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CITY ATTORNEY

June 25, 2021

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*Via email to [selinamaclaren@dwt.com](mailto:selinamaclaren@dwt.com)*

Re: *Brennan Center v. City of Los Angeles*, Case No 20STCP03820  
Responses to Production Review Questions

Dear Ms. MacLaren:

This letter concerns your client's "Production Review Questions" document, which we discussed during our June 14, 2021 meet-and-confer telephone call, and which you forwarded to me via email that same day. The "Production Review Questions" document contains 14 questions or comments pertaining to "additional documents" (which are numbered 1a-1n) and six (6) questions described as "factual questions" (which are numbered 2a-2f).

As I mentioned during our June 14 call, the Los Angeles Police Department (LAPD or Department) was willing to conduct an inquiry in response to your client's questions – even though the California Public Records Act (CPRA) does not require an agency to conduct research or answer questions in response to a CPRA request. Therefore, while the Department is not obligated to do so, the below responses are being provided in good faith in furtherance of a mutually agreeable resolution of the litigation, and in the interest of resolving this matter quickly. Accordingly, please see the Department's responses below.

**Questions/Comments re: "Additional Documents"**

**1a.** *The production included excerpts from guidelines titled "Emergency Operations Guide Vol. 4." Specifically, the production included "Chapter III" titled "Managing Significant Incidents," which states "Chapter IV will provide more information on some specific resources available to an LAPD Incident Commander." Chapter IV was not produced. We believe Chapter IV would be responsive if it references social media or the LAPD's electronic media group.*

**City's Response:** LAPD does not believe that Chapter IV of the referenced guide is responsive to the Brennan Center's CPRA request, in that it does not reference social media or an electronic media group. Nevertheless, LAPD will produce a copy of Chapter IV in the interest of transparency.

Please note that LAPD has segregated and redacted information regarding security procedures and/or undercover officers, pursuant to Government Code Sections 6254(f) and 6255. Section 6254(f) protects, among other things, "records of intelligence information or security procedures of . . . any state or local police agency." Similarly, the public interest exemption of Section 6255 protects information the disclosure of which could jeopardize the safety and/or efficacy of undercover officers. See *Commission on Peace Officer Standards & Training v. Superior Court*, 42 Cal.4th 278, 301 (2007); *Int'l Fed. of Prof. & Tech. Engineers v. Superior Court*, 42 Cal.4th 319, 344 (2007) (explaining that the way to safeguard the safety and efficacy of its undercover officers is to "segregate the information relating to them from the records that are disclosed"); *Long Beach Police Officers Assn. v. City of Long Beach*, 59 Cal.4th 59, 74 (2014) (noting that information about an officer may be subject to protection due to safety reasons "or for reasons peculiar to the officer's duties – as, for example, in the case of an undercover officer").

**1b.** *The production included a document titled "Organizations and Function of the Los Angeles Police Department," which sets out the responsibility to produce "basic social media situational awareness reports regarding events that may impact public safety." No situational awareness reports appear to have been produced.*

**City's Response:** The LAPD has already conducted several searches for records responsive to the Brennan Center's CPRA request, and has not identified social media situational awareness reports. Additionally, the Community Relationship Division (CRD) – which is referenced in the above-referenced document as the group with responsibility to produce such reports – ceased to exist at some point in the summer or fall of 2018. Nevertheless, in an effort to be responsive, the LAPD will supplement its searches by querying current Department employees that it has identified as having been assigned to CRD in the 2016-18 time period. If the Department's supplemental inquiry and search yields any responsive records, the Department will provide your client with any disclosable, non-exempt records identified.

**1c.** *Training Order 1.17, dated May 3, 2018, describes a training covering social media. The associated training materials do not appear to have been produced.*

**City's Response:** The LAPD has already conducted several searches for training records and training materials and did not identify in its possession any records relating the referenced training. Nevertheless, in an effort to be responsive, the LAPD conducted another supplemental inquiry and search, and did not identify any records in its possession relating to the training course. In the interest of providing assistance and

being transparent, please note that LAPD is informed that course information may be available at the following link:

<https://wrctc.com/default.aspx?act=EBCoursesDetail.aspx&startrow=1&courseid=243&menuitemid=5&menusubid=2&AspxAutoDetectCookieSupport=1>

**1d.** *In an email from Jeffrey Long (Dataminr) to Kathleen Owens (LAPD), dated December 14, 2015, Long states he is attaching “a few one pagers on (1) how our technology performed during recent events, (2) our advanced features, (3) the slides we presented during the meeting, and (4) descriptions of our products.” Those one-pagers do not appear to have been produced.*

**City’s Response:** The 2015 emails referenced by your client were identified as having been produced in response to an earlier CPRA request, and were contained in files pertaining to that earlier CPRA request. That earlier production did not contain the attachments/one-pagers referenced. Moreover, because the Department’s current email retrieval system can only obtain emails dating from 01/01/2016 and after, LAPD is unable to conduct a supplemental search for 2015 emails and attachments. Therefore, the Department does not have in its possession the one-pagers your client is requesting.

**1e.** *Skopenow sent a series of outreach emails to LAPD officers in November and December 2020 linking to handouts about its products, which do not appear to have been produced.*

**City’s Response:** Records contained in “links” provided by Skopenow, a prospective vendor, are not “public records in the possession of” LAPD, because both the records and the system where the links are maintained and controlled by Skopenow, and not by LAPD. Govt. Code § 6253(c). For example, although LAPD has the ability to access some of the links, it is unable to print, save, or PDF the documents contained in the links. Moreover, Skopenow has the ability to limit or remove viewing access, to remove a document from a link, or deactivate a link. Finally, when a document in a link is viewed, the owner of the record receives a notification. Therefore, because the documents that Skopenow shared with LAPD are, or were, contained in links controlled by, and in the possession of Skopenow, and because LAPD lacks the ability to print and/or save the documents to PDF, the records are not “in the possession of” LAPD and are not subject to disclosure under the CPRA. *See Anderson-Barker v. Superior Court*, 31 Cal.App.5th 528, 539-40 (2019) (concluding that the City did not “possess or control” records and data that resided in systems and databases owned and maintained by City contractors, and thus had no duty to disclose the records and data despite having access to them); *City of San Jose v. Superior Court*, 2 Cal.5th 608, 623 (2017) (explaining that, in determining whether an agency has a duty to disclosure records under Section 6253(c) of the CPRA, an agency has “constructive possession” of records if it has the “right to control the records”); *Consolidated Irrigation Dist. v. Superior Court*, 205 Cal.App.4th 697, 710-11 (2012) (upholding trial court’s finding that the City did not have possession of records under the meaning of the CPRA where it “did not control the subconsultants or their files”); *cf. Regents of Univ. of Calif. v. Super. Ct.*, 222 Cal.App.4th 383 (2013).

**1f.** *In an email from Danila Cariello (Skopenow) to a redacted LAPD officer, dated October 14,*

2020, she attaches an “executive summary, white paper, and sole source documentation.” Those documents do not appear to have been produced.

**City’s Response:** The attachments contained in the October 14, 2020 email have been identified as being exempt from disclosure as protected trade secret information, pursuant to Government Code Section 6254(k)/Evidence Code Section 1060, and Government Code Sections 6254.7(d), because they contain competitively sensitive information that is not known to the public at large, and which the owners have made reasonable efforts to protect, regarding the following subjects that are protectable as trade secrets: algorithms and process steps, description of proprietary processes, and confidential cost and pricing information. See Govt. Code § 6254.7(d) (providing that “trade secrets are not public records”); Evid. Code § 1060 (creating a privilege to protect trade secret); see also *Altavision, Inc. v. Konica Minolta Sys. Lab’y, Inc.*, 226 Cal.App.4th 26, 45, 49 n.12, 59-62 (2014) (algorithms and process steps “implemented in [ ] software” are protected trade secrets when such information is unknown to competitors); *Burroughs Payment Sys., Inc. v. Symco Grp., Inc.*, 2012 U.S. Dist. LEXIS 67198, at \*15 N.D. Cal. May 14, 2012) (trade secret designation proper to software that “can only be accessed by authorized individuals”); *Navigation Holdings, LLC v. Molavi*, 445 F. Supp. 3d 69 (N.D. Cal. 2020) (description of proprietary process and client information qualify as trade secret); *Morlife, Inc. v. Perry*, 56 Cal.App.4th 1514, 1521 (1997) (customer identities not generally known to the industry are trade secret protected); *Whyte v. Schlage Lock Co.*, 101 Cal.App.4th 1443, 1456 (2002) (cost and pricing information not readily known in the industry is a trade secret); *Volume Distributors, Inc. v. Khodadad*, 2017 U.S. Dist. LEXIS 229442, at 6 (C.D. Cal. Nov. 14, 2017) (“Courts have recognized that information related to cost and pricing can qualify as a trade secret”); *Yeiser Rsch. & Dev. LLC v. Teknor Apex Co.*, 281 F. Supp. 3d 1021, 1044 (S.D. Cal. 2017) (trade secret may reside in an “improvement” concept and process, or in concepts and as yet-untested ideas for new products and new processes).

**1g.** When LAPD contracted with Skopenow in November 2018, Detective Douglas Stice stated he would provide “a written document outlining the feedback of the platform from the users.” That document does not appear to have been produced.

**City’s Response:** LAPD previously conducted a search for all records of communication between Skopenow and LAPD, in response to the Brennan Center’s CPRA request, and did not identify the “written document” referenced above. LAPD believes that if such document did exist, it would have been identified in response to that previous search. Nevertheless, in an effort to be responsive, the LAPD conducted a supplemental inquiry, which did not yield any responsive records. The LAPD believes that no such “written document” was created or provided to Skopenow. Moreover, in an effort to assist your client and provide more context, be aware that Detective Stice left the Department in 2019, and there is no information to suggest that anybody else at LAPD worked on such a document and/or provided it to Skopenow. Accordingly, LAPD did not locate, and does not have in its possession, the “written document” your client is requesting.

**1h.** *A document titled “LA-LB UASI 2021 Project Application” shows that LAPD submitted a grant application to DHS to cover licenses for several products: MediaSonar, Skopenow, Cobwebs, Voyager Analytics, and ABT Shield. No documents regarding Voyager Analytics and ABT Shield appear to have been produced.*

**City’s Response:** LAPD does not believe that records pertaining to Voyager Analytics and ABT Shield would be responsive to the Brennan Center’s CPRA request, as it is LAPD’s understanding that those platforms are not used for social media monitoring. Nevertheless, in an effort to be transparent, LAPD will conduct a supplemental search for records and/or communications regarding Voyager Analytics and ABT Shield, and will review any such records in its possession to determine if they are responsive.

**1i.** *Search terms that were used for Geofeedia were produced, but no search terms were produced for the other social media monitoring tools LAPD uses or has used.*

**City’s Response:** LAPD previously conducted a search for records responsive to the Brennan Center’s CPRA request, and did not locate any records containing “search terms” beyond those that were already provided to your client and which pertain to Geofeedia, a platform that LAPD ceased using in 2016 or 2017. Nevertheless, in an effort to be responsive and transparent, LAPD conducted a supplemental query and responds that there are no records in its possession containing or reflecting a listing of search terms used for other applications or platforms. Moreover, in an effort to assist your client and provide more context, there is no information or evidence to suggest that this type of search term tracking was used with other systems. Additionally, although LAPD may use search terms or key words when using various applications, it has no obligation under the CPRA to create new records listing those terms or words. *See Fredericks v. Superior Court*, 233 Cal.App.4th 209, 227 (2015) (stating that a public agency is not required to create a new set of public records to respond to a CPRA request); *Haynie v. Superior Court*, 26 Cal.4th 1061, 1073-1075 (2001) (holding that the CPRA does not require an agency to create a list in response to a request). Finally, even if LAPD had in its possession any listing of currently-used search terms – and it does not – or were to create such a listing in the future, any such listing would be exempt from disclosure under the investigatory and security records exemption of Government Code Section 6254(f) and the public interest exemption of Section 6255, given that disclosure of key words or terms would reveal security procedures, would compromise threat indicators that the Department uses to identify threats to groups and individuals, and could place officers and members of the public in danger.

**1j.** *In an email to DigitalStakeout, dated March 29, 2018, a redacted LAPD officer references a DOJ grant application for public safety technologies, which does not appear to have been produced.*

**City’s Response:** LAPD previously conducted a search for records responsive to the Brennan Center’s CPRA request – which included a search for grants and grant applications – and provided all responsive records in its possession. Nevertheless, in an

effort to assist the Brennan Center, LAPD has conducted a supplemental inquiry to determine if it has in its possession a copy of the grant application referenced in the March 29, 2018 email. The inquiry confirmed that the officer referenced in the email did not pursue the grant; therefore, LAPD does not have the referenced grant application.

**1k.** *In an email from Jason Starr (Dataminr) to Hector Guzman (LAPD), dated January 16, 2017, the attachment, described as a two page document showing “major product features” does not appear to have been produced.*

**City’s Response:** LAPD has already provided the requested attachment to the Brennan Center in its document production. Please refer your client to pages 5-6 of the Dataminr PDF document with the file name NR20-719\_dataminr\_attachments\_redacted.pdf.

**1l.** *In an email from Jeffrey Long (Dataminr) to Kathleen Owens (LAPD), dated May 4, 2016, there are nine attachments that do not appear to have been produced.*

**City’s Response:** The May 4, 2016 email actually contained two attachments, one of which was broken down into “9 buckets.” LAPD already provided the broken-down attachment to the Brennan Center in its document production. Please refer your client to pages 18-23 of the Dataminr pdf document with the file name NR20-719\_dataminr\_attachments\_redacted.pdf. Please note that the attachment was redacted to protect trade secret information, pursuant to Government Code Section 6254(k)/Evidence Code Section 1060, and Government Code Sections 6254.7(d) and 6255. *See* Govt. Code § 6254.7(d) (providing that “trade secrets are not public records”); Evid. Code § 1060 (creating a privilege to protect trade secret); *see also* cases cited in response to 1f, above. Please also note that the other attachment to the May 4, 2016 email also constitutes trade secret information and is exempt from disclosure pursuant to the same legal authorities referenced above. Moreover, that second attachment – which provides information about Dataminr’s prior work – is also exempt under the public interest exemption of Section 6255, because it does not reveal anything about LAPD or how the LAPD conducts its duties, and therefore the public interest in withholding clearly outweighs any public interest in disclosure.

**1m.** *In an email from Jennifer Smith (MediaSonar) to a redacted LAPD officer, dated August 8, 2019, the attachment, titled LAPD Proposal for Purchase, does not appear to have been produced.*

**City’s Response:** LAPD has already provided the requested attachment to the Brennan Center in its document production. Please refer your client to pages 58-61 of the MediaSonar PDF document with the file name NR20-719\_mediasonar\_attachments\_redacted.pdf.

**1n.** *In an email from Toni Chrabot (Risk Confidence Group) to a redacted LAPD officer, dated July 23, 2019, there are two attachments that do not appear to have been produced.*

**City's Response:** LAPD has already provided both of the requested attachments to the Brennan Center in its document production. Please refer your client to pages 26-28 and 70-73 of the MediaSonar PDF document with the file name NR20-719\_mediasonar\_attachments\_redacted.pdf.

### **Questions Described as "Factual Questions"**

**2a.** *Skopenow's marketing materials describe the capability to merge location data from various records to produce a heatmap of individuals' movements, as well as to use facial images to identify social media profiles. Does LAPD use these capabilities?*

**City's Response:** LAPD does not use Skopenow. It was only used for a trial period that ended in 2020. LAPD conducted an inquiry with a person knowledgeable about the product, who did not personally use the facial images nor heatmap functions, and does not believe LAPD staff used (or were familiar with) those functions.

**2b.** *In an email from Rob Douglas (Skopenow) to Douglas Stice (LAPD), dated May 22, 2019, Skopenow asks about the volume of searches LAPD anticipates that its "44 agencies" will conduct in a year. What does this number refer to?*

**City's Response:** LAPD does not know what Rob Douglas of Skopenow, a prospective vendor meant to when he referenced "44 agencies" in his May 22, 2019 email. Moreover, the LAPD recipient of that email, Doug Stice, left the Department in 2019 and thus LAPD cannot (and is not obligated to) ask him what he understood the term to mean, since he is no longer an employee. Nevertheless, in an effort to assist your client, the City believes – based on contextual cues in the email thread – that the reference to "44 agencies" may refer to Los Angeles County (not City) agencies. For example, in the May 22 email, Mr. Douglas says that he would "like to ask a few questions that you [Stice] can forward along," and further asks how many "searches does LA County run as a whole" and about "LA county's total allocatable budget for . . . searches." On May 24, 2019, Mr. Stice forwarded Mr. Douglas's email to Mark Dolfi at the Los Angeles Sheriff's Department, a county agency. The next day, Mr. Dolfi at LASD responded to Mr. Douglas's questions. Alternatively, it is possible that the reference to "44 agencies" could be a reference to the Joint Regional Intelligence Center (JRIC).

**2c.** *The document titled "LA-LB UASI 2021 Project Application," indicates LAPD sought funding to procure MediaSonar, Skopenow, Cobwebs, Voyager Analytics, and ABT Shield. Are these products currently in use by LAPD?*

**City's Response:** MediaSonar won the 2021 grant and will therefore be used by LAPD going forward in the new fiscal year. The other applications were only used, if at all, for trial periods; they are not currently being used by LAPD.

**2d.** *We understand from the marketing materials included in the production that some of the third party social media products LAPD has used have an audit capability. For example, Media Sonar has an “audit log” function, and Geofeedia has a feature called “Audit Trail.” Has LAPD used these functions to review officer searches, and if so, for what purpose?*

**City’s Response:** LAPD conducted an inquiry with persons knowledgeable about the products, who confirm that they did not use the audit functions and that LAPD did not have a practice of using such functions. LAPD is unable to determine one way or another whether other persons who may have used the various products ever used an audit or audit-like feature on an ad hoc basis.

**2e.** *We understand from the marketing materials that Skopenow offers a facial recognition product in which at least one LAPD officer expressed interest. Has LAPD used this product?*

**City’s Response:** LAPD did not use Skopenow’s facial recognition product or features. Moreover, in its discussions with Skopenow, LAPD requested that the facial recognition feature be turned off, due to a then-pending LAPD policy that would ban it.

**2f.** *In a May 17, 2015 Memo titled “Field Interview Report, Form 15.43.00 – Revised,” the Chief of Police notified all personnel that the “‘Additional Info’ box of the Field Interview (FI) Report” had “been revised to include social media account information.” The Chief of Police directed that “[w]hen completing a FI report, officers should ask for a person’s social media and e-mail account information and include it in the ‘Additional Info’ box.” Does LAPD’s FI Report form still include a field for individuals’ social media account information, and are officers still advised to request that information?*

**City’s Response:** Yes, LAPD’s Field Interview Report, Form 15.43.00 still includes a box for “Additional Info,” which may include a person’s e-mail address and social media accounts. According to Notice 1.14 dated 07/22/2020, all personnel are expected to fill out the forms thoroughly and accurately. In an effort to assist the Brennan Center and be transparent, LAPD will provide your client with a copy of the 07/22/2020 notice, as well as a blank copy of the Field Interview form.

If you have any questions or would like to discuss further, please feel free to call or email me at my usual email address.

Very truly yours,  
MICHAEL N. FEUER, City Attorney

By /s/ Soraya Kelly  
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