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January 15, 2016

**Via Email and U.S. Mail**

Nicole I. Taub, Esq.  
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Boston Police Department  
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*Re: Public Records Request for FIO Records from May 2015 to December 2015*

Dear Attorney Taub:

The ACLU of Massachusetts would like to thank the Boston Police Department for publicly disclosing significant portions of the Department's field interrogation and observation ("FIO") reports from January 2011 to April 2015. I write to request that such disclosures be made regularly, and to make a public records request for FIO records for the remainder of 2015.

As you know, the FIO data disclosed by the BPD on Friday, January 8, was sought in a September 2014 public records request from the ACLU of Massachusetts and the national ACLU. The data is also at issue in a lawsuit we filed in August 2015. See *ACLU of Massachusetts v. Evans*, No. 1584-cv-02373. We are grateful for your efforts to work with us to resolve that case, and we are encouraged by the BPD's decision—in response to our lawsuit—to release to the entire public much of the data at issue.

But it should not have taken 16 months and a lawsuit to bring this data to the public. Going forward, we ask that the Department publish regularly and contemporaneously on the City of Boston's Open Data Portal.

This regular publication is warranted not just because the data belongs to the people, but also because it reveals stark and consistent racial disparities. In a press release, the BPD has said that 58.5% of the street-level encounters from January 2011 to April 2015 targeted Black people, even though less than a quarter of Boston is Black. The BPD has also conceded that the disparities show no signs of

improvement from 2011 to 2015; in the Department's words, the "racial distributions remain fairly stable over each year."

But it's actually worse than that. If the BPD had done its calculations correctly, it would have reported an even higher percentage of encounters involving Black subjects. There are a few different ways to do these calculations, but even the most conservative approach would have limited the analysis to the 96% of entries in which the subject's race was either provided or listed as "unknown." Black people were the subjects of **60.9%** of those entries (87540 Black FIO subjects out of 143635 people). And, as reflected in the following year-by-year breakdown, there are no current signs of improvement:

- 2011: 59.6% Black (19771 out of 33163)
- 2012: 60.4% Black (23533 out of 38946)
- 2013: 62.2% Black (19903 out of 32022)
- 2014: 61.6% Black (20339 out of 33027)
- 2015: 61.7% Black (3994 out of 6477)

As you know, academic researchers briefed the BPD in June 2012 and March 2014 concerning racial disparities they had observed in FIO data from 2007 to 2010. Nevertheless, the disparities did not decline after these briefings. Black people were 61.8% of the total encounters from January 2013 to April 2015.

Even if some of these raw disparities are explained by crime rates and other non-race factors, there are also important indicators of racial *discrimination*. As you know, the researchers who reviewed BPD encounters with civilians from 2007 to 2010 found racially disparate treatment after controlling for crime and gang activity. See Jeffrey Fagan, *et al.*, "[Final Report\[:\] An Analysis of Race and Ethnicity Patterns in Boston Police Department Field Interrogation, Observation, Frisk, and/or Search Reports](#)," June 15, 2015, at ii ("These analyses revealed racially disparate treatment of minority persons in BPD FIO activity"); *id.* at 8 ("The pattern of race effects suggests evidence of disparate treatment in FIO activity based on neighborhood racial composition"). Although the data cannot capture whether racial disparities are caused by *individual* bias—because it cannot assess the thought process of individual officers—it can't be attributed to crime either. See *id.* at 21 (discussing "processes of racial discrimination").

Since at least September 2014, we have consistently urged the BPD to adopt specific measures that would reduce racial discrimination and promote greater transparency and accountability, including improved policies and training, the use of body-worn cameras, providing receipts to civilians who are subject to police encounters, and the regular publication of FIO data.

We appreciate that the BPD has pledged to adopt some of these reforms, including its announcement of an intention to begin a body-camera pilot program this spring. We also urge the Department to work with the Mayor's office to track any progress that is made through these reforms. One possible mechanism for doing so would be to incorporate a metric concerning racially disparate policing into Boston's "[CityScore](#)." It has been reported the CityScore is based on an algorithm designed to ascertain Boston's "overall performance." Jess Bidgood, [Tracking Boston's Progress with Just One Number](#), N.Y. Times, Oct. 8, 2015. Given the enormous racial disparities in the recently-published data, and given the prior finding of disparate treatment, it is difficult to see how any assessment of the City's performance could be credible without accounting for racial justice in policing.

In the meantime, because we are not yet certain whether the BPD intends to regularly publish current FIO data on its own accord, my office will continue to ensure public access to FIO data by seeking it via public records requests. Accordingly, under the Massachusetts Public Records Law, G.L. c. 66, § 10, please consider this letter a request for FIO reports from May 2015 to December 2015. Specifically, please provide all reports for FIOs conducted between May and December 2015, including but not limited to:

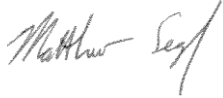
- the location, district, date, and time of the FIO;
- the age, gender, race, ethnicity, complexion, clothing, and address of the subject, and whether the subject was reported as having a prior record;
- the FIOFS type, and whether terrorism was involved;
- the motor vehicle state, make, year, color and model/body, and whether the subject was the occupant or driver of the motor vehicle;
- the type of search conducted and the basis for the search; the reason for the stop and "FIOFS" reason (including any narrative explanations);
- the outcome of the encounter;
- any comments noted on the FIO form;
- the officer and supervisor names and IDs, and the officer's district; and
- the date and time the FIO was filled out, entered into the database, or revised, along with the corresponding user names.

Please provide a response to this request within 10 days, as required by G.L. c. 66, § 10(b). We request that these records be provided in electronic form, in a Microsoft Access or comparable document format. In addition, if you believe that any portion of this request is subject to an exemption from the Massachusetts Public Records Law, please identify the exemption with specificity. G.L. c. 66, § 10(c). Finally, because this request involves a matter of public concern and is made on behalf of a nonprofit organization, I ask that you waive any costs pursuant to 950 CMR 32.06(5).

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I look forward to working with you to resolve this specific request and, more broadly, to ensure that making this kind of data available to the public will no longer require litigation. My office is always prepared to meet at your convenience with you or with other BPD officials. Certainly the Department's publication of FIO data from 2011 to April 2015 is a step in the right direction.

Sincerely,

A handwritten signature in black ink that reads "Matthew Segal". The signature is written in a cursive style with a long, sweeping underline.

Matthew R. Segal