

VIA EMAIL

Tom Dahl,
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March 17, 2021

RE: Open Records Law Request

Dear Mr. Dahl,

This letter constitutes a request under the North Dakota Open Records Law, ND ST 44-04-18 et seq. and is submitted by the Electronic Privacy Information Center.

EPIC requests records related to the North Dakota State and Local Intelligence Center (NDSLIC), protest monitoring, and advanced surveillance technologies. Please provide all records in a searchable electronic format, preferably PDF or Excel spreadsheet.

Background

The summer of 2020 saw large protests across the country in the wake of the killing of George Floyd. Polls conducted between June 4 and June 22, 2020 estimate that between 15 million and 26 million people attended protests nationwide, marking 2020's protests as the largest in American history.¹ 2020 was also a high-water mark for police surveillance of protesters, with reports of aerial and drone surveillance, widespread use of video recording and facial recognition, cellular surveillance, and social media surveillance appearing in news stories across the nation.² Fusion centers played a prominent role in surveilling protesters, providing advanced tools like facial recognition and social media monitoring to local police.³ The BlueLeaks documents, records

¹ Larry Buchanan, Quoc Trung Bui, and Jugal K. Patel, Black Lives Matter May Be the Largest Movement in U.S. History, N.Y. Times (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

² See e.g., Zolan Kanno-Youngs, U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance, N.Y. Times (Jun. 19, 2020), <https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html>; Katie Schoolov, As protests over the killing of George Floyd continue, here's how police use powerful surveillance tech to track them, CNBC (Jun. 18, 2020), <https://www.cnbc.com/2020/06/18/heres-how-police-use-powerful-surveillance-tech-to-track-protestors.html>; Kristina Libby, How to Spot Police Surveillance Tools, Popular Mechanics (Jun. 12, 2020), <https://www.popularmechanics.com/technology/security/a32851975/police-surveillance-tools-protest-guide/>;

³ Micah Lee, *How Northern California's Police Intelligence Center Tracked Protests*, The Intercept (Aug. 17, 2020), <https://theintercept.com/2020/08/17/blueleaks-california-ncric-black-lives-matter-protesters/>;

obtained from police and fusion center internal servers across the country, reveal substantial and ongoing surveillance of protesters.⁴

There were a number of Black Lives Matter protests in cities and towns across North Dakota during the summer of 2020.⁵ Protesters were subjected to traffic camera surveillance in Fargo.⁶ In another incident an undercover officer posing as a protester photographed individuals in a Fargo crowd, resulting in his resignation.⁷ NDSLIC also received at least one request to monitor protesters, specifically targeting an indigenous activist.⁸

Documents Requested

- (1) All Requests for Information submitted between May 28, 2020 and August 31, 2020, including the final status of those requests (e.g. granted, denied etc.);
- (2) All Suspicious Activity Reports (SARs) submitted between May 28, 2020 and August 31, 2020 including the resolution of those reports (e.g. verified, credible, non-credible, etc.);
- (3) All emails, memoranda, intelligence products, and other documents relating to “protests”, “organizers”, “Black Lives Matter”, “BLM”, “antifa”, “riots” or “activists” between May 28, 2020 and August 31, 2020;

'Blue leaks' include information about police surveillance of Black Lives Matter protests, WGME News (Jun. 19, 2020), <https://wgme.com/news/local/blue-leaks-include-information-about-police-surveillance-of-black-lives-matter-protests>; Tim Cushing, *California Fusion Center Tracked Anti-Police Protests, Sent Info To 14,000 Police Officers*, TechDirt (Aug. 20, 2020), <https://www.techdirt.com/articles/20200819/16572045148/california-fusion-center-tracked-anti-police-protests-sent-info-to-14000-police-officers.shtml>.

⁴ John Anderson, *Is ARIC Still Watching? Despite scrutiny, fusion center still keeps tabs on protests*, Austin Chronicle (Dec. 11, 2020), <https://www.austinchronicle.com/news/2020-12-11/is-aric-still-watching/>.

⁵ Bilal Suleiman and Amy Dalrymple, *Bismarck holds rally to protest death of George Floyd*, Bismarck Tribune (May 30, 2020), https://bismarcktribune.com/news/local/bismarck/bismarck-holds-rally-to-protest-death-of-george-floyd/article_eb7f4262-af80-5b28-bbaa-11bdc283ce9.html; Julie Martin, *Dickinson protest stays peaceful with help from a motorcycle club*, KFYZ TV (Jun. 3, 2020), <https://www.kfyrtv.com/content/news/Dickinson-protest-stays-peaceful-with-help-of-biker-gang-570985441.html>; Kortney Lockney, *Peaceful protest in Grand Forks*, Valley News Live (Jun. 4, 2020), <https://www.valleynewslive.com/content/news/Peaceful-protest-in-Grand-Forks--571035701.html>; PJ Walker, *Teenagers in Rugby organize 'Black Lives Matter' march*, KXNet (Jun. 7, 2020), <https://www.kxnet.com/news/local-news/teenagers-in-rugby-organize-black-lives-matter-march/>.

⁶ *OneFargo / Black Lives Matter Claim Police Misconduct Regarding Protest*, Valley News Live (Jun. 8, 2020), <https://www.valleynewslive.com/content/news/130PM-Webstream-OneFargo--Black-Lives-Matter-News-Conference-571104801.html>.

⁷ Chacour Koop, *Rogue deputy chief poses as protester and curses about cops at Fargo rally, police say*, Tri-City Herald (Jun. 4, 2020), <https://www.tri-cityherald.com/news/nation-world/national/article243268486.html>.

⁸ See Appendix.

- (4) All policies, privacy impact assessments, evaluations, training materials, use logs, contracts, memoranda of understanding, or other documents relating to the CellHawk data extraction and visualization tool;⁹
- (5) All policies, privacy impact assessments, evaluations, training materials, use records, contracts memoranda of understanding or other documents relating to the CLEAR software/database;¹⁰
- (6) All policies, privacy impact assessments, evaluations, training materials, use logs, contracts, memoranda of understanding or other documents identifying and relating to NDSLIC's social media analysis and monitoring tools (e.g. Geofeedia, Babel Street, Dataminr, Media Sonar, Snaptrands, Skopenow and similar services),
- (7) All contracts, memoranda of understanding, and information sharing agreements relating to (a) facial recognition services (e.g. Clearview AI, FaceFirst, and similar services) and (b) databases containing faceprints or other facial recognition images;
- (8) All contracts, memoranda of understanding, and information sharing agreements relating to Automated License Plate Reader (ALRP), and License Plate Reader (LPR) databases or services (e.g. Vigilant Systems and similar services).
- (9) All policies, privacy impact assessments, evaluations, training materials, use records, contracts/MOUs or other documents identifying and relating to Flock Automated License Plate Reader database, also known as TALON;¹¹
- (10) All records relating to the Black Lives Matter walk on the Standing Rock Sioux Tribe Reservation on June 6, 2020;¹²
- (11) All policies, privacy impact assessments, evaluations, training materials, use logs, contracts/memoranda of understanding, promotional materials, or other documents identifying and relating to the Ulysses Group or the Ulysses car location tracking product.¹³

Fee Waiver

EPIC requests a waiver of fees because the release of the records is in the public interest. If EPIC does not receive a fee waiver please notify us in advance of processing if the fees are likely to exceed \$25.

Disclosure of the records requested is in the public interest as protest surveillance is a topic of immediate public concern. Hundreds of individuals showed up to protests in North Dakota over

⁹ <https://www.hawkanalytics.com/cellhawk/>

¹⁰ <https://legal.thomsonreuters.com/en/products/clear-investigation-software/law-enforcement>

¹¹ Joseph Cox, *Inside 'TALON,' the Nationwide Network of AI-Enabled Surveillance Cameras*, VICE (Mar. 3, 2021), <https://www.vice.com/en/article/bvx4bq/talon-flock-safety-cameras-police-license-plate-reader>.

¹² See Appendix.

¹³ Joseph Cox, *Cars Have Your Location. This Spy Firm Wants to Sell It to the U.S. Military*, VICE (Mar. 17, 2021), <https://www.vice.com/en/article/k7adn9/car-location-data-telematics-us-military-ulysses-group>; <http://www.theulyssesgroup.com>.

the summer.¹⁴ The public deserves to know how police monitored protesters, what tools were used, and how much support the federally-funded NDSLIC provided to protest surveillance. This information will inform ongoing public debate over policing and the use of government funds.

Conclusion

Thank you for your consideration of this request. Please inform EPIC of estimated fees if such fees are likely to exceed \$25. We anticipate your determination on our request within “without unreasonable delay”. For questions regarding this request, please contact Jake Wiener at (202) 483-1140 x108 or FOIA@epic.org.

Respectfully,

/s Jeramie Scott

Jeramie Scott
EPIC Senior Counsel

/s Jake Wiener

Jake Wiener
EPIC Law Fellow

¹⁴ See e.g., Bilal Suleiman and Amy Dalrymple, *Bismarck holds rally to protest death of George Floyd*, Bismarck Tribune (May 30, 2020), https://bismarcktribune.com/news/local/bismarck/bismarck-holds-rally-to-protest-death-of-george-floyd/article_eb7f4262-af80-5b28-bbaa-11bdc283ce9.html, WDAY, Black Lives Matter protesters in Fargo ‘turning our back on hate,’ call for equality, KX Newst (Jun. 20, 2020), <https://www.kxnet.com/news/state-news/black-lives-matter-protesters-in-fargo-turning-our-back-on-hate-call-for-equality/>.

Appendix

The following RFI is excerpted from NDSLIC's Requests for Information obtained through the BlueLeaks document trove.

RFID	Date	Center	Description
85	6/2/20	NDSLIC	<p>Jerrica Tiokasin (DOB: 10/26/1994) is organizing a Black Lives Matter (BLM) walk (06/06/2020 12:00 P.M.) on the Standing Rock Sioux Tribe Reservation. Bureau of Indian Affairs (BIA) Bureau of Criminal Investigations (BCI) is respectfully requesting a RFI report on the lead organizer.</p> <p>News: https://www.spokesman.com/stories/2020/jun/30/native-american-activist-keeps-the-peace-at-black-/</p>