



November 21, 2011

By fax, email, and US mail

Chancellor Linda P.B. Katehi
Offices of the Chancellor and Provost
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Re: Use of Pepper Spray against Demonstrations and Request for Public Records

Dear Chancellor Katehi:

I am writing on behalf of the American Civil Liberties Union of Northern California. We have seen the widely circulated videos of a U.C.D. police officer discharging pepper spray¹ into the faces of seated student protestors on your campus last Friday and we, like U.C. President Yudof, are appalled that the university has done this to its own students. It has been clear for a decade that using pepper spray on protestors who have merely linked arms and refused to move violates the Fourth Amendment to the United States Constitution.² We understand from news reports³ that the officers involved had received training in the departmental policies for using

¹ Or some similar noxious substance.

² See *Headwaters Forest Defense v. County of Humboldt*, 276 F.3d 1125 (9th Cir. 2002) (In case in which environmental protestors “linked themselves together with self-releasing lock-down devices known as ‘black bears,’ using pepper spray against them violated Fourth Amendment because “the protestors were sitting peacefully, were easily moved by the police, and did not threaten or harm the officers. In sum, it would be clear to a reasonable officer that it was excessive to use pepper spray against the nonviolent protestors under these circumstances.”).

³ See Jason Dearen, *Officers in UC Davis Pepper Spray Incident Placed on Leave*, San Jose Mercury News, Nov. 20, 2011, available at http://www.mercurynews.com/education/ci_19378536

pepper spray; and we do not understand how an officer who had received such training could possibly believe that these actions were appropriate.

As part of our investigation into this incident we request the following records and information under the California Public Records Act and Article I §(3) of the California Constitution:

1. A copy of any U.C.D. Police Department policies, general orders, training materials, or other records relating to the use of pepper spray by U.C.D.P.D. personnel, including records showing how they were developed and by whom.
2. A copy of any U.C.D. Police Department policies, general orders, training materials, or other records relating to the use of force against protestors or demonstrators, including but not limited to documents relating to the use of force against persons who fail to comply with law-enforcement orders or who resist arrest.
3. The name and rank of the officer who used the pepper spray on the demonstrators, as depicted in this video.⁴
4. A photocopy of the label of the substance that was used against the protestors, either of the specific canister that was used or of an identical canister.
5. Copies of all manufacturer's instructions, warnings, and package inserts relating to the substance that was used against the protestors, including but not limited to a copy of any records showing the substance's ingredients and concentrations thereof.
6. The following information for each person arrested at the demonstration: full name, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set and the time and manner of release or the location where the individual is currently being held.
7. A copy of any memoranda or correspondence (including emails) regarding the decision to take action against these protestors, including records relating to the decision to use pepper spray or the authorization to use force to remove them or their property, and including but not limited to memoranda and correspondence to or from Chancellor Katehi and Chief Spicuzza.

We ask that you release to us the documents requested above without delay, and in any event within the 10-day deadline mandated by the PRA. If portions of the documents are exempt from disclosure, please provide the non-exempt portions.⁵ If the documents are available in

⁴ As required by Cal. Atty. Gen. Op. No. 07-208, at 10, 91 Ops. Cal. Atty. Gen. 11 (2008) and *New York Times Co. v. Superior Court*, 52 Cal. App. 4th 97, 104-105 (1997).

⁵ Gov't. Code § 6253(a).

electronic format please email them to me at mrisher@aclunc.org and to my assistant Nishan Bhaumik at nbhaumik@aclunc.org. We also ask that you make records available on a "rolling" basis rather than delaying production until they are all available.

We request that if you have the records in electronic form you email them to me, so as to avoid incurring any copying costs.⁶ However, should you be unable to do so, the ACLU will reimburse your agency for the direct costs of copying these records plus postage.⁷ Please copy and send them as soon as possible, and we will promptly pay the required costs. If copying will result in any delays in release of the information, please let us know the soonest time that we can come and examine the records.⁸ If you believe that any records are exempt from disclosure, please provide a written response setting forth the legal authority on which you rely in failing to disclose each document. In addition, please provide us with any documents that support this position, again under the PRA. If we can provide any clarification that will help comply with this request please contact us.

Thank you for your prompt attention to this matter.

Sincerely,



Michael T. Risher
Staff Attorney

cc: Lt. Matt Carmichael, interim police chief, U.C.D. Police Department
Mark G. Yudof, President of the University of California

⁶ Gov't. Code § 6253.9.

⁷ Gov't. Code § 6253(b).

⁸ Gov't. Code § 6253(a) (records must be made available when office is open).