



October 9, 2008

VIA ELECTRONIC AND FIRST CLASS MAIL

Hon. Martin J. O'Malley  
Governor  
State House  
Annapolis, MD 21401 - 1925

Dear Governor O'Malley:

I am writing in connection with the ongoing inquiry into the Maryland State Police spying on peaceful political activists in Maryland.

As you know, we are grateful that you took the initiative to appoint former Attorney General Steven Sachs to conduct an independent review of the MSP's actions during 2005 and 2006 that had been disclosed in documents released to us pursuant to a Maryland Public Information Act lawsuit. As we all expected, Mr. Sachs did a careful and thoughtful review of the MSP's activities, and was appropriately scathing in his criticism. Unfortunately, it is also now clear, both from Mr. Sachs' report and disclosures since it was released, that the scope of the MSP's improper actions has not been fully explored or disclosed.

In that regard, our most immediate concern relates to the ongoing process of notifying the victims of the MSP's unlawful surveillance activities. Col. Sheridan disclosed for the first time during his testimony before the Senate Judicial Proceedings Committee on October 7 that the MSP had improperly entered the names of 53 peaceful political activists into the agency's Case Explorer criminal intelligence database as suspected terrorists, despite the fact that the MSP itself knew that they were not suspected of any crime whatsoever, much less suspected of being terrorists (only four of those persons were disclosed to Mr. Sachs during the course of his review).

The fact that 53 people were improperly, unlawfully, and cavalierly labeled as suspected terrorists in the Case Explorer database is profoundly disturbing for a host of reasons obvious to us all. The purpose of this letter is to address several more specific concerns. At least three of the 53 persons are among those on whose behalf we requested records in the original August 29, 2006 MPIA request that ultimately led to the release of the files disclosed to date. As to those persons, it is now clear that the MSP falsely asserted in the original response to the MPIA request that no records existed. In addition, Mr. Sachs found that the American Friends Service Committee (AFSC) was one of three groups included in the Case Explorer database as a "security threat group". AFSC is also one of the clients on whose behalf we requested records in the original August 29, 2006 MPIA request. As with the individuals, MSP falsely asserted in its original MPIA response that no records existed. Indeed, the MSP has consistently asserted, to the present date, in papers filed in the ongoing MPIA litigation, that the only responsive records that existed related to a single requestor, and have already been disclosed. Those assertions that are

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clearly at odds with the facts as we now know them. MSP has an ongoing obligation to provide a complete and accurate response to the ACLU of Maryland to the original MPIA request regarding all persons and groups named in that request.

As we requested in our letter to you of July 17, and as Mr. Sachs recommended in his report, the MSP is currently engaged in the process of notifying the 53 persons that they had been improperly entered into the MSP's database, and offering them an opportunity to view their files. Incomprehensibly, however, we learned for the first time yesterday that the MSP would not permit anyone to bring a lawyer with them to review the records (a great many of the 53 persons are our existing clients, and many more have contacted us seeking our representation since receiving the letters). In addition, and equally incomprehensibly, the MSP has taken the position that the victims of the improper spying will not be permitted to obtain copies of the records that relate to them.

These positions are untenable and unacceptable, and are not the actions we would expect of a department that is seeking to rebuild public trust and put this troubling chapter behind it. It is not up to the MSP to decide whether a person has legal representation, who that attorney will be, and whether that attorney may assist persons in determining their legal rights. The victims of the MSP's improper spying are free to seek (and have sought) the assistance of counsel to make sure that they are provided with all of the records they are legally entitled to, and are not relegated to simply accepting at face value the MSP's assurances that this is being done.

Many persons receiving the letters from the MSP stating that they have been listed in the department's records as suspected terrorists are justifiably, understandably, and deeply concerned (and indeed frightened). A great many of these persons have never been so much as accused of a crime in their life, much less charged or convicted. Many persons are quite understandably reluctant to go to the MSP's offices unaccompanied. Other persons do not even live in Maryland and are not able to come to the MSP in person, even if they wish to.

Many, if not all, of the persons in the MSP database want to have a copy of the documents because they are understandably concerned about the future implications of having been listed in MSP's database as a suspected terrorist, given that the information was shared with the Washington/Baltimore HIDTA, and from there was accessible to the Maryland Coordination and Analysis Center, and from there, to every other fusion center in the country, as well as a host of federal law enforcement and homeland security agencies. Many victims wish to have, for themselves, a permanent record of what occurred, as well as the state's response, in case they find themselves on federal terrorist watch lists (the criteria for inclusion in which is classified, and currently the subject of ACLU litigation), or encounter other difficulties as a result of having been entered into the homeland security information stream. In addition, many of the victims wish to have a record of the MSP's actions so that they can assist in making the full extent of the MSP's improper activities a matter of public record. Finally, each of the victims has a legal entitlement to physical copies of these records under the Maryland Public Information Act, and many of the victims have already filed such requests with our assistance.

The MSP has not offered any justification for the refusal to allow the assistance of counsel or to allow victims to obtain copies of all relevant documents, except to assert that a lawyer's presence is not necessary because the lawyer will have no way of

knowing whether the MSP is providing all of the records to which the persons are entitled. As stated above, the MSP's judgement about the necessity of assistance of counsel has no bearing on the right of these individuals to meet with MSP and review their files with their chosen representatives present. MSP has no authority to deny the presence and assistance of counsel at these meetings.

We are also deeply concerned about Col. Sheridan's testimony on October 7 indicating that the records related to the 53 individuals are going to be deleted if people do not respond in a reasonable time after getting the notification letter. This raises several concerns. The letter does not specify a time frame in which to respond or clearly indicate that a lack of a timely response means the record will be deleted. More importantly, however, Col. Sheridan's testimony directly contradicts the written assurance made in his letter to us of August 1, 2008, stating that, as requested in our letter to you of July 17, 2008, "[t]he MSP has and will preserve the records related to this matter." We believe that any destruction of files related to the 53 individuals (or any other records related in any way to the MSP's surveillance or compilation of information on groups or individuals engaged in political advocacy) would constitute the intentional destruction of evidence in contemplation of litigation, and we request written assurances that no such permanent destruction of records will occur. If the records are removed from the database, they should be preserved in a way that will allow later users to determine any linkages that may have existed in the original database prior to purging.

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Finally, it is clear to us that the full extent of the MSP's improper activities have yet to be fully disclosed, and it is equally clear to us that MSP efforts currently underway are insufficient for such full disclosure. For example Col. Sheridan indicated in his October 7 testimony that the only search underway to determine the scope of the MSP's improper files is for people labeled as terrorists in Case Explorer database. However we know from Mr. Sachs' report that at least two of the Case Explorer files related to the information already disclosed were indexed not as terrorism investigations, but under the heading "CM & D – Intelligence Bulletins," and other designations may have been used. In addition, Col. Sheridan indicated that the MSP had not yet searched for any groups, even though Mr. Sachs reported that at least four groups were improperly listed in the Case Explorer database as "security threat groups", including the American Friends Service Committee. We also now know that persons unconnected with any of those four groups (and totally unconnected to any anti-death penalty activity) have received letters indicating that they were listed as suspected terrorists. Finally, searching for individuals in the Case Explorer database will not capture the many individuals whose political activities and views are improperly (and sometimes inaccurately) recorded in the MSP's still unknown number of case reports and notes, each of whom is also entitled to know what information about them exists and to have it purged.

We would like an opportunity to meet with you, or your staff, and representatives from the MSP, to discuss these and other issues related to the full accounting of the MSP's activities. Col. Sheridan had previously invoked the possibility of litigation as a reason that he could not be more forthcoming in his response to our letter to you of July 17. While litigation remains a possibility, we view it as an option of last resort. We continue to advocate for a full, thorough, and public accounting of the MSP's improper surveillance activities, and for effective measures, including legislation, to assure the citizens of Maryland that something like this will never recur. We believe that public confidence in the MSP, the civil rights at stake, and our public safety are better served by accomplishing these goals without recourse to litigation, if possible. You have already

made great strides in this regard, and for that we are grateful. Our hope is to work with you, and the Maryland State Police, to ensure that the victims of the improper activity, and the citizens of Maryland, can have confidence that this episode has been fully aired and put behind us.

We urge you to immediately intervene with the MSP and direct that they allow persons who wish to be accompanied by counsel to have that opportunity when they view their records, and to direct that the MSP provide copies of all records to those persons who desire them. I will contact your office to follow up on this request. We look forward to hearing from you regarding the prospects for further discussion of the many remaining issues.

Sincerely,

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