

petition for writ of certiorari to the U.S. Supreme Court), the District of Columbia will develop, maintain and/or implement a document management protocol or system to ensure the preservation of records and documents arising from mass demonstrations and protests, and to be used also in other litigation brought against the District of Columbia as may be deemed appropriate by the Attorney General, encompassing the Office of the Attorney General and the MPD Office of General Counsel that provides for the following:

- i. Maintain an index and log of any documents, items, things, recorded or electronic/computer/digitized material (hereinafter "record(s)") that are directly related to a complaint or litigation hold letter for matters arising from mass demonstrations and protests or other cases as may be deemed appropriate by the Attorney General;
- ii. The index will assign a unique identifier to each record and, if possible, will be numbered or identified in a continuous or contiguous manner. One of the intents of the parties is to provide an internal "audit trail" that would alert the District to any missing records or evidence.
- iii. The indexing for matters arising from mass demonstrations and protests (or other cases as may be deemed appropriate by the Attorney General) is intended as an internal control over document management; use of the indexing system described in this section, (III)(B)(1), is mandatory for all records received or reviewed in connection with a case for matters arising from mass demonstrations and protests (or other cases as may be deemed appropriate by the Attorney General); in the event that, due to the physicality or medium of an item, a copy of the item cannot be maintained or stored within a computer-based document management system, the requirements of above-referenced sub-paragraph (ii)

still requires such items to be indexed and logged in an effective manner, i.e. in a central hard copy log or a dedicated spreadsheet; and the fact that a record is indexed is not intended to establish that the record is discoverable, relevant or admissible;

iv. Communications that are protected by attorney-client privilege or protected as work product are not required or intended to be subject to this particular indexing, unless so desired by the District of Columbia in its own discretion;

v. Records shall be indexed in the indexing system described and required by section (III)(B)(I) as soon as possible upon collection or review.

Status

As previously reported, pursuant to D.C. Code § 1-207.31 and 31 U.S.C. § 1537, which authorize the District government to utilize services of the United States government on a reimbursable basis, the OAG is using a contract administered by the U.S. Department of Justice to develop the OAG document management system for the mass demonstration cases. The contract provides information technology and automated litigation support services for the Department of Justice and other agencies. Under that contract, on January 7, 2011, a task order was awarded to Lockheed Martin Systems, Inc. to develop a mass demonstration document management system for OAG that meets all requirements of the court's order. Development of the OAG Document Management System began on January 13, 2011. While the original contract with DOJ (Mega 3) expires at the end of November, 2013, the task order is currently in a re-bid status. Lockheed Martin will continue to provide support under the current contract until its expiration; if the award goes to a company other than Lockheed Martin, Lockheed Martin will transition all the work to the new contractor and will be available to assist with the project until

the transition is complete. Thus, the OAG will continue to maintain its document management system.

The system is centered around a LexisNexis Concordance litigation support system maintained at the OAG. In any matter for which a mass demonstration complaint is received or a litigation hold letter in a mass demonstration incident is issued, as soon as relevant documents are identified (be they hardcopy, audio-visual media, or electronic in origin) they are gathered and forwarded to the OAG Document Management System center for processing. This is done pursuant to internal document tracking and handling procedures to be implemented at District agencies. For each document processed, a “universal unique identifier” is assigned. This identifier has a sequential, non-volatile field value (not changed when records are inserted into or deleted from a Concordance database) and does not appear on any pages produced from a database. OAG is able to use records included within the document management system to respond to discovery, for which production-specific Bates numbers will then be assigned to the produced pages. The produced Bates number ranges will be maintained in the associated, uniquely identified Concordance database records in a production history field. All items which are not compatible with the current system, such as video and audio recordings, are inventoried and the inventories are loaded into the system.

The system has been developed using OAG-owned equipment and will be operated and maintained within OAG’s offices. As part of the system development, OAG has to date purchased and installed an additional \$51,000 of software on its existing document scanning and computer systems, and an additional \$3,300 for hardware. OAG has also continued to purchase renewals of the Law Maintenance Agreement as needed since the system was purchased.

Documents from the *Barham/Chang* litigation and other related mass demonstration cases

continue to be maintained with the Concordance system and the system is being used for ongoing discovery-related production in the *Chang* litigation.

2. "Litigation Hold" Procedures and Practices to Prevent Loss or Destruction of Evidence.

Commencing not later than 120 days following the Court's final approval of settlement of this matter upon these terms, the OAG shall issue policy statements mandating that upon written notice of likely litigation and/or request to preserve documents and records pertaining to alleged police misconduct involving or relating to mass demonstrations or protests, the OAG shall affirmatively direct in writing and ensure that all documents, records, items, videos or computer files relating to the underlying incident be preserved and affirmatively protected from destruction for a period of no less than three (3) years. "Notice of likely litigation and/or request to preserve documents and records" is any notification in writing to the Chief of Police, or the Mayor; and/or service upon the Office of the Attorney General of a civil action complaint for matters alleging police misconduct involving or relating to mass demonstrations or protests. The contractual definition used herein of "notice of likely litigation and/or request to preserve documents and records" is not intended to alter the meaning of those terms of art as may be used by established reported case law precedent in the District of Columbia.

Status

As previously reported, OAG issued a mandatory policy to the Civil Litigation Division. The attorneys in the Civil Litigation Division are responsible for defending all litigation involving mass demonstrations. OAG has updated the portion of its Civil Litigation Division ("CLD") manual which addresses litigation hold requirements to include the procedures which must be followed when written notice is received of likely litigation and/or request to preserve

documents and records pertaining to alleged police misconduct involving or relating to mass demonstrations or protests. The CLD manual is maintained internally on the OAG's intranet and is available to all staff. In addition, the Attorney General issued a directive to the MPD Chief of Police informing the Chief of the Metropolitan Police Department's obligations related to litigation hold procedures pursuant to this Court's Order. The Executive Office of the Chief of Police (EOCOP) has a system for tracking incoming mail. All legal matters received by EOCOP, including notices of likely litigation, are forwarded to the Office of the General Counsel (OGC). OGC has issued its own policy statement regarding litigation hold requirements for mass demonstration cases. In keeping with the *Barham* agreement and the Court's order, the policy mandates that for notices forwarded to OGC alleging police misconduct involving or relating to mass demonstrations or protests, litigation hold letters shall be issued by OGC to MPD, and copies of the notices shall be forwarded to OAG to ensure that all other agencies implicated by the notices receive litigation hold letters from OAG.

3. Preservation and Indexing of Command Center and Communications Systems Records and Data. Commencing not later than 120 days following the Court's final approval of settlement of this matter upon these terms and the exhaustion of any appeals (including any petition for writ of certiorari to the United States Supreme Court), the MPD shall issue policy statements or general orders mandating that whenever a system is activated to assist in the management of mass demonstrations and protests or other cases as may be deemed appropriate by the Attorney General, all computer files, communications recordings / radio runs and documents reasonably related to the event shall be preserved and indexed for a period of no less than three (3) years.

Status

As previously reported, an MPD Revised Standard Operating Procedure (“SOP”) for Handling First Amendment Assemblies and Mass Demonstrations was issued, effective January 20, 2011. The SOP was amended to address the preservation and indexing of computer files, communications recordings/radio runs and documents whenever a system is activated to assist in the management of mass demonstrations and protests. Attachment N to the SOP contains the specifics on the new requirements. The SOP is publically available on MPD’s website at mpdc.dc.gov and can be found by using the following link:
https://go.mpdconline.com/GO/SOP_11_01.pdf.

4. Procedures and Practices to Index and Log Photographic or Video or other Recorded

Evidence. Commencing not later than 120 days following the Court's final approval of settlement of this matter upon these terms and the exhaustion of any appeals (including any petition for writ of certiorari to the United States Supreme Court), whenever any MPD officer is assigned to (or with the capability to) engage in photographic or video recording or surveillance of mass demonstration activity or protests; documentation shall be maintained reflecting the officer's name, assignment, the equipment and recording media issued; and indexing and logging the return of all media. Upon the return of any media, the officer shall document the dates, times, locations and events recorded and affix such information to the media itself or secure to the container that contains the media. This provision is intended solely to focus on indexing and record-keeping; it does not authorize under what circumstances such surveillance or recordings may occur. This provision is not intended to supplant or supersede orders or rules pertaining to

the use of closed circuit television and cataloging requirements set forth in such applicable orders or rules.

Status

As previously reported, an MPD Revised Standard Operating Procedure (“SOP”) for Handling First Amendment Assemblies and Mass Demonstrations was issued, effective January 20, 2011. The SOP was amended to address the collection and retention of audio and video recordings associated with First Amendment Assemblies and Mass Demonstrations. The SOP is publically available on MPD’s website at mpdc.dc.gov and can be found by using the following link: https://go.mpdconline.com/GO/SOP_11_01.pdf. Attachment N to the SOP contains the specifics on the new requirements.

5. Communications with Class Counsel to Ensure Compliance. The District of Columbia, through the Office of Attorney General, shall engage in communications with and respond to reasonable inquiries from class counsel, as to the status and/or completion of the obligations set forth in the section, "Changes to Policies and Practices."

Status

The Office of the Attorney General continues to engage in communications with Class Counsel as needed and responded to inquiries.

6. Mandatory Reporting Obligations. At six month intervals during the three year period of required implementation, the District of Columbia shall issue a report regarding measures taken to perform the requirements of section (III)(B), "Changes to Policies and Practices." Class Counsel shall be provided an advance copy of the report and provided opportunity to comment.

The District shall consider the comments by Class Counsel. The comments or response of Class Counsel, if any, shall be incorporated as an included attachment or exhibit and published in the final report. The reports shall be transmitted to Judge Emmet G. Sullivan, as well as made publicly available. Additionally, the District shall consult and communicate with Class Counsel during the system acquisition or procurement process.

Status

All changes to policies and practices were instituted and all statements issued within the 120 day deadlines set by the Court's order. The District of Columbia remains committed to ensuring that the agreement of the parties is fully executed. On September 19, 2013, counsel for the *Barham* Class Plaintiffs was provided a draft copy of this report for review and comment.

7. Funding for Development and Operation of Document Management System. The District of Columbia shall use either the class/claimant funds that revert back to the District of Columbia under the settlement, if any, or the Settlement and Judgment Fund to pay the costs of the development and operation of the document management system.

Status

As previously reported, no class/claimant funds have reverted back to the District. The funding for the court-ordered obligation has been provided to support the costs of the document management project.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on September 23, 2013, I filed the foregoing with the Court's electronic filing system, which will serve notice upon all counsel of record.

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