



April 24, 2012

**Via email, United States mail, and facsimile**

Chief of Police Howard Jordan

Oakland Police Department

455 7th Street

Oakland, CA 94607

Email: [ocop@oaklandnet.com](mailto:ocop@oaklandnet.com) and [HJordan@oaklandnet.com](mailto:HJordan@oaklandnet.com)

Fax: (510) 238-2251

Re: Proposed Changes to Settlement of *Local 10, Int'l Longshore and Warehouse Union, et al. v. City of Oakland*, Case No. C03-2962 TEH

Public Records Act and Oakland Sunshine Ordinance: Immediate Disclosure Request

Dear Chief Jordan,

Yesterday, you announced that the Oakland Police Department is revising its Crowd Management Policy “to be consistent with upcoming POST-recommended crowd management policies.” The American Civil Liberties Union of Northern California and the San Francisco Bay Area Chapter of the National Lawyers Guild have grave concerns that OPD may be unilaterally eliminating important protections for demonstrators against excessive force contained in the Policy. You and the City of Oakland have acknowledged that the Crowd Control Policy, adopted pursuant a federal court order, is binding on the Department. In light of upcoming protest activity planned for May 1, 2012, it is essential that demonstrators and the public at large know the precise crowd management guidelines that the OPD intends to follow and whether you plan to abandon the existing Policy. We therefore demand that you explain to us immediately the nature of OPD’s proposed changes to the Crowd Control Policy.

As you know, OPD’s existing Crowd Management and Crowd Control Policy is the product of a settlement agreement of *Local 10, Int'l Longshore and Warehouse Union, et al. v.*

MICHELLE A. WELSH, CHAIRPERSON | DENNIS MCNALLY, AJAY KRISHNAN, FARAH BRELVI, ALLEN ASCH VICE CHAIRPERSONS | KENNETH SUGARMAN, SECRETARY/TREASURER  
ABDI SOLTANI, EXECUTIVE DIRECTOR | KELLI EVANS, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR | SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR  
LAURA SAPONARA, COMMUNICATIONS DIRECTOR | ALAN SCHLOSSER, LEGAL DIRECTOR | MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS  
PHYLLIDA BURLINGAME, ALLEN HOPPER, NATASHA MINSKER, NICOLE A. OZER, DIANA TATE VERMEIRE, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

39 DRUMM STREET, SAN FRANCISCO, CA 94111 | T/415.621.2493 | F/415.255.1478 | TTY/415.863.7832 | WWW.ACLUNC.ORG

*City of Oakland*, Case No. C03-2962 TEH, a case brought by the ACLU and NLG challenging OPD's response to a peaceful anti-war protest at the Port of Oakland in 2003. The policy articulates important crowd management principles – such as reliance on the minimal use of force – and contains key directives for officers in the field that protect protester safety – such as prohibiting officers from throwing flash bang grenades or other exploding projectiles directly at people, or shooting less lethal munitions directly into crowds.

The guidelines created by the Commission of Peace Officer Standards and Training, by contrast, merely identify criteria to be considered in formulating crowd management policies and fail to contain specific directives. The POST Guidelines on Use of Force contain very general standards (e.g., “the force used must be objectively reasonable under the totality of the circumstances,” Page 39) that, while a legally accurate statement of the Fourth Amendment law, fail to provide officers in the field with clear guidance.

Moreover, the March, 2012, POST Guidelines on Crowd Management, Intervention and Control appear to permit the use of so-called “less lethal” munitions to disperse crowds, whereas the OPD Crowd Management and Crowd Control Policy specifically prohibits the police from shooting such munitions into crowds as a means of crowd dispersal.

There are good reasons for the specific prohibitions in the existing Crowd Control Policy. All so-called “less lethal” munitions are potentially deadly, as we have seen from the tragic death of college student Victoria Snelgrove when Boston police opened fire at an unruly crowd with pepperballs in 2004, and the near-fatal injury to veteran Scott Olsen when Oakland police opened fire on the crowd with shot filled “bean bags” on October 25, 2011.

The problem with OPD's handling of the Occupy protests last fall, on October 25 and November 2-3, 2012, was not the department's Crowd Control Policy. The problem was that OPD failed to adhere to its own Crowd Control Policy. Even with a strong Policy in place, the department last fall responded to these protests by engaging in highly dangerous and clearly unconstitutional practices that violate the Policy. These practices, extensively documented by the ACLU and NLG, included, for example, shooting less lethal munitions and throwing explosive devices directly into crowds. We are extremely concerned that if the department eliminates important prohibitions against these and other unsafe tactics from its Policy and replaces them with vague standards, it will invite a repetition – rather than prevent a recurrence – of what happened last fall.

In court pleadings, you and the City of Oakland have acknowledged you are bound by the OPD Crowd Management and Crowd Control Policy: “Defendants admit that the crowd-control policy that Oakland adopted as part of the settlement in two previous consolidated cases before this Court remains in effect and the settlement obliges Oakland to follow it.” *See Campbell v. City of Oakland*, Case No. C11-05498 RS, Answer, Doc. 47. Further, the *Local 10* settlement agreement requires you to meet and confer with us regarding “any material change to the term of

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[the Crowd Management and Crowd Control] Policy.” *Local 10 Stipulation & Order* (entered December 24, 2004), page 6, line 5-6.

We therefore fail to understand why you now believe that OPD is free to alter or abandon that Policy without running afoul of the federal court order that adopted it, and to do so without even consulting with us beforehand. Please clarify whether OPD intends to continue to adhere to the Crowd Control Policy. Please also explain to us the nature of any proposed revisions to the Policy and to OPD crowd control training and provide us with any and all revisions you are considering to the Policy or training materials.

The request for this information and documents is also made pursuant to the Public Records Act and constitutes an immediate disclosure request pursuant to the Oakland Sunshine Ordinance, which require, respectively, a response within ten and three days. *See* Cal. Gov. Code §6250 *et seq.*, and Oakland Municipal Code Sec. 2.20.230. Because, however, the May 1 protests are rapidly approaching, we request a response immediately.

Sincerely,



Linda Lye  
ACLU of Northern  
California



Rachel Lederman  
San Francisco Bay Area Chapter  
of the National Lawyers Guild

Cc: Randy Hall, City Attorney's Office (via email, facsimile and United States mail)  
Bill Simmons, City Attorney's Office (via email, facsimile and United States mail)