

MPD Complied with First Amendment Investigation Requirements in 2018, 2019

August 3, 2021

A report by the Office of the District of Columbia Auditor



Audit Team
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Background

The First Amendment to the U.S. Constitution protects the right of the people to assemble peaceably.¹ This right to engage in peaceful public protests, rallies, marches, picket lines, demonstrations, and other assemblies is a core freedom that is closely safeguarded in the United States.

The Metropolitan Police Department (MPD) is the main law enforcement agency for the District of Columbia.² Its mission is to safeguard the District and protect its residents and visitors with the highest regard for the sanctity of human life.³ As individuals and groups from all over the United States gather in Washington, D.C., to exercise their First Amendment rights, MPD continually deals with the challenges of maintaining public safety and upholding the people's First Amendment rights. In 2018 and 2019, Washington, D.C., hosted demonstrations and rallies that advocated for causes such as racial equity, antisemitism, climate change, gun control, immigration, court rulings, and human rights, to name a few.

The First Amendment Rights and Police Standards Act of 2004 (the Act) established requirements for the District of Columbia regarding First Amendment assemblies.⁴ Title II of this Act is the Police Investigations Concerning First Amendment Activities Act of 2004 that is codified at Chapter 3A, Subchapter II of the D.C. Code. The D.C. Code "establishes the responsibilities of and procedures for the MPD relating to investigations and preliminary inquiries, including criminal intelligence investigations and inquiries, that may affect activities protected by the First Amendment."⁵

In accordance with D.C. Code, MPD may initiate a preliminary inquiry involving First Amendment activities to obtain sufficient information to determine whether an investigation is warranted, and/or where MPD receives information or an allegation that requires further scrutiny, or it does not justify opening a full investigation because it does not establish reasonable suspicion that persons are planning or engaged in criminal activity.⁶

Further, D.C. Code states that MPD may conduct a criminal investigation involving the First Amendment activities of persons, groups, or organizations only when there is a reasonable suspicion that they are planning or engaged in criminal activity, and the First Amendment activities are relevant to the criminal investigation.⁷

1 Constitution of the United States, First Amendment, Library of Congress (Accessed 5/3/2021) <https://constitution.congress.gov/constitution>

2 D.C. Metropolitan Police Department Website, MPD: Who We Are, page 1. Accessed on 11/20/2020. <https://mpdc.dc.gov/page/mpd-who-we-are>

3 D.C. Metropolitan Police Department Website, MPD: Who We Are, page 2. Accessed on 11/20/2020. <https://mpdc.dc.gov/page/mpd-who-we-are>

4 D.C. Law 15-352. First Amendment Rights and Police Standards Act of 2004, Council of the District of Columbia. (Accessed 11/9/2020) <https://code.dccouncil.us/dc/council/laws/15-352.html>

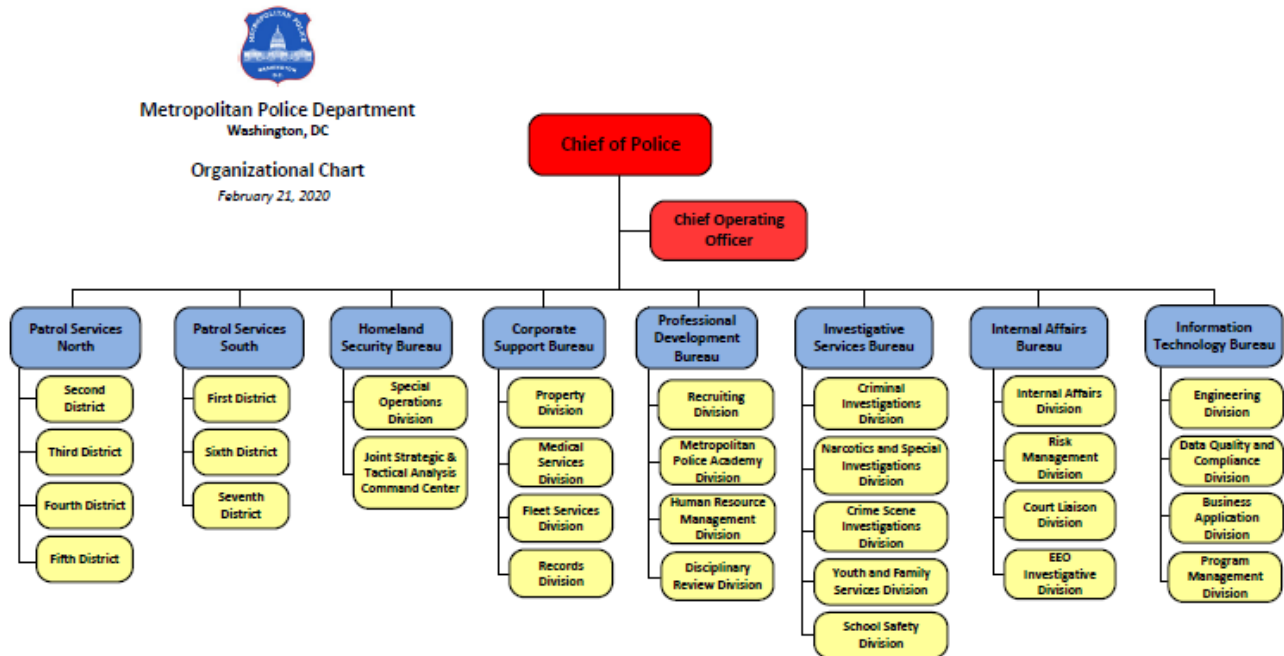
5 D.C. Code § 5-333.03.

6 D.C. Code § 5-333.06.

7 D.C. Code § 5-333.05.

During the scope of the audit, MPD consisted of eight bureaus: Patrol Services North, Patrol Services South, Corporate Support, Professional Development, Investigative Services, Internal Affairs, Information Technology, and Homeland Security.

Figure 1: Metropolitan Police Department Organizational Chart for Fiscal Year 2019⁸

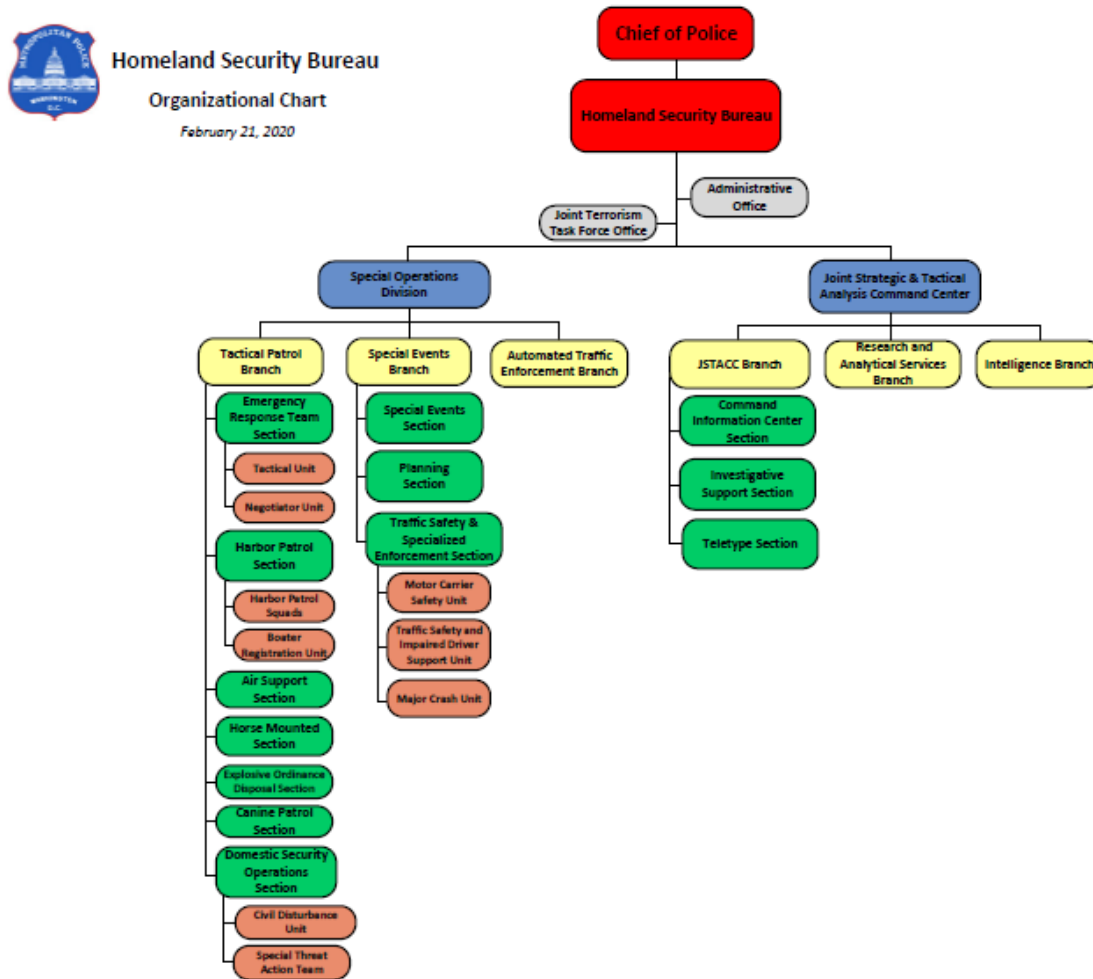


Source: DC Metropolitan Police Department

The Homeland Security Bureau oversees First Amendment activities through its subdivisions: The Special Operations Division (SOD) and the Joint Strategic & Tactical Analysis Command Center (JSTACC), particularly through the Intelligence Branch of JSTACC.

⁸ MPD submitted this Organizational Chart to the D.C. Council by letter dated March 2, 2020, for its Fiscal Year 2019 Performance Oversight Hearing. Therefore, it covers the period October 1, 2018, through September 30, 2019, which includes the date of MPD's one First Amendment investigation in July 2019.

Figure 2: MPD Homeland Security Bureau Organizational Chart for Fiscal Year 2019⁹



Source: DC Metropolitan Police Department

The Special Operations Division (SOD) offers specialized patrol, tactical, rescue, and security services to the public, businesses, and government in the District.¹⁰ The Joint Strategic & Tactical Analysis Command Center (JSTACC) supports District functions by keeping both the command staff and the community informed and aware of public safety matters, by sending out crime alerts that give timely information about offenses occurring within neighborhoods, and liaising with the Washington Regional Threat

9 MPD submitted this Organizational Chart to the D.C. Council by letter dated March 2, 2020, for its Fiscal Year 2019 Performance Oversight Hearing. Therefore, it covers the period October 1, 2018, through September 30, 2019, which includes the date of MPD's one First Amendment investigation in July 2019.

10 D.C. Metropolitan Police Department Website, Homeland Security Bureau pp. 1 - 2. Accessed on 5/6/2021. <https://mpdc.dc.gov/page/homeland-security-bureau>.

Analysis Center and the Capitol Police.¹¹

In addition, the Intelligence Branch under JSTACC works with other local and federal agencies to assist with intelligence gathering and dissemination of information relating to crimes that have been committed, or are being committed or planned, within the District. It also handles First Amendment activities and conducts preliminary inquiries and investigations.

To assess compliance with the requirements of the Police Investigations Concerning First Amendment Activities Act of 2004, D.C. Code also requires that the Office of the District of Columbia Auditor (ODCA) annually audit MPD files and records relating to investigations and preliminary inquiries involving First Amendment activities.¹² In conducting the audit, ODCA reviews each authorization granted pursuant to D.C. Code¹³ and investigative files associated with the authorizations.

11 D.C. Metropolitan Police Department Website, Homeland Security Bureau p. 2. Accessed on 5/6/2021. <https://mpdc.dc.gov/page/homeland-security-bureau>.

12 D.C. Code § 5-333.12.

13 D.C. Code § 5-333.05 and D.C. Code § 5-333.06.

Objective, Scope, Methodology

Objective

The objective of this audit was to determine whether MPD complied with the requirements of the Police Investigations Concerning First Amendment Activities Act of 2004 during the scope of the audit.

Scope

The scope of the audit included all investigations and preliminary inquiries subject to the requirements of the Act that were completed during calendar years (CYs) 2018 and 2019.

According to MPD officials, there were no preliminary inquiries in CYs 2018 and 2019. There also were no investigations conducted in CY 2018. There was only one First Amendment investigation conducted in CY 2019 and this concerned the rallies held on July 6, 2019.

Methodology

To comply with D.C. Code,¹⁴ ODCA conducted an audit of the 2019 investigation initiated by MPD.

To determine whether MPD complied with the requirements of the Act, ODCA:

- Interviewed MPD officials from the following divisions: Homeland Security Bureau, Intelligence Branch, Special Operations Division, Joint Strategic and Tactical Command Center (JSTACC), and the Office of the General Counsel.
- Reviewed standard operating procedures concerning First Amendment activities.
- Reviewed MPD's performance reports for FY 2018 - FY 2020.
- Reviewed annual reports submitted by MPD to the Council of the District of Columbia in accordance with the requirements of the Act. The reports included information on the number and types of First Amendment preliminary inquiries and investigations conducted during calendar years 2018 and 2019.
- Reviewed First Amendment training materials, including presentations and attendance sheets.
- Reviewed documents regarding the rallies of July 6, 2019, that included but were not limited to the following information:
 - Confidential Memorandum dated July 1, 2019, Subject: Request to Initiate a First Amendment Investigation regarding rallies held on July 6, 2019.
 - Confidential Memorandum dated July 9, 2019, Subject: Request to Officially Close the First

14 D.C. Code § 5-333.12 (d)(1) states "The Office of the District of Columbia Auditor ("ODCA") shall serve as auditor of MPD's investigations and preliminary inquiries involving First Amendment activities in order to assess compliance with this subchapter." Further, D.C. Code § 5-333.12 (d)(2) states in part "On an annual basis, the ODCA shall audit MPD files and records relating to investigations and preliminary inquiries involving First Amendment activities. In conducting the audit, the ODCA shall review each authorization granted pursuant to §§ 5-333.05 and 5-333.06, requests for authorization that were denied, and investigative files associated with the authorizations."

Amendment Investigation regarding the rallies on July 6, 2019.

- News and social media posts documenting threats of criminal activities during the rallies of July 6, 2019.
- Information related to one arrest unrelated to the First Amendment investigation.

This report was drafted, reviewed, and approved in accordance with the standards outlined in the ODCA's Policy and Procedure Manual.

Audit Results

MPD initiated and authorized one First Amendment investigation in CY 2019 and none in CY 2018. The one First Amendment investigation conducted by MPD was related to two rallies that took place on July 6, 2019, in the District of Columbia.

In accordance with the D.C. Code¹⁵ and MPD's Standard Operating Procedures, MPD properly authorized the one 2019 investigation into First Amendment activities. The investigation was conducted pursuant to all requirements and MPD used proper and appropriate investigative techniques that were dictated by the needs of the investigation. MPD closed the investigation timely and followed required procedures.

Based on a review of the pertinent information, we found that the Metropolitan Police Department complied with the requirements of the Police Investigations Concerning First Amendment Activities Act of 2004 when conducting the one 2019 First Amendment investigation.

¹⁵ D.C. Code § 5-333.01 *et seq.*

Agency Comments

On June 2, 2021, we sent a draft copy of this report to the Metropolitan Police Department (MPD) for review and written comment. MPD responded with comments on July 7, 2021. Agency comments are included here in their entirety.



GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

Kathy Patterson
District of Columbia Auditor
Office of the D.C. Auditor
717 14th Street, N.W., Suite 900
Washington, D.C. 20005

Dear Ms. Patterson:

This is in response to your letter and draft report concerning the Metropolitan Police Department's (MPD) compliance with the Police Investigations Concerning First Amendment Activities Act of 2004.

We are committed to upholding the first amendment rights of our residents and visitors to the District of Columbia. We are pleased with the report's findings that the "MPD Complied with First Amendment Investigation Requirements in 2018, 2019." We will continue to ensure we meet or exceed these standards that have been set.

We have no additional comments that we feel need to be added to the report. Thank you for providing us with the opportunity to comment.

Sincerely,

Robert J. Contee, III
Chief of Police

About ODCA

The mission of the Office of the District of Columbia Auditor (ODCA) is to support the Council of the District of Columbia by making sound recommendations that improve the effectiveness, efficiency, and accountability of the District government.

To fulfill our mission, we conduct performance audits, non-audit reviews, and revenue certifications. The residents of the District of Columbia are one of our primary customers and we strive to keep the residents of the District of Columbia informed on how their government is operating and how their tax money is being spent.

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