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MEMORANDUM

TO: Commission on Accreditation for Law Enforcement Agencies
FROM: Steven Brown, Executive Director
RE: Cranston Police Department
DATE: November 11, 2014

The ACLU of Rhode Island appreciates the opportunity to provide testimony to the Commission in considering reaccreditation of the Cranston Police Department.

We understand that the Commission is aware of the so-called Ticketgate scandal from this past year, but we wish to share a letter that we sent to City officials in July of this year raising additional concerns about potential misconduct by Cranston police officers as described in a recent court case.

We hope that the Commission finds this letter useful in its reaccreditation review. Thank you.

Enclosure



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July 22, 2014

John Lanni, Jr., City Council President
Cranston City Hall
869 Park Avenue
Cranston, RI 02910

Dear Mr. Lanni:

As you know, a lot of attention has been appropriately focused in recent months on the police department parking ticket scandal that came to light at the end of last year. Many questions about that episode remain, as the ACLU and others have thus far been stymied in obtaining documents that could shine more light on this incident and the investigation of it.

However, we are concerned that this scandal may have inadvertently deflected the city's attention from other extremely troubling allegations of police misconduct by Cranston police. I refer to court determinations that have been made about police actions in a high-profile criminal case – that of Michael Patino, who was charged in 2010 with the murder of the young son of his girlfriend. The ACLU believes that this too deserves the City Council's attention.

Last month, in a highly publicized ruling, the Rhode Island Supreme Court ruled that Patino did not have standing to challenge the constitutionality of a police search for incriminating evidence from cell phones that he did not own. What has received only minimal attention in the coverage of this case, however, are the various separate findings of improper conduct that both the Supreme Court and the lower court have made about other aspects of the police department's investigation.

For instance, in a troubling finding, the R.I. Supreme Court upheld the lower court's conclusion that Patino had "made a substantial preliminary showing" that the warrant affidavits filed by Cranston police in the case "contain certain false statements that were deliberate or made in reckless disregard for the truth."

The lower court's review of the Cranston police department's conduct in other areas of the Patino investigation that were not the subject of the Supreme Court appeal led to additional disconcerting conclusions. In addition to the alleged filing of false or misleading warrant affidavits that Judge Savage called "internally inconsistent and riddled with inaccuracies," the judge found the department's failure to ensure the chain of custody of the cell phones to be "unbelievable." Her opinion noted how two officers kept cell phones – crucial evidence in the case – in their pants pockets for the better part of a day, and she also cited with disbelief the ultimate bagging of evidence "in little unsealed brown paper lunch bags."

But that is not all. The judge found the court testimony of at least two of the officers to be "suspicious." She raised concerns about "questionable interrogation practices" engaged in by the police in questioning Patino. And she pointed out that, in violation of basic protocol, "some, if not all, of the officers did not sign themselves in and out of the [crime] scene on the Crime Scene Roster."

In addition, while the Supreme Court rejected Patino's challenge to the search of his girlfriend's cell phone, the Court upheld the suppression of evidence that had been garnered by police through searching Patino's *own* cell phones without obtaining a warrant. The lower court had concluded that such a search without a warrant was a violation of Patino's Fourth Amendment right to be free from unreasonable searches and seizures, and the state did not meaningfully contest that finding.

Coincidentally, less than a week later, the U.S. Supreme Court reached the same conclusion about the illegality of such searches in another case. Most noteworthy to us is the fact that even the R.I. Attorney General, in responding to the U.S. Supreme Court ruling, acknowledged that his office had a "long standing policy and practice" of urging police to obtain warrants for such information, something the Cranston police notably failed to do in the Patino case until after they had already searched some of the phones.

Judge Savage's conclusion two years ago in examining all of the police conduct in the Patino case could not be clearer or more blunt. She stated:

"In all, the Court finds that the Cranston Police Department's actions - both with regard to the illegal search and the ensuing investigation into Defendant's culpability - manifested an overall attitude of gross negligence, if not downright recklessness, in blatant disregard of the requirements of the law."

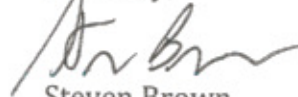
We recognize that this criminal case is ongoing, and therefore an investigation into some of the allegations referenced in the court opinions may be premature. But taken in conjunction with the parking ticket scandal, this deserves serious attention, for it suggests a broader pattern of police misconduct that cannot be ignored. While some people may find it easy to look the other way when police bend the rules in investigating heinous crimes, one does so only at the risk that it will promote a culture of indifference to basic civil rights that may show up in myriad other ways. The parking ticket scandal may be an outcome of that indifference.

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July 22, 2014

A resolution initially proposed by the City Council in response to the ticket scandal noted the importance of determining "whether some Cranston police officers violated the law, their oath of office or police department procedures," and emphasized that "the citizens of Cranston deserve a police department that is trusted by residents and free of scandal." We agree, but rather than viewing the parking ticket scandal as an isolated incident, we urge the City Council to consider whether, particularly in light of the court rulings in the Patino case, a more comprehensive resolution and more thorough investigation are warranted.

Thank you in advance for considering our concerns.

Sincerely,



Steven Brown
Executive Director

cc: Cranston City Council
The Hon. Allan Fung, Mayor
Capt. Kevin Barry, Interim Police Chief
Maria Wall, City Clerk