

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALLIANCE TO END REPRESSION,
et al.,

Plaintiffs,

vs.

CITY OF CHICAGO, et al.,

Defendants.

No. 74 C 3268

AMERICAN CIVIL LIBERTIES UNION,
et al.,

Plaintiffs,

vs.

CITY OF CHICAGO,

Defendants.

No. 75 C 3295

HON. SUSAN GETZENDANNER

ORDER CONCERNING
DISPOSITION OF DOCUMENTS

1. The claims for injunctive relief in these two lawsuits were finally disposed of by an Agreed Order, Judgment and Decree executed by the parties on April 24, 1981, and approved by the Court on April 8, 1982.

2. The Judgment Order provided that jurisdiction was retained by the Court, inter alia, for the following purposes:

II.A.2 For the trial and adjudication of the damage claims against the City defendants.

II.C.1 The Chicago Police Department intelligence files held in the document depository at Police Headquarters pursuant to this Court's orders of October 14, 1976 and May

4, 1977 shall be retained in the depository under the terms of those orders until the final disposition of the damage claims against the City defendants and of all claims against the federal defendants, and their status thereafter shall be determined by future order of court.

3. Since 1981, all claims against the federal defendants have been disposed of. The matter of the disposition of the intelligence files pursuant to paragraph II.C.1 of the Judgment Order is therefore ripe for determination by the Court.

4. This Order is entered for the sole purpose of resolving the disposition of the depository files referred to herein. This Order is not and shall not be construed as a determination of liability on the part of the City of Chicago, or any of its officers, agents, representatives or employees.

5. Considerations that bear upon the disposition of these files include the following:

a. The information contained in the files has not been used by the Police Department since 1975 has and will not be used in the future.

b. The City is no longer interested in maintaining the confidentiality of the intelligence methods reflected in the files.

c. Significant excerpts from these files have already been publicly disclosed under the terms of this Court's October 1976 Protective Order.

6. The Chicago Historical Society ("CHS") has expressed its opinion that these intelligence files have historical and research value.

7. There is an interest on the part of persons who were the subjects of these investigations in examining the information which was recorded about them. Numerous requests have been received by plaintiffs' counsel from class members for access to these files under the terms of the existing Protective Order.

8. Three interests require continued protection in determining the future status of the intelligence files:

a. The privacy interest of the subjects of the investigations in privacy with respect to information gathered and recorded by the City about their First Amendment activities. This interest requires an appropriate protective order governing access to and dissemination of the files.

b. The interest of the subjects regarding the accuracy or inaccuracy of the information recorded in the files. This interest requires an appropriate cautionary statement to anyone who may have access to the files in the future.

c. The personal privacy interest of personnel of the City of Chicago and Chicago Police Department who are identified in the files.

9. CHS has stated that it would serve as the repository for these materials and consents to the jurisdiction of this Court for the purpose of enforcement, implementation and administration of the terms of this Agreement.

10. All documents contained in the document depository at police headquarters pursuant to this Court's orders of October 14, 1976 and May 4, 1977 shall be transmitted by the City to the CHS which shall have permanent possession of, and access to, the documents subject to the restrictions and obligations stated in the following paragraphs.¹ The City will assume the cost incident to transferring the documents to the CHS, but will not be responsible for any costs incurred which relate to the storage and administration of the documents after the transfer. Before transmitting the documents, the City may (in consultation with the plaintiffs' counsel) delete or obscure the names and numbers and other comparable personal identifying information of individual police officers and other employees or agents of the City who participated in these investigations; provided that this sentence does not authorize deletion of information about the activities of those persons. The City shall transmit the documents no later than six months from the

¹ This does not include documents concerning organized crime investigations. This Order shall govern access to and dissemination of the documents described in paragraph 10. Information previously released in accordance with protective orders entered in this litigation, including litigation and discovery materials within the possession of plaintiffs' counsel, shall continue to be governed by those protective orders.

date of this Order, provided that for good cause shown the Court may on application extend this time.

11. Persons Entitled to Access. The following persons shall be entitled to access at CHS to the document(s) described in each subparagraph:

a. Upon the expiration of 25 years from the date of this Order, any person shall have access to the documents (including to obtain copies) upon the following conditions. Such persons shall be required to submit an affidavit stating their name, address, institutional affiliation (if any), professional qualifications and purpose. A copy of the relevant provisions of this Order shall be attached to the affidavit, and the affidavit shall provide that the person agrees to conform to the restrictions on use and disclosure contained herein, submits to the jurisdiction of the Court for the enforcement of this Order and understands that violation of the Order is subject to punishment as for contempt.

b. The following attorneys (and any attorney for the class who is recognized as such by the Court in the future) are entitled (personally or through their employees or through other persons whom they authorize in writing) to complete access to the documents and to have copies thereof at the cost of copying: Douglass Cassel or his successor as General Counsel of BPI; Richard Gutman or his successor as counsel for certain Alliance plaintiffs; Harvey Grossman or

his successor as Legal Director of the Illinois Division of ACLU, and Robert C. Howard, or his successor as counsel for certain ACLU plaintiffs. The Corporation Counsel of the City of Chicago shall also have access through authorized employees, subject to the provision of the 1981 Judgment Order.

c. Any subject of a document (defined as any individual or organization named in the document other than City of Chicago employees or agents who participated in the police investigation) shall be entitled (personally or through a representative) to have access to that document and to obtain a copy. Any necessary search shall be conducted by CHS rather than the subject, for which CHS may impose a reasonable charge. CHS shall use its best efforts to locate the requested information, by using the index to the documents. With respect to an organization, the right of access shall be vested in the organization's present or past officers, staff and governing body members. Individual or organizational identification satisfactory to the CHS may be required. Such persons shall submit to the CHS an affidavit stating their name and address and shall agree in writing to abide by the relevant provisions of this Order and submit to the jurisdiction of this Court for enforcement of these provisions.

12. Caution Regarding Accuracy of the Documents. Any person having access to one or more of the documents shall be

notified that the information contained in the documents is not necessarily accurate; that some of the information was gathered through various indirect sources, including informants, and was not necessarily subjected to verification before being recorded in the files; and that some of the information is known to be inaccurate. Any grant of access to the documents or their contents shall be accompanied by the foregoing statement, and by any further statement CHS wishes to add.

13. Restrictions on Disclosure. All of the persons described in paragraphs 11(a), (b) and (c) as entitled to access are subject to the following restrictions on disclosure by them to others of information contained in the documents:

a. A document may be disclosed in its entirety to any subject of that document. The individual or organization which is a subject of a document may elect to make further disclosure of that information, but only as it concerns that subject. That individual or organization may not disclose the information insofar as the contents identify another individual or organization, without complying subsection b. Any dissemination of documents or their contents to a subject thereof shall be accompanied by a copy of paragraphs 11-13 of this Order.

b. Information which identifies a subject of a document may not otherwise be disclosed without the written consent of that subject. This restriction shall apply both to the persons described in paragraph 11 and to a subject

to whom a document has been disclosed. Consent with respect to a deceased individual shall be obtained from his/her spouse, or if the spouse is deceased from a child of at least age 21. Consent with respect to a defunct organization shall be obtained from at least two former officers of the organization. The CHS may in its discretion waive the consent requirement concerning deceased or defunct subjects upon a demonstration that the persons from whom consent could be obtained do not exist or cannot be located despite diligent search.

c. Prior to obtaining access to the information contained in these files, every person seeking access shall in writing undertake not to publish, repeat or disclose to any person any name, number or other information obtained from these files specifically identifying individual police officers or other agents or employees of the City of Chicago who participated in these investigations.

14. a. Subjects of the documents shall for a period of 120 days have the right to have their names deleted from the documents. An individual subject desiring to have his/her name deleted shall submit to the CHS a written request signed by the individual personally. The right of a deceased subject to have his/her name deleted shall extend to his/her spouse, or if the spouse is deceased from a child of at least age 21. An organizational subject shall have the right to have the names of its alleged

members or contributors deleted and for that purpose shall submit to the CHS a written request signed by the organization's chief executive officer or, in the case of a defunct organization, signed by one of the organization's former chief executive officers. The written request shall be transmitted to the CHS and shall specify the name(s) which are to be deleted. An agent appointed by the CHS shall make good faith efforts, by using the index to the documents, to delete names by removing the original document and substituting in its place a photocopy on which the name of the subject or its member/contributor has been deleted. The original shall be placed in a separate confidential file which shall be available only to personnel of the CHS, the attorneys described in paragraph 11(b), and the individual who made the request that the information be deleted.

b. Within 45 days of the entry of this order the Court, counsel for the plaintiffs and the CHS will cause notices of said Order to be published in the Chicago Sun Times, the Chicago Tribune and the Chicago Defender. The notices will include the following:

- A description of the Court Order and the right of persons to have their names deleted from the documents;
- Direction regarding the procedure for requesting that names be deleted; and

- A one hundred twenty day period commencing with the first date of publication, within which the request for deletion must be made and received.

The costs for publication and notices shall be paid for by the plaintiffs and/or the CHS.

c. The CHS shall select personnel to carry out the process of deleting names from files. If compensation of said personnel is necessary, that expense will be paid by the CHS. Any copying costs which result from the deletion of names will also be paid by the CHS.

15. The CHS is authorized to take appropriate steps to facilitate the administration of this Order. The CHS may also impose reasonable additional requirements or restrictions concerning access to the documents which are consistent with the privacy interests of the individuals and organizations named in the files (see Order of October 14, 1976), and the purpose of the CHS, including without limitation:

a. Reasonable charges for photocopying and for CHS staff time devoted to locating documents;

b. A requirement that persons obtaining access to the documents agree to hold harmless and indemnify CHS, and its officers, agents and employees against any loss or damage to them occasioned by such access or by the release of the informational content of the documents;

c. Other reasonable restrictions which are appropriate to protect the documents or their contents, or

to facilitate the administration of this Order by the CHS. The CHS or any party may apply to this Court at any time for further guidance in the interpretation of this Order or the administration of the documents.

16. Each party will bear his, her, or its future costs and attorney's fees incurred in implementing and administering these provisions, and monitoring future compliance.

17. The plaintiffs and the CHS hereby release the City of Chicago and its officers, agents and employees from and against any and all suits, claims, damages, costs, expenses, judgments and/or liabilities resulting from the City acting in accordance with this Order.

18. This Order is a final and total resolution of the issue regarding the disposition of the intelligence files held in the document depository at Police Headquarters pursuant to this Court's Orders of October 14, 1976 and May 4, 1977.

19. This Court shall retain jurisdiction of this matter for the purpose of interpreting and enforcing this Order, and, for good cause shown, to modify this Order in the future. Application for such purposes may be presented to this Court by any party or any

person affected by the matter, provided that prior written notice shall be given to counsel identified in paragraph 11(b) and the CHS.

ENTER:


U.S. DISTRICT JUDGE

Date: September 22, 1987

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