

BRENNAN CENTER FOR JUSTICE

at New York University School of Law

For more information, please contact Faiza Patel at
faiza.patel@nyu.edu or 646-292-8325

UNCHECKED NYPD OPERATIONS IN NEED OF OVERSIGHT

In the wake of 9/11, the NYPD all but eliminated safeguards against illegal spying on lawful political, religious, educational and social activities. It partnered with the CIA to “become one of the nation’s most aggressive domestic intelligence agencies, targeting ethnic communities in ways that would run afoul of civil liberties rules if practiced by the federal government,” according to an investigation by the Associated Press.

These revelations underscore the need for increased vigilance by the New York City Council to ensure that the NYPD – whether deployed in cooperation with the federal government or acting independently – is acting lawfully and is subject to appropriate controls and oversight. The Council should immediately undertake a full, public accounting of the NYPD’s intelligence activities and set up a system for ongoing oversight of these activities.

BACKGROUND: A HISTORY OF PROBLEMATIC NYPD ACTIVITIES

The intelligence collection scandals of the last century revealed that the NYPD had abused its authorities in a variety of ways. It targeted Italians in the 1900s, “radicals” in the 1930s and civil rights groups in the 1960s using informants, infiltrators, and agents provocateurs. It assembled over a million intelligence files on individuals and groups involved in constitutionally protected political activity.

A 1971 class action lawsuit, *Handschu v. Special Services Division*, resulted in court-ordered reform of the NYPD Intelligence Division, including new regulations, known as the Handschu Guidelines. These prohibited the NYPD from investigating lawful, political activity unless “specific information” indicated that a suspect was, or was about be, engaged in criminal conduct.

In 2003, a federal court modified the Handschu Guidelines and diluted the restrictions on the NYPD’s intelligence collection authority. The NYPD traded the safeguards of Handschu for the 2002 Guidelines for FBI Investigations, which contain only minimal safeguards on spying on political or religious gatherings. This weakening of controls re-opened the door to the same alarming abuses that marred the last century. City Council oversight is urgently required.

TODAY: ASSOCIATED PRESS REPORTS NYPD, CIA SECRETLY TARGETING ETHNIC COMMUNITIES AND RELIGIOUS GROUPS

Recent news reports have revealed that the NYPD is running a secret intelligence operation that blurs the line between foreign and domestic spying, is responsible for potentially illegal and unconstitutional surveillance of New Yorkers, and functions without the full knowledge of the New York City Council or the federal government.

According to the Associated Press, the NYPD Intelligence Division operates a “Demographics Unit” which participates in a “human mapping program” that covertly surveils Muslims and ethnic minorities in New York and the tri-state area. As part of this effort, the NYPD has reportedly engaged in repeated acts of religious, ethnic and racial profiling, including:

- Stationing undercover agents, called “rakers,” in local businesses such as cafes, bookstores and nightclubs to spy on ethnic communities from a list of 28 (mainly Muslim) countries that, along with “American Black Muslim,” were considered “ancestries of interest”;
- Dispatching informants known as “mosque crawlers” to monitor sermons without any evidence of wrongdoing and targeting particular mosques because of “rhetoric”;
- Seeking a list from the taxi commission of every Pakistani cab driver in the city and targeting a Bangladeshi restaurant because it attracted a “devout crowd”;
- Targeting university-based Muslim student associations because students were “politically active”; and
- Producing an analytical report on every mosque within 100 miles of New York City.

WHY IT MATTERS

These reports raise the possibility that the NYPD has been engaging in illegal and unconstitutional intelligence operations aimed at New Yorkers. The reported activities may violate even the minimal restrictions that remain after modification of the Handschu Guidelines, the NYPD’s own rules against profiling on the basis of race, a New York State law prohibiting profiling, as well as Article I, §§ 8, 11, and 12 of the New York State Constitution and the First, Fourth and Fourteenth Amendments to the United States Constitution. Indeed, although the FBI itself has broad intelligence gathering authority, it has reportedly balked at the extent and scope of the NYPD’s operations. The AP reported that such activities would violate the Privacy Act if conducted by federal agents and that “senior FBI officials in New York ordered their own agents not to accept any reports from the NYPD’s mosque crawlers.”

Moreover, the NYPD’s activities sow distrust among targeted communities, including the law-abiding Muslim New Yorkers who have helped to foil terrorist plots by providing tips and other vital information. The October 5th AP story shows that the police were secretly surveilling religious leaders with whom they purported to be working. Such activities are not conducive to building trust. Rather, they put all New Yorkers at risk by alienating the very communities whose cooperation is so essential to combating terrorism.

WHAT THE CITY COUNCIL CAN DO

Despite a reported Intelligence Division budget of more than \$63 million for 2012 and some \$1.6 billion in contributions from the federal government since 9/11, the NYPD’s intelligence activities have not been subject to any meaningful oversight. The CIA Inspector General has already launched an investigation into the legality of the Agency’s collusion with the NYPD. The New York City Council should immediately undertake a full, public accounting of the NYPD’s intelligence gathering activities to determine whether they adhere to the law, whether they are effective, and whether the current rules are sufficient to protect both the safety of New Yorkers and their right to speak and pray without government intrusion. It should also develop a plan for continuing oversight in order to ensure that abuses do not recur.