

January 30, 2020

Re: Freedom of Information Law Request

Dear Sir or Madam:

This is a request under the New York Freedom of Information Law (“FOIL”), N.Y. Pub. Off. Law §§ 86, 87, on behalf of the Brennan Center for Justice at NYU School of Law (“Brennan Center”).

The Brennan Center seeks information relating to the New York City Police Department’s use of social media to collect information about individuals, groups, and activities, described below as “social media monitoring.”

Background

In general, “social media monitoring” is a term describing the use of social media platforms like Facebook, Twitter, and Instagram to gather information for purposes including, but not limited to, identifying potential threats, reviewing breaking news, collecting individuals’ information, conducting criminal investigations and intelligence, and gauging public sentiment. Social media monitoring can be conducted through individual, direct use of social media platforms and their search functions (including via the use of a social media account, either public or undercover), or through third-party monitoring tools that use keywords, geographic locations, and data mining to identify trends and networks of association.

The most recent publicly available social media use policy from the New York City Police Department (“NYPD” or “Department”), which was produced in response to a 2015 FOIL request, allows officers to use social media to aid investigations, including by using fictional or undercover personas.¹ The arrest of Jelani Henry on murder charges in 2012 demonstrates the Department’s use of social media during investigations to identify potential persons of interest via their friend and follower networks. Mr. Henry was arrested based on his associations and pictures with members of a local “crew.”² He spent two years

¹ See Chase Pashkowich, *NYPD Online Surveillance*, MUCKROCK, <https://www.muckrock.com/foi/new-york-city-17/nypd-online-surveillance-14466/#file-34135> (last visited Oct. 29, 2019).

² David Uberti, *How Social-Media Surveillance of Teenagers Led to a New Kind of Policing*, NATION (Apr. 19, 2019), <https://www.thenation.com/article/jeffery-lane-digital-street-book-review/> (reviewing Sociologist Jeffrey Lane’s book *The Digital Street*); Ben Popper, *How The NYPD Is Using Social Media To Put Harlem Teens Behind Bars*, VERGE (Dec. 10, 2014), <https://www.theverge.com/2014/12/10/7341077/nypd-harlem-crews-social-media-rikers-prison>.

on Rikers Island on the basis of “social media evidence” before his case was dropped and he was released.³

The case of the Bronx120, which involved the arrests of 120 young men in one day on the basis of allegations that they were involved in gang-related conspiracies, also involved access to civilians’ social media accounts. Several of the cases were built on social media “likes” or “shares,” the use of which led to some defendants pleading guilty to charges of conspiracy.⁴ To date, the prosecution has used over 41,000 Facebook pages and records to build the Bronx120 case.⁵

The NYPD also uses social media to gauge public sentiment, identify potential threats, and track protestors. Last year, the Department reported sending surveys, in the form of pop-up ads, to thousands of New Yorkers each month via platforms like Facebook and Instagram to gauge public sentiment about the NYPD. The surveys were translated into measurable “trust scores” by an independent company, using an undisclosed methodology, and the results were sent to each precinct.⁶ The NYPD has acknowledged using social media to monitor and identify parties that might lead to overcrowding, noise, or underage drinking.⁷ Public-records requests have also revealed that the NYPD used social media to conduct surveillance of Black Lives Matter protesters.⁸

Despite widespread public interest in social media monitoring by law enforcement officers,⁹ the public lacks information about the capabilities and limitations of the NYPD’s

³ *Id.*

⁴ Max Rivlin-Nadler, *The Strange Aftermath of the Largest Gang Bust in New York History*, VICE (May 12, 2016), https://www.vice.com/en_ca/article/8gkwaa/the-strange-aftermath-of-the-largest-gang-bust-in-new-york-history.

⁵ Simon Davis-Cohen, *Video: The Heavy Hand Of New York’s Social Media-Powered Policing*, FAST COMPANY (Apr. 19, 2019), <https://www.fastcompany.com/90337408/the-heavy-hand-of-new-york-city-social-media-fueled-policing-video-documentary>.

⁶ Rebecca Kesten, *NYPD Uses Tech To Gauge Citizens’ Sense Of Safety: It’s a ‘Shared Responsibility’*, FOX NEWS (Sep. 28, 2019), <https://www.foxnews.com/tech/app-helps-police-tap-into-citizen-sentiments>; Simone Weichselbaum, *How a ‘Sentiment Meter’ Helps Cops Understand Their Precincts*, WIRED (July 16, 2018), <https://www.wired.com/story/elucid-sentiment-meter-helps-cops-understand-precincts/>.

⁷ Jen Chung, *FYI: NYPD Maybe Be [sic] Following Your Twitter and Facebook*, GOTHAMIST (June 25, 2011), <https://gothamist.com/news/fyi-nypd-maybe-be-following-your-twitter-and-facebook>.

⁸ Zolan Kanno-Youngs, *NYPD Emails Show Officers Surveilled Black Lives Matter Protesters*, WALL ST. J. (Jan. 17, 2019), www.wsj.com/articles/nypd-emails-show-officers-surveilled-black-lives-matter-protesters-11547771520.

⁹ *See, e.g., Letter from Community Groups to City Council Member Donovan Richards, Chair, Committee on Public Safety*, N.Y. AMSTERDAM NEWS (Feb. 8, 2018), <http://amsterdamnews.com/news/2018/feb/08/dear-city-council-member-donovan-richards-chair-co/> (Note: This letter of concern to the City Council comes from community groups who were affected by or spoke out against the proceedings of the Bronx120 prosecutions.); George Joseph, *Years After Protests, NYPD Retains Photos of Black Lives Matter Activists*, APPEAL (Jan. 17, 2019), <https://theappeal.org/years-after-protests-nypd-retains-photos-of-black-lives-matter-activists/>; Kanno-Youngs, *supra* note 8; Ali Winston,

social media monitoring operations. For this reason, we seek information about the Department's use of social media to collect information about individuals, groups, and activities. We therefore request the documents below.

Request

The Brennan Center specifically requests records under the FOIL that were in the NYPD's possession or control from January 1, 2011 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

Did the Police Spy on Black Lives Matter Protesters? The Answer May Soon Come Out, N.Y. TIMES (Jan. 14, 2019), <https://www.nytimes.com/2019/01/14/nyregion/nypd-black-lives-matter-surveillance.html>; Meredith Broussard, *When Cops Check Facebook*, ATLANTIC (Apr. 19, 2015), <https://www.theatlantic.com/politics/archive/2015/04/when-cops-check-facebook/390882/>; Alice Sperti, *The Largest Gang Raid in NYC History Swept Up Dozens of Young People Who Weren't in Gangs*, INTERCEPT (Apr. 25, 2019), <https://theintercept.com/2019/04/25/bronx-120-report-mass-gang-prosecution-rico/>; *Police: Social Media Surveillance*, BRENNAN CTR. FOR JUSTICE, <https://www.brennancenter.org/issues/protect-liberty-security/social-media/police-social-media-surveillance> (last visited Oct. 29, 2019).

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 NYPD and bearing the NYPD'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, FOIL 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, non-profit groups, companies, the Office of the Inspector General for the NYPD, or Civilian Complaint Review Board.
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 NYPD'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.

Fee Waiver and Expedited Processing

The above requests are a matter of public interest. Accordingly, the Brennan Center for Justice requests a fee waiver and expedited processing. The disclosure of the information sought is not for commercial purposes; instead, it will contribute to the public's understanding of government operations.

The Brennan Center for Justice is a nonpartisan, non-profit law and policy institute dedicated to upholding the American ideals of democracy and equal justice for all. The Center has a long history of compiling information and disseminating analysis and reports to the public about government functions and activities, including policing. Accordingly,

the primary purpose of the above requests is to obtain information to further the public's understanding of important policing policies and practices. Access to this information is crucial for the Center to evaluate such policies and their effects.

Should the NYPD choose to charge a fee, please inform the Brennan Center if the cost will exceed \$50.00, in writing at levinsonr@brennan.law.nyu.edu or Attn: Rachel Levinson-Waldman, 1140 Connecticut Ave. NW, Suite 1150, Washington, DC 20036.

Response Required

The Brennan Center appreciates the NYPD's attention to this request and expects that the NYPD will send its legally mandated response within five days of receipt, or provide the date on which the response will be provided, which must be "reasonable" under the statute.¹⁰ For records that contain some exempt material and some non-exempt material, we request that you release the requested records with appropriate redactions in accordance with the FOIL and related case law.¹¹ We also request that you provide us with the documents in electronic format where possible.

Should you have any questions concerning this request, please contact Rachel Levinson-Waldman by telephone at (202) 249-7193 or via e-mail at levinsonr@brennan.law.nyu.edu.

¹⁰ See N.Y. Pub. Off. Law § 89(3)(a).

¹¹ See, e.g., *Gould v. New York City Police Dep't.*, 89 N.Y.2d 267, 265 (1996) ("blanket exemptions for particular types of documents are inimical to FOIL's policy of open government").