

**SUPREME COURT OF NEW JERSEY**  
**DOCKET NO. A-35-15 (076184)**

NORTH JERSEY MEDIA GROUP, INC.,  
Plaintiff-Appellant,

v.

TOWNSHIP OF LYNDHURST, HELEN POLITO,  
RMC, in her capacity as the Custodian  
of Records for the Township of  
Lyndhurst, BOROUGH OF NORTH ARLINGTON,  
KATHLEEN MOORE, in her capacity as the  
Custodian of Records for the Borough of  
North Arlington, BOROUGH OF RUTHERFORD,  
MARGARET M. SCANLON, RMC, in her  
capacity as the Custodian of Records  
for the Borough of Rutherford, BERGEN  
COUNTY POLICE DEPARTMENT, CAPTAIN UWE  
MALAKAS, in his capacity as Custodian  
of Records for the Bergen County Police  
Department, NEW JERSEY STATE POLICE and  
SERGEANT HARRY ROCHESKEY, in his  
capacity as Custodian of Records for  
the New Jersey State Police

CIVIL ACTION

On Leave to Appeal From  
a Final Order of the  
Appellate Division

Sat Below:

Hon. Carmen Messano,  
P.J.A.D., Hon. Mitchel  
E. Ostrer and Thomas W.  
Sumners, Jr., J.J.A.D.

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**BRIEF AND APPENDIX OF AMICI CURIAE,**  
**THE AMERICAN CIVIL LIBERTIES UNION OF NEW JERSEY, ASSOCIATION OF**  
**BLACK WOMEN LAWYERS OF NEW JERSEY, BLACK LIVE MATTER - NJ,**  
**GARDEN STATE BAR ASSOCIATION, GARDEN STATE EQUALITY,**  
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## PRELIMINARY STATEMENT

This extensively briefed case, which addresses statutory analysis of the criminal investigatory records exemption to the Open Public Records Act ("OPRA"), will also determine the fate of police accountability efforts in New Jersey. As civil rights organizations committed to increasing police accountability in this state, *amici curiae*<sup>1</sup> seek to illustrate the limitations that will be placed on efforts to ensure more accountable police practices should the Court affirm the decision of the Appellate Division. Like the Ghost of Christmas Yet to Come delivered a dire warning to Ebenezer Scrooge in *A Christmas Carol*, *amici* seek to paint a picture of a future in which police records, especially videos, are unavailable to the public.

*Amici* explain the importance of transparency to public trust and the corresponding importance of public trust to effective policing (Point II). Community trust in police, which has historically been hard to gain and difficult to maintain, will disappear if police executives become the gatekeepers for public records (Point II, A). *Amici* explain - as anyone who has heard of Rodney King, Eric Garner, or Laquan McDonald knows - that video records provide qualitatively different value as a trust-maintaining device than do non-pictorial records (Point II, B).

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<sup>1</sup>A list of *amici* and their respective statements of interest are included as Appendix A to this brief.

Lest the Court worry that *amici* ask the Court to make a policy, rather than a legal, determination, *amici* explain that the policy decision has already been made: the Legislature created an Open Public Records Act designed to provide broad access to governmental records in order to shine light on the actions of government officials that are of interest or concern to the public, such as the actions here. (Point I). Indeed, it is the government defendants here who seek an extraordinary judicial intervention by requesting an unjustifiably broad reading of the criminal investigatory exemption (Point III).

While there are numerous flaws in defendants' arguments that can be (and have previously been) addressed, *amici* submit this brief to address a particular limitation of the criminal investigatory exemption to OPRA. Records that are "required by law" to be made cannot be withheld under the exemption. The Appellate Division, however, adopted an improperly cramped reading of that term. The Attorney General of New Jersey has been statutorily granted great power to regulate the behavior of law enforcement agencies throughout the State, and makes the rules that all law enforcement must apply. Given the unique and statutorily-based role of the Attorney General in this State, Attorney General Guidelines and Directives carry the force of law (Point III). As such, the criminal investigatory records exemption to OPRA's disclosure requirement is inapplicable to



records required to be made pursuant to Attorney General Guidelines and Directives.

Because efforts to improve police accountability will be dramatically damaged should the Court affirm the Appellate Division's decision, because the decision below ignores the Legislature's mandate that OPRA be broadly construed, and because the Attorney General's Directives and Guidelines carry the force of law, *amici* respectfully urge the Court to reverse the decision below.

#### **STATEMENT OF FACTS AND PROCEDURAL HISTORY**

For the purpose of this brief, *amici* accept the statement of facts and procedural history contained in Plaintiff/Appellant's brief in Opposition to Defendants' Motion to Stay Pending Appeal & Motion for Leave to Appeal dated January 29, 2015.

#### **ARGUMENT**

##### **I. THROUGH THE OPEN PUBLIC RECORDS ACT, THE LEGISLATURE DECLARED NEW JERSEY'S STRONG PUBLIC POLICY IN FAVOR OF OPEN GOVERNMENT AND CRAFTED A BROAD STATUTORY RIGHT OF PUBLIC ACCESS TO GOVERNMENT RECORDS.**

This Court is well aware of the many times our courts have opined in favor of maximum transparency in government: "New Jersey can boast of a long and proud tradition[] of openness and [of] hostility to secrecy in government." *Educ. Law Ctr. v. N.J. Dep't of Educ.*, 198 N.J. 274, 283 (2009) (quoting *N. Jersey Newspapers v. Passaic Cty. Bd. Of Chosen Freeholders*, 127 N.J.

9, 16 (1992) (internal quotation marks omitted). As this Court has declared, it is "axiomatic in any democratically constituted society that the public business is indeed the public's business. The people have a right to know." *Tarus v. Borough of Pine Hill*, 189 N.J. 497, 507 (2007).

New Jersey has furthered the ideals of openness and transparency in government through both a statutory and a common law right of access to public records. See *Educ. Law Ctr.*, 198 N.J. at 302. Indeed, "our well-established common law protection of a citizen's right to access . . . [was] complemented by the Legislature's enactment of OPRA, which was intended to enhance the citizenry's statutory rights to government maintained records." *Id.* at 283.

The goal of the Open Public Records Act (OPRA) is "to maximize public knowledge about public affairs in order to ensure an informed citizenry and to minimize the evils inherent in a secluded process." *Mason v. City of Hoboken*, 196 N.J. 51, 64-65 (2008) (internal quotation omitted). "Those who enacted OPRA understood that knowledge is power in a democracy, and that without access to information contained in records maintained by public agencies citizens cannot monitor the operation of our government or hold public officials accountable for their actions." *Fair Share Housing Ctr., Inc. v. N.J. State League of Municipalities*, 207 N.J. 489, 501 (2011). "An underlying premise

of OPRA is that society as a whole suffers when governmental bodies are permitted to operate in secrecy." *Ibid.* (quotations omitted).

To accomplish these worthy and valued interests, the Legislature incorporated into OPRA mechanisms strongly favoring public access. For example, OPRA expressly states that government records be "readily accessible" to the public unless exempt, *N.J.S.A. 47:1A-1*, and that the "agency shall have the burden of proving that the denial of access is authorized by law." *N.J.S.A. 47:1A-6*. In order for a government record to be exempt from disclosure, there must be a "clear showing that one of [OPRA's] exemptions or exceptions incorporated in the statute by reference is applicable to the requested disclosure." *Asbury Park Press v. Ocean County Prosecutor's Office*, 374 *N.J. Super.* 312, 329 (Law Div. 2004). Moreover, OPRA specifically mandates that "any limitations on the right of access . . . shall be construed in favor of the public's right of access." *N.J.S.A. 47:1A-1*. As such, when deciding whether one of OPRA's exemptions applies, courts "must always maintain a sharp focus on the purpose of OPRA and resist attempts to limit its scope[.]" *Asbury Park Press v. Ocean County Prosecutor's Office*, 374 *N.J. Super.* at 329. See also *Times of Trenton Publ'g Corp. v. Lafayette Yard Cmty. Dev. Corp.*, 183 *N.J.* 519, 535 (2005); *Libertarian Party of Cent. New Jersey v. Murphy*, 384 *N.J. Super.*

136, 139 (App. Div. 2006). The Appellate Division's decision is not reflective of that focus.

**II. ACCESS TO POLICE RECORDS IS ESSENTIAL IN LIGHT OF THE NECESSARY CONNECTION BETWEEN TRUST AND EFFECTIVENESS OF LAW ENFORCEMENT AND THE ENORMOUS POWER WE GIVE POLICE.**

The Open Public Records Act is the Legislature's answer to the question "*sed quis custodiet ipsos custodies?*" or "who will guard the guards themselves?" As explained above, OPRA is rooted in a belief that "knowledge is power in a democracy" and that, as a result, government must be held accountable by the people it serves which cannot occur "without access to information maintained by public agencies." *Fair Share Hous. Ctr., Inc.*, 207 N.J. at 502; see also *Mason v. City of Hoboken*, 196 N.J. at 64-65, quoting *Asbury Park Press*, 374 N.J. Super. at 329. In other words, members of the public are the primary beneficiaries of the transparency mandated by OPRA. But members of the public are not the only beneficiaries. In real and demonstrable ways, government agencies - and most notable for *amici*, law enforcement agencies - profit from the increased public trust that comes from greater transparency.

The issue of police accountability has come to the fore throughout our nation. In the wake several recent displays of fractured relationships between police and the communities they serve, President Barack Obama created a task force charged with "identifying best practices and offering recommendations on how

policing practices can promote effective crime reduction while building public trust." *The Final Report of the President's Taskforce on 21<sup>st</sup> Century Policing*, May 2015, page 1, available at: [http://www.cops.usdoj.gov/pdf/taskforce/TaskForce Final Report.pdf](http://www.cops.usdoj.gov/pdf/taskforce/TaskForce%20Final%20Report.pdf). The President's Task Force, comprised of national leaders in the civil rights and policing fields, began its report by explaining that: "Trust between law enforcement agencies and the people they protect and serve is essential in a democracy. It is key to the stability of our communities, the integrity of our criminal justice system, and the safe and effective delivery of policing services." *Id.* The Task Force made dozens of recommendations, organized into six major themes, or pillars. *Id.* The first of those pillars, "Building Trust and Legitimacy" relies on concepts of procedural justice, recognizing that a police department cannot effectively enforce the law where its authority is perceived as illegitimate. *Id.*; See also Jeffrey Fagan, *Legitimacy and Criminal Justice*, 6 OHIO ST. J. CRIM. L. 123-140 (2008) (discussing relationship between perceptions of legitimacy and efficacy in the policing context). "Although organizations can be more or less dependent on legitimacy and public trust for their effectiveness and survival, police departments would appear to be particularly sensitive, given the often very high visibility of their actions and their dependence on public support." Brian Jackson, *Respect and Legitimacy – A*

*Two-Way Street: Strengthening Trust Between Police and the Public in an Era of Increasing Transparency*, RAND CORPORATION, p. 4 (2015). The President's Taskforce identified as a top priority for "Law enforcement agencies . . . [to] establish a culture of transparency and accountability to build public trust and legitimacy." *President's Taskforce* at 12.

To limit access to documents about policing activities, beyond those narrow circumstances when it is clearly essential to do so, is both counterproductive and counter to OPRA's presumption of transparency and its underlying principle of the need to hold those in power accountable to those they serve. A construction of OPRA that limits access in such a way also ignores the unique role that police play in our society. The "police have a monopoly on the authority to use non-negotiably coercive force." Brian Forst, *Improving Police Effectiveness and Transparency: National Information Needs on Law Enforcement*, BUREAU OF JUSTICE STATISTICS, 2008, p 1. Indeed, police have power to use their discretion in deciding whether to "challenge a citizen as he goes about his daily business, detain him, seize property, use force, and - both as individuals and organizations - exercise considerable discretion regarding when to escalate their actions." *Id.* While police have always held a unique role in our society, developments in the acquisition of military-style equipment have made the role even more exceptional. See,

e.g., Ted Sherman and Carla Astudillo, *Guns, armor and a grenade launcher: Do N.J. cops need weapons of war?* NJ ADVANCE MEDIA FOR NJ.COM, August 26, 2014, available at: [http://www.nj.com/news/index.ssf/2014/08/guns\\_armor\\_and\\_a\\_grenade\\_launcher\\_militarization\\_of\\_police\\_in\\_nj.html](http://www.nj.com/news/index.ssf/2014/08/guns_armor_and_a_grenade_launcher_militarization_of_police_in_nj.html) (documenting surplus military gear worth 32.8 million dollars obtained by law enforcement agencies in NJ over the last 2 decades, including hundreds of automatic rifles, night vision scopes, laser range finders, combat knives, armored trucks, three helicopters and the grenade launcher).

In short, the role of police in our society demands more - not less - transparency than other government agencies.

**A. THE APPELLATE DIVISION'S DECISION, IF ALLOWED TO STAND, WILL RESULT IN THE UNAVAILABILITY OF VIRTUALLY ALL LAW ENFORCEMENT RECORDS.**

Good policing requires good data. In a candid speech in February 2015, FBI Director James Comey explained the importance of data in good policing outcomes:

Not long after riots broke out in Ferguson late last summer, I asked my staff to tell me how many people shot by police were African-American in this country. I wanted to see trends. I wanted to see information. They couldn't give it to me, and it wasn't their fault. Demographic data regarding officer-involved shootings is not consistently reported to us through our Uniform Crime Reporting Program. Because reporting is voluntary, our data is incomplete and therefore, in the aggregate, unreliable.

I recently listened to a thoughtful big city police chief express his frustration with that lack of reliable data. He said he didn't know whether the Ferguson police shot one person a week, one a year, or one a century, and that in the absence of good data, "all we get are ideological thunderbolts, when what we need are ideological agnostics who use information to try to solve problems." He's right.

The first step to understanding what is really going on in our communities and in our country is to gather more and better data related to those we arrest, those we confront for breaking the law and jeopardizing public safety, and those who confront us. "Data" seems a dry and boring word but, without it, we cannot understand our world and make it better.

[James Comey, *Hard Truths: Law Enforcement and Race*, Speech at Georgetown University, Washington, D.C, February 12, 2015, available at: <https://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race>.]

At first glance there appears nothing contradictory between Director Comey's call for more available data and the Attorney General's position that records from individual matters should be exempt from disclosure. After all, one could reasonably say that aggregate data should be widely available but the reports that contribute to that data should remain private. In *O'Shea v. Township of West Milford*, for example, the Township argued it should be allowed to deny access to use of force reports under the criminal investigatory records exemption, but "nevertheless



gave plaintiff 'a summary report . . . that the police department provides to a county prosecutor in accordance with the Use of Force guideline.'" 410 N.J. Super. 371, 376 (App. Div. 2009).

But, such a construction requires blind faith in law enforcement to collect and provide accurate and complete data on critical issues. The Legislature made clear in OPRA that a "just trust us" position by government was incompatible with our democratic principles. Further, such faith has often sadly not been earned. Using Use of Force Reports (the records at issue in *O'Shea*) as an example, external audits of police departments reveal that use of force is widely underreported. See, e.g., United States Department of Justice, Civil Rights Division & United States Attorney's Office, District of New Jersey, *Investigation of the Newark Police Department*, July 22, 2014, p. 27 (finding that "the NPD tolerates significant underreporting of force by its officers").

If the criminal investigatory records exemption to OPRA is interpreted in the way advocated for by the Attorney General and endorsed by the Appellate Division, the public will have no choice but to accept the data presented by the government. The public will neither be able to vet the data given, examine pieces of data that are not properly analyzed by law enforcement agencies, nor discover instances when records should have been

created but were (either intentionally or unintentionally) never made.

Such limitations imperil police accountability efforts. In a 2015 study, the American Civil Liberties Union of New Jersey sought to examine racial disparities in the enforcement of low-level offenses throughout our state. ACLU-NJ, *SELECTIVE POLICING: RACIALLY DISPARATE ENFORCEMENT OF LOW-LEVEL OFFENSES IN NEW JERSEY*, December 2015, available at: [https://www.aclu-nj.org/files/7214/5070/6701/2015\\_12\\_21\\_aclunj\\_select\\_enf.pdf](https://www.aclu-nj.org/files/7214/5070/6701/2015_12_21_aclunj_select_enf.pdf). In almost all of the cities studied, meaningful analysis was hampered by woefully insufficient data collection and retention practices. See, e.g., *id.* at 11 (Asbury Park Police Department was unable to produce records with necessary information including: race, gender, location, and the other offenses a person was charged with); *id.* at 18-19 (discussing Jersey City's methodological limitations); *id.* at 36 (discussing Elizabeth's inability to keep consistent data and failure to track data regarding arrests of Latinos); *id.* at 61-62 (noting that Millville Police Department lost all arrest data for 2010 and 2011 in a data migration). These data problems make clear that real analysis of police departments cannot rely exclusively on aggregate data provided by those departments. For example, in Jersey City, there were significant - indeed, dramatic - discrepancies between the data the police department provided to

the FBI as part of the Uniform Crime Reports and the data provided to the ACLU-NJ under OPRA. *Id.* at p. 94 (Appendix B) (finding, for example, that in 2011 the Jersey City Police Department reported 259 marijuana arrests to the FBI but was able to produce evidence of only 98 arrests through OPRA).<sup>2</sup>

**B. PUBLIC ACCESS TO VIDEO IS PARTICULARLY IMPORTANT AS AN ACCOUNTABILITY TOOL BECAUSE VIDEO OFFERS UNIQUE DOCUMENTARY CAPACITIES.**

While the decision in the present case will impact the public's access to many types of police records, *amici* highlight a specific type of record that has been extremely important in ensuring police transparency and accountability, and is becoming even more so: video footage. For more than half a century - from Selma, Alabama, to Los Angeles, California - recordings of police have ushered in significant policy changes, resulting in increased police accountability. Recently, recording police officers - on dashboard cameras and on body worn cameras (BWCs) - has become so critical an accountability mechanism that the President's Taskforce on 21st Century Policing has recommended the use of BWCs. *Taskforce on 21<sup>st</sup> Century Policing* at p. 36. Presidential candidates, too, have identified the utility of

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<sup>2</sup>While documents related to individual arrests would be available under OPRA even under the Appellate Division's interpretation of OPRA (*North Jersey Media Group, Inc. v. Township of Lyndhurst*, 441 N.J. Super. 70, 91 (App. Div. 2015) (citing N.J.S.A. 47:1A-3(a))), documents related to other critical police events - like stops, searches, and use of force - would potentially be kept from the public.

mechanisms for recording police interactions. See, e.g., *Hillary for America*, available at: <https://www.hillaryclinton.com/the-four-fights/strengthening-americas-families/> ("we will make sure every police department in the country has body cameras to record interactions on patrol"); *Bernie Sanders 2016*, available at: <https://berniesanders.com/issues/racial-justice/> ("federally fund and require body cameras for law enforcement officers to make it easier to hold them accountable"); Eric Bradner, *John Kasich 'open' to police body cameras*, CNN, August 10, 2015, available at: <http://www.cnn.com/2015/08/09/politics/john-kasich-police-body-cameras/>; Jeremy Diamond, *Christie: Body cameras good for police officers and public*, CNN, May 13, 2015, available at: <http://www.cnn.com/2015/05/13/politics/christie-police-body-cameras/>; Ben Jacobs, *Donald Trump tells the Guardian police body cameras 'need federal funding,'* GUARDIAN, October 13, 2015, available at: <http://www.theguardian.com/us-news/2015/oct/13/donald-trump-police-body-cameras-federal-funding/>; *Ben Carson 2016*, available at: <https://www.bencarson.com/issues/issue/police> ("To help support and protect police and citizens alike, states and localities should begin utilizing body cameras on police officers so we can see first-hand the incidents that are at the heart of so much turmoil"). It has become well-accepted that "video footage has the potential to expose officer misconduct and exonerate

civilians whose actions have been falsely characterized by the police." *Developments In The Law - Policing: Chapter Four: Considering Police Body Cameras*, 128 HARV. L. REV. 1794, 1799 (2015).

While neither dashboard cameras nor body worn cameras are a cure to all that ails police departments, time and again video footage has served as a powerful tool to increase accountability. Video footage has defined momentous events and shaped public perceptions. For example, the brutal suppression of protest at Tiananmen Square in 1989 was crystallized by the now-famous video<sup>3</sup> of a lone man standing in a white shirt in front of a column of tanks. Likewise, few can forget footage of police officers attacking protesters on "Bloody Sunday" in Selma, Alabama in 1965,<sup>4</sup> which "'touched a nerve deeper than anything that had come before'" and was "a turning point in the civil rights movement." *Demarest v. Athol/Orange Cmty. TV, Inc.*, 188 F. Supp. 2d 82, 96-97 (D. Mass. 2002) (quoting John Lewis & Michael D'Orso, *Walking with the Wind: A Memoir of the Movement*, 344 (1998)).

More recently, the public debate about abusive police practices has in many ways been spurred by video footage

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<sup>3</sup><https://www.youtube.com/watch?v=YeFzeNAHEhU>

<sup>4</sup><https://www.youtube.com/watch?v=P7vrrYVyN3g>

documenting the deaths of Eric Garner,<sup>5</sup> Walter Scott,<sup>6</sup> Tamir Rice,<sup>7</sup> Sandra Bland,<sup>8</sup> Laquan McDonald<sup>9</sup> and others. These videos have not only focused attention on police misconduct, they have also served to exonerate people falsely charged with crimes. One need not look beyond our own state for a sobering example.

On June, 7, 2012, Bloomfield police officers followed Marcus Jeter onto the Garden State Parkway and stopped him. Hasime Kukaj, *Bloomfield officers convicted in 'dashcam' case*, BLOOMFIELD LIFE, November 5, 2015, available at: <http://www.northjersey.com/news/crime-and-courts/bloomfield-officers-convicted-in-dashcam-case-1.1449629> One officer tried to get Jeter to leave his vehicle but Jeter refused saying that he feared for his life. *Id.* Another officer then arrived and struck the front of Jeter's car. *Id.* The officers then broke the car window and pulled Jeter from the car. *Id.* The police reports that the officers wrote indicated that Jeter attempted to grab one officer's gun and struck the other officer. *Id.* As a result, Jeter was charged with eluding, resisting arrest, aggravated assault and attempting to disarm a police officer. *Id.* In

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<sup>5</sup><https://www.youtube.com/watch?v=LfXgYwyzOpM>

<sup>6</sup><http://www.nytimes.com/video/us/100000003615939/video-shows-fatal-police-shooting.html>

<sup>7</sup><https://www.youtube.com/watch?v=x1GaaMYhrw0>

<sup>8</sup><https://www.youtube.com/watch?v=CaW09Ymr2BA>

<sup>9</sup><http://www.theguardian.com/us-news/video/2015/nov/24/chicago-officials-release-video-showing-police-killing-of-laquan-mcdonald-video>

discovery Jeter received only the dashboard video from one officer's patrol vehicle. *Id.* It was only through an Open Public Records Act request that Jeter's lawyer obtained a second dashcam video: "That video showed Jeter's hands up in a surrender position throughout the encounter." *Id.* After reviewing the video, the Prosecutor dismissed all charges against Jeter and sought and obtained an indictment, and eventually a conviction, against both officers. *Id.* But for the video obtained through OPRA, Jeter would have faced a likely conviction and jail time and the officers' misconduct would have gone unpunished. See Sarah Wallace, *Exclusive: Dashcam Video Clears NJ Man*, EYEWITNESS NEWS, Feb. 21, 2014, available at: <http://abc7ny.com/archive/9440401/> (reporting the Bloomfield Police Department's internal affairs division initially found no wrongdoing by the police officer).

But police recordings do not just serve the public - they are an accountability tool for police too, debunking false allegations of misconduct. See, e.g., PoliceOne, *Video: NJ cop's dash cam refutes man's harassment claims*, September 22, 2014, available at: <http://www.policeone.com/investigations/articles/7587619-Video-NJ-cops-dash-cam-refutes-mans-harassment-claims/>.

That police videos serve as a win-win accountability tool explains their proliferation around the country and in New Jersey. Stefanie Dazio and Michael Phillis, *Use of cameras for*

*police cars and officers on the rise in N.J.*, THE RECORD, September 28, 2014, available at: <http://www.northjersey.com/news/use-of-cameras-for-police-cars-and-officers-on-the-rise-in-n-j-1.1098028?page=all>.

However, the value of police recordings (dashcams and BWCs) is significantly undermined where the public is denied access to those recordings. After all, "[w]ithout an affirmative right of public access, police departments would have a strong incentive to only release footage in which they appear sympathetic - law enforcement officials have succumbed to such temptation in the past." Abrams Institute, *Police Body Cam Footage: Just Another Public Record*, December 2015, p. 7; see also Brittney M. Wehner, *N.J. cop could have given woman a ticket, here's what she did instead*, SOUTH JERSEY TIMES, Jan. 27, 2016, available at: <http://www.nj.com/burlington/index.ssf/2016/01/south-jersey-cop-assists-senior-woman-with-snow-re.html> (showing video of officers exercising discretion to aid senior citizen where police department posted recording on its Facebook page the day after the incident); Daniel Victor and Damien Cave, *Police Release Video of Traffic Stop of Princeton Professor*, NEW YORK TIMES, February 11, 2016, available at: <http://www.nytimes.com/2016/02/12/us/police-release-video-of-traffic-stop-of-princeton-professor.html> (showing video of arrest one week earlier that had been publically critiqued where



video showed police behaved calmly); see generally Kimberly Kindy and Julie Tate, *Police withhold videos despite vows of transparency: But officers investigated in fatal shootings are routinely given access to body camera footage*, WASH. POST., October 8, 2015, available at: <http://www.washingtonpost.com/sf/national/2015/10/08/police-withhold-videos-despite-vows-of-transparency/> (noting that nationwide, less than half of police killings that have been captured on video have been publicly released; "and in several of those cases, the footage . . . was severely cut or otherwise edited.").

While New Jersey law enforcement - as evidenced by the Attorney General's position in this case - has taken the view that police videos should be presumptively inaccessible, public officials around the country have recognized that dashboard camera and body worn camera programs without public accessibility are merely mechanisms for mass surveillance. As a result, these public officials recognize the importance of making police recordings available to the public. See, e.g., Peter Hermann & Aaron C. Davis, *As Police Body Cameras Catch On, a Debate Surfaces: Who Gets to Watch?*, WASH. POST, Apr. 17, 2015, available at: [http://www.washingtonpost.com/local/crime/as-police-body-cameras-catch-on-a-debate-surfaces-who-gets-to-watch/2015/04/17/c4ef64f8-e360-11e4-81ea-0649268f729e\\_story.html](http://www.washingtonpost.com/local/crime/as-police-body-cameras-catch-on-a-debate-surfaces-who-gets-to-watch/2015/04/17/c4ef64f8-e360-11e4-81ea-0649268f729e_story.html) (quoting Delroy Burton, Chairman of D.C. Police Union,

explaining "We want to provide people with the ability to view what we do."); see also *id.* (quoting Baltimore County Executive Kevin B. Kamenetz noting "The quicker we get [recordings] out to the public to clarify what we perceive to be the facts, the better it is.").

As this Court has recognized, video, even more than photographs, written accounts, or unaided memory, has the capacity to record events in living detail. See *Tarus*, 189 N.J. at 512 (2007) ("[V]ideo cameras present distinct advantages over other recording devices."). Thus, Defendants' position that they should be allowed to withhold videos because narrative descriptions (presented by law enforcement) of the same incident already exist is simply unavailing. Their position would deprive the public of a uniquely vivid and reliable means of gathering, documenting and conveying information. Indeed, the United States Supreme Court recognized the unique documentary capacities of video in *Scott v. Harris*, 550 U.S. 372 (2007), in which the Court considered whether the police violated the Fourth Amendment by attempting to end a high-speed chase by ramming the fleeing motorist from behind. The entire chase was captured on the police cruiser's onboard camera. The Court discussed the videotape at length, relying on it to settle factual disputes and to inform the constitutional analysis. See *id.* at 378 ("The videotape quite clearly contradicts the version of the story

told by respondent and adopted by the Court of Appeals."); *id.* at 390 (Stevens, J., dissenting) (discussing the videotape at length and concluding that "the tape actually confirms, rather than contradicts, the lower courts' appraisal of the factual questions at issue"); *id.* at 387 (Breyer, J., concurring) ("[W]atching the video footage of the car chase made a difference to my own view of the case."). The Court found the video evidence so instructive that it took the unprecedented step of posting the video to its website. See *id.* at 378 n.5.<sup>10</sup>

The public places enormous trust in police officers. But government entities cannot simply say "trust us" and hope that the community will merely assume that misconduct is being addressed appropriately. The Legislature passed OPRA to ensure that the public itself has the tools and power to "guard the guardians." Where, as here, there exists video that shows the public what happened, failure to provide that recording undermines public confidence in the ability of government to hold police accountable and undermines the spirit, letter, and intent of OPRA.

**III. RECORDS REQUIRED TO BE MADE PURSUANT TO ATTORNEY GENERAL GUIDELINES OR DIRECTIVES CATEGORICALLY DO NOT FALL WITHIN THE CRIMINAL INVESTIGATORY RECORDS EXEMPTION TO OPRA.**

Defendants urge this Court to adopt broad readings of two exemptions (the "ongoing investigations" exemption and the

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<sup>10</sup>[http://www.supremecourt.gov/media/06/scott\\_v\\_harris.wmv](http://www.supremecourt.gov/media/06/scott_v_harris.wmv)

"criminal investigatory records" exemption) to the access requirements of OPRA, which would result in large swaths of records related to police accountability being removed from public view. The State's overtures must be rejected, based on the intent of the Legislature, prior case law, and practical realities.

OPRA's exemptions for records of "investigations in progress" and for "criminal investigatory records" are meant to be limited exemptions to the statute's general requirement of disclosure. As previously noted, the Legislature made clear in OPRA that, as an overarching principle, if there is any doubt whether or not the public is entitled to access, such doubt must be resolved in favor of transparency. *N.J.S.A. 47:1A-1* ("any limitations on the right of access accorded by [OPRA] shall be construed in favor of the public's right of access"); see also Point I, *supra*. Therefore, when an exemption to the disclosure requirement exists and that exemption can be read either broadly or in a limited manner, the statute mandates the latter. *Id.*

Both exemptions raised by the defendants are limited by their own terms. First, the ongoing investigatory exemption to OPRA can only be invoked when the record "pertain[s] to an investigation" and its "release would be inimical to the public interest." *N.J.S.A. 47:1A-3*. In addition, the record at issue must not have previously been available to the public. *Id.* In

their appellate briefs, Plaintiff and *amicus* American Civil Liberties Union of New Jersey amply covered the reasons why that exemption does not apply. See, ACLU-NJ's Appellate Division Brief at 5-7; Plaintiff's Appellate Division Brief in Opposition to Defendants' Motion to Stay Pending Appeal & Motion for Leave to Appeal (Plaintiff's Appellate Division Brief) at 29-32; Plaintiff's Appellate Division Supplemental Brief in Opposition to Defendants' Appeal (Plaintiff's Appellate Division Supplemental Brief) at 24-34. Most notably, (1) for many of the records, Defendant did not establish that they were not in fact created prior to the commencement of an investigation, and thereby were previously available to the public and did not pertain to an investigation, Plaintiff's Appellate Division Brief at 31-32, Plaintiff's Appellate Division Supplemental Brief 33-34, and (2) assessment of whether or not disclosure of a record is "inimical to the public interest" requires a record-by-record analysis, and thus precludes the categorical restrictions that Defendants seek to invoke. ACLU-NJ's Appellate Division Brief at 8-12.

A "criminal investigatory record" is a record that is "not required by law to be made, maintained or kept on file" and that "pertains to any criminal investigation or related civil enforcement proceeding." *N.J.S.A.* 47:1A-1.1. A record must satisfy both prongs of that definition to be exempt from public

access. *Id.*; see also *O'Shea*, 410 N.J. Super. at 380-81; *Serrano v. South Brunswick Tp.*, 358 N.J. Super. 352 (App. Div. 2003). Plaintiff and *amicus* ACLU-NJ, in their briefs below, explain that, for many reasons, the documents that Plaintiff requested do not fall within that exemption. As to the second prong, the records requested do not pertain to an investigation because the records are factual by nature rather than investigatory, and many of the records sought are routinely made regardless of whether any crime occurs. See Plaintiff's Appellate Division Brief at 27-28. Regarding the requirement that the records sought to be withheld are "not required by law to be made, maintained or kept on file," Plaintiff explains that the exemption is inapplicable to all of the requested records, as the records sought were required to be made either by statute, by regulation, by Attorney General Guidelines, or local order. See Plaintiff's Appellate Division Brief at 24-27; Plaintiff's Appellate Division Supplemental Brief at 41-52. Further, many of the documents are required "to be . . . maintained" pursuant to the records retention schedule adopted by the Records Management Service in implementing the Destruction of Public Records Law (*N.J.S.A.* 47:3-15 et seq.) and the regulations adopted in furtherance thereof. *N.J.A.C.* 15:3-1.1. Plaintiff's Appellate Division Supplemental Brief at 45-52. *Amici* support those arguments.

*Amici* supplements the argument solely to more fully address the specific impropriety of applying the criminal investigatory records exemption to records that are required to be made pursuant to Attorney General Guidelines and Directives. Because Attorney General Guidelines and Directives are binding and uniform statewide rules that have been treated by the State and, in significant prior contexts, by the Legislature and this Court as akin to regulations, they carry the "force of law," see *O'Shea*, 410 *N.J. Super.* at 384. By holding otherwise, the decision now on appeal conflicts both with case law upon which advocates (and the State) have been relying, as well as with practical reality.

As held by this Court: "The Attorney General is given broad powers under the laws to adopt 'Guidelines' apparently intended to be binding on all law enforcement agencies." *Doe v. Poritz*, 142 *N.J.* 1, 23 (1995). This statutory authority stems from the Criminal Justice Act of 1970, *N.J.S.A.* 52:17B-97 *et seq.*, which declares the Attorney General as the "chief law enforcement officer of the State." In accordance with this role, the Attorney General has the statutory responsibility to provide for "'uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State.'" *N.J.S.A.* 52:17B-98. The Attorney General thus exerts broad authority over law enforcement agencies and may issue mandatory

guidelines and directives to prosecutors and law enforcement agencies. *N.J.S.A.* 52:17B-112(b).<sup>11</sup> Further, the Legislature specifically imposed a statutory duty on all law enforcement officers in the State "to cooperate with and aid the Attorney General . . . in the performance of [his] duties," thus requiring those Guidelines and Directives to be followed. *Id.*; see also *State v. Winne*, 12 *N.J.* 152, 168-169 (1953).

The determination that Attorney General Guidelines and Directives carry the "force of law," see *O'Shea*, 410 *N.J. Super.* at 384, is further supported by the manner in which this Court and the Legislature have treated Guidelines and Directives in various contexts. While the Legislature most often calls upon the Attorney General to implement laws through regulations, it has also sets forth in statute that implementation can occur through "guidelines." See, e.g., *N.J.S.A.* 52:17B-194.8 ("The Attorney General may adopt guidelines to effectuate the purposes of [the "Silver Alert System]"); *N.J.S.A.* 52:17B-194.3 (setting forth that the Attorney General may effectuate the Amber's Plan Act through "guidelines"). And this Court has recognized that Attorney General Guidelines institute sufficiently binding

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<sup>1111</sup> Attorney General Guidelines and Directives are fairly rare. Based on the Attorney General's website (<http://www.state.nj.us/lps/dcj/agguide.htm> and <http://www.state.nj.us/lps/dcj/directiv.htm>), it appears that, over the past five years, there are approximately two to three Directives and two to three Guidelines issued on average per year.



state-wide policies and practices so as to satisfactorily remedy otherwise unconstitutional practices by individual counties or employees. See, e.g., *State v. Brimage*, 153 N.J. 1, 24-25 (1998) (instructing the Attorney General to issue new plea offer guidelines to assist counties in applying the Comprehensive Drug Reform Act of 1997, to remedy disparate treatment that violated equal protection principles); *Doe v. Poritz*, 142 N.J. at 111 (1995) (incorporating the Attorney General's Guidelines for implementing convicted sex offender registration and community notification in conjunction with the statute, and finding the overall scheme constitutional based on the modified Guidelines); *State v. Lagares*, 127 N.J. 20, 32 (1992) ("Rather than striking down Section 6f, we construe it in a manner that upholds its constitutionality. . . . Accordingly, we interpret the statute to require that guidelines be adopted to assist prosecutorial decision-making with respect to applications for enhanced sentences [under the statute]"). Simply put, Attorney General Guidelines and Directives are imbued with an authority even beyond that which exists with internal policies or orders issued by other agencies.

Therefore, in 2008, the Appellate Division was correct to hold that Uniform Force Reports - which are required to be made pursuant to Attorney General Guidelines - do not fall under the "criminal investigatory records" exemption to OPRA. *O'Shea*, 410

*N.J. Super.* at 385. Specifically, the Attorney General's Use of Force Policy instituted a mandatory reporting requirement for "all instances when physical, mechanical or deadly force is used." Attorney General's Use of Force Policy III.A.2. As is the case here, in *O'Shea*, a requester requested the reports, and the State improperly invoked the "criminal investigatory records" exemption to OPRA. The court held: "There can be no doubt that [Attorney General Guidelines] have the force of law in respect of the duties of law enforcement agencies to conform to the requirements regarding the use of force and accountability for it." *O'Shea*, 410 *N.J. Super.* at 384. As the Use of Force Reports were thus "required by law to be made, maintained, or kept on file," the "criminal investigatory records" exemption was inapplicable, and the Appellate Division ordered the reports to be disclosed. *Id.* at 388.

Thus, to the extent Plaintiff in the present case sought records required to be made pursuant to the force of an Attorney General Guideline or Directive, this Court has an additional reason - beyond the more general persuasive reasons that Plaintiff and *amici* presented in favor of disclosure - to declare that such records do not fall within the criminal investigatory records exemption and must be disclosed.<sup>12</sup>

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<sup>12</sup> It is unclear whether all Use of Force reports have been turned over in the present case (Defendants contend that all Use

Defendants attempt to rely on Right-to-Know Law cases for support of their cramped interpretation of the public's right to access. See *Lyndhurst*, 441 N.J. Super. at 96; Brief of Defendants-Respondents in Opposition to Appellant's Motion for Leave to Appeal at 8-14. That reliance is misplaced.

The Appellate Division suggested that there was legislative "acquiescence" based on the Legislature's use in OPRA of a phrase that was interpreted in a restrictive way under the Right-to-Know Law, and that use of "the same language or failure to amend the statute, is evidence that such construction is in accordance with the legislative intent." *Lyndhurst*, 441 N.J. Super. at 96. That argument must be rejected for numerous reasons. First, the phrase at issue was crafted in a different context in OPRA than it was in the Right-to-Know Law. Indeed, a "criminal investigatory records" exemption did not even exist under the Right-to-Know Law. Instead, in the Right-to-Know Law, the phrase was part of an overarching definition of public records. The definition was narrowly construed, limiting access. See *Lyndhurst*, 441 N.J. Super. at 93. Yet, as acknowledged by the Appellate Division in the present case, the legislative

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of Force Reports have now been turned over while Plaintiffs claim that the disclosures are not complete). However, even if Defendants have now disclosed all such records, it remains exceedingly important for the Court to clarify the contours of the exception and thereby resolve any lingering uncertainty between *O'Shea* and the Appellate Division decision in the present case.

response was to turn the approach to questions of access on its head, requiring public access *except* when subject to specific limited exemptions. *Id.* The Legislature thus *did* "amend the statute," incorporating an overarching change in how the State (and the courts) should address questions regarding public records, requiring a new analysis of records with a bent towards transparency (*i.e.*, "limitations on the right of access accorded by [OPRA]. . . shall be construed in favor of the public's right of access"). *N.J.S.A.* 47:1A-1. See also *Mason v. City of Hoboken*, 196 *N.J.* at 64 (OPRA advances its purpose of maximizing public knowledge about public affairs by mandating that records be readily accessible, that limitations on access be construed in favor of the public's right of access, and by defining "government records" broadly.); *O'Shea*, 410 *N.J. Super.* at 379 (same).

In short, the Appellate Division's interpretation conflicts with OPRA's mechanisms which maximize public access, and which incorporate a fundamentally different approach than its predecessor. As stated by this Court: "statutes must be read in their entirety; each part or section should be construed in connection with every other part or section to provide a harmonious whole." *Bedford v. Riello*, 195 *N.J.* 210, 224 (2008) (citations omitted). Here, the Appellate Division did not look at the statute as a whole. It failed to adhere to the

statute's overarching statutory presumption in favor of access. And it failed to "maintain a sharp focus on the purpose of OPRA and resist attempts to limit its scope[.]" *Asbury Park Press*, 374 N.J. Super. at 329.

Further, specific to *amici's* present discussion regarding Attorney General Guidelines and Directives, none of the Right-to-Know cases cited by Defendants even touched upon records mandated by Attorney General Guidelines, and knowledge of where the Court would fall on that then-yet-unaddressed question cannot be imputed to the Legislature.

Indeed, if "acquiescence" of the Legislature is to be considered, it falls in favor of the limited reading of the exemption that *amici* and Plaintiff suggest. The first appellate case that addressed whether the criminal investigatory records exemption applies to records required to be made pursuant to Attorney General Guidelines was *O'Shea v. West Milford, supra*, which was decided in 2008. Defendants cite to no action by the Legislature in the past seven years that has sought to alter the status quo that has existed since that time. If the Appellate Division in *Lyndhurst* is to be consistent, that "failure to amend the statute, is evidence that [the *O'Shea* court's] construction is in accordance with the legislative intent." *Lyndhurst*, 441 N.J. Super. at 96.

## CONCLUSION

"New Jersey can boast of a long and proud tradition of openness and hostility to secrecy in government." *Educ. Law Ctr.*, 198 N.J. at 283. The position advanced by Defendants would threaten that tradition and would undermine efforts to achieve OPRA's goal of government accountability (here, specifically police accountability) through increased transparency. That position must be rejected. While an affirmance of the Appellate Division's construction of OPRA would not impact Ebenezer Scrooge, Bob Cratchit or Tiny Tim, the future of police accountability for the communities from which Laquan MacDonald, Walter Scott and Tamir Rice came would be bleak indeed. For the foregoing reasons, the decision of the Appellate Division should be reversed.

Respectfully submitted,



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Dated: February 26, 2016

**APPENDIX A:**

**Statements of Interest of Amici**

## **American Civil Liberties Union of New Jersey**

1. The American Civil Liberties Union of NJ (ACLU-NJ) is a private, non-profit, non-partisan membership organization dedicated to the principle of individual liberty embodied in the Constitution. Founded in 1960, the ACLU-NJ has more than 12,000 members and donors and tens of thousands of supporters throughout New Jersey. The ACLU-NJ is the state affiliate of the national American Civil Liberties Union, which was founded in 1920 for the identical purpose and is composed of 500,000 members and donors with millions of supporters nationwide.

2. For decades, the ACLU-NJ has worked on issues affecting the right of New Jersey's citizenry, enshrined in the common and statutory law of this State, to obtain meaningful and timely access to appropriate information concerning the workings of government. To further our goals, ACLU-NJ formed its Open Governance Project to provide legal assistance and public education on these issues. A particular emphasis of our work has been on ensuring police accountability.

3. The ACLU-NJ has been granted leave to participate as *amicus curiae*, in numerous New Jersey Supreme Court cases involving open governance issues, including: *McGovern v. Rutgers, et al.*, 211 N.J. 94 (2012); *Fair Share Housing Center, Inc. v. New Jersey State*, 207 N.J. 489 (2011); *Kovalcik v. Somerset County Prosecutor's Office*, 206 N.J. 581 (2011).



## **Association of Black Women Lawyers of New Jersey**

4. The Association of Black Women Lawyers of New Jersey (ABWL) was born of the determination of its founders in 1975 to produce an organization inherently designed to meet the needs of women and students interested in the practice of law. The ABWL is a non-partisan organization that promotes and encourages the participation of African-American women in field of law. The oldest women's bar association in the State of New Jersey, ABWL has spent the past four decades as an essential link in the strategy to gain the legal, educational, economic and social empowerment needed to enhance the quality of life for African-American women, their families and the community at large.

5. The Association of Black Women Lawyers is committed to providing outstanding service to women and to the community-at-large, as demonstrated by an untiring commitment to improving the quality of life not only of women of color, but of all women and the general community. The ABWL is committed to ensuring that relations between police and the communities they serve thrive and believes that transparency assists in that effort.

### **Black Lives Matter - NJ**

6. Black Lives Matter-NJ (BLM-NJ) is a grassroots organization that works to socially, politically, and economically empower Black people; as well as, to end police brutality, mass incarceration, and all forms of

institutionalized racial oppression. Founded in 2015, BLM-NJ is the state chapter of the national Black Lives Matter Network. BLM-NJ has members located throughout the state, and works with a number of other organizations and coalitions who have the common goals of promoting social justice and ending systemic oppression. BLM-NJ works to achieve its goals through political education for the public, community service programs, lobbying legislators, and direct action.

7. BLM-NJ strongly advocates for transparency in government and policing. BLM-NJ works under the principle that justice and a harmonious society cannot be attained without transparency in law enforcement and all forms of governance. Not only is such trust necessary to hold individuals and groups accountable for their actions, but it is also imperative for building the mutual trust needed for a civil, and safe society.

#### **Garden State Bar Association**

8. The Garden State Bar Association (GSBA) is a professional organization in New Jersey for African-American attorneys. The activism of Black law students during the late 1960's, after the Newark riots, caused several Black attorneys, to organize the Concerned Legal Associates. The organization initially focused on issues such as the hiring of minority faculty in the law schools, participation in community legal

services, and the examination of the bar passage rate for Black graduates in the early 1970's. In 1975, the Concerned Legal Associates changed its name to the Garden State Bar Association to reflect a growing statewide constituency. The organization's membership is now more diverse and has greatly increased since its inception, as has the number of African American attorneys in the State of New Jersey.

9. Today, the Garden State Bar Association strives to enhance, improve, and mainstream the status of African-American attorneys as well as attorneys belonging to other minority groups in New Jersey. The GSBA is active in opposing discrimination in the legal profession, specifically, and throughout society, generally, on the basis of race, ethnicity, or sex, and to improving the overall administration of justice. The GSBA believes that transparency in government activity, particularly, police activity, is critical to combating discrimination and other potential abuses.

#### **Garden State Equality**

10. Garden State Equality (GSE) is New Jersey's statewide advocacy and education organization for the lesbian, gay, bisexual, and transgender community. GSE, in collaboration with community partners, led efforts to ensure nondiscrimination for transgender and gender nonconforming people in NJ, pass the most comprehensive anti-bullying law in the country, end sexual

orientation and gender identity/expression change efforts in NJ (sometimes called conversion therapy), and bring marriage equality to the Garden State.

11. In this post-marriage environment, GSE's main focuses are youth, transgender people, and seniors, and our work on those issues is informed by racial, economic, and disability justice concerns. GSE has been active in seeking to bring accountability to the Newark Police Department and recognizes the importance of transparency in working to combat police abuses.

#### **Latino Action Network**

12. The Latino Action Network (LAN) is a grassroots organization composed of individuals and organizations committed to engaging in collective action at the local, state and national levels in order to advance the equitable inclusion of the diverse Latino communities in all aspects of United States society.

13. Since its founding in 2009, LAN has advocated on the issues of greatest importance to the Latino community, including criminal justice reform. LAN members have testified at public hearings, written opinion pieces for many publications, met with legislators, and participated in legal challenges to champion its various causes. LAN believes that work to address a fairer criminal justice system requires transparency.

## **Latino Leadership Alliance**

14. The Latino Leadership Alliance is a statewide advocacy organization established in 1999 to empower Latinos and educate them on social, governmental and political issues that affect their lives. Since 2008, LLA has monitored police activities and citizen encounters through the use of public access to police records. The access has allowed LLA to provide data to police agencies and prosecutors so they may make evidence-based decisions regarding policy and training needs for law enforcement personnel. LLA's data collection and analyses are instrumental in shaping statewide policing policy which enhances public safety and promotes public trust. Following review of thousands of records with errors or inaccuracies, it was clear that independent, external examination of records was warranted and assists law enforcement officials in holding police employees accountable. Without access to the records, we are left to rely upon police executives to critique their own work and shortcomings. Transparency in police practices is a hallmark of democratic policing and LLA support efforts to maintain the level of access the public once had in our state to better understand the role of police and how they interact with people daily.

### **LatinoJustice PRLDEF**

15. LatinoJustice PRLDEF formerly known as the Puerto Rican Legal Defense & Education Fund is a national not for profit civil rights organization that has defended the constitutional rights and equal protection of all Latinos under the law. Our continuing mission is to promote the civic participation of the greater pan-Latino community in the United States, to cultivate Latino community leaders, and to engage in and support law reform litigation across the country addressing criminal justice, education, employment, fair housing, immigrants' rights, language rights, redistricting and voting rights. During our 44-year history, LatinoJustice has litigated numerous cases in both state and federal courts challenging multiple forms of discrimination including discriminatory policing and law enforcement practices.

### **People's Organization for Progress**

16. The People's Organization for Progress (POP) is an independent, grassroots, community based, politically progressive association of citizens working for racial, social and economic justice, and greater unity in the community. Founded in August of 1983, POP grew out of the struggles for justice of the African-American community during the late sixties and seventies. POP has organized marches, demonstrations, vigils, rallies, public meetings, petition

drives, letter writing campaigns and press conferences around various issues. Representatives of POP have made presentations before various government agencies and legislative bodies.

17. In recent years, POP has been particularly active around the issue of police brutality. It has waged a vigorous fight for justice for Earl Faison who died within 45 minutes after being wrongfully taken into custody by police in Orange, New Jersey. Currently, POP is supporting the families of Abdul Kamal, Kashad Ashford, and Jerome Reid who died at the hands of law enforcement officers, and Radazz Hearn who was wounded. POP recognizes that access to documents related to police behavior is necessary, but not sufficient, to end police brutality.