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MARJORIE R. ESMAN
EXECUTIVE DIRECTOR

March 15, 2011

OPEN LETTER SEEKING PUBLIC RECORDS

BY FAX 504-658-5775
and regular mail
Superintendent Ronal W. Serpas
New Orleans Police Department
715 S. Board Street, Rm. 501
New Orleans, LA 70119

Dear Superintendent Serpas:

I write concerning the events surrounding the Krewe of Eris parade on March 6, 2011. Specifically, I am concerned about the efforts by NOPD officers to prevent photographing and filming the activities of police officers during the events of that evening. I'm sure you're aware of the video found on youtube
http://www.youtube.com/watch?v=3JerztJN5pY&feature=player_embedded
which clearly shows an officer knocking a camera out of the hands of someone who was filming police conduct.

As you know, the ACLU of Louisiana has long been concerned about police interference with the First Amendment right to film and record police conduct. I know you're familiar with the report we released last summer, "Observing, photographing & filming the New Orleans Police Department," which can be found on our website at:
www.laaclu.org/PDF.../Observing_photographing_filming_NOPD.pdf
You and I have discussed the need for enhanced training for NOPD officers to ensure that they know that the First Amendment protects the right of the public to record what they see, including police activities. In fact, it is the duty of police to protect that right, as part of their obligation to enforce the laws of this country.

Because you have assured me that your officers would be trained in the applications of the First Amendment, this letter seeks public records surrounding the training materials provided to NOPD officers on this very important issue. For purposes of this letter, "**documents**" includes, but is not limited to, any memoranda, letters, electronic mail or "e-mail," handwritten, typed, or electronic notes, recordings of any kind and in any form (video, audio, digital, etc.)

I request copies of the following:

1. Any and all documents containing information provided to NOPD officers concerning the rights of the public to record, in any fashion, what they see in public.

2. Any and all documents, specifically information used in training NOPD officers or recruits, showing training on First Amendment rights and protections.

Under the provisions of R.S. 44:32, if you raise a question as to whether any of the records requested is a public record, you are required to notify in writing the person making the request of your determination and the reasons, including the legal basis therefor. Notice shall be made within three days of the receipt of the request, exclusive of Saturdays, Sundays and legal public holidays. If you claim exemption for a record or records under the Public Records Act, or any other statute, include for each record the section of law under which exemption is claimed and your reasons for believing the statute is applicable to the record.

Under the provisions of R.S. 44:33, if the public record is not immediately available, you are required to certify this in writing promptly, and in your certificate fix a day and hour within three days, exclusive of Saturdays, Sundays and legal public holidays, for the exercise of the right granted in the Public Records Act.

Under R.S. 44:34, "If any public record applied for by any authorized person is not in the custody or control of the person to whom the application is made, such person shall promptly certify this in writing to the applicant, and shall in the certificate state in detail to the best of his knowledge and belief, the reason for the absence of the record from his custody or control, its location, what person has custody of the record and the manner and method in which, and the exact time at which it was taken from his custody and control. He shall include in the certificate ample and detailed answers to inquiries of the applicant which may facilitate the exercise of the right granted by this Chapter."

If you are invoking R.S. 44:34 to deny this request, please answer the following questions in detail.

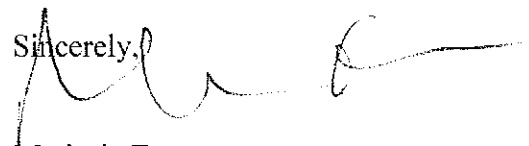
1. Is a copy of the requested public record usually located in your office?
2. Why is your copy of the requested public record absent from your office?
3. Where is your copy of the requested public record?
4. Who has received a copy of the requested public record?
5. How and from whom did the present custodian gain control of your copy of the requested public record?
6. What was the exact time your copy of the public record was taken from your custody and control?
7. When will your copy of the requested public record be returned to your office?
8. Is there any other public official who has a copy of the requested record?
9. What is/are the name(s) of anyone who has a copy of the requested public record?
10. What is/are the location(s) where the public record can be viewed?
11. What are the hours and dates when the requested public record can be viewed?

We request that you produce in electronic form any and all documents that can be made available, in that format. This includes any documents that are in paper form but that can be scanned to electronic form, as well as digital copies of any recordings. For documents that cannot be produced in electronic form, if the cost of copies does not exceed \$25.00, proceed without further approval and send us an invoice with the records; otherwise, call to advise and

(3)

gain approval to proceed. As you are aware, failure to abide by the Public Records Law may result in certain penalties and the award of attorney's fees. We trust that you will comply without the necessity of any further action on our part.

Sincerely,



Marjorie Esman
Executive Director

cc: Dawn Segura, Office of the City Attorney (by email)