

NYPD Sued For Refusing To Confirm Or Deny Existence Of Counterintelligence Activities Against Activists

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Photo by Thomas Altfather Good on Flickr.

The New York chapter of the American Civil Liberties Union (ACLU) and activists with Millions March NYC sued the New York Police Department after the department refused to confirm or deny the existence of records on Black Lives Matter activists.

Mariko Hirose, a senior staff attorney for the New York chapter, said, "New York City should be doing what it can to protect people's right to engage in political protests. The last thing the police department should be doing is finding new loopholes to conceal from activists whether or not they are interfering with protests and organizing."

Millions March NYC and organizers Vienna Rye, Arminta Jeffryes and Nabil Hassenin filed a routine records request under the state's freedom of information law. They sought records that might reveal why multiple activists had "strange problems" with their cell phones at Black Lives Matter protests.

A request asked for any records the NYPD might have on "the use of technology to interfere with the use of cell phones by protestors," according to the lawsuit. It also asked for records on monitoring of social media accounts of protestors, the "acquisition of contents" of any of the organizers' cell phones, and any documents the NYPD might

have on the protest or organizing activities of Millions March NYC.

The NYPD replied with a Glomar response, stating it refused to confirm or deny the records existed. The NYCLU describes Glomar as a “federally judicially crafted doctrine that is inconsistent with the structure and purpose” of New York’s freedom of information law.

“This type of response is clearly unwarranted and unlawful,” the lawsuit states [\[PDF\]](#).

“Throughout the NYCLU’s long history of sending [records] requests to the NYPD, including regarding its use of military-grade Stingrays, the NYPD has never before hidden behind the Glomar doctrine,” the NYCLU asserted in a press statement. “In fact, whether or not the Glomar response is even permitted under state law is a question currently pending before the highest court of the state, in a case where the NYPD rejected [records] requests by two Muslim men following the department’s widespread surveillance of the New York Muslim community.”

In that case, Imam Talib Abdur-Rashid filed a request for records on himself and his mosque that he [believed](#) were collected “as part of the NYPD’s dragnet surveillance of Muslim New Yorkers,” which the Associated Press revealed in 2011.

The NYPD refused to confirm or deny the existence of records, and as recalled by the Brennan Center for Justice, “A state trial court permitted the NYPD to issue a Glomar response for the first time in the history of New York FOIL practice.”

According to the Brennan Center, the NYPD should only be able to use the Glomar doctrine to withhold records if a “legislative authority” grants them permission to use this doctrine.

The public is also acutely aware of the NYPD’s history of dragnet surveillance of citizens, whether it involved targeting them for their political or religious beliefs.

Rye experienced “strange problems” on December 13, 2014, when Millions March NYC protested the grand juries’ failure to indict police responsible for killing Eric Garner and Michael Brown. Her phone “shut down during the march while she was trying to film what was happening.”

The lawsuit indicates her phone showed it was out of battery power, “even though it was fully charged.”

At solidarity protests in response to the killing of Freddie Gray in Baltimore and at a protest against Donald Trump at the New York State Republican Committee’s annual gala, activists also experienced “strange problems.”

The activists are additionally concerned that the police may be interfering in some way with the sending of messages over an app called Signal, which is supposed to be a secure communications tool on smart phones. The organizers use the app to plan protests, and they started experiencing problems in August 2015.

“Rye and Jeffryes have heard comments from NYPD police officers about the monitoring of Millions March NYC’s organizing and protest activities,” the lawsuit adds. “On one occasion, while they were being arrested, they saw officers make duplicates of arrest records and heard them saying to each other that a copy would be placed in ‘movement files.’”

“On other occasions, they have heard officers make comments indicating that they are monitoring the social media accounts of activists.”