

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

PARTNERSHIP FOR CIVIL JUSTICE FUND 617 Florida Ave. NW Washington, D.C. 20001)	
)	
Plaintiff,)	Civil Action No. _____
)	
v.)	
)	
THE DISTRICT OF COLUMBIA)	
)	
Serve: Muriel Bowser, Mayor of the District of Columbia 1350 Pennsylvania Ave. NW Washington, D.C. 20004)	
)	
Serve: Karl A. Racine Attorney General 441 4 th St. NW Washington, D.C. 20001)	
)	
Defendant.)	
)	



COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

[Freedom of Information Act, D.C. Code § 2-531, *et seq.*]

1. This action is brought under the District of Columbia’s Freedom of Information Act (“FOIA”), D.C. Code § 2-531, *et seq.*, as amended.

2. Plaintiff, the Partnership for Civil Justice Fund (PCJF), seeks injunctive and other appropriate relief for the disclosure and production of records in the possession of the District of Columbia, including the Metropolitan Police Department (MPD), pertaining to its relationships with Project Veritas, Oath Keepers and any other private group or

organization or person that has provided or offered to provide information or “intelligence” on political protests or political organizing activities.

3. The D.C. MPD and its officers have worked with and received information from private, politically motivated, right-wing organizations including Project Veritas and Oath Keepers to be used against the political opponents of those organizations. *See* Keith Alexander, *Secret video of Inauguration Day protest meeting provided by Project Veritas*, Washington Post, Nov. 29, 2017; Kelly Weill, *Feds Use Right-Wing Militia’s Video to Prosecute Trump Protesters*, Daily Beast, Oct. 11, 2017.
4. The material provided by these organizations to the MPD has been used to prosecute persons whose political views are in apparent opposition to the political goals of the providing entities. Both organizations have openly boasted of providing information to and collaborating with the D.C. MPD.
5. The District’s MPD has participated with the U.S. Attorney’s Office in an unprecedented felony prosecution of hundreds of persons subject to a mass dragnet arrest at the Inauguration of Donald J. Trump on the basis that they participated in, or were in proximity to, a First Amendment protest activity where a handful of other persons, at other times and locations that day, are alleged to have committed acts of property damage.
6. At a trial of six of those persons (all subsequently acquitted by jury), the government introduced into evidence an edited video provided by the widely discredited right-wing Project Veritas to the MPD. This occurred the same week that Project Veritas was exposed for attempting to plant a false story in the *Washington Post*, also by use of undercover operatives with false identities and covert recording. *See* Shawn Boburg,

Aaron C. Davis and Alice Crites, *A woman approached The Post with dramatic — and false — tale about Roy Moore. She appears to be part of undercover sting operation*, Washington Post, Nov. 27, 2017 (identifying Project Veritas as an “organization that uses deceptive tactics to secretly record conversations in an effort to embarrass its targets.”)

7. On November 29, 2017, directly after this public disclosure and admission of relationship between Project Veritas and the D.C. MPD, the Partnership for Civil Justice Fund filed the FOIA request at issue.
8. To date, despite multiple inquiries, the D.C. MPD is withholding and refusing to make public information that would shed light on the nature and extent of the relationship between the D.C. MPD, its officers, and private political non-governmental entities from whom it accepts information to be used against those entities’ political opponents. The MPD has failed and refused to provide any responsive information and has refused to respond to the Freedom of Information Act request or subsequent inquiries at all.
9. The D.C. police department is bound by the First Amendment Rights and Police Standards Act (codified at D.C. Code § 5–331.01, *et seq.*) and Police Investigations Concerning First Amendment Activities Act (codified at D.C. Code § 5–333.01, *et seq.*) of 2004 which carefully limit the circumstances under which the police may engage in intelligence activities against demonstration groups and create a required procedure for authorization, reporting and accountability.
10. These laws were enacted by the D.C. Council after investigation into wrongful activities of the MPD that were exposed by the PCJF, including the MPD’s unlawful practice of sending undercover infiltrator officers into protest groups on long term assignments posing as social justice demonstrators, as well as officers engaging in *agent provocateur*

activities seeking to incite violence. See Chairperson Kathy Patterson, *Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia*, D.C. Council Committee on the Judiciary, March 11, 2004.

11. It is of great public concern if the D.C. MPD has undertaken actions to illegally skirt its requirements under the law, including through use of proxy forces to engage in infiltration and surveillance that violate these laws.
12. The issue of relationships between police departments and political opponents of a social justice movement is also of significant public concern due to the threat it poses to fundamental political rights, including free speech and assembly, as well as raising questions regarding whether police authority is being abused in service to a particular viewpoint. See, e.g., Sam Levin, *California police worked with neo-Nazis to pursue 'anti-racist' activists, documents show*, *The Guardian*, Feb. 9, 2018. (“Officers expressed sympathy with white supremacists and sought their help to target counter-protesters after a violent 2016 rally, according to court documents.”)
13. Over the past year, some members of the D.C. MPD have been exposed displaying white supremacist and brutality-endorsing paramilitary insignia. *'Disgraceful': DC Officer Accused of Wearing Racist T-Shirt On Duty*, NBC 4, July 27, 2017; Justin Juvenal, *Photo Shows DC Police Officers Displaying Flag that Advocates Violence, Complaint Says*, *Washington Post*, Aug. 12, 2017.
14. The Partnership for Civil Justice Fund has sought the materials subject to this FOIA request in its function as a police watchdog organization. It is essential for the public, and lawmakers who engage in oversight activities, to have insight and analysis into how the

MPD uses the infiltration and surveillance services of politically-motivated organizations in support of police actions and prosecutions, even more so where this functions as an outsourcing of intelligence operations prohibited by law to be undertaken by the MPD directly.

JURISDICTION AND VENUE

15. This Court has jurisdiction over this action pursuant to D.C. Code § 2-537(a)(1) (D.C. FOIA) and § 11-921 (civil jurisdiction).

16. Venue properly lies with this Court as the defendant is the District of Columbia Government, the actions forming the basis of the claim occurred principally within the District of Columbia and the agency records at issue are located in the District of Columbia.

PARTIES

17. The PARTNERSHIP FOR CIVIL JUSTICE FUND (PCJF) is incorporated pursuant to the District of Columbia Non-Profit Corporations Act and is based and headquartered in the District of Columbia. The PCJF is a not-for-profit legal and educational organization. The PCJF works to ensure transparency or openness in government operations. It also works to ensure constitutional conduct within government practices, including police practices, affecting First Amendment rights in the District of Columbia and nationwide. Among the focuses of the PCJF's work has been effectuating significant changes to the laws and policies governing police handling of First Amendment activities under which the MPD is legally required to operate to conform to constitutional obligations.

18. The DISTRICT OF COLUMBIA is a municipal corporation, subject to suit, that runs and constitutes the local government of the District of Columbia.

19. The DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT (MPD)

is an agency within the executive branch of the District of Columbia government. The MPD is the primary law enforcement agency for the District of Columbia.

THE FOIA REQUEST

20. On November 29, 2017, the Partnership for Civil Justice Fund filed a Freedom of Information Act request with the Metropolitan Police Department (Attachment 1) requesting:

[A]ll documents, information and communications regarding Project Veritas, Oath Keepers and/or any agent, representative or person acting on behalf of either of the identified organizations, as well as documents, information and communications regarding any other external private (non-governmental) group, organization or person that has offered to provide, or has provided, intelligence on political protests or political organizing. Published reports have disclosed that the MPD has used information provided by, and/or worked with, both of the identified organizations.

By way of illustration and not limitation, this FOIA request seeks:

- All information, documents and communications including Project Veritas and/or any of its agents or representatives, including but not limited to James O’Keefe or any undercover or infiltrating operative
- All information, documents and communications involving Oath Keepers and/or any of its agents or representatives or undercover or infiltrating operative
- All communications regarding Project Veritas, Oath Keepers, or any of their respective agents, representatives or operatives, including the D.C. Metropolitan Police Department (including any personnel or representatives of the D.C. Metropolitan Police Department)
 - This includes but is not limited to such communications within the DC MPD, or with any other D.C. agency or any other external entity including other law enforcement entities and federal agencies and departments.
- All information, documents and communications regarding any private person or entity that has offered to provide, or has provided, intelligence on political protests or political organizing to the MPD.

By way of definition, “political protests” and “political organizing” mean any such activity or gathering containing a First Amendment component of political views and expression, regardless of whether there are allegations or evidence of arguably criminal conduct also present.

21. The FOIA request contained a Fee Waiver Request and submitted that the Partnership for Civil Justice Fund constitutes a “representative of the news media” for the purpose of the FOIA. *See* Attachment 1.
22. The FOIA request was transmitted via the D.C. Government Freedom of Information Act (FOIA) Public Access Website and was addressed to the official that the MPD identified as its FOIA Officer, Donald Kaufman.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

23. On November 29, 2017, by e-mail the D.C. Government acknowledged receipt of the FOIA request and assigned the following reference number: 2018-FOIA-01235. The acknowledgment was sent from the following e-mail: thang.nguten@dc.gov.
24. As of January 11, 2018, there had been no further communication from the D.C. Government regarding the FOIA request. The D.C. Government had not produced any records nor had the D.C. Government notified the requestor of any determination to not make the requested record or any part thereof accessible (including reasons therefor).
25. As of January 11, 2018, there was no additional information regarding the request on D.C. Government FOIA Submission Site other than the status being identified as “In Process.”
26. On January 11, 2018, Mara Verheyden-Hilliard sent a follow-up e-mail to the D.C. Government. The e-mail was sent to two e-mail addresses, thang.nguyen@dc.gov and Donald.kaufman@dc.gov.

27. Ms. Verheyden-Hilliard's e-mail stated in relevant part as follows:

We have not received any information responsive to the above captioned FOIA request to the Metropolitan Police Department which was submitted via the DC Government FOIA Public Access Website November 29, 2017. Other than the below email response upon filing, we have received no response at all.

The MPD did not elect a ten day extension to respond to this request. Even if it had, an extended time to respond has now also passed.

Please provide the information requested without further delay. We will send someone to pick up the responsive information, if the materials are not in electronic form and cannot be emailed.

28. An automatic reply was received advising that Don Kaufman was no longer employed with the MPD and directing future correspondence to his e-mail instead to Inspector Vendette Parker at vendette.parker@dc.gov.

29. As of the date of the January 11, 2018, follow-up e-mail and automatic reply, the MPD website continued to identify Mr. Kaufman as the MPD FOIA Officer.

30. Upon receipt of the automatic reply, on January 11, 2018, Ms. Verheyden-Hilliard forwarded the January 11, 2018, follow-up e-mail also to vendette.parker@dc.gov.

31. On January 11, 2018, Mr. Nguyen responded to the follow-up e-mail to state, "I have copied @Archie-Mills, Lisa (MPD) from MPD FOIA office, who can assist with your case." His email with Ms. Verheyden-Hilliard's inquiry was copied to lisa.archie-mills@dc.gov.

32. As of the date of the filing of the instant complaint, there has been no further communications from the D.C. Government, including no response from any of the designated officials who directly received the PCJF's inquiries.

33. As of the date of the filing of the instant complaint, the D.C. Government has not produced any records in response to the FOIA request nor has the government notified

the requestor of any determination to not make the requested record or any part thereof accessible (including reasons therefor).

34. Under the D.C. FOIA, the response period is 15 business days, *see* D.C. Code § 2-532©, (d), which has expired without any request for extension.

35. D.C. Code § 2-532(e) provides

Any failure on the part of a public body to comply with a request under subsection (a) of this section [D.C. Code § 2-532] within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request, and the person making such request shall be deemed to have exhausted his administrative remedies with respect to such request. . . .

D.C. Code § 2-532(e).

36. Accordingly, the District of Columbia has categorically denied all three FOIA requests and the PCJF has exhausted its administrative remedies.

37. Pursuant to D.C. Code § 2-537(a)(1), having exhausted administrative remedies under D.C. Code § 2-532(e), the PCJF is authorized to institute proceedings for injunctive or declaratory relief in the Superior Court of the District of Columbia.

COUNT ONE

(Failure to produce public records under the D.C. Freedom of Information Act)

38. The preceding paragraphs numbered 1 through ___ are incorporated by reference as if set forth herein.

39. The District of Columbia has unlawfully denied the PCJF's November 29, 2017, FOIA request.

40. The District of Columbia has unlawfully denied PCJF's request for a public interest fee waiver.

41. The District of Columbia has unlawfully withheld all responsive public records subject to release under D.C. Code § 2-532.

PRAYER FOR RELIEF

42. WHEREFORE, PCJF respectfully requests that this Court grant it the following relief:

- a. Declare that the denial of the PCJF’s requests, including any requests for fee waiver or non-applicability of fees, are in violation of D.C. Code. § 5–331.16 (a) and the D.C. FOIA;
- b. Enjoin the District of Columbia from withholding any records encompassed by the November 29, 2017, request;
- c. Order that the District of Columbia produce the requested records within ten (10) business days;
- d. Award PCJF reasonable attorney’s fees and costs incurred in this case pursuant to D.C. Code § 2-537(c); and
- e. Grant such further relief as the Court may deem to be just and appropriate.

February 13, 2018

Respectfully submitted,

/s/ Mara Verheyden-Hilliard
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