

Lisa Kershner
Public Access Ombudsman
Office of the Attorney General
200 St Paul Place, 25th Floor
Baltimore, MD 21202

Re: Mediation Request to Public Records Ombudsman for MPIA 20-0187

Dear Ms. Kershner:

This is a request for mediation under Md. Code Gen. Prov. § 4-1B-04 sent on behalf of the Brennan Center for Justice at NYU School of Law (“Brennan Center”). On January 30, 2020, the Brennan Center requested documents under Maryland Public Information Act (“MPIA”) §§ 4-101 et seq. from the Baltimore Police Department (“BPD”). The request sought records regarding the BPD’s use of social media to collect information about individuals, groups, and activities, described below as “social media monitoring.” The BPD’s final response on October 20, 2020 did not adequately respond to the Brennan Center’s request, omitting records and information we have reason to believe exist. We therefore request a mediation with the BPD by the Office of the Public Records Ombudsman.

Timeline

The Brennan Center submitted its initial MPIA request on January 30, 2020. The BPD did not acknowledge the request, prompting the Brennan Center to submit status inquiries on three separate occasions in March, April, and August 2020. On August 12th, the Brennan Center telephoned the BPD and finally received an acknowledgement of the MPIA request. The BPD provided a point of contact, Dana Abdul Saboor, with whom the Brennan Center communicated from August 20th through October 20, 2020, when the BPD sent its response to the Brennan Center’s inquiry. As described in further detail below, we believe the BPD failed to adequately or completely respond to the Brennan Center’s request, as required by the MPIA.

Brennan Center MPIA Request

The Brennan Center requested information on the BPD’s use of “social media monitoring.” 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 use or through third-party monitoring tools that use keywords, geographic locations, and data mining to identify trends and networks of association.

In 2016, records obtained through an MPIA request by the *Baltimore Sun* revealed that the BPD had employed a social media surveillance program called Geofeedia to monitor protests and other First Amendment-protected activities.¹ The BPD has since publicly defended its use of the program.² Despite widespread interest in its use, the public still lacks information about the capabilities and limitations of the BPD's social media monitoring operations.

For this reason, the Brennan Center sought information about the Department's use of social media to collect information about individuals, groups, and activities. We requested seventeen separate categories of public records in the BPD's possession or control from January 1, 2014 through the date of our request relating to social media monitoring, including, but not limited to, BPD policies governing use of social media monitoring; information about data retention, analysis, and sharing; communications with vendors about the technology; and agreements governing the BPD's use of the technology.

BPD Response

On October 20th, the BPD sent its formal response to the Brennan Center's MPIA request. The response included a letter addressed to the Brennan Center and eleven attached documents, two of which are identical and one of which was so heavily redacted that it cannot be read. In the letter, the BPD claimed it had no responsive records for nine of the Brennan Center's requests, including information on recordkeeping; data collection, retention, and sharing; internal investigations and audits; and officer training. The BPD also claimed that records pertaining to three of the requests – employee disciplinary actions; legal justifications; and civilian communications – were either privileged or confidential. Finally, the BPD claimed that six of the requests would be unreasonably burdensome to produce. In sum, the BPD provided responsive records to only four of the seventeen Brennan Center requests.

¹ Alison Knezevich, *Police In Baltimore, Surrounding Communities Using Geofeedia To Monitor Social Media Posts*, BALTIMORE SUN (Sep. 5, 2016), <https://www.baltimoresun.com/news/investigations/bs-md-geofeedia-police-20160902-story.html>.

² See Kate Amara, *ACLU Report: Baltimore Police Used Social Media Aggregator During Unrest*, WBALTV (Oct. 13, 2016), <https://www.wbaltv.com/article/aclu-report-baltimore-police-used-social-media-aggregator-during-unrest/7148628>; Knezevich, *supra* note 1.

Information/Records Outstanding

The Brennan Center believes there are outstanding records the BPD has failed to produce. Not only did the BPD produce documents in response to only four of the seventeen requests, but the responses provided are clearly incomplete.

To begin with, there are missing contracts with Geofeedia. The Brennan Center requested “any and all records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate” a third-party social media monitoring application. The BPD’s own records show that the Homeland Security Section began using Geofeedia in 2013.³ Yet the earliest contract provided to the Brennan Center is from November 2015.

The BPD also repeatedly failed to produce responsive records cited in the Department’s own documents. For instance, the BPD did not provide copies of four files attached to an “Open Market Purchase Order” that the department produced describing a BPD-Geofeedia contract. The Department did not give an explanation as to why the documents are missing. Additionally, another BPD record references a 2015 social media policy, but the Brennan Center did not receive this policy, despite requesting “any and all policies, procedures, regulations, protocols, manuals, or guidelines related to the use of social media monitoring.”

While this is not an exhaustive list of issues that would benefit from mediation, we believe it is illustrative of the fact that for many of the Brennan Center’s requests, the BPD’s response was either incomplete or inadequate.

Request for Mediation

In the interest of settling this matter without litigation, the Brennan Center believes the best path forward at this point is mediation with the BPD by the Office of the Public Records Ombudsman. We are hopeful that an informal discussion led by an independent and impartial official will be an efficient and effective way to allow the parties to address any misunderstandings, answer outstanding questions, and discuss the information and records we believe are missing. For example, in its response letter, the BPD informed us that portions of our request were “vague and ambiguous,” but did not elaborate further or request clarification or additional information. We would appreciate an opportunity to correct any perceived ambiguities, answer questions, and provide supplemental information.

³ One of the documents produced to the Brennan Center by the BPD was a September 2016 “Justification Form,” where it is alleged that “Homeland Security Section has been using Geofeedia’s location-based social media monitoring software for the past three years.”

Should you have any questions concerning this request, please contact Laura Hecht-Felella by telephone at (646) 292-8385 or via e-mail at hecht-felella@brennan.law.nyu.edu.

Thank you for your time.

Laura Hecht-Felella

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