

The
Intercept_

UNDERCOVER POLICE HAVE REGULARLY SPIED ON BLACK LIVES MATTER ACTIVISTS IN NEW YORK

George Joseph

August 18 2015, 5:27 p.m.



Photo: Anadolu Agency/Getty Images

Documents obtained by *The Intercept* confirm that undercover police officers attended numerous Black Lives Matter protests in New York City between December 2014 and February 2015. The

documents also show that police in New York have monitored activists, tracking their movements and keeping individual photos of them on file.

The nearly 300 documents, released by the Metropolitan Transit Authority and the Metro-North Railroad, reveal more on-the-ground surveillance of Black Lives Matter activists than [previous](#) reports have shown, conducted by a coalition of MTA counterterrorism agents and undercover police in conjunction with NYPD intelligence officers.

This appears to be the first documented proof of the frequent presence of undercover police at Black Lives Matter protests in the city of New York, though many activists have suspected their presence since mass protests erupted there last year over a grand jury's decision not to indict Daniel Pantaleo, a police officer involved in the death of Eric Garner.

The protest surveillance and use of undercover officers raises questions over whether New York-area law enforcement agencies are potentially criminalizing the exercise of free speech and treating activists like terrorist threats. Critics say the police files seem to document a response vastly disproportionate to the level of law breaking associated with the protests.

The documents were released to activists after several requests under New York's Freedom of Information Law, which asked for records from the [MTA](#), MTA Metro-North, the [New York State Police](#), and the NYPD pertaining to Black Lives Matter protests at Grand Central Terminal between November 2014 and January 2015.

In the 118 pages released by the MTA, the names of undercover

police officers are redacted at least 58 times in five December 2014 protests, 124 times at five protests in January 2015, and 10 times at one protest in February 2015. *The Intercept* has been unable to contact any of the undercover police reporting on protests because the MTA said it redacted the “names of undercover police officers,” citing the New York Public Officers Law stipulating that certain records, which “if disclosed could endanger the life or safety of any person,” may be withheld. Metro-North also redacted the names of undercover officers. Both entities also said they redacted location and contact information for regular MTA police named in the documents.

Together the 118 MTA and 161 Metro-North documents also showed monitoring of an additional protest in November 2014, 11 protests in December 2014, nine protests in January 2015, and two protests in February 2015 by MTA officials and undercover police working at times in conjunction with NYPD officers.

In response to *The Intercept*'s request for information on the use of undercover police officers at Grand Central protests, MTA spokesperson Adam Lisberg issued the following statement: “The Metropolitan Transportation Authority Police Department must ensure the safety and security of millions of people who pass through our railroad systems every day, at a time when transportation networks have been persistently targeted by terrorists. We accommodate peaceful protest in our transportation system, while also ensuring that protest activities do not prevent customers from using the system for transportation. We take all appropriate police measures to ensure the safety and security of our customers, but we do not discuss the particulars of those operations.”

The NYPD has not released documents in response to the request, but documents released by the MTA and Metro-North show that NYPD officials have also been involved in the surveillance of Black Lives Matter protests in Grand Central and beyond. The NYPD did not respond to a request for comment.

Many of the documents released include live updates on protests from undercover police officers, reporting on group sizes, and the tracking of protesters' movements around the city, particularly the movements of New York's "People's Monday" protests, which focus attention on, and demonstrate on behalf of, victims of police brutality, and which repeatedly convene at Grand Central. Some of the reports go further than tracking group movements, however, referring to specific activists and including photos of them.

In one [document](#) concerning a protest on Martin Luther King Jr. Day, for example, an officer, whose name is redacted because of his undercover status, sends frequent updates on protesters' movements in Grand Central. The officer also notes that Jose LaSalle, founder of New York police watchdog group Copwatch Patrol Unit, has been "observed inside Grand Central Terminal." LaSalle is mentioned four times in the documents, twice for delivering a "mic check" and twice for his mere presence, as seen in document below. His picture also appears in the files several times:

Cutler, Ann

From: [REDACTED]
Sent: Thursday, January 15, 2015 7:09 PM
Subject: 15JAN2015 MLK PROTEST Update #6
Attachments: GCT 1845 hrs 15JAN2015.JPG; GCT 1847 hrs 15JAN2015.JPG

15JAN2015 MLK PROTEST
 Thursday, 15 January 2015

Update #6

1906 hrs
 Location: GRAND CENTRAL TERMINAL
 Protest group now marching to the lower level. (ICTF)

1859 hrs
 Location: GRAND CENTRAL TERMINAL
 Approximately 50-60 protesters inside GCT on main concourse. (ICTF)

1847 hrs
 Location: GRAND CENTRAL TERMINAL
 Group now marching with "Black Lives Matter" banner. See attached photos. (ICTF)



OBSERVED INSIDE GRAND CENTRAL TERMINAL
 Jose LaSalle, founder of New York City's Copwatch Patrol Unit

From: [REDACTED]
Sent: Thursday, January 15, 2015 6:43 PM
Subject: 15JAN2015 MLK PROTEST Update #5

15JAN2015 MLK PROTEST
 Thursday, 15 January 2015

Update #5

1

“I think its just another example of how anyone who is practicing their constitutional rights and speaking against the government is going to be considered a domestic problem,” says LaSalle. “It’s sad because all we’re doing is speaking because we feel there is no justice for people being brutalized by the system. It’s sad we have

to be targets of surveillance when were not committing crimes.”

Alex Vitale, a Brooklyn College associate professor in sociology, whose work focuses on policing, argues this is part of a long history of police surveillance of activists like LaSalle. “Historically, law enforcement, both local and national, have a track record of keeping files on activists, engaging in surveillance, and targeting for excessive enforcement action people identified in leadership roles in social movement,” he said. “The evidence shown by these documents raises warning flags about resources committed and, more importantly, the degree to which local police agencies are potentially targeting non-violent activists.”

The documents also hint that such surveillance operations may be targeting groups across the city. For example, one email [chain](#) from December 9 included a table with the protest plans of four groups, including those of “Students and Faculty from East Side Community High School,” a public school in Manhattan’s East Village:

NYC - GARNER / FERGUSON Grand Jury Decision Protests; TODAY

TUESDAY, 9 DEC 2014

Date	Day	Start	End	Group/Event	Proposed Location	Reason	Pct	1
9-Dec	Tue	14:30	16:00	Students and Faculty from East Side Community High School	Start at East Side Community High School (420 East 12th St) then MARCH to Eastern District Courthouse (225 Cadman Plaza) via BK Bridge Footpath	March in response to Eric Garner's GJ Decision	PBMS & 84	1
9-Dec	Tue	16:00	Unk.	National Action Network	41 Bay Street, SI	Response Protest to Eric Garner's Grand Jury Decision	120	1
9-Dec	Tue	17:00	Unk.	Peoples Power Assembly	Union Square	Response Protest to the Ferguson, MO decision	13	1
9-Dec	Tue	17:00	Unk.	Stop Mass Incarceration Network	North End of Union Square	Flash-Mob/ Die-In then MARCH "Through the City"	13	1
9-Dec	Tue	17:00	Unk.	Stop Mass Incarceration Network	Meet-up at Union Square then MARCH to 1 PP	"Justice for Eric Garner"	13 & 5	1

5

Though the documents were obtained from the MTA and Metro-North, they include several references to collaboration with NYPD officers. In one [email](#) from January 1, 2015, for example, an undercover police officer shares attached field reports and photographs of a protest at Grand Central, which MTA

counterterrorism agents provided “in conjunction with NYPD Intel team members.”

Cutler, Ann

From: [REDACTED]
Sent: Thursday, January 01, 2015 8:22 PM
To: Diaz, Raymond
Cc: Finneran, Kathleen; Berlingieri, John; Montgomery, Sean; Hammam, Keyla; Cheung, David
Subject: GCT Protest Summary 01Jan2015 Part 1
Attachments: GCT Protest 01JAN15.doc; GCT 1729 hrs.bmp; GCT 1722 hrs.bmp; GCT 1713 hrs.bmp; GCT 1712 hrs.bmp; Facebook page.bmp

Please see attached summary, photographs, etc. with regard to this evening’s protest event at Grand Central Terminal. MTAPD ICTF Field Team (Hammam/Cheung) provided photographs and field reports in conjunction with NYPD Intel team members.

[REDACTED]
[REDACTED]



CONFIDENTIALITY NOTICE: This email, including any attachments, may contain confidential and privileged information which is intended for the exclusive use of the individual or entity to which the transmission is addressed. If you are not the intended recipient, you are hereby notified that you have received this communication in error and that any review, disclosure, dissemination, distribution or copying of this transmission is strictly prohibited.

In another [document](#), sent February 13 concerning a demonstration at Grand Central, Anthony D’Angelis, identified in

the document as an MTA liaison with the NYPD's counterterrorism division, shared and labeled a photo of Alex Seel, a local photographer. In the documents, D'Angelis uses an NYPD email address.

Cutler, Ann

From: D' Angelis, Anthony
Sent: Friday, February 13, 2015 7:28 AM
Subject: Alex Seel (videographer/photographer) Protester GCT



It is unclear if any of the undercover police officers, whose names are redacted in the documents, are themselves NYPD personnel. According to the ACLU, if the NYPD is collecting information about protesters at Grand Central along the lines of the photographs that MTA appeared to collect, it may be in violation of the historic “[Handschu agreement](#),” which regulates the department’s monitoring of political groups.

Under the decree, “the NYPD is not permitted to retain information gathered from public events unless it’s connected to suspected criminal or terrorist activity,” says Nusrat Choudhury, an attorney at the ACLU. “They cannot identify someone and have their photo in their files unless they have evidence supporting reasonable suspicion that he was about to commit criminal activity or had engaged in criminal conduct.”

Regardless of these legal gray areas and the confusing blend of agencies engaged in the surveillance, several protesters at Grand Central say they are perturbed by the photo file’s existence, considering that Seel did not share his name publicly that night and usually only comes to the protests as a quiet photographer. “I was surprised that they had photos of Alex,” says Kim Ortiz, a Black Lives Matter organizer with the Grand Central People’s Monday group, also known by its hashtag, #PeoplesMonday. “He doesn’t do any of the planning. It’s very telling. If they’re focusing on someone who’s a silent supporter, I can’t imagine what they’re doing to people more at the forefront.”

Seel says he was “surprised by how specific they were with me, calling me photographer, and a documenter, and I’m pretty sure that photo is from Penn Station, so they definitely had it on file or

something. If you look at my A14 pictures, I caught some serious stuff – cops pushing people over – that’s my take on it. ... So it’s definitely a fear tactic used to break down certain aspects of the movement. They know that we’re the lens of the movement.”

The MTA and Metro-North documents also show that numerous counterterrorism and intelligence agents are involved in this monitoring, despite repeated references in the documents to the “peaceful” and “orderly” nature of the demonstrations. The Department of Homeland Security similarly commented on the lack of violence at Black Lives Matter protests in documents describing monitoring of those protests, [published](#) previously by *The Intercept*.

In an MTA [document](#) from January 12, D’Angelis, the NYPD counterterrorism division liaison, shared pictures that an unnamed “activist posted” of police milling around Grand Central. The photos in the email [appear to be from the Twitter account](#) of Black Lives Matter activist Keegan Stephan. Just beneath the photos, D’Angelis’s email claims the document is for “detering, detecting, and preventing terrorism.”



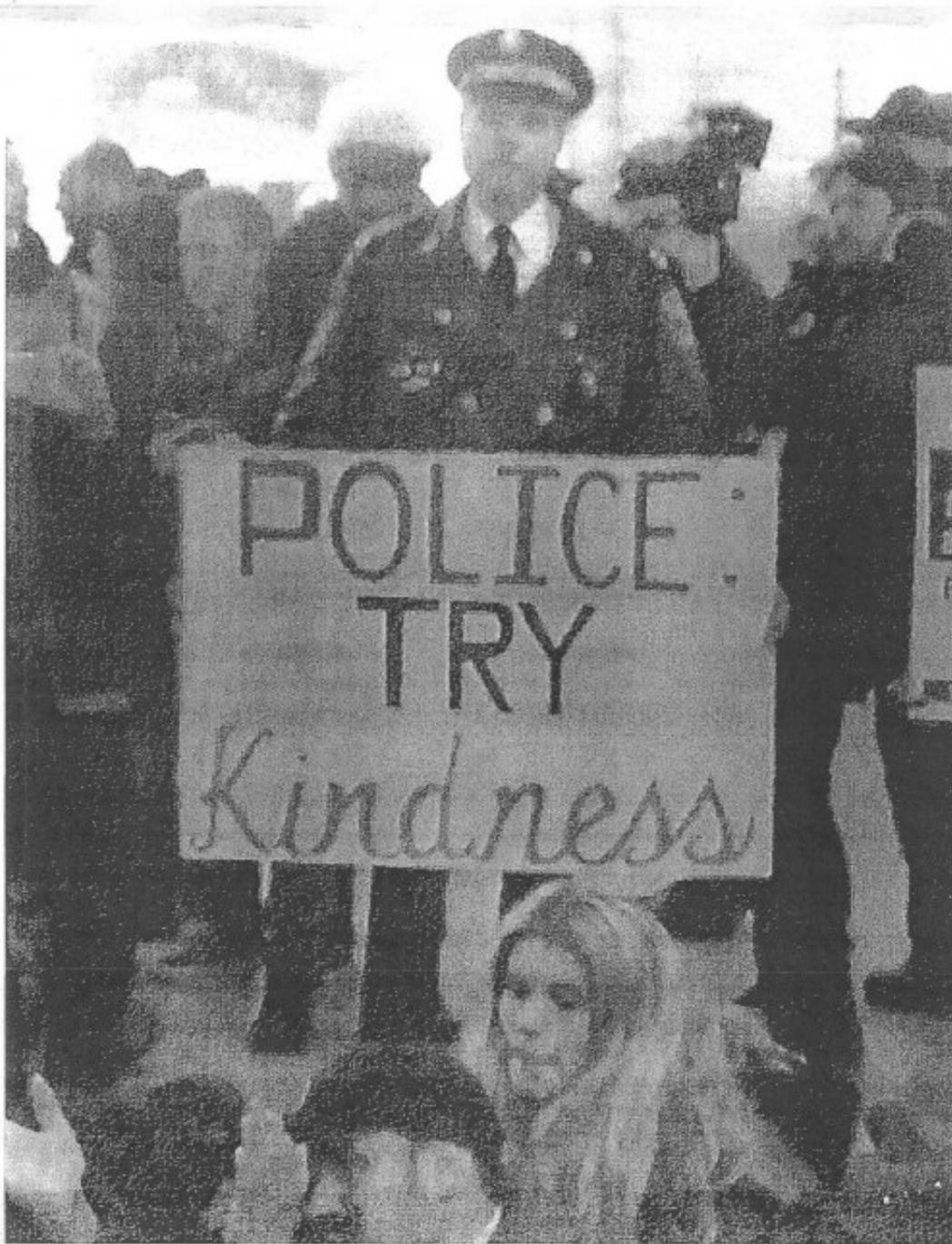
Detective Anthony D'Angelis
MTA PD (ICTF)
NYPD CTD Liaison

Unclassified //For Official Use only // Law Enforcement Sensitive Third Agency dissemination of this material is prohibited without prior MTA PD approval. This document is for deterring, detecting and preventing terrorism. This document contains law enforcement sensitive material and be shared appropriately , it should be protected from public dissemination.

In another [document](#) from a December 7 protest for Eric Garner, Detective Keyla Hammam, identified as a member of the MTA's Interagency Counter-Terrorism Task Force, shared a photo of prominent activist and former Philadelphia police officer Ray Lewis. An undercover police officer made an entry accompanying

Hamman's photo, mentioning Lewis' past activities with Occupy Wall Street and stating: "A retired Philadelphia Police Officer in uniform is one of the protesters at Grand Central Terminal. He is also known to NYPD as a protestor in OWS and has an arrest record with NYPD." (Lewis was arrested on disorderly conduct charges in connection with an Occupy Wall Street protest; the case was later [closed](#) by prosecutors.)

"I wasn't surprised at all," Lewis said when asked about the monitoring. "From my experience in law enforcement, I know the key concept to knocking out all protests is taking out leaders. So they see certain people and target them."



Vitale, the sociology professor, argues that police response to peaceful protests and civil disobedience is often wrongly designed to resemble counterterrorism operations, illustrating a broader mission creep in policing over the last decade. “Protests by their nature are disruptive, and that by itself should not be grounds for

surveillance and file-keeping,” he said. “But in the post-9-11 environment, there’s been a major shift towards risk aversion and massive expansion of intelligence gathering in a way such that protest activity often gets lumped in with terrorism investigation.”

In January, NYPD Commissioner Bill Bratton stirred controversy when he announced that the department would commingle efforts against terrorism with the containment of protests. Bratton said his new Strategic Response Group “is designed for dealing with events like our recent [Eric Garner] protests, or incidents like Mumbai or what just happened in Paris.” Bratton also noted, “In New York, dealing with terrorism, and large-scale disorder, and other so-called ‘black swan’ events involves similar skill sets.”

Many Black Lives Matter activists argue the surveillance documented in the MTA files does not constitute crime or terrorism prevention, especially given how non-confrontational the People’s Monday protest events have been.

“We do the same thing every week,” says Stephan, the People’s Monday organizer whose Twitter photos were in the documents. “We read aloud the facts of their cases, and statistics about police killings, generally. ... The biggest confrontation that has occurred was when police threatened to arrest us [for doing die-ins](#), but ultimately, they didn’t even make arrests for this – and haven’t – because even when we do die-in we aren’t obstructing access to the trains.”

Indeed, many of the MTA and Metro-North documents support Stephan’s claim, mentioning that the protests remain “peaceful,” “orderly,” “in order,” and “all orderly.” According to one [email exchange](#) from January 19, 2015, still in the swing of [the post-Eric](#)

Garner non-indictment protests, top MTA officials casually discussed a Grand Central protest, CC'ing the Metro-North's chief security officer and remarking that protesters "just began chanting. The usual routine."

Montanino, Linda

From: Rehbein, Kim
Sent: Monday, January 19, 2015 6:20 PM
To: Rinaldi, Catherine
Cc: Fleischer, Randall; Giuliotti, Joseph; Ryan, Sean
Subject: Re: Protestors
Attachments: image1.jpeg



Estimated at 100 now

On Jan 19, 2015, at 6:15 PM, Rinaldi, Catherine <crinaldi@mnr.org> wrote:

Thanks. Still the typical routine?

Sent from my Verizon Wireless 4G LTE smartphone

----- Original message -----

From: "Rehbein, Kim"
Date: 01/19/2015 5:58 PM (GMT-05:00)
To: "Fleischer, Randall"
Cc: "Giuliotti, Joseph", "Rinaldi, Catherine", "Ryan, Sean"
Subject: Re: Protestors

Group is now at 50.

On Jan 19, 2015, at 5:54 PM, Fleischer, Randall <RFleischer@mnr.org> wrote:

Joe/ Cathy,
We have about 20 protestors on the main floor at this time. Just began chanting.
The usual routine.

Randy

Randall J. Fleischer
Vice President
Grand Central Terminal and Corporate Development
MTA Metro North Railroad
3153

212-340-

Nonetheless, this intelligence gathering on activists by undercover police and counterterrorism agents continued, according to the documents.

Comedian and Black Lives Matter activist Elsa Waithe believes the purpose of this intense police surveillance is to chill dissent and gather information in order to better target organizers. Waithe stopped attending the weekly Grand Central protests after an April 14 demonstration in which video shows her **being shoved** by a man identified as a police officer, allegedly because Waithe was trying to film an arrest.



“Weeks before the assault, a police officer referred to me by name, and I don’t know how he knew it,” says Waithe. “We were in Grand Central just about every single week before, so they set up a crow’s nest – like two to three guys with cameras standing up high above the concourse – a lot of those photos in your

documents look like it must have come from that angle. When you know they're recording and watching you – that's a feeling I can't ever shake. I don't know what they're doing with all those hours of tape because there's nothing much there. It's just being used to intimidate us.”

Waithe argues this prior surveillance in part contributed to her assault: “The day it happened, someone was getting arrested pretty roughly so I went to go film cause I'm a member of Copwatch. The officer shoved me back like a football player and I fell to the ground. I fell onto a wrought iron metal tree guard, and had to be taken in the ambulance because of severe swelling in my ribs. I think they already had information on me and saw that as an opportunity.”

Nonetheless, according to organizers, the intensity of this surveillance was expected from the get-go and dogged many of them even before the Black Lives Matter movement. Angie Brilliance, an organizer from Chicago with the group Black Youth Project 100, recalls fighting in a 2012 campaign for a mental health care facility in one of Chicago's black neighborhoods, only to find out that some of the most provocative organizers among them [may have been police informants](#).

“We need to be aware, especially given the digital organizing of the modern era, about how we're being tracked,” says Brilliance. “I know we and many groups we're affiliated with try as much as possible to not put any plans down on digital documents, to meet in person, and other strategies I probably shouldn't make public – we have to learn from what the state did to break up our ancestors' struggles.”

Most Black Lives Matter activists interviewed by *The Intercept* noted that while the intense surveillance of their lives gave them pause, it wouldn't stop them from protesting.

“Some of this surveillance is meant to scare us and potentially to figure out what people's next steps are,” says DeRay Mckesson, an activist whose prominent social media presence has reportedly been monitored by **both** private cybersecurity firms and the Department of Homeland Security. “But what we're doing is right.”

AdChoices **BLACK VOICES** 08/21/2015 02:51 pm ET

Is NYPD Crossing The Line, Again, In Its Black Lives Matter Surveillance?

That would be “the same troubling surveillance it has conducted for decades on political activists.”

By Christopher Mathias

NEW YORK — The New York City Police Department’s involvement in the surveillance of Black Lives Matter activists, [as revealed this week by The Intercept](#), is once again raising questions about whether the NYPD is unlawfully monitoring political activity.

Nearly 280 documents on how authorities watched protests, primarily inside Grand Central Terminal between November 2014 and January 2015, were turned over by the Metropolitan Transportation Authority and Metro-North in response to a Freedom of Information Law request from the activists. According to The Intercept, the documents show that MTA counterterrorism agents, along with “undercover” officers, monitored 21 peaceful Black Lives Matter demonstrations at the Manhattan transportation hub, photographing and keeping files on individual activists who were doing nothing more than utilizing their First Amendment right to free speech and assembly.

What’s more, the documents reveal that the two agencies worked in conjunction with NYPD intelligence officers to monitor the protesters.

“The report about NYPD and MTA police officers conducting surveillance on protesters opposed to police brutality demonstrates that the NYPD remains engaged in the same troubling surveillance it has conducted for decades on political activists,” Monifa Bande, of the group Communities United for Police Reform, said in a statement Thursday.



H Is NYPD Crossing The Line, Again, In Its Black Lives Matter Surveillance?



CREDIT: ANADOLU AGENCY VIA GETTY IMAGES

Black Lives Matter protesters gather inside Grand Central Terminal in Manhattan on Dec. 7, 2014.

In 1971, civil rights lawyer Barbara Handschu, members of the Black Panthers and anti-war activists, among others, filed a lawsuit alleging that the NYPD had illegally infiltrated, surveilled and disrupted First Amendment-protected activity, mostly surrounding Vietnam War protests.

As a result of the lawsuit, the NYPD agreed in 1985 to what's now called the Handschu agreement: Police can spy on constitutionally protected activity only when there is credible information of criminal activity and only after its surveillance plan is approved by an overseer called the Handschu authority. (This agreement does not apply to the MTA or Metro-North.)

While the documents obtained by The Intercept this week show only glimpses of NYPD involvement in the surveillance of Black Lives Matter protesters, they suggest the department could be breaching the Handschu agreement.



CREDIT: TIMOTHY A. CLARY VIA GETTY IMAGES

Protesters lie down in Manhattan's Grand Central Terminal during a demonstration on Dec. 3, 2014.

In a Feb. 13 email, for example, regarding one Grand Central demonstration, Anthony D'Angelis — identified as an MTA [liaison with the NYPD's counterterrorism division](#) — shares a photo of an individual protester.

"Alex Seel (videographer/photographer) protester GTC," reads the subject line of the email, which D'Angelis sent from an NYPD email address. Activists told The Intercept they were surprised that Seel, who never revealed his name to police, was identified in the documents.

Another email, from Jan. 12, shows D'Angelis sharing photos taken by an unnamed activist who posted photos of police patrolling inside Grand Central. The photos appear to be taken from the Twitter account of Black Lives Matter activist Keegan Stephan.

And then there's an email from Jan. 1, which summarized another protest that day at Grand Central. It says that MTA officers from the Inter-agency Counterterrorism Task Force "provided photographs and field reports in conjunction with NYPD Intel team members."

"This is certainly something that makes us want to do some further inquiries," Martin Stolar, one of the attorneys that has worked on the Handschu lawsuit since its inception over 40 years ago, told The Huffington Post.

"One of the things that's of concern is the collection of photo or video evidence of people not involved in criminal conduct," he said, pointing to the actions of the MTA and MetroNorth. "I don't know whether that's occurred [with the NYPD]."

If the police department has been collecting evidence about the protests, that could be a violation of the Handschu agreement.



about 2 years ago

From: [REDACTED]
 Sent: Thursday, January 15, 2015 7:09 PM
 Subject: 15JAN2015 MLK PROTEST Update #6
 Attachments: GCT 1845 hrs 15JAN2015.JPG; GCT 1847 hrs 15JAN2015.JPG

15JAN2015 MLK PROTEST
 Thursday, 15 January 2015

Update #6

1906 hrs
 Location: GRAND CENTRAL TERMINAL
 Protest group now marching to the lower level. (ICTF)

1859 hrs
 Location: GRAND CENTRAL TERMINAL
 Approximately 50-60 protesters inside GCT on main concourse. (ICTF)

1847 hrs
 Location: GRAND CENTRAL TERMINAL
 Group now marching with "Black Lives Matter" banner. See attached photos. (ICTF)



OBSERVED INSIDE GRAND CENTRAL TERMINAL
 Jose LaSalle, founder of New York City's Copwatch Patrol Unit

From: [REDACTED]
 Sent: Thursday, January 15, 2015 6:43 PM
 Subject: 15JAN2015 MLK PROTEST Update #5

15JAN2015 MLK PROTEST
 Thursday, 15 January 2015

Update #5

My Freedom Fighter family, as you could see from these documents big brother is watching us all. Freedom Fighters like us has become a threat to the status quo, because we speak the truth. FTP.

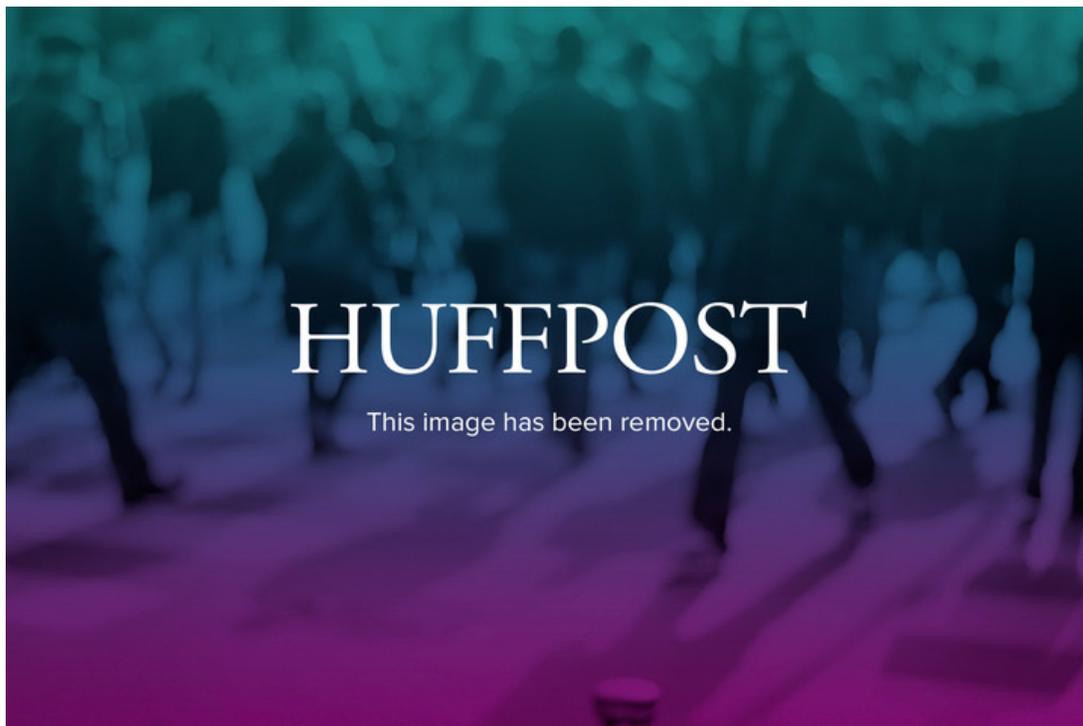
87 13 14

AdChoices

Stolar added that it was “bothersome” that documents about the Grand Central protests show the involvement of counterterrorism officers “because if you are the police department treating peaceful First Amendment activity as terrorism, then we have a serious issue.”

Stolar also speculated that the department could be using events at previous Black Lives Matter demonstrations to justify spying on others. For example, during one of demonstrations after the death of Eric Garner, the unarmed black man who was put in a police chokehold last summer, [two cops were assaulted](#) on the Brooklyn Bridge.

“And that gives them the ability to surveil every demonstration involving Garner,” Stolar. “That’s the excuse they could use.”



CREDIT: JASON DECROW/ASSOCIATED PRESS

Protesters rallying against the grand jury's decision not to indict the police officer involved in the death of Eric Garner occupy traffic lanes on the Brooklyn Bridge in the early morning hours of Dec. 4, 2014, in New York.

Stolar cautioned, however, that without more evidence, it's impossible to tell whether the NYPD has violated the Handschu agreement, and until then, neither he nor his co-counsel can take legal action.

According to The Intercept, activists also filed a Freedom of Information Law request with the NYPD over the Grand Central protests, but the department has yet to fulfill the request. ([If it ever does.](#))

"The NYPD confers with our Legal Bureau when planning for the policing of protests and demonstrations," Deputy Commissioner Stephen Davis told HuffPost in a statement Thursday. "We comply with the various established guidelines governing police activities involving these public events."

Davis also disputed The Intercept's characterization of officers as "undercover" and said they were merely in plainclothes. Use of such officers, he said, was appropriate due to instances of criminal activity at previous demonstrations.

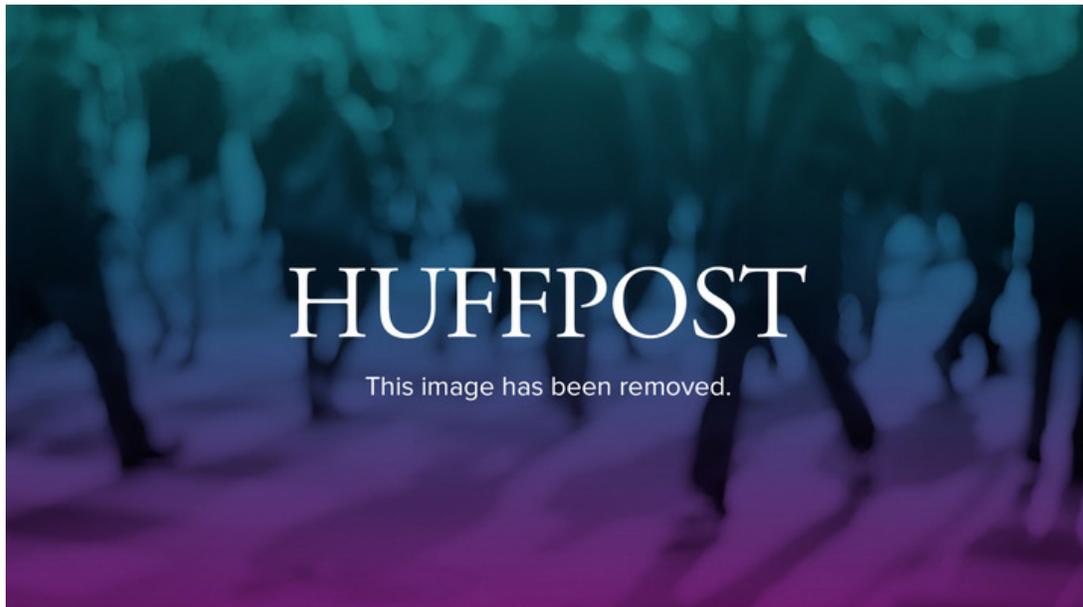
But Bandele, of Communities United for Police Reform, sees the NYPD's actions as part of a long practice of treating peaceful demonstrators like terrorists.

"This dubious surveillance by the NYPD continues under [New York City Mayor Bill de Blasio's] administration despite its claims regarding reform, as the Intercept story further substantiates a previous [April New York Times report](#) regarding the questioning of protesters," Bandele said. "Given the fact that [New York Police] Commissioner [William] Bratton [previously stated](#) that a new NYPD unit would dually handle protests and terrorism threats, New Yorkers should be very concerned about whose First Amendment rights are considered for taxpayer-funded NYPD surveillance."

That New York Times report documented intense post-arrest interrogation of at least 11 protesters in custody on petty charges related to the demonstrations. As a result of the report, NYPD Deputy Commissioner Lawrence Byrne wrote that the department had directed that post-arrest questioning of protesters "may not be conducted absent explicit

advanced authorization by the Legal Bureau on a case by case basis.”

Similarly, in 2003, a judge overseeing the Handschu agreement reprimanded the NYPD after it was revealed that detectives had been using a document called the Demonstration Debriefing Form when interrogating anti-Iraq War protesters, [The New York Times reported](#). The form tracked where the protesters went to school, what organizations they belonged to and what demonstrations they had previously participated in. Detectives also reportedly asked protesters about their political beliefs, including their views on Israel and Palestine.



CREDIT: LOUIS LANZANO/ASSOCIATED PRESS

Anti-war demonstrators march down Broadway protesting the war in Iraq on March 22, 2003, in New York.

And in 2013, Stolar and his co-counsel filed papers in court accusing the NYPD of violating the Handschu rules when it used undercover officers to routinely [surveil Muslims in restaurants, bookstores and mosques](#), as exposed by a Pulitzer Prize-winning Associated Press investigation. A settlement in that case is expected soon.

Meanwhile, as Black Lives Matter protests continue in New York City and across the country, protesters can expect that more than one government agency is watching them. Another [recent report from The Intercept](#) revealed that the U.S. Department of Homeland Security has been monitoring Black Lives Matter protesters since demonstrations erupted in Ferguson, Missouri, one year ago.

Christopher Mathias

National Reporter, The Huffington Post

[Suggest a correction](#)

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NYPD sent undercover officers to Black Lives Matter protest, records reveal

The New York police department also collected 'multimedia records' of protests after the death of Eric Garner, legal papers show

George Joseph

Thursday 29 September 2016 07.00 EDT

Legal papers filed by the New York police department reveal that the department sent its own undercover officers to protests led by Black Lives Matter after the death of Eric Garner. The NYPD documents also show that it collected multimedia records about the protests.

The NYPD disclosed its undercover operations in response to a group of New York attorneys requesting records under the state freedom of information law. The department has thus far declined to provide the records requested. But its descriptions in August court filings of the records it is refusing to release provide new details about its monitoring of protests at Grand Central Station:

The first set contains “multimedia records” relating to the petitioners’ request for “pictures, videos, audio recordings, data, and metadata” collected or received by the NYPD at the Grand Central Station protests, which Black Lives Matter groups are still leading, according to the NYPD response.

The second “consists entirely of communications between and among NYPD undercover officers and their handlers”, pertaining to the protests. According to a 22 August NYPD Memorandum of Law, these undercover communications “consist primarily of immediate impressions concerning ongoing events”.

The third “consists of a single record, which is a communication from an NYPD officer working in an undercover capacity and his base”, pertaining to the protests, the response indicates.

From: [REDACTED]
Sent: Thursday, January 15, 2015 7:09 PM
Subject: 15JAN2015 MLK PROTEST Update #6
Attachments: GCT 1845 hrs 15JAN2015.JPG; GCT 1847 hrs 15JAN2015.JPG

15JAN2015 MLK PROTEST
Thursday, 15 January 2015

Update #6

1906 hrs
Location: GRAND CENTRAL TERMINAL
Protest group now marching to the lower level. (ICTF)

1859 hrs
Location: GRAND CENTRAL TERMINAL
Approximately 50-60 protesters inside GCT on main concourse. (ICTF)

1847 hrs
Location: GRAND CENTRAL TERMINAL
Group now marching with “Black Lives Matter” banner. See attached photos. (ICTF)



OBSERVED INSIDE GRAND CENTRAL TERMINAL
Jose LaSalle, founder of New York City’s Copwatch Patrol Unit

One of the images transit police released in response to the same group’s records request about Black Lives Matter surveillance last year. Photograph: Screenshot from Freedom of Information request

The revelations come from the same records request that led to the Intercept’s release of documents last summer showing that MTA and Metro-North transit police had regularly spied on Black Lives Matter protesters in and around Grand Central, deploying plainclothes officers to monitor demonstrations, track their movements, and share photos of activists. Though some NYPD officials appeared to be linked to the monitoring, those documents did

not confirm whether the NYPD itself was leading its own surveillance operation targeting activists.

The attorneys litigating for the records say the NYPD's newly revealed operations are potential constitutional violations, especially since released MTA and Metro-North police observations of these protests frequently stated that the gatherings were "peaceful" and "orderly".

"The fear and disarming effect caused by undercover officers being assigned to what were and continue to be extraordinarily peaceful protests is disturbing," said MJ Williams, one of the attorneys involved in the records request. "To the extent that it would influence individuals not to participate and get individuals to censor what they say because of a fear of undercover officers - that's a basis for a first amendment violation."

She added: "As someone who was present at the protests, it's disturbing to know the NYPD may have a file on me, ready to be used or to prevent me from getting a job simply because I've been active in some political capacity. That's potentially a fourth amendment violation for unlawful seizure, but on the other hand, we've seen law enforcement agencies have all sorts of justifications for data collection for public safety that the courts have allowed."

In response to the Freedom of Information Law request, John Donohue, the second highest ranking uniformed officer in the NYPD's intelligence bureau, argued in an affidavit that the NYPD could not release the records because public understanding of the undercover operations could help "would-be criminals" learn "the circumstances in which the NYPD does not, or cannot, deploy undercover officers". The release of the "multimedia" records of the protests, Donohue said, also could reveal "the kinds of optical technology NYPD uses, both in its undercover and general surveillance operations" and "any areas NYPD does not have under surveillance, thereby exposing gaps in coverage".

The MTA and Metro-North disclosures from last summer revealed that transit police tracked activists' locations and shared images of some activists, like Jose La Salle, an organizer with the New York police watchdog group Copwatch Patrol Unit, and Alex Seel, a movement photographer.

If similar multimedia images are being held by the NYPD, they could be a violation of the NYPD's protest monitoring rules, known as the Handschu guidelines, which are supposed to prevent the department from deploying undercover officers or collecting images of protesters solely to keep tabs on their political activity.

Martin Stolar, an attorney who helped bring about the Handschu guidelines in 1971, said it isn't clear if the NYPD violated the guidelines since we do not know if the monitoring is part of an authorized ongoing investigation. In an email to the Guardian, Stolar explained, the NYPD is "unlikely to tell you, or anyone, whether an investigation is ongoing or not and authorized or not".

The NYPD did not respond to a request for comment.

In recent years the NYPD has been criticized for alleged spying on political and ethnic groups without substantial evidence of criminal activity. New York City's independent police monitor released a report in August, concluding that between 2010 and 2015 the department routinely violated legal requirements in its monitoring of Muslim communities, failing to explain its use of undercovers and informants and extending investigations without evidence of criminal activity.

In recent weeks, Black Lives Matter activists in New York have pointed to apparent sightings of undercover NYPD officers at protests and claim that the surveillance is ongoing.

“This is still happening, we still have undercovers at our protests weekly,” said Armie Jeffreys, an organizer with NYC Shut It Down and Millions March. “But we’re still out here. They can try if they want to, but it’s not gonna stop us.”

Topics

Black Lives Matter movement

NYPD**New York****US policing****Surveillance****Protest****news**

Photo: [Keegan Stephan](#)

During a hearing at New York Supreme Court on Wednesday, the NYPD argued that it should not have to disclose records pertaining to its undercover surveillance of the Black Lives Matter movement.

In court papers ([PDF doc](#)), the nation's largest police department admitted that it has records of communications between undercover officers surveilling the Black Lives Matter movement and their handlers, as well as multimedia records collected by those officers.

The existence of these records came to light through a Freedom of Information request filed by a Black Lives Matter activist during the height of the movement's demonstrations in NYC. The activist sought all records collected by police officers in Manhattan's Grand Central Terminal from November 2014 through January 2015. At the time, Black Lives Matter demonstrators were gathering in Grand Central daily, and the activist witnessed police officers from the MTA, Metro-North, and NYPD photographing and filming the demonstrations, so he requested records from all three agencies.

The NYPD initially said that it had no responsive records. However, the MTA and Metro-North released hundreds of pages of records that contained photographs of the protests and protesters, along with communications between police officers. City officers were cc'd on almost all of these communications, and many of them, including some of the photographs, originated from the NYPD. The records stated that the

names of undercover officers were redacted, and several names and e-mail addresses were in fact redacted throughout.



The activist released these records to *The Intercept*, which ran an article on the disclosure under the headline “**Undercover Police Have Regularly Spied on Black Lives Matter Activists In New York.**” In a **follow-up article** on the Huffington Post, Deputy Commissioner Stephen Davis of the NYPD “disputed *The Intercept*’s characterization of officers as ‘undercover’ and said they were merely in plainclothes.”

The NYPD also continued to deny it had any records responsive to the Freedom of Information request, and stated that if it did have any records, they would be exempt from disclosure, citing multiple exemptions.

Aware the NYPD had responsive records based on the MTA and Metro-North disclosure, and curious if the NYPD had more records than were disclosed by the other agencies, a group of activists and attorneys, including myself, sued to compel the production of the records.

In their reply papers, the NYPD admitted it did, in fact, have more records. The NYPD also said that it did, in fact, have undercover officers surveilling the Black Lives Matter Movement in NYC, despite what it told the press after the MTA and Metro-North disclosures.

In court, the NYPD argued that it should not have to disclose these records for three reasons: (1) that they would reveal the identity of the undercover officers, putting their lives in danger; (2) that they would reveal the NYPD's undercover tactics, rendering them less effective; and (3) that they would reveal technology used by the NYPD, leaving it vulnerable to malicious hacks. The NYPD claims these reasons satisfy exemptions under the Freedom of Information Law.





Petitioner's counsel, David Thompson, of the law firm **Stecklow and Thompson**, argued that this reasoning does not satisfy the FOIL exemptions. He noted that the names of the undercover officers could easily be redacted, as they were in the records released by the MTA and Metro-North, and consistent with FOIL. Only step-by-step instructions of undercover tactics are exempt under FOIL, he said, not communications, facts, and images, which is what the NYPD has claimed it has and what the MTA and Metro-North released.

He responded to police claims that the NYPD's camera surveillance system could be hacked if people knew what kind of cameras were in use, by showing the court multiple photographs of NYPD surveillance cameras visible in the NYC subway, that have not only the brand, but the model number of the camera displayed where any member of the public

model number of the camera displayed where any member of the public could see it. He also submitted expert testimony ([PDF doc](#)) stating that all metadata contained in multimedia files can be easily and completely scrubbed before disclosure.

Finally, he argued that the court should not take the NYPD's word that these documents fall into any exemption. He noted that the court is permitted to order an in camera review of the documents to determine if they are exempt, and pointed out that this may be called for in this matter since the NYPD has been dishonest about the existence and contents of the records throughout. The NYPD lied about having undercover officers at the demonstrations, he noted, and further lied about having records relating to these demonstrations.

Indeed, the mere existence of these records raises legal questions. Under court-ordered guidelines, the NYPD is not supposed to keep images and files on first amendment protected political activity outside of a criminal investigation. Nothing in the NYPD's papers state that it ever had an open criminal investigation related to these demonstrations, yet the department sent undercover officers to these protests, created multimedia files of them, and generated records about them. And the NYPD maintains those records to this day, almost two years later. The Office of the Inspector General recently released a report ([PDF doc](#)) condemning the NYPD for failing to follow the court-ordered guidelines in its investigations of political activity, but no specifics were made to its surveillance of Black Lives Matter.

After the hearing, Thompson said that the concern is that the NYPD is maintaining these records and creating dossiers on peaceful political

activists. He noted that this type of policing is contrary to a free and open democracy, and is the exact reason that Freedom of Information laws were created. Historically, Freedom of Information laws were created after surveillance of political activists, such as Martin Luther King Jr., were revealed, and the public generally found these surveillance tactics unacceptable.



Lesley Berson Mbaye, the attorney for the NYPD, said that Thompson

“claimed” there was no open criminal investigation, but produced no evidence that there ever was, let alone still is. If there is still an active investigation, this begs the question of whether these undercover officers are still operating in the Black Lives Matter Movement in NYC today. If they are, that may support the NYPD’s reasons for invoking exemptions, but it bolsters larger concerns about the extent of the NYPD’s undercover activity in the movement. It is now a **matter of public record** that an undercover NYPD officer assigned to the Occupy Wall Street movement attended not only public demonstrations, but also private, social events, and did so long after the large demonstrations in Zuccotti Park were dismantled. It is also worth noting that this officer was outed for instigating violence at another, unrelated event, for which he was convicted of multiple crimes.

Mbaye also condemned Mr. Thompson for questioning the honesty of the NYPD officers who had denied the FOIL requests. She said the NYPD was not required to say what records it had that were exempt under FOIL.

M.J. Williams, another attorney working on the case, said this was a misinterpretation of the law. Mbaye, she said, “misguided the court as to the law in an effort to win.”

In an e-mail to Mass Appeal, Thompson said, “I always think it is amusing when the City attorneys pretend to be outraged when I call the NYPD out on presenting false information to the court. Of course there is a simple solution — the NYPD could stop making false statements of fact and law in court.”

The judge stated that he will further review the case and issue his opinion online.

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NYPD must disclose surveillance of Black Lives Matter protesters

BY STEPHEN REX BROWN

NEW YORK DAILY NEWS Updated: Wednesday, February 8, 2017, 1:42 PM



NYPD officers watch demonstrators as they lie down on the floor of Grand Central Terminal in December 2014. (EDUARDO MUNOZ ALVAREZ/AFP/GETTY IMAGES)

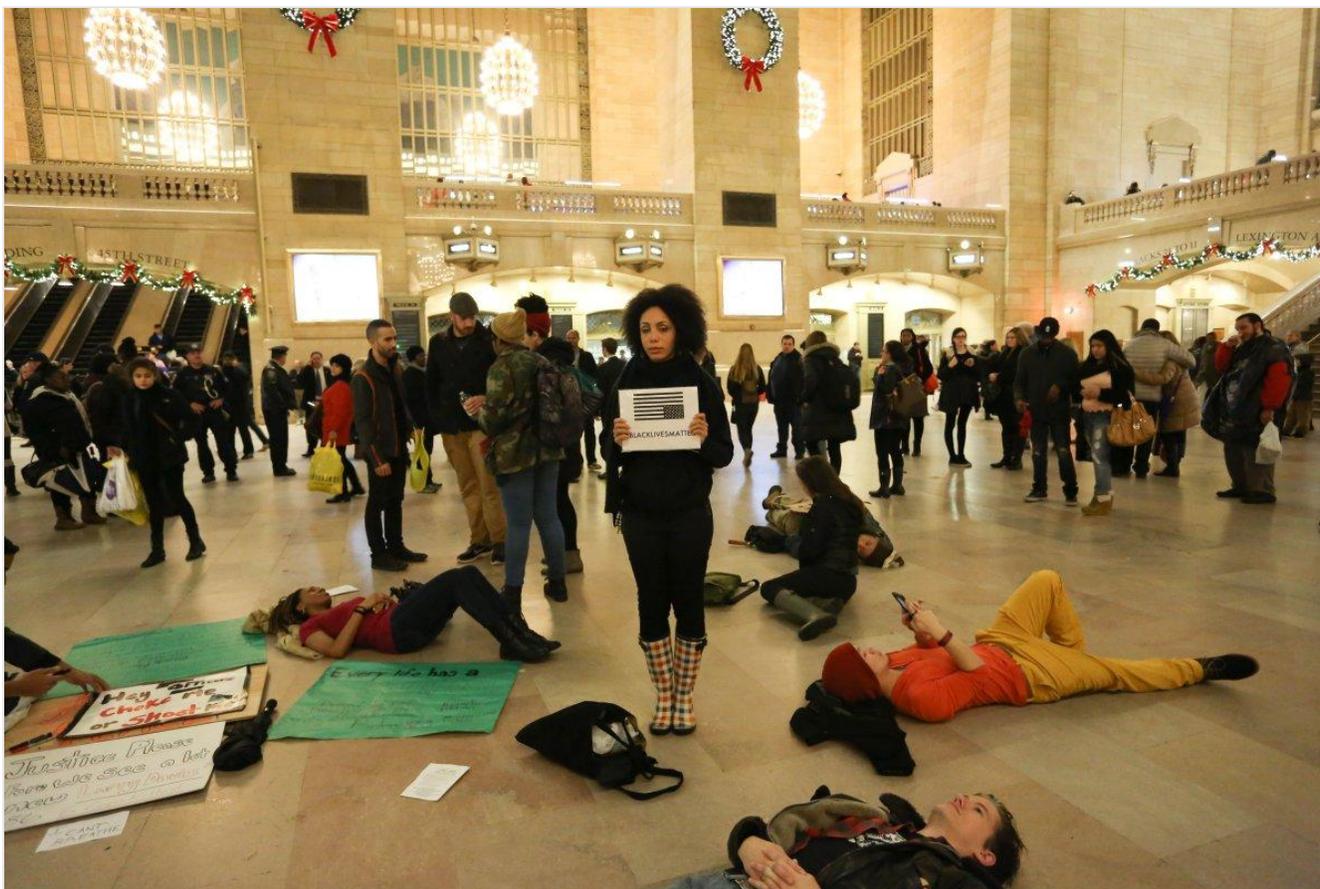
The NYPD must disclose documents and video revealing surveillance of Black Lives Matter protesters at Grand Central Terminal in 2014 and 2015, a judge has ruled.

The case, brought by protester James Logue, challenged the NYPD's denial of a Freedom of Information Law request for information on its monitoring of rallies following the police killings of Eric Garner in Staten Island and Michael Brown in Ferguson, Mo.

Logue decided to file the request after suspecting that police were “compiling dossiers” on individuals at the peaceful protest, his attorney David Thompson said.

The NYPD had argued that revealing its tactics would interfere with law enforcement work.

But Manhattan Supreme Court Justice Manuel Mendez ruled the NYPD could not decline to comply with the law on such “overly broad” grounds.



Manhattan Supreme Court Justice Manuel Mendez says the NYPD based its objections to an information request on "overly broad" grounds. (SHAWN INGLIMA)

NYPD authorities “make blanket assertions and fail to particularize or distinguish their surveillance or undercover techniques and records,” Mendez wrote, adding that the department had failed to show why the use of redactions could not protect ongoing investigative work.

The judge noted that the MTA and Metro-North, which also monitored the rallies, responded to Logue’s FOIL request with some paperwork. Mendez ordered the NYPD to comply with Logue’s request within 30 days. He signed the ruling Monday, though it was made public Wednesday.

Thompson said NYPD routinely flouted state law regarding disclosure of documents that should be public.

“Their practice is to simply deny all the requests,” he said, adding that he hoped the ruling would lead to a change in practice.



NYPD authorities “make blanket assertions and fail to particularize or distinguish their surveillance or undercover techniques and records,” Mendez wrote. (SAM COSTANZA/FOR NEW YORK DAILY NEWS)

“We have a right to expect law enforcement to obey laws.”

In August 2015, it emerged that the MTA and NYPD had undercover and plain-clothes cops to monitor “die-ins” at Grand Central.

“We are reviewing the decision with the NYPD, and will respond accordingly,” a city Law Department spokesman said.

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The Guardian



NYPD officers accessed Black Lives Matter activists' texts, documents show

Exclusive: Documents obtained by the Guardian reveal details of how police posed as protesters amid unrest following the death of Eric Garner

George Joseph in New York

Tue 4 Apr 2017 06.00 EDT

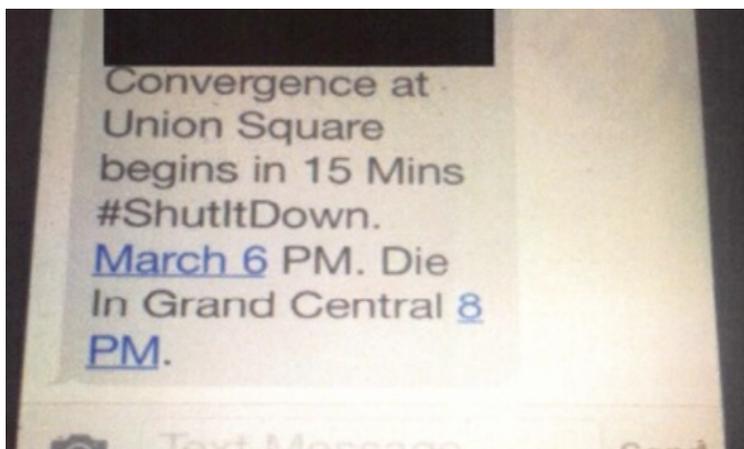
Undercover officers in the New York police department infiltrated small groups of Black Lives Matter activists and gained access to their text messages, according to newly released NYPD documents obtained by the Guardian.

The records, produced in response to a freedom of information lawsuit led by New York law firm Stecklow & Thompson, provide the most detailed picture yet of the sweeping scope of NYPD surveillance during mass protests over the death of Eric Garner in 2014 and 2015. Lawyers said the new documents raised questions about NYPD compliance with city rules.

The documents, mostly emails between undercover officers and other NYPD officials, follow other disclosures that the NYPD regularly filmed Black Lives Matter activists and sent undercover

personnel to protests. The NYPD has not responded to the Guardian's request for comment or interview.

Emails show that undercover officers were able to pose as protesters even within small groups, giving them extensive access to details about protesters' whereabouts and plans. In one email, an official notes that an undercover officer is embedded within a group of seven protesters on their way to Grand Central Station. This intimate access appears to have helped police pass as trusted organizers and extract information about demonstrations. In other emails, officers share the locations of individual protesters at particular times. The NYPD emails also include pictures of organizers' group text exchanges with information about protests, suggesting that undercover officials were either trusted enough to be allowed to take photos of activists' phones or were themselves members of a private planning group text.



Police obtained access to protesters' text messages, the documents show. Photograph: NYPD/Screenshot/Scribd

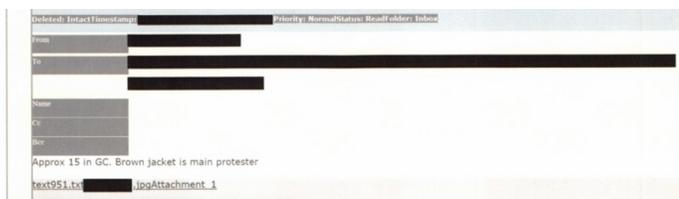
“That text loop was definitely just for organizers, I don't know how that got out,” said Elsa Waithe, a Black Lives Matter organizer. “Someone had to have told someone how to get on it, probably trusting someone they had seen a few times in good faith. We clearly compromised ourselves.”

Keegan Stephan, a regular attendee of the Grand Central protests in 2014 and 2015, said information about protesters' whereabouts was limited to a small group of core organizers at that time. “I feel like the undercover was somebody who was or is very much a part of the group, and has access to information we only give to people we trust,” said Stephan, who has been assisting attorneys with a lawsuit to obtain the documents on behalf of plaintiff James Logue, a protester. “If you're walking to Grand Central with a handful of people for an action, that's much more than just showing up to a public demonstration - that sounds like a level of friendship.”

Joseph Giacalone, a retired NYPD detective sergeant and professor at John Jay College, agreed that it would not be easy for an undercover officer to join a small group of protesters and hear their plans. “It would be pretty amazing that they would be able to get into the core group in such a short window of time,” said Giacalone. “This could have been going on a while before for these people to get so close to the inner circle.”

The NYPD documents also included a handful of pictures and one short video taken at Grand Central Station demonstrations. Most are pictures of crowds milling about or taking part in demonstrations. In one picture of a small group of activists, the NYPD identifies an individual in a brown jacket as the “main protester”. These images of protesters are reminiscent of those taken

by undercover transit police, who were also deployed to Black Lives Matter protests in Grand Central Station in 2015.



An individual is identified as the 'main protester'. Photograph: NYPD/Screenshot/Scribd

Giacalone said this type of leadership identification was standard police practice at protests. “If you take out the biggest mouth, everybody just withers away, so you concentrate on the ones you believe are your organizers,” he said. “Once you identify that person, you can run computer checks on them to see if they have a warrant out or any summons failures, then you can drag them in before they go out to speak or rile up the crowd, as long as you have reasonable cause to do so.”

Attorneys say the documents raise legal questions about whether the NYPD was acting in compliance with the department’s intelligence-gathering rules, known as the Handschu Guidelines. The guidelines, which are based on an ongoing decades-old class-action lawsuit, hold that the NYPD can begin formally investigating first amendment activity “when facts or circumstances reasonably indicate that an unlawful act has been, is being, or will be committed” and if the police surveillance plan has been authorized by a committee known as the Handschu Authority. (That committee was exclusively staffed by NYPD officials at the time.) However, according to the guidelines, before launching a formal investigation, the NYPD can also conduct investigative work such as “checking of leads” and “preliminary inquiries” with even lower standards of suspicion.

Michael Price, counsel at the Brennan Center for Justice, said it was difficult to know whether NYPD’s undercover surveillance operations crossed the line, as the documents did not make clear what, if any, stage of investigation the police were in at the time of the operations. But he said the department’s retention of pictures and video raised questions, since police are not allowed to retain information about public events unless it relates to unlawful activity.

“So my question would be: what was the unlawful activity that police had reason to suspect here?” said Price. “It doesn’t appear that there was any criminal behavior they were talking about in the emails. Most references are to protesters being peaceful, so I would be very concerned if they were hinging their whole investigation on civil disobedience, such as unpermitted protests or blocking of pedestrians.”

Throughout the emails, the NYPD’s undercover sources provide little indication of any unlawful activity, frequently characterizing demonstrators as peaceful and orderly with only one mention of a single arrest.

“The documents uniformly show no crime occurring, but NYPD had undercover agents inside the protests for months on end as if they were al-Qaida,” said David Thompson, an attorney of Stecklow & Thompson, who helped sue for the records.

Giacalone argued that police could have easily come up with a legal justification to initiate surveillance, especially if such operations occurred after the shooting of two NYPD officers in December of 2014 (all dates in the NYPD’s email communications were redacted). But he noted that such investigative activities would be harder to justify if officers were not directly observing signs of unlawful activity.

“If they’re not talking about any crimes being committed, they’re going to have a difficult time defending this. It may end up in another one of these lawsuits,” said Giacalone. “Some may say this is good police work, fine, but good police work or not, we have rules against this kind of thing in New York.”

Attorneys have already filed a petition charging that the NYPD may have failed to produce all of its surveillance records. But for some protesters, the damage has already been done.

“In the first couple of months, we had a lot of people in and out of the group, some because they didn’t fit our style but others because of the whispers that they were undercover,” recalled Waithe. “Whether it was real or perceived, that was the most debilitating part for me, the whispers ... It’s really hard to organize when you can’t trust each other.”

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NATION/WORLD NEWS UNCATEGORIZED

JUDGE: NYPD MUST TURN OVER #BLM SURVEILLANCE

[#TEAMJET](#) February 10, 2017

A New York state judge has ruled that the New York Police Department must turn over surveillance material related to Black Lives Matter protests at the city's Grand Central Terminal in 2014 and 2015. **The ruling** is a win for civil liberty advocates who believed the NYPD had violated rules linked to Freedom of Information laws (FOIL).

James Logue, who had attended a #BLM protest in 2014 noticed officers recording the activities of the demonstrators, according to a lawsuit he filed, but believed the action violated the First Amendment rights of those participating. In response he filed FOIL requests for the media and records taken by the NYPD, New York State Police, the Metropolitan Transit Authority Police and the Metro-North Railroad.

The MTA and Metro-North accommodated Logue's request, with "partial redactions," the court document says. But the New York State Police denied the request flatly and the NYPD rejected his request saying much of what he wanted was given to him by the first two agencies, and also that turning over the material could potentially compromise criminal investigations.

But New York Supreme Court Judge Manuel Mendez said that the NYPD had not met the burden of proving they deserve an exemption and ruled that they must comply with the request. Logue did not appeal the New York State Police's denial of his request.

"They fail to show that redacting the relevant information, as was done with MTA and Metro-North records, would not provide sufficient protection for NYPD undercover officers, their techniques and records," the ruling states.

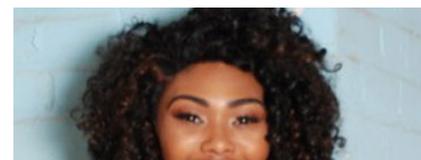
"The NYPD often attempts to avoid accountability by insisting on the need for blanket secrecy," New York Civil Liberties Union senior staff attorney Mariko Hirose said in an e-mail to Gothamist.com. "This decision ensures that the NYPD cannot shroud its operations in secrecy by relying on vague references to law enforcement interests."

Image: Demonstrators storm New York's Grand Central Terminal protesting a grand jury's decision not to indict a police officer involved in the chokehold death of Eric Garner. Photo: Andrew Burton / Getty Images

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BEAUTY OF THE WEEK



JET BEAUTY

BEAUTY OF THE WEEK: KHILAI-AH WILLIAMS

[AARON RHODAN](#) February 8, 2017



NEWS & POLITICS

Lawyers for Black Lives Matter Protestor Seek to Hold NYPD in Contempt for Stonewalling Release of Surveillance Video

by NICK PINTO

JULY 17, 2017





A protester at a December 2014 rally after a grand jury declined to indict New York Police Officer Daniel Pantaleo in the death of Eric Garner C.S. MUNCY FOR THE VILLAGE VOICE

Months after a court ordered the NYPD to turn over records of its surveillance of Black Lives Matter protesters, the lawyers seeking those records say the police and the New York City Law Department lawyers representing them still haven't complied with the court order — and may have lied in court. In a motion filed this afternoon, attorneys have asked the judge who heard the case to hold the police and the city in contempt and to levy monetary sanctions against them.

The case began when James Logue, a New Yorker taking part in a Black Lives Matter protest in Grand Central Station in November 2014, noticed that the demonstration was being recorded by plainclothes police officers. Logue believed that action violated the restrictions on when the NYPD is allowed to conduct surveillance on citizens' political



The NYPD has been widely criticized as a particularly egregious offender when it comes to violating state laws on transparent government. “The NYPD has been in so many ways hostile to Freedom of Information Law,” Bob Freeman, executive director of the state’s Committee on Open Government, tells the *Voice*. In 2011, the *New York Times* sued the department, saying it had “routinely violated” the law. Two years later, Mayor Bill de Blasio, then Public Advocate, gave the department an “F” for transparency. Earlier this year, the mother of Ramarley Graham announced she was suing the NYPD after it refused to give her documents she’d requested that might shed some light on how her son was killed by police in the Bronx five years ago. And it took a lawsuit, settled last month, just to get the department to accept Freedom of Information requests by email, even though the law has required it to do so for a full decade.

After the NYPD rejected Logue’s FOIL request and his appeal, in May of last year he sued the department in what’s known as an Article 78 hearing, alleging the NYPD was illegally stonewalling his request for information. The Law Department strenuously argued in response that to turn over information about how the NYPD was spying on protesters would make New Yorkers less safe, exposing them to terrorist attacks. But this February, Justice Manuel Mendez ruled that the city lawyers’ arguments were inadequate, ordering the NYPD to turn over its surveillance records within thirty days.

But that’s not what happened. After the ruling, the NYPD did turn over some surveillance material that showed, among other things, that undercover officers had posed as Black Lives Matter protesters and gained access to text loops used by organizers to coordinate demonstrations. The department also turned over redacted emails between undercover officers and their handlers, plus a handful of still photographs of demonstrators and a single video shot with a handheld camera.



turned over all its material, even after being ordered to by a court of law. For one thing, though Justice Mendez had indicated that the department could redact only “identifying information...of the NYPD undercover officers, their handlers, and the base” in emails, the records turned over by the NYPD also redacted useful information like the dates and times the emails were sent.

Thompson and Williams also noticed the lack of still and video images from any stationary surveillance cameras — which is odd, since the city had an explicit argument against turning over this kind of material, implying it did exist. During the case, the city had argued that it couldn’t turn over such footage because it might indicate to terrorists weaknesses in the NYPD’s protections. In a sworn affidavit submitted in the case, Assistant Chief John Donohue, executive officer of the NYPD’s Intelligence Bureau, testified that turning over camera evidence could “reveal the kinds of optical technology NYPD uses, both in its undercover and general surveillance operations. Additionally, these records would show not only which areas were under surveillance, but also the inverse: specifically, any areas NYPD does not have under surveillance, thereby exposing gaps in coverage.”

“He said disclosure would reveal the blind spots in the [surveillance] network,” Thompson explains. “Then when they turn over the material, we get one video. From a handheld camera!” For Thompson, that means one of two things had to be true: “Either what Chief Donohue said wasn’t just bullshit, it was perjury; or they are withholding video, and they’re in contempt of the court order.”

Over the last few weeks, Thompson said as much in letters to the Law Department, urging it to turn over any remaining videos. But the NYPD has refused to budge. Thompson warned the Law Department that his next step would be to seek contempt charges for the NYPD’s failure to comply with the court order, as well as sanctions



Last Monday, the Law Department wrote an extremely unusual letter to Justice Mendez, saying that even to adequately explain its position on whether it had fully complied with the court order “would require NYPD to reveal or explain non-routine law enforcement techniques, and also would implicate issues of public safety and security.... Although NYPD is confident it can explain why Petitioner’s objections and concerns regarding NYPD’s production are without merit, the nature of NYPD’s response constrains it from explaining its position except privately to Your Honor.” The Law Department then requested a private meeting with Justice Mendez without the plaintiffs present.

There were any number of problems with this request, Thompson and Williams argued in their own letter to the judge:

Seen in the very best light possible, Respondents’ request seeks to convene an unheard-of ex parte proceeding to provide the Court with previously withheld information that they now claim the Court actually needed to properly adjudicate this matter. Or, alternatively, Respondents are seeking to argue the old facts anew, this time without the hindrance of a counterparty to answer those arguments. In either scenario, this is an extraordinary request signaling a radical demand to upend both law of the case and basic American procedural guarantees. To exclude Petitioner from an unprecedented proceeding to modify the Judgment and Order would not only be unlawful, but would additionally reward Respondents for their continual falsehoods and their non-compliance with law that has been, throughout both the administrative FOIL process and the litigation that followed, uniquely remarkable and shameful.

Asked about the city’s request for a private meeting with the judge, Thompson is even more blunt. “It’s insane,” he says. “We have not yet gotten to the stage in this country



inside government to the people so they can have better control over their government. So to seek to upend court procedure, the constitution, not to mention one thousand years of English common law, in this context, where we're talking about the sunshine law — that's chutzpah!"

If the NYPD has top secret arguments why it can't comply with the FOIL request, it should have presented them at trial, Thompson says, or appealed the judge's ruling to a higher court. It did neither.

"This isn't us saying, 'Nyah-nyah, you missed your chance,' " he says. "There's a principle involved: The only reasons we have all this surveillance, supposedly, is to protect the American way, which is truth and justice, not lies and kangaroo courts and the government does whatever it wants."

Freeman, director of the state agency tasked with overseeing government transparency and adherence to the Freedom of Information Law, says he also finds the city's behavior concerning. "If we refuse to abide by orders issued by judges, and we fail to appeal, it seems to me we're inviting chaos," he says. "The Freedom of Information Law requires government agencies to demonstrate how and why disclosure would somehow be damaging. It seems the NYPD was unable to do so before the judge. So do we just ignore court orders in this country? I hope not. This is supposed to be a nation of laws, where we rely on the judicial branch to make these determinations."

The NYPD did not respond to requests for comment.

The Law Department disputes the suggestion that the NYPD has failed to turn over all the material it is required to. "We take no issue with and are in compliance with the court's order," Nick Paolucci, director of public affairs and press secretary for the department, tells the *Voice*. "As we mention in our letter to the court, there are



The NYPD’s lawyers now have until September 30 to respond to the motion for contempt and sanctions filed today.

You can read the full Memorandum of Law from Logue’s lawyers arguing for sanctions and a contempt finding against the city [here](#).

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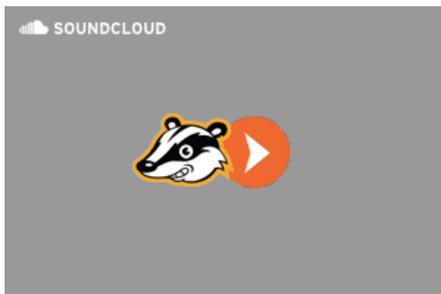


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Court Holds NYPD In Contempt For Refusing To Hand Over Documents Related To Black Live Matter Surveillance

from the *momentary-stay-of-the-judicial-backhand* dept

The NYPD continues to extend a middle finger to every entity that isn't the NYPD. The department's long history of doing everything it can to thwart public records requesters has been discussed here [several times](#). It's not on much better terms with its oversight, which it routinely ignores when directed to do something about its officers' [routine rights violations](#) and deployment of [excessive force](#).

If it's not going to be accountable to the public -- either via FOIL (Freedom of Information Law) compliance or respecting the decisions of its oversight -- [it's certainly not going to let the judicial branch push it around](#).

The NYPD has 30 days to turn over surveillance videos of Black Lives Matter protesters after a Manhattan judge ruled Wednesday that the department flouted his previous order to disclose the records.

Manhattan Supreme Court Justice Manuel Mendez, who issued the contempt of court ruling, stopped short of immediately imposing sanctions on the police. Instead, he said the NYPD could "purge" the contempt ruling by turning over more material related to the monitoring of protesters at Grand Central Terminal in November 2014 and January 2015 within a month.

This ruling arrives eight months after the NYPD made a mockery of an earlier court order on records disclosure, turning over nothing more than a few pieces of paper and short, blurry cell phone recording of Black Lives Matter protesters. According to Judge Mendez, the NYPD's efforts to comply with the FOIL request at the heart of the lawsuit have been "disingenuous" at best.

Undoubtedly, the NYPD has a large number of records related to its surveillance of protesters. It just doesn't want to release them. The NYPD has [repeatedly engaged](#) in surveillance of First Amendment activity. That's the sort of thing one should expect from a law enforcement agency that views protests and terrorism as two sides of the same coin. When that's your viewpoint, you get you a special operations unit that can do both: the Strategic Response Group, which, according to the Mayor, is capable of handling both protests or "attacks like those in Mumbai."

Mendez may have issued a ruling of contempt, but city lawyers aren't exactly springing into action to comply with the judge's *February* order. According to the city, it's still "weighing its options" and angsting away uselessly.

The city's Law Department immediately cried foul, saying it is reviewing its legal options and is "deeply concerned with this ruling and the dilemma in which it places the city."

"On the one hand, we are constrained by genuine security concerns from explaining publicly how disclosure could endanger the lives and safety of undercover officers," a Law Department spokesman said. "On the other hand, we were not afforded an opportunity to explain those concerns to the court in a non-public setting."

Well, I call bullshit. There's not a court in the land that won't allow [in camera hearings](#) or [ex parte submissions](#) where the government can attempt to explain its refusal to hand over evidence

or documents. I'm sure Judge Mendez would have allowed it if he thought this sort of hearing was appropriate. Chances are he would have been much more amenable to the city's request for a private explanation if it had engaged in a little more good faith effort during its search for relevant documents.

If the city returns to court with nothing more than its unearned dismay, the judge will probably start issuing sanctions. As it stands now, the NYPD has the choice of producing more responsive documents or submit sworn affidavits explaining why it can't -- or won't -- turn over more documents related to its surveillance of Black Lives Matter protesters.

It's hard to imagine what sanctions will have a lasting deterrent effect on the NYPD. Everything else that's been tried hasn't produced a more accountable entity. Short of jailing some top brass, any punishment the court hands out will likely be suffered by the public, especially if it's nothing more than fines the NYPD can pay with other people's money.

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 MyNameHere (profile), 11 Dec 2017 @ 3:27am

+ + FW LW

It's Black Lives Matter, not Black Live Matter. Title needs a fix!

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 Anonymous Coward, 11 Dec 2017 @ 4:04am

+ + FW LW

Re:

No witty comeback about how there must be more to this story and Tim Cushing hates cops?

There might be hope for you yet...

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 Ninja (profile), 11 Dec 2017 @ 4:25am

+ + FW LW

Re: Re:

Wrong guy. It's usually that Cristopher guy that comes to the rescue of any cop when these stories pop. I guess his limit was cops forcing an underage boy to masturbate to generate evidence. Like an article these days. I haven't seen any comment from him there. I do suspect it was because the cop was dealing with child abuse charges outside of work though otherwise he'd be there defending the cops.

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 Anonymous Coward, 11 Dec 2017 @ 5:57am

+ + FW LW

Re: Re: Re:

MyNameHere comes pretty close, though.

After all, he's defended shooting the backs of fleeing, unarmed citizens because this is a "me! me! me!" generation of confident law-flouters. Can you imagine the stress that a policeman has to undergo, armed with only a firearm against a naked stranger's crotch rocket?

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 Wendy Cockcroft, 11 Dec 2017 @ 7:12am

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Friday

- 19:39 Naperville, IL Development Project Forced To Drop Name To Avoid Public Confusing It With City 1.7K Miles Away (15)
- 14:44 Scooter Company Bird Sends Absolutely Bullshit Copyright Threat Letter To Cory Doctorow For Reporting On Modifying Scooters (59)
- 12:42 Vietnamese Government Whines Facebook Isn't Helping It Censor Critics Quickly Enough (11)
- 10:45 CBP Will Search You And Your Property If You're Paying Too Much Attention To An Agent. Or Too Little. (29)
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- 09:22 Appeals Court: First Amendment Violation To Ban Members Of The Public From Gov't Officials' Facebook Pages (18)
- 06:18 Verizon Promises Not To Over-Hype 5G, Immediately Proceeds To Over-Hype 5G (11)
- 03:18 LinkedIn Is Helping The Chinese Government Silence Critics (19)

Thursday

- 18:59 PLOS ONE Topic Pages: Peer-Reviewed Articles That Are Also Wikipedia Entries: What's Not To Like? (13)
- 13:57 And Now Professional Sports Teams Are Cutting The Cable Cord, Too (21)

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