

KEVIN S. PARKER
SENATOR, 21ST DISTRICT
RANKING MINORITY MEMBER
ENERGY & TELECOMMUNICATIONS

COMMITTEES
CODES
COMMERCE, ECONOMIC DEVELOPMENT
& SMALL BUSINESS
FINANCE
HIGHER EDUCATION
INSURANCE
RULES
NEW AMERICAN TASK FORCE



THE SENATE
STATE OF NEW YORK

ALBANY OFFICE:
ROOM 604
LEGISLATIVE OFFICE BUILDING
ALBANY, NEW YORK 12247
PHONE: 518-455-2530
FAX: 518-426-6843

DISTRICT OFFICE:
1300 FLATBUSH AVENUE
BROOKLYN, NEW YORK 11210
PHONE 718-629-6401
FAX 718-629-6420

e-mail:
parker@nysenate.gov

April 29, 2013

The Honorable John C. Liu
Comptroller
City of New York
One Centre St.
New York, NY 10007

Dear Comptroller Liu:

We write to request a full fiscal, management and operations audit of the New York Police Department's Intelligence Division and any "fusion center(s)"¹ operated by the NYPD.

The NYPD's Intelligence Division's fusion center(s) in the current iteration was/were created following the September 11 attacks,² after which there was broad support for the increased involvement of local law enforcement agencies in counter-terrorism activities.³ The 9/11 Commission Report also recommended that state and local law enforcement "...need more training and work with federal agencies so that they can cooperate more effectively with federal authorities in identifying terror suspects."⁴ It was considered critical to the United States and especially New York, to integrate information from local and state entities with federal counter-terrorism and domestic "threat" databases.

Consequently, entities like the NYPD Intelligence Division were given tremendous resources to gather intelligence, analyze the data, and then determine actionable knowledge. In furtherance of

¹ See 6 U.S.C. §124h(j)(1). Defines "fusion center" as "a collaborative effort of two or more Federal, State, local, or tribal government agencies that combines resources, expertise, or information with the goal of maximizing the ability of such agencies to detect, prevent, investigate, apprehend, and respond to criminal or terrorist activity." See also, Judith Miller, *NYPD's Intelligence Advantage*, July 16, 2007, available at, http://www.nypost.com/p/news/opinion/opedcolumnists/item_YyC4tWpJes9Ui0E01fJx4M;jsessionid=679508AF858C7F258BF1E047C4519641 (highlighting the NYPD operates the nation's first "fusion center" with representation from "40 local, state, and federal agencies.")

² U.S. Government Accountability Office, *HOMELAND SECURITY: FEDERAL EFFORTS ARE HELPING TO ALLEVIATE SOME CHALLENGES ENCOUNTERED BY STATE AND LOCAL INFORMATION FUSION CENTERS*, 91, available at <http://www.gao.gov/new.items/d0835.pdf>

³ *The 9/11 Commission Report*, 390, available at, <http://www.9-11commission.gov/report/911Report.pdf>.

⁴ *Id.*

such mission, the centers were provided with federal, state and municipal funds. Unfortunately, no oversight mechanisms were put into place, a situation we seek to remedy through our legislation, this audit request, and legislative hearings.

There are three reasons why we believe the investigation request herein is not only warranted, but also necessary. First, the Intelligence Division has received hundreds of millions in federal, state and municipal funds and employs over a thousand municipal employees, but has not received a single audit from your office in the 10 years they have been in existence.⁵

Second, the New York Police Department's Intelligence Division has a reported annual budget of over \$330 million.⁶ This Division's employees reportedly engage in covert activities well beyond the NYPD's jurisdiction (including, e.g., Louisiana, Massachusetts, New Jersey, the rest of New York State, and Pennsylvania) without documented federal or state approval, or publicly and properly formalized memoranda of understanding from the relevant local, state, or federal authorities.⁷ In addition, the NYPD is reliably reported to be engaging in foreign operations in over two dozen sovereign nations funded by a private foundation (the New York City Police Foundation).⁸

Finally, the potentially illegal and arguably unconstitutional practices the NYPD engages in during its domestic surveillance has reportedly damaged the NYPD's cooperation with the Federal Bureau of Investigation (FBI), and arguably undermine the program's effectiveness and opens it up to significant civil and human rights litigation in federal and state courts. The FBI, for example, regularly does not cooperate with the NYPD on these programs, nor will it accept information gained from religious and racial profiling. The FBI's General Counsel, Valerie Caproni explained the agency's concern in the following manner: "if you're sending an informant into a mosque when there is no evidence of wrong doing, that is a very high risk thing to do. You're running right up against core constitutional rights. You're talking about freedom of religion."⁹

⁵ During such audit, we ask you to examine, among other things, whether NYPD officers while in foreign countries submitted for night shift differentials due to time difference between New York and these foreign assignments.

⁶ Judith Miller, *How to Stop Terrorists Before They Kill*, WALL ST. JOURNAL, Apr. 25, 2013, available at <http://online.wsj.com/article/SB10001424127887324874204578440992247444754.html>. *Supra* GAO at fn 2.

⁷ Matt Apuzzo & Adam Goldman, *With CIA Help, NYPD Moves Covertly in Muslim Areas*, Aug. 23, 2011, available at <http://www.ap.org/Content/AP-In-The-News/2011/With-CIA-help-NYPD-moves-covertly-in-Muslim-areas>.

⁸ Such activity raises questions with regard whether sufficient mechanisms exist to maintain the requisite oversight and accountability of municipal law enforcement officers operating in foreign nations. *See*, International Liaison Program <http://www.nycpolicefoundation.org/NetCommunity/Page.aspx?pid=639>. *See also*, Cassandra Garrison, *Lawmakers: Commissioner Kelly won't explain where money in NYPD budget increase is going*, METRO, Mar. 15, 2012, available at, <http://www.metro.us/newyork/news/local/2012/03/15/lawmakers-commissioner-kelly-wont-explain-where-money-in-nypd-budget-increase-is-going/>. NYPD Deputy Commissioner Paul Browne stated "The salaries of officers overseas are paid through the regular city/NYPD budget; their travel and other expenses overseas are paid by the NYC Police Foundation."

⁹ Apuzzo & Goldman, *supra* note 7.

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The detrimental impact of this policy not only adversely impacts the relationship between the NYPD and the FBI, but has also greatly reduced the cooperation between law enforcement and the Muslim community.¹⁰ Furthermore, the NYPD Muslim surveillance program has admittedly “never generated a lead or triggered a terrorism investigation.”¹¹

It is our hope that your investigation into these issues will uncover sufficient documentation to initiate a meaningful dialogue over the lack of oversight, transparency and accountability of an important piece of the homeland security architecture of our state.

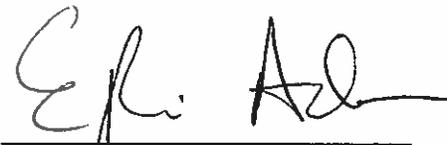
Furthermore, in view of the currently unaudited expenditures of the NYPD Intelligence Division and center, it is necessary to begin establishing the factual basis for the Legislature to conduct the oversight of these entities that the public good and safety demands. For these reasons and for the others set forth above, we respectfully request an audit by your office of the NYPD Intelligence Division.

If you have questions or concerns, please contact our staff members Umair Khan at (518) 455-2580, or Rosa Maria Castillo-Kesper at (518) 455-2408.

Yours in Partnership,



KEVIN PARKER



ERIC ADAMS

¹⁰ Jason Grant, *FBI official defends agency's terror intelligence operations in N.J.*, March 7, 2012, available at, http://www.nj.com/news/index.ssf/2012/03/fbi_official_defends_agencys_t.html.

¹¹ Adam Goldman & Matt Apuzzo, *NYPD: Muslim spying led to no leads, terror cases*, Aug. 21, 2012, available at <http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases>. Assistant Chief Thomas Galati conceded in unsealed court testimony that the Muslim Surveillance program resulted in no leads. “I never made a lead from rhetoric that came from a Demographics report, and I’m here since 2006,” he said. “I don’t recall other ones prior to my arrival. Again, that’s always a possibility. I am not aware of any.”, Deposition of NYPD Assistant Chief Thomas Galati, *Handschu v. Special Services Division*, June 28, 20012, 124, http://www.nyclu.org/files/releases/Galati_EBT_6.28.12.pdf.