



NYCLU

NEW YORK CIVIL LIBERTIES UNION

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BY FACSIMILE AND FIRST CLASS MAIL

May 12, 2009

Christopher Dunn
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Raymond Kelly
Commissioner
New York City Police Department
1 Police Plaza
New York, N.Y. 10038

Dear Commissioner Kelly:

On behalf of the New York Civil Liberties Union, we write to reiterate our concerns about the surging number of stops and frisks of law-abiding New Yorkers and about the database being built and maintained by the Department of the names and addresses of innocent New Yorkers who have been stopped by officers. This letter follows up on our original letter of February 5, 2007, a copy of which we enclose.

According to an NYPD report we have just obtained from the City Council through the Freedom of Information Law, Department officers made 171,094 stops in the first quarter of 2009. This represents the largest number of reported stops for any quarter, represents a 22% increase from the 140,151 stops conducted in the last three months of last year and represents an 18% increase from the 145,098 stops conducted in the first quarter of last year (the prior record). If the 18% increase from the first quarter of last year continues, the Department will conduct a record 626,767 stops in 2009, as compared to the 531,159 stops it made last year (the current record).

As in recent years, most of those stopped in the first three months of this year were engaged in no unlawful activity. According to the Department's own report, 151,358 of the stops in the first quarter did not result in a summons or arrest, meaning that nearly 90% (88.5%) of those stopped were doing nothing wrong. Our analysis of Department reports reveals that since 2004 NYPD officers have conducted 2,114,394 stops of law-abiding New Yorkers.

Black New Yorkers are particularly bearing the brunt of the huge number of stops of law-abiding people. In the first quarter alone, officers stopped 78,574 law-abiding blacks as opposed to only 14,007 law-abiding whites.¹

¹For the quarter, officers stopped 88,838 blacks (52% of all stops), as compared to 15,876 whites (9% of all stops).

Adding to our concerns about the mass stopping of law-abiding people is the fact that the Department is maintaining a database of the names and addresses of everyone being stopped, regardless of whether they were engaged in unlawful conduct. Thus, the Department may well now have in its database the names of every person involved in the over 2 million stops of law-abiding people over the last five years, most of whom were black or Latino.

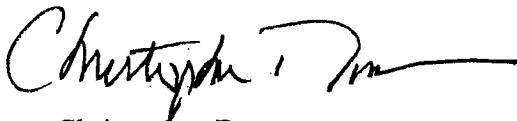
We believe the Department has no legitimate reason for maintaining a database of the names and addresses of law-abiding people who are stopped and that to do so exposes innocent people -- largely blacks or Latinos -- to the risk of becoming targets of NYPD investigations. As we stated in our original letter, we believe this database is a gross violation of privacy, and we call on you to end this practice and to expunge from the database the names and addresses of everyone stopped without being arrested or given a summons as well as the names and addresses of all people who were arrested or given a summons but whose charges were dismissed or otherwise disposed of in their favor.

Beyond the issue of the database, the huge and growing number of innocent New Yorkers being stopped is alarming. We recognize, given the legal standards governing stop-and-frisk encounters, that legitimate stop-and-frisk activity will entail stopping some law-abiding people. The Department's own reports reveal, however, that such a small percentage of stops are resulting in arrests and summonses as to raise serious concerns about the appropriateness of many stops. And when one contemplates the scale of the stop-and-frisk program -- nearly 2.4 million stops since 2004 -- it is imperative that the Department seriously examine the program to reduce the number of stops of law-abiding people.

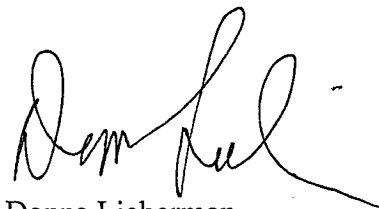
Our concerns about excessive numbers of stops are supported by the RAND Corporation study commissioned by the Department in 2007. That report estimated that, "[e]ven with the most liberal assumptions," one would expect the NYPD to have "roughly 250,000 to 330,000 stops" each year. Thus, even when measured against the most permissive of standards, the Department this year, should it continue at its current increased stop rate, may end up conducting 300,000 more stops than would be expected.

If you have any questions about this matter, we would be happy to speak with you or a member of your staff.

Sincerely,



Christopher Dunn
Associate Legal Director



Donna Lieberman
Executive Director

c: Stephen Hammerman, NYPD Deputy Commissioner, Legal Matters
Peter Vallone, Jr., Chair, New York City Council Public Safety Committee



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BY FACSIMILE AND FIRST CLASS MAIL

February 5, 2007

Raymond Kelly
Commissioner
New York City Police Department
1 Police Plaza
New York, N.Y. 10038

Re: Stop and Frisks and NYPD Database

Dear Commissioner Kelly:

On behalf of the New York Civil Liberties Union, we write about serious concerns arising out of Friday's release of stop-and-frisk data for 2006. In particular, we are concerned that the Department is building a massive database of law-abiding black and Hispanic New Yorkers.

We will be reviewing the stop-and-frisk reports in detail over the next few days and then will address questions about racial profiling and improper stops that the reports may raise. But the information already available to us indicates that the Department is improperly collecting information about hundreds of thousands of New Yorkers.

According to initial reports, in 2006 the Department completed stop-and-frisk forms on 508,540 individuals. Of that number, 21,268 were arrested and 29,168 received summonses. That leaves 458,104 people – 90% of all people stopped – who were engaged in no unlawful activity whatsoever. And according to the Department, 85.7% of all persons stopped were black or Hispanic.

As a result of an internal NYPD operations order that we recently obtained, we understand that the Department has created a new database for compiling stop-and-frisk data. (We enclose a copy of that order.) And according to sources with first-hand knowledge of the database, the names of persons stopped are included in the system and can be obtained through a query of the system.

Assuming our understanding is correct, this creates an unprecedented situation. Between the dramatic surge in stops and frisks and this new database, the Department is now collecting and maintaining a centralized database of hundreds of thousands of law-abiding New Yorkers, most of whom are black and Hispanic. This represents a gross violation of the privacy rights of New Yorkers, raises immediate racial concerns given the race of those being stopped and put in

the database, and may be illegal. People who have engaged in no wrongdoing should not be in a police database.

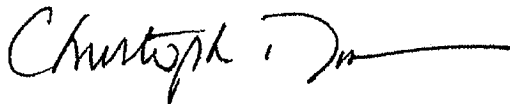
As you undoubtedly are aware, New York State law (Penal Law section 160.50) requires that police records of people who are arrested and whose cases are later dismissed must be sealed so as to protect their privacy rights. This massive new stop-and-frisk database circumvents those legal protections by including hundreds of thousands of people who have never been arrested or given a summons. And for those people who were arrested and whose cases were dismissed, unsealed retention of their names in the database would directly violate section 160.50.

We therefore request that the Department take immediate steps to protect the privacy rights of persons who are stopped and frisked but not given a summons or arrested. Those individuals (who comprise nine of every ten people stopped and frisked) should not have their names entered into a centralized database that is generally accessible by the Department. At the very least, strict privacy protections need to be put in place to protect those whose names are entered into the database.

We also ask that you take immediate steps to assure that any stop-and-frisk records of those who are arrested but whose cases are dismissed are being sealed in accordance with section 160.50. In conjunction with this, we ask that you provide us with information about Department procedures to assure that all computerized records subject to section 160.50 in fact are being sealed.

We would welcome the opportunity to discuss our concerns with you or your staff. Otherwise, we look forward to receiving a response from you.

Sincerely,



Christopher Dunn
Associate Legal Director



Donna Lieberman
Executive Director