



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

March 5, 2009

Chief Richard Myers
Colorado Springs Police Department
705 South Nevada Avenue
Colorado Springs, CO 80903
SENT VIA FACSIMILE TO: 719-578-6169

Re: Internal Affairs investigation of seizure and destruction of private property belonging to Colorado Springs' homeless residents

Dear Chief Myers:

The ACLU of Colorado was recently contacted by Sgt. Michael Lux of Internal Affairs, who informed us that the Colorado Springs Police Department has initiated an internal investigation into the confiscation and destruction of the private property of homeless persons residing in Colorado Springs. I write now to provide information relevant to that internal investigation which has been gathered by the ACLU as part of a months-long investigation.

The ACLU of Colorado began this investigation after receiving complaints the Colorado Springs Police Department ("CSPD") and Keep Colorado Springs Beautiful ("KCSB") had a practice of summarily seizing and destroying the private property of the City's homeless residents with little or no advance notice. The complainants alleged that CSPD and KCSB routinely searched through private property without any legal justification, seized and destroyed valuable private property that was clearly not abandoned nor trash, and that CSPD did not provide any pre or post-deprivation procedural due process for persons whose private property was targeted.

As you know, private property located in public spaces, including property belonging to persons who are homeless, is unambiguously protected from unreasonable search and seizure by the Fourth Amendment and Article II Section 7 of the Colorado constitution. *E.g. People v. Schafer*, 946 P.2d 938, 844-45 (Colo. 1997) (holding that there is a reasonable expectation of privacy in a tent on public land); *State v. Mooney*, 588 A.2d 145, 153-154 (Conn. 1991) (holding homeless defendant had reasonable expectation of privacy in property left under a bridge). In other words, the government cannot search or seize the private property of homeless persons without complying with the requirements of the Fourth Amendment and Article II Section 7. *E.g. Kincaid v. Fresno*, 2006 WL 354273, *41-42 (E.D. Cal. 2006) (holding that practice of indiscriminately seizing and destroying homeless residents' property violated their Fourth Amendment

rights); *Pottinger v. Miami*, 810 F.Supp. 1551, 1585 (S.D. Fla. 1992) (Holding that City's unannounced and unjustified seizure and destruction of property left by homeless in public places was unconstitutional).

Furthermore, in cases where the government removes property from public places under the justification that the property is "abandoned" or "trash," it must provide persons with adequate procedural due process protections. For example, the government must notice of the impending seizure reasonably certain to inform those affected; provide an opportunity for the owners of the private property to object to the impending deprivation; and give notice and the opportunity for persons to reclaim their property. *E.g. Kincaid*, 2006 WL 354273 at *42 (enjoining City from seizing any property belonging to homeless unless it was evidence of a crime, contraband or posed an immediate threat to public health or safety, and requiring notice and opportunity to be heard before seizure, and adequate pre- or post-deprivation remedy to recover property); *Pottinger*, 810 F.Supp. at 1585 (enjoining City from destroying homeless' property, and requiring establishment of a "safe zone" for homeless residents, five days advance notice before any "cleaning," and other due process protections).

Contrary to the complaints received by the ACLU, however, the CSPD and KCSB Executive Director Deborah Cunningham have asserted that their practice was only to seize and discard "trash."¹ As reported in the media, CSPD has asserted that it provided advance notice to persons before property is seized, and that it retains all valuable property so that could be retrieved by the owners from CSPD.² Furthermore, with regard to specific allegations that valuable property such as prescription medication and sleeping bags have been destroyed, CSPD representatives stated that they only seize and discard "illegal drugs," and sleeping bags that are "no longer usable."³

As part of its investigation, the ACLU interviewed dozens of persons who claimed to have had private property seized and destroyed by CSPD and KCSB. In addition, the ACLU made contact with persons who were ordered to perform community service and fulfilled that requirement by volunteering with KCSB. As a result of that investigation, multiple and unrelated sources reported the following consistent allegations:

- CSPD officers and KSCB volunteers routinely and customarily conducted unannounced "sweeps" of locations where the City's homeless kept their private property, with no advance notice;

¹ Lance Benzel, *Vets group plans to sue over homeless sweep*, COLORADO SPRINGS GAZETTE (Oct. 21, 2008); Tom McGhee, *Springs' homeless decry site sweeps*, DENVER POST (Feb. 16, 2009)

² Lance Benzel, *Cleanup sweeps suspended while city studies law*, COLORADO SPRINGS GAZETTE (Oct. 23, 2008).

³ Tom McGhee, *Springs' homeless decry site sweeps*, DENVER POST (Feb. 16, 2009)

- The City's homeless residents would often be at work, or eating at a shelter, when they returned to find that all or most of their private property was gone. The only clue as to what had happened would often be a business card left behind by a CSPD officer, or persons who had witnessed the sweep and later informed the owner of the private property as to what had occurred;
- When CSPD and KCSB encountered people at the camps during the sweeps, they routinely ordered them to leave immediately under threat of arrest, and in almost all instances provided only minutes for people to gather whatever possessions they could carry and leave the scene;
- CSPD officers and KCSB volunteers consistently seized personal private property that was clearly in use, not abandoned, not trash, and that posed no public safety or health risk. This included items such as prescribed medication; identification documents such as drivers' licenses and birth certificates; military and medical records; bibles and other books; irreplaceable family photographs; tents, sleeping bags, bicycles, clothing, toiletries and backpacks;
- Many interviewees consistently reported that CSPD officers and KCSB volunteers would not seize tents, but would make slashes in the walls of the tents with a box cutter or knife, rendering the tents unusable;
- It is not clear whether or not the CSPD retained some private property as police department representatives have claimed, but numerous interviewees reported that during large sweeps in 2008, KCSB volunteers discarded seized property into large garbage dumpsters brought to the City's public parks for the sweeps, suggesting that private property seized was immediately destroyed and was not retained by CSPD to be reclaimed;
- Numerous different CSPD officers have been involved in seizing and destroying property, but many interviewees consistently identified CSPD Officers' Olav Chaney and Tracey Fox;
- Homeless persons were seldom, if ever, informed by CSPD or KCSB of any process for objecting to, or reclaiming, their private property;
- KCSB Director Cunningham instructed KSCB volunteers to seize and throw away "everything" they found.

The following are just a few examples of the allegations made by the City's homeless residents during the ACLU's investigative interviews:

- In November of 2004, a homeless man in his early 50s left his private property unattended for a few hours on public land near a bike trail when he went to eat at a nearby soup kitchen. When he returned, he found that all his property was gone, including his birth certificate, prescription medication (Robaxin pain medication, Naproxen for inflammation, and Seroquel to treat bipolar disorder), MRI films and medical records necessary for his Social Security disability application, a tent, sleeping bags, and clothes. Other homeless people nearby had witnessed CSPD officers and KSCB volunteers arrive and seize the property, and they told the man the next day what had happened.
- In September of 2006, a homeless man in his early 50s was under a public bridge when CSPD officers arrived and ordered him to leave immediately or face arrest. The man was given no opportunity to collect any of his personal belongings. The officers seized his prescription medication (including Dilantin for epilepsy and Zestril for heart disease), a state identification card, birth certificate, driver's license, sleeping bag, blankets, and clothing. The officer did not seize the man's tent, but made slashes in the tent walls so that it was rendered unusable.
- In December of 2007, a homeless veteran in his early 50s lost all his property kept in a campsite with three other men. While he was away from the campsite, two CSPD officers came to the campsite and told the other homeless men present that they had "15 minutes" to gather all their property. The officers seized all the property left behind, and the veteran lost his prepaid cell phone, tent, clothes, and a portable television. In July of 2008, this same veteran found that his personal property had been "swept" once again. This time he lost his state driver's license, birth certificate, bible and other books, pictures of his girlfriend and her family, clothes, and a tent. Two other homeless persons camping nearby had seen CSPD officers and KSCB volunteers arrive at the scene and seize the property, and they later told the veteran what had happened.
- In December of 2007, a homeless woman in her mid-20s left her private property unattended for just under an hour, and when she returned it was nearly all gone. The business cards of CSPD Officers' Chaney and Fox were left at the scene. The officers seized the woman's Albuterol inhaler prescribed for asthma, two bibles, library books, the only photographs she had of her son, her sleeping bag, and changes of clothes. The woman's tent was left at the scene, but with large slashes made in the tent walls, rendering it unusable.
- In March of 2008, a homeless veteran and Purple-heart awardee in his mid-50s left his property unattended on public land while he went to a job he obtained through a temporary labor agency. When he returned to his camp, he found nearly all his property was gone, including his state

driver's license, social security card, ATM card, food stamp card, tent, clothing, and sleeping bag. Other homeless persons in the immediate vicinity had been present when CSPD officers arrived and ordered everyone to leave, and they later told the veteran what had happened.

- In the spring of 2008, a homeless woman in her early 50s was sleeping under a city bridge when KCSB Director Cunningham arrived at sunrise with two KCSB volunteers and two CSPD officers. The officers told the woman she had "30 seconds to leave." The woman, who was only partially dressed, quickly put on her clothes and gathered as much as she could in her arms. She then watched from across the street as officers and KCSB volunteers seized her tent, her bicycle and padlock, school books she had purchased for community college courses, her cell phone, cash, her winter clothes, coats and jackets. The woman later walked over to America the Beautiful Park, where she saw numerous KCSB volunteers and CSPD officers filling a dumpster with seized property.
- In April of 2008, a homeless man in his mid-40s left his private property unattended on public land to go to his full-time job working for a moving company. When he returned, a CSPD patrol was parked near the camp with another car marked "HSS," which the ACLU believes is a private security firm headquartered in Denver, Colorado. A guard in an HSS uniform prevented the homeless man from going to his camp until the CSPD officer and the HSS guard had finished their "sweep." When the man went down to his camp, he found that he had lost his original birth certificate, medical paperwork, prescription pain medication, his bible, tent, sleeping back, books, and clothes. In August of 2008, the man was camping in the same general location when he came back from work and found that all his property had again been seized, including his state identification card, his social security card, to prepaid debit cards totaling over \$400 dollars, and an irreplaceable family photograph that included his deceased parents.

Based upon the ACLU's investigation, we believe there is ample evidence to conduct a formal investigation regarding CSPD's and KCSB's reassurances to the public that they have given sufficient notice to the City's homeless residents before seizing property; that only "trash" or items which were a threat to public health and safety were seized and destroyed; and that valuable private property was retained and could be reclaimed from the police department.

Given the history of the actions taken by CSPD and KCSB against the City's homeless residents, many are understandably hesitant or unwilling to publicly identify themselves for fear of further retaliation. Thus, we have protected their actual identities in this letter. Presumably, CSPD investigators will be able to verify the veracity of many of these allegations through interviews with involved

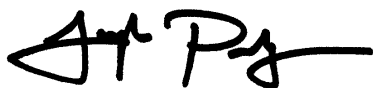
CSPD employees such as Officers Chaney and Fox, and through review of any police reports that CSPD requires officers to file.

We also respectfully suggest that the internal investigators consider publicly inviting anyone who has performed community service hours with KSCB to contact CSPD internal affairs' investigators to describe how they were instructed by Ms. Cunningham, and what they personally seized and/or destroyed while volunteering for KCSB. Although Ms. Cunningham has publicly stated that volunteers under her direction and control only seized and discarded "trash," the ACLU received information during its investigation that substantially conflicts with Ms. Cunningham's assertions.

Finally, if CSPD would be willing to accept complaints about the actions of CSPD officers and KCSB volunteers while pledging not to use personal information gathered during that process for any purpose other than conducting the internal investigation, I believe that many of the same persons who came forward to speak to the ACLU under a promise of confidentiality would also be willing to provide the same information contained in this letter to CSPD's internal affairs investigators. For example, CSPD could designate a date and time at a neutral location for persons to come forward and make formal complaints. CSPD could provide oral and written notice that it is accepting complaints at that date, time and location by posting flyers at campsites, shelters, soup kitchens and other organizations that service the City's homeless community. Importantly, CSPD should put in writing that persons can make such complaints without any fear that the information would be used for any purpose other than the internal investigation, and without fear that they'd be subject to any law enforcement action (such as warrant checks) if they show up to file a complaint. Finally, CSPD and KCSB should preserve the current moratorium on "sweeps" until the internal investigation and findings are complete, which will encourage complainants to come forward, and provide CSPD and the City with more complete information on past practices before finalizing any new "guidelines" and/or re-initiating the sweeps.

If I can provide any additional information, please do not hesitate to let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Taylor Pendergrass". The signature is stylized and cursive, with a long horizontal stroke extending to the right.

Taylor Pendergrass
Staff Attorney, ACLU of Colorado

cc. Mayor Lionel Rivera, sent via facsimile to 719-385-5495