



## Unanswered Questions from the Sachs Report on Maryland State Police Spying on Peaceful Political Activity

### **Duration of wrongful spying by MSP is unknown.**

We don't know when the program that included surveillance and infiltration of political groups began.

### **Complete list of wrongful targets is unknown.**

### **What other individuals have been labeled as terrorists, or security threats or as anti-government in national security databases or files is unknown.**

The Sachs Report finds that MSP “decided to cast a relatively broad net in the ‘protest group’ area, seeking to learn more about the activist community in general. “ p.44 The report also states that “Lieutenant Mazella acknowledged the existence of a somewhat broader effort to develop information about Maryland’s activist community. . .” “ p. 44-45.

The Sachs Report finds that MSP used covert techniques in this “broader effort” pp. 43-44.

In addition, the existence of a covert Yahoo account used to infiltrate and “eavesdrop” on on-line discussions prior to the commencement of surveillance of the groups at issue in the Sachs review supports the existence of a broad program through, which other individuals and groups were wrongfully targeted.

The Sachs Report documents an indiscriminant identification of targeted individuals as “terrorists”, “security threats,” and “anti-government” in files and databases transmitted to national security agencies and law enforcement agencies nationwide. This suggests that any other wrongful targets would have been so labeled with similar consequences, underscoring the urgency of a complete, thorough review to identify them and purge inaccurate and unreliable files.

Mr. Sachs makes it clear throughout his report that “. . . ***MSP’s interest in other protest groups was not the focus of our review.***”p. 44

The Sachs report also makes it clear that a lack of supervision and an institutional “obliviousness” to the First Amendment implications of targeting peaceful political activity pervaded the MSP’s “broad” and “aimless” program. And that no written policies provided guidance about selecting appropriate targets and appropriate investigative techniques.<sup>1</sup> And further that choice of

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<sup>1</sup> ACLU of Maryland learned for the first time in the Sachs Report that some of our original clients were wrongfully targeted and entered as terrorists in national security

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targets was unrelated to evidence or reasonable suspicion of criminal activity of any kind.

This means that it remains unknown whether any vestiges of wrongful spying persisted through and under the new administration, after 2006. Given the widespread confusion about the law and constitution; the lack of supervision; and the covert techniques wrongfully employed along with the limited scope of Mr. Sachs review, it is possible that wrongful spying continued whether intentionally or not; whether or not known to the Administration.

**Consequently, there remains the unacceptable likelihood that other innocent Marylanders have been labeled in national security databases as “terrorists” or “security threats”.**

**These individuals and groups must be told what protected information has been wrongfully collected and disseminated and afforded the opportunity to have such files purged.**

**How will we identify other past or current targets to ensure similar information about them is purged? Given the breadth of the program, its indiscriminant use of loaded labels, and its lack of any criteria to identify targets or scope, we do not know how to accurately identify all those who may have been victimized.**

**We do not know the full extent of the damage caused to wrongful targets by virtue of their identification as terrorist suspects in national security databases in a post-9/11 world.**

Under federal law, many of the consequences triggered by being a suspected terrorist are confidential. Surveillance of financial transactions, travel, and communications may be triggered unknown to the targets. We do not know whether they have been or could have been placed on “no-fly” lists or “terrorist watch lists” because the criteria for inclusion are confidential; the lists themselves are confidential. Wrongful targets could encounter difficulties in completing financial business, like loans, travel, entering or leaving the country, obtaining employment or credit or in otherwise routine encounters with law enforcement (traffic stops, for instance) without ever knowing the basis and without ever being able to challenge this designation.

**The extent of the involvement of federal national security agencies is unknown.**

Because Mr. Sachs was not asked or authorized to explore the activities of law enforcement agencies other than MSP, we do not know to what extent federal agencies directed MSP intelligence gathering, requested or received information and to what extent MSP intelligence gathering was and is done through formal or informal arrangements with federal agencies.

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databases; MSP failed to disclose this as required in their response to the MPIA requests and the court order.

Documents obtained by the ACLU of Maryland and appended to the Sachs Report show that there was communication between the MSP and the National Security Agency (NSA) regarding surveillance at issue in the report.

Revelations of MSP spying came to light via a trail that started at NSA and included the Baltimore City Intelligence Unit (“Baltimore Intel Unit”).

MSP receives federal funding for national security related intelligence efforts; participates in federally funded MCAC or “fusion center” in partnership with federal agencies; and shares and transmits data to federal databases.

Determining the extent of federal agency involvement in such spying in Maryland requires additional investigation.

**Whether any local law enforcement in Maryland were or are engaged in similar conduct, wittingly or unwittingly is unknown.**

Mr. Sachs was not authorized and did not have time to investigate the existence of any similar programs or isolated incidents among local law enforcement.

We know that local law enforcement agencies are subject to the same pressures and goals that led to the wrongful conduct at MSP. If MSP, with its level of funding and professionalism, can end up with an institutional blind spot regarding First Amendment protections and a broad and aimless program focused on peaceful, harmless political groups, then Maryland’s smaller and less-well resourced, but no less zealous or well meaning agencies are even more vulnerable.

We know that application of federal regulations and internal policies does not deter, prevent or disclose wrongful intelligence gathering. Documents disclosed to date suggest that local law enforcement has played some yet to be determined role in wrongful spying in this case. For example, the “Baltimore Intel Unit” is named in NSA logs; NSA documents show that Baltimore Police were sending reports on peaceful groups to NSA. ACLU clients report receiving visits from detectives representing the Baltimore Intelligence Division regarding peaceful political activities.

Maryland’s local law enforcement agencies also participate in disseminating their files to federal agencies through MCAC, which means the potential devastating consequences for wrongful targets of local law enforcement are the same.