

From: [Voris, Dane](#)
To: [Ivey Dyson](#); [Rachel Levinson-Waldman](#); [Jose Gutierrez](#); [Emile Ayoub](#)
Cc: [Gershenson, Adam](#); [Evensen, Hanna](#)
Subject: FW: BPD / Brennan Center Discussion
Date: Friday, April 21, 2023 8:29:25 PM
Attachments: [BRIC and BPD Responses to Brennan Center Questions \(2023-04-21\).pdf](#)
[4 BRIC Criminal Intelligence File Guidelines.pdf](#)
[3 BRIC Tips and Leads Processing Procedures for Suspicious Activity Reporting \(SAR\).pdf](#)
[2 BRIC Threat Information Receipt and Triage Plan.pdf](#)
[1 BRIC Privacy Civil Rights Civil Liberties Protection Policy.pdf](#)

External (dvoris@cooley.com)

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Team – BPD’s response received this evening:

Dane Voris

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dvoris@cooley.com
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From: James Megee <james.megee@pd.boston.gov>
Sent: Friday, April 21, 2023 7:13 PM
To: Voris, Dane <dvoris@cooley.com>
Subject: Re: BPD / Brennan Center Discussion

[External]

Hi Dane,

Answers to the BRIC and BPD questions and copies of policies referenced therein are attached.

To answer your additional questions:

1. BPD’s written responses regarding the Youth Violence Strike Force refer to “significant encounters” that may warrant a Form 26. Please explain what “significant encounters” means in this context. If the criteria for a “significant encounter” is reflected in any BPD policy or other document, please provide a copy.

The term "significant encounter" as used in the Department's answers to the questions you posed regarding the social media practices of the Youth Violence Strike Force is not defined in any BPD policy or document. In practice, "significant encounters" typically include the observation of an individual brandishing a weapon or other contraband on social media.

2. The Brennan Center's specific Request #12 seeks "[a]ny and all records reflecting the legal justification(s) for social media monitoring, including but not limited to memos, emails, and policies and procedures." In its October 26, 2021 letter, BPD noted that "[a]ny department legal memos may be subject to attorney client privilege." However, BPD has not yet indicated whether any such privileged memos do in fact exist. Nor to our knowledge has BPD produced any non-privileged documents responsive to this request. On September 9, 2022, Joe McClellan noted that BPD was "working diligently on request No. 12 right now and hope to give [the Brennan Center] a full and complete response soon." Please provide that response and any associated privilege log.

The department has not located any responsive records to Request #12, other than the current draft social media policies you reference below.

3. In your February 11, 2022 letter, BPD indicated that it "currently has two draft policies regarding the use of social media," but declined to produce them under Mass. Gen. Laws Chap. 4, Section 7(26)(d). Please provide an update on the status of those policies and, if now adopted, produce copies.

The policies are still in draft form and are actively being worked on. Once finalized, the Department agrees to send courtesy copies of any social media policy to the Brennan Center.

I hope this resolves all outstanding issues with the Brennan Center. Should you require anything else, please feel free to reach out to me or to submit a new Public Records Request. I apologize that this took longer than we all had hoped.

Regards,

James Megee

On Fri, Apr 7, 2023 at 6:07 PM Voris, Dane <dvoris@cooley.com> wrote:

Jess –

Despite multiple follow-ups on our end, it has been several weeks since I've heard from you regarding BPD's written responses to our general and BRIC questions. Joe McClellan promised these responses in December, and we have yet to receive even an ETA from your office. While we appreciate your office's commitment to working with the Brennan Center on its January 2020 public records request, the current state of play is unacceptable. Please provide BPD's remaining written responses no later than Friday, April 21, 2023.

In addition, please provide responses and/or updates on the following items no later than Friday, April 21, 2023:

1. BPD's written responses regarding the Youth Violence Strike Force refer to "significant encounters" that may warrant a Form 26. Please explain what "significant encounters" means in this context. If the criteria for a "significant encounter" is reflected in any BPD policy or other document, please provide a copy.

2. The Brennan Center's specific Request #12 seeks "[a]ny and all records reflecting the legal justification(s) for social media monitoring, including but not limited to memos, emails, and policies and procedures." In its October 26, 2021 letter, BPD noted that "[a]ny department legal memos may be subject to attorney client privilege." However, BPD has not yet indicated whether any such privileged memos do in fact exist. Nor to our knowledge has BPD produced any non-privileged documents responsive to this request. On September 9, 2022, Joe McClellan noted that BPD was "working diligently on request No. 12 right now and hope to give [the Brennan Center] a full and complete response soon." Please provide that response and any associated privilege log.

3. In your February 11, 2022 letter, BPD indicated that it "currently has two draft policies regarding the use of social media," but declined to produce them under Mass. Gen. Laws Chap. 4, Section 7(26)(d). Please provide an update on the status of those policies and, if now adopted, produce copies.

If we do not receive a timely response to these items, the Brennan Center will need to consider all of its options, including pushing forward with the search-term review that we discussed last year.

Please do not hesitate to reach out if you need clarification on any of these points. The Brennan Center reserves all rights and waives none.

Wishing you and yours a nice holiday weekend.

Best,
Dane

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From: Voris, Dane
Sent: Tuesday, April 4, 2023 2:54 PM
To: James Megee <james.megee@pd.boston.gov>
Subject: RE: BPD / Brennan Center Discussion

Jess –

I'm following up again on this. As I'm sure you can appreciate, my client is starting to question whether and when we will receive the department's responses to our BRIC and general questions. Please advise.

Dane

Dane Voris

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From: Voris, Dane
Sent: Monday, March 20, 2023 9:02 AM
To: James Megee <james.megee@pd.boston.gov>
Subject: RE: BPD / Brennan Center Discussion

Jess –

I'm following up on the department's responses to our BRIC and general questions. Can you please provide an ETA?

Best,
Dane

Dane Voris

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From: James Megee <james.megee@pd.boston.gov>
Sent: Friday, February 24, 2023 2:32 PM
To: Voris, Dane <dvoris@cooley.com>
Subject: Re: BPD / Brennan Center Discussion

[External]

Hi Dane,

Sorry for the delayed reply. I was out sick for part of the week. I am told we are awaiting a few more items on the BRIC questions, as people were out for school vacation this week. As for the department questions I will have to get back to you. I should have some time next week to take a look at them and get you an ETA.

Best,

Jess

On Tue, Feb 21, 2023 at 4:17 PM Voris, Dane <dvoris@cooley.com> wrote:

Jess – I hope you had a nice holiday weekend. Following up on my email below:

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From: Voris, Dane
Sent: Friday, February 17, 2023 11:13 AM
To: James Megee <james.megee@pd.boston.gov>
Subject: RE: BPD / Brennan Center Discussion

Jess – Thank you for the update. We look forward to the Youth Violence Strike Force responses today. Please send the BRIC answers as soon as possible next week.

Do you have an ETA for the general BPD answers?

Best,
Dane

Dane Voris

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From: James Megee <james.megee@pd.boston.gov>
Sent: Wednesday, February 15, 2023 3:54 PM
To: Voris, Dane <dvoris@cooley.com>
Subject: Re: BPD / Brennan Center Discussion

[External]

Hi Dane,

Sorry for the delay. Quick update on the questions you asked on behalf of the Brennan center. I am awaiting the answer on one of the Youth Violence Strike Force questions and we should be able to get that out by end of week. As for the BRIC questions we will get those to you by next friday.

Glve me a shout if you need anything in the interim.

Best,

Jess

On Fri, Feb 3, 2023 at 9:20 AM Voris, Dane <dvoris@cooley.com> wrote:



Dane Voris is
inviting you to a
scheduled Zoom
meeting.

[Join Zoom Meeting](#)

iPhone one-tap: (US Toll): +13092053325,96113413366# or
+13126266799,96113413366#

Meeting URL: <https://cooley.zoom.us/j/96113413366>

Join by Telephone

Dial:

- +1 309 205 3325 (US Toll)
- +1 312 626 6799 (US Toll)
- +1 646 558 8656 (US Toll)
- +1 646 931 3860 (US Toll)
- +1 301 715 8592 (US Toll)
- +1 305 224 1968 (US Toll)
- +1 669 900 6833 (US Toll)
- +1 689 278 1000 (US Toll)
- +1 719 359 4580 (US Toll)
- +1 253 205 0468 (US Toll)
- +1 253 215 8782 (US Toll)
- +1 346 248 7799 (US Toll)
- +1 360 209 5623 (US Toll)
- +1 386 347 5053 (US Toll)
- +1 507 473 4847 (US Toll)
- +1 564 217 2000 (US Toll)
- +1 669 444 9171 (US Toll)
- 855 880 1246 (US Toll Free)

877 853 5257 (US Toll Free)

Meeting ID: 961 1341 3366

[International
numbers](#)

**Join from an
H.323/SIP room
system**

H.323: 162.255.37.11 (US West) or 162.255.36.11 (US East)

Meeting ID: 961 1341 3366

SIP: 96113413366@zoomcrc.com

**Skype for
Business
(Lync)**

SIP: 96113413366@lync.zoom.us

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Questions for the Boston Regional Intelligence Center (BRIC)

- 1. Does the BRIC monitor any individuals or groups on an ongoing basis, either through routine or periodic manual review of their social media profiles, automated alerts, or other tracking tools? If so, how were those individuals or groups identified for ongoing review?**

Social media is used in investigative, analytical, assessment and intelligence activities and in a manner that protects individuals' privacy, civil rights, and civil liberties.

The BRIC uses social media for the following law enforcement/public safety purposes: (1) crime analysis, (2) situational assessments/awareness for public safety purposes, (3) developing criminal intelligence development, and (4) supporting criminal investigations.

The Department does not own or pay for subscription-based licensing for "Social Media Monitoring Software." The Department accesses information from publicly available sources, such as social media platforms, including, but not limited to, Facebook, Twitter, Instagram, and SnapChat, and utilizes publicly available applications to improve efficiency in reviewing such information, such as Snapmap and Tweetdeck.

BRIC personnel will not utilize social media to seek or retain information about: (1) individuals or organizations solely on the basis of their religious, political, social views or activities; or (2) an individual's race, ethnicity, citizenship, place of origin, disability, gender, or sexual orientation unless such information is relevant to the individual's criminal conduct or activity or if required to identify the individual.

- 2. What factors or criteria would prompt or cause the BRIC to monitor an individual or group's social media presence, including but not limited to a threat reported by another law enforcement agent or by the target of that threat? Where are those factors or criteria documented?**

Intelligence information -- which may include information via social media -- is gathered and maintained in accordance with the BRIC Privacy, Civil Rights, and Civil Liberties Protection Policy, Threat Information Receipt and Triage Plan, Tips and Leads Processing Procedures for Suspicious Activity (SAR), Criminal Intelligence File Guidelines, and 28 CFR Part 23.

Intelligence information may be gathered regarding activities and associations of individuals, organizations, businesses, or groups that are (a) suspected of actual or attempted planning, organizing, financing, or commission of criminal acts; or (b) suspected of being associated with criminal activity with known or suspected criminals.

3. If individuals or groups are monitored by the BRIC using social media, what are the steps taken to do so, and how are those steps documented?

Social media can be accessed for overt, discreet, or undercover law enforcement purposes. As noted above, the BRIC uses social media for the following law enforcement/public safety purposes: (1) crime analysis, (2) situational assessments/awareness for public safety purposes, (3) developing criminal intelligence development, and (4) supporting criminal investigations.

Intelligence information collected from social media via overt, discreet, or undercover activities is evaluated and maintained in accordance with the BRIC Privacy, Civil Rights, and Civil Liberties Protection Policy, Threat Information Receipt and Triage Plan, Tips and Leads Processing Procedures for Suspicious Activity (SAR), Criminal Intelligence File Guidelines, and 28 CFR Part 23.

Authorization by a supervisor is not necessary for accessing publicly available information for an overt online activity. Authorization by a supervisor and the use of an online alias must be obtained for discreet or undercover law enforcement activity.

Discreet Purposes:

Approved discreet activity may include, but is not limited to, the following actions: "following", "subscribing" and "liking."

To receive authorization to use an online alias for discreet purposes, BRIC personnel shall submit a written request to their immediate supervisor. The immediate supervisor shall evaluate the request to determine whether the use of an online alias with discreet activity would serve a valid law enforcement or public safety purpose.

The request and subsequent approval, if any, will specify the details, circumstances, and conditions the online alias may be used for discreet activity.

Undercover Law Enforcement Purposes:

Approved undercover activity may include, but is not limited to, the following actions: "friending," direct messaging, engaging in dialogue with others, etc.

To receive authorization to use an online alias for undercover purposes, BRIC personnel shall submit a request to their immediate supervisor. The request will specify the details, circumstances, and conditions under which the online alias may be used for undercover activity.

The immediate supervisor shall evaluate the request to determine if undercover activity is necessary to meet a valid law enforcement or public safety purpose. If so, a "recommended" request form will be submitted to the attorney assigned to the BRIC for review and further recommended action, and then to the Bureau Chief or his/her designee final approval.

In situations involving exigent circumstances, a BRIC Supervisor may obtain via the chain of command verbal authorization for online undercover activity. The BRIC Supervisor shall provide written documentation of the request, to include the exigent circumstances, and the circumstances of the verbal authorization as soon as practical.

All online undercover activity conducted by BRIC personnel will be done under the supervision and guidance of a BPD detective and BPD sworn supervisor(s).

All approved online undercover activity requests will be regularly reviewed by the immediate supervisor, BPD sworn supervisor(s), Bureau Chief, and the attorney assigned to the BRIC to evaluate whether the need for the undercover activity continues to exist.

4. How does the BRIC use social media to prepare for upcoming public events?

As noted above, the BRIC uses social media for law enforcement/public safety purposes, including situational assessments/awareness for public safety purposes.

The BRIC actively searches open source social media for events in the area of responsibility (the Metro Boston Homeland Security Region). Events are assessed to determine whether there are any concerns regarding public safety or potential criminal activity. If discreet or undercover activity is deemed necessary, the procedures listed above are implemented.

The BRIC maintains a special events database. Most event details are purged from the database within 30 days of the completion of the event. No content related information regarding any particular event is maintained in the database outside of the 30-day period. However, the date/time, category, and district where the event occurred are maintained for a period of 5 years to aid in administrative management tasks.

5. When the BRIC collects information from social media based on a potential threat and determines the threat is not substantiated, where is that fact documented and how long does BRIC retain documentation that the threat is not substantiated? In addition, how long does BRIC retain the information collected from social media in circumstances where a threat is not substantiated?

Potential threat information is handled in accordance with the BRIC Privacy, Civil Rights, and Civil Liberties Protection Policy, Threat Information Receipt and Triage Plan, Tips and Leads

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Processing Procedures for Suspicious Activity Reporting (SAR), Criminal Intelligence File Guidelines, and 28 CFR Part 23.

Upon initial receipt of information, including social media-based information, by the BRIC, tips, leads, and threat information, may be initially retained for a maximum of 30 days for detectives and analysts to determine its credibility and value. When appropriate, and based on reasonable circumstances, a BRIC supervisor may extend the assessment period beyond 30 days to effectively address the information.

All BPD investigatory information is retained in accordance with the Massachusetts Statewide Records Retention Schedule (Revised May 2022) and BPD Rule 322A (Retention and Destruction of Records and Materials). Any information related to a crime or an investigation of criminal activity must be maintained in accordance with the Schedule and preserved so it can be made available for discovery during the pendency of the case and any subsequent appeals as required of all Public Agencies in the Schedule.

Intelligence information is maintained in accordance with the BRIC Privacy, Civil Rights, and Civil Liberties Protection Policy, Threat Information Receipt and Triage Plan, Tips and Leads Processing Procedures for Suspicious Activity Reporting (SAR), Criminal Intelligence File Guidelines, and 28 CFR Part 23.

6. Is information collected by BRIC from social media searchable? If so, what parameters can the BRIC use to retrieve information that it or other components of BPD have previously collected from social media? If not, how is that information stored/maintained and accessed?

The BRIC does not maintain a database of information collected from social media.

All BPD investigatory information is retained in accordance with the Massachusetts Statewide Records Retention Schedule (Revised May 2022) and BPD Rule 322A (Retention and Destruction of Records and Materials). Any information related to a crime or an investigation of criminal activity must be maintained in accordance with the Schedule and preserved so it can be made available for discovery during the pendency of the case and any subsequent appeals as required of all Public Agencies in the Schedule.

Intelligence information is maintained in accordance with the BRIC Privacy, Civil Rights, and Civil Liberties Protection Policy, Threat Information Receipt and Triage Plan, Tips and Leads Processing Procedures for Suspicious Activity Reporting (SAR), Criminal Intelligence File Guidelines, and 28 CFR Part 23.

Questions for the Boston Police Department

18. Has any person or group filed a complaint against BPD concerning social media monitoring? If so, please identify those persons or groups.

The Department is not in receipt of any such direct complaints. Nonetheless, criminal defendants regularly and routinely file motions that challenge the Department's use of social media.

19. Are BPD officers or agents permitted to create fake or undercover social media accounts for use in investigations?

Yes, in accordance with the 4th Amendment to the U.S. Constitution and Article 14 of the Massachusetts Declaration of Rights. *See e.g., Commonwealth v. Carrasquillo*, 489 Mass. 107 (2022).

20. Are BPD officers permitted to use fake or undercover social media accounts to communicate directly with targets of investigation?

Yes, in accordance with the 4th Amendment to the U.S. Constitution and Article 14 of the Massachusetts Declaration of Rights. *See e.g., Commonwealth v. Carrasquillo*, 489 Mass. 107 (2022).

21. Are BPD officers permitted to use fake or undercover accounts to communicate directly with victims or witnesses?

Yes, in accordance with the 4th Amendment to the U.S. Constitution and Article 14 of the Massachusetts Declaration of Rights. *See e.g., Commonwealth v. Carrasquillo*, 489 Mass. 107 (2022).

22. Are BPD officers permitted to use fake or undercover social media accounts that impersonate an actual person who is known to the individual with whom they are connecting?

Yes, in accordance with the 4th Amendment to the U.S. Constitution and Article 14 of the Massachusetts Declaration of Rights, and recognizing the cautionary dicta in *Carrasquillo*, 489 Mass. at 125 n.20 ("If, for example, a police officer had gained access to an individual's account by masquerading as a close friend or family member, the result might be different").

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- 23. If the answers to 19, 20, 21, or 22 are yes, have any individuals or groups contacted using fake or undercover social media accounts on filed complaints against BPD? If so, please identify those persons or groups.**

The Department is not in receipt of any such direct complaints. Nonetheless, criminal defendants regularly and routinely file motions that challenge the Department's use of social media.