



AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO

CATHRYN L. HAZOURI EXECUTIVE DIRECTOR. MARK SILVERSTEIN, LEGAL DIRECTOR

July 28, 2005

Cole Finegan
Denver City Attorney
1447 Bannock Street, Room 353
Denver, CO 80202-5375

Dear Mr. Finegan:

I write to reply to your letter of June 22, which responded to the letter I addressed on May 18 to the Mayor and members of the Denver City Council. In that letter, I explained that Denver's participation in the FBI Joint Terrorism Task Force (JTTF) was interfering with the City's ability to fulfill its obligations under the Settlement Agreement that resolved the Spy Files lawsuit.

Your letter assumes correctly that the focus of the ACLU's concern is assuring compliance with the restrictions on collecting information that are contained in Denver Police Department (DPD) Policy 118.03, which Denver adopted as part of the Settlement Agreement. This policy prohibits Denver police officers from gathering certain kinds of information about political views, political associations, and political activities unless two conditions are met: 1) the information must be directly relevant to specified criminal activity; and 2) there must be specific objective facts that amount to reasonable suspicion that the individual or organization is involved in that criminal activity. Another provision ensures that the predicate criminal activity cannot be nonviolent civil disobedience that amounts at most to a misdemeanor offense.

The two Denver detectives assigned to JTTF are working with and are supervised by FBI agents who are not bound by Policy 118.03. Indeed, the FBI continues to collect the same kind of information about peaceful political activities that Denver police are now prohibited from gathering. In your letter you said you were not aware of any information or documentation that supports this assertion. I appreciate your invitation to provide that documentation for you.

I have attached an FBI memo written about Sarah Bardwell, a young Denver activist who worked for several years for the American Friends Service Committee (AFSC). Sarah has also been active with Food Not Bombs, which collects food that would otherwise go

to waste and shares it with poor people. She also works with a group known as Derailer, which teaches individuals how to fix their own bicycles and donates bicycles to the homeless. Sarah is one of the persons who came forward in the summer of 2004 to object to the JTTF showing up at her home (accompanied by Denver police officers in SWAT gear) to question her and her roommates about the upcoming Democratic and Republican conventions (neither of which Sarah planned on attending).

The attached FBI report about Sarah was written in December, 2004, long after the political conventions had passed without serious incident. The report focuses solely on Sarah's political activities and associations. Indeed, it begins by stating that its purpose is to "document information regarding Sarah Bardwell and Food Not Bombs." In the second paragraph, the report discusses an antiwar demonstration held in Denver on March 20, 2004, sponsored by Coloradans Opposing War. It notes that Sarah was listed as a point of contact for the protest organizers, a role she fulfilled as part of her work for AFSC. The FBI apparently did a records check; obtained her address, date of birth, and social security number; and learned that she had no criminal history. The report notes that her address was "associated" with Food Not Bombs as well as Derailer. The report further notes that the author remembers that the Derailer group "hosted a meeting" two years earlier, at the time of the protests around Columbus Day. Nothing in this JTTF report provides reasonable suspicion to believe that Sarah is involved in any criminal activity.¹ The report provides an excellent example of the kind of information about First Amendment activities that Denver police detectives are forbidden to collect pursuant to the Settlement Agreement and Policy 118.03. As the report demonstrates, however, the FBI is clearly collecting and maintaining such information.

In your letter, you say that Chief Whitman has "argued persuasively" that Denver "derives substantial benefits" from its participation in the JTTF. As far as I know, the single paragraph you devote to Chief Whitman's view represents the first time that any Denver official has provided the public with any rationale for assigning two full-time detectives to the FBI task force. I would like to believe that this represents a valuable first step toward a full public discussion of the pros and cons. According to your letter, the JTTF focuses on investigating terrorism threats and individuals and organizations that "have been identified as potentially violating federal laws and furtherance of terrorist activities." You mention specific examples such as threatening to use weapons of mass destruction, explosives, and financial support of terrorism. Such serious crimes clearly merit law enforcement's attention. Unfortunately, the information we have obtained at the ACLU indicates that JTTF officers are being diverted from investigating such serious

¹ The FBI report mentions arrests made more than a year earlier at a house several blocks from Sarah's house. Although the FBI report does not explain the nature of these arrests, I obtained the incident reports from the Denver Police Department. They indicate that several young people were arrested after police responded to a call about a loud party. Neither Sarah nor any of the organizations with which she is involved are mentioned in the DPD reports. The FBI report also notes that three persons were arrested near the March, 2004, antiwar demonstration where Sarah was listed as a point of contact for the demonstrators. But neither the FBI report nor the DPD reports about those arrests suggest that Sarah or any of the other 3000 participants was involved with or connected to the persons arrested or their conduct.

crimes and are instead monitoring the political associations of persons who pose no threat at all, such as Sarah Bardwell.

You state that the DPD deems it “essential” that in order to be prepared to handle terrorism threats, Denver must continue to work with the FBI. Does Denver deem it “essential” to monitor the political associations of someone like Sarah Bardwell as part of what the FBI labels as a “domestic terrorism” investigation?² I do not doubt that the JTTF is also investigating real terrorism. Your letter does not explain, however, how membership in the JTTF is necessary for Denver to obtain the benefit of the JTTF’s work against real terrorists. I would expect the FBI to respond diligently to any threat of real terrorism, without regard to whether the target is located in a community that participates in the JTTF. I would expect that the JTTF would continue to protect Denver from real terrorism even if Denver’s detectives were assigned to other duties. If you have a different understanding of how the FBI construes its responsibilities, please let me know.

You take issue with my assertion that, because of FBI secrecy, the independent auditor required by the Settlement Agreement cannot determine whether the DPD detectives assigned to JTTF are complying with Policy 118.03. Your response asserts that Chief Whitman and others in the DPD chain of command now receive regular reports and now “are privy to the details” of the detectives’ participation in the JTTF.³ The regular reporting described in your letter does not necessarily provide the DPD chain of command with the details necessary to determine, on a specific case-by-case basis, whether information gathered about First Amendment activities is based on reasonable suspicion of criminal activity. Even more importantly, the audit provision of Policy 118.03 requires that an independent agency -- not the DPD chain of command -- must evaluate whether Denver intelligence officers are complying with the Settlement Agreement. As Judge Briggs explained in his last audit report, he has not been provided access to the information he needs to make this determination.

You acknowledge that the ACLU’s principal complaint is that FBI secrecy prevents the independent auditor from gathering the information relevant to the activities of the two Denver detectives assigned to JTTF. You dismiss this issue in a single sentence, stating erroneously that the “major function” of the auditor is to ensure that the Intelligence Bureau’s database is maintained.

On the contrary, nothing in the Settlement Agreement or in Policy 118.03 suggests that policing the database is the “major function” of the independent auditor. One of the most critical points of the Settlement Agreement is Denver’s pledge that its officers will refrain from collecting information about First Amendment activities unless that

² The case ID number beginning with 266 indicates that the FBI classifies the enclosed report as “domestic terrorism.” The abbreviations “AOT-DT-VC” in the file title stand for “acts of terrorism,” “domestic terrorism,” and “violent crimes.”

³ Indeed, in the fall of 2004, Deputy Chief Battista reportedly confirmed that the DPD “has no way of actually knowing whether the two detectives are performing their duties in compliance with the Policy.” Steve C. Briggs, Third Audit Report, Denver Police Intelligence Bureau, October 27, 2004, at 12.

information is directly relevant to criminal activity and there is reasonable suspicion that the individual or group is involved in that criminal activity. The plaintiffs and the plaintiff class understood that the mere collection of information about the opinions, views, and political associations of Colorado residents activities posed a threat, without regard to whether police store the information in a file cabinet or in a computer database. Indeed, perhaps the auditor's most important function is assuring that Denver police are not collecting information that the Settlement Agreement and Policy 118.03 prohibit them from collecting. Your letter inappropriately and unjustifiably dismisses the significance of the auditor's inability to determine whether the JTTF-assigned detectives are complying with the settlement agreement.

Most importantly, your letter acknowledges that the auditor is not able to determine whether the DPD detectives assigned to JTTF are inappropriately collecting information about First Amendment activities. In other words, the auditor is not able to complete his job, and Denver, therefore, is not able to comply fully with the audit provisions of the Settlement Agreement. It is Denver's obligation to ensure that the auditor can do his job. One way Denver can do this is to withdraw from the JTTF. Your letter has not suggested any other solutions. It thus appears that Denver has chosen to turn its back on the commitment it made when it signed the Spy Files Settlement Agreement. I urge you to reconsider that choice.

Sincerely,

Mark Silverstein,
Legal Director, ACLU of Colorado

cc: Mayor John Hickenlooper
Elbra Wedgeworth
Judy H. Montero
Jeanne Robb
Michael B. Hancock
Carol Boigon
Doug Linkart
Rick Garcia
Jeanne Faatz
Rosemary E. Rodriguez
Peggy Lehmann
Marcia Johnson
Charlie Brown
Kathleen MacKenzie

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 12/07/2004

To: Denver

From: Denver

Squad 5/JTTF

Contact: SA [redacted]

Approved By: [redacted]

b2

John
Drafted By: [redacted]

jmh

b7C

①
John

Case ID #: 266A-DN-63085 ³⁹ (Pending)

Title:

[redacted]

ANARCHIST BLACK CROSS DENVER (ABCD);
AOT-DT-VC-CIVIL DISORDER

Synopsis: To document information regarding Sarah Bardwell and Food Not Bombs.

Details: As previously noted in serial 4, Colorado has several active Food Not Bombs (FNB) groups in Denver, Boulder, Fort Collins and Durango. On August 1, 2003, eight individuals were arrested at the so-called Denver FNB house at 1435 Lipan Street. The charges included obstruction police/fire, disturbing the peace, resisting arrest and assault. These arrests were noted in this investigation due to (i) the close association between FNB and the Anarchist Black Cross movement and (ii) the close proximity of the FNB house to 923 Lipan Street, the location of the Anarchist Black Cross Denver.

On March 20, 2004, three individuals were arrested by the Denver Police Department for crimes committed during an anti-war protest at the Federal Building, 19th and Stout. The police report noted that the protest was sponsored by Coloradans Opposing War. Sarah Rina Bardwell, 1065 Lipan Street, was identified as a point of contact for the protest organizers. Routine records checks identified Bardwell as a white female, DOB 06/02/1983, [redacted], with no criminal history. Her address, 1065 Lipan Street, was found to be associated with FNB and Derailer Bicycle Collective. This address was of interest to this investigation for the same reasons noted above. In addition, writer recalled that the Derailer group hosted a meeting place during the Columbus Day protests in Denver in October 2002.

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