

April 19, 2023

Delivered via Email

Mayor Ruthanne Fuller
City of Newton
1000 Commonwealth Avenue
Newton Centre, MA 02459

Chief John L. Carmichael, Jr.
Newton Police Department
1321 Washington Street
Newton, MA 02459

Re: Racial Profiling at the Boston Marathon

Dear Mayor Fuller and Chief Carmichael:

Lawyers for Civil Rights (LCR) is writing on behalf of spectators and runners affected by [racial profiling against Black people that took place near Mile 21](#) in Newton during the Boston Marathon on Monday, April 17, 2023. A group of predominantly Black observers near Mile 21 were targeted for police mistreatment based on their race and identity. This letter should be construed as a formal public records request pursuant to Massachusetts Public Records Law, G. L. c. 66, § 10. We are also requesting an emergency meeting to discuss serious racial discrimination concerns and to urge immediate action, including an independent investigation of law enforcement activities during the Boston Marathon.

With the 10th anniversary of the tragic Boston Marathon bombing, increased security concerns are expected and warranted. Runners, spectators and law enforcement all share the same strong interest in safety. However, safety concerns cannot override fundamental civil rights protections, including the right to live free of racism and discrimination, particularly at the hands of police.

We have received requests for legal assistance from both marathon spectators and runners who have consistently noted that police officers targeted and singled-out Black people for surveillance and aggressive treatment during the race. For example, officers surrounded Black people near mile marker 21 by lining up not only along the course path, but also behind them, giving the strong impression that the observers were not free to leave. This, in effect, exacted an illegal seizure in violation of the Fourth Amendment. Officers also threatened Black people with arrest and criminalization. Affected individuals consistently describe a barricade of police officers monitoring and surrounding Black spectators near Mile 21. Reports from non-Black observers and runners confirm and corroborate the racial profiling complaints, including efforts to block Black people from cheering the marathon participants through law enforcement tactics. Police did this to Black observers, but not to other spectators.

While the police line-up may appear to serve the function of preventing running path obstruction, a comparison of activities along the marathon course — and within Newton — demonstrates that non-Black spectators were [praised for supporting runners](#), even when they obstructed the running path. Enthusiastic encouragement — even jumping into the race path to support runners — is a well-known aspect of marathon culture often expressed near Mile 21 and Heartbreak Hill, a challenging and dispiriting stretch of the race in Newton. Police were not observed reprimanding or threatening to arrest non-Black people. This raises serious concerns surrounding racial profiling and discrimination in violation of well-established federal and state constitutional protections, including Equal Protection under the 14th Amendment. *See, e.g., Commonwealth v. Warren*, 475 Mass. 530 (2016).

Near Mile 21, the military-style formation of the police officers is a concrete example and visual representation of the intimidation and over-policing of Black people. Allowing this conduct to remain unchecked undermines public safety, perpetuates discriminatory policing, and sows distrust between police and communities of color. This erodes law enforcement's ability to protect and serve the public.

To fully ascertain the scope and scale of the constitutional deprivations, we are formally requesting public records from the City of Newton and the Newton Police Department, pursuant to Public Records Law, G. L. c. 66, § 10. Specifically, we request:

1. All records, including incident and police reports, related to the marathon held on April 17, 2023, including audio files and visual recordings. We are requesting public records surrounding police and surveillance activities along the entire route of the marathon in Newton, including the vicinity of Mile 21.
2. All arrest records from April 17, 2023, including the race/ethnicity of the arrestee(s) and where the arrest occurred. We understand that sensitive personal identifying information may need redaction, but demographic and geographical information must be fully disclosed.

Since this request involves a matter of great public concern, we ask that all fees associated with this records request be waived pursuant to 950 C.M.R. 32.07(2)(k). The information will not be used for any commercial purpose. If the waiver is denied and you expect the fee to exceed \$10.00, please provide a detailed fee estimate. The Public Records Law requires that you comply with this request within 10 days following receipt. In light of the urgent nature of this unfolding racial scandal, we expect a prompt response within the mandatory statutory time frame.

If your response to any portion of the request is that any record or portion of it is not public, please set forth in writing the specific reasons for such denial, including which specific exemption you believe applies.

In terms of next steps, we respectfully request an emergency meeting to discuss the urgent underlying public safety and racial profiling concerns. The meeting should include athletes, spectators, sports teams, and LCR attorneys to fully discuss the legal and community implications outlined above. Additionally, we urge you to immediately:

- Conduct an independent investigation of the Newton Police Department's surveillance tactics and law enforcement practices in connection with the marathon.
- Review the Newton Police Department's policies and procedures to root out racial profiling. This includes performing an equity audit and assessment of policing practices to ensure that current activities do not produce disparities along racial/ethnic lines. As a part of this review, implement unconscious bias and use of force training.
- Issue a public apology to marathon runners and spectators for the improper policing of Black people in Newton.

We can schedule a meeting at your earliest convenience. Please contact us by email at tdavis@lawyersforcivilrights.org. We hope that we can reach an amicable and expeditious resolution of this matter.

Sincerely,

Tasheena M. Davis, Esq.
Iván Espinoza-Madrigal, Esq.
Lawyers for Civil Rights

Cc: Newton City Council