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March 7, 2012

Chief Paul MacMillan
MBTA Transit Police Department
240 Southamptton Street
Boston, MA 02118

Re: Public Records Request

Dear Chief MacMillan:

This is a public records request on behalf of the American Civil Liberties Union Foundation of Massachusetts ("ACLUM") for certain records made or received by the Transit Police. As you know, the work of the MBTA's police force has evolved and expanded in recent years, with the Transit Police Department taking on new responsibilities and making use of significant additional resources. The records we are seeking concern the following areas.

The Intelligence Unit. One of the changes at the Transit Police Department has been the work of the Department's Intelligence Unit. The MBTA web site reports that the Transit Police Intelligence Unit is now responsible for coordinating the gathering, recording and sharing of intelligence information on criminal and terrorist activity. The Unit works in conjunction with the FBI Joint Terrorism Task Force, the US Attorney's Office, the Commonwealth Fusion Center and the Boston Regional Intelligence Center. Transit Police Detectives are assigned full time to the FBI Joint Terrorism Task Force, Immigration and Customs Enforcement (ICE) and the US Drug Enforcement Administration (DEA). Thus, in addition to its own monitoring and investigation of security issues and suspicious activities relating to transit facilities within the Commonwealth, the Unit is able to use a great number of sources at the federal, state and local levels to collect information.

The Civil Disturbance Unit: Established in 2005, this Unit addresses riots and civil disturbances that may threaten the transportation system.

Passenger Tracking. With the introduction of electronic fare media (generally known as the "Charlie Card") and the phasing out of the token system, the MBTA has been collecting and storing personally identifiable information about thousands of passengers, including but not limited to those who use managed account services or who purchase MBTA tickets online or use a credit card. It has also been reported that the MBTA maintains data about the use of individual Charlie Cards which have been purchased with cash, although the use of such cards may not

always disclose personally identifiable information. The data collected by the MBTA includes not only identification and purchase records but also the time and location of each occasion that a Charlie Card is used. The ability to track the activities and travel of individual passengers is enhanced by the expanded use of video surveillance cameras which monitor both MBTA facilities and vehicles. The combination of the electronic fare records and digital video records thus makes it possible for the Transit Police to track the location of individual passengers throughout the system and to provide that information to other law enforcement agencies on request.

Federal Grants and Collaboration with other agencies. Increasingly, the federal government has funded projects that relate to transportation systems, which give the MBTA greater resources and may create binding obligations. Although a few federally-supported MBTA expenditures, such as DHS-funded searches on the T, have been noted, the specific programmatic uses of such funds are not readily available to the public. In addition, the MBTA, like other government agencies, increasingly cooperates and shares information with other federal, state and local agencies. The extent to which MBTA riders' information is disseminated to other agencies is of concern.

In order to enhance the public's understanding of these programs and to insure a measure of accountability for the operations of the MBTA, we request the following records.

Intelligence Unit

1. Records indicating the purpose and organization of the Intelligence Unit, its membership and command structure;
2. Records indicating how many officers are assigned to the Intelligence Unit;
3. Records indicating the budget of the Intelligence Unit from 2005 to present;
4. Records indicating the participation of other law enforcement agencies in the Intelligence Unit;

Civil Disturbance Unit

5. Records indicating the purpose and organization of the Civil Disturbance Unit, its membership and command structure;
6. Records indicating how many officers are assigned to the Civil Disturbance Unit;
7. Records indicating the budget of the Civil Disturbance Unit from 2005 to present;
8. Records indicating the participation of other law enforcement agencies in the Disturbance Unit;
9. Records indicating the number of times the Civil Disturbance Unit has been deployed;
10. Records indicating the number of arrests carried out by the Civil Disturbance Unit;

Passenger Tracking

11. Final memoranda, policies, procedures, directives, guidance, and training materials pertaining to:
 - a. Access of Transit Police personnel to electronic fare media data;
 - b. Access of Transit Police personnel to MBTA video/CCTV data;

Federal Grants

12. All applications for funding, award letters and budgets for grants from the federal government, including ones from the Department of Homeland Security, the U.S. Department of Justice, the Department of Transportation and the Federal Highway Administration;
13. All progress reports and final grant reports relating to grants from the federal government;

Collaboration with other law enforcement agencies

14. Any memoranda of understanding or other agreements relating to information-sharing between the Transit Police and other law enforcement agencies;
15. Records indicating the number of MBTA Transit Police personnel assigned to the FBI Joint Terrorism Task Force (JTTF);
16. Records indicating how Transit Police personnel are chosen to be assigned to the JTTF;
17. Records showing the number of investigations on which Transit Police staff members have collaborated with JTTF, including any statistics showing how many collaborations have led to arrests and convictions;
18. Records describing the procedure and standards for sharing information or intelligence with the Commonwealth Fusion Center (CFC) and with the Boston Regional Intelligence Center (BRIC).

We appreciate that this request seeks a large number of records. We are happy to work with you to narrow the request or establish a reasonable phased timeline for the release of records. We are sending a concurrent request for related information to the MBTA General Manager.

Because this request involves a matter of public concern and because it is made on behalf of a nonprofit organization, we ask that you waive any copying costs pursuant to 950 C.M.R. § 32.06(5). ACLUM is a nonprofit §501(c)(3) organization dedicated to the protection of civil rights and liberties for all persons in the Commonwealth of Massachusetts. As the state's affiliate of the American Civil Liberties Union, ACLUM is part of a nationwide network of advocates dedicated to defending and expanding the civil liberties of all.

If you decide not to waive copying costs, we request that you permit us to examine the responsive documents before deciding which portions to photocopy. We request that you send documents in electronic form whenever possible.

Should you determine that some portion of the documents requested are exempt from disclosure, please release any reasonably segregable portions that are not exempt. In addition, please note the applicable statutory exemption and explain why it applies to the redacted portions. As you know, a custodian of public records shall comply with a request within ten days after receipt.

Thank you for your assistance. We look forward to your response.

Sincerely,

A handwritten signature in cursive script, reading "Laura Rótolo", written over a horizontal line.

Laura Rótolo
Staff Attorney