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John Houton
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

December 28, 2009

Re: Public Records Request / Suspicious Activities Reporting policies & procedures

Dear Mr. Houton:

This letter constitutes a request under the Public Records Law, Mass. Gen. Laws ch. 66, §10 for documents made or received by the Boston Police Department and Boston Regional Intelligence Center. The request is made on behalf of Political Research Associates (“PRA”) and the American Civil Liberties Union Foundation of Massachusetts (“ACLUM”).

This request seeks documents regarding the Boston Police and the Boston Regional Intelligence Center’s use of Suspicious Activities Reports.

Background

According to the U.S. Department of Justice, the Boston Police Department is one of a small number of local law enforcement agencies participating in the National Suspicious Activity Reporting Initiative (NSI), which allows for the nationwide sharing of intelligence gathered by local, state and federal law enforcement agencies through the national Information Sharing Environment. We understand that the purpose of this program is to create what has been described as an “Evaluative Environment” in several key cities, including Boston.

Under this initiative, the information is shared by using standardized Suspicious Activity Reports (SAR), defined as “[o]fficial documentation of observed behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, criminal, or other illicit

intention.”¹ A “suspicious activity” is defined as “observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity.”² According to the U.S. Department of Justice, SARs that are deemed to be related to terrorism are entered into the JTTF, Fusion Center, ISE and eGuardian at two points: first if the potential SAR is determined to be an immediate threat; then after a processing of the SAR; and lastly, once reasonable suspicion is established.³

While the Boston Police Department traditionally has documented inquiries by police officers into suspicious activities, the standards set forth in SAR reporting system suggest a broader inquiry, which may touch on activities that are not related to crimes. These reports apparently are intended to be included in the national Information Sharing Environment (ISE). It is for that reason that we make this request for information to inform the public regarding matters of public concern, specifically whether BPD and BRIC policies, procedures, and training have been adopted and instituted to guarantee Massachusetts residents’ constitutional rights in light of this federal directive.

Documents Requested

Please provide copies of the following public records created from January 1, 2006 to the present:

1. Records indicating the number of:
 - a. SARs created by the Boston Police Department
 - b. SARs reported to the Commonwealth Fusion Center (CFC)
 - c. SARs reported to the Boston Regional Intelligence Center (BRIC)
 - d. SARs reported to federal systems including eGuardian, the Information Sharing Environment (ISE) and the FBI Joint Terrorism Task Force (JTTF).

2. Any and all agreements between the Boston Police and other law enforcement agencies that include the use of SARs; any and all agreements between BRIC and other law enforcement agencies that include the use of SARs. Such agencies include the Massachusetts State Police, the FBI Joint Terrorism Task Force and the Commonwealth Fusion Center.

¹ *Information Sharing Environment (ISE) Functional Standard Suspicious Activity Reporting (SAR) Version 1.0*, p.6, available at: <http://www.ise.gov/pages/ctiss.html>

² *Information Sharing Environment (ISE) Functional Standard (FS) Suspicious Activity Reporting (SAR) Version 1.5*, available at: <http://www.ise.gov/pages/sar-initiative.aspx>

³ U.S. Dep’t of Justice, *Findings and Recommendations of the Suspicious Activity Report (SAR) Support and Implementation Process*, Oct. 2008, http://it.ojp.gov/documents/SAR_Report_October_2008.pdf

3. Final memoranda, policies, procedures, directives, guidance, legal analysis, and training materials pertaining to:
 - a. The definition of “suspicious activity” that may be collected and documented as a SAR;
 - b. Any departmental order mandating the SAR process;
 - c. The standards and procedures used to evaluate what information should or can be reported to the CFC, BRIC, eGuardian, ISE or JTTF;
 - d. The standards and procedures used to evaluate what SARs should be rejected or not reported to the CFC, BRIC, eGuardian, ISE or JTTF;
 - e. The verification and maintenance of the accuracy of data in recorded using SARs.
 - f. The retention or destruction information recorded using SARs;
 - g. The use or consideration of race, religion, national origin and/or ethnicity as factors to support the recording of information using SARs;
 - h. Information regarding which Boston Police Department officials are responsible for determining whether SARs are reported to the CFC, BRIC, eGuardian, ISE or the JTTF;
 - i. Boston Police and BRIC’s compliance with 28 CFR Part 23 in using SARs, including any documents that describe when SAR information is subject to 28 CFR Part 23 requirements.
4. Intra-agency correspondence or correspondence with local, state, or federal agencies regarding the NSI or SAR.
5. Records concerning evaluations, tests, analyses, and/or assessments of:
 - a. The implementation of and/or performance of the NSI/SAR system;
 - b. The effectiveness and/or ineffectiveness of the NSI/SAR system, including the standards, procedures, and analyses used to evaluate what information should or can be reported or disseminated;
 - c. The accuracy of information reported through SARs;
 - d. Problems with the NSI/SAR system.
6. Records concerning complaints about, investigations of, and/or disciplinary actions related to the misuse or abuse of SARs.
7. Copies of templates or forms used in the filling out of SARs; copies of templates of other types of incident reports that include a field to capture SAR data.
8. The Boston Police Department’s Privacy and Civil Liberties Policy, as concerns SARs, including any and all related documents and correspondence.

Because this request involves a matter of public concern and because it is made on behalf of two nonprofit organizations, we ask that you waive any copying costs pursuant to 950

C.M.R. § 32.06(5). PRA is a nonprofit, educational § 501(c)(3) organization that conducts research and routinely and systematically informs the public about the civil liberties implications of domestic security practice, policies, and legislation through its website, www.publiceye.org, a quarterly journal, *The Public Eye*, a blog, and radio appearances. ACLUM is a nonprofit §501(c)(3) organization dedicated to the protection of civil rights and liberties for all persons in the Commonwealth of Massachusetts. As the state's affiliate of the American Civil Liberties Union, ACLUM is part of a nationwide network of advocates dedicated to defending and expanding the civil liberties of all.

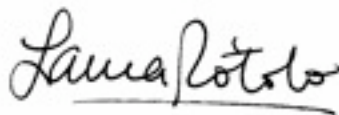
If you decide not to waive copying costs, we request that you permit us to examine, at our election, the responsive documents before deciding which portions to photocopy.

Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt.

Please reply to this request to by contacting Laura Rótolo at (617) 482-3170 x311 or through email at lrotolo@aclum.org.

Thank you for your assistance. We look forward to your response.

Sincerely,

A handwritten signature in black ink that reads "Laura Rótolo". The signature is written in a cursive style with a horizontal line underneath the name.

Laura Rótolo
ACLUM Staff Attorney

Thomas R. Cincotta
PRA Civil Liberties Project Director