



Council on American-Islamic Relations

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July 3<sup>rd</sup>, 2017

Mayor of the City of New York  
The Honorable Bill de Blasio  
City Hall  
New York, NY 10007  
*via U.S. Mail*

**Re: Mayor de Blasio must end New York City Police Department (“NYPD”) use of “Glomar Responses” to Freedom of Information Law (“FOIL”) requests.**

Dear Mayor de Blasio:

We write to you in support of two community leaders: Talib Abdur-Rashid and Samir Hashmi. We have closely monitored their Freedom of Information Law (“FOIL”) litigation against the NYPD, which is currently on appeal before the New York State Court of Appeals.

As you know, FOIL is a vital oversight tool for every aspect of government, empowering the public to request government documents, and casting sunlight into the darkest corners of our bureaucracy. FOIL is used by journalists, civil rights advocates, and everyday New Yorkers to empower citizen watchdogs.

In your prior role as New York City Public Advocate, you vocally criticized the NYPD’s failure to meet its FOIL obligations, noting that their failure has impeded critical oversight of city policy.<sup>1</sup> Since becoming Mayor, little has changed apart from your willingness to condemn the NYPD’s abuses. In 2014, when your administration disbanded the NYPD’s discriminatory “Demographics Unit,” you stated “[O]ur administration has promised the people of New York a police force that keeps our city safe, but that is also respectful and fair.”<sup>2</sup> Sadly, your administration failed to keep that promise.

Currently, the NYPD is responding to FOIL litigation by using novel legal tactics that are utterly inconsistent with even the most basic guarantees of transparency and fairness: “Glomar responses.” This strategy is antithetical to FOIL’s purpose and completely contrary to FOIL’s “broad duty of

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<sup>1</sup> See <http://archive.advocate.nyc.gov/foil/report>.

<sup>2</sup> See Mayor Bill de Blasio’s statement regarding Disbandment of Demographics Unit, Apr. 15, 2014, available at <http://www1.nyc.gov/office-of-the-mayor/news/155-14/statement-the-mayor-nypd-demographics-unit>.

disclosure.”<sup>3</sup> Using this Cold War-era tactic, the NYPD will respond to lawful requests for information by saying “we can neither confirm nor deny the information exists.” Such a response may be appropriate for the CIA, but it is utterly improper for a municipal police force and completely contrary to New York State law.

This episode is particularly important because it is part of your administration’s pattern of inaction on surveillance. Recently, your administration had an important opportunity to provide improved oversight of NYPD surveillance, following settlement of the long running *Handschu* and *Raza* litigation (the “Settlement.”). The Settlement called for the creation of an independent Civilian Representative (“CR”) “to foster public confidence that the department maintains best practices in intelligence investigations and decisions.”<sup>4</sup> Rather than appointing a CR who has the support of the community he is supposed to serve, you circumvented community involvement and appointed Stephen Robinson, a former FBI official with a lengthy history of working in law enforcement, and no experience as a community advocate or a civil liberties watchdog.

Additionally, your office has been silent on the POST Act, a vital bill that would close a loophole that allows the NYPD to purchase highly invasive surveillance tools without any City Council oversight. During a recent hearing, NYPD Deputy Commissioner of Intelligence and Counterterrorism John Miller was repeatedly asked whether, the NYPD or lawmakers should draw the line between privacy and surveillance. He refused to answer. We say to you that in a democratic society it is up to our lawmakers to decide these vital questions, and that silence is no answer.

As a public advocate and candidate, you committed to reform the NYPD’s long pattern of surveillance abuses, but during your administration, the NYPD has managed to evade every attempt to impose additional oversight or enact even the most basic reforms. We ask you to follow through on your promises of open government. As Mayor, you are ultimately responsible for overseeing the legal arguments put forth by the NYPD and the New York City Law Department, and we will treat your silence on Glomar responses as a tacit endorsement of the tactic. With a single phone call, you could order the NYPD to comply with their FOIL obligations and cease their obstructionist tactics. We implore you to make that call.

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<sup>3</sup> See *Matter of New York Civ. Liberties Union v. City of Schenectady*, 2 NY3d 657, 661 (2004).

<sup>4</sup> See Mayor de Blasio Announces Selection of Stephen Robinson as Civilian representative for Handschu Committee Following Formal Resolution of Muslim Surveillance Suits, March 21, 2017, available at <http://www1.nyc.gov/office-of-the-mayor/news/163-17/mayor-de-blasio-selection-stephen-robinson-civilian-representative-handschu>.

Thank you for your time and attention to this matter.

Sincerely,

Albert Fox Cahn, Esq.  
Legal Director

CC:

New York City Public Advocate, Letitia James,  
New York City Comptroller, Scott Stringer,  
Speaker of the New York City Council, Melissa Mark-Viverito,  
Commissioner, Community Affairs Unit, Marco Carrion,  
Senior Advisor to The Community Affairs Unit, Sarah Sayeed,  
New York City Corporation Counsel Zachary Carter,  
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NYPD Deputy Commissioner for Legal Matters, Lawrence Byrne,  
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