

# BRENNAN CENTER FOR JUSTICE

December 15, 2020

Metropolitan Police Department  
General Counsel  
300 Indiana Ave., NW  
Room 4125  
Washington, DC 20001

Inspector Vendette Parker  
Metropolitan Police Department  
300 Indiana Avenue, NW  
Room 4153  
Washington, D.C. 20001

Via: DC Government Public FOIA Portal

## **Re: Freedom of Information Act Request**

Dear Sir or Madam:

This is a request under the District of Columbia's Freedom of Information Act ("FOIA"), D.C. Code §§ 2-531-539, on behalf of Data for Black Lives and the Brennan Center for Justice at NYU School of Law ("Brennan Center"). Data for Black Lives and the Brennan Center seek information relating to the Metropolitan Police Department's ("MPD'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, Snapchat, 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 includes four types of activities: (1) monitoring or tracking an individual, a group, or an affiliation (e.g., an online hashtag) via publicly available information; (2) using an informant, a friend of the target, or an undercover account to obtain information from a protected, private, or otherwise unavailable account or page; (3)

using software like Dataminr to monitor individuals, groups, associations, or locations; or (4) issuing a subpoena, warrant, or other form of legal process to a social media platform for data held by that platform.

Social media is a crucial forum for the exchange of ideas, particularly in this time of unprecedented public activism and political engagement. Social media platforms like Facebook, Twitter, and Instagram have proven to be an invaluable tool for connecting and organizing around a variety of issues and across diverse movements. In a time when social media is recognized as akin to the “modern public square,”<sup>1</sup> social media monitoring has significant civil rights implications. Like other forms of surveillance, social media monitoring impacts what people say and who they interact with online. The deleterious effects of surveillance on free speech have been well documented in empirical research.<sup>2</sup>

Publicly available records indicate the Metropolitan Police Department engages in social media monitoring, including in its criminal investigations and to monitor public events. For example, the Department’s Special Order 13-04, entitled “Investigative Support Unit,” contains an incident response checklist that lists as a potential action: “Establish ‘fence’ for Twitter or conduct other research or investigative actions via social media sites.”<sup>3</sup> Similarly, General Order 803.06 states that, during a major event or critical incident, the Command Information Center Watch Commander shall ensure that “Media outlets and social media are monitored, in coordination with the Intelligence Infusion Division and Public Information Branch, in order to correct mistaken or inaccurate information that is reported and, if corroborated, use the information to assist MPD during the incident in accordance with Departmental policy.”<sup>4</sup> A 2013 memorandum from the Criminal Intelligence Branch described the creation of Social Media Teams to monitor social media

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<sup>1</sup> *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (quoting *Reno v. American Civil Liberties Union*, 521 U. S. 844, 868 (1997)).

<sup>2</sup> See, e.g., Faiza Patel et al., *Social Media Monitoring*, Brennan Center for Justice, May 22, 2019, <https://www.brennancenter.org/publication/social-media-monitoring>; Jonathon W. Penney, “Chilling Effects: Online Surveillance and Wikipedia Use,” *Berkeley Technology Law Journal* 31, no. 1: 117-182 (2016), [https://btj.org/data/articles2016/vol31/31\\_1/0117\\_0182\\_Penney\\_ChillingEffects\\_WEB.pdf](https://btj.org/data/articles2016/vol31/31_1/0117_0182_Penney_ChillingEffects_WEB.pdf); Elizabeth Stoycheff, “Under Surveillance: Examining Facebook’s Spiral of Silence Effects in the Wake of NSA Internet Monitoring,” *Journalism and Mass Communication Quarterly* 93, no. 2: 296-311 (2016), <https://journals.sagepub.com/doi/pdf/10.1177/1077699016630255#articleCitationDownloadContainer>; Matthew A. Wasserman, “First Amendment Limitations on Police Surveillance: The Case of the Muslim Surveillance Program,” *New York University Law Review* 90, no. 5: 1786-1826 (2015), <https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-5-Wasserman.pdf>.

<sup>3</sup> Investigative Support Unit, “Criminal Research Specialist Incident Response Checklist,” No. SO-13-04, Metropolitan Police Department, May 14, 2013, [https://go.mpdonline.com/GO/SO\\_13\\_04.pdf](https://go.mpdonline.com/GO/SO_13_04.pdf).

<sup>4</sup> Metropolitan Police Department, “Command Information Center,” No. GO-803.06, May 19, 2015, [https://cdn.muckrock.com/foia\\_files/2017/01/26/GO803.06.pdf](https://cdn.muckrock.com/foia_files/2017/01/26/GO803.06.pdf).

websites for information on criminal activity.<sup>5</sup> The DC Office of Partnerships and Grant Services also revealed that, in December 2016, the Department had received a donation of training services for 10 officers on alerts by Dataminr, a social media monitoring provider.<sup>6</sup>

Despite widespread public interest in social media monitoring by law enforcement officers, the public lacks information about the current capabilities and limitations of the Metropolitan Police Department's social media monitoring operations. We therefore request the documents below.

### **Request**

The Brennan Center specifically requests records under FOIA that were in the Metropolitan Police Department's possession or control from January 1, 2013 through the date of the production of records, in the following categories:

1. **Policies Governing Use:** Any and all department-wide or unit-specific policies, procedures, regulations, protocols, manuals, or guidelines related to:
  - a. the use of social media monitoring by police department employees including, but not limited to, for the purposes of conducting a criminal investigation, undertaking situational awareness activities, monitoring current or anticipated gatherings, or otherwise viewing or gathering information about individuals;
  - b. the authorization, creation, use, and maintenance of fictitious/undercover online personas;
  - c. the collection and maintenance of location data from social media platforms and/or applications; or
  - d. the retention, analysis, or sharing of data collected via social media.
2. **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.
3. **Purchase Agreements and Orders:** Any and all records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service

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<sup>5</sup> Metropolitan Police Department, "Memorandum from Lieutenant Michael J. Pavlik to the Metropolitan Police Department's Criminal Intelligence Branch re: Social Media Monitoring Policy," June 5, 2013, [https://cdn.muckrock.com/foia\\_files/2017/01/26/Social\\_media\\_FOIA\\_.pdf](https://cdn.muckrock.com/foia_files/2017/01/26/Social_media_FOIA_.pdf).

<sup>6</sup> Government of the District of Columbia Office of Partnerships and Grant Services, "1st Quarter Report on Donations Approved by OPGS FY 2017," [https://opgs.dc.gov/sites/default/files/dc/sites/opgs/page\\_content/attachments/1st%20Quarter%20FY17%20Donations%20Report\\_0.pdf](https://opgs.dc.gov/sites/default/files/dc/sites/opgs/page_content/attachments/1st%20Quarter%20FY17%20Donations%20Report_0.pdf).

developed by any company providing third-party social media monitoring services, including, but not limited to, Dataminr, Geofeedia, Snaptrends, Firestorm, Media Sonar, Social Sentinel, or Dunami.

4. **Social Media Account Information from Civilians:** Any and all records reflecting:
  - a. 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; or
  - b. 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 MPD and bearing the MPD's name, insignia, or other indicia of ownership or control.

5. **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 offenses charged in those investigations, and the number of those investigations that resulted in arrests and/or prosecutions.
6. **Use for Purposes Other Than Criminal Investigations:** Any and all records reflecting the number of circumstances in which social media was used to collect information about individuals for purposes other than criminal investigations or background checks for police department employment, including regarding protest activity, as well as the number of such matters in which an individual or group was charged with a crime.
7. **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.
8. **Training Materials:** Any and all training documents, including drafts, discussing social media monitoring, including, but not limited to, PowerPoint presentations, handouts, manuals, or lectures.

9. **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.
10. **Formal Complaints, Freedom of Information Requests, and Legal Challenges:** Any and all records reflecting formal complaints, FOIA 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, or companies.
11. **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. This includes, but is not limited to, records reflecting communications regarding information sharing between MPD and federal law enforcement agencies, such as the FBI, Secret Service, Park Police, ATF, DEA, Bureau of Prisons, U.S. Marshals Service, Capitol Police, Department of Homeland Security's CBP and Border Patrol units, in response to protests in June 2020.<sup>7</sup>
12. **Nondisclosure Agreements:** Any and all records regarding the MPD's nondisclosure or confidentiality obligations in relation to contracts or use agreements with third-party vendors of social media monitoring products or services.
13. **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, licensing agreements, communications, memorandums, and emails relating to those products.

### **Fee Waiver and Expedited Processing**

The above requests are a matter of public interest. The disclosure of the information sought is not for commercial purposes; instead, it will contribute to the public's understanding of government operations. Accordingly, Data for Black Lives and the Brennan Center for Justice request a fee waiver and expedited processing pursuant to DC Code § 2-532(b).

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<sup>7</sup> Office of Public Affairs, "Attorney General William P. Barr's Statement on Protests in Washington, D.C.," Department of Justice, June 2, 2020, <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-protests-washington-dc>.

Data for Black Lives is a nonprofit organization dedicated to the mission of using data and technology to make concrete change in the lives of Black people. Through advocacy, movement-building, and leadership development, it is working to support a network of grassroots racial justice organizations to challenge discriminatory uses of data and algorithms across systems. With a national network of thousands of scientists and activists, it is working to build a future in which data and technology are forces for good, rather than instruments of oppression, in Black communities.

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 Brennan Center and Data for Black Lives to evaluate such policies and their effects.

Should the Metropolitan Police Department choose to charge a fee, please inform the Brennan Center of the total charges in advance of fulfilling this request via email at [hecht-felellal@brennan.law.nyu.edu](mailto:hecht-felellal@brennan.law.nyu.edu).

### **Response Required**

The Brennan Center appreciates the Metropolitan Police Department's attention to this request and expects that the Department will send its legally mandated response within fifteen business days of receipt, subject to the possibility of a ten business day extension, as required under DC Code § 2-532. To the extent that the Department withholds any records, please list, in writing, each document that is withheld as well as the specific claimed exemption.<sup>8</sup> We also request that you provide us with the documents in electronic format where possible. If documents must be produced in hard copy, please first contact Laura Hecht-Felella, contact information below.

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<sup>8</sup> See Washington, DC Municipal Code § 2-533.

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](mailto:hecht-felella@brennan.law.nyu.edu).

Thank you for your time.

*Laura Hecht-Felella*

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