



September 21, 2011

Via Certified Mail

Police Department Legal Bureau
Attn: Freedom of Information Law Request
F.O.I.L. Unit, Room 110C
1 Police Plaza
New York, NY 10038

Re: Freedom of Information Law Request

Dear Sir or Madam:

This is a request under the New York Freedom of Information Law (“FOIL”) N.Y. Pub. Off. Law §§ 86, 87 for records pertaining to: 1) the intelligence gathering cooperation between the Central Intelligence Agency (“CIA”) and the New York City Police Department (“NYPD”); 2) the NYPD’s implementation of its “Guidelines for Uniformed Members of the Service Conducting Investigations of Unlawful Political Activities;”¹ 3) the NYPD’s gathering of information, and its conduct of terrorism investigations, relating to individuals, locations, organizations, businesses, or communities defined by ethnic or religious identity; and 4) the NYPD’s use of undercover officers or confidential informants to gather information and conduct investigations relating to individuals, locations, organizations, businesses, or communities defined by ethnic or religious identity.

The request is made on behalf of the Brennan Center for Justice at NYU School of Law (“Brennan Center”), Muslim Advocates, and the Asian American Legal Defense and Education Fund (“AALDEF”).

Factual Background

On August 24, 2011, the Associated Press published an investigative article (“AP Article”) describing the NYPD’s intelligence gathering operations.² The AP Article indicated that the CIA

¹ NEW YORK CITY POLICE DEPARTMENT, INTERIM ORDER 58, GUIDELINES FOR UNIFORMED MEMBERS OF THE SERVICE CONDUCTING INVESTIGATIONS OF UNLAWFUL POLITICAL ACTIVITIES (2004) (hereinafter P.G. 212-72)

had been a key part of developing the NYPD's intelligence gathering operations and that intelligence gathering operations have taken place outside the NYPD's jurisdiction and without the involvement of the FBI.

The AP Article described the NYPD's use of potentially illegal and unconstitutional methods of collecting information. For example, it cited a former police official directly involved in the effort as saying that immediately after the 9/11 attacks, officers were dispatched to "Pakistani neighborhoods and ... instructed ... to look for reasons to stop cars: speeding, broken tail lights, running stop signs, whatever."³ Stopping cars gave the police "an opportunity to search for outstanding warrants or look for suspicious behavior. An arrest could be the leverage the police needed to persuade someone to become an informant."⁴ The NYPD also sought a list from the taxi commission of every Pakistani cab driver in the city, and produced an analytical report on every mosque within 100 miles.⁵

The AP Article stated that the NYPD set up a command center and dispatched undercover officers "as part of a human mapping program."⁶ Its activities have reportedly included monitoring Muslim communities by stationing agents in local businesses such as cafes, bookstores, and nightclubs (also known as "raking").⁷ In addition, the AP Article cites several sources as indicating that "mosque crawlers" were sent to monitor sermons.⁸ Current and former officials associated with these programs informed AP reporters that the NYPD does not require evidence of a crime before dispatching informants to a mosque.⁹

In subsequent stories, published on August 31¹⁰ and September 6,¹¹ the Associated Press provided more details of the NYPD's surveillance activities. These included targeting a Bangladeshi restaurant because it attracted a "devout crowd," targeting particular mosques as being of concern due to "rhetoric," and targeting university based Muslim student associations for having students who were "politically active and ... radicalizing."¹² The articles also

² Matt Apuzzo & Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, ASSOCIATED PRESS, Aug. 24, 2011, available at http://www.google.com/hostednews/ap/article/ALEqM5iwl_LiP3l8NwLPoSruULZWhDPTg?docId=68e74ec21cb6481ebff3a063dc4ca2ba.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Adam Goldman, *NYPD Monitored Where Muslims Ate, Shopped, Prayed*, ASSOCIATED PRESS, August 31, 2011, available at http://www.google.com/hostednews/ap/article/ALEqM5gHc_1HtSxco67F1IoTZM0Wra4rWw?docId=97320a5daf684319b2221e0f97da3841.

¹¹ Adam Goldman, *Documents Show NY Police Watched Devout Muslims*, ASSOCIATED PRESS, September 6, 2011, available at <http://www.google.com/hostednews/ap/article/ALEqM5hE7olAeX9iUnh0LxCS2EjpnIXRw?docId=fd1a04fa820c44bd820aae6bc75d33e3>.

¹² *Id.*

reported that the NYPD kept a list of 28 (mainly Muslim) countries that, along with “American Black Muslim,” were considered “ancestries of interest.”¹³

Three NYPD Units are named in the AP articles: 1) the Demographic Unit; 2) the Terrorist Interdiction Unit; and 3) the Special Services Unit.¹⁴ All of these appear to be part of the Intelligence Division of the NYPD.

Legal Background

The activities reported in the AP articles implicate, among other matters, the rules commonly known as the “Handschu Guidelines.” These guidelines were adopted by the NYPD as part of a consent decree settling a case of political surveillance,¹⁵ restricted the Department’s monitoring of “political activity.” The February 2003 court order modifying the Handschu Guidelines significantly reduced these controls. As part of this modification, the NYPD was required to include in its Patrol Guide the standards used by the Federal Bureau of Investigations (“FBI”). The FBI’s investigatory standards at that time were contained in the Attorney General’s Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations issued by Attorney General Ashcroft. The NYPD incorporated these rules into its Patrol Guide, where they are described as the Modified Handschu Guidelines.¹⁶

The Modified Handschu Guidelines provide for three levels of investigation: “the prompt and extremely limited checking of leads”; Preliminary Inquiries; and Full Investigations—as well as for Terrorism Enterprise Investigations (a type of Full Investigation).¹⁷ They include procedures for how these types of investigations are to be conducted where they concern “possible unlawful or terrorist related activity that involve[s] political activity.”¹⁸ NYPD activities of the type described by the AP could violate these procedures because intelligence was collected even where there were no leads or other indication of wrongdoing.

An additional section of the Patrol Guide—“Counterterrorism Activities and Other Authorizations”—“identifies a number of authorized activities which further [early intervention and prevention of terrorist acts before they occur] and which can be carried out even in the absence of checking of leads, Preliminary Inquiry, or Full Investigation.”¹⁹ The activities authorized are as follows: 1) operation and participation in information systems “for the purpose of identifying and locating potential terrorists and supporters of terrorist activity;”²⁰ 2) visiting any place and attending any event open to the public “on the same terms and conditions as members of the public generally;”²¹ 3) “general topical research” on areas “relevant for the

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Id.

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Appuzo & Goldman, *supra* note 2.

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Handschu v. Special Servs. Div., 273 F.Supp.2d 327, 330 (S.D.N.Y. 2003).

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P.G. 212-72.

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P.G. 212-72, app. B, pts. V(A)-(D).

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See generally P.G. 212-72.

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P.G. 212-72, app. B, pt. VIII.

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P.G. 212-72, app. B, pt VIII(A)(1).

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P.G. 212-72, app. B, pt. VIII(A)(2).

purpose of facilitating or supporting the discharge of investigative responsibilities;”²² 4) online searches and access to online sites and forums;²³ and 5) preparation of “general reports and assessments concerning terrorism or other unlawful activities for purposes of strategic or operational planning or in support of other legitimate law enforcement activities.”²⁴ Notably, the list of authorized techniques does not include the use of informants to collect information about particular ethnic or religious communities. Accordingly, it appears that this aspect of the Patrol Guide may also have been violated by the NYPD activities reported in the AP stories.

Finally, the activities reportedly carried out by the NYPD seem to violate its own Police Order 11 which prohibits the use of racial profiling – defined as the use of race, color, ethnicity or national origin – as the determinative factor for initiating police action,²⁵ as well as the New York Code, which contains a similar prohibition.²⁶

Formal Request

In an effort to better understand the policies, procedures, and scope of the NYPD’s intelligence activities – particularly in Muslim, Arab and South Asian (MASA) communities – the Brennan Center, Muslim Advocates, and AALDEF request the following documents.

Our request is limited to documents prepared or dated after September 11, 2001 to the present. It covers both documents maintained in the NYPD’s normal intelligence database, as well as documents maintained in other computers or databases, such as those reportedly kept on a computer at Brooklyn Army Terminal.²⁷

1. Records, documents, guidelines, or procedures detailing NYPD’s record-keeping and record-retention protocols, including system metadata associated with the records sought in this request.²⁸
2. Records²⁹ relating to³⁰ any formal or informal agreements between the CIA and the NYPD relating to counterterrorism, intelligence gathering, surveillance, or training, as well as

²² P.G. 212-72, app. B, pt. VIII(B)(1).

²³ P.G. 212-72, app. B, pt. VIII(B)(2).

²⁴ P.G. 212-72, app. B, pt. VIII(B)(3).

²⁵ N.Y. POLICE DEPARTMENT, OPERATIONS ORDER 11, DEPARTMENT POLICY REGARDING RACIAL PROFILING (2002).

²⁶ N.Y. ADC. LAW § 14-151.

²⁷ Apuzzo & Goldman, *supra* note 2.

²⁸ In *Irwin v. Onondaga County Res. Recovery Agency*, 895 N.Y.S.2d 262, 268 (N.Y. App. Div. 2010), the Supreme Court, Appellate Division addressed disclosure of “system metadata,” defined as “automatically generated information about the creation or revision of a document, such as the document’s author, or the date and time of its creation or modification. System metadata is not necessarily embedded in the document, but can be obtained from the operating system or information management system on which the document was created.” *Id.* at 267. The court held that system metadata, “which is at its core the electronic equivalent of notes on a file folder indicating when the documents stored therein were created or filed, constitutes a ‘record’ subject to disclosure under FOIL.” *Id.* at 268 (citing Pub. Off. Law § 86(4)).

records relating to any cost-sharing arrangements relating to these agreements, and documentation of legal authority for any agreements identified.

3. Records of leads or other information involving possible terrorist related activity involving an individual, group, or organization that is engaged in political activity³¹ reported to the Intelligence Division Operations Desk or other unit of the NYPD,³² including³³ records that reflect:
 - a. the identifying number associated with the lead (“incident number”);
 - b. the source of the lead (NYPD personnel/civilian/other);
 - c. the total number of leads recorded each year; and/or
 - d. the “political activity”³⁴ involved.
4. Records of any telephone interviews³⁵ or other information gathering effort conducted to follow up on the leads or other information involving possible terrorist related activity referenced in paragraph 3 of this request, including records that reflect:
 - a. the incident number;
 - b. the total number of follow-up telephone interviews conducted per year; and/or
 - c. any additional information relating to “political activity” gathered in the course of the interview.
5. Records of Investigative Statements or similar documents submitted to Authorizing Officials requesting approval to conduct a Preliminary Inquiry or a Full Investigation involving possible terrorist related activity, or to conduct a Terrorism Enterprise Investigation,³⁶ involving any individual, group, or organization that is engaged in political activity, including records that reflect:

²⁹ Section 86(4) of FOIL defines records as “any information kept, held, filed, produced or reproduced by, with or for an agency or the state legislature, in any physical form whatsoever including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.” N.Y. Pub. Off. Law § 86(4) (McKinney 2003).

³⁰ Hereinafter, the words “relating to” should be interpreted to encompass the terms “containing information about, reflecting, identifying, mentioning, referring to, or summarizing.”

³¹ Throughout this letter, the phrase “political activity” has the meaning ascribed to it in the Patrol Guide: “The exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.” P.G. 212-72
³² P.G. 212-72.

³³ Throughout this letter, the phrase “including records that reflect” or similar language is followed by examples of records or information that would be covered by the request at issue. These examples are for illustrative purposes and are not intended to narrow the request.

³⁴ P.G. 212-72 (defining “political activity” as “the exercise of a right of expression or association for the purpose of maintaining or changing governmental policies or social conditions.”)

³⁵ *Id.* at 212-72.

³⁶ *Id.* at app. B, pt. V(D).

- a. the incident number;
 - b. the total number of each category of investigation (i.e. Preliminary Inquiry, a Full Investigation, or a Terrorism Enterprise Investigation) authorized per year;
 - c. the “political activity” involved;
 - d. the total number of requests for undercover agents or confidential informants;
 - e. the number of times requests for undercover agents or confidential informants were approved; and/or
 - f. the number of times a Preliminary Inquiry or Full Investigation involving possible terrorist related activity, or Terrorism Enterprise Investigation, was commenced without an Investigative Statement on the grounds of exigency.³⁷
6. Records of Investigative Statements or similar documents relating to possible terrorist related activity involving any individual, group, or organization that is engaged in political activity and endorsements by Authorizing Officials submitted to the Deputy Commissioner, Intelligence for final approval,³⁸ including records that reflect:
- a. the incident number;
 - b. the total number of each category of investigation (i.e. Preliminary Inquiry, a Full Investigation, or a Terrorism Enterprise Investigation) authorized per year;
 - c. the “political activity” involved;
 - d. the total number of requests for undercover agents or confidential informants; and/or
 - e. the number of approvals of requests for undercover agents or confidential informants.
7. Records of reports of investigative activity involving possible terrorist related activity involving an individual, group, or organization that is engaged in political activity submitted by Investigative Units to Assigned Supervisors,³⁹ including records that reflect:
- a. the incident number;
 - b. the total number of reports submitted for each category of investigation (i.e. Preliminary Inquiry, a Full Investigation, or a Terrorism Enterprise Investigation) per year; and/or
 - c. the “political activity” involved.
8. Records of reviews by Assigned Supervisors of reports of investigative activity involving possible terrorist related activity⁴⁰ involving an individual, group, or organization that is engaged in political activity, including records that reflect:
- a. the incident numbers;

³⁷ *Id.* at app. B, pt. II(2).

³⁸ *Id.* at pts. 7(a)-(b).

³⁹ *Id.* at pts. 10-11.

⁴⁰ *Id.* at pts. 12-13.

- b. the total number of reports reviewed for each category of investigation (i.e. Preliminary Inquiry, a Full Investigation, or a Terrorism Enterprise Investigation) per year;
 - c. total number of reports of investigative activity approved and forwarded to the Commanding Officer of the Unit; and/or
 - d. the “political activity” involved.
9. Results of reviews by all Commanding Officers of Investigative Units assigned to investigations of possible terrorist related activity involving an individual, group, or organization that is engaged in political activity for purposes of verifying that the investigation was conducted in compliance with relevant Guidelines,⁴¹ including records that reflect:
- a. the incident numbers; and/or
 - b. the total number of reviews conducted by Commanding Officers per category of investigation (i.e. Preliminary Inquiry, a Full Investigation, or Terrorism Enterprise Investigation) per year and the number of investigations approved by the Commanding Officers.
10. Results of all reviews by the Deputy Commissioner of Intelligence of investigations of possible terrorist related activity involving an individual, group, or organization that is engaged in political activity for purposes of verifying that the investigation was conducted in compliance with relevant Guidelines,⁴² including records that reflect:
- a. the incident numbers; and/or
 - b. the total number of reviews conducted by the Deputy Commissioner of Intelligence per category of investigation (i.e. Preliminary Inquiry, a Full Investigation, or a Terrorism Enterprise Investigation) per year and the number of investigations approved by the Deputy of Intelligence.
11. Reports from the Deputy Commissioner of Intelligence concerning the status and outcome of investigations conducted under the Handschu Guidelines or involving “political activity.”⁴³
12. Guidelines, policies and procedures⁴⁴ (in addition to the Patrol Guide) relating to NYPD units that carry out counterterrorism surveillance or information gathering, including:
- a. Demographic Unit or any unit or group that performs the functions of the type attributed to the Demographic Unit by the AP Article;⁴⁵

⁴¹ *Id.* at pt. 14.

⁴² *Id.* at pt. 15.

⁴³ *Id.* at pt. 16.

⁴⁴ The terms, “guidelines,” “policies,” and “procedures,” shall include but not be limited to legal or other memoranda, protocols, directives, orders, guidance, rules, manuals, training materials, powerpoint presentations, or instructions.

- b. Terrorist Interdiction Unit;⁴⁶
 - c. Special Services Unit;⁴⁷ and/or
 - d. Any other NYPD or joint NYPD-CIA unit engaged in counterterrorism surveillance or information gathering.
13. Guidelines, policies, and procedures (in addition to the Patrol Guide) applicable or relating to:
- a. the conduct of general topical research of the type described in Patrol Guide part VIII(B)(1);
 - b. preparation of reports or assessments of the type described in Patrol Guide part VIII(B)(3), or other types of information gathering about particular religious, racial, or ethnic communities, including MASA communities;
 - c. the NYPD's mapping,⁴⁸ or reports or other similar analysis, of particular religious, racial or ethnic communities, including MASA communities;
 - d. the identification, recruitment (including through use of incentives), and vetting of informants for use in investigations and intelligence-gathering activities, including but not limited to guidelines, policies and procedures relating to the "debriefing program" mentioned in the AP Article;⁴⁹ and
 - e. the NYPD's sharing of information about informants with the CIA or other agencies.
14. Records identifying the identification, tracking, and information systems in which the NYPD participates for the purpose of identifying and locating potential terrorists and supporters of terrorist activity, as described in the August 24, 2001 AP report.⁵⁰
15. Records identifying services or resources (whether nonprofit or commercial) that compile or analyze information for counterterrorism purposes and are used by the NYPD.⁵¹
16. Records relating to visits by NYPD officers or agents to events open to the public⁵² that took place in or related to: MASA communities; businesses owned or frequented by members of MASA communities; or MASA organizations, including visits to mosques and Muslim student organizations.
17. Records relating to visits by NYPD officers or agents to businesses owned or frequented by members of the MASA community or to MASA organizations in order to gather information

⁴⁵ Apuzzo & Goldman, *supra* note 2.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ P.G. 212-72, *supra* n. 1, app. B, pt. VIII(A)(1).

⁵¹ *Id.*

⁵² *Id.*, app. B, pt. VIII(A)(2).

for official purposes, including any lists of individuals, businesses, or organizations compiled based on such visits.

18. Records (including maps) relating to general topic research of the type authorized by Patrol Guide part VIII(B)(1), carried out by NYPD officers or agents relating to MASA individuals, mosques, Islamic centers, Muslim community centers, Muslim student associations, and businesses owned or frequented by members of the MASA community (and individuals associated with these institutions), including research relating to:
 - a. mosques;⁵³
 - b. businesses owned by members of these communities or catering to them;⁵⁴
 - c. student groups;⁵⁵
 - d. charities; and/or
 - e. financial transactions.

19. Records (including maps) relating to general reports and assessments of the type authorized by Patrol Guide part VIII(B)(3) prepared by the NYPD relating to MASA individuals, mosques, Islamic centers, Muslim community centers, Muslim student associations, and businesses owned or frequented by members of the MASA community (and individuals associated with these institutions), including but not limited to reports and assessments relating to:
 - a. mosques;⁵⁶
 - b. businesses owned by members of these communities or catering to them;⁵⁷
 - c. student groups;⁵⁸
 - d. charities; and/or
 - e. financial transactions.

20. Records provided by the New York Taxi and Limousine Commission (“TLC”) to the NYPD in connection with the NYPD’s counterterrorism investigations or information gathering activities and records reflecting the NYPD’s request for such records from the TLC.⁵⁹

21. Records relating to instances in which the NYPD used an informant to investigate or gather information relating to MASA individuals, mosques, Islamic centers, Muslim community

⁵³ Apuzzo & Goldman, *supra* note 2.

⁵⁴ *Id.*

⁵⁵ Matt Apuzzo and Adam Goodman, A.P., *NYPD Eyed 250-plus Mosques, Student Groups*, Sept. 6, 2011, available at http://www.salon.com/news/new_york_city/index.html?story=/news/feature/2011/09/06/us_nypd_intelligence.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ Apuzzo & Goldman, *supra* note 54.

⁵⁹ *Id.*

centers, Muslim student associations, and businesses owned or frequented by members of the MASA community (and individuals associated with these institutions), including:

- a. records reflecting the number of such informants;
 - b. records reflecting the immigration status of any such informants;
 - c. records reflecting the NYPD's consideration or discussion of the immigration status of, or criminal charges pending against, an such informant;
 - d. records reflecting the number of such informants who have immigration or criminal proceedings pending against them or who wish to obtain an immigration benefit of some type (e.g., a green card); and/or
 - e. records reflecting the aggregate and mean amounts paid to informants.
22. Records relating to instances in which NYPD officers solicited information about MASA individuals, mosques, Islamic centers, Muslim community centers, Muslim student associations, and businesses owned or frequented by members of the MASA community (and individuals associated with these institutions), without revealing their affiliation or the true purpose of the request.
23. Records relating to instances in which NYPD officers conducted surveillance or other information gathering activities outside New York City.
24. Records, data, or statistics indicating the number of undercover officers used by the NYPD to investigate or gather information about MASA individuals, mosques, Islamic centers, Muslim community centers, Muslim student associations, and businesses owned or frequented by members of the MASA community (and individuals associated with these institutions).
25. Records, data, or statistics indicating the number of instances in which the NYPD used physical surveillance to gather information about mosques, Islamic centers, Muslim community centers, Muslim student associations, and businesses owned or frequented by members of the MASA community (and individuals associated with these institutions).
26. Records relating to intelligence gathering about mosques, Islamic centers, Muslim community centers, Muslim student associations, and businesses owned or frequented by members of the MASA community (and individuals associated with these institutions) by the NYPD, including:
- a. The names of the entities or persons about whom intelligence was gathered;
 - b. Duration of the intelligence gathering;
 - c. Reason for intelligence gathering;
 - d. Whether intelligence gathering involved NYPD officers or informants, or both;
 - e. Whether intelligence gathering led to opening a Preliminary Investigation or Full Investigation;
 - f. Whether investigation led to prosecution;

g. If prosecution initiated, the charges and basis for the prosecution.

Response Within Five Business Days

The Brennan Center, Muslim Advocates and AALDEF appreciate the NYPD's attention to this request, and expect that the NYPD will send, within five days of receipt, its legally mandated response. *See* N.Y. Pub. Off. Law § 89(3)(a).

We are aware that some of the records requested above may contain information that is exempt from disclosure. For records that contain some exempt material and some non-exempt material, we request that you release the requested records with appropriate redactions, in accordance with the FOIL and related case law.⁶⁰

We also recognize that it may take longer to provide certain categories of the documents listed in our request than others. We therefore request that you provide us with documents as they become available rather than waiting to provide a complete set of documents. We also request that you provide us with the documents in electronic format where possible.⁶¹

Should you have questions concerning this request, please contact Faiza Patel by telephone at (646) 292-8325, via e-mail at faiza.patel@nyu.edu, or at the address listed above.


Very truly yours,



Faiza Patel
Co-Director, Liberty and
National Security Program
Brennan Center for Justice



Farhana Khera
Executive Director
Muslim Advocates



Ken Kimerling
Legal Director
Asian American Legal
Defense & Education Fund

⁶⁰ *See, e.g., Gould v. New York City Police Dep't.*, 89 N.Y.2d 267, 275 (1996) (“blanket exemptions for particular types of documents are inimical to FOIL's policy of open government”).
See N.Y. Pub. Off. Law § 89(3)(b) (McKinney 2008) (“All entities shall, provided such entity has reasonable means available, accept requests for records submitted in the form of electronic mail and *shall respond to such requests by electronic mail*”) (emphasis added).