



September 30, 2008

Maryland State Police
1201 Reisterstown Road
Pikesville, MD 21208

Baltimore Police Department
242 W. 29th Street
Baltimore, Maryland 21211-2908

Maryland Department of General
Services Police
301 West Preston St., Suite L-100
Baltimore, MD 21201

Annapolis Police Department
199 Taylor Ave.
Annapolis, MD 21401

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OFFICERS AND DIRECTORS
SARA N. LOVE
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN
GENERAL COUNSEL

RE: Public Information Act Request

To Whom It May Concern:

This letter constitutes a request under the Maryland Public Information Act (“MPIA”), Maryland Code Annotated, State Government Article, §§10-611 to 628 and all other applicable regulations by the American Civil Liberties Union of Maryland on behalf of ACORN (Association of Community Organizations for Reform Now: Baltimore and Prince George’s County Chapters), Algebra Project, All People’s Congress, Children First, and Power Inside (BCDC/Baltimore Citizens Do Care Human Rights Network, Coalition for Women in Detention), and individuals connected thereto (clients of the ACLU of Maryland).

I. The Requesters¹

The ACLU of Maryland is a branch of the American Civil Liberties Union, a national organization that works to protect civil liberties of all people, including the safeguarding of the basic constitutional rights to privacy and free speech and expression. The ACLU of Maryland is responsible for serving the population in the State of Maryland. The communications department of the ACLU of Maryland is a division of the ACLU of Maryland that is responsible for disseminating information to the public about issues of concern to the ACLU of Maryland.

ACORN is a community-based organization that works in low- to moderate-income neighborhoods on issues such as access to housing, schools, voting rights, prevention of lead poisoning.

The Algebra Project is an after-school student tutoring organization run by students who also engage in activism relating to education.

All People’s Congress is a community group that has been active in protesting police brutality, the war in Iraq, and advocating for better housing.

¹ The term “Requesters” is defined as ACORN (Association of Community Organizations for Reform Now: Baltimore and PG Chapters), Algebra Project, All People’s Congress, Children First, and Power Inside (aka BCDC/Baltimore Citizens Do Care, Human Rights Network, Coalition for Women in Detention), as well as the individuals connected with these organizations listed in the attached Appendix A, and the ACLU of Maryland.

Children First seeks to monitor and implement change within the Baltimore City School district.

Power Inside works to build sufficiency and prevent incarceration among women in Baltimore.

II. Requests

The Requesters seek disclosure of any record(s),² document(s), file(s), communications, memorandum(a), order(s), agreement(s) and/or instruction(s), created from January 1, 2000, to the present, that were prepared, received, transmitted, collected and/or maintained by you, and/or any divisions, departments, components or field offices that you worked with. The recipient is requested to produce the data and documents as they are kept in the normal course of business.

If the recipient does not now have data or documents responsive to a particular request, but later obtains possession, custody, or control of such data or documents, the recipient is requested to furnish such data and/or documents immediately thereafter. If the recipient cannot respond to a request completely, the recipient is requested to provide the answer to the extent possible, explain why the recipient cannot respond to the request completely, and provide all information and knowledge in the recipient's possession, custody, or control regarding the incomplete response. If any data or document responsive to any request is unavailable, the recipient is to identify the data or document, provide an explanation concerning why the data or document is unavailable, and state where the data or document can be obtained.

If, in the course of responding to these data requests, the recipient determines that any instruction, definition, or data request is ambiguous, efforts should be made to contact counsel for the ACLU for any necessary clarification. In any such case, the response should set forth the language you feel is ambiguous and the interpretation you are using in responding to the request. If the recipient knows, or has reason to believe, that another agency or department in the State of Maryland has information sought in a request, or information related to a request, the recipient is requested to disclose the name of the specific agency or department that has the information.

1. Any records relating or referring to the Requesters, including but not limited to records that document any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information relating to Requesters or any person identified as associated with Requesters, either as an employee, volunteer, member, or in any other capacity, or any event sponsored by Requesters.

2. Any orders, agreements, or instructions to monitor, conduct surveillance, question, interrogate, investigate, infiltrate, and/or collect information relating to the Requesters.

3. Any records relating or referring to how, why, or when the Requesters or their members were selected to be a subject of monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information.

² The term "records" as used herein includes all records or communications preserved in electronic or written form, including but not limited to correspondence, documents, data, e-mails, text messages, videotapes, audio tapes, faxes, files, guidance, guidelines, evaluations, instructions, analyses, memoranda, agreements, notes, orders, policies, procedures, protocols, reports, rules, technical manuals, technical specifications, training manuals or studies.

4. Any records relating or referring to how, why or when monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information relating to the Requesters or any of their members was or will be suspended or terminated.

5. Any records relating or referring to how monitoring, surveillance, observations, questioning, interrogation, investigation, infiltration and/or collection of information relating to the Requesters or their members was or will be conducted, including any records indicating whether any employee subscribed to any listserv or e-mail mailing list or physical mailing list operated by any Requestor.

6. Any records relating or referring to the names of any other federal, state or local government agencies participating in or requesting any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration, and/or collection of information relating to the Requesters or their members.

7. Any records relating or referring to the specific role of any federal, state or local government agency participating in or requesting any monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information relating to the Requesters or any of their members.

8. Any records relating or referring to how records about the Requesters or any of their members have been, will be, or might be used, or documenting how or with whom or with which other agencies, public or private, any records have been shared or disseminated, including by means of inclusion into a database to which any other governmental or non-governmental agency or entity has access in any way.

9. Any databases, lists or other compilations of records that include the Requesters or any of their members.

10. All records relating to any lists (or directives, orders or instructions to prepare or maintain lists) of potential security threats, or security threat groups, in the State of Maryland or other locations that include the Requesters.

11. Any e-mails sent to or from any of the Requestors.

12. All records relating to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information in connection with ACORN demonstrations, including, but not limited to, demonstrations against BGE rate hikes in 2005-2006, in Baltimore and Annapolis; a demonstration at Arlington Elementary in 2002-2003 in Baltimore; a demonstration at the Baltimore City School Board Headquarters in late 2003; and a demonstration at the Lieutenant Governor's fundraiser at the Ropewalk Tavern in Baltimore in 2003.

13. All records relating to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information in connection with Algebra Project demonstrations, including, but not limited to: a student strike/job fair at City Hall in Baltimore in 2008; a demonstration/camp-out in front of City Hall in Baltimore in 2008; a hunger strike, including a march and rally from Harbor to the Legg Mason building and a speak-out outside of the War Memorial Museum, in 2008; a rally in Annapolis at the Maryland State House on February 6, 2008; a 2004 sit-in at Baltimore City Public School System CEO's office;

four rallies throughout 2005 at the State School Board in Baltimore; a 2006 March to convene a Maryland Freedom Board of Education in Baltimore; and a three-day student strike in 2006, including a rally at the State School Board on day 1, rally at Baltimore City Public School System Headquarters on day 2, and a rally at City Hall in Baltimore on day 3.

14. All records relating to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information in connection with All People's Congress demonstrations, including, but not limited to: protests at the State Office Building in Baltimore in September, 2001; an Anti-War/Anti-Anthrax demonstration in Frederick on or about July 11, 2002; an Anti-War/Anti-Bush demonstration outside of the Hyatt Hotel in Baltimore in October 2002; a protest of bus fare hikes in Baltimore on or about June 27, and July 1 2003; a protest of Raymond Smoot's Death in May, 2005 in Baltimore; and a protest against BGE/Constellation Energy outside of the CEO's house in Baltimore on or about March 22, 2006.

15. All records relating to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information in connection with Children First demonstrations, including, but not limited to: a protest regarding lead in the public school water supply outside the Baltimore City Public School System headquarters on or about January 21, 2003; and protests regarding the educational system in Baltimore at Camden Yards on or about April 4, 2004 and on Opening Day in 2005.

16. Any records relating to, or that explain why, detective Darrell Merrick and an unnamed detective from the Baltimore City Police Department Intelligence Unit visited Dr. Tyrone Powers on January 18, 2003, in connection with Children First's planned demonstration at the Baltimore City Public School System headquarters, including any notes or reports resulting from that visit, or directives to the officers in connection with that visit.

17. All records relating to the monitoring, surveillance, observation, questioning, interrogation, investigation, infiltration and/or collection of information about a Power Inside rally on or about March 7, 2003 at the Central Booking and Intake Facility in Baltimore; and a July 2, 2008 vigil in Baltimore.

III. Waiver of Fees

The ACLU of Maryland requests a waiver of all fees pursuant to State Government Article §10-621(e), which allows the custodian to waive fees when the applicant requests a waiver and "after consideration of the ability of the applicant to pay the fee and other relevant factors, the official custodian determines that the waiver would be in the public interest." Moreover, under the Freedom of Information Act, 5 U.S.C. §552(a)(4)(A)(ii)II, "[d]ocuments shall be furnished without any charge ... if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." The ACLU of Maryland is a non-profit, tax-exempt organization dedicated to the public interest—protecting the civil liberties of the citizens of and visitors to Maryland. Disclosure of the requested information is in the public interest. This request will further public understanding of government conduct; specifically, the surveillance and infiltration of organizations on the basis of organizational membership, political views or affiliation, or participation in protest activities or demonstrations. This type of government activity concretely affects many individuals and groups and implicates basic privacy, free speech, and associational rights protected by the Constitution. In addition, disclosure of the requested information will aid public understanding of the implications of spying on organizations without a threshold showing of suspected criminal

activity. Understanding the current scope of the government's surveillance and infiltration of law-abiding organizations is, therefore, crucial to the public's interest in understanding recent developments in the law vis-à-vis their rights.

As a nonprofit 501(c)(3) and 501(c)(4) organization, the ACLU of Maryland is well-situated to disseminate information it gains from this request to the general public as well as to immigrant, religious, politically active, and other targeted communities, and to groups that protect constitutional rights. Because the ACLU of Maryland meets the test for a fee waiver under FOIA, fees associated with responding to FOIA requests are regularly waived for ACLU affiliates and should therefore be waived under MPIA.

IV. Expediting Processing Request.

Section 10-614(b) requires a response to this request within 30 days. Expedited processing is warranted in analogous federal situations where there is "an urgency to inform the public about actual or alleged federal government activity" by organizations "primarily engaged in disseminating information." 28 C.F.R. § 16.5(d)(1)(ii).

This request implicates a matter of urgent public concern; namely, the surveillance of individuals and surveillance and/or infiltration of political, religious and community organizations by the government. Such government activity may infringe upon the public's free speech, free association, and privacy rights, which are guaranteed by the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. In addition, as described above, the ACLU of Maryland is well situated to disseminate information it gains from this request to the general public as well as to immigrant, religious, politically active, and other targeted communities, and to groups that protect constitutional rights. Given the urgency of the matter and the ACLU's nature, expedited processing is warranted here.

Finally, if you determine that some portions of the requested records are exempt from disclosure, we will expect, as the Act provides in § 10-614 (b)(3)(iii), that you provide us with "any reasonable severable portion" of the records sought. See Blythe v. State, 161 Md. App. 492, 870 A.2d 1246 (2005) (holding that "the denials of inspection that are permitted are not blanket denials for an entire record but are more narrowly focused denials of "a part of public record").

If all or any part of this request is denied, please provide us with a written statement of the grounds for the denial, citing the law or regulation under which you believe you may deny access. If this is the case, we also request that you inform us of the available remedies for review of the denial.

In addition, we would like to call your attention to the discretionary nature of § 10-618(f)(1)(ii) exemptions to the duty to disclose. If such an exemption to the MPIA is asserted it will be construed narrowly by the courts, and the burden rests on the custodian of the records to show that such records should not be released. See Cranford v. Montgomery, 300 Md. 759, 777, 481 A.2d 221 (1984).

Thank you for your prompt attention to this matter. Please furnish all applicable records to me at the following address:

ACLU of Maryland
3600 Clipper Mill Rd.

Suite 350
Baltimore, MD 21211

I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief.

Sincerely,

David Rocah
Staff Attorney

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