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PRELIMINARY REPORT OF THE PUBLIC SAFETY REVIEW COMMISSION REGARDING THE DENVER POLICE DEPARTMENT INTELLIGENCE FILES

August 21, 2003

INTRODUCTION

This Commission received a complaint from the All Nations Alliance, requesting an investigation into the Denver Police Department's ("DPD") collection, creation, maintenance, and dissemination of intelligence information (the "Spy files"). This Commission reviewed numerous documents and considered comments and information provided by individuals during its public meetings. This Commission also considered the testimony of Denver Chief of Police, Gerry Whitman, former City Attorney, J. Wallace Wortham, Intelligence Bureau secretary, Kathleen Miklich, and Intelligence Bureau Chief, Lieutenant Judith Will. The Commission subpoenaed Denver Police Detectives Abe Alonzo, David Pontarelli, Joel Humphries, and Raymond Ayon to testify before the Commission. Because Detectives Alonzo, Pontarelli, Humphries, and Ayon presently and/or previously conducted surveillance on individuals for many years, the Commission sought their testimony to clarify DPD's custom and practice with respect to the Spy files. Those officers refused to honor the Commission's subpoenas to testify in open session, and thus this Commission filed contempt proceedings against them. The contempt proceedings are pending in the District Court for the City and County of Denver.

Because this Commission's investigation has been significantly hampered by the refusal of Officers Alonzo, Pontarelli, Humphries and Ayon to testify, the Commission issues this Preliminary Report to set forth its initial recommendations. The Commission intends to submit a comprehensive report setting forth its findings and recommendations following the testimony of Officers Alonzo, Pontarelli, Humphries, and Ayon. In addition, the Commission may subpoena additional documents and individuals to testify concerning the Spy files prior to issuing a final report.

PRELIMINARY STATEMENT

The Intelligence Bureau of the DPD has conducted surveillance on Denver residents and others engaging in peaceful protest activities for more than a quarter of a century. Prior to 2001, the DPD failed to have adequate policies and guidelines in place to ensure that the DPD's activities furthered legitimate law enforcement goals and to ensure that the DPD did not violate the First Amendment rights of individuals to peacefully assemble and engage in peaceful protests. Neither Chief Whitman, nor the other witnesses who testified to date before this Commission, have been able to provide comprehensive information regarding how officers identified the subjects of their surveillance activities; whether officers engaged in racial profiling

in the selection of surveillance subjects; how officers conducted the surveillance; how officers classified and labeled the information gathered on subjects; how officers collected and stored the information; how officers purged information from their files; whether officers destroyed information to avoid potential liability for violating individual rights; and how and to whom the officers disseminated the information. No investigation can be complete, and the DPD can not restore the public's trust in its actions until this critical information is disclosed to this Commission and to the citizens of the City and County of Denver. The Commission looks forward to continuing its investigation into these areas.

On May 7, 2003, the DPD implemented Policy 118.03 (the "Policy"), which prohibits the DPD from collecting information on individuals or groups merely on the basis of involvement in expressive activity that takes the form of non-violent civil disobedience that amounts, at most, to a misdemeanor offense. On May 15, 2003, J. Wallace Wortham testified that the Policy does not legally bind Denver employees who work in concert with federal authorities who are not bound by the Policy. Chief Whitman, however, testified that he interpreted the Policy to apply to all DPD employees, regardless of their participation with authorities that are not required to comply with the Policy, such as the Federal Bureau of Investigation's Joint Terrorism Task Force ("JTTF"). The discrepancy in the applicability of the Policy raises serious concerns. In addition, questions remain concerning the specific operation of the Policy. Based on the information provided, the Commission offers the following recommendations:

PRELIMINARY RECOMMENDATIONS

1. City Adoption by Ordinance of Policy 118.03

In order to ensure that the rights of individual citizens are protected, the Commission recommends that Denver City Council pass an ordinance requiring all DPD employees, including officers and employees who engage in joint activities with other law enforcement authorities, to adhere to the provisions of the Policy without exception. Thus, officers who work in concert with authorities such as the JTTF, would be legally prohibited from engaging in activities with the JTTF that contravene the Policy. In addition, the adoption of the Policy by the City Council would prohibit DPD from changing the Policy. The City Council would have the ultimate authority to change the Policy. In the event that the Denver City Council elects not to pass an ordinance adopting the Policy, the Commission recommends that the DPD and Mayor officially state that all DPD employees are subject to and required to abide by the Policy regardless of their assignment or participation with other authorities.

2. Commission Oversight of Compliance with the Policy

The Commission believes that effective oversight of the DPD requires an independent body to review the DPD's compliance with its policies and procedures and to review the quality of the policies and procedures. The Commission is troubled that prior to 2001, the DPD failed to implement written policies with respect to the Spy Files to safeguard against violations of First Amendment and other rights. Additionally, this Commission is concerned that after implementation of a policy in 2001 that would have provided some protection against violations of the First Amendment rights of citizens of Denver, the DPD failed to take basic steps to ensure that the policy was implemented. Information provided to the Commission clearly shows that the DPD can not and will not police itself. The Commission recommends that following the first

quarterly audit in September 2003 of the DPD's implementation of and compliance with the Policy, it be designated as the auditor of the Policy to ensure that the DPD abides by the provisions of the Policy. The Commission requests adequate resources and funding to enable it to conduct a thorough audit and review of the DPD's adherence to the Policy.

3. Surveillance Information May Not Be Shared with Informal Organizations, Entities and/or Groups That Do Not Constitute Law Enforcement Authorities and/or Agencies

The Policy provides that Intelligence Bureau officers may disseminate intelligence information only to law enforcement authorities who agree in writing to follow the provisions set forth in the Policy for the receipt, maintenance, security and dissemination of such information. See Policy ¶ 7. On May 15, 2003, Lieutenant Judith Will testified that DPD officers share intelligence information with loosely formed law enforcement groups, for which there are no formal rules, bylaws, members of officers. The Multi-Agency Group Intelligence Conference ("MAGIC") is an example of such an organization. The Commission recommends that the Policy be amended to preclude DPD from sharing surveillance information with entities, such as MAGIC, for which no single individual or group of individuals can ensure that its participants abide by the Policy. In addition, the Commission recommends that the Policy define "law enforcement authority" and "law enforcement agency" to exclude entities such as MAGIC.

4. Commission Investigation of Misconduct by DPD Officers

The Commission is troubled by the following activities of DPD officers, which the Commission believes constitutes serious misconduct:

a. Intelligence Officers Targeted Subjects Based on Unpopular Speech

DPD officers targeted certain individuals and groups based solely on their expressed views. In many of the Spy files produced by citizens to this Commission, the sole information collected consisted of information regarding peaceful protests of Denver residents. In many instances, the officers followed, photographed, recorded license plate and other information and labeled peaceful protesters and groups as "criminal extremist." The Spy files show that certain officers engaged in this conduct after DPD implemented policies in January 2001 which clearly prohibited such conduct.

b. Intelligence Officers May Have Racially Profiled Individuals

The Commission is concerned that DPD officers may have racially profiled certain individuals and groups in their surveillance activities. The Spy files consist of ample surveillance information regarding Native American activists and groups advocating rights for Native American causes. Such activity is clearly contrary to DPD's racial profiling policy and other policies concerning racial discrimination.

c. Destruction of Spy Files By Officers

The DPD has indicated that DPD officers on their own volition or at the direction of supervisors destroyed Spy files by transporting the files to their home residences to use or

destroy as they saw fit. Additionally, there are allegations that the DPD may have destroyed Spy files to avoid civil and/or criminal liability.

The Commission recognizes that the DPD and individual officers who engaged in misconduct must be held accountable for their actions. The DPD will only be held accountable to the citizens of the City and County of Denver by a thorough investigation into the Spy files and through a mechanism where officers are disciplined for violating First Amendment and other rights of citizens. The Commission recommends that the Chief of Police and Mayor authorize and provide resources to the Commission to conduct a thorough, independent investigation into misconduct committed by individual officers, and to recommend discipline to be imposed. Further, the Commission recommends that the Mayor and Police Chief refer any criminal activity discovered to the appropriate authorities for prosecution. The Commission also recommends that any ongoing internal investigation into officer misconduct with respect to the Spy files be disclosed to the Commission.

5. Preservation of Spy File Information

The Commission believes that it is important to maintain and preserve the Spy files for historical purposes. With the understanding that the Colorado Historical Society has offered the use of its facilities to house and store the Spy files, this Commission recommends that the DPD transfer the documents to the Colorado Historical Society for preservation and storage, with adequate safeguards to ensure that the information is not used for unlawful purposes.

6. Public Apology to Residents of the City and County of Denver

The Commission recognizes that the community must have trust and confidence in its police force and that misconduct on the part of DPD fundamentally breaches public trust. The Commission also recognizes that accountability requires that DPD acknowledge wrongdoing, discipline wrongdoers, and apologize. The Commission recommends that DPD publicly apologize to the residents of the City and County of Denver for failing to ensure that its police force protected, rather than abused, the First Amendment rights of citizens to peacefully assemble and protest.

CONCLUSION

The Commission recommends that the Denver City Council, Police Chief and Mayor implement the measures set forth in this Preliminary Report. The Commission will make itself available to the City Council, Police Chief and Mayor to facilitate the implementation of these measures.