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Safeguarding Liberty, Justice & the Rule of Law

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December 12, 2012

Commissioner Edward Davis
Boston Police Department
One Schroeder Plaza
Boston, MA 02120

Dear Commissioner Davis:

We are writing to you regarding the recent report by the American Civil Liberties Union (ACLU) of Massachusetts and the National Lawyers Guild of Massachusetts concerning the monitoring and investigation of political activity by the Boston Police Department (BPD) and Boston Regional Intelligence Center (BRIC). The report summarized records showing that the BPD and BRIC have conducted surveillance on citizens and groups engaged in First Amendment protected activity, and subsequently created criminal intelligence reports on these political groups and leaders. The Constitution Project (TCP) shares the concerns of the ACLU and National Lawyers' Guild chapters, as set forth in our Liberty and Security Committee's recent report described below. We join in urging the BPD and BRIC to end these intrusive surveillance practices and create comprehensive policies that provide for accountability, transparency, and respect for constitutional liberties.

Earlier this fall, TCP's Liberty and Security Committee released a report outlining the risks that fusion centers across the country pose to civil liberties, and making recommendations for reforms: [*Recommendations for Fusion Centers: Preserving Privacy and Civil Liberties While Protecting Against Crime and Terrorism*](#) (copy enclosed). TCP is a nonprofit organization in Washington, DC that promotes and defends constitutional safeguards by bringing together liberal and conservative political leaders, policy experts, and legal scholars who share a common concern about preserving civil liberties. TCP works through our committees on criminal justice and rule of law issues by undertaking scholarship, policy reform, and public education initiatives. Our fusion centers report was developed by TCP's bipartisan Liberty and Security Committee. That committee was formed in the aftermath of the 9/11 attacks, and works to promote both national security and civil liberties.

The Committee's report on fusion centers can provide a foundation for future reform in the BPD and BRIC, and we enclose a copy with this letter. The report's recommendations cover three categories: data collection methods, data storage and use, and accountability. The report describes the risks of racial, religious, and political profiling created by Suspicious

Activity Reports (SARs), examines the threats to privacy rights presented by private sector partnerships, and explains how the vast network of databases created by fusion centers compounds the civil liberties risks of any data gathering practices that lack adequate safeguards . The report recommends a series of policy reforms and best practices based upon the Fair Information Practice Principles to mitigate these risks, including policies to incorporate and promote data minimization, use limitations, audit logs, transparency, and redress mechanisms.

The report's specific recommendations for fusion centers include the following:

- Fusion centers should establish guidelines that clearly prohibit personnel from engaging in racial and religious profiling. All fusion center personnel should be properly trained on constitutional rights of free expression, assembly, religion, and equal protection.
- Suspicious Activity Reports (SARs) should only be retained or shared if they demonstrate reasonable suspicion of criminal or terrorist activity.
- Fusion centers should ensure that immutable audit logs track all database activity.
- Privacy policies and the results of compliance audits should be publicized.
- Fusion centers should have effective and well-publicized redress processes for reviewing and challenging information held by a fusion center.

Many of these recommendations overlap with the specific calls for reform in the October 16, 2012 letter from the ACLU of Massachusetts and National Lawyers Guild of Massachusetts. Therefore, TCP joins these organizations in urging the Boston Police Department and Boston Regional Intelligence Center to reform the fusion center's practices regarding the monitoring of public demonstrations, and to implement comprehensive policies to safeguard civil liberties and promote transparency in the future.

We would appreciate the opportunity to discuss these matters with you. Please contact Sharon Bradford Franklin at 202-580-6928 or sfranklin@constitutionproject.org.

Sincerely,



Virginia Sloan
President



Sharon Bradford Franklin
Senior Counsel