



Metropolitan Police Department First Amendment Investigations Complied with District Law in 2013

September 16, 2014

Audit Team:

Lawrence Perry, Audit Supervisor
Dexter Monroe, Auditor-in-Charge

A Report by the Office of the District of Columbia Auditor
Lawrence Perry, Acting District of Columbia Auditor



September 16, 2014

Dear Chief Lanier:

The attached report presents the audit of the Office of the District of Columbia Auditor (ODCA) of the Metropolitan Police Department's conduct of investigations subject to the "Police Investigations Concerning First Amendment Activities Act of 2004 (Act)." This audit was included in the fiscal year (FY) 2014 ODCA Audit Plan.

ODCA conducted this audit to determine whether the Metropolitan Police Department (MPD) was in compliance with the Act during 2013. We examined records of the four qualifying investigations that were conducted by MPD in 2013. In addition, we interviewed MPD officials and examined the policies and procedures of MPD. We found that in 2013, MPD was in compliance with the Act.

Our second objective in the audit was to determine whether MPD effectively and has continually implemented all of the recommendations made by ODCA on September 27, 2012 in the audit report entitled "[Audit of the Metropolitan Police Department's Investigations and Preliminary Inquiries Involving First Amendment Activities](#)." We are pleased that MPD has continually implemented these recommendations.

We have discussed the audit conclusions with MPD officials. As is required by law, in FY 2015 ODCA will conduct another annual audit of the Metropolitan Police Department's conduct of investigations subject to the "Police Investigations Concerning First Amendment Activities Act of 2004."

Sincerely

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Lawrence Perry
Acting District of Columbia Auditor



September 16, 2014

Metropolitan Police Department First Amendment Investigations Substantially Complied with District Law

Why ODCA Did This Audit

The audit was conducted per the requirements of the Police Investigations Concerning First Amendment Activities Act of 2004.

What ODCA Recommends

We have made no recommendations in this report.

For more information regarding this report, please contact Anovia Daniels, Communications Analyst/ANC Outreach, at Anovia.Daniels@dc.gov or 202-727-3600.

What ODCA Found

The Metropolitan Police Department (MPD) conducts investigations of groups suspected of or known to have committed crimes in connection with planned First Amendment activities (typically public demonstrations or assemblies). The Police Investigations Concerning First Amendment Activities Act of 2004 (the Act) provides certain guidelines and restrictions on when and how these investigations may be conducted. The Act also requires the Office of the District of Columbia Auditor to conduct an annual audit of MPD files and records relating to these investigations.

Overall, we found that MPD complied with the requirements of the law during 2013.

We also sought to determine whether MPD had continually implemented the recommendations made to them in our report entitled “Audit of the Metropolitan Police Department’s Investigations and Preliminary Inquiries Involving First Amendment Activities,” published on September 27, 2012. We found that MPD is implementing these recommendations satisfactorily.

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Background

The District of Columbia has long been a place where Americans have come to express their opinions on issues of public policy. Often, these expressions have taken the form of rallies held in public places like the National Mall or marches through District streets. In the majority of cases, these demonstrations happen peacefully and without incident. Through the years, the Metropolitan Police Department (MPD) has helped to maintain peace and order during most demonstrations, even when the crowds have been very large and boisterous or when faced with potentially combative counter-demonstrators.

However, there have been demonstrations where crimes were committed by demonstrators. These crimes have ranged from blocking traffic to breaking windows and assault. As the District's law enforcement agency, MPD has an interest in responding to or, when possible, preventing such crimes from happening. Consequently, MPD regularly prepares in advance for known demonstrations, sometimes conducting investigations of groups planning a demonstration when reason exists to anticipate criminal activity associated with the event.

The District Council passed the Police Investigations Concerning First Amendment Activities Act of 2004 (the Act) in response to a number of instances that occurred between the years 2000-2003. These instances involved the mistreatment of persons gathered in the District to exercise their First Amendment rights to assemble and protest government actions. At several of these protests, MPD made arrests and took other actions that were later challenged in court as unjustified or excessive. These lawsuits resulted in large payments made by the District government to victims of MPD misbehavior. The Act was passed in an attempt to provide legal guidelines and controls on the manner in which MPD handled demonstrations themselves as well as any investigations conducted leading up to demonstrations.

The Act requires the Office of the District of Columbia Auditor (ODCA) to conduct an annual audit of MPD operations related to investigations involving First Amendment activities. The purpose of the audit is to determine whether MPD is in compliance with the Act.

The Metropolitan Police Department (MPD) is the District of Columbia's municipal law enforcement agency. As such, it is responsible for helping to maintain the safety and security of all

those who live and work in the District. MPD provides a range of services through patrols, investigations and other security and intelligence operations. MPD currently has an annual budget of approximately \$508 million and employs over 4,500 people.

First Amendment investigations are conducted by the Criminal Intelligence Branch (CIB) of the Intelligence Fusion Division, located within the Homeland Security Bureau at MPD. The CIB is primarily occupied with providing intelligence to other parts of the Department on gang activity in the District. Through the use of undercover officers and other investigative techniques, MPD seeks to keep track of known gang members, become aware of planned violence between rival gangs, and provide this intelligence to the uniformed members of the Department so that they can respond to or prevent crimes before they happen. The CIB maintains approximately 30-35 staff, including undercover officers. According to CIB's Captain, more than 90 percent of the staff's time is spent on gang-related investigative work with only 10 percent or less of their time spent on First Amendment investigations.

According to the Act, First Amendment investigations are to be conducted only when there is "reasonable suspicion" to believe that a crime has occurred, is occurring, or is planned to occur in conjunction with a known demonstration/protest/rally. CIB officers use a variety of methods to arrive at this reasonable suspicion. If groups with a known history of criminal behavior have announced their intention to participate in the event, this can be one cause for suspicion. By monitoring public online discussions, officers may learn of calls for violence or other kinds of law-breaking activity. If the officers conducting this background research conclude that reasonable suspicion exists, they will then request authorization to open an investigation.

The request to open an investigation takes the form of a memorandum to the Executive Director of the Intelligence Fusion Division. The memo includes a summary of the information that led to the reasonable suspicion of criminal activity, the name of the group or groups to be investigated (if known), and the related First Amendment activity at which the crimes are possibly to be committed. According to MPD officials, it has been CIB practice to convene a meeting to discuss these memos and decide whether to proceed. This meeting typically includes the Captain in charge of the CIB, the Executive Director of the Intelligence Fusion Division (who has the authority to approve the investigation), the MPD General Counsel, a Sergeant from the CIB, and often the Assistant Chief of Police.

Once the investigation is underway, CIB shares intelligence obtained about possible upcoming criminal activity with other branches of the Department. According to the Captain of the CIB, the goal is to assign uniformed police officers to areas where crimes are suspected

to be committed and thus either deter the would-be criminals or to apprehend those who commit crimes.

The conduct of an investigation involves continued monitoring of “open source” websites, including discussion threads and other such sites where protesters can exchange information publicly. In addition, for most of the First Amendment investigations our office reviewed, CIB has requested the use of undercover officers. According to interviews with members of CIB, the undercover officers attend meetings of the groups suspected of planning criminal activity. They report whatever they learn about how many people might be involved, what exactly they are planning, where the crimes are to take place, and any other relevant details.

As noted above, this information can be used to deploy uniformed officers so as to prevent the crime or arrest those involved. Information gathered in this way is transmitted back to CIB. Undercover officers will also attend the First Amendment event itself and alert MPD commanders if they observe criminal activity as it is occurring or about to occur.

The Act requires that investigations be terminated when “logical leads have been exhausted and no legitimate law enforcement purpose justifies its continuance.”¹ In practice, this typically means that the investigations are wrapped up after the date of the protest, march or other relevant First Amendment activity. It is current MPD practice to seal the investigative file upon the closing of the investigation. The file is only to be unsealed with the approval of the Executive Director of the Intelligence Fusion Division.

United Students Against Sweatshops

United Students Against Sweatshops (USAS) is a nonprofit, national student labor organization that supports workers’ rights by staging public protest. USAS filed a civil lawsuit alleging MPD unlawfully opened an investigation against their organization in response to an alleged assault of a police officer during a protest held on May 1, 2013, that was not organized by USAS. ODCA was also named a party in the lawsuit. The case was dismissed for lack of standing.

¹ D.C. Code § 5-333.05(f)

Objectives, Scope and Methodology

Objectives

The objectives of the audit were to determine:

- Whether MPD was in compliance with the requirements of the Act during the scope of the audit; and
- Whether MPD has continually implemented the recommendations made in our audit report entitled “[Audit of the Metropolitan Police Department’s Investigations and Preliminary Inquiries Involving First Amendment Activities](#),” released September 27, 2012.

Scope

The scope of the audit included all investigations and preliminary inquiries subject to the requirements of the Act that were completed in 2013. We examined all files, training records and MPD policies and procedures related to the First Amendment investigations conducted in 2013.

According to MPD officials, there were 306 demonstrations “permitted” by MPD in the District during 2013. This does not include demonstration permitted through other law enforcement agencies within the District or other unpermitted demonstrations. Of the 306 demonstrations that were permitted by MPD in 2013, there were four demonstrations resulting in investigations in 2013 that were subject to the requirements of the Act.

Methodology

In order to determine whether MPD is in compliance with the requirements of the Act, ODCA reviewed MPD’s:

- Standard operating procedures for First Amendment investigations;
- MPD’s Investigative files for the time period;
- Communications between undercover officers and their superior officers; and

- Records showing training given to MPD personnel on the requirements of the Act.

In order to determine whether MPD has continually implemented the recommendations made in the September 27, 2012 report, we reviewed:

- MPD's standard operating procedures for First Amendment investigations;
- MPD documents related to the designation of authority under the Act; and
- Records documenting training given to MPD personnel on the requirements of the Act.

Audit Results

Based on a review of the information available to us, we found that Metropolitan Police Department (MPD) was in compliance with the requirements of the Act during its conduct of the four investigations that occurred in 2013. In addition, we found that MPD effectively and continually implemented all of the recommendations we made in our report entitled, “[Audit of the Metropolitan Police Department’s Investigations and Preliminary Inquiries Involving First Amendment Activities](#)” released September 27, 2012. See Appendix I for a list of recommendations from ODCA’s 2012 report.

Conclusion

Since 2005, the Metropolitan Police Department (MPD) has been conducting investigations subject to the Police Investigations Concerning First Amendment Activities Act of 2004. We have now audited, for compliance with the Act, every such investigation asserted to by MPD between 2005 and 2013. Our 2012 audit, covering investigations conducted between 2005 through 2011, revealed important areas of non-compliance. We made several recommendations for improvement in MPD policies and procedures to help improve compliance levels.

In this audit, we examined investigations conducted in 2013. ODCA found continued compliance with the requirements of the Act. We also noted that MPD has continued to effectively implement all the recommendations made in the 2012 audit.

We look forward to working with MPD again on our annual audit of First Amendment investigations.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence Perry". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lawrence Perry
Acting District of Columbia Auditor

Agency Comments

On August 15, 2014, the Office of the District of Columbia Auditor submitted a draft version of this report to Metropolitan Police Department (MPD) for review and comment. As required by the Act, we provided 30 days to submit a reply. MPD had no additional comments to add to the report. MPD's response is included with this report.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

SEP 02 2014

Lawrence Perry
Acting District of Columbia Auditor
Office of the D.C. Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Mr. Perry:

This is in response to your letter and draft report concerning the Metropolitan Police Department's (MPD) compliance with the First Amendment Activities Act of 2004. The MPD has taken the necessary steps to ensure our members are informed and trained on this important and fundamental right.

We will continue to maintain our commitment to uphold the first amendment rights of our community members. We are pleased with the report's findings that the "Metropolitan Police Department First Amendment Investigations Substantially Complied with District Law in 2013." As such, we will continue to ensure we meet or exceed these standards that have been set.

We have no additional comments that we feel need to be added to the report. Thank you for providing us with the opportunity to comment.

Sincerely,

Cathy L. Lanier
Chief of Police

Appendix I

Recommendations Made in the ODCA Fiscal Year 2012 Report

Number	Recommendation
1	Develop written Standard Operation Procedures that are consistent with the laws and regulations for authorizing preliminary and full First Amendment investigations. At a minimum, the Standard Operating Procedures should require the responsible official to affirm in writing that the First Amendment investigation was authorized. This authorization should include the authorizing official's printed name, position title, signature, and date signed.
2	Develop Standard Operating Procedures that outline the MPD's policy on purging investigative files. This Standard Operating Procedure should define the terms "accurate, reliable, relevant, and timely" as provided in the law and regulations, and include the process MPD will employ to identify and remove information that MPD considers is not "accurate, reliable, relevant, and timely."
3	Develop Standard Operating Procedures that provide the Auditor with access to MPD's files and records to conduct audits of MPD's investigations of First Amendment activities. The Standard Operating Procedures should define documentation that must remain in the First Amendment investigation files to verify that MPD properly authorized preliminary and full investigations.
4	Designate, in writing, those MPD members who may, in the absence of the Chief of Police's signature, authorize the use of undercover officers in conjunction with MPD's investigations of First Amendment activities.
5	Develop Standard Operating Procedures for requesting and authorizing the use of undercover officers that clearly document approval to use undercover officers in the investigation.
6	Develop Standard Operating Procedures that require MPD to provide MPD staff members who investigate First Amendment activities initial and refresher training regarding: Authorization, conduct, monitoring, and termination of investigation and preliminary inquiries; and The maintenance, dissemination, and purging of records, files, and information in connection with First Amendment investigations.
7	Develop a curriculum, training agenda, and attendance documentation that would allow MPD and the Auditor to be able to determine: What First Amendment training MPD provided, The dates when MPD provided the First Amendment training; and The names of MPD members that attended the First Amendment training.
8	Develop Standard Operating Procedures for First Amendment investigation file reviews. At a minimum, the Standard Operating Procedures should provide: The name, title, and signature of the person performing the investigation file review, The dates MPD conducted the investigation file review; and A narrative description of the results of the investigation file review.

9	Develop Standard Operating Procedures that require MPD to review First Amendment investigations prior to filing, and include within the investigation file a statement that MPD has corroborated the reliability, validity, and accuracy of the investigative information.
10	Develop Standard Operating Procedures for reviewing and authorizing First Amendment investigations at least every 90 days. At a minimum, these Standard Operating Procedures should provide for required review panel attendance, review requirements, review results, and the documenting of review panel attendance and approval.
11	Develop Standard Operating Procedures for reviewing and authorizing First Amendment investigations that exceed 120 days. At a minimum, these Standard Operating Procedures should provide for required review panel attendance, review requirements, and the documenting of review panel attendance and review results.
12	Develop Standard Operating Procedures that require undercover officers to provide regular, routine, and periodic status reports on the details of undercover activities conducted while performing First Amendment investigations.
13	Revise the recordkeeping and purging policies of the Metropolitan Police Department to allow the Auditor access to pertinent and relevant documents and records so that the Auditor can determine whether MPD complied with applicable laws when conducting First Amendment investigations.