

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

BLACK LIVES MATTER D.C., et al.,

Plaintiffs,

v.

MURIEL BOWSER, et al.,

Defendants.

2018 CA 003168 B
Judge John M. Campbell

**PLAINTIFFS' THIRD SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
IMMEDIATE ISSUANCE OF PRELIMINARY INJUNCTION**

Plaintiffs submit yet another memorandum to update the Court on developments regarding the response of the Metropolitan Police Department (MPD) to Plaintiff ACLU-DC's FOIA request for a portion of the NEAR Act-required data that Defendants are required by law to collect. As Plaintiffs explained in their June 13 filing, MPD informed the ACLU-DC that the past six months' worth of race/ethnicity data for traffic stops is contained in a set of 31,521 individual videos. In that filing, Plaintiffs further explained that in order for them to compile a complete set of data about the race and ethnicity of individuals stopped by MPD, they would need to complete the gargantuan task of obtaining and reviewing each video and then acquiring race/ethnicity data for *non-traffic* stops. As Plaintiffs explained in their June 21 filing, MPD provided an invoice on June 20 for \$310,362 to obtain 1,077 of the 31,521 videos, a subset that is $\frac{1}{29}$ of the whole. If that price for the subset is representative of the price for the whole (and there's no reason to believe it isn't), then the total cost for the 31,521 videos should be \$9,000,498 (which is \$310,362 times 29).

Several hours after Plaintiffs' June 21 filing in this Court estimating the total cost of the videos at approximately \$9 million, Plaintiff ACLU-DC received an email from MPD's deputy

general counsel stating as follows (and attached to this memorandum):

The department has decided to retract the invoice that was sent to you. The department is exploring whether recently updated technology can be used to make the redactions in-house rather than having a vendor complete this task. This alternative process will be more economical and might be more efficient. The department will need a few days to explore the feasibility of this alternative method and will advise you of our next steps.

Plaintiffs submit this memorandum to inform the Court of this development and speak briefly to its significance.

MPD is making this process up as it goes along. It belatedly recognized that the \$9 million amount is deeply revealing about its bad faith in implementing the NEAR Act, and so now it has decided to “retract” the invoice. But MPD cannot “retract” the fact that compiling the data requires watching 31,521 videos. Nor can it “retract” its failure to comply with the NEAR Act for three years. Data is being lost every day. MPD’s absurd 31,521-video response to Plaintiffs’ request for NEAR Act data and its embarrassing about-face on the charges (with actual fees to be determined later—piling delay on top of delay) show that its compliance efforts are a sham.

Injunctive relief should issue now.

June 24, 2019

Respectfully submitted,

/s/ Scott Michelman

Scott Michelman (D.C. Bar No. 1006945)

Michael Perloff*

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* Admitted to practice in New York. Practicing in D.C. under supervision of a D.C. Bar member while awaiting admission to D.C. Bar, pursuant to D.C. Ct. App. R. 49(c)(8).

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June 2019, a copy of PLAINTIFFS' SUPPLEMENTAL MEMORANDUM (and its attachment) was served on counsel for Defendants through CaseFileXpress.

/s/ Scott Michelman

Scott Michelman (D.C. Bar No. 1006945)
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From: [Harris, Ronald \(MPD\)](#)
To: [Michael Perloff](#)
Cc: [Parker, Vendette \(MPD\)](#)
Subject: FOIA Appeal 2019-162
Date: Friday, June 21, 2019 3:56:56 PM

Mr. Perloff,

As you are aware the Mayor's Office of Legal Counsel has remanded your FOIA appeal to the department to begin reviewing and making any appropriate redactions to those records deemed responsive to your request. The department has decided to retract the invoice that was sent to you. The department is exploring whether recently updated technology can be used to make the redactions in-house rather than having a vendor complete this task. This alternative process will be more economical and might be more efficient. The department will need a few days to explore the feasibility of this alternative method and will advise you of our next steps.

Ronald B. Harris
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