

January 16, 2021

Via Public FOIA Portal

MPD FOIA Officer
Metropolitan Police Department
300 Indiana Avenue NW, Room 4125
Washington, D.C. 20001

Re: FOIA Request –NEAR Act Data

To whom it may concern:

This is a request under the D.C. Freedom of Information Act (FOIA), D.C. Code § 2-531 *et seq.*, on behalf of the American Civil Liberties Union of the District of Columbia (ACLU-DC). We request all data collected pursuant to the Neighborhood Engagement Achieves Results (NEAR) Act of 2016, D.C. Code § 5-113.01(4B) from January 1, 2020 until the date of your search. Pursuant to D.C. Code § 2-532(a-1), we request that the data be produced in the same CSV format MPD used in producing NEAR Act stop data for the period covering July 22, 2019 through December 31, 2019. See Metropolitan Police Department, *Stop Data Reports* (Mar. 4, 2020), <https://mpdc.dc.gov/stopdata>.

If the requested format is not available, we request the underlying records for the same data—stop and/or frisk data collected pursuant to the NEAR Act from January 1, 2020 until the date of search. Per MPD General Order 304.10, Attachment B, this includes all Notices of Infraction or warning Notices of Infraction issued after a stop; all Notices of Violation or warning Notices of Violation issued after a stop; all event and person cards in MPD’s record management system containing information related to the fields listed in D.C. Code § 5-113.01(4B); and any other documentation MPD used to record stop information pursuant to the NEAR Act.

I. Background

In the NEAR Act of 2016, the D.C. Council amended the D.C. Code to require that MPD officers record the following information about all stops made in the District of Columbia:

- A. The date, location, and time of the stop;
- B. The approximate duration of the stop;

- C. The traffic violation or violations alleged to have been committed that led to the stop;
- D. Whether a search was conducted as a result of the stop;
- E. If a search was conducted:
 - i. The reason for the search;
 - ii. Whether the search was consensual or nonconsensual;
 - iii. Whether a person was searched, and whether a person's property was searched; and
 - iv. Whether any contraband or other property was seized in the course of the search;
- F. Whether a warning, safety equipment repair order, or citation was issued as a result of a stop and the basis for issuing such warning, order, or citation;
- G. Whether an arrest was made as a result of either the stop or the search;
- H. If an arrest was made, the crime charged;
- I. The gender of the person stopped;
- J. The race or ethnicity of the person stopped; and
- K. The date of birth of the person stopped.

D.C. Code § 5-113.01(4B). The statute incorporates by reference the meanings of “contact”, “frisk”, and “stop” as defined in MPD General Order 304.10, which establishes internal policies and procedures governing stops and frisks. *See* D.C. Code § 5-113.01(4D). Pursuant to MPD General Order 304.10, MPD officers are required to “maintain records of all stops.” MPD Gen. Order 304.10, Attach. B at 1. Stops resolved using a Notice of Infraction (NOI) or Notice of Violation (NOV)—referred to as “NOI stops”—must be documented through issuance of a warning NOI or NOV, a NOI, or a NOV. MPD Gen. Order 304.10, Attach. B, at 1-4. All other stops are documented in the record management system as events where a stop was involved. MPD Gen. Order 304.10, Attach. B at 4.

On June 27, 2019, the D.C. Superior Court issued a preliminary injunction ordering the MPD to comply with the NEAR Act by collecting the required data and “keep[ing] and maintain[ing] the data collected.” *Black Lives Matter D.C. v. Bowser*, No. 2018 CA 003168 B, 2019 WL 4050218, at *11 (D.C. Super. Ct. June 27, 2019). Subsequently, MPD implemented new data collection methods to allow for “more comprehensive information about each police stop” to be collected “in an aggregated manner.” MPD, *Explanatory Note – Stop Data* (Mar. 4, 2020), <https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/Stop%20Data%20Explanatory%20Note.pdf>. The plaintiffs agreed to a motion to vacate the injunction after MPD publicly committed in writing to continue to collect NEAR Act

data and publish it semi-annually. *See MPD, Stop Data Report (September 2019)*, at 7, https://mpdc.dc.gov/sites/default/files/dc/sites/mpdc/publication/attachments/MPD%20Stop%20Data%20Report_September%202019_lowres_0.pdf (“Full data . . . will be published . . . in 6-month increments.”). Despite this guarantee, no data has been released since March 4, 2020. *Stop Data Reports* (Mar. 4, 2020), <https://mpdc.dc.gov/stopdata>. Because MPD has failed to uphold its commitment to release the data proactively on a regular basis, the ACLU-DC files this FOIA request.

II. Request

We request all stop and/or frisk data collected pursuant to the NEAR Act from January 1, 2020 until the date of your search, inclusive. Pursuant to D.C. Code § 2-532(a-1), we request that the records be produced in the format and per the specifications below.

1. Dataset format: The dataset should be in a machine-readable CSV format (i.e. a spreadsheet).
2. Dataset structure: Each row of the dataset should represent a single stop or other reportable incident.
3. Dataset time range: The dataset should include all recorded MPD stops that occurred between January 1, 2020 and the date of your search, inclusive.
4. Dataset columns: The dataset should include 52 columns matching the columns in the already-produced datasets covering July 22, 2019 through December 31, 2019. *See MPD, Stop Data (1 of 3), Stop Data (2 of 3), Stop Data (3 of 3)*, <https://mpdc.dc.gov/node/1487566> (.csv attachments). This includes all data fields required by the NEAR Act, D.C. Code § 5-113.01(4B).

Should the data requested not be available in the above format, we request, in the alternative, the underlying records for the same data—all stop and/or frisk data collected pursuant to the NEAR Act from January 1, 2020 to the date of search. This includes:

1. All Notices of Infraction or warning Notices of Infraction issued after a stop;
2. All Notices of Violation or warning Notices of Violation issued after a stop;
3. All event, person, incident, arrest, and/or offense records in MPD’s record management system where the question “Was a stop involved?” was answered with “Yes,” as well as all event, person, incident, arrest,

- and/or offense records that otherwise document information responsive to one or more of the fields in D.C. Code § 5-113.01(4B); and
4. Any and all other forms of documentation that MPD used to record information responsive to one or more of the fields contained in D.C. Code § 5-113.01(4B) during the time period references above.

Please note that we do *not* seek individually identifying information such as complainant or suspect names, home addresses or dates of birth, and any such information should be redacted. Any such information may be redacted. We also do *not* seek body-worn camera recordings.

III. Segregability and Fee Waiver

If you determine that some or all of the records are exempt, you must provide a written explanation including a reference to the specific statutory exemption on which you rely. D.C. Code § 2-533(a). If a segregable portion of any record is not exempt, you must provide those portions along with your explanation of the exemption. D.C. Code § 2-534(b). We reserve the right to appeal any such decision.

We request a fee waiver pursuant to D.C. Code § 2-532(b), which permits you to waive or reduce any fee for searching and reproducing records if “furnishing the information can be considered as primarily benefiting the general public.” The ACLU is a nonprofit public interest organization with limited resources, dedicated to the protection of civil rights and civil liberties. The public is the primary beneficiary of the ACLU’s work to protect fundamental rights, whether by litigation, legislative advocacy, or publication. It is on this ground that federal and state agencies, as well as courts, generally grant waivers of fees for ACLU FOIA requests. The present request satisfies the statutory criteria for a fee waiver.

If you determine no waiver is appropriate, and if the proposed fee is greater than \$25.00, we ask that you notify us prior to fulfilling the above requests.

Please furnish all applicable records to Megan Yan via email at myan@acludc.org. If you have questions, please contact me at myan@acludc.org. We look forward to your reply to this records request within 15 business days, as required by D.C. Code § 2-532(c). Thank you for your prompt attention to this matter.

Sincerely,



Megan Yan, Liman Fellow
ACLU-DC



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cc: Mark Viehmeyer, General Counsel
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