

BRENNAN CENTER

FOR JUSTICE

December 22, 2021

Secretary of the Commonwealth
Public Records Division
McCormack Building
One Ashburton Place, Room 1719
Boston, MA 02108
pre@sec.state.ma.us

**Re: Appeal to the Supervisor of Records
Massachusetts Public Records Law Request B000169-013020**

Dear Sir or Madam:

This is an appeal to the Supervisor of Records under Massachusetts General Laws, Chapter 66, Section 10A on behalf of the Brennan Center for Justice at NYU School of Law (“Brennan Center”).

This petition pertains to our public records request, No. B000169-013020, which was submitted to the Boston Police Department (“BPD”) on January 30, 2020.

Pursuant to Title 950 of the Code of Massachusetts Regulations § 32.08(1)(d), we are filing this petition for appeal of a response by a records access officer within 90 calendar days of the date of the response by a records access officer. Our last communication with the Director of Public Records for the City of Boston, Shawn Williams, was on September 30, 2020. Mr. Williams indicated that he would be following up with the BPD regarding our request. To date, the Brennan Center has received no responsive records from the BPD.

We are requesting the Supervisor of Records direct the BPD to respond to our public records request.

Brennan Center’s Public Records Request

On January 30, 2020, the Brennan Center submitted a public records request to the BPD seeking records pertaining to the Department’s collection of social media information about individuals, groups, and activities, described below as “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.

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,”¹ 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.²

The Brennan Center 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.

Current Status of the Request

The current status of the Brennan Center’s request per the City of Boston’s online Public Records Center is “Assigned.”

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

² 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://btlj.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>.

Timeline of Agency Response & Communications

On January 30, 2020, the Brennan Center filed its public records request, described above, via the City of Boston's online Public Records Center. We received an acknowledgment and tracking information by email from bostonmapolicedepart@mycusthelp.net.

On February 14, 2020, a BPD representative named Martha emailed the Brennan Center seeking additional clarification on enumerated request 16, which pertains to vendor communications. She noted that the BPD would reach out if the agency needed additional clarification regarding any other parts of the request. In a separate email on the same day, Martha also requested additional time to provide responsive records because of the scope of the Brennan Center's request.

On February 20, 2020, the Brennan Center responded to the BPD's request for clarification on vendor communications by providing particular vendor names and other recommendations.

On April 17, 2020, the Brennan Center followed up with the BPD seeking an update on the status of our request, acknowledging that the coronavirus outbreak may have affected the Departments' ability to respond in a timely manner. We received no response.

On August 12, 2020, the Brennan Center again followed up with BPD seeking an update on the status of our request but received no response.

On September 2, 2020, the Brennan Center called the BPD Records Office at 617-343-6660 and 617-343-4499. We spoke to a BPD representative named Sean Finn, who advised we contact Shawn Williams, the Director of Public Records for the City of Boston, to follow up on the status of our request.

On September 3, 2020, the Brennan Center contacted Mr. Williams at publicrecords@boston.gov regarding the status of our request. On September 12, 2020, Mr. Williams responded asking for clarification on the request reference number. The Brennan Center confirmed the reference number on September 14, 2020.

On September 30, 2020, the Brennan Center contacted Mr. Williams again to follow up on the status of our request. Mr. Williams responded stating he would follow up with the Department for an update. We have received no response from him since then. We have also received no responsive records from the BPD.

Given the foregoing, we are requesting the Supervisor of Records direct the BPD respond to our public records request. We are filing this petition for appeal of a response by a records access officer within 90 calendar days of the date of the response by a records

access officer. Our last communication with the Director of Public Records for the City of Boston, Shawn Williams, was on September 30, 2020.

I have attached complete copies of all correspondence associated with the petition, including a complete copy of the letter by which the request was made, and all written responses associated with the request. We will also be sending a copy of this petition to the BPD and Mr. Williams.

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.

Sincerely,

Laura Hecht-Felella

Laura Hecht-Felella
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cc:

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