
BACKGROUND CHECKS ON MEMBERS OF THE PUBLIC

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VIA ELECTRONIC MAIL

September 22, 2021

Superintendent David O. Brown
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

Dear Superintendent Brown:

Pursuant to §§ 2-56-30 and -230 of the Municipal Code of Chicago (MCC), the Office of Inspector General (OIG) has completed an inquiry into the practice of members of the Chicago Police Department (CPD or the Department) performing background checks on individuals signed up to speak at Chicago Police Board meetings.

In the course of its review, OIG interviewed CPD and Police Board officials. OIG also reviewed CPD emails and relevant CPD policies, regulations, and directives, as well as CPD training materials. The practice of conducting background checks on Police Board meeting speakers was a longstanding one, going back as far as 2006. Neither CPD nor the Police Board was able to account for who initiated the practice or for what purpose, beyond nonspecific security concerns regarding visitors to the City's Public Safety Headquarters.

This practice raised the specter of infringement of the First Amendment rights of members of the public who chose to speak at Police Board meetings, ran afoul of laws and regulations regarding use of CPD databases, and strained public confidence in both CPD and the Police Board.¹ Moreover, this practice came to light at a critical time in the City's efforts to foster public

¹ Gorner, Jeremy and Gregory Pratt, "Have you spoken at a Chicago Police Board meeting? The police know more than you realize," July 24, 2019, <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-background-checks-20190724-stu2yjnygjbyjloycjcfmkerka-story.html>; "William Calloway, an activist who pushed for the release of the infamous video of the fatal police shooting of [Laquan] McDonald, was taken aback that police checked his background when he signed up to speak before the Police Board in July 2019. 'They know me – like what you running my name for?' he said. 'That's crazy.' The searches, though, 'speak to the culture of the Chicago Police Department, that culture that still exists that we're trying to break up,' he said." "Karen Sheley, the director of the [American Civil Liberties Union of Illinois]' police practices project, said the information-gathering on public speakers could undermine efforts to rebuild trust with residents at a time the Police Department is undergoing potentially sweeping reforms as a result of a federally mandated consent decree." Gorner, Jeremy and Gregory Pratt, "Documents show secret background checks by Chicago police go back to at least 2006 at Lightfoot calls for probe," September 12, 2019, <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police->

trust in its public safety institutions, and necessary and overdue efforts by the Department to meaningfully and respectfully engage with members of Chicago's communities. As you know, CPD discontinued the practice of performing background checks on Police Board speakers in July 2019. OIG writes to recommend measures to ensure that the practice of using CPD databases to perform background checks on members of the public who engage with the City's public safety institutions will not reoccur, particularly as CPD and the City work to broaden and deepen the opportunities for that engagement.

I. BACKGROUND

On July 24, 2019, the Chicago Tribune published an article reporting that CPD members had compiled extensive reports—which included both criminal history and open source search results—on every person who had spoken at monthly public meetings of the Police Board as far back as 2013.² Upon learning of the practice, Mayor Lightfoot ordered CPD to immediately terminate that practice. On July 25, 2019, CPD issued a public apology and confirmed that it had discontinued the practice completely with respect to Police Board meetings, a decision which CPD communicated to the Police Board. In an August 30, 2019 response to a Chicago Tribune Freedom of Information Act (FOIA) request, CPD noted that the practice of conducting background checks on Police Board speakers dated back to 2006. CPD's FOIA response also stated that it was enclosing certain responsive records and that "[a]ll Department 'queries' performed via the Illinois Law Enforcement Agencies Data System (LEADS) have been redacted," and that "LEADS print outs were redacted pursuant to §7(1)(a) of the Illinois FOIA Statute..." Mayor Lightfoot subsequently requested an OIG investigation, expressing concern about the discrepancy in timeframe as to when the practice started and whether City employees had used confidential law enforcement databases for improper purposes.

On September 4, 2019, CPD's then-Chief Communications Officer emailed a statement to a Chicago Tribune reporter stating, among other things, that CPD "recognize[s] the critical role community voice plays in this collaborative effort to keep Chicago safe," "recognize[s] individuals (sic) constitutional right to personal privacy," and that CPD "deeply apologize[s] for any mistrust that this practice may have caused over the years, and we will remain committed to restoring and maintaining that trust going forward."

From at least 2006 through 2019, when CPD was conducting background checks on members of the public signed up to speak at Police Board meetings, the Police Board met on the third

[background-checks-20190912-vcvwow7wh5he7ci36wduneokn4-story.html](#): "Martinez Sutton, whose sister Rekia Boyd was killed in 2012 in a controversial shooting by an off-duty Chicago police detective, said he was troubled on learning that the department had checked on his background before speaking before the Police Board. 'I'm fighting against police brutality due to what they did to Rekia and everything. So you find out officers or whoever are investigating your background, that makes you think about all sorts of privacy issues,' Sutton said. '...What about retaliation?'"

² Gorner, Jeremy and Gregory Pratt, "Have you spoken at a Chicago Police Board meeting? The police know more than you realize," July 24, 2019, <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-background-checks-20190724-stu2yjnygibyljocjcfmkerka-story.html>.

Thursday of each month at 7:30 p.m. at the City's Public Safety Headquarters. Members of the public were invited to attend Police Board meetings and could ask questions or address comments to Police Board members. Individuals were required to contact the Police Board ahead of time via telephone or email to sign up to speak, with a sign-up deadline at 4:30 p.m. the day before a meeting. After that deadline, the Supervising Clerk for the Police Board would send a list of the registered speakers' names to approximately 20 people, including CPD Officers, Detectives, Captains, Sergeants, and Lieutenants, as well as Independent Police Review Authority (IPRA) and Civilian Office of Police Accountability (COPA) personnel.

As reported to OIG, beginning in 2014, three detectives from CPD's Bureau of Detectives took turns running background checks on members of the public who had signed up to speak at Police Board meetings. OIG's investigation revealed that the assigned Detectives were not provided with any guidance specifying the objectives for running these checks, for whom they were being run, or otherwise directing that analysis be performed with criteria for such analysis; CPD members interviewed by OIG did not say who had given the original instruction to do so. The assigned Detective received the list of registered speakers' names from a Bureau of Detectives Sergeant, and the Detective would then conduct background checks on every name on the list, which at times included former CPD members who had signed up to speak at Police Board meetings, as well as registered speakers who had signed up for and spoken at a previous Police Board meeting and had thus had been the subject of prior background checks.

The background checks CPD members performed were extensive. They included open-source and Citizen Law Enforcement Analysis and Reporting (CLEAR) database searches for each name on a meeting registrant list.³ Furthermore, the background check results circulated by CPD sometimes included information accessed through LEADS.⁴ Notably, in CPD's response to the Chicago Tribune's FOIA request, the Department itself characterized LEADS information as not susceptible to public distribution.

The Detective performing the background checks for a particular meeting would compile information obtained from the searches into single document. The resulting compilation reports included information as to whether speakers had arrests, outstanding warrants, investigative alerts, past traffic stops, or pending search warrants connected to their names; whether they were sex offenders, appeared on case reports as suspects, had been arrested as "non-offenders," or were missing persons; and sometimes whether they had been victims of crimes or were registered voters. Some reports included links to blog posts, news stories, or articles written by speakers, YouTube videos associated with speakers, as well as information obtained from Facebook, Twitter, and LinkedIn. Examples of CPD background check reports on Police

³ CLEAR is a product procured by CPD, consisting of several modules and applications that, in part, store electronic records. In totality, CLEAR is a collection of different technologies, dating from the early 2000s to present day. City of Chicago's Position Paper Regarding Discovery Violation at 7, *Cazares v. Frugoli*, No. 1:13-CV-05626 (April 6, 2018), ECF No. 505.

⁴ LEADS is a statewide, computerized telecommunications system designed to provide services, information, and capabilities to the law enforcement and criminal justice community in the State of Illinois. Ill. Admin. Code tit. 20, § 1240.10(a).

Board speakers reviewed by OIG also included one speaker's social security number and information from CPD's records on whether some speakers were believed to be gang-affiliated. Photographs of speakers—some of which appear to be arrest booking photos—were often included in reports. The compilation reports did not contain any type of analysis or assessment on the registrants.

The Detective would then distribute the compilation report via email to a list of recipients that included numerous CPD members—Police Officers, Sergeants, Lieutenants, and Chiefs—as well as numerous individuals outside CPD, including the Executive Director and Supervising Clerk of the Police Board, and IPRA/COPA's Administrator, General Counsel, and Director of Public Affairs.⁵ When interviewed by OIG, one of those Detectives reported that they did not know how the recipient list was determined or who created the list. Beginning in at least February 2017, the search compilation documents were also printed for CPD's General Counsel before each Police Board meeting.⁶ The July 24, 2019 Chicago Tribune article noted Mayor Lightfoot's statement that she had been unaware of the practice when she was President of the Police Board. The article also reported the current Police Board President's statement that none of the current or immediate past Police Board members had knowledge of the practice or were provided with the background check reports, which as noted above were routinely provided by the assigned CPD Detective to the Police Board Executive Director and Supervising Clerk. A senior Police Board employee reported to OIG that they had received the reports, typically on the morning of a scheduled public meeting.

Records provided by CPD show that the background check practice goes back to at least August 2006. Of the numerous interviewees who spoke to OIG, none were able to explain exactly when the practice began or why, although most assumed that the checks were done to ensure safety and security at Public Safety Headquarters, where Police Board meetings were held. CPD had no applicable Departmental policy specifically authorizing these background checks, there were no disclosures to potential speakers that CPD might perform a background check, and none of the Detectives interviewed by OIG reported running similar background checks on other visitors to Public Safety Headquarters outside the context of or for events unrelated to Police Board meetings.

⁵ An April 11, 2019 email from a CPD Detective, attaching results from background checks performed on speakers for the April 2019 Police Board meeting was sent to 28 individuals at CPD and the Police Board, and included the name and email address of an employee of IPRA, which ceased to exist in October 2016. On May 15, 2019, the Police Board's Supervising Clerk sent an email to 17 individuals at CPD, the Police Board, and COPA with a list of individuals who had signed up to speak at the May 16, 2019 Police Board meeting. Documents provided to OIG do not include a response to this email which might show which parties received results of background checks CPD performed on the scheduled speakers.

⁶ On September 12, 2019, the Chicago Tribune published a follow-up article, "[Documents show secret background checks by Chicago police go back to at least 2006 as Lightfoot calls for probe.](#)" This article stated that several past CPD Superintendents—including Jody Weis, Philip Cline, Terry Hilliard, and Garry McCarthy—denied knowledge of the background checks. Cline, Superintendent from 2003-2007, could not explain how or why the practice might have begun during his tenure. McCarthy, Superintendent from 2011-2015, said he did not remember ordering the checks but "wholeheartedly backed the practice," citing security concerns.

OIG asked CPD, via its Office of Legal Affairs, when this practice began, for what purpose it was initiated, how and by whom it was begun, and who determined the distribution list for background check results. In May 2021, CPD responded that it directed these questions to the then-current CPD members at the level of Chief, and “[n]one of these individuals had information to answer these questions raised.” CPD further noted that “[i]t has proved impossible to pinpoint when the process began and who made the decision to begin this process. It appears that the individuals who made the decision to begin conducting background checks have long left the Department, which has made it difficult to ascertain why the conduct began and who made the decision to start this process.”⁷

II. RELEVANT LAWS, RULES, DIRECTIVES, POLICIES, AND TRAINING PRACTICES

A. FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

The First Amendment to the United States Constitution provides that “Congress shall make no law...abridging the freedom of speech...” U.S. CONST. amend. I. The First Amendment provides protection to speech in public forums, such as Police Board meetings. As the Supreme Court of the United States has affirmed, speech concerning public issues “is the essence of self-government,” occupies “the highest rung of the hierarchy of First Amendment values,” and “is entitled to special protection.” *Connick v. Myers*, 461 U.S. 138, 145, 103 S. Ct. 1684, 1689, 75 L. Ed. 2d 708 (1983) (internal quotations and citations omitted).

B. ILLINOIS ADMINISTRATIVE CODE PROVISIONS REGARDING LEADS

The Illinois Administrative Code provides, as relevant, that LEADS data “shall not be disseminated to any individual or organization that is not legally authorized to have access to the information.” Ill. Admin. Code tit. 20, § 1240.80(d). Further, “LEADS operators shall use [LEADS] only for those purposes for which they are authorized,” and the individual “receiving a request for criminal justice information must ensure the person requesting the information is authorized to receive the data.” Ill. Admin. Code tit. 20, § 1240.50 (b)(4).

C. APPLICABLE CPD RULES, DIRECTIVES, AND POLICIES

- CPD General Order G02-02-01, *Investigations Directed at First Amendment-Related Information* (effective April 19, 2012), states that “[a]ll police action will be conducted in accordance with the Constitution of the United States, including the First Amendment of the Constitution.” This order also states that “[u]nder no circumstances will any sworn member or other employee of [CPD] investigate, prosecute, disrupt, interfere with, or

⁷ In a separate communication to OIG, CPD noted that its “current and past” General Counsels had retained binders of paper documents “regarding information compiled for the speakers at the Chicago Police Board meeting.” CPD determined that those binders contained “thoughts and mental impressions” of the General Counsel, and redacted them.

harass any person for the purpose of preventing that person from engaging in conduct protected by the First Amendment” or “investigate, prosecute, disrupt, interfere with, or harass any person for the purpose of punishing or retaliating against that person for engaging in conduct protected by the First Amendment.” (Subsections II.A.1, II.B.1, and II.B.2.)⁸

- CPD General Order G09-01-01, *Access to Computerized Data, Dissemination and Retention of Computer Data* (effective February 3, 2012), states that any member “who accesses information through the Department's computerized information systems is accountable for the appropriate use and disposal of the information. Access to information is restricted to official police business. Access of information for personal or other reasons is strictly prohibited.” This general order also provides that “[t]he contents of any record, file or report will not be exhibited or divulged to any non-Departmental person or entity except in the performance of official duties and in accordance with Department policy, and applicable federal, state and local laws.” (Subsections VI.A.2 and Section VII.A.)
- CPD Special Order S09-04-01, *Computerized Criminal History* (effective February 12, 1988), states that “[c]riminal history records will be given only to sworn members as investigative aids in the investigation of assigned cases,” and that “[m]embers will not allow their access to such information to be used for non-Department purposes.”
- Acts prohibited by CPD’s Rules and Regulations include the failure to report any improper conduct which is contrary to the policy, order or directives of the Department (Section V, Rule 22) and “[d]isseminating, releasing, altering, defacing or removing any Department record or information concerning police matters except as provided by Department orders” (Section V, Rule 41).

D. THE EMPOWERING PUBLIC PARTICIPATION ACT

In October 2019, a bill to amend the Open Meetings Act was introduced in the Illinois House of Representatives, providing that law enforcement officials may not conduct background checks of speakers at meetings of public bodies, including police disciplinary boards, except to provide security for the premises of the meetings. The legislation was reintroduced in February 2021 and, as amended, currently provides in relevant part that a law enforcement agency or an officer employed by a law enforcement agency may not knowingly and intentionally conduct a background check [“a criminal history check using the Law Enforcement Agencies Data System (LEADS)”] of a person for the sole reason of that person speaking at an open meeting of a public body, including police disciplinary boards. This prohibition does not apply when an agency or

⁸ OIG notes that, during at least some of the time period at issue, the City was under a modified consent decree relating to some of these activities. See, e.g., *ACLU of Ill. v. City of Chi.*, 2008 WL 4450304 (N.D. Ill. Sept. 30, 2008).

officer develops a reasonable suspicion of criminal conduct or of a threat to security for the premises in which the meeting is to occur.⁹

A violation of the Empowering Public Participation Act is a Class C misdemeanor, but the Act creates no claim for damages or other relief. The Act passed both houses of the Illinois legislature on May 31, 2021, and was signed into law by Governor JB Pritzker on August 13, 2021.

E. CPD'S TRAINING FOR RECRUITS AND MEMBERS

OIG inquired as to whether CPD's training academy curriculum includes training on the consequences of misuse of CPD databases and whether CPD members are provided with ongoing training regarding the proper use of CPD databases. CPD reported that the academy curriculum includes no such training and CPD members are provided with no such ongoing training.

CPD produced digital copies of several lesson plans and training instructor guides used at the academy to train recruits. The training materials for modules related to LEADS include slides stating that LEADS data may only be accessed "for criminal justice purposes," that unauthorized dissemination of LEADS data is prohibited, and that pulled information can only be shared with persons involved with the information in an official criminal justice capacity.

III. ANALYSIS

CPD's running of background checks on members of the public signed up to speak at Police Board meetings threatened those individual's First Amendment entitlements. Moreover, CPD accessing database information and distributing background check reports to non-CPD personnel at IPRA, COPA, and the Police Board violated the Illinois administrative code as well as CPD directives regarding LEADS data being accessed only for criminal justice purposes and shared only with persons involved with the information in an official criminal justice capacity.

The practice of running background checks dates continued for some 13 years, with the knowledge of Department members throughout the chain of command. It appears that likely violations of law and policy were undertaken pursuant to an understanding that they were assignments from higher-ranking members, for what were assumed to be legitimate purposes. Generally, they were not. Because many of the involved CPD personnel are no longer with the Department and current CPD personnel were unable to answer questions about the origins or purposes of the practice, OIG was unable to ascertain who gave the initial order to perform these background checks, and who ordered that the practice continue as CPD leadership and personnel changed. As such, OIG elected not to issue disciplinary sanctions for misconduct by individual CPD members, but rather to assess programmatic and policy concerns.

⁹ The prohibition against background checks is also inapplicable whenever the person speaking at a public body meeting is also under consideration for appointment to a government position by that public body. See Illinois Public Act 102-0348, § 10(b).

There is no evidence that speakers were ever advised about these background searches being performed, either before or after they had attended Police Board meetings. The Police Board's "Policy Regarding the Attendance of and Participation by the Public at Board Meetings," adopted in December 2005, makes no mention of background checks, and there is no indication that any of the speakers were warned that they were subjecting themselves to background checks when signing up to speak at Police Board meetings. Particularly for undocumented and criminal justice-involved populations, the use of extensive background checks at community engagement events may have a chilling effect, which could handicap engagement efforts precisely at a time when the City and Department must work toward increasing and improving such opportunities.

Finally, beyond general statements about security concerns at Public Safety Headquarters, CPD was unable to explain the specific purpose of these background checks, and it is therefore impossible to determine whether the means by which they were conducted was appropriately tailored to that purpose. Notably, none of the CPD personnel interviewed by OIG recalled being asked to perform similar background checks on individuals visiting Public Safety Headquarters for purposes other than public Police Board meetings, undermining the notion that the checks represented a necessary security measure.

IV. RECOMMENDATIONS

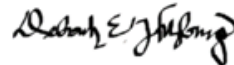
In order to ensure that future community engagement efforts are not compromised by practices similar to the background checks performed on members of the public signed up to speak at Police Board meetings, to work toward restoring public trust undermined by that practice, and to align its policies and practices with state law, OIG recommends that CPD:

1. Update its directives to comport with the Empowering Public Participation Act by explicitly prohibiting its members from performing background checks on members of the public solely based upon their request to speak at a public meeting.
2. State clearly in its policies the consequences—administrative and criminal—that members may face for misusing CPD databases to conduct background checks in violation of existing laws and disseminating such information to third parties/non-CPD personnel.
3. Incorporate permissible and impermissible uses of CPD databases and prohibitions on improper background checks—including potential administrative and criminal consequences for misuse—into training academy and in-service curricula.

V. CONCLUSION

At this critical juncture in CPD and the City's efforts to strengthen community engagement and to improve the relationship between CPD and members of Chicago's communities, CPD must take decisive and visible steps to ensure that the practice of performing background checks on Police Board speakers does not risk being replicated. Please respond in writing by October 22, 2021. OIG looks forward to CPD's response, which will be published in accordance with MCC § 2-56-250.

Respectfully,



Deborah Witzburg
Deputy Inspector General for Public Safety
Office of Inspector General

cc: Joseph Ferguson, Inspector General, OIG
Nathaniel Wackman, Associate General Counsel for Public Safety, OIG
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- administrative and criminal investigations by its Investigations Section;
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- inspections, evaluations and reviews of City police and police accountability programs, operations, and policies by its Public Safety Section; and
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OIG's authority to produce reports of its findings and recommendations is established in the City of Chicago Municipal Code §§ 2-56-030(d), -035(c), -110, -230, and -240.

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