

*via email*

26 October 2021

Cooley LLP  
500 Boylston Street 14th Floor  
Boston, MA 02116-3736

Attn: Adam Gershenson

Re: Public Records Request B00169-01320

Dear Attorney Gershenson:

The Boston Police Department (Department), has received your October 25, 2021 letter regarding the Brennan Center for Justice at New York University School of Law (“Brennan Center”). The Department is currently reviewing the objections and queries laid out in the letter. We are in the process of raising points of clarification with our staff in regards to the letter, and will send a supplemental response to address these issues shortly.

The Department has located additional responsive material to your original, January 2021 request. This letter shall act as a supplement to our August 27, 2021 letter. This response applies only to records that exist and are in the custody of the Department. *See A Guide to the Massachusetts Public Records Law*, p. 32, n.115. It is expected that a custodian of records must use her superior knowledge of her records with respect to responses to public records requests. 950 CMR 32.04(5).

Specifically, you requested:

The Brennan Center specifically requests records under the Public Records Law that were in the BPD’s possession or control from January 1, 2014 through the date of this request, in the following categories:

- 1. Policies Governing Use:** Any and all policies, procedures, regulations, protocols, manuals, or guidelines related to the use of social media monitoring by police department employees for purposes other than conducting a background check for police department employment, including but not limited to conducting a criminal investigation, undertaking situational awareness activities, monitoring current or anticipated gatherings, or otherwise viewing or gathering information about individuals. This includes but is not limited to policies, procedures, manuals, or guidelines regarding the authorization, creation, use, and maintenance of fictitious or undercover online personas.
- 2. Policies Governing Location Data Collection:** Any and all records, policies procedures, regulations, protocols, manuals, or guidelines governing the collection and maintenance of location data from social media platforms and/or applications.

3. **Policies Governing Data Retention, Analysis, and Sharing:** Any and all records, policies, procedures, regulations, protocols, manuals, or guidelines relating to the retention, analysis, or sharing of data collected via social media.
4. **Recordkeeping:** Any and all recordkeeping, logs, or digests reflecting the use of social media monitoring or searches of social media for purposes including criminal investigations, situational awareness, event planning, or public safety.
5. **Third-Party Applications:** Any and all records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service developed by any company providing third-party social media monitoring or analysis services, including but not limited to Geofeedia, Snaptrrends, Firestorm, Media Sonar, Social Sentinel, or Dunami.
6. **Collection of Social Media Account Information:** Any and all records reflecting interactions with civilians in which police department employees requested information about the civilian's social media account information, including but not limited to a username, identifier, handle, linked email, or password.
7. **Civilian Communications:** Any and all records reflecting any communications conducted on social media platforms between uniformed or undercover police department employees and civilians, including but not limited to direct messages, group messages, chat histories, comments, or "likes," but excluding communications conducted as part of ongoing investigations and communications appearing on a page or account operated by the BPD and bearing the BPD's name, insignia, or other indicia of ownership or control.
8. **Use for Criminal Investigations:** Any and all records reflecting the number of criminal investigations in which social media research has been used, the number of criminal investigations in which fictitious/undercover online personas have been used, the nature of the offense(s) charged in each investigation, and the number of those investigations that resulted in arrests and/or prosecutions.
9. **Use for Purposes Other Than Criminal Investigations:** Any and all records reflecting the number of matters in which social media was used to collect information about individuals for purposes other than criminal investigations or background checks for police department employment, the nature of each such matter, the number of such matters in which an individual or group was charged with a crime, and the nature of each such matter.
10. **Audits:** Any and all records of, or communications regarding, audits or internal reviews of the Department's use of social media monitoring for the purpose of investigations, situational awareness, event planning, intelligence, or public safety, including but not limited to records reflecting any disciplinary actions, warnings, or proceedings in response to an employee's use of social media.
11. **Training Materials:** Any and all training documents (including draft documents) discussing social media monitoring, including but not limited to PowerPoint presentations, handouts, manuals, or lectures.
12. **Legal Justifications:** Any and all records reflecting the legal justification(s) for social media monitoring, including but not limited to memos, emails, and policies and procedures.
13. **Formal Complaints, Freedom of Information Requests, and Legal Challenges:** Any and all records reflecting formal complaints, Public Record requests, or legal

challenges regarding the Department's use of social media monitoring, including, but not limited to, those complaints or legal challenges made by civilians, nonprofit groups, companies, or the Community Ombudsman Oversight Panel.

14. **Federal Communications:** Any and all records reflecting any communications, contracts, licenses, waivers, grants, or agreements with any federal agency concerning the use, testing, information sharing, or evaluation of social media monitoring products or services.

15. **Nondisclosure Agreements:** Any and all records regarding the BPD's nondisclosure or confidentiality obligations in relation to contracts with third-party vendors of social media monitoring products or services.

16. **Vendor Communication:** Any and all records reflecting interactions with any third-party vendors concerning social media monitoring products or services, including, but not limited to, sales materials, communications, memorandums, and emails relating to those products.

17. **Metrics Measuring Effectiveness of Program:** Any and all reports, communications, metrics, or graphics representing the effectiveness of the Department's social media monitoring program, including but not limited to the degree to which use of social media monitoring led to the discovery of threats to public safety.

Please find all responsive documents to your request attached via the portal.

### **Response No. 1**

The Department provided a response to this request via its August 27, 2021 letter.

### **Response No. 2**

The Department provided a response to this request via its August 27, 2021 letter.

### **Response No. 3**

The Department provided a response to this request via its August 27, 2021 letter.

### **Response No. 4**

The Department provided a response to this request via its August 27, 2021 letter.

### **Response No. 5**

The Department provided a response to this request via its August 27, 2021 letter.

### **Response No. 6**

The Boston Police Department does not maintain a centralized list or database of records reflecting interactions with civilians in which police department employees requested social media information.

The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Under the Public Records Law, the Boston Police Department is not required to create a record, answer questions or conduct research in response to a public records request. See G. L. c. 66, § 6A( d); 32 Op. Atty Gen. 157, 165 (May 18, 1977).

A complete response to Request No. 6, would require the Department to conduct research into every investigative file to determine whether the requested information is contained in said file. The public records law does not place such a requirement on the record holder. Id.

### **Response No. 7**

The Boston Police department does not maintain a centralized list or database of records reflecting any communications conducted on social media platforms between uniformed or undercover police department employees and civilians, including but not limited to direct messages, group messages, chat histories, comments, or “likes.”

The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Under the Public Records Law, the Boston Police Department is not required to create a record, answer questions or conduct research in response to a public records request. See G. L. c. 66, § 6A( d); 32 Op. Atty Gen. 157, 165 (May 18, 1977).

A complete response to Request No. 7, would require the Department to conduct research into every investigative file to determine whether the requested information is contained in said file. The public records law does not place such a requirement on the record holder. Id.

### **Response No. 8**

The Boston Police Department does not maintain a centralized list or database reflecting the number of criminal investigations in which social media research has been used, the number of criminal investigations in which fictitious/undercover online personas have been used, the nature of the offense(s) charged in each investigation, and the number of those investigations that resulted in arrests and/or prosecutions.

The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Under the Public Records Law, the Boston Police Department is not required to create a record, answer questions or conduct research in response to a public records request. See G. L. c. 66, § 6A( d); 32 Op. Atty Gen. 157, 165 (May 18, 1977).

A complete response to Request No. 8, would require the Department to conduct research into every investigative file to determine whether the requested information is contained in said file. The public records law does not place such a requirement on the record holder. Id.

**Response No. 9**

The Boston Police Department does not maintain a centralized list or database reflecting the number of matters in which social media was used to collect information about individuals for purposes other than criminal investigations or background checks for police department employment, the nature of each such matter, the number of such matters in which an individual or group was charged with a crime, and the nature of each such matter

The duty to comply with requests for records extends to those records that exist and are in the possession, custody, or control of the custodian of records at the time of the request. See G. L. c. 66, § 10(a)(ii). Under the Public Records Law, the Boston Police Department is not required to create a record, answer questions or conduct research in response to a public records request. See G. L. c. 66, § 6A( d); 32 Op. Atty Gen. 157, 165 (May 18, 1977).

A complete response to Request No. 6, would require the Department to conduct research into every investigative file to determine whether the requested information is contained in said file. The public records law does not place such a requirement on the record holder. Id.

**Response No. 10**

There are no records responsive to this request.

**Response No. 11**

Please refer to the documents attached via the portal.

**Response No. 12**

The department has reviewed the Brennan Center's October 25, 2021 clarification regarding request No. 12. A search for responsive records is currently being conducted and any responsive documents that are not otherwise exempt from disclosure will be provided within the next 60 days as they become available.

Any Department legal memos may be subject to attorney client privilege. See G.L. c.4, §7 Twenty-sixth(d); see also Suffolk Construction Co., Inc. v. Division of Capital Asset Management, 449 Mass. 444 (2007)

**Response No. 13**



A search for responsive records is currently being conducted and any responsive documents that are not otherwise exempt from disclosure will be provided within the next 60 days as they become available.

**Response No. 14**

Please refer to the documents attached via the portal.

**Response No. 15**

There are no records responsive to this request.

**Response No. 16**

The Department provided a response to this request via its August 27, 2021 letter.

**Response No. 17**

There are no records responsive to this request.

There is a presumption under the Massachusetts Public Records Law that government records are public; however, government records custodians are permitted to redact or withhold portions of public records. See G. L. c. 4, § 7 (26).

After a determination regarding the existence of any public records the Department will provide a supplemental response to your request. Any exemptions to the Public Records Law that apply to permit or require redaction or withholding will be described at that time.

You may appeal this response to the Supervisor of Records in the Office of the Secretary of the Commonwealth. G. L. c. 66, § 10A (c); G. L. c. 66, § 10(b)(ix); 950 CMR 32.08; 950 CMR 32.08(1)(h) (in petitioning the Supervisor, the requester shall provide a copy of such petition to the records access officer associated with such petition). You may also appeal to the Superior Court. 950 CMR 32.06(3)(c).

Very truly yours,

Martha DeMaio  
Director of Public Information  
Boston Police Department