

News

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title: USA - Group against dolphin tank may go to court

summary: an attorney representing Dolphin Liberty suggested Wednesday there may be legal consequences if the city does not stop its police obserbvation

By JASON SKOG
_ 2001, The Virginian-Pilot

As police defended their decision to use undercover officers to monitor a group opposed to a controversial dolphin exhibit, an attorney representing Dolphin Liberty suggested Wednesday there may be legal consequences if the city does not stop.

Police were unapologetic, insisting they were justified and could resume the surveillance if "extremists within our community" resurfaced.

Kevin E. Martingayle, a Beach attorney volunteering for Dolphin Liberty, demanded that police explain their actions and "cease and desist from unwarranted espionage activities (or) the members of Dolphin Liberty will take whatever action is necessary to protect themselves, including court intervention."

Martingayle questioned the validity of using undercover officers at citizen group meetings and said the practice has far-reaching and chilling consequences.

"When law-abiding citizens become fearful that their attendance at meetings may result in baseless criminal investigations . . . many will decide the price of risking their freedom, personal reputation and employment is too heavy to pay, and they will refuse to be involved any longer," he wrote in a four-page letter to City Attorney Leslie L. Lilley.

But police on Wednesday again said Dolphin Liberty members, who oppose a planned dolphin exhibit at the Virginia Marine Science Museum, were not the targets. Rather, they were more concerned about some of Dolphin Liberty's invited guests, who, police said, have extensive criminal backgrounds.

"The information gathered cannot be used for purposes other than by law enforcement, and I am disturbed by the characterization that our tactics are unfair or unreasonable," Virginia Beach Police Chief Alfred Jacocks Jr. said.

City officials on Monday confirmed what Dolphin Liberty members long suspected: An

undercover officer secretly attended their meetings for months.

Chief Jacocks said the surveillance met at least one of the three criteria for undercover monitoring of the citizen group's activities. The criteria are:

When a person has been involved in past criminal activity.

When police suspect criminal activity is occurring.

When there is a threat to public safety.

He said the criteria are part of a policy written by national law enforcement associations and adopted locally in 1991, but he did not specify what occurred that met the department's threshold for surveillance.

Whether a person's criminal background is severe enough to warrant surveillance is "a judgmental, case-by-case thing" Jacocks said.

"We wouldn't have any need, desire or the time to (monitor) someone who had been convicted of jaywalking, but a known drug dealer, obviously that would be a need," he said.

Martingayle said he's particularly concerned that police have not specified the targets or their alleged crimes.

"The fact that they won't say what it is tells me there's not much to it," Martingayle said. "We think this is a concerted effort to chill free speech. Now, if they've got a legitimate suspicion, let them come forward and prove it."

Deputy City Attorney Randall M. Blow said his office is reviewing Martingayle's letter.

"To the extent that we can legally answer these questions, and to the extent that it would not compromise any police activities, we will answer these questions," Blow said. "But I want to be very clear. If the city does respond to any of the questions, its response will be because the city has chosen to respond and not because Mr. Martingayle has threatened court action." Mayor Meyera E. Oberndorf was out of town Wednesday and could not be reached for comment.

Police on Wednesday also said two undercover officers attended an anti-dolphin-tank meeting on Aug. 28 -- more than a month before Dolphin Liberty formed and four months before anyone suspected police were in their midst.

"I guess if there are going to be any police officers, it doesn't matter how many there are," said Susan Q. Wagner, co-founder of Dolphin Liberty. "It wasn't even a meeting. It was a public forum. Why didn't they just come in uniform?"

While Jacocks said it's possible undercover officers have monitored other activist groups in the past, he could not specify which ones or when. That left Wagner wondering whether Dolphin Liberty may be the only example.

“I think it makes me surer than ever that the fact we are opposing a city-endorsed project had something to do with it,” she said Wednesday.

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