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October 25, 2021

Martha J. DeMaio
Director, Public Information
Office of the Police Commissioner
Boston Police Department

Re: Public Records Request B000169-013020

Dear Ms. DeMaio:

Thank you for your recent correspondence concerning the public records request that the Brennan Center for Justice at New York University School of Law (“Brennan Center”) issued to the Boston Police Department (“BPD”). Per your written response of August 27, 2021, which outlined BPD’s plan to respond to our January 2020 requests, we understand that you consider BPD’s production complete for several of our requests. We write to follow-up on the production of documents responsive to these requests, understanding that further production will be forthcoming for certain other requests no later than October 26, 2021.

In your August 27 letter, you indicated that responsive documents have been produced for Request Nos. 1, 2, 3, 5, and 16. You also stated certain objections to Request Nos. 4, 6, 7, 8, and 9 and asked for clarification on Request No. 12. We have summarized below, for each category of documents, why we believe BPD’s response on August 27 did not adequately respond to the Brennan Center’s request and omitted public records and information we have reason to believe exist.

Request No. 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.

BPD stated that responsive documents have been produced. However, BPD did not produce any “policies, procedures, regulations, protocols, manuals, or guidelines” relating to its use of social media monitoring. Please either confirm that the absence of documents falling into these

categories in BPD's August 27 production means that no such documents exist, or immediately produce such documents.

BPD did produce a 2013 document authored by the Global Advisory Committee, a federal advisory committee to the U.S. Attorney General, outlining procedures for drafting social media policies. Please explain whether BPD considers this document binding on its officers and other employees, such that it constitutes a BPD policy and is responsive to this request.

Request No. 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.

Please confirm that, with the exception of the Boston Regional Intelligence Center ("BRIC") *Privacy, Civil Rights, and Civil Liberties Protection Policy* produced on August 27, there are no additional documents in BPD's custody or control that are responsive to this request, or immediately produce such additional documents.

Request No. 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.

Please confirm that, with the exception of the BRIC *Privacy, Civil Rights, and Civil Liberties Protection Policy* produced on August 27, there are no additional documents in BPD's custody or control that are responsive to this request, or immediately produce such additional documents.

Request No. 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.

BPD stated in its August 27 letter, "The Boston Police Department does not maintain a centralized list or database of all recordkeeping, logs, or digests reflecting the use of social media monitoring or searches of social media." As you know, BPD's obligation to produce public record extends beyond just those reflected in a "centralized list or database." Please confirm whether you are representing that BPD has **no** documents in its possession responsive to this request, or immediately produce such responsive documents. In addition, please explain the parameters of BPD's search for documents responsive to this request.

The Brennan Center has reason to believe there are additional records responsive to this request. BPD is the managing authority of the BRIC.¹ BRIC's *Privacy, Civil Rights, and Civil Liberties*

¹ See The Official Website of the Boston Police Department, *Inside the BPD*, "Bureaus." <https://bpdnews.com/bia>.

Protection Policy, approved on November 3, 2010, provides that all BRIC personnel and authorized users will “seek or retain” information based on public safety threats, criminal law enforcement, and reasonable suspicion of criminal conduct, including information related to investigation and prosecutions, crime analysis, or criminal justice administration.² The policy further states that BRIC “will keep a record of the source of all information sought and collected by the center.”³ Social media monitoring for law enforcement purposes certainly falls within the types of information that BRIC seeks or retains, and thus, the Brennan Center expects BPD to produce any records relating to social media monitoring that BRIC maintains as part of its policy.

Request No. 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, Snaprends, Firestorm, Media Sonar, Social Sentinel, or Dunami.*

The documents BPD produced on August 27 show it contracted with Geofeedia, a social media surveillance system, for several years.⁴ However, the Brennan Center believes there are additional records responsive to this request. First, there appear to be records pertaining to Geofeedia that were not produced. The Geofeedia order form dated December 10, 2015 references “unlimited access to support tutorials and documentation,” yet no support materials or documents were produced.

Second, in 2016, BPD received proposals from Verint Technology,⁵ Uncharted,⁶ and Dataminr,⁷ and apparently conducted a trial of Dataminr the same year.⁸ In 2017, WBUR News reported that BPD planned to spend \$1.4 million on data mining software and was in the process of selecting a vendor.⁹ In July 2021, NBC Boston reported that Massachusetts police departments are actively employing a new software tool, created by ShadowDragon, to conduct social media monitoring.¹⁰ Yet, BPD did not produce any documents regarding trials it conducted with any

² Boston Regional Intelligence Center, *Privacy, Civil Rights, and Civil Liberties Protection Policy*, p. 4-5 (January 2020).

³ *Id.* at 7.

⁴ The documents confirm records previously produced via the Public Records Law in 2017, which revealed that, from 2014 to 2016, BPD used Geofeedia to monitor the social media posts of Bostonians. See Zeninor Enwemeka, *Boston Police Delay Picking Vendor for Social Media Monitoring Program*, WBUR News (Jan. 14, 2017), <https://www.wbur.org/news/2017/01/13/boston-police-social-media-monitoring-delay>.

⁵ <https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/5879516f1b10e3a43057d85f/1484345719679/BRIC+Proposal+Baseline+Document++27a-Oct-16.pdf>

⁶ <https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/587954bb4402438507dcc2e8/1484346558607/Uncharted-BPD-Social-Media-Threats-TechProp-28Oct2016-Submitted.pdf>

⁷ <https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/58795115bebafe8c69f1efc/1484345636642/Dataminr.pdf>

⁸ *Id.*

⁹ See Zeninor Enwemeka, *Boston Police Delay Picking Vendor for Social Media Monitoring Program*, WBUR News (Jan. 14, 2017), <https://www.wbur.org/news/2017/01/13/boston-police-social-media-monitoring-delay>.

¹⁰ See Ryan Kath & Jim Haddadin, *ShadowDragon: Mass. Police Get New Social Media Monitoring Tool*, NBC Boston (July 7, 2021), <https://www.nbcboston.com/investigations/shadowdragon-mass-police-get-new-social-media-monitoring-tool/2424128/>.

vendor, nor did it produce any documents relating to ShadowDragon, despite reports indicating its use in a program in which BPD is a participant. This is particularly troubling given that the software is apparently funded through the Project Safe Neighborhoods initiative, a federal program that aims to reduce violent crime in Boston, Lawrence, Brockton, Worcester, New Bedford, and Springfield.¹¹

Please confirm that, with the exception of those produced on August 27, there are no additional documents in BPD's custody or control that are responsive to this request, or immediately produce such additional documents. In addition, please explain the parameters of BPD's search for documents responsive to this request.

Request No. 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.

BPD stated in its August 27 letter, "[t]he Boston Police Department does not maintain a centralized list or database of all recordkeeping, logs, or digests reflecting the use of social media monitoring or searches of social media." As you know, BPD's obligation to produce public record extends beyond just those reflected in a "centralized list or database." Please explain the parameters of BPD's search for documents responsive to this request when it makes its next production no later than October 26.

Request No. 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.

BPD stated in its August 27 letter, "The Boston Police Department does not maintain a centralized list or database of all recordkeeping, logs, or digests reflecting the use of social media monitoring or searches of social media." As you know, BPD's obligation to produce public record extends beyond just those reflected in a "centralized list or database." Please explain the parameters of BPD's search for documents responsive to this request when it makes its next production no later than October 26.

Request No. 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

¹¹ *Id.*

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.

BPD stated in its August 27 letter, “[t]he Boston Police Department does not maintain a centralized list or database of all recordkeeping, logs, or digests reflecting the use of social media monitoring or searches of social media.” As you know, BPD’s obligation to produce public record extends beyond just those reflected in a “centralized list or database.” Additionally, the Geofeedia documents BPD produced suggest additional records may exist. For example, the Geofeedia order form dated December 10, 2015 references “CSV exports” of data from the platform. Similarly, the Geofeedia order form dated June 5, 2015 references data exports. Please explain the parameters of BPD’s search for documents responsive to this request and immediately produce documents responsive to this Request.

Request No. 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.

BPD stated in its August 27 letter, “[t]he Boston Police Department does not maintain a centralized list or database of all recordkeeping, logs, or digests reflecting the use of social media monitoring or searches of social media.” As you know, BPD’s obligation to produce public record extends beyond just those reflected in a “centralized list or database.” Additionally, as noted above, the Geofeedia documents BPD produced suggest social media information collected through its platform may have been exported and saved. Please explain the parameters of BPD’s search for documents responsive to this request and immediately produce documents responsive to this Request.

Request No. 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.

BPD requested clarification regarding Request No. 12.

Request No. 12 seeks any and all documents and communications regarding BPD’s knowledge, awareness, or establishment of the legal framework governing the use of social media monitoring by police, including any records or memos reflecting legal authorities on the scope of BPD’s authority to conduct social media monitoring. Records responsive to this Request would include documents and communications involving potential or anticipated legal challenges to social media monitoring, questions or issues raised over the legality of social media monitoring, and any policies and procedures that relate to legal matters in conjunction with social media monitoring.

The Brennan Center requests that BPD provide documents responsive to Request No. 12 on or before October 26 along with the productions for the remaining requests.

Request No. 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.

The Brennan Center believes there are additional records responsive to this request. As noted above, the Brennan Center is aware that BPD communicated with several vendors to obtain proposals for social media monitoring services and the documents BPD produced on August 27 show it contracted with Geofeedia for several years. As noted above, the Geofeedia documents BPD produced further show that Geofeedia contemplated providing support to BPD, and the June 5, 2015 order form indicates Geofeedia intended to provide video-based training to BPD officers. Yet BPD did not produce any records reflecting its interactions with either Geofeedia or the other vendors.

Please confirm that, with the exception of those produced on August 27, there are no additional documents in BPD's custody or control that are responsive to this request, or immediately produce any such additional documents. In addition, please explain the parameters of BPD's search for documents responsive to this request.

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Thank you for your time. We look forward to your response and BPD's production of additional responsive documents on or before October 26. The Brennan Center reserves all rights.

Sincerely,

Adam Gershenson

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