

March 28, 2018

Via Public FOIA Portal
Inspector Vendette Parker
Metropolitan Police Department
300 Indiana Avenue NW
Room 4153
Washington, D.C. 20001
Phone: (202) 727-3721

Re: FOIA Request – Post-NEAR Act Stop & Frisk Data.

Dear Inspector Parker:

This is a request under the D.C. Freedom of Information Act (FOIA), D.C. Code § 2-531 *et seq.*, on behalf of three requesters: the American Civil Liberties Union of the District of Columbia (ACLU-DC), Black Lives Matter D.C., and the Stop Police Terror Project D.C. We request two categories of records: (1) records and/or data regarding stops and/or frisks following the implementation of the Neighborhood Engagement Achieves Results (NEAR) Act of 2016, and (2) plans and timetables for implementing of the NEAR Act stop and frisk data collection requirement. ACLU-DC previously requested the first category of data in 2017 and was informed by MPD that the NEAR Act had not yet been implemented. More than a year has passed since our earlier request.



**District
of Columbia**

915 15th St. NW, 2nd Floor
Washington, D.C. 20005
(202) 457-0800
acludc.org

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 (hereinafter "NEAR Act Data"):

- 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 Metropolitan Police Department 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 Parts III.D.2 and III.D.3, “[w]henever any force is used to stop a person . . . or whenever any frisk is conducted . . . , regardless of whether or not an arrest follows, a PD Form 251 shall be made containing all pertinent details of the incident, including all factors relied upon in determining that the stop or frisk was justified” and “[w]henever a person is stopped without the use of force, the stop shall be recorded on a PD Form 76, which shall contain all pertinent details of the incident including all factors relied upon in determining that the stop was justified.”

II. Substance of request

A. *NEAR Act Data*

First, we request records containing the “NEAR Act Data” (as defined above) for all stops and frisks conducted beginning on the NEAR Act implementation date—the day on which the MPD began complying with the reporting requirements of D.C. Code § 5-113.01(4B)—until the date of your search, inclusive. Such records include:

1. All PD 251 Forms for Forcible Stops;
2. All PD 76 Forms for Non-Forcible Stops; and
3. Any and all other forms of documentation the MPD uses to record information relating to stops and frisks as required by D.C. Code § 5-113.01(4B).

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. We also do *not* seek body-worn camera recordings.

B. Plans and Timetables for NEAR Act Data Implementation

Second, we request all documents – including but not limited to memoranda, correspondence, and emails – since March 26, 2016, containing or discussing in whole or in part any plans, procedures, and/or timetables for implementation of the NEAR Act Data requirement by MPD and the District of Columbia government.

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. Black Lives Matter D.C. and the Stop Police Terror Project D.C. are public interest organizations dedicated to organizing against state-sanctioned violence, particularly in the form of police abuses, against the black community in the District of Columbia. Both Black Lives Matter D.C. and the Stop Police Terror Project D.C. were integrally involved in the passage of the NEAR Act, having advocated for many of the policy initiatives included in the NEAR Act prior to the drafting of the Act and then lobbying the Council for the passage of the Act in 2016. 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 Shana Knizhnik, 915 15th Street, NW, Second Floor, Washington, DC 20005 or sknizhnik@acludc.org. If you have questions, please contact me at 202-601-4278 or sknizhnik@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,

A handwritten signature in black ink, appearing to read 'S. Khizhnik', written in a cursive style.

Shana Khizhnik, Dunn Fellow
ACLU Foundation of the District of Columbia