



BE A FORCE

August 1, 2014

Nusrat Choudhury
Jason Williamson
ACLU
125 Broad Street, 18th Floor
New York, NY 10004

Milwaukee Police Department
Police Administration Building
749 West State Street
Milwaukee, Wisconsin 53233
<http://www.milwaukee.gov/police>

Edward A. Flynn
Chief of Police

(414) 933-4444

Dear Ms. Choudhury and Mr. Williamson,

This is in response to your request for information pursuant to the provisions of the Wisconsin Public Records Law (Wis. Stat. § 19.31-39). In your letter dated April 14, 2014, you requested the following:

"The American Civil Liberties Union and the American Civil Liberties Union Foundation and the American Civil Liberties Union of Wisconsin submit this request under the Wisconsin public records law, Wis Stat. § 19.31-39, for policies and data concerning the stop, frisk, search, and arrest practices of the Milwaukee Police Department, and records concerning its data collection and analysis. Records requested."

1. All records, including training materials, manuals, protocols, procedures, regulations, and guidelines, created since January 1, 2008, setting for the MPD's policies concerning:
 - a. The stop, frisk, search, and arrest of pedestrians;
 - b. The stop, frisk, search, and arrest of motorists;
 - c. Racial profiling, bias, and implicit bias.

2. All records created since January 1, 2008, documenting the total number of:
 - a. Stops, also known as "field interviews, conducted by the MPD between January 1, 2008 and the date of this request;
 - b. Frisks conducted by the MPD between January 1, 2008 and the date of this request, and the number of such frisks that resulted in the recovery of contraband disaggregated by contraband type;
 - c. Non-strip searches conducted by the MPD without subject consent between January 1, 2008 and the date of this request, and the number of such searches that resulted in the recovery of contraband disaggregated by contraband type;
 - d. Strip searches conducted by the MPD without subject consent between January 1, 2008 and the date of this request, and the number of strip searches that resulted in the recovery of contraband disaggregated by contraband type;
 - e. Consent searches conducted by the MPD between January 1, 2008 and the date of this request, and the number of such consent searches that resulted in the recovery of contraband disaggregated by contraband type;
 - f. Arrests, disaggregated by age, race, and gender, made by the MPD between January 1, 2008 and the date of this request, and the offense(s) for which each arrest was made.

3. The most recent (2013) Annual Report to Milwaukee's Common council on MPD's traffic stop data collection practices.
4. All records, including, but not limited to, Field Interview cards, Strip Search Authorization Reports, consent to Search Authorization forms, and records of the Tiburon Records Management System, TRACS Citizen Contact database, TRACS Traffic Stop Data Collection database, Automated Reporting System, AIMS Database, and the Computer Aided Dispatch System, created since January 1, 2008, collecting information about each stop, frisk, and search conducted by the MPD, including records identifying the following for each incident:
 - a. The location or address of the stop, frisk, and/or search;
 - b. The date of the stop, frisk, and/or search;
 - c. The duration of the stop, frisk, and/or search, or in the alternative, the time that the stop, frisk, and/or search was initiated and the time that it concluded;
 - d. The race, ethnicity, gender, national origin, and/or age of the individual(s) stopped;
 - e. The basis for the stop, including any description of the circumstances leading to the stop;
 - f. Whether any frisk was conducted and the basis for the frisk, including any description of the circumstances leading to the frisk;
 - g. Whether any frisk resulted in the recovery of contraband, and the nature of any contraband recovered;
 - h. Whether any search was conducted and the basis for the search, including any description of the circumstances leading to the search;
 - i. Whether any search resulted in the recovery of contraband, and the nature of any contraband recovered;
 - j. Whether the stop resulted in an arrest, citation, or no further action, and the basis for any resulting arrest or citation;
 - k. The badge number and jurisdiction of the law enforcement officer(s) who completed the form.
5. All records created since January 1, 2008, setting forth the process by which deployment decisions are made within the MPD, including but not limited to the purpose of such deployments, the number of officers used for such deployments, the law enforcement actions taken during such deployments, whether the deployments resulted in an arrest, citation, or no offense(s) for which each arrest was made.
6. All training materials, manuals, protocols, procedures, regulations, guidelines, and analyses, created since January 1, 2008, regarding the use of "predictive policing" or other data-driven law enforcement programs, including but not limited to, policies related to the purpose and use of such programs, studies or reports on the effectiveness of such programs, the date of acquisition and initial use of such programs, and any vendor information.

It is my understanding that you have had several telephone conversations with Police Officer Laura Kraemer regarding the process in which we may be able to disseminate portions of your request. As you are aware all statistical data must be pulled from our servers and programs must be written to pull said data. We have informed you that this process is ongoing but very time consuming. As soon as this process is completed we will make the data available to you. Please be advised that the following portions of your request fall under this category:

- 2a
- 2f
- 4a
- 4b
- 4c
- 4d
- 4e

- 4h
- 4i
- 4j
- 4k

Regarding all other portions of your request that will be made available at this time: The public policy in this state is to give the public the greatest amount of access to government records as possible. Wis. Stat. § 19.31. The general presumption is that government records are open to the public unless there is a clear statutory or common law exception. If there is no clear statutory or common law exception the custodian must “decide whether the strong presumption favoring access and disclosure is overcome by some even stronger public policy favoring limited access or nondisclosure.” *Hempel v. City of Baraboo*, 2005 WI 120, § 28 (Citations omitted). Notwithstanding the presumption of openness, the public’s right to access to public records is not absolute. *Journal/Sentinel v. Agerup*, 145 Wis. 2d 818, 822 (Ct. App. 1988).

The Wisconsin Supreme Court has recognized that public policy considerations underlying other statutory provisions may supply sufficient policy reasons justifying a nondisclosure decision. *Woznicki v. Erickson*, 202 Wis. 2d 178, 187 (1996). Wisconsin courts have repeatedly recognized “the importance the legislature puts on privacy and reputational interests of Wisconsin citizens.” *Id.*

Although the Freedom of Information Act (FOIA), 5 USC § 552, does not apply to records created or maintained by state or local government agencies, Wisconsin courts have relied on federal court decisions analyzing the exceptions under FOIA as persuasive authority for exceptions to disclosure of records under the Wisconsin Public Records Law. FOIA exceptions may be considered when applying the balancing test. *Linzmeier v. Forcey*, 2002 WI 84, ¶ 33.

Regarding Item 1: Based upon the information provided and an inspection of the relevant files of the Milwaukee Police Department, enclosed are the following responsive MPD records on a compact disc:

- MPD PowerPoint Citizen Contacts 085
- MPD PowerPoint Citizen Contacts and Consent Searches
- MPD Standard Operating Procedure 085 Citizen Contacts, Field Interviews, Search and Seizure
- MPD Fair & Impartial Policing The Instructors Guide
- MPD Fair & Impartial Policing Recruit and Patrol Officer Training
- MPD PowerPoint Fair & Impartial Policing The Supervisor’s Role Part 1
- MPD PowerPoint Fair & Impartial Policing The Supervisor’s Role Part 2
- MPD Fair & Impartial Policing The Supervisor’s Role
- MPD Standard Operating Procedure 001 Fair & Impartial Policing
- MPD PowerPoint Warrantless Searches

Regarding Item 2b: Please be advised that the Milwaukee Police Department does not keep statistical data on “frisks”.

Regarding Item 2c: Based upon the information provided and an inspection of the relevant files of the Milwaukee Police Department fails to disclose the information requested.

Regarding Item 2d and 2e: Based upon the information provided and an inspection of the relevant files of the Milwaukee Police Department, enclosed are the following responsive MPD records on a compact disc:

- Authorization for Strip Searches
- Strip Search, Consent Searches and Contraband document

Regarding Item 3: Based upon the information provided and an inspection of the relevant files of the Milwaukee Police Department, enclosed are the following responsive MPD records on a compact disc:

- MPD Crime and Traffic Stop Data

Regarding Item 4f: Please be advised that the Milwaukee Police Department does not keep statistical data on "frisks".

Regarding Item 4g: Please be advised that the Milwaukee Police Department does not keep statistical data on "frisks".

Regarding Item 5: The requested records contain deployment information, which, if disclosed, would seriously handicap the Department regarding the performance of its duties by identifying its operations and methods, with respect to the deployment and assignment of personnel. Disclosure may thwart the Department's plans and deployment strategies in critical areas of providing safety to the public. Thus, we are convinced that the public policy favoring disclosure in this case is clearly outweighed by the public interest in providing the best and most efficient provision of security within MPD. Wis. Stat. § 19.85(1)(d). The public interest in providing safe, thorough and efficient law enforcement provisions to the citizens in Milwaukee outweighs the public's interest in disclosure of the department's deployment strategies that you have requested.

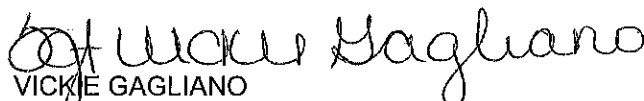
Public disclosure of the squad line up sheets or any other documents related to staffing levels to the public for the dates referenced could inform those members of the public with criminal intent of the deployment strategy and staffing levels within the requested area of the City, which could assist those individuals in deciding when and where to commit crimes. Public disclosure of this information could create safety risks both to the MPD officers as well as to members of the general public. This would not be in the public interest. Upon conducting the required balancing test, we believe that the public interest in protecting the safety and welfare of police officers and citizens outweighs the public interest in disclosure of these records. Wisconsin courts have recognized safety concerns as a sufficient policy reason to support a nondisclosure decision by a record custodian. See, *State ex rel. Morke v. Record Custodian*, 159 Wis. 2d 722, 726 (Ct. App. 1990) (court of appeals held that the concern for the safety and well-being of prison employees and institutional morale outweighed the presumption of full access to records.)

Regarding Item 6: Based upon the information provided and an inspection of the relevant files of the Milwaukee Police Department fails to disclose the information requested.

Further be advised that in the event that all or part of your request is denied, that this determination is subject to review by mandamus action under Wis. Stat. § 19.37(1), or upon an application to the Wisconsin Attorney General or the Milwaukee County Corporation Counsel.

Sincerely,

EDWARD A. FLYNN
CHIEF OF POLICE


VICKIE GAGLIANO
POLICE SERGEANT

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