



August 23, 2017

Jerry P. Dyer, Chief of Police
Fresno Police Department
2323 Mariposa Street
Fresno, CA 93721

Re: Records of Constitutionally Protected Public Demonstrations Maintained by The Fresno Police Department's Criminal Intelligence Unit

Dear Chief Dyer:

We are writing to express our concerns regarding a Fresno Police Department (FPD) document titled "Special Investigations Bureau – Criminal Intelligence Unit Demonstration Log." It appears that the Fresno Police Department is gathering information and maintaining records about lawful and constitutionally protected events, individuals, and organizations in its criminal intelligence files, and that such information and record keeping is in violation of the Constitution and federal and state standards.

The FPD Criminal Intelligence Unit's Demonstration Log, enclosed, details 47 events that took place from January to May 2017, including the titles, dates, approximate number of attendees, and locations of the events. The Demonstration Log also lists the names of specific organizations and individuals who hosted many of the events. Although the document is titled "Demonstration Log," it includes a range of constitutionally protected activities other than political demonstrations, such as a Know Your Rights workshop, the Mardi Gras Parade, and press conferences. The criteria used for including events in the Log is unclear, as the FPD lists a street car show and a brunch event with Mayor Brand along with the Martin Luther King March and the National Women's March. Nevertheless, the range of events does not include pro-Trump rallies or conservative protests, giving us heightened concern regarding FPD's true intent in collecting this information.

I. FPD's Tracking of Events in Support of Certain Causes is Unconstitutional Viewpoint Discrimination

The FPD's tracking of demonstrations and other events that support social justice movements – evident in the Demonstration Log – unconstitutionally chills basic First Amendment speech and conduct. In particular, government targeting of certain political views

over others constitutes impermissible viewpoint discrimination.¹ The Supreme Court has long held that the expression of political viewpoints rests “on the highest rung of the hierarchy of First Amendment values” and cannot be suppressed by the government.² The FPD’s information gathering on events that support certain causes is a dangerous first step toward unconstitutionally restraining those viewpoints.

Strikingly, of the 47 total events the FPD listed in the Demonstration Log, 41 of them were held to criticize policies of the Trump Administration and local law enforcement. Events to advance sanctuary city status and police reform in Fresno, for example, are heavily featured. However, events organized in support of the Administration are noticeably absent, despite their occurrence during the logged time period. For example, although both a protest against Planned Parenthood and a rally in support of the organization occurred simultaneously at their Fulton Street Health Center on February 11, 2017, only the protest to defend Planned Parenthood is listed in the Log.³ Similarly, the Central Valley Tea Party held a rally to support President Trump on March 4, 2017.⁴ This event is not listed and only a “Not My President Day Rally” on February 20, 2017 is included.

The FPD’s clear omission of events that support the Administration in the Demonstration Log is concerning. FPD cannot favor certain viewpoints over others without contravening the First Amendment right to free speech.

II. FPD’s Information Gathering on Political Demonstrations, Organizations, and Individuals for Criminal Intelligence Files Violates Federal and State Standards

Federal and state guidelines make clear that information gathered for criminal intelligence purposes must meet particular standards. Under Title 28, Code of Federal Regulations, Part 23 (hereinafter 28 C.F.R. § 23), information regarding an individual or organization may only be collected if there is a reasonable suspicion of involvement in criminal conduct or activity.⁵ We fail to see what basis, if any, the FPD has for suspecting the activities, individuals, and organizations listed in the Demonstration Log of involvement in criminal conduct.

¹ *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819 (1995).

² *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982).

³ Cresencio Rodriguez-Delgado, *Anti-Planned Parenthood Protest in Fresno Outnumbered by Supporters of Clinic*, THE FRESNO BEE (Feb. 11, 2017, 5:00 PM), <http://www.fresnobee.com/news/local/article132231354.html>; Right to Life of Central California, *Defund Planned Parenthood Nationwide Rally*, FACEBOOK (Feb. 11, 2017), <https://www.facebook.com/events/247909298998437>.

⁴ Central Valley Tea Party, FACEBOOK (Feb. 27, 2017), <https://www.facebook.com/CentralValleyTeaParty/photos/a.181081295304620.45361.179682365444513/1295746067171465>; *Pro President Rally this Saturday*, SIERRA STAR (Mar. 3, 2017 9:54 AM), <http://www.sierrastar.com/news/local/article136218248.html>; Charlieinthebox the patriotic miscreant, *Power talk’s Trevor Carey at pro TRUMP rally in FRESNO*, YOUTUBE (Mar. 6, 2017), <https://www.youtube.com/watch?v=hCldg5HPC0c>.

⁵ 28 C.F.R. § 23.20.

The California Attorney General's clear guidelines for criminal intelligence files underscore when police departments can log demonstration activity. The guidance requires that law enforcement establish and document specific, articulable facts providing a basis for a belief of any involvement in a definable criminal activity. In addition to incorporating the reasonable suspicion standard, the Attorney General's guidance explicitly limits the investigation of political demonstrations.⁶ Specifically, FPD's Criminal Intelligence Unit cannot investigate a political demonstration, rally, or other similar event "unless the local law enforcement agency possesses a reasonable suspicion that an individual and/or organization at such a planned event will be involved in a definable criminal activity or enterprise."⁷ Without reasonable suspicion, the FPD's gathering of information detailed in the Demonstration Log directly contradicts federal and state standards.

III. FPD's Information Gathering on Political Demonstrations and Other Events Violates Constitutional Protections

FPD's collection of information concerning constitutionally protected activities must also comply with constitutional standards. In *White v. Davis*, the California Supreme Court relied on the federal and state constitutions when it warned that law enforcement in California cannot gather intelligence on citizen activities without an articulable criminal predicate for doing so.⁸ The Court stated:

The inherent legitimacy of the police "intelligence gathering" function does not grant the police the unbridled power to pursue that function by any and all means. In this realm, as in all others, the permissible limits of governmental action are circumscribed by the federal Bill of Rights and the comparable protections of our state Constitution.⁹

The Court also noted that the overbroad collection and retention of unnecessary personal information by the government can constitute a violation of the California constitutional right to privacy.¹⁰ The FPD's inclusion of events ranging from a Know Your Rights workshop to a parade, as well as names of specific individuals and organizations in the Demonstration Log is unmistakably overbroad.

The FPD's maintaining records of political demonstrations furthermore infringes on the First Amendment right to assemble. Appearing on a list maintained by the Criminal Intelligence Unit in and of itself can create a deterrent effect on the willingness of individuals and

⁶ BUREAU OF INVESTIGATION AND INTELLIGENCE, DIVISION OF LAW ENFORCEMENT, CALIFORNIA DEPARTMENT OF JUSTICE, CALIFORNIA ATTORNEY GENERAL'S MODEL STANDARDS AND PROCEDURES FOR MAINTAINING CRIMINAL INTELLIGENCE FILES AND CRIMINAL INTELLIGENCE OPERATIONAL ACTIVITIES 30 (Nov. 2007).

⁷ *Id.*

⁸ *White v. Davis*, 13 Cal.3d 757, 776 (1975).

⁹ *Id.* at 766.

¹⁰ *Id.* at 775.

organizations to exercise their free speech rights, especially when their cause is controversial in the community.

For these reasons, we are interested in obtaining information about the Fresno Police Department's policies and procedures for gathering and maintaining criminal intelligence information. Accordingly, we submit the following request for records pursuant to the California Public Records Act ("CPRA"), California Government Code § 6250 *et seq.* Government Code § 6253(c) requires agencies to provide a response to Public Record Act requests within ten (10) days of receipt of a request.

Definitions Used in this Request

The phrase "policies and procedures" includes, but is not limited to codes, rules, and regulations, board exhibits, bulletins, memoranda, directive and training materials, and board policies. If any of the policies or procedures we have requested is currently being updated or revised, please let us know.

The term "document" used in this request has the same broad definition as the term "writing" in section 6252(f) of the Government Code, set forth below:

Any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting, by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

The terms "Demonstration Log" or "Log" used in this request refer to the enclosed Fresno Police Department document titled "Special Investigations Bureau – Criminal Intelligence Unit Demonstration Log."

Records Request

Please provide us with copies of the records specified below. Each lettered or numbered paragraph should be considered a separate request under the CPRA. For each set of records produced, please identify the paragraph to which these records are intended to respond.

1. All documents from 2012-2017 that relate to policies and procedures of the Fresno Police Department, including, but not limited to:
 - a. All documents from 2012-2017 that relate to policies and procedures of the FPD Special Investigations Bureau;
 - b. All documents from 2012-2017 that relate to policies and procedures of the FPD Criminal Intelligence Unit;

- c. All documents from 2012-2017 that reflect the staffing and organizational structure of the FPD Special Investigations Bureau;
 - d. All documents from 2012-2017 that reflect the staffing and organizational structure of the FPD Criminal Intelligence Unit;
 - e. All documents from 2012-2017 that reflect FPD's system for obtaining, maintaining, and using information for criminal intelligence purposes;
 - f. All documents from 2012-2017 that reflect FPD's policies and procedures for policing, investigating, surveilling, and gathering information on public events, including, but not limited to:
 - i. Demonstrations;
 - ii. Rallies;
 - iii. Know Your Rights workshops;
 - iv. Brunch events with Mayor Brand;
 - g. FPD's Memorandum of Understanding with the Joint Terrorism Taskforce.
2. All documents that relate to the Demonstration Log, including, but not limited to:
- a. All records on the 47 events listed in the Demonstration Log;
 - b. The criteria used for including certain events, individuals, and organizations in the Log and for excluding others in the Log;
 - c. The names and positions of FPD employees who obtained information used in the Log and who wrote the Log.

We have attempted to be as specific as possible in designating the public records we wish to review, given that we are unfamiliar with the Department's policies and practices regarding the collection and maintenance of these records. If you find that any of our requests are unclear or insufficiently focused, we request that you provide us with the assistance required under California Government Code § 6253.1, including "assisting the member of the public to identify records and information that are responsive to the request or to the purpose of the request." If we can provide clarification that will help identify responsive documents, please let me know.

Because the ACLU is a nonprofit organization, we request that you waive any fees that would be normally applicable to a Public Records Act request. See *North County Parents Org'n v. Dept. of Educ.*, 23 Cal. App. 4th 144 (1994). Should you be unable to do so, please let me know if the direct costs associated with reproducing the documents requested herein will exceed one hundred dollars (\$100) prior to incurring such costs.

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We thank you in advance for providing us with the records we have requested. Please send all responsive documents to me at:

Abre' Conner
ACLU of Northern California
P.O. Box 188
Fresno, CA 93707

You may also send an electronic copy to aconner@aclunc.org.

If you or your legal representative have any questions regarding this request, please do not hesitate to contact me. I can be reached by telephone at (559) 554-2994 x 203, or by email at aconner@aclunc.org.

Sincerely,



Abre' Conner
Staff Attorney
ACLU of Northern California

CC: Lee Brand, Mayor
All members of City Council
Douglas Sloan, City Attorney
H. Spees, Director, Strategic Initiatives

Enclosure: Fresno Police Department's Criminal Intelligence Log