaney and Hess (“the individual Plaintiffs”) are peace

activists who have attended or been involved in numerous protests or political gatherings in the Boston area. On January 8, 2009, the individual Plaintiffs, along with about thirty-five other people took part in a non-violent protest at the Israeli consulate in Boston following the Israeli invasion of Gaza. The protest involved a “die-in” in which they lay down on the floor in the lobby of the office building housing the consulate and passively resisted being removed. The individual Plaintiffs were arrested and, while in police custody and handcuffed, were interrogated by police officers assigned to the Boston Regional Intelligence Center (BRIC).

24. In the course of the interrogation of the individual Plaintiffs, they were questioned about the planning for the protest at the Israeli consulate, the identity of the organizers of the protest and any political protests planned for the future. The officers acknowledged that at least some of the individual Plaintiffs had been under surveillance at previous protest activities and were for that reason known to the Boston Police Department. A BPD report relating to the January 8, 2009 event was shared with the U.S. Department of Homeland Security and another law enforcement agency.

25. On March 29, 2010, the individual Plaintiffs and the NLG of Massachusetts sent a public records request to the Boston Police Department seeking (a) records made or received by the Department containing information about them and (b) records concerning the sharing of their information with other law enforcement agencies. The individual Plaintiff/ NLG letter is attached to this Complaint as Exhibit D.

26. By letter dated May 13, 2010, the BPD responded that all documents requested by the individual Plaintiffs were being withheld on the grounds that they were investigatory records within the meaning of G.L. c. 4, § 7 cl. 26(f). The Department did not identify specific records that were being withheld and did not provide information supporting the claims of exemption. The

claims were asserted with respect to each of the requested records in its entirety. The BPD's response to the individual Plaintiff's letter is attached to this Complaint as Exhibit E. The Department subsequently agreed to release the incident reports concerning the arrest of the individual Plaintiffs but withheld the remainder of the records and asserted that it had no record of the interrogation of the Plaintiffs.

Claims

27. The withholding of the records requested by the Plaintiffs violates the Massachusetts Public Records Law. Each of the records sought by the Plaintiffs is a public record within the meaning of G.L. c. 4, § 7 cl. 26th in that they are "documentary materials or data, regardless of physical form ... made or received by any ... authority of the Commonwealth." Under G.L. c. 66, § 10, all such records are presumed to be public records. Defendants were required to furnish Plaintiffs with copies of the requested records within ten days of each of their separate requests but have not done so.

28. The exemptions to the Public Records Law cited by Defendants are inapplicable and do not justify the refusal to provide a copy of the requested records. To the extent that the records requested by the Plaintiffs contained information which is exempt from disclosure, Defendants are required by the Public Records Law to release any segregable portion of the record which is not exempt but have not done so.

Prayer for Relief


WHEREFORE, Plaintiffs pray that the Court:

1. Order the Defendants (a) to conduct a good faith review of their records and to identify all records and data which are responsive to Plaintiffs' Requests; and (b) promptly to disclose all public records to the Plaintiffs;

2. Award Plaintiffs the costs of this action; and
3. Grant such other relief as the Court may deem just and proper.

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MASSACHUSETTS, POLITICAL RESEARCH
ASSOCIATES, NATIONAL LAWYERS GUILD
MASSACHUSETTS CHAPTER, CODEPINK OF
GREATER BOSTON, VETERANS FOR PEACE -
CHAPTER 9 SMEDLEY BUTLER BRIGADE,
BOSTON STOP THE WARS COALITION,
BOSTON COALITION FOR PALESTINIAN
RIGHTS, UNITED FOR JUSTICE WITH PEACE,
SUSAN BARNEY, RIDGELY FULLER,
PATRICK KEANEY and RICHARD HESS

By their attorneys,



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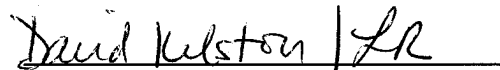
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August 17, 2011