

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

---

ELAINE BLANCHARD, KEEDRAN )  
FRANKLIN, PAUL GARNER, and )  
BRADLEY WATKINS, )  
) )  
Plaintiffs (dismissed), )  
) )  
and ) )  
) )  
ACLU OF TENNESSEE, INC., )  
) )  
Intervening Plaintiff, )  
) )  
v. ) )  
) )  
CITY OF MEMPHIS, TENNESSEE, )  
) )  
Defendant. )

Case No. 2:17-cv-2120-JPM-egb

---

**ORDER DOCKETING MATERIALS SUBMITTED BY CITY OF MEMPHIS**

---

In its October 26, 2018 Order, the Court required the City to submit certain materials as part of the sanctions imposed. (ECF No. 151 at PageID 6274-75.) The City submitted those materials to the Court on January 14, 2019. The Court hereby docketed the City’s submitted documents as attachments to this Order. The ACLU of Tennessee, Inc. shall, by February 4, 2019, file any objections to said proposals or, if there are no objections, a document stating that there are no objections. (See ECF No. 151 at PageID 6274-75.)

**IT IS SO ORDERED**, this 15th day of January, 2019.

/s/ Jon McCalla  
\_\_\_\_\_  
JON P. McCALLA  
UNITED STATES DISTRICT JUDGE

## **DR 138 POLITICAL INTELLIGENCE (REVISED)**

The Memphis Police Department and the City of Memphis shall not engage in political intelligence. "Political Intelligence" means the gathering, indexing, filing, maintenance, storage or dissemination of information, or any other investigative activity, relating to any person's beliefs, opinions, associations or other exercise of First Amendment rights. Political intelligence includes any investigation into the lawful exercise of First Amendment rights, even if the investigating officer does not have a partisan political motive. Political intelligence is not permissible as a goal of an investigation nor as the means to an end of an otherwise lawful investigation.

No member shall intercept, record, transcribe or otherwise interfere with any communications by means of electronic or covert surveillance for the purpose of gathering political intelligence. No member shall engage in any action or disseminate damaging, derogatory, false or anonymous information about any person which will deprive any individual of their First Amendment Rights; nor will any member encourage, cooperate with, or contract with any local, state, federal or private agency to plan or conduct any investigation involving political intelligence.

Investigations into unlawful conduct that may incidentally result in the receipt of information relating to First Amendment rights are permissible, but require approval by the Director of Police Services or his/her designee. Any member conducting or supervising such an investigation must bring the matter to the attention of the Director of Police Services, or his/her designee, for review and written authorization. If approved, the investigation shall not exceed ninety (90) calendar days. An extension may be granted in writing by the Director or his/her designee for period of up to an additional ninety (90) days.

The form to be utilized to request approval to conduct an investigation under the authority provided in this this DR, are in accordance with the Order, Judgment and Decree for Civil Case 76-449 ("*Kendrick* Consent Decree"), and the Memorandum Opinion issued by the United States District Court in Case No. 2:17-cv-02120, Doc. 151. Copies of both may be found on the Memphis Police Department Kiosk [show links here].

Except as may be otherwise provided in this DR, the fundamental principles found in The Code of Federal Regulations, 28 CFR Part 23, contain operating policies providing law enforcement professionals with guidance on the operation of criminal intelligence information systems effectively while safeguarding privacy

and civil liberties. In the event of a conflict between the principles and provisions of 28 CFR Part 23 and this DR, as well as the provisions of the *Kendrick* Consent Decree, the provisions of the *Kendrick* Consent Decree shall govern.

## TRAINING PLAN

In the Opinion and Order (ECF No. 151), the Court ordered, in part, the following:

The City shall design training for members of OHS, RTCC, and MPD's Command Staff. The new training shall define "political intelligence." The new training shall specify that "political intelligence" includes any investigation into the lawful exercise of First Amendment rights, even if the investigating officer or unit does not have a partisan political motive. The new training shall specify that political intelligence is not permissible as a goal of an investigation nor as the means to an end of an otherwise lawful investigation. The new training shall inform officers that investigations into unlawful conduct that may incidentally result in the receipt of information relating to First Amendment rights are permissible, but require approval as set out in Consent Decree § G. No officer may be assigned to RTCC or OHS, or be promoted to the Command Staff without receiving this training. The City shall submit a training plan to the Court no later than January 14, 2019 for review and approval.

Pursuant to the Order, the City submits the following training plan for the Court's review and approval.

- The City has drafted training materials for members of OHS, RTCC, and MPD's Command Staff. This draft is attached hereto as Exhibit A. The City will provide a copy of the draft to the Court-appointed Monitor.
- Within 21 days after approval of the training materials by the Court, the City will hold training sessions for all members of OHS, RTCC, and MPD's Command Staff.
- Training will be done by the City of Memphis City Attorney's Office or Law Division and/or its designee(s).
  - Attendance will be mandatory and tracked to ensure all members receive the training.
  - Acknowledgement of receipt of this training shall be signed by members of OHS, RTCC, and MPD's Command Staff and placed in their personnel files.
- For future members of OHS, RTCC, and/or MPD's Command Staff, training will be included in the mandatory new hire or transfer orientation requirements.
  - Training will be offered annually, or on an "as needed" basis for future members of OHS, RTCC, and/or MPD's Command Staff
- MPD members who are being considered for promotion to the Command Staff will have their personnel files reviewed for training completion. Those being considered for promotion to the Command Staff will be ineligible for promotion until completion of training.



## MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURE

**SERIAL:**

**DATE:**

**FROM:**

**TO:**

**SUBJECT:** Guidelines for Delegation of Authority of Director of Police Services to Authorize Investigations Which May Interfere with the Exercise of First Amendment Rights Under Section G of *Kendrick* Consent Decree

---

In accordance with the Order, Judgment and Decree entered in Civil Case 76-449 (“*Kendrick* Consent Decree”), the Memphis Police Department and the City of Memphis shall not engage in “political intelligence.” Political intelligence includes any investigation into the lawful exercise of First Amendment rights, even if the investigating officer does not have a partisan political motive.

Investigations into unlawful conduct that may incidentally result in the receipt of information relating to First Amendment rights are permissible, but require approval by the Director of Police Services under Section G of the *Kendrick* Consent Decree.

The Director of Police Services may delegate his/her authority to authorize such authorizations as follows:

### **Selection of Designees by Director**

The Director of Police Services may identify up to 3 designees, who shall each be at the Command staff (persons who hold rank of Major or higher) level of the MPD, who are entitled to issue the written authorization to investigate per Section G. The Director shall identify each designee in an interdepartmental communication distributed to the Command Staff, all specialized unit supervisors, and the Commander of each precinct. If a designee is replaced or if an additional designee or designees is named within the parameters of this policy, that individual[s] shall similarly be identified in an interdepartmental communication as set forth in the preceding sentence.

The designee issuing such written direction shall not be in the direct chain of command of the unit or officer requesting authorization. If each designee falls within the applicable chain of command set forth in this policy, the Director must personally authorize the written investigation.

Cross References:

DR 138

Policy # XXX: Authorization for Investigations Which May Interfere with the Exercise of First Amendment Rights Under Section G of *Kendrick* Consent Decree



## MEMPHIS POLICE DEPARTMENT POLICY AND PROCEDURE

**SERIAL:**

**DATE:**

**FROM:**

**TO:**

**SUBJECT:** Authorization for Investigations Which May Incidentally Result in the Collection of Information Related to the Exercise of First Amendment Rights Under Section G of *Kendrick* Consent Decree

---

In accordance with the Order, Judgment, and Decree entered in Civil Case 76-449 (“*Kendrick* Consent Decree”), the Memphis Police Department and the City of Memphis shall not engage in “political intelligence.” Political intelligence includes any investigation into the lawful exercise of First Amendment rights, even if the investigating officer does not have a partisan political motive.

Investigations into unlawful conduct that may incidentally result in the receipt of information relating to First Amendment rights are permissible, but require approval by the Director of Police Services, or his/her Designee, under Section G of the *Kendrick* Consent Decree (available [HERE](#)).

### **PURPOSE**

The purpose of this policy is to outline the procedure for requesting authorization to conduct an investigation into unlawful conduct which may incidentally result in the in the receipt of information relating to First Amendment rights.

### **PROCEDURE**

The requirement to obtain written authorization is applicable to any investigation into unlawful conduct by any officer, which may incidentally result in the collection of information about the exercise of First Amendment rights.

When this becomes known to the officer, the investigation must be brought to the attention of the Director or his/her Designee.

For purposes of this Policy, the following activities shall not require a written authorization from the Director/designee:

1. Ongoing, active investigation into the planning or occurrence of a criminal act;
2. Criminal intelligence development (defined as information relevant to the identification of criminal activity engaged in by individuals or organizations which are reasonably suspected of involvement in criminal activity)
3. Investigating or monitoring organized gangs reasonably suspected of involving criminal activity;
4. Investigating or monitoring sex crimes, including pedophilia;
5. Investigating or monitoring hate crimes;
6. Crime analysis and reporting.

When requesting written authorization, the officer shall provide the factual basis for the investigation and the investigative techniques to be employed. The written authorization shall be substantially in the form set forth in Exhibit One to this Policy, although additional information relevant to the authorization may be included.

The Director/Director's Designee may authorize the investigation upon making the following findings:

- a. The investigation does not violate the provisions of the *Kendrick* Consent Decree;
- b. The expected collection of information about related to First Amendment activity is unavoidably necessary for the proper conduct of the investigation;
- c. Every reasonable precaution has been employed to minimize the collection of information related to First Amendment activity; and
- d. The investigation employs the least intrusive technique necessary to obtain the information.

If approved, the investigation will not exceed more than ninety (90) calendar days. An extension may be granted by the Director for an additional ninety (90) days, if necessary.

#### **DOCUMENTATION AND RETENTION**

Other than crime analysis and situational assessment reports, all information found during an authorized investigation and obtained from social media websites shall be placed within a case file, suspicious activity report, or intelligence report. At no time should MPD Personnel maintain any social media files outside of these authorized files.



At the expiration of the 90 day authorization, or the expiration of the extension (if any), all information collected during the authorized investigation will be destroyed, unless the information is identified as evidence of a crime and/or is associated with an open criminal investigation.

Information identified as evidence of a crime that is obtained in the course of an investigation authorized under this policy from a social media site will be collected and retained using screen shots, printouts of chat logs, copying uniform resource locators (URL's) for subpoena or investigatory purposes, or storing the information via secure digital means. When possible, employees will utilize investigative computer systems and software intended to record data from social media sites. This information will be stored in conjunction with a case file number.

### **DISSEMINATION**

Information collected related to the exercise of First Amendment rights as a result of the authorized investigation may be disseminated only to the Director or his/her Designees who have been authorized to grant the investigation, unless the information will be used as evidence in a criminal indictment or proceeding, at which time the information may be disseminated to law enforcement consistent with MPD policy.

Cross References:

DR 138

*Kendrick* Consent Decree

In accordance with Policy # XXX any officer conducting an investigation into unlawful conduct that may incidentally result in the gathering of political intelligence (see DR 138) or information related to the exercise of First Amendment rights, requires approval by the Director of Police Services or his/her Designee. If approved, the investigation will not exceed more than ninety (90) calendar days. An extension may be granted by the Director/Director's Designee for an additional ninety (90) days if necessary.

REPORT #: \_\_\_\_\_

**Purpose of Investigation (include all pertinent facts)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Subjects of Investigation (include all Aliases and known Handles)**

\_\_\_\_\_  
\_\_\_\_\_

**Method of Investigation:**

Social Media       Undercover Capacity       Surveillance

Other (explain): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Requesting Investigator's Signature      Date: \_\_\_\_\_

**Investigation Approval Status**

Based on the foregoing, and all information known to me, I have determined that this investigation meets the requirements of Section G of the *Kendrick* Consent Decree, and I hereby approve the investigation. This authorization will expire 90 days from the date of my signature.

\_\_\_\_\_  
Director of Police Services or Designee  
Date: \_\_\_\_\_

**Extension**

Reason for Extension: \_\_\_\_\_  
\_\_\_\_\_

Approved

Extension Expires: \_\_\_\_\_  
Director of Police Services or Designee      Date

Investigator's Signature: \_\_\_\_\_ Investigation Closure Date: \_\_\_\_\_



# MEMPHIS POLICE DEPARTMENT

## Policy and Procedure



**SERIAL:**

**DATE:**

**FROM:**

**TO:**

**SUBJECT: UTILIZING SOCIAL MEDIA FOR INVESTIGATIONS**

---

### **PURPOSE:**

To establish guidelines for the use of social media, via manual social media searches and through the use of social media collators, for all officers assigned to the Office of Homeland Security (“OHS”) and Real Time Crime Center (“RTCC”), as well as any officer with access to social media collators, and in compliance with the Order, Judgment, and Decree entered in Civil Case 76-449 (“*Kendrick Consent Decree*”), and in accordance with the Memorandum Opinion issued by the United States District Court in Case No. 2:17-cv-02120, Doc. 151.

### **SCOPE:**

This policy applies to all officers with access to social media collators, and to all officers assigned to the Office of Homeland Security (“OHS”) and Real Time Crime Center (“RTCC”).

### **GENERAL:**

Social media is a tool for real time communication and has become an integral part of daily life for citizens of all ages. Its usage can be a valuable tool to aid in investigations and analysis within public safety interest areas. Similarly, in the aftermath of a crime, social media can be used to obtain information to identify suspects, victims and witnesses.

Social media, by definition, is a forum on which the expression of First Amendment rights may be expected to occur. The MPD’s use of social media is governed by the *Kendrick Consent Decree*.

This policy shall outline the restrictions and uses of social media by applicable officers. This policy is intended to address social media in general, and not any one particular form of social media.

**DEFINITIONS:**

**Criminal Intelligence Information** — Data which meets criminal intelligence collection criteria and which has been evaluated and determined to be relevant to the identification of criminal activity engaged in by individuals who or organizations which are reasonably suspected of involvement in criminal activity.

**Criminal Nexus, Criminal Predicate** — Established when behavior or circumstances are related to an individual or organization’s involvement or planned involvement in criminal activity or enterprise.

**Undercover Account** — The utilization of an online alias to search or engage in interactions with a person via social media sites that may or may not be in the public domain (i.e. “friending a person on Facebook”).

**Political Intelligence** – the gathering, indexing, filing, maintenance, storage or dissemination of information, or any other investigative activity, relating to any person’s beliefs, opinions, associations or other exercise of First Amendment rights. Political intelligence includes any investigation into the lawful exercise of First Amendment rights, even if the investigating officer does not have a partisan political motive. Political intelligence is not permissible as a goal of an investigation nor as the means to an end of an otherwise lawful investigation.

**Public Domain** — Any Internet resource that is open and available to anyone, without use of a password, specific invitation, or other identifier.

**Reasonable Suspicion** — Information exists which establishes sufficient facts to give trained law enforcement officer or MPD employee a basis to believe that there is a reasonable possibility that an individual or organization is involved in a definable criminal activity or enterprise.

**Social Media** — A category of Internet-based resources that integrate user-generated content and user participation.

**Social Media Collator** — A tool used to capture data and monitor social media sites by utilizing automated tools such as web crawlers and word search functions to make predictive analysis, develop trends, or collect information.

**Social Media Sites** — Sites which focus on building online communities of people who share interests and activities and/or exploring the interests and activities of others. Social media websites are further categorized by Internet-based resources that integrate user-generated content and user

participation. This includes, but is not limited to, social networking sites (Facebook), micro blogging sites (Twitter), photo-and video-sharing sites (Instagram). The absence of an explicit reference to a specific social media website does not limit the application of this policy.

**Valid Law Enforcement Purpose** — A purpose for information/intelligence gathering development, that furthers the authorized functions and activities of a law enforcement agency, which may include the prevention of crime, ensuring the safety of the public, furthering officer safety, and homeland and national security.

### **USE OF SOCIAL MEDIA**

The collection and use of information through the use of social media shall be conducted in accordance with the *Kendrick* Consent Decree, and the Memorandum Opinion issued by the United States District Court in Case No. 2:17-cv-02120, Doc. 151, which may be found on the Memphis Police Department Kiosk [show link here], and shall further be conducted without violating constitutionally protected rights, or the requirements of 28 CFR Part 23<sup>1</sup>, or any relevant state or local regulations.

Social media shall not be used by MPD to conduct political intelligence. Political intelligence, as defined by the *Kendrick* Consent Decree, is the gathering, indexing, filing, maintenance, storage or dissemination of information, or any other investigative activity, relating to any person's beliefs, opinions, associations or other exercise of First Amendment rights. Political intelligence includes any investigation into the lawful exercise of First Amendment rights, even if the investigating officer does not have a partisan political motive. Political intelligence is not permissible as a goal of an investigation nor as the means to an end of an otherwise lawful investigation. (See DR 138.)

All searches of social media by a MPD officer, through the use of a social media account or social media collator, shall be based on a valid law enforcement purpose, and not for the purpose of gathering information related to First Amendment rights. Absent authorization to conduct an investigation, for example, impermissible search terms might include a phrase or name of an organization that expresses political beliefs, such as

---

<sup>1</sup> 28 CFR Part 23 is a federal regulation that provides guidance to law enforcement agencies on the implementation standards for operating multijurisdictional criminal intelligence systems funded under the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Crime Control Act)

"Black Lives Matter," "Occupy Wall Street" or "Sovereign Citizens." An example of permissible search terms, which in and of themselves indicate unlawful conduct not protected by the First Amendment, would be "shoot the police." A search term such as "St. Jude Marathon" is permissible because it does not involve the collection of information associated with a person's exercise of First Amendment rights.

Social Media searches are limited to sources within the public domain that are accessible without use of a password or other identifier. If an MPD officer needs to create an alias or undercover account or seeks to gain access to a "private" social media account, these actions require prior written authorization by the Director of Police Services or his/her designee. (See Policy # XXX.)

Even when a search of social media is carried out in compliance with other provisions of this Policy, there should be no interaction by the MPD officer with any individual's social media account such as through commenting, "liking," direct messaging, posting, etc. The officer should merely view the content of the social media account for data/information collection.

In the event a MPD officer encounters information on social media pertaining to an imminent threat to public safety or evidence of the planning or commission of a crime, the MPD officer shall immediately notify his/her commanding officer.

Social media searches following a homicide or critical incident or occurrence of a crime should be limited to the social media accounts of persons who have been identified as suspects, victims, and/or witnesses to a crime. Only searches of open-sources (non-private) should be used.

Only social media content directly relevant to the criminal investigation should be retained and disseminated, and it shall be placed in the case file.

Use of social media while on duty should be conducted for police business purposes only, and only in compliance with this Policy.

**SOCIAL MEDIA SEARCHES REQUIRING AUTHORIZATION BY DIRECTOR**

In the event that a search of social media is part of an investigation into unlawful conduct which may incidentally result in the receipt of information relative to First Amendment rights, such searches require authorization by the Director of Police Services or his/her designee. (See Policy ###, HERE)

### **DOCUMENTATION AND RETENTION**

Other than crime analysis, situational assessment reports, and evidence collected during a criminal investigation, no information obtained from social media websites shall be retained.

The search histories of each social media platform searched by an MPD officer shall be retained for a period of no less than 90 days. At the end of each 90-day period, each MPD officer who conducted a search on social media must submit a list of search terms used to search the particular social media platform related to the officer's duties and responsibilities as an officer of the MPD. These reports shall be submitted to the officer's commander. The officer's personal use of the social media platform and any searches conducted for personal reasons are not subject to this reporting requirement.

Crime analysis and situational assessment reports may be prepared for special events management, including First Amendment-protected activities. At the conclusion of the situation or First Amendment-protected event that was the catalyst for generation of a situational awareness report, and where there was no criminal activity related to the information gathered, the information obtained from social media or from a social media monitoring tool will be retained for no more than thirty (30) days.

Information from social media that does indicate a criminal nexus of unlawful conduct that is not protected by the First Amendment may be retained in an intelligence report, suspicious activity report, or case investigative file.

Information obtained from a social media site in the course of an investigation that is identified as criminal in nature will be collected and retained using screen shots, printouts of chat logs, copying uniform resource locators (URL's), and any other reasonable means for preserving the evidence for subpoena or investigatory purposes. This evidence will be stored in the same manner as other evidence of a criminal investigation.

When possible, MPD employees will utilize investigative computer systems and software intended to record data from social media sites.

At no time shall MPD Personnel maintain any social media files outside of these authorized files.

### **DISSEMINATION**

Information gathered from social media, including screen shots or “snags” of social media sites, shall not be disseminated except as necessary for preparations for special events management or for the investigation of unlawful activity. Any information gathered and retained from social media may only be disseminated to members of the Command Staff, and only when the information pertains to threats to public safety or is potential evidence in a criminal investigation.

### **DISCIPLINE**

Any employee who violates this Section will be subject to disciplinary action, up to and including termination.

Cross Reference

DR 138





*KENDRICK* CONSENT DECREE

INTRODUCTORY TRAINING  
FOR MPD OFFICERS

## THE *KENDRICK* CONSENT DECREE

- In 1978, the City of Memphis entered into an agreement with the ACLU-TN known as the *Kendrick* Consent Decree.
- The City agreed to refrain from specifically defined activities related to “political intelligence.”
- The Consent Decree is located on the MPD Kiosk.

## WHAT IS "POLITICAL INTELLIGENCE"?

- "Political intelligence," is defined in the *Kendrick* Consent Decree as the gathering, indexing, filing, maintenance, storage, or dissemination of information, or any other investigative activity, relating to any person's beliefs, opinions, associations or other exercise of First Amendment Rights.
- The United States District Court recently confirmed that the definition of "political intelligence" in the *Kendrick* Consent Decree includes any investigation into the lawful exercise of First Amendment rights, even if the investigating officer or unit does not have a partisan motive. Political intelligence is not permissible as a goal of an investigation nor as the means to an end of an otherwise lawful investigation.

# REVISED DR138

- DR 138 has been revised, pursuant to the Court's order, and can be found on the Kiosk.

## **DR 138 POLITICAL INTELLIGENCE (REVISED)**

The Memphis Police Department and the City of Memphis shall not engage in political intelligence. "Political Intelligence" means the gathering, indexing, filing, maintenance, storage or dissemination of information, or any other investigative activity, relating to any person's beliefs, opinions, associations or other exercise of First Amendment rights. Political intelligence includes any investigation into the lawful exercise of First Amendment rights, even if the investigating officer does not have a partisan political motive. Political intelligence is not permissible as a goal of an investigation nor as the means to an end of an otherwise lawful investigation.

No member shall intercept, record, transcribe or otherwise interfere with any communications by means of electronic or covert surveillance for the purpose of gathering political intelligence. No member shall engage in any action or disseminate damaging, derogatory, false or anonymous information about any person which will deprive any individual of their First Amendment Rights, nor will any member encourage, cooperate with, or contract with any local, state, federal or private agency to plan or conduct any investigation involving political intelligence.

Investigations into unlawful conduct that may incidentally result in the receipt of information relating to First Amendment rights are permissible, but require approval by the Director of Police Services or his/her designee. Any member conducting or supervising such an investigation must bring the matter to the attention of the Director of Police Services, or his/her designee, for review and written authorization. If approved, the investigation shall not exceed ninety (90) calendar days. An extension may be granted in writing by the Director or his/her designee for period of up to an additional ninety (90) days.

The form to be utilized to request approval to conduct an investigation under the authority provided in this DR, are in accordance with the Order, Judgment and Decree for Civil Case 76-449 ("*Kendrick* Consent Decree"), and the Memorandum Opinion issued by the United States District Court in Case No. 2:17-cv-02120, Doc. 151. Copies of both may be found on the Memphis Police Department Kiosk [show links here].

Except as may be otherwise provided in this DR, the fundamental principles found in The Code of Federal Regulations, 28 CFR Part 23, contain operating policies providing law enforcement professionals with guidance on the operation of criminal intelligence information systems effectively while safeguarding privacy

# NO ELECTRONIC SURVEILLANCE FOR THE PURPOSE OF POLITICAL INTELLIGENCE

- The *Kendrick* Consent Decree prohibits MPD from electronic surveillance as a means of political intelligence.
  - “No officer shall intercept, record, transcribe or otherwise interfere with any communications by means of electronic or covert surveillance for the purpose of gathering political intelligence.”
  - This prohibition includes the use of social media for the purpose of political intelligence.
-

# NO COVERT SURVEILLANCE FOR THE PURPOSE OF POLITICAL INTELLIGENCE

- MPD shall not recruit, solicit, place, maintain, or employ an informant for political intelligence; nor shall any officer, employee, or agent of the City of Memphis, for the purpose of political intelligence, infiltrate or pose as a member of any group or organization exercising First Amendment Rights.

# HARASSMENT AND INTIMIDATION PROHIBITED

- MPD shall not “disrupt, discredit, interfere with or otherwise harass any person exercising First Amendment rights.”
- This includes a prohibition against dissemination of damaging, derogatory, false, or anonymous information about any person for the purpose of political intelligence, or an attempt to provoke disagreement, dissention, or violence between persons.
- MPD shall not engage in any action for the purpose of, or reasonably having the effect of, deterring any person from exercising First Amendment rights.
- EXAMPLE: MPD shall not record the name of or photograph any person in attendance, or record the license plate number of any person in attendance, of any lawful meeting or demonstration for the purpose of chilling the exercise of First Amendment rights or for the purpose of maintaining a record of that gathering.

# INVESTIGATIONS THAT MIGHT INCIDENTALLY RESULT IN POLITICAL INTELLIGENCE

- For any investigation into unlawful conduct that may incidentally result in political intelligence, prior authorization is REQUIRED.
- These investigations are permissible, but require approval by the Director of Police Services or his/her designee.
- If the investigation is authorized by the Director/Director's Designee, the investigation will not exceed more than ninety (90) calendar days.
- An extension may be requested by the investigating office, and granted by the Director/Director Designee for an additional ninety (90) days if necessary.
- The Authorization Form for any such investigation can be found on the Kiosk.



# WHEN WILL AN INVESTIGATION THAT INVOLVES POLITICAL INTELLIGENCE BE AUTHORIZED?

- After a review of the factual basis for the investigation as well as the investigative techniques to be employed, the Director or his/her designee may authorize the investigation upon making the following findings:
  - The investigation does not violate the provisions of the *Kendrick* Consent Decree;
  - The expected collection of information related to the exercise of First Amendment rights is unavoidably necessary for the proper conduct of the investigation;
  - Every reasonable precaution has been employed to minimize the collection of information about, or interference with, First Amendment rights; and
  - The investigation employs the least intrusive technique necessary to obtain the information.

# DOCUMENTATION AND RETENTION OF "POLITICAL INTELLIGENCE" GATHERED IN AN INVESTIGATION

- Other than crime analysis and situational assessment reports, all information found during an authorized investigation of unlawful conduct and obtained from social media websites shall be placed within a case file, suspicious activity report, or intelligence report.
- At no time should MPD Personnel maintain any social media files outside of these authorized files.
- At the expiration of the 90 day authorization, or the expiration of the extension (if any), all information collected during the authorized investigation will be destroyed, unless the information is identified as evidence of a crime and/or is associated with an open criminal investigation.
- Information identified as evidence of a crime that is obtained in the course of an investigation authorized under this policy from a social media site will be collected and retained using screen shots, printouts of chat logs, copying uniform resource locators (URL's) for subpoena or investigatory purposes, or storing the information via secure digital means. When possible, employees will utilize investigative computer systems and software intended to record data from social media sites. This information will be stored in conjunction with a case file number.

# DISSEMINATION OF POLITICAL INTELLIGENCE GATHERED IN AN AUTHORIZED INVESTIGATION

- Information collected related to the exercise of First Amendment rights as a result of the authorized investigation may be disseminated only to the Director or his/her Designees who have been authorized to grant the investigation, unless the information will be used as evidence in a criminal investigation or proceeding, at which time the information may be disseminated to law enforcement representatives consistent with MPD policy.

## MORE TRAINING TO FOLLOW

- The City of Memphis and MPD are working with the Court-appointed Monitor to develop more training on the *Kendrick* Consent Decree and its provisions.
- Every new and existing officer of MPD will receive training on the *Kendrick* Consent Decree and its prohibition against political intelligence.

## QUESTIONS?

- Please contact your commanding officer with any questions about the *Kendrick* Consent Decree, political intelligence, or the use of social media in investigations.