

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

ACLU OF TENNESSEE,

Intervening Plaintiff,

v.

No. 2:17-cv-02120-JPM-dkv

THE CITY OF MEMPHIS,

Defendant.

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**DEFENDANT'S RESPONSE TO PLAINTIFF'S UNDISPUTED STATEMENT OF  
MATERIAL FACTS**

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Pursuant to Federal Rule of Civil Procedure 56 and Local Rule 56.1, Defendant, The City of Memphis ("the City") responds to Plaintiffs' statement of material facts as to which Plaintiffs contend there is no genuine issue for trial.

1. On December 19, 2016, the Coalition of Concerned Citizens ("CCC") and Keedran Franklin, staged a protest, known as a die-in, on the front lawn of Mayor Strickland's residence. (Bonner Dep. 24; Rallings Dep. 65, 75; Reynolds Dep. 117.)

**Response No. 1.** Disputed.

It is disputed that this event was a "protest." Rather, the Die-In was an act of criminal trespass on private property by masked persons "playing dead" on the Mayor's lawn, and peering through the Mayor's windows.<sup>1</sup> (Depo. Rallings, p. 65; Depo. Reynolds pp.120-21.) (all Deposition Excerpts of Director Rallings attached as Coll. Exhibit 1; all Deposition Excerpts of Reynolds

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<sup>1</sup> <https://www.commercialappeal.com/story/news/local/2016/12/19/group-protests-memphis-mayors-lawn/95628352/>

attached as Coll. Exhibit 2.)

2. The list publicly known as the City Hall Escort List was produced as a response to the die-in event. (Rallings Dep. 64-66; Exh. A: Bonner Dep., Exh. 1.)

**Response No. 2.** Disputed.

The City Hall Escort List existed before the Die-In at the Mayor's Home. An "Escort List" pre-dating the current administration was for the use of police officers providing security at City Hall. It consisted of identifying information regarding certain former employees or individuals known or observed by law enforcement or city employees to have engaged in disruptive conduct or who have expressed a willingness to commit disruptive acts while in City Hall. Once a person's name was on that City Hall Escort List, that person is allowed to enter City Hall, but that person must identify where they are going and who they intend to see. They might require an escort while in the building. (Bonner Depo. at pp. 17-19) (all Deposition Excerpts of Lt. Bonner attached as Coll. Exhibit 3).

3. The list is an Authorization of Agency ("AOA") produced with the approval of Director Rallings. (Rallings Dep. 64-66; Exh. A: Bonner Dep., Exh. 1.)

**Response No. 3.** Disputed.

While true that the Escort List was updated to include the list of persons on the AOA for the Mayor's home, the Escort List pre-dated the Die-In and the AOA at the Mayor's home. *See* Defendant's Response No. 2.

The Mayor executed an AOA for his personal residence on January 4, 2017, in response to the Die-In. Lt. Albert Bonner added the persons on the AOA for the Mayor's Home to the pre-existing City Hall Escort List. He did this because he was trying to make sure if any of the individuals who trespassed at the Mayor's home came to City Hall, the City Hall security team

would be on notice of the potential for disruption. (Bonner Depo. at p 28).

Regardless, the names from the AOA at the Mayor's home were removed from the City Hall Escort List a few weeks after they were added. *See* Def.'s Statement of Undisputed Material Facts in Support of Defendant's Motion for Summary Judgment on the Issue of Civil Contempt No. 32, ECF No. 81-2)

4. An AOA is a MPD internal form that designates a list of individuals who may not enter a particular property; individuals on an AOA are to be notified of their presence on the list and that, if they then return to the property, they are subject to arrest for criminal trespass. (Reynolds Dep. 118-19.)

**Response No. 4.** Undisputed except as clarified below.

It is undisputed that the purpose of an AOA is to empower the police to arrest the persons listed on the AOA should they trespass again on that property without having to notify the property owner. (Bonner Depo. at pp. 15-17). The particular form used for an AOA is not the authority from which the criminal trespass springs. The criminal trespass arises under circumstances described in T.C.A. § 39-14-405.

5. Sergeant Tim Reynolds of OHS drafted the AOA but did not limit it to individuals who were present at the Mayor's residence on December 19, 2016. (Reynolds Dep. 122, 125-26; Rallings Dep. 67-68.)

**Response No. 5** Undisputed.

6. Reynolds populated the list with individuals who he termed "associates in fact," who were individuals that "may have something to do with either Keedran Franklin or the CCC" as determined by "social media contacts," "previously arrested with," "often seen at unlawful assemblies with." (Reynolds Dep. 122, 125-26; Rallings Dep. 67-68.)

**Response No. 6.** Disputed.

It is undisputed that Detective Reynolds obtained the names for the AOA list from open source social media contacts of Franklin and the CCC, as well as looking up the identities of individuals arrested along with Franklin in the past. (Depo. Reynolds at p. 122). However, Reynolds's list also included persons that had either attended, publicly supported, or encouraged unlawful, unpermitted protests, including the Graceland protest. (Depo. Reynolds at pp. 122-123).

7. AOA's were issued for the Mayor's residence and City Hall on January 4, 2017 and January 17, 2017, respectively, and the AOA for the Mayor's residence specified that the individuals included on that list to be escorted while inside of City Hall. (Exh. A.)

**Response No. 7.** Undisputed.

It is undisputed that the AOA executed for City Hall was merely an addition to the pre-existing escort list, which would only require that a person on the Escort List be escorted to his or her destination within City Hall. In fact, none of the persons listed on the AOA were ever escorted while in City Hall. *See* Def.'s Statement of Undisputed Material Facts in Support of Defendant's Motion for Summary Judgment on the Issue of Civil Contempt No. 33, ECF No. 81-2)

8. In support of the AOA's, Reynolds prepared dossiers for the listed individuals and sent them to Albert Bonner, who instructed that they be printed and kept in a folder where officers could familiarize themselves with the list. (Bonner Dep. 9, 33-35; Exh. C: Bonner Dep. Exhs. 2- 3; Reynolds Dep. 25; Exh. C, at 20796.

**Response No. 8.** Disputed.

It is disputed that Sgt. Reynolds prepared "dossiers" for the listed individuals. In an effort to assist the City Hall Security team in identifying the persons on the Escort List, he compiled and sent the driver's license photos of the persons recently added to the Escort List to Lt. Bonner for

inclusion in the City Hall Security Book. Intervening Plaintiff admitted that the purpose of including the driver's license photos in the City Hall Security Book was for providing information "to your personnel to help them know who was supposed to be escorted[.]." (Depo Bonner 33).

9. After the AOA list became public, and in an effort to "pare the list down," Reynolds generated an additional list that provided explanations for individuals who were to remain on the list. (Exh. D: Bonner Dep. Exh. 4; Reynolds 128.)

**Response No. 9.** Disputed.

Sgt. Reynolds and his partner Sgt. Cornwell generated the list. They were instructed to make sure that the people on the City Hall Escort List had a "strong connection" to a "series of unlawful assemblies or arrests." (Depo. Reynolds 128.) The names from the AOA for the Mayor's Home and the Valero arrestees were removed from the Escort List just a few weeks after they were added to the list, *See* Def.'s Statement of Undisputed Material Facts in Support of Defendant's Motion for Summary Judgment on the Issue of Civil Contempt No. 32, ECF No. 81-2).

10. OHS was "originally designed to deal with threats to the Memphis Police Department or Memphis in general," but that it had to "retool due to recent events" — such as "protests against the police" and threats against the police — and that, OHS began to focus on "local individuals or groups that were staging protests." (Chandler 14-15.)

**Response No. 10.** Disputed.

The Office of Homeland Security was designed, in part, to deal with threats to the Memphis Police Department or Memphis in general, but it also was designed to "look[] at national threats plus international threats. And as -- after an officer involved shooting that resulted in the death of a suspect, we had to retool due to recent events or certain events that were starting to take place that we needed to be aware of." (Depo. Chandler 14) (all Deposition Excerpts of Major Chandler

attached as Coll. Exhibit 4).

11. Joint Intelligence Briefings, circulated between one and three times per day, were reports prepared by OHS that included national news stories regarding police involved shootings presented alongside local criminal activities, photographs and profiles of activists and individuals, and lists of movement meetings and events. (Exh. E: Chandler Dep. Exh. 59.)

**Response No. 11.** Disputed.

The JIB was designed to collect information from federal, state, and local agencies regarding known threats to public safety for dissemination to other law enforcement agencies. (Depo. Chandler, pp. 22-25). The early JIBs contained critical information regarding alarming acts of violence towards law enforcement as well as large events with the potential for violence. *See, e.g.*, JIBs attached as Collective Exh. 5.

12. The four categories of information that were to be incorporated into a JIB, according to Chandler, were: (1) Police Shootings/deaths; (2) Riots/protests; (3) Black Lives Matter (BLM); (4) Officer Safety. (Exh. E.)

**Response No. 12.** Disputed.

The JIB also included information related to international and national terrorist threats. (Depo. Reynolds p.26). To the extent that Major Chandler identified those four categories of information to be incorporated into the JIB, he testified that those groups were earmarked because that is what MPD was focused on in August 2016, including "anything related to police shootings/deaths that would result in riots/protests or the Black Lives Matter would be speaking out against or anything that would affect officer safety." (Depo. Chandler, pp. 31-32.)

13. JIBS served as "a regional guide to area law enforcement for current and historical intel in reference to the BLM encounters" that law enforcement had been "challenged to mitigate."

(Exh. F: Bass Dep. Exh. 80; Bass Dep. 55-56.)

**Response No. 13.** Disputed.

It is disputed that the JIBs only purpose was to serve as a regional guide to area law enforcement in reference to the BLM encounters. Major Bass did not state that the sole purpose of the JIB was to monitor Black Lives Matters events. (Bass Depo. 56) (all Deposition Excerpts of Major Bass attached as Coll. Exhibit 6). Instead, the full exchange between Major Bass and counsel for Intervening Plaintiff is below:

Q. . . . Do you think that this description is accurate, your own description?

A. . . . In my praise of the guys for their work?

Q. . . . Uh-huh.

A. . . . Yes.

Q. . . . Okay. . . Wonderful.

14. JIBs initially focused on protests “that were popping up around the city” but as time progressed, OHS began “looking at more national events as opposed to anything else, how it had implications for Memphis Police Department,” targeting “any of the organizations that arose out of Ferguson,” and specifically, “Black Lives Matter” and “Take them Down 911 [sic].” (Chandler Dep. 23-24.)

**Response No. 14.** Disputed.

The MPD did not "target" any particular group for the JIB. Major Chandler testified that, since Ferguson, there was an ambush in Dallas where five officers were killed and officers killed in Baton Rouge, and that the MPD needed to be aware of some of the radicalized members of certain groups so that "we can keep ourselves safe as well as those assembling." (Depo. Chandler p. 23.)

15. Groups described in paragraph 14 had “made no direct threat” in Memphis.

(Chandler Dep. 23-24.)

**Response No. 15.** Disputed.

It is undisputed that Major Chandler stated that, at the time the JIBs began circulating, there had been no direct threats made to Memphis. However, a Black Lives Matter protest On July 10, 2016, in Memphis, Tennessee that started at the FedEx Forum resulted in several hundred protestors shutting down the Interstate 40 Bridge over the Mississippi River for approximately four hours ("the Bridge Incident").<sup>2</sup> (Depo. Rallings p. 108.). Additionally, several of the persons involved with the organization of the Bridge Incident repeatedly threatened to stage a repeat of the Bridge Incident and other acts of civil disturbance. For example, Ian Jeffries confronted Police Director Rallings and reminded him "that the Black Panther Party was fully capable of protesting, shutting down different parts of the city." (Depo. Rallings P. 69.) Keedran Franklin personally threatened Director Rallings on "going back to the bridge." *Id.* at 72. Frank Gibson, aka Frank Gottie, has telephoned Director Rallings and has threatened "to go back to the bridge." *Id.* at 73.

16. Within MPD, the JIB was circulated to Executive and Command Staff, Colonels, Special Ops, Special Services, Lt. Colonels, Investigative Services Command, Precinct – Traffic COs, RTCC, MPD Training Academy, Communications Supervisors, and the Public Information Office. (Exh. G: Reynolds, Exh. 14.)

**Response No. 16.** Undisputed.

17. The JIBs were also circulated outside of MPD to employees of: Shelby County Sheriff, U.S. Military, U.S. Department of Justice, Tennessee Department of Homeland Security, Arkansas Fusion Centers, Shelby County, Germantown, West Memphis, Memphis Light, Gas, &

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<sup>2</sup> <http://www.wmcactionnews5.com/story/32411896/protesters-blocking-i-40-bridge>



Water, Tennessee Valley Authority, Shelby County Schools, FedEx, Autozone, and St. Jude. (Exh. G; Exh. H: Reynolds Dep. Exh. 18; Exh. I: Oct. 4, 2016 E-mail; Reynolds Dep. 54-55, 63.)

**Response No. 17.** Undisputed.

It is undisputed that the JIBs were, at one time, circulated outside the MPD. For example, the JIBs was distributed to a former colonel of the MPD who was then employed by Memphis Light Gas and Water. He was added to the distribution list because there had been suspicious activities as some substations, including cutting of fences. In another example, the JIB was distributed to the Arkansas Fusion Center, which is not law enforcement agency, but a crime analysis agency. (Depo. Reynolds p. 59). In the early stages of the JIB, some downtown businesses were included on the distribution list, because a majority of the demonstrations occurred downtown and could impact downtown business. Regardless, the practice of sharing the JIB outside of law enforcement has stopped. (Depo. Reynolds p. 26)

18. JIBs were forwarded beyond this initial circulation list. (*See e.g.* Exh. I; Exh. J: Reynolds Dep. Exh. 12.)

**Response No. 18.** Undisputed.

19. The JIB from July 15, 2016 1600 hours included: a report on the rumored "Day of Rage" protests, information regarding public protests, copies of permits filed for protest events (and the status of those permits), information about an event on private property, a social media post about an individual who posted about a potential protest action and subsequent retraction, a complaint filed by Frank Gibson alleging harassment. (Exh. H.)

**Response No. 19.** Disputed.

The JIB referenced in No. 18 did not reference "a social media post about an individual who posted about a potential protest action," but rather a post on social media from a Jon Jizzle

indicating that he intended or was instigating that persons "Shut down Wolfchase on Friday." (Pl.'s Exh. H). This threat to shut down a major shopping mall came just five days after the Bridge Incident. *See* Def.'s Response No. 15.

The characterization of "the complaint filed by Frank Gibson alleging harassment" is also disputed. The JIB explained that after Frank Gibson and a second person made their complaint at the North Main Station, and then Gibson and the other male were seen circling the precinct. Gibson had also asked "a lot of questions about police radios, and security at the precinct." As a result of their suspicious behavior, an internal incident report was written and circulated "because of the numerous non-specific threats to Law Enforcement that have been circulated." (Pl.'s Exh. H).

20. From July 9 to July 15, there were "no specific threats to law enforcement on social media." (Exh. H.)

**Response No. 20.** Disputed.

While it is undisputed that the JIB contained the language cited by Intervening Plaintiff, it is disputed that there were no specific threats to law enforcement. For example, in a JIB from July 11, 2016, MPD received a tip that Anthony Tolbert was going to kill a police officer. (*See* Ex. 5 at 05297; *See generally* Collective Exhibit 15 containing several specific threats made to law enforcement.)

21. JIBs regularly included information about meetings on private property; these included panel discussions, townhalls, BLM Meetings for adults and those for youth, and even "Black Owned Food Truck Sunday." (*See, e.g.* Exhs. G, H; Exh. L: February 8, 2017 0800 JIB.)

**Response No. 21.** Disputed.

It is disputed that the JIBs "regularly" included information about private events. The

evidence submitted shows just three instances where private events were included in the JIB.

To the extent that the JIBs sometimes included information about a private event, such an event was included because of its potential for disruption to public safety. (Depo. Reynolds p. 25; Depo. Chandler p. 22.)

22. JIBs regularly included photographs of and information about those involved in protest movements and those who posted about the possibility of protest action. (*See, e.g.* Exh. G, Exh. M: August 11 2016 1600 JIB; Exh. N: Reynolds Dep. Exh. 15.)

**Response No. 22.** Undisputed.

23. JIBs included “Sensitive/Classified” information, such as drivers’ license profiles, juvenile arrest records, photographs, dates of birth, addresses, mental health histories, and information from police databases. (Exhs. G, H, I, J, K, L, M.)

**Response No. 23.** Disputed. Photographs of persons are not "sensitive/classified information." Moreover, Exhibits G, I, K, L, and M do not support the Intervening Plaintiff's assertion that the JIBs included other such “Sensitive/Classified” information," such as drivers’ license profiles, dates of birth, addresses, mental health histories, and information from police databases.

24. Information that is personal in nature (address, social security numbers, drivers license information, etc.) or taken from police databases is defined as “Sensitive/Classified Media” pursuant to the CJIS Media Policy. (Exh. O.)

**Response No. 24.** Undisputed.

25. JIBs were regularly circulated between June 2016 and March 2017.

**Response No. 25.** Undisputed.

26. Rallings instructed OHS to create and maintain a database of protests,

demonstrations, and flash mobs (“Database”). (Rallings Dep. 54; Exh. P; Reynolds Dep. Exh. 8.)

**Response No. 26.** Undisputed.

It is undisputed that Director Rallings instructed that the Database be created "because City Council is so interested in my budget and our use of overtime to where probably quarterly we're reporting our overtime expense to the council, I wanted to make sure I could reference how many civil disturbances we responded to, the when and the where, and so that my finance manager could put a cost to it. So I think that if we -- what this helped us do is to decide if I had three -- I think three percent of my entire overtime budget of almost 25 million dollars has been spent on responding to protest or crowds or some type of demonstration." (Depo. Rallings pp. 54-55; *see also* Depo. Reynolds p. 30.)

27. The Database spanned 2016 and 2017, and OHS began keeping the Database in the course of its work in December 2016. (Reynolds Dep. 27-28.)

**Response No. 27.** Undisputed.

28. The Database tracked the name, date, and crowd size of events, the “Group” responsible, “Key Personnel,” Arrests, “Techniques,” “Critical Infrastructure,” and “Damage.” (Exh. P.)

**Response No. 28.** Disputed.

It is undisputed that the Database contained the above-listed categories. It is disputed, however, that the Database *only* contained those categories. The Database also contained columns for the location of the event, the Station/Ward implicated by the event, and whether or not the event was permitted. (Pl.'s Exh. P.) Indeed, the vast majority of the events were unpermitted, but allowed anyway. (Pl.'s Exh. P.); (Depo. Rallings p. 59.)

29. The Database tracked gatherings as small as four individuals and recorded only two

events resulting in any arrests and no events resulting in damage. (Exh. P.)

**Response No. 29.**

It is undisputed that the Database recorded only two events resulting in any arrests and no results in damage because it was the policy of MPD to allow groups to protest regardless of whether the protest was a lawful permitted protest. (Depo. Rallings p. 60.)

30. It was "very rare" that "protests, permitted or unpermitted, or gatherings that responded in any issue where law enforcement had to do anything other than just kind of be there to keep everybody safe." (Rallings Dep. 54-56.)

**Response No. 30.** Undisputed.

It is undisputed that very few arrests were made and that MPD "allowed all these individuals to exercise their right to protest." (Depo. Rallings p. 57.) Even if the protestors engaged in extremely disruptive behavior, such as walking slowly back and forth across the street so as to obstruct the normal flow of traffic, MPD allowed them to do that, so long as they did not physically sit down in the street. (Depo. Chandler p. 67.)

31. OHS prepared and presented Power Point presentations regarding activists and protest groups that were given at the training academy and at weekly meetings for Command Staff. (Bass Dep. 21; Reynolds Dep. 98-99.)

**Response No. 31.** Disputed.

It is disputed that OHS prepared and presented PowerPoint presentations "weekly." It is further disputed that OHS prepared PowerPoint presentations "regarding activists and protest groups." Rather OHS prepared PowerPoint presentations about specific events that resulted in arrests. For example, the PowerPoint referenced by Sgt. Reynolds and cited by Intervening Plaintiff was an after action review of a protest at Graceland on August 15, 2016, in which several persons

were arrested. The PowerPoint also explained that several of the persons involved with the protest were suspected of criminal activity unrelated to the protest including a plan to hack into the Zoo's computer system. (Pl.'s Exhibit Q.) To take another example, OHS prepared a PowerPoint regarding the unlawful protest that shut down the Valero Oil Refinery. See attached as Ex. 7. In both Exhibits, the PowerPoint made clear that it was the intention of the MPD to allow these groups to exercise their First Amendment rights. See Pl.'s Exh. Q at 22801, Def.'s Ex. 7 at 20884-20886.

32. *Blue Suede Shoes* was one such presentation. (Exh. Q: Reynolds Dep. Exh. 25.)

**Response No. 32.** Disputed.

It is disputed that *Blue Suede Shoes*, (Pl.'s Exhibit Q.), was a PowerPoint prepared and presented regarding activists and protests. See Defendant's Response No. 31.

33. The presentation included activist photographs and arrest information; it describes alleged associations and personal relationships between protestors, including individuals who were not arrested at the protests in question. (Exh. Q.)

**Response No. 33.** Undisputed.

34. *All Shook Up* was another representative presentation, dated January 8, 2017. (Exh. R: Reynolds Dep. Exh. 26.)

**Response No. 34.** Disputed.

It is disputed that *All Shook Up*, (Pl.'s Exhibit R.), was a PowerPoint prepared and presented "regarding activists and protests." *All Shook Up* was a PowerPoint prepared for the purpose of preventing a disruption to public safety at an event at Graceland celebrating Elvis's birthday. There was discussion on social media that certain persons intended to disrupt Elvis's Birthday week. This was also prepared "on the heels of the die-in at the mayor's house." (Reynolds Depo. p. 114).

35. The presentation outlined individuals who had been previously arrested, associates of those individuals, and a summary of the beliefs of the organization. (Exh. R.)

**Response No. 35.** Disputed.

It is disputed that *All Shook Up* contained a "summary of the beliefs of the organization." The PowerPoint contained a slide with a screenshot of the "Initial Focus Areas" of the Coalition for Concerned Citizens. (Pl.'s Exhibit R.)

36. RTCC officers monitor live feeds of cameras, which include fixed, mobile, drone, covert, and overt types that have been used to surveil protest activity in the City. (Chandler Dep. 29; Patty Dep. 6-26, 34; Wilburn Dep. 25.)

**Response No. 36.** Disputed.

It is undisputed that the City has a network of over a thousand cameras, not including the body-worn cameras and in-car cameras, that MPD monitors for the protection of the public. (Depo. Rallings p. 48.) The location of these cameras is based upon where crimes are occurring or something significant is taking place. (Depo. Ross, p. 14.)(all Deposition Excerpts of Major Ross attached as Coll. Exhibit 8). However, the monitoring of those cameras occurs under a large variety of circumstances unrelated to protest activities, as well.

37. RTCC officers used software referred to as a social media collator, including Geofeedia and NC4, which enabled monitoring of open source data or "chatter" regarding protest events across social media platforms. (Wilburn Dep. 24-25.)

**Response No. 37.** Undisputed.

It is undisputed that the MPD adheres to common and best police practices of monitoring social media to track potentially dangerous events. "The importance of 'proactive' as opposed to 'reactive' measures on the part of law enforcement in order to protect against very real threats to

public safety associated with domestic as well as foreign terrorist activity, aided by the use of social media, is now a recognized and legitimate responsibility of law enforcement professionals." Def.'s Expert Witness Report, p. 5-7, 10, attached as Exhibit 9) However, those software applications were used for a large number of circumstances unrelated to protest activities, as well.

38. RTCC officers conducted manual searches of social media accounts such as Facebook. (Wilburn Dep. 27-28.)

**Response No. 38.** Undisputed.

39. As part of their duties, RTCC officers conducted social media monitoring of protests or potential protests and reported the results of their monitoring to OHS. (Bass Dep. 58-59; see also Exh. S: Ross Dep. Exh. 65.) There is no evidence, however, that this monitoring was for a political purpose.

**Response No. 39.** Undisputed.

It is undisputed that the RTCC was called upon to monitor social media during the time of Major Bass's tenure with OHS, from approximately January 2015 through August 2016. due to the limited operating hours of the OHS. (Depo. Bass pp. 8, 58.) There is no evidence, however, that this monitoring was for a political purpose.

40. In a representative example, Bradley Wilburn, an officer with RTCC reported to the OHS team regarding a "particular feed" he "set up to monitor MemphisPD." (Exh. T: Wilburn Dep. Exh. 82.)

**Response No. 40.** Disputed.

It is disputed that the example cited in No. 40 is a "representative example" of the type of monitoring of social media conducted by the RTCC. In fact, Sgt. Wilburn could not recall what tool he used to conduct that search. (Depo. Wilburn, pp. 38-39.) (all Deposition Excerpts of Sgt.



Wilburn attached as Coll. Exhibit 10).

41. RTCC collected and circulated a broad swath of social media posts related to Black Lives Matter (Exh. V: Memphis 3701-02; Exh. W: Memphis 4376-77; Wilburn Dep. 40-41.)

**Response No. 41.** Disputed.

It is undisputed that RTCC collected and circulated social media posts related to Black Lives Matter. However, RTCC also collected and circulated social media posts related to other groups during the pertinent time frame, including the Ku Klux Klan ("KKK"). (Depo. Reynolds, Exh. 47, attached as Exhibit 11).

42. RTCC officers documented its investigative work by creating a folder on the server for each investigation (named by subject). (Wilburn Dep. 21, 24-25)

**Response No. 42.** Undisputed.

43. RTCC officers referenced previous investigations in the course of investigations and used JIBs as a basis to initiate investigations into background information. (Wilburn Dep. 21, 24-25)

**Response No. 43.** Disputed.

To the extent that No. 43 implies that RTCC officers *always* used JIBs as a basis to initiate investigations into background information, that fact is disputed. Sgt. Wilburn testified that RTCC received the JIB from OHS "off and on," and that they "could" use the JIB as a basis to begin a general background investigation. (Depo. Wilburn p. 45.)

44. MPD has accessed private social media accounts through at least one covert social media account using the pseudonym "Bob Smith." (See Reynolds Dep. 90-98; Exh. X: Bonner Exh. 6; Exh. Y: Reynolds Exh. 24; Exh. Z: ACLU 562-91; Exh. AA: Memphis 9442-44; Exh. BB: Memphis 10457-59; Exh. CC: Memphis 9316-20.)

**Response No. 44.** Disputed.

The City disputes this fact, but declines to support that disputation with additional evidence on the basis of law enforcement privilege. Subject to and without waving that assertion of privilege, the City disputes that MPD "accessed" only "private" social media accounts. For example, Plaintiff's Exhibit X, which is a screen shot from a Facebook account known as "Bob Smith," shows posts that are designated as publicly available by the small globe under each Profile Name. Thus, Exhibit X does not stand for the proposition for which ACLU-TN asserts.

It is undisputed that the "Bob Smith" Facebook profile is "friends" with certain individuals. It is disputed, however, that a social media account is "private" when the account holder willingly becomes "friends" with an account of a person to which they do not know. Indeed, FaceBook's own Privacy Policies explain:

You should consider who you choose to share with, because people who can see your activity on our Products can choose to share it with others on and off our Products, including people and businesses outside the audience you shared with. For example, when you share a post or send a message to specific friends or accounts, they can download, screenshot, or reshare that content to others across or off our Products, in person or in virtual reality experiences such as Facebook Spaces. Also, when you comment on someone else's post or react to their content, your comment or reaction is visible to anyone who can see the other person's content, and that person can change the audience later.

People can also use our Products to create and share content about you with the audience they choose. For example, people can share a photo of you in a Story, mention or tag you at a location in a post, or share information about you in their posts or messages. If you are uncomfortable with what others have shared about you on our Products, you can learn how to report the content.<sup>3</sup>

45. Available documents indicate that someone within MPD not only had access to the Bob Smith account, but used it to communicate with individuals, to view private posts, join private

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<sup>3</sup> <https://www.facebook.com/privacy/explanation/>

groups, and otherwise to pose as a member of the activist community. (*Id.*)

**Response No. 45.** Disputed.

The City disputes this fact, but declines to support that disputation with additional evidence on the basis of law enforcement privilege. Subject to and without waving that assertion of privilege, the City disputes that any post made on FaceBook could legitimately be considered "private." *See* Response No. 44.

46. From publicly available information, the "Bob Smith" Facebook account has been actively adding friends from the Memphis community from July 2015 to April 2018. (Exh. Z at 577, 591).

**Response No. 46** Disputed.

It is disputed that the evidence presented supports the assertion that "Bob Smith" has been "actively" adding friends from the "Memphis Community" since 2015. The evidence presented shows that "Bob Smith" added 29 friends over the span of almost three years, and there is no indication that those "friends" are part of the "Memphis community." There is also no evidence that "Bob Smith" initiated the "friending" between those 29 persons. (Pl.'s Ex. Z.)

47. OHS disseminated information to precinct commanders who typically developed the operational response to events occurring within their precincts. (Chandler Dep. 38.)

**Response No. 47.** Undisputed.

48. OHS made sure that protest events were staffed with officers "be it a uniform presence or somebody that was in a plain clothes presence." (Chandler Dep. 48-49.)

**Response No. 48.** Disputed.

Major Chandler testified that "occasionally people [from Homeland Security] would go out" to a protest. (Depo. Chandler p. 47.) To the extent that Major Chandler testified that there

was always a police presence at a protest, he did not testify that it was the Office of Homeland Security that dispatched those officers. *Id.*

49. At the Commercial Appeal protest that occurred on July 13, 2016. Keith Watson, Acting-Lieutenant Colonel of Uniform Division II, North Main Station, and provided regular updates to MPD Executive Staff, Command Staff, Colonels, and Lt. Colonels throughout the event regarding the identities of those in attendance, crowd size, content of the announcements made, and photographs of the event. (Exh. SS: Bass Dep. Exh. 77.)

**Response No. 49.** Disputed.

It is undisputed that Lt. Col. Watson provided updates at an unpermitted protest at the Commercial Appeal on July 13, 2016. The protest discussed in No. 48 was a protest regarding a headline on the front page of the Commercial Appeal newspaper regarding the Dallas police ambush that occurred on July 7, 2016.<sup>4</sup> However, it should be noted, that Lt. Col. Watson's first "update" (at 11:46 am) on the protest regarding the recent deaths of five Dallas police officers, was to report the presence of a suspicious male wearing black panther clothing who stated that "more people are coming." (Pl.'s Exhibit SS). Although the protest was unpermitted and potentially dangerous based upon the recent events in Dallas, the MPD created an "Ops Plan" that expressly stated that the most probable course of action for the event was a "Peaceful Protest with No Permit," and that "MPD will allow law abiding citizens the right to demonstrate peacefully and protest as an expression of their First Amendment Rights." See Ops Plan, attached as Exhibit 12.

50. Watson's communication at the Commercial Appeal event was typical or regular communication of information from commanders back to OHS. (Bass Dep. 47-50.)

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<sup>4</sup> <http://www.wmcactionnews5.com/story/32436700/protesters-gather-outside-commercial-appeal-building>

**Response No. 50.** Undisputed.

51. Plain clothes officers took photographs of the crowd at protest events to identify participants that were there. (Chandler Dep. 47-48; Exh. GG: Chandler Dep. Exh. 63.)

**Response No. 51.** Disputed.

It is disputed that plain clothes officers took photographs at protests for the sole purpose of identifying participants there. Major Chandler testified that the officers would take photographs of protests for situational awareness purposes. Specifically, the photographs would show "what was going on to give people an idea of the size of the crowd, what the crowd was doing." (Depo. Chandler p. 48.).

52. Plain clothes officers were used to gather intelligence on protestors. (Exh. DD at 2394; Bass Dep. 52; Exh. HH: Bass Dep. Exh. 78.)

**Response No. 52.** Disputed as worded.

It is disputed that plain clothes officers were used to gather intelligence on protestors. It is undisputed that sometimes plain clothes officers were used to gather intelligence regarding certain events that had the potential for morphing into unlawful acts of civil disruption. Major Bass clarified that when he sent officers to "for intel" that he was "just trying to find out what were their intentions." (Depo. Bass p. 52.) "Because after the bridge shutdown, there were many . . . discussions across town with various group on what their next move was going to be, blah, blah, blah. And we just wanted to make sure that this was not another move to shut down the bridge, as attempts have ben conveyed thereafter to do so." *Id.*

53. MPD conducted surveillance of private events. (Exh. JJ: Bass Dep. Exh. 76.)

**Response No. 53.** Disputed.

It is disputed that MPD conducted surveillance of "private events." MPD patrolled and

monitored events with the potential for civil disorder or threat to law enforcement and public safety. (Pl.'s Exh. JJ; Depo. Bass p. 52.)

54. In response to a Facebook post by Frank Gibson, Col. Mickey Williams, the Raines Station Commander, surveilled a church the next morning and reported back the number of vehicles present and information about the church's pastor, despite being advised by Bass that the event posed no threat. (Pl.'s Exh. JJ; Bass Dep. Exh. 76.)

**Response No. 54.** Disputed.

It is disputed that Col. Williams "surveilled" a church the next morning in response to a Facebook post. Col. Williams was advised by Major Bass (not in response to a Facebook post) of an event at Thaddeus Matthew's church involving Frank Gotti. (Pl.'s Exh. JJ.) Furthermore, there is no evidence that Col. Williams himself surveilled the church. *Id.* Additionally, the timeframe is disputed. The email from Major Bass was sent at 7:31 am on July 17, 2016, and Col. Williams responded at 8:15 am and again at 9:51 am on the same day, not the next morning as Intervening Plaintiff asserts. *Id.*

55. Bass testified that this was a typical type of communication he would have with precinct commanders and their response to it. (Bass Dep. 46-47.)

**Response No. 55.** Undisputed.

56. Col. Marcus Worthy, the commander of Ridgeway Station, covertly surveilled a memorial service for Darrius Stewart at New Direction Church from across the street and provided status reports and identifying individuals in the crowd. (Exh. KK; Chandler Dep. Exh. 60.)

**Response No. 56.** Disputed.

It is disputed that Col. Worthy "covertly surveilled" a memorial services at New Direction Church. Col. Worthy simply stated that he had "made the scene" at the church, and he was "across

the street" and "they do not know that I'm watching them." Nothing in the document suggests that Col. Worthy was acting in a covert capacity. (Pl.'s Ex. KK.)

When Major Chandler was questioned about this document and MPD's presence at the memorial service, he testified that "we received death threats from unidentified sources from Facebook posts in retaliation to the [Darrius Stewart] shooting. The shooting was controversial here in Memphis. We wanted to know what implications that had to law enforcement, what implications it had to the city of Memphis." (Depo. Chandler p. 37.)

57. Reynolds obtained an undercover cell phone from the Organized Crime Unit to contact activists; Reynolds used the number to contact Spencer Kaaz and to enter the cell phone's number into an online form for updates on an Elvis Week protest. (Exh. LL: Reynolds Dep. Exh. 32.)

**Response No. 57.** Disputed as worded.

It is undisputed that Sgt. Reynolds used an undercover phone number to contact Spencer Kaaz, a person arrested at multiple protests including the Graceland Candlelight Vigil on August 15, 2016 and the Valero Refinery (Pl.'s Ex. Q at 22810 and 20872.) The undercover phone number, however, was not used for the purpose of contacting "activists" generally and exclusively.

58. Reynolds requested that an OCU officer be sent to a "civil disobedience training" that he had learned about through the undercover phone number. (Exh. MM: Reynolds Dep. Exh. 33.)

**Response No. 58.** Undisputed.

59. MPD officers regularly contacted individuals who were organizing free speech events. (Exh. HH.)

**Response No. 59.** Disputed.

It is disputed that MPD officers "regularly" contacted individuals organizing free speech events. The evidence supporting No. 58 evidences just one instance of MPD contacting the organizer of an event. It is undisputed, regarding the specific event on July 13, 2016 referenced in No. 58, that Major Chandler spoke with the organizer of that event for purpose of determining the nature of the event and to ensure that MPD was adequately prepared to protect public safety in light of the fact that this event was being held just three days after the I-40 bridge shut-down. (Depo. Bass pp. 51-52.) There is no evidence that MPD had a political purpose in any such communication with a person organizing a free speech event.

60. In the case of a community meeting at New Life in Christ Church, Bass instructed OHS officers to "[m]ake inquiries and find out the event organizer, contact number and what is on the agenda.

**Response No. 60.** Undisputed.

This fact is not supported by a citation to evidence. Assuming, however, that the meeting referenced in No. 60 at New Life in Christ Church is the same meeting as referenced in No. 59, it is undisputed that Major Bass made that statement.

61. Chandler spoke with a Bishop of the New Life in Christ Church who assured him that the purpose of the event was not to disparage law enforcement, that it would be a "pro-police dialogue." (Exh. HH.)

**Response No. 61.** Disputed.

It is undisputed that Major Chandler spoke with Bishop Willis regarding the event at New Life in Christ Church and that Bishop Willis advised that event was not for the purpose of disparaging law enforcement. However, Bishop Willis also advised that the purpose of the event was to give the "congregation and the member officers a chance to connect," and that the church



was providing its own security guards. (Pl.'s Exh. HH.)

62. Staff of the Memphis Permit Office were instructed to record all anonymous calls asking about protest permits. (Exh. NN: Howard Dep. Exh. 71.)

**Response No. 62.** Undisputed.

63. Protest events were held to a strict adherence to the 14-day notice requirement, that requirement was not enforced for non-protest events. (Exh. OO: Jan. 19, 2017 E-mail.)

**Response No. 63.** Disputed

It is disputed that protest events were held to a strict 14-day notice requirement, while "non-protest events" were not held to such a requirement. The evidence presented in support of No. 63 does not support that assertion. The email chain presented begins on January 19, 2017, with an email from Col. Bullock regarding a planned protest the following day, January 20, 2017.<sup>5</sup> Col. Bullock is advising Deputy Chief Landrum that they just received the permit for the protest to be held the next day, and that she will have to hire overtime and have officers come in early to adequately staff the event. She complains that the Permits office did not give enough notice to prepare a detail.

In response, Deputy Chief emailed the Permits-Licenses Administrator, Aubrey Howard, asking what the timeline is obtain a permit. Mr. Howard responded: "We have asked for 14 days for known protest. I will be more vigilant!" (Pl.'s Exh. OO.)

Nothing in the Exhibit indicates that non-protest events are subject to any less than a 14-day permit requirement.

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<sup>5</sup> The subject line of the email indicates the date of the protest is February 20 at 1700, but the body of the email shows that is a typographical error and the actual date of the protest was January 20, 2017.

The City's Permitting Ordinance requires that an application for any parade or public assembly be filed by the applicant at least 14 business days before the parade or public assembly. (Depo. Howard, Ex. 68, attached as Ex. 13). Mr. Howard testified that the Permit office will sometimes waive the 14-day requirement for "spontaneous events" where the organizer of the event can request a waiver to have a parade or assembly within three days of the time that the news event happens. (Depo Howard, p. 14.) (all Deposition Excerpts of Aubrey Howard attached as Coll. Exhibit 14).

64. Protest permit applications were circulated to Command Staff or OHS, while non-protest permit applications were circulated only to Special Events. (Howard Dep. 24-25, 39-40.)

**Response No. 64.** Disputed

It is disputed that protest permit applications were circulated to "Command Staff or OHS." Mr. Howard testified that all permit applications were forward to MPD Special Events, the Transit Authority, and FedEx Forum when there were events downtown. (Depo. Howard p. 24.) Mr. Howard also testified that he started sending protest applications to Police Director Rallings, his boss Bruce McMullen, and "some other folk." (Depo. Howard p. 39.). However, nothing in the deposition testimony of Mr. Howard nor the exhibits attached thereto indicate that Mr. Howard ever forwarded a permit application to OHS, except on one occasion involving coordination of efforts surrounding the St. Jude Marathon in 2016.

65. One of the tools available to RTCC officers and analysts is the i2 Analyst's Notebook, "program that can help correlate certain events" and, upon inputting large amounts of data can help a user "determine correlations." (Wilburn Dep. 46-47.)

**Response No. 65.** Disputed.

It is disputed that the i2 Analyst's Notebook was a tool that RTCC officers and analysts

used. Sgt. Wilburn testified that he was familiar with it, but it was nothing that he used. (Depo. Wilburn p. 46.) He further testified that he was not aware of anyone with RTCC who was trained on the i2 Analyst's Notebook, and that he did not receive training on it. (Depo. Wilburn p.47.)

Similarly, Major Lambert Ross, who was Commander of RTCC during the relevant time period, also testified that he never saw i2 Analyst's Notebook in use at RTCC, and he did not recall anyone within RTCC receiving training on its use. (Depo. Ross pp. 70-71.)

66. In 2016, a RTCC officer used the i2 Analyst's Notebook, along with social media data and a police database, to create a map of associations between individuals and events entitled "Black Lives Matter." The map included certain members of the AOA, a BLM Bridge Protest, Town Hall Meeting, and Protest, and a Back to School Community Carnival. (Exh. PP: Sept. 19, 2017 E-mail.)

**Response No. 66.** Disputed.

It is undisputed that someone used the i2 Analyst's Notebook to create the aforementioned document attached as Pl.'s Ex. PP. The email that is a part of Pl.'s Ex. PP states: "We've been playing around with i2 Analysis notebook, just trying to see how to make it Real Time effective." Then the author of the email explains that the PDF created by the i2Analysis notebook was "pain staking" due to the fact that the data must be entered manually. (Pl.'s Ex. PP at 23059.)

67. The Decree is located on the MPD's Kiosk, which is a forms and links page available to officers online. (Rallings Dep. 26-28; Exh. QQ: Rallings Dep. Exh. 49.)

**Response No. 67.** Undisputed.

68. Rallings and Reynolds were informed about the Decree in the course of their employment. (Rallings Dep. 28-29; Reynolds Dep. 139-40.)

**Response No. 68.** Undisputed.

69. Rallings has not conducted reviews and authorizations for criminal investigations as specified in Section G of the Decree or DR 138, its implementing policy. (Rallings Dep. 92-93; Exh. RR: Reynolds Exh. 30.)

**Response No. 69.** Undisputed.

It is undisputed that Director Rallings does not recall personally conducting reviews and authorizations under DR 138.

Respectfully submitted,

/s/ Jennie Silk

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of July, 2018, a copy of the foregoing will be served via the Court's ECF system to:

Thomas H. Castelli  
Mandy Floyd  
ACLU Foundation of Tennessee  
P.O. Box 120160  
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/s/ Jennie Silk