THE ROGER BALDWIN FOUNDATION OF ACLU, INC.

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May 29, 2018

VIA EMAIL & U.S. MAIL

Joseph Ferguson Chicago Inspector General City of Chicago Office of Inspector General 740 N Sedgwick St Ste 200 Chicago IL 60654

Re: CPD gang database

Dear Mr. Ferguson:

We were pleased that your office announced that it is investigating Chicago Police Department's gang database. I write to provide some information about the agreement between the ACLU, City of Chicago and Chicago Police Department ("CPD") ("the Agreement"); the Investigatory Stop Reports ("ISRs"); and some historical context that you may find useful during your investigation.

A. Background on the Agreement

In April 2015, the ACLU published a report about CPD's extensive stop and frisk program.¹ In just four months of 2014, over a quarter million people were stopped in Chicago. In addition to the alarming frequency of the stops was a drastic racial disparity—Black people were stopped more than twice as frequently and Hispanic people nearly twice as frequently as white people, even though Chicago's populations of white, Black and Latino people are roughly equally sized. This disparity as compared to population was even more pronounced in predominately white districts like Jefferson Park and Near North. The report also reviewed the narrative descriptions that officers recorded for 250 randomly selected stops from 2012 and 2013, and determined that half of them lacked sufficient reasonable articulable suspicion to comply with the Fourth Amendment.

¹ That report, the Agreement, and this letter focus on *Terry* stops of pedestrians and, unless otherwise noted, discussion of "stops" does not include vehicle (traffic) stops.

In August 2015, the ACLU, City of Chicago and CPD announced an agreement under which the ACLU would not file its suit against the City for unconstitutional and unlawful stop and frisk practices and, in exchange, CPD would improve data collection, train its officers, conduct audits of the data, and have an outside monitor oversee the Agreement. The Agreement will continue until CPD has been in substantial compliance with the Agreement—not only by completing those tasks but also by showing that officers' stops are substantially complying with the Fourth Amendment and the Illinois Civil Rights Act—for two reporting periods.

Since the Agreement took effect in January 2016, the number of stops have declined, and data suggests a higher percentage of stops are based on reasonable articulable suspicion. However, significant racial disparities remain—last year over 90% of the people stopped were Black or Latino.

B. Requirements for the ISR form under the Agreement

While some of the data that CPD collects on ISR forms is required by the Agreement, much of it is not. Over the last several years, some have suggested that the ACLU wrote the current version of the ISRs and dictated its contents. This is not true. CPD based the ISRs on previously used "contact cards," which already contained many of the fields on the current ISR. *See* Ex. A.

The Agreement required CPD to *continue collecting* the following information:

- The name and badge numbers of the officers who conducted the stop;
- The race/ethnicity of the person stopped;
- The gender of the person stopped;
- The location of the stop, including the address, beat and district; and
- The date and time of the stop.²

Officers were also already required to write a narrative explaining the reason for the stop.

In addition to this information, the City and CPD agreed to *start collecting* the following:

- Whether a pat down or search was conducted and, if so, why;
- Whether the pat down or search resulted in a finding of contraband and, if so, what; and
- Whether the person was arrested or given a ticket and, if so, on what charges.³

For ease of reference, attached is the ISR with the all new fields required by the Agreement highlighted. Ex. B.

² Stop and frisk agreement at 2.

³ A state law, which took effect January 1, 2016, requires the collection of the same data as the Agreement for stops that result in a frisk, arrest, or ticket. 625 ILCS 5/11-212.

C. Fields on the ISR form not required by the Agreement

In addition to the fields that collect data to comply with the Agreement, there are many other fields on the ISR. Of these, a few are useful but not required by the Agreement:

- An event number that links the ISR to other forms;
- Checkboxes that document whether the stop was recorded by an in-car or bodyworn camera; and
- Checkboxes that differentiate between "dispatched" stops (based on 911 calls) and "on view" stops (potentially based more on officer discretion).

Additionally, there is a section that distinguishes *Terry* stops from gang/narcotic-related enforcement. Gang/narcotic-related enforcement stops are based on a Chicago ordinance that allows officers to disperse people from a previously designated gang or narcotic hot spot if two or more people are loitering there, at least one gang member is present, and the loitering is consistent with maintaining control of the area for an illegal purpose. *See* Municipal Code of Chicago § 8-4-015 (Gang Loitering); 8-4-017 (Narcotics-Related Loitering).⁴ The ACLU has opposed this and similar ordinances for decades. *See Morales v. City of Chicago*, 527 U.S. 41 (1991). However, if such ordinances are going to be enforced, dispersals should be documented and evaluated for compliance with the statute and potential racial bias. We would like to know: If the documentation is also used for gang designations, does the CPD designate everyone involved in the dispersal? The ordinance only requires that one gang member be present; any others present need not meet that standard.

The remainder of the ISR is not required by the Agreement, and, in some cases, is potentially harmful. First and foremost, sections of the form document gang information. *See* Ex. C (ISR with sections related to gangs highlighted). The Agreement between the ACLU, City and CPD does not address these designations. The order guiding use of ISRs (Special Order S04-13-09⁵) does not include standards for when people are designated as gang members on this form. Given that there is no standard, it would be cause for serious concern if ISRs are being used to designate gang members.

Second, there is a great deal of private information collected in the ISRs, including the home address, school, school address, workplace and workplace address of the person stopped. This data collection is invasive. The ACLU's goal under the Agreement is to collect information relevant to assessing the City and CPD's compliance with the Fourth Amendment and the disparate impact standards of ICRA; personal data aside from basic demographic data is not necessary for that assessment and not required by our Agreement.

⁴ See also the CPD order on loitering ordinances:

http://directives.chicagopolice.org/directives/data/a7a57be2-12a5752b-27112-a586d845218c69a1f912.html

⁵ Available at: <u>http://directives.chicagopolice.org/directives/data/a7a57b99-151b6927-49f15-1b69-2c32e99868b316b0.html?hl=true</u>

A final area of unnecessary data collection is the checkboxes that allow officers to select reasons for the stops. Officers write narratives to justify stops and frisks, which are then assessed for Fourth Amendment compliance. For that reason, the checkboxes are superfluous and add to the length of the form. Additionally, of the stops made public by the CPD, 40.6% percent of stops for 2017 have "other" checked as the only RAS factor, suggesting that they are not useful to the officers or CPD either.⁶

D. Areas of investigation

As the Inspector General's office examines how CPD designates people as gang members, we recommend that your office assess and publish information about the following topics:

- What are all of the ways that someone could be designated as a gang member? For example:
 - On what forms are gang designations made?
 - What standards does CPD use to make gang designations?
 - Does CPD receive gang designations from other entities (federal, state, or local)? If so, which ones? What standards do they use, and what, if any, does CPD require before designating an individual as a gang member based on a designation by another entity?
- Are gang designations ever revised or purged? If so, under what conditions? For example:
 - Is there a standard for when a designation should be removed?
 - Are there regular reviews of designations?
 - How are designations purged internally throughout CPD's and the City's records?
 - If a designation is removed, is that communicated to anyone who has been informed externally of the designation (e.g. other law enforcement agencies, ICE, etc.)?
- In what ways does CPD use gang designations? For example:
 - What information about gang designations do CPD officers have access to when they interact with the public during *Terry* stops, probable cause stops, traffic stops, and all other encounters?
 - Do gang designations impact whether people may receive an I-bond? If so, is the impact recorded? If so, how often does this happen and what is the racial and district breakdown of the people impacted?
 - Do gang designations impact criminal charges, sentencing or probation? If so, is the impact recorded? If so, how often does this happen and what is the racial and district breakdown of the people impacted?
- In what ways does CPD communicate gang designations to others? For example:
 - Does CPD provide this information to other law enforcement agencies (*e.g.* ATF, FBI, Illinois State Police, etc.)? If so, which ones?

⁶ The stops are made publicly available at: <u>https://home.chicagopolice.org/isr-data/</u>. The data does not include information regarding stops of juveniles.

- Does CPD provide this information to other government agencies (*e.g.* BOE or CPS, ICE, professional licensing boards, IDOC, DCFS, etc.)? If so, which ones?
- Does CPD provide this information to anyone else, such as landlords or employers doing background checks? If so, under what circumstances?

Thank you for taking on this investigation. We hope it leads to greater transparency regarding gang designations and their impact on people's lives.

Sincerely, all Shelen

Karen Sheley Director, Police Practices Project



CPD contact card (rev 8/06)

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