

BRENNAN CENTER FOR JUSTICE

February 17, 2021

Jeremiah Regan
441 4th St., NW
Washington, DC 20001

Office of Contracting and Procurement
441 4th St., NW
Suite 220 South
Washington, DC 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 Office of Contracting and Procurement's records pertaining to vendors who collect social media 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. One form of social media monitoring involves using software from companies like Dataminr or Babel Street to monitor individuals, groups, associations, or locations.

Social media is a crucial forum for the exchange of ideas, particularly in this time of unprecedented public activism and political engagement. Social media platforms like Facebook, Twitter, and Instagram have proven to be an invaluable tool for connecting and organizing around a variety of issues and across diverse movements. In a time when social

media is recognized as akin to the “modern public square,”¹ social media monitoring has significant civil rights implications. Like other forms of surveillance, social media monitoring impacts what people say and who they interact with online. The deleterious effects of surveillance on free speech have been well documented in empirical research.²

The DC Vendor Portal, which allows vendors to submit electronic invoices according to specific purchasing agencies, indicates that a broad range of District Government agencies have engaged the services of social media monitoring vendors. These organizations include the Office of the State Superintendent of Education, the Department of Insurance, Securities, and Banking, and the Homeland Security and Emergency Management Agency, among others. Information from the Office of Contracting and Procurement regarding these transactions would clarify the extent of government reliance on third-party vendors.

Request

The Brennan Center requests all records in the Office of Contracting and Procurement’s possession or control pertaining to the following purchase orders, which we have identified by vendor, purchase order number, voucher number, and payment date.

Vendor	PO #	Voucher #	Payment Date
Babel Street	PO553921	VOE50229	1/26/17
Babel Street	PO563228	VOE85063	6/7/17
Babel Street	PO570883	VOF36016	11/20/17
Babel Street	PO592629	VOG40494	11/9/18
Babel Street	PO611421	VOH88017	12/13/19
Babel Street	PO633942	VOJ00503	11/23/20
Dataminr	PO623464	VOI35796	5/11/20
Meltwater	PO573537	VOF40903	12/18/17
Meltwater	PO573537	VOF58936	3/5/18
Meltwater	PO585676	VOF94711	7/11/18
Meltwater	PO592330	VOG37579	11/21/18
Meltwater	PO598868	VOG65955	2/8/19
Meltwater	PO599199	VOG75961	3/6/19

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>.

Meltwater	PO603290	VOH07135	5/28/19
Meltwater	PO610173	VOH57927	9/23/19
Meltwater	PO610173	VOH57851	9/23/19
Meltwater	PO616923	VOH84750	12/13/19
Meltwater	PO614249	VOH91230	12/23/19
Meltwater	PO618581	VOH92387	12/26/19
Meltwater	PO620095	VOI10509	3/6/20
Meltwater	PO624049	VOI38889	5/22/20
Meltwater	PO629237	VOI91624	10/14/20
Meltwater	PO631630	VOI91620	10/14/20
Meltwater	PO632913	VOI97135	11/16/20
Meltwater	PO634864	VOJ04241	11/30/20

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).

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.

Accordingly, the primary purpose of the above requests is to obtain information to further the public’s understanding of important government 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 Office of Contracting and Procurement 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 Office of Contracting and Procurement's attention to this request and expects that the Office 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 Office withholds any records, please list, in writing, each document that is withheld as well as the specific claimed exemption.³ 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.

Should you have any questions concerning this request, please contact Laura Hecht-Felella by telephone at (646) 292-8385 or via e-mail at hecht-felella@brennan.law.nyu.edu.

Sincerely,

Laura Hecht-Felella

Laura Hecht-Felella
George A. Katz Fellow
Brennan Center for Justice
Ph: (646) 292-8385
Email: hecht-felella@brennan.law.nyu.edu

³ See Washington, DC Municipal Code § 2-533.