



December 31, 2014

Via fax and U.S. Mail

City Clerks Office
Attention Records
2180 Milvia Street,
Berkeley, CA 94704
Fax (510) 981-6901

Re: Berkeley Police Department response to demonstrations for justice for Michael Brown and Eric Garner

To whom it may concern:

The San Francisco Bay Area Chapter of the National Lawyers Guild (NLG) and the American Civil Liberties Union of Northern California (ACLU-NC) have concerns about the conduct of the Berkeley Police Department (BPD) and agencies providing mutual aid in connection with demonstrations in reaction to the grand jury announcements concerning the deaths of Michael Brown and Eric Garner.

The present situation demands transparency. We therefore request that you immediately release the following documents that would further the public's understanding of the past month's events. This request is made pursuant to the California Public Records Act (PRA), the Berkeley Open Government Ordinance, and Article I § 3(b) of the California Constitution.¹

In particular, we seek the following records:

- 1) Records identifying the BPD Incident Commander for each demonstration from December 7, 2014, to the date of this request.
- 2) Records identifying the BPD officer(s) assigned to each Outside Agency providing mutual aid during each demonstration from December 7, 2014, to the date of this request.

¹California Public Records Act (Govt. Code, § 250 *et seq.*); Berkeley Open Government Ordinance, Berkeley Municipal Code, Chapter 2.06; *and see* Cal. Const. Art. I § 3(b).

- 3) For each dispersal order that was given for each demonstration from December 7, 2014, to the date of this request, records identifying the name of individual making the dispersal order, the date/time each such order was given, and the basis for each such order.
- 4) Records reflecting the supervisor(s) or commander(s), if any, who approved the use of batons at each demonstration from December 7, 2014, to the date of this request, and the basis for each such use.
- 5) Records identifying the supervisor(s) or command officer(s), if any, who approved the use of chemical agents at each demonstration from December 7, 2014, and the date of this request, and the basis for each such use.
- 6) Records identifying the supervisor(s) or commanders, if any, who approved use of hand-thrown pyrotechnic gas dispersal devices at each demonstration from December 7, 2014, to the date of this request, and the basis for each such use.
- 7) All records pertaining to the amount and nature of chemical agents, less lethal munitions, and hand-thrown pyrotechnic gas dispersal devices brought by the Berkeley Police to each demonstration from December 7, 2014, to the date of this request, and the nature and amount of such weapons used at each such demonstration.
- 8) All records, including but not limited to written reports and video recordings, detailing the use by the Berkley Police of "less lethal" munitions, chemical agents, and hand-thrown pyrotechnic gas dispersal devices at each demonstration from December 7, 2014, to the date of this request.
- 9) All use of force logs and reports pertaining to each demonstration from December 7, 2014 to the date of this request.
- 10) All operations plans, planning documents, incident reports, crime reports, mass arrest reports, after action reports, injury reports, supplemental reports, property damage reports, documents referencing field contacts, detentions, and citations, and other reports pertaining to each demonstration from December 7, 2014, to the date of this request.
- 11) All records of police communications during and pertaining to each demonstration from December 7, 2014, to the date of this request. This request includes, but is not limited to, all computer records, including records of email and other computer communications as well as records of computer assisted dispatch computer entries; complete audiotapes of all radio communications and dispatch communications on all pertinent channels; all communications reports, situational awareness updates, dispatch logs and any and all other communications recordings and documents of any kind.

- 12) All individual officers', operations center and command center logs, other logs, notes, or chronologies prepared during or after, pertaining for each demonstration from December 7, 2014, to the date of this request.
- 13) All records pertaining to requests for Mutual Aid and responses to requests for Mutual Aid for each demonstration from December 7, 2014, to the date of this request.
- 14) A list of all participating law enforcement agencies who provided mutual aid to the Berkeley Police for each demonstration from December 7, 2014, to the date of this request.
- 15) All briefings, presentations, memoranda, and communications concerning BPD policies, including but not limited to Crowd Control Policy, Use of Force policy, "less lethal" munitions policy, chemical agents policy, that were provided to agencies providing mutual aid at any of the demonstrations from December 7, 2014, to the date of this request.
- 16) All records reflecting the nature and amount of chemical agents, less lethal munitions, and hand-thrown pyrotechnic gas dispersal devices brought by each law enforcement agency that provided mutual aid to the Berkeley Police for each demonstration from December 7, 2014, to the date of this request, and the nature and amount of such weapons used at each such demonstration.
- 17) All records pertaining to the assignments given Mutual Aid agencies for each demonstration from December 7, 2014, to the date of this request.
- 18) All reports prepared by mutual aid agencies pertaining to each demonstration from December 7, 2014, to the date of this request, including but not limited to, use of force reports, crime reports, injury reports, equipment damage reports and lists of responding personnel.

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. Please produce the documents as they become available, and if portions of the documents are exempt from disclosure, please provide the non-exempt portions.² If the documents are available in electronic format please email them to me at rlieberman@beachliedermanlaw.com.

The ACLU and NLG are non-profit organizations dedicated to public service. We therefore request that you waive any fees that would be normally applicable to a Public Records Act request. In addition, if you have the records in electronic form you can simply email them to me without incurring any copying costs.³ However, should you be unable to do so, the ACLU will reimburse your agency for the direct costs of copying these records plus postage.⁴ Please copy

² Gov't. Code § 6253(a);

³ Gov't. Code § 6253.9.

⁴ Gov't. Code § 6253(b).

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.⁵

If you believe that the records are in fact exempt from disclosure, please provide a written response setting forth the legal authority on which you rely in failing to disclose each document.⁶ 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.

We are also writing to insure that the BPD preserve any and all evidence relating to the BPD enforcement actions connected to each demonstration from December 7, 2014, to the date of this request, including but not limited to, all of the records that are requested above in our PRA request. This demand for preservation of evidence includes, but is not limited to, any and all communications, documents, and recordings of any kind, including, but not limited to, all radio communications, computer communications, telephone communications, dispatch communications, CAD reports, dispatch logs, video recordings, including mobile in-car video systems, dash cams and body cameras. Please be advised that we are making this demand for the preservation of all of the recordings and other documentary materials relating to these events and to any subsequent investigation(s) of said events in anticipation of potential criminal and civil litigation arising from enforcement actions relating to each demonstration from December 7, 2014, to the date of this request. Under California law, such potential evidence may not be destroyed until the resolution of all claims and litigation (Cal. Govt. Code, § 34090.6; Pen. Code, § 135). Therefore, all of the above-referenced records and evidence must be preserved until the final resolution of any and all civil, criminal and/or other investigative proceedings arising from any BPD enforcement actions relating to each demonstration from December 7, 2014, to the date of this request.

Sincerely,

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Also on behalf of the ACLU-NC

⁵ Gov't. Code § 6253(a) (records must be made available when office is open).