

**IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

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|------------------------------------|---|---------------------------------|
| BRENNAN CENTER FOR JUSTICE, |) | |
| |) | |
| and |) | |
| |) | |
| DATA FOR BLACK LIVES |) | |
| |) | Civil Action No. 2022-CA-00922B |
| Plaintiffs, |) | Judge Yvonne Williams |
| |) | |
| v. |) | |
| |) | |
| THE DISTRICT OF COLUMBIA, |) | |
| |) | |
| Defendant. |) | |

**PLAINTIFFS BRENNAN CENTER FOR JUSTICE AND DATA FOR BLACK LIVES’
CONTESTED MOTION FOR PARTIAL SUMMARY JUDGMENT**

Plaintiffs Brennan Center for Justice and Data for Black Lives, through counsel, respectfully submit this contested motion for partial summary judgment in the above-captioned case. For the reasons set forth in the accompanying Statement of Points and Authorities (which includes Plaintiffs’ Statement of Undisputed Material Facts) and the Declaration of Margaret N. Strouse, plus the exhibits attached thereto, no genuine issues of material facts exist, and Plaintiffs are entitled to judgment as a matter of law.

ORAL HEARING REQUESTED

Plaintiffs respectfully request a hearing on their Motion for Partial Summary Judgment.

March 15, 2022

Respectfully submitted,
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RULE 12-I CERTIFICATION

Pursuant to Rule 12-I, Plaintiffs sought consent to this motion from the District of Columbia through its Attorney General's Office. Consent was denied by Chad Copeland, Deputy Attorney General of the Civil Litigation Division in the Office of the Attorney General for the District of Columbia.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of March, 2022, copies of the foregoing Motion for Partial Summary Judgment and the accompanying Memorandum of Law (with the Statement of Undisputed Material Facts, pursuant to D.C. Super. Ct. Rule 12-I) and Proposed Order were filed on the court's efilng system and sent, via U.S. mail and electronic mail to the below representatives of the District of Columbia:

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and

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/s/ Seth Berlin
Seth Berlin

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY JUDGMENT AND
STATEMENT OF UNDISPUTED MATERIAL FACTS**

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PRELIMINARY STATEMENT

Over a year ago, Plaintiffs Brennan Center for Justice at New York University School of Law¹ (the “Brennan Center”) and Data for Black Lives (“D4BL”) submitted requests to the D.C. Metropolitan Police Department (“MPD”), pursuant to the D.C. Freedom of Information Act (“FOIA”), D.C. Code 2-531 *et seq.*, for information concerning the Department’s use of social media and social media monitoring. Social media monitoring involves the use of social media platforms like Facebook, Twitter, Instagram, and Snapchat to track and monitor individuals and groups. Plaintiffs sought these records – specifically concerning the scope of the MPD’s policies and practices related to use of social media and social media monitoring, how they function, how they are justified under the law, and whether the MPD has relationships with third-party providers of social media monitoring services – so that they (and, by extension, the public) could evaluate the extent and effect of the MPD’s surveillance and data collection practices. Plaintiffs are particularly concerned with how the MPD’s use of social media impacts individuals and communities of color.

Despite the importance of these concerns, and despite FOIA’s mandate to provide requestors with prompt access to public records, the MPD has stonewalled at every turn, has failed to conduct an adequate search for records, and has neglected to produce anything close to a complete set of the records that Plaintiffs have been attempting to obtain for more than a year. The Mayor’s Office, which is responsible for appeals and oversees the MPD has also failed to respond meaningfully to attempts to enforce Plaintiffs’ rights under FOIA.

- The MPD did not respond to Plaintiff’s FOIA request until six months after the statutory deadline for a response passed.

¹ This Motion does not purport to represent the position, if any, of New York University School of Law.

- When the MPD did finally respond, the records it produced referenced numerous other records responsive to Plaintiffs' request. The MPD failed to produce those referenced records, however, meaning not only was the production woefully incomplete, but also the search for records was obviously inadequate.
- The Mayor's Office failed to respond to Plaintiffs' administrative appeal of the partial constructive denial of the request, which explicitly detailed the records that were missing from the production. To this day, Plaintiffs still have received no response to their administrative appeal, which, under FOIA, was due more than two months ago.
- The MPD and the Mayor's Office failed to respond to Plaintiffs' multiple efforts to follow up on the status of their administrative appeal.
- When the MPD finally did reach out – as this lawsuit was being filed – it stated that its social media records were decentralized, suggesting the search had likely been incomplete, yet still did not indicate that it had conducted, or would be conducting, a complete search of all locations where responsive records may be kept.
- The MPD also did not indicate that it would produce all the missing records identified in Plaintiff's administrative appeal. Instead, the MPD's representative directed Plaintiffs to a publicly available Executive Order, which itself identified additional records responsive to Plaintiffs' request that also had not been produced.

Accordingly, Plaintiffs now move for partial summary judgment seeking an order (a) directing the MPD to produce, within 14 days, the missing records identified in Paragraphs 17 and 18 of the Complaint and at Paragraph 17 of the Strouse Declaration (describing the additional responsive records identified in the Executive Order); (b) finding that MPD's initial search was inadequate; and (c) authorizing discovery from the MPD on its record keeping practices regarding social media use in order to facilitate the fashioning of concrete relief on the inadequate search.

STATEMENT OF UNDISPUTED MATERIAL FACTS

Plaintiffs and Their FOIA Request

1. Plaintiff Brennan Center is a nonprofit law and public policy institute that, among other things, pursues government transparency surrounding law enforcement's use of technology. Compl. ¶ 8.

2. As part of this mission, the Brennan Center endeavors to track and report on law enforcement's use of social media, including the purchase and use of third-party social media monitoring tools. *Id.* ¶ 2. It also analyzes law enforcement's collection of information from social media platforms like Facebook, Twitter, Snapchat, and Instagram for purposes such as identifying potential threats, monitoring individuals and groups, and facilitating criminal investigations. *Id.*

3. Plaintiff D4BL is a nonprofit organization that, among other things, uses data science – including statistical modeling, data visualization, and crowd-sourcing – to fight bias, build progressive movements, and promote civic engagement. *Id.* ¶ 9.

4. As part of this mission, D4BL engages in advocacy to limit police access to technology and data analytics, including through its *#NoMoreDataWeapons* campaign. *Id.* ¶ 2.

5. On December 15, 2020, the Brennan Center and D4BL submitted a FOIA request to the MPD for records from January 1, 2013, through the date of the production of records, concerning the MPD's use of social media and social media monitoring (the "Request"). Compl. ¶ 11; Decl. of Margaret N. Strouse ("Strouse Decl."), Ex. 1.

6. The Brennan Center and D4BL sought the production of records in the following categories:

- a. Policies governing the MPD's use of social media monitoring;
- b. Records reflecting the MPD's use of social media monitoring;

- c. Purchase agreements with or orders from third-party social media monitoring services, including, but not limited to, Dataminr, Geofeedia, Snaptrends, Firestorm, Media Sonar, and others;
- d. Records reflecting interactions between police and civilians on social media (excluding ongoing investigations and communications from accounts bearing the MPD insignia);
- e. Records concerning the use of social media data in criminal investigations;
- f. Records concerning the use of social media for other purposes;
- g. Records concerning audits or internal reviews of the MPD's use of social media monitoring;
- h. Training materials regarding the use of social media monitoring;
- i. Records reflecting the legal justification(s) for the use of social media monitoring;
- j. Records reflecting formal complaints, FOIA requests, or legal challenges regarding the MPD's use of social media monitoring;
- k. Records reflecting communications with the federal government regarding social media monitoring;
- l. Nondisclosure agreements with third-party vendors;
- m. Vendor communications, including sales materials, licensing agreements, emails, etc.

Strouse Decl., Ex. 1 at 3-5 (detailing the requests). This Request was assigned handling number 2021-FOIA-01634. *See* Compl. ¶ 12; Strouse Decl. ¶ 3.

7. As further explained in their Request and in their Complaint, the Brennan Center and D4BL submitted this Request because research has shown that law enforcement's use of social media and social media monitoring is widespread, and the collection of information about people police perceive as suspicious has a disparate impact on historically over-policed communities, especially communities of color. *See* Compl. ¶ 13 & Strouse Decl., Ex. 1 at 1-3. Plaintiffs seek access to the information sought in the Request so that they – and, by extension,

the public – may evaluate the extent and effect of law enforcement’s surveillance and data collection practices. *See* Compl. ¶ 2.

The MPD’s Response

8. The MPD’s response to the Brennan Center’s and D4BL’s Request was due on March 24, 2021, more than 90 days after the submission of the Request, a period that afforded the MPD significant additional time under the extended FOIA response deadline for requests received during the initial COVID-19 closures. Compl. ¶ 15.

9. More than six months after its response was due, and more than nine months after the submission of the Request, in the wake of persistent follow up by the Brennan Center and D4BL, and under threat of litigation, the MPD finally provided a limited response on September 30, 2021. *See* Compl. ¶ 16 & Strouse Decl., Ex. 2.

10. With that response, the MPD produced a partial set of responsive records and pointed to some additional responsive records available online. *Id.*²

11. The records the MPD produced and pointed to online, however, expressly reference numerous *other* responsive documents that the MPD failed to produce. Compl. ¶ 16. (Explanations of the missing records are contained in ¶ 16, below.)

12. The MPD’s failure to produce these other responsive records confirms that its production was incomplete and its search for responsive records was inadequate. *Id.*

² The MPD did not claim that any of the records sought by Plaintiffs were wholly exempt from disclosure. It did partially redact some of the records because, in the MPD’s view, “their release would constitute a clearly unwarranted invasion of personal privacy” under D.C. Code § 2-534(a)(2) and (a)(3). *See* Strouse Decl. Ex. 2 at 4. Without conceding that this claimed exemption properly applies, Plaintiffs do not challenge these redactions. Compl. at 11, ¶ 16 n.10.

Brennan Center and D4BL's Administrative Appeal

13. Given the MPD's inadequate search for records and the resulting deficiencies in its response to the Request, the Brennan Center and D4BL submitted an administrative appeal to the Mayor's Office on December 22, 2021, pursuant to D.C. Code §§ 2-532(e) & 2-537. *See* Compl. ¶ 17 & Strouse Decl. Ex. 3.

14. The administrative appeal was assigned tracking number 2022-047. *See* Compl. ¶ 17 & Strouse Decl. ¶ 5.

15. The administrative appeal identified the following specific problems and deficiencies with the MPD's response to the Request:

- a. **Regarding Request 1 (social media monitoring policies):** In response to the Brennan Center and D4BL's request for social media monitoring policies, *see* Strouse Decl. Ex. 1 at 3, ¶ 1, the MPD produced a record entitled, "ISS Social Media Procedures," *see id.* Ex. 3 at 29-30 ("ISS Social Media Procedures"). On the first page, that document describes three other responsive but unproduced records: "CRS Social Media Passwords," "ISS Online Resources," and "Social Media Search Techniques." *Id.* at 29.

In addition, the MPD failed to produce (or even reference) the full version of its "Social Media Monitoring Policy," which is available in redacted form online. *Id.* at 32-33 ("Social Media Monitoring Policy").

- b. **Regarding Requests 1 and 4 (policies and police interactions with civilians):** The MPD's response stated that it had no records relating to fictitious online personas or accounts. *Id.* Ex. 2. But the "ISS Social Media Training" document it produced, *id.* Ex. 3 at 35-69, advises that the solution to an officer getting blocked is to "Change username." *Id.* at 40. If changing usernames is an effective solution to getting blocked, then the MPD officers must have alternative undercover or alias accounts or a method to create them, despite the MPD's assertion that it has no relevant records.
- c. **Regarding Request 2 (recordkeeping reflecting use of social media monitoring):** The Request sought recordkeeping, logs, or digests reflecting the use of social media monitoring. *Id.* Ex. 1 at 3, ¶ 2. The MPD's written response was silent on the existence of recordkeeping or digests, indicating only that its search located no records of logs of

social media searches. *Id.* Ex. 2. However, a publicly available copy of the MPD’s 2013 “Social Media Monitoring Policy” indicates that the MPD routinely keeps records of its social media monitoring. Specifically, this policy instructs officers to print or document information gathered from social media, prepare a weekly report, submit a written request for social media monitoring continuing longer than thirty days, and submit an oral or written request before using social media in exigent circumstances. *Id.* Ex. 3 at 32-33. In addition, the document entitled “ISS Social Media Procedures,” provides templates to document social media searches within a crime report’s “social media section.” *Id.* at 29-30. Despite having policies setting forth detailed recordkeeping policies and requiring its officers to document social media searches on an approved template, the MPD produced no such records.

- d. **Regarding Request 3 (purchase orders and agreements):** The Request sought Social Media Monitoring Purchase Agreements and Orders. *Id.* Ex. 1. In response, the MPD produced a Memorandum of Understanding between itself and Homeland Security Emergency Management Agency (“HSEMA”) to share data, resources, and research tools. *Id.* Ex. 4 at 2-4. The MPD asserted that the only social media monitoring application it can access is Dataminr, which was purchased by HSEMA, together with other agencies. *Id.* Ex. 2 at 2. However, public records from the Office of Contracting and Procurement reveal that HSEMA also purchased Babel Street, another social media monitoring application that HSEMA may share with the MPD. *Id.* Ex. 5. In addition, public records from the Office of Partnerships and Grant Services, cited in the Request, *id.* Ex. 1 at n.6, reveal that the MPD received a donation from Dataminr for training services for ten officers, valued at \$10,000, in December 2016. *Id.* Ex. 6 at 5 The MPD failed to disclose purchase agreements, orders, contracts, or vendor communications related to its donation from Dataminr and its apparent access to Babel Street through HSEMA.
- e. **Regarding Requests 3, 4, 12, and 13:** The document produced by the MPD titled “ISS Social Media Training Updated,” *id.* Ex. 3 at 35-69, references multiple social media monitoring services the MPD uses, such as storiesig.com, Spokeo, Pipl, Webstagram, Facebook Messenger, LexisNexis Accurint, TransUnion TLOxp, Buzzsumo, WebMii, Tagboard, Lullar, SnapBird, and Social Searcher. *See id.* Ex. 3 at 40, 42, 62. Despite seemingly providing these services to their officers, the MPD indicated that it “does not have any contracts with any social media vendors”, *id.* Ex 2 at 2, 4, and failed to produce *any* purchase agreements and orders, vendor communications, social media account information from civilians, nondisclosure agreements, or other

documents providing for usage of these services as requested in Requests numbered 3, 4, 12, and 13.

- f. **Request 8 (Training Materials):** The Request also sought “training materials.” *Id.* Ex. 1 at 4, ¶8. The MPD produced two undated training presentations, one of which references “old procedures.” *See id.* Ex. 3 at 38-39. MPD does not appear to have produced any “old procedures” or records related to them.

16. The Brennan Center and D4BL’s administrative appeal, therefore, requested that the Mayor’s Office order the MPD to conduct an adequate search for records and to produce those records referenced but not produced, including specifically all records related to:

- a. those specifically referenced in the produced “ISS Social Media Procedures”;
- b. the use of fictitious online personas, including undercover or alias usernames officers may “change” to when blocked;
- c. recordkeeping of social media monitoring searches, including written requests for monitoring extensions, weekly reports, requests, and all crime report social media sections;
- d. the MPD’s access to and use of Babel Street;
- e. Dataminr’s 2016 donation to the MPD;
- f. the MPD’s use of storiesig.com, Spokeo, Pipl, Webstagram, Facebook Messenger, LexisNexis Accurint, TransUnion TLOxp, Buzzsumo, WebMii, Tagboard, Lullar, SnapBird, and Social Searcher, including purchase agreements, orders, vendor communications, social media account information from civilians, nondisclosure agreements, and memorandums of understanding;
- g. the MPD’s old social media monitoring procedures, including drafts of past or current policies or procedures, referenced in “ISS Social Media Training Updated”; and
- h. the dates the produced training presentations were presented.

See Compl. ¶ 18 & Strouse Decl. Ex. 3 at 6-8.

17. Through their administrative appeal, the Brennan Center and D4BL also sought clarification regarding the MPD's response to its request for information regarding the use of social media monitoring in connection with criminal investigations. Strouse Decl. Ex. 3 at 7 n.4. They did so because, although the MPD stated that it "has no records responsive to this portion of the request[,]" *id.* Ex. 2 at 3, it produced a document reflecting general crime statistics for the time period, *id.* Ex. 3 at 71, without indicating whether this document reflected criminal investigations in which social media monitoring was used.

The Mayor's Constructive Denial of the Administrative Appeal

18. The deadline for the Mayor's final determination of the administrative appeal was January 7, 2022, pursuant to D.C. Code § 2-537(a) and 1 D.C. Mun. Regs. tit. 1 § 412.7.

19. On January 4, 2022, the Mayor's Office instructed the MPD to provide it with a response to the administrative appeal and indicated that if the MPD failed to provide a response by January 12, 2022, the Mayor's Office would decide the appeal without it. Strouse Decl. Ex. 7.

20. Counsel for the Brennan Center and D4BL attempted to follow up on the status of the administrative appeal, as well as the existence of any response by the MPD, on January 13, 2022 (via email) and January 20, 2022 (by phone), but received no reply. *Id.* Ex. 8.

21. On February 11, 2022, the Brennan Center and D4BL sent a follow up letter to the Mayor's Office, copying the MPD, again inquiring about the status of their administrative appeal and stating their intention to file this lawsuit if, by February 25, 2022, the Mayor's Office failed to order the MPD to conduct an adequate search and to produce the requested responsive records. *Id.* Ex. 9.

22. Despite these multiple attempts to press their administrative appeal and to secure the statutorily mandated production of records, the Brennan Center and D4BL have not received any additional records from the MPD, nor have they received any final determination of their administrative appeal. Strouse Decl. ¶ 12.

23. This failure constitutes a denial of Plaintiffs' administrative appeal. *See* D.C. Code § 2-537(a).

Belated Communications from the MPD Revealing Additional Unproduced Records

24. On the afternoon of February 28, 2022, a representative of the MPD's General Counsel's Office left two voicemail messages for counsel for Plaintiffs. Strouse Decl. ¶ 13.

25. In these messages, the MPD did not indicate that it had conducted an additional search or would produce additional records, instead explaining that the MPD had a very "decentralized" social media practice prior to November of 2021, when it issued an executive order centralizing the process. *Id.*; Compl. ¶ 24.

26. In a subsequent telephone conversation, the MPD's General Counsel's office directed Plaintiffs' counsel to a previously unproduced the MPD Executive Order regarding "Social Media for Investigative and Intelligence-Gathering Purposes." *Id.* ¶ 14 & Ex. 10.

27. The Executive Order sets forth requirements and procedures for the use of undercover social media accounts, even though, in its covering message to its partial document production, the MPD stated that it does not use undercover or fictitious accounts. *Id.* Ex. 2 at 2 & Ex. 10.

28. The Executive Order also describes additional records, which are responsive to Plaintiffs' Request, that the MPD had failed to produce:

- a. written approvals from the Narcotics and Special Investigations Division (“NSID”) prior to using or creating an undercover account;
- b. the centralized registry of all active undercover social media accounts that the order requires NSID to maintain;
- c. documented reviews of undercover accounts that commanding officials are required to conduct every 30 days;
- d. requests to use undercover social media accounts;
- e. training documents that are part of the required training members must undergo before using an undercover account; and
- f. reports of potential compromises of an undercover social media account.

See id. ¶ 17 & Ex. 10.

ARGUMENT

The D.C. FOIA “embodies a strong policy favoring disclosure of information about governmental affairs and the acts of public officials[.]” *FOP v. District of Columbia*, 2011 D.C. Super. LEXIS 11, at *8 (quoting *Barry v. Wash. Post Co.*, 529 A.2d 319, 321 (D.C. 1987)). Indeed, “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Code § 2-531; accord *FOP v. District of Columbia*, 79 A.3d 347, 353-54 (D.C. 2013); *Judicial Watch v. District of Columbia* (“*Judicial Watch*”), 2019 CA 007410 B, slip op. (Dec. 15, 2020) (Williams, J.) at 1 (attached to Strouse Decl. as Ex. 11). Accordingly, “in FOIA cases, ‘the burden is on the agency to demonstrate, not the requestor to disprove, that the materials sought ... have not been improperly withheld.’” *Judicial Watch* at 5 (quoting *DOJ v. Tax Analysts*, 492 U.S. 136, 142 n.3 (1989)); see also *FOP, Metro. Labor Comm. v. District of Columbia*, 82 A.3d 803, 814 (D.C. 2014) (“[T]he burden of proof is always on the agency to demonstrate that it has fully discharged its obligations under the FOIA.” (quoting *McKinley v.*

FDIC, 756 F. Supp. 2d 105, 110-11 (D.D.C. 2010))). Likewise, agencies bear the burden to show that they made an adequate search for records in the first place. *See Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220 (D.C. 2008).

Here, the Complaint, the Strouse Declaration, and the materials submitted therewith show that, as a matter of law, the MPD cannot meet its burden to prove that (1) its continued withholding of certain records responsive to Plaintiff's Request – identified in Compl. ¶¶ 17-18 and Strouse Decl. ¶ 17 (collectively, the "Missing Records") – is proper, or (2) its search for records in response to the Request was adequate. Accordingly, Plaintiffs are entitled to summary judgment on these issues.

I. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT ON THE MISSING RECORDS.

"Barring a valid exemption," a FOIA requestor has "a near-absolute right to receive the information it requests within the statutorily prescribed period." *FOP*, 2011 D.C. Super. LEXIS 11, at *12-13. Agencies may not even deviate from this rule where requestors seek a large volume of documents or where the agency otherwise views the request as "burdensome." *See FOP v. District of Columbia*, 139 A.3d 853, 862-63 (D.C. 2016) (no "authority to treat as void requests that the District asserts are overly burdensome" or "volum[inous]"); *FOP*, 2011 D.C. Super. LEXIS 11, at *14-15 (rejecting government's argument that "it is not reasonable to expect the District to respond to a FOIA request within the strict confines permitted under DC FOIA").

Here, the MPD has not asserted any exemptions, but Plaintiffs nevertheless have not "receive[d]" the Missing Records at all, much less "within the statutorily prescribed time period." *FOP*, 2011 D.C. Super. LEXIS 11, at *12-13. The MPD was required to provide records in response to the initial Request – including the Missing Records – by March 24, 2021, *see* Compl. ¶ 15 (citing FOIA and COVID-related tolling orders), but failed to do so, *see id.* ¶ 16.

The MPD then had another opportunity to produce the Missing Records after Plaintiffs specifically described the records in detail in their administrative appeal, *see id.* ¶ 17, a response to which was due January 7, 2022, *see id.* ¶ 19. It again failed to do so. The MPD has asserted no valid basis (and there is no valid basis) for continuing to withhold these public records that shed light on the MPD’s use of social media and social media monitoring. Plaintiffs are entitled to summary judgment on the Missing Records and an order requiring the MPD to produce them.

II. PLAINTIFFS ARE ENTITLED TO A FINDING THAT THE MPD CONDUCTED AN INADEQUATE SEARCH FOR RESPONSIVE RECORDS.

The MPD bears the burden to “show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *See Doe*, 948 A.2d at 1220 (quoting *Oglesby v. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). To carry this burden, the District must submit “[a] reasonably detailed affidavit, setting forth the search terms and the type of search performed, and averring that all files likely to contain responsive materials (if such records exist) were searched.” *Id.* at 1221; *see also FOP*, 139 A.3d at 865 (“The District must establish ‘beyond material doubt’ that it expended reasonable efforts ‘to uncover all relevant documents.’”). Where the agency fails to meet its burden, a “FOIA requester may prevail on a motion for summary judgment ‘merely by showing that the agency might have discovered a responsive document had the agency conducted a reasonable search.’” *FOP*, 79 A.3d at 360; *accord Judicial Watch* at 6; *see also FOP*, 79 A.3d at 362-63 (“If the results of an initial search contain ‘leads’ indicating that additional responsive documents are likely to be found in another location, those leads must be followed.”).

Here, the MPD cannot show that it in “good faith” adequately searched for records “in all files likely to contain responsive materials.” As explained, Plaintiffs have identified – from the

records the MPD did (belatedly) produce – a whole host of additional records responsive to their Request that the MPD has failed to produce. *See* Compl. ¶¶ 17-18 and Strouse Decl. ¶ 17. This failure – involving *so many* unproduced responsive records – is significant evidence that the MPD’s search for such records was inadequate. *See* FOP, 79 A.3d at 362 (finding search inadequate where agency failed to produce records “referenced in the documents the District did produce”). Moreover, the MPD admitted that its records related to social media monitoring are “decentralized,” suggesting that it may not have searched all potential locations where records may be located. Compl. ¶¶ 24-25 & Strouse Decl. ¶¶ 13-14.

For these reasons, Plaintiffs are entitled to summary judgment on the adequacy of MPD’s search as well as an order requiring the MPD to conduct an adequate search. So that such an order may specify precisely how an “adequate” search must be conducted (especially in light of the “decentralized” nature of the records at issue), Plaintiffs respectfully request authorization to take discovery from the MPD regarding its record-keeping practices with respect to the use of social media and social media monitoring. *See, e.g., WP Co. LLC v. District of Columbia*, 2021 CA 002124 B, slip op. (Jan. 24, 2022) at 3 (attached to Strouse Decl. as Ex. 12) (ordering discovery on “the process used to search” for responsive documents); *Judicial Watch* at 9 (noting that instruction to conduct adequate search requires “specificity”).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request as follows: that their motion for partial summary judgment be granted; that the MPD be ordered to produce the Missing Records within 14 days of the Court’s order; that the MPD’s search be declared inadequate; that Plaintiffs be permitted to take discovery on the MPD’s record-keeping practices with respect to social

media and social media monitoring; and that Plaintiffs be awarded their costs and reasonable attorneys' fees incurred in this action pursuant to 5 U.S.C.A. § 552(a)(4)(E).

Dated: March 15, 2022

Respectfully submitted,
BALLARD SPAHR LLP

s/ Seth D. Berlin

Seth D. Berlin (D.C. Bar No. 433611)
Alia L. Smith (D.C. Bar No. 992629)
Margaret N. Strouse (admitted; bar no. pending)
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*Counsel for Plaintiffs Brennan Center for Justice
and Data for Black Lives*

**IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

| | | |
|------------------------------------|---|---------------------------------|
| BRENNAN CENTER FOR JUSTICE, |) | |
| and |) | |
| DATA FOR BLACK LIVES |) | |
| Plaintiffs, |) | Civil Action No. 2022-CA-00922B |
| v. |) | Judge Yvonne Williams |
| THE DISTRICT OF COLUMBIA, |) | |
| Defendant. |) | |

DECLARATION OF MARGARET N. STROUSE

I, Margaret N. Strouse, declare as follows:

1. I am an attorney with the law firm of Ballard Spahr LLP, counsel for Plaintiffs Brennan Center for Justice and Data for Black Lives in the above-captioned action. I am admitted to practice in this Court.¹

2. I submit this declaration in support of Plaintiffs’ Motion for Partial Summary Judgment primarily for the purpose of putting relevant records before the Court. I have personal knowledge of the facts herein and would be competent to testify to them.

3. Attached hereto as Exhibit 1 is a true and correct copy of Plaintiffs’ Freedom of Information Act request to the Metropolitan Police Department (“MPD”) for public records from January 1, 2013, through the date of the production of records, concerning the MPD’s use of social media and social media monitoring. The FOIA request was assigned handling number 2021-FOIA-01634.

¹ I am admitted and awaiting the receipt of my bar registration number from the District of Columbia committee on admission.

4. Attached hereto as Exhibit 2 is a true and correct copy of the MPD's email responding to Plaintiffs' FOIA request with a partial production of public records on September 30, 2021.

5. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiffs' administrative appeal submitted to the Mayor's Office on December 22, 2021, pursuant to D.C. Code §§ 2-532(e) & 2-537. The appeal was assigned tracking number 2022-047.

6. Attached hereto as Exhibit 4 is a true and correct copy of the Memorandum of Understanding between the District of Columbia Homeland Security and Emergency Management Agency ("HSEMA") and the MPD, which was provided in the MPD's September 30, 2021 partial disclosure.

7. Attached hereto as Exhibit 5 is a true and correct copy of a public record from the Office of Contracting and Procurement that reflects HSEMA's purchase of Babel Street, a social media monitoring application.

8. Attached hereto as Exhibit 6 is a true and correct copy of the 2017 1st Quarter Report on Donations Approved by the DC Office of Partnerships and Grant Services that reflects Dataminr's donation of training services to ten MPD officers, valued at \$10,000. It is also available online at https://opgs.dc.gov/sites/default/files/dc/sites/opgs/page_content/attachments/1st%20Quarter%20FY17%20Donations%20Report_0.pdf.

9. Attached hereto as Exhibit 7 is a true and correct copy of a January 4, 2022 email sent by the Mayor's Office instructing the MPD to provide it with a response to the administrative appeal and indicating that if the MPD failed to provide a response by January 12, 2022, the Mayor's Office would decide the appeal without it.

10. Attached hereto as Exhibit 8 is a true and correct copy of the January 13, 2022 email sent on behalf of Plaintiffs attempting to follow up on the status of the administrative appeal and the existence of any response by the MPD.

11. Attached hereto as Exhibit 9 is a true and correct copy of the letter Plaintiffs sent to the Mayor's Office (with a copy to the MPD) on February 11, 2022, inquiring about the status of their administrative appeal and stating their intention to file this lawsuit by February 25, 2022 if the Mayor's Office failed to order the MPD to conduct an adequate search and to produce the requested responsive records.

12. Neither the Mayor's Office nor the MPD responded to Exhibit 9 by February 25, 2022. To date, Plaintiffs have not received any additional records from the MPD, nor have they received any final determination of their administrative appeal.

13. On the afternoon of February 28, 2022, a representative of the MPD's General Counsel's Office left two voicemail messages for counsel for Plaintiffs – one for me and one for my colleague Alia Smith. In these messages, the MPD did not indicate that it had conducted an additional search or would produce additional records, and instead explained that the MPD had a very “decentralized” social media practice prior to November of 2021.

14. In a subsequent telephone conversation, a representative from the MPD's General Counsel's office reiterated that before November of 2021, the MPD's records, with respect to the use of social media, were “decentralized,” and stated that the MPD would continue to search for records responsive to Plaintiffs' Request.

15. This representative also explained that Chief of Police Robert J. Contee III had issued an Executive Order in November 2021, centralizing the social media-related record-keeping practices. A true and correct copy of this November 2021 Executive Order, with the

subject line “Social Media for Investigative and Intelligence-Gathering Purposes,” is attached hereto as Exhibit 10. It is available online at https://go.mpdconline.com/GO/EO_21_025.pdf.

16. The Executive Order describes requirements regarding the use of fictitious online accounts. In the MPD’s covering email to its partial production of records to Plaintiffs, however, it stated that it does not use undercover or fictitious accounts.

17. The Executive Order also describes additional responsive records that the MPD failed to produce in response to Plaintiffs’ Request: (1) written approvals from the Narcotics and Special Investigations Division (“NSID”) prior to using or creating an undercover account; (2) the centralized registry of all active undercover social media accounts that the order requires NSID to maintain; (3) documented reviews of undercover accounts that commanding officials are required to conduct every 30 days; (4) requests to use undercover social media accounts; (5) training documents that are part of the required training members must undergo before using an undercover account; and (6) reports of potential compromises of an undercover social media account.

18. Attached hereto as Exhibit 11 is a true and correct copy of an Order dated Dec. 15, 2020 in *Judicial Watch v. District of Columbia*, 2019-CA-007410 B (Williams, J.).

19. Attached hereto as Exhibit 12 is a true and correct copy of an Order dated Jan. 24, 2022 in *WP Co. LLC v. District of Columbia*, 2021-CA-002124 B (Williams, J.).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 15, 2022.

/s/ Margaret N. Strouse
Margaret N. Strouse

Exhibit 1

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,”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

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.”³ 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.”⁴ A 2013 memorandum from the Criminal Intelligence Branch described the creation of Social Media Teams to monitor social media

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://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>.

³ 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.

⁴ 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.

websites for information on criminal activity.⁵ 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.⁶

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

⁵ 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.

⁶ 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.

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 2020.⁷
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).

⁷ 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.

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.⁸ 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.

⁸ 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.

Thank you for your time.

Laura Hecht-Felella

Laura Hecht-Felella
George A. Katz Fellow, Liberty and National Security Program
Brennan Center for Justice at NYU School of Law
(646) 292-8385 | hecht-felella@brennan.law.nyu.edu

Exhibit 2

From: Eckert, Robert (MPD) <robert.eckert@dc.gov>
Sent: Thursday, September 30, 2021 3:52 PM
To: Laura Hecht-Felella <hecht-felella@brennan.law.nyu.edu>
Cc: Eckert, Robert (MPD) <robert.eckert@dc.gov>
Subject: Final Response in Process - FOIA Request No. 2021-FOIA-01634, from Laura Hecht-Felella (Brennan Center for Justice)

September 30, 2021

Laura Hecht-Felella
George A. Katz Fellow
(submitted via Sahil Singhvi)
Liberty and National Security Program
Brennan Center for Justice at NYU School of Law
hecht-felella@brennan.law.nyu.edu

FOIA Request No. 2021-FOIA-01634

Dear Ms. Hecht-Felella:

This is in response to the above-referenced Freedom of Information Act (FOIA) request for a variety of information as reflected below, along with response information received through the search for responsive records.

"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."

The following references are responsive to this FOIA request, which may be located on the MPD website (<https://mpdc.dc.gov/page/written-directives-general-orders>): SO-13-04 Investigative Support Unit; SO-14-05 CIC Traffic Desk; SO-16-06 Social Media Checks for Background; SOP 16-01 Handling First Amendment Assemblies; ISS CRS Social Media Policy; ISS Social Media Training; and, ISS Social Media Procedures.

Also located were the attached: ISS CRS Social Media Policy; ISS Social Media Training; ISS Social Media Procedures, Memorandum of Understanding (MOU) Between the District of Columbia (DC) Homeland Security and Emergency Management Agency (HSEMA) and the Metropolitan Police Department (MPD); Emergency Disclosure and Preservation Requests; and, DCR (Crime Statistics) 01/01/2013 - 12/21/2020.

No records reflecting fictitious online personas/accounts were located.

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.

A search located no records of logs reflecting social media searches for the purpose of criminal investigations, situational awareness, event planning, or public safety. Analysts and other MPD members often rely on open-source (publicly available) social media searches to find information about planned demonstrations or criminal activities.

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

No records of contracts for social media monitoring applications were located. The MPD does have access to Dataminr, an application purchased by the Office of the Chief Technology Officer (OCTO)/Homeland Security Emergency Management Agency (HSEMA)/National Technology Information Center (NTIC). The MPD has access through the attached memorandum of understanding (MOU) with NTIC. The NTIC provides alerts from Dataminr's First Alert to the Joint Strategic and Tactical Analysis Command Center (JSTACC) management. Dataminr's First Alert uses technology to detect breaking events and emerging risks from open-source social media in real time.

"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."

This is not something maintained in a database, but would be part of a criminal investigation, and would require research, which is not required under the FOIA. Additionally, as mentioned above, JSTACC members do not create fictitious online personas or interact in an undercover capacity on social media platforms.

"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."

The MPD has no records responsive to this portion of the request.

"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."

No records responsive to this item of the request were located.

Situational Awareness - The MPD utilizes TweetDeck, which is a free social media dashboard application for management of Twitter accounts. Originally an independent application, TweetDeck was subsequently acquired by Twitter Inc. and integrated into Twitter's interface. It is normally used to monitor trending topics in real-time to identify events that could affect the operational landscape, or MPD operations, and subsequently provide timely and accurate situational awareness and operational intelligence to MPD personnel. Real-time monitoring is not tracked as it is all open source (publicly available data). Additionally, MPD's Intelligence Branch completes a daily demonstration report which provides a daily list of known demonstrations. It's compiled based on known permit applications through MPD, USPP, etc. and open media searches for demonstrations occurring in DC.

As far as First Amendment demonstrations - MPD does not keep "files" on individuals involved in protest/demonstration activity, to include social media accounts, unless MPD has been authorized to conduct an investigation as outlined by First Amendment activities as required by the Police Investigations Concerning First Amendment Activities Act of 2004 (the Act), D.C. Code § 5-333 et seq.

"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."

No records responsive to this portion of the request were located. Social media inquiries by JSTACC are open source (publicly available).

"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."

Please see the attached the following training material regarding social media investigations. These are given internally to JSTACC members, as well as in investigator and district intelligence officer training: 081920 Investigator Training - Emergency Disclosures ISS Social Media Training Updated.

“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.”

No responsive records were located.

“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, nonprofit groups, or companies.”

A search located no records of formal complaints or legal challenges regarding social media monitoring.

“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.”

A search located no records responsive records; however, the attached MOU with the DC HSEMA, referenced in the response to No. 1, is attached.

“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.”

As previously mentioned, MPD does not have any contracts with any social media vendors. Therefore, we would not have any nondisclosure agreements.

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.

No responsive records were located.

I have determined to withhold portions of the released records under DC Official Code § 2-534 (a)(2) and (a)(3) because their release would constitute a clearly unwarranted invasion of personal privacy. The withheld material includes names/personal identifiers and other personal privacy information, including that which would lead to the identity of individuals.

Please know that, under D.C. Official Code § 2-537 and 1 DCMR § 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter, as well as, on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) a daytime telephone number, an e-mail and/or U.S. mailing address at which you can be reached.

The appeal must be mailed to: The Mayor’s Office of Legal Counsel, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 407, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to the Mayor’s Office of Legal Counsel at foia.appeals@dc.gov. Further, a copy of all appeal materials must be forwarded to the Freedom of Information Officer of the involved agency, or to the agency head of that agency, if there is no designated Freedom of Information Officer there. Failure to follow these administrative steps will result in delay in the processing and commencement of a response to your appeal to the Mayor.

**Sincerely,
Bob Eckert
FOIA Specialist
Freedom of Information Act Office
Metropolitan Police Department
Robert.eckert@dc.gov
“Excellence is transferable.”**

Exhibit 3

December 22, 2021

VIA EMAIL

The Mayor's Office of Legal Counsel
FOIA Appeal
1350 Pennsylvania Avenue, N.W., Suite 407
Washington, D.C. 20004
foia.appeals@dc.gov

Re: Freedom of Information Act Appeal
FOIA Request No. 2021-FOIA-01634

Dear FOIA Appeals Officer:

We write to appeal the partial constructive denial of the above-referenced District of Columbia Freedom of Information Act ("DC-FOIA") request submitted by Data for Black Lives ("D4BL") and the Brennan Center for Justice at NYU School of Law ("Brennan Center") to the Metropolitan Police Department ("MPD"). While MPD did, belatedly, produce some of the documents subject to the request, that production itself makes clear that MPD possesses or has control over many additional documents that it should have produced, but did not.

BACKGROUND

The Brennan Center tracks and reports on, among other things, police departments' social media monitoring – *i.e.*, the collection of information about groups and individuals from social media platforms like Facebook, Twitter, Snapchat, and Instagram. D4BL engages in advocacy to limit police access to technology and data analytics, including through its *#NoMoreDataWeapons* campaign. In furtherance of their mission to understand and explain the police's use of social media monitoring, D4BL and Brennan Center requested, on December 15, 2020, copies of public records related to MPD's training and use of social media monitoring. (A copy of the request is attached as Exhibit A). As more explicitly set forth in Exhibit A, they requested:

1. Policies governing MPD's use of social media monitoring;
2. Records reflecting the MPD's use of social media monitoring;

3. Purchase agreements with or orders from third-party social media monitoring services, including, but not limited to, Dataminr, Geofeedia, Snaptrends, Firestorm, Media Sonar, and others;
4. Records reflecting interactions between police and civilians on social media;
5. Records concerning the use of social media data in criminal investigations;
6. Records concerning the use of social media for other purposes;
7. Records concerning audits or internal reviews of MPD's use of social media monitoring;
8. Training materials regarding the use of social media monitoring;
9. Records reflecting the legal justification(s) for the use of social media monitoring;
10. Records reflecting formal complaints, FOIA requests, or legal challenges regarding MPD's use of social media monitoring;
11. Records reflecting communications with the federal government regarding social media monitoring;
12. Nondisclosure agreements with third-party vendors;
13. Vendor communications, including sales materials, licensing agreements, emails, etc.

Ex. A. The request was assigned handling number 2021-FOIA-01634.

The DC-FOIA required a response by March 24, 2021 under the extended DC-FOIA deadline for requests received during the Initial Covid-19 closure. D.C. Code § 2-532(c)(3)(A) (emergency amendment expired Mar. 22, 2021); *FOIA Tolling Emergency Amendment Act of 2020*, D.C. Act 23-555, effective Dec. 22, 2020 (amending D.C. Code § 2-532(c) through Mar. 22, 2021). On September 30, 2021, more than six months after MPD's statutory response deadline passed, with persistent follow up by D4BL and Brennan Center,¹ and under threat of litigation, MPD finally responded by providing a limited set of documents to Brennan Center and D4BL. By email that same date, MPD also provided correspondence listing certain responsive documents available online, describing information responsive to the request, and indicating it was closing the request. (A copy of this email is attached as Exhibit C.) However, the

¹ See Ex. B.

documents MPD produced and pointed to online expressly reference *other*, unproduced, documents that are responsive to D4BL and Brennan Center's request. Therefore, MPD's search for records and production of documents was incomplete.

Accordingly, pursuant to D.C. Code § 2-532(e) and D.C. Code § 2-537(a), D4BL and Brennan Center hereby appeal the constructive partial denial of D4BL and Brennan Center's request to the extent that readily identifiable and responsive documents have been neither produced nor the subject of any specific assertion of an exemption by MPD. The Mayor should direct MPD to (1) conduct an adequate search for the requested records and (2) produce all responsive records, whether or not specifically discussed herein, without further delay.

ARGUMENT

DC-FOIA enacts a broad disclosure policy that requires construing the law "with the view toward expansion of public access and the minimization of costs and time delays to the persons requesting information." *Fraternal Order of Police v. District of Columbia*, 79 A.3d 347, 354 (D.C. 2013) (citing D.C. Code § 2-531). The right of access must be "generously construed." *Id.*; accord *Fraternal Order of Police v. District of Columbia*, 82 A.3d 803, 813 (D.C. 2014).

To comply with its DC-FOIA obligations, the MPD is required to expend all "reasonable efforts" to uncover all relevant documents. *Fraternal Order of Police v. District of Columbia*, 139 A.3d 853, 865 (D.C. 2016). The agency has the burden of establishing *beyond material doubt* that its effort was reasonable. *Id.* MPD must describe, in reasonable detail, where it searched for the requested documents and how its search method was reasonably calculated to uncover all relevant documents. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008). To the extent MPD withholds documents in full or in part, MPD bears the burden of providing the specific exemption and its justification for withholding the documents, so that the Mayor's Office can determine whether MPD has properly invoked the exemption. 1 DCMR 412.5 (providing the agency should provide a "Vaughn index of documents withheld, an affidavit or declaration of a knowledgeable official or employee testifying to the decision to withhold documents, or such other similar proof" for all exempt materials); see *FOP*, 79 A.3d at 358.

Here, as an initial matter, with respect to all the enumerated requests, MPD has failed to describe what systems were searched, what search terms were used, and why it employed such search strategy to locate documents responsive to the request. MPD's email merely describes that "a search" was conducted, Ex. C, making it difficult for D4BL and Brennan Center to assess the reasonableness of MPD's search effort at all, much less determine if MPD has met its burden beyond material doubt. Still, in light of the information that D4BL and Brennan Center do know – from documents produced in response to this request, from documents produced in response to

other DC-FOIA requests, and from their expertise in this area – it is apparent that MPD’s search was inadequate and its production incomplete. For example:

- **Request 1 (Social Media Monitoring Policies):** Among other things, MPD produced “ISS Social Media Procedures,” attached as Exhibit D, in response to Brennan Center and D4BL’s request for social media monitoring policies. *See* Ex. A (Request 1). ISS Social Media Procedures (Ex. D) describes three separate responsive, but unproduced, documents on the first page: “CRS Social Media Passwords,” “ISS Online Resources,” and “Social Media Search Techniques.” Ex. D.

In addition, D4BL and Brennan Center are aware of an additional policy, available in redacted form at https://cdn.muckrock.com/foia_files/2017/01/26/Social_media_FOIA_.pdf (attached as Exhibit E), which was not produced or referenced in MPD’s responsive email. MPD is required to produce this form in full to D4BL and Brennan Center or, at a minimum, explain the legal basis for the redactions. *FOP*, 82 A.3d at 813 (an agency bears the burden of demonstrating it properly claimed exemptions for both redactions and withheld documents).

- **Requests 1 and 4 (Policies and Police Interactions with Civilians):** In its request, Brennan Center and D4BL sought, in part, policies related to the use of fictitious or undercover online personas and communications between uniformed or undercover police employees and civilians. Ex. A (Requests 1 and 4). MPD responded that no records relating to fictitious online personas or accounts were located and that Joint Strategic and Tactical Analysis Command Center (“JSTACC”) members “do not create fictitious online personas or interact in an undercover capacity on social media.” Ex. C. However, the produced ISS Social Media Training (attached as Ex. F) suggests that the solution to “Getting Blocked” is to “Change username.” *See* Ex. F at 6. It strains credulity to suggest that changing usernames would be an effective solution to getting blocked if the MPD officer’s second username was not an undercover or alias account. In light of these policies, it is clear that additional documents must exist.
- **Request 2 (Use of Social Media Monitoring):** Brennan Center and D4BL requested, in part, “[a]ny and all recordkeeping, logs, or digests reflecting the use of social media monitoring.” *See* Ex. A (Request 2). In its email, MPD is silent on the existence of recordkeeping or digests; instead it provided only the narrow response that “[a] search located no records of *logs* reflecting social media searches.” *See* Ex. C (emphasis added). However, the publicly-available 2013 Social Media Monitoring Policy (Ex. E) states that officers shall “print or

document information” gathered via social media, submit an oral or written request before interacting on social media in exigent circumstances, provide a written request for a social media monitoring extension to continue for longer than thirty days, and “prepare a weekly report.” Under this policy, Lieutenants also “shall maintain a file of all requests.” *Id.* Further, MPD’s ISS Social Media Procedures (Ex. D) includes *templates* to document social media searches within a crime report’s “social media section.” MPD therefore must have records of social media monitoring searches because its policies require record-keeping and even provide templates for such purposes.

- **Request 3 (Social Media Monitoring Purchase Agreements and Orders):** In response to D4BL and Brennan Center’s request for purchase agreements and orders of social media monitoring services, MPD asserts that the only social media monitoring application it can access is Dataminr, which was purchased by three other agencies: the Office of the Chief Technology Officer (“OCTO”), Homeland Security Emergency Management Agency (“HSEMA”), and National Technology Information Center (“NTIC”). *See* Ex. C. However, the Office of Contracting and Procurement (“OCP”) released public records revealing several purchases of Babel Street, another social media monitoring application, by HSEMA, in response to a separate DC-FOIA request by Brennan Center and D4BL.² OCP provided order forms, invoices, and statements of work for several Babel Street subscription purchases by HSEMA. If MPD has access to Dataminr through HSEMA’s subscription, it follows that MPD is likely to have access to all of HSEMA’s social media monitoring tools, like Babel Street. MPD must search for and produce all records that document its access and use of Babel Street.

In addition, MPD’s email states that MPD did not locate any records of contracts for social media monitoring applications, and that its *only* access to Dataminr is through a purchase by OCTO, HSEMA, and NTIC. *See* Ex. C. This directly contradicts a donation report published by the Office of Partnerships and Grant Services (“1st Quarter Report on Donations Approved by the DC Office of Partnerships and Grant Services”), an online public record that was *specifically referenced* in the DC-FOIA request. *See* Ex. A at n.6. This document indicates that Dataminr donated training services for 10 officers, valued at \$10,000, in

² Sent by Brennan Center and D4BL on February 17, 2021 and assigned FOIA Request No. 2021-FOIA-03164.

December of 2016.³ MPD failed to disclose any purchase agreements, orders, contracts, or vendor communications (including attachments to communications), related to Dataminr's 2016 donation.

- **Requests 3, 4, 12 & 13:** The document produced by MPD titled "ISS Social Media Training Updated" references multiple social media monitoring services MPD uses, such as storiesig.com, Spokeo, Pipl, Webstagram, Facebook Messenger, LexisNexis Accurint, TransUnion TLOxp, Buzzsumo, WebMii, Tagboard, Lullar, SnapBird, and Social Searcher. *See* Ex. F at 6, 8, 28. Despite seemingly providing these services to their officers, MPD indicated that it "does not have any contracts with any social media vendors" and failed to produce *any* purchase agreements and orders, vendor communications, social media account information from civilians, nondisclosure agreements, or other documents providing usage of these services as requested by D4BL and the Brennan Center by Requests 3, 4, 12, and 13. *See* Ex. A.
- **Request 8 (Training Materials):** In response to Brennan Center and D4BL's request for training materials that discuss social media monitoring, Ex. A (Request 8), MPD produced two undated training presentations: (1) 081920 Investigator Training - Emergency Disclosures and (2) ISS Social Media Training Updated. ISS Social Media Training Updated references "old procedures," none of which have been produced. *See* Ex. F at 4-5.

In sum, there are abundant indications that MPD did not conduct a thorough search and did not produce all documents responsive to D4BL's and Brennan Center's DC-FOIA request. Accordingly, D4BL and Brennan Center seek as relief in connection with this administrative appeal an instruction that MPD conduct a complete and thorough new search and provide a statement explaining its search methods (including search terms, databases searched, and search strategy). In addition, D4BL and Brennan Center seek immediate production of the following documents, which should have been included in MPD's initial response:

- Any and all records that document MPD's access to and use of Babel Street, including but not limited to communications with or about Babel Street (including all attachments to those communications), memorandums of use, contracts, training materials, purchase agreements, and orders.

³ *See*

https://opgs.dc.gov/sites/default/files/dc/sites/opgs/page_content/attachments/1st%20Quarter%20FY17%20Donations%20Report_0.pdf at 5.

- Any and all records related to Dataminr's 2016 donation to MPD, including but not limited to any purchase agreements, orders, contracts, training materials, memorandums of use, or communications with or about Dataminr (including all attachments to those communications).
- The following documents referenced in ISS Social Media Procedures (Ex. D) and all other documents contained in the referenced "Social Media folder": "CRS Social Media Passwords," "ISS Online Resources," and "Social Media Search Techniques."
- Records reflecting the dates that the following training presentations, produced in response to Request 8, were created and used: (1) 081920 Investigator Training - Emergency Disclosures and (2) ISS Social Media Training Updated (Ex. F).
- MPD's "old procedures", including any drafts of past or current policies or procedures, referenced in ISS Social Media Training Updated. Ex. F at 4-5.
- Purchase agreements and orders, vendor communications (including all emails, attachments, sales materials, licensing agreements, memorandums), social media account information from civilians, nondisclosure agreements, memorandums of understanding, or other documents related to MPD's use of storiesig.com, Spokeo, Pipl, Webstagram, Facebook Messenger, LexisNexis Accurint, TransUnion TLOxp, Buzzsumo, WebMii, Tagboard, Lullar, SnapBird, and Social Searcher. *See* Ex. F at 6, 8, 28.
- Any and all recordkeeping related to social media monitoring searches, including but not limited to all written requests for monitoring extensions, weekly reports, and files of requests pursuant to the 2013 social media monitoring policy, Ex. E, and all crime report social media sections, as referenced in ISS Social Media Procedures (Ex. D) template.⁴

⁴ In addition, D4BL and Brennan Center seek clarification regarding MPD's response to Request No. 5, regarding the use of social media in criminal investigations. MPD stated that it "has no records responsive to this portion of the request." Ex. C. However, it did produce a document entitled "Crime 01.01.13 Through 12.12.2020," attached as Exhibit G, reflecting general crime statistics for the time period. D4BL and Brennan Center request explanation of whether this document contains crimes in which social media monitoring was used and whether it is responsive to Request 5.

- Policies, protocols, and other documents related to usernames officers have available to “change” to when blocked, Ex. F at 6, and the use of fictitious or anonymous online personas used by MPD.

* * *

We look forward to your prompt response within 10 business days of this appeal. *See* D.C. Code § 2-537(a). Should you like to discuss the request or this appeal, please do not hesitate to contact us. Thank you.

Sincerely,

BALLARD SPAHR LLP

A handwritten signature in blue ink that reads "Alia Smith". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alia L. Smith
Margaret N. Strouse

Encls.

cc: Brennan Center
D4BL
Robert Eckert, MPD FOIA Specialist (Robert.eckert@dc.gov)

Exhibit A

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,”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

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.”³ 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.”⁴ A 2013 memorandum from the Criminal Intelligence Branch described the creation of Social Media Teams to monitor social media

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>.

³ 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.

⁴ 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.

websites for information on criminal activity.⁵ 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.⁶

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

⁵ 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.

⁶ 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.

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 2020.⁷
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).

⁷ 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.

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.⁸ 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.

⁸ 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.

Thank you for your time.

Laura Hecht-Felella

Laura Hecht-Felella
George A. Katz Fellow, Liberty and National Security Program
Brennan Center for Justice at NYU School of Law
(646) 292-8385 | hecht-felella@brennan.law.nyu.edu

Exhibit B

From: [Eckert, Robert \(MPD\)](#)
To: [Laura Hecht-Felella](#)
Cc: [Sahil Singhvi](#); [Rachel Levinson-Waldman](#); [Archie-Mills, Lisa \(MPD\)](#)
Subject: FOIA Request No. 2021-FOIA-01634, from Ms. Hecht-Fella (Brennan Center)
Date: Wednesday, March 24, 2021 3:54:32 PM

Hello Ms. Hecht-Felella,

Thanks for your query.

As you know, the referenced FOIA request consists of a broad variety of thirteen (13) itemized/individual requests for records/information, including those that may not currently exist.

While the District of Columbia (DC) Freedom of Information Act (FOIA) does not require agencies to create records, we are working to address each of the thirteen (13) items/requests, in turn, posed within this FOIA request.

We will respond to the FOIA request upon the completion of the following: the search for records that may be responsive to the request; the review for material that may be exempt from release under the FOIA; and, the completion of any other needed consultation and coordination.

Thanks,
Bob Eckert
FOIA Specialist
MPD FOIA Office
robert.eckert@dc.gov
"We are here to help."

From: Laura Hecht-Felella <hecht-felella@brennan.law.nyu.edu>
Sent: Wednesday, March 24, 2021 1:54 PM
To: Eckert, Robert (MPD) <robert.eckert@dc.gov>; Crumlin, Latrina (MPD) <Latrina.Crumlin2@dc.gov>; Archie-Mills, Lisa (MPD) <lisa.archie-mills@dc.gov>
Cc: Sahil Singhvi <singhvis@brennan.law.nyu.edu>; Rachel Levinson-Waldman <levinsonr@brennan.law.nyu.edu>
Subject: RE: Acknowledgement Letter 2021-FOIA-01634

CAUTION: This email originated from outside of the DC Government. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@dc.gov for additional analysis by OCTO Security Operations Center (SOC).

Good morning –

It is our understanding that, pursuant to D.C. Act 23-328 § 808, the MPD was required to respond to our public records request 2021-FOIA-01634 (attached) by today. I am writing to follow up on the status of our request.

Thank you,

Laura

Laura Hecht-Felella
George A. Katz Fellow, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law
120 Broadway, Suite 1750, New York, NY 10271
(646) 292-8385 | hecht-felella@brennan.law.nyu.edu

From: Laura Hecht-Felella

Sent: Thursday, February 11, 2021 3:22 PM

To: robert.eckert@dc.gov; latrina.crumlin2@dc.gov; lisa.archie-mills@dc.gov

Cc: Sahil Singhvi <singhvis@brennan.law.nyu.edu>; Rachel Levinson-Waldman <levinsonr@brennan.law.nyu.edu>

Subject: RE: Acknowledgement Letter 2021-FOIA-01634

Dear Mr./Ms. Crumlin,

I hope this email finds you well. The Brennan Center is in receipt of your December 16, 2020 response regarding our FOIA request number 2021-FOIA-01634. The Metropolitan Police Department (MPD) claimed a Covid-19 extension pursuant to D.C. Act 23-328 § 808 that allowed it to extend the response deadline for this request until the public health emergency ended.

However, [the FOIA Tolling Emergency Amendment Act of 2020](#) (effective December 22, 2020) requires the MPD to provide a response to our request within 45 days (except Saturdays, Sundays, and legal public holidays) of the end of the "Initial COVID-19 closure," which was on January 15, 2021.

Therefore, we request that MPD respond to our request by **March 24, 2021** and "either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor."

Please do not hesitate to contact me with further questions at (646) 292-8385. Thank you for your attention to this matter.

Thank you,

Laura

Laura Hecht-Felella
George A. Katz Fellow, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law
120 Broadway, Suite 1750, New York, NY 10271
(646) 292-8385 | hecht-felella@brennan.law.nyu.edu

From: latrina.crumlin2@dc.gov <latrina.crumlin2@dc.gov>
Sent: Wednesday, December 16, 2020 12:28 PM
To: sahil.singhvi@nyu.edu
Cc: robert.eckert@dc.gov; latrina.crumlin2@dc.gov; lisa.archie-mills@dc.gov
Subject: Acknowledgement Letter 2021-FOIA-01634

Dear Mr./Mrs. Singhvi,

This office is in receipt of your Freedom of Information Act (FOIA) request. Your FOIA request number is 2021-FOIA-01634 and your assigned FOIA Specialist is **Robert Eckert**.

If you have any questions regarding your request, please contact your assigned FOIA Specialist at (202) 727-3721. For ease of reference, we ask that you have your FOIA Request Number available when you contact our office.

Please know, pursuant to D.C. Official Code § 2-532(c), we have 15 business-days, subject to the possibility of a ten (10) business day extension to respond to the request as of the date of receipt.

Be advised, if your request is for Body Worn Camera (BWC) footage, D.C. Code § 2-532(c) allows 25 business days subject to the possibility of 15 working-day extension, to respond to the request as of the date of receipt.

COVID-19 Notification

Pursuant to section 808 of the Coronavirus Support Congressional Review Emergency Amendment Act of 2020, **effective June 9, 2020**, D.C. Act 23-328, all FOIA deadlines may be extended during a period of time for which the Mayor has declared a public health emergency. Pursuant to this provision, we have claimed an extension of the time in which to provide a response to your request.

Regards,

Latrina Crumlin
Staff Assistant, FOIA
Metropolitan Police Department

300 Indiana Ave NW, RM 4153
Washington, DC 20001

Exhibit C

From: Eckert, Robert (MPD) <robert.eckert@dc.gov>

Sent: Thursday, September 30, 2021 3:52 PM

To: Laura Hecht-Felella <hecht-felella@brennan.law.nyu.edu>

Cc: Eckert, Robert (MPD) <robert.eckert@dc.gov>

Subject: Final Response in Process - FOIA Request No. 2021-FOIA-01634, from Laura Hecht-Felella (Brennan Center for Justice)

September 30, 2021

Laura Hecht-Felella
George A. Katz Fellow
(submitted via Sahil Singhvi)
Liberty and National Security Program
Brennan Center for Justice at NYU School of Law
hecht-felella@brennan.law.nyu.edu

FOIA Request No. 2021-FOIA-01634

Dear Ms. Hecht-Felella:

This is in response to the above-referenced Freedom of Information Act (FOIA) request for a variety of information as reflected below, along with response information received through the search for responsive records.

"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."

The following references are responsive to this FOIA request, which may be located on the MPD website (<https://mpdc.dc.gov/page/written-directives-general-orders>): SO-13-04 Investigative Support Unit; SO-14-05 CIC Traffic Desk; SO-16-06 Social Media Checks for Background; SOP 16-01 Handling First Amendment Assemblies; ISS CRS Social Media Policy; ISS Social Media Training; and, ISS Social Media Procedures.

Also located were the attached: ISS CRS Social Media Policy; ISS Social Media Training; ISS Social Media Procedures, Memorandum of Understanding (MOU) Between the District of Columbia (DC) Homeland Security and Emergency Management Agency (HSEMA) and the Metropolitan Police Department (MPD); Emergency Disclosure and Preservation Requests; and, DCR (Crime Statistics) 01/01/2013 - 12/21/2020.

No records reflecting fictitious online personas/accounts were located.

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.

A search located no records of logs reflecting social media searches for the purpose of criminal investigations, situational awareness, event planning, or public safety. Analysts and other MPD members often rely on open-source (publicly available) social media searches to find information about planned demonstrations or criminal activities.

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

No records of contracts for social media monitoring applications were located. The MPD does have access to Dataminr, an application purchased by the Office of the Chief Technology Officer (OCTO)/Homeland Security Emergency Management Agency (HSEMA)/National Technology Information Center (NTIC). The MPD has access through the attached memorandum of understanding (MOU) with NTIC. The NTIC provides alerts from Dataminr's First Alert to the Joint Strategic and Tactical Analysis Command Center (JSTACC) management. Dataminr's First Alert uses technology to detect breaking events and emerging risks from open-source social media in real time.

"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."

This is not something maintained in a database, but would be part of a criminal investigation, and would require research, which is not required under the FOIA. Additionally, as mentioned above, JSTACC members do not create fictitious online personas or interact in an undercover capacity on social media platforms.

"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."

The MPD has no records responsive to this portion of the request.

"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."

No records responsive to this item of the request were located.

Situational Awareness - The MPD utilizes TweetDeck, which is a free social media dashboard application for management of Twitter accounts. Originally an independent application, TweetDeck was subsequently acquired by Twitter Inc. and integrated into Twitter's interface. It is normally used to monitor trending topics in real-time to identify events that could affect the operational landscape, or MPD operations, and subsequently provide timely and accurate situational awareness and operational intelligence to MPD personnel. Real-time monitoring is not tracked as it is all open source (publicly available data). Additionally, MPD's Intelligence Branch completes a daily demonstration report which provides a daily list of known demonstrations. It's compiled based on known permit applications through MPD, USPP, etc. and open media searches for demonstrations occurring in DC.

As far as First Amendment demonstrations - MPD does not keep "files" on individuals involved in protest/demonstration activity, to include social media accounts, unless MPD has been authorized to conduct an investigation as outlined by First Amendment activities as required by the Police Investigations Concerning First Amendment Activities Act of 2004 (the Act), D.C. Code § 5-333 et seq.

"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."

No records responsive to this portion of the request were located. Social media inquiries by JSTACC are open source (publicly available).

"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."

Please see the attached the following training material regarding social media investigations. These are given internally to JSTACC members, as well as in investigator and district intelligence officer training: 081920 Investigator Training - Emergency Disclosures ISS Social Media Training Updated.

“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.”

No responsive records were located.

“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, nonprofit groups, or companies.”

A search located no records of formal complaints or legal challenges regarding social media monitoring.

“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.”

A search located no records responsive records; however, the attached MOU with the DC HSEMA, referenced in the response to No. 1, is attached.

“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.”

As previously mentioned, MPD does not have any contracts with any social media vendors. Therefore, we would not have any nondisclosure agreements.

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.

No responsive records were located.

I have determined to withhold portions of the released records under DC Official Code § 2-534 (a)(2) and (a)(3) because their release would constitute a clearly unwarranted invasion of personal privacy. The withheld material includes names/personal identifiers and other personal privacy information, including that which would lead to the identity of individuals.

Please know that, under D.C. Official Code § 2-537 and 1 DCMR § 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter, as well as, on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) a daytime telephone number, an e-mail and/or U.S. mailing address at which you can be reached.

The appeal must be mailed to: The Mayor's Office of Legal Counsel, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 407, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to the Mayor's Office of Legal Counsel at foia.appeals@dc.gov. Further, a copy of all appeal materials must be forwarded to the Freedom of Information Officer of the involved agency, or to the agency head of that agency, if there is no designated Freedom of Information Officer there. Failure to follow these administrative steps will result in delay in the processing and commencement of a response to your appeal to the Mayor.

**Sincerely,
Bob Eckert
FOIA Specialist
Freedom of Information Act Office
Metropolitan Police Department
Robert.eckert@dc.gov
"Excellence is transferable."**

Exhibit D

Section 1: Minimum social media requirements**Section 2: Taking social media results and searches a step further****Section 3: Negative social media results**

- All ISS usernames and passwords for social media searches are saved in the Social Media folder as “CRS Social Media Passwords.doc”
- Access links to various online resources and internet search tools in the document saved as “ISS Online Resources” in the Social Media folder.
- Additional social media search tips are located in the document “Social Media Search Techniques” in the Social Media folder.

Section 1:

At a minimum, the following procedures are required to uncover social media profiles:

1. Query various name combinations, phone numbers, and email addresses for the subject through the following sites:
 - a. **Facebook, Google, and at least two other search engines** from the ISS Online Resources document.
2. Access Accurint
 - a. Query the subject in Accurint’s Virtual Identity Report.
 - i. Click on all URLs provided in the Virtual Identity Report that are associated to the subject.
 - b. If the subject is a juvenile or no information is returned in public records, also search for relatives and/or current address(es) of that subject through Accurint and/or TLO to find a relative that resides at the subject’s address.
 - i. If a social media profile is obtained for a relative (mother, father, sibling), thoroughly search the profile (friends list, about section, posts, etc.) in an effort to locate a profile for the individual of interest.
 1. The document “**Social Media Search Techniques**” saved in the Social Media folder provides guidance on searching private social media profiles.
 - c. If no profile can be found for the individual of interest, include the relative’s social media profile and URL in the report.

Section 2:

If a profile is uncovered, the following procedures are required:

1. If a social media account is uncovered, the URL handle as well as the name/alias provided on the social media account should be searched in **Google, Facebook, Instagram, Twitter, YouTube, and at least one additional** site that has a username search in an effort to uncover additional profiles.

Use the following template to document positive search results. Plug in or take out what parameters were searched in the italicized portion of the template. This information should appear in the beginning of the social media section.

POSITIVE results

- I conducted searches based on the parameters available on each site using the [arrestee, person of interest, decedent, etc] *name(s), DOB(s), SSN(s), email(s), phone(s)* and other various identifiers. The following systems returned results that appear to be relevant: [list websites accessed here]

If profiles are found, the following template should be used in the body of the social media section of the report for every social media site that produced results, as seen below:

- I conducted [website] searches based on [search parameters] and received the following results:
Facebook URL: <https://www.facebook.com/CRS>
**Insert screenshots of any relevant timeline, about section, photos, etc.
 - I conducted [website] searches based on [search parameters] and received the following results:
Instagram URL: <https://www.instagram.com/CRS>
**Insert screenshots of the about section, photos, etc.
2. If a photo or video is posted on a social media account where firearms or ammunition is viewable; the account URL, image URL, and screenshot of the image in which a firearm is shown **must be emailed** to the following GRU and Intel members: Cmdr. John Haines, Lt. [REDACTED], Sgt. [REDACTED], and Lt. [REDACTED].

If photos on social media reveal firearms or ammunition; the following template should be used under the website URL:

- The account URL, image URL, and screenshot of the image in which a firearm is shown was sent on [DATE] to GRU and Intel for situational awareness.

Section 3:

If no profile is uncovered, the following procedures are required:

1. Access TLO, as TLO tends to provide more phone numbers and email addresses tied to search results. Include or exclude this information in the report based on your judgment as not all information is accurate.
2. If searches have been exhausted, and no relevant social media information has been found; see below on how to document negative results.

In the Possible Social Media section, use the following template to document negative search results. Plug in or take out what parameters were searched in the italicized portion of the template. This information should appear after any positive results or in the beginning of the social media section if no results are returned.

NEGATIVE results

- I conducted searches based on the parameters available on each site using the [arrestee, person of interest, decedent, etc] *name(s), DOB(s), SSN(s), email(s), phone(s)* and other various identifiers. The following systems yielded negative or unrelated results: [list websites accessed here]

Exhibit E



**Homeland Security Bureau
Intelligence Fusion Division**

300 Indiana Ave, NW Room 3044, Washington DC, 20001 Office: 724-4252 Fax: 202-727-5783

MEMORANDUM

TO: Criminal Intelligence Branch Members

FROM: Lieutenant Michael J. Pavlik
Criminal Intelligence Branch

DATE: June 5, 2013

SUBJECT: Social Media Monitoring Policy

The Criminal Intelligence Branch (CIB) has been tasked with creating Social Media Teams. The mission of these teams is to monitor social media websites for possible information on criminal activity and that care is exercised so as to protect person's constitutional rights, and that matters investigated are confined to those supported by a legitimate law enforcement purpose. To that end, the following guidelines shall be followed.

[REDACTED]

[REDACTED]

Members shall only monitor such websites for discussions of possible criminal activity and criminal associations and shall not engage discussions or interactions unless prior approval has been given by the CIB lieutenant.

In exigent circumstances approval maybe requested by phone followed by a written request the next business day.

Members shall print or document information only as it pertains to having reasonable suspicion of criminal activity or associations.

Approval for the above monitoring will only be approved for thirty days. Prior to the expiration members shall request a written request for an extension to the CIB lieutenant as necessary.

The CIB lieutenant shall maintain a file of all requests and shall conduct a review to determine if reasonable criminal suspicion still exists prior to the 30 day expiration.



Members shall prepare a weekly report for each OSS area detailing any information gleaned. However, should a member gain information regarding any criminal acts, potential suspects, or acts of retaliation, this information shall be forwarded ASAP.

Exhibit F



SOCIAL MEDIA

INVESTIGATIVE SUPPORT SECTION

JOINT STRATEGIC & TACTICAL ANALYSIS COMMAND CENTER

METROPOLITAN POLICE DEPARTMENT

WASHINGTON, D.C.

PETER NEWSHAM
CHIEF OF POLICE





- Provide insight on how the Investigative Support Section (ISS) provides open source intelligence for investigative purposes
 - Old vs New procedures
- Techniques
- Challenges & Solutions
- Examples/Success stories

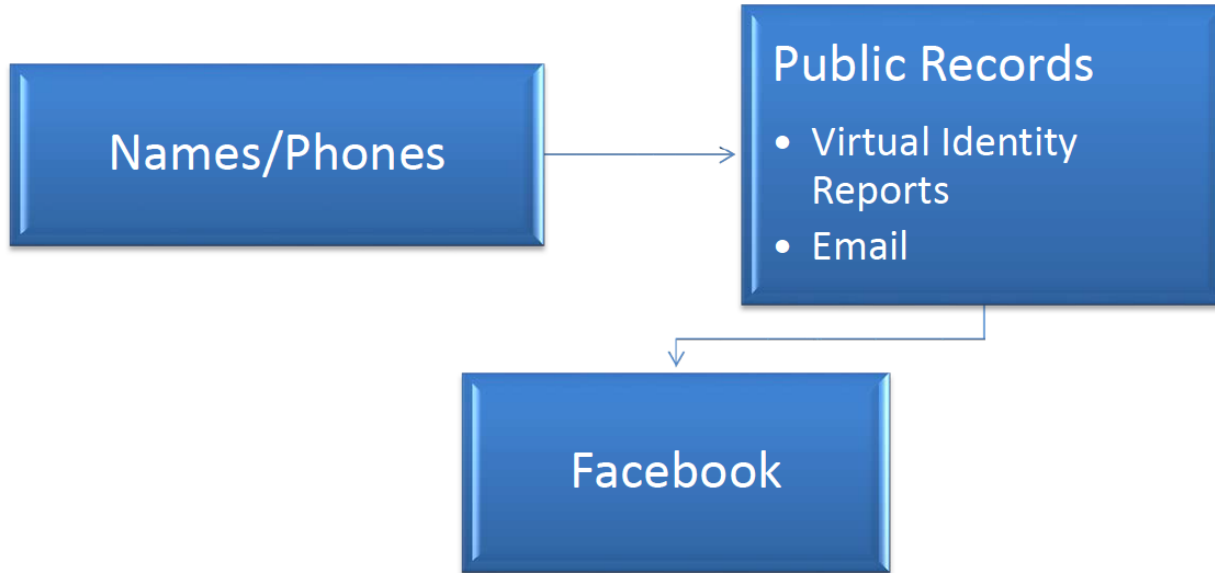


SOCIAL MEDIA: INVESTIGATIVE SUPPORT



- Gaining actionable intelligence off social media about a subject
 - Weapons, narcotics, active areas, chatter, #hashtags, friends, activities, family members, etc.
- More targeted searches
- Ability to search a variety of social networking sites, but often use the most popular at the present time (Instagram, Twitter, Facebook, Youtube, Google)
- Search public profiles, pictures, blogs, comments, etc.





Barely scratching the surface

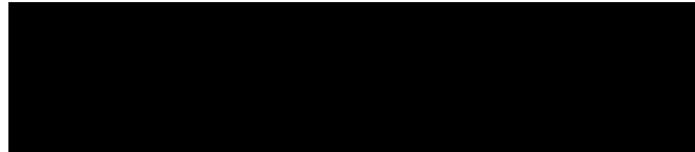


Robbery Arrestee:



Accurint:

Virtual Identity Report



Facebook:



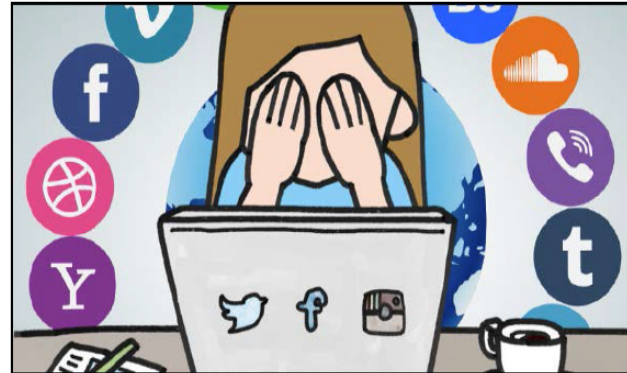
We couldn't find anything for [redacted]
Looking for people or posts? Try entering a name, location, or different words.

**SOME THINGS THAT
ARE TRUE ARE NOT
VERY USEFUL**

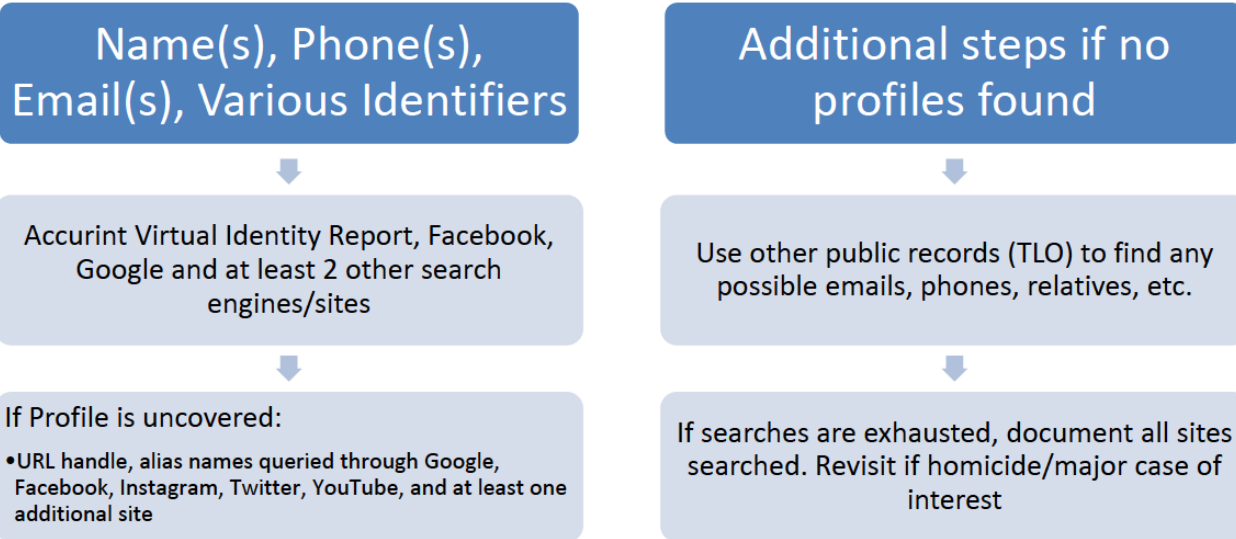
SOCIAL MEDIA: CHALLENGES



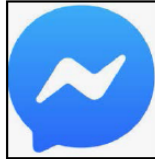
- Time
 - ✓ SOLUTION
 - New social media protocol
 - In-depth searches post major incident
- Changing Usernames
 - ✓ SOLUTION
 - Variations of their previous usernames, check associates profiles for tagged photos
- Private Accounts
 - ✓ SOLUTION
 - Known associates and family members sharing tagged photos
- Getting Blocked
 - ✓ SOLUTION
 - Change username, view profiles publicly
 - Storiesig.com
- Search Restrictions
 - ✓ SOLUTION
 - Specialized search sites (Spokeo, Pipl, Webstagram, Facebook Messenger)



SOCIAL MEDIA: NEW PROTOCOL



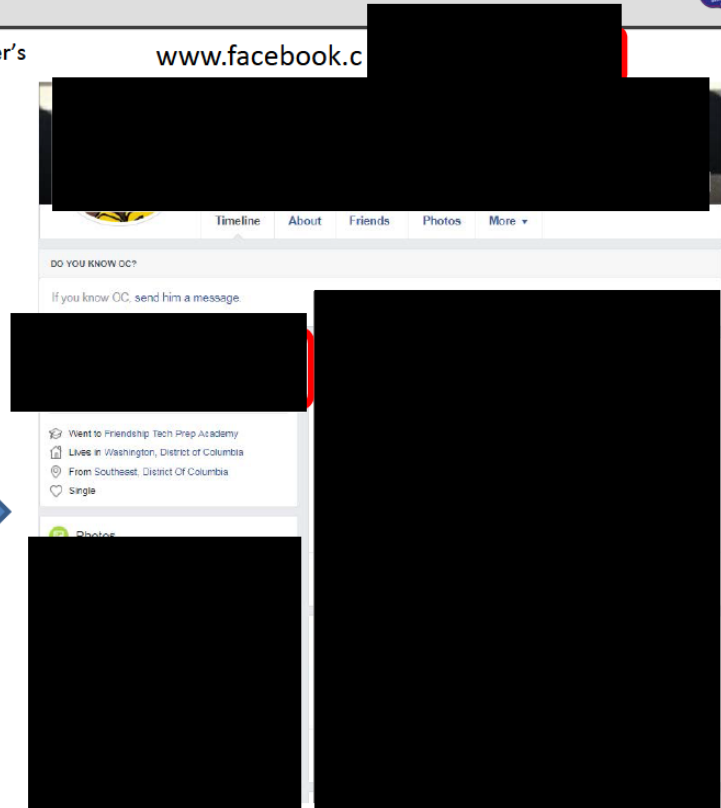
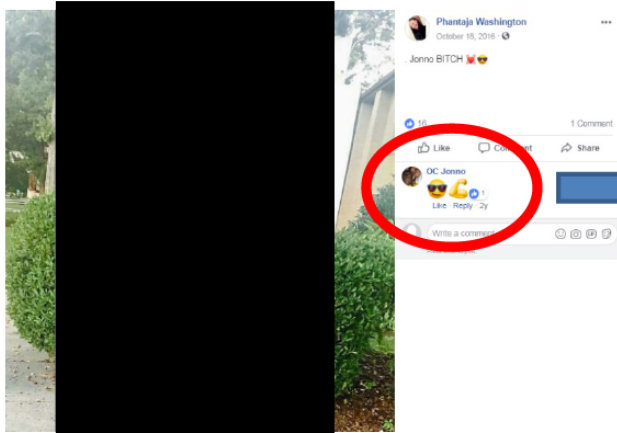
SOCIAL MEDIA: RESOURCES



FACEBOOK



- Exhausted searches on armed robbery arrestee, Daejon Ross. Found mother's Facebook account; however, no links to her son.
- Next, Daejon Ross ex-girlfriend/child in common: Phantaja Washington

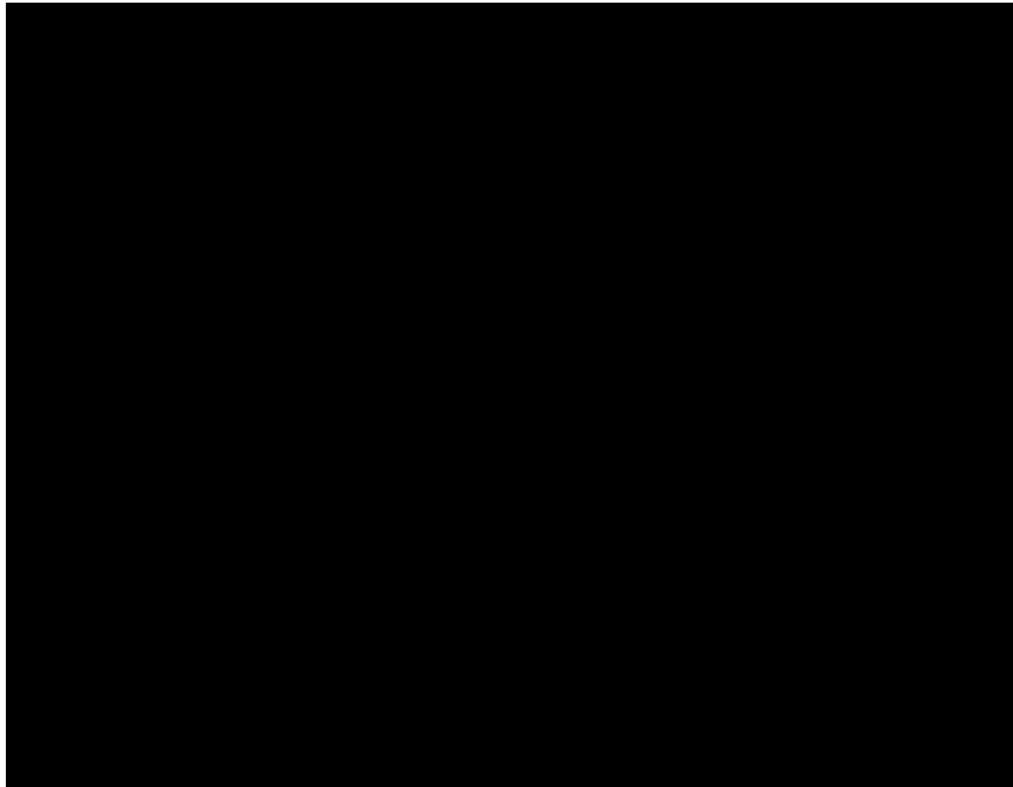




www.instagram.co




www.instagram.com



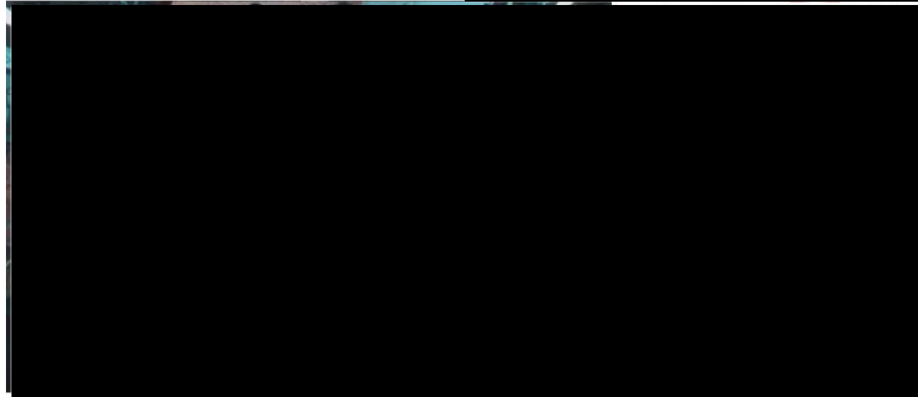
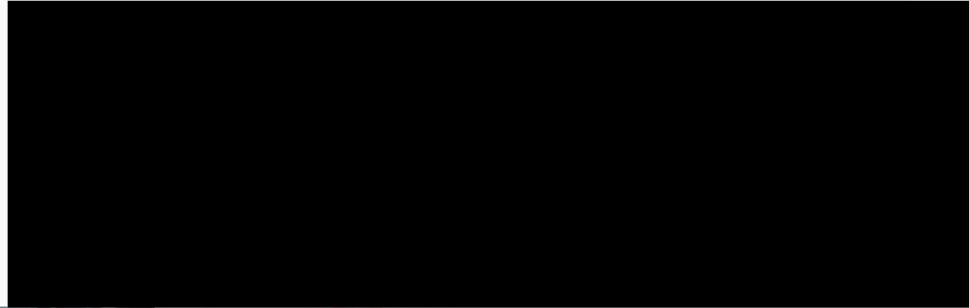
INSTAGRAM

Is there a location
or crew your
subject may be
affiliated with?



INSTAGRAM CONT'D.

While on this profile look for clues that may help you identify key words and help identify your subject

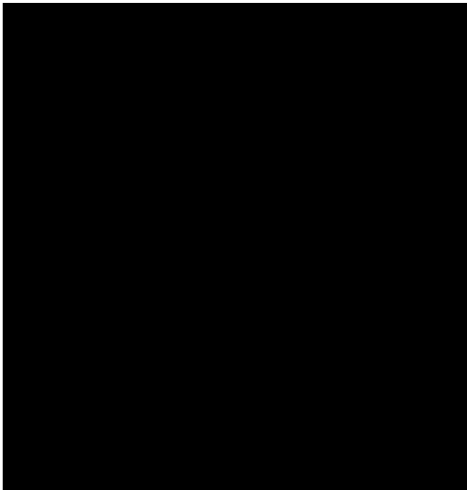
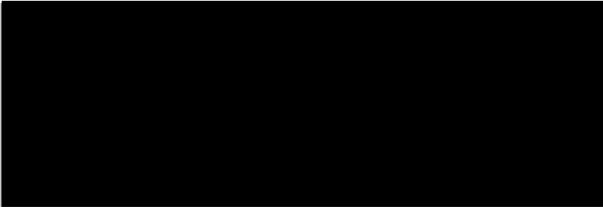
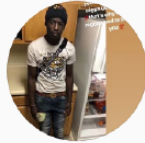


Based on the profile bio and photos it appears [redacted] and [redacted] may be keywords associated with subjects from Simple City

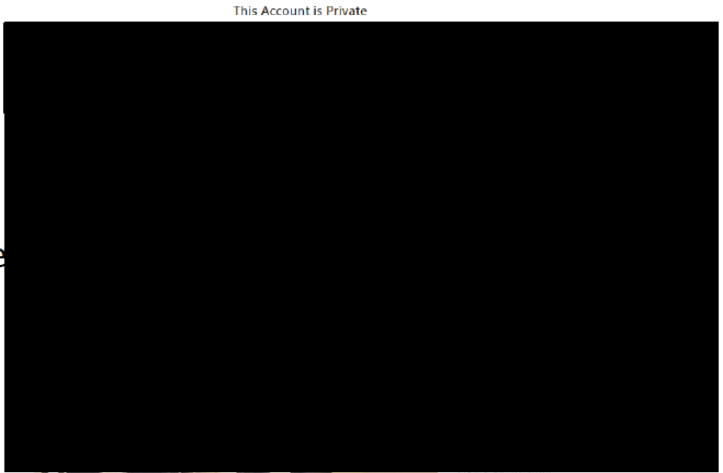
INSTAGRAM CONT'D

Based on that information, try searching [redacted] and see what populates

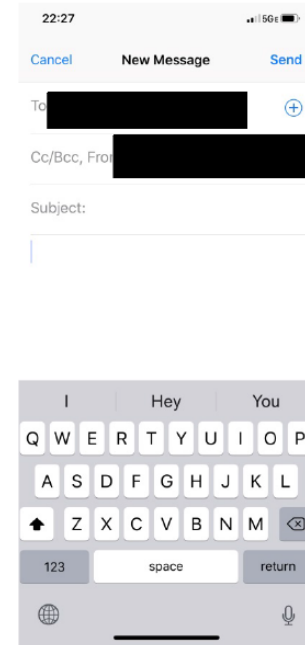
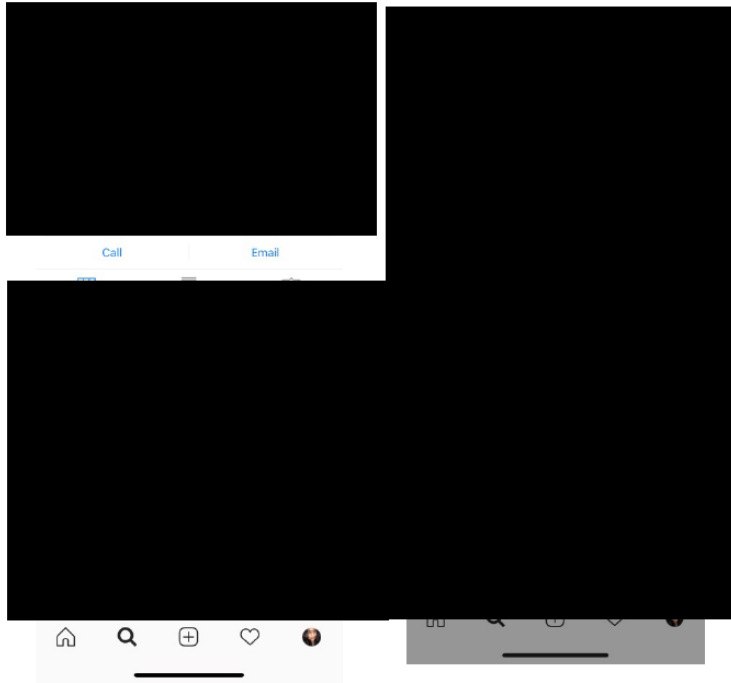
[redacted] account is private, how can we combat it?



Check [redacted] page since its public and he appears to be affiliated with the same area

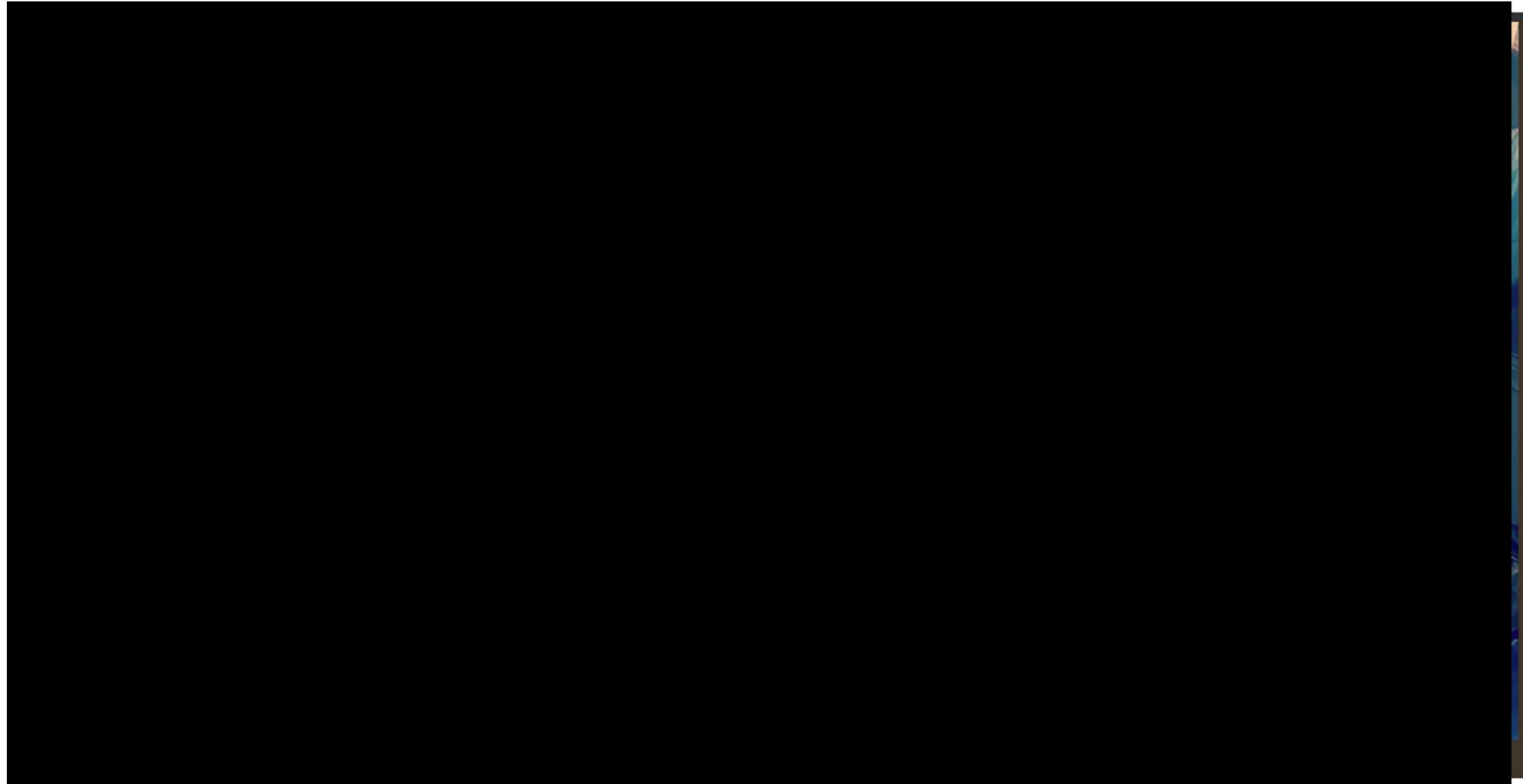


INSTAGRAM CONT'D



14

TWITTER

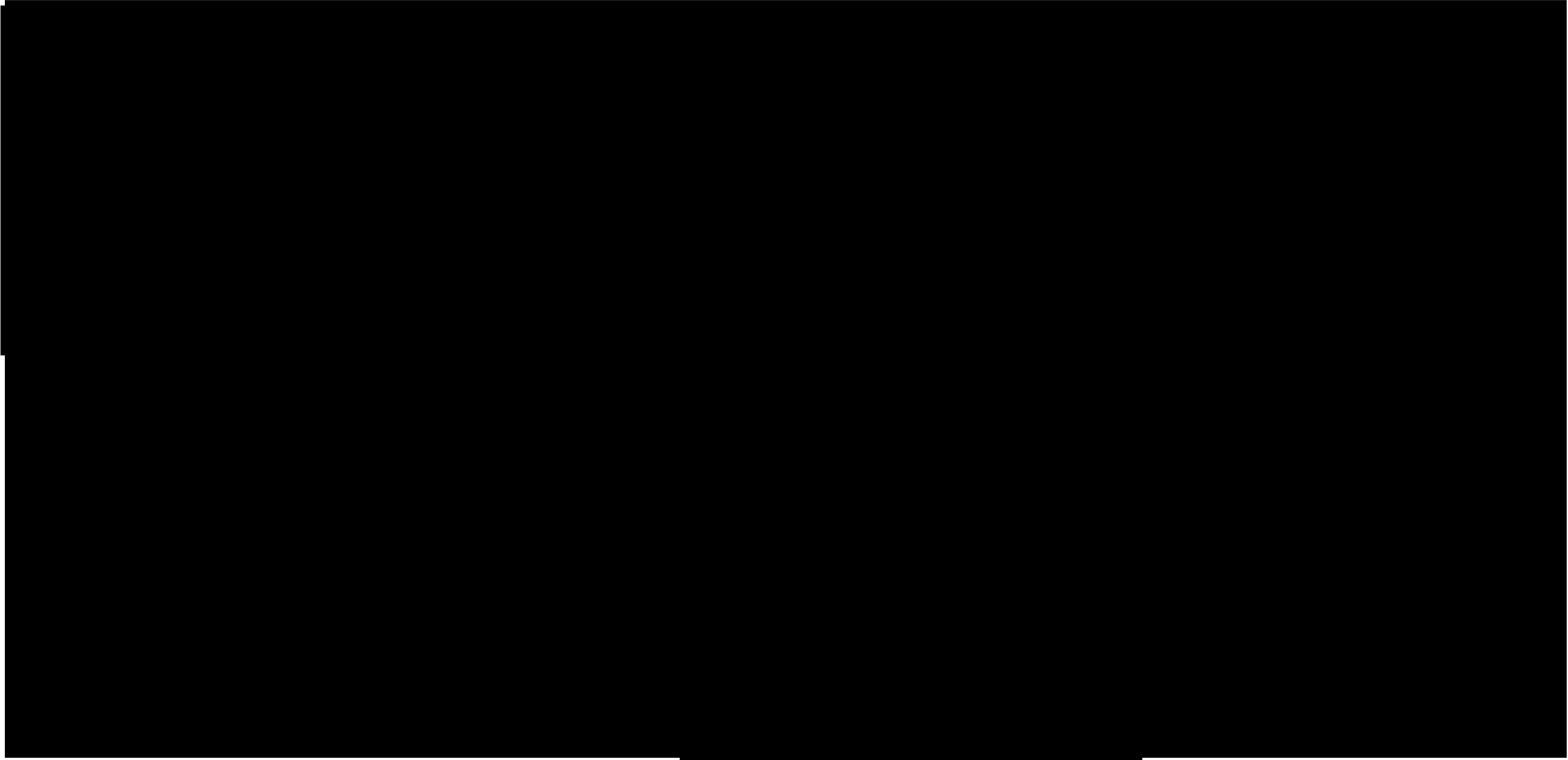


SOCIAL MEDIA: TARGETED SEARCHES

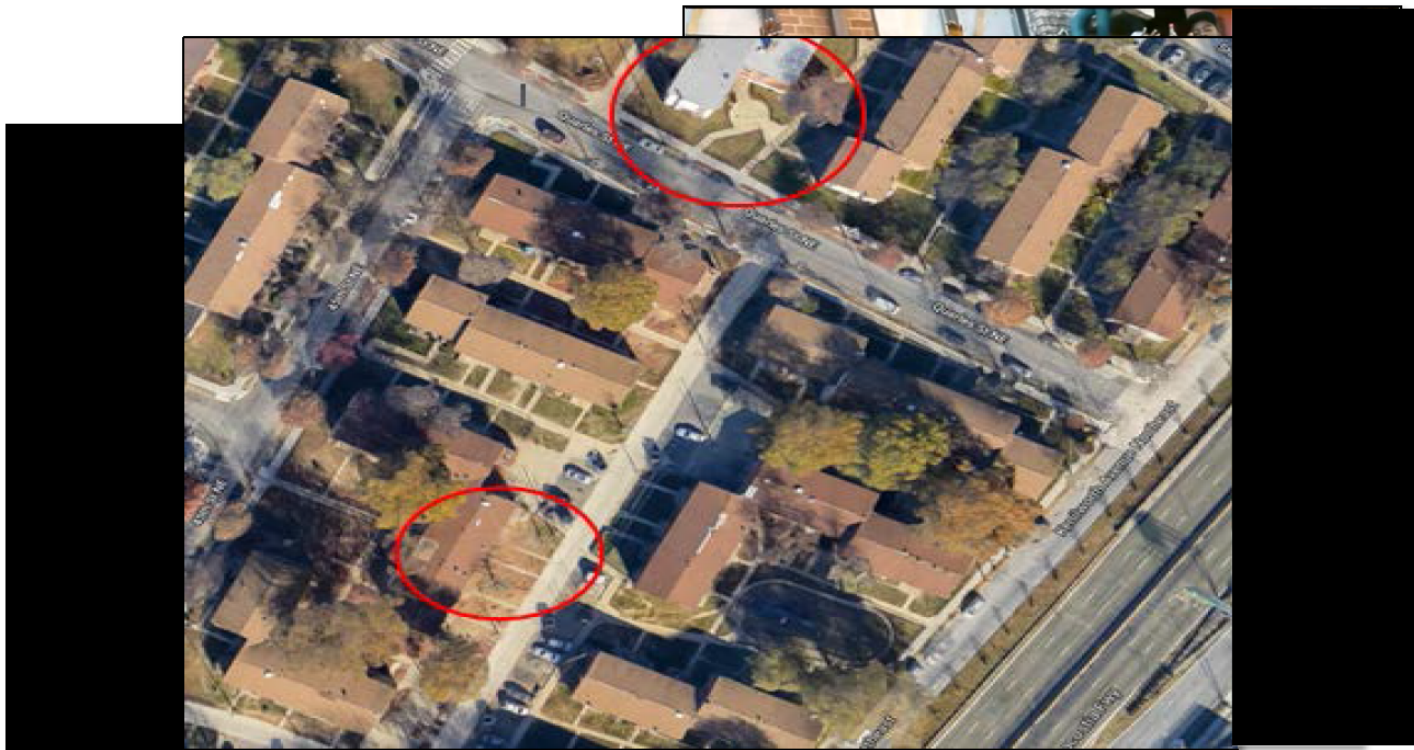


- Social Media drill downs on homicides and high profiles cases/individuals of interest
 - Quick turnaround time for requests
 - Around the clock requests/communication needed between shifts
 - Building out information on hashtags, possible retaliation/crew beefs, relatives/associates
 - Information sharing with Intel, NSID, Districts

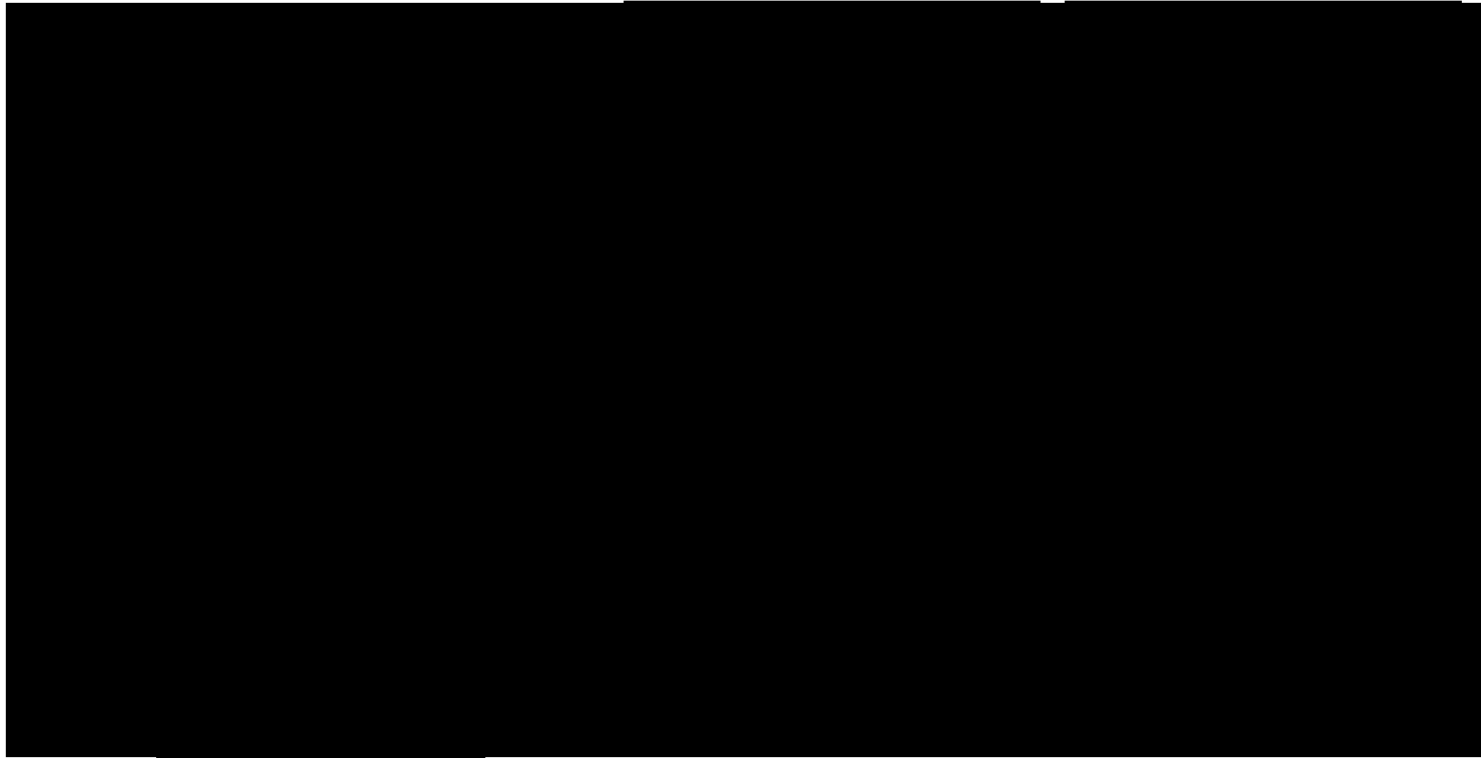




SOCIAL MEDIA: TARGETED SEARCHES – YOUTUBE/INSTAGRAM



SOCIAL MEDIA: TARGETED SEARCHES – YOUTUBE/INSTAGRAM

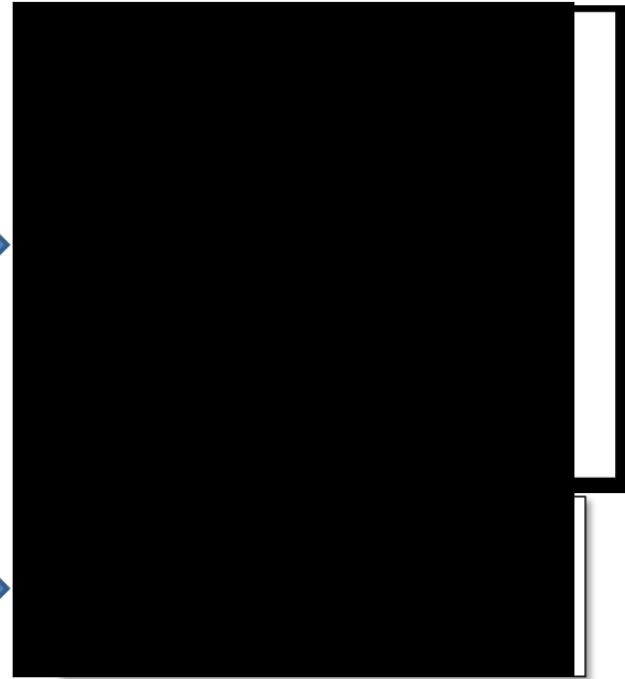
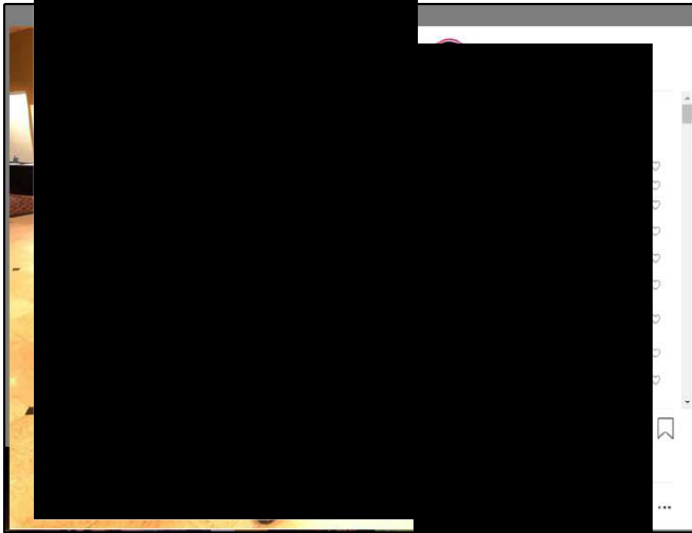


SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE

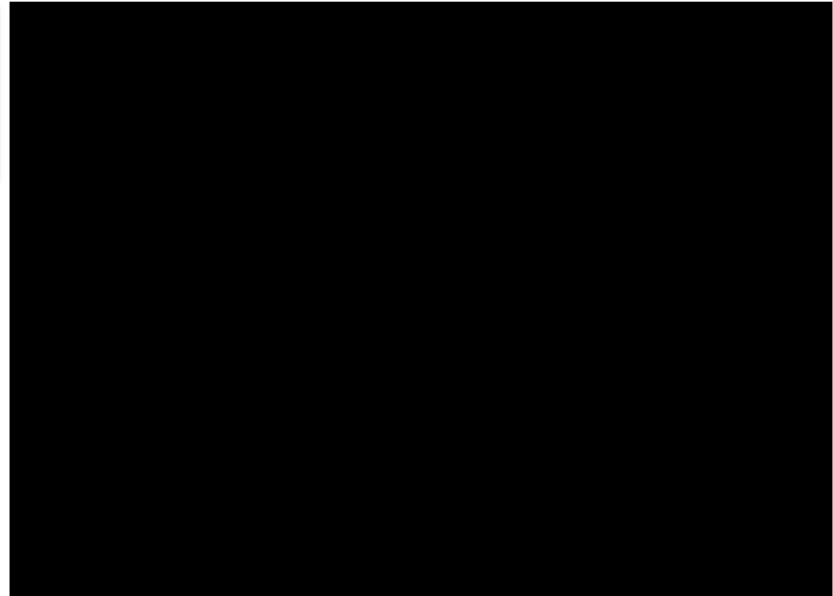
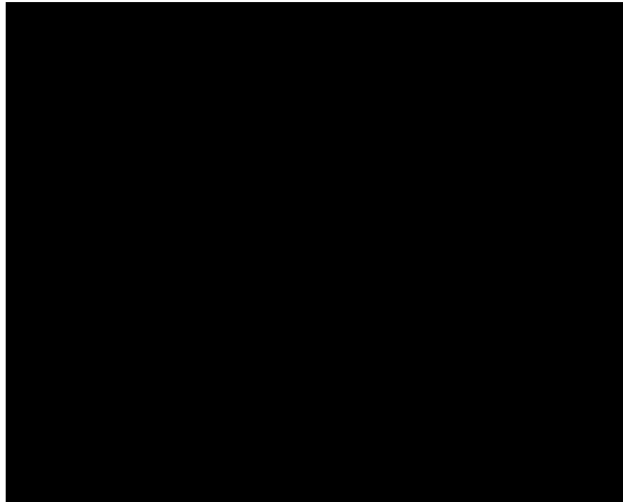


Post homicide follow-up of *validated* [REDACTED]

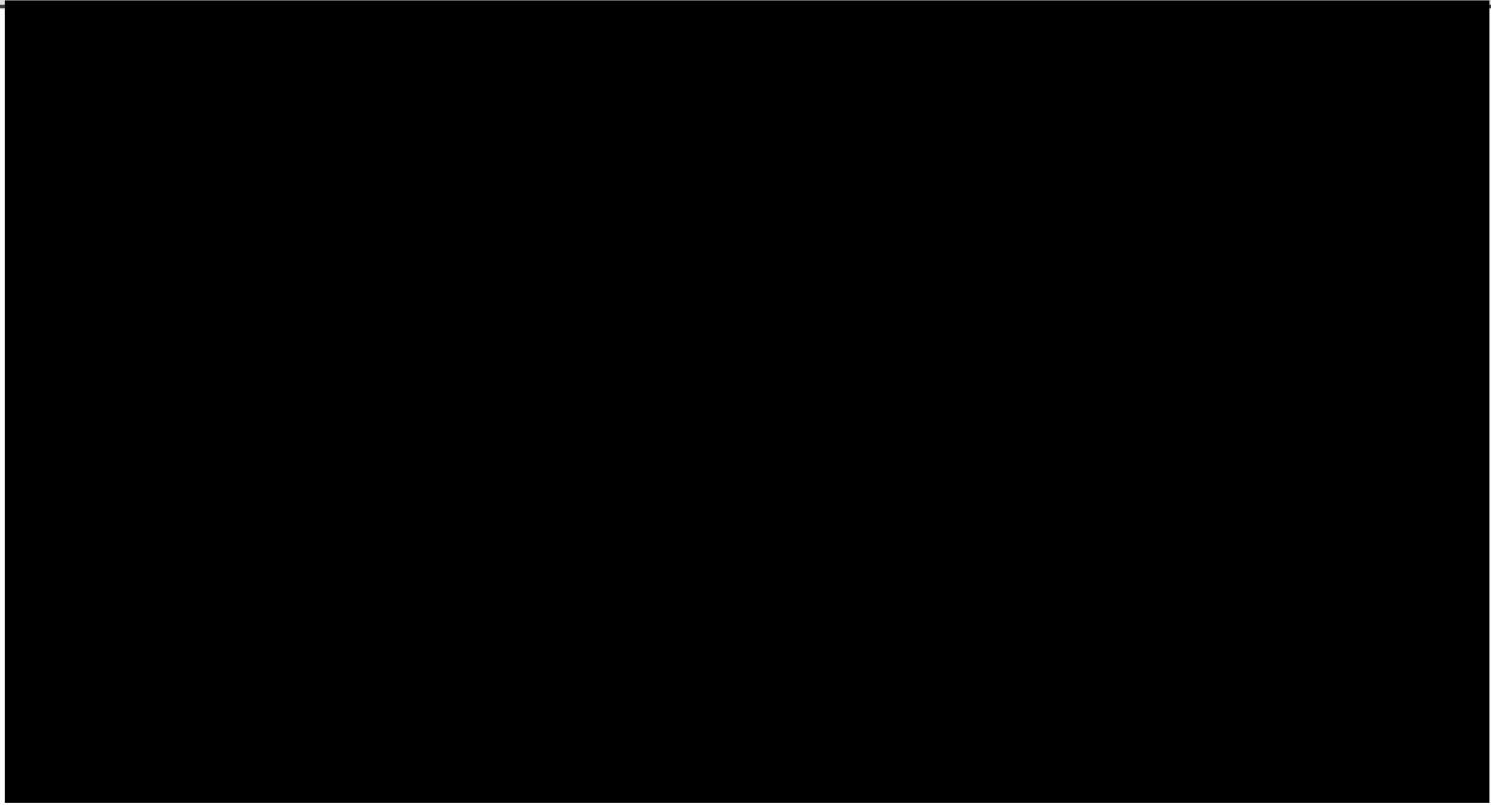
- Searched through Instagram accounts of known validated members
 - [REDACTED]
 - Posted 4 days after the homicide occurred



SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE



Who is this person?



CHALLENGES: SEARCH RESTRICTIONS

Home Download Stories

Start Download
View PDF & Download PDF Converter Guru

STORIESDOWN HOMEPAGE BLOG REMOVE CONTENT CONTACT US

Instagram Story Viewer & Downloader

Best Instagram story viewer! You can watch Instagram stories anonymously and quickly without the need to log in or having account.

Ads by Google

Stop seeing this ad Why this ad? ⌵

Enter Instagram username **Search**

Instagram Downloader

Instagram URL

INSTADP

Instadp search profile pictures
Search and download Instagram profile pictures or stories

INSTADP STORIES

Search username

CHALLENGES: SEARCH RESTRICTIONS INSTADP

INSTADP 

Instadp search profile pictures

Search and download Instagram profile pictures or stories

INSTADP STORIES

Q Search usomame



INSTADP 

Instadp search profile pictures

Search and download Instagram profile pictures or stories

INSTADP STORIES

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INSTADP INSTADP

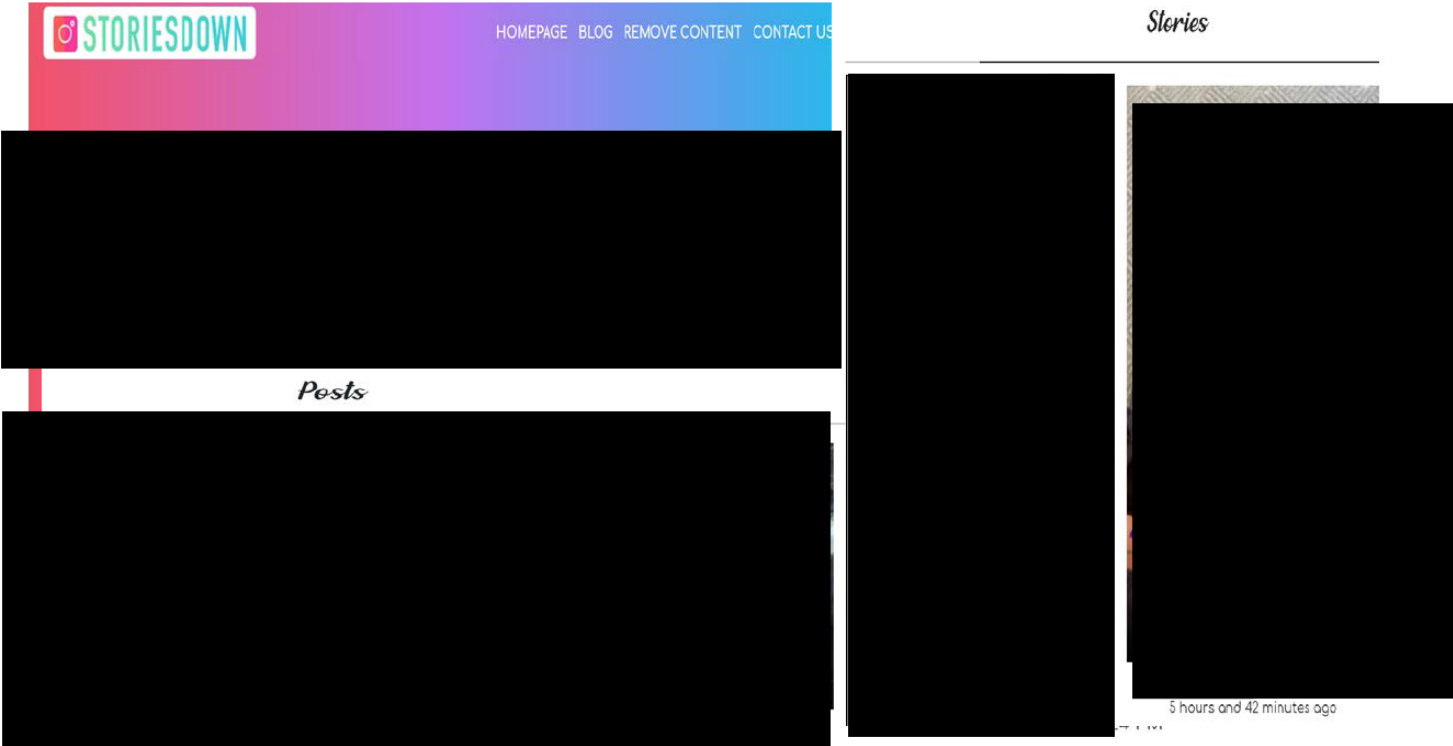


ze and download it

>



CHALLENGES: SEARCH RESTRICTIONS STORIESDOWN



CHALLENGES: SEARCH RESTRICTIONS W3TOYS

Home Download Stories Download Highlights

Start Download

View PDF & Download PDF Converter Guru

Inst.

Instagr

Instagram Downloader

https://www.instagram.com/p/B_Av_YqH1qe/

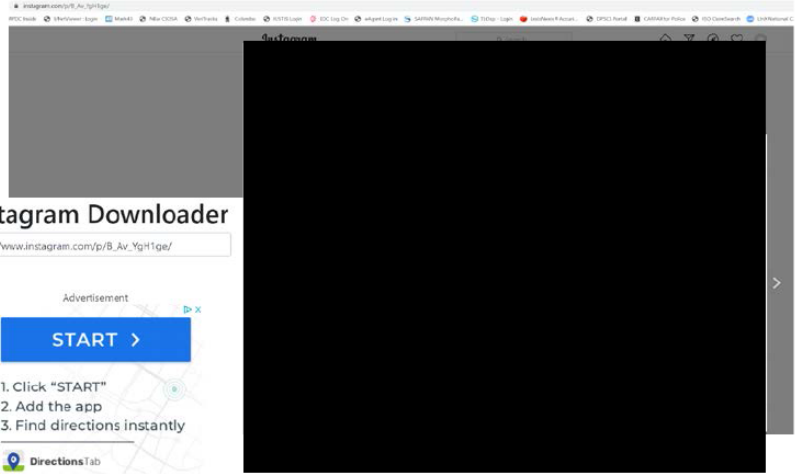
Advertisement

START >

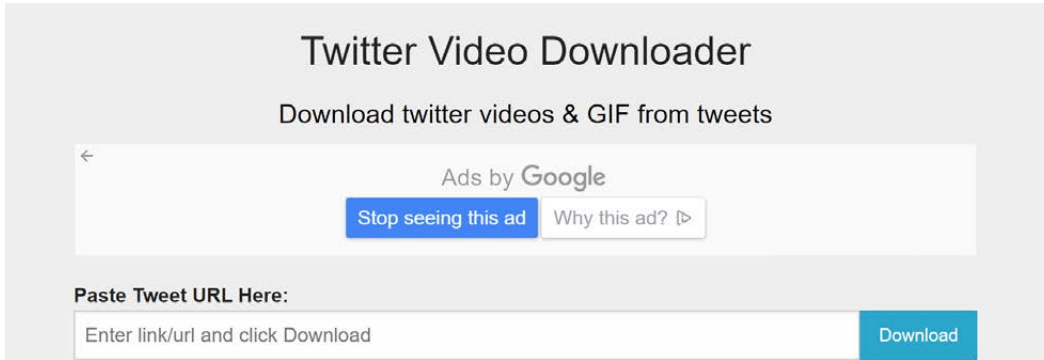
1. Click "START"
2. Add the app
3. Find directions instantly

DirectionsTab

Download



CHALLENGES: SEARCH RESTRICTIONS TWITTER DOWNLOAD



SOCIAL MEDIA: ADDITIONAL SEARCHES



- Using specialized sites to search hashtags, telephone numbers, usernames, email addresses, keywords, URLs
- Specialized site searches for Twitter, Instagram, etc.



peekyou

WebMii

SPOKEO

#tagboard

pipl

Buzzsumo

Lullar
com

Social Searcher

SnapBird

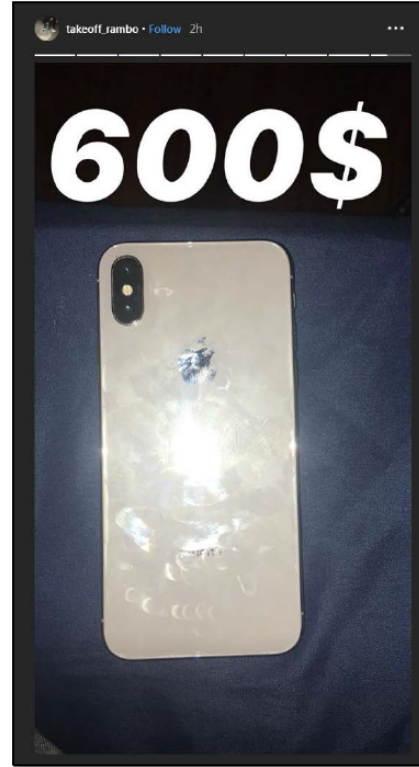
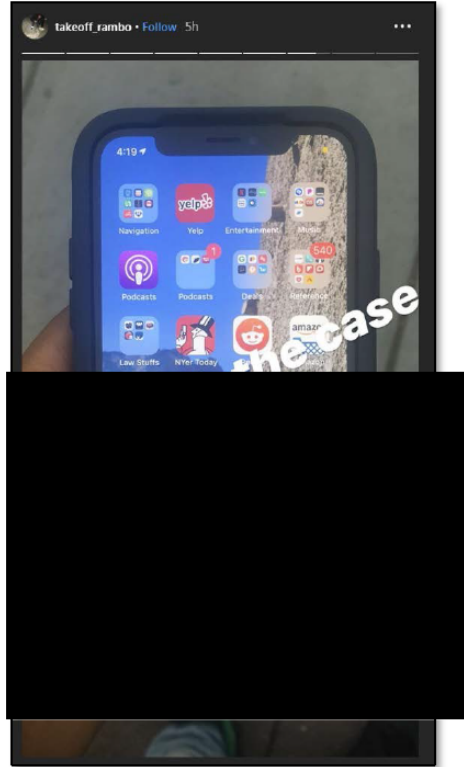
WEBSTAGRAM

WHAT'S NEXT?



Check-in on known recidivists and gang/crew members with a social media footprint

SOCIAL MEDIA: TARGETED SEARCHES – SUCCESS STORY

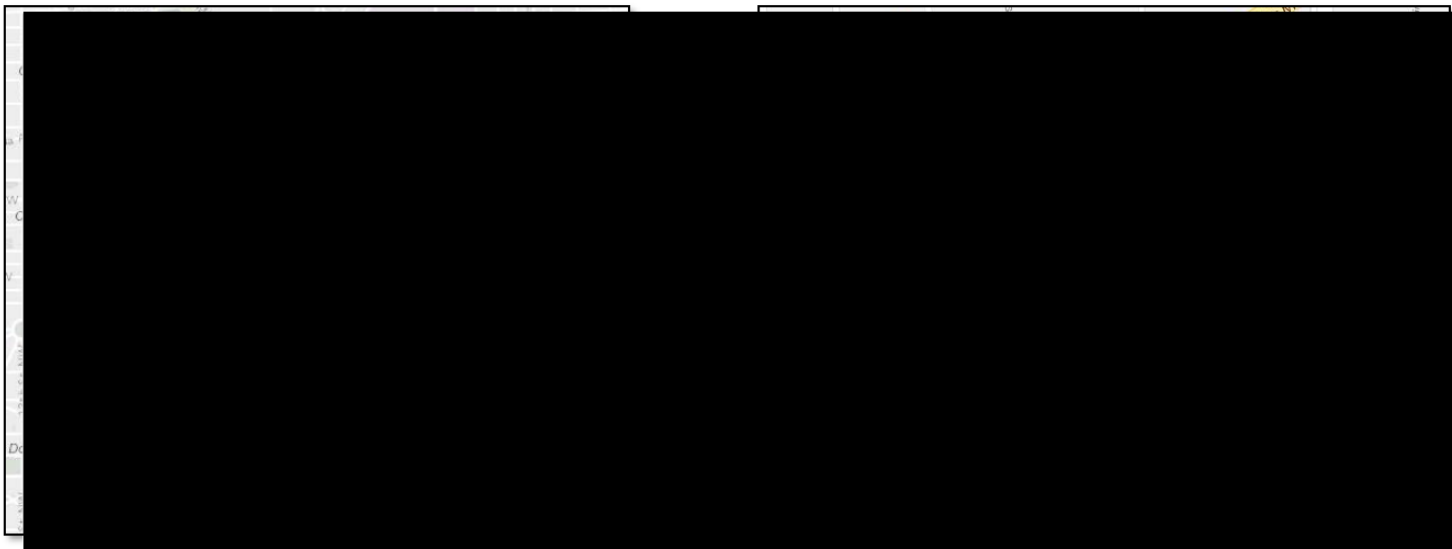


SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE



01/04/19 0037 - 0234 hours - Robbery (Gun) [REDACTED]

- On the above listed date and time, the complainant and two others were approached from behind and held at gunpoint by three suspects who instructed them to lie face down then took several items including an **iPhoneX** described in Cobalt as **Aluminum/Silver**. The look out in this incident was for **3 B/M, late teens to mid-twenties**.

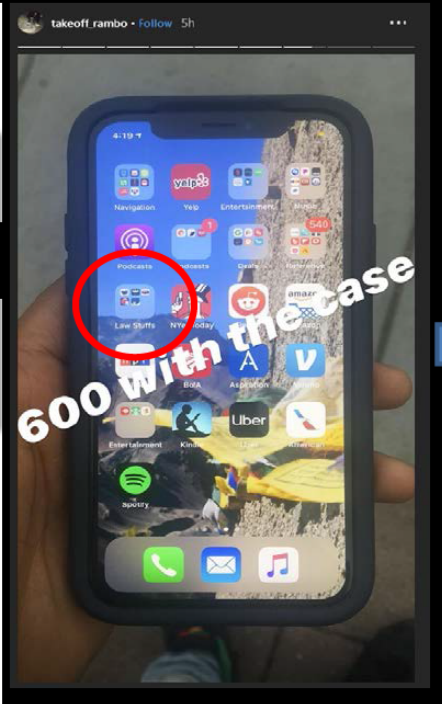


SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE



Complainant, owner of the iPhone X stolen in the 01/04/19 incident appears to be a lawyer. The phone has a folder of apps dedicate to “Law Stuff”.

Attorney Licensee [REDACTED]
License Status: Active [REDACTED]
[REDACTED]
Law School: UC Berkeley SOL Boalt Hall; Berkeley CA



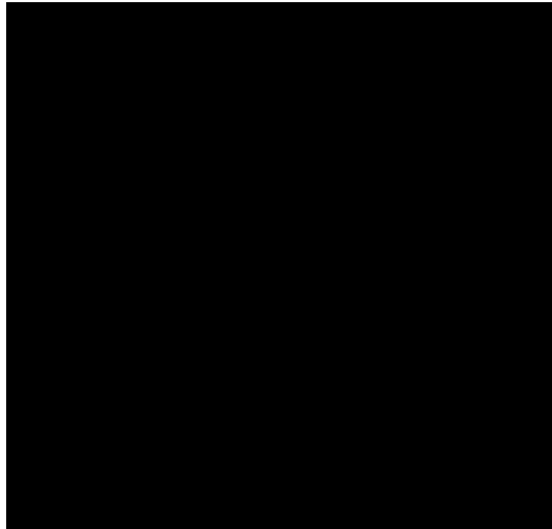
SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE



Social media was queried for complainant. The following Facebook account was located which matches the complainant based on age and location. Photos show the complainant may have recently visited Asia, possibly China. The background of the phone shown in Logan's Instagram story includes what appear to be Tibetan prayer flags.



SOCIAL MEDIA: TARGETED SEARCHES - OUTCOME



- Stopped at the [REDACTED] probable cause for arrest for being in possession and attempting to sell complainant's phone
- **Placed under arrest for RSP, CPWL, PWID Marijuana**
- Recovered in this incident was a Smith & Wesson 9MM Handgun, 1.8 ounces of marijuana, 2 cell phones

QUESTIONS?



METROPOLITAN POLICE DEPARTMENT

300 INDIANA AVENUE NW – WASHINGTON, DC – 20001 – 202.727.9099

WWW.MPDC.DC.GOV

Exhibit G

Totals

| | |
|--|---------|
| Total Crime | 276,891 |
| All Violent Crime | 41,527 |
|  Homicide | 1,140 |
|  Sex Abuse | 2,217 |
|  Assault w/Dangerous Weapon | 16,213 |
|  Robbery | 21,957 |
| All Property Crime | 235,364 |
|  Burglary | 16,842 |
|  Theft f/Auto | 85,642 |
|  Theft/Other | 111,197 |
|  Motor Vehicle Theft | 21,567 |
|  Arson | 116 |

Exhibit 4

MEMORANDUM OF UNDERSTANDING

BETWEEN

**DISTRICT OF COLUMBIA HOMELAND SECURITY AND EMERGENCY
MANAGEMENT AGENCY**

AND

DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT

I. INTRODUCTION

This Memorandum of Understanding ("MOU") is entered into between the District of Columbia Homeland Security and Emergency Management Agency ("HSEMA"), whose address is 2720 Martin Luther King, Jr. Ave, SE, Washington, DC 20032 and the District of Columbia Metropolitan Police Department ("MPD"), whose address is 300 Indiana Ave, NW, Washington, DC 20001, collectively referred to herein as the "Parties."

II. BACKGROUND

The mission of HSEMA is to ensure that the District of Columbia ("District") is prepared to prevent, protect against, respond to, mitigate and recover from all threats and hazards. As part of this mission, HSEMA oversees the National Capital Region Threat Intelligence Consortium ("NTIC"), which is the District's fusion center. The NTIC employs an all-crimes, all-hazards approach and serves as the National Capital Region's ("NCR") only all-hazards fusion center. The NTIC, which is based in the District of Columbia's Homeland Security and Emergency Management Agency, works in partnership with fusion centers in Maryland and Virginia, as well as the federal government, to conduct regional analysis and share information on terrorism, crime, and natural hazards.

The NTIC is one component of the national network of fusion centers, which the US Department of Homeland Security has sanctioned as a critical strategic initiative for sharing information across a range of natural and manmade threats.

The MPD is the lead public safety agency in the District of Columbia and it is the mission of the MPD to safeguard the District of Columbia and protect its residents and visitors with the highest regard for the sanctity of human life. MPD strives at all times to accomplish the mission with a focus on service, integrity, and fairness by upholding the city's motto *Justitia Omnibus -- Justice for All*.

III. PURPOSE

- A.** The purpose of this MOU is to set forth the terms by which MPD agrees to commit personnel resources and to contribute information to the NTIC. This effort will ensure increased communication and coordination and assist in developing methods to efficiently analyze relevant information at all levels to maximize the usefulness of the NTIC products and increase its usefulness to MPD and other public safety stakeholders in the National Capital Region (NCR).
- B.** This MOU is an agreement among the Parties and is not intended, and should not be construed, to create or confer any other person or entity any right or benefit, substantive or procedural, enforceable at law or otherwise against MPD, NTIC, or any state, locality, or other sponsor under whose auspices a party is participating in the NTIC, or the officers, directors, employees, detailees, agents, representatives, task force members contractors, subcontractors, consultants, advisors, successors, assignees, or other agencies thereof.

IV. RESPONSIBILITIES OF MPD UNDER THIS MOU

- A.** MPD agrees to detail one Liaison Officer ("LNO"), at the rank of Captain or above, to the NTIC. The daily schedule and the hours to be worked by the LNO will be determined by the Parties. This LNO is an addition to the MPD LNO who now supports the Joint All-Hazards Operations Center (JAHOC) within HSEMA, which is the District's 24/7 watch center.
- B.** Responsibilities for the conduct of the MPD LNO, both personally and professionally, shall remain with MPD. During this detail, the LNO will continue to work under the rules and regulations applicable to MPD employees and will be subject to the same personnel rules, regulations, laws and policies, including ethical standards, applicable to those employees. The LNO will report personnel and administrative matters to the commanding official of the Joint Strategic & Tactical Analysis Command Center within MPD.
- C.** The designated MPD LNO will:
 - 1.** Be assigned to work within the Analysis Center of the NTIC.
 - 2.** Oversee the handling and dissemination of all law enforcement information.
 - 3.** Facilitate relevant intelligence to MPD.
 - 4.** Review suspicious activity reports and ensure they are appropriately disseminated within a timely manner to the appropriate agency or unit.
 - 5.** Serve as the MPD representative to HSEMA for information needs associated with special events and emergency activations.

6. Participate in other related matters associated with the HSEMA and NTIC's work with MPD.
7. Be available after normal business hours for responses and liaison needs of the NTIC.
8. Coordinate access to the appropriate law enforcement databases to only the NTIC intelligence analysts who work directly with and are supervised by the MPD LNO.

V. RESPONSIBILITIES OF HSEMA UNDER THIS MOU

- A. As the primary fusion center for the District of Columbia, the NTIC conducts analysis, facilitates information sharing, and assists law enforcement and homeland security partners in preventing, protecting against, and responding to crime and terrorism.
- B. The NTIC shall:
 1. Allow the MPD LNO access to the NTIC at all times.
 2. Provide the MPD LNO with an identification card or credentials.
 3. Provide a standard size work station equipped with a computer and telephone.
 4. Provide appropriate training to the MPD LNO.
 5. Authorize the MPD LNO to oversee NTIC intelligence analysts in any and all work related to law enforcement information activities within the NTIC.
 6. Send any law enforcement related work products (For example: "Daily Officer Awareness Bulletins", "Intelligence Bulletins", "Special Event Threat Assessments", and regional products), prior to publishing, to the MPD LNO for review and approval. The MPD LNO shall have final approval for any analysis, report, or work product developed using MPD data.
 7. Research and disseminate Requests for Information (RFI) and Requests for Analysis (RFA) from law enforcement agencies Monday through Friday during normal business hours, excluding holidays. Any questions regarding a RFI or RFA shall be directed to the MPD LNO.
 8. Leverage NTIC real-time open source research and analysis (ROSA) tools for the MPD Intelligence Branch and grant access to MPD members for outside normal business hours and during holidays.

9. Assist with MPD's Capital Watch and suspicious activity reporting public awareness campaigns
10. Monitor social media, open source websites, news outlets, the HSIN-Sit room, and any additional internal and external resources, in an effort to identify events that could affect the operational landscape or MPD operations, and subsequently provide timely and accurate situational awareness and operational intelligence to MPD personnel.
11. Share Suspicious Activity Reports, Terrorist Screening Center Reports, and all other analysis work products with MPD, especially when utilizing MPD databases and resources.

VI. DURATION OF THIS MOU

The term of this MOU continues in force until terminated. This MOU may be terminated at will by any Party, as long as written notice is provided to the other Party of not less than sixty (60) days. Upon termination of this MOU, all equipment will be returned to the supplying Party.

VII. FUNDING

This MOU is not an obligation or commitment of funds, nor a basis for transfer of funds, but rather is a basic statement of the understanding between the Parties to commit resources to the NTIC. Unless otherwise agreed in writing, each Party shall bear its own costs in relation to this MOU. Expenditures by each Party will be subject to each organization's budgetary processes and to the availability of funds and resources pursuant to applicable laws, regulations, and policies. The parties expressly acknowledge that the above language in no way implies that Congress will appropriate additional funds for such expenditures.

VIII. PRIVACY AND CIVIL LIBERTIES

- A. The Parties agree to comply with all applicable law protecting privacy, civil rights, and civil liberties in the collection, use, analysis, retention, destruction, sharing, and disclosure of information through the NTIC, including, to the extent applicable, the privacy guidelines established for the Information Sharing Environment created by § 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004.
- B. Each Party agrees that the fusion center has now, or will develop, a privacy policy that comports, to the extent practicable, with the Privacy Policy Development Guide published by the Department of Justice as part of the Global Information Sharing Initiative.
- C. This MOU does not alter the Parties' civil and financial liabilities, if any and pursuant to applicable law. MPD shall not be responsible for any civil or financial claim which

does not arise from an act or omission of an employee of MPD committed within the scope of this or her employment.

IX. NOTICE

The Following individuals are the contact points for each Party under this MOU:

Justin Pierce
Deputy Chief and Executive Director
Homeland Security Division
National Capital Region Threat Intelligence Consortium
DC Homeland Security and Emergency Management Agency
2720 Martin Luther King, Jr. Avenue, SE
Washington, DC 20032
(C) 202-437-2348

Carolyn Montagna
Acting Director
Joint Strategic & Tactical Analysis Command Center
Metropolitan Police Department
300 Indiana Ave NW
Washington, DC 20001
(C) 202-489-7859

The Parties may change the contact points at will.

X. MODIFICATIONS

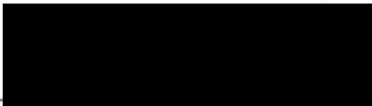
The terms and conditions of this MOU may be modified only upon prior written agreement by the Parties.

XI. MISCELLANEOUS

The Parties shall comply with all applicable laws, rules, and regulations whether now in force or hereafter enacted or promulgated.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as follows:

**DISTRICT OF COLUMBIA HOMELAND SECURITY AND EMERGENCY
MANAGEMENT AGENCY:**



Date: 6/17/19

**CHRISTOPHER RODRIGUEZ
DIRECTOR, HSEMA**

DISTRICT OF COLUMBIA METROPOLITAN POLICE DEPARTMENT:



Date: JUN 14 2019

**PETER NEWSHAM
CHIEF, MPD**

Exhibit 5



Date: August 2, 2019
Order # 20190802.201.03

Customer (User):

DC Fusion Center
 2720 Martin Luther King Jr Ave SE
 Washington, D.C. 20032

Babel Street Contact:

Steve Tomaselli
 stomaselli@babelstreet.com
 +1.703.956.3572

| Product | Term | Product Code | Standard Price | Extended Price | QTY | Total Price |
|---|--------|--------------|----------------|----------------|---------|--------------------|
| SLED Package | Annual | BSP-001-S01 | \$43,700.00 | \$25,000.00 | 1 | \$25,000.00 |
| <i>This limited time, promotional package represents a 42.79% discount off standard price and includes the products listed below</i> | | | | | | |
| Babel X: Babel Research Subscription | Annual | BXR-001-001 | \$9,500.00 | Included | Up to 3 | Included |
| <i>Authorized User with access to up to 10 active Babel Channels and 1,000 Public Records Searches, and virtual training via Babel University</i> | | | | | | |
| Babel X Subscription | Annual | BXC-001-001 | \$15,200.00 | Included | 1 | Included |
| <i>Authorized User with access to five (5) Active Filters, up to 10 active Babel Channels, and 1,000 Public Records Searches, and virtual training via Babel University</i> | | | | | | |
| Additional Active Filters | Annual | BAF-S01-S01 | \$1,250.00 | \$1,250.00 | 10 | \$12,500.00 |
| <i>Additional Active Filters for Babel X Subscription purchased with SLED Package</i> | | | | | | |
| Order Form Total: | | | | | | \$37,500.00 |

Terms and Conditions

All capitalized terms used in this Order Form but not defined herein shall have the meaning given to such terms in the Babel Street End User Subscription Terms (as defined below). If an "Additional Terms" box is checked above, those terms are attached hereto, and incorporated by this reference into, the Agreement (as defined in the Terms).

Subscription Term

The period during which Customer may access its subscription shall be twelve (12) months unless specifically stated elsewhere within this Order Form ("Subscription Term"). The Subscription Term shall commence on the earlier to occur of (i) the date on which Babel Street provides the Customer with log-in credentials for either Babel University or Babel X ("the Application"), or (ii) the date that is seven (7) calendar days following execution of this Order Form (in either case, the "Subscription Effective Date"). For any renewal Subscription Term, the Subscription Effective Date shall be the calendar day immediately following expiration of either the initial Subscription Term or the then-current renewal Subscription Term, as applicable. Additional products may be purchased during the Subscription Term pursuant to an add-on Order Form (each, an "Add-On Order Form"). Any such additional products shall be coterminous with the original Subscription Term.

Fees

All Fees and expenses are quoted and invoiced in U.S. Dollars unless otherwise specified in this Order Form. All invoiced amounts are due and payable in advance by Customer. Fees are exclusive of any taxes, assessments or duties that may be assessed upon the Application or any Support provided under this Agreement, including, without limitation, sales, use, excise, value added (VAT), goods and services taxes (GST), personal property, electronic/Internet commerce, export, import, withholding taxes, and third-party fees. Customer is responsible for directly paying any such taxes assessed against it, and Customer will promptly reimburse Babel Street for any such taxes payable or collectible by Babel Street. Such taxes do not include taxes based upon Babel Street's income. Tax exemption certificates or reseller certificates, if any, must be submitted at the time Customer signs an Order Form.

End User Terms

Customer agrees to be bound by the End User Subscription Terms ("Terms") found at <https://www.babelstreet.com/legal/enduserterms-c.pdf>, which are hereby incorporated by reference in their entirety (the Order Form, any Add-On Order Form, the Terms, and any applicable Additional Terms checked above (each, an "Addendum") attached to this Order Form being collectively referred to as the "Agreement"). In the event of a direct conflict between this Order Form and the Terms and/or an applicable Addendum, this Order Form shall control.

Trademarks

Babel Street®, Babel X®, Babel BOX®, Babel Sentry®, Babel Channels™, Locate X™, Babel University®, "Decipher Your World®" and the Babel Logos are the proprietary trademarks of Babel Street, Inc.

Authority

By executing this Order Form, the undersigned hereby certifies that (i) the information provided by or on behalf of Customer in order to obtain the pricing set forth herein is accurate and complete, and (ii) the individual signing below has the legal authority to bind the Customer.

No Conflicting Terms

Babel Street's receipt of a purchase order from Customer based on this Order Form is expressly subject to, and contingent upon, Customer's express agreement to the Terms. In the event that the terms in any Customer purchase order differ from, or conflict with, the terms of the Agreement, the Agreement shall control and the conflicting or additional purchase order terms will not apply. Babel Street expressly rejects any additional, different or conflicting terms in a Customer purchase order, and any such purchase order shall be for Customer's internal and/or reference purposes only.

This Order Form is valid for 60 days from the date issued.

Additional Terms:

Babel Street, Inc.

DC Fusion Center

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

PO# _____

**Send
Invoice
To Email:** _____



***** Electronic Invoicing Purchase Order. Please use <https://vendorportal.dc.gov> to register and submit invoices. *****

Order No : PO611421 -FY2020- HSP/NTIC Situational Awareness Tool/Subscription (8BNUA8)

Issued on Tue, 01 Oct, 2019

Supplier

Babel Street Inc.
1818 Library Street, STE 500
Suite 500
Reston, VA 20910
Phone: 703.956.3572
Contact

Ship To

Emergency Management Agency
2720 Martin Luther King, Jr. Ave., SE
Washington, DC 20032
United States

Bill To:

Please use <https://vendorportal.dc.gov> to register and submit invoices.

Bill To Contact: Attn: Rosanne Etinoff-Accounts Payable Division
Contract Number: N/A
Requester: Samantha Gross
Delivery Date: Tue, 1 Oct, 2019
PR No.: RK133580

| Item | Description | Part Number | Unit | Qty | Need By | Unit Price | Extended Amount | |
|------|---|-------------|------|--------|-------------------|------------|-----------------|------------------------|
| 1 | The NTIC utilized Babel Street to provide ... | | each | 37,500 | Tue, 01 Oct, 2019 | \$1.00 USD | \$37,500.00 USD | |
| | | | | | | | Total | \$37,500.00 USD |

The NTIC utilized Babel Street to provide situational awareness of threats during special events in the District. Threats that are identified as potentially credible are passed to appropriate jurisdictions for investigations. Analysts set up filters on threat terms in relation to critical infrastructure and specific crimes to gather data. This design is unique to Babel Street and consistent with the requirements of DC HSEMA NTIC.

Comments

- Ruby Nelson, 09/26/2019:
THE CONTRACTOR SHALL SUBMIT PAYMENT REQUESTS IN ELECTRONIC FORMAT THROUGH THE DC VENDOR PORTAL VENDORPORTAL.DC.GOV BY SELECTING THE APPLICABLE PURCHASE ORDER NUMBER WHICH IS LISTED ON THE CONTRACTOR'S PROFILE. INVOICES FOR QUANTITIES OR AMOUNT GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (Ruby Nelson, Thu, 26 Sep, 2019)
- COMMENT by **aribasystem** on 10/01/2019
****GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH THE DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACTS (July 2010) ARE HEREBY INCORPORATED BY REFERENCE. WWW.OCP.DC.GOV**** (aribasystem, Tue, 01 Oct, 2019)
- COMMENT by **aribasystem** on 10/01/2019
FOB is Destination unless specified otherwise (aribasystem, Tue, 01 Oct, 2019)
- COMMENT by **aribasystem** on 10/01/2019
The Contractor shall submit payment requests in electronic format through the DC Vendor Portal vendorportal.dc.gov by selecting the applicable purchase order number which is listed on the Contractor's profile. INVOICES FOR QUANTITIES OR AMOUNTS GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (aribasystem, Tue, 01 Oct, 2019)



***** Electronic Invoicing Purchase Order. Please use <https://vendorportal.dc.gov> to register and submit invoices. *****

Order No : PO633942 -FY2021- HSP/NTIC Situational Awareness Tool/Subscription (8BNUA9)

Issued on Thu, 29 Oct, 2020

Supplier

Babel Street Inc.
1818 Library Street, STE 500
Suite 500
Reston, VA 20910
Phone: 703.956.3572
Contact

Ship To

Emergency Management Agency
2720 Martin Luther King, Jr. Ave., SE
Washington, DC 20032
United States

Bill To:

Please use <https://vendorportal.dc.gov> to register and submit invoices.

Bill To Contact: Attn: Rosanne Etinoff-Accounts Payable Division
Contract Number: N/A
Requester: Samantha Gross
Delivery Date: Thu, 1 Oct, 2020
PR No.: RK165602

| Item | Description | Part Number | Unit | Qty | Need By | Unit Price | Extended Amount | |
|------|---|-------------|------|--------|-------------------|------------|-----------------|------------------------|
| 1 | The NTIC utilized Babel Street to provide ... | | each | 31,250 | Thu, 01 Oct, 2020 | \$1.00 USD | \$31,250.00 USD | |
| | | | | | | | Total | \$31,250.00 USD |

The NTIC utilized Babel Street to provide situational awareness of threats during special events in the District. Threats that are identified as potentially credible are passed to appropriate jurisdictions for investigations. Analysts set up filters on threat terms in relation to critical infrastructure and specific crimes to gather data. This design is unique to Babel Street and consistent with the requirements of DC HSEMA NTIC.

Comments

- COMMENT by **aribasystem** on 10/29/2020
The Contractor shall submit payment requests in electronic format through the DC Vendor Portal vendorportal.dc.gov by selecting the applicable purchase order number which is listed on the Contractor's profile. INVOICES FOR QUANTITIES OR AMOUNTS GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (aribasystem, Thu, 29 Oct, 2020)
- COMMENT by **aribasystem** on 10/29/2020
FOB is Destination unless specified otherwise (aribasystem, Thu, 29 Oct, 2020)
- COMMENT by **aribasystem** on 10/29/2020
****GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH THE DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACTS (July 2010) ARE HEREBY INCORPORATED BY REFERENCE. WWW.OCP.DC.GOV**** (aribasystem, Thu, 29 Oct, 2020)



Homeland Security and Emergency Management Agency

Statement of Work

HSEMA UCC,
HSEMA Babel Street Continuing Service

Author: Homeland Security and Emergency Management Agency

| | |
|---------------------|--|
| Client name | DC Homeland Security and Emergency Management Agency |
| Project name | HSEMA Babel Street Continuing Service |

C.1 SCOPE:

The Contractor shall provide the following product and service categories as part of this Statement of Work:

- Procurement of subscriptions and service needed to maintain the Babel X Subscription for social media research capabilities

(Section C.3)

- Babel X, is a cloud-based engine that searches various data sources and generates actionable output. It is utilized to support the daily functions of the NTIC, and the mission of HSEMA as a whole.

The Contractor shall provide service and routine maintenance as specified in the product proposal.

C.1.1 APPLICABLE DOCUMENTS

| Document No. | Document Type | Title | Date |
|--------------|---------------|-------|------|
| 1 | | | |

C.2 BACKGROUND

The District of Columbia Homeland Security and Emergency Management Agency (HSEMA) is host to a number of trainings, exercises, meetings, activations (including past and future National Special Security Events) in the Emergency Operations Center (EOC), and houses the District of Columbia fusion center, the Washington Regional Threat Analysis Center(WRTAC), at the current HSEMA facility located at 2720 Martin Luther King Jr Ave. SE, Washington DC 20032. This SOW will allow HSEMA to continue to provide the technological tools to support the District of Columbia fusion center (WRTAC). This software tool is utilized to conduct social media research, a critical function of daily operations and one component of how HSEMA supports special events hosted in

the District. As part of this effort DC HSEMA requires procurement of the above mentioned licenses and subscriptions.

C.3 PROCUREMENT OF SOFTWARE AND MAINTENANCE

The successful Contractor will provide subscriptions and service as per the below listing.

The Contractor will provide the following:

C.3.1 SUBSCRIPTIONS & SERVICE

- C.3.3.1 (4) – (BSL-009-000) – Babel X Subscription**
- C.3.3.2 (1) – (BDP-002-000) – Babel X Data Package (Fixed Rate) –
15 active filters**
- C.3.3.3 (1) – (BPS-001-000) – Babel X Public Records Search**
- C.3.3.4 (1) – (BST-001-000) – Babel University**

C.4 CHANGE OF SPECIFICATION

No change in the specification of standards, materials or services will be authorized for this statement of work.

C.9 TECHNICAL REQUIREMENTS AND DELIVERABLES

The Contractor shall be responsible for providing all the above mentioned subscriptions and service. The procurement proposed shall consist of all necessary items as per the above section **C.3**.

C.10 DELIVERABLES

The Contractor shall be required to meet the following deliverables for this SOW:

| Section Reference | Description | Due Date |
|-------------------|--|---------------------------------------|
| C.3 | Procurement of all subscriptions and service | Within two weeks after contract award |
| | Client Signoff | |



September 26, 2019

From: Babel Street, Inc.
1818 Library Street, 5th Floor
Reston, VA 20190
(703) 956-3572

Subj: SOLE SOURCE JUSTIFICATION LETTER, 2019

To Whom It May Concern:

This letter serves as a sole source document for the proprietary web-based application developed and maintained by Babel Street, Inc.

The Babel Street® web-based application, Babel X®, is a multi-lingual, geo-enabled, text analytics software as a service (SaaS) solution. Babel X provides the following capabilities and is unique in the marketplace in doing so under a single application:

- A billion-strong ontology, or dictionary of related terms, in English and across 200 languages; this ontology greatly enhances the quality of search and uncovers search results not easily gained without this efficiency. Babel X is the only application on the market that has this linguistic capability.
- Persistent data collection on search terms and parameters of interest from hundreds of millions of URLs, more than 1 billion blogs and forums, and more than 40 data sources across social media, news, and deep and dark web sources. Babel X has the highest concentration of searchable data sources available on the market based on market studies.
- Babel X facilitates timely alerting on security topics in every major geographic location in the United States based on data emanating from web, news, social media, and blog and forums. The breadth of data sources supporting such alerting is unique to Babel X.
- With FindX, Babel X supports quick search of any search terms(s) in hundreds of languages from seven (7) functional areas on the internet, including: social media, community talk, dark web, news, virtual currency, Domain Tools, and Babel X Archives. Babel X is the only capability on the market supporting this function based on market studies.

1818 Library St., 5th Floor • Reston, Virginia 20190 • 703-956-3572 • babelstreet.com

These advanced statistical, linguistic and crowd-sourcing techniques are based on a proprietary knowledgebase and algorithms, as well as other patent-issued, patent-pending, and other proprietary intellectual property of Babel Street, Inc.

Babel Street, Inc. is the sole provider of Babel X. Babel Street maintains all proprietary rights to its source code, issued patents and pending patents, and other technology. Babel Street has not issued any rights or licenses to others to develop a similar or competing product. Babel Street, Inc. is the sole provider of updates and maintenance to the web-based application.

Please let me know should you need further details.

Sincerely,
BABEL STREET INC.

A handwritten signature in black ink, appearing to read "Eric A. Bowen", with a long horizontal flourish extending to the right.

Eric A. Bowen
Chief Operating Officer



Date: September 24, 2020
Order # 20200924.203.03

Customer (User):

DC Fusion Center
2720 Martin Luther King Jr Ave SE
Washington, D.C. 20032

Babel Street Contact:

Steve Tomaselli
stomaselli@babelstreet.com
+1.703.956.3572

Order Form Type: Renewal

Subscription Term: October 1, 2020 - September 30, 2021

| Product | Term | Product Code | Standard Price | Extended Price | QTY | Total Price |
|---------------------|--------|--------------|----------------|----------------|-----|-------------|
| SLED Package | Annual | BSP-001-S01 | \$43,700.00 | \$25,000.00 | 1 | \$25,000.00 |

This limited time, promotional package represents a 42.8% discount off standard price and includes the products listed below.

Babel X: Babel Research Subscription Annual BXR-001-001 \$28,500.00 Included Up to 3 Included
Authorized User with access to up to fifty (50) active Babel Channels and 1,000 Public Records Searches, and virtual training via Babel University

Babel X Subscription Annual BXC-001-001 \$15,200.00 Included 1 Included
Authorized User with access to five (5) Active Filters, up to fifty (50) active Babel Channels, and 1,000 Public Records Searches, and virtual training via Babel University

Package Add-ons:

Additional Active Filters Annual BAF-D01-S01 N/A \$1,250.00 5 \$6,250.00
Additional Active Filters for Babel X Subscription purchased with SLED Package

Order Form Total: \$31,250.00

Terms and Conditions

All capitalized terms used in this Order Form but not defined herein shall have the meaning given to such terms in the Babel Street End User Subscription Terms (as defined below). If an "Additional Terms" box is checked above, those terms are attached hereto, and incorporated by this reference into, the Agreement (as defined in the Terms).

Subscription Term

The period during which Customer may access its subscription shall be twelve (12) months unless specifically stated elsewhere within this Order Form ("Subscription Term"). The Subscription Term shall commence on the earlier to occur of (i) the date on which Babel Street provides the Customer with log-in credentials for either Babel X ("the Application") or Babel University, or (ii) the date that is seven (7) calendar days following the Effective Date of this Order Form (in either case, the "Subscription Effective Date"). For any renewal Subscription Term, the Subscription Effective Date shall be the calendar day immediately following expiration of either the initial Subscription Term or the then-current renewal Subscription Term, as applicable. Additional products may be purchased during the Subscription Term pursuant to an add-on Order Form (each, an "Add-On Order Form"). Any such additional products shall be coterminous with the original Subscription Term.

Fees

All Fees and expenses are quoted and invoiced in U.S. Dollars unless otherwise specified in this Order Form. All invoiced amounts are due and payable in advance by Customer. Fees are exclusive of any taxes, assessments or duties that may be assessed upon the Application or any Support provided under this Agreement, including, without limitation, sales, use, excise, value added (VAT), goods and services taxes (GST), personal property, electronic/Internet commerce, export, import, withholding taxes, and third-party fees. Customer is responsible for directly paying any such taxes assessed against it, and Customer will promptly reimburse Babel Street for any such taxes payable or collectible by Babel Street. Such taxes do not include taxes based upon Babel Street's income. Tax exemption certificates or reseller certificates, if any, must be submitted at the time Customer signs an Order Form.

End User Terms

All Terms and Conditions of Babel Street Order# 20190802.201.03 apply to this Renewal Order Form.

Trademarks

Babel Street®, Babel X®, Babel BOX®, Babel Sentry®, Babel Channels®, Locate X™, Babel University®, "Decipher Your World®" and the Babel Logos are the proprietary trademarks of Babel Street, Inc.

Authority

By executing this Order Form, the undersigned hereby certifies that (i) the information provided by or on behalf of Customer in order to obtain the pricing set forth herein is accurate and complete, and (ii) the individual signing below has the legal authority to bind the Customer.

No Conflicting Terms

Babel Street's receipt of a purchase order from Customer based on this Order Form is subject to, and contingent upon, Customer's express agreement to the Terms. Any purchase order shall be for Customer's internal and/or reference purposes only. Babel Street expressly rejects any and all terms in any such purchase order, regardless of the date of such purchase order. In addition to the foregoing, by logging into the Application, Customer reaffirms the inapplicability of any and all terms of a Customer purchase order, even if such purchase order has been signed by the parties hereto.

This Order Form is valid for 60 days from the date issued.

Additional Terms:

| |
|--|
| |
|--|

Babel Street, Inc.

DC Fusion Center

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

**Effective
Date** _____

Date _____

PO# _____

**Send
Invoice
To Email:** _____



Order No : PO553921 -Babel X Annual Subscription FY 17 (8BNUA5)

Issued on Mon, 07 Nov, 2016

Supplier

Babel Street Inc.
 1818 Library Street, STE 500
 Suite 500
 Reston, VA 20910
 Phone: 703.956.3572
 Contact

Ship To

Emergency Management Agency
 2720 Martin Luther King, Jr. Ave., SE
 Washington, DC 20032
 United States

Bill To:

Emergency Management Agency Attn: PSJC (HSEMA) - Accounts Payable Division
 899 North Capitol Street, N.E. Suite: 600A
 Washington, DC 20002
 United States
 Phone: 1(202) 727-4449
 Fax: 1(202) 727-4845

Bill To Contact: Attn: Rosanne Etinoff-Accounts Payable Division
 Contract Number: DOC271693
 Requester: Monica Hill
 Delivery Date: Sat, 1 Oct, 2016
 PR No.: RQ941136

| Item | Description | Part Number | Unit | Qty | Need By | Unit Price | Extended Amount |
|---|--|-------------|------|--------|-------------------|------------|------------------------|
| 1 | HSEMA engages Babel Street to procure Babel X... | | each | 19,600 | Sat, 01 Oct, 2016 | \$1.00 USD | \$19,600.00 USD |
| HSEMA engages Babel Street to procure Babel X Annual Individual Subscription. | | | | | | | |
| Total | | | | | | | \$19,600.00 USD |

Comments

- Monica Hill, 10/14/2016:
 This software is being ordered to support the mission of HSEMA and the WRTAC. We have teams of analysts who will use this software to complete and substantiate their duties (Monica Hill, Fri, 14 Oct, 2016)
- Antwanette Boone Murphy, 11/07/2016:
 This procurement is in accordance with 27DCMR and PPRA. Prices have been deemed fair and reasonable. (Antwanette Boone Murphy, Mon, 07 Nov, 2016)
- Antwanette Boone Murphy, 11/07/2016:
 This PO is for FY17-Previous PO#: 549629 was for FY16. (Antwanette Boone Murphy, Mon, 07 Nov, 2016)
- COMMENT by aribasystem on 11/07/2016
 ALL INVOICES SHALL BE SUBMITTED TO THE 'BILL TO' ADDRESS INDICATED ON THIS PURCHASE ORDER. INVOICES SHALL INCLUDE THE PURCHASE ORDER NUMBER, CONTRACT NUMBER (IF APPLICABLE), CONTRACTOR'S NAME AND ADDRESS, INVOICE DATE, QUANTITY AND DESCRIPTION OF GOOD(S) OR SERVICE(S) FOR WHICH PAYMENT IS BEING REQUESTED, REMITTANCE ADDRESS, AND CONTACT PERSON NAME AND PHONE NUMBER IF THERE IS A PROBLEM WITH THE INVOICE. INVOICES FOR QUANTITIES OR AMOUNTS GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (aribasystem, Mon, 07 Nov, 2016)
- COMMENT by aribasystem on 11/07/2016
 ****GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH THE DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACTS (July 2010) ARE HEREBY INCORPORATED BY REFERENCE. WWW.OCP.DC.GOV**** (aribasystem, Mon, 07 Nov, 2016)
- COMMENT by aribasystem on 11/07/2016
 FOB is Destination unless specified otherwise (aribasystem, Mon, 07 Nov, 2016)



Homeland Security and Emergency Management Agency

Statement of Work

HSEMA UCC,
HSEMA Babel Street Continuing Service

Author: Homeland Security and Emergency Management Agency

| | |
|---------------------|--|
| <i>Client name</i> | DC Homeland Security and Emergency Management Agency |
| <i>Project name</i> | HSEMA Babel Street Continuing Service |

C.1 SCOPE:

The Contractor shall provide the following product and service categories as part of this Statement of Work:

- Procurement of subscriptions and service needed to maintain the Babel X Subscription for social media research capabilities
 - (Section C.3)
 - Babel X, is a cloud-based engine that searches various data sources and generates actionable output. It is utilized to support the daily functions of the WRTAC, and the mission of HSEMA as a whole.

The Contractor shall provide service and routine maintenance as specified in the product proposal.

C.1.1 APPLICABLE DOCUMENTS

| Document No. | Document Type | Title | Date |
|--------------|---------------|-------|------|
| 1 | | | |

C.2 BACKGROUND

The District of Columbia Homeland Security and Emergency Management Agency (HSEMA) is host to a number of trainings, exercises, meetings, activations (including past and future National Special Security Events) in the Emergency Operations Center (EOC), and houses the District of Columbia fusion center, the Washington Regional Threat Analysis Center(WRTAC), at the current HSEMA facility located at 2720 Martin Luther King Jr Ave. SE, Washington DC 20032. This SOW will allow HSEMA to continue to provide the technological tools to support the District of Columbia fusion center (WRTAC). This software tool is utilized to conduct social media research, a critical function of daily operations and one component of how HSEMA supports special events hosted in the District. As part of this effort DC HSEMA requires procurement of the above mentioned licenses and subscriptions.

C.3 PROCUREMENT OF SOFTWARE AND MAINTENANCE

The successful Contractor will provide subscriptions and service as per the below listing.

The Contractor will provide the following:

C.3.1 SUBSCRIPTIONS & SERVICE

- C.3.3.1 (4) – (BSL-009-000) – Babel X Subscription**
- C.3.3.2 (1) – (BDP-002-000) – Babel X Data Package (Fixed Rate) –
15 active filters**
- C.3.3.3 (1) – (BPS-001-000) – Babel X Public Records Search**
- C.3.3.4 (1) – (BST-001-000) – Babel University**

C.4 CHANGE OF SPECIFICATION

No change in the specification of standards, materials or services will be authorized for this statement of work.

C.9 TECHNICAL REQUIREMENTS AND DELIVERABLES

The Contractor shall be responsible for providing all the above mentioned subscriptions and service. The procurement proposed shall consist of all necessary items as per the above section **C.3**.

C.10 DELIVERABLES

The Contractor shall be required to meet the following deliverables for this SOW:

| Section Reference | Description | Due Date |
|-------------------|--|---------------------------------------|
| C.3 | Procurement of all subscriptions and service | Within two weeks after contract award |
| | Client Signoff | |



Order No : PO563228 -Annual Software Subscription- WRTAC (8BNUA6)

Issued on Wed, 24 May, 2017

Supplier

Babel Street Inc.
1818 Library Street, STE 500
Suite 500
Reston, VA 20910
Phone: 703.956.3572
Contact

Ship To

Emergency Management Agency
2720 Martin Luther King, Jr. Ave., SE
Washington, DC 20032
United States

Bill To:

Emergency Management Agency Attn: PSJC (HSEMA) - Accounts Payable Division
899 North Capitol Street, N.E. Suite: 600A
Washington, DC 20002
United States
Phone: 1(202) 727-4449
Fax: 1(202) 727-4845

Bill To Contact: Attn: Rosanne Etinoff-Accounts Payable Division
Contract Number: na
Requester: Monica Hill
Delivery Date: Tue, 25 Apr, 2017
PR No.: RQ954603

| Item | Description | Part Number | Unit | Qty | Need By | Unit Price | Extended Amount |
|--------------|---|-------------|------|--------|-------------------|------------|------------------------|
| 1 | HSEMA engages Babel Street, Inc., to procure ... | | each | 14,000 | Tue, 25 Apr, 2017 | \$1.00 USD | \$14,000.00 USD |
| | HSEMA engages Babel Street, Inc., to procure Babel X Annual Software Subscription | | | | | | |
| Total | | | | | | | \$14,000.00 USD |

Comments

- COMMENT by **aribasystem** on 05/24/2017
ALL INVOICES SHALL BE SUBMITTED TO THE 'BILL TO' ADDRESS INDICATED ON THIS PURCHASE ORDER. INVOICES SHALL INCLUDE THE PURCHASE ORDER NUMBER, CONTRACT NUMBER (IF APPLICABLE), CONTRACTOR'S NAME AND ADDRESS, INVOICE DATE, QUANTITY AND DESCRIPTION OF GOOD(S) OR SERVICE(S) FOR WHICH PAYMENT IS BEING REQUESTED, REMITTANCE ADDRESS, AND CONTACT PERSON NAME AND PHONE NUMBER IF THERE IS A PROBLEM WITH THE INVOICE. INVOICES FOR QUANTITIES OR AMOUNTS GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (aribasystem, Wed, 24 May, 2017)
- COMMENT by **aribasystem** on 05/24/2017
FOB is Destination unless specified otherwise (aribasystem, Wed, 24 May, 2017)
- COMMENT by **aribasystem** on 05/24/2017
****GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH THE DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACTS (July 2010) ARE HEREBY INCORPORATED BY REFERENCE. WWW.OCP.DC.GOV**** (aribasystem, Wed, 24 May, 2017)



Customer (User):
 HSEMA-WRTAC
 441 4th Street NW
 Suite 700 South
 Washington, D.C. 20001

Bill to (If Different):

Date: March 6, 2017

MSA # 20160830.002.02M

Customer Contact:
 Briana Huggins
 briana.huggins@dc.gov
 202.481.3029

Babel Street Contact:
 Customer Experience
 CX@babelstreet.com
 +1.703.956.3572

Proposal # 20170306.003.02

| Product | Description | Term | Product Code | Price | Quantity | Total |
|--------------------------------|---------------------|----------|--------------|------------|----------|--------------------|
| Babel X® Subscription | 4 User(s) | 4 Months | BSL-009-000 | \$1,400.00 | 4 | \$5,600.00 |
| Babel X® Fixed Rate | 15 Active Filters | 4 Months | BDP-002-000 | \$8,400.00 | 1 | \$8,400.00 |
| Babel X® Public Records Search | 1,000 Searches/User | 4 Months | BPS-001-000 | Included | 4 | Included |
| Subscription & Data | | | | | | \$14,000.00 |
| Babel University | 4 User(s) | | BST-001-000 | Included | 1 | Included |
| Travel & Training | | | | | | Included |
| Proposal Total | | | | | | \$14,000.00 |

Product Description/Terms

- Customer’s purchase under this Proposal Form is subject to, and Customer agrees to be bound by, the Master Subscription Agreement referenced above. If no Master Subscription Agreement is referenced above, then prior to the commencement of the Subscription Term, Customer shall execute, as applicable, the Babel Street Evaluation Terms (click-through terms), the Babel Street Evaluation Agreement (hard copy) and/or the Babel Street Master Subscription Agreement (together with any applicable Addendum, the “Subscription Agreement”). The Terms and Conditions of this Proposal shall be incorporated with and into the Subscription Agreement. In the event of a direct conflict between this Proposal and the Subscription Agreement, this Proposal shall control. By executing this Proposal, Customer hereby [i] agrees to be bound by the terms and conditions included in, and/or attached to, this Proposal, including the applicable Subscription Agreement, [ii] certifies that the information provided by or on behalf of Customer in order to obtain the pricing set forth herein is accurate and complete, [iii] certifies that the individual signing on behalf of the customer has the authority to do so.
- Some Data Providers may have limitations, may not be available to all users, or may require acknowledgement of an approved use case within the Babel X platform.
- The Subscription Term shall commence on the earlier to occur of (i) the date on which Babel Street receives full payment for this Proposal, and (ii) the date on which Babel Street provides Customer with log-in credentials for Babel University (the “Subscription Effective Date”). The Subscription Term shall be 12 Months unless specifically stated elsewhere within this Proposal.
- Babel Street provides a number of training and onboarding options for Babel X® users. Included with each user subscription is access to Babel University, Babel Street’s Learning Management System. Babel University offers self-paced and hands-on virtual instructor- led training via a series of Learning Paths designed for each user level. Babel Basics, the core learning path, is required for all Babel X users and upon successful completion, credentials to Babel X are issued.

- Should Customer require training in addition to the included initial training, Babel Street can provide such training during the Subscription Term for an additional cost. Additional training periods are available for daily fixed rates. Training may be provided at Babel Street's offices in Ashburn, VA or at Customer's chosen location. Travel costs are additional and based on Customer's location. In-person training must be scheduled with Babel Street at least fifteen (15) days in advance or thirty (30) days in advance for any Customer outside of the continental United States.

- Customer shall promptly notify Babel Street of any change in any Customer information (including the number of end users) and the parties shall negotiate in good faith to determine any new needs of Customer, and any revised pricing, resulting therefrom. For Data Package-based subscriptions, when the Data Package limit is reached, data collection may cease. Existing data will be retained during the Subscription Term, subject to the retention policies of the applicable data provider. Fixed-Rate subscriptions are not subject to data limits; however, data collection may be slowed during times of high demand and certain data feeds may be limited. Access to the Twitter Real-Time Power Track is not provided under a Fixed-Rate Subscription; however, Twitter data is still available through the public API. Fixed-Rate Subscriptions permit only the limited number of active Filters noted in this Proposal Form. Should Customer purchase additional products (increased data packages, larger Fixed-Rate subscriptions, premium data feeds, or any other item), a new Proposal will be

- In addition, Customer acknowledges that additional Terms and Conditions may apply for the utilization of other additional and/or Premium Data Feeds.


- All fees are due in advance. All prices are reflected and payable in US Dollars. Prices exclude sales tax or other applicable taxes. The final invoice amount may be higher due to the inclusion of those taxes. If the Customer is a "reseller" or not subject to sales tax, GST, VAT or the like, please provide the applicable reseller certificate or tax-exempt certification / documentation to Babel Street. If additional partners or resellers are required by customer to facilitate procurement, the price may be higher.

- Babel Street's receipt of a Customer purchase order based on this Proposal is expressly subject to, and contingent upon, Customer's execution of and agreement to the applicable Subscription Agreement. In the event that the terms in any Customer Purchase Order differ from, or conflict with, the terms of any Babel Street Proposal or the Subscription Agreement, the Subscription Agreement and Proposal will control and the conflicting or additional Purchase Order terms will not apply. Babel Street expressly rejects any additional, different or conflicting terms in a Customer Purchase Order, and any Purchase Order shall be for Customer's internal and/or reference purposes only.

- Babel Street, Babel X, Babel University and the Babel Logos are the proprietary trademarks of Babel Street, Inc.

- This Proposal is valid for 60 days from the date issued

Additional Terms:

| | | |
|---------------------------|--|---|
| Babel Street, Inc. | | HSEMA-WRTAC |
| Signature _____ | | Signature <u></u> |
| Name _____ | | Name <u>MARIC MORGAN</u> |
| Title _____ | | Title <u>ACTING DIRECTOR</u> |
| Date _____ | | Date <u>3/30/17</u> |



Homeland Security and Emergency Management Agency

Statement of Work

HSEMA UCC,
HSEMA Babel Street Continuing Service

Author: Homeland Security and Emergency Management Agency

| | |
|---------------------|--|
| <i>Client name</i> | DC Homeland Security and Emergency Management Agency |
| <i>Project name</i> | HSEMA Babel Street Continuing Service |

C.1 SCOPE:

The Contractor shall provide the following product and service categories as part of this Statement of Work:

- Procurement of subscriptions and service needed to maintain the Babel X Subscription for social media research capabilities
(Section C.3)
 - Babel X, is a cloud-based engine that searches various data sources and generates actionable output. It is utilized to support the daily functions of the WRTAC, and the mission of HSEMA as a whole.

The Contractor shall provide service and routine maintenance as specified in the product proposal.

C.1.1 APPLICABLE DOCUMENTS

| Document No. | Document Type | Title | Date |
|--------------|---------------|-------|------|
| 1 | | | |

C.2 BACKGROUND

The District of Columbia Homeland Security and Emergency Management Agency (HSEMA) is host to a number of trainings, exercises, meetings, activations (including past and future National Special Security Events) in the Emergency Operations Center (EOC), and houses the District of Columbia fusion center, the Washington Regional Threat Analysis Center(WRTAC), at the current HSEMA facility located at 2720 Martin Luther King Jr Ave. SE, Washington DC 20032. This SOW will allow HSEMA to continue to provide the technological tools to support the District of Columbia fusion center (WRTAC). This software tool is utilized to conduct social media research, a critical function of daily operations and one component of how HSEMA supports special events hosted in the District. As part of this effort DC HSEMA requires procurement of the above mentioned licenses and subscriptions.

C.3 PROCUREMENT OF SOFTWARE AND MAINTENANCE

The successful Contractor will provide subscriptions and service as per the below listing.

The Contractor will provide the following:

C.3.1 SUBSCRIPTIONS & SERVICE

- C.3.3.1 (1) – (BSL-009-000)** – Babel X Subscription
- C.3.3.2 (1) – (BSL-009-001)** – Babel X Subscription Read Only
- C.3.3.3 (1) – (BDP-002-000)** – Babel X Data Package (Fixed Rate) –
15 active filters
- C.3.3.4 (1) – (BPS-001-000)** – Babel X Public Records Search
- C.3.3.5 (1) – (BST-001-000)** – Babel University

C.4 CHANGE OF SPECIFICATION

No change in the specification of standards, materials or services will be authorized for this statement of work.

C.9 TECHNICAL REQUIREMENTS AND DELIVERABLES

The Contractor shall be responsible for providing all the above mentioned subscriptions and service. The procurement proposed shall consist of all necessary items as per the above section **C.3**.

C.10 DELIVERABLES

The Contractor shall be required to meet the following deliverables for this SOW:

| Section Reference | Description | Due Date |
|-------------------|--|-----------------|
| C.3 | Procurement of all subscriptions and service | October 1, 2017 |
| | Client Signoff | |

**DETERMINATION AND FINDINGS
FOR A
SOLE SOURCE PROCUREMENT**

CONTRACT NO:

CAPTION:

PROPOSED CONTRACTOR: Babel Street, Inc.

PROGRAM AGENCY: HSEMA

FINDINGS

1. AUTHORIZATION:

D.C. Official Code § 2-354.04, 27 DCMR 1304, 1700 and 1701

2. MINIMUM NEED:

1

3. ESTIMATED REASONABLE PRICE:

\$33,600

4. FACTS WHICH JUSTIFY SOLE SOURCE PROCUREMENT:

The District of Columbia's Homeland Security and Emergency Management Agency (HSEMA) is statutorily tasked with cooperating with governmental and nongovernmental agencies, organizations, associations, and other entities, and coordinating the activities of all organizations for civil defense within the District. The Agency's civil defense duties include coordinating the District's response to emergencies and disasters – both natural and man-made. In addition, HSEMA provides support to the Federal government during National Special Security Events (NSSE).

In connection with the aforementioned responsibilities, HSEMA staffs and operates the District's Fusion Center. In order to ensure that the agency is able to continuously conduct social media research to be aware of events and hazards that might affect District residents, including those that might require a District government/regional stakeholder response or an alert, HSEMA is requesting a sole source contract for a Babel Street Subscription for the period beginning October 1, 2017 to September 30, 2018.

The Babel Street web-based application is a multi-lingual, geo-enabled, text-analytics open source intelligence (OSINT) software as a service (SaaS) solution developed to meet the specialized needs of law enforcement and homeland security entities. The Babel Street platform generates real-time, actionable intelligence by persistently monitoring and analyzing open-source, web-based data sources through advanced statistical, linguistic, and crowd sourcing techniques. These advanced statistical, linguistic, and crowd sourcing techniques are based on a

proprietary knowledgebase and algorithms, as well as other patent issued and protected intellectual property of Babel Street, Inc. Babel Street, Inc. is the sole provider of updates and maintenance to the web-based application.

5. CERTIFICATION BY AGENCY HEAD:

I hereby certify that the above findings are true, correct, and complete.

Date

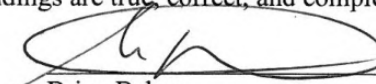
Brian Baker
Interim Director, HSEMA

proprietary knowledgebase and algorithms, as well as other patent issued and protected intellectual property of Babel Street, Inc. Babel Street, Inc. is the sole provider of updates and maintenance to the web-based application.

5. CERTIFICATION BY AGENCY HEAD:

I hereby certify that the above findings are true, correct, and complete.

8/31/2017
Date



Brian Baker
Interim Director, HSEMA



Customer (User):
 DC Fusion Center
 2720 Martin Luther King Jr Ave SE
 Washington, D.C. 20032

Bill to (If Different):

Date: August 18, 2017

MSA # 20160830.002.02M

Customer Contact:
 Briana Huggins
 briana.huggins@dc.gov
 (202) 481-3029

Babel Street Contact:
 Matt McGill
 mmcgill@babelstreet.com
 +1.703.956.3572

Proposal # 20170801.010.02

| Product | Description | Term | Product Code | Price | Quantity | Total |
|---------------------------------|---------------------|--------|--------------|-------------|----------|--------------------|
| Babel X® Subscription | 1 User(s) | Annual | BSL-009-000 | \$4,200.00 | 1 | \$4,200.00 |
| Babel X® Subscription Read Only | 1 User(s) | Annual | BSL-009-001 | \$4,200.00 | 1 | \$4,200.00 |
| Babel X® Fixed Rate | 15 Active Filters | Annual | BDP-002-000 | \$25,200.00 | 1 | \$25,200.00 |
| Babel X® Public Records Search | 1,000 Searches/User | Annual | BPS-001-000 | Included | 1 | Included |
| Subscription & Data | | | | | | \$33,600.00 |
| Babel University | 1 User(s) | | BST-001-000 | Included | 1 | Included |
| Travel & Training | | | | | | Included |
| Proposal Total | | | | | | \$33,600.00 |

Product Description/Terms

- Customer’s purchase under this Proposal Form is subject to, and Customer agrees to be bound by, the Master Subscription Agreement referenced above. If no Master Subscription Agreement is referenced above, then prior to the commencement of the Subscription Term, Customer shall execute, as applicable, the Babel Street Evaluation Terms (click-through terms), the Babel Street Evaluation Agreement (hard copy) and/or the Babel Street Master Subscription Agreement (together with any applicable Addendum, the “Subscription Agreement”). The Terms and Conditions of this Proposal shall be incorporated with and into the Subscription Agreement. In the event of a direct conflict between this Proposal and the Subscription Agreement, this Proposal shall control. By executing this Proposal, Customer hereby [i] agrees to be bound by the terms and conditions included in, and/or attached to, this Proposal, including the applicable Subscription Agreement, [ii] certifies that the information provided by or on behalf of Customer in order to obtain the pricing set forth herein is accurate and complete, [iii] certifies that the individual signing on behalf of the customer has the authority to do so. Notwithstanding anything to contrary herein, this Proposal Form shall constitute an “Order Form” as defined in the applicable Subscription Agreement.

- Some Data Providers may have limitations, may not be available to all users, or may require acknowledgement of an approved use case within the Babel X platform.

- The Subscription Term shall commence on the earlier to occur of (i) the date on which Babel Street receives full payment for this Proposal, or (ii) the date on which Babel Street provides Customer with log-in credentials for Babel University (the “Subscription Effective Date”). The Subscription Term shall be 12 Months unless specifically stated elsewhere within this Proposal.



Order No : PO570883 -WRTAC-FY 2018- Annual Software Subscription- 8BNUA6

Issued on Tue, 03 Oct, 2017

Supplier

Babel Street Inc.
1818 Library Street, STE 500
Suite 500
Reston, VA 20910
Phone: 703.956.3572
Contact

Ship To

Emergency Management Agency
2720 Martin Luther King, Jr. Ave., SE
Washington, DC 20032
United States

Bill To:

Emergency Management Agency Attn: PSJC (HSEMA) - Accounts Payable Division
899 North Capitol Street, N.E. Suite: 600A
Washington, DC 20002
United States
Phone: 1(202) 727-4449
Fax: 1(202) 727-4845

Bill To Contact: Attn: Rosanne Etinoff-Accounts Payable Division
Contract Number: N/A
Requester: Monica Hill
Delivery Date: Tue, 3 Oct, 2017
PR No.: RQ965639

| Item | Description | Part Number | Unit | Qty | Need By | Unit Price | Extended Amount |
|---|---|-------------|------|--------|-------------------|------------|------------------------|
| 1 | HSEMA engages Babel Street, Inc. to procure ... | | each | 33,600 | Tue, 03 Oct, 2017 | \$1.00 USD | \$33,600.00 USD |
| HSEMA engages Babel Street, Inc. to procure the following Babel X Subscription: 1) Babel X Subscription, 1 User(s) , Annual, Product No. BSL-009-000 1 ea @ \$4,200.00 = \$4,200.00. 2) Babel X Subscription Read Only - 1 User(s), Annual, Product No.: BSL-009-001, 1 ea. @ \$4,200.00 = \$4,200.00. 3) Babel X Fixed Rate, 15 Active Filters, Annual Product No.: BDP-002-000, 1 ea. @ \$25,200.00 = \$25,200.00. 4) Babel X Public Records Search, 1,000 Searches/User, Annual, part No.: BPS-001-000 included. 5) Babel University, 1 User(s), Product No.: BST-001-000, included. 6) Travel and Training included. Grand Total: \$33,600.00. | | | | | | | |
| Total | | | | | | | \$33,600.00 USD |

Comments

- COMMENT by **aribasystem** on 10/03/2017
ALL INVOICES SHALL BE SUBMITTED TO THE 'BILL TO' ADDRESS INDICATED ON THIS PURCHASE ORDER. INVOICES SHALL INCLUDE THE PURCHASE ORDER NUMBER, CONTRACT NUMBER (IF APPLICABLE), CONTRACTOR'S NAME AND ADDRESS, INVOICE DATE, QUANTITY AND DESCRIPTION OF GOOD(S) OR SERVICE(S) FOR WHICH PAYMENT IS BEING REQUESTED, REMITTANCE ADDRESS, AND CONTACT PERSON NAME AND PHONE NUMBER IF THERE IS A PROBLEM WITH THE INVOICE. INVOICES FOR QUANTITIES OR AMOUNTS GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (aribasystem, Tue, 03 Oct, 2017)
- COMMENT by **aribasystem** on 10/03/2017
FOB is Destination unless specified otherwise (aribasystem, Tue, 03 Oct, 2017)
- COMMENT by **aribasystem** on 10/03/2017
****GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH THE DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACTS (July 2010) ARE HEREBY INCORPORATED BY REFERENCE. WWW.OCP.DC.GOV**** (aribasystem, Tue, 03 Oct, 2017)



Homeland Security and Emergency Management Agency

Statement of Work

HSEMA UCC,
HSEMA Babel Street Continuing Service

Author: Homeland Security and Emergency Management Agency

| | |
|---------------------|--|
| <i>Client name</i> | DC Homeland Security and Emergency Management Agency |
| <i>Project name</i> | HSEMA Babel Street Continuing Service |

C.1 SCOPE:

The Contractor shall provide the following product and service categories as part of this Statement of Work:

- Procurement of subscriptions and service needed to maintain the Babel X Subscription for social media research capabilities

(Section C.3)

- Babel X, is a cloud-based engine that searches various data sources and generates actionable output. It is utilized to support the daily functions of the WRTAC, and the mission of HSEMA as a whole.

The Contractor shall provide service and routine maintenance as specified in the product proposal.

C.1.1 APPLICABLE DOCUMENTS

| Document No. | Document Type | Title | Date |
|---------------------|----------------------|--------------|-------------|
| 1 | | | |

C.2 BACKGROUND

The District of Columbia Homeland Security and Emergency Management Agency (HSEMA) is host to a number of trainings, exercises, meetings, activations (including past and future National Special Security Events) in the Emergency Operations Center (EOC), and houses the District of Columbia fusion center, the Washington Regional Threat Analysis Center(WRTAC), at the current HSEMA facility located at 2720 Martin Luther King Jr Ave. SE, Washington DC 20032. This SOW will allow HSEMA to continue to provide the technological tools to support the District of Columbia fusion center (WRTAC). This software tool is utilized to conduct social media research, a critical function of daily operations and one component of how HSEMA supports special events hosted in the District. As part of this effort DC HSEMA requires procurement of the above mentioned licenses and subscriptions.

C.3 PROCUREMENT OF SOFTWARE AND MAINTENANCE

The successful Contractor will provide subscriptions and service as per the below listing.

The Contractor will provide the following:

C.3.1 SUBSCRIPTIONS & SERVICE

- C.3.3.1 (4) – (BSL-009-000) – Babel X Subscription**
- C.3.3.2 (1) – (BDP-002-000) – Babel X Data Package (Fixed Rate) –
15 active filters**
- C.3.3.3 (1) – (BPS-001-000) – Babel X Public Records Search**
- C.3.3.4 (1) – (BST-001-000) – Babel University**

C.4 CHANGE OF SPECIFICATION

No change in the specification of standards, materials or services will be authorized for this statement of work.

C.9 TECHNICAL REQUIREMENTS AND DELIVERABLES

The Contractor shall be responsible for providing all the above mentioned subscriptions and service. The procurement proposed shall consist of all necessary items as per the above section **C.3**.

C.10 DELIVERABLES

The Contractor shall be required to meet the following deliverables for this SOW:

| Section Reference | Description | Due Date |
|-------------------|--|---------------------------------------|
| C.3 | Procurement of all subscriptions and service | Within two weeks after contract award |
| | Client Signoff | |



Date: August 17, 2018
Order # 2018.0817.001.03(1)

Customer (User):
 DC Fusion Center
 2720 Martin Luther King Jr Ave SE
 Washington, DC 20032

Customer Contact:
 Paige Schilling
 Paige.Schilling@dc.gov
 (202) 604-6239

Babel Street Contact:
 Steve Tomaselli
 stomaselli@babelstreet.com
 +1.703.956.3572

| Product | Description | Term | Product Code | Price | Quantity | Total |
|---|---------------------|--------|--------------|-------------|----------|--------------------|
| Babel X® Subscription | | | | | | |
| Babel X® Authorized User(s) | | Annual | BSL-009-000 | | | |
| | | Annual | | \$4,500.00 | 2 | \$9,000.00 |
| <i>Babel X is a Commercial Item SaaS subscription subject to End User Subscription Terms at https://www.babelstreet.com/legal/enduserterms-c.pdf</i> | | | | | | |
| Babel X® Fixed Rate | 15 Active Filters | Annual | BDP-002-000 | \$28,500.00 | 1 | \$28,500.00 |
| Babel X® Public Records Search | 1,000 Searches/User | Annual | BPS-001-000 | Included | 2 | Included |
| Subscription & Data | | | | | | \$37,500.00 |
| Babel University® | 2 User(s) | | BST-001-000 | Included | 1 | Included |
| Training | | | | | | Included |
| Order Form Total | | | | | | \$37,500.00 |

Terms and Conditions

All capitalized terms used in this Order Form but not defined herein shall have the meaning given to such terms in the Babel Street End User Subscription Terms (the "Terms"). If an "Additional Terms" box is checked above, those terms are attached hereto, and incorporated by this reference into, the Agreement (as defined in the Terms).

Subscription Term

For full subscriptions or pilot subscriptions, Customer's right to access and use the Application and/or the Data Feeds ("Subscription Term") shall commence on the earlier to occur of (i) the date on which Babel Street provides the Customer with log-in credentials for either Babel University or Babel X or (ii) the date that is seven (7) calendar days following execution of this Order Form (in either case, the "Subscription Effective Date"). The initial Subscription Term shall be twelve (12) months unless specifically stated elsewhere within this Order Form. For any renewal Subscription Term, the Subscription Effective Date shall be the calendar day immediately following expiration of either the initial Subscription Term or the then current renewal Subscription Term. Additional products may be purchased during the Subscription Term pursuant to an add-on Order Form (each, an "Add-On Order Form"). Any such additional products shall be coterminous with the original Subscription Term.

Fees

All Fees and expenses are quoted and invoiced in U.S. Dollars unless otherwise specified in this Order Form. All invoiced amounts are due and payable in advance by Customer. Fees are exclusive of any taxes, assessments or duties that may be assessed upon the Application or any Support provided under this Agreement, including, without limitation, sales, use, excise, value added (VAT), goods and services taxes (GST), personal property, electronic/Internet commerce, export, import, withholding taxes, and third-party fees. Customer is responsible for directly paying any such taxes assessed against it, and Customer will promptly reimburse Babel Street for any such taxes payable or collectible by Babel Street. Such taxes do not include taxes based upon Babel Street's income. Tax exemption certificates or reseller certificates, if any, must be submitted at the time Customer signs an Order Form. For Babel X Data Package-based subscriptions, when the Data Package limit is reached, data collection may cease. Existing data will be retained during the Subscription Term, subject to the retention policies of the applicable data provider. Babel X Fixed-Rate subscriptions are not subject to data limits; however, data collection may be slowed during times of high demand and certain data feeds may be limited.

End User Terms

If Customer executes this Order Form without using an Agent, Customer agrees to be bound by the End User Subscription Terms ("Terms") found at <https://www.babelstreet.com/legal/enduserterms-c.pdf>, which are hereby incorporated by reference in their entirety (the Order Form, any Add-On Order Form, Terms and any applicable Additional Terms checked above (each, an "Addendum") attached to this Order Form being collectively referred to as the "Agreement"). In the event of a direct conflict between this Order Form and the Terms and/or an applicable Addendum, this Order Form shall control. In the event that Agent executes this Order Form on behalf of Customer, Agent hereby agrees that it will either (i) obtain and provide to Babel Street a copy of the Terms signed or acknowledged in writing by Customer, or (ii) provide a copy of the end-user's contract and/or PO with Agent that conspicuously includes the following language "Babel X® is Commercial Item software subject to End User Subscription Terms at <https://www.babelstreet.com/legal/enduserterms-c.pdf>". Agent further acknowledges that it will not have any access or usage rights to the Application unless separately granted to Agent by Customer as permitted by the Terms.

Trademarks

Babel Street, Babel X, Babel BOX, Babel Sentry, Locate X, Babel University, "Decipher Your World" and the Babel Logos are the proprietary trademarks of Babel Street, Inc.

Authority

By executing this Order Form, the undersigned hereby (i) certifies that the information provided by or on behalf of Customer in order to obtain the pricing set forth herein is accurate and complete and (ii) certifies that the individual signing below has the legal authority to bind the Customer or the Agent, as applicable.

No Conflicting Terms.

Babel Street's receipt of a purchase order from either Customer or Agent based on this Order Form is expressly subject to, and contingent upon, Customer's execution of, and agreement to, the Terms. In the event that the terms in any Customer or Agent purchase order differ from, or conflict with, the terms of the Agreement, the Agreement shall control and the conflicting or additional purchase order terms will not apply. Babel Street expressly rejects any additional, different or conflicting terms in a Customer or Agent purchase order, and any such purchase order shall be for Customer's or Agent's, as the case may be, internal and/or reference purposes only.

This Order Form is valid for 60 days from the date issued.

Additional Terms:

Babel Street, Inc.

DC Fusion Center

Signature _____

Signature _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

PO # _____



***** Electronic Invoicing Purchase Order. Please use <https://vendorportal.dc.gov> to register and submit invoices. *****

Order No : PO592629 -FY 2019- IT- Situational Awareness services/subscription (8BNUA7)

Issued on Wed, 17 Oct, 2018

Supplier

Babel Street Inc.
1818 Library Street, STE 500
Suite 500
Reston, VA 20910
Phone: 703.956.3572
Contact

Ship To

Emergency Management Agency
2720 Martin Luther King, Jr. Ave., SE
Washington, DC 20032
United States

Bill To:

Please use <https://vendorportal.dc.gov> to register and submit invoices.

Bill To Contact: Attn: Rosanne Etinoff-Accounts Payable Division
Contract Number: N/A
Requester: Monica Hill
Delivery Date: Thu, 11 Oct, 2018
PR No.: RK102707

| Item | Description | Part Number | Unit | Qty | Need By | Unit Price | Extended Amount |
|--------------|--|-------------|------|--------|-------------------|------------|------------------------|
| 1 | The WRTAC utilizes Babel Street to provide ... | | each | 37,500 | Thu, 11 Oct, 2018 | \$1.00 USD | \$37,500.00 USD |
| | The WRTAC utilizes Babel Street to provide situational awareness | | | | | | |
| Total | | | | | | | \$37,500.00 USD |

Comments

- Ruby Nelson, 10/16/2018:
THE CONTRACTOR SHALL SUBMIT PAYMENT REQUESTS IN ELECTRONIC FORMAT THROUGH THE DC VENDOR PORTAL VENDORPORTAL.DC.GOV BY SELECTING THE APPLICABLE PURCHASE ORDER NUMBER WHICH IS LISTED ON THE CONTRACTOR'S PROFILE. INVOICES FOR QUANTITIES OR AMOUNT GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (Ruby Nelson, Tue, 16 Oct, 2018)
- COMMENT by **aribasystem** on 10/17/2018
****GOVERNMENT OF THE DISTRICT OF COLUMBIA STANDARD CONTRACT PROVISIONS FOR USE WITH THE DISTRICT OF COLUMBIA GOVERNMENT SUPPLY AND SERVICES CONTRACTS (July 2010) ARE HEREBY INCORPORATED BY REFERENCE. WWW.OCP.DC.GOV***** (aribasystem, Wed, 17 Oct, 2018)
- COMMENT by **aribasystem** on 10/17/2018
FOB is Destination unless specified otherwise (aribasystem, Wed, 17 Oct, 2018)
- COMMENT by **aribasystem** on 10/17/2018
The Contractor shall submit payment requests in electronic format through the DC Vendor Portal vendorportal.dc.gov by selecting the applicable purchase order number which is listed on the Contractor's profile. INVOICES FOR QUANTITIES OR AMOUNTS GREATER THAN WHAT IS STATED ON THE PURCHASE ORDER WILL BE REJECTED. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY RESULT IN DELAYS IN PAYMENT. (aribasystem, Wed, 17 Oct, 2018)



Homeland Security and Emergency Management Agency

Statement of Work

HSEMA UCC,
HSEMA Babel Street Continuing Service

Author: Homeland Security and Emergency Management Agency

| | |
|---------------------|--|
| Client name | DC Homeland Security and Emergency Management Agency |
| Project name | HSEMA Babel Street Continuing Service |

C.1 SCOPE:

The Contractor shall provide the following product and service categories as part of this Statement of Work:

- Procurement of subscriptions and service needed to maintain the Babel X Subscription for social media research capabilities

(Section C.3)

- Babel X, is a cloud-based engine that searches various data sources and generates actionable output. It is utilized to support the daily functions of the NTIC, and the mission of HSEMA as a whole.

The Contractor shall provide service and routine maintenance as specified in the product proposal.

C.1.1 APPLICABLE DOCUMENTS

| Document No. | Document Type | Title | Date |
|--------------|---------------|-------|------|
| 1 | | | |

C.2 BACKGROUND

The District of Columbia Homeland Security and Emergency Management Agency (HSEMA) is host to a number of trainings, exercises, meetings, activations (including past and future National Special Security Events) in the Emergency Operations Center (EOC), and houses the District of Columbia fusion center, the Washington Regional Threat Analysis Center(WRTAC), at the current HSEMA facility located at 2720 Martin Luther King Jr Ave. SE, Washington DC 20032. This SOW will allow HSEMA to continue to provide the technological tools to support the District of Columbia fusion center (WRTAC). This software tool is utilized to conduct social media research, a critical function of daily operations and one component of how HSEMA supports special events hosted in

the District. As part of this effort DC HSEMA requires procurement of the above mentioned licenses and subscriptions.

C.3 PROCUREMENT OF SOFTWARE AND MAINTENANCE

The successful Contractor will provide subscriptions and service as per the below listing.

The Contractor will provide the following:

C.3.1 SUBSCRIPTIONS & SERVICE

- C.3.3.1 (4) – (BSL-009-000) – Babel X Subscription**
- C.3.3.2 (1) – (BDP-002-000) – Babel X Data Package (Fixed Rate) – 15 active filters**
- C.3.3.3 (1) – (BPS-001-000) – Babel X Public Records Search**
- C.3.3.4 (1) – (BST-001-000) – Babel University**

C.4 CHANGE OF SPECIFICATION

No change in the specification of standards, materials or services will be authorized for this statement of work.

C.9 TECHNICAL REQUIREMENTS AND DELIVERABLES

The Contractor shall be responsible for providing all the above mentioned subscriptions and service. The procurement proposed shall consist of all necessary items as per the above section **C.3**.

C.10 DELIVERABLES

The Contractor shall be required to meet the following deliverables for this SOW:

| Section Reference | Description | Due Date |
|-------------------|--|---------------------------------------|
| C.3 | Procurement of all subscriptions and service | Within two weeks after contract award |
| | Client Signoff | |

Exhibit 6

OPGS

Government of the District of Columbia
Mayor Muriel Bowser



Office of Partnerships and Grant Services (OPGS)



1st Quarter Report on Donations Approved by OPGS FY 2017

Pursuant to Mayor's Order 2011-170, dated October 5, 2011, the Office of Partnerships and Grant Services (OPGS), in consultation with the Office of the Legal Counsel's Ethics Counselor, is publishing the District's first Quarter Report on Donations for Fiscal Year 2017. The Order requires OPGS to review all requests by District officials to solicit or accept donations and approve or disapprove such requests as appropriate in accordance with the Rules of Conduct Governing Donations (Mayor Memorandum 2015-001) and D.C. Official Code Sec. 1-329.01 (2001). This report includes data on all donation requests approved by OPGS for the period beginning October 1, 2016 and ending December 31, 2016. During this period, OPGS approved the solicitation and acceptance of \$4,676,075.28 in donations of which \$456,987.71 represented financial contributions and \$4,219,087.57 were in-kind.

Please contact the Donations Manager at (202) 727-7977 with any question about the report.

| DC Agency Name | Donation Description | Value | Type | Donor | AAD Date |
|--|---|--------------|-----------|---|------------|
| Board of Ethics and Government Accountability (BEGA) | Donation of pro bono legal services to support trial court litigation in the matter captioned Office of Open Government vs Yates | \$8,000.00 | In-Kind | Levine Sullivan Koch & Schultz, LLP | 10/19/2016 |
| Board of Ethics and Government Accountability (BEGA) | Donation of consulting services to provide communication and marketing planning support | \$6,000.00 | In-Kind | Sreekumar Raghavakaimal | 12/13/2016 |
| DC Water and Sewer Authority (WASA) | Donation to support the DC Water Splash Fund Program | \$25,653.00 | Financial | Various individual donors | 12/30/2016 |
| Department of Behavioral Health (DBH) | Donation of 100,000 medication deactivation pouches to reduce the occurrence of the unintended use of prescription medication and its improper disposal | \$200,000.00 | In-Kind | CADCA | 11/15/2016 |
| Department of Forensic Sciences (DFS) | Donation to provide airfare and lodging for Reginald Blackwell to attend the CDC/APHL PulsNet MiSeq workshop in Atlanta, Georgia, from October 16 - 21, 2016 | \$2,200.00 | In-Kind | Association of Public Health Laboratories (APHL) | 10/7/2016 |
| Department of Forensic Sciences (DFS) | Donation to cover travel and lodging expenses for Dr. Luke Short to attend the LRN-C National meeting hosted by the Center For Disease Control in Austin, Texas from November 3 - 4, 2016 | \$1,211.37 | In-Kind | Association of Public Health Laboratories (APHL) | 10/21/2016 |
| Department of Forensic Sciences (DFS) | Donation to cover travel and lodging expenses for Dr. Jenifer A.L. Smith to attend the Analytical McElvain Seminar Series hosted by the Chemistry Department of the University of Wisconsin-Madison | \$845.44 | In-Kind | University of Wisconsin - Madison | 10/28/2016 |
| Department of For-Hire Vehicles (DFHV) | Donation includes hosting and ensuring continued access to and use of components of the DC Universal Taxicab App | \$12,500.00 | In-Kind | DC Transportation Group, Inc. | 10/4/2016 |
| Department of For-Hire Vehicles (DFHV) | Donation of software and support to enable the DFHV to test a digital taxicab system from October 6, 2016 to January 4, 2017 | \$10,000.00 | In-Kind | Infinite Peripherals, Inc. | 10/6/2016 |
| Department of For-Hire Vehicles (DFHV) | Donation to provide, maintain and manage necessary software to link passengers to drivers and provide signage at Union Station | \$5,000.00 | In-Kind | Bandwagon, Inc. | 12/14/2016 |
| OPGS | Donation of one IPOD Nano 7th generation and 3 pediatric environmental health books to educate DC Medicaid Pediatric providers regarding lead screening and lead poisoning prevention | \$784.00 | In-Kind | Mid Atlantic Center for Children's Health and the Environment | 10/5/2016 |
| Department of Housing and Community Development (DHCD) | Donation to cover travel and lodging expenses for Polly Donaldson to attend the NLC City Summit in Pittsburgh, PA from November 16-19, 2016 | \$1,495.00 | Financial | National League of Cities | 11/1/2016 |

OPGS

| | | | | | |
|--|---|-------------|-----------|---|------------|
| Department of Human Services (DHS) | Donation of used playground equipment and one bench to provide families with an outlet for exercise and outdoor recreation | \$3,500.00 | In-Kind | Office of the Curator, White House | 12/21/2016 |
| Department of Motor Vehicle (DMV) | Donation to cover travel and lodging expenses for Amit Vora to attend a project kick off for Digital Driver's License implementation in Austin, Texas from November 30 to December 2, 2016 | \$1,500.00 | Financial | Gemalto, Inc. | 11/22/2016 |
| Department of Park and Recreation (DPR) | Donation of a specific bequest to support the Columbia Height Youth Club | \$31,758.93 | In-Kind | Paul W. Jencks | 9/29/2016 |
| Department of Small and Local Business Development (DSLBD) | Donation to cover travel and lodging expenses for Mr. Brady Jonathan to attend the 9th Annual Tbilisi Local Economic Development Forum in Georgia from December 7-9, 2016 | \$2,540.00 | In-Kind | Economic Development Office Tbilisi Municipality City | 11/7/2016 |
| Department of Transportation (DOT) | Donation to cover travel expenses for Director Leif Dornsjo to travel to the City Accelerator transportation focus meeting in New Orleans, Louisiana | \$879.00 | In-Kind | Living Cities, Inc | 10/13/2016 |
| Department of Youth Rehabilitation Services (DYRS) | Donation to cover travel and lodging expenses for Director Lacey to attend a roundtable discussion about juvenile justice in Richmond, VA from October 24 - 25, 2016 | \$337.00 | In-Kind | Youth First Initiative | 10/17/2016 |
| Deputy Mayor for Planning and Economic Development (DMPED) | Donation to cover travel and lodging expenses for Andrew Trueblood to attend the Reimagine Communities Conference in Plano, TX from January 22-23, 2017 | \$1,500.00 | In-Kind | Capitol One | 12/27/2016 |
| Deputy Mayor for Planning and Economic Development (DMPED) | Donation to cover travel expenses for Brian Kenner and Andrew Trueblood to attend the NLC City Summit in Pittsburgh, PA from November 16-18, 2016 | \$2,540.00 | In-Kind | National League of Cities | 11/22/2016 |
| District Department of Energy and Environment (DOEE) | Donation to cover travel expenses for Kate Johnson to participate in the The C40 Cities Adaptation Conference in Dubai from January 23-25, 2017 | \$2,260.00 | Financial | C40 Cities | 10/27/2016 |
| District Department of Energy and Environment (DOEE) | Donation to cover travel and lodging expenses for Director Tommy Wells to attend the 6th Biennial Mayors Summit and the C40 Cities Award that coincides with activities around the C40's flagship event in Ciudad de Mexico from November 30 - December 2, 2016 | \$2,222.89 | Financial | C40 Cities Climate Leadership Group | 11/2/2016 |
| District Department of Energy and Environment (DOEE) | Donation of food and refreshments for the National Lead Poisoning Prevention Week Lunch-time event on Friday October 28th, 2016 | \$70.00 | In-Kind | Moe's Southwest Grill | 10/25/2016 |
| District Department of Energy and Environment (DOEE) | Donation of food and refreshments for the National Lead Poisoning Prevention Week Lunch-time event on Friday October 28th, 2016 | \$82.50 | In-Kind | Pot Belly Sandwich Shop | 10/25/2016 |
| District Department of Energy and Environment (DOEE) | Donation of food and refreshments for the National Lead Poisoning Prevention Week Lunch-time event on Friday October 28th, 2016 | \$75.00 | In-Kind | ABP Corporation (Au Bon Pain) | 10/25/2016 |
| District Department of Energy and Environment (DOEE) | Donation to cover travel expenses for Bill Updike to attend the Annual C40 Mayor's Summit in Mexico City from November 30-December 2, 2016 | \$2,000.00 | Financial | C40 ities Climate Leadership Group | 10/25/2016 |
| District Department of Energy and Environment (DOEE) | Donation to cover travel and lodging expenses for Julienne Bautista to attend the "National Blue Ribbon Commission Meeting to Advance Innovation in Decentralized Non-potable Water Systems" in San Francisco, CA from December 13-14, 2016 | \$717.00 | Financial | US Water Alliance | 11/9/2016 |
| District Department of Energy and Environment (DOEE) | Donation of a rental space at the Embassy Ballroom for the 2016 District Sustainability Awards program on December 13, 2016 | \$1,800.00 | In-Kind | Embassy of Finland | 11/10/2016 |

OPGS

| | | | | | |
|--|---|--------------|-----------|---|------------|
| District Department of Energy and Environment (DOEE) | Donation to cover travel and lodging expenses for Phetmano Phannavong to attend the C40 Cities Climate Adaptation Conference in Dubai, United Arab Emirates from January 23 -25, 2017 | \$3,299.00 | Financial | C40 Cities Climate Leadership Group | 11/15/2016 |
| District Department of Energy and Environment (DOEE) | Donation to cover travel and lodging expenses for Olayinka Yinka Kolawole to attend the 100% Equitable Renewable Cities Initiative in Atlanta, GA on January 10, 2017 | \$801.50 | Financial | The Solutions Project | 12/15/2016 |
| District of Columbia Public Library (DCPL) | Donation of material and programmatic services to support DC Public Library programs | 723,942.00 | In-Kind | DC Public Library Foundation | 12/31/2016 |
| District of Columbia Public Schools (DCPS) | Donation to support the cost of curriculum development, staff, overhead and programmatic materials at DCPS | \$27,500.00 | In-Kind | AARP Foundation | 10/6/2016 |
| District of Columbia Public Schools (DCPS) | Donation of paint, basketball hoop, storage units and equipments for garden and picnic | \$10,000.00 | In-Kind | Sweetgreen | 10/11/2016 |
| District of Columbia Public Schools (DCPS) | Donation of SAT Prep printed materials and online licensing for services to support SAT preparation classes | \$96,830.00 | In-Kind | Graham Holdings Company | 10/21/2016 |
| District of Columbia Public Schools (DCPS) | Donation to cover travel and lodging expenses for a DCPS employee to attend the National Summer Learning Association Meeting from October 24 - 27, 2016 | \$689.00 | In-Kind | National Summer Learning Association | 11/3/2016 |
| District of Columbia Public Schools (DCPS) | Donation to provide transportation expenses funding for DCPS 4th grade students to have a national park experience | \$800.00 | Financial | National Park Trust | 10/18/2016 |
| District of Columbia Public Schools (DCPS) | Donation of gym divider curtains to allow simultaneous multiple use of the gym space at Hearst Elementary School | \$13,000.00 | In-Kind | Donald Holmes | 10/26/2016 |
| District of Columbia Public Schools (DCPS) | Donation to support the professional development of DCPS data and strategy team members and to support the salary of a Strategic Data Project Fellow | \$85,500.00 | In-Kind | Harvard University-Center for Education Policy Research | 10/31/2016 |
| District of Columbia Public Schools (DCPS) | Donation of shoes and T-shirts to reward the HD Woodson's Boys Basketball Team for winning the State Championship in Basketball | \$3,000.00 | In-Kind | Nike | 11/7/2016 |
| District of Columbia Public Schools (DCPS) | Donation to purchase equipment, supplies, professional development training tools attached to developing peer-to-peer classroom supports between DCPS and counterparts in Angola | \$25,000.00 | Financial | Djembe Communications | 11/7/2016 |
| District of Columbia Public Schools (DCPS) | Donation to purchase meals and tip for families to support newly-piloted family engagement strategies in the schools | \$2,260.00 | Financial | Flamboyant Foundation | 11/7/2016 |
| District of Columbia Public Schools (DCPS) | Donation of 200 bicycle helmets for Ward 5's 2nd grade students | \$2,000.00 | In-Kind | MedStar Washington Hospital Center | 11/8/2016 |
| District of Columbia Public Schools (DCPS) | Donation of training, coaching, and systems support to teachers and staff members at Brookland MS, Eliot-Hine MS, and Kelly Miller MS | \$551,094.00 | In-Kind | Higher Achievement | 11/18/2016 |
| District of Columbia Public Schools (DCPS) | Donation of electrical equipments to Phelps High School | \$1,500.00 | In-Kind | Wayne Johnson | 11/29/2016 |
| District of Columbia Public Schools (DCPS) | Donation of on-site professional development trainings to school personnel including principals, | \$53,292.84 | In-Kind | Latin American Youth Center | 12/20/2016 |
| District of Columbia Public Schools (DCPS) | Donation for technology and school supply needs at HD Cooke Elementary School | \$20,000.00 | Financial | Mill Creek | 12/1/2016 |
| District of Columbia Public Schools (DCPS) | Donation of playground equipment for the Mobius 7 panel climber and provide improvement to the initial design | \$30,000.00 | In-Kind | Douglas Development | 12/5/2016 |

OPGS

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| District of Columbia Public Schools (DCPS) | Donation to provide cooking equipments and supplemental foods for cooking programs and taste tests to support afterschool garden programs | \$1,470.00 | Financial | Montoyas Farm LLC | 12/5/2016 |
| District of Columbia Public Schools (DCPS) | Donation of 1,000 basketball tickets to support DCPS goals related to improving school culture by providing reward for positive behavior | \$20,000.00 | In-Kind | Georgetown Athletics | 12/19/2016 |
| District of Columbia Public Schools (DCPS) | Donation of cameras, videos recorders and monitors to support DCPS media arts programming | \$1,000.00 | In-Kind | American University | 12/19/2016 |
| District of Columbia Public Schools (DCPS) | Donation of a 2000 Ford Explorer to support the automotive repair program at Ballou SHS | \$1,500.00 | In-Kind | Steven Campbell | 12/20/2016 |
| District of Columbia Public Schools (DCPS) | Donation of a 2007 Saturn Aura XR to support the automotive repair program at Ballou SHS | \$2,500.00 | In-Kind | Karen Gordon | 10/19/2016 |
| District of Columbia Public Schools (DCPS) | Donation to cover travel expenses for Harry Hughes and Katherine Larkin to attend the Learning Forward 2016 Annual Conference in Vancouver, Canada from December 3-7, 2016 | \$2,000.00 | In-Kind | Learning Forward | 12/8/2016 |
| District of Columbia Public Schools (DCPS) | Donation of educational supplies and equipment to support DCPS' classroom projects | \$172,736.79 | In-Kind | DonorsChoose.org | 12/31/2016 |
| District of Columbia Public Schools (DCPS) | Donation to support a select set of school's high-impact programs. These programs primarily fall under three reform areas: Excellent Teachers and Leaders, Engaged Students and Families, and Innovative Classrooms and Schools | \$1,886,764.88 | In-Kind | DC Public Education Fund (DCPEF) | 12/31/2016 |
| District of Columbia Public Schools (DCPS) | Donation of licenses for online software, kits and in-person training for staff | \$6,000.00 | In-Kind | Timocco | 12/20/2016 |
| District of Columbia Public Schools (DCPS) | Various drop off in kind donations to support schools activities | \$3,980.00 | In-Kind | Various donors | 12/31/2016 |
| Executive Office of the Mayor (EOM) | Donation to cover travel expenses for Mayor Bowser and her Chief of staff John Falcicchio to attend the 40 Mayor's Summit in Mexico City from December 1-4, 2016 | \$1,975.32 | Financial | C40 Cities Climate Leadership Group | 11/28/2016 |
| Executive Office of the Mayor (EOM) | Donation to cover travel and lodging expenses for Mayor Bowser and Chief of Staff John Falcicchio to attend the CityLab 2016 in Miami, Florida from October 22-24, 2016 | \$2,400.00 | Financial | The Aspen Institute | 11/28/2016 |
| Executive Office of the Mayor (EOM) | Donation of granola bars and bananas for the Fit DC Fresh Start 5K event on January 1, 2017 | \$5,000.00 | In-Kind | Safeway | 12/15/2016 |
| Executive Office of the Mayor (EOM) | Donation to sponsor a portion of the catering for the National African American Museum for History and Culture welcome reception on September 23, 2016 | \$5,000.00 | In-Kind | Thurgood Marshall College Fund | 10/1/2016 |
| Fire and Emergency Medical Services (FEMS) | Donation to cover travel and lodging expenses for the Fire Chief and his designee to attend the Fire Officers Association Annual Conference in Dublin, Ireland from May 1-5, 2017 | \$2,000.00 | In-Kind | The Chief Fire Officers Association of Ireland | 12/12/2016 |
| Metropolitan Police Department (MPD) | Donation of refreshments and light snacks for three day meeting between the interim Chief Peter Newsham and 250 MPD officials from October 20 to 23, 2016 | \$844.48 | In-Kind | Code 3 Association | 10/13/2016 |
| Metropolitan Police Department (MPD) | Donation of refreshments for the MPD Promotional Ceremony to recognize the Veterans and their families on Veterans Day | \$538.45 | In-Kind | Dale Sutherland | 11/9/2016 |
| Metropolitan Police Department (MPD) | Donation of refreshments for the MPD Promotional Ceremony to recognize the Veterans and their families on Veterans Day | \$548.45 | In-Kind | Dale Sutherland | 11/16/2016 |

OPGS

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| Metropolitan Police Department (MPD) | Donation of training services for 10 officers on the Datamir alerts, a New Mobile Security App system to enhance MPD's situational awareness | \$10,000.00 | In-Kind | Datamir Inc. | 12/19/2016 |
| Metropolitan Police Department (MPD) | Donation of a variety of tools and planting supplies to support Youth Creating Change and Junior Cadet Flower planting events | \$1,249.36 | In-Kind | Washington DC Police Foundation | 12/19/2016 |
| Office of Attorney General (OAG) | Donation to partially fund the employment of six Georgetown Law graduates in the Office of the Attorney General for twelve months as Charles F.C. Ruff Fellows | \$165,108.00 | Financial | Georgetown University Law Center | 10/28/2016 |
| Office of Attorney General (OAG) | Donation to partially fund the employment of six George Washington Law graduates in the Office of the Attorney General for twelve months as Charles F.C. Ruff Fellows | \$165,108.00 | Financial | George Washington University | 10/28/2016 |
| Office of Attorney General (OAG) | Donation to partially fund the employment of one University of Virginia Law graduate in the Office of the Attorney General for twelve months as Charles F.C. Ruff Fellows | \$27,518.00 | Financial | University of Virginia School of Law | 10/28/2016 |
| Office of Cable Television, Film, Music and Entertainment (OCTFME) | Donation of pizza for 50 attendees to support the 202Creates event | \$100.00 | In-Kind | &Pizza | 12/15/2016 |
| Office of Chief Technology Officer (OCTO) | Donation to cover travel expenses for Archana Vemulapalli to attend the Internet of Things (IoT) Plans and Policies Conference in Boston, MA from November 3-4, 2016 | \$900.00 | Financial | Berkman Center for Internet & Society Harvard University | 12/08/2016 |
| Office of Chief Technology Officer (OCTO) | Donation to cover travel expenses for Haidi Ali to attend the eRepublic Public Technology Summit in Austin, Texas | \$1,500.00 | financial | eRepublic | 12/5/2016 |
| Office of Planning | Donation to cover travel and lodging expenses for Director Shaw to attend the City Summit in Pittsburgh, PA from November 16-18, 2016 | \$1,200.00 | In-Kind | The Rose Center for Public Leadership in Land Use | 11/30/2016 |
| Office of Planning | Donation to cover travel and lodging expenses for Director Shaw to attend the Big City Planning Directors Institute Event in Cambridge, MA from October 9-11, 2016 | \$850.00 | | The Lincoln Institute of Land Policy | 11/9/2016 |
| Office of the Chief Medical Examiner (OCME) | Donation to cover travel and lodging expenses for the Chief Medical Examiner to attend the NIST Sponsored Organization of Scientific Area Committees for Forensic Science Meeting from December 1-2, 2016 | \$1,400.00 | In-Kind | National Institute of Standards and Technology (NIST) | 10/5/2016 |
| Office of the City administrator (OCA) | Donation of a Grant Management Training Lab for Grants Managers in the District of Columbia Government to drive greater impact from District grant investments | \$18,000.00 | In-Kind | Deloitte | 12/14/2016 |
| Office of the State Superintendent of Education (OSSE) | Donation to support independent research on school-level growth models applicable for DC under the Every Student Succeeds Act | \$169,789.00 | In-Kind | Council of Chief State School Officers | 10/12/2016 |
| Office of the State Superintendent of Education (OSSE) | Donation to cover the cost of catering services for the Summer Museum's 30th Anniversary Celebration on November 10, 2016 | \$1,000.00 | In-Kind | Boston Properties | 11/3/2016 |
| Office on Asian and Pacific Islander Affairs (OAPIA) | Donation of toys for young children and youth varying from ages 2 and up to support the "Share a Smile, Give a Toy" event | \$700.00 | In-Kind | Walter Lee | 11/28/2016 |
| Office on Asian and Pacific Islander Affairs (OAPIA) | Donation refreshments and entertainment activities to support the "Share a Smile, Give a Toy" event | \$1,500.00 | In-Kind | Korean American Grocers Association | 10/18/2016 |

OPGS

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|--|--|-----------------------|-----------|--|------------|
| Office on Returning Citizen Affairs (ORCA) | Donation of 3 dozen Cupcakes to support a ORCA's Thanksgiving Feast for Returning Citizens in the District | \$438.00 | In-Kind | Georgetown Cupcakes | 11/22/2016 |
| Public Service Commission (PSC) | Donation to cover lodging and transportation expenses for Chairman Betty Ann Kane, Commissioner Joanne Doddy Fort, Brian Edmonds, Dan Cleverdon and Grace Hu to participate in the OPSI Annual Meeting in Columbus, OH from October 17-21, 2016 | \$7,500.00 | In-Kind | Organization of PJM States, Inc. | 10/7/2016 |
| Public Service Commission (PSC) | Donation to reimburse travel and lodging expenses for Dan Cleverdon to participate in the Power Sector Transformation Meeting in Golden, CO from October 26-27, 2016 | \$900.00 | Other | The Regulatory Assistance Project | 11/7/2016 |
| Public Service Commission (PSC) | Donation to cover lodging expenses for Commissioners Joanne Doddy Fort and Willie Phillips to participate in the CCIF Summit on Connecting Communities: Smart Cities, Enabling Technologies & the Grid to be held during the NARUC Annual Meeting in LaQuinita, CA from November 12-16, 2016 | \$470.00 | In-Kind | Critical Consumer Issues Forum | 11/8/2016 |
| Public Service Commission (PSC) | Donation to reimburse travel and lodging expenses for Commissioner Joanne Doddy Fort to participate in the OPSI Board Meeting in LaQuinita, CA on November 14, 2016 | \$1,500.00 | Financial | Organization of PJM States, Inc. | 11/9/2016 |
| Public Service Commission (PSC) | Donation to reimburse travel and lodging expenses for Chairman Betty Ann Kane to participate in the National Association of Regulatory Utility Commissioners Board Meeting in LaQuinita, CA from November 12-16, 2016 | \$1,500.00 | Financial | National Association of Regulatory Utility Commissioners | 11/10/2016 |
| Saint Elizabeth Hospital | Drop off in kind donations to support activities of Saint Elizabeths Hospital | \$3,607.08 | In-Kind | Various donors | 12/31/2016 |
| Total | | \$4,676,075.28 | | | |

Exhibit 7

From: Appeals, Foia (EOM) <Foia.Appeals@dc.gov>
Sent: Tuesday, January 4, 2022 12:43 AM
To: Admin, FOIA (MPD); FOIA, MPD (MPD)
Cc: Quon, Teresa J.A. (MPD); Strouse, Margaret N. (DC)
Subject: FOIA Appeal 2022-047
Attachments: FOIA Request Administrative Appeal for MPD records.PDF

⚠ EXTERNAL

Hello,

This Office adjudicates administrative FOIA appeals on behalf of the Mayor. We received the attached appeal based upon a FOIA decision (or lack of decision) issued by your agency. Please provide us with your response to the appeal within five (5) business days of this communication. Please include the following in your response:

- (a) The justification for your decision not to grant review of records as requested;
- (b) A *Vaughn* index of documents withheld, and an affidavit or declaration of a knowledgeable official or employee testifying to the decision to withhold documents; and
- (c) A copy of the public record or records in dispute on the appeal; provided, that if the public record contains personal, sensitive, or confidential information, you may redact such information.

If no response is received, a final decision will be made on the record before us.

Please be advised that your agency's response may be shared with the requester when the final decision is issued. Therefore, please clearly mark any confidential information contained in your response.

Thank you for your assistance.

Sincerely,

Mayor's Office of Legal Counsel (MOLC)
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C. 20004
(202) 727-8812

Exhibit 8

From: Strouse, Margaret N. (DC)
Sent: Thursday, January 13, 2022 10:35 AM
To: Appeals, Foia (EOM); Admin, FOIA (MPD); FOIA, MPD (MPD)
Cc: Quon, Teresa J.A. (MPD)
Subject: RE: FOIA Appeal 2022-047

Hello,

Could you please provide status update as to whether MPD has submitted a response and when we can expect decision from the Mayor's Office?

Thank you.

Best,
Maggie

**Margaret N. Strouse
(She/Her)**

2021 Pro Bono Honor Roll – Gold
Ballard Spahr LLP
1909 K Street, NW, 12th Floor
Washington, DC 20006-1157
Direct 202.661.7670
Fax 202.661.2299
Mobile 202.631.2509
strousem@ballardspahr.com
www.ballardspahr.com

From: Appeals, Foia (EOM) <Foia.Appeals@dc.gov>
Sent: Tuesday, January 4, 2022 12:43 AM
To: Admin, FOIA (MPD) <foia.admin@dc.gov>; FOIA, MPD (MPD) <mpd.foia@dc.gov>
Cc: Quon, Teresa J.A. (MPD) <Teresa.Quon@dc.gov>; Strouse, Margaret N. (DC) <StrouseM@ballardspahr.com>
Subject: FOIA Appeal 2022-047

⚠ EXTERNAL

Hello,

This Office adjudicates administrative FOIA appeals on behalf of the Mayor. We received the attached appeal based upon a FOIA decision (or lack of decision) issued by your agency. Please provide us with your response to the appeal within five (5) business days of this communication. Please include the following in your response:

- (a) The justification for your decision not to grant review of records as requested;
- (b) A *Vaughn* index of documents withheld, and an affidavit or declaration of a knowledgeable official or employee testifying to the decision to withhold documents; and
- (c) A copy of the public record or records in dispute on the appeal; provided, that if the public record contains personal, sensitive, or confidential information, you may redact such information.

If no response is received, a final decision will be made on the record before us.

Please be advised that your agency's response may be shared with the requester when the final decision is issued. Therefore, please clearly mark any confidential information contained in your response.

Thank you for your assistance.

Sincerely,

Mayor's Office of Legal Counsel (MOLC)
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C. 20004
(202) 727-8812

Exhibit 9

Ballard Spahr LLP

1909 K Street, NW
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Washington, DC 20006-1157
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FAX 202.661.2299
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Alia L. Smith
Tel: 202.508.1125
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smithalia@ballardspahr.com

Margaret N. Strouse
Tel: 202.661.7670
Fax: 202.661.2299
strousem@ballardspahr.com

February 11, 2022

Via E-mail (foia.appeals@dc.gov)

Mayor's Office of Legal Counsel
FOIA Appeal
1350 Pennsylvania Avenue, N.W., Suite 407
Washington, DC 20004

Re: Brennan Center for Justice and Data for Black Lives Pre-Litigation Notice:
Improper Delay to Respond to DC-FOIA Administrative Appeal 2022-047

Dear FOIA Appeals Officer:

As you know, this firm represents Data for Black Lives (“D4BL”) and the Brennan Center for Justice at NYU School of Law (“Brennan Center”) in connection with a DC-FOIA request (2021-FOIA-01634) they made to the Metropolitan Police Department (“MPD”) on December 15, 2020, as well as the administrative appeal of the partial constructive denial of that request they submitted on December 22, 2021 (2022-047). (For your reference, a copy of that administrative appeal is appended to this letter.) MPD’s response to provide information to the Mayor’s Office was due December 30, 2021 under DC-FOIA. 1 D.C. Mun. Regs. tit. 1 § 412.5. (providing five business days for an agency to respond to a DC-FOIA appeal). Pursuant to D.C. Code Section 2-537(a), the Mayor’s final determination was then due January 7, 2022.

Nearly a week after MPD’s response deadline passed and two days before the Mayor’s final determination was due, on January 5, 2022 the Mayor’s Office emailed MPD and unilaterally stated MPD had five business days *from receipt of the* email to respond to the appeal. (For your reference, a copy of this email is appended to this letter.) The Mayor’s Office informed MPD it would decide the appeal on Brennan Center and D4BL’s submission alone if MPD failed to respond. Although DC-FOIA does not provide the Mayor’s Office with discretion to extend an agency’s response deadline, MPD’s deadline to respond based on the Mayor’s email elapsed a month ago on January 12, 2022.

To date, Brennan Center and D4BL have received nothing from the Mayor’s Office or MPD since the January 5, 2022 Mayor’s Office email to MPD. Neither the statutory deadline for MPD to respond (December 30), the Mayor’s Office deadline (January 7), nor counsel’s several attempts to inquire about the status of their appeal have resulted in any


update. While D4BL and Brennan Center would prefer to resolve this matter amicably through the administrative appeal process, please take notice that if, **by February 25, 2022**, the Mayor's office still has not provided a final determination of the administrative appeal and set deadlines for MPD to conduct an adequate search for, and provide, the requested responsive documents, Brennan Center and D4BL intend to file suit in D.C. Superior Court. The suit will seek access to all of the requested records as well as attorneys' fees and costs pursuant to D.C. Code Section 2-537(c).

The DC-FOIA request at issue – seeking information about MPD's use of social media monitoring – was made more than a year ago. MPD did not produce any documents at all until September 20, 2021, more than six months after its statutory deadline had passed. When it did produce documents, the production was materially incomplete. Brennan Center and D4BL have tried address this deficiency through administrative appeal, but those efforts have been continually ignored. Brennan Center and D4BL can no longer tolerate these repeated delays, which have a significant negative impact on their mission of shedding light on the use of social media monitoring by MPD and which are totally contrary to the letter and spirit of the DC-FOIA. *See, e.g., Frankel v. D.C. Office for Planning & Econ. Dev.*, 110 A.3d 553, 558 (D.C. 2015) (DC-FOIA intended to promote “expansion of public access and the minimization of costs and time delays to persons requesting information”). We sincerely hope that you will respond promptly by providing a substantive response to the administrative appeal submitted six weeks ago. But, if not, as noted, Brennan Center and D4BL are fully prepared to seek judicial relief.

Thank you, and please do not hesitate to contact us if you would like to discuss this matter.

Sincerely,

BALLARD SPAHR LLP



By: Alia L. Smith
Margaret N. Strouse

Enclosure

cc: Brennan Center
D4BL
Alana Burnett, FOIA Officer for Executive Office of the Mayor (eom.foia@dc.gov)
Robert Eckert, FOIA Specialist for MPD FOIA Office (Robert.Eckert@dc.gov)
Teresa Quon, Office of the General Counsel for MPD (Terasa.Quon@dc.gov)
foia.admin@dc.gov
mpd.foia@dc.gov

Exhibit 1

Ballard Spahr LLP

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TEL 202.661.2200
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Alia L. Smith
Tel: 202.508.1125
smithalia@ballardspahr.com

Margaret N. Strouse
Tel: 202.661.7670
strousem@ballardspahr.com

December 22, 2021

VIA EMAIL

The Mayor's Office of Legal Counsel
FOIA Appeal
1350 Pennsylvania Avenue, N.W., Suite 407
Washington, D.C. 20004
foia.appeals@dc.gov

Re: Freedom of Information Act Appeal
FOIA Request No. 2021-FOIA-01634

Dear FOIA Appeals Officer:

We write to appeal the partial constructive denial of the above-referenced District of Columbia Freedom of Information Act ("DC-FOIA") request submitted by Data for Black Lives ("D4BL") and the Brennan Center for Justice at NYU School of Law ("Brennan Center") to the Metropolitan Police Department ("MPD"). While MPD did, belatedly, produce some of the documents subject to the request, that production itself makes clear that MPD possesses or has control over many additional documents that it should have produced, but did not.

BACKGROUND

The Brennan Center tracks and reports on, among other things, police departments' social media monitoring – *i.e.*, the collection of information about groups and individuals from social media platforms like Facebook, Twitter, Snapchat, and Instagram. D4BL engages in advocacy to limit police access to technology and data analytics, including through its *#NoMoreDataWeapons* campaign. In furtherance of their mission to understand and explain the police's use of social media monitoring, D4BL and Brennan Center requested, on December 15, 2020, copies of public records related to MPD's training and use of social media monitoring. (A copy of the request is attached as Exhibit A). As more explicitly set forth in Exhibit A, they requested:

1. Policies governing MPD's use of social media monitoring;
2. Records reflecting the MPD's use of social media monitoring;

3. Purchase agreements with or orders from third-party social media monitoring services, including, but not limited to, Dataminr, Geofeedia, Snaptrends, Firestorm, Media Sonar, and others;
4. Records reflecting interactions between police and civilians on social media;
5. Records concerning the use of social media data in criminal investigations;
6. Records concerning the use of social media for other purposes;
7. Records concerning audits or internal reviews of MPD's use of social media monitoring;
8. Training materials regarding the use of social media monitoring;
9. Records reflecting the legal justification(s) for the use of social media monitoring;
10. Records reflecting formal complaints, FOIA requests, or legal challenges regarding MPD's use of social media monitoring;
11. Records reflecting communications with the federal government regarding social media monitoring;
12. Nondisclosure agreements with third-party vendors;
13. Vendor communications, including sales materials, licensing agreements, emails, etc.

Ex. A. The request was assigned handling number 2021-FOIA-01634.

The DC-FOIA required a response by March 24, 2021 under the extended DC-FOIA deadline for requests received during the Initial Covid-19 closure. D.C. Code § 2-532(c)(3)(A) (emergency amendment expired Mar. 22, 2021); *FOIA Tolling Emergency Amendment Act of 2020*, D.C. Act 23-555, effective Dec. 22, 2020 (amending D.C. Code § 2-532(c) through Mar. 22, 2021). On September 30, 2021, more than six months after MPD's statutory response deadline passed, with persistent follow up by D4BL and Brennan Center,¹ and under threat of litigation, MPD finally responded by providing a limited set of documents to Brennan Center and D4BL. By email that same date, MPD also provided correspondence listing certain responsive documents available online, describing information responsive to the request, and indicating it was closing the request. (A copy of this email is attached as Exhibit C.) However, the

¹ See Ex. B.

documents MPD produced and pointed to online expressly reference *other*, unproduced, documents that are responsive to D4BL and Brennan Center's request. Therefore, MPD's search for records and production of documents was incomplete.

Accordingly, pursuant to D.C. Code § 2-532(e) and D.C. Code § 2-537(a), D4BL and Brennan Center hereby appeal the constructive partial denial of D4BL and Brennan Center's request to the extent that readily identifiable and responsive documents have been neither produced nor the subject of any specific assertion of an exemption by MPD. The Mayor should direct MPD to (1) conduct an adequate search for the requested records and (2) produce all responsive records, whether or not specifically discussed herein, without further delay.

ARGUMENT

DC-FOIA enacts a broad disclosure policy that requires construing the law "with the view toward expansion of public access and the minimization of costs and time delays to the persons requesting information." *Fraternal Order of Police v. District of Columbia*, 79 A.3d 347, 354 (D.C. 2013) (citing D.C. Code § 2-531). The right of access must be "generously construed." *Id.*; accord *Fraternal Order of Police v. District of Columbia*, 82 A.3d 803, 813 (D.C. 2014).

To comply with its DC-FOIA obligations, the MPD is required to expend all "reasonable efforts" to uncover all relevant documents. *Fraternal Order of Police v. District of Columbia*, 139 A.3d 853, 865 (D.C. 2016). The agency has the burden of establishing *beyond material doubt* that its effort was reasonable. *Id.* MPD must describe, in reasonable detail, where it searched for the requested documents and how its search method was reasonably calculated to uncover all relevant documents. *Doe v. D.C. Metro. Police Dep't*, 948 A.2d 1210, 1220-21 (D.C. 2008). To the extent MPD withholds documents in full or in part, MPD bears the burden of providing the specific exemption and its justification for withholding the documents, so that the Mayor's Office can determine whether MPD has properly invoked the exemption. 1 DCMR 412.5 (providing the agency should provide a "Vaughn index of documents withheld, an affidavit or declaration of a knowledgeable official or employee testifying to the decision to withhold documents, or such other similar proof" for all exempt materials); see *FOP*, 79 A.3d at 358.

Here, as an initial matter, with respect to all the enumerated requests, MPD has failed to describe what systems were searched, what search terms were used, and why it employed such search strategy to locate documents responsive to the request. MPD's email merely describes that "a search" was conducted, Ex. C, making it difficult for D4BL and Brennan Center to assess the reasonableness of MPD's search effort at all, much less determine if MPD has met its burden beyond material doubt. Still, in light of the information that D4BL and Brennan Center do know – from documents produced in response to this request, from documents produced in response to

other DC-FOIA requests, and from their expertise in this area – it is apparent that MPD’s search was inadequate and its production incomplete. For example:

- **Request 1 (Social Media Monitoring Policies):** Among other things, MPD produced “ISS Social Media Procedures,” attached as Exhibit D, in response to Brennan Center and D4BL’s request for social media monitoring policies. *See* Ex. A (Request 1). ISS Social Media Procedures (Ex. D) describes three separate responsive, but unproduced, documents on the first page: “CRS Social Media Passwords,” “ISS Online Resources,” and “Social Media Search Techniques.” Ex. D.

In addition, D4BL and Brennan Center are aware of an additional policy, available in redacted form at https://cdn.muckrock.com/foia_files/2017/01/26/Social_media_FOIA_.pdf (attached as Exhibit E), which was not produced or referenced in MPD’s responsive email. MPD is required to produce this form in full to D4BL and Brennan Center or, at a minimum, explain the legal basis for the redactions. *FOP*, 82 A.3d at 813 (an agency bears the burden of demonstrating it properly claimed exemptions for both redactions and withheld documents).

- **Requests 1 and 4 (Policies and Police Interactions with Civilians):** In its request, Brennan Center and D4BL sought, in part, policies related to the use of fictitious or undercover online personas and communications between uniformed or undercover police employees and civilians. Ex. A (Requests 1 and 4). MPD responded that no records relating to fictitious online personas or accounts were located and that Joint Strategic and Tactical Analysis Command Center (“JSTACC”) members “do not create fictitious online personas or interact in an undercover capacity on social media.” Ex. C. However, the produced ISS Social Media Training (attached as Ex. F) suggests that the solution to “Getting Blocked” is to “Change username.” *See* Ex. F at 6. It strains credulity to suggest that changing usernames would be an effective solution to getting blocked if the MPD officer’s second username was not an undercover or alias account. In light of these policies, it is clear that additional documents must exist.
- **Request 2 (Use of Social Media Monitoring):** Brennan Center and D4BL requested, in part, “[a]ny and all recordkeeping, logs, or digests reflecting the use of social media monitoring.” *See* Ex. A (Request 2). In its email, MPD is silent on the existence of recordkeeping or digests; instead it provided only the narrow response that “[a] search located no records of *logs* reflecting social media searches.” *See* Ex. C (emphasis added). However, the publicly-available 2013 Social Media Monitoring Policy (Ex. E) states that officers shall “print or

document information” gathered via social media, submit an oral or written request before interacting on social media in exigent circumstances, provide a written request for a social media monitoring extension to continue for longer than thirty days, and “prepare a weekly report.” Under this policy, Lieutenants also “shall maintain a file of all requests.” *Id.* Further, MPD’s ISS Social Media Procedures (Ex. D) includes *templates* to document social media searches within a crime report’s “social media section.” MPD therefore must have records of social media monitoring searches because its policies require record-keeping and even provide templates for such purposes.

- **Request 3 (Social Media Monitoring Purchase Agreements and Orders):** In response to D4BL and Brennan Center’s request for purchase agreements and orders of social media monitoring services, MPD asserts that the only social media monitoring application it can access is Dataminr, which was purchased by three other agencies: the Office of the Chief Technology Officer (“OCTO”), Homeland Security Emergency Management Agency (“HSEMA”), and National Technology Information Center (“NTIC”). *See* Ex. C. However, the Office of Contracting and Procurement (“OCP”) released public records revealing several purchases of Babel Street, another social media monitoring application, by HSEMA, in response to a separate DC-FOIA request by Brennan Center and D4BL.² OCP provided order forms, invoices, and statements of work for several Babel Street subscription purchases by HSEMA. If MPD has access to Dataminr through HSEMA’s subscription, it follows that MPD is likely to have access to all of HSEMA’s social media monitoring tools, like Babel Street. MPD must search for and produce all records that document its access and use of Babel Street.

In addition, MPD’s email states that MPD did not locate any records of contracts for social media monitoring applications, and that its *only* access to Dataminr is through a purchase by OCTO, HSEMA, and NTIC. *See* Ex. C. This directly contradicts a donation report published by the Office of Partnerships and Grant Services (“1st Quarter Report on Donations Approved by the DC Office of Partnerships and Grant Services”), an online public record that was *specifically referenced* in the DC-FOIA request. *See* Ex. A at n.6. This document indicates that Dataminr donated training services for 10 officers, valued at \$10,000, in

² Sent by Brennan Center and D4BL on February 17, 2021 and assigned FOIA Request No. 2021-FOIA-03164.

December of 2016.³ MPD failed to disclose any purchase agreements, orders, contracts, or vendor communications (including attachments to communications), related to Dataminr's 2016 donation.

- **Requests 3, 4, 12 & 13:** The document produced by MPD titled "ISS Social Media Training Updated" references multiple social media monitoring services MPD uses, such as storiesig.com, Spokeo, Pipl, Webstagram, Facebook Messenger, LexisNexis Accurint, TransUnion TLOxp, Buzzsumo, WebMii, Tagboard, Lullar, SnapBird, and Social Searcher. *See* Ex. F at 6, 8, 28. Despite seemingly providing these services to their officers, MPD indicated that it "does not have any contracts with any social media vendors" and failed to produce *any* purchase agreements and orders, vendor communications, social media account information from civilians, nondisclosure agreements, or other documents providing usage of these services as requested by D4BL and the Brennan Center by Requests 3, 4, 12, and 13. *See* Ex. A.
- **Request 8 (Training Materials):** In response to Brennan Center and D4BL's request for training materials that discuss social media monitoring, Ex. A (Request 8), MPD produced two undated training presentations: (1) 081920 Investigator Training - Emergency Disclosures and (2) ISS Social Media Training Updated. ISS Social Media Training Updated references "old procedures," none of which have been produced. *See* Ex. F at 4-5.

In sum, there are abundant indications that MPD did not conduct a thorough search and did not produce all documents responsive to D4BL's and Brennan Center's DC-FOIA request. Accordingly, D4BL and Brennan Center seek as relief in connection with this administrative appeal an instruction that MPD conduct a complete and thorough new search and provide a statement explaining its search methods (including search terms, databases searched, and search strategy). In addition, D4BL and Brennan Center seek immediate production of the following documents, which should have been included in MPD's initial response:

- Any and all records that document MPD's access to and use of Babel Street, including but not limited to communications with or about Babel Street (including all attachments to those communications), memorandums of use, contracts, training materials, purchase agreements, and orders.

³ *See*

https://opgs.dc.gov/sites/default/files/dc/sites/opgs/page_content/attachments/1st%20Quarter%20FY17%20Donations%20Report_0.pdf at 5.

- Any and all records related to Dataminr's 2016 donation to MPD, including but not limited to any purchase agreements, orders, contracts, training materials, memorandums of use, or communications with or about Dataminr (including all attachments to those communications).
- The following documents referenced in ISS Social Media Procedures (Ex. D) and all other documents contained in the referenced "Social Media folder": "CRS Social Media Passwords," "ISS Online Resources," and "Social Media Search Techniques."
- Records reflecting the dates that the following training presentations, produced in response to Request 8, were created and used: (1) 081920 Investigator Training - Emergency Disclosures and (2) ISS Social Media Training Updated (Ex. F).
- MPD's "old procedures", including any drafts of past or current policies or procedures, referenced in ISS Social Media Training Updated. Ex. F at 4-5.
- Purchase agreements and orders, vendor communications (including all emails, attachments, sales materials, licensing agreements, memorandums), social media account information from civilians, nondisclosure agreements, memorandums of understanding, or other documents related to MPD's use of storiesig.com, Spokeo, Pipl, Webstagram, Facebook Messenger, LexisNexis Accurint, TransUnion TLOxp, Buzzsumo, WebMii, Tagboard, Lullar, SnapBird, and Social Searcher. *See* Ex. F at 6, 8, 28.
- Any and all recordkeeping related to social media monitoring searches, including but not limited to all written requests for monitoring extensions, weekly reports, and files of requests pursuant to the 2013 social media monitoring policy, Ex. E, and all crime report social media sections, as referenced in ISS Social Media Procedures (Ex. D) template.⁴

⁴ In addition, D4BL and Brennan Center seek clarification regarding MPD's response to Request No. 5, regarding the use of social media in criminal investigations. MPD stated that it "has no records responsive to this portion of the request." Ex. C. However, it did produce a document entitled "Crime 01.01.13 Through 12.12.2020," attached as Exhibit G, reflecting general crime statistics for the time period. D4BL and Brennan Center request explanation of whether this document contains crimes in which social media monitoring was used and whether it is responsive to Request 5.

Freedom of Information Act Appeal

December 22, 2021

Page 8

- Policies, protocols, and other documents related to usernames officers have available to “change” to when blocked, Ex. F at 6, and the use of fictitious or anonymous online personas used by MPD.

* * *

We look forward to your prompt response within 10 business days of this appeal. *See* D.C. Code § 2-537(a). Should you like to discuss the request or this appeal, please do not hesitate to contact us. Thank you.

Sincerely,

BALLARD SPAHR LLP

A handwritten signature in blue ink that reads "Alia L. Smith". The signature is fluid and cursive, with a long horizontal stroke at the end.

Alia L. Smith

Margaret N. Strouse

Encls.

cc: Brennan Center

D4BL

Robert Eckert, MPD FOIA Specialist (Robert.eckert@dc.gov)

Exhibit A

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,”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

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.”³ 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.”⁴ A 2013 memorandum from the Criminal Intelligence Branch described the creation of Social Media Teams to monitor social media

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://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>.

³ 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.

⁴ 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.

websites for information on criminal activity.⁵ 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.⁶

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

⁵ 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.

⁶ 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.

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 2020.⁷
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).

⁷ 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.

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.⁸ 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.

⁸ 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.

Thank you for your time.

Laura Hecht-Felella

Laura Hecht-Felella
George A. Katz Fellow, Liberty and National Security Program
Brennan Center for Justice at NYU School of Law
(646) 292-8385 | hecht-felella@brennan.law.nyu.edu

Exhibit B

From: [Eckert, Robert \(MPD\)](#)
To: [Laura Hecht-Felella](#)
Cc: [Sahil Singhvi](#); [Rachel Levinson-Waldman](#); [Archie-Mills, Lisa \(MPD\)](#)
Subject: FOIA Request No. 2021-FOIA-01634, from Ms. Hecht-Fella (Brennan Center)
Date: Wednesday, March 24, 2021 3:54:32 PM

Hello Ms. Hecht-Felella,

Thanks for your query.

As you know, the referenced FOIA request consists of a broad variety of thirteen (13) itemized/individual requests for records/information, including those that may not currently exist.

While the District of Columbia (DC) Freedom of Information Act (FOIA) does not require agencies to create records, we are working to address each of the thirteen (13) items/requests, in turn, posed within this FOIA request.

We will respond to the FOIA request upon the completion of the following: the search for records that may be responsive to the request; the review for material that may be exempt from release under the FOIA; and, the completion of any other needed consultation and coordination.

Thanks,
Bob Eckert
FOIA Specialist
MPD FOIA Office
robert.eckert@dc.gov
"We are here to help."

From: Laura Hecht-Felella <hecht-felella@brennan.law.nyu.edu>
Sent: Wednesday, March 24, 2021 1:54 PM
To: Eckert, Robert (MPD) <robert.eckert@dc.gov>; Crumlin, Latrina (MPD) <Latrina.Crumlin2@dc.gov>; Archie-Mills, Lisa (MPD) <lisa.archie-mills@dc.gov>
Cc: Sahil Singhvi <singhvis@brennan.law.nyu.edu>; Rachel Levinson-Waldman <levinsonr@brennan.law.nyu.edu>
Subject: RE: Acknowledgement Letter 2021-FOIA-01634

CAUTION: This email originated from outside of the DC Government. Do not click on links or open attachments unless you recognize the sender and know that the content is safe. If you believe that this email is suspicious, please forward to phishing@dc.gov for additional analysis by OCTO Security Operations Center (SOC).

Good morning –

It is our understanding that, pursuant to D.C. Act 23-328 § 808, the MPD was required to respond to our public records request 2021-FOIA-01634 (attached) by today. I am writing to follow up on the status of our request.

Thank you,

Laura

Laura Hecht-Felella
George A. Katz Fellow, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law
120 Broadway, Suite 1750, New York, NY 10271
(646) 292-8385 | hecht-felella@brennan.law.nyu.edu

From: Laura Hecht-Felella

Sent: Thursday, February 11, 2021 3:22 PM

To: robert.eckert@dc.gov; latrina.crumlin2@dc.gov; lisa.archie-mills@dc.gov

Cc: Sahil Singhvi <singhvis@brennan.law.nyu.edu>; Rachel Levinson-Waldman <levinsonr@brennan.law.nyu.edu>

Subject: RE: Acknowledgement Letter 2021-FOIA-01634

Dear Mr./Ms. Crumlin,

I hope this email finds you well. The Brennan Center is in receipt of your December 16, 2020 response regarding our FOIA request number 2021-FOIA-01634. The Metropolitan Police Department (MPD) claimed a Covid-19 extension pursuant to D.C. Act 23-328 § 808 that allowed it to extend the response deadline for this request until the public health emergency ended.

However, [the FOIA Tolling Emergency Amendment Act of 2020](#) (effective December 22, 2020) requires the MPD to provide a response to our request within 45 days (except Saturdays, Sundays, and legal public holidays) of the end of the “Initial COVID-19 closure,” which was on January 15, 2021.

Therefore, we request that MPD respond to our request by **March 24, 2021** and “either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.”

Please do not hesitate to contact me with further questions at (646) 292-8385. Thank you for your attention to this matter.

Thank you,

Laura

Laura Hecht-Felella
George A. Katz Fellow, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law
120 Broadway, Suite 1750, New York, NY 10271
(646) 292-8385 | hecht-felella@brennan.law.nyu.edu

From: latrina.crumlin2@dc.gov <latrina.crumlin2@dc.gov>
Sent: Wednesday, December 16, 2020 12:28 PM
To: sahil.singhvi@nyu.edu
Cc: robert.eckert@dc.gov; latrina.crumlin2@dc.gov; lisa.archie-mills@dc.gov
Subject: Acknowledgement Letter 2021-FOIA-01634

Dear Mr./Mrs. Singhvi,

This office is in receipt of your Freedom of Information Act (FOIA) request. Your FOIA request number is 2021-FOIA-01634 and your assigned FOIA Specialist is **Robert Eckert**.

If you have any questions regarding your request, please contact your assigned FOIA Specialist at (202) 727-3721. For ease of reference, we ask that you have your FOIA Request Number available when you contact our office.

Please know, pursuant to D.C. Official Code § 2-532(c), we have 15 business-days, subject to the possibility of a ten (10) business day extension to respond to the request as of the date of receipt.

Be advised, if your request is for Body Worn Camera (BWC) footage, D.C. Code § 2-532(c) allows 25 business days subject to the possibility of 15 working-day extension, to respond to the request as of the date of receipt.

COVID-19 Notification

Pursuant to section 808 of the Coronavirus Support Congressional Review Emergency Amendment Act of 2020, **effective June 9, 2020**, D.C. Act 23-328, all FOIA deadlines may be extended during a period of time for which the Mayor has declared a public health emergency. Pursuant to this provision, we have claimed an extension of the time in which to provide a response to your request.

Regards,

Latrina Crumlin
Staff Assistant, FOIA
Metropolitan Police Department

300 Indiana Ave NW, RM 4153
Washington, DC 20001

Exhibit C

From: Eckert, Robert (MPD) <robert.eckert@dc.gov>
Sent: Thursday, September 30, 2021 3:52 PM
To: Laura Hecht-Felella <hecht-felella@brennan.law.nyu.edu>
Cc: Eckert, Robert (MPD) <robert.eckert@dc.gov>
Subject: Final Response in Process - FOIA Request No. 2021-FOIA-01634, from Laura Hecht-Felella (Brennan Center for Justice)

September 30, 2021

Laura Hecht-Felella
George A. Katz Fellow
(submitted via Sahil Singhvi)
Liberty and National Security Program
Brennan Center for Justice at NYU School of Law
hecht-felella@brennan.law.nyu.edu

FOIA Request No. 2021-FOIA-01634

Dear Ms. Hecht-Felella:

This is in response to the above-referenced Freedom of Information Act (FOIA) request for a variety of information as reflected below, along with response information received through the search for responsive records.

"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."

The following references are responsive to this FOIA request, which may be located on the MPD website (<https://mpdc.dc.gov/page/written-directives-general-orders>): SO-13-04 Investigative Support Unit; SO-14-05 CIC Traffic Desk; SO-16-06 Social Media Checks for Background; SOP 16-01 Handling First Amendment Assemblies; ISS CRS Social Media Policy; ISS Social Media Training; and, ISS Social Media Procedures.

Also located were the attached: ISS CRS Social Media Policy; ISS Social Media Training; ISS Social Media Procedures, Memorandum of Understanding (MOU) Between the District of Columbia (DC) Homeland Security and Emergency Management Agency (HSEMA) and the Metropolitan Police Department (MPD); Emergency Disclosure and Preservation Requests; and, DCR (Crime Statistics) 01/01/2013 - 12/21/2020.

No records reflecting fictitious online personas/accounts were located.

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.

A search located no records of logs reflecting social media searches for the purpose of criminal investigations, situational awareness, event planning, or public safety. Analysts and other MPD members often rely on open-source (publicly available) social media searches to find information about planned demonstrations or criminal activities.

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

No records of contracts for social media monitoring applications were located. The MPD does have access to Dataminr, an application purchased by the Office of the Chief Technology Officer (OCTO)/Homeland Security Emergency Management Agency (HSEMA)/National Technology Information Center (NTIC). The MPD has access through the attached memorandum of understanding (MOU) with NTIC. The NTIC provides alerts from Dataminr's First Alert to the Joint Strategic and Tactical Analysis Command Center (JSTACC) management. Dataminr's First Alert uses technology to detect breaking events and emerging risks from open-source social media in real time.

"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."

This is not something maintained in a database, but would be part of a criminal investigation, and would require research, which is not required under the FOIA. Additionally, as mentioned above, JSTACC members do not create fictitious online personas or interact in an undercover capacity on social media platforms.

"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."

The MPD has no records responsive to this portion of the request.

"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."

No records responsive to this item of the request were located.

Situational Awareness - The MPD utilizes TweetDeck, which is a free social media dashboard application for management of Twitter accounts. Originally an independent application, TweetDeck was subsequently acquired by Twitter Inc. and integrated into Twitter's interface. It is normally used to monitor trending topics in real-time to identify events that could affect the operational landscape, or MPD operations, and subsequently provide timely and accurate situational awareness and operational intelligence to MPD personnel. Real-time monitoring is not tracked as it is all open source (publicly available data). Additionally, MPD's Intelligence Branch completes a daily demonstration report which provides a daily list of known demonstrations. It's compiled based on known permit applications through MPD, USPP, etc. and open media searches for demonstrations occurring in DC.

As far as First Amendment demonstrations - MPD does not keep "files" on individuals involved in protest/demonstration activity, to include social media accounts, unless MPD has been authorized to conduct an investigation as outlined by First Amendment activities as required by the Police Investigations Concerning First Amendment Activities Act of 2004 (the Act), D.C. Code § 5-333 et seq.

"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."

No records responsive to this portion of the request were located. Social media inquiries by JSTACC are open source (publicly available).

"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."

Please see the attached the following training material regarding social media investigations. These are given internally to JSTACC members, as well as in investigator and district intelligence officer training: 081920 Investigator Training - Emergency Disclosures ISS Social Media Training Updated.

“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.”

No responsive records were located.

“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, nonprofit groups, or companies.”

A search located no records of formal complaints or legal challenges regarding social media monitoring.

“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.”

A search located no records responsive records; however, the attached MOU with the DC HSEMA, referenced in the response to No. 1, is attached.

“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.”

As previously mentioned, MPD does not have any contracts with any social media vendors. Therefore, we would not have any nondisclosure agreements.

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.

No responsive records were located.

I have determined to withhold portions of the released records under DC Official Code § 2-534 (a)(2) and (a)(3) because their release would constitute a clearly unwarranted invasion of personal privacy. The withheld material includes names/personal identifiers and other personal privacy information, including that which would lead to the identity of individuals.

Please know that, under D.C. Official Code § 2-537 and 1 DCMR § 412, you have the right to appeal this letter to the Mayor or to the Superior Court of the District of Columbia. If you elect to appeal to the Mayor, your appeal must be in writing and contain “Freedom of Information Act Appeal” or “FOIA Appeal” in the subject line of the letter, as well as, on the outside of the envelope. The appeal must include (1) a copy of the original request; (2) a copy of any written denial; (3) a statement of the circumstances, reasons, and/or arguments advanced in support of disclosure; and (4) a daytime telephone number, an e-mail and/or U.S. mailing address at which you can be reached.

The appeal must be mailed to: The Mayor’s Office of Legal Counsel, FOIA Appeal, 1350 Pennsylvania Avenue, N.W., Suite 407, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to the Mayor’s Office of Legal Counsel at foia.appeals@dc.gov. Further, a copy of all appeal materials must be forwarded to the Freedom of Information Officer of the involved agency, or to the agency head of that agency, if there is no designated Freedom of Information Officer there. Failure to follow these administrative steps will result in delay in the processing and commencement of a response to your appeal to the Mayor.

**Sincerely,
Bob Eckert
FOIA Specialist
Freedom of Information Act Office
Metropolitan Police Department
Robert.eckert@dc.gov
“Excellence is transferable.”**

Exhibit D

Section 1: Minimum social media requirements**Section 2: Taking social media results and searches a step further****Section 3: Negative social media results**

- All ISS usernames and passwords for social media searches are saved in the Social Media folder as “CRS Social Media Passwords.doc”
- Access links to various online resources and internet search tools in the document saved as “ISS Online Resources” in the Social Media folder.
- Additional social media search tips are located in the document “Social Media Search Techniques” in the Social Media folder.

Section 1:

At a minimum, the following procedures are required to uncover social media profiles:

1. Query various name combinations, phone numbers, and email addresses for the subject through the following sites:
 - a. **Facebook, Google, and at least two other search engines** from the ISS Online Resources document.
2. Access Accurint
 - a. Query the subject in Accurint’s Virtual Identity Report.
 - i. Click on all URLs provided in the Virtual Identity Report that are associated to the subject.
 - b. If the subject is a juvenile or no information is returned in public records, also search for relatives and/or current address(es) of that subject through Accurint and/or TLO to find a relative that resides at the subject’s address.
 - i. If a social media profile is obtained for a relative (mother, father, sibling), thoroughly search the profile (friends list, about section, posts, etc.) in an effort to locate a profile for the individual of interest.
 1. The document “**Social Media Search Techniques**” saved in the Social Media folder provides guidance on searching private social media profiles.
 - c. If no profile can be found for the individual of interest, include the relative’s social media profile and URL in the report.

Section 2:

If a profile is uncovered, the following procedures are required:

1. If a social media account is uncovered, the URL handle as well as the name/alias provided on the social media account should be searched in **Google, Facebook, Instagram, Twitter, YouTube, and at least one additional site** that has a username search in an effort to uncover additional profiles.

Use the following template to document positive search results. Plug in or take out what parameters were searched in the italicized portion of the template. This information should appear in the beginning of the social media section.

POSITIVE results

- I conducted searches based on the parameters available on each site using the [arrestee, person of interest, decedent, etc] name(s), DOB(s), SSN(s), email(s), phone(s) and other various identifiers. The following systems returned results that appear to be relevant: [list websites accessed here]

If profiles are found, the following template should be used in the body of the social media section of the report for every social media site that produced results, as seen below:

- I conducted [website] searches based on [search parameters] and received the following results:
Facebook URL: <https://www.facebook.com/CRS>
**Insert screenshots of any relevant timeline, about section, photos, etc.
 - I conducted [website] searches based on [search parameters] and received the following results:
Instagram URL: <https://www.instagram.com/CRS>
**Insert screenshots of the about section, photos, etc.
2. If a photo or video is posted on a social media account where firearms or ammunition is viewable; the account URL, image URL, and screenshot of the image in which a firearm is shown **must be emailed** to the following GRU and Intel members: Cmdr. John Haines, Lt [REDACTED], Sgt. [REDACTED], and Lt. [REDACTED].

If photos on social media reveal firearms or ammunition; the following template should be used under the website URL:

- The account URL, image URL, and screenshot of the image in which a firearm is shown was sent on [DATE] to GRU and Intel for situational awareness.

Section 3:

If no profile is uncovered, the following procedures are required:

1. Access TLO, as TLO tends to provide more phone numbers and email addresses tied to search results. Include or exclude this information in the report based on your judgment as not all information is accurate.
2. If searches have been exhausted, and no relevant social media information has been found; see below on how to document negative results.

In the Possible Social Media section, use the following template to document negative search results. Plug in or take out what parameters were searched in the italicized portion of the template. This information should appear after any positive results or in the beginning of the social media section if no results are returned.

NEGATIVE results

- I conducted searches based on the parameters available on each site using the [arrestee, person of interest, decedent, etc] *name(s), DOB(s), SSN(s), email(s), phone(s)* and other various identifiers. The following systems yielded negative or unrelated results: [list websites accessed here]

Exhibit E



**Homeland Security Bureau
Intelligence Fusion Division**

300 Indiana Ave, NW Room 3044, Washington DC, 20001 Office: 724-4252 Fax: 202-727-5783

MEMORANDUM

TO: Criminal Intelligence Branch Members

FROM: Lieutenant Michael J. Pavlik
Criminal Intelligence Branch

DATE: June 5, 2013

SUBJECT: Social Media Monitoring Policy

The Criminal Intelligence Branch (CIB) has been tasked with creating Social Media Teams. The mission of these teams is to monitor social media websites for possible information on criminal activity and that care is exercised so as to protect person's constitutional rights, and that matters investigated are confined to those supported by a legitimate law enforcement purpose. To that end, the following guidelines shall be followed.

[REDACTED]

[REDACTED]

Members shall only monitor such websites for discussions of possible criminal activity and criminal associations and shall not engage discussions or interactions unless prior approval has been given by the CIB lieutenant.

In exigent circumstances approval maybe requested by phone followed by a written request the next business day.

Members shall print or document information only as it pertains to having reasonable suspicion of criminal activity or associations.

Approval for the above monitoring will only be approved for thirty days. Prior to the expiration members shall request a written request for an extension to the CIB lieutenant as necessary.

The CIB lieutenant shall maintain a file of all requests and shall conduct a review to determine if reasonable criminal suspicion still exists prior to the 30 day expiration.



Members shall prepare a weekly report for each OSS area detailing any information gleaned. However, should a member gain information regarding any criminal acts, potential suspects, or acts of retaliation, this information shall be forwarded ASAP.

Exhibit F



SOCIAL MEDIA

INVESTIGATIVE SUPPORT SECTION

JOINT STRATEGIC & TACTICAL ANALYSIS COMMAND CENTER

METROPOLITAN POLICE DEPARTMENT

WASHINGTON, D.C.

PETER NEWSHAM
CHIEF OF POLICE



SOCIAL MEDIA: INTRODUCTION



- Provide insight on how the Investigative Support Section (ISS) provides open source intelligence for investigative purposes
 - Old vs New procedures
- Techniques
- Challenges & Solutions
- Examples/Success stories

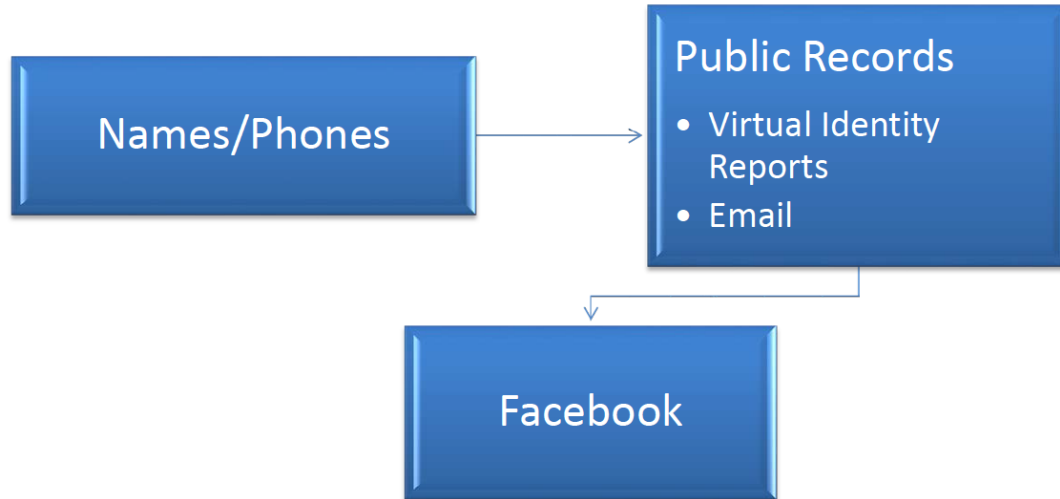


SOCIAL MEDIA: INVESTIGATIVE SUPPORT



- Gaining actionable intelligence off social media about a subject
 - Weapons, narcotics, active areas, chatter, #hashtags, friends, activities, family members, etc.
- More targeted searches
- Ability to search a variety of social networking sites, but often use the most popular at the present time (Instagram, Twitter, Facebook, Youtube, Google)
- Search public profiles, pictures, blogs, comments, etc.





Barely scratching the surface

SOCIAL MEDIA: OLD PROCEDURES

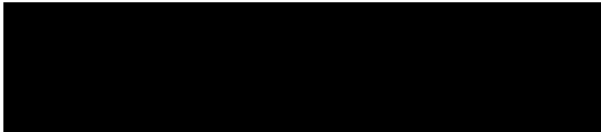


Robbery Arrestee:



Accurint:

Virtual Identity Report



Facebook:



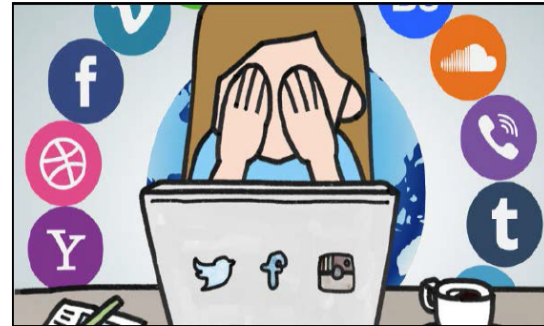
We couldn't find anything for [redacted]
Looking for people or posts? Try entering a name, location, or different words.

**SOME THINGS THAT
ARE TRUE ARE NOT
VERY USEFUL**

SOCIAL MEDIA: CHALLENGES



- Time
 - ✓ SOLUTION
 - New social media protocol
 - In-depth searches post major incident
- Changing Usernames
 - ✓ SOLUTION
 - Variations of their previous usernames, check associates profiles for tagged photos
- Private Accounts
 - ✓ SOLUTION
 - Known associates and family members sharing tagged photos
- Getting Blocked
 - ✓ SOLUTION
 - Change username, view profiles publicly
 - Storiesig.com
- Search Restrictions
 - ✓ SOLUTION
 - Specialized search sites (Spokeo, Pipl, Webstagram, Facebook Messenger)



SOCIAL MEDIA: NEW PROTOCOL



Name(s), Phone(s),
Email(s), Various Identifiers



Accurant Virtual Identity Report, Facebook,
Google and at least 2 other search
engines/sites



If Profile is uncovered:

- URL handle, alias names queried through Google, Facebook, Instagram, Twitter, YouTube, and at least one additional site

Additional steps if no
profiles found

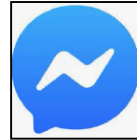


Use other public records (TLO) to find any
possible emails, phones, relatives, etc.



If searches are exhausted, document all sites
searched. Revisit if homicide/major case of
interest

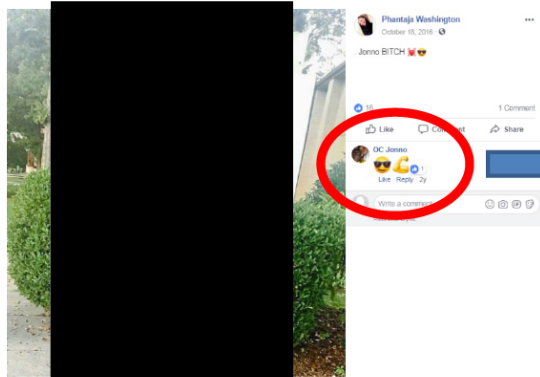
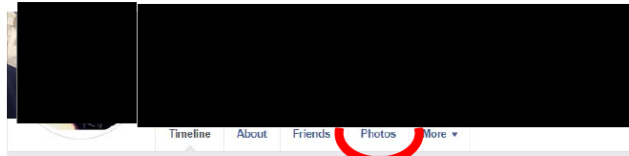
SOCIAL MEDIA: RESOURCES



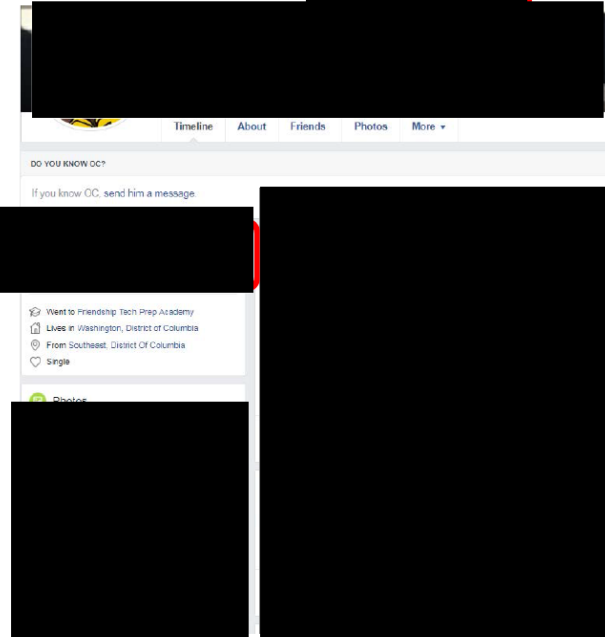
FACEBOOK



- Exhausted searches on armed robbery arrestee, Daejon Ross. Found mother's Facebook account; however, no links to her son.
- Next, Daejon Ross ex-girlfriend/child in common: Phantaja Washington



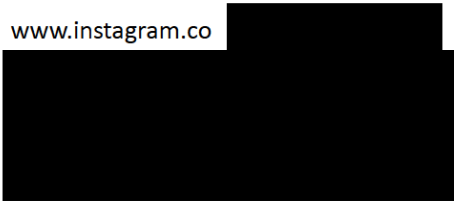
www.facebook.c



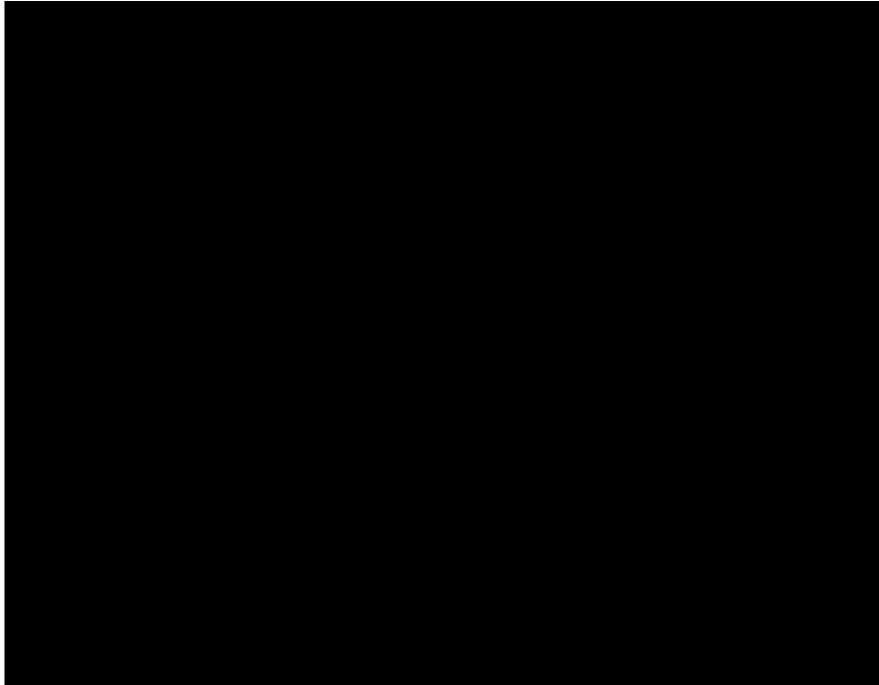
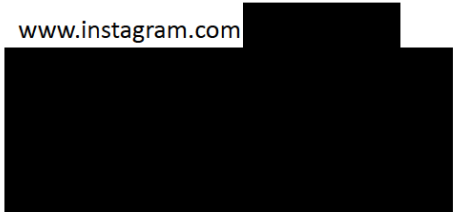
SOCIAL MEDIA: NEW PROTOCOL



www.instagram.co




www.instagram.com



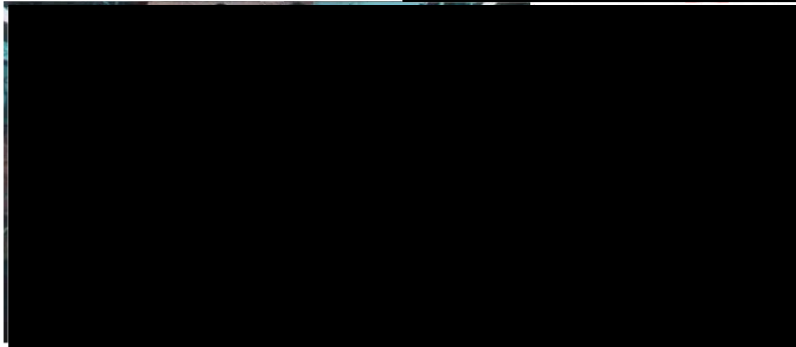
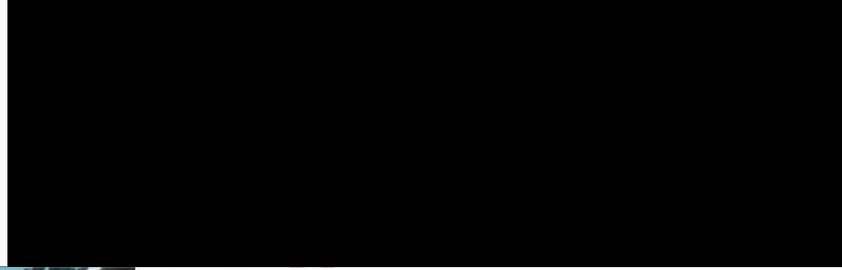
INSTAGRAM

Is there a location
or crew your
subject may be
affiliated with?



INSTAGRAM CONT'D.

While on this profile
look for clues that may
help you identify key
words and help identify
your subject

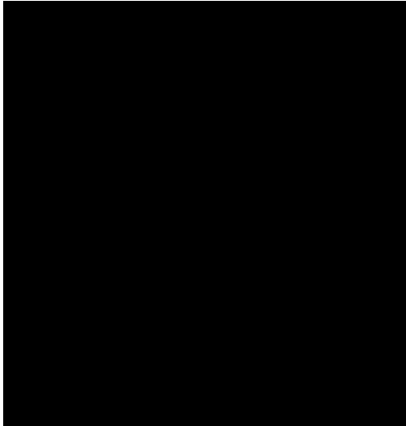


Based on the profile
bio and photos it
appears [redacted] and
[redacted] may be
keywords associated
with subjects from
Simple City

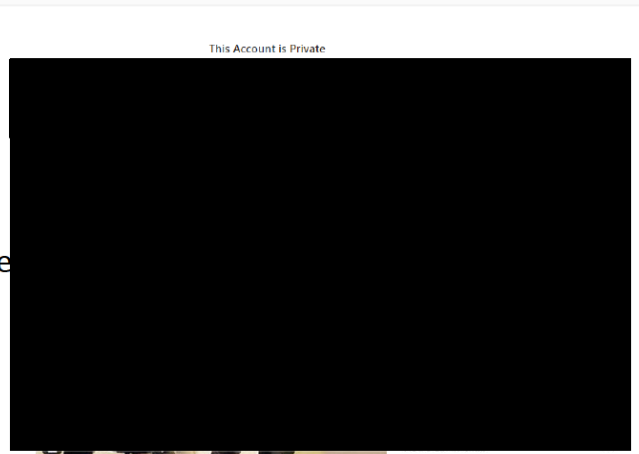
INSTAGRAM CONT'D

Based on that information, try searching [REDACTED] and see what populates

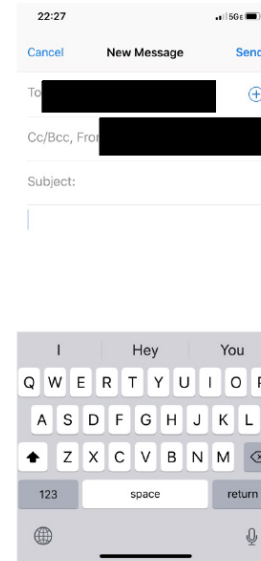
[REDACTED] account is private, how can we combat it?



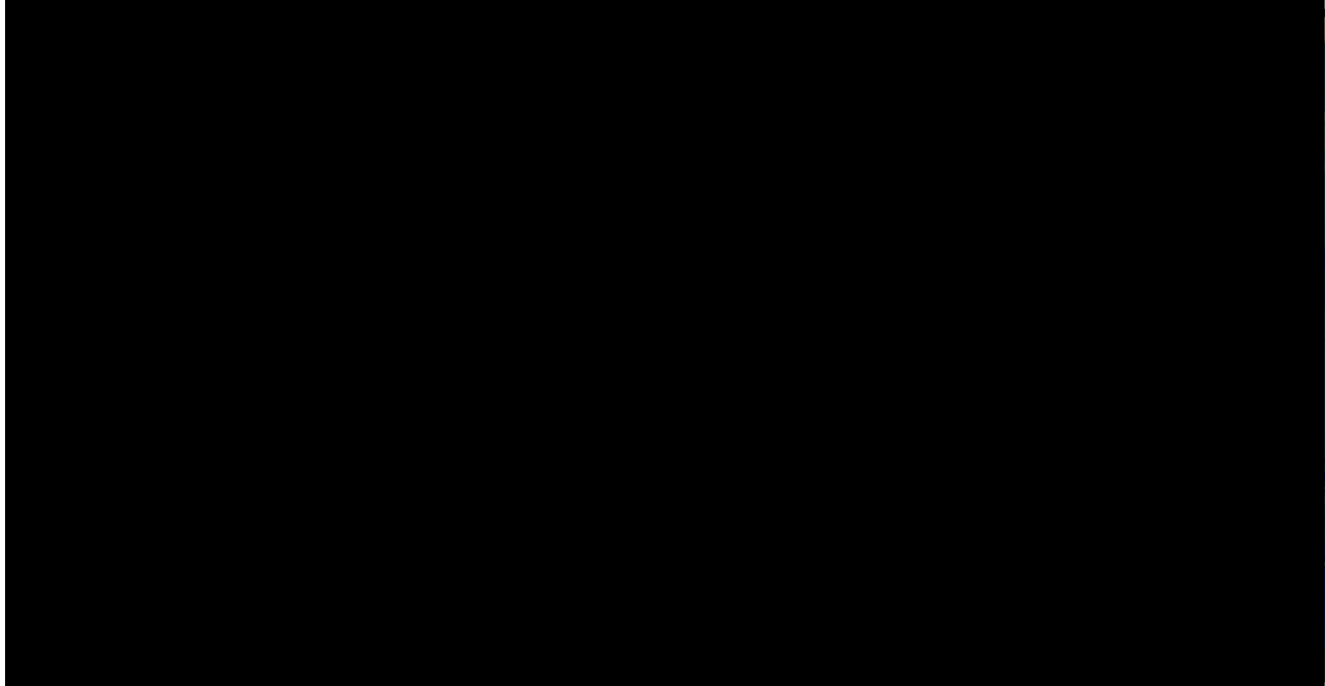
Check [REDACTED] page since its public and he appears to be affiliated with the same area



INSTAGRAM CONT'D



TWITTER



SOCIAL MEDIA: TARGETED SEARCHES



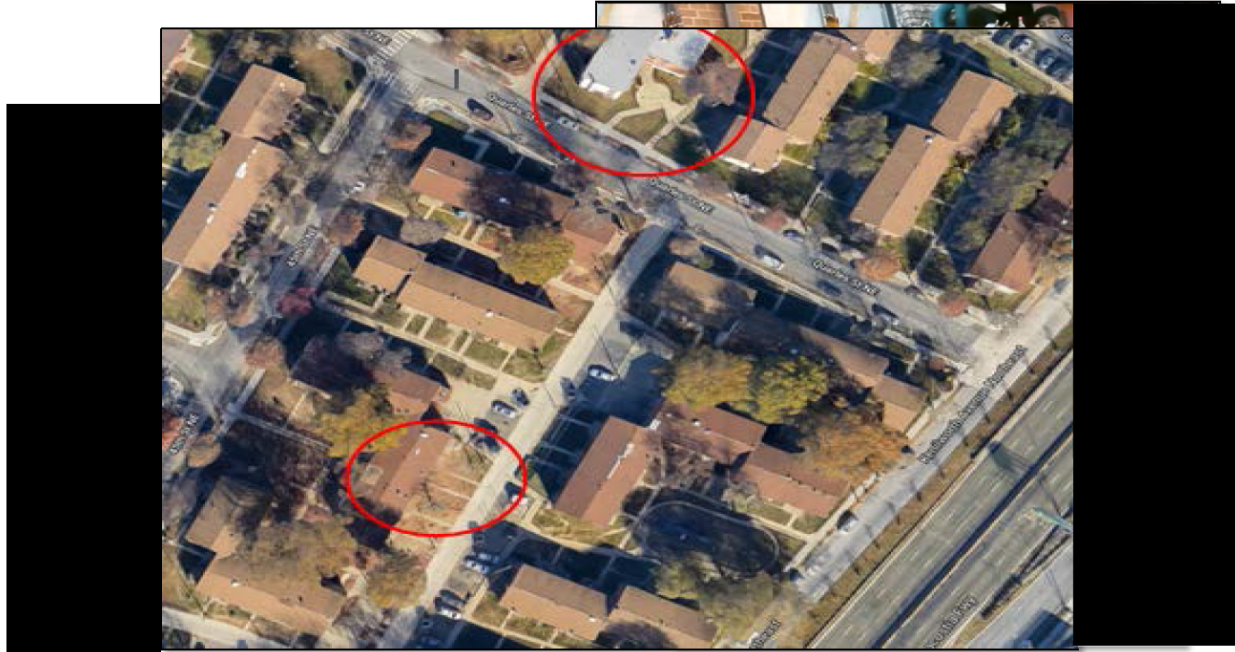
- Social Media drill downs on homicides and high profiles cases/individuals of interest
 - Quick turnaround time for requests
 - Around the clock requests/communication needed between shifts
 - Building out information on hashtags, possible retaliation/crew beefs, relatives/associates
 - Information sharing with Intel, NSID, Districts



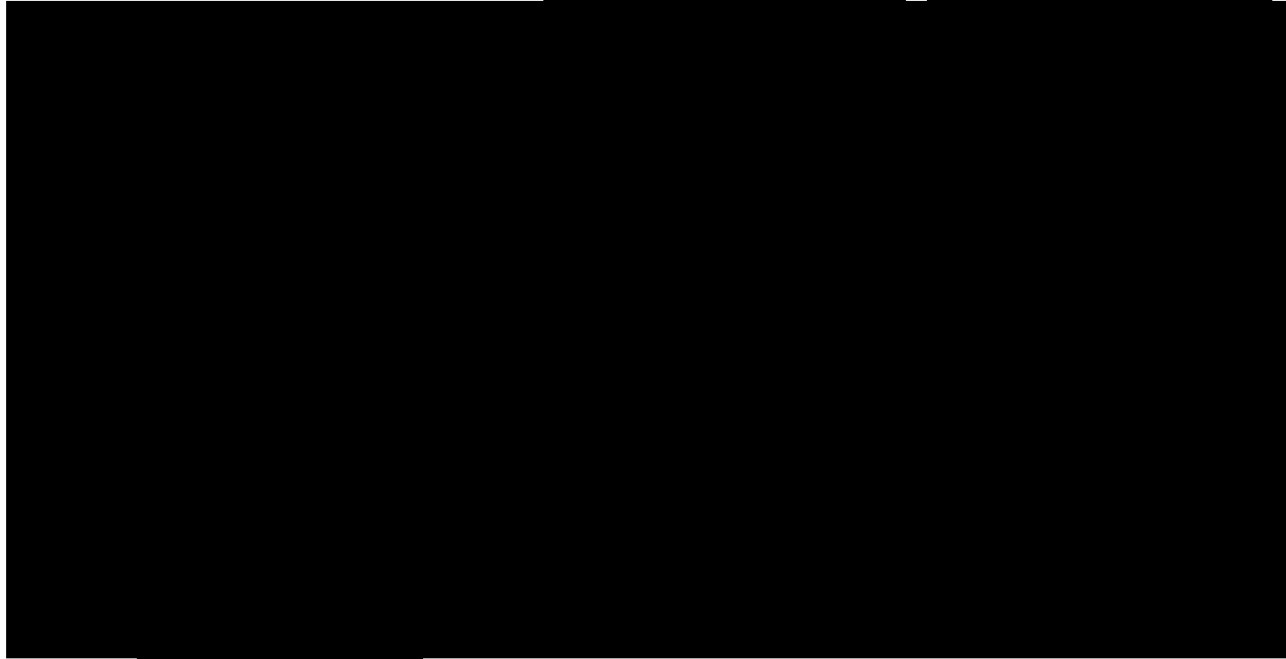
SOCIAL MEDIA: TARGETED SEARCHES - YOUTUBE



SOCIAL MEDIA: TARGETED SEARCHES – YOUTUBE/INSTAGRAM



SOCIAL MEDIA: TARGETED SEARCHES – YOUTUBE/INSTAGRAM

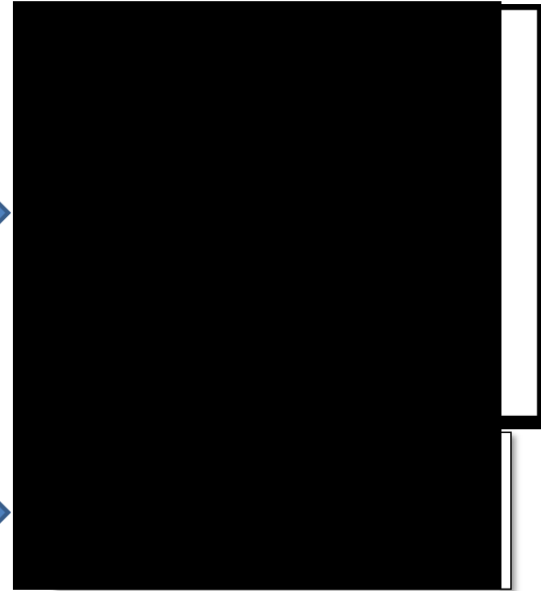


SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE

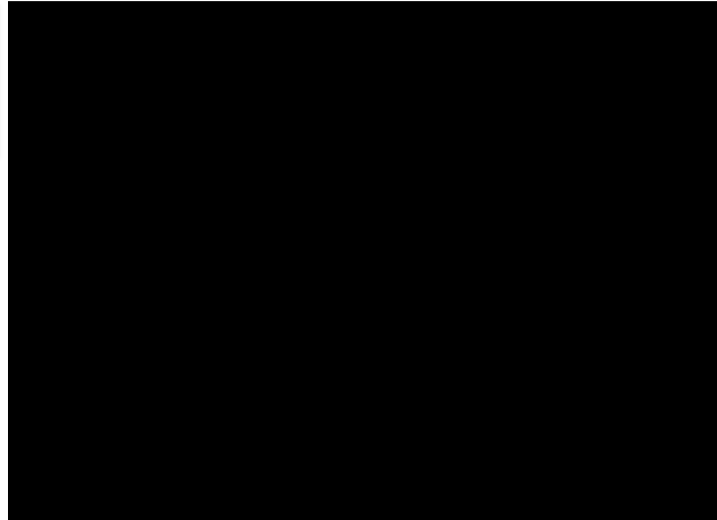
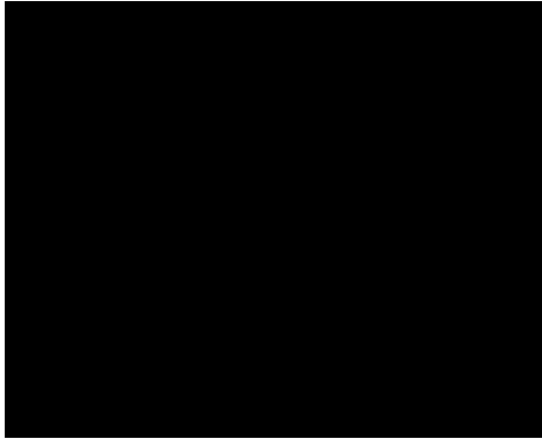


Post homicide follow-up of *validated* [REDACTED]

- Searched through Instagram accounts of known validated members
 - [REDACTED]
 - Posted 4 days after the homicide occurred

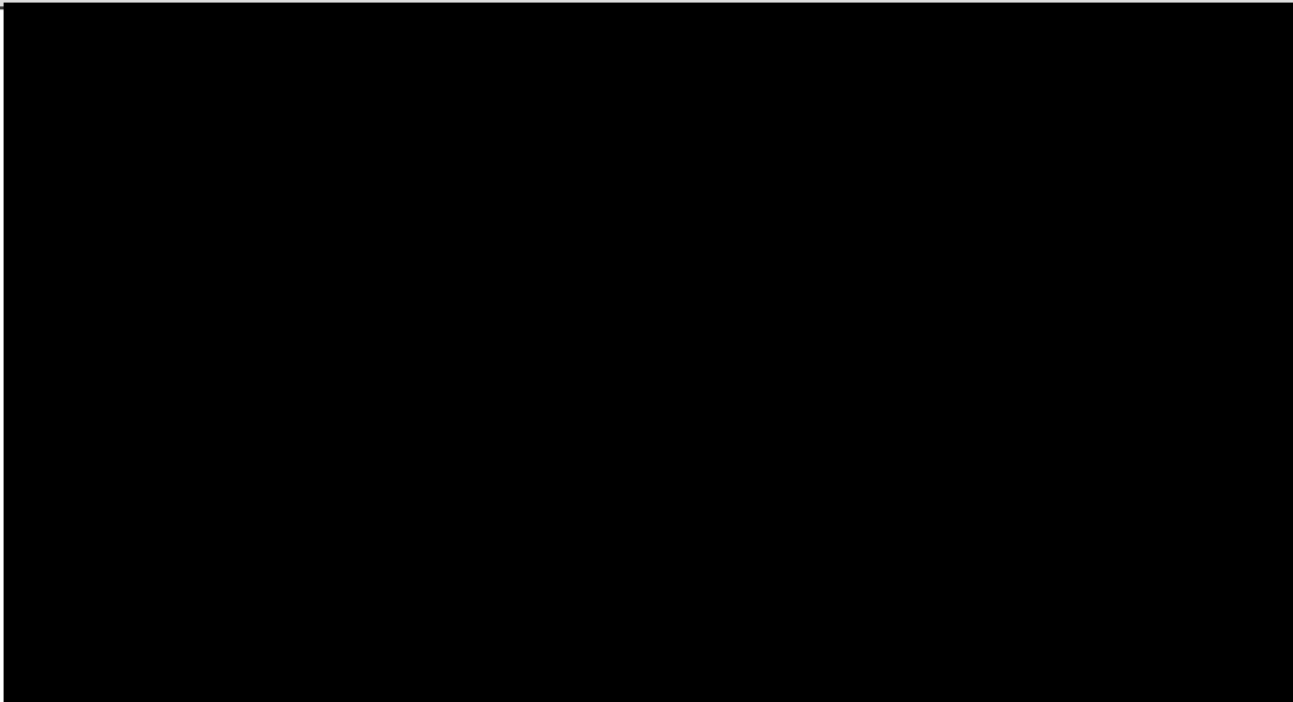


SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE



Who is this person?

TARGETED SEARCHES CONT'

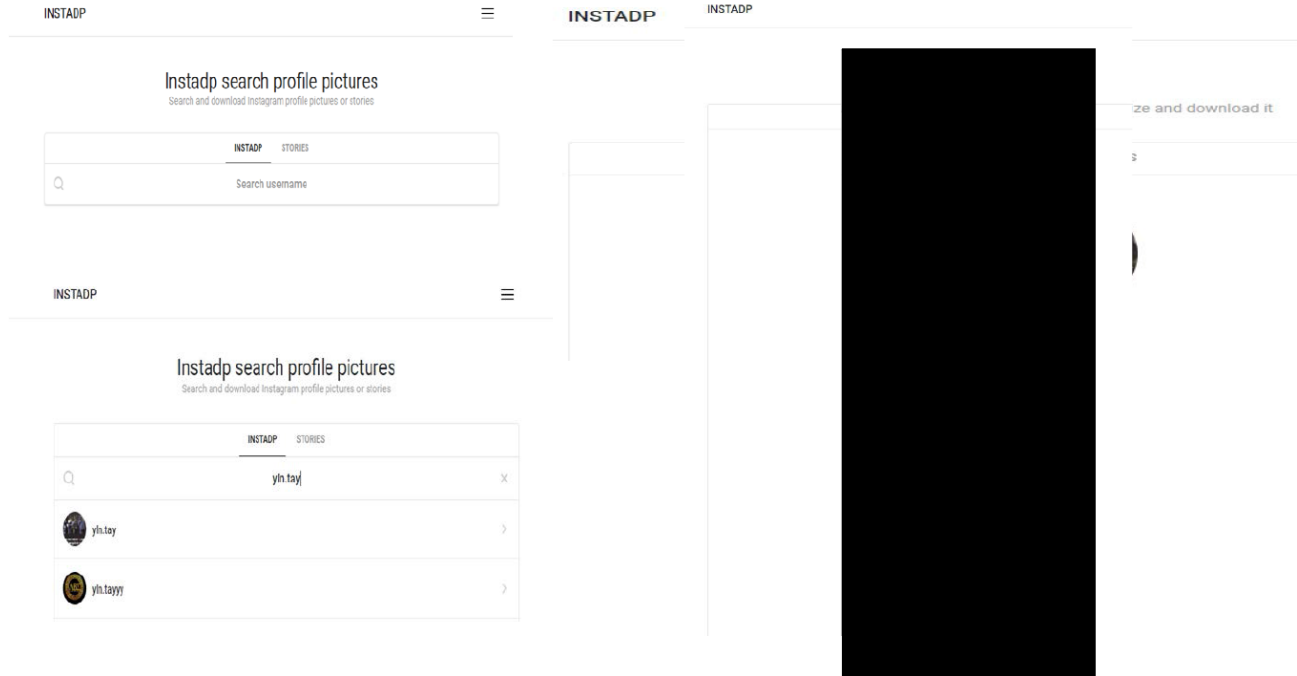


CHALLENGES: SEARCH RESTRICTIONS

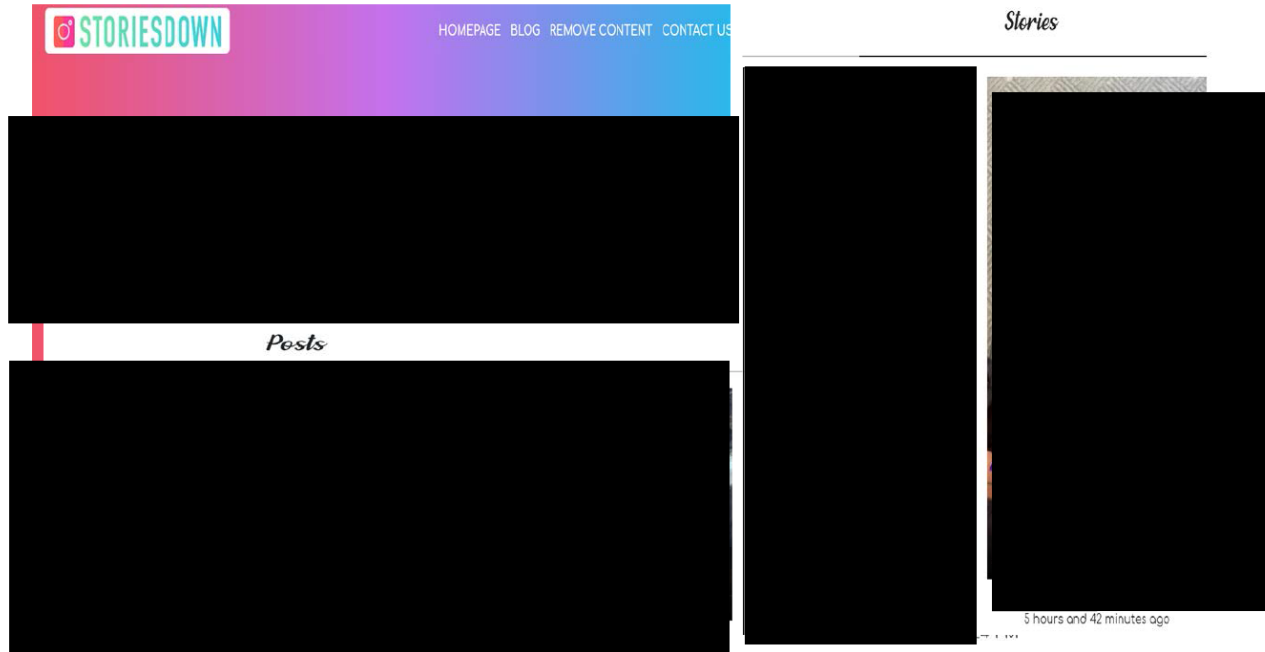
The collage features three distinct web interfaces:

- STORIESDOWN:** A website with a purple-to-blue gradient header. It includes a search bar with the placeholder "Enter Instagram username" and a "Search" button. A Google Ad is visible above the search bar.
- Start Download:** A white box with a dark header containing "Home" and "Download Stories". Below the header, it says "Start Download" and "View PDF & Download PDF Converter Guru".
- INSTADP:** A white interface with a header "INSTADP" and "Instdp search profile pictures". Below the header, it says "Search and download Instagram profile pictures or stories". A search bar contains the text "Search username".

CHALLENGES: SEARCH RESTRICTIONS INSTADP



CHALLENGES: SEARCH RESTRICTIONS STORIESDOWN



CHALLENGES: SEARCH RESTRICTIONS W3TOYS

Home Download Stories Download Highlights

Start Download
View PDF & Download PDF Converter Guru

Inst
Instagram

Instagram Downloader
https://www.instagram.com/p/B_Av_YgH1ge/

Advertisement

START >

1. Click "START"
2. Add the app
3. Find directions instantly

DirectionsTab

Download

CHALLENGES: SEARCH RESTRICTIONS TWITTER DOWNLOAD

Twitter Video Downloader

Download twitter videos & GIF from tweets

←

Ads by Google

Stop seeing this ad Why this ad? ▶

Paste Tweet URL Here:

Enter link/url and click Download

Download

SOCIAL MEDIA: ADDITIONAL SEARCHES



- Using specialized sites to search hashtags, telephone numbers, usernames, email addresses, keywords, URLs
- Specialized site searches for Twitter, Instagram, etc.



peekyou

WebMii

SPOKEO

#tagboard

pipl

Buzzsumo

Lullar
com

Social Searcher

SnapBird

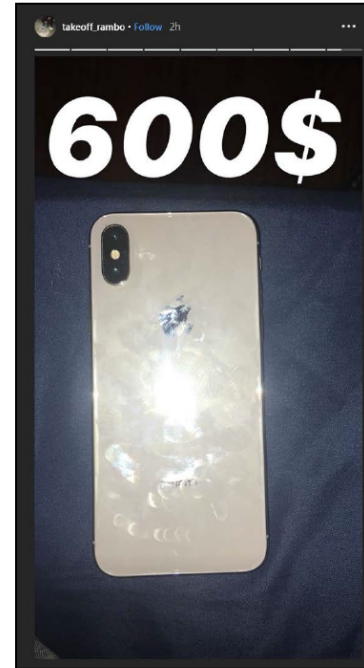
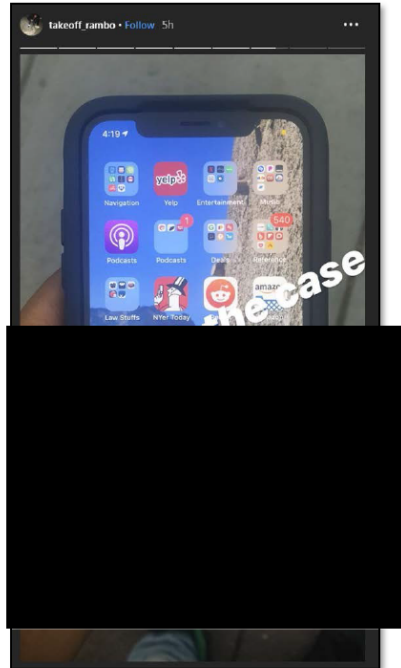
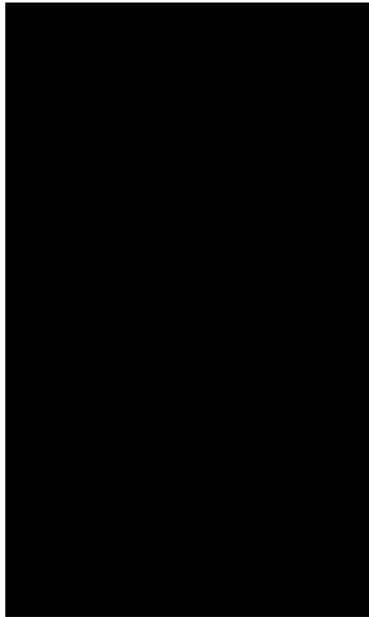
WEBSTAGRAM

WHAT'S NEXT?



Check-in on known recidivists and gang/crew members with a social media footprint

SOCIAL MEDIA: TARGETED SEARCHES – SUCCESS STORY

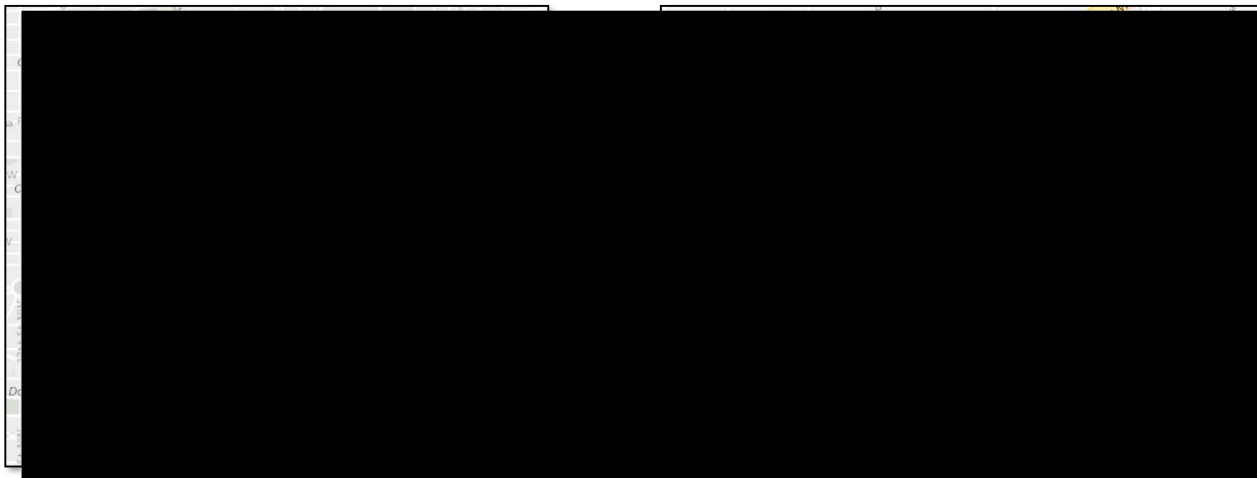


SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE



01/04/19 0037 - 0234 hours - Robbery (Gun) [REDACTED]

- On the above listed date and time, the complainant and two others were approached from behind and held at gunpoint by three suspects who instructed them to lie face down then took several items including an **iPhoneX** described in Cobalt as **Aluminum/Silver**. The look out in this incident was for **3 B/M, late teens to mid-twenties**.

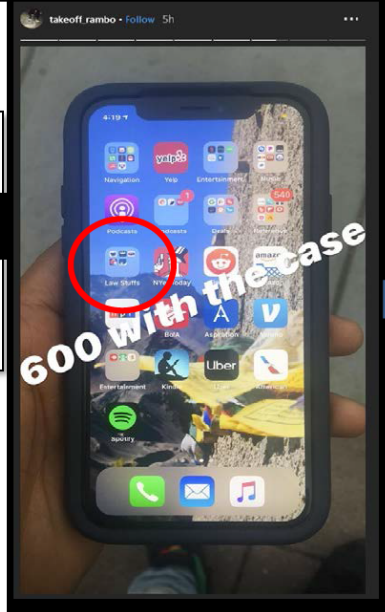


SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE



Complainant, owner of the iPhone X stolen in the 01/04/19 incident appears to be a lawyer. The phone has a folder of apps dedicate to "Law Stuffs". [REDACTED]

Attorney Licensee [REDACTED]
License Status: Active [REDACTED]
[REDACTED]
Law School: UC Berkeley SOL Boalt Hall; Berkeley CA



SOCIAL MEDIA: TARGETED SEARCHES - EXAMPLE



Social media was queried for complainant. The following Facebook account was located which matches the complainant based on age and location. Photos show the complainant may have recently visited Asia, possibly China. The background of the phone shown in Logan's Instagram story includes what appear to be Tibetan prayer flags.



SOCIAL MEDIA: TARGETED SEARCHES - OUTCOME



- Stopped at the [REDACTED] probable cause for arrest for being in possession and attempting to sell complainant's phone
- **Placed under arrest for RSP, CPWL, PWID Marijuana**
- Recovered in this incident was a Smith & Wesson 9MM Handgun, 1.8 ounces of marijuana, 2 cell phones

QUESTIONS?



METROPOLITAN POLICE DEPARTMENT

300 INDIANA AVENUE NW – WASHINGTON, DC – 20001 – 202.727.9099

WWW.MPDC.DC.GOV

Exhibit G

Totals





| | |
|---|---------|
| Total Crime | 276,891 |
| All Violent Crime | 41,527 |
|  Homicide | 1,140 |
|  Sex Abuse | 2,217 |
|  Assault w/Dangerous Weapon | 16,213 |
|  Robbery | 21,957 |
| All Property Crime | 235,364 |
|  Burglary | 16,842 |
|  Theft f/Auto | 85,642 |
|  Theft/Other | 111,197 |
|  Motor Vehicle Theft | 21,567 |
|  Arson | 116 |

Exhibit 2

From: Appeals, Foia (EOM) <Foia.Appeals@dc.gov>
Sent: Tuesday, January 4, 2022 12:43 AM
To: Admin, FOIA (MPD); FOIA, MPD (MPD)
Cc: Quon, Teresa J.A. (MPD); Strouse, Margaret N. (DC)
Subject: FOIA Appeal 2022-047
Attachments: FOIA Request Administrative Appeal for MPD records.PDF

△ EXTERNAL

Hello,

This Office adjudicates administrative FOIA appeals on behalf of the Mayor. We received the attached appeal based upon a FOIA decision (or lack of decision) issued by your agency. Please provide us with your response to the appeal within five (5) business days of this communication. Please include the following in your response:

- (a) The justification for your decision not to grant review of records as requested;
- (b) A *Vaughn* index of documents withheld, and an affidavit or declaration of a knowledgeable official or employee testifying to the decision to withhold documents; and
- (c) A copy of the public record or records in dispute on the appeal; provided, that if the public record contains personal, sensitive, or confidential information, you may redact such information.

If no response is received, a final decision will be made on the record before us.

Please be advised that your agency's response may be shared with the requester when the final decision is issued. Therefore, please clearly mark any confidential information contained in your response.

Thank you for your assistance.

Sincerely,

Mayor's Office of Legal Counsel (MOLC)
1350 Pennsylvania Avenue, N.W.
Suite 407
Washington, D.C. 20004
(202) 727-8812

Exhibit 10

EXECUTIVE ORDER



DISTRICT OF COLUMBIA

| |
|---|
| Subject: Social Media for Investigative and Intelligence-Gathering Purposes |
| Number EO-21-025 |
| Effective Date November 8, 2021 |
| Replaces: EO-21-024 (Social Media for Investigative and Intelligence-Gathering Purposes), Effective Date October 15, 2021 |
| Related to: GO-OPS-304.01 (Operation and Management of Criminal Investigations) |

I. PURPOSE

The purpose of this executive order is to provide Metropolitan Police Department (MPD) members with guidance on the use, management, administration, and oversight of social media for investigative and intelligence-gathering purposes.

II. PROCEDURES

A. Use of Social Media for Investigations and Intelligence-Gathering

1. Overt monitoring, searching, and collecting of information available in the public domain for any legitimate law enforcement purpose is permitted and requires no supervisory authorization. Overt use of social media in the public domain may include the use of fictitious accounts created to monitor social media provided the account is not used to engage in conversation.
2. In certain circumstances and pursuant to the procedures set forth in this order, members of the following elements may request approval to use non-official MPD social media accounts (i.e., undercover accounts) in the course of legitimate criminal investigations or intelligence collection efforts related to public safety or potential criminal activity.

| Undercover Accounts |
|---|
| a. Criminal Investigations Division |
| b. Intelligence Division |
| c. Internal Affairs Division (criminal investigations only) |
| d. Narcotics and Special Investigations Division |
| e. Youth and Family Services Division |

3. Members shall request written approval from the Narcotics and Special Investigations Division (NSID) commander through the chain of command **prior** to using or creating an undercover account. The NSID commander shall ensure new accounts are reviewed to ensure de-confliction with existing accounts and investigations.

4. If approved, the member may create or use an undercover social media account, profile, avatar, or a similar form of online identification.
 - a. Members shall complete training prior to using an undercover account.
 - b. Members shall not use a proprietary image or another person's likeness without prior consent.
 - c. Members using an undercover account to engage in conversations with a subject may only do so when the member is physically located in the District of Columbia (i.e., to ensure compliance with one-party consent).
 - d. Members shall not use their personal social media account or personal information to access content that is being used as part of an investigation or intelligence-gathering effort.
5. Members have no expectation of privacy when using fictitious social media accounts for overt monitoring or when using undercover social media accounts as all accounts are subject to discovery.
6. Members shall ensure that any criminal investigations involving or overlapping investigations related to First Amendment activities shall be subject to the procedures set forth in GO-HSC-801.03 (Investigations Involving First Amendment Activities).
7. Members shall use only department or federal law enforcement equipment throughout the investigation.
8. Members shall not use another individual's personal account without his or her consent and the written approval of their commanding official, the rank of commander or above.
9. Members shall not use undercover social media accounts on personal devices.
10. Members seeking to use the personal account of confidential informants or cooperating witnesses shall request specific approval from NSID through the member's commanding official.
11. Members shall not post content that is disparaging to a person or group based on race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, status as a victim of an intrafamily offense, place of residence or business, and status as a victim or family member of a victim of domestic violence, a sexual offense, or stalking.

12. Members shall report any potential compromise of an online alias to their official immediately upon becoming aware and be guided by his or her direction.

B. Oversight and De-Confliction

1. NSID shall provide oversight by maintaining a centralized registry of all active undercover social media accounts for de-confliction purposes. The registry shall include any assigned central complaint numbers (CCNs) or incident summary (IS) numbers, name of primary investigating member responsible for the account, date that the account was created, social media platform used to create the account, and log in credentials (i.e., username and password).
2. Commanding officials shall monitor the use of undercover social media accounts in use by their members. Commanding officials shall conduct a documented review of all accounts every 30 days to ensure:
 - a. That members are operating accounts pursuant to this order and not in a manner which could be interpreted as biased, unprofessional, or otherwise in violation of policy; and
 - b. That each investigation warrants the continued use of an undercover account.

III. DEFINITIONS

When used in this directive, the following terms shall have the meanings designated.

| | Term | Definition |
|----|--------------------|---|
| 1. | Fictitious account | Social media identity that has been created by a member of MPD for the purpose of concealing his or her identify as a law enforcement officer in order to engage in overt monitoring of social media. |
| 2. | Monitor | Observing social media accounts and content including sending requests to follow individual social media accounts. |
| 3. | Post | Uploaded content or added response uploaded by another user. |
| 4. | Profile | Information that a user provides about him or herself on a social media or similar site. |
| 5. | Social media | Online sources that allow people to communicate, share, and exchange information with others via some form of online or cellular network platform (e.g., Facebook, Twitter, Instagram, LinkedIn). Information may include, but is not limited to, text, photographs, video, audio, and other multimedia files, message or online bulletin boards, and other similarly developed formats, to communicate with others using the same groups while also networking with other users based upon similar interests (e.g., geographical location, skills, occupation, ideology, beliefs). |
| 6. | Undercover account | Social media identity that has been created by a member of MPD for the purpose of concealing his or her identify as a law enforcement officer in order to gain information. |

A handwritten signature in black ink, appearing to read "Robert J. Contee III". The signature is fluid and cursive, with a prominent flourish at the end.

Robert J. Contee III
Chief of Police

RJC:KDO:MOC:SMM

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

JUDICIAL WATCH, INC.,
Plaintiff,
v.
DISTRICT OF COLUMBIA,
Defendant.

2019 CA 007410 B

Judge Yvonne Williams

ORDER

Before the Court is Plaintiff Judicial Watch, Inc.'s ("Judicial Watch") Motion for Summary Judgment, filed on October 21, 2020. On November 6, 2020, Defendant District of Columbia ("the District") filed its Opposition. Judicial Watch's Reply followed on November 9, 2020. Also before the Court is Defendant District of Columbia's Motion for Leave to File a Motion for Summary Judgment, filed on October 23, 2020, and accompanied by a Motion for Summary Judgment. Judicial Watch filed an Opposition to the Motion for Leave to File a Motion for Summary Judgment on October 23, 2020 and an Opposition to the District's Motion for Summary Judgment on November 2, 2020. For the following reasons, Judicial Watch's Motion for Summary Judgment shall be **HELD IN ABEYANCE**, the District's Motion for Leave to File a Motion for Summary Judgment shall be **GRANTED**, and the District's Motion for Summary Judgment shall be **DENIED**.

I. FACTUAL BACKGROUND

The District of Columbia's Freedom of Information Act ("FOIA") declares "[t]he public policy of the District of Columbia is that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Code § 2-531. Pursuant to this sunshine law, Plaintiff Judicial

Watch, Inc. submitted a FOIA request to the Office of the Advisory Neighborhood Commission (“ANC”) on September 10, 2019. Pl.’s Mot. for Summ. J., Statement of Facts (“Pl. SUMF”) § 14; Def.’s Mot. for Summ. J., Statement of Material Facts (“Def. SUMF”) ¶ 1.¹ The request sought access to:

- A. Emails and/or texts of Commissioner Rhonda Hamilton² concerning “Square 653 Row Houses;” Square 653 – Lots 52-54, 60-66, 68, 69, and 827;” “Old Southwest” Historic District which is bounded by M Street, S.W., South Capitol Street, S.W., Q Street, S.W., and Canal/2nd Street, S.W.; and/or Office of Planning Case Number 17-11. This request seeks emails from both Commissioner Hamilton’s official government email account as well as her personal email account (misrhonda@yahoo.com). The timeframe for this request is from January 1, 2017 to present.
- B. Emails and/or texts of Commissioner Gail Fast concerning “Square 653 Row Houses;” Square 653 – Lots 52-54, 60-66, 68, 69, and 827;” “Old Southwest” Historic District which is bounded by M Street, S.W., South Capitol Street, S.W., Q Street, S.W., and Canal/2nd Street, S.W.; and/or Office of Planning Case Number 17-11. This request seeks emails from both Commissioner Fast’s official government email account as well as her personal email account (fasthgail@gmail.com). The timeframe for this request is from January 1, 2017 to present.

Pl. SUMF ¶ 14.

Gottlieb Simon, the Executive Director of the Office of the Advisory Neighborhood Commission, directed the District of Columbia Office of the Chief Technology Officer to search Commissioners Fast’s and Hamilton’s ANC email accounts and provided responsive emails to Judicial Watch. Pl. SUMF ¶ 1; Def. SUMF ¶ 4. Mr. Simon further instructed Commissioner

¹ The Court construes the respective Statement of Facts and Statement of Material Facts as complying with Rule 56(b)(2), which requires the movant of a motion for summary judgment to file a statement of undisputed material facts.

² Rhonda Hamilton is an ANC Commissioner. Pl. SUMF ¶ 6. Until late 2019, Commissioner Hamilton used both an official, government-issued email account as well as a personal email account to conduct official ANC business. *Id.* ¶ 7. She also conducted official ANC business via text message. *Id.* ¶ 11.

Hamilton how to search her personal accounts for records responsive to the request. Pl. SUMF ¶ 17; Def. SUMF ¶ 5. The search consisted of the terms “Old Southwest,” “square 653,” and “17-11.” Def. SUMF ¶ 2; *see also* Def. Mot. for Summ. J., Ex. A, Decl. of Gottlieb Simon ¶ 4. By Commissioner Hamilton’s deposition testimony, she does not remember what those instructions were but states she completed the search as instructed. Pl. SUMF ¶¶ 18, 20. By Mr. Simon’s deposition testimony, he provided her with search terms and discussed questions she had about how the search—but he never provided specific instructions on how to conduct the search. Pl. SUMF ¶ 19; *see also* Def. Mot. for Summ. J., Ex. B., Depo. of Gottlieb Simon Tr. at 25:7–26:14 (Aug. 14, 2020). Accordingly, Commissioner Hamilton did not conduct any searches based on her firsthand knowledge of the subject matter or who or what she may have sent or received through email or text messages about the subject matter at issue in the FOIA request. Pl. SUMF ¶ 22.

Commissioner Hamilton found responsive emails in her personal email account and provided them to Mr. Simon, who in turn provided the documents to Judicial Watch as part of the FOIA production. Def. SUMF ¶¶ 6, 9. Commissioner Hamilton did not find any responsive text messages, however. *Id.* ¶ 6. Commissioner Fast provided responsive emails to Mr. Simon from her personal email account; she did not use text messaging to conduct ANC business. *Id.* ¶¶ 7–8. On November 27, 2019 and February 6, 2020, the Office of the Advisory Neighborhood Commission produced responsive records to Judicial Watch. Pl. SUMF ¶ 15; Def. SUMF ¶ 9. On January 21, 2020, Mr. Simon provided some remaining emails from Commissioner Hamilton’s personal email account to the Office of the Attorney General, who later provided them to Judicial Watch. Def. SUMF ¶ 11.

II. PROCEDURAL HISTORY

Judicial Watch initiated this FOIA action on November 8, 2019. At a February 28, 2020 Status Hearing, the Court permitted Judicial Watch to take limited discovery, including depositions of Commissioner Fast, Commissioner Hamilton, and Mr. Simon. At a September 18, 2020 Status Hearing, the Court set the instant dispositive motions briefing schedule, requiring that Judicial Watch's Motion for Summary Judgment be filed by October 23, 2020, any opposition by November 6, 2020, and any reply by November 13, 2020. At the hearing, the District represented that it did not intend to file a Motion for Summary Judgment.

On October 21, Judicial Watch filed the instant Motion for Summary Judgment. It submits that it is satisfied that the District has conducted reasonable searches of the official email accounts of Commissioners Fast and Hamilton as well as Commissioner Fast's personal email account and text messages. Judicial Watch's sole remaining challenge is the adequacy of the searches of Commissioner Hamilton's personal email account and text messages. Judicial Watch asks the Court to order the District "to conduct searches reasonably calculated to uncover all relevant emails and text messages of Commissioner Hamilton." Pl.'s Mot. for Summ. J. at 7.

On October 23, 2020, the District filed its Motion for Leave to File a Motion for Summary Judgment. The District submits that it "has since determined that a cross Motion for Summary Judgment is necessary to show Plaintiff's claims are moot" and attached its Motion for Summary Judgment with its filing. The District's Motion for Summary Judgment is supported by a Declaration from Gottlieb Simon, the three deposition transcripts, and a *Vaughn* index.³ Judicial Watch filed an Opposition to the Motion for Leave to File a Motion for Summary Judgment on

³ A *Vaughn* index itemizes any withheld documents and explains why each document is exempt from disclosure. See *Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973).

October 23, 2020 and an Opposition to the District’s Motion for Summary Judgment on November 2, 2020. On November 6, 2020, the District filed its Opposition to Judicial Watch’s Motion for Summary Judgment. It attached the same Declaration from Gottlieb Simon, deposition transcripts, the *Vaughn* index, and screenshots of search terms in an iPhone’s search bar in support. Judicial Watch’s Reply followed on November 9, 2020.

III. LEGAL STANDARD

Judicial Watch’s sole challenge on summary judgment is whether the District conducted an adequate search of Commissioner Hamilton’s personal email account and text messages for records responsive to Judicial Watch’s FOIA request. In assessing whether a District entity subject to FOIA has undertaken an adequate search to fulfill a FOIA request, courts look not to “the fruits of the search,” but instead to the “appropriateness of the methods used to carry out the search.” *Iturralde v. Comptroller of Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). The agency “must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Fraternal Order of Police v. District of Columbia (FOP I)*, 79 A.3d 347, 360 (D.C. 2013) (internal citations omitted). “An agency’s search conducted in response to a FOIA request ‘need not be perfect, only adequate, and adequacy is measured by the reasonableness of the effort in light of the specific request.’” *Id.* (quoting *Meeropol v. Meese*, 790 F.2d 942, 956 (D.C. Cir. 1986)).

In FOIA cases, “[t]he burden is on the agency to demonstrate, not the requester to disprove, that the materials sought . . . have not been improperly withheld.” *U.S. Dep’t of Justice v. Tax Analysts*, 492 U.S. 136, 142 n.3 (1989) (internal quotation marks and citation omitted). When the District seeks summary judgment, this burden aligns with the District’s burden as the moving party to prove there is no genuine issue of fact regarding its fulfillment of its FOIA obligations. The

District must establish “beyond material doubt” that it expended reasonable efforts “to uncover all relevant documents.” *Nation Magazine, Wash. Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995).

To carry that burden, the District “must set forth sufficient information in its affidavits for a court to determine if the search was adequate.” *Id.* (citing *Oglesby v. U.S. Dep’t of Army*, 920 F.2d 57, 68, (D.C. Cir. 1990)); *see also FOP I*, 79 A. 3d at 360 (“The burden is on the agency to establish through reasonably detailed affidavits that its search was reasonable.”) (internal quotation marks and citation omitted). The affidavits submitted by the District in support of a motion for summary judgment “must demonstrate ‘with reasonable detail[] that the search method . . . was reasonably calculated to uncover all relevant documents.’” *FOP I*, 79 A.3d at 360 (quoting *Doe v. D.C. Metro. Police Dep’t*, 948 A.2d 1210, 1221 (D.C. 2008)). “More concretely, the District must adequately explain both how the search was conducted and why it was conducted in that manner; only then can the trial court assess the reasonableness of the District’s efforts.” *Fraternal Order of Police v. District of Columbia (FOP II)*, 139 A.3d 853, 864-865 (D.C. 2016).

“If the agency meets its burden, the FOIA requester can prevail in a motion for summary judgment only by showing that the agency’s search was not made in good faith.” *FOP I*, 79 A.3d at 360. “Purely speculative claims about the existence and discoverability of other documents” is insufficient to establish the agency lacked good faith. *Safecard Servs., Inc. v. SEC*, 926 F.2d 1197, 1200 (D.C. Cir. 1991). And, if the agency fails to meet its burden for summary judgment, “a FOIA requester may prevail on a motion for summary judgment ‘merely by showing that the agency might have discovered a responsive document had the agency conducted a reasonable search.’” *FOP I*, 79 A.3d at 360 (quoting *Safecard Servs., Inc.*, 926 F.2d at 1200).

IV. DISCUSSION

A. The District's Motion for Leave to File a Motion for Summary Judgment

As a threshold matter, the Court grants the District's Motion for Leave to File a Motion for Summary Judgment and accepts its Motion for Summary Judgment as filed on October 23, 2020. The District represents that its motion is necessary to oppose Judicial Watch's claims as moot. Its arguments are also intertwined with its response to Judicial Watch's Motion for Summary Judgment and speak to the merits of this matter. Although Judicial Watch protests procedural unfairness and that it would have structured its arguments differently in its own Motion for Summary Judgment had it known the District intended to file a dispositive motion, the Court finds that because the District's Motion for Summary Judgment was filed within the briefing schedule set by the Court, and Judicial Watch was afforded a full opportunity to respond to the District's Motion for Summary Judgment and a reply brief in support of its own Motion for Summary Judgment, Judicial Watch has not been substantially prejudiced. Accordingly, the Court finds good cause to permit the District leave to file its Motion for Summary Judgment and addresses the Motion for Summary Judgment herein.

B. The District's Motion for Summary Judgment

The Court finds that the District has failed to meet its burden for summary judgment. The District argues that because it has produced all non-exempt documents the case is moot. In the FOIA context, a request for relief is moot "once the trial court determines that the District has adequately and completely complied with the FOIA request." *Fraternal Order of Police, Metro. Labor Comm. v. District of Columbia*, 113 A.3d 195, 199 (D.C. 2015); *see also Fraternal Order of Police, Metro. Labor Comm. v. District of Columbia*, 82 A.3d 803, 813 (D.C. 2014). However, the Court has not determined that the District had adequately and completely complied with the

FOIA request. Indeed, as Judicial Watch argues in its Opposition, courts have rejected the argument that a case is over merely because the District says so. *See e.g., id.* at 816–17; *Jacobson v. District of Columbia*, Case No. 2013 CA 003283 B (D.C. Super. Ct. Feb. 27, 2014) (“The Court fails to appreciate Defendants’ argument that the case has been rendered moot merely because they claim they have fully complied in, a timely fashion (a representation with which Plaintiff disagrees), by production of all the documents (or portions thereof) to which Plaintiff is entitled.”).

The stumbling block here is that the District has not set forth sufficient information in its affidavits to determine if the search was adequate. Although the District has explained its search terms, the District has not explained “both how the search was conducted and why it was conducted in that manner.” *See FOP II*, 139 A.3d at 864–865. It is not enough for Mr. Simon to state in conclusory fashion that he “directed both Fast and Hamilton to search their personal email accounts and cellphones for messages that contained the terms ‘Old Southwest,’ ‘square 653,’ and ‘17-11.’” *See* Def.’s Mot. for Summ. J., Ex. A, Decl. of Gottlieb Simon at ¶ 7; *see also Morley v. CIA*, 508 F.3d 1108, 1122 (D.C. Cir. 2007) (holding that a declaration that “provide[d] no information about the search strategies” and failed to “identify[] the terms searched or explain[] how the search was conducted” was not an adequate basis for summary judgment) (internal quotation marks and citation omitted); *Oglesby*, 920 F.2d at 68 (determining that an agency failed to justify limiting its search to a single record system where it was “not clear from [the agency’s] affidavit that [this] system [wa]s the only possible place that responsive records [we]re likely to be located”). In addition, deposition testimony cannot confirm how the search was conducted or why it was conducted in any particular manner as Commissioner Hamilton cannot recall how she conducted the search and Mr. Simon appears not to have provided specific instructions. *See* Def. Mot. for Summ. J., Ex. B., Depo. of Gottlieb Simon Tr. at 25:7–26:14 (Aug. 14, 2020); *Id.*, Ex. D,

Depo. of Rhonda Hamilton Tr. at 24:12–27:22 (Aug. 13, 2020). Finally, the Court cannot rely on the screenshots of a search performed on an iPhone at the District’s Opposition, Exhibit F. The screenshots are not authenticated, bear no notion that the phone belongs to Commissioner Hamilton, does not indicate a date the search was performed, and no representation exists if the search would have turned up deleted or stored text messages. Accordingly, the District has not met its burden by the letter of the law and the Court must deny its Motion for Summary Judgment.

C. Judicial Watch’s Motion for Summary Judgment

The Court is inclined to grant Judicial Watch’s Motion for Summary Judgment. Judicial Watch has shown that the District failed to satisfy its burden in explaining how it conducted its search and why it conducted the search in the manner that it did; without adequate explanation, the Court cannot be assured that the District conducted an adequate search for all responsive documents. However, Judicial Watch’s relief requested is vaguely to order the District “to conduct searches reasonably calculated to uncover all relevant emails and text messages of Commissioner Hamilton.” Pl.’s Mot. for Summ. J. at 7. It is not clear from Judicial Watch’s briefing if it takes issue with both the search terms and how the searches were conducted, or what search conduct from the District would satisfy Judicial Watch as a complete and adequate search. Thus, the Court lacks the required specificity by which to order relief so as to fully resolve this matter.

Accordingly, the Court hereby orders the Parties to meet and confer about adequate search terms and methods. If the Parties cannot resolve the search terms and methods to be carried out without Court intervention, the Court will hear argument on the subject at the Status Hearing currently scheduled for December 18, 2020. If the Parties reach an agreement before the Status Hearing, they are instructed to file a Praecipe with the Court and the Court will vacate the December 18, 2020 Status Hearing. For these reasons, Judicial Watch’s Motion for Summary

Judgment shall be held in abeyance until the Court receives a Praecipe from the Parties or the December 18, 2020 Status Hearing.

V. CONCLUSION

In sum, the Court shall grant the District's Motion for Leave to file a Motion for Summary Judgment, but denies without prejudice the District's Motion for Summary Judgment for failure to demonstrate with reasonable detail that the search terms and search methods employed were reasonably calculated to uncover all relevant documents. The Court orders the Parties to meet and confer to address adequate search terms and search methods prior to the December 18, 2020 Status Hearing. Finally, the Court holds in abeyance Judicial Watch's Motion for Summary Judgment until such time as the Parties file a Praecipe resolving outstanding challenges or the Parties appear for the December 18, 2020 Status Hearing.

Accordingly, it is on this 15th day of December, 2020, hereby,

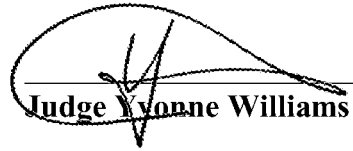
ORDERED that Plaintiff Judicial Watch, Inc.'s Motion for Summary Judgment shall be **HELD IN ABEYANCE** until the Parties file a Praecipe notifying the Court of agreed search terms and methods or the Parties appear for a Status Hearing on December 18, 2020; and it is further

ORDERED that the Parties meet and confer to address adequate search terms and methods as respects Plaintiff Judicial Watch, Inc.'s remaining challenges to Defendant District of Columbia's response to Plaintiff's FOIA request; and it is further

ORDERED that Defendant District of Columbia's Motion for Leave to File a Motion for Summary Judgment shall be **GRANTED** and shall be accepted as filed on October 23, 2020; and it is further

ORDERED that Defendant District of Columbia's Motion for Summary Judgment shall be **DENIED WITHOUT PREJUDICE**.

IT IS SO ORDERED.



Judge Yvonne Williams

Date: December 15, 2020

Copies to:

Michael Bekesha
Counsel for Plaintiff

Michael K. Addo
Counsel for Defendant

Exhibit 12

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

WP COMPANY LLC,

Plaintiff,

v.

DISTRICT OF COLUMBIA,

Defendant.

2021 CA 002114 B

Judge Yvonne Williams

ORDER

Before the Court is Defendant District of Columbia's Opposed Motion to Dismiss ("Motion"), filed on November 29, 2021. Plaintiff's Opposition to Defendant's Partial Motion to Dismiss ("Opposition") was filed on December 13, 2021. The District of Columbia filed Defendant's Rely in Support of Motion to Dismiss ("Reply") on December 20, 2021. For the following reasons, the Motion shall be **GRANTED IN PART AND DENIED IN PART**.

This matter came before the Court for an Initial Scheduling Conference on January 21, 2022. Counsel Maxwell S. Mishkin appeared for Plaintiff WP Company LLC ("WP") and counsel Brendan Heath appeared for Defendant District of Columbia (the "District"). During the hearing, the Court addressed the District's Motion. Upon consideration of the Motion, WP's Opposition, the District's Reply, the Parties' representations during the hearing, and for the reasons the Court articulated on the record, the Court Dismissed Count I of WP's Complaint with respect to the messages sent by Mayor Muriel Bowser (the "Mayor") from her email account between January 5 and January 8, 2021 under Superior Court Rule of Civil Procedure 12(b)(1). Count I remains with respect to the messages sent by the Mayor from her WhatsApp Account between January 5 and January 8, 2021. The Court rules on each issue as follows:

I. The Mayor's Email Messages

Under the D.C. Freedom of Information Act (“FOIA”), “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. D.C. Code § 2-531. Generally, “once the government produces all the documents a plaintiff requests, the claim for relief under the FOIA becomes moot.” *FOP, Metro. Labor Comm. V. District of Columbia (FOP Intoxilyzer FOIA)*, 82 A.3d 803, 813 (D.C. 2014) (internal quotations and brackets omitted) (quoting *Walsh v. United States Dep’t of Veteran Affairs*, 400 F.3d 535, 536 (7th Cir. 2005)).

Here, the District submits that every email message sent by the Mayor between January 5 and January 8, 2021 has been produced by to WP. *See* Sacco Decl. ¶ 10. The Declaration of Cristina Sacco, Associate General Counsel for the Executive Office of the Mayor, Office of General Counsel, states that 100 pages of responsive emails and attachments were delivered to WP on August 27, 2021 with a total of four redactions. *See* Sacco Decl. ¶ 11-12. Plaintiff did not raise objections to the redactions. As it seems all emails sent by the Mayor between the dates requested have been turned over to WP and the search was adequately explaining in Ms. Sacco’s Declaration, the claim with respect to the Mayor’s email messages is moot. Therefore, Count I of the Complaint is dismissed with respect to the email messages sent by the Mayor between January 5 and January 8, 2021.

II. The Mayor's WhatsApp Messages

In claims concerning FOIA, “the burden of proof is always on the agency to demonstrate that it has fully discharged its obligations under the FOIA.” *FOP Intoxilyzer FOIA*, 82 A.3d at 814 (internal quotations omitted) (quoting *McKinley v. Federal Deposit Ins. Corp.*, 756 F. Supp. 2d 105, 110 (D.D.C. 2010)). An agency’s search is adequate when it has “made a good faith

effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.” *Doe v. D.C. Metro Police Dep’t*, 948 A.2d 1210, 1220 (D.C. 2008) (quoting *Oglesby v. United States Dep’t of the Army*, 287 U.S. App. D.C. 126, 137, 920 F.2d 57, 68 (1990)).

The Court is not convinced that the Mayor’s search for messages sent from her WhatsApp account between January 5 and January 8, 2021 was sufficient. The District asserts that Mayor’s search “yielded no responsive records.” *See* Sacco Decl. ¶ 9. However, Ms. Sacco’s Declaration does not provide information about how the search was conducted. The only information regarding the Mayor’s WhatsApp search in the Declaration is that “General Counsel requested the Mayor to conduct a search of all messages sent by the Mayor on her WhatsApp account between January 5 and January 8, 2021.” *See* Sacco Decl. ¶ 8. The District’s search and explanation of that search was therefore inadequate to meet its burden under FOIA. As such, Count I is not dismissed with respect to the Mayor’s WhatsApp messages.

For these reasons, the Court granted the District’s Motion to Dismiss Count I of the Complaint with respect to Mayor Muriel Bowser’s email messages sent from her email account between January 5 and January 8, 2021. The Court further denies the District’s Motion with respect to the Mayor’s WhatsApp messages sent from her account between January 5 and January 8, 2021. All further discovery in respect to Count I of the above-referenced matter shall be limited to the efficacy and scope of the Mayor’s WhatsApp messages between January 5 and January 8, 2021 and the process used to search these messages. Finally, the Court orders the Parties to appear for a Status Conference on April 8, 2022 at 11:00 a.m. in Courtroom 212 to determine whether the Parties will set a discovery track and production schedule.

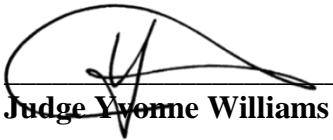
Accordingly, it is on this 24th day of January, 2022, hereby,

ORDERED that Defendant's Opposed Motion to Dismiss shall be **GRANTED IN PART AND DENIED IN PART**; it is further

ORDERED that Count I of the Complaint with respect to Mayor Muriel Bowser's email messages between January 5 and January 8, 2021 shall be **DISMISSED**; and it is further

ORDERED that the Parties shall appear for a Status Conference on April 8, 2022 at 11:00 a.m. in Courtroom 212.

IT IS SO ORDERED.


Judge Yvonne Williams

Date: January 24, 2022

Copies to:

James A. McLaughlin
Maxwell S. Mishkin
Chad R. Bowman
Charles D. Tobin
Counsel for Plaintiff

Brendan Heath
Fernando Amarillas
Counsel for Defendant