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December 4, 2015

VIA FIRST CLASS MAIL

Jonathan David  
Records Access Appeal Officer  
New York City Police Department  
One Police Plaza Room 1406  
New York, NY 10038

Re: *Appeal of Denial of FOIL Request 2015-PL-1004*

Dear Jonathan David:

Please take notice that I represent FOIL requester [REDACTED] in connection with the above-referred FOIL request, submitted to the NYPD in January of 2015. Please accept this letter as notice of the requester's appeal of the NYPD's determination of this request. Requester reserves the right to submit additional information and materials in support of this appeal, but intends that the instant letter will serve as notice of said appeal and the grounds therefore.

[REDACTED] requested documents relating to surveillance of "Black Lives Matter" protests and demonstrations, and interagency communication in support thereof. NYPD documents pertaining to the surveillance that are already available in the public domain show that the NYPD's justifications for withholding documents are completely baseless. Furthermore, taken with these documents, the NYPD's own justifications for withholding documents would seem to indicate that the NYPD is systematically violating the spirit, if perhaps not the precise letter, of the consent decree in the matter of *Handschu v. Special Services Division*, SDNY 71CV2203, in that it appears that the NYPD is conducting coordinated surveillance of non-criminal political activities in conjunction with other agencies in an attempt to end-run Court-imposed restrictions on the NYPD's own activities.

Certain requested documents have allegedly been withheld because "if disclosed would constitute an unwarranted invasion of privacy." Requester has no objection to the redaction of personal information that would actually affect privacy in a release of documents pursuant

to FOIL, to wit, the contact information, identification numbers, or other private information of individuals who have generated responsive materials, but the identities of said individuals and their communications are not protected by the Public Officers Law as Lieutenant Mantellino from your department contends.

Lieutenant Mantellino's response additionally alleges that disclosures "could endanger the life or safety of any person." This contention is simply incorrect, and suggests an anticipation of potential consequences that are not within the realm of realistic concern. Documents previously obtained from the more timely responses of the Metropolitan Transportation Authority to ██████████ requests have been published by the online periodical The Intercept, including documents with not only the names and identities of specific protesters, but also the names of the uniformed officers tasked with monitoring the protests. In the months since the publication of that information, absolutely zero acts have occurred in response to these prior disclosures that would warrant the concern raised by Lieutenant Mantellino. MTA PD redacted the names of certain plain-clothes police officers to address the concern raised by Lieutenant Mantellino, and while we feel that such a redaction would be unwarranted here, it demonstrates the existence of a remedy more in keeping with the purpose of the FOIL law than withholding all documents on the basis of speculative and unfounded safety concerns.

Lieutenant Mantellino additionally contends that any release of documents would "interfere with law enforcement investigations or judicial proceedings." As an attorney who has represented literally hundreds of persons arrested for political expression, I can personally aver to the nonsensicality of this justification for withholding documents. In the course of all of my defenses of persons arrested for expressive political activity, including several dozen individuals arrested for violation charges at Black Lives Matter protests, I can state unequivocally that NYPD documents of any sort have never been introduced in support of any such prosecutions. To the extent that the NYPD or NYPD officers have explicit, present intention to introduce any particular documents in the prosecution or investigation of any particular person, they are free to withhold same; however, it is simply unbelievable that the NYPD has no responsive documents not related to presently-instituted investigations or proceedings.

Lieutenant Mantellino also contends that responsive documents, if disclosed "could identify a confidential source or disclose confidential information relating to a criminal

investigation.” Again, this concern could be mitigated simply by redacting names, as the MTA PD did. However, to the extent that the NYPD is utilizing confidential sources or undertaking confidential investigations of Black Lives Matter activists, such methods may likely fall outside of the NYPD’s lawful capabilities under *Handschu*. To the extent that this basis of denial is continued, requester shall draw the inference that the NYPD is maintaining its refusal to disclose pursuant to FOIL in order to avoid admitting to routine violations of the *Handschu* decree as related to Black Lives Matter demonstrators.

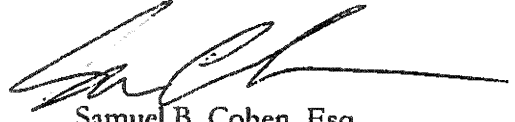
Lieutenant Mantellino additionally refuses disclosure on the contention that such information, if disclosed, “would reveal non-routine techniques and procedures.” This statement again suggests the NYPD is engaging in continuing and knowing violation of *Handschu*, and is additionally preposterous due to the non-existence of documented routine techniques and procedures for NYPD investigations generally. Having deposed a number of NYPD officers on this subject, I can state with some certainty that while procedures exist for buy-busts and other forms of standardized enforcement activities, NYPD training and procedures around policing of First Amendment protected activities appear to consist entirely of officer assembly formations for use at demonstrations. To the extent that any routine techniques or procedures exist for surveilling public demonstrations, they are demanded under the initial demand. To the extent that specific procedures exist for surveilling Black Lives Matter events, these procedures are presumptively unlawful, and maintaining this ground for denial will cause requester to infer that the NYPD is deliberately withholding information that would show that it is engaging in unlawful activities.

Finally, Lieutenant Mantellino contends that both inter-agency and intra-agency materials are exempt from disclosure under the Public Officers Law. This is a simple and broad misstatement of the law, as literally all materials in the possession of the NYPD are either inter-agency or intra-agency materials, and requester deems this denial to be improperly interposed as such.

In light of the foregoing, we look forward to reviewing the obviously extensive documents that the NYPD has collected in response to [REDACTED] requests. Please do not hesitate to contact me to discuss any aspect of this matter.

I remain,

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'S. B. Cohen', with a long horizontal flourish extending to the right.

Samuel B. Cohen, Esq.