



ROGER BALDWIN FOUNDATION  
OF ACLU, INC.

Illinois

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May 10, 2019

Eddie Johnson  
Superintendent  
Chicago Police Department  
3510 S. Michigan Ave.  
Chicago, IL 60653

Re: Comments on CPD's Proposed Criminal Enterprise Database Policy

Dear Superintendent Johnson:

The Chicago Police Department's ("CPD") proposed Criminal Enterprise Database does not resolve the problems the Office of Inspector General ("OIG") identified in its April 11, 2019 report on the CPD's gang database system. The CPD has dismissed several of the OIG's recommendations. Key among the recommendations was for an additional public evaluation of the gang database system; moving forward with the Criminal Enterprise Database without that input will further damage public trust in the CPD.

Before any further steps are taken, the CPD must place a moratorium on using gang designations, adding new gang designations, and, most importantly, sharing gang designations with other entities. The OIG report found few controls on how and why CPD places people on the "gang database" and no processes for removal. (PUB. SAFETY SECTION, CITY OF CHI. OFFICE OF INSPECTOR GEN., REVIEW OF THE CHICAGO POLICE DEPARTMENT'S "GANG DATABASE" 44-47 (2019) [hereinafter "OIG Report"], *available at* <https://igchicago.org/wp-content/uploads/2019/04/OIG-CPD-Gang-Database-Review.pdf>.) Instead, inaccurate or outdated information on a person's gang membership can remain in the system for years, where it is shared with over 500 external agencies. (*Id.* at 25, 46-47, App. E.) Of particular importance, CPD shares this unverified information with U.S. Immigration and Customs Enforcement ("ICE"). (*Id.* at 25, 27, App. E.) In combination with ICE's own databases, CPD effectively hands ICE a list of low-hanging targets for immigration enforcement whom ICE can claim are "gang members." Moreover, since people on the database are exempt from some of the protections of Chicago's Welcoming City Ordinance, CPD may assist ICE in various ways to detain them. CPD thereby contributes to the separation of families and creates a culture of fear and distrust of law enforcement in immigrant communities. (*See*, CHI., ILL., MUN. CODE § 2-173-042(c)(4) (2018); Jacqueline Serrato, *Chicago Police Admits Gang Database Error that Enabled ICE Raid*, CHICAGO TRIBUNE (Dec. 6, 2017), <https://www.chicagotribune.com/hoy/ct-chicago-police-admits-gang-database-error-20171206-story.html>.)

Gang designations may lead to a number of other collateral consequences, including increased law enforcement surveillance, higher bonds, denial of bail, mandatory minimum

sentences, and conditions of probation and parole that prohibit contact with other individuals designated as gang members. (OIG Report, at 28-31, App. B.) These gang designations are hurting people now. CPD must immediately stop using and sharing information from this broken system.

Before lifting the moratorium, CPD should evaluate, *in partnership with stakeholders* and with consideration of collateral consequences, whether collecting and using gang information best serves violence reduction efforts. (OIG Report, at 53.) This is a vital first step in determining whether such a database should even exist. In response to the OIG, CPD disagreed that a public evaluation was necessary, and instead developed its new gang database based only on its internal evaluation. (Letter from Eddie T. Johnson, Superintendent of Police, Chi. Police Dep't, to Joseph Lipari, Deputy Inspector Gen. for Pub. Safety, City of Chi. Office of Inspector Gen. 3-4 (Apr. 5, 2019) [hereinafter "CPD Response Letter"] (attached as App. J to OIG Report).) By failing to engage meaningfully with the community about the benefits and consequences of such a database, CPD has missed an opportunity to establish legitimacy in its practices.

Indeed, while the OIG report created some transparency about gang designations, the report is not a full accounting of the CPD's practices. For example, the OIG report did not examine all of the forms and databases that include gang designations—only gang arrest cards. According to the report, 18 different forms have created gang designations over the past decade, including Investigatory Stop Reports, which document stops and frisks. (OIG Report, at 23.) Without a comprehensive examination of how CPD collects and uses the data from all of these sources, it is impossible to assess whether the proposed solutions address the full scope of the problem.

Even addressing only the OIG's report and recommendations, the Criminal Enterprise Database, as currently proposed, does not resolve all of the identified problems. Below are a few examples demonstrating continuing concerns with CPD's new gang database, but this is not an exhaustive list of the problems with the proposal.

First, the CPD's proposal does not sufficiently address the problems inherent in sharing the gang designations with ICE. CPD insists on continuing to share information with other law enforcement agencies, albeit now requiring data sharing agreements with law enforcement partners who access its new gang database. While CPD claims it will require those partners to comply with Chicago's Welcoming City Ordinance, this does not provide enough assurance or information to ensure that all the problems inherent with sharing data with ICE will be addressed. (CPD Response Letter, at 13-14; *see also*, OIG Report, at 56.) CPD's draft policy provides no mention of these data sharing agreements, much less an explanation of what information will be shared, what uses will be permitted, how noncompliance will be determined, or what consequences for noncompliance will be imposed. (CHI. POLICE DEP'T, GEN. ORDER G10-01-03, CRIMINAL ENTERPRISE DATABASE (proposed Apr. 11, 2019) [hereinafter "CPD Draft Policy"], available at <https://home.chicagopolice.org/criminal-enterprise-database/>.) Instead, CPD includes some general statements about these agreements in a "Frequently Asked Questions" document. (CHI. POLICE DEP'T, FREQUENTLY ASKED QUESTIONS: CHICAGO POLICE DEPARTMENT (CPD) CRIMINAL ENTERPRISE DATABASE DIRECTIVE G10-01-03 (Apr. 11, 2019),

available at <https://home.chicagopolice.org/criminal-enterprise-database/>.) CPD must provide more detailed information about these data sharing agreements to ensure they will be effective and will not contribute to the targeted harassment of immigrant communities.

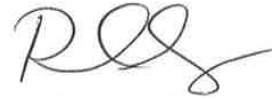
Second, while CPD agreed to limit the new database to include only information from the last five years, CPD claims it cannot modify original source documents that include gang information. (CPD Response Letter, at 9-10, 19-21.) This means that unsubstantiated information may continue to exist in CPD's various other databases. Nothing in CPD's draft policy, response letter to the OIG, or "Frequently Asked Questions" states that access to these existing databases will be subject to data sharing agreements or limited in any other way. CPD's proposed disclaimer that historical information cannot be used to determine gang membership is insufficient to ensure that CPD members and external law enforcement agencies, such as ICE, will not improperly rely on the outdated and unverified data available through these other databases. (*See, e.g.*, CPD Response Letter, at 10, 14, 21.)

Third, CPD outright rejected the OIG's recommendation of providing juveniles with special protections, including requiring a lawyer or juvenile advocate be present for "self-admission" to be considered sufficient evidence. (OIG Report, at 58; CPD Response Letter, at 22-23.) Instead, CPD decided that its existing processes for juveniles are sufficient to guard against false self-admissions. (CPD Response Letter, at 22-23.) The failure to address this recommendation is especially troubling given that the OIG found 25% of individuals identified as gang members were under 18 years old when first designated—some even as young as 9 years old—and these potentially false designations may follow them for years. (OIG Report, at 37, 60.)

Finally, while agreeing to establish an appeals process for people to challenge their gang designations, CPD included several arbitrary barriers to make the process less accessible. (CPD Response Letter, at 23-24; CPD Draft Policy, § IX.) CPD's proposed process requires a person to go into CPD Headquarters to complete an appeal form, and then limits the hours available to 8:00 a.m. to only 3:00 p.m., on weekdays and excluding holidays. (CPD Draft Policy, § IX.) In addition, the person must agree to a background investigation conducted by the CPD, while CPD denies the person access to supporting documentation. (*Id.*) In CPD's response to the OIG, it did not even explain its refusal to create a recommended third-party mechanism for appeals determinations, as the process appears to be contained exclusively within CPD. (CPD Response Letter, at 22-24; OIG Letter, at 58.) This proposed appeals process is inadequate and a disingenuous attempt to satisfy community concerns. CPD cannot be relied on to review requests for appeals when it is the entity responsible for creating the faulty gang designation; this process should be operated by an independent third party.

The proposed Criminal Enterprise Database is an insufficient and premature solution to CPD's broken gang database system. CPD, with the involvement of community stakeholders, must first conduct a full accounting of gang designations and their uses. Community stakeholders must be involved in the decision of whether a gang database should exist at all, and if so, what safeguards must be enacted. Until then, the ACLU calls for a moratorium on the existing and proposed "gang databases."

Sincerely,

A handwritten signature in black ink, appearing to read 'RM', with a long horizontal flourish extending to the right.

Rachel Murphy  
Staff Attorney

cc: Lori Lightfoot, Mayor-Elect, City of Chicago  
Joseph Lipari, Deputy Inspector General for Public Safety, City of Chicago