

SUSAN GOERING
EXECUTIVE DIRECTOR



July 17, 2008

VIA ELECTRONIC AND FIRST CLASS MAIL

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

Dear Governor O'Malley:

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The American Civil Liberties Union Foundation of Maryland (ACLU) has obtained documents that demonstrate that the Maryland State Police (MSP) has been covertly monitoring and recording the peaceful protest activities of Maryland residents and keeping files on the expressive activities of law-abiding advocacy organizations. Copies of the all documents we have received to date are attached to this letter.

The ACLU obtained the documents after filing a lawsuit under the Maryland Public Information Act, following the MSP's improper refusal to turn over the records in response to an MPIA request. To its credit, the Office of the Attorney General provided the documents expeditiously soon after the lawsuit was filed.

These documents also demonstrate that the Maryland State Police has outrageously smeared the reputation of at least one peaceful advocate of nonviolent social change by falsely labeling him a suspected terrorist in the Washington-Baltimore High Intensity Drug Trafficking Area (W-B HIDTA) database, and has falsely labeled a peaceful political protest group a "security threat group" in the same database. We believe this database is available to the 134 federal, state, and local law enforcement agencies that participate in the W-B HIDTA.

Although we have no way of knowing the full extent of the unlawful surveillance activities of the Maryland State Police at this point, the documents we have seen provide an alarming look into the kinds of information the MSP is recording and the kinds of peaceful protest activity it is monitoring. In what appears to be a summary log of individual W-B HIDTA database narrative entries, the MSP has recorded extensive information about specific individuals and groups, including describing their political outlook, whether they were articulate, what political activities they are engaged in, and attended private planning meetings in a covert capacity.

In addition, a print out of what appears to be individual entries in the W-B HIDTA database document monitoring of the Baltimore Pledge of Resistance (BPR), a local peace organization, some of whose most active members are Catholic nuns. The print outs indicate that in 2005, an undercover officer with the MSP Homeland Security and Intelligence Division attended several meetings of the BPR, and reported information about their political activities, including a meeting with then Rep. Benjamin Cardin at his Baltimore office.

The documents provide no information that would explain why police would go to so much trouble and expense to monitor the activities of any of these individuals or groups. At least two undercover agents were involved, and they collectively spent at least 288 hours over a 14 month period devoted to monitoring the groups' and individuals' lawful political activities. Indeed, according to the undercover agents' own descriptions, the individuals and groups are repeatedly and consistently described as peaceful and law abiding. This description of the individuals' and groups' activities is entirely consistent with the First Amendment, and entirely inconsistent with any criminal activity. The sole potentially unlawful activity referenced anywhere in the documents are two instances of nonviolent civil disobedience: one where activists refused to leave a guard station at a protest at the NSA (they brought Berger cookies and drinks to share with the NSA guards), and a plan to place photographs of soldiers who died in Iraq on the fence surrounding the White House.

The MSP branded the Baltimore Pledge of Resistance with the label "security threat group." Nothing in the pages the ACLU has obtained (which were represented by the MSP as the sum total of all their records on the group) provides any support for labeling any of these groups as either extremist or criminal. The members of these organizations vigorously deny the accuracy of these labels.

Equally outrageously, the MSP entered at least one activist, Max Obuszewski, into the W-B HIDTA database with an indication that the "Primary Crime" linked to him in the database is "Terrorism-Anti Govern[ment], and the "Secondary Crime" is "Terrorism – Anti-War Protestors" – outlandish and blatantly false accusations for which there isn't even the slightest bit of evidence.

The Bill of Rights and the Maryland Declaration of Rights guarantee the right to petition the government, the right of political expression, and the right to associate in groups for the purpose of communicating a political message.

Accordingly, Maryland residents should feel free to join a peaceful protest without fear that their names will wind up in police files. They should feel free to engage in nonviolent dissent without fear of being branded as "terrorists" or "security threat groups" in shared law enforcement databases. They should feel free to organize their political activities without wondering if the newest person to show up at a meeting is an undercover police officer.

Maryland residents cannot feel free, however, when police maintain the kinds of files described in this letter. This program of surveillance threatens to chill and deter individuals from speaking out, even though it is their constitutional right to do so.

Accordingly, I ask that you take the following actions:

- Order an immediate stop to the surveillance and monitoring of peaceful protest activity and prohibit police from keeping files on the views and expressive activities of peaceful activist organizations.
- Prohibit the MSP from sharing the existing files with any other law enforcement agency, either directly, or through their inclusion in a database to which other entities have access. To the extent that information has already been shared, the MSP should be required to withdraw the information from any databases, and/or

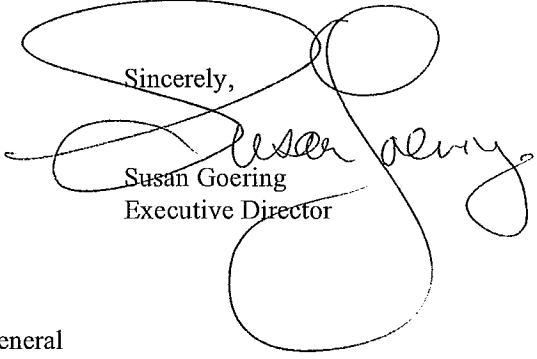
request that files physically sent to other agencies be returned or removed from other agencies' databases.

- Order the MSP to make a public accounting of the scope and nature of records related to surveillance of peaceful protest activity (including non-violent civil disobedience). Such an accounting should, at a minimum, answer questions such as the following:
 - 1) How and why did the monitoring of peaceful protest groups begin?
 - 2) Why was the monitoring allowed to continue for at least 14 months in the absence of the slightest bit of evidence of criminal activity?
 - 3) What procedures were in place to guide the activities of the MSP generally, and the Homeland Security and Intelligence Division specifically, as they relate to surveillance and recording of peaceful political protest activity?
 - 4) How many groups and organizations are listed in records that have not yet been released?
 - 5) Which groups are listed?
 - 6) Which groups are branded as a "security threat group"?
 - 7) How does the MSP define "security threat group"?
 - 8) What are the criteria for listing or opening a record on an organization?
 - 9) How many individuals are listed in records that have not yet been released?
 - 10) What are the criteria for listing or opening a record on an individual?
 - 11) To whom has the MSP disseminated information from the records, either directly or through their inclusion in a database to which other entities have access?
- Order that for each individual whose name appears in a record, MSP notify that individual of the existence of the file and provide an opportunity for that individual to review the information.

Finally, we specifically request that all records relating to surveillance, investigation or other monitoring or reporting about the groups and individuals referenced in the attached records (or any other organizations and individuals engaged in non-violent political or advocacy activities that have been subject to surveillance, investigation, monitoring or reporting by State or local authorities in Maryland) be preserved. These records may be highly relevant to future litigation involving the State or local authorities that we are now evaluating. We respectfully request confirmation that all relevant agencies in Maryland, including law enforcement authorities, are promptly advised in writing of their legal obligation to preserve these records.

We would appreciate receiving your written response. We are also prepared to meet with you to discuss these issues – and actions the State is prepared to take to address these matters – at an early date.

Sincerely,



Susan Goering
Executive Director

Encl.

cc: Hon. Douglas F. Gansler, Attorney General
Col. Terrence B. Sheridan, Superintendent, Maryland State Police
Kit Pierson, Heller Ehrman, LLP
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