

January 18, 2018

Col. Kriste Kibbey Etue
Director, Michigan State Police
P.O. Box 30634
Lansing, MI 48909

Re: Race and Traffic Stops

Dear Col. Etue:



State Headquarters
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Detroit, MI 48201
(313) 578-6800
aclumich.org

West Michigan
Regional Office
1514 Wealthy Street SE
Suite 242
Grand Rapids, MI 49506
(616) 301-0930

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115 West Allegan
Lansing, MI 48933
(517) 372-8503

As you may recall, in 2016 the ACLU of Michigan advised you of our concerns about racial profiling by pointing out that although Michigan State Police denied that it set a ticket quota for its troopers, the agency did acknowledge a “70 percent baseline” criterion for performance evaluations of troopers’ traffic stops. We explained our concern that this can create an incentive to stop motorists without proper grounds when there is fear that supervisors will regard troopers’ stop histories as deficient. We were concerned that if these troopers were to become desperate to meet supervisors’ expectations, some might become racially selective and target people of color and others perceived to be powerless and unlikely to complain about arbitrary or unnecessary stops.

In response to our concerns, MSP acknowledged there were, at that time, no reliable or consistent records of the racial identities of persons who were stopped. This prompted a new policy of mandatory reporting of racial identity that was implemented in January, 2017. The new reporting requirement has been in place for a year and we now ask that you conduct a comprehensive agency-wide review of race and traffic stops to identify any patterns that may exist. Further, we ask, in the interest of transparency, that you share the results of the investigation with the public.

It is not simply the passage of time that prompts our request. The ACLU of Michigan has received separate complaints from African American motorists who believe their race was the sole reason they were stopped by Michigan State Police while traveling on Interstate 94. Though these persons are unrelated and unacquainted, the experiences of two motorists are remarkably similar. These drivers were not only stopped by members of MSP’s 5th District Home Town Security Team on separate Fridays during Autumn, 2016, but the purported reason for the stops is that they were both allegedly following too closely behind tractor-trailers. They were not accused of offenses that require arrest. Nevertheless they were both asked to exit their vehicles. Their vehicles were searched and they were asked whether they were transporting drugs or other contraband. In both cases a canine officer was called, and a dog sniffed the vehicles.

Other African American drivers have contacted us as well with accounts of stops by troopers that differ from accounts provided by the drivers referenced above, but which nevertheless left them with suspicions that they had been racially profiled.

The ACLU of Michigan submitted a Freedom of Information Act request for documents related to stops made by troopers who stopped the individuals accused of following trucks too closely. The records we received show that from Tuesday, Nov. 15, 2016 through Thursday, Nov. 17, 2016, one of the troopers made stops that brought him into contact with 15 individuals who were either drivers or passengers. Seven of these 15 individuals were identified as black, and four were identified as Hispanic. The race of one driver was not identified. The three remaining individuals were identified as white. The encounter with one of the white drivers was apparently not because of actual or suspected violations of the law, but for the purpose of providing assistance with the driver's vehicle.

The ACLU of Michigan followed up with Freedom of Information Act requests for records of stops made by other members of the Fifth District Hometown Security Team on six randomly selected Fridays during the first quarter of 2017. The records produced by MSP show that on those days, four of the more active members of that unit made stops that brought them into contact with 82 individuals who were either drivers or passengers. Almost 48 percent of these individuals were identified by the troopers as black, Hispanic or Asian. About 24 percent of these individuals were identified as white. Another 28 percent were reported to be of unknown racial identity.

These records concern us not only because they document racial disproportion, but also because seventeen of the 23 racially unidentified persons have Spanish surnames. To the extent that individuals in this group belong to racial or ethnic minorities, the problem of disproportion is enhanced. In addition the "unknown" designation appears to give troopers attempting to disguise racial profiling the means to obfuscate racial stop patterns notwithstanding the MSP policy on racial reporting.

These records as we have interpreted them and the complaints we have received do not by themselves prove racial impropriety, but they do prompt curiosity and concern that we hope you share. Part of that concern is based on our understanding that the primary mission of the Hometown Security teams is drug interdiction. As part of the agency-wide investigation we are requesting, we ask that you give special attention to the Hometown Security units. If you find that people of color are the majority of those targeted for stops, then you should have concerns not only about racial profiling, but also about the effectiveness of these troopers. As you may know, there are studies that show that the involvement of whites in drug trafficking is at rates equivalent to or greater than the involvement of African Americans.

Attention to race would be useful under any circumstances, but in the aftermath of controversies concerning your unfortunate social media post about protesting NFL players, internal racial analysis takes on a special importance. The ACLU of Michigan's suggestion that you resign is not a judgment of your character or integrity, but it does reflect an understanding that an occurrence of this kind creates tremendous hazards that the troopers who serve under you will infer that acts of racial discrimination will be tolerated if not condoned. Internal review of racial patterns may help to ensure that any such inferences are identified and addressed.

There are yet other measures that can be taken to reduce racial discrimination. Not long ago, the ACLU of Michigan was pleased to join with the NAACP and others in presenting a list of recommended reforms for MSP. These proposed reforms include, among other things: comprehensive cross-cultural training; strategic recruitment in communities where MSP maintains a presence; review of intra-agency tests to ensure the absence of cultural bias; fair and appropriate punishment; and targeted advertisements to attract applicants from communities of color.

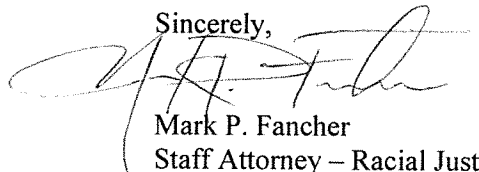
Finally, the ACLU of Michigan is committed to completing its own investigation. To that end, pursuant to the Michigan Freedom of Information Act ("FOIA"), MCL 15.231 *et seq.*, the American Civil Liberties Union of Michigan ("ACLU") hereby requests "records," as that term is defined to the fullest extent under FOIA.

Records requested herein include documents in all forms, including, but not limited to: written reports, recordings, computer disks, medical records, affidavits, investigative records, videotapes, digital video discs, correspondence, memoranda, court documents and records, purchase orders, invoices, transcripts, telephone logs, photographs, news clippings and other preserved media reports, complaint forms, e-mail messages, activity logs, incident reports, daily reports etc.

We specifically request records that reflect the racial identities of all persons who were the subjects of traffic stops made by members of the District 5 Hometown Security Team on the following dates: January 6, 2017; January 20, 2017; February 3, 2017; February 17, 2017; March 3, 2017; March 17, 2017; March 31, 2017; April 7, 2017; April 14, 2017; April 21, 2017; April 28, 2017; May 5, 2017; May 12, 2017; May 19, 2017; May 26, 2017; June 2, 2017; June 9, 2017; June 16, 2017; June 23, 2017; June 30, 2017; and July 7, 2017.

The ACLU requests limitation and waiver of fees pursuant to FOIA which provides for such limitation and waiver where searching for or furnishing the records can be considered as primarily benefiting the general public because it is likely to contribute to public understanding and is not in the commercial interests of the ACLU. See MCL 15.234(2). If this request for waiver of fees is denied and it will cost more than \$100 to process the request please contact the undersigned before proceeding. Please respond within the time period mandated by the statute. If the request is denied in whole or part please justify all deletions by reference to specific exemptions under FOIA. Separate any exempt material from non-exempt material and make the non-exempt material available. Direct all responses to the undersigned. If there are any questions or you require further information about this request, please contact me at (313) 578-6822. Thank you for your courtesies and cooperation.

Sincerely,



Mark P. Fancher

Staff Attorney – Racial Justice Project