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July 16, 2013

The Honorable Eric Schneiderman  
Attorney General  
State of New York  
The Capitol  
Albany, NY 12224

Dear Attorney General Schneiderman:

We write to request that you investigate the activities of the New York City Police Department Foundation Inc. (hereinafter Foundation). Several findings detailed below, and our analysis of the applicable law and practice, have lead us to believe the Foundation may be in violation of the charitable purposes for which it is organized under the laws of New York.<sup>1</sup> These violations, if found to be true, potentially undermine New York's security. They also permit the NYPD to operate without the system of checks and balances and legislative oversight under which every government agency functions. That would establish a dangerous precedent.

There are four reasons why we request you to investigate the Foundation. First, the Foundation funds operations of the New York Police Department outside the United States that may not be permissible under New York law for a government agency or for government employees.<sup>2</sup> Second, the Foundation's activities potentially amount to a violation of the Logan Act,<sup>3</sup> and arguably undermine New York's homeland security.<sup>4</sup> Third, the Foundation is reported to pay for personal services rendered to New York Police Department Commissioner Raymond W. Kelly that are arguably unrelated to his position, but rather could be characterized as gifts. Finally, the Foundation's involvement in what can only be characterized as "political activities," arguably violate

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<sup>1</sup> The New York City Police Foundation Inc., is organized as a Type B Not-for-Profit entity under the laws of New York. Article Three of the Certificate of Incorporation does not appear to support the funding international activities or provide indicate sponsoring the private activities of the police commissioner.

<sup>2</sup> See, e.g., Art 18, Gen Municipal Law, McKinneys (2012) (Conflicts of Interest of Municipal Officers and Employees).

<sup>3</sup> See, 18 U.S.C. § 953.

<sup>4</sup> Art 18, Gen Municipal Law, McKinneys (2012). Ch. 68, New York City Charter (Conflicts of Interest).

the legal strictures placed upon it to qualify to be a tax-free entity in New York and are worthy of investigation. Consequently, pursuant to the statutory authority vested in your office by the Legislature and the state's *parens patriae* interest to protect the assets given for a public purpose, we request you investigate these activities of the New York City Police Department Foundation.

## **I. Funding and Overseas Operations**

The Foundation is a 501(c)(3) organization that has collected over \$120 million from various sources. According to the Foundation website, its mission is to provide "critical resources for innovative NYPD programs that make New York city a safer place to live, visit and work."<sup>5</sup> These funds have been expended to, among other things, deploy NYPD employees to foreign countries. In fact, according to their 2012 annual report, "\$10,000 supports one NYPD detective for one month in the international liaison program."<sup>6</sup> The report further states that the "Intelligence Officers are stationed in 11 international cities, working with law enforcement agencies to provide first hand, in-depth analysis to New York."<sup>7</sup> Ostensibly, these NYPD Detectives and/or Intelligence Officers "have been at terrorist crime scenes in Mumbai, Madrid, Istanbul, Amman, and London." However, the former director of the Federal Bureau of Investigation's Office of International Operations, Thomas V. Fuentes, stated that the liaison program is "a complete waste of money..."<sup>8</sup>

Despite what one might infer from the claims made by the Foundation and the City of New York, the NYPD is not a member of the US multi-agency team assigned to these cases. Thus, even if a foreign intelligence or law enforcement agency wished to share information with NYPD detectives they could not do so.<sup>9</sup> In other words the NYPD detectives neither have the requisite security clearances or possess the appropriate secure communications devices, nor do they stay at secure facilities in the country where the investigation is taking place, which would enable them to "work with law enforcement agencies to provide first hand, in depth analysis to New York."<sup>10</sup>

In fact, in at least two of these cities the NYPD nearly caused an international incident. In London, following the bombing of the Underground, the U.S. Ambassador had to intervene after "several New York police officers ran into the tunnel and showed their

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<sup>5</sup> New York City Police Foundation, Annual Report, Fiscal Year Ending June 30, 2012, 11, *available at* <http://www.nycpolicefoundation.org/netcommunity//Document.Doc?id=132>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 7. Although this is the number provided by the Foundation, state law enforcement officials acknowledge the NYPD operates in at least two dozen foreign countries.

<sup>8</sup> Jeff Stein, *NYPD Intelligence Detectives Go Their Own Way*, WASH. POST, Nov. 10, 2010, *available at*, [http://voices.washingtonpost.com/spy-talk/2010/11/nypds\\_foreign\\_cops\\_play\\_outsid.html](http://voices.washingtonpost.com/spy-talk/2010/11/nypds_foreign_cops_play_outsid.html).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* It is important to note that the intelligence information gleaned by US law enforcement and intelligence agencies is made available to NYPD detectives assigned to New York City's Joint Terrorism Taskforce, where the NYPD has 125 detectives.

badges” as if they were a part of the investigation.<sup>11</sup> In response, the British threatened to kick everyone out, including the FBI. If this had occurred, it would have severely jeopardized the FBI’s intelligence investigation. In another incident, Indian authorities rebuffed the NYPD detectives that arrived in Mumbai. NYPD detectives arrived at the scene and baffled Indian security forces when the NYPD officers asserted, “We’re from the U.S. government.”<sup>12</sup>

Thus it is possible to conclude that the NYPD’s activities may constitute a violation of the Logan Act. As you may know, this law is intended to prohibit American citizens without authority from interfering in the relations between the U.S. and foreign governments.<sup>13</sup>

We are greatly troubled that a private foundation is allowed to fund foreign adventures, and particularly so without oversight. New York City Council Public Safety Committee Chair Peter Vallone voiced support for such a position when he acknowledged the need for oversight of the Foundation’s support for foreign activities but stated he had neither the authority nor the expertise.<sup>14</sup>

The explanation provided by Commissioner Kelly for the need of private funds is that these “are things we can’t do through the normal budget of the city.”<sup>15</sup> Which begs the question why if this program is so critical for our security, Mayor Bloomberg and Commissioner Kelly do not seek additional funds to fund this program or ask for the legislative authority to make such expenditures through the normal budget process.

## II. Use of Charitable Funds for NYPD Commissioner’s Personal Benefit

In addition, it is disconcerting and contrary to policy to allow nonprofit entities to subsidize the extravagant habits of our public officials. New York Police Department

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<sup>11</sup> *Supra* note 4.

<sup>12</sup> Jeff Stein, *NYPD Intelligence Making FBI Blue*, WASH. POST, April 26, 2010, available at [http://voices.washingtonpost.com/spy-talk/2010/04/nypd\\_intelligence\\_making\\_fbi\\_b.html](http://voices.washingtonpost.com/spy-talk/2010/04/nypd_intelligence_making_fbi_b.html). Here it seems the NYPD officers were representing themselves as United States officials when they had no training or permission to do so.

<sup>13</sup> “Any citizen of the United States, wherever he may be, who, without authority of the United States, directly or indirectly commences or carries on any correspondence or intercourse with any foreign government or any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the United States, shall be fined under this title or imprisoned not more than three years, or both. This section shall not abridge the right of a citizen to apply, himself or his agent, to any foreign government or the agents thereof for redress of any injury which he may have sustained from such government or any of its agents or subjects.”

<sup>14</sup> *Supra* note 12.

<sup>15</sup> Bob Hennelly, *Critics Take Aim at NYPD Foundation*, WNYC NEWS, Nov. 4, 2011, available at <http://www.wnyc.org/articles/wnyc-news/2011/nov/04/nypd-foundation/#>. The justification provided by the Foundation in their annual report is that other than the salaries “other expenses are not permissible under city budgetary guidelines. The NYPD relies upon the Police Foundation to fund the essential living, travel, and communication expenses that cannot be paid for with City funds.” *Supra* note 1 at 7.

Commissioner's membership and dining expenses to the Harvard University Club should not be paid by the New York City Police Foundation, for example. According to press reports, the Commissioner's \$1,500 annual membership for at least eight years and tens of thousands in dining expenses were covered by the tax-deductible contributions of Foundation's donors.<sup>16</sup> When reporters requested a list of the Commissioner's guests, the Foundation and the NYPD refused to provide such information. Additionally, the Foundation also paid at least \$400,000 to hire a private publicist, Hamilton South, for Commissioner Kelly for purposes not detailed in their IRS 990 filing.<sup>17</sup> It is unclear to us how this is protecting the safety of our constituents, and it is unclear under what legal authority a government official might accept such services as a gift from a not-for-profit corporation.

### III. Conclusion

You recently announced an initiative to create greater transparency by requiring additional reporting requirements for nonprofit entities in New York that engage in political activities. In taking this visionary and notable action, you articulated that in doing so you are "protecting the integrity of nonprofits and our democracy."<sup>18</sup> In the case of the NYPD Foundation, private money is reported to fund what the Foundation and NYPD label "intelligence" and "counter-terrorism" activities. Due to the NYPD and Foundation's unwillingness to respond to the public or media requests, or generally act in a transparent manner, it is difficult to discern who the donors are that fund the Foundation and the NYPD's activities and upon what such funds are spent. It is also difficult to discern where the NYPD is deploying its officers or others outside of New York and the United States, and for what manner and on what basis. The duly elected representatives of the City and State of New York have no oversight of these activities, that is contrary to public policy and potentially unlawful. Finally, it is disconcerting that private donors in the guise of a nonprofit provide hundreds of thousands of dollars in benefits to the police commissioner. For those reasons, as noted above, we ask for a comprehensive investigation of the activities of the Foundation.

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<sup>16</sup> Ray Rivera and William Rashbaum, *Kelly's Harvard Club Bill Paid by Police Foundation*, NY TIMES, Oct. 25, 2010, available at, [http://www.nytimes.com/2010/10/26/nyregion/26kelly.html?\\_r=0](http://www.nytimes.com/2010/10/26/nyregion/26kelly.html?_r=0).

<sup>17</sup> Graham Rayman, *Ray Kelly's Publicity Piggy Bank: The Police Foundation*, VILLAGE VOICE, Nov. 1, 2010, available at, [http://blogs.villagevoice.com/runninscared/2010/11/ray\\_kellys\\_publ.php](http://blogs.villagevoice.com/runninscared/2010/11/ray_kellys_publ.php). Justin Elliott, *The NYPD, Now Sponsored by Wall Street*, SALON, Oct. 7, 2011, available at, [http://www.salon.com/2011/10/07/the\\_nypd\\_now\\_sponsored\\_by\\_wall\\_street/](http://www.salon.com/2011/10/07/the_nypd_now_sponsored_by_wall_street/)

<sup>18</sup> A.G. Schneiderman Adopts New Disclosure Requirements For Nonprofits That Engage In Electioneering, Press Release June 5, 2013, available at, <http://www.ag.ny.gov/press-release/ag-schneiderman-adopts-new-disclosure-requirements-nonprofits-engage-electioneering>.

Schneiderman  
NYPD Police Foundation  
07/16/13  
Page 5 of 5

We look forward to your favorable response to this request, and to a more transparent and accountable future for the NYPD and the New York City Police Foundation Inc.

Sincerely,

  
KEVIN PARKER

  
ERIC ADAMS

cc: Thomas DiNapoli  
John Liu  
Yvette Clarke  
Hakeem Jeffries  
Jumaane Williams  
Brad Lander