IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

BRENNAN CENTER FOR JUSTICE, *et al.*	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 2022-CA-00922B
v.	)	
	)	**Next Hearing:**
THE DISTRICT OF COLUMBIA,	)	**November 29, 2023 9:00 AM**
	)	
Defendant.	)	
	)	

PLAINTIFFS' SECOND CONTESTED MOTION FOR SUMMARY JUDGMENT

Plaintiffs, Brennan Center for Justice and Data for Black Lives, through counsel, respectfully submit this second contested motion for summary judgment in the above-captioned case. For the reasons set forth in the accompanying Statement of Points and Authorities, Plaintiffs' Statement of Undisputed Material Facts, and the Declaration of Margaret N. Strouse (and the exhibits attached thereto), there is no genuine issues of material fact, and Plaintiffs are entitled to judgment as a matter of law. Specifically, Plaintiffs are entitled to the following records, in unredacted form:

a. the "Voyager Evaluation Agreement,"
b. the "raw" and "consolidated" Dataminr and Sprinklr Feedback,
c. the "Social Media Platform" column within the Undercover Social Media Account Registry, and
d. the number of requests and approvals regarding undercover social media accounts from November 2021 to present, and the associated dates.

Plaintiffs are further entitled to an award of attorneys' fees and costs pursuant to D.C. Code § 2-537(c), given that they have substantially prevailed in this litigation, as the District produced thousands of records after Plaintiffs filed suit and after being repeatedly ordered by the Court to

do so. Plaintiffs request the Court to direct the parties either to negotiate the amount of such an award or for Plaintiffs to submit an accounting for consideration by the Court.

September 8, 2022

Respectfully submitted,

BALLARD SPAHR LLP

By: /s/ *Seth D. Berlin*

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RULE 12-I CERTIFICATION

Pursuant to Rule 12-I, and the Court's July 14, 2023 Order, Plaintiffs certify that on multiple occasions, most recently on August 23, 2023, Plaintiffs' counsel conferred with counsel for the District about the relief sought herein. Burth G. Lopez represented the District of Columbia and the Plaintiffs were represented by Alia L. Smith and Margaret N. Strouse and, during many of the discussions, by Seth D. Berlin. Defendant does not consent to the relief requested herein.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of September, 2023, copies of the foregoing Second Motion for Summary Judgment and the accompanying Memorandum of Points and Authorities, Statement of Undisputed Material Facts, Declaration of Margaret N. Strouse (and exhibits thereto), and Proposed Order were filed on the court's efiling system and sent, via electronic mail to the Counsel for the District of Columbia:

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' SECOND MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION AND BACKGROUND

For nearly three years, Plaintiffs Brennan Center for Justice and Data for Black Lives ("Plaintiffs") have been seeking records, under the D.C. Freedom of Information Act, D.C. Code § 2-531 *et seq.* ("FOIA"), about the Metropolitan Police Department's ("MPD") use of social media to track and monitor individuals and groups. Their aim is to evaluate the extent and effects of the MPD's surveillance and data collection practices, including especially how the MPD's use of social media impacts individuals and communities of color.

As this Court is aware, the process of obtaining this information has been a long struggle – from the failure of Defendant District of Columbia (the "District") to respond to Plaintiffs' first summary judgment motion, to extensive delays in conducting adequate searches and producing responsive records, to the numerous "meet and confers" and court hearings that have been required to reach this point. After that extraordinary effort, there still remain several substantive issues for adjudication, all related to the District's improper invocation of various FOIA exemptions.

First, the District claims that a 2016 or 2017 "Evaluation Agreement" with the social media monitoring company Voyager Analytics ("Voyager") is exempt under Exemption 1, which shields disclosure of "trade secrets and commercial or financial information" that would result in "substantial" competitive harm. But there has been no showing of likely competitive harm, nor could there be, as the agreement is at least six years old, and similar information is already public.

Second, the District claims that feedback MPD employees provided on trials of social media monitoring programs Dataminr and Sprinklr is fully exempt from disclosure pursuant to the "deliberative process" privilege under Exemption 4, which shields communications that are "predecisional" to a "policy" decision and are "deliberative" opinions, not facts. However, as

explained below, the selection of software is not a "policy" decision, and the feedback consists of empirical observations about the functions, capabilities and uses of the software, *i.e.,* factual observations, not "deliberative" opinions.

Finally, the District has withheld basic information regarding MPD's use of undercover social media accounts, even though the Court has repeatedly ordered the District to produce detailed records on this topic. In an attempt to resolve disputed issues without Court intervention, Plaintiffs have, since those court orders, narrowed their request substantially, limiting it to just which social media platforms the District has used and the number of undercover accounts that have been requested and/or approved on each platform. Remarkably, and despite the Court's prior orders, the District has refused to produce even this limited category of information. The District now claims that it is "deliberative" under Exemption 4, even though Plaintiffs are requesting only facts. And the District also now claims that disclosure would interfere with law enforcement investigations and reveal confidential techniques under Exemptions 3(A)(i) and 3E, even though Plaintiffs are not seeking records related to any *specific* investigation, and undercover social media accounts are a well-known law enforcement tool.[1]

The records Plaintiffs seek here are vital to the public's understanding of MPD's work. There is no basis for keeping them secret under a law meant to ensure that citizens have access to "full and complete information regarding the affairs of government." D.C. Code § 2-531.

---

[1] Although the Court ordered the parties to conduct their final "meet and confer" by August 25, 2023, and the District to complete its production of records by September 1, 2023, in advance of the September 8 deadline for Plaintiffs to file the instant motion, the District was still producing records as late as September 5. Strouse Decl. ¶ 20. And it still has not produced various records it has agreed to produce, including three Capitol Police records and 34 domain name records. *Id.* Based on the District's representation that it will imminently produce those outstanding records, Plaintiffs have not addressed them in this motion, but, given the District's failure to adhere to the Court's schedule, reserve the right to address those records with the Court if the District fails to produce them in whole or in part.

ARGUMENT

I. STANDARD OF REVIEW

In adjudicating a motion for summary judgment in a D.C. FOIA case, the court considers "whether the agency has sustained its burden of demonstrating the documents requested are exempt from disclosure under the FOIA." *FOP, Metro. Labor Comm. v. D.C.*, 82 A.3d 803, 813 (D.C. 2014); *see also Judicial Watch, Inc. v. D.C.*, No. 2019CA007410B, 2020 D.C. Super. LEXIS 80, at *7 (D.C. Super. Dec. 15, 2020) (Williams, J.) ("In FOIA cases, the burden is on the agency to demonstrate, not the requester to disprove, that the materials sought . . . have not been improperly withheld" (cleaned up)). In making this determination, the court must bear in mind that FOIA "embodies a strong policy favoring disclosure of information about governmental affairs and the acts of public officials," *FOP v. D.C.*, No. 2010CA003447B, 2011 D.C. Super. LEXIS 11, at *8 (D.C. Super. Sept. 6, 2011) (quoting *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987)), and that exemptions to disclosure must be "narrowly construed, with ambiguities resolved in favor of disclosure." *D.C. v. FOP*, 75 A.3d 259, 264 (D.C. 2013). Any "doubts" about whether an exemption applies "are to be resolved in favor of disclosure." *WP Co. v. D.C.*, No. 2018CA005576B, 2019 D.C. Super. LEXIS 6, at *5 (D.C. Super. Jan. 7, 2019).

II. THE DISTRICT CANNOT JUSTIFY ITS WITHHOLDINGS.

A. Exemption 1 (for Trade Secrets and Commercial/Financial Information) Does Not Shield the Voyager Evaluation Agreement from Disclosure.

The District asserts that an "Evaluation Agreement" with the social media monitoring company Voyager, apparently entered in 2016 or 2017, is exempt from disclosure under FOIA's Exemption 1. *See* D.C. Code § 2-534(a)(1) (shielding "[t]rade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information

was obtained"). The agreement appears to contain the following types of information: terms of the District's trial of Voyager; "Main Features" of Version 3.7 of the software; and "Training Services." Pl.'s Statement of Undisputed Material Facts ("SUMF") ¶ 11 & Exhibit 28 to the Declaration of Margaret N. Strouse ("Ex."). The District has not explained *why* Exemption 1 supposedly applies to such information other than because the agreement contains a boilerplate confidentiality provision. Ex. 28 at 1-2. In in its *Vaughn* Index, the District merely parroted the statutory language and claimed that Voyager objected to disclosure. Ex. 27 (*Vaughn* index asserting that the agreement "contains confidential and proprietorial information" which "if released could cause substantial competitive harm" and indicating that the District consulted with Voyager, which "expressly prohibited" release).

This is insufficient. To properly invoke Exemption 1, the District must show that "disclosure will cause substantial competitive injury" to Voyager. *Washington Post Co. v. Minority Bus. Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). But there is no valid reason why the disclosure of Voyager's trial terms from 2016/2017, training materials, and Version 3.7 capabilities would cause it "substantial competitive injury" in 2023. By 2020, Voyager was already advertising a Version 6.2. *See* Ex. 38 at 10. Government contracts such as this one are routinely disclosed under open records laws and not considered "trade secrets" or otherwise commercially sensitive, especially where, as here, the information is out of date or "stale." *Gov't Accountability Project v. FDA*, 206 F. Supp. 3d 420, 442 (D.D.C. 2016) (Brown Jackson, J.) ("[C]ompetitive injury that Exemption [1] is designed to prevent can be significantly mitigated if the disclosed information is stale."); *Calderon v. USDA*, 236 F. Supp. 3d 96, 114 (D.D.C. 2017)

(disclosure of "stale" information "cannot cause substantial competitive harm").[2] The release of government contracts furthers FOIA's purposes by "permit[ing] the public to evaluate whether the government is receiving value for taxpayer funds." *McDonnell Douglas Corp. v. Dep't of the Air Force*, 375 F.3d 1182, 1194 (D.C. Cir. 2004); *see also, e.g.*, *Ctr. for Pub. Integrity v. Dep't of Energy*, 191 F. Supp. 2d 187, 196 (D.D.C. 2002) ("[T]he benefits of doing business with the government can be considerable and are generally sufficient to ensure that firms will continue to submit bids even if these bids are made public.").

In addition to the fact that the six-year-old Voyager Evaluation Agreement is "stale," redacting virtually the entire agreement is unwarranted because it does not appear to contain trade secrets or other closely held financial or commercial information. Indeed, in this very litigation, the District produced a number of documents concerning the functionality and pricing of Voyager (SUMF ¶ 17), including a detailed "Capabilities Statement" (*id.* ¶ 18; Ex. 29 at 15-17). The District also produced agreements with Voyager's competitors, including a 13-page proposal from LexisNexis touting the capabilities of its "Virtual Crime Center" (Ex. 43), records from LexisNexis detailing MPD's searches (Ex. 44), and an entirely unredacted nine-page Dataminr Agreement from 2017, which includes a confidentiality provision similar to the one in the Voyager Evaluation Agreement (Ex. 41). In addition, the Los Angeles Police Department produced similar records about Voyager's capabilities and pricing in response to a lawsuit Plaintiff the Brennan Center filed against it under California's open records law. *See* SUMF ¶ 20. There is no logical reason why Voyager's Evaluation Agreement should be withheld as a trade

[2] D.C. Courts have found "the federal FOIA to be 'instructive authority with respect to our own Act.'" *FOP v. District of Columbia*, 79 A.3d 347, 354 (D.C. 2013).

secret when similar information about Voyager's competitors – and even similar information about Voyager itself – is already public.

The fact that Voyager's years-old Evaluation Agreement is stamped "confidential" is "certainly not enough" to render it exempt from FOIA. *Washington Post Co. v. Dep't of Health & Human Servs*., 690 F.2d 252, 263-64 (D.C. Cir. 1982). "[T]o allow the government to make documents exempt by the simple means of promising confidentiality would subvert FOIA's disclosure mandate." *Id.* The only relevant question under the D.C. FOIA is whether the District has shown that "substantial competitive harm" to Voyager would result from release. Because it has not and cannot, the Evaluation Agreement should be fully disclosed.

B. Exemption 4 (for Deliberative Process Records) Does Not Shield Dataminr and Sprinklr Feedback From Disclosure.

The District heavily redacted records containing "raw" and "consolidated" feedback collected in connection with the trials of Dataminr and Sprinklr software used for social media monitoring. SUMF ¶¶ 25-26. The District asserts that this feedback is exempt under Exemption 4, D.C. Code § 2-534(a)(4), and, in particular, the "Deliberative Process Privilege," which protects from disclosure "intra-agency" materials (a) that are "predecisional and deliberative," meaning that they were "generated before the adoption of an agency policy," and (b) that reflect subjective opinions that are part of "the give-and-take of the consultative process." *Coastal States Gas Corp. v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980); *see also FOP*, 79 A.3d at 355. Specifically, the District asserts that the feedback "is predecisional as it is prior to MPD's decision whether to purchase the program or not" and that each user's "recommendation is deliberative as it weighs the pros and cons of the program." Ex. 46.

The District's assertion of the exemption is far too broad. *See Coastal States*, 617 F.2d at 868 (deliberative process privilege must be applied "narrowly"). The type of feedback at issue

here is not "predecisional" because the "decision" at issue – whether to purchase certain software – is not the type of "agency policy" that the exemption is meant to protect. And it is not "deliberative" because (a) it does not reflect the type of "give-and-take" that the privilege is meant to cover, and (b) it necessarily contains, in significant part, non-exempt *factual* observations and information about the programs' capabilities and features.

1. The District has failed to show that selecting computer software is a policy decision or that the feedback is "predecisional."

The Deliberative Process Privilege "encourage[s] open, frank discussion on matters of *policy*" and "protect[s] against premature disclosure of proposed *policies* before they finally are adopted." *Cleveland v. Dep't of State*, 128 F. Supp. 3d 284, 298 (D.D.C. 2015); *see also U.S. Fish & Wildlife Serv. v. Sierra Club, Inc.*, 141 S. Ct. 777, 783 (2021) (predecisional records are those "generated during an agency's deliberations about a *policy*") (emphasis added). "[W]hen material could not reasonably be said to reveal an agency's or official's mode of formulating or exercising *policy-implicating* judgment, the deliberative process privilege is inapplicable." *FOP*, 79 A.3d at 355 (emphasis added). A document is "predecisional" to a government policy only where government employees are "formulating and refining both the actual content of and the public rationale for a new and consequential government policy . . . [and] balancing the proposed justifications." *Campaign Legal Ctr. v. Dep't of Justice*, 34 F.4th 14, 25 (D.C. Cir. 2022). The exemption covers policy concerns such as: how the Air Force should draft an internal report on the use of Agent Orange during the Vietnam War, *see Russell v. Dep't of the Air Force*, 682 F.2d 1045 (D.C. Cir. 1982), IRS Revenue Rulings, *see Arthur Andersen & Co. v. IRS*, 679 F.2d 254 (D.C. Cir. 1982), and adding a citizenship question to the census, *see Campaign Legal Ctr.*, 34 F.4th at 25.

Plaintiffs are unaware of any authority that treats the selection of a software program as the enunciation of a "consequential governmental policy." *Id.* at 25. Indeed, in other settings, the District did not treat it as such, producing, without redaction, employee feedback regarding other social media monitoring software trials (Geofeedia and Transunion TLOxp). Exs. 47-48. There is no logical reason why feedback on Sprinklr and Dataminr should be treated any differently.

2. The District has failed to show that the feedback is "deliberative."

Moreover, even if the feedback were properly considered "predecisional" communications directed toward a *policy* decision (which it is not), the Dataminr and Sprinklr feedback still would not be subject to exemption because is not "deliberative." For information to be considered deliberative, it generally must reflect "opinions, recommendations and deliberations." *Grand Cent. P'ship, Inc. v. Cuomo*, 166 F.3d 473, 482 (2d Cir. 1999); *see also 100Reporters LLC v. DOJ,* 316 F. Supp. 3d 124, 152 (D.D.C. 2018) (deliberative records are "subjective documents which reflect the personal opinions of the writer"). The privilege is intended to "assure[] agency staff that they can provide their candid opinions and recommendations to decisionmakers without fear of ridicule or reprisal," *Reporters Comm. for Freedom of the Press v. FBI*, 3 F.4th at 350, 361 (D.C. Cir. 2021), and "to allow agencies to freely explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny," *Moye, O'Brien, O'Rourke, Hogan & Pickert v. AMTRAK,* 376 F.3d 1270, 1277 (11th Cir. 2004). *See also Dudman Comms. Corp. v. Dep't of the Air Force*, 815 F.2d 1565, 1568 (D.C. Cir. 1987) (observing that the "key question" in deliberative process cases is "whether the disclosure of materials would expose an agency's decisionmaking process in such a way as to discourage candid discussion within the agency and thereby undermine the agency's ability to perform its functions."). Here, there is no reasonable argument that something as anodyne as a person's observations about a software program reflects

the kind of "internal debate" or "deliberation" that the privilege is meant to cover or that its disclosure would likely to lead to a future lack of candor based on a fear of "ridicule or reprisal."

Moreover, because the privilege is meant to protect only "opinions and recommendations," *Mead Data Ctr. Inc. v. Dep't of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977), it does not cover factual observations or other factual information, which "generally must be disclosed," *Reporters Comm.*, 3 F.4th at 365. Factual information may not be withheld even if it provides the "raw material" upon which the final policy decision is based. *Washington Post Co. v. SIGAR*, No. 18-2622(ABJ), 2021 U.S. Dist. LEXIS 188123, at **50-51 (D.D.C. Sept. 30, 2021). Nor may a record "become a part of the deliberative process merely because it contains *only* those facts which the person making [it] thinks material." *Playboy Enters., Inc. v. Dep't of Justice*, 677 F.2d 931, 935 (D.C. Cir. 1982) (emphasis added). Put simply, unless factual information "inevitably reveal[s] the government's deliberations," it must be disclosed. *Reporters Comm.*, 3 F.4th at 366.

Here, because the records are fully redacted, it is not clear precisely what they contain, but publicly-disclosed feedback on three other software programs – Geofeedia, Transunion TLOxp and Voyager – confirm that the feedback on software programs is largely factual. *See* SUMF at ¶¶ 19 & 27 (feedback includes information such as that a product "group[s] together separate crews," that its "algorithm weighs heavily on friends in common," that it can be used for "vehicle sighting reports [and] real time phone carrier search," and that it "cannot give a comprehensive report"). This type of information is exactly the type of "factual recounting" that is not covered by the privilege. *Gold Anti-Tr. Action Comm., Inc. v. Bd. of Governors of the Fed. Res. Sys.*, 762 F. Supp. 2d 123, 137 (D.D.C. 2011). It is a far cry from the kinds of "recommendations and opinions" that the privilege is meant to cover, usually contained in, for example, "drafts," "redline

edits," documents of a "conjectural nature," "proposals," "proposed language and edits," "tentative ideas," etc. – not emails explaining the functions of software. *See, e.g., Found. for Gov't Accountability v. Dep't of Justice*, No. 22-cv-252, 2023 U.S. Dist. LEXIS 150395, at *20 (M.D. Fla. Aug. 25, 2023); *Avila v. Dep't of State*, No. 17-2685, 2022 U.S. Dist. LEXIS 104439, at *30 (D.D.C. June 10, 2022); *Pub. Emps. for Envt'l Responsibility v. EPA*, No. 18-2219, 2021 U.S. Dist. LEXIS 114123, at *29 (D.D.C. June 18, 2021); *100Reporters LLC*, 316 F. Supp. 3d at 152; *Taylor Energy Co. v. Dep't of Interior*, 271 F. Supp. 3d 73, 95 (D.D.C. 2017).[3]

C. The District Has Not Justified Its Redactions of Undercover Social Media Account Requests, Approvals, and Platforms

In their initial Request, Plaintiffs sought records related to the use of undercover social media accounts. Ex. 1 at 3 (seeking records on "the authorization, creation, use, and maintenance of fictitious/undercover online personas"). This Court repeatedly ordered the District to produce detailed records concerning its use of undercover social media accounts. Despite those orders, Plaintiffs have nevertheless narrowed their Request substantially to seek only the following information, not tied to any specific investigation: (a) the names of the social media platforms on which the District uses undercover accounts and (b) the total number of requests for and approvals of the use of undercover accounts, and the dates associated therewith. Nevertheless, the District now maintains that it may effectively disregard this Court's prior Orders and is refusing to provide even the limited information Plaintiffs seek, belatedly claiming inapplicable exemptions and arguing that the undercover records are not part of this litigation. None of this is proper.

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[3] Moreover, even if some brief passages of the feedback were legitimately "deliberative," the *facts* contained therein – concerning, for example, the products' capabilities, functions, features, etc. – must be segregated and disclosed. *See* D.C. Code § 2-534(b). The District's block redactions are thus entirely improper.

1. The Court has already ordered undercover account records to be produced.

Plaintiffs set out a brief timeline to set the stage:

- In September 2021, the District conducted its first search for undercover social media account records. SUMF ¶¶ 2, 33 & Ex. 2.

- Because that search was woefully inadequate, on July 11, 2022, this Court ordered the District to locate and "produce" records showing "MPD's use of fictitious social media accounts," "written approvals . . . prior to using or creating an undercover account," "[t]he centralized registry of all active undercover social media accounts," and "requests to use undercover social media accounts" by September 9, 2022. SUMF ¶ 34 & Ex. 8.

- On August 30, 2022, this Court denied the District's Motion for Reconsideration of its July 11, 2022, Order, and again ordered the undercover account records to be produced by September 9, 2022. SUMF ¶ 35 & Ex. 9.

- After the District effectively ignored the July and August 2022 Orders, the Court, on December 9, 2022, again ordered the District to "produce," among other things, records regarding the use of "fictitious social media accounts" and the related approvals. SUMF ¶ 36 & Exs. 11 & 23.

- Also on December 9, 2022, because the District's searches for responsive records were still inadequate, the Court ordered the District to conduct *new* searches using parameters proposed by Plaintiffs. These new searches included one specifically designed to retrieve (a) "all written approvals to use undercover accounts" and (b) "the centralized registry of all active undercover social media accounts." The Court ordered the District to "conduct" these searches and "produce relevant documents by January 13, 2023." SUMF ¶ 37 & Exs. 11 & 21.

- On January 13, 2023, the District produced *no* "written approvals" or requests for approvals, fully withholding everything responsive to Plaintiffs' request for such information and invoking for the first time Exemptions 4 (deliberative process) and 3(A)(i) (law enforcement proceeding). It produced one chart that appears to be the "registry of all active undercover social media accounts," but it is so heavily redacted as to contain virtually no useable information. SUMF ¶¶ 38-39 & Exs. 22 & 51-52.

In short, the Court has *four times* specifically ordered the District to "produce" (a) "written approvals" and "requests" to use undercover social media accounts and (b) the "centralized registry" of such accounts (on July 11, 2022; August 30, 2022; and twice on December 9, 2022, once to reiterate its prior orders and once to order production of records resulting from new

searches). In refusing to release *anything* regarding approvals or requests and in producing a "central registry" record that is so heavily redacted as to be meaningless, the District has again ignored the Court's Orders. It is one thing to redact, for example, a discrete piece of privileged information in a document production. It is something else entirely to refuse to produce nearly every part of records repeatedly ordered to be disclosed. This Court should reconfirm its prior orders and direct the District to produce the undercover account information Plaintiffs seek.

2. The District's objections to production are meritless.

Even if the Court had not already repeatedly ruled on this issue, the records still must be disclosed. None of the exemptions the District has belatedly asserted apply to the limited information Plaintiffs seek, and its claim that these records are not part of this lawsuit is baseless.

The Deliberative Process Privilege: As discussed *supra* at 6-10, this privilege protects only information that is "predecisional" and "deliberative." It does *not* cover factual information. The identities of the social media platforms and the number/dates of requests and approvals are not "predecisional," *i.e.*, they are not precursors to any sort of "policy" decision. But even more saliently, they are not "deliberative." They contain no "opinions or recommendations." They are simply facts. Plaintiffs are not asking to know anything other than the *fact* of which platforms are used and the *fact* that a request or approval was made and the corresponding date.

The Law Enforcement Proceedings Exemption: Records fall under this exemption only if their "disclosure would significantly impede law enforcement efforts" in connection with a "particular law enforcement investigation." *Barry*, 529 A.2d at 321. But revealing the social media platforms on which MPD has undercover accounts could not conceivably impact a specific investigation. The identity of the social media platform is fully segregated from any investigative details, including the case number, date, username, etc. Likewise, release of information showing

the number of requests/approvals, along with associated dates – divorced from any investigation-specific details as to *why* MPD requested or approved the creation of a particular undercover social media account – could not "significantly impede law enforcement efforts."[4]

The Law Enforcement Technique Exemption: Although the District failed to assert this exemption in its responses, counsel for the District orally raised it during the parties' "meet and confer" sessions. Strouse Decl. ¶ 60. Even assuming that this exemption is validly before the Court, it does not apply here. It applies only to "investigative techniques …not generally known outside the government," D.C. Code § 2-534(a)(3)(E), and requires the agency to "demonstrate logically how the release of the requested information might create a risk of circumvention of the law." *BuzzFeed, Inc. v. Dep't of Justice*, 344 F. Supp. 3d 396, 406 (D.D.C. 2018).

With respect to the total number and the dates of requests and approvals for use of undercover accounts, the District itself has made it "generally known" in a November 2021 Executive Order that such requests and approvals are required. Ex. 49. And the District has not explained (nor could it explain) how knowing the number of requests/approvals or the dates thereof could possibly risk "circumvention of the law." *See, e.g.*, *ACLU Found. v. Dep't of Justice*, No. 19-cv-290, 2021 U.S. Dist. LEXIS 181279, at *10 (N.D. Cal. Sep. 22, 2021) ("[P]rocedures for obtaining authorization to use masked monitoring and undercover engagement" on social media cannot be withheld because it "cannot reasonably be expected to risk circumvention of the law.").

As for the identities of the social media platforms used for undercover purposes, the District has already publicized that it uses undercover social media accounts, Ex. 49, and law

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[4] To the extent the Court determines that releasing exact dates may compromise an investigation, Plaintiffs would accept the month/year of each request and approval instead.

enforcement use of social media platforms is a well-known investigative technique, *see Elec. Frontier Found. v. Dep't of Def.*, No. C09-05640, 2012 U.S. Dist. LEXIS 137010, at *9-*21 (N.D. Cal. Sep. 24, 2012) ("[R]edaction of the mention of 'Facebook' may not be justified . . . in light of the FBI's acknowledgement that it is using social media networking sites in its investigations."). Information showing the identities of the platforms used is just not specific enough to create any legitimate risk of "circumvention of the law."

The District's Argument that These Records Are Not Part of this Lawsuit: Earlier in the case, the District took the position that it need not search for or produce records created after September 2021, the date of its first search for such records, on the grounds that the "date of search" is the appropriate "cutoff date" for FOIA requests. SUMF ¶ 42. When the District advanced that position at the December 9, 2022 hearing, Plaintiffs reminded the Court that it had already found the September 2021 search to be inadequate and, for its part, the Court noted that the District had readily searched for and produced *other* records created after September 2021. SUMF ¶ 43. As the Court told the District's counsel, "I don't understand why we're stuck on September 30, 2021, when you've already turned over documents well past that date." Strouse Decl. ¶¶ 13-14 & Ex. 12 (Dec. 9 Hrg. Tr. at 26:15-26:24). Moreover, in its December 9 Order following that hearing (Ex. 11), the Court ordered the District to search for and produce records concerning undercover social media accounts created *after* September 2021. Ex. 21 at 11-12 (containing search parameters ordered by Court's December 9 Order).[5]

[5] To avoid any dispute that the District was required to produce these records, Plaintiffs submitted a second FOIA request for post-September 2021 records in October 2022. Strouse Decl. ¶ 56 & Ex. 50. They have consistently maintained that this second request was unnecessary and that the initial request for undercover account records was sufficient. *Id.* ¶¶ 24, 26, Ex. 21 at 6 (Pltfs.' Oct. 14, 2022 Letter: "this additional request was not necessary," but was submitted just "for the avoidance of doubt") & Ex. 23 (Pltfs' Dec. 7, 2022 Praecipe, explaining that their second request was not required, but had been submitted in attempt "to remove any basis for ongoing dispute").

Even if the Court were to revisit that conclusion, September 2021 was never the appropriate cutoff date for records because search dates do not operate as a cutoff if the search was inadequate. *See, e.g.*, *Wilderness Soc'y v. Bureau of Land Mgmt.*, No. 01cv2210, 2003 WL 255971 (D.D.C. Jan. 15, 2003) (where supplemental search ordered because initial search was inadequate, defendants should produce records "they uncover at the time their supplemental search is conducted, regardless of when the documents were created"). Here, the Court has repeatedly found that the search conducted in September 2021 was not adequate, *see* SUMF ¶¶ 34-37 (citing numerous Court orders after September 2021 noting the inadequacy of the District's searches and ordering new ones). Thus, the District was never entitled to declare that post-September 2021 records were not responsive to Plaintiffs' initial request or to claim that they are not properly part of this litigation. It was for that reason that the Court, in its December 9 Order, specifically ordered the District to search for and produce post-September 2021 undercover account records. Ex. 11.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for summary judgment, direct the District to produce unredacted versions of the contested records as described herein, and grant such other and further relief as may be warranted. Plaintiffs also request an award of attorneys' fees and costs pursuant to D.C. Code § 2-537(c), given that they have substantially prevailed in this litigation, as the District produced thousands of records after Plaintiffs filed suit and after being repeatedly ordered by the Court to do so. Plaintiffs request the Court to direct the parties either to negotiate the amount of such an award or for Plaintiffs to submit an accounting for consideration by the Court.

Dated: September 8, 2023

Respectfully submitted,

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IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA

CIVIL DIVISION

BRENNAN CENTER FOR JUSTICE, *et al.*	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 2022-CA-00922B
v.	)	
	)	**Next Hearing:**
THE DISTRICT OF COLUMBIA,	)	**November 29, 2023 9:00 AM**
	)	
Defendant.	)	

STATEMENT OF UNDISPUTED MATERIAL FACTS

A. Plaintiffs' FOIA Request and This Litigation

1. On December 15, 2020, Plaintiffs, The Brennan Center for Justice (the "Brennan Center") and Data for Black Lives (together, "Plaintiffs"), submitted a FOIA request (the "Request") to the Metropolitan Police Department ("MPD"), a unit of Defendant District of Columbia (the "District"). *See* Decl. of Margaret N. Strouse ("Strouse Decl.") ¶ 1 & Ex. 1. In the Request, Plaintiffs sought 14 specific types of public records concerning how police use social media to monitor citizens. *Id.*

2. On September 30, 2021, more than nine months after its response deadline had passed, and upon threat of litigation, the District released six documents to Plaintiffs. Strouse Decl. ¶ 2 & Ex. 2.

3. Believing that these six documents could not possibly constitute the entire universe of requested records, Plaintiffs submitted an administrative appeal pursuant to D.C. Code § 2-537, explaining that MPD's search had plainly been inadequate. Strouse Decl. ¶ 3 & Ex. 3.

4. The Mayor's Office failed to respond to Plaintiffs' administrative appeal as required by § 2-537(a), nor did MPD. Strouse Decl. ¶ 4.

5. On March 1, 2022, more than a year after submitting the Request, Plaintiffs filed the instant lawsuit, followed shortly thereafter by a motion for summary judgment on March 15, 2022. In both their Complaint and summary judgment motion, Plaintiffs alleged that the District's search was inadequate, including because the few records that were produced referenced by name other responsive records that had not been produced. Strouse Decl. ¶ 5-6 & Exs. 4-5.

6. The District failed to respond to Plaintiffs' summary judgment motion, but the Court agreed to hold the motion abeyance to allow the District the opportunity to work with Plaintiffs to cure the search inadequacies and to produce the requested records. Strouse Decl. ¶¶ 7-9, Ex. 6 (June 3, 2022 Hr'g Tr. at 7:11-25) & Ex. 7 (June 3, 2022 Order).

7. Over the next 18 months, Plaintiffs engaged in more than 20 meet and confer conferences, prepared and sent counsel for the District detailed letters describing outstanding issues, submitted numerous Praecipes to the Court detailing ongoing issues, and secured 10 Court Orders addressing the District's repeated delays in agreeing on search terms, conducting searches, and producing responsive records. *See, e.g.*, Strouse Decl. ¶¶ 8-30, Exs. 6-17 (Court Orders dated June 3, 2022; July 11, 2022; Aug. 30, 2022; Sept. 30, 2022; Dec. 9, 2022; Feb. 6, 2023; April 14, 2023; May 23, 2023; June 2, 2023; and July 14, 2023; Hearing Transcripts dated June 3, 2023 and Dec. 9, 2022), & Exs. 18-21, 23-26 (Plaintiffs' Praecipes dated May 12, 2022; July 5, 2022; Aug. 19, 2022; Dec. 7, 2022; Jan. 31, 2023; April 12, 2023; and July 13, 2023; and Plaintiffs' Oct. 14, 2022 Letter).

8. As a result of Plaintiffs' extensive efforts and the Court's repeated orders, the District has now produced the bulk of the requested records.[1]

9. However, the District has continued to withhold or redact records, raising three issues that remain for resolution by the Court on this (Second) Motion for Summary Judgment. Plaintiffs respectfully set forth the undisputed material facts necessary to address each issue below.

B. Issue 1: Whether A Six-Year-Old "Evaluation Agreement" Concerning MPD's Voyager Trial Is Shielded From Disclosure as a Trade Secret

10. First, the instant motion challenges whether the District properly invoked D.C. FOIA's "Trade Secrets" exemption, D.C. Code § 2-543(a)(1), in redacting almost the entirety of an "Evaluation Agreement" concerning MPD's 2016 or 2017 trial of social media monitoring software[2] called Voyager Analytics ("Voyager").[3] *See* Strouse Decl. ¶ 31 & Ex. 27 (relevant portion of *Vaughn* index, claiming the Voyager Evaluation Agreement "contains confidential and

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[1] Although the Court ordered the parties to conduct their final "meet and confer" by August 25, 2023, and the District to complete its production of records by September 1, 2023, in advance of the September 8 deadline for Plaintiffs to file the instant motion, the District was still producing records as late as September 5, and still has not produced various records it has agreed to produce, including three Capitol Police records and 34 domain name records. Strouse Decl. ¶ 20. As reflected in their motion papers, Plaintiffs reserve the right to address those records with the Court if the District fails to produce them in whole or in part.

[2] Throughout this Statement of Undisputed Material Facts ("SUMF") and the Memorandum in support of their Summary Judgment Motion, Plaintiffs refer to "software" as a shorthand to describe social media analysis platforms. As a technical matter, not all items referred to as "software" fit the definition of software, *i.e.*, they may utilize cloud-based computing platforms instead of requiring local installation onto a computer.

[3] The District produced records indicating it conducted at least two trials of Voyager—in 2016 and 2017. *See infra* ¶ 15. Due to the extensive redactions, is unclear for precisely which trial the Voyager Evaluation Agreement was created.

proprietorial information regarding its product which if released could cause substantial competitive harm to the vendor").

11. Nearly the entire Voyager Evaluation Agreement, including two exhibits entitled "Training Services" and "Voyager Version 3.7 Main Features," is redacted, except for one paragraph entitled "Confidentiality," which defines "Confidential Information" broadly as "certain information regarding [Voyager's] business, including technical, marketing, financial, employee, and other confidential or proprietary information." Strouse Decl. ¶ 32 & Ex. 28 (redacted Voyager Evaluation Agreement, also specifying that the Voyager "System, Service and the documentation are . . . Voyager's Confidential Information"). The paragraph does not state that such information is a "Trade Secret," and it provides that MPD may release the "Confidential Information" to "the extent that such disclosure is required by law or by the order of a court." *Id.*

12. The District has indicated that it asserted the "Trade Secrets" exemption at the direction of Voyager, and not necessarily because it made an independent assessment that the exemption validly applies. Strouse Decl. ¶ 31 & Ex. 27 (*Vaughn* Index: "After consultation with Voyager, disclosure of this document has been expressly prohibited. Therefore, the agreement and its attachments have been redacted under D.C. Code § 2-534(a)(1).").

13. Below, we detail the substantial amount of information concerning Voyager that has already been made public by both the District and through other sources, including with respect to later versions of Voyager's software, as well as the District's production of similar agreements with other software vendors in response to Plaintiffs' FOIA Request in this action.

14. Voyager is a software program that "offers an automated solution" to "conduct network analysis and provide in-depth information from over six social media platforms"

Strouse Decl. ¶ 33 & Ex. 29. It analyzes the relationships between social media profiles and offers a tool that "effectively reads and parses PDF files received from social media platform providers in response to a search warrant or subpoena." *See id.* (Voyager PowerPoint presentation).

15. MPD has conducted trials of the Voyager software at least twice, in 2016 and 2017, and Voyager has solicited MPD to purchase its software several more times. Strouse Decl. ¶¶ 33-40 & Exs. 29- 36.

16. In June 2017, Voyager provided MPD with a free trial of its social media monitoring tool, valued at $15,000. Strouse Decl. ¶ 40 & Ex. 36.

17. In response to Plaintiffs' FOIA request, MPD produced numerous public records from Voyager describing the software's capabilities and pricing. These included: promotional materials (Strouse Decl. ¶ 34 & Ex. 30); a PowerPoint presentation demonstrating how Voyager's tools can assist law enforcement (Strouse Decl. ¶ 33 & Ex. 29); a demonstration solicitation email to MPD listing Voyager's capabilities (Strouse Decl. ¶ 35& Ex. 31); and various pricing-related documents (Strouse Decl. ¶¶ 34, 36 & Exs. 30, 32).

18. MPD also produced a Voyager "Capabilities Statement," which describes Voyager's features and capabilities in detail, including the following:

a. use of anonymized, near real-time, collection of social media content in 103 languages;

b. analysis of geo-located posts, blogs, and social media sites to "survey" and "cover" locations;

c. "in-depth visualized network analysis portraying social media networks and personal/organizational relationships"; and

d. access to archived and exportable datasets that allows access even if the accounts or posts are deleted. Strouse Decl. ¶ 33 & Ex. 29 (Capabilities Statement).[4]

19. In addition to substantial information about Voyager produced by the District, other information related to Voyager's capabilities has also been made public. For example, in 2021, MPD experienced a ransomware attack, and hackers released over 250GB of MPD files to the public.[5] One of the released records is an email thread between Senior Intelligence Research Specialist Daniel Hall and then-Chief Lamar Greene describing his feedback on several social media monitoring services, including a lengthy review of Voyager and its capabilities. Strouse Decl. ¶ 42 & Ex. 37. In particular, Senior Intelligence Specialist Hall noted the following about the Voyager software:

a. it "allowed 5 'queries' a day," meaning MPD could "load 5 Facebook profiles into the system each day";

b. the software took a long time "to load in the profiles";

c. the software grouped together "separate crews, and even conflicting crews," so that they "were always interconnected";

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[4] Perplexingly, after having produced the "Capabilities Statement" described above, MPD subsequently produced the same document again as part of a different production of records. This second time, though, the District fully redacted the record, asserting in its *Vaughn* Index that the redacted information was subject to FOIA's "Trade Secrets" exemption. Because the District had already produced an unredacted version, Plaintiffs are not challenging the later redaction. *See* Strouse Decl. ¶ 33 n.2. Plaintiffs note it here to demonstrate the inconsistent manner in which the District has asserted various exemptions, including specifically its invocation of the trade secrets exemption in connection with information provided to the District by Voyager.

[5] *See, e.g.*, Thomas Brewster, *Ransomware Hackers Claim To Leak 250GB Of Washington, D.C., Police Data After Cops Don't Pay $4 Million Ransom*, Forbes (May 14, 2021) https://www.forbes.com/sites/thomasbrewster/2021/05/13/ransomware-hackers-claim-to-leak-250gb-of-washington-dc-police-data-after-cops-dont-pay-4-million-ransom/?sh=1aa24e8258d0.

d. "Voyager only searches the exact keyword" and does not automatically search for related relevant terms;

e. it had a "'strength of the connection' tool and the 'show insights' [tool] to see who the queried individual was closest to";

f. its "algorithm weighs heavily on friends in common";

g. it could help you complete the puzzle of a robbery group if you knew 3 of the 5 and were trying to identify the unknowns; and

h. its "groups section . . . allows you to group profiles (likely by crew) and follow them as an interconnected network." *Id.*

20. In addition, in connection with litigation that Plaintiff the Brennan Center brought against the Los Angeles Police Department ("LAPD") under California's open records law, the LAPD released several detailed documents concerning its trial of Voyager, including:

a. a PowerPoint presentation highlighting its 2019-2020 capabilities, including functional changes from versions 5.5 to 6.2 (Strouse Decl. ¶ 44 & Ex. 38);

b. a detailed 10-page proposal describing Voyager's benefits, capabilities, and functionality (Strouse Decl. ¶ 45 & Ex. 39); and

c. a 25-page Voyager user guide describing how to execute Facebook profile searches, keyword searches, generate friendship reports, visualize connections of targeted individuals, and use Voyager to review social media platform responses to warrants (Strouse Decl. ¶ 46 & Ex. 40).

21. While the District has withheld the 2016 or 2017 Voyager evaluation agreement, it has produced analogous contractual documents from trials of other social media monitoring tools. For example, the District produced an entirely unredacted nine-page Dataminr agreement

from 2017, which – like the Voyager agreement at issue –includes a lengthy confidentiality provision that restricts the District from releasing any confidential information. Ex. 41. Similarly, the District produced a proposal from LexisNexis for a "Virtual Crime Center" as well as a LexisNexis invoice[6] showing the types of searches MPD ran that month. Strouse Decl. ¶¶ 49-50 & Exs. 43-44.[7]

22. The Voyager Evaluation Agreement at issue was for Version 3.7 of the Voyager software. Ex. 28 at 4. As reflected in the records provided by the LAPD, by 2020, Voyager was already advertising Version 6.2. Strouse Decl. ¶ 44 & Ex. 38.

23. The District has not explained how, in the wake of substantial public disclosures about the Voyager software and the production of similar agreements with other software vendors, the information included in a six-to-seven-year-old Voyager evaluation agreement, governing a long-outdated piece of software is a trade secret which, if disclosed, would cause competitive injury to Voyager.

C. <u>Issue 2: Whether MPD's Feedback on Dataminr and Sprinklr Software Is Shielded from Disclosure by the Deliberative Process Privilege.</u>

24. The second issue that Plaintiffs' motion challenges is the District's invocation of the "Deliberative Process" exemption, D.C. Code § 2-534(a)(4), in redacting user feedback from the trials of the social media monitoring tools Dataminr and Sprinklr.

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[6] We have attached to the Strouse Declaration an exemplar of one of the five monthly LexisNexis invoices produced by the District. The remaining four are substantially the same, showing the searches and charges incurred by the District for each month.

[7] The District had initially produced these records in heavily redacted form, asserting the trade secret exemption, *see* Strouse Decl. ¶ 48 & Ex. 42, but after discussions with Plaintiffs and LexisNexis, the District removed most of those redactions. *See id.* ¶¶ 49-50 & Exs. 43-44.

25. In addition to MPD's trial of Voyager, MPD also conducted trials of Dataminr and Sprinklr, and, in so doing, collected employee feedback to decide whether to purchase one of the software programs. *See* Strouse Decl. ¶ 51 & Ex. 45 at 2; *see also id.* at 4 (establishing evaluation criteria for Dataminr, including its efficacy of alerting MPD to emerging events, its ease of use, and the extent of training that would be necessary for MPD employees to use the tool independently); *id.* at 19 (feedback intended to "highlight why we prefer Dataminr (a program we would need to pay for) vs. Sprinklr (a program we may get through [the Office of the Chief Technology Officer]).").

26. The District used block redactions to withhold nearly all feedback from individual users who participated in the trials of Dataminr and Sprinklr, claiming that it consisted of "deliberative process" information under FOIA's Exemption 4. Strouse Decl. ¶ 52 & Ex. 46.

27. The District redacted this Dataminr and Sprinklr feedback even though it produced the feedback relating to its trials of other social media monitoring tools such as "Transunion TLOxp" and "Geofeedia," including by comparing them to the Accurint service provided by LexisNexis. *See, e.g.,* Strouse Decl. ¶¶ 53-54 , Ex. 47 (Geofeedia is "user friendly," and "can do everything LexisNexis can," but cannot "give a comprehensive report about that person [like] Accurint.") & Ex. 49 (Transunion TLOxp can be used for searching "social media, vehicle sighting reports, real time phone carrier search, [] super reverse phones" and "phone number and address[es]." It has a "vehicle sighting report function" that MPD uses "sporadically" and its "social media searches" are "cumbersome.").

28. In addition, feedback on the social media monitoring tools Socio Spyder, Babel Street, Lexis Nexis, and Voyager Analytics has become publicly available, *see supra ¶* 19. Strouse Decl. ¶ 42 & Ex. 37. Such feedback included an email from Senior Intelligence

Research Specialist Daniel Hall comparing the different social media monitoring tools' interfaces and capabilities. For example, in addition to his findings regarding Voyager, described *supra* at ¶ 19, he wrote that Socio Spyder "lacked the ability to organize information"; LexisNexis "was very good at organizing social media accounts into groups … for example you could create a 'Trinidad' folder where all social media accounts associated with the crew area could be housed and monitored"; and Babel Street "automatically searches [the] criteria through all languages on social media" and had the "ability to search geographic areas for social media posts." Strouse Decl. ¶ 42 & Ex. 37 at 1-2.

29. The District has not explained why feedback on Dataminr and Sprinklr is privileged when other similar feedback has been produced to Plaintiffs, how selection of a software tool constitutes deliberation over a policy decision, or why factual observations and information – which are not covered by the privilege – have been withheld.

D. Issue 3: Whether the Limited Information Plaintiffs Seek Concerning Undercover Social Media Accounts May Be Withheld

30. The third issue the instant motion challenges is the District's refusal to provide limited information concerning undercover social media accounts. Although Plaintiffs had initially requested additional records, Plaintiffs subsequently agreed to limit their request to two narrow categories of information not tied to any specific investigation: (a) the names of the social media platforms on which the District uses undercover accounts and (b) a tally of the total number of requests and approvals for the use of undercover accounts, and the dates associated therewith.

31. Although this Court has repeatedly ordered the District to produce such records (and more), the District has refused to do so, most recently invoking two separate "Law

Enforcement" exemptions, D.C. Code §§ 2-534(a)(3)(A)(i) & (3)(E), and the "Deliberative Process" exemption, *id.* § 2-534(a)(4).

32. Plaintiffs review below the background of their request for this information as well as the Court's prior rulings. In their Request, first made on December 15, 2020, Plaintiffs specifically sought records concerning the use of undercover social media accounts. Strouse Decl. ¶ 1 & Ex. 1 (Request seeking records on "the authorization, creation, use, and maintenance of fictitious/undercover online personas").

33. In September 2021, the District conducted its first search for undercover social media account records. Strouse Decl. ¶ 2 & Ex. 2.

34. Determining that the District's September 2021 search was insufficient, this Court ordered the District on July 11, 2022, to locate and produce records by September 9, 2022 showing "MPD's use of fictitious social media accounts," "written approvals … prior to using or creating an under-cover account," "[t]he centralized registry of all active undercover social media accounts," and "requests to use undercover social media accounts." Strouse Decl. ¶¶ 10, 22 & Ex. 8 (July 11, 2022 Order requiring production of "the documents identified in Exhibits B and C of Plaintiffs' July 5, 2022 Praecipe") & Ex. 19 (July 5, 2022 Praecipe, with exhibits detailing, *inter alia*, the above-referenced categories of records to be located and produced).

35. On August 30, 2022, this Court denied the District's Motion for Reconsideration of its July 11, 2022, Order, and again ordered the undercover account records to be produced by September 9, 2022. Strouse Decl. ¶ 11 & Ex. 9.

36. On December 9, 2022, the Court determined that the District still had not sufficiently produced the requested records related to the use of undercover social media

accounts, and again ordered the District to produce, among other things, records regarding the use of "fictitious social media accounts" and the related approvals. Strouse Decl. ¶ 13 & Ex. 11.

37. Also on December 9, 2022, the Court additionally ordered the District to conduct new searches using search parameters proposed by Plaintiffs. These new searches included one specifically designed to retrieve (a) "all written approvals to use undercover accounts" and (b) "the centralized registry of all active undercover social media accounts." The Court ordered the District to "conduct" these searches and "produce relevant documents by January 13, 2023." Strouse Decl. ¶¶ 13, 24, Ex. 11 (Dec. 9, 2022 Order directing the District to conduct the searches as enumerated in Plaintiffs' October 14, 2022 Letter); Ex. 21 (October 14, 2022 Letter) at 11-13.

38. On January 13, 2023, the District produced no "written approvals" or requests for approvals, as had been directed by the Court numerous times. Instead, it fully withheld everything responsive to the request for such information on grounds of Exemption 4 (deliberative process) and Exemption 3(A)(i) (law enforcement proceeding). Strouse Decl. ¶ 57 & Ex. 51 .

39. The District produced one chart that appears to be the "registry of all active undercover social media accounts," but most of the information is redacted from it under the same exemptions. Strouse Decl. ¶ 58 & Ex. 52 (redacted chart). Specifically, of the chart's 18 columns, 13 are fully redacted: account number, date received, date account was created, case numbers, primary investigative member, secondary investigative member, supervisor, element, social media platform, username, password, account ID number, and date training was complete. *Id.* The only unredacted fields are "EO-21-025 Compliant," "Approved By," "Deconflicted Check" (a column which contains no data), "NSID Reviewed Official," and an additional unnamed column that includes two procedural notes. *Id.* The District asserts that the redactions

were made pursuant to Exemption 4 (deliberative process) and Exemption 3(A)(i) (law enforcement proceeding). Strouse Decl. ¶ 57 & Ex. 51.

40. After receiving the January 13, 2023 production, Plaintiffs informed the District that, in an effort to compromise, they would seek only (a) the total number of written requests and approvals to use undercover social media accounts, along with the dates thereof and (b) the identities of the social media platforms on which MPD had undercover accounts, *i.e.*, the "unredaction" of the column in the produced chart listing "social media platform." Strouse Decl. ¶ 59. Plaintiffs agreed not to seek the usernames or passwords; any investigation-specific information, such as case numbers, investigation elements, type of investigation, date accounts were created, account numbers; or the identities of MPD investigative employees or supervisors. (This narrow set of information continues to be all that Plaintiffs seek in connection with undercover accounts in the instant summary judgment motion.)

41. Despite the Court's prior orders requiring the District to produce a much broader class of records, the District rejected this compromise. *Id. ¶* 59. Its counsel also indicated during several "meet and confers" that the District was invoking Exemption 3(E), relating to law enforcement techniques, although this exemption was never asserted in writing. Strouse Decl. ¶ 60.[8]

42. In addition to claiming that the undercover account information sought by Plaintiffs is exempt, the District also asserts that the "chart" and "requests/approvals" at issue here, which were created sometime after November 2021, should not be considered part of this

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[8] Although Plaintiffs believe that this issue has been disposed of by the Court's prior orders, Plaintiffs have nevertheless asked the District multiple times to clarify which exemptions it is asserting to support the challenged redactions and withholdings. It has not provided a substantive response. Strouse Decl. ¶ 60.

litigation. Strouse Decl. ¶ 61. Specifically, the District has taken the position that the "cutoff" date for undercover account records is September 2021, because that is the date that it conducted its initial search, and therefore any records that post-date September 2021 are not responsive. Strouse Decl. ¶ 14, 24 & Exs. 12, 21

43. The Court had already rejected that specific contention in its several orders directing the production of these records. When the District advanced this argument at the December 9, 2022 hearing, the Court, referencing the District's production of numerous other documents that were created after September 2021, told the District's counsel: "I don't understand why we're stuck on September 30, 2021, when you've already turned over documents well past that date." Strouse Decl. ¶ 14 & Ex. 12 (Dec. 9 Hrg. Tr. at 26:15-26:24). *See also, e.g.*, Strouse Decl. ¶¶ 61-62, Ex. 53 (excerpts from demonstration reports from 2022 and 2023 produced by District) & Ex. 54 (1/13/2022 Email Search Chart produced by District). In addition, in its December 9 Order, the Court ordered the District to search for and produce records concerning undercover social media accounts created *after* September 2021, Ex. 21 at 11-13 (containing search parameters ordered by Court's December 9 Order).[9]

44. The District has not explained how it is exempt from producing this limited group of records – here, pursuant to a substantially narrowed compromise request – in light of the Court's repeated orders.

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[9] To avoid any possible dispute that the District was not required to produce these records, Plaintiffs submitted a second FOIA request for post-September 2021 records on October 13, 2022. Strouse Decl. ¶ 56 & Ex. 50. Plaintiffs have consistently maintained that this second request was not necessary and that the initial request for undercover account information was sufficient. Strouse Decl. ¶ 24, 26 & Ex. 21 at 6 (Plaintiffs' Oct. 14, 2022 Letter to District, noting that "this additional request was not necessary," but that Plaintiffs "submitted it for the avoidance of doubt and to avoid further disputes on this subject") & Ex. 23 (Plaintiffs' Dec. 9, 2022 Praecipe, explaining that their second request had been submitted in attempt "to remove any basis for ongoing dispute").

Dated: September 8, 2023

Respectfully submitted,

BALLARD SPAHR LLP

By: *__/s/ Seth D. Berlin__*

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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, ***et al.***	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 2022-CA-00922B
v.	)	
	)	**Next Hearing:**
THE DISTRICT OF COLUMBIA,	)	**November 29, 2023 9:00 AM**
	)	
Defendant.	)	

DECLARATION OF MARGARET N. STROUSE

I, Margaret N. Strouse, declare under penalty of perjury as follows:

I am an associate in the law firm of Ballard Spahr LLP, counsel for Plaintiffs the Brennan Center for Justice ("Brennan Center") and Data for Black Lives (together, "Plaintiffs") in this action. I am admitted to practice in this Court. I submit this declaration in support of Plaintiff's Second Motion for Summary Judgment. I have personal knowledge of the facts herein and would be competent to testify to them.

Plaintiffs' Request and Summary Judgment Motion

1. Attached hereto as Exhibit 1 is a true and correct copy of a request under the D.C. Freedom of Information Act ("FOIA") submitted by Plaintiffs' to the Metropolitan Police Department ("MPD") on December 15, 2020, seeking fourteen types of public records regarding police use of social media to monitor citizens (the "Request").

2. Attached hereto as Exhibit 2 is a true and correct copy of MPD's email response to the Request, sent on September 30, 2021. MPD produced six records responsive to Plaintiffs' Request with its email response.

3. Attached hereto as Exhibit 3 is a true and correct copy of Plaintiffs' administrative appeal of the MPD's response to the Request submitted to the Mayor's Office of General Counsel on December 22, 2021 on the basis of search inadequacy. The exhibits attached to the administrative appeal have been omitted.

4. The Mayor's Office did not respond to Plaintiffs' administrative appeal of the MPD as required by D.C. Code § 2-537(a), nor did MPD.

5. Attached hereto as Exhibit 4 is a true and correct copy of Plaintiffs' Complaint filed on March 1, 2022. The exhibits attached to the Complaint have been omitted.

6. Attached hereto as Exhibit 5 is a true and correct copy of Plaintiffs' First Contested Motion for Summary Judgment filed on March 13, 2022. The exhibits attached to the first summary judgment motion have been omitted.

7. The District failed to respond to Plaintiffs' first summary judgment motion.

The Court's Hearings and Orders

8. The Court held an Initial Scheduling Conference on June 3, 2022. Attached hereto as Exhibit 6 is a true and correct copy of an excerpt of the transcript of that conference, in which the Court agreed to hold Plaintiffs' summary judgment motion abeyance to allow the District the opportunity to work with Plaintiffs to cure the search inadequacies and to produce the requested records.

9. Attached hereto as Exhibit 7 is a true and correct copy of the Court's June 3, 2022 Order Memorializing June 3, 2022 Initial Scheduling Conference.

10. The Court held a hearing on July 8, 2022. Attached hereto as Exhibit 8 is a true and correct copy of the Court's July 11, 2022 Order, memorializing the July 8, 2022 hearing. In it, the Court ordered the District (among other things) to locate and produce records identified in

Exhibits B and C of Plaintiffs' July 5, 2022 Praecipe (*see infra* ¶ 22), which included various records related to the use of undercover social media accounts, by September 9, 2022.

11. The Court held a hearing on August 26, 2022. Attached hereto as Exhibit 9 is a true and correct copy of the Court's August 30, 2022 Order Memorializing the August 26, 2022 Hearing and Denying Defendant's Opposed Motion for Reconsideration of the Court's July 11, 2022 Order. In it, the Court again ordered the undercover account records, listed in Exhibits B and C to the July 5, 2022 Praecipe, to be produced by September 9, 2022.

12. The Court held a hearing on September 30, 2022. Attached hereto as Exhibit 10 is a true and correct copy of the Court's September 30, 2022 Order memorializing the hearing held that same day.

13. The Court held a hearing on December 9, 2022. Attached hereto as Exhibit 11 is a true and correct copy of the Court's December 9, 2022 Order memorializing the hearing held the same day. In it, the Court (a) again ordered the District to produce "certain documents that Defendant was ordered to produce by the Court," including records regarding the use of and approvals for undercover social media accounts and (b) ordered the District to conduct new searches using search parameters proposed by Plaintiffs (*see infra* ¶ 24), including searches designed to retrieve records related to the use of undercover social media accounts. The Court ordered that the District conduct these searches and "produce relevant documents by January 13, 2023."

14. Attached hereto as Exhibit 12 is a true and correct copy of the transcript of December 9, 2022 hearing.

15. The Court held a hearing on February 3, 2023. Attached hereto as Exhibit 13 is a true and correct copy of the Court's February 6, 2023 Order memorializing the hearing held that day.

16. The Court held a hearing on April 14, 2023. Attached hereto as Exhibit 14 is a true and correct copy of the Court's April 14, 2023 Order memorializing the hearing held that day.

17. Attached hereto as Exhibit 15 is a true and correct copy of the Court's May 23, 2023 Order Granting in Part the District's Motion to Extend Production Deadlines.

18. The Court held a hearing on June 2, 2023. Attached hereto as Exhibit 16 is a true and correct copy of the Court's June 2, 2023 Order memorializing the hearing held the same day.

19. The Court held a hearing on July 14, 2023. Attached hereto as Exhibit 17 is a true and correct copy of the Court's July 14, 2023 Order setting a dispositive motion briefing schedule.

20. The Court held a hearing on August 25, 2023. It orally ordered the District to produce all outstanding documents it agreed to produce by September 1, 2023, in advance of the September 8 deadline for Plaintiffs to file the instant motion. As of September 5, 2023, the District was still producing records, and, as of today, September 8, 2023, some records still remain outstanding. They are three records related to the Capitol Police records and 34 concerning certain domain names.

Plaintiffs' Praecipes and Letters

21. Attached hereto as Exhibit 18 is a true and correct copy Plaintiff's May 12, 2022 Praecipe Under Rule 12-I(e) Noting Failure to File Opposition to Plaintiffs' Partial Motion for Summary Judgment.

22. Attached hereto as Exhibit 19 is a true and correct copy of Plaintiffs' Praecipe in Advance of Status Hearing, filed on July 5, 2022. Exhibits B & C to the praecipe list responsive records the District had not produced.

23. Attached hereto as Exhibit 20 is a true and correct copy of Plaintiffs' Praecipe Regarding the District's Failure to Comply with Court Orders, filed on August 19, 2022. The exhibits attached to the praecipe have been omitted.

24. Attached hereto as Exhibit 21 is a true and correct copy of a letter from Plaintiffs to the District, dated October 14, 2022, describing all outstanding issues in the case.

25. Attached hereto as Exhibit 22 is a true and correct copy of the District's December 2, 2022 Letter responding to Plaintiff's October 14 Letter.

26. Attached hereto as Exhibit 23 is a true and correct copy of Plaintiffs' Praecipe in Advance of December 9, 2022 Status Hearing, filed on December 7, 2022. The exhibits attached to the praecipe have been omitted.

27. Attached hereto as Exhibit 24 is a true and correct copy of Plaintiffs' Praecipe in Advance of February 3, 2023 Status Hearing, filed on January 31, 2023. The exhibits attached to the praecipe have been omitted.

28. Attached hereto as Exhibit 25 is a true and correct copy of Plaintiffs' Praecipe in Advance of April 14, 2023 Status Hearing, filed on April 12, 2023.

29. Attached hereto as Exhibit 26 is a true and correct copy Plaintiffs' Praecipe in Advance of July 14, 2023 Status Hearing, filed on July 13, 2023.

30. Over the course of this litigation, Plaintiffs have engaged in at least 21 meet and confer conferences with the District regarding search terms, searches, production of public records, and redactions.

Records Related to Voyager Analytics

31. Attached hereto as Exhibit 27 is a true and correct copy an excerpt of the *Vaughn* Index the District produced on June 23, 2023, containing the entry regarding the redaction of a "Voyager Evaluation Agreement," with that entry highlighted.

32. Attached hereto as Exhibit 28 is a true and correct copy of the redacted Voyager Evaluation Agreement (from 2016 or 2017),[1] produced by the District on April 28, 2023, with Bates numbers B-00745093-98.

33. Attached hereto as Exhibit 29 is a true and correct copy of MPD's Homeland Security Bureau's December 22, 2016 Memorandum regarding Social Media Analysis Tool (Voyager Analytics) Test Request from the Director of Joint Strategic and Tactical Analysis Command Center Lee T. Wight, thru Commander of Technical Services Division, and to the Chief Operating Officer. MPD produced the December 22, 2016 memorandum on May 30, 2023, with Bates numbers B-00746719-35. The memorandum includes three attachments:

a. E-Mail from Voyager to JSTACC Director proposing trial period;

b. Voyager Social Media Intelligence and Investigations software description PowerPoint presentation; and

c. Voyager Analytics—Capabilities Statement.[2]

34. Attached hereto as Exhibit 30 is a true and correct copy of a set of records labeled "Request 17 – Voyager Trial by Intel," produced by the District on March 29, 2023, with Bates numbers MPD 1-41. This set of records includes 2016 emails with Voyager Analytics representatives, promotional materials for Voyager Analytics, and a Voyager Analytics price proposal for MPD.

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[1] The District produced records indicating it conducted at least two trials of Voyager—in 2016 and 2017. Due to the extensive redactions, is unclear for precisely which trial the Voyager Evaluation Agreement was created.

[2] After having produced the "Capabilities Statement," MPD subsequently produced the same document again as part of a different production of records. This second time, though, the District fully redacted the record, asserting in its *Vaughn* Index that the redacted information was subject to FOIA's "Trade Secrets" exemption. Because the District had already produced an unredacted version, Plaintiffs are not challenging the later redaction.

35. Attached hereto as Exhibit 31 is a true and correct copy of an October 13, 2015 email from a Voyager Analytics representative to MPD Commander Robin Hoey soliciting a meeting with MPD and providing information about Voyager's capabilities and tools. The District produced this email on May 30, 2023, with Bates numbers B-00746117-18.

36. Attached hereto as Exhibit 32 are true and correct copies of several emails regarding the "Status of Voyager Analytics, Inc.'s Social Media Proposal" in 2019, including exchanges between Voyager's Vice President and MPD and internal MPD exchanges regarding Voyager's pricing. The District produced the emails on May 30, 2023, with Bates numbers B-00746621-25.

37. Attached hereto as Exhibit 33 is a true and correct copy of a meeting invitation for a Voyager Analytics Demonstration for MPD on October 20, 2015. The District produced this record on May 30, 2023 labeled with Bates numbers B-0046111-12.

38. Attached hereto as Exhibit 34 are a true and correct copies of October 2015 emails between a Voyager representative and MPD employees regarding Voyager's October 20, 2014 demonstration for MPD and offering another Voyager Demonstration. The District produced the emails on May 30, 2023, with Bates numbers B-0046108-10.

39. Attached hereto as Exhibit 35 are true and correct copies of MPD emails regarding a Voyager Tool Test Request from December 2016 to January 2017, discussing the details of the Voyager trial and the "expected performance outcomes and measures" for the trial period. The District produced these emails on September 8, 2022, with Bates numbers MPD 1-11.

40. Attached hereto as Exhibit 36 is a true and correct copy of the 2017 Donation Agreement between the Metropolitan Police Department and Voyager Analytics, Inc. The District produced the Donation Agreement on May 2, 2023, with Bates number MPD 1.

41. In 2021, MPD experienced a ransomware attack, and hackers released over 250GB of MPD files to the public. *See* Thomas Brewster, *Ransomware Hackers Claim To Leak 250GB Of Washington, D.C., Police Data After Cops Don't Pay $4 Million Ransom*, Forbes (May 14, 2021) https://www.forbes.com/sites/thomasbrewster/2021/05/13/ransomware-hackers-claim-to-leak-250gb-of-washington-dc-police-data-after-cops-dont-pay-4-million-ransom/?sh=1aa24e8258d0.

42. Attached hereto as Exhibit 37 are true and correct copies of leaked emails from July 2016 between Senior Intelligence Research Specialist Daniel Hall and then-Chief Lamar Greene describing Mr. Hall's feedback on several social media monitoring services, including a lengthy review of Voyager and its capabilities.

43. In connection with litigation that Plaintiff Brennan Center brought against the Los Angeles Police Department ("LAPD") under California's open records law, the LAPD released several detailed documents concerning its trial of Voyager.

44. Attached hereto as Exhibit 38 is a true and correct copy of a PowerPoint presentation highlighting Voyager's capabilities and promoting Voyager Version 6.2 for 2020.

45. Attached hereto as Exhibit 39 is a true and correct copy of a detailed 10-page proposal for LAPD describing Voyager's benefits, capabilities, and functionality.

46. Attached hereto as Exhibit 40 is a true and correct copy of LAPD's 25-page Voyager April 2019 user guide for Version 5.3 describing how to execute Facebook profile searches, keyword searches, generate friendship reports, visualize connections of targeted individuals, and use Voyager to review social media platform responses to warrants.

47. Attached hereto as Exhibit 41 is a true and correct, and unredacted, copy of a 2017 agreement between MPD and Dataminr, including a confidentiality provision. The District produced the Dataminr Agreement on June 24, 2022 without any Bates numbering.

48. In April 2023, the District produced, in redacted form, (a) a 2017 proposal from LexisNexis for a "Virtual Crime Center," and (b) five 2014 LexisNexis "Schedule A" invoices. Attached hereto as Exhibit 42 is a true and correct composite copy of the *Vaughn* Index entries, the heavily redacted LexisNexis proposal (Bates numbers B-00745099-111), and an exemplar 2014 "Schedule A" invoice (Bates numbers B-00745049-63).

49. After discussions with Plaintiffs and LexisNexis, the District removed nearly all of the redactions and produced a 2017 proposal from LexisNexis for a "Virtual Crime Center" on August 25, 2023 without new Bates numbering. Attached hereto as Exhibit 43 is a true and correct copy of the unredacted 2017 LexisNexis "Virtual Crime Center" proposal.

50. After discussions with Plaintiffs and LexisNexis, the District, on August 25, 2023, re-produced the five 2014 LexisNexis "Schedule A" invoices without redactions, revealing the types of searches MPD ran each month. Attached hereto as Exhibit 44 is a true and correct copy of an exemplar unredacted LexisNexis "Schedule A" invoice without new Bates numbering.

Records Related to Dataminr and Sprinklr

51. Attached hereto as Exhibit 45 is a true and correct copy of "Dataminr Emails Feedback" that the District produced in redacted form on September 8, 2022 with Bates numbering MPD 1-58.

52. Attached hereto as Exhibit 46 is a true and correct excerpted copy of the District's March 3, 2023 *Vaughn* Index with Dataminr Feedback entries highlighted, showing that the redactions were made pursuant to the District's claim that the feedback was exempt under Exemption 4 of the D.C. FOIA for information protected by the "deliberative process" privilege.

53. Attached hereto as Exhibit 47 is a true and correct copy of a July 11, 2014, email from a MPD Criminal Intelligence Branch employee providing feedback regarding the Geofeedia social media monitoring tool, which was excerpted from the document "Geofeedia

Emails-Redacted" that the District produced on September 23, 2022 and Bates numbered MPD 3.

54. Attached hereto as Exhibit 48 is a true and correct copy of an August 21, 2018 email providing feedback from ISS regarding the Transunion TLOxp tool, which was excerpted from the document "TransUnion Emails2-Redacted" that the District produced on September 23, 2022 and Bates numbered MPD 127.

Records Related to Undercover Accounts

55. Attached hereto as Exhibit 49 is a true and correct copy of Executive Order 21-025: Chief Of Police Robert J. Contee III, *Social Media for Investigative and Intelligence-Gathering Purposes*, Metropolitan Police District of Columbia, effective November 8, 2021. MPD General Counsel Theresa Quon produced the Executive Order after the filing of this suit on February 28, 2022.

56. Attached hereto as Exhibit 50 is a true and correct copy of Plaintiffs' October 13, 2022 FOIA request for undercover social media account records, submitted after the District refused to produce such documents despite several court orders.

57. Attached hereto as Exhibit 51 is a true and correct copy of the District's January 13, 2023 Letter regarding Plaintiff's request for undercover social media account public records, claiming that it was entitled to redact and withhold certain records under FOIA Exemption 4 (for "deliberative process") and FOIA Exemption 3(A)(i) (for law enforcement proceeding).

58. Attached hereto as Exhibit 52 is a true and correct copy of MPD's "Social Media Username Log – 23.01.10-Redacted," which was produced on January 13, 2023, in heavily redacted form, including a completely redacted column entitled "social media platform."

59. After receiving the January 13, 2023 production, Plaintiffs informed the District that, in an effort to compromise, they would seek only (a) total number of written requests and

approvals to use undercover social media accounts, along with the dates thereof and (b) the identities of the social media platforms on which MPD had undercover accounts, *i.e.*, the "unredaction" of the column in the produced chart (Ex. 52) listing "social media platform." Plaintiffs agreed not to seek usernames or passwords; any investigation-specific information, such as case numbers, investigation elements, type of investigation, date accounts were created, account numbers; or the identities of MPD investigative employees or supervisors.

60. The District rejected this compromise. The District's counsel also indicated orally during the parties' "meet and confer" conferences that the District was additionally invoking Exemption 3(E), relating to law enforcement techniques, to redact the social media platforms column, Ex. 52 , although this exemption was never asserted in writing.

61. Although the District maintains that it need not produce undercover account records created after September 2021, it has produced many other records created after that date. By way of example, attached hereto as Exhibit 53 are true and correct copies of the first pages of 25 demonstration reports from 2022 and 2023 that the District produced on January 13, 2023 and each Bates numbered MPD 1.

62. Attached hereto as Exhibit 54 is a true and correct copy of an email search chart, showing the status of Plaintiffs' of the searches enumerated in Plaintiffs' October 14, 2022 letter (Ex. 21), which the District produced on January 13, 2023.

Executed on September 8, 2023.

Margaret N. Strouse

IN THE SUPERIOR COURT
FOR THE DISTRICT OF COLUMBIA
CIVIL DIVISION

BRENNAN CENTER FOR JUSTICE, ***et al.***	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 2022-CA-00922B
v.	)	
	)	**Next Hearing:**
THE DISTRICT OF COLUMBIA,	)	**November 29, 2023 9:00 AM**
	)	
Defendant.	)	

[PROPOSED] ORDER

Upon consideration of Plaintiffs' Second Motion for Summary Judgment ("Plaintiffs' Motion") pursuant to the D.C. Freedom of Information Act ("FOIA"), any cross-motion thereto, opposition thereto and/or reply in support thereof, and having heard argument from counsel for the parties, it is this _____ day of _____ 2023, hereby

ORDERED that Plaintiffs' Motion is **GRANTED**, upon this Court's finding that Defendant violated FOIA by improperly redacting and withholding public records responsive to Plaintiffs' December 15, 2020 FOIA Request. It is further

ORDERED that within 14 days of this Order, Defendant must produce, in unredacted form

a. the "Voyager Evaluation Agreement,"

b. the "raw" and "consolidated" Dataminr and Sprinklr Feedback,

c. the "Social Media Platform" column within the Undercover Social Media Account Registry, and

d. the number of requests and approvals regarding undercover social media accounts from November 2021 to present, and the associated dates.

It is further

ORDERED that, pursuant to D.C. Code § 537(c), Plaintiffs are entitled to an award of the costs and fees (including reasonable attorneys' fees) related to this matter. They have substantially prevailed in this litigation, as the District produced thousands of records after Plaintiffs filed suit and after the Court repeatedly ordered it to do so. The Court directs the Parties to meet and confer with the goal of negotiating the amount of such award. If the parties agree, they shall submit a proposed order. If the parties are unable to agree, Plaintiffs shall, within sixty (60) days of the date of this Order, file an accounting of their attorneys' fees and costs. Defendant shall then have fourteen (14) days to file any objection, and Plaintiffs shall have ten (10) days to file any reply to such objection.

IT IS SO ORDERED.

Date: November ____, 2023

____

Judge Yvonne Williams