

EXHIBIT C

BUTLER | SNOW

August 26, 2019

VIA ELECTRONIC MAIL

R. Mark Glover, Esq.
Baker Donelson
Bearman, Caldwell & Berkowitz, PC
2000 First Tennessee Building
165 Madison Ave.
Memphis, TN 38103

Re: *ACLU-TN v. City of Memphis*, Case No. 2:17-cv-02120-JPM-jay:
The Monitoring Team's Responses to the City's outstanding RFAs.

Dear Mark:

On Wednesday, August 7, 2019, the court docketed the Monitoring Team's Second Quarterly (Q2) Report and made the report available to the City and the ACLU-TN.¹ (*See* Sealed ECF No. 218.) On Monday, August 12, 2019, the Monitoring Team responded to the City's letter of June 7, 2019, which addressed the City's remaining questions regarding the sufficiency of its January 14, 2019, submissions to the court (*see* ECF Nos. 183, 185) and proposed protocols for the eleven hypothetical scenarios submitted to the Monitoring Team in March (*see* Sealed ECF No. 197-3). The August 12 response mentioned that the discrete requests for authorization (RFAs) raised by the City would be addressed in separate correspondence.

This letter is the second of two correspondences that address the City's RFAs. The first, a memorandum opinion provided to the City on August 21, 2019, addressed RFAs related to the Memphis Police Department (MPD)'s ability to share and receive personal information with other law enforcement entities and non-law enforcement entities and people (Coordination Opinion). This letter both addresses certain questions of the Monitoring Team regarding the RFAs to which I responded before the submission of the Q2 Report and also responds to the RFAs, other than those addressed by the Coordination Opinion, that the City has raised since the submission of the Q2 Report. Related to the prior RFAs is a July 19, 2019, disclosure by the City that concerns the use of imposter accounts on Facebook. This letter also addresses that disclosure.

¹ The Monitoring Team submitted the Q2 Report to the court on Wednesday, July 24, 2019, without one of the report's exhibits—Exhibit 4, the Monitoring Team's proposed Audit & Compliance Plan for the Memphis Police Department. The court then ordered the Monitoring Team to submit the plan by August 2, 2019 (*see* ECF No. 216), which it did.

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I. **Questions Regarding Prior RFAs.**

In the Q2 Report (Sealed ECF No. 218), the Monitoring Team highlighted three RFAs by the City to which I had then responded, based on my authority qua “special master” to approve or prohibit certain conduct. (*See* Hr’g Tr., ECF No. 207, PageID # 7189: 16-25.) I responded to those RFAs on May 9, 2019; June 12, 2019; and July 12, 2019. (*See* Sealed ECF No. 218, PageID # 7395.) The Q2 Report also explained that the Monitoring Team was “pursuing additional information related to a July 19, 2019, disclosure by the City related to the use of Facebook.” (*Id.* at PageID # 7390 n. 7.) The questions raised in this section concern the second and third RFAs and the July 19, 2019, disclosure.

A. June 12, 2019, RFA.

At 11:49 P.M. on June 12, 2019, City Attorney Bruce McMullen requested authority to access the Facebook accounts of Memphis residents for “a situation in North Memphis and a crowd out of control.” (Sealed ECF No. 214, Ex. 2.) Mr. McMullen explained that “[t]here was chatter on social media” but that the MPD was “in the blind” and could “only use what people t[old] [them].” (*Ibid.*) He asked to “monitor social media”—specifically “identi[ying] Facebook accounts”—and to use “unidentified accounts” because one suspect was dead, another on the run, and the MPD was “facing a possible reprise of the crowd but d[idn’t] know what [the crowd] w[as] planning.” (*Ibid.*) I approved Mr. McMullen’s RFA 35 minutes later, at 12:24 A.M. (*Ibid.*)

On July 16, 2019, in its quarterly filing regarding the MPD’s use of social media searches, the City elaborated on this RFA, which occurred “in the aftermath of the US Marshal-involved shooting of Mr. Brandon Webber.” (*Id.* at 3.) According to the City, “the vast majority of the individuals on this list of search terms were not associated with a protest or other scenario in which First Amendment rights were being exercised,” but “four individuals listed were present at the scene” of the June 12 incident. (*Ibid.*) “Those persons were Chris Long, Frank Gotti (Gibson), Keedran Franklin, and Derrion Childs.”² (*Id.* at 4.)

The Monitoring Team has questions related to four aspects of this quarterly filing, the social-media searches that the City conducted related to the June 12 incident, and the City’s gathering, maintenance, and reporting of information about those searches:

- **First**, the City identified in its quarterly filing certain limitations in its ability to report the social-media searches conducted by MPD officers as ordered by the court. According to the City, compliance with the court’s orders “must rely in large part on self-reporting by . . . MPD officers.” (*Id.* at 2.) “Even where social media use occurs

² Mr. Franklin, of course, was one of the original plaintiffs in this lawsuit; he and Mr. Gotti actively have been following this case and attended the Community Forum on July 11, 2019. *See, e.g.*, “Team Monitoring MPD Conduct to Speak at Public Forum,” on local Channel 3 (link available [here](#)).

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on the City's network," the City explained further, "some social media sources require an individual account to access content, but others do not, so only those requiring an individual account would presumably have search history that is traceable to that user." (*Ibid.*)

- Please identify which social media platforms used by MPD officers in connection with their official duties require an individual account to access content and which do not.
 - Does the City have any generic accounts on any social media platforms that officers may use in connection with their official duties? If so, then is there a log or other documentation that establishes who uses those accounts and the dates and times of that use?
 - Please confirm that searches that occur via any generic social media accounts operated by the City are being included in the City's quarterly reports to the court irrespective of whether those searches can be linked to specific users.
 - Please state whether all social media searches that occur on the City's network can be linked to specific users. If not, then please explain why.
 - Please also confirm that searches that occur on the City's network are being included in the City's quarterly reports to the court irrespective of whether those searches can be linked to specific users.
- **Second**, in future quarterly reports, please add officers detailed to the Multi-Agency Gang Unit to the groups of officers ordered to report all search terms entered by them into social media sites to collect information for the purpose of conducting police business. The current list of officers as reported by the City includes officers detailed to the Office of Homeland Security, the Real Time Crime Center, the General Investigative Unit, Homicide, the Sex Crimes Unit, and members of Command Staff (Listed Officers). (*See ibid.*)
 - **Third**, in describing the written instructions that Listed Officers receive, the City stated that the instructions are accompanied by reference guides on how to collect individual search history on the commonly used social media sources—Facebook, Instagram, and Twitter. (*Ibid.*) Please confirm whether officers' social media use is limited to these three platforms. If not, then please identify the additional platforms and include reference guides regarding the same with instructions to officers about reporting social media search terms.
 - **Fourth**, the City stated that "Colonel Greg Sanders first viewed the publicly-available Facebook feeds of [Long, Gotti, Franklin, and Childs], . . . identified video containing evidence of . . . assaults and vandalism, and . . . instructed Sergeant Filsinger to obtain a search warrant for video footage of the events that evening." (*Id.* at 4.)

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- Did Col. Sanders or Sgt. Filsinger complete an authorization form contemplated by § G of the consent decree and otherwise document this investigation as contemplated by § G?³
- Were “unidentified” or imposter accounts, on Facebook or other social media platforms, used by MPD in connection with this investigation?
- How many MPD imposter accounts, if any, have remained active since deactivation of the “Bob Smith” Facebook account referenced in this litigation?⁴
- Are the social media searches done via any such imposter accounts being included in the City’s quarterly reports to the court?

B. July 12, 2019, RFA.

On July 12, 2019, the City made two, related requests of the Monitoring Team. First, the City requested permission “to operate its SkyCops, Body Worn Cameras [BWCs], and Dash Cams pursuant to the current MPD policy for each of those cameras at [a] rally planned for [that evening] centered on the release of journalist Manuel Duran from Ice Custody.” (Email from J. Silk to E. Stanton, attached as **Ex. 1**.) Second, the City asked to used certain search terms on social media to prepare for “a rally . . . to celebrate Nathan Bedford Forrest’s birthday, which [wa]s [Saturday] July 13.” (*Ibid.*) The search terms included several “counter-protester group names,” including the Coalition of Concerned Citizens, to which the City explained that it was “very sensitive.” The Monitoring Team reviewed, but did not authorize, the proposed social media search terms. The City since has confirmed that it did not use any of the terms and that the rally went off without incident.

After a conference call with the City’s legal counsel that lasted about an hour—the full Monitoring Team was still in Memphis, having assembled for the first Community Forum on July 11, 2019, and was able to deliberate contemporaneously—I granted the first request. The grant was premised on the understandings that the BWCs would not continuously record—they would instead record only when specifically activated by an officer and would then capture a 30-second “buffer” prior to activation—and that SkyCop and Dash Cam data would not be maintained or indexed without a § G authorization.

This request raises some concerns because it appears not to have been based on accurate information. After the Monitoring Team’s conference call with the City’s legal counsel on July

³ I realize that an Interim Authorization Form for use in § G investigations was approved by the Monitoring Team after June 12, 2019. I’d like to know what, if any, documentation the City used before that form was approved.

⁴ The Monitoring Team has raised this question before. Please see § I(C) & n. 5, *infra*.

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12, 2019, Audit and Compliance Expert Dave McGriff followed up via phone with MPD Deputy Chief Don Crowe to ask about the particulars of the MPD's planned response to the Duran rally that evening. Chief Crowe informed Mr. McGriff that the MPD had planned no response to the rally due to the small number of anticipated protestors and that there would not be any uniform officers on the scene. Chief Crowe also advised Mr. McGriff that there were no stationary SkyCop cameras near the rally site (80 Monroe).

This information is inconsistent with the RFA that the Monitoring Team received earlier in the day. In a subsequent weekly conference call with the City's legal counsel, Mr. McMullen apologized for the error, explaining that there had been some miscommunication between himself and the MPD about the Duran rally and that his information was incorrect. It should go without saying that it is imperative for all RFAs to be verified before they are directed to the Monitoring Team.

C. July 19, 2019, Disclosure.

In the Monitoring Team's Q2 Report, we noted that "community members are aware that the MPD's use of the 'Bob Smith' account was held by the [c]ourt to violate the *Kendrick* Consent Decree, but also understand that several other undercover accounts improperly being used by the City were disabled." (Sealed ECF No. 218, PageID # 7398.) We also noted that we were "pursuing additional information related to a July 19, 2019, disclosure by the City" that implicated these concerns. (*Id.* at PageID # 7390 n. 7.)

The July 19, 2019, disclosure included two sets of correspondence between Mr. McMullen and Facebook.⁵ (See Email & attachments from B. McMullen to E. Stanton, attached as **Exhibit 2**.) The first set of correspondence, which occurred in October 2016, concerned several imposter accounts that had been created on Facebook to impersonate Memphis Mayor Jim Strickland and his wife.⁶ The second set, relevant here, occurred in September and October 2018, between the court's August and October 2018 orders holding that the City had violated the consent decree. (See ECF Nos. 120 & 151 / 152.) It concerned the MPD's creation and use of imposter accounts and was initiated by Facebook Director and Associate General Counsel for Security Andrea Kirkpatrick. (See Second and Third Attachments, **Ex. 2**.)

In September 2018, Ms. Kirkpatrick wrote to MPD Director Michael Rallings, explaining that she "recently [had] learned through media reports and the Electronic Frontier Foundation (EFF) that the [MPD] created fake Facebook accounts and impersonated legitimate Facebook

⁵ Earlier that day, on the Monitoring Team's weekly call with the City, I first raised community concerns about imposter accounts other than the "Bob Smith" account.

⁶ According to the City, the imposter accounts were "misleading and pose[d] a threat to public safety." (Email of October 28, 2016 at 12:32 PM, from B. McMullen to records@facebook.com, First Attachment, **Ex. 2**.) Coordinating with the FBI, it appears that the City was able to get Facebook to shut down these imposter accounts. (See generally First Attachment, **Ex. 2**.)

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users as part of its investigation of alleged criminal conduct unrelated to Facebook.” (Second Attachment, **Ex. 2.**) She stated that such imposter accounts “violate[] [Facebook’s] terms of service” and requested that the MPD, “its members, and any others acting on its behalf cease all activities on Facebook that involve impersonation or that otherwise violate [Facebook’s] policies.” (*Ibid.*)

After verifying the authenticity of the letter, Mr. McMullen requested information about “6 additional accounts [other than the “Bob Smith” account],” explaining that he understood “from unconfirmed press reports” that Facebook had identified those accounts as being “associated with MPD’s account.” (*Ibid.*) Ms. Kirkpatrick responded that Facebook had taken action on six accounts that “were forensically related to the ‘Bob Smith’ account,” ultimately checkpointing, authenticating, and reactivating three of the accounts and disabling the other three as fake. (*Ibid.*) She provided Mr. McMullen the URLs for the fake accounts and referred the City to Facebook’s Law Enforcement Guidelines for additional information. (*Ibid.*)

The City’s July 19, 2019, disclosure also included a third set of correspondence, internal to the City. (*See* Third Attachment, **Ex. 2.**) In that correspondence, City employee Michael Rodriguez explained to Mr. McMullen that no forensic analysis of the three fake accounts was possible because those accounts had been deactivated. (*Ibid.*) Mr. Rodriguez also stated that, to be “forensically related” to the “Bob Smith” account, the additional accounts had to have similar associated data—“[P]erhaps the same computer was used to create the account[s], the same user id was used to create the account[s] . . . A MAC address or IP address across the urls was related.” (*Ibid.*)

Despite these correspondences, it is not clear from the July 19, 2019, disclosure whether the MPD has operated or is operating imposter accounts other than the “Bob Smith” account or, if so, whether Facebook is the only platform on which MPD has used imposter accounts. In his cover email describing the disclosure, Mr. McMullen stated that the City “investigated but had no knowledge of any other imposter accounts other than ‘Bob Smith.’” (**Ex. 2.**) Please provide whatever information the City has in its possession, custody, or control regarding the three accounts disabled by Facebook as fake. Please also provide the related information sought by the final three questions in the fourth area of inquiry in § I(A), above.

II.

Responses to Outstanding RFAs.

Aside from an RFA on July 16, 2019, and related inquiries on June 7, 2019, all of which were addressed in the August 21, 2019, Coordination Opinion, the City has directed five RFAs to the Monitoring Team since the submission of the Q2 Report—on July 26, 2019; July 29, 2019; August 5, 2019; August 22, 2019; and August 23, 2019. This section addresses each request.

A. July 26, 2019, RFA.

During a weekly conference call with the City’s legal counsel on Friday, July 26, 2019, the City asked whether City representatives would be allowed to attend planned focus groups

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(see, e.g., Joint Public Engagement Plan, ECF No. 211, PageID # 7282) as they are scheduled.⁷ According to the City, it does not want to participate in the focus groups, but wishes merely to “observe” them, and focus group participants need not be informed that representatives of the City are present. To that end, the City offered to send officers in plain clothes to observe the focus groups and suggested that the officers refrain from identifying themselves.⁸

This request is denied in the strongest possible terms. At best, the request is tone deaf: “May the City secretly monitor Memphis residents during focus groups about the City’s secret (and unlawful) monitoring of Memphis residents?” At worst, it is Orwellian: If granted, the request would convert a mechanism for vindicating individual rights into a device for degrading and invading those same rights—all in the guise of promoting them. Understood either way, the request undermines the court’s impressions that the City’s prior violations of the *Kendrick* Consent Decree “stem from a shared misunderstanding of the Decree’s requirements, rather than political favoritism” (Order, ECF No. 151, PageID # 6272) and that “the officers of MPD have demonstrated their dedication to protecting First Amendment rights regardless of protester opinion” (*id.* at PageID # 6243). Further, no fewer than five specific provisions of the consent decree forbid it.⁹

Yet the request appears to arise from a legitimate concern: that views on the various issues addressed during the focus groups may be skewed due to disproportionate participation by a vocal, but small, minority of Memphis residents. According to the City, certain City Council members and other local constituencies regularly raise concerns with the City that are at odds with those raised by the ACLU-TN and its supporters. To that end, the Monitoring Team has invited the City to propose additional constituencies and individuals that should be included in the focus groups, much as the ACLU-TN has encouraged its members and supporters to contact

⁷ During the same call, the City mentioned that it has reached an agreement with the Tennessee Highway Patrol (THP) to access the speed cameras that THP has on the interstate due to the high number of shootings that happen there. The cameras are a live stream and do not record data. Our understanding is that MPD plans to purchase equipment that would allow officers to record the camera footage for review in case of an internet shooting. This scenario appears to implicate §§ G, H, and I of the *Kendrick* Consent Decree for many of the same reasons outlined in the August 21, 2019, Coordination Opinion.

⁸ During the call, one member of the City’s legal team stated, “They won’t know who we are.”

⁹ See, e.g., §§ C(1) (“[T]he City of Memphis shall not engage in political intelligence.”); D (forbidding the City to “intercept, record, transcribe or otherwise interfere with any communication by means of electronic surveillance for the purpose of political intelligence”); E (forbidding the City to “infiltrate or pose as a member of any group or organization exercising First Amendment rights”); F(1) (forbidding the City to “disrupt, discredit, interfere with or otherwise harass any person exercising First Amendment rights”); and H(1) (forbidding the maintenance of personal information except when collected via and relevant to “a lawful investigation of criminal conduct”).

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the Monitoring Team.¹⁰ The Monitoring Team wishes to include as broad a spectrum of Memphis residents as possible in its focus groups.

Anonymous, surreptitious observations of the focus groups by the very entity whose unlawful conduct necessitated the focus groups in the first place, however, is not the answer. That request is categorically denied.

B. July 29, 2019, RFA.

On July 29, 2019, the City explained that it will install Speed Cameras, whose purpose is student safety, near fifteen local schools. The cameras “will be activated 45 min before school starts and run a short period after school starts and 30 min before school ends and run a short period of time after school.” (Email from B. McMullen to E. Stanton, attached as **Exhibit 3**.) “[D]ata that does not result in a ticket will be kept 90 days and the data resulting in a ticket will be kept 3 years. The data will be held by a third party (Conduent).” (*Ibid.*) The City will start installing the Speed Cameras in September 2019 and expects them to go live by December 2019. (*Ibid.*) The City has asked whether this proposed use of the cameras violates the consent decree.

This question implicates § H of the consent decree. Section H prohibits the City from “maintain[ing] personal information about any person unless it is collected in the course of a lawful investigation of criminal conduct.” § H(1). It also prohibits the City from sharing “personal information . . . collected in the course of a lawful investigation of criminal conduct” unless the recipient is “another governmental law enforcement agency then engaged in a lawful investigation of criminal conduct.” § H(2). As stated in the August 21, 2019, Coordination Opinion, I read this language to impose two applicable restrictions: (1) entirely against the sharing of personal information collected in any way other than via lawful criminal investigation (as such information may not be maintained in the first instance); and (2) against the sharing of personal information collected via lawful criminal investigation unless such sharing is with another governmental law enforcement agency and that agency already is engaged in a lawful criminal investigation.

Traffic offenses generally are classified as misdemeanors under Tennessee law. *See, e.g.*, Tenn. Code Ann. § 55-8-103 (classifying traffic offenses as misdemeanors unless “otherwise declared . . . with respect to particular offenses”). Thus, § H(1) appears to allow the City to collect personal information via the Speed Cameras as part of a “lawful investigation of criminal conduct.” Where the data does not result in a ticket, however, that data “shall be destroyed,” according to § H(1), rather than kept for ninety (90) days. Additionally, § H(2) appears to forbid the City from sharing the collected information with Conduent or any other non-law enforcement third party, as it prohibits the sharing of “personal information . . . collected in the course of a lawful investigation of criminal conduct” unless the recipient is “another governmental law enforcement agency then engaged in a lawful investigation of criminal conduct.” Finally, the

¹⁰ In fact, the ACLU-TN provided via email earlier today some resources to assist the Monitoring Team as it organizes focus groups and subsequent community forums.

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Monitoring Team would like to know the law enforcement purpose for maintaining data that results in a ticket for three (3) years rather than a shorter amount of time.

C. August 5, 2019, RFA.

On August 5, 2019, a Shelby County Sherriff was involved in a fatal shooting near 201 Poplar. According to the City, the Sherriff's Office asked the MPD to control the scene, as the shooting occurred within City limits, and the TBI also was on the scene because the shooting involved a peace officer. At 3:46 P.M. that afternoon, the City requested through its legal counsel "permission for MPD to be able to go on social media to gauge the potential response to this situation and anticipate crowd swell." (Email from B. McMullen to E. Stanton, attached as **Exhibit 4**.) The City also noted "that there may be plans to have a larger gathering at another location, and [that] MPD wants to be able to be prepared in order to adequately provide public safety at that location." (*Ibid.*) Director Rallings elaborated in a follow-up email at 4:31 P.M., explaining "that the officers are terrified to use their personal accounts and [MPD] cannot force them to do so." (Email from M. Rallings to E. Stanton, attached as **Exhibit 5**.) According to Director Rallings, "[t]he prohibition on [alternate] social media account[s] is crippling MPD and may put our citizens['] safety at risk. We need to resolve asap before we have an El Paso type incident." (*Ibid.*)

I approved this request contemporaneously, conditioned on the City's maintaining a log of all social media search terms used in connection with this incident.¹¹ Please provide that search-term log as soon as possible and also include its contents in the City's next quarterly search-term report to the court.

D. August 22, 2019, RFA.

On August 22, 2019, after having reviewed the Monitoring Team's August 12, 2019, response to the City's letter of June 7, 2019, the City stated that it intended to raise with the court certain recommendations of the team regarding the City's security procedures for entering City

¹¹ I also responded separately to Director Rallings' email, stating the following:

Director Rallings –

Thank you for sharing this concern. Please tell your officers that they may use their personal devices and social media accounts but that any such use will be subject to the same auditing and reporting requirements that apply to official MPD devices and accounts. We recognize that MPD has a critical public safety function. The purpose of my team is not to interfere with or inhibit that function but to help guide it, consistent with the parameters that Judge McCalla has identified. As long as your officers report their social media use as we have requested, the Monitoring Team will be able to proceed according to the court's instructions.

(August 5, 2019, Email from E. Stanton to M. Rallings, attached as **Exhibit 6**.)

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Hall. (See Email from B. McMullen to E. Stanton, attached as **Exhibit 7**.) In the interim, the City proposed a modified entry procedure:

[U]ntil we can get some clarity from the Court (and I would like to bring it up Tuesday because this is so critical), we plan to advise the City Hall security team to first ask persons where they intend to go when they enter City Hall. If they advise that they are going to pay their taxes on the 3rd Floor or to attend City Council events open to the public, we will not require those individuals to show ID or sign in on the desk log. If individuals advise that they are visiting any other area, we will ask them to show ID and sign in on the desk log, and we will make a visitor's badge so that employees are aware that a non-employee is in the restricted area. The photo will be retained until after court on Tuesday.

...

Finally, with respect to 170 Main which houses MPD, parts of HR, Legal and the sex offender registry office, we will continue to require the visitors state their business and produce their identification, and we will produce a photo badge and maintain the information for security purposes.

(*Ibid.*) The City asked that I approve this interim approach until the City obtains "further clarification from the Court on Tuesday[, August 27, 2019]." (*Ibid.*)

I approved that request.

E. August 23, 2019, RFA.

Finally, this past Friday, August 23, 2019, the City made a request regarding its use of Crime Stoppers. (See Email from B. McMullen to E. Stanton, attached as **Exhibit 8**.) According to the City, when a crime is committed, the City encourages anyone with information related to the crime to call Crime Stoppers, which is "a standalone entity that is separate from MPD." (*Ibid.*) Crime Stoppers then shares that information that it receives with MPD. (*Ibid.*) The MPD has no way to determine how the caller obtained the information that it receives or whether the collection of the information complies with the consent decree. The City wants to know whether the MPD may continue to receive information from Crime Stoppers under the consent decree.

This request implicates § I of the consent decree. Section I forbids the City to "encourage, cooperate with, delegate, employ or contract with, or act at the behest of, any local, state, federal or private agency, or any person, to plan or conduct any . . . activity . . . prohibited by th[e] decree." As stated in the August 21, 2019, Coordination Opinion, I read this restriction to place the onus on the City to verify that any information it receives from governmental law enforcement agencies, non-law enforcement agencies, public and private entities, and individuals satisfies the same standards as information lawfully collected by the City itself.

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Information collected by civilian residents of the City, shared with Crime Stoppers, and then shared with the MPD ordinarily would not implicate the First Amendment. The First Amendment restrains only the government, and not private individuals or organizations. Thus, the practices of private individuals and organizations do not offend the First Amendment even when those same practices, employed by the government, would violate it.

Section I of the consent decree, however, forbids the City to coordinate both with governmental entities—“any local, state, [or] federal” entity—and with any “private agency, or any person, to plan or conduct any . . . activity . . . prohibited by th[e] decree.” As a result, the practices of private individuals or organizations may offend the consent decree if the City “encourage[s], cooperate[s] with, delegate[s], employ[s] or contract[s] with, or act[s] at the behest of” such private individuals or organizations “to plan or conduct any . . . activity . . . prohibited by th[e] decree.” § I.

The only way to ensure that the City does not offend the consent decree in working with private individuals or organizations is to require the same verification process for information received from private individuals and organizations as I understand the consent decree to impose for receiving information from the FBI, the Secret Service, or any other law enforcement agencies. (*See generally* August 21, 2019, Coordination Opinion.) The City’s ability to receive information from private citizens, either through Crime Stoppers or directly, is thus subject to verification that the information satisfies the same standards as information lawfully collected by the City itself.

III. **Conclusion.**

All remaining questions about the City’s prior RFAs and all outstanding RFAs by the City should now have been addressed. We look forward to seeing you tomorrow at the court’s next hearing in this matter.

Sincerely,

BUTLER SNOW LLP



Edward L. Stanton III

ES:tw

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cc: Bruce A. McMullen, Esq. (via email only)
Jim Letten, Esq. (via email only)
Gadson W. Perry, Esq. (via email only)

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Exhibit 1

From: Silk, Jennie <jsilk@bakerdonelson.com>
Sent: Friday, July 12, 2019 4:41 PM
To: Edward L. Stanton III
Cc: Shanell Tyler; Will Perry; Glover, R. Mark; Tullis, Mary Wu; McMullen, Bruce; McMullen, Bruce
Subject: Search terms for Nathan Bedford Forrest Birthday Rally and Confirming Use of Cameras at Rally Tonight

Hi Ed,

As we discussed on the call today, a rally is planned this weekend to celebrate Nathan Bedford Forrest's birthday, which is tomorrow July 13. You instructed the City to send you the search terms that MPD needs to search on social media in order to adequately prepare for this event. Here is the list:

Confederate
NBF
Forrest
July 13
July 13, 1821
October 29
October 29, 1877
Statue
December 20, 2017
Sons of the Confederacy
SOC
Nathan Bedford Forrest
Friends of Nathan Bedford Forrest
Confederate901
Confederate 901
Taking Our Country Back
Hiwayman Operation Home Front
highwaymen
Rollin Memphis
KKK
Ku Klux Klan
Grand Wizard
Health Sciences Park
Lee Millar
Calvary General
Battle of Fort Pillow
Battle of Shiloh
Confederate Hero
Battle of Fort Donelson
Battle of Tupelo
KKK
Billy Roper
Shield Wall

Possible Counter protesters:

CCC

Coalition of Concerned Citizens

New Black Panthers

Antifa

Please understand that we are very sensitive to the issue of the counter-protester group names listed above, however, the City needs to prepare for the possibility of a large counter protest that could turn violent or become otherwise disruptive. As you know, whenever two ideologically opposite groups converge, things could erupt, similar to what happened in Charlottesville, Virginia.

This note also confirms that today the Monitoring team gave the City the greenlight to operate its SkyCops, Body Worn Cameras, and Dash Cams pursuant to the current MPD policy for each of those cameras at the rally planned for tonight centered on the release of journalist Manuel Duran from ICE custody.

Please let us know if you have any questions or concerns. Thank you and the team for taking the time to address these issues on the call today.

Best,

Jennie Vee Silk

Associate

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Exhibit 2

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Friday, July 19, 2019 4:28 PM
To: Edward L. Stanton III; Will Perry; Shanell Tyler; Jim Letten
Cc: Glover, R. Mark; Jill Silk; Saleem, Zayid-mem; Tullis, Mary Wu; Sink, Jennifer
Subject: Facebook inquiry about Imposter
Attachments: SKM_C45819071914390.pdf; SKM_C45819071914391.pdf; SKM_C45819071914420.pdf

Ed, Will, Jim, & Shanell,

Attached is the letter from Facebook's Associate General Counsel, Andrea Kirkpatrick, and the subsequent emails discussing the imposter accounts in September 2019.

Before I get to those, in October 2016, I contacted Facebook about 5 imposter accounts that were created in the likeness of the Mayor, the Police Director, the City, and the Mayor's wife. See attached emails I exchanged with FBI Agent David Palmer, as well as my email to Facebook notifying them of the imposter accounts, requesting that they shut down the accounts, and advising them that I had reached out to the US Attorney's Office. Ultimately, we were unable to trace the origin of the Facebook accounts, although the FBI was able to trace 2 imposter Twitter accounts to Paul Garner.

Following the ACLU trial, MPD received a letter dated September 19, 2018 from Andrea Kirkpatrick. Initially, I thought the letter was fake but we verified it was in fact legitimate. I contacted Ms. Kirkpatrick by email on September 25, 2018 and inquired about the imposter accounts alleged to have been created by MPD. In an email of September 26th Ms. Kirkpatrick advised that Facebook took action on 6 accounts because they appeared to be "forensically related" to the "Bob Smith" account, but determined 3 were authentic and 3 were disabled for being fake. She provide us with the URLs of the three fake accounts but they were disabled.

We investigated but had no knowledge of any other imposter accounts other than "Bob Smith" which was deactivated. I did not know what "forensically related" meant, so I inquired with our Chief IS Officer Mike Rodriguez as to its meaning and whether he could determine the identity of the disabled Facebook accounts, including their creator (see email of Oct 3 2018 for his response). Mr. Rodriguez could not make any determinations. We also engaged an outside Cyber security attorney but he was also I unsuccessful.

Bruce McMullen
Chief Legal Officer/City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

McMullen, Bruce

From: Palmer, David E. (ME) (FBI) <David.Palmer2@ic.fbi.gov>
Sent: Friday, October 28, 2016 2:11 PM
To: McMullen, Bruce
Subject: RE: IMMINENT MATTER--imposter account of Public official

David E. Palmer
Special Agent
FBI Memphis Division
225 N. Humphreys Blvd.
Memphis, TN 38120
Office: 901-747-9607
Cell: 901-233-3213
david.palmer2@ic.fbi.gov



From: McMullen, Bruce [<mailto:Bruce.McMullen1@memphistn.gov>]
Sent: Friday, October 28, 2016 2:09 PM
To: Palmer, David E. (ME) (FBI)
Subject: Fwd: IMMINENT MATTER--imposter account of Public official

Sent from my iPhone

Begin forwarded message:

From: "McMullen, Bruce" <Bruce.McMullen1@memphistn.gov>
Date: October 28, 2016 at 12:32:10 PM CDT
To: "records@facebook.com" <records@facebook.com>
Cc: "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>
Subject: IMMINENT MATTER--imposter account of Public official

Dear Facebook legal

I am the Chief Legal officer for the City of Memphis Tennessee. Someone has created at least 5 imposter accounts all of which claim to be the Mayor of Memphis' page or His wife's page.

<http://cp.mcafee.com/d/k-Kr6zqb0UsUYyqehPNISyyyyM-C-UOrhhhhovjshhdCPpJnRlysGjxN6FASCCWOaIXp0lZTni7Lm5nJjp5mdto5thd7bUGCg7e47n1SKc8CPpISr9PCJhbcasXJL8IGlVv49hCmEuTdMtx9SfKDjErdELef6PtPqpJUTsTsSyrh>

<http://cp.mcafee.com/d/FZsScy0Qrho73D7AjhOeudCQkkkm7QTT6jqaaab3Wrya9ISrdG-GliBise8RcCQQTmhlDr82LKWWgZWGMGZGr8GNHH0HG9EVv5kO0VMwWUeRNx4SrdCPpesRG9pxjDtJV2JiLbU7q2 Q Wj6Zblzx9SfKDjErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/2DRPoQ73gwcCQm1MVNV4QszDzpJ5555xZdZNASyyyyM-CUyyrdCPqLGH4VkD3yjdj9JddRAIpSO0HXKKAfulaLqCOalqWMAWyqenNlcwes8eK3JsohdCPpISjDdqymokVTrugHkHO-3vGH4Vku03x9SfKDjErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/2DRPow82gQcCQm1MVNV4QszDzpJ5555xZdZNASyyyyM-CUyyrdCPqLGH4VkD3yjdj9JddRAIpSO0HXKKAfulaLqCOalqWMAWyqenNlcwes8eK3JsohdCPpISjDdqymokVTrugHkHO-6zCWcSUMCSJx9SfKDjErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/FZsSd39J5wsesuhd78VUSrhhhhovjvspdEEEEIfFK8ECPpISHWGNel9MUzkOrjtp5mtlwa-XHF3TH2HSFLyH6KI2KECzBYIj83D23HwXn64jplSrdAVPmEBC5etSTAaRaYLyLGH4VkSzlpmaUrdELef6PtPqpJUTsTsSyrh>

The comments on the different sites are not only vulgar and inappropriate, the sites themselves are misleading and poses a threat to public safety. Consequently, we would like your assistance in shutting these sites down. We have contacted the US Attorney for the Western District of Tennessee and notified him of the problem. He has notified the FBI and we are expecting to hear from them. In the interim, would you please shut these sites down as I understand it is Facebook's policy not to support imposter accounts.

Bruce McMullen

Chief Legal Officer/City Attorney

125 N. Main, Room 336

Memphis, Tennessee 38103

(901) 576-6614 – Office

(901) 576-6531 – Fax

bruce.mcmullen1@memphistn.gov

McMullen, Bruce

From: Palmer, David E. (ME) (FBI) <David.Palmer2@ic.fbi.gov>
Sent: Monday, October 31, 2016 9:31 AM
To: McMullen, Bruce
Subject: RE: IMMINENT MATTER--imposter account of Public official

Mr. McMullen,

It appears that most of the Facebook sites listed below have been shut down with the exception of "memphisasfrick". Do you know if anyone took screen shots or preserved any of the content from these sites prior the them being closed?

Thanks,

David E. Palmer
Special Agent
FBI Memphis Division
225 N. Humphreys Blvd.
Memphis, TN 38120
O: 901-747-9607
C: 901-233-3213
david.palmer2@ic.fbi.gov



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Date: October 28, 2016 at 12:32:10 PM CDT
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Cc: "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>
Subject: IMMINENT MATTER--imposter account of Public official

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http://cp.mcafee.com/d/1jWVledEI3xNEVjooKUrdeEEEIfFLKcCQkkkm7QT4kjpISrIZloDaAUshGpdF_sQsyH1EVg82G8VZNORDxIZVCMGMwCMAa7D71kweYQsSoRMQs_pYSrdCPpesRG9pxjDtJV2JiLbU7q2_Q_Wj6Zblzx9SfKdJErdELef6PtPqpJUTsTsSyrh
<http://cp.mcafee.com/d/1jWVlp418p4zqb0UsqekS6bK6Pqaaab3WrXz9J5555xZdN54SrdCRvIm90Fe74qCiqvTd78GMqek20GyevssJpUlvuplaI89I2F1VNMI83Ld7dCdsd7fSvdCPpISjDdqymokVTrugHkHO-3vGH4Vku03x9SfKdJErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/5fHCMUp43qb0UsqekS6bK6Pqaaab3WrXz9J5555xZdN54SrdCRvIm90Fe74qCiqvTd78GMqek20GyevssJpUlvuplaI89I2F1VNMI83Ld7dCdsd7fSvdCPpISjDdqymokVTrugHkHO-6zCWcSUMCSJx9SfKdJErdELef6PtPqpJUTsTsSyrh>
<http://cp.mcafee.com/d/k-Kr40Uq41ASyMe76zBdxyXxISyyyyM-C-UOrhhhhovjshhdCPpJnRlysGjxN6FASDZPhOaI6zB0waEzDT7bmu5nTCr2H22r0Gguss5i0XPhPpzn3hPZDPpISrdAVPmEBC5etSTAaRaYLyLGH4VksZlpmaUrdELef6PtPqpJUTsTsSyrh>

The comments on the different sites are not only vulgar and inappropriate, the sites themselves are misleading and poses a threat to public safety. Consequently, we would like your assistance in shutting these sites down. We have contacted the US Attorney for the Western District of Tennessee and notified him of the problem. He has notified the FBI and we are expecting to hear from them. In the interim, would you please shut these sites down as I understand it is Facebook's policy not to support imposter accounts.

Bruce McMullen

Chief Legal Officer/City Attorney

125 N. Main, Room 336

Memphis, Tennessee 38103

(901) 576-6614 – Office

(901) 576-6531 – Fax

bruce.mcmullen1@memphistn.gov

September 19, 2018

By Email and via FedEx

Mr. Michael Rallings
Director, Memphis Police Department
Memphis Police Department
170 N. Main Street
Memphis, TN 38103

Office of the Director

SEP 20 2018

MPD

Dear Mr. Rallings:

We recently learned through media reports and the Electronic Frontier Foundation (EFF) that the Memphis Police Department created fake Facebook accounts and impersonated legitimate Facebook users as part of its investigation of alleged criminal conduct unrelated to Facebook. We write to underscore that this activity violates our terms of service. The Police Department should cease all activities on Facebook that involve the use of fake accounts or impersonation of others.

People come to Facebook to connect and share with real people using their authentic identities. This core principle is what differentiates Facebook from other services on the Internet. Our authenticity policies are intended to create a safe environment where people can trust and hold one another accountable. Operating fake accounts violates the terms and policies that govern the Facebook service, and undermines trust in our community (<https://www.facebook.com/communitystandards/misrepresentation>).

Anyone who creates a Facebook account agrees to abide by our Community Standards, which expressly prohibit the creation and use of fake accounts. The Community Standards provide as follows:

- Do not misrepresent your identity by using a name that does not abide by our name policies (<https://www.facebook.com/help/112146705538576>) or providing a false date of birth.
- Do not misuse our profiles product by:
 - Creating a profile for someone under thirteen years old
 - Maintaining multiple accounts
 - Creating inauthentic profiles
 - Sharing an account with any other person
 - Creating another account after being banned from the site
 - Evading the registration requirements outlined in our Terms of Service (<https://www.facebook.com/legal/terms>)
- Do not impersonate others by:
 - Using their images with the explicit aim to deceive people
 - Creating a profile assuming the persona of or speaking for another person or entity

facebook

Address: 1601 Willow Road
Menlo Park, CA 94025

- Creating a Page assuming to be or speak for another person or entity for whom the user is not authorized to do so.
- Do not engage in authentic behavior, which includes creating, managing, or otherwise perpetuating:
 - Accounts that are fake
 - Accounts that have fake names
 - Accounts that participate in, or claim to engage in, coordinated inauthentic behavior, meaning that multiple accounts are working together to do any of the following:
 - Mislead people about the origin of content
 - Mislead people about the destination of links off our services (for example, providing a display URL that does not match the destination URL)
 - Mislead people in an attempt to encourage shares, likes, or clicks
 - Mislead people to conceal or enable the violation of other policies under the Community Standards

Facebook has made clear that law enforcement authorities are subject to these policies. We regard this activity as a breach of Facebook's terms and policies, and as such we have disabled the fake accounts that we identified in our investigation.

We request that the Police Department, its members, and any others acting on its behalf cease all activities on Facebook that involve impersonation or that otherwise violate our policies.

Please contact us if you have any questions or concerns.

Sincerely,



Andrea Kirkpatrick
Director and Associate General Counsel, Security

facebook

Address: 1601 Willow Road
Menlo Park, CA 94025



Align top of FedEx Express® shipping label here

ORIGIN ID: PAOA (650) 739-9596
KURTIS HUBBELL
FACEBOOK
1 HACKER WAY

SHIP DATE: 19SEP18
ACTWGT: 1.00 LB MAN
CAD: 0589497/CAFE3210

MENLO PARK, CA 94025
UNITED STATES US

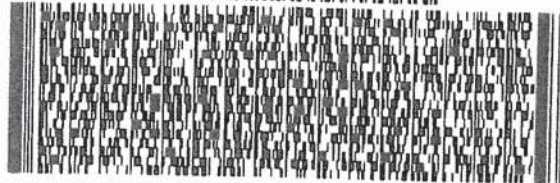
BILL SENDER

TO **MR. MICHAEL RALLINGS**
MEPHIS POLICE DEPARTMENT
170 N MAIN STREET

MEMPHIS TN 38103

(901) 838-3700

REF: ANDREA KIRPATRICK



FedEx
Express



TRK# 4437 9255 9499
0201

THU - 20 SEP 10:30A
PRIORITY OVERNIGHT

XH NQAA

38103
TN-US MEM

Part # 156148-434 RIT EXP 04/19



RT 589
10:30
1
9499
09:20
A

McMullen, Bruce

From: Andrea Kirkpatrick <andreak@fb.com>
Sent: Wednesday, September 26, 2018 1:51 PM
To: McMullen, Bruce; Jay Nancarrow
Cc: 'Joy, Justin N.'; Sink, Jennifer
Subject: Re: Letter from Andrea Kirkpatrick

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Mr. McMullen:

Thank you for reaching out and for looking into this matter more closely on behalf of the City of Memphis.

We took action on six additional accounts because they appeared to be inauthentic and were forensically related to the "Bob Smith" account that was the subject of The Appeal's August 2, 2018 article (<https://theappeal.org/memphis-police-surveillance-black-lives-matter-facebook-profile-exclusive/>).

Of the six accounts, three were checkpointed and three were disabled for being fake. The account holders of the three checkpointed accounts have since submitted the information necessary to authenticate the accounts. As a result, those accounts have been reactivated.

The accounts that were disabled as fake remain disabled. The URLs associated with those accounts are:

- URL: <https://www.facebook.com/100009045433820>
- URL: <http://facebook.com/100020798830432>
- URL: <https://www.facebook.com/100025331090444>

Should you require additional information from Facebook about these accounts, please refer to our Law Enforcement Guidelines (<https://www.facebook.com/safety/groups/law/guidelines/>) which serve as our operational guidelines for law enforcement official seeking records from Facebook.

Best,

Andrea Kirkpatrick | **facebook** | Director & Associate General Counsel, Security |
1 Hacker Way, Menlo Park, CA 94025

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From: "McMullen, Bruce" <Bruce.McMullen1@memphistn.gov>
Date: Tuesday, 25 September 2018 8:07 AM
To: Jay Nancarrow <jcn@fb.com>

Cc: "'Joy, Justin N.'" <JJoy@LewisThomason.com>, "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>, Andrea Kirkpatrick <andreak@fb.com>

Subject: RE: Letter from Andrea Kirkpatrick

Ms. Kirkpatrick,

I am the Chief Legal Officer for the City of Memphis. Under my jurisdiction are the divisions of the City, including Memphis Police Department (MPD). I appreciate your letter dated September 20th and will address it further in a future correspondence. However, in his email Mr. Nancarrow indicated there were 6 "related accounts." Consequently, I am investigating the creation and use of 6 "related accounts" allegedly linked to MPD.

Unfortunately, I am not sure what "related accounts" means in this context. Are they MPD accounts, MPD employee accounts, family members accounts etc.. Could you please define and clarify?

Additionally, if there is a concern that they are MPD sanctioned or MPD controlled accounts or that they are used in MPD's business, please provide me with as much information as possible so that I can investigate and take appropriate action. Please include the name, when it was created, and any information traced back to the creator.

Bruce McMullen

Chief Legal Officer/City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

From: Jay Nancarrow [mailto:jcn@fb.com]
Sent: Monday, September 24, 2018 7:32 PM
To: McMullen, Bruce
Cc: 'Joy, Justin N.'; Sink, Jennifer; Andrea Kirkpatrick
Subject: Re: Letter from Andrea Kirkpatrick

Dear Mr. McMullen,

I can confirm that the letter you received from Andrea Kirkpatrick is legitimate. I'm copying her on this response for further validation. Upon receiving the initial report of the fake account that was in use, we disabled it and then looked for related accounts. As a result, we ended up taking action on an additional six accounts. Regarding your remaining questions about providing additional information concerning these accounts, I believe Andrea is best placed to respond.

Thank you,

Jay Nancarrow

From: "McMullen, Bruce" <Bruce.McMullen1@memphistn.gov>

Date: Monday, September 24, 2018 at 2:41 PM

To: Jay Nancarrow <jcn@fb.com>

Cc: "Joy, Justin N." <JJoy@LewisThomason.com>, "Sink, Jennifer" <Jennifer.Sink@memphistn.gov>

Subject: Letter from Andrea Kirkpatrick

Dear Mr. Nancarrow,

I am the Chief Legal Officer for the City of Memphis. As such, I represent Memphis Police Department. I am trying to authenticate a letter the Memphis Police Department received from Andrea Kirkpatrick dated September 20, 2018. Attached is a copy of the letter. Also, I understand from unconfirmed press reports that Facebook found 6 additional accounts associated with MPD's account. If this is accurate, please provide me with information about those related accounts including names used, dates originated, and last postings, and what action was taken by Facebook on these accounts.

Bruce McMullen

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125 N. Main, Room 336

Memphis, Tennessee 38103

(901) 576-6614 – Office

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bruce.mcmullen1@memphistn.gov

McMullen, Bruce

From: Rodriguez, Mike
Sent: Wednesday, October 03, 2018 5:36 PM
To: McMullen, Bruce
Cc: 'Joy, Justin N.'; Sink, Jennifer
Subject: RE: Confidential attorney client information

Bruce,

"forensically related" would mean that when Facebook looked at the Facebook pages they found similar data associated with each of the urls in question. Meaning – perhaps the same computer was used to create the account, the same user id was used to create the account – or something like that. A MAC address or IP address across the urls were related. Since the account have been deactivated by Facebook we do not have any ability to do any forensics analysis.

I will have the IS team take a look in the proxy logs and see if we can identify a city employee that might have accessed the pages in question.

Regards,
Mike

From: McMullen, Bruce
Sent: Wednesday, October 3, 2018 2:34 PM
To: Rodriguez, Mike <Mike.Rodriguez@memphistn.gov>
Cc: 'Joy, Justin N.' <JJoy@LewisThomason.com>; Sink, Jennifer <Jennifer.Sink@memphistn.gov>
Subject: Confidential attorney client information

Mike,

Look at the three URLs that Facebook says are disconnected. Is there any information we can get on those disconnected URLs? I am trying to see who they are and figure out how they are linked them to MPD. Also, can you tell me specifically what "forensically related" means?

From: Andrea Kirkpatrick [<mailto:andreak@fb.com>]
Sent: Wednesday, September 26, 2018 1:51 PM
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Cc: 'Joy, Justin N.'; Sink, Jennifer
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Andrea Kirkpatrick | **facebook** | Director & Associate General Counsel, Security |
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Jay Nancarrow

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Bruce McMullen
Chief Legal Officer/City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

Exhibit 3

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Monday, July 29, 2019 9:16 AM
To: Edward L. Stanton III; Will Perry; Jim Letten; Shanell Tyler
Cc: Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer
Subject: Blanchard v The City - Monitor communication

Ed, Jim, Will & Shanell,

The City is installing speed Camera in 15 locations (attached is the location map). The Cameras are similar to red light cameras that are currently in use. The purpose of the cameras is for student safety. They will be located near 15 schools to control traffic during early morning hours and after school. They will be activated 45 min before school starts and run a short period after school starts and 30 min before school ends and run a short period of time after school.

The data that does not result in a ticket will be kept 90 days and the data resulting in a ticket will be kept 3 years. The data will be held by a third party (Conduent). We will began installation in September and should have all systems live by December 2019.

Please advise whether the usage of these cameras as described above violates the consent decree?

Exhibit 4

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Monday, August 05, 2019 2:46 PM
To: Edward L. Stanton III; Will Perry
Cc: Rallings, Director Michael; Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don
Subject: Exigent circumstance request to Monitor
Importance: High

Ed,

Earlier today, a Shelby County Sheriff was involved in a fatal shooting near 201 Poplar. Almost immediately, a crowd gathered. MPD was asked by the Sheriff's Office to control the scene (the incident within MPD's jurisdiction in that it was in the City). TBI is on the scene, since it is an officer-involved shooting.

MPD is providing crowd control for public safety and has taken measures such as using bike racks to set up a perimeter. We are requesting permission for MPD to be able to go on social media to gauge the potential response to this situation and anticipate crowd swell. Also a concern is that there may be plans to have a larger gathering at another location, and MPD wants to be able to be prepared in order to adequately provide public safety at that location.

Per our conversation just a few moments ago, you have authorized this request, conditioned upon keeping a log of the search terms used.

Bruce McMullen
Chief Legal Officer/City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

Exhibit 5

From: Rallings, Director Michael <Michael.Rallings@memphistn.gov>
Sent: Monday, August 05, 2019 3:31 PM
To: Edward L. Stanton III; McMullen, Bruce; Will Perry
Cc: Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don
Subject: Re: Exigent circumstance request to Monitor

The problem is that the officers are terrified to use their personal accounts and we can not force them to do so.

The prohibition on a alternate social media account is crippling MPD and may put our citizens safety at risk. We need to resolve asap before we have an El Paso type incident.

Director Michael W. Rallings

Memphis Police Department

170 N. Main, Suite 12-01

Memphis, TN 38103

Phone [\(901\) 636-3700](tel:9016363700)

Fax [\(901\) 636-3502](tel:9016363502)

Community Outreach Program (C.O.P), a proactive initiative developed by the Memphis PoliceDepartment, to improve the quality of life of citizens and reduce juvenile violence, utilizing crime prevention techniques through identification, enforcement and education within the community.

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From: Edward L. Stanton III

Sent: Monday, August 5, 2019 2:54:06 PM

To: McMullen, Bruce ; Will Perry

Cc: Rallings, Director Michael ; Saleem, Zayid-mem ; Glover, R. Mark ; Jill Silk ; Tullis, Mary Wu ; Sink, Jennifer ; Fletcher, Michael ; Crowe, Deputy Chief Don

Subject: RE: Exigent circumstance request to Monitor

Bruce –

Confirmed.

ELS

Edward L. Stanton III

Butler Snow LLP

D: (901) 680-7369 | F: (901) 680-7201

6075 Poplar Avenue, Suite 500, Memphis, TN 38119

P.O. Box 171443, Memphis, TN 38187-1443

Edward.Stanton@butlersnow.com | [vCard](#) | [Bio](#)

[Twitter](#) | [LinkedIn](#) | [Facebook](#) | [YouTube](#)

From: McMullen, Bruce [mailto:Bruce.McMullen1@memphistn.gov]

Sent: Monday, August 05, 2019 2:46 PM

To: Edward L. Stanton III; Will Perry

Cc: Rallings, Director Michael; Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don

Subject: Exigent circumstance request to Monitor

Importance: High

Ed,

Earlier today, a Shelby County Sheriff was involved in a fatal shooting near 201 Poplar. Almost immediately, a crowd gathered. MPD was asked by the Sheriff's Office to control the scene (the incident within MPD's jurisdiction in that it was in the City). TBI is on the scene, since it is an officer-involved shooting.

MPD is providing crowd control for public safety and has taken measures such as using bike racks to set up a perimeter. We are requesting permission for MPD to be able to go on social media to gauge the potential response to this situation and anticipate crowd swell. Also a concern is that there may be plans to have a larger gathering at another location, and MPD wants to be able to be prepared in order to adequately provide public safety at that location.

Per our conversation just a few moments ago, you have authorized this request, conditioned upon keeping a log of the search terms used.

Bruce McMullen

Chief Legal Officer/City Attorney

125 N. Main, Room 336

Memphis, Tennessee 38103

(901) 576-6614 – Office

(901) 576-6531 – Fax

bruce.mcmullen1@memphistn.gov

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Exhibit 6

From: Edward L. Stanton III
Sent: Monday, August 05, 2019 4:07 PM
To: 'Rallings, Director Michael'; McMullen, Bruce; Will Perry
Cc: Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don
Subject: RE: Exigent circumstance request to Monitor

Director Rallings –

Thank you for sharing this concern. Please tell your officers that they may use their personal devices and social media accounts but that any such use will be subject to the same auditing and reporting requirements that apply to official MPD devices and accounts. We recognize that MPD has a critical public safety function. The purpose of my team is not to interfere with or inhibit that function but to help guide it, consistent with the parameters that Judge McCalla has identified. As long as your officers report their social media use as we have requested, the Monitoring Team will be able to proceed according to the court's instructions.

Best,

ELS

Edward L. Stanton III
Butler Snow LLP

D: (901) 680-7369 | F: (901) 680-7201
6075 Poplar Avenue, Suite 500, Memphis, TN 38119
P.O. Box 171443, Memphis, TN 38187-1443
Edward.Stanton@butlersnow.com | [vCard](#) | [Bio](#)

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From: Rallings, Director Michael [mailto:Michael.Rallings@memphistn.gov]
Sent: Monday, August 05, 2019 3:31 PM
To: Edward L. Stanton III; McMullen, Bruce; Will Perry
Cc: Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don
Subject: Re: Exigent circumstance request to Monitor

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Subject: RE: Exigent circumstance request to Monitor

Bruce –

Confirmed.

ELS

Edward L. Stanton III

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From: McMullen, Bruce [mailto:Bruce.McMullen1@memphistn.gov]

Sent: Monday, August 05, 2019 2:46 PM

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Cc: Rallings, Director Michael; Saleem, Zayid-mem; Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer; Fletcher, Michael; Crowe, Deputy Chief Don

Subject: Exigent circumstance request to Monitor

Importance: High

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Earlier today, a Shelby County Sheriff was involved in a fatal shooting near 201 Poplar. Almost immediately, a crowd gathered. MPD was asked by the Sheriff's Office to control the scene (the incident within MPD's jurisdiction in that it was in the City). TBI is on the scene, since it is an officer-involved shooting.

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Bruce McMullen

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Exhibit 7

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Thursday, August 22, 2019 2:15 PM
To: Edward L. Stanton III; Will Perry; Shanell Tyler; Jim Letten
Cc: Glover, R. Mark; Jill Silk; Tullis, Mary Wu; Sink, Jennifer
Subject: Approval requested

Importance: High

Ed,

We are continuing to review your letter of August 12, 2019. I wanted to email you immediately to discuss clarification of your response to our Scenario #10 regarding security procedures for entering City Hall. Because your response would result in a massive operational change, and change in how we assess threats to employees (i.e., disgruntled former employees or someone under a restraining order), we wanted to make sure we were 100% clear on the directions for new security procedures or approach for persons entering City Hall and that you and the Court deem permissible under the Consent Decree.

Consequently, until we can get some clarity from the Court (and I would like to bring it up Tuesday because this is so critical), we plan to advise the City Hall security team to first ask persons where they intend to go when they enter City Hall. If they advise that they are going to pay their taxes on the 3rd Floor or to attend City Council events open to the public, we will not require those individuals to show ID or sign in on the desk log. If individuals advise that they are visiting any other area, we will ask them to show ID and sign in on the desk log, and we will make a visitor's badge so that employees are aware that a non-employee is in the restricted area. The photo will be retained until after court on Tuesday. Please confirm if that is acceptable until we can get further clarification from the Court on Tuesday.

Finally, with respect to 170 Main which houses MPD, parts of HR, Legal and the sex offender registry office, we will continue to require the visitors state their business and produce their identification, and we will produce a photo badge and maintain the information for security purposes.

Bruce McMullen
Chief Legal Officer/City Attorney
125 N. Main, Room 336
Memphis, Tennessee 38103
(901) 576-6614 – Office
(901) 576-6531 – Fax
bruce.mcmullen1@memphistn.gov

Exhibit 8

From: McMullen, Bruce <Bruce.McMullen1@memphistn.gov>
Sent: Friday, August 23, 2019 3:42 PM
To: Edward L. Stanton III; Will Perry; Shanell Tyler
Cc: mglover@bakerdonelson.com; Jill Silk; mtullis@bakerdonelson.com; Sink, Jennifer; Saleem, Zayid-
mem
Subject: Request for Approval

Ed,

As you are aware, MPD uses an information/evidence gathering entity called "Crime Stoppers." When a crime is committed, there is usually a marketing campaign for anyone with any information to call a number and provide that information. The caller can remain anonymous or give personal information for follow up so that they can collect the cash reward. Crime Stoppers is a standalone entity that is separate from MPD; however, the information is transmitted to MPD.

MPD has no way of verifying how the caller got his/her intel and certainly have no way of knowing whether the caller is trained on the consent decree or whether they used methods not allowed by the consent decree. Can MPD receive information from Crime Stoppers?

Sent from my iPhone