



Rutgers University Law School
Center for Security, Race and Rights

SHINING A LIGHT ON NEW JERSEY'S SECRET STATE INTELLIGENCE SYSTEM

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EXECUTIVE SUMMARY

Civil liberties in the United States have been eroding for over two decades. Under the auspices of national security, federal agencies working with their state counterparts have built an expansive homeland security apparatus, facilitated by laws granting national security officials broader surveillance and investigative authorities. Prior to the attempted insurrection of January 6, 2021, national security powers nearly exclusively targeted Muslim and Arab communities.¹

These same powers, especially at the state level, also served to further the mass incarceration of African American communities. The most invasive, and simultaneously secret, post-9/11 tool has been state fusion centers. Fusion centers coordinate federal, state, and local law enforcement through complex intelligence-gathering systems that retain, analyze, synthesize, and distribute data – with minimal oversight. They have become institutionalized within the American law enforcement framework post-9/11 despite little, if any, tangible results to show for their intended original purpose: preventing terrorism.

New Jersey's fusion center is no exception. Also known as the Regional Operations and Intelligence Center (ROIC), it actively supports local and state law enforcement. Driven by intelligence led policing (ILP), the fusion center assists police departments in what is known as quality of life,² zero tolerance, or “broken windows” policing. As one scholar described it, the ROIC is little more than “a mini-CIA on call for [New Jersey] cops” who practice counterinsurgency tactics against domestic communities under the guise of so-called intelligence-led policing.³

One city singled out for such treatment is Camden, New Jersey, where the concept of privacy is now a quaint anachronism. The unprecedented surveillance apparatus has been used to enforce a locally sourced variant of the ILP model, “community-led policing.” In the predominantly Black and Brown city, law enforcement inflates its numbers by charging myriad low-level offenses. Such aggressive policing and charging decisions have led to a strain on the municipal court system.⁴ Meanwhile, how this vast, widespread surveillance *apparatus* actually works in practice is entirely opaque.

To understand basic relationships between traditional (state and county) law enforcement and the ROIC, the [Center for Security, Race and Rights](#) (CSRR) conducted a year-long investigation using the New Jersey Open Public Records Act (OPRA). Regrettably, these efforts proved all-but fruitless as countless agencies stonewalled and stymied questions of vast public importance. Their responses, and lack thereof, also proved illuminating – showing the extent to which law enforcement will go to maintain a wall of secrecy as it relates to the fusion center.

¹ SAHAR F. AZIZ, *THE RACIAL MUSLIM: WHEN RACISM QUASHES RELIGIOUS FREEDOM* (2022); Sahar F. Aziz, *Race, Entrapment and Manufacturing “Homegrown Terrorism,”* GEORGETOWN L.J. (forthcoming 2023).

² INCITE!, *Quality of Life Policing*, <https://incite-national.org/quality-of-life-policing/> (last visited Oct. 15, 2022).

³ Brendan McQuade, email to the authors, July 13, 2022.

⁴ BRENDAN MCQUADE, *PACIFYING THE HOMELAND*, 163, Kindle Edition, University of California Press (2019).

Accordingly, this report calls for transparency and meaningful legislative oversight over New Jersey’s intelligence-gathering complex, including the ROIC. Toward that end, CSRR makes three recommendations. First, Governor Murphy should appoint an ombudsman to oversee New Jersey’s intelligence system.⁵ Although Executive Order 5 authorizes the New Jersey Office of the Public Advocate to appoint an ombudsman to ensure privacy and civil liberties are protected, no such appointment has yet to occur.⁶ Second, the New Jersey legislature should mandate by law regular reporting by the Chief Intelligence Director to the legislature. Finally, civil society should conduct a People’s Audit of the ROIC to determine the privacy impact on New Jersey’s diverse populations. Together, these three recommendations can help mitigate abuse from intelligence collection authorities often directed at minority and low-income communities.

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Federal agencies working with their state counterparts have built an expansive homeland security apparatus, facilitated by laws granting national security officials broader surveillance and investigative authorities.

THREE RECOMMENDATIONS

- 1 Governor Murphy should appoint an ombudsman to oversee New Jersey’s intelligence system.
- 2 The New Jersey legislature should mandate regular reporting by the Chief Intelligence Director.
- 3 Civil society should conduct a People’s Audit of the fusion center to determine the privacy impact on New Jersey’s diverse populations.

⁵ *Leadership*, N.J. OFFICE OF HOMELAND SEC. AND PREPAREDNESS, <https://www.njhomelandsecurity.gov/leadership> (last visited June 15, 2022) (describing appointment of Laurie R. Doran).

⁶ N.J. Exec. Order No. 5 (March 16, 2006), <https://nj.gov/infobank/circular/eojsc5.html>.



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Fusion centers coordinate federal, state, and local law enforcement through complex, intelligence-gathering systems that retain, analyze, synthesize, and distribute data – with minimal oversight.

UNFULFILLED PROMISES OF FUSION CENTERS

The September 11, 2001 terrorist attacks prompted the United States government to restructure law enforcement and intelligence-gathering processes to bolster protecting the nation against terrorism.⁷ After a multiyear investigation, the 9/11 Commission concluded that lack of information-sharing between state and federal agencies was a primary reason for law enforcement's failure to stop the attacks on the World Trade Center and Pentagon.⁸ In response, Congress established via statute a new federal agency whose central mission is to stop terrorism: The Department of Homeland Security (DHS). Congress granted DHS broad legal authority to conduct law enforcement at vertical and horizontal levels.⁹

Another new domestic security entity also emerged – The Fusion Center. Fusion centers are authorized to coordinate federal, state, and local law enforcement through complex, intelligence-gathering systems that retain, analyze, synthesize, and distribute data.¹⁰ The objective is to avoid another 9/11-scale intelligence failure. But mission creep has made fusion centers instruments of racialized surveillance.¹¹ What initially started as a counterterrorism mission has expanded into an “all hazards” approach that collects data on persons within the state of New Jersey with very attenuated, if any, links to actual, concrete threats.¹²

The U.S. Department of Homeland Security defines fusion centers as “a collaborative effort of two or more agencies that provide resources, expertise and information to the Center with the goal of maximizing their ability to detect, prevent, investigate, and respond to criminal and terrorist activity.”¹³ In total, seventy-nine fusion centers are scattered across the US with each state in the country having at least one; while larger states, such as California and Texas, have six and eight fusion centers, respectively.¹⁴ The fusion centers collaborate with state police agencies, local police departments, sheriff's departments, the DHS, the Drug Enforcement Agency (DEA), and the Federal Bureau of Investigation (FBI) to retain, collate, and distribute intelligence on persons in the US and beyond, for the stated purpose of stopping terrorism.¹⁵

Despite billions of federal dollars going to state-based, intelligence-gathering fusion centers, most Americans are unfamiliar with these entities.¹⁶ Even professionals steeped in the language, history and culture of the national security state know relatively little about what fusion centers actually collect, let alone the ways such information is used to stop terrorism, if at all.¹⁷ Twenty years after the establishment of the DHS, there is little data confirming that fusion centers play a material role in circumventing terrorism.¹⁸ Though the data collected is vast, and substantial resources are spent on advanced technologies and staff, fusion centers have not yet proven to generate valuable and reliable intelligence relating to national security threats.¹⁹ Nevertheless, fusion centers including the ROIC in New Jersey, continue to operate without public accountability or proper legislative oversight.²⁰

Equally troubling is fusion centers' aggressive targeting of Black, Muslim, and other communities of color, anti-war protestors, and political activists in their surveillance programs.²¹ The lack of safeguards to protect New Jersey's minority communities whose civil liberties are most impacted necessitates the oversight recommended in this report.²² A closer look at the structure of New Jersey's intelligence gathering apparatus further highlights the need for transparency.

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Seventy-nine fusion centers are scattered across the US with each state in the country having at least one; while larger states, such as California and Texas, have six and eight fusion centers, respectively.

7 Michael Price, *National Security and Local Police*, BRENNAN CTR. FOR J. (2013), https://www.brennancenter.org/sites/default/files/publications/NationalSecurity_LocalPolice_web.pdf.

8 COMM'N ON TERRORIST ATTACKS UPON THE UNITED STATES, THE 9/11 COMMISSION REPORT: FINAL REPORT OF THE NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES (9/11 REPORT), (2004), <https://www.govinfo.gov/app/details/GPO-911REPORT>.

9 *Mission: About DHS*, U.S. DEP'T OF HOMELAND SEC., <https://www.dhs.gov/mission> (Dec. 7, 2021); Homeland Security Act of 2002, Public Law 296, U.S. Statutes at Large 116 (2002).

10 Homeland Security Act of 2002, Public Law 296, U.S. Statutes at Large 116 (2002).

11 Price, *supra* note 7.

12 *Id.*

13 *National Network of Fusion Centers Fact Sheet*, DEP'T OF HOMELAND SEC., <https://www.dhs.gov/national-network-fusion-centers-fact-sheet> (Dec. 16, 2021).

14 *Id.*; Dave Lieber, *Texas' Secretive Surveillance Centers Will Get More Staff and Money. But What Do They Do?*, DALL. NEWS (Dec. 6, 2019), <https://www.dallasnews.com/news/watchdog/2019/12/06/texas-secretive-surveillance-centers-will-get-more-staff-and-money-but-what-do-they-do/>.

15 Fusion Centers have also had their missions substantively enlarged in the years since terror threats have died down. The ROIC wholeheartedly embraces this expansive mission and advertises itself as having purview over: “All Threats. All Crimes. All Hazards.” They believe they exist to—and are allowed to—stop any and all criminal activity in general, without much transparency or public information about what, if anything, focuses their scope of authority. In other words, we don't know much about what fusion centers are doing, but more to the point, due to the extreme amounts of secrecy built into these agencies, we don't know what we don't know.

16 Danielle Citron & Frank Pasquale, *Network Accountability for the Domestic Intelligence Apparatus*, 62 HASTINGS L.J. 1441 (2011).

17 Nicolas Franco, *Suspicious to Whom? Reforming the Suspicious Activity Reporting Program to Better Protect Privacy and Prevent Discrimination*, 43 N.Y.U. REV. L. & SOC. CHANGE 611 (2019).

18 Cyrus Farivar, *20 Years After 9/11, 'Fusion Centers' Have Done Little to Combat Terrorism*, NBC News (Sept. 10, 2021), <https://www.nbc-news.com/business/business-news/20-years-after-9-11-fusion-centers-have-done-little-n1278949>; Franco, *supra* note 17.

19 *See, e.g., Id.*; Citron & Pasquale, *supra* note 16; Robert O'Harrow Jr., *DHS 'Fusion Centers' Portrayed as Pools of Ineptitude and Civil Liberties Intrusions*, WASH. POST (Oct. 2, 2012), https://www.washingtonpost.com/investigations/dhs-fusion-centers-portrayed-as-pools-of-ineptitude-and-civil-liberties-intrusions/2012/10/02/10014440-0cb1-11e2bd1ab868e65d57eb_story.html; Michael German, *Fusion Centers: Too Much (Bad) Information*, AM. CIVIL LIBERTIES UNION (Oct. 3, 2012), <https://www.aclu.org/blog/national-security/privacy-and-surveillance/fusion-centers-too-much-bad-information>.

20 Tung Yin, *Joint Terrorism Task Forces as a Window into the Security vs. Civil Liberties Debate*, 13 FLA. COASTAL L. REV. 1 (2011).

21 Christopher Slobogin, *Panvasive Surveillance, Political Process Theory, and the Nondelegation Doctrine*, 102 GEORGETOWN L.J. 1721 (2014).

22 Faiza Patel & Michael Price, *Fusion Centers Need More Rules, Oversight*, BRENNAN CTR. FOR J. (Oct. 18, 2012), <https://www.brennancenter.org/our-work/research-reports/fusion-centers-need-more-rules-oversight>.

A THE NEW JERSEY INTELLIGENCE SYSTEM

B THE REGIONAL OPERATIONS INTELLIGENCE CENTER

C FUSION CENTERS, BROKEN WINDOWS POLICING, AND MASS INCARCERATION OF MINORITY COMMUNITIES

D CASE STUDY OF CAMDEN, NEW JERSEY

A THE NEW JERSEY INTELLIGENCE SYSTEM

On March 16, 2006, then-New Jersey Governor Corzine, via Executive Order 5, established the state's Office of Homeland Security and Preparedness (NJOHSP) as the state's primary intelligence agency.²³ Its mission is "to enhance New Jersey's capability to prevent, protect against, respond to, recover from, and mitigate acts of terrorism and other catastrophic incidents."²⁴ The NJOHSP is the central point of contact with federal and other state agencies within and outside of New Jersey on national security matters. It also coordinates with the State Police and local precincts on intelligence-gathering and dissemination.²⁵ Notably, the NJOHSP houses the state's sole fusion center, known as the Regional Operations Intelligence Center (ROIC), as well as oversees several other programs including, counterterrorism, intelligence-gathering, cybersecurity, and disaster preparedness.

The NJOHSP, jurisdictionally is "...in but not part of the state's Department of Law and Public Safety."²⁶ This arrangement arguably vests the NJOHSP with latitude to operate outside the bounds of oversight that anchor most other state agencies. This jurisdictional gap allows the NJOHSP to operate outside typical checks and balances. A study of the ROIC published in 2019 estimates that "half of the civilian analysts at the ROIC were [Office of Homeland and Preparedness] employees,"²⁷ limiting oversight to the Governor's office because the NJOHSP is a cabinet-level agency created by executive order.²⁸ The public deserves to know more about how and what the NJOHSP reports to the Governor's office and its relationship with the ROIC. Not being within the state's Department of Law and Public Safety effectively exempts the ROIC from the usual oversight mechanisms for law enforcement.

1. New Jersey Shield Expands Intelligence Collection

New Jersey's intelligence community continues to expand information-sharing laterally and vertically. New Jersey Shield is the most recent intelligence-gathering program consisting of a partnership between the ROIC and NJOHSP. Launched on April 14, 2021, New Jersey Shield is supposed to "focus on strengthening information sharing and collaboration among the public and private sectors."²⁹ It expands the ROIC's information-sharing activities, across not only law enforcement entities but the public and private sectors as well.³⁰ This is a step in the wrong direction. New Jersey should make moves toward curtailing, not enhancing, the ROIC's powers in the immediate future, particularly given its promotion of racialized broken windows policing.

²³ N.J. Exec. Order No. 5, *supra* note 6.

²⁴ *Grants*, N.J. OFFICE OF HOMELAND SEC. AND PREPAREDNESS, <https://www.njohsp.gov/grants/about> (last visited Nov. 17, 2022).

²⁵ N.J. Exec. Order No. 5, *supra* note 6.

²⁶ *Id.*

²⁷ McQUADE, *supra* note 4, at 86.

²⁸ *Frequently Asked Questions*, N.J. OFFICE OF HOMELAND SEC. AND PREPAREDNESS, <https://www.njohsp.gov/frequently-asked-questions> (last visited October 15, 2022).

²⁹ Press Release, N.J. Office of Homeland Sec. and Preparedness, NJ ROIC Launch New Jersey Shield Program To Foster Information Sharing, Collaboration (Apr. 14, 2021), <https://www.njhomelandsecurity.gov/media/njohsp-nj-roic-launch-new-jersey-shield-program-to-foster-information-sharing-collaboration>.

³⁰ *Id.*

2. Former CIA Agent Heads New Jersey Homeland Security Agency

Every New Jersey governor since 2006 has appointed a state, cabinet-level director to oversee all state intelligence-gathering and counterterrorism matters.³¹ On June 4, 2021, Governor Murphy appointed Laurie Doran as his choice for Director of the NJOHSP in February 2022.³² Doran, like her predecessor Jared Maples, retired from the Central Intelligence Agency (CIA) after more than a decade of service.³³ Doran came out of retirement to accept her appointment as the lead administrator of New Jersey's counterterrorism and intelligence-gathering agency. While Director Doran's expertise at the CIA involved intelligence-gathering, her work focused on foreign, not domestic matters. Thus, the skill set she brings is compatible with intelligence-gathering overseas subject to different legal standards without constitutional protections.³⁴ Indeed, the CIA engages in behaviors that violate the laws of the countries in which it gathers intelligence such that the rule of law is perceived as something to circumvent, not a system to follow.³⁵

There is reason for concern here. In neighboring New York state, a CIA-style, domestic intelligence program run amok occurred in the NYPD's (now-defunct) demographics unit.³⁶ The demographics unit incorporated CIA tactics into domestic intelligence-gathering. Tellingly, the architect of NYPD's program was also a former CIA operative, David Cohen, who applied his CIA training to build a program that was eventually shut down due to legally dubious practices.³⁷ It took Pulitzer Prize-winning Associated Press reporting in 2011 to confirm what Muslim New Yorkers had suspected for years—evidence of widespread surveillance and profiling of Muslims in New York, New Jersey, and other states in the Northeast.³⁸

Only after grassroots organizing, advocacy and lawsuits, did the courts require a new 10-person committee to oversee the NYPD for compliance with the First and Fourteenth Amendment of the U.S. Constitution.³⁹ So beyond the law were the NYPD's CIA-inspired surveillance tactics that the same judge who dissolved the safeguards reinstated the *Handschu* Committee's mandate for external

oversight over the NYPD, including an appointed civilian monitor.⁴⁰ The *Handschu* Committee was put into place in 1983 to stop overly broad surveillance practices against activist Barbara Handschu and others in New York state. The agreement restricts police surveillance on protected speech and political activities. Similar to the abusive practices of the 1970s and 1980s, the NYPD post-9/11 mass surveillance operation drawn up by a former CIA operative and housed within the now defunct demographics unit, collected data on anyone who “seemed” Muslim in New York and surrounding areas. The NYPD's unfettered approach is similar to CIA overseas surveillance tactics on “enemy” subjects.⁴¹

If similar tactics are used by those controlling New Jersey's intelligence apparatus, no internal mechanism is in place to sound the alarm. Nor does the public know if CIA tactics are being employed on U.S. soil, this time in New Jersey.⁴² Absent meaningful executive and legislative oversight, New Jersey's intelligence-gathering apparatus is at risk of violating the civil liberties of New Jersey's diverse communities of color.

31 *Id.*

32 *Leadership, supra* note 5.

33 *Jared Maples*, N.J. OFFICE OF HOMELAND SEC. AND PREPAREDNESS, <https://jcfgmw.org/wp-content/uploads/2019/05/Director20Jared20Maples-Bio.pdf> (last visited August 28, 2022).

34 Elizabeth Goitein, *How the CIA Is Acting Outside the Law to Spy on Americans*, BRENNAN CTR. FOR J. (Feb. 15, 2022), <https://www.brennancenter.org/our-work/analysis-opinion/how-cia-acting-outside-law-spy-americans>; 50 U.S.C. § 3040.

35 *Id.*

36 Ryan Devereaux, *Judge Who Approved Expanding NYPD Surveillance of Muslims Now Wants More Oversight*, *The Intercept* (Nov. 7, 2016), <https://theintercept.com/2016/11/07/judge-who-approved-expanding-nypd-surveillance-of-muslims-now-wants-more-oversight/> (“More than a decade after he loosened a set of rules surrounding New York Police Department surveillance, a federal judge did something unexpected last week: He rejected a lawsuit settlement between the city and plaintiffs alleging years of unlawful spying in Muslim communities, arguing it did not go far enough in reining in law enforcement overreach.”).

37 Mark Mazzetti, *CIA Examining Legality Of Its Work With New York Police*, *N.Y. TIMES* (Sept. 13, 2011), <https://www.nytimes.com/2011/09/14/nyregion/cia-examining-legality-of-its-work-with-new-york-police.html>.

38 *Id.*

39 *See, e.g., Raza v. City of N.Y.*, 998 F. Supp. 2d 70 (E.D.N.Y. 2013); *Handschu v. Police Dep't of N.Y.*, 241 F. Supp. 3d 433, 438 (S.D.N.Y. 2017) Pursuant to the consent decree, which was modified over several years, a body called the “Handschu Committee” would be established to review NYPD investigations of political and religious activity, and to combat reported NYPD First Amendment violations. The consent decree served to combat the NYPD's unconstitutional surveillance program of local Muslim communities by prohibiting the NYPD from launching investigations into groups' religious or political activity without specific information connecting the group to a crime; *Raza v. City of New York - Handschu Guidelines Comparison - 2003 vs. 2017 Changes*, ACLU, <https://www.aclu.org/cases/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-program?document=raza-v-city-new-york-handschu-guidelines-comparison-2003-vs-2017-changes> (last visited June 15, 2022).

40 Ayyan Zubair, *The Handschu agreement & NYPD Surveillance*, SURVEILLANCE TECH. OVERSIGHT PROJECT (July 5, 2019), <https://www.stopspying.org/latest-news/2019/7/5/the-handschu-agreement-amp-nypd-surveillance> (“Notably, the revised consent decree mandates the inclusion of a civilian representative who has never been employed by the NYPD. This representative must report all objections to the NYPD, and all systematic and repeated violations of the revised guidelines to the Handschu court, and while unable [to] block any investigation, they can serve an important role as a whistleblower on police misconduct.”).

41 Goitein, *supra* note 34; 50 U.S.C. § 3040.

42 David Crary, *AP Series About NYPD Surveillance Wins Pulitzer*, *Associated Press* (Apr. 16, 2012), <https://www.ap.org/ap-in-the-news/2012/ap-series-about-nypd-surveillance-wins-pulitzer>.

B THE REGIONAL OPERATIONS INTELLIGENCE CENTER

The Regional Operations Intelligence Center, New Jersey's sole fusion center, applies intelligence-led policing (ILP) in its work with law enforcement.⁴³ The ILP approach to crime-fighting replaces evidence-driven investigations with mass data collection and speculative reporting of possible threats.⁴⁴ This problematic protocol of crime-fighting supplants traditional due process expectations that all persons are innocent until proven guilty.⁴⁵ Specifically, ILP short-cuts probable cause requirements for getting a warrant prior to surveilling persons within the U.S. and instead allows local and state police to gather volumes of data on any person within U.S. borders.⁴⁶ The American Civil Liberties Union sums up the practice succinctly: "This new theory of criminal intelligence argues that collecting even outwardly innocuous behaviors will somehow enhance security. The erosion of reasonable limits on police intelligence powers has set the stage for a return of the abusive practices of the past. In recent years the ACLU has uncovered substantial evidence that domestic intelligence powers are being misused at all levels of government to target non-violent political activists."⁴⁷ In New Jersey, ILP has resulted in ROIC staff creating the equivalent of intelligence dossiers on "known troublemakers" that are used in large scale criminal sweeps.⁴⁸

The potential harm by such dossiers is exacerbated by the relatively large size of New Jersey's fusion center. As of 2012, the ROIC had roughly 100 staff members, making it one of the "largest fusion centers recognized by the DHS."⁴⁹ With a large staff and significant resources at its disposal, the ROIC has yet to disclose concrete findings that prove how many terrorist plots it has helped foil, or how it ensures that the civil liberties of New Jersey residents are protected against unwarranted surveillance.

Criminology Professor Brendan McQuade visited the ROIC and conducted dozens of interviews with law enforcement throughout New Jersey. He concluded that "[r]ather than sobering analysis of realistic dangers, [the ROIC's] reports construct the threat of terrorism..."⁵⁰ This is because the ROIC is "not grounded in a set blueprint."⁵¹ Instead, the ROIC "construct" terrorist threats while also supporting broken windows policing.⁵² Consistent with CSRR's findings, McQuade recommends more public awareness of the ROIC, given the lack of oversight since its inception in 2006.

Advocates have also warned that fusion centers pose significant threats to the civil liberties of minority communities and political activists.⁵³ The Brennan Center for Justice's recent report, *A Course Correction of Homeland Security*,⁵⁴ emphasizes fusion centers' systematic concealment of information in its vast databases. Their intrusive surveillance technologies aggressively target minority communities. The report demonstrates how fusion centers often embark on ventures that implicate privacy and civil rights, in part due to their broad authorities, weak safeguards, and insufficient oversight. The report concludes that "[s]haring credible information about actual threats of violence is vital. But fusion centers have repeatedly disseminated false, biased, and unreliable information and focused disproportionate attention on minority communities and protest movements — all with minimal security benefit."⁵⁵

43 N.J. OFFICE OF EMERGENCY MGMT., OEM BULLETIN NJ: "WELCOME TO THE ROIC" (2008), https://www.state.nj.us/njoem/media/pdf/102308_oembulletin.pdf.

44 Michael German & Kaylana Mueller-Hsia, *Focusing the FBI*, BRENNAN CTR. FOR J. (July 28, 2022), <https://www.brennancenter.org/our-work/research-reports/focusing-fbi>.

45 Goitein, *supra* note 34; 50 U.S.C. § 3040.

46 Goitein, *supra* note 34; 50 U.S.C. § 3040.

47 *More About State and Local Police Spying*, ACLU, <https://www.aclu.org/other/more-about-state-and-local-police-spying> (last visited October 15, 2022).

48 MCQUADE, *supra* note 4, at 98.

49 *Id.* at 77.

50 *Id.* at 33.

51 *Id.*

52 *Id.* at 84.

53 Slobogin, *supra* note 21.

54 Faiza Patel, et al., BRENNAN CTR. FOR J., *A Course Correction for Homeland Security* (2022), <https://www.brennancenter.org/our-work/research-reports/course-correction-homeland-security>.

55 MCQUADE, *supra* note 4, at 31.

C FUSION CENTERS, BROKEN WINDOWS POLICING, AND MASS INCARCERATION OF MINORITY COMMUNITIES

New Jersey's opaque intelligence-gathering apparatus has largely been used to advance "broken windows" policies against Black and Brown people.⁵⁶ Broken windows policing is rebuked by legal scholars as a tool of mass incarceration of racial minorities for so-called "quality of life" crimes.⁵⁷ Aggressive enforcement of misdemeanor offenses (like riding a bicycle without a bell or petty drug possession) entails an intelligence component where law enforcement contacts with the community, ostensibly to field concerns in a collaborative fashion, double as gaining sources of information.⁵⁸ The data provided to the public by ROIC provides no evidence that arrests initiated by ROIC are terrorism related.⁵⁹

Local law enforcement systems that surveil persons living in New Jersey, therefore, do not support ROIC's original mission – to interdict terrorism plots.⁶⁰ As McQuade notes, however, such mission creep is precisely how fusion centers across the country have justified their budgets, in the absence of palpable terrorist threats.

In the absence of terrorism, fusion center employees "have to use their time and skills constructively" and find ways "to be valuable to their states." To meet these practical demands, fusion centers developed to the needs of the police agencies managing them. In this context, fusion center investigators "found" that many acts of terrorism have a "nexus" with crime, which, in theory, makes the former a window into the latter. Similarly, fusion centers' information-sharing mission led many to contend that intelligence fusion illuminated criminal patterns across jurisdictions.⁶¹

The ROIC's primary function, thus, seems to be supporting mass warrant sweeps, whereby intelligence-sharing powers with other local, state, and federal law enforcement agencies are deployed on persons with outstanding bench-warrants or parole violators. This has led to mass arrests of parole violators and low-level drug offenders, not terrorists. As a result, the ROIC is facilitating the mass incarceration of Black and Brown people for non-violent, quality of life crimes.⁶² For example, "Operation Summer Shield," initiated in 2010 by the New Jersey Attorney General's office, later morphed into "Operation Summer Shield II" and then later into "operation safer streets."⁶³ Each of these programs relied heavily on ROIC data collection to make mass arrests for "quality of life"

56 *Id.* at 163.

57 Daniel T. O'Brien, et al., *Looking Through Broken Windows: The Impact of Neighborhood Disorder on Aggression and Fear of Crime Is an Artifact of Research Design*, 2 ANN. REV. CRIMINOLOGY 53 (2019); Amna A. Akbar, *National Security's Broken Windows*, 62 UCLA L. REV. 834 (2015).

58 *Id.* at 877.

59 *Id.*

60 6 U.S.C. § 124h (establishing the Department of Homeland Security State, Local, and Regional Fusion Center Initiative).

61 McQUADE, *supra* note 4, at 109.

62 *Id.* at 93-94 ("The centrality of intelligence fusion to mass supervision is evident in the organic emergence of four ILP operations in New York and New Jersey during the period when both states dramatically reduced their prison populations. These programs target the same symbolically profaned surplus populations warehoused in prisons: the so-called criminal element that I found occupied the attention of New Jersey's Regional Operations Intelligence Center (ROIC) during my first visit to a fusion center.")

63 *Id.* at 95.

criminality like vagrancy, vandalism, riding a bike without a bell, and process crimes such as parole violations, and non-violent drug offenses.⁶⁴ McQuade catalogs what counts as success for such initiatives: "From July through October 2014, for example, the Camden County Police wrote ninety-nine tickets for riding a bicycle without a bell. They issued one in the previous year."⁶⁵

In 2010, approximately 385 parole violators were arrested, with the ROIC playing an indispensable role.⁶⁶ These mass arrests were not terrorism-related and "...began at the ROIC, with intelligence compiled by analysts and the two parole officers assigned there full-time."⁶⁷ Based on public information, the ROIC's information-sharing capabilities are used to conduct mass warrant sweeps to arrest almost exclusively Black and Brown people engaging in non-terrorist, non-violent acts.⁶⁸ Many of those arrested by sheriffs – who later brag about such efforts – include people accused of failure to appear in court, drug possession, child support arrears, and resisting arrest.⁶⁹ None of these mass arrests would have been possible without the ROIC's powerful vertical and horizontal intelligence-gathering authorities granted under the guise of fighting terrorism.⁷⁰

Locking up scores of offenders will not and cannot address the structural reasons for the underlying social harm and state-enforced neglect that precipitates, among other problems, the drug trade. Rather, such low-level, non-violent arrests contribute to the mass incarceration of Black and Brown persons and further contributes to discriminatory enforcement of criminal legal standards.⁷¹ The shifting mission creep of terrorism-focused police morphing into all-seeing public order sentinels is part of a vicious cycle that funnels millions of racial minorities into prisons.

In the rare occasion of publicly available terrorism-related ROIC work product, the lack of articulable suspicion is glaring. For example, in a February 2008 report titled "Altered Bus in Fairfield, N.J. Presents Concerns," ROIC analysts described in detail how a bus was pulled over where the driver allegedly "modified the bus to evade fuel taxes."⁷² The possible terror connection, ROIC analysts claimed, was that such "alterations demonstrate the potential for a bus to be turned into a large vehicle

64 *City of Jersey City and Jersey City Police Department Unveil Results of Operation Summer Shield II*, RIVERVIEW OBSERVER (June 29, 2012), <https://riverviewobserver.net/general/city-of-jersey-city-and-jersey-city-police-department-unveil-results-of-operation-summer-shield-ii/#more-5059>.

65 McQUADE, *supra* note 4, at 163.

66 *Id.*

67 McQUADE, *supra* note 4, at 96.

68 RIVERVIEW OBSERVER, *supra* note 64.

69 *See, e.g.*, Greg Adomaitis, *Camden County Warrant Sweep Nets 76 Arrests, Authorities Say*, NJ.com (Dec. 21, 2013), https://www.nj.com/camden/2013/12/camden_county_warrant_sweep_nets_76_arrests_authorities_say.html; Michaelangelo Conte, *24 Netted by Hudson Sheriff's Office in Jersey City Warrant Sweep*, NJ.com (July 25, 2014), https://www.nj.com/hudson/2014/07/post_573.html; Michaelangelo Conte, *Hudson County Sheriff's Officers Nab 27 'Fugitives' in Sweep*, NJ.com (May 30, 2013), https://www.nj.com/hudson/2013/05/hudson_county_sheriffs_officer_6.html.

70 McQUADE, *supra* note 4, at 96 ("In New Jersey, warrant sweeps began in 2010 as a statewide effort organized by the Attorney General's Office. Parole and the ROIC provided the necessary intelligence. In July and August of 2010, interagency teams went hunting, arresting 1,298 individuals, including 385 parole violators."); RIVERVIEW OBSERVER, *supra* note 64.

71 MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (2010); James Forman Jr., *Exporting Harshness: How the War on Crime Helped Make the War on Terror Possible*, 33 N.Y.U. REV. L. & SOC. CHANGE 331 (2009); Greg St. Martin, *Do More Broken Windows Mean More Crime?*, Northeastern Global News (May 15, 2019), <https://news.northeastern.edu/2019/05/15/northeastern-university-researchers-find-little-evidence-for-broken-windows-theory-say-neighborhood-disorder-doesnt-cause-crime/>.

72 *New Jersey ROIC: Terrorist Bus Alteration*, PUBLIC INTELLIGENCE (Mar. 19, 2010), <https://publicintelligence.net/new-jersey-roic-terrorist-bus-alteration/>.

borne improvised explosive device.”⁷³ The report’s conclusion highlights that no actual threat existed. “While the NJ ROIC has not received any specific, credible threats related to altered buses in New Jersey, this event highlights the devastating capability an altered bus could have in terms of casualties or toward infrastructure.”⁷⁴ The ROIC decided that the physical components allegedly used to facilitate a banal tax-evasion scheme *might in some way* be used by terrorists to conduct some kind of terrorism at some point in the future. No other details were described that make this report worthy of law enforcement scrutiny. Such speculative, far-fetched theories further demonstrate the need for robust legislative oversight.

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New Jersey’s opaque intelligence-gathering apparatus has largely been used to advance “broken windows” policies against Black and Brown people.

D CASE STUDY OF CAMDEN, NEW JERSEY

Collaboration between the ROIC and Camden police offers a case study of the risks posed to the civil liberties of minority communities by broken windows policing. For cities like Camden, New Jersey, whose population is over 40 percent African American, broken windows policing has eviscerated privacy.⁷⁵ Well over 150 documented surveillance devices are watching, listening, and scanning citizens at all hours of the day.⁷⁶ This reality is amplified by a ROIC Intelligence Collection Cell where agents join local police officers as embeds.⁷⁷ As one supervisor explained “[w]e’re actually going to ride along with you and, when you lock up somebody in Camden, we’re going to debrief them and interview them.”⁷⁸ Law enforcement, with the ROIC’s guidance, has made that decision for everyone within the city limits. As one expert at the ROIC puts it, the mere concept of “privacy” under a city regulated by the ROIC’s eyes and ears becomes “a pedantic concern, an abstract formalism.”⁷⁹

Under the guise of “community-led policing” in Camden, police were infused with more funds to conduct overly aggressive enforcement of misdemeanors or broken windows policing. As the tickets and summonses piled up, “municipal court struggled to process the nearly 125,000 cases on its docket from July 2013 and 2014, a 97,000-case increase from the previous year.”⁸⁰ Petty offenses made up the oft-touted success story of Camden’s experiment. Community activists would come to complain about the new system, and for good reason. As a result, “[i]n 2014, excessive force complaints reached sixty-five, nearly twice the number of the previous year and more than the combined total for Newark and Jersey City, the two largest cities in the state.”⁸¹

Based on the minimal open source-information available, the ROIC generally acts as an “outsourced intelligence division” for local police departments focusing on “information sharing” and the creation and provision of “higher level intelligence products” like crime mapping, data on so-called “hot spots”, and predictive analyses.⁸² While the ROIC professes fealty to “applicable laws protecting privacy, civil rights, and civil liberties, including applicable state and federal privacy, civil rights, and civil liberties law,” the inner-workings of the agency, and the various baked-in roadblocks to transparency, make such statements untestable at present.⁸³ The ROIC uses its unique vertical and horizontal information-sharing structure to access and push out data related to New Jersey citizens and beyond without mechanisms to protect civil

73 *Id.*

74 *Id.*

75 McQUADE, *supra* note 4, at 9 (documenting at least “121 cameras watching ‘virtually every inch of sidewalk’; thirty-five SpotShooter microphones to detect gunshots; new scanners to read license plates; and SkyPatrol, a mobile observation post that can scan six square blocks with thermal-imaging equipment”); U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, *U.S. Census QuickFacts, Camden city, New Jersey* (2022) <https://www.census.gov/quickfacts/camdennewjersey>.

76 McQUADE, *supra* note 4, at 9.

77 *Id.* at 8.

78 *Id.*

79 *Id.* at 9.

80 McQUADE, *supra* note 4, at 163.

81 *Id.*

82 McQUADE, *supra* note 4, at 106-107.

83 N.J. OFFICE OF THE ATT’Y GEN., NEW JERSEY ROIC PRIVACY POLICY, https://www.nj.gov/oag/njsp//info/pdf/042213_roic_privpolicy.pdf (last visited September 28, 2022).

liberties.⁸⁴ As a result, the ROIC is not combating terrorism, but as one ROIC analyst explained “...a lot of our time is filled up with monitoring trends and data streams, rather than specific cases.”⁸⁵

Most of what takes place within ROIC remains largely cloaked in secrecy. New Jersey law enforcement agencies’ resistance to transparency raises concerns that surveillance powers are abused in violation of civil liberties and rights of minority communities.⁸⁶ For these reasons, public demands for government records are necessary.



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New Jersey law enforcement agencies’ resistance to transparency raises concerns that surveillance powers are abused in violation of civil liberties and rights of minority communities.

⁸⁴ *Id.*

⁸⁵ McQUADE, *supra* note 4, at 84.

⁸⁶ CSRR’s own recently conducted records-gathering effort aimed at the ROIC was illustrative of the procedural roadblocks that make up the state’s secrecy regime viz. the ROIC and law enforcement practices in general. Time and again, almost to a response, obfuscation and lack of transparency were chosen by way of citation to case law and the use of closed feedback loops. Instead of an adherence to the spirit of the law, agency after agency issued boilerplate denial responses in an effort that can fairly be categorized as an effort to deliberately obfuscate transparency.

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With a large staff and significant resources at its disposal, the ROIC has yet to disclose concrete findings that prove how many terrorist plots it has helped foil, or how it ensures that the civil liberties of New Jersey residents are protected against unwarranted surveillance.

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The shifting mission creep of terrorism-focused police morphing into all-seeing public order sentinels is part of a vicious cycle that funnels millions of racial minorities into prisons.

LACK OF TRANSPARENCY IMPEDES PUBLIC OVERSIGHT

To better understand the ROIC or NJOHSP, CSRR submitted several open records requests in March 2022 seeking information about the policies and functions of ROIC, with a focus on surveillance on communities of color. CSRR inquired about ROIC's collaboration with federal and state agencies, including the U.S. Department of Homeland Security (DHS), the Federal Bureau of Investigation (FBI), the New Jersey Department of Law & Public Safety, prosecutors' and sheriffs' offices in New Jersey's twenty-one counties. CSRR also requested information specific to data obtained on the state's communities, including Muslim, Black, Brown, and Arab communities with a discrete focus on "places of worship, community centers and political or religious organizing activities in New Jersey."⁸⁷ Finally, CSRR requested data relating to annual operating budgets, training practices, and other key information that the public needs to hold public surveillance systems accountable.

Remarkably, *only one* law enforcement agency has responded with a substantive response in accord with the spirit of the law.⁸⁸ Another agency offered to conduct a search for documents, but cautioned that the search would come with an exorbitant price tag.⁸⁹ All other agencies that offered responses to our requests stated they had no records or asserted statutory exemptions based on extremely broad interpretations of New Jersey case law – occasionally citing secrecy standards that predated the 2001 passage of the New Jersey Open Public Records Act (OPRA).⁹⁰

A thorough survey of responses to CSRR's FOIA and OPRA submissions are detailed in the addendum at the end of this report.⁹¹ The responses, almost unanimously, draw on structurally designed roadblocks, namely: (1) case law that has interpreted obligations for records custodians so narrowly that disclosure is rare; (2) executive orders liberally interpreted by county attorneys to facilitate such narrow readings of the OPRA statute; and (3) to a much lesser degree, actual exemptions laid out in state statutes.⁹²

87 See *infra* Addendum: CSRR OPRA/FOIA Investigation Findings.

88 See *infra* Addendum: CSRR OPRA/FOIA Investigation Findings, Section I.

89 See *infra* Addendum: CSRR OPRA/FOIA Investigation Findings, Section IV.

90 The Salem County Prosecutor's Office supplied the following response to deny the provision of SARs:

"[T]he official information privilege affords confidentiality for 'official information' if disclosure 'will be harmful to the interests of the public.' N.J.R.E. 515; N.J.S.A. 2A:84A-27. 'Official information' has been defined as including 'information not open or theretofore officially disclosed to the public relating to internal affairs of the State ... in the course of duty, or transmitted from one such official to another in the course of his duty.' In re Liquidation of Integrity Ins. Co., 165 N.J. 75, 93 (2000) (quoting N.J. R. EVID. 515 cmt. 1). This privilege has been interpreted to protect the location of surveillance positions. State v. Garcia, 131 N.J. 67, 74-75 (1993) (explaining that applying the official information privilege to surveillance sites avoids compromising ongoing surveillance, protects police officers and private citizens from reprisal, and encourages citizens to cooperate with police); see also State v. Ribalta, 277 N.J. Super. 277, 287 (App. Div. 1994) (stating that the privilege permits the State to conceal information "about the location from which law enforcement personnel observed alleged criminal activities" (citing *Garcia*, 131 N.J. at 73)); N.J. R. EVID. 515; N.J. STAT. ANN. § 2A:84A-27.

91 See *infra* Addendum: CSRR OPR/FOIA Investigation Findings.

92 See *infra* Addendum: CSRR OPR/FOIA Investigation Findings.

A FAILURE TO RESPOND TO OPEN RECORDS REQUESTS

B JUDICIAL DEFERENCE TO SECRECY UNDERMINES ACCOUNTABILITY



A FAILURE TO RESPOND TO OPEN RECORDS REQUESTS

Government agencies' refusal to disclose information about fusion centers illustrates a pervasive, bureaucratic resistance to transparency. Many of the responses to CSRR's requests rely on legally suspect basis and lack of fealty to the spirit of open records' statutory language. Moreover, the threat of prohibitive costs is invoked against public interest principles which mandate government openness on matters relating to the surveillance of data of residents and citizens.⁹³

The general tenor of the responses is unfortunate but not surprising. At least eight agencies failed to respond within the statutory time frame of seven days.⁹⁴ Notably, the New Jersey state Department of Law and Public Safety also failed to respond to two separate OPRA requests within the statutory mandated time frame. To date, the state agency has failed to even acknowledge CSRR's OPRA requests – both of which were filed via the state's online portal for OPRA request—an express violation of the Garden State's open records law.⁹⁵ Five Sheriff's Offices replied that they had no "responsive" records.⁹⁶ Two agencies issued responses combining blanket denials and claims that no responsive documents were available.⁹⁷

To date, twenty agencies issued blanket denials. These denials, by and large, offer some permutation of reasoning that CSRR's requests were "broad," "overbroad," or "impermissibly vague."⁹⁸ While numerous references to precedent are cited in each of several lengthy lawyer letters, the sum and substance of those denials is contained in the following argument made by the Ocean County Prosecutor's Office: "it does not identify any specific records or documents in existence."⁹⁹ In opposition to the public accessing public records, the Essex County Prosecutor's Office told CSRR they can refuse to release records that concern "actions of police" that pertain to "an investigation into actual or *potential* violations of criminal law."¹⁰⁰

Denials of CSRR's requests for Suspicious Activity Reports (SARs) cited the New Jersey statutory equivalent of the federal law enforcement FOIA Exemption 7.¹⁰¹ A representative iteration of this claimed exemption comes was cited by the Somerset County Prosecutor's Office:

"All information in the database is considered Unclassified//Law Enforcement Sensitive (U//LES) and cannot be released to the public or other personnel outside of the law enforcement community."¹⁰²

93 To date, CSRR's federal FOIA requests are still processing. This was anticipated as the federal system operates with less stringent statutory response times and, in effect, zero real adherence to such timelines.

94 See *infra* Addendum: CSRR OPR/FOIA Investigation Findings, Section IV.

95 N.J. R. EVID. 515; N.J. STAT. ANN. § 2A:84A-27.

96 These include: (1) the Atlantic County Sheriff's Office; (2) the Essex County Sheriff's Office; (3) the Gloucester County Sheriff's Office; (4) the Hunterdon County Sheriff's Office; and (5) the Salem County Sheriff's Office.

97 These include: (1) the Middlesex County Sheriff's Office; and (2) the Passaic County Sheriff's Office.

98 See *infra* Addendum: CSRR OPR/FOIA Investigation Findings, Section III.

99 See *infra* Addendum: CSRR OPR/FOIA Investigation Findings, Section III.

100 See *infra* Addendum: CSRR OPR/FOIA Investigation Findings, Section III (emphasis added).

101 U.S. DEP'T OF J., FREEDOM OF INFORMATION ACT GUIDE: EXEMPTION 7 (2004), <https://www.justice.gov/archives/oip/foia-guide-2004-edition-exemption-7>.

102 See *infra* Addendum: CSRR OPR/FOIA Investigation Findings, Section III.

A similar denial referred to SARs as “reports [that] are considered law enforcement sensitive and cannot be released to the public or other personnel outside of the law enforcement community.”¹⁰³ This putative exemption, however, despite its almost across-the-board application as a hard-and-fast barrier to defeat public access: (1) does not appear to be an actual statement of New Jersey statutory law but, rather, a regulatory recommendation made by the NJOHSP; and (2) is not observed with unanimity in practice.¹⁰⁴ The Ocean County Sheriff’s Office provided a list of SARs over a three-month period. While not particularly illustrative – each of those SARs related to the location of what tipsters believed to be suspicious packages – the provision of those records shows that some agencies are, in fact, able to produce responsive documentation without falling into kneejerk secrecy and boilerplate denialism – but only if they are willing to act in the spirit of state law.

B JUDICIAL DEFERENCE TO SECRECY UNDERMINES ACCOUNTABILITY

When an agency’s OPRA obligations have been disputed, New Jersey’s courts have sometimes sided with agencies and against public transparency. These court decisions, over time, have created a semi-closed feedback loop whereby agency lawyers can cite to precedent and shut down searches by simply saying the courts have already concluded state agencies are not required to look for anything unless the public knows exactly what it is seeking.¹⁰⁵

A relevant and oft-cited case used by agencies to deny records requests is *Bent v. Township of Stafford Police Department*.¹⁰⁶ In this decision, the Superior Court of New Jersey Appellate Division offered the following explanation of the limits of OPRA requests: “OPRA only allows requests for records, not requests for information. In this regard, OPRA ‘is not intended as a research tool . . . to force government officials to identify and siphon useful information.’ In other words, a records custodian is not required ‘to conduct research among its records . . . and correlate data from various government records in the custodian’s possession.’” As such, the Essex County Prosecutor’s Office stated: “identify with reasonable clarity those documents that are desired.”¹⁰⁷

The Monmouth County Prosecutor’s Office believes OPRA law stands for the following limited proposition: “The requestor’s obligation is to specifically describe the document sought; the request may not be a broad, generic description of documents because the custodian is not required to speculate about what the requestor seeks.”¹⁰⁸ Surely this is not what the legislature intended, but it is an issue that can be remedied by New Jersey lawmakers. The systematic refusal to disclose government documents coupled with judicial deference makes the need for robust state legislative oversight even more crucial for preserving civil liberties.

The responses received by CSRR evince a system designed to obfuscate public scrutiny and accountability.¹⁰⁹ The willingness of most (but not all) law enforcement agencies to use case law to sufficiently narrow their obligations to the public right to know is cause for concern. Indeed, legislative intent underlying OPRA’s 2001 passage is being ignored, frustrated, and pushed aside. Courts, prosecutors, and police agencies are collectively thumbing their noses at OPRA’s original promise, even as millions of public dollars flow to law enforcement year after year.¹¹⁰

Since the inception of the ROIC, there has been little-to-no effort by New Jersey state and federal officials – legislative or executive – to conduct an open, public investigation into the activities of the state’s massive fusion center. Accordingly, CSRR offers three recommendations that collectively establish a system of public oversight over the ROIC’s intelligence gathering authority, and in turn protect New Jersey residents’ civil liberties.

¹⁰⁵ *Bent v. Twp. of Stafford Police Dep’t, Custodian of Records*, 381 N.J. Super. 30, 37 (App. Div. 2005).

¹⁰⁶ *Id.*

¹⁰⁷ *See infra* Addendum: CSRR OPR/FOIA Investigation Findings.

¹⁰⁸ *Bart v. Passaic Cnty. Pub. Hous. Agency*, 406 N.J. Super. 445, 451–52 (App. Div. 2009).

¹⁰⁹ *See infra* Addendum: CSRR OPR/FOIA Investigation Findings, Section III.

¹¹⁰ STATE OF N.J., THE GOVERNOR’S FY 2022 BUDGET <https://nj.gov/treasury/omb/publications/22budget/pdf/FY22GBM.pdf> (last visited Oct. 14, 2022).

¹⁰³ *See infra* Addendum: CSRR OPR/FOIA Investigation Findings, Section III.

¹⁰⁴ *See infra* Addendum: CSRR OPR/FOIA Investigation Findings, Section III.

RECOMMENDATIONS FOR MEANINGFUL OVERSIGHT AND ACCOUNTABILITY

Bringing transparency and accountability to the New Jersey fusion center entails three key steps. First, an ombudsman must be appointed to oversee New Jersey's intelligence regime. The New Jersey Office of the Public Advocate has the authority to appoint such an ombudsman to ensure privacy and civil liberties protections are upheld, but has yet to do so.¹¹¹ Second, legislative action is necessary to legally mandate regular reporting by the state's Chief Intelligence Officer. This ensures New Jersey's domestic intelligence-gathering apparatus is focusing on actual terrorist threats while preserving civil liberties for all. Finally, civil society should conduct a People's Audit that explores the inner workings of the fusion center to determine the privacy and other costs it exacts on New Jersey's diverse populations.

A. Appoint a Civil Liberties Ombudsman to Oversee the New Jersey Fusion Center

Robust administrative safeguards need to be put in place to protect against constitutional and statutory violations. As such, the Office of the Public Advocate must appoint an ombudsman tasked with ensuring that the civil liberties of all those living in New Jersey are protected against unconstitutional intelligence-gathering by the ROIC. That the ROIC's information retention information-sharing work must be cabined from public debate makes oversight by state agencies and the federal inspector general all the more crucial for preserving civil liberties.

Pursuant to Executive Order 5 issued in 2006, the New Jersey Public Advocate's office is responsible for the appointment of "a public ombudsman within the Public Advocate's Office to address civil liberties issues related to homeland security and preparedness."¹¹² Upon appointment, the ombudsman should conduct an audit of the ROIC, as part of a review of all intelligence-gathering in the state.¹¹³ As a political appointee in the executive branch, the ombudsman will have access to relevant classified information necessary for conducting a comprehensive investigation into whether the practices of the ROIC comport with constitutional and statutory law.¹¹⁴ Again, no ombudsman has yet to be appointed.

The Brennan Center found that appointing an ombudsman is an example of the "review and appellate model" of law enforcement oversight.¹¹⁵ While acknowledging the limits of such extant models when it comes to "monitoring state and local counterterrorism intelligence activities," the Brennan Center offers a detailed outline of a "review and appellate" process:

The Houston Independent Police Oversight Board is typical of this approach. This 20-member civilian board, appointed by the mayor, reviews all major internal investigations to "determine if the investigation was sufficient and the conclusions were correct." It can make nonbinding disciplinary recommendations or request additional investigation by the police, and if necessary, by the city's Inspector General. The board is new, created in 2011 after the disclosure of video footage showing four Houston police officers beating a 15-year old burglary suspect.¹¹⁶

¹¹¹ N.J. Exec. Order No. 5, *supra* note 6.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ Price, *supra* note 7.

¹¹⁶ *Id.* at 30.

The Center for Security, Race and Rights calls on Governor Murphy to initiate the appointment of an ombudsman with authority to oversee the ROIC's activities in collaboration with minority communities most impacted by surveillance.

B. Pass State Legislation for Transparency and Accountability in Domestic Intelligence-Gathering

The ROIC's advancement of broken windows policy goals warrants legislation mandating more accountability and reporting. The mass warrant sweep programs which led to the non-terrorism-related arrest of thousands of mostly Black or Brown persons for over a decade must be at the top of the legislative oversight agenda.¹¹⁷ Relatedly, NJ Shield deserves a public hearing wherein the legislature can discern the extent to which this program is violating civil liberties. That open records requests by CSRR and other civil society groups are disregarded makes legislative oversight all the more crucial.

Legislative hearings should call on ROIC officials to disclose the following: (1) protocols and administrative protections for whistleblowers to document abuse without fear of professional reprisal or criminal sanction; (2) policies, practices and procedures in place that ensure civil liberties are protected in data retention and distribution; and (3) mechanisms that curtail racial, religious and other discrimination. The New Jersey legislature should follow the example set by the U.S. Senate in its investigation of fusion centers nationally.¹¹⁸

The U.S. Senate Homeland Security and Governmental Affairs Subcommittee on Investigations conducted an investigation into state and local fusion centers in 2012. The Subcommittee's objectives were threefold. "First, how much has the Federal Government spent to support state and local fusion centers? Second, based on benefits anticipated by language in statute, executive directives and DHS's own 2006 plan, what has DHS received in return for its investment? And third, is the return worth the cost?"¹¹⁹ Those questions were later refined, the report notes, because of "missing, ambiguous and inadequate data" from DHS, to: "First, how well did DHS engage operationally with fusion centers to obtain useful intelligence, and share it with other Federal agencies and its own analysts? Second, how well did DHS award and oversee the millions of dollars in grant funds it awards states and cities for fusion center projects? Third, how capable were state and local fusion centers at conducting intelligence-related activities in support of the Federal counterterrorism mission?"¹²⁰ A similar investigation should be conducted by the New Jersey legislature for the ROIC.

In seeking answers to these questions, "[o]ver a period of two years, the Subcommittee reviewed more than 80,000 pages of documents, including reviews, audits, intelligence reports, emails, memoranda, grant applications, news accounts, and scholarly articles; conducted a nationwide survey of fusion centers; and interviewed over 50 current and former DHS officials, outside experts, and state and local officials."¹²¹ The groundbreaking 2012 bi-partisan report found "...that DHS's work with... state and local fusion centers has not produced useful intelligence to support Federal counterterrorism efforts"¹²² Moreover, the Senate report concluded based on strong evidence from their investigation "... that DHS-assigned detailee to the fusion centers forwarded 'intelligence' of uneven quality – oftentimes shoddy, rarely timely, sometimes endangering citizens' civil liberties and Privacy Act protections, occasionally taken from already-published public sources, and more often than not unrelated to terrorism."¹²³ To date, the substantive recommendations laid out in the 2012 Congressional report have yet to be fully implemented.¹²⁴ Instead, the number of fusion centers, their information-sharing authority and mission have only expanded, as they continue to receive millions of taxpayer dollars.¹²⁵ Thus, it is incumbent on New Jersey legislators to determine if these same systemic failures are occurring in the ROIC and NJOHSP.

To that end, legislation is needed to mandate regular reporting to the state legislature, with budgetary strings attached. Many fusion centers across the country operate with oversight in name only – for myriad local reasons.¹²⁶ New Jersey should lead the nation in oversight by requiring regular reporting and mandate that such reports be made public. Legislators should statutorily require the state's intelligence director, who leads all state and federal intelligence-gathering operations dealing with New Jersey, to provide annual updates in legislative hearings. The statute should also require budgetary scrutiny and transparency about how public funds are spent by the ROIC.¹²⁷ Finally, legislative oversight is imperative for assessing the civil liberties and rights impacts of the ROIC's programs.

117 Daniel Poniowski, *A Constructive Problem: Redemption of Unlawful Arrests via Fusion Centers*, 2014 WIS. L. REV. 831.

118 Press Release, Homeland Sec. and Governmental Affs. Permanent Subcomm. on Investigations, Investigative Report Criticizes Counterterrorism Reporting, Waste at State & Local Intelligence Fusion Centers (Oct. 3, 2012), <https://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>.

119 U.S. SENATE PERMANENT SUBCOMM. ON INVESTIGATIONS, MAJORITY AND MINORITY STAFF REPORT, FEDERAL SUPPORT FOR AND INVOLVEMENT IN STATE AND LOCAL FUSION CENTERS 7 (2012), <https://www.hsgac.senate.gov/imo/media/doc/10-3-2012%20PSI%20STAFF%20REPORT%20re%20FUSION%20CENTERS.2.pdf>.

120 *Id.* at 8.

121 *Id.*

122 *Id.* at 7.

123 *Id.*

124 *Id.*; See generally, Michael German, et al., *Ending Fusion Center Abuses*, BRENNAN CTR. FOR J. (Dec. 15, 2022), <https://www.brennan-center.org/our-work/policy-solutions/ending-fusion-center-abuses>; PBS Newshour, *Fusion Centers Accused of Undermining Civil Rights* (Jan. 5, 2023), <https://www.njtvonline.org/programs/pbs-newshour/two-years-later-sot-1672955102>.

125 OPEN THE GOVERNMENT, *The Cost of Fear: Long-Cited Abuses Persist at U.S. Government-Funded Post-9/11 Fusion Centers* (Mar. 26, 2020), <https://www.openthegovernment.org/dhs-fusion-centers-full-report/>.

126 Thomas Cincotta, *Public Accountability for Fusion Centers*, POL. RSCH. ASSOCS. (Oct. 29, 2009), <https://politicalresearch.org/2009/10/29/public-accountability-fusion-centers>.

127 Chris Cushing, et al., *MIAC Shadow Report: Reporting on MIAC Auditing Processes Supplemental to the DPS Report* (2022), MAINE BEACON, <https://mainebeacon.com/wp-content/uploads/2022/03/MIAC-Shadow-Report.pdf>.

C. Conduct a People's Audit of the Fusion Center

Years of research reinforce the critical points made by the 2012 U.S. Senate report on fusion centers: they do not combat terrorism.¹²⁸ Instead, fusion centers are policing mechanisms that often reproduce societal racial inequality and concoct threats to justify their budgets.¹²⁹ As a result, grassroots coalitions in various states have demanded a People's Audit to be conducted by independent civil society organizations.¹³⁰ To date, no coalition in New Jersey has conducted such an audit.

Two instructive case studies offer a template for a People's Audit – California and Maine – where local groups obtained raw data via public records requests. Civil society in those states used transparency tools to hold accountable the fusion centers in those states. Most recently, in Maine, a coalition worked together to issue a groundbreaking publication documenting a campaign that culminated in the passage of historic legislation mandating reporting by the Maine fusion center. With the help of a lone Maine State Trooper who blew the whistle on systemic abuse and privacy violations, civil society groups worked together to hold the state's intelligence-gathering apparatus accountable and nearly defunded the fusion center.¹³¹ Only after impending defunding did the fusion center in Maine comply with requests for more transparency and a genuine accounting.¹³²

In California, the StopLAPDSpying coalition, published their own public audit exposing systematic racial and religious profiling by the police based on their own independent investigations.¹³³ Conducted in April 2013, StopLAPDSpying analyzed the LAPD's state homeland security Suspicious Activity Reports (SARs) reports.¹³⁴ The findings concluded that 78% of the records were profiling nonwhites,¹³⁵ which was consistent with the LAPD's inspector general's finding that 74% of SAR targets were nonwhite.¹³⁶ Similarly, the ACLU of Northern California (ACLU-NC), extracted valuable information from their own public records requests, which are included in their report "Selected Suspicious Activity Reports From The Central California Intelligence Center and Joint Regional Intelligence."¹³⁷

The ACLU-NC references multiple SAR reports as evidence of systemic racial bias. For example, one California fusion center SAR's report is entitled "Suspicious ME [Middle Eastern] Males Buy Several Large Pallets of Water."¹³⁸ The document does not provide an objective indicator of reasonable suspicion or probable cause. Instead, the alleged Middle Eastern national origin of the male target was *ipso facto* enough to suspect him as a threat to national security. His conduct -- purchasing water-- was not only legal, but was wholly innocuous.¹³⁹

Another troubling California SAR report that triggered law enforcement contact, was also based on nothing more than national origin profiling. This time, a SAR report generated a dossier on Chinese tourists who were engaging in typical touristic activities.¹⁴⁰ Yet again, the SAR report overinterprets innocuous activity such as "[s]uspicious photography of Folsom Dam by Chinese Nationals... [who were] evasive when the deputy asked them for identification and *said their passports were in their vehicle.*"¹⁴¹ This absurd conclusion is clearly based on racial stereotypes.¹⁴² That multiple SARs reference protected categories, like national origin or race, as a proxy for "suspicious" conduct points to the real risk of unlawful racial profiling disguised as national security.¹⁴³

The failures by local intelligence gathering officials in Maine and California serve as cautionary tales for New Jersey's racially diverse communities. The gaping absence of transparency about the ROIC's policies, budgets and operations makes a people's audit imperative. Civil society groups in New Jersey are well-positioned to work together to shine a light on the ROIC and other local, intelligence-gathering efforts. Absent citizen activism, racist surveillance and broken windows policing will continue unchecked.

128 U.S. SENATE PERMANENT SUBCOMM. ON INVESTIGATIONS, *supra* note 119.

129 *Id.*

130 *See, e.g.*, Cushing, et al., *supra* note 127; STOP LAPD SPYING COAL., "To Observe and To Suspect": A People's Audit of the Los Angeles Police Department's Special Order 1, <https://stoplapdspying.org/wp-content/uploads/2013/04/PEOPLES-AUDIT-UPDATED-APRIL-2-2013-A.pdf> (Apr. 2, 2013); COMMONWEALTH OF MASS. OFFICE OF THE STATE AUDITOR, OFFICIAL AUDIT REPORT: DEPARTMENT OF STATE POLICE—FUSION CENTER OPERATIONS FOR THE PERIOD JULY 1, 2014 THROUGH DECEMBER 31, 2017 (2019), <https://www.mass.gov/audit/audit-of-the-department-of-state-police-fusion-center-operations>.

131 Dan Neuman, *MIAC 'Shadow Report' Raises Questions About Surveillance, Targeting of Vulnerable Mainers*, MAINE BEACON (Apr. 1, 2022), <https://mainebeacon.com/miac-shadow-report-raises-questions-about-surveillance-targeting-of-vulnerable-mainers/>.

132 *Id.*

133 STOP LAPD SPYING COAL., *supra* note 130.

134 The lone documentary response to CSRR's OPRA requests was a list of SARs from the Ocean County Sheriff's Office.

135 Dia Kayyali, *Why Fusion Centers Matter: FAQ*, ELEC. FRONTIER FOUND. (Apr. 7, 2014), <https://www.eff.org/deeplinks/2014/04/why-fusion-centers-matter-faq#4>.

136 *Id.*

137 ACLU OF N. CA., *Selected Suspicious Activity Reports from the Central California Intelligence Center and Joint Regional Intelligence Center* (Aug. 6, 2012), https://www.aclunc.org/sites/default/files/asset_upload_file470_12586.pdf.

138 *Id.*

139 *Id.*

140 *Id.*

141 *Id.*

142 *Id.*; Peter Waldman, *Mistrust and the Hunt for Spies Among Chinese Americans*, Bloomberg (Dec. 10, 2019), <https://www.bloomberg.com/news/features/2019-12-10/the-u-s-government-s-mistrust-of-chinese-americans>.

143 ACLU OF N. CA., *supra* note 137; Waldman, *supra* note 142.

CONCLUSION

Historical and contemporary insights into the U.S. law enforcement experience show that domestic, intelligence-gathering programs are rights infringing, unless mechanisms that protect civil liberties are built into the operations. That a CIA expert with no *domestic* intelligence-gathering experience or civil liberties expertise leads the New Jersey's homeland intelligence agency, and the generalized lack of transparency from that agency's statewide domestic partners, is cause for concern.¹⁴⁴ New Jersey State legislators have a long overdue obligation to be a check on unaccountable, opaque, budgetary vacuums that exhaust untold and unknowable amounts of public money.

The lack of responsiveness to CSRR's open records requests for basic information from New Jersey's law enforcement community, combined with the lack of government oversight, should ring alarm bells. State officials starting with Governor Murphy must appoint an ombudsman to oversee New Jersey's intelligence regime¹⁴⁵ through the New Jersey Office of the Public Advocate to ensure privacy and civil liberties are protected.¹⁴⁶ And the New Jersey legislature must mandate regular reporting by the Chief Intelligence Director to the legislature so that the public can have an open and honest debate regarding the impacts of ROIC's practices on New Jersey's diverse populations.

Much more needs to be done to ensure that New Jersey residents are protected from discriminatory, unwarranted, sprawling surveillance.¹⁴⁷ The residents of New Jersey deserve to know whether their taxes are spent on unlawful surveillance. They also deserve to live free of invidious discrimination by law enforcement. Implementing robust and independent oversight over New Jersey's intelligence system is an essential first step.

¹⁴⁴ On February 10, 2022, Senators Ron Wyden and Martin Heinrich flagged that the CIA's bulk collection program raised serious concerns regarding violations of Americans' civil liberties. The CIA is now being federally investigated by Congress, because there were rights violations very likely occurring in ways that are well-outside the bounds of established statutes and constitutional norms. *See generally* Press Release, Ron Wyden, U.S. Senator for Oregon, Wyden and Heinrich: Newly Declassified Documents Reveal Previously Secret CIA Bulk Collection, Problems With CIA Handling of Americans' Information (Feb. 10, 2022), <https://www.wyden.senate.gov/news/press-releases/wyden-and-heinrich-newly-declassified-documents-reveal-previously-secret-cia-bulk-collection-problems-with-cia-handling-of-americans-information>; *Leadership*, *supra* note 5.

¹⁴⁵ *Leadership*, *supra* note 5.

¹⁴⁶ N.J. Exec. Order No. 5, *supra* note 6.

¹⁴⁷ *See generally* Devereaux, *supra* note 36; Mazzetti, *supra* note 37. The Church Committee report found that COINTELPRO was a mass surveillance and counter-intelligence operation on U.S. soil that targeted protected activity engaged in by left-wing, anti-war, and civil rights groups with then-FBI director J. Edgar Hoover's stated intent being to "expose, disrupt, and otherwise neutralize the activities of the various New Left organizations, their leadership and adherents." Aaron J. Leonard & Conor A. Gallagher, *Newly Obtained FBI Files Shed New Light on the Murder of Fred Hampton*, *JACOBIN MAG.* (Mar. 2, 2021) <https://jacobin.com/2021/03/newly-obtained-fbi-files-shed-new-light-on-the-murder-of-fred-hampton/>; SENATE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE, FINAL REPORT (1976) <https://www.senate.gov/about/powers-procedures/investigations/church-committee.htm> (last visited June 19, 2022).

ADDENDUM: OPRA/FOIA INVESTIGATION RESPONSES

GLOSSARY OF TERMS

Intelligence-led Policing:	ILP
Intelligence Community:	IC
NJ Fusion Center:	ROIC
Rutgers Center for Security, Race and Rights:	CSRR
Warrant Sweep Program:	WSP
Suspicious Activity Report:	SAR
Counter Intelligence Program:	COINTELPRO
New Jersey Office of Homeland Security and Preparedness:	NJOHSP

I. One Agency Issued a Substantive Response

The Ocean County Sheriff's Office was the only agency that provided responsive information to our requests. Specifically, this agency provided a list of SARs in response to CSRR request #2.

However, this agency denied the remainder of our requests as "complex" and therefore "invalid" because research would be required. Their excuse for denying the remainder of our requests was premised on case law and described as follows: "[Y]our request is an invalid OPRA request and is denied. When a request is "complex" because it fails to specifically identify the documents sought, then that request is not "encompassed" by OPRA. See *New Jersey Builders Association v. New Jersey Council on Affordable Housing*, 390 N.J. Super. 166, 180 (App. Div. 2007). A proper request under OPRA must identify with reasonable clarity those documents that are desired, and a party cannot satisfy this requirement by simply requesting all of an agency's documents. See *Bent v. Stafford Police Department*, 381 N.J. Super. 30, 37 (App. Div. 2005). Custodians are not required to conduct research or create new records in response to an ORPA request."

Additionally, the agency highlighted the case of *Elcavage v. West Milford Township*, as a reason for denial. This particular case was cited repeatedly by agencies issuing denials.

II. Four Agencies Stated They Had No Responsive Records

The following five (5) agencies said they had *no* responsive records in response to any of CSRR's requests: (1) the Atlantic County Sheriff's Office; (2) the Essex County Sheriff's Office; (3) the Gloucester County Sheriff's Office; (4) the Hunterdon County Sheriff's Office; and (5) the Salem County Sheriff's Office.

III. Twenty-Two Agencies Issued Blanket Denials

Twenty-two (22) agencies responded to CSRR's requests with what we term blanket denials. Generally, these denials were premised on the notion that CSRR's requests were overbroad, vague, and/or would have required some amount of never-specified "research" on behalf of record custodians. The general thematic rule for most law enforcement agencies is an adherence to a regime of secrecy undergirded by courts that have, over some 20 years of case law, worked to maintain law enforcement's longstanding preference to substantially operate in the dark.

In New Jersey, law enforcement agencies rely on rigid readings of case law to allow a government entity to deny a reasonable request for basic information because a "specific" document must be precisely described. The issue, of course, is that when the purpose of the OPRA request is to shed light into hidden troves being kept from the state's citizenry which government agencies have refused to be accountable for, it becomes challenging to pinpoint a specific detailed description

of a document when the government entity claiming the exemptions continues to hide behind the same wall of secrecy that gives rise to the request in the first place.

Additionally, many agencies maintained that the nature of CSRR's requests would place an undue burden on staff, resulting in what they term an unreasonable or impracticable expenditure of resources. Ironically, ROIC is one of the best staffed law enforcement agencies boasting a staff of 100 people and enjoying borrowed staff from other entities.¹ It is also one of the country's largest and most active fusion centers, making it more than equipped to work with its state and local counterparts, who may be less-resourced, to respond to legitimate, transparency requests.

Since denials show a pattern of being written out in substantially similar language, this categorical use of boilerplate language to continue to obstruct transparency cannot pass legal muster. In fact, many responses show government agencies claiming that requests for SARs, in particular, asked for "law enforcement sensitive" or "criminal investigatory records" and therefore could not be produced. The requests themselves ask for no such data, whatsoever. The records requests ask for basic information, regarding non-active investigations, including training materials and data on programs that are not even in place anymore. The purpose of the requests is to break open a system of domestic intelligence-retention that has yet to share meaningfully, relevant information with the public since its inception in 2006. New Jersey agencies' boilerplate denialism, and the two major excuses often-cited to support this trend, effectively undermine the object and purpose of New Jersey's freedom of information statute. The purpose of the law is to ensure that state agencies are operating in a transparent way so that members of the public hold them accountable. As it stands, New Jersey's ORPA regime is on lower footing than even the federal Freedom of Information Act and how the U.S. federal government applies the nation's premier transparency law. For all of its bureaucratic, administrative, budgetary, and political drawbacks (many of which are longstanding), federal agencies often respond to FOIA requests without demanding that requesters know exactly what they are looking for and will conduct basic and simple searches in order to comply with requests for documents containing certain keywords—often this results in a surfeit of documentation for federal FOIA requesters that then must be sifted through.

Often denials are reproduced verbatim from one agency to another – the same verbiage, case law, and reasoning is used to maintain New Jersey law enforcement's general culture of opacity and commitment to frustrating transparency and access. The agencies below issued blanket denials:

The Ocean County Prosecutor's Office denied CSRR's requests as: (1) overbroad; (2) because research would be required; (3) due to an alleged email/written communication request deficiency; and (4) as law enforcement sensitive.

The Morris County Prosecutor's Office denied CSRR's requests as: (1) overbroad; (2) as law enforcement sensitive; (3) as unreasonable and impracticable; and (4) because research would be required. This agency offered the following excuse sourced from case law to issue their blanket denials: "An OPRA request "must be well defined so that the custodian knows precisely what records are sought. The request should not require the records custodian to undertake a subjective analysis to understand the nature of the request. Seeking particular information from the custodian is permissible; expecting the custodian to do research is not." *Paff v. Galloway Township*, 229N.J.340, 355 (2017).

The Union County Prosecutor's Office denied CSRR's requests as: (1) overbroad; (2) because research would be required; and (3) as law enforcement sensitive.

The Somerset County Prosecutor's Office denied CSRR's requests as: (1) overbroad; (2) because research would be required; and as law enforcement sensitive viz. SARs

The following verbiage was typical of the law enforcement exception:

- All information in the database is considered Unclassified//Law Enforcement Sensitive (U//LES) and cannot be released to the public or other personnel outside of the law enforcement community.

The Hunterdon County Prosecutor's Office denied CSRR's requests as: (1) overbroad; (2) as criminal investigatory records; and (3) as research would be required

The Camden County Prosecutor's Office denied CSRR's requests as: (1) overbroad; (2) as research would be required; and (3) as law enforcement sensitive.

The Middlesex County Prosecutor's Office denied CSRR's requests as: (1) overbroad; (2) as criminal investigatory records; and (3) as research would be required.

The Mercer County Prosecutor's Office denied CSRR's requests as: (1) overbroad; (2) as criminal investigatory records; and (3) as research would be required.

The Mercer County Sheriff's Office denied CSRR's requests as: (1) vague and overbroad; and (2) as unclassified/law enforcement sensitive.

The Cumberland County Prosecutor's Office denied CSRR's requests as: (1) overly broad; (2) because research would be required; and (3) as unreasonable/impracticable.

The Gloucester County Prosecutor's Office denied CSRR's requests as overbroad.

The Hudson County Prosecutor's Office denied CSRR's requests as: (1) overbroad; and (2) unreasonable/impracticable.

The Monmouth County Prosecutor's Office denied CSRR's requests as: (1) overbroad; and (2) because research would be required.

The Monmouth County Sheriff's Office denied CSRR's requests as: (1) overbroad; (2) because research would be required; (3) as unreasonable/impracticable; and (4) as law enforcement sensitive.

The Burlington County Prosecutor's Office denied CSRR's requests as: (1) overbroad and unclear; and (2) exempt from OPRA viz. SARs.

The Passaic County Prosecutor's Office denied CSRR's requests as: (1) overbroad; and (2) because research would be required.

148 McQuade, *supra* note 4, at 77.

The Atlantic County Prosecutor's Office denied CSRR's requests as: (1) overbroad; and (2) as law enforcement sensitive

The Sussex County Prosecutor's Office denied CSRR's requests as: (1) overbroad; and because research would be required

The Sussex County Sheriff's Office denied CSRR's requests as: (1) overbroad; (2) because research would be required; (3) as unreasonable/impracticable; and as (4) law enforcement sensitive. Notably, this blanket denial was exactly the same response, from the same law firm, on the same letterhead, as the blanket denial provided by the Monmouth County Sheriff's Office.

The Cape May County Prosecutor's Office denied CSRR's requests as: (1) impermissibly vague and overbroad; and (2) as law enforcement sensitive.

The Salem County Prosecutor's Office denied CSRR's requests as: (1) unclear, overbroad, requiring extensive research, and not valid; and (2) as exempt under executive order, statute, and security measures. The second excuse here was novel and three excerpts are provided below:

1. Pursuant to Executive Order No. 5 (Corzine) dated March 16, 2006, "All documents, materials, and information pertaining to counter-terrorism investigation, intelligence, training, and protocols created, compiled, obtained or maintained by the Office [of Homeland Security and Preparedness] shall be deemed confidential, non-public and not subject to the Open Public Records Act[.]" Additionally, under the provisions of the New Jersey Domestic Security Preparedness Act, "[n]o record held, maintained or kept on file by the task force or the planning group shall be deemed to be a public record under the provisions of P.L.1963, c. 73 (C.47:1A-1 et seq.) or the common law concerning access to public records." N.J.S.A. App. A:9-74
2. This request is also denied under OPRA's exemption for "security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software." N.J.S.A. 47:1A-1.1; see also *Gilleran v. Township of Bloomfield*, 227 N.J. 159, 164 (2016) ("The compelled release under OPRA, on demand for any or no reason, of a security system's operational product revealing otherwise nonpublic information about monitoring capability is at odds with the legislative intent in creating security exceptions to OPRA."); *Huyzers v. NJ Department of Corrections*, GRC Complaint No. 2018-38 (Jan. 2020) (finding surveillance video from prison exempt under OPRA's security provisions). In addition, Executive Order 21 (McGreevey 2002) exempts from disclosure records which "would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage and terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism." This Executive Order also protects against "the ongoing threat of security of our citizens" and to support "this State's compelling interest in developing and maintaining a precisely coordinated counter-terrorism and preparedness effort to enhance the public's safety."
3. [T]he official information privilege affords confidentiality for "official information" if disclosure "will be harmful to the interests of the public." N.J.R.E. 515; N.J.S.A. 2A:84A-27. "Official information" has been defined as including "information not open or theretofore

officially disclosed to the public relating to internal affairs of the State ... in the course of duty, or transmitted from one such official to another in the course of his duty." *In re Liquidation of Integrity Ins. Co.*, 165 N.J. 75, 93 (2000) (quoting *Biunno*, N.J. Rules of Evidence, comment 1 on N.J.R.E. 515 (1999)). This privilege has been interpreted to protect the location of surveillance positions. *State v. Garcia*, 131 N.J. 67, 74-75 (1993) (explaining that applying the official information privilege to surveillance sites avoids compromising ongoing surveillance, protects police officers and private citizens from reprisal, and encourages citizens to cooperate with police); see also *State v. Ribalta*, 277 N.J. Super. 277, 287 (App. Div. 1994) (stating that the privilege permits the State to conceal information "about the location from which law enforcement personnel observed alleged criminal activities.") (citing *Garcia*, 131 N.J. at 73).

The Essex County Prosecutor's Office denied CSRR's requests as: (1) overbroad and invalid; (2) as requiring research and discretion; (3) as requesting information; and (4) as exempt criminal investigatory files. Here, the final two excuses struck CSRR as novel and are excerpted below:

1. Additionally, insofar as this request concerns information as opposed to a government record, it is also being denied. Please be advised that OPRA only allows for records, not general data, information or statistics. *Bent v. Township of Stafford Police Department, Custodian of Records*, 381 N.J. Super. at 39, citing *MAG Entm't, LLC v. Div. of Alcoholic Beverage Control*, 375 N.J. Super. 534, 546-549 (App. Div. 2005).
2. [I]n a recent case pertaining to an incident in which police used deadly force against a suspect, the New Jersey Supreme Court held that dash cam videos (MVR recordings), investigative reports and witness statements are covered by the criminal investigatory records exception because those items are not "required by law to be made, maintained or kept on file," and because the actions of the police pertained to an investigation into actual or potential violations of criminal law. See *North Jersey Media Group v. Township of Lyndhurst*, 229 N.J. 541 (2017). Thus, under *Lyndhurst*, BWC and dash-cam footage that records potential criminal offenses are exempt from OPRA. See also, Attorney General Law Enforcement Directive No. 2018-1.

The Somerset County Sheriff's Office denied CSRR's requests as: (1) overbroad; and (2) as exempt from disclosure under OPRA.

- IV.** The Morris County Sheriff's Office denied CSRR's requests as (1) overly broad; (2) overbroad; and (3) exempt from disclosure.

A Few Agencies Issued Semi-Helpful Combination Denials

The Middlesex County Sheriff's Office replied with denials to CSRR's requests #1 and #3-10 on the basis they were "overly broad" and, where communications were sought, because they were not specific; additionally, this agency claimed there were no responsive records to request #2.

The Passaic County Sheriff's Office replied with denials to CSRR's requests #3-10 on the basis they were "overly broad"; additionally, this agency claimed there were no responsive records to CSRR requests #1 and #2..

The Burlington County Sheriff's Office replied with denials to CSRR's requests #3-7, and #9 on the basis that they were "overly broad," "impermissibly broad," and "lack specificity and/or are not limited as to time. This agency also replied that they had no responsive documents to CSRR requests #2, #8, and #10. Additionally, this agency claimed they could produce responsive documents to CSRR request #1 but suggested the cost would be inordinate by offering the following account: "In order to properly respond, a staff member would have to pull each request and corresponding response individually. Thereafter, all responsive records will need [sic] be reviewed and, if necessary, redacted, should any OPRA exemption and/or privilege be found to apply. This is estimated to take about 416 hours (5,000 requests x 5 minutes per request) which would be subject to a special service charge."

The Union County Sheriff's Office replied with a denial to CSRR's request #3 on the basis that it "is voluminous and not practical for the County to complete without substantial disruption of Government work." Additionally, this agency claimed there were no responsive records to CSRR requests #1, #2 and #4-10.

The Cumberland County Sheriff's Office replied that they have no responsive records for CSRR's request #2. Additionally, this agency replied, in response to CSRR request #10, that they do not "have aerial surveillance vehicles or drones that conduct surveillance on communities in New Jersey." In response to CSRR's requests #1, and #3-9, this agency replied that such requests are "overbroad, burdensome and in many cases do not identify [sic] a specific document to be produced, constituting research which is not requires [sic] under OPRA."

V. A Handful of County (and One State Agency) Violated OPRA's Response Time Mandate

Six agencies failed to respond to our requests in a timely manner—or at all. New Jersey State law provides a seven (7) business day deadline for an agency to reply to an OPRA request. CSRR plans to follow up with these agencies in order to extract responses and to remind them of their statutory obligations. Seven (7) total OPRA requests were sent to the following agencies: (1) the Camden County Sheriff's Office; (2) the Hudson County Sheriff's Office; (3) the Bergen County Sheriff's Office; (4) the Cape May County Sheriff's Office; (5) the Warren County Prosecutor's Attorney's Office; and (6) the New Jersey Department of Law and Public Safety.

VI. A Few Pending Requests Are Currently Still Extant

Throughout the course of sending open records requests and receiving responses, many agencies requested time extensions or replied with instructions for requests to be re-sent to particular individuals and addresses. Other agencies, when questioned by CSRR about the status of extant requests, replied that they had not received them in the first place and provided instructions for where to re-send such requests. We worked in accommodation and good faith with various individuals in order to provide new OPRA requests and to provide sufficient time for agencies to send responses back. To that end, CSRR's requests with the following agencies are still pending: (1) the Bergen County Prosecutor's Office; (2) the Warren County Sheriff's Office; (3) the U.S. Department of Homeland Security; and (4) the Federal Bureau of Investigation.

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