

APLC

Austin People's Legal Collective

News
Spring 2009

Freedom of Information Act Request

In the wake of the revelation that local activist Brandon Darby has been working with federal law enforcement for an indeterminate length of time, APLC put together a comprehensive Freedom of Information Act (FOIA) request to the FBI in an attempt to get a better picture of the entire scope of federal surveillance and repression of activism in the Austin area. Under the Freedom of Information Act, government agencies are required to release documents and records to the public upon written request. There are numerous exemptions for classified or other material deemed "sensitive," but FOIAs can be extremely valuable tools in exposing government misconduct, especially with regards to politically motivated surveillance.

Unfortunately, the FBI has one of the worst track records for complying with FOIA requests, especially with regards to response time and thoroughness of their searches for records (<http://www.gwu.edu/~nsarchiv/news/20090313/index.htm>). As of this writing, the FBI has acknowledged receipt of our request and denied our request for expedited processing (which APLC plans to appeal). Stay tuned for updates about the information we receive; just don't hold your breath—we could be waiting a while.

Many states have their own individual FOIA laws. The Web site <http://www.rcfp.org/ogg/index.php> has a pretty comprehensive guide to the open records laws in all 50 states. If you would like more information about how to file your own freedom of information request, please contact us.

APLC's FOIA request by the numbers:

- * 15 pages
- * 4853 words
- * 34 individuals
- * 31 groups
- * 10 FBI offices
- * 8 protests/actions
- * 8 email lists
- * 7 FBI case numbers

Thanks to all the people who filled out personal information release forms! APLC plans to follow up with freedom of information requests to the other jurisdictions that Darby was active in, as well as at the state and local levels here in Austin. The costs of these requests can often be quite high: for mailing them and then paying for the searches and document copying when our requests for fee waivers are denied. If you would like to donate to help cover these costs, please email us or use the paypal button on www.freethetexas2.org.

Texas Two Update

On the eve of David McKay's retrial, he made the hard decision to plead guilty instead of going forward with the trial. There has been much confusion about the circumstance surrounding this decision, especially in light of the arguments at the first trial. To help clear up this confusion, we are reprinting an excerpt from the Austin Informant Working Group's statement on the plea.

Throughout the trial period APLC has supported the brave witnesses who volunteered to testify on David's behalf in Minneapolis by helping them secure legal counsel and helping coordinate and fund their travel.

Between the State and a Hard Place: Statement on David McKay's Plea from the Austin Informant Working Group

The State and, in particular, the FBI reached into their bag of dirty tricks to make examples of McKay and his co-defendant Brad Crowder. It is also apparent to us that if this had gone to trial again, the lies of the State's primary informant in the case, Brandon Darby, would have embarrassed the FBI and the prosecution . . .

Before David's first trial in January the prosecution filed a motion to change the definition of entrapment in the case. However the judge refused to overturn years of legal precedents for the mere convenience of the pros-

ecution in this case . . . A couple weeks before the March 16 retrial, in another attempt to cover for their informant's misconduct, the prosecution filed a motion to exclude information about Darby's violent tendencies and his history of using firearms in inappropriate situations. This motion also failed.

During the intermission in proceedings, David's defense compiled additional testimony that confirmed Darby's history of problematic and manipulative behavior . . . As the case of the defense solidified, so escalated the prosecution's intimidation of both David and Brad. The State was determined to prevent both the exposure of its misconduct in utilizing and supporting a violence-prone provocateur to entrap two young activists, and the precedent of being called out and held accountable for their repressive tactics. The State knew that Darby's testimony was questionable, if not completely lacking credibility . . .

Days before the trial, the prosecution subpoenaed Brad to testify. Brad had no interest in testifying against David. The State then threatened to add two years to Brad's sentence if he failed to cooperate. The FBI has contacted and intimidated others, including potential defense witnesses, over the past few months in an attempt to disrupt David's legal defense.

It is likely that David did not want Brad, his close friend, to be forced to choose between testifying and enduring harsher sentencing. Neither did he want his family and loved ones to have to go through the turmoil of a second trial . . .

The Austin Informant Working Group concludes that there is much more to the story than any of us know. From what information we do have, we stand by the statements we have previously made about the entrapment of Brad and David. There are many reasons innocent people plead guilty, including intimidation, fear and exhaustion. The evidence suggests these factors, rather than the truth, controlled the outcome in this case.

Know Your Rights with the Cops!

(Not) Talking to Cops

Anything you say to the police can be used against you and your friends. Whenever the cops ask you anything besides your name and address, it's safest to say: "I am going to remain silent. I want to see a lawyer." The cops are then legally required to stop questioning you. They probably won't, so just keep repeating it. Say it loud enough for witnesses to hear.

Don't wait for the cops to read you your rights. They usually won't. Law enforcement agents are legally allowed to lie, and they're trained to be manipulative. The only thing you should say to them is, "I am going to remain silent. I want to see a lawyer." You are required to give your name and date of birth. (Don't sign anything, either, without showing it to a lawyer first.)

Searches

Any time the police try to search you, say: "I do not consent to this search." This may not stop them, but it could get evidence thrown out in court later. This is important, because you might have something on you that is technically illegal (like a pocketknife that's too long), or the police might plant evidence on you. However, don't physically resist when cops try to search you, because you could get hurt and charged with assault.

Any time the cops try to search anything connected to you, say: "I do not consent to this search." Keep saying it, loudly enough for witnesses to hear. This is true for your body, your car, your house, your garage – anything. It's also true if the cops have a search warrant. There might be a technical problem with the warrant that only comes up later.

Physical Safety

Keep your hands in view and make no sudden movements. Avoid passing behind police officers - nervous cops are dangerous cops. Also, never touch the police or their equipment (vehicles, flashlights, animals, etc.) — you can get beat up and charged with assaulting an officer.

Take Notes!

Whenever you talk to or observe the police, write down their names, ID #s and physical descriptions. Get as many specific details about the incident as you can. Get names and contact info of any witnesses. Cameras and cell phone are great for observing cops, too.

"Conspiracy": The Government's Criminalization of Dissent

The RNC 8

Eight Minneapolis activists who sought to coordinate housing, feeding and organizing activists coming to Minnesota to protest were preemptively arrested prior to the RNC and have been falsely charged with Conspiracy to Riot in Furtherance of Terrorism. for more on their case see: www.rnc8.org

I-69

In what appears to be the culmination of a several year long case the state has been building against I-69 resistance, two Indiana residents, Tiga and Hugh, were arrested this afternoon. Although the charges against the two include individual acts, for the majority they are trumped up charges of conspiracy that include 2 counts of intimidation, 2 counts of conversion (all misdemeanors) and 1 count of corrupt business influence (a class C felony) To see the warrants go to: www.mostlyeverything.net

Legal Literacy

Definitions from the Texas Penal Code. Laws can vary by state, and on the federal level.

Sec. 15.02. CRIMINAL CONSPIRACY. (a) A person commits criminal conspiracy if, with intent that a felony be committed:

(1) he agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and

(2) he or one or more of them performs an overt act in pursuance of the agreement.

(b) An agreement constituting a conspiracy may be inferred from acts of the parties.

(c) It is no defense to prosecution for criminal conspiracy that:

(1) one or more of the coconspirators is not criminally responsible for the object offense;

(2) one or more of the coconspirators has been acquitted, so long as two or more coconspirators have not been acquitted;

(3) one or more of the coconspirators has not been prosecuted or convicted, has been convicted of a different offense, or is immune from prosecution;

(4) the actor belongs to a class of persons that by definition of the object offense is legally incapable of committing the object offense in an individual capacity; or

(5) the object offense was actually committed.

(d) An offense under this section is one category lower than the most serious felony that is the object of the conspiracy, and if the most serious felony that is the object of the conspiracy is a state jail felony, the offense is a Class A misdemeanor.

Editor's note: Conspiracy charges have long been a favorite for the state to use against activists, because they do not require an offense to be committed and are very much open to a jury's interpretation of events and intentions, which is handy for hot-shot states' attorneys with little real evidence. Noteworthy conspiracy cases include the Chicago 8 (1968), Eric McDavid (2006), and the current case against the RNC 8.

Sec. 8.06. ENTRAPMENT.

(a) It is a defense to prosecution that the actor engaged in the conduct charged because he was induced to do so by a law enforcement agent using persuasion or other means likely to cause persons to commit the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(b) In this section "law enforcement agent" includes personnel of the state and local law enforcement agencies as well as of the United States and any person acting in accordance with instructions from such agents.

Editor's note: As was the case in David McKay's trial, the entrapment defense often hinges on questions about the defendant's predisposition. For example, if someone telling an undercover cop that they were broke and really needed money, and then the cop came up with a plan to rob a bank, that would be entrapment because being broke does not necessarily make someone predisposed to robbery. However, if the same person said they were broke and would consider taking money, then an entrapment defense would not likely work, even if the undercover cop provided the plan, car, and gun. The defendant, by saying they would consider committing a crime to get the money they needed, admitted to being predisposed to the crime, and the cop "merely [afforded] the person an opportunity."

Celebrate May Day

On May 1, 1886, nearly 500,000 workers across the US walked off their jobs to demand an eight-hour workday. We continue to gather on May Day, 123 years later, not just because of the victory of an eight-hour workday, but to celebrate our history of grassroots struggle and to demonstrate our hope for a better future through direct action, solidarity and organizing from the bottom up. Friday, May 1, Austin activists from all walks of life will meet at the capitol at 6 pm for a march for Just and Humane Immigration Reform.