



October 4, 2004

BY FAX TO 720-913-7029 AND  
BY E-MAIL TO: whitmang@ci.denver.co.us

Chief Gerald R. Whitman  
Denver Police Department  
1331 Cherokee Street, Room 402  
Denver, CO 80204

Re: Second request for 118.03 audit documents

Dear Chief Whitman:

During the audit on September 22, 2004, Consultant Oren Root requested from Deputy Chief Battista, Captain Will, and Lieutenant Quinones a variety of documents needed for the third audit conducted pursuant to Policy 118.03 ("the Policy"). Included in the list of requested documents was a request for "Documents concerning implementation of April [should have been "May"] 2003 settlement agreement and Policy 118.03 (and planning for such implementation)."

When we met with you, Cole Finegan, Thomas Rice, and Deputy Chief Battista on September 23, Mr. Root answered a number of questions from you and Deputy Chief Batista. The questions concerned the types of documents were being sought pursuant to this request. Mr. Root withdrew one of his requests. In addition to explaining the other requests, Mr. Root specifically identified one document included in the request as the timeline of implementation of the settlement agreement that you had handed out to members of the Public Safety Review Commission on May 15, 2003. The City and the Department agreed at the meeting on September 23 that they would comply with this and most of the other document requests.

On the afternoon of September 24, Captain Will and Lieutenant Quinones informed us that Deputy Chief Battista had said that the Department required a letter "clarifying" Mr. Root's request for documents. To "clarify" in a broad  
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context, the request is for copies of all documents anywhere in the Department that relate to planning for and implementing the Policy.

As Mr. Root pointed out in the September 23 meeting, it is difficult to “clarify” further a request for documents when we don’t know what exists. As you know, the Policy applies “to all Denver Policy Department criminal intelligence systems.” What we expect might therefore exist, in a generic sense, would be 1) documents in forms such as e-mails, Faxes, memos, and letters that would have been delivered throughout the Department to explain Policy 118.03 and the need to comply; 2) minutes of meetings at which the Policy and the need for compliance was explained; and 3) reports from throughout the Department as to what steps were taken to comply and what problems have been encountered. Obviously, if no one other than members of the Intelligence Bureau were informed of the Policy and asked to comply, then no such documents may exist.

In addition, a review of the video of the PSRC meeting on May, 15, 2003, indicates that you handed out two documents that fall within our request: (1) a simplified version of the settlement agreement with date deadline thresholds, and (2) an Intelligence Bureau update (with sections dealing with policy, procedures, training, and an IAB case).

In an attempt to provide yet further clarification, but without limiting the scope of our request, I will list other possible kinds of documents that may exist:

- Intelligence Bureau updates sent to others outside the Intelligence Bureau.
- Memos, e-mails, or general orders sent to some or all members of the Department explaining how the Policy would change intelligence practices.
- Notes from, minutes of, or memos about meetings dealing with planning for and implementing the Policy.
- Memos, e-mails or directives changing assignments of members of the Department as a direct or indirect result of the Policy.
- Memos, e-mails or directives changing how criminal intelligence would be handled.
- Memos, e-mails or letters to the Federal Bureau of Investigation and/or the Joint Terrorism Task Force regarding the Policy and its implementation.
- Documents prepared by the person or persons tasked with planning and implementing the changes required by the Policy.
- Documents relating to training required by the Policy.

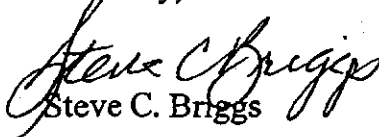
- Documents relating to problems that occurred in implementing the Policy.
- Documents relating to progress, or lack of progress, made in implementing the Policy.
- Documents pertaining to the creation of criminal intelligence systems or the assignment or performance of criminal intelligence work outside the Intelligence Bureau.
- Documents that contain a definition of criminal intelligence information or that distinguish criminal intelligence information from criminal investigatory information.

I hope these examples are helpful. As auditor, I am trying to balance the need to inconvenience the Department as little as possible with the need to fulfill the auditing responsibilities.

The additional request for documents comes in part because of the substantial absence of actual criminal intelligence work being performed in the Intelligence Bureau. It now appears this will continue to be true for the foreseeable future. This raises a question as to where criminal intelligence work is being performed. I do apologize for the inconvenience.

Since I hope to submit the Audit Report in the very near future, I would appreciate your assistance in supplying the requested documents as promptly as possible. Also, as I have indicated in my two phone messages to you, I would like to complete with you the interview portion of the audit at your earliest convenience. I will be available on Wednesday and Thursday of this week.

Sincerely,

  
Steve C. Briggs



# CITY AND COUNTY OF DENVER

DEPARTMENT OF SAFETY

DENVER POLICE DEPARTMENT  
ADMINISTRATION BUILDING  
1331 CHEROKEE STREET  
DENVER, COLORADO 80204-2787  
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JOHN W. HICKENLOOPER  
Mayor

October 8, 2004

Steve C. Briggs  
Judicial Arbitrator Group, Inc  
1601 Blake Street, Suite 400  
Denver, CO 80202

**Re: Request for 118.03 audit documents**

Dear Judge Briggs:

I am in receipt of your letter requesting certain documents to assist you in your audit and have been researching to the best of my ability to determine if such documents exist. The following is an item by item response to your request.

In the first full paragraph on page 2 you ask for:

- 1) documents in forms such as e-mails, faxes, memos, and letters that would have been delivered throughout the Department to explain Policy 118.03 and the need to comply

Response: The policy was distributed Department wide April 25, 2003 and instructions given to remove the old policy from the Operations Manual and replace it with the new policy. This document has been retrieved and is available for your review.

- 2) minutes of meetings at which the Policy and the need for compliance was explained

Response: There are none.

- 3) reports from throughout the Department as to what steps were taken to comply and what problems have been encountered.

Response: The audits and the accompanying reports are where these issues are addressed.

In the second full paragraph on page 2 you ask for two documents handed out at the May 15, 2003 PSRC meeting:

- 1) a simplified version of the settlement agreement with date deadline thresholds

Response: This document has been retrieved and is available for review.

- 2) an Intelligence Bureau update (with section dealing with policy, procedures, training, and an IAB case).

Response: This document has been retrieved and is available for review.

The following is a list of your bullet points starting on page 2:

- 1) Intelligence Bureau updates sent to others outside the Intelligence Bureau.

Response: While the meaning of "updates" is not clear, the Intelligence Bureau did release several Intelligence Bulletins which were printed as an addendum to the Daily Bulletin. They have been retrieved and are available for review.

- 2) Memos, e-mails, or general orders sent to some or all members of the Department explaining how the Policy would change intelligence practices.

Response: The policy was distributed Department wide April 25, 2003 and instructions given to remove the old policy from the Operations Manual and replace it with the new policy. This document has been retrieved and is available for review. *(This is the same as paragraph 1 response 1.)*

- 3) Notes from, minutes of, or memos about meetings dealing with planning for and implementing the Policy.

Response: There are none.

- 4) Memos, e-mails or directives changing assignments of members of the Department as a direct or indirect result of the Policy.

Response: There were no assignment changes as a direct or indirect result of the policy. Initially there was an Intelligence Analyst added (Ms. Les Minor) but that was not as a result of the policy. Responsibility for the Fugitive/Bomb Unit and the Gun Unit were moved away from the Intelligence Bureau but this was not done as a result of the policy. There is routine Human Resource paperwork that reflects these moves, but again, they are not related to the policy.

- 5) Memos, e-mails or directives changing how criminal intelligence would be handled.

Response: That information is included in the policy, 118.03. There was a Daily Bulletin notice in relation to establishing Intelligence Bureau liaison officers with Patrol districts. This document has been retrieved and is available for review.

- 6) Memos, e-mails or letters to the Federal Bureau of Investigation and/or the Joint Terrorism Task Force regarding the Policy and its implementation.

Response: A letter was sent to the FBI advising them that we were purging our files and that they may contact us to inquire whether or not any intelligence, which may have been previously supplied to their agency, was included in the purge. This document is available for review.

- 7) Documents prepared by the person or persons tasked with planning and implementing the changes required by the Policy.

Response: There are none.

- 8) Documents relating to training required by the Policy.

Response: A training log is maintained in the Intelligence Bureau documenting all training for Bureau personnel. This log is available for review along with the associated training materials.

- 9) Documents relating to problems that occurred in implementing the Policy.

Response: There are none.

- 10) Documents relating progress, or lack of progress, made in implementing the Policy.

Response: The audits and the accompanying reports are where these issues are addressed.

- 11) Documents pertaining to the creation of criminal intelligence systems or the assignment or performance of criminal intelligence work outside the Intelligence Bureau.

Response: We believe this to be outside the scope of the audit.

- 12) Documents that contain a definition of criminal intelligence information or that distinguish criminal intelligence information from criminal investigatory information.

Response: Reference the policy 118.03 and 28CFR23

By way of history, Policy 118.03 was created and implemented to regulate the Intelligence Bureau database, which is the only criminal intelligence system maintained by this department. Moreover, the independent oversight provisions of the policy, set forth at paragraph 11, are expressly directed to the operations of the Intelligence Bureau. Thus, it was the intent and expectation of the Denver Police Department that the audit function of the policy would focus on the Intelligence Bureau and its database. That having been said, it is expected and, indeed explicitly stated in the policy, that to the extent that any department employee becomes involved with matters relating to the Intelligence Bureau database, they are to adhere to the policy. In addition, members of this department in other bureaus at times provide information to databases that are maintained by other agencies (such as the Colorado Law Enforcement Intelligence Network maintained by the Colorado Bureau of Investigation), but those databases constitute projects that are neither operated by this department, nor are they within this department's control. Accordingly, we do not believe that the data retained by those other agencies is within the scope of the audit provisions of the policy.

In your letter, and in our recent meeting with you and Oren Root, it has been suggested that intelligence gathering activities within this department have been shifted from the Intelligence Bureau to other bureaus or units in order to circumvent the operation of Policy 118.03. Nothing could be further from the truth. The assignment of Denver Police Department officers to the Joint Terrorism Task Force run by the Federal Bureau of Investigation pre-dated the implementation of the policy and was wholly unrelated to that implementation.

Finally, it has been commented that the Intelligence Bureau has been slow to collect data and rebuild its criminal intelligence database. In essence, the controversies surrounding the ACLU lawsuit have caused this department to purge its entire Intelligence Bureau database and start from scratch. Intelligence Bureau personnel have been working under a new policy and new command. The Bureau and the entire Department, is also under the strain of critical staffing shortages. We are also attempting to be meticulously careful to adhere to policy and rebuild the bureau in a way that will be both productive to our law enforcement mission and compliant with all applicable laws and regulations. This is an undertaking that takes time. We believe the progress made by the Intelligence Bureau in this mission is consistent with other departments that have experienced similar histories.

Judge C. Steve Briggs  
Re: Request for 118.03 audit documents  
October 8, 2004  
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Sincerely,

Gerald R. Whitman  
Chief of Police