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July 29, 2015

Via Email and First Class Mail

Seattle Police Department
Attn: Public Request Unit
P.O. Box 34986
Seattle, WA 98124-4986

Re: Request for Public Records (#14-2543)

To Whom It May Concern:

On February 23, 2015, we sent your office a public records request for records related to the Ferguson/Black Lives Matter protests that occurred on November 28, 2014. We received no production from your office until May 20, 2015. This response was only a partial response, and you indicated that we would be receiving the second installment of records on or about July 1, 2015. This date has now been moved out to August 12, 2015.

The responses we have received from your office thus far have raised some concerns, which our office finds very troubling. In particular, we are concerned about the following:

1. Timeliness

Our request to your office for public records related to the Ferguson protests was dated February 23, 2015. A recent email sent by our office on July 1, 2015 indicates that you received our request on February 25, 2015. The first production we received was almost three months after you received our request. Beyond this, your continued delays in providing records regarding an event that took place nearly 8 months ago are unacceptable. Our conversations with other requesters lead us to believe that these unacceptable delays are part of the Seattle Police Department's standard operating procedures. These activities contravene the purposes of our state's public records laws, as they inhibit effective oversight over government activities.

2. Redactions

The Public Records Act requires that any redactions or denials of records made by the agency must be explained, in writing and with adequate detail, to the requestor. RCW 42.56.070(1), .210, .520. These explanations must be sufficiently detailed as to allow the requestor to be able to determine whether the exceptions were

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properly invoked. *City of Lakewood v. Koenig*, 182 Wn.2d 87, 95, 343 P.3d 335 (2014).

The Incident Action Plan (IAP) contains redactions on all but three (3) pages of the document. Your office cited three exemptions that supposedly apply to these redactions, noting only that these exceptions apply “throughout.” This is not a sufficient explanation for these redactions. It is clear from the unredacted portions of the IAP that your office has redacted different types of information, including the names of officers, job duties related to the IAP, and all information about the internal communication plan. It is not clear, however, that every redaction is supported by all three cited exemptions. As noted by the Court of Appeals, your office must specify which exemption applies to each redaction in order to satisfy the requirements of the Public Records Act. *Gronquist v. Dep’t of Licensing*, 175 Wn. App. 729, 754, 309 P.3d 538 (2013). Your office has not done so, and we cannot determine from your inadequate exemption log whether you properly invoked the correct exemptions for the information redacted.

We ask that you please provide us with more detailed information about which exemption you are claiming for each redaction appearing on the IAP.

3. Invocation of the terrorism exception

One of the exemptions you are claiming applies to the redactions on the IAP is RCW 42.56.420(1), otherwise known as the “terrorism” exemption. Under this statute, “terrorism” is defined as “acts that significantly disrupt the conduct of government or of the general civilian population of the state or the United States and that manifest an extreme indifference to human life.” RCW 42.56.420(1). We do not believe that this exemption is properly invoked in this matter.

Exemptions to the mandate of public disclosure are to be narrowly construed. *Progressive Animal Welfare Soc. v. Univ. of Wash.*, 125 Wn.2d 243, 251, 884 P.2d 592 (1994). A narrow construction of RCW 42.56.420 does not permit your office to invoke it here. In enacting the “terrorism” exemption, the legislature recognized the need to protect information and documents designed to “prevent or mitigate criminal terrorist acts.” Laws of 2001, ch. 98, § 1. The event for which the IAP was designed occurred over six months ago. There is nothing to “prevent or mitigate” at this point in time.

More importantly, the fact that your office considers persons who stand up for the rights of black communities to be terrorists is extremely troubling, to say the least. Since the date of our last letter, events throughout our country have continued to reveal the racial inequities in police practices and the legitimate basis for distrust of police officers by black communities. It is vital that police departments across the country recognize these inequities and take steps to correct them, to follow the principles of equality mandated by our constitution, which they are sworn to uphold. Labeling these protestors and their supporters as “terrorists” moves the Seattle Police

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Department in the exact opposite direction. We are deeply troubled by this misclassification and its implications as to the Seattle Police Department's attitudes towards already marginalized and oppressed members of our society.

The purpose of our Public Records Act is to promote government accountability, to "assure that the public interest will be fully protected." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 128, 580 P.2d 246 (1978). This cannot be achieved when the government evades public disclosure through unjustified delay and vague or tenuous invocation of exemptions. The Seattle Police Department has already been admonished for its failure to properly adhere to the Public Records Act in the Seattle Office of City Auditor's *Audit of the Seattle Police Department's Public Disclosure Process* dated March 16, 2015. We are disappointed to find that many of the missteps raised in that report are still being replicated in the Department's responses to requests today. We ask that you provide a prompt response to our already months-old request, and that you justify your redactions with detail and proper exemptions.

Sincerely,

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