



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

June 25, 2009

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

Re: CCJRA request for Internal Affairs file related to seizure and  
destruction of private property belonging to homeless

Dear Chief Myers:

Thank you for your letter dated June 2, 2009.<sup>1</sup> I understand from your letter that the Internal Affairs investigation into the seizure and destruction of private property belonging to the homeless in Colorado Springs has closed, and that CSPD did not find any misconduct on the part of its officers. I write to address several issues raised in your letter, and to request a copy of the entire internal affairs investigative file pursuant to the Colorado Criminal Justice Records Act (CCJRA).

We wrote you on March 5, 2009, after learning that the CSPD had begun an internal affairs investigation regarding allegations that CSPD officers were participating in the routine seizure and destruction of the private property of the homeless. As discussed in that letter, the private property of homeless persons is protected from unreasonable searches and seizures by the Fourth Amendment. Furthermore, the Fourteenth Amendment requires that adequate due process protections must be provided anytime the government believes that it is justified in seizing and/or destroying homeless persons' private property.

In our letter, we described examples of CSPD officers seizing and destroying property belonging to the homeless. These examples were gathered by the ACLU in a series of confidential interviews conducted with the City's homeless residents. In these interviews, individuals described CSPD officers actively participating in the seizure and destruction of private property such as medications, photo identifications, birth certificates, debit cards, clothing, sleeping bags, tents, and other valuable personal property. The ACLU noted that the officers' participation in the seizure and destruction of property was essentially undisputed, as the CSPD had publicly admitted that its officers participated in the seizure and destruction of the property, but contended only that the seizures were lawful and justified.

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<sup>1</sup> This letter was postmarked June 15, 2009.

For example, in an October 21, 2008, article, the Executive Director of KCSB Dee Cunningham stated that before seizing or discarding any property, "the group makes what [Cunningham] calls "a cooperative decision" with police . . . Police decide which personal effects should be preserved and place them in storage."<sup>2</sup> In an October 23, 2008, article, you were quoted as stating that CSPD was responsible for holding valuable property seized from the homeless.<sup>3</sup> In a February 16, 2009, article, Cmdr. Kurt Pillard described in further detail CSPD's intimate involvement in determining what private property would be seized and/or discarded, the prior warnings given by CSPD, and CSPD's policies on holding property and returning it to the owners:

"When you hear that sleeping bags are being thrown away ... they are no longer usable because of the extreme filth. Items have also been disposed of that are infested with rodents and insects," [CSPD Cmdr. Kurt] Pillard said . . . "If a prescription was found in an appropriate container with a name on it, we would have tried to locate the owner. But these are drugs that have been compromised. They are taken to the evidence custodian at the Police Department, and when we have enough stuff, it is destroyed." Police do not document the medications taken from the camps, only those drugs seized when criminal activity is involved, Pillard said . . . Pillard also said police try to give the homeless a warning of impending cleanups. But those who aren't in the camp at the time cannot be told . . . If personal items appeared to be abandoned, they may have been taken during the sweeps, but police did what they could to return them to owners, Pillard said.<sup>4</sup>

Based on these public assertions, there appeared to be no question that CSPD officers actively participated in the search, seizure and destruction of the private property of the homeless. The only question for internal affairs investigators was whether CSPD had violated its own policies and/or the constitutional rights of the homeless while doing so.

We also noted that if CSPD deemed it necessary to take statements from the homeless residents, CSPD should recognize that "[g]iven 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, if CSPD was interested in making a *bona fide* effort to obtain statements from homeless who had been victims of the unconstitutional seizure and destruction of their property, the ACLU suggested as follows:

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<sup>2</sup> Lance Benzel, *Vets group plans to sue over homeless sweep*, COLORADO SPRINGS GAZETTE (Oct. 21, 2008)

<sup>3</sup> Lance Benzel, *Cleanup sweeps suspended while city studies law*, COLORADO SPRINGS GAZETTE (Oct. 23, 2008) ("Anything deemed of value was collected and could be retrieved from police, [Myers] said").

<sup>4</sup> Tom McGhee, *Springs' homeless decry site sweeps*, DENVER POST (Feb. 16, 2009)

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.<sup>5</sup>

The ACLU also suggested that interviews be conducted at a neutral (i.e, non-CSPD) location. Furthermore, at the specific request of CSPD IAB investigator Sgt. Michael Lux, the ACLU agreed to be present for any face-to-face interviews at anytime requested by CSPD, to increase the likelihood that complainants would feel they could safely present complaints without fear of retaliation.

In your June 2, 2009, letter, you reported that the CSPD asked homeless individuals to come forward to make complaints at "two community meetings" and that CSPD "posted a flyer requesting information about possible violations of individual rights." The result of these efforts "resulted in one homeless person who agreed to be interviewed."

I obtained a copy of the CSPD flyer from Sgt. Lux (attached). Contrary to the suggestions of the ACLU, the flyer contains no assurances that complainants would be protected from retaliation or law enforcement action if they came forward to file a complaint. Furthermore, the only method identified on the flyer for making a complaint was to call the CSPD internal affairs general desk by telephone during business hours. As you might know, homeless individuals seldom own or have access to a telephone.

In addition, the flyer soliciting complaints began with a statement that seemingly defended the actions of CSPD and KCSB:

The role of the police department during these clean ups has always been to provide security, while the role of Keep Colorado Springs Beautiful has been to physically clean the sites.

As you know, it was the direct experience of many homeless individuals that the CSPD did much more than "provide security," i.e., officers participated or cooperated in the seizure and destruction of private property. The above statement in the flyer, however, could certainly lead a reasonable person to believe that any complaint would be met by CSPD internal affairs with hostility or skepticism. The statement likely further discouraged any potential complainants from coming forward.

In sum, CSPD's "outreach efforts" to obtain complaints from the homeless were undertaken under the following conditions:

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<sup>5</sup> See ACLU letter to Chief Meyers (March 5, 2009).

- CSPD refused to provide any assurance to the City's homeless population that complaints would be used only for the purpose of the internal investigation;
- CSPD refused to assure complainants they would not be subject to "warrant checks" or other law enforcement action if they came forward to file a complaint;
- CSPD rejected suggestions to take complaints at a neutral site;
- CSPD did not take advantage of ACLU's willingness to be present at a site for interviews of homeless individuals by CSPD internal investigators, so that complainants might feel safer and be more likely to come forward;
- CSPD's flyer provided potential complainants with a single method of making a complaint—by telephone—despite the fact that few, if any, of the City's homeless individuals own or have access to telephones;
- CSPD's decided to open its solicitation for complaints with a strong conclusory statement defending the role of CSPD's officers.

Under these circumstances, it is hardly surprising that these efforts only produced an interview with one homeless individual. Indeed, it is difficult to imagine an outreach effort that would be less likely to actually encourage complainants to come forward.

In your letter, you stated that, "I will say the Colorado Springs Police Department is disappointed in the level of cooperation provided by your office in this investigation . . . you outline serious allegations of civil rights violations . . . to date your office has failed to provide any information to substantiate these allegations . . . " I am unclear regarding what you perceive as a lack of cooperation.

The ACLU did not refuse any of CSPD's requests for interviews or follow-up questions. When Sgt. Lux inquired whether the ACLU would assist the CSPD with face-to-face interviews with homeless individuals, the ACLU responded that it would be happy to do so. Sgt. Lux, however, never followed up with the ACLU on his request. Furthermore, I informed Sgt. Lux generally in an April 7, 2009, email that, "The ACLU was willing to consider any requests that CSPD thought would be of assistance to its investigation." No additional requests of the ACLU were ever made.

In fact, I am not aware of any request from Sgt. Lux the ACLU refused, with the single exception that the ALCU was unable to release privileged statements and communications between the ACLU and homeless individuals who came forward to speak with the ACLU under a promise of confidentiality. As I made clear to

Sgt. Lux, the fact that the ACLU could not unilaterally release confidential statements and interview notes to the CSPD was not a matter of “cooperation.” Rather, it would be a breach of the attorney/client privilege, and a violation of the Colorado Rules of Professional Conduct, to release an individual’s confidential communication with an attorney to a third party without that individual’s consent.

Please describe more fully what “level of cooperation” you anticipated, and where you believe we fell short. We look forward to discussing any steps we can take to rectify the perceived lack of cooperation on our part.

The fact that CSPD internal affairs found no misconduct on the part of any CSPD officer, and the manner in which the investigators reached this conclusion, is obviously a matter of great public interest. Pursuant to the CCJRA, please provide a copy of the entire internal affairs investigative file related to the CSPD internal investigation of the seizure and destruction of private property belonging to the homeless.


The CCJRA permits a custodian of records to withhold information only when disclosure would be “contrary to the public interest.” In this case, we believe it is quite clear that the public interest weighs heavily in favor releasing the file and allowing the public to review the manner and method in which CSPD conducted the investigation and determined that no misconduct could be substantiated. For example, questions of public interest served by disclosure might include:

- Did CSPD’s method of soliciting complaints have the effect of making complaints from homeless individuals extremely unlikely or impossible?
- What did CSPD discover about officers’ role in deciding which property to throw away and which property to retain?
- What did CSPD discover about the efforts CSPD allegedly made to “locate the owners” of valuable property as described by Cmdr. Pillard?
- What did CSPD discover about the procedures you described where, “Anything deemed of value was collected and could be retrieved from police”?
- What did CSPD IAB discover about what CSPD officers described as their role during the “sweeps?”
- In light of the unambiguous public statements from CSPD representatives about officers’ roles in the sweeps, at least one video recording of the seizure and destruction of private property involving CSPD officers, and police reports filed by officers after “sweeps,” why was the record so ambiguous that no misconduct could be substantiated?

- Overall, did CSPD internal affairs conduct an adequate and good faith investigation of its own officers?

I look forward to your response at your earliest convenience.

Very truly yours,

A handwritten signature in black ink, appearing to read "Taylor Pendergrass". The signature is stylized with a large, looped "T" and a long, horizontal stroke at the end.

Taylor Pendergrass  
Staff Attorney, ACLU of Colorado

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

Enc. CSPD Flyer

# **KCSB Homeless Camp Clean Up** **Investigation**

The Colorado Springs Police Department is looking into the procedures used during homeless camp clean ups within the City of Colorado Springs. The role of the police department during these clean ups has always been to provide security, while the role of Keep Colorado Springs Beautiful has been to physically clean the sites.

We are looking for people who feel that their rights have been violated during these clean ups.

Interviews will be limited to parties **who have been the victims of or personally witnessed** some type of wrongdoing by either Keep Colorado Springs Beautiful members or the police department. The focus of the investigation is from January 2008 to October 2008. The clean up activities were discontinued in October 2008 at the direction of City Council.

If you have first hand knowledge of an incident please call Sgt. Mike Lux to report it.

Sgt. Mike Lux  
Colorado Springs Police Department  
Internal Affairs Section  
**444-7417**  
Monday-Friday 8AM-5PM