

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FLOYD, *et al.*,

Plaintiffs,

-against-

THE CITY OF NEW YORK, *et al.*,

Defendants.

**STIPULATION AND
ORDER**

08 Civ. 01034 (SAS)

_____ x
WHEREAS, pursuant to Order dated November 1, 2010, and after the passage of 2010 NY Laws 176, this Court received from defendants and maintained under seal for safekeeping a searchable version of the NYPD UF250 database from January 31, 2005 through July 16, 2010, which contained the names and addresses of the individuals who were stopped to the extent that such information existed in the database;

WHEREAS, on May 16, 2012, this Court granted plaintiffs' motion to certify a class;

WHEREAS, at a conference on May 29, 2012, the Court indicated that plaintiffs were entitled to contact a limited number of individuals whose personal identifying information appears in the sealed UF250 database to pursue their alleged claims under *Monell v. Department of Social Servs.*, 436 U.S. 658 (1978);

WHEREAS, pursuant to Order dated, November 1, 2010, and by letter received from plaintiffs on August 17, 2012, plaintiffs made appropriate application to obtain the names, addresses and phone numbers of 21,774 people as recorded in the sealed 2009 NYPD UF250 database for the purposes of contacting them regarding participation in the class action;

WHEREAS, at a conference held on August 27, 2012, the Court granted plaintiffs' request for the data and set certain deadlines regarding the disclosure and handling of the data; and

WHEREAS, the parties seek to preserve the confidentiality of statutorily confidential data and that the action ordered herein is not construed or intended to be in any way a derogation of any binding state statutes;

IT IS HEREBY STIPULATED, AGREED TO AND SO ORDERED:

1. Unsealing of Database. The Court will order the Clerk of the Court to release the NYPD UF250 database to defendants' counsel for the purposes described herein, including identifying names, addresses and telephone numbers in the 2009 UF250 database limited to the UF250 forms identified in Exhibit A, annexed hereto.

2. Access to Database by NYPD/Identification of Sealed Data. Defendants' counsel may make the database available to non-patrol NYPD technology personnel solely for the purpose of making best efforts to identify the individuals on Exhibit A where the UF250 indicates: (1) the person's date of birth on or after January 1, 1993; (2) that the suspect was arrested; or (3) that a summons issued ("sealed data"). Upon completion of the identification of the sealed data, the NYPD will return the database and the identified information to defense counsel and will not retain the database or the identified information in any form. Defense counsel will maintain the database until the procedures herein are complete for the sole purpose of facilitating the terms of this Stipulation and Order. Upon completion of the procedures herein, defense counsel will return the database to the Court for continued sealing and maintenance. Defense counsel will maintain the identified information regarding the sealed data for attorneys' eyes only purposes and will not attempt to contact or conduct discovery using the personal

identifying information from the database related to any of the individuals represented in Exhibit A except as provided in paragraph 6.

3. Magistrate Judge Contact of Individuals with Sealed Data. By September 14, 2012, defense counsel will forward to Magistrate Judge Pitman the names and addresses of the individuals represented in Exhibit A who are identified as having sealed data. Using this information, Magistrate Judge Pitman will contact these individuals by way of postage paid letters supplied and paid for by plaintiffs in the form agreed to between the parties and attached hereto as Exhibit B. Only in the event that these individuals waive their statutory right to privacy and indicate a willingness to be contacted by plaintiffs' counsel in a returned postage paid postcard to Magistrate Judge Pitman, made within thirty (30) days of the initial mailing, may their contact information be made available to plaintiffs' counsel. Magistrate Judge Pitman will provide the names and contact information of individuals who returned postcards within the thirty (30)-day response period to the parties' counsel as soon as practical and no later than one (1) week after the thirty (30)-day response period has expired. Defense counsel shall maintain the information for attorneys' eyes only purposes and shall not attempt to contact or conduct discovery using the personal identifying information from the database related to any of the individuals represented in Exhibit A except as provided in paragraph 6.

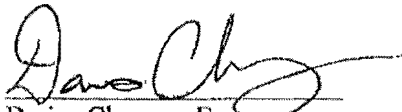
4. Contact of Other Individuals in the UF 250 Database. By September 14, 2012, the same date that they provide Magistrate Judge Pitman with the information described in Paragraph 3, defense counsel shall provide plaintiffs' counsel with the names, addresses and phone numbers of those individuals represented on Exhibit A who do not have sealed data. Initially, plaintiffs' counsel may only contact such individuals in writing in the form agreed to between the parties and attached hereto as Exhibit C. Any and all initial written mailings to

these individuals must be made no later than the date of the Magistrate Judge's mailing described in paragraph 3. Only if these individuals express an interest in the litigation in a returned postcard within thirty (30) days of the initial mailing may plaintiffs' counsel follow-up in a more detailed telephone call. Plaintiffs' counsel will produce to defendants' counsel copies of all returned postcards on a rolling basis as they are received by plaintiffs and no later than within one (1) week after the thirty (30) day response period has expired. Defense counsel shall maintain the postcards for attorneys' eyes only purposes and shall not attempt to contact or conduct discovery using the personal identifying information from the database related to the individuals who return the postcards except as provided in paragraph 6.

5. List of Plaintiffs' Potential Trial Witnesses. By November 9, 2012, plaintiffs will make Fed. R. Civ. P. 26 (a)(1) (A) disclosures regarding these individuals and other potential plaintiff class members who have contacted plaintiffs' counsel since class certification and were not previously disclosed by plaintiffs during fact discovery.

6. Plaintiffs' Rule 26 Disclosure. Upon plaintiffs' Rule 26(a)(1)(A) disclosures referred to in paragraph 5, defendants will no longer be bound by the attorneys' eyes only limitations specified in paragraphs 2 through 4 as to those individuals listed in plaintiffs' Rule 26(a)(1)(A) disclosures referred to in paragraph 5, except that neither defense counsel, Defendants or any employee of NYPD may contact those individuals directly. Further, within a reasonable time after plaintiffs' Rule 26(a)(1)(A) disclosures referred to in paragraph 5, defendants may seek a reasonable time to conduct discovery and plaintiffs will not unreasonably withhold their consent to defendants' request and under no circumstances will plaintiffs object to any time request that seeks the same or less amount of time used by plaintiffs to make their Rule 26(a)(1)(A) disclosures.

Dated: New York, New York
August 29, 2012

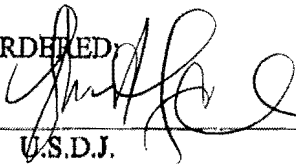


Darius Charney, Esq.
CENTER FOR CONSTITUTIONAL RIGHTS
Counsel for Plaintiffs
666 Broadway, 7th Floor
New York, NY 10012
(212) 614-6475



Cecilia A. Silver, Esq.
Assistant Corporation Counsel
Counsel for Defendants
100 Church Street
New York, NY 10007
(212) 788-8684

SO ORDERED:



U.S.D.J.

8/29/12

Exhibit B:

Dear _____:

This letter is to advise you that you are either a potential witness or member of a federal class action lawsuit entitled *Floyd v. the City of New York*, which seeks injunctive and declaratory relief against the City of New York for alleged constitutional violations. The constitutional violations alleged are unlawful stops and frisks by the officers of the NYPD, done without reasonable suspicion and on the basis of racial profiling. This class action does not seek money on behalf of the class members.

Your name was obtained from records supplied by the NYPD pursuant to court order. Please be advised that, by operation of Criminal Procedure Law § 140.50(4), the NYPD no longer maintains a computer database of stop, question and frisks that contains your name and contact information.

The attorneys for the plaintiff class in this lawsuit would like to talk to you to discuss the case, to determine whether you might be a witness or a member of the class of plaintiffs, and how you might participate in the case, if you wish to do so. If you are a juvenile, or were a juvenile at the time of the allegedly unconstitutional stop, please be advised that no personal information, even contact information, will be sent to plaintiffs' counsel unless you consent to the unsealing of your records. If you were arrested or received a summons subsequent to the allegedly unconstitutional stop, please be advised that no personal information, even contact information, will be sent to plaintiffs' counsel unless you consent to the unsealing of your records which have been sealed by operation of Criminal Procedure Law § 160.50.

If you are interested in speaking with the attorneys for the plaintiff class in this lawsuit, please fill out the enclosed form indicating your willingness to have a lawyer for the plaintiff class contact you by telephone. You are under no legal obligation to return the enclosed form, to cooperate with plaintiffs' counsel or to speak with them.

If the Court does not receive a completed form within 30 days of this mailing or otherwise hear from you, the Court will assume you do not wish to speak to plaintiffs' counsel, and they will not contact you.

Sincerely,

Exhibit C:

Dear _____:

This letter is to advise you that you are either a potential witness or member of a federal class action lawsuit entitled *Floyd v. the City of New York*, which seeks injunctive and declaratory relief against the City of New York for alleged constitutional violations. The constitutional violations alleged are unlawful stops and frisks by the officers of the NYPD, done without reasonable suspicion and on the basis of racial profiling. This class action does not seek money on behalf of the class members.

We obtained your name from records supplied by the NYPD pursuant to court order. Please be advised that, by operation of Criminal Procedure Law § 140.50(4), the NYPD no longer maintains a computerized database of stop, question and frisks that contains your name and contact information.

As attorneys for the class of plaintiffs, we would like to talk to you to discuss the case, to determine whether you might be a witness or a member of the class of plaintiffs, and how you might participate in the case, if you wish to do so. We are prohibited from disclosing anything you tell us unless you agree to such disclosure. We will not publicize your identity unless you agree to such publication. You are under no legal obligation to cooperate with us, or even talk to us.

If you are interested in speaking with us, please fill out and mail the enclosed form indicating your willingness to have a lawyer for the plaintiff class contact you by telephone. If we do not receive a completed form within 30 days of this mailing or otherwise hear from you, we will assume you do not wish to speak to us.

Sincerely,

Letter for Arrested and Summoned Adults and Juveniles