

**AMERICAN CIVIL LIBERTIES UNION OF COLORADO**

MARK SILVERSTEIN, LEGAL DIRECTOR

March 25, 2002

Dear Chief Whitman:

Please consider this to be a written request for records pursuant to the Colorado Open Records Act and the Colorado Criminal Justice Records Act.

I make this request on behalf of the American Civil Liberties Union as well as Glenn Morris, Kerry Appel, Barbara Cohen, Mark Cohen, and LeRoy Lemos.

I am requesting records related to the Denver Police Department's intelligence files that include information on the peaceful protest activities of individual activists and law-abiding groups. These files, which press reports have dubbed as the "Spy Files," are the subject of a letter that I sent to Mayor Webb dated March 11, 2002. You have already received a copy of that March 11 letter.

On March 13, Mayor Webb responded to the letter in part at a news conference. He acknowledged that the Denver Police Department has indeed been monitoring and keeping files on the legitimate protest activities of law abiding citizens. He acknowledged that the maintenance of such files violates the City's written policy on intelligence databases, which is titled "Denver Police Department Intelligence Systems Information." It states as follows:

The Denver Police Department shall only collect and maintain criminal intelligence information concerning an individual if there is 'reasonable suspicion' that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.

The Denver Police Department shall not collect or maintain criminal intelligence information about the political, religious, or social views associations or activities of any individual or any group, association, corporation, business, partnership, or other organization, unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.

The quoted portion of the City's policy incorporates the standard that appears in a federal regulation, 28 C.F.R. Part 23.

On March 13, Mayor Webb also stated that the Denver Police Department's intelligence unit had compiled files on approximately 3200 individuals and 208 organizations.

I understand that the City believes that at least some portion of those 3400 files consists of

legitimately-maintained intelligence files that comply with the city's policy and focus appropriately on suspected criminal activity.

The remainder, however, violate the City's policy as well as 28 C.F.R. Part 23. These files were compiled and are maintained in violation of the City policy and in violation of 28 C.F.R. Part 23. You have no legitimate law enforcement purpose for maintaining these files and no legitimate reason for withholding them from disclosure. Under Colorado law, you may withhold the records only if disclosure would be contrary to the public interest. You will not be able to make such a showing. Indeed, it is affirmatively in the public interest to disclose the full scope of the Denver Police Department's inappropriate monitoring of peaceful protest activities.

To the extent that the City is concerned that rights of individual privacy might be infringed by the disclosure of documents that link specific individuals with unpopular political views, there are several possible solutions. First, at least some individuals have been so active, public, and vocal in their expressive activities that the release of their names would not infringe on privacy rights. Second, individuals can waive any possible privacy interest by expressly authorizing the release of their records. With this letter, I enclose release forms signed by the individuals on whose behalf I write today. Third, the City can redact the names of specific individuals if disclosure would unduly risk infringing on their rights of privacy.

Accordingly, I ask that you disclose the following documents:

1. Please disclose all documents from the intelligence files that refer to Glenn Morris, Mark Cohen, Barbara Cohen or LeRoy Lemos or that mention any of their political or social views or associations. This request includes all paper files as well as computer records maintained in electronic form. It also includes files that have been purged from the accessible database but that continue to exist on backup storage media. It also includes the records of each time that information from the files was forwarded to other government agencies, including the date of the sharing and the identity of the receiving agency.
2. Documents that will reveal the names of each of the 208 organizations that appear in the files as a result of the political, educational, social, or religious activities of the organizations or their members that are unrelated to reasonably suspected criminal activity.
3. All intelligence files that have been compiled on each of the organizations who appear in the files as a result of the political, educational, social, or religious activities of the organizations or their members. This request includes all paper files as well as computer records maintained in electronic form. It also includes files that have been purged from the accessible database but that continue to exist on backup storage media. It also includes the records of each time that information from the files was forwarded to other government agencies.

On behalf of the American Civil Liberties Union, alone, I also ask to inspect and copy additional documents. I will try to describe them with as much detail as possible:

4. All documents related to grants for intelligence-related activities that the City and County of Denver has applied for or received since 1997 pursuant to Title I of the Omnibus Crime Control and Safe Streets Act of 1968

5. All policies, general orders, internal memoranda, training materials, or other documents that discuss or refer to the intelligence database that Mayor Webb identified as containing approximately 3200 names of individuals and records on 208 organizations, including, but not limited to:

1. documents that provide the criteria for including a group or individual in the file;
2. documents that provide the criteria for labeling an organization as "criminal extremist";
3. documents that provide the definition and criteria for the specific kinds of criminal activity that is the target of the intelligence-gathering program;
4. documents that provide the criteria or conditions an outside law enforcement agency must meet before being permitted to receive information from the intelligence files;
5. reports or other documents summarizing, documenting, or otherwise referring to any audits of the intelligence database that have been conducted since 1997, including the dates and criteria for the audits; a report on the number of records examined at each audit and the number purged as obsolete or unreliable;
6. any documents that describe or refer to any occasions in which the intelligence database has been useful in identifying or apprehending the suspected perpetrators in any crimes;
7. documents providing a list of all law enforcement agencies to which the Denver Police Department has transmitted information from the intelligence database; as well as the dates the information was transmitted.

I know that the City might consider taking the position that some or all of the requested records are shielded from disclosure by exemptions in the Open Records Act or the Criminal Justice Records Act.

I urge you to reject that option. When serious allegations of police misconduct are made, the Denver Police Department cannot shield its officers from public scrutiny. A full public accounting is appropriate. On three prior occasions in recent years, the American Civil Liberties Union has gone to court when the Denver Police Department has refused to disclose documents relevant to widely-publicized allegations of police misconduct. On each occasion, the ACLU obtained the records. I hope that this time a lawsuit under the Open Records Act and the Criminal Justice Records Act will not be necessary.

If you do refuse to permit inspection and copying of the requested records, then I ask that you send me a written statement explaining your grounds for refusing access, as described in the following paragraphs.

The Criminal Justice Records Act provides as follows:

If the custodian denies access to any criminal justice record, the applicant may request a written statement of the grounds for the denial, which statement shall be provided to the applicant within seventy-two hours, shall cite the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial, and shall be furnished forthwith to the applicant.

C.R.S. § 24-72-305 (6). The Colorado Open Records Act provides:

If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

C.R.S. § 24-72-204(4). If you deny access to the requested records, then I will expect you to provide, within 72 hours, a written statement explaining your reasons.

Sincerely,

Mark Silverstein  
ACLU Legal Director

*This page was last updated 8/30/2002*

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