

# **EXHIBIT A**

BUTLER | SNOW

August 12, 2019

**VIA ELECTRONIC AND U. S. 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 June 7, 2019 Inquiries

Dear Mark:

I hope that you're well. Please find enclosed with this letter the Monitoring Team's responses to the City's inquiries of June 7, 2019. In making these recommendations, the Monitoring Team has sought to remain faithful to the court's mandate that it "ensure [the City's] compliance with the [*Kendrick* Consent] Decree and . . . provide closer guidance on what constitutes political intelligence." (ECF No. 151, PageID # 6275.) To the extent that, in the City's view, the consent decree's requirements raise public-safety concerns or otherwise implicate issues beyond the scope of that mandate, those concerns and issues are best addressed to the court in the first instance.

Responses to discrete requests for authorization raised by the City since June 7, 2019, are forthcoming in separate correspondence.

I look forward to our weekly call this Friday.

Sincerely,

BUTLER SNOW LLP



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## MEMORANDUM

**To:** The Monitoring Team  
**From:** Edward L. Stanton III  
**Date:** August 12, 2019  
**Subject:** City’s Responses to Monitoring Team’s Feedback

### OVERVIEW

As you are aware, the Monitoring Team and the ACLU-TN have had the opportunity to review and give feedback on several of the City of Memphis’s policies and procedures that are implicated by the *Kendrick* Consent Decree. (See ECF Nos. 197, 205.) In addition to offering this feedback, the Team has also responded to the City’s request for recommendations regarding eleven hypothetical scenarios. (See ECF 197-3.)

On June 7, 2019, the City sent the Monitoring Team its latest responses to the team’s feedback on its revised policies and procedures and the recommendations made in response to the City’s hypothetical scenarios. Please provide your feedback regarding the same as you did with the prior submissions. The feedback will be reconciled and provided to the City.

I. The City’s Proposed Policies and Training Materials

A. Departmental Regulation 138 Political Intelligence (Revised)

Team’s Prior Feedback to City of Memphis	City of Memphis’s Response to Team’s Prior Feedback	City of Memphis’s Proposed Action in Response to Team’s Prior Feedback	The Team’s Response to the City’s Proposed Action.	Recommendation(s)
The Team recommended that the definition of First	<b>Response:</b> The City accepts the recommendation.	The City adds the recommended language.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.

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<p>Amendment rights expressly include the right to petition the government. (ECF 197-1, PageID 6853.)</p>				
<p>The Team recommended adding language to the fourth paragraph of the policy as follows: “No member <b>shall knowingly, intentionally or recklessly facilitate or cause the interception, recording, transcription of— or otherwise interfere with or cause, any interference with any communications</b> by means of electronic or covert surveillance for the purpose of gathering political intelligence.” (ECF 197-2, PageID 6866)</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City adds the recommended language.</p>	<p><b>Response:</b> The Team agrees, but it recommends revising this section for clarity.</p>	<p>Team recommends that this statement be revised as follows:  “No member <b>shall knowingly, intentionally, or recklessly facilitate or cause the interception, recording, transcription of— or otherwise interfere with or cause any interference with— any communications</b> by means of electronic or covert surveillance for the purpose of gathering political intelligence.”</p>
<p>The Team recommended</p>	<p><b>Response:</b> The City accepts the</p>	<p>The City adds the</p>	<p><b>Response:</b> The Team</p>	<p>The Team does not recommend anything</p>

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<p>revising the second sentence in the fourth paragraph as follows: “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 <b>investigation involving political intelligence or for the purpose, expectation or anticipation of political intelligence.</b>” (ECF 205, PageID 7078.)</p>	<p>recommendation.</p>	<p>recommended language.</p>	<p>agrees.</p>	<p>further.</p>
<p>The Team recommended that Paragraph 3, which states that</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City proposes a time limit of ten days for</p>	<p><b>Response:</b> The Team mostly agrees, but it</p>	<p>The Team recommends that the City establish a time limit of five calendar</p>

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<p>“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,” have a time limit for notification added – for instance, “...prior to initiating such an investigation, or, where the possibility of such incidental receipt is discovered after an investigation has commenced, no later than [X] days after such discovery.” (ECF 197-1, PageID 6853.)</p>		<p>bringing such an investigation to the attention of the Director or his/her designee.</p>	<p>recommends shortening the time limit for bringing the investigation to the attention of the Director or his/her designee.</p> <p><b>Rationale:</b> The Team believes that ten days is too long to wait to notify the Director of Police Services or his/her designee.</p>	<p>days.</p>
<p>The Team recommended revising the fifth paragraph to include language that investigations into unlawful conduct “<b>that reasonably may be expected to result</b>”</p>	<p><b>Response:</b> The City accepts the Team’s revised recommendation.</p>	<p>The City revises paragraph five to track the original language of revised DR 138.</p> <p>“Investigations into unlawful conduct that</p>	<p><b>Response:</b> The Team disagrees.</p> <p><b>Rationale:</b> After further consideration, the Team believes the objective “reasonable person”</p>	<p>Team recommends that the City adopt the “reasonably may be expected to result” language that it previously recommended.</p>

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<p>incidentally in the receipt of political intelligence require approval, but then the Team revised its recommendation to track the original language in paragraph five. (ECF 205, PageID 7078).</p>		<p>may incidentally result in the receipt of information relating to the First Amendment rights are permissible but require approval by the Director of Police Services or his/her designee.”</p>	<p>standard should be applied and explicitly stated.</p>	
<p>The Team recommended adding language to the fifth paragraph stating, "An extension may be granted in writing by the Director or his/her designee for periods of up to an additional ninety (90) days; <b>and in extraordinary circumstances where warranted, additional 90-day periods as documented and approved by the Director or his Designee.</b>"</p> <p>In the First</p>	<p><b>Response:</b> The City accepts the revised recommendation.</p>	<p>The City adds the recommended language.</p>	<p><b>Response:</b> The Team agrees.</p>	<p>The Team does not recommend anything further.</p>



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<p>Quarterly Report, however, the Team revised its recommendation as follows: “The Police Director or his / her designee may grant written extensions of the initial ninety (90)-day period of up to 90 days each when such extensions are justified by extraordinary circumstances. For each such extension, the following two conditions must be satisfied: (1) The Director or his / her designee must consult with the City Attorney or the City Attorney's designee (who must be a lawyer in good standing with the Tennessee Board of Professional Responsibility); and (2) The investigating officer must complete the [Kendrick</p>				
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<p>Consent Form] and state in writing either the persistent facts that establish extraordinary circumstances or new facts that do the same.” (ECF 205, PageID 7078.)</p>				
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**B. Memphis Police Department Political Intelligence Training for the Office of Homeland Security, the Real time Crime Center, and the Command Staff**

<b>Team’s Prior Feedback to City of Memphis</b>	<b>City of Memphis’s Response to Team’s Prior Feedback</b>	<b>City of Memphis’s Proposed Action in Response to Team’s Prior Feedback</b>	<b>The Team’s Response to the City’s Proposed Action.</b>	<b>Recommendation(s)</b>
<p>The Team recommended that the training plan incorporate the use of hypothetical examples. The Team also recommended that training options include the following: providing a one- to two-hour block taught by an instructor who prepares a lesson plan</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City adds four bullet points to the end of the Training Plan to address the Team’s recommendation:</p> <ul style="list-style-type: none"> <li>·All training on the <i>Kendrick</i> Consent Decree and its prohibition against political intelligence shall incorporate the use of hypothetical examples of permissible and prohibited</li> </ul>	<p><b>Response:</b> The Team agrees, but it recommends further revising the plan to include training on First Amendment topics as well.</p> <p><b>Rationale:</b> The Team believes that it is important for officers</p>	<p>The Team recommends revising the training plan as follows:</p> <ul style="list-style-type: none"> <li>·All training on the <b>First Amendment and the <i>Kendrick</i> Consent Decree</b> and its prohibition against political intelligence shall incorporate the use of hypothetical examples of permissible and prohibited conduct under the <b>First Amendment and the <i>Kendrick</i> Consent Decree</b>.</li> </ul>

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<p>and course evaluations; building the training into existing training models; and using short officer training videos, known as video alerts. (ECF 197-1, Page ID 6854.)</p>		<p>conduct under the Kendrick Consent Decree.</p> <ul style="list-style-type: none"> <li>·Training on the <i>Kendrick</i> Consent Decree shall be provided in blocks anticipated to be one- to two-hours long. The training will be conducted by an instructor with a written lesson plan. After each training session, the participants of the session will submit a course evaluation to the instructor.</li> <li>·Training on the <i>Kendrick</i> Consent Decree shall also be incorporated into existing training models, such as routine training of police cadets at the Training Academy.</li> <li>·Training on the <i>Kendrick</i> Consent Decree shall also be conducted via short officer training videos known as video</li> </ul>	<p>to understand First Amendment rights in order to understand what it is and is not permissible under the <i>Kendrick</i> Consent Decree.</p>	<ul style="list-style-type: none"> <li>·Training on the <b>First Amendment and the Kendrick</b> Consent Decree shall be provided in blocks anticipated to be one-to two-hours long. The training will be conducted by an instructor with a written lesson plan. After each training session, the participants of the session will submit a course evaluation to the instructor.</li> <li>·Training on the <b>First Amendment and the Kendrick</b> Consent Decree shall also be incorporated into existing training models, such as routine training of police cadets at the Training Academy.</li> <li>·Training on the <b>First Amendment and the Kendrick</b> Consent Decree shall also be conducted via short officer training videos known as video alerts.</li> </ul>
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		alerts.		
The Team recommended adding a requirement that the training be updated annually to track changes in relevant laws and MPD policies. (ECF 197-2, PageID 6869.)	<b>Response:</b> The City accepts the recommendation.	The City adds a bullet point to the end of the Training Plan to address the Team’s recommendation.  ·Training on the <i>Kendrick</i> Consent Decree shall be updated annually to track changes in relevant laws and MPD policies.	<b>Response:</b> The Team agrees, but it recommends further revising the plan to include training on First Amendment topics as well.  <b>Rationale:</b> The Team believes that it is important for officers to understand First Amendment rights in order to understand what it is and is not permissible under the <i>Kendrick</i> Consent Decree.	The Team recommends revising the training plan as follows:  ·Training on the <b>First Amendment and the Kendrick</b> Consent Decree shall be updated annually to track changes in relevant laws and MPD policies.
The Team recommended that training be provided to all officers and civilian	<b>Response:</b> The City partially accepts the recommendation.  <b>Rationale:</b> While	The City proposes that within 21 days after approval of the training materials by the	<b>Response:</b> The Team disagrees.  <b>Rationale:</b> The Team	The Team recommends that the following policy be adopted:  “Within 21 days after

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<p>employees working within or otherwise assigned or detailed to the Memphis Police Department. (ECF 197-1, PageID 6854.)</p>	<p>such a training program could be accomplished by use of the regular annual in-service training for officers, the City believes that the immediate training of such additional persons is outside the scope of the Order (ECF 151) listing groups to be trained initially, and would not be possible in a short time frame, particularly the 21 day period suggested by the City in its original submission.</p>	<p>Court, the City will begin training sessions for all officers and civilian employees of OHS, RTCC, and Command Staff. MPD will then begin to train all other MPD officers on the prohibitions of the Consent Decree. Due to the large number of officers (2000+), this training will be done on a rolling basis, with all officers and civilian employees of MPD to complete the training within 12 months.</p>	<p>recognizes the potential logistical problems with the immediate training of all officers; however, it believes that such training is necessary to ensure that the entire police department complies with the <i>Kendrick</i> Consent Decree. The Team also believes that such training is necessary to ensure that the topics become fully engrained within the entire MPD.</p>	<p>approval of the training materials by the Court, the City will begin training sessions for officers and civilian employees of specialized units including, but not limited to, the Office of Homeland Security, RTCC, Command Staff, and units investigating narcotics, violent crimes, gangs, organized crime, and intelligence. <b>The City will make every effort to complete these training sessions as soon as possible, but in no event later than December 31, 2019.</b></p> <p><b>Within 30 days after approval of the training materials by the Court, the City will provide and make available to all other MPD officers and employees a monitor-approved video alert on the First Amendment and the Consent Decree.</b></p> <p><b>MPD will also train all other MPD</b></p>
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				<b>officers and employees on the First Amendment and Consent Decree. This training may be done on a rolling basis to be completed no later than December 31, 2020."</b>
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**C. PowerPoint Presentation**

<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Prior Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation(s)</b>
The Team recommended adding language to the seventh slide "Harassment and Intimidation Prohibited," stating that a valid law enforcement purpose is required. (ECF 197-1, PageID 6855.)	<b>Response:</b> The City accepts the Team's recommendation.	The City adds the phrase "Absent a valid law enforcement purpose" to the third and fourth bullets on Slide 7.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.
The Team recommended "MPD shall not record..."	<b>Response:</b> The City accepts the recommendation.	The City incorporates the reasonable effect	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.

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<p>for the purpose of chilling the exercise of First Amendment rights or for the purpose of maintaining a record of that gathering, or where such recording will reasonably have the effect of deterring any person from exercising First Amendment rights." (ECF 197-2, Page ID 6870.)</p>		<p>language to Slide 7.</p>		
<p>The Team recommended updating Slide 4 with the revised DR 138. (ECF 197-2, PageID 6869-6870.)</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City updates as recommended.</p>	<p><b>Response:</b> The Team agrees.</p>	<p>The Team does not recommend anything further.</p>
<p>The Team recommended updating PowerPoint to include language about non-collator social media searches. (ECF 197-2,</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City updates Slide 12, Bullet 1 to include language about non-collator social media searches. "An MPD officer searches a</p>	<p><b>Response:</b> The Team agrees.</p>	<p>The Team does not recommend anything further.</p>

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PageID 6871.)		social media collator <b>or platform</b> for all instances..."		
The Team recommended revising the language of Slide 14 to provide: "An MPD officer wearing a body camera that has been activated pursuant to MPD policy does not have to cover the camera every time he or she passes..." (ECF 197-2, PageID 6871.)	<b>Response:</b> The City accepts the recommendation.	The City includes the language.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.
The Team recommended that the City's examples of community organizers not single out one or two named groups. (ECF 197-2, PageID 6872.)	<b>Response:</b> The City accepts the recommendation.	The City removes all references to any particular group in the PowerPoint. Specifically, the City changed all instances of "Black Lives Matter" to "activist group."	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.
The Team recommended deleting the language on	<b>Response:</b> The City declines the recommendation.	None.	<b>Response:</b> The Team disagrees.	The Team recommends adding language to Slide 14 that states,



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<p>Slide 14 regarding "kill the police," because any search of that term could incidentally collect information related to First Amendment rights. (ECF 197-2, PageID 6871.)</p>	<p><b>Rationale:</b> The City does not agree with the Monitor's recommendation, because the Court used the example "kill police" in its Opinion and Order. (ECF 151.) The Court stated that a police officer who queries a social media collator for the phrase "kill police," is not going out of her way to "gather" information related to First Amendment rights, even though her action is definitely investigative in nature.</p>		<p><b>Rationale:</b> The Team believes the First Amendment analysis to be more nuanced than the City's current position. The Team submits that collecting protected speech and considering its content is permissible so long as it is being done for a valid law enforcement purpose, in a manner that does not unduly infringe upon the ability of the speaker to deliver his or her message. In addition, there must be a reasonable relation between the collection and retention of the protected speech and the purpose of the investigation.</p>	<p>"Any use of this information, including its retention and dissemination, is governed by the Consent Decree."</p>
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**D. Guidelines for Delegation of Authority of Director of Police Services to Authorize Investigations That May Interfere with the Exercise of First Amendment Rights under Section G of the Kendrick Consent Decree**

<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Prior Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation(s)</b>
The Team recommended adding language to this policy that requires review of each selected designee be made by competent in-house counsel or authorized/assigned counsel (ECF 197-1, PageID 6857.)	<b>Response:</b> The City accepts the recommendation.	The City has designated Attorney Zayid Saleem as the appropriate in-house counsel for this role.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.
The Team expressed concern that the volume of these investigations would be too voluminous for the Director to oversee and suggested adding language that the Designee submit a report to the Director. (ECF 197-1, PageID 6857.)	<b>Response:</b> The City agrees with the recommendation.	The City notes that the policy already provides for the designee's report.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.
The Team recommended	<b>Response:</b> The City accepts	The City includes this	<b>Response:</b> The Team agrees.	The Team does not recommend anything

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<p>revising the last sentence of the policy to state as follows: "The Director shall have the authority to rescind authorization for any investigation that the Director deems <b>to violate the letter or intent of the department prohibition against the gathering of political intelligence, or in cases in which either the initial, authorized investigative goals or purposes no longer exist; or when political intelligence collection is no longer merely incidental.</b>" (ECF 197-2, PageID 6873.)</p>	<p>the recommendation.</p>	<p>language.</p>		<p>further.</p>
<p>The Team recommended changing the temporal reporting requirement to the last Friday of every month <b>that is a regular business day.</b> (ECF 197-2, PageID 6873.)</p>	<p><b>Response:</b> The City declines the recommendation.  <b>Rationale:</b> The City requests that the monthly</p>	<p>None.</p>	<p><b>Response:</b> The Team disagrees.  <b>Rationale:</b> The Team believes that the directive should be specific enough that it's</p>	<p>The Team recommends changing the temporal reporting requirement to the last day of the calendar month. If the last day of the month is a weekend or state or federal holiday, the report should be due by the end of the next business day.</p>

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	reporting requirement not fall on a day certain, but rather just "monthly" due to the varying work schedules of those involved.		complied with and that account-ability is possible.	
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**E. Authorization for Investigations Which May Incidentally Result in the Collection of Information Related to the Exercise of First Amendment Rights Under Section G**

<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Prior Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation(s)</b>
The Team recommended that the policy define "situational assessment." (ECF 197-1, PageID 6858.)	<b>Response:</b> The City accepts the recommendation.	This definition is included in footnote 2.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.
The Team recommended adding a discussion of whether situational assessment reports should be excluded from the authorization process. (ECF	<b>Response:</b> The City accepts the recommendation.	The City seeks to clarify this by changing the term "Situational Assessment Report" to "After Action Review." Accordingly, Number 6 is suggested to be revised as	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.

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<p>197-1, PageID 6858.)</p>		<p>follows: "After Action Review (AAR)" is defined as a report following an incident describing the incident and analyzing MPD's preparation for and response or reaction to the incident.</p>		
<p>The Team asked for clarification about what policy governs the dissemination of First Amendment information to law enforcement referenced in the "Dissemination" section on page 3. (ECF 197-2, PageID 6874.)</p>	<p><b>Response:</b> The City adds language to clarify.</p>	<p>The City adds the following language to the "Dissemination" section:</p> <p>"If the information collected related to the exercise of First Amendment rights as a result of an authorized investigation identifies a threat or potential disruption to a private entity, that information may be shared with the private entity's security and/or other joint law enforcement agencies as reasonably necessary."</p>	<p><b>Response:</b> The Team disagrees and recommends additional language.</p> <p><b>Rationale:</b> The Team believes that the language, as written, is too broad.</p>	<p>It is the view of the Monitoring Team that the City may <b>not</b> share political intelligence with any private person or any non-law enforcement entity under any circumstances under the <i>Kendrick</i> Consent Decree. We read § H of the consent decree to prohibit the sharing of personal information collected via a lawful criminal investigation <b>unless</b> such sharing is with another law enforcement entity <b>and</b> that entity already is engaged in a lawful criminal investigation. Thus, we do not believe that § H permits the City to share any information in an After Action Review with any private person or any non-law enforcement</p>

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				entity.
<p>The Team recommended adding the following note at the end of the "Exclusions" section:                  "There may be times when an investigation starts out in one of the excluded categories and evolves into something that does not implicate First Amendment rights. Accordingly, officers involved in an investigation should remain vigilant for any changes that would trigger the need for authorization."                  (ECF 197-2, PageID 6875.)</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City adds the recommended language.</p>	<p><b>Response:</b> The Team agrees.</p>	<p>The Team does not recommend anything further.</p>
N/a	N/a	N/a	N/a	<p>The Team recommends adding the language of DR138 that explains the granting of written extensions past the initial ninety (90)-day investigation period. Thus this policy would include the following:</p>

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			<p>“The Police Director or his/her designee may grant extensions of the initial ninety (90)-day period of up to 90 days each when such extensions are justified by extraordinary circumstances. For each such extension, the following two conditions must be satisfied:</p> <p>(1.)The Director or his/her designee must consult with the City Attorney or the City Attorney’s designee (who much be a lawyer in good standing with the Tennessee Board of Professional Responsibility); and</p> <p>(2.) The investigating officer must complete [the <i>Kendrick</i> Consent Form] and state in writing either the persistent facts that establish extraordinary circumstances or new facts that do the same.”</p>
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**F. Form: Authorization for Investigations That May Incidentally Result in Political Intelligence**

<b>Team’s Prior Feedback to City of Memphis</b>	<b>City of Memphis’s Response to Team’s Prior</b>	<b>City of Memphis’s Proposed Action in</b>	<b>The Team’s Response to the City’s Proposed</b>	<b>Recommendation(s)</b>
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	<b>Feedback</b>	<b>Response to Team's Prior Feedback</b>	<b>Action.</b>	
<p>Some members of the Team expressed concern that the ACLU-TN's recommendation that the Authorization Form include a separate section for the Director/Designee to list the precautions and techniques to be employed during the investigation to certify that they are the least intrusive means available might involve law enforcement sensitive methods, some of which could be secret or necessarily confidential. (ECF 197-2, PageID 6876.).</p> <p>The Team revised this recommendation</p>	<p><b>Response:</b> The City accepts the prior, unrevised recommendation and responds to the request for clarification.</p> <p>The City responds to the request for clarification about types of precautions and techniques to be listed.</p> <p>"An example of a confidential technique that might be used in an investigation is the use of an undercover social media account aimed at accessing the private social media</p>	<p>The City deletes the section for the Director/Designee to list precautions and techniques to be employed during the investigation.</p>	<p><b>Response:</b> The Team also requested further information from the City regarding examples of precautionary techniques.</p> <p><b>Note:</b> The City, in an email dated July 19, 2019, responded to the Team's precautionary techniques inquiry with the following:</p> <ul style="list-style-type: none"> <li>· Instructing the officer(s) conducting the search, after consultation with Atty. Zayid Saleem, to immediately destroy any materials obtained that do not have value in</li> </ul>	<p>After conferring with the ACLU-TN, the Monitoring Team would revise the first listed precautionary technique as follows:</p> <p>Instructing the officer(s) conducting the search, after consultation with the city's legal counsel that such materials shall be preserved until the conclusion of any ongoing criminal investigation, after which they must be returned to the individuals from whom they were obtained in order to ensure that any exculpatory or Brady materials are not destroyed or lost. In no event shall such materials be used for any purpose other than for a legitimate criminal investigation, nor shall any such materials relating to exercise of First Amendment rights be maintained, disseminated, or used in any manner that is inconsistent with or in violation of the <i>Kendrick</i> Consent Decree, the Court's Opinion and</p>



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<p>on with a request for clarification about the kinds of information that would be provided by the City as precautions and techniques. (ECF 205, PageID 7079.)</p>	<p>account of a criminal suspect. Another law-enforcement sensitive technique that might be used during an investigation is the use of a court-ordered wiretap to monitor the phone calls between known gang members.”</p>		<p>the criminal investigation . · where the search uncovers information pertinent to the criminal investigation but implicating a citizen’s First Amendment rights, limiting the dissemination of that information to MPD “personnel with a need to know”, and that group of recipients would be approved by the Director or his designee. · Using only open source, publicly available information. Investigating a closed account or use of an undercover account</p>	<p>Order of October 26, 2018 (ECF 151), available online at <a href="http://www.memphisdpdmonitor.com">www.memphisdpdmonitor.com</a>, or this department's policies relating to usage of social media and protection of individuals' First Amendment rights. In addition, the authorization form – or an attachment – must include more than a blanket statement that the four factors have been met, to ensure compliance with the decree and to facilitate auditing and oversight. The record must contain sufficient information to demonstrate, both internally and to the monitoring team’s auditor, that authorizations are being considered on a case-by-case basis, based on the specific facts and justifications in an individual case. This should be done in a manner that does not risk disclosing genuinely confidential or law enforcement-sensitive information to the general public. The city should make a recommendation as to what that process would be, keeping in mind the</p>
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			requires a compelling reason subject to additional prior approval by the Director or his designees. Once the investigation is over, the undercover account must "unfriend" or "unfollow" the person being investigated.	public interest in a transparent and accountable police department.
N/a	N/a	N/a	N/a	<p>The Team recommends adding the language of DR138 that explains the granting of written extensions past the initial ninety (90)-day investigation period. Thus, after the sentence stating that an investigation will not exceed more than ninety calendar days, this form would state the following:</p> <p>“The Police Director or his/her designee may grant extensions of the initial ninety (90)-day period of up to 90 days each when such extensions are justified</p>

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				<p>by extraordinary circumstances. For each such extension, the following two conditions must be satisfied:</p> <p>(1) The Director or his/her designee must consult with the City Attorney or the City Attorney's designee (who must be a lawyer in good standing with the Tennessee Board of Professional Responsibility); and</p> <p>(2) The investigating officer must complete [the <i>Kendrick</i> Consent Form] and state in writing either the persistent facts that establish extraordinary circumstances or new facts that do the same."</p>
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**G. Written Guidelines for the use of Manual Social Media Searches and of Social media Collators (aka Using Social Media for Investigations)**

<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Prior Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation (s)</b>
The Team agreed with the ACLU-TN that the Social Media Policy	<b>Response:</b> The City accepts the recommendation.	The policy applies to all MPD officers.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.

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<p>should apply to all MPD officers. (ECF 197-1, PageID 6860.)</p>				
<p>The Team recommended adding the following language regarding when the Social Media Guidelines are applicable: "The officer's personal use of the social media platform and any searches conducted for personal reasons are nevertheless subject to this reporting requirement, when: ·The information searched, gathered, collected, stored or disseminated involves, includes, intersects or overlaps with, or otherwise relates to or</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City adds the recommended language.</p>	<p><b>Response:</b> The Team agrees.</p>	<p>The Team does not recommend anything further.</p>

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<p>has direct or derivative use in any investigation, inquiry or matter involving official law enforcement or department interest; and ·The officer has knowledge of such investigation, inquiry, or matter, or should reasonably have such knowledge.” (ECF 197-1, PageID 6860.)</p>				
<p>The Team recommended that the "Documentation and Retention" Section be revised for clarity. (ECF 197-1, PageID 6861.)</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City revises the section as follows:  “Information gathered from a social media site by MPD related to First Amendment activity shall not be retained, unless for a legitimate</p>	<p><b>Response:</b> The Team agrees but recommends amending the language for clarification. The Team also requests clarification about whether MPD has a policy section that generally authorizes audits of an officer’s files?  <b>Note:</b> The City, in an email dated July 19, 2019,</p>	<p>The Team recommends amending the language as follows:  “Unannounced <b>internal</b> audits of an officer's social media searches, etc.”</p>

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		<p>law enforcement purpose, for more than thirty days.</p> <p>All social media searches by an MPD officer shall be retained until reported to the Command Staff, which shall occur approximately every 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</p>	<p>responded to the Team's policy inquiry by providing the responsive policies and stating as follows:</p> <p>Yes. There are case status meetings which are held weekly throughout MPD. Each investigator meets individually with a supervisor to discuss cases in their Inform RMS folder that have not been disposed of within fifteen (15) days, in addition to past-due State Arrest Reports. The investigator should be able to articulate what steps are being taken to dispose of the cases in question, and the status of all overdue State Arrest Reports. Additionally, a supervisor must approve all State Arrest Reports and sign a checklist. The completed State Arrest Report file</p>	
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		<p>MPD. These reports shall be submitted to the officer's commander.</p> <p>Unannounced audits of an officer's social media searches are permissible at any time for any reason when authorized by a member of the Command staff."</p>	<p>will be scanned and added to the records management as an object. The approving supervisor will make a notation in the records management task tab the date each State Arrest Report is approved. Finally, there is a weekly TRAC review. TRAC is MPD's weekly commander's meeting. One precinct is selected per week during TRAC and the precinct Commander brings his detectives to the meeting. A Deputy Chief reviews all Blue Crush designated crimes to include each original report along with the assigned investigator's supplemental report. Each report and investigation are discussed. An average of 40-50 cases are reviewed at this time.</p>	
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<p>The Team recommended defining "Special Events." (ECF 197-1, PageID 6862.)</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City defines "special events" as the following:</p> <p>"Events, both planned and unplanned, that involves groups of people gathering in public which require the presence and planning of the City and/or MPD officers."</p>	<p><b>Response:</b> The Team disagrees and requests that the City provide additional policies related to unplanned immediate events and/or flash mobs.</p> <p><b>Rationale:</b> The City's Public Assemblies and Application process uses different terms (special events, spontaneous events, and alternative events) than the proposed definition. This policy should be consistent with the City's Ordinance.</p> <p><b>Note:</b> The City, in an email dated July 19, 2019, responded to the Team's policy request with the following:</p> <p>"MPD does not have a written policy specific to unplanned immediate events or flash mobs. MPD responds in a manner tailored to</p>	<p>The Team recommends revising the definition of "Special Events" to be consistent with the City's Ordinance on public assemblies.</p>
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			the specific nature of the event. MPD conducts 'After Action Reviews' of such an event. An After-Action Review is a report following an incident describing the incident and analyzing MPD's preparation for and response to the incident."	
The Team recommended adding a disciplinary requirement in the event of an officer's failure to adhere to the Social Media Policy as well as an auditing procedure. (ECF 197-1, PageID 6863.)	<b>Response:</b> The City accepts recommendation.	The City revises as requested.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.
The Team recommended that the policy state that an undercover social media account may not impersonate an actual person known to the subject of an investigation.	<b>Response:</b> The City accepts the recommendation.	The City revises as requested.	<b>Response:</b> The Team agrees but revises its recommendation.	The Team recommends revising the sentence "Under no circumstances may an officer impersonate an actual person known to the subject of an investigation through the use of an undercover social media

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(ECF 197-1, PageID 6863.)				account” to say, “Under no circumstances may an officer impersonate an actual person through the use of an undercover social media account.”
The Team recommended that a section regarding Juveniles be added. (ECF 197-1, PageID 6863.)	<b>Response:</b> The City accepts the recommendation.	The City adds the following language:  ONLINE MONITORING OF JUVENILES ON SOCIAL MEDIA “Any and all restrictions regarding the monitoring of juveniles included in MPD's practices, policies, or procedures, are incorporated into this Social Media Policy.”	<b>Response:</b> The Team agrees but asks that the City share MPD’s policies relating to juveniles so the Team can see how they would apply in the social media monitoring context.  <b>Note:</b> The City, in an email dated July 19, 2019, responded to the Team’s request for juvenile policies by attaching the responsive policies.	The Team recommends adding the following language.  “MPD officers are prohibited from using a social media account, including a covert account, to contact or connect with a minor without first notifying that minor’s parent or guardian prior to initial contact. This policy may include exceptions for exigent circumstances and circumstances in which a parent or guardian is a subject of a predicated investigation.”
The Team recommended clarifying a "situational assessment	<b>Response:</b> The City accepts the recommendation.	The City revises the policy as follows:	<b>Response:</b> The Team mostly agrees but recommends that the City adds	The Team submits that any MPD investigation that uses social media as an investigative

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<p>report" vs. a "situational awareness report." (ECF 197-2, PageID 6879.)</p>		<p>"Situational awareness 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)</p>	<p>language to the situational awareness report policy.</p>	<p>technique must have a lawful purpose and must not unlawfully infringe the First Amendment Rights of the individual(s) or groups subject to the investigation—meaning, the social media investigation should employ the least intrusive means upon exercise of those First Amendment rights. Further, if the investigation infringes on First Amendment rights, a rational connection between the collection of information about the individual(s) or groups and the purpose of the investigation should be documented.</p> <p>In addition, the Team further recommends the changes listed below.</p>
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		<p>days.</p> <p>After Action Reviews may be prepared using information gathered from social media. "After Action Review" (AAR) is defined as a report following an incident describing the incident and analyzing MPD's preparation for and response or reaction to the incident. These reviews are aimed at department self-improvement . The information obtained from social media may be retained within the AAR indefinitely, but the</p>		
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		<p>names, photos, and identifying information of individuals not suspected of criminal activity must be redacted.”</p> <p>The City added in a footnote: “situational awareness report is report of intelligence gathered by law enforcement related to public safety surrounding a planned gathering of people in public. The purpose of a situational awareness report is to provide MPD with information so that it can adequately prepare for and protect the public before, during, and</p>		
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		after a special event.”		
The Team recommended a shorter retention period for information about First Amendment activities. (ECF 197-2, PageID 6879.)	<b>Response:</b> The City accepts the recommendation.	The City includes the following language:  “Information gathered from a social media site by MPD related to First Amendment activity shall not be retained, unless for a legitimate law enforcement purpose, for more than thirty days.”	<b>Response:</b> The Team agrees.	The Team further recommends the changes listed below.
The Team requested clarification as to why the City made the change from allowing First Amendment information gathered on social media to be distributed only to the Command Staff versus "to MPD	<b>Response:</b> The City responds to request for clarification.  The City made this change based on the ACLU-TN's suggestion. Moreover, the City envisions a situation in which some officer below the level of Command Staff	None.	<b>Response:</b> The Team is satisfied with the explanation.	The Team does not recommend anything further.

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<p>officers and staff as necessary." (ECF 197-2, PageID 6880.)</p>	<p>would be required to take an action (such as make an arrest) where access to the information would be critical.</p>			
<p>The Team recommended that there be audits of an officer's social media searches. (ECF 197-1, PageID 6863.)</p>	<p><b>Response:</b> The City accepts the recommendation.</p>	<p>The City adds the following language to its policy:  "Unannounced audits of an officer's social media searches are permissible at any time for any reason when authorized by a member of the Command Staff."</p>	<p><b>Response:</b> The Team agrees but recommends amending the language for clarity.</p>	<p>The Team recommends amending the language of the policy as follows:  "Unannounced <b>internal</b> audits..."</p>
<p>N/a</p>	<p>N/A</p>	<p>N/a</p>	<p>N/a</p>	<p>The Team recommends revising the title of the social media policy, which is currently "Utilizing Social Media for Investigations," to "Law Enforcement Utilization of Social Media," because the policy covers more than</p>

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				investigations.
N/a	N/a	N/a	N/a	The Team recommends changing all instances of “MPD officers” to “MPD employees” in the social media policy.
N/a	N/a	N/a	N/a	The Team recommends revising the sentence, “All searches of social media by a MPD officer, through the use of a social media account or social media collator...” to <b>“All searches of social media by an MPD employee, including but not limited to those through the use of a social media collator, shall be based on a valid law enforcement purpose....”</b>
N/a	N/a	N/a	N/a	The Team recommends adding the following language after the first paragraph under “Use of Social Media” on page three, or before the paragraph beginning “Social Media searches are



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				<p>limited to sources within the public domain..." on page four:</p> <p>"Social media may not be used to seek or retain information about:</p> <ul style="list-style-type: none"> <li>•An individual's race, ethnicity, citizenship, place of origin, disability, gender, or sexual orientation, unless relevant to individual's criminal conduct or activity or if required for identification; or</li> <li>•An individual's age, other than to determine if person is a minor." </li></ul>
N/a	N/a	N/a	N/a	<p>On top page four of the social media policy, after the term "shoot the police," the Team recommends adding a sentence stating, "However, the use, retention, or dissemination of information collected by searches that relate to the exercise of First Amendment rights is governed by the</p>

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				Consent Decree.”
N/a	N/a	N/a	N/a	On page four of the social media policy, the current policy says, “Only searches of open-sources (non-private) should be used.” The Team recommends revising this to say, “Only searches of open source (non-private) information should be used.”
N/a	N/a	N/a	N/a	On page five of the social media policy, the current policy states, “Information gathered from a social media site by MPD related to First Amendment activity shall not be retained, unless for a legitimate law enforcement purpose, for thirty days.” The Team recommends shortening this to fourteen days.  The Team also recommends revising the language under situational awareness reports, as stated on page six of the policy, to

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				reflect this fourteen day retention requirement.
N/a	N/a	N/a	N/a	The Team recommends revising the last two paragraphs on page five of the social media policy to clarify the distinction between keeping information for a limited period (currently 30 days) and keeping the searches themselves for up to 90 days. The Team recommends adding language such as, "The terms used by an MPD officer to conduct social media searches shall be retained..."
N/a	N/a	N/a	N/a	The Team recommends revising the situational awareness reports language as follows:  "Situational awareness reports may be prepared for special events management, including First Amendment-

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				<p>protected activities, where necessary for the furtherance of public safety. Employees preparing such reports must take special care to collect no more information than necessary regarding the exercise of First Amendment-protected rights. Employees should further document that there is a relationship between the incidental collection of information about First Amendment-protected activities and the purpose of the report, which is the protection of public safety. At the conclusion of the situation or First Amendment-protected event, the information obtained from social media or from a social media monitoring tool will be retained for no more than fourteen days.”</p>
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N/a	N/a	N/a	N/a	With respect to After Action Reviews, the Team recommends adding “organization” to the final sentence – so it would say “...the names, photos, and identifying information of individuals <b>and organizations</b> not suspected of criminal activity should be redacted.”
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**H. Social Media Search Terms**

<b>Team’s Prior Feedback to City of Memphis</b>	<b>City of Memphis’s Response to Team’s Prior Feedback</b>	<b>City of Memphis’s Proposed Action in Response to Team’s Prior Feedback</b>	<b>The Team’s Response to the City’s Proposed Action.</b>	<b>Recommendation(s)</b>
The Team expressed concerns about the certification process for social media searches by MPD officers. In particular the Team recommended that the MPD certify that each term has a	<b>Response:</b> The City requests follow-up information.  The City would like clarification as to whether the Team is suggesting a certification be made for each	The City suggests that it maintain the current practice of reporting social media search terms from the limited set of phones as outlined in its pleadings to the Court (OHS, RTCC,	<b>Response:</b> The Team disagrees and requests more information about how many officers outside the officers covered by the policy also use social media for work.  <b>Note:</b> The City,	The Team recommends that the City create an internal audit system to ensure compliance by all MPD offices and civilians.

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<p>valid law enforcement purpose. (ECF 197-1, PageID 6864.)</p>	<p>individual search term as it is occurring in real time, or if a "blanket group certification" be made by each officer when he/she submits his/her search terms quarterly. To this point, the City notes that certifying each search term in real time would be incredibly onerous. The City is also doubtful whether the Court intended that every MPD officer's phone be subject to the social media search term reporting requirement.</p>	<p>General Investigative Unit, Homicide, Sex Crimes, and Command Staff). It also expresses concern that to require all 2000+ officers to submit search terms quarterly would be onerous.</p>	<p>in an email dated July 19, 2019, responded to the Team's request for social media use information with the following:</p> <p>"While no officer is directed or required to do so, we think it is reasonable to assume that every officer in the units listed above as well as every uniformed police officer within MPD may use social media for the purpose of a criminal investigation, consistent with the purpose and manner as the search terms used on social media that the City has been reporting since January 2019."</p>	
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<p>The Team requested an explanation for the use of the word "protest" as a search term in conjunction with the words "St. Jude" and "marathon." (ECF 197-1, PageID 6864.)</p>	<p><b>Response:</b> The City responds to request for information.  The City states that those terms were used by Sergeant Eddie Cornwell from the Office of Homeland Security. The searches in question were performed around the time of the marathon to identify anyone who might be preparing to engage in acts threatening the safety of the event.</p>	<p>None.</p>	<p><b>Response:</b> The Team is satisfied with the explanation.</p>	<p>The Team does not recommend anything further.</p>
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**(2.) The Eleven Scenarios**

*Body Worn Cameras*

**City's Current Policy:** MPD POP Chapter XIII, Section 15: In-Car Video/Body Worn Cameras. The relevant language is as follows:

"Officers shall record all law-enforcement encounters and activities." (Page 3, ¶ B.3.).

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"Once a recording event begins, the BWC shall remain activated until the event has concluded in order to conserve the integrity of the recording." (Page 4, ¶ B.6).

"Officers are responsible for the labeling and the categorization of videos they produce. The videos will be categorized in accordance with the available choices in the system. Officers will obtain the Computer Aided Dispatch number either through an automated feature, from the dispatcher, or through a manual lookup and entered in the ID field. (41.3.8G)

Officers who categorize videos incorrectly may be subject to discipline." (Page 5, ¶ B.9.)

"As a general rule, recordings classified as non-evidentiary will be retained for ninety days before deletion. Recordings classified as evidentiary will be retained for one year after any final legal disposition. Further, evidentiary data shall be retained for the period specified by any applicable state or local statute. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable retention period. (41.3.8G)" (Page 12, § IX.)

**Scenario No. 1:** When police officers are at the scene of a protest (either permitted or unpermitted) for purposes of public safety, may they leave their body cameras on even though First Amendment Rights are being exercised? ("First Amendment Rights" in this context means expressive conduct in the public sphere.) No film of protesters would be retained unless the film reflects a criminal act or provides important evidence with regard to a criminal act.

Team's Prior Feedback to City of Memphis	City of Memphis's Response to Team's Prior Feedback	City of Memphis's Proposed Action in Response to Team's Prior Feedback	The Team's Response to the City's Proposed Action.	Recommendation(s)



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<p>The Team requested clarification about whether the City is proposing that it be able to continuously record First Amendment activities, or that it be able to film discrete incidents that occur during the course of First Amendment activities. (ECF 197-3, PageID 6925.)</p>	<p><b>Response:</b> The City proposes that it be able to continuously record First Amendment activities.</p> <p><b>Rationale:</b> The City believes that best practices would dictate that body cameras be activated at all times during a demonstration, protest, or other expression of First Amendment activity involving a group of people to ensure that all citizen interactions are recorded. This is necessary in the event that a disruption occurs that causes damage to property or the public. Moreover, if there was any question as to police misconduct, unequal or harsh treatment of one group over</p>	<p>The City, after further review, believes there is no policy it could enact that would allow the video recording of people exercising their First Amendment rights without the possibility of having a chilling effect on those people, and thus running afoul of the Consent Decree.</p> <p>The City intends to take it to the Court for further guidance.</p>	<p><b>Response:</b></p> <p>The Monitoring Team welcomes the input of the Court but makes the adjacent recommendation in the interim.</p>	<p>After conferring with the ACLU-TN, the Monitoring Team recommends the following:</p> <p>Body-worn cameras (BWCs) should not be rolling constantly at a First Amendment-protected special event or when a person is engaged in First Amendment protected activity in a public area, in the absence of a legitimate law-enforcement encounter. BWCs should only be activated for legitimate law-enforcement encounters, such as observing any ongoing criminal activity, including unlawful interference with another person’s exercise of her or his First Amendment rights. Such rights include speaking or leafleting in a public area or at a special event permitted by the City.</p> <p>It is critical that MPD’s BWC policy be enforced in an even-handed manner and</p>
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	<p>another, or the use of unreasonable force, the body worn camera footage from the event would likely answer those questions.</p>			<p>that all MPD officers be thoroughly trained on what constitutes a legitimate law-enforcement encounter understanding every specific encounter requires the exercise of sound discretion and judgment on the part of the officer.</p>
<p>The Team acknowledged the benefit of ensuring that citizen interactions are recorded and the potential chilling effect that body worn cameras can have on those engaging in First Amendment activities. For that reason, the Team coalesced around two major views: (a) body cameras should be activated at all times during a demonstration to ensure that all citizen</p>	<p><b>Response:</b> The City agrees with the First Amendment rights concerns and requests a final recommendation from the Team.</p> <p><b>Rationale:</b> The Consent Decree expressly forbids the City of Memphis from engaging "in any action for the purpose of, or reasonably having the effect of, deterring any person from exercising First Amendment rights. As an example, the City of Memphis</p>	<p>The City intends to take issue to the Court for further guidance.</p>	<p><b>Response:</b> See response above.</p>	<p>See response above. In addition, the Team intends to hold a focus group directed at this issue.</p>

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<p>interactions are recorded, and (b) body cameras should be activated only when an officer begins a voluntary or involuntary citizen interaction. (ECF 197-3, PageID 6925.)</p>	<p>shall not, at any lawful meeting or demonstration, for the purpose of chilling the exercise of First Amendment rights or for the purpose of maintaining a record, record the name of or photograph any person in attendance, or record the automobile license plate numbers of any person in attendance." (Consent Decree, § F.2., ECF No. 151, PageIDs 6282-83). Thus, the City agrees that the use of Body Worn cameras at a protest or demonstration likely offends the Consent Decree.</p>			
<p>The Team recommended creating a comprehensive policy manual that modifies and defines</p>	<p><b>Response:</b> The City did not address this.</p>	<p>None.</p>	<p><b>Response:</b> None</p>	<p>The Team stands by its prior recommendation.</p>

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<p>certain terms used by the City in this policy and scenario. For example, the term “law-enforcement encounters and activities” is too broad. The City should specify the types of criminal investigations for which this would be authorized. As written, this policy potentially covers anything that an on-duty officer does in the course and scope of her duties, including walking or patrolling a beat. (ECF 197-3, PageID 6926.)</p>				
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*Covert Social Media Accounts*

**City's Current Policy:** See MPD Real Time Crime Center Standard Operating Procedure (SOP).

"Social Media

ALL RTCC STAFF WILL FAMILIARIZE THEMSELVES WITH THE KENDRICK V. CHANDLER, CONSENT DECREE NO. C 76-449.

Pursuant to the 1978 Kendrick Consent Decree, the Memphis Police Department will cease utilizing investigative and covert accounts on all social media platforms. The only account that may be utilized is that which is approved by The City of Memphis Legal team and the Court ordered monitor. The RTCC will not engage in the use of Social Media for any reason unless otherwise directed by the Command Staff." (§ 1.9.)

**City's Proposed Covert Social Media Account Policy:**

The MPD shall not use investigative and covert accounts on any social media platform for the purpose of political intelligence. "Political intelligence" was defined in the 1978 Kendrick Consent Decree as "the gathering, indexing, filing, 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 provisions of the Kendrick Consent Decree prohibit MPD from "engaging in law enforcement activities which interfere with any person's rights protected by the First Amendment, including but not limited to, the rights to communicate an idea or belief, to speak freely, to write and to publish, and to associate privately and publicly for any lawful purpose."

An MPD officer may use an alias to develop online relationships with individuals and gain access to private online groups as part of a criminal investigation. If a criminal investigation results in the collection of information about the exercise of First Amendment rights, or interferes in any way with the exercise of First Amendment rights, the criminal investigation must be reviewed and authorized by the Memphis Director of Police or his/her designee.

**Scenario 2:** May police officers work under cover by using social media accounts to discover, pursue and prosecute, or prevent possible crimes such as human trafficking, internet crimes against minors, child pornography, illegal drug sales, and related behavior even though entry into the social media platforms under cover may expose them to persons expressing views protected by the First Amendment?

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**Scenario 5:** May police officers use "dummy" or "undercover" social media accounts to investigate crimes unrelated to First Amendment activity without Director approval pursuant to § G (e.g. using a "fake" Facebook account to investigate a suspected drug trafficking enterprise)?

Team’s Prior Feedback to City of Memphis	City of Memphis’s Response to Team’s Prior Feedback	City of Memphis’s Proposed Action in Response to Team’s Prior Feedback	The Team’s Response to the City’s Proposed Action.	Recommendation(s)
<p>Regarding the proposed policy, the Team advised that the term "criminal investigations" is too broad and recommended that the language be modified to specify the types of crimes covered by this policy. (ECF 197-3, PageID 6927.)</p>	<p><b>Response:</b> The City accepts the Team’s recommendation.</p>	<p>The City proposes defining "criminal investigation" in the amended policy as it is defined in the Social Media Policy as follows:</p> <p>“If probable cause exists that a crime has been committed, a criminal investigation is the process of collecting information or evidence about an incident in order to: (1) determine if a crime has</p>	<p><b>Response:</b> The Team disagrees and recommends amending the language of the proposed policy.</p> <p><b>Rationale:</b> The Team would like to emphasize the importance that such investigations should be for purposes other than to interfere with or gather information related to First Amendment activities.</p>	<p>The Team recommends that the proposed policy be amended as follows:</p> <p>“An MPD officer may use an alias to develop online relationships with individuals and gain access to private online groups as part of a criminal investigation; an alias may not be used <b>to interfere with or gather information related to First Amendment activities.</b> Moreover, even in circumstances where the purpose of the online alias is to</p>

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		been committed; (2) identify a perpetrator; (3) establish probable cause; (4) apprehend the perpetrator; and (5) provide evidence to support a conviction in court.”		collect information related to a criminal investigation, the use of social media to connect with or monitor an individual will implicate First Amendment-protected rights. See Kendrick Consent Decree at p. 3, Para. G (Prohibition Against Covert Surveillance for Political Intelligence). “A police officer may, for example, need to “friend” a suspected drug dealer as part of an investigation. The officer in question would not be conducting political intelligence, because while he may incidentally obtain information relating to the suspect’s exercise of First Amendment rights, he is not “gathering” that information. This officer does,
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				<p>however, need to seek formal approval through use of the authorization form, because the investigation “may result in the collection of information about the exercise of First Amendment rights.” (Consent Decree, at § G.)” Opinion And Order at p. 34 n.14 (Oct. 26, 2018) (ECF 151, PageID 6274 n.14.)</p>
<p>The Team advised that the proposed Covert Social Media Account Policy suggests that the use of undercover social media accounts for criminal investigations <i>per se</i> does not interfere with a person's First Amendment rights. The Team further advised that such a stance is inaccurate.</p> <p>The Team</p>	<p><b>Response:</b> The City accepts the advice and recommendation.</p>	<p>The City proposes adding the following language:</p> <p>“The use of undercover social media accounts may incidentally interfere with a person's First Amendment rights. In those cases, care must be taken to comply with the Kendrick Consent Decree and</p>	<p><b>Response:</b> The Team agrees but recommends that the policy also clarify the “care must be taken” language with a citation to the Consent Decree.</p>	<p>The Team recommends that the City cite and quote the provisions of the Consent Decree that address what the First Amendment and the Consent Decree prohibit, that is Consent Decree at B.4, C.1, and D-F.”</p>



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<p>recommended revising the policy. (ECF 197-3, PageID 6927.)</p>		<p>DR 138.”</p>		
<p>The Team recommended that there be an auditing system to assess whether MPD is actually capturing, reviewing, and getting authorizations for undercover social media criminal investigations that result in the collection of First Amendment information. (ECF 197-3, PageID 6927-6928.)</p>	<p><b>Response:</b> The City accepts the Team’s recommendation.</p>	<p>The City agrees and is working on ideas for such an auditing system which would employ random sampling and periodic full review.</p>	<p><b>Response:</b> The Team agrees.</p>	<p>The Team does not recommend anything further.</p>
<p>In terms of using social media accounts for specific investigation of crimes, the Team recommended: a. some predication required to open a matter and follow lead/institute active use; and</p>	<p><b>Response:</b> The City requests clarification as to point (a) and accepted recommendation in point (b).</p>	<p>The City will make changes recommended in “b.”</p>	<p><b>Response:</b> A “Predication” is a term used often in federal enforcement. It means reason, purpose, or objective trigger for an investigation—as opposed to an unlawful or purely subjective reason for</p>	<p>The Team recommends the following language to supplant point “a”:  “A lawful purpose must be required to open a matter and institute a social media investigation.”</p>

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<p>b. in investigations in which no criminal conduct is intercepted, there be no retention of intercepted communications when using social media accounts for specific investigations of crimes. (ECF 197-3, PageID 6928.)</p>			<p>opening an investigation. With this in mind, the Team now borrows the term “lawful purpose” from FBI protocols and applies it here to supplant the term “predication.”</p> <p><b>Rationale:</b> This change is meant to underscore the fact that such investigatory procedures must have articulable and lawful reasons for launching them.</p>	
<p>The Team clarified that it is not in the position to approve or disapprove of the City’s “the investigative and covert [social media] accounts” that are covered by the January 10, 2019, policy. (ECF 197-3, PageID 6928.)</p>	<p><b>Response:</b> The City understands the Team’s stance.</p>	<p>The City is not seeking the Monitor’s approval of any specific account, but of its policy generally.</p>	<p><b>Response:</b> The Team is satisfied with this explanation.</p>	<p>The Team does not recommend anything further.</p>

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**Scenario 3:** May police officers work under cover by using social media accounts to investigate acts of domestic terrorism such as school bomb threats or school shooting threats which are reported to or discovered by them even though entry into social media platforms under cover may expose them to persons expressing views protected by the First Amendment?

<b>Team’s Prior Feedback to City of Memphis</b>	<b>City of Memphis’s Response to Team’s Prior Feedback</b>	<b>City of Memphis’s Proposed Action in Response to Team’s Prior Feedback</b>	<b>The Team’s Response to the City’s Proposed Action.</b>	<b>Recommendation(s)</b>
<p>The Team advised that the City’s proposed Covert Social Media Account Policy would not adequately address any concerns about the implications of the Consent Decree. (ECF 197-3, PageID 6929.)</p>	<p><b>Response:</b> The City accepts the Team’s advice.</p>	<p>The City proposes adding the following language:</p> <p>“The use of undercover social media accounts may incidentally interfere with a person’s First Amendment rights. In those cases, care must be taken to comply with the Kendrick Consent Decree and DR 138.”</p>	<p><b>Response:</b> The Team agrees but recommends amending the policy to incorporate First Amendment compliance and clarifying the “care must be taken” language with a citation to the Consent Decree.</p>	<p>The Team recommends amending the policy as follows:</p> <p>“The use of undercover social media accounts may incidentally interfere with a person’s First Amendment rights. In those cases, care must be taken to comply with the <b>First Amendment, Kendrick Consent Decree, and DR 138.</b>”</p> <p>Further, the Team recommends that the City cite and quote the provisions of the Consent Decree that address what the First Amendment and the Consent Decree prohibit, that is Consent Decree at B.4, C.1, and D-F.”</p>
<p>The Team advised that an investigative response to information</p>	<p><b>Response:</b> The City agrees with the advice.</p>	<p>None.</p>	<p><b>Response:</b> The Team agrees.</p>	<p>The Team does not recommend anything further.</p>

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regarding ongoing or imminent violent acts is not only permissible but appropriate and necessary. (ECF 197-3, PageID 6929.)				
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**Scenario 6:** May the MPD use all investigative techniques available, including the use of undercover and "dummy" social media accounts for the purpose of 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) without Director approval pursuant to § G (e.g. the ongoing gathering of intelligence into a drug trafficking ring)?

<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Prior Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation(s)</b>
The Team advised that to the extent that such investigations are targeting clearly illegal conduct (e.g., drug trafficking), the mere possibility that some protected conversations may be intercepted should not	<b>Response:</b> The City declines the advice.  <b>Rationale:</b> The City believes its amended proposed Covert Social Media Account Policy is consistent with the Court's finding that the use of undercover accounts is	Maintain amended proposed Covert Social Media Account Policy.	<b>Response:</b> The Team disagrees.  <b>Rationale:</b> Team believes that director approval is required here, because there is a possibility of collecting	The Team recommends revising this policy to be consistent with the Court's Order and Opinion, which states:  "A police officer may, for example, need to 'friend' a suspected drug dealer as part of an investigation. The officer in question would not be conducting political intelligence, because

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<p>require additional approval. In the event protected communications are intercepted, policies should require immediate notification, reporting, approval, and handling that will prevent political use and dissemination. (ECF 197-3, PageID 6932.)</p>	<p>permissible under the Consent Decree.</p>		<p>First Amendment protected information.</p>	<p>while he may incidentally obtain information relating to the suspect’s exercise of First Amendment rights, he is not ‘gathering’ that information. This officer does, however, need to seek formal approval through use of the authorization form, because the investigation ‘may result in the collection of information about the exercise of First Amendment rights.’ (Consent Decree § G.)” (ECF 151, PageID 6274 n.14.)</p>
<p>The Team disagreed with City’s proposal that it adopt the federal guidelines on criminal intelligence found in <u>28 CFR Part 23</u> as its policy on criminal intelligence. (ECF 197-3, PageID 6932.)</p>	<p><b>Response:</b> The City requests clarification as to the Team’s source of disagreement.</p> <p><b>Rationale:</b> The City is unclear as to whether the Monitoring Team is rejecting 28 CFR 23 as the City’s policy on criminal intelligence, or if the Team simply wants 28 CFR 23 clarified to include a statement that explains:</p>	<p>The City stands ready to address the Team’s concern.</p>	<p><b>Response:</b> After further discussion, the Team agrees with the City’s proposal.</p>	<p>The Team does not recommend anything further.</p>

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	<p>"In the event protected communications are intercepted, immediate notification, reporting, approval, and handling that will prevent political use and dissemination is required."</p>			
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*Social Media Generally*

**Revised Policy Submitted To Court on 1/14/2019:** 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.

**City's Proposed Amendment to Revised Policy Submitted To Court on 1/14/2019:** "If it becomes necessary to utilize an undercover social media account in the course of the criminal investigation, Director or Director's designee approval is required."

**Scenario 4:** May police officers review publicly accessible social media accounts (with either their personal PDA/phone or with a police-issued device) of victims, potential suspects, and witnesses as part of an active investigation into the planning or occurrence of a criminal act without Director approval pursuant to § G (e.g. a homicide scene and its immediate aftermath, such as where the responding officer searches Facebook for the name of the victim and/or the name(s) of any suspect(s))?

<p><b>Team's Prior Feedback to City of Memphis</b></p>	<p><b>City of Memphis's Response to Team's Prior Feedback</b></p>	<p><b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b></p>	<p><b>The Team's Response to the City's Proposed Action.</b></p>	<p><b>Recommendation(s)</b></p>
<p>Regarding the</p>	<p><b>Response:</b> The</p>	<p>The City</p>	<p><b>Response:</b></p>	<p>The Team</p>

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<p>use of personal and police-issued devices, the Team disagreed that officers be able to use personal devices for work-related activities. Team expressed concern about the City's policy, or lack thereof, regarding the use of personal and police-issued devices.</p> <p>The Team recommended that the City restrict work-related social media searches to police-issued devices, unless there are extenuating circumstances, because the use of personal communication devices potentially implicates the First Amendment and Fourth Amendment rights of the officers who own the</p>	<p>City declines the Team's recommendation.</p> <p><b>Rationale:</b> The City believes that work-related business by officers, regardless of whether it is on police-issued devices or on personal communications devices, is generally subject to disclosure and review, and officers would not be able to object to access because of the mere fact that the work was performed on personal communications devices.</p>	<p>proposes amending its policy and procedures to clarify this issue.</p>	<p>The Team agrees that the City should amend its policy and procedures to reflect its position on police-issued and personal devices. In addition, the Team recommends language to accomplish this.</p> <p><b>Rationale:</b> The proposed process would better facilitate internal and external audits.</p>	<p>recommends the following amendment:</p> <p>"All MPD personnel should only utilize Department-issued electronic devices when conducting official business on behalf of MPD. If, for any reason, an MPD officer or employee utilizes his or her personal electronic device when conducting official business, each search shall be documented and reported in a timely manner."</p>
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<p>devices. (ECF 197-3, PageID 6930- 6931.)</p>				
<p>The Team requested clarification about the scope of the searches that are covered by this policy. For example, the Team believed that searches of "witnesses" after the "occurrence of a crime" could sweep in a lot of information that's not related to the crime. Relatedly, the Team wanted to know whether these searches would only happen when there's reason to think that relevant information will be found on social media. (ECF 197-3, PageID 6931.)</p>	<p><b>Response:</b> The City responds to the Team's request and declines its recommendation.</p> <p>The City states that the Social Media Policy covers all searches of social media done by any officer of the MPD.</p> <p><b>Rationale:</b> The City believes that it is a best practice to thoroughly search social media during a criminal investigation, even if those searches necessarily sweep in a lot of information that is unrelated to the crime. The City is willing to address the issue of how to handle this irrelevant information in its Social Media policy, but it does not believe pre-</p>	<p>None.</p>	<p><b>Response:</b> The Team disagrees.</p>	<p>The Team submits that any MPD investigation that uses social media as an investigative technique must have a lawful purpose and must not unlawfully infringe the First Amendment Rights of the individual(s) or groups subject to the investigation— meaning, the social media investigation should employ the least intrusive means upon exercise of those First Amendment rights. Further, if the investigation infringes on First Amendment rights, then the authorization form and director's approval are required. Lastly, the Team reiterates the language of footnote 14 on page 34 of the Court's Order and Opinion, which is copied again here.</p> <p>"A police officer may, for example, need to 'friend' a suspected drug dealer as part of an investigation. The</p>



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	set parameters are practical or best practices.			officer in question would not be conducting political intelligence, because while he may incidentally obtain information relating to the suspect's exercise of First Amendment rights, he is not 'gathering' that information. This officer does, however, need to seek formal approval through use of the authorization form, because the investigation 'may result in the collection of information about the exercise of First Amendment rights.' (Consent Decree, at § G.)" Opinion And Order at p. 34 n.14 (Oct. 26, 2018) (ECF 151, PageID 6274 n.14.)
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*Criminal Intelligence*

**Proposed Policy:** 28 CFR 23 in full.

**Scenario 7:** May the MPD investigate and monitor organized gangs reasonably suspected of involving criminal activity even though the right of association is protected by the First Amendment?

<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Prior Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation(s)</b>
The Team	<b>Response:</b>	The City would	<b>Response:</b>	The Team does not

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<p>requested clarification about where the proposed language will be added. (ECF 197-3, PageID 6934.)</p>	<p>The City requests clarification about meaning of "proposed language."</p> <p><b>Rationale:</b> The City believes adopting 28 CFR 23's policy on criminal intelligence would address this scenario.</p>	<p>like to adopt 28 CFR 23's policy on criminal intelligence. The relevant portion of this section states,</p> <p>"A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity." (§ 23.20(b))</p>	<p>The Team is satisfied with this explanation.</p>	<p>recommend anything further.</p>
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*Crime Analysis and Reporting*

**City's Current Policy:** MPD Real Time Crime Center Standard Operating Procedure (SOP).

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"The RTCC will be the clearing house for gathering analytical data, as far as criminal activity, and processing the data into spread sheets, maps, or any array of information to be disseminated as needed throughout the MPD Command Staff and the MPD Public Information Officers. Civilian employees are responsible for specific daily statistics, which is covered in the CAU SOP." (§1.1.)

**Scenario 8:** May the MPD use information collected during the course of its investigations for the purpose of crime analysis and reporting? The central focus of crime analysis is the study of crime (e.g., rape, robbery, and burglary); disorder problems (e.g., noise complaints, burglar alarms, and suspicious activity); and information related to the nature of incidents, offenders, and victims or targets of crime (targets refer to inanimate objects, such as buildings or property). Crime analysis is also used for other police-related operational issues, such as staffing needs, addressing any deficiencies in training, and updating policies and procedures.

<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Prior Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation(s)</b>
The Team recommended that the policy include language that makes it clear that "analytical data" does not include "political intelligence." After that, the policy should define "political intelligence." (ECF 197-3, PageID 6935.)	<b>Response:</b> The City accepts the Team's recommendation.	The City proposes adding the following language to paragraph 1.1.:  "The RTCC will be the clearing house for gathering analytical data, as far as criminal activity, and processing the data into spread sheets, maps, or any array of	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.

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		<p>information to be disseminated as needed throughout the <b>MPD</b> Command Staff and the MPD Public Information Officers. Civilian employees are responsible for specific daily statistics, which is covered in the CAU SOP. <b>'Analytical data' shall not include political intelligence. 'Political Intelligence.'</b> means the gathering, indexing, filing, maintenance, storage or dissemination of information, or any other investigative activity, relating to any person's beliefs, opinions, associations</p>		
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		<p><b>or other exercise of First Amendment rights.”</b></p>		
<p>The Team recommended that the content of investigations and identities of non-charged persons—as well as their communications—should not be disseminated and noted that sharing information would likely violate the Consent Decree. (ECF 197-3, PageID 6935.)</p>	<p><b>Response:</b> The City agrees with the recommendation and acknowledges that the sharing of information among law enforcement agencies may violate the Consent Decree.</p> <p><b>Rationale:</b> The City agrees that the sharing of such information among law enforcement agencies is likely prohibited by Section I of the Consent Decree "Restriction on Joint Operations." However, the City can contemplate situations during which it would be a matter of best police practices and in the best interest of public safety</p>	<p>The City proposes seeking clarification from the Court.</p>	<p><b>Response:</b> The Team would like examples of the types of situations during which it would be a matter of best police practices and in the best interest of public safety for law enforcement agencies to share information that would otherwise be impermissible under the Consent Decree.</p>	<p>The Monitoring Team maintains its original recommendation:</p> <p>The content of investigations and identities of non-charged persons—as well as their communications—should not be disseminated and noted that sharing information would likely violate the Consent Decree. (See ECF 197-3, PageID 6935.)</p>

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	for law enforcement agencies to share information that would otherwise be impermissible under the Consent Decree.			
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*Exigent Circumstances*

**City’s Proposed Policy:** An MPD officer may investigate or monitor a person who may be engaged in First Amendment activity without first obtaining the approval of the Director pursuant to § G under exigent circumstances. However, such an investigation must immediately be reviewed and authorized by the Director/Designee as soon as practicable for approval and documentation.

**Scenario 9:** May the MPD investigate or monitor a person engaged in First Amendment activity without first getting the approval of the Director pursuant to § G under exigent circumstances (e.g. searching the social media accounts of a person involved in organizing a gathering originally thought to be a protest, but that is quickly morphing into a riot/looting, for the purpose of determining where the crowd plans to go next)?

<b>Team’s Prior Feedback to City of Memphis</b>	<b>City of Memphis’s Response to Team’s Prior Feedback</b>	<b>City of Memphis’s Proposed Action in Response to Team’s Prior Feedback</b>	<b>The Team’s Response to the City’s Proposed Action.</b>	<b>Recommendation(s)</b>
The Team recommended that it is reasonable to have an exigent circumstances policy; however, such a policy would require a modification of the Consent Decree. (ECF	<b>Response:</b> The City is unsure whether an exigent circumstances policy requires modification of the Consent Decree.  <b>Rationale:</b> The City does not	The City proposes taking this issue to the Court for clarification.	<b>Response:</b> The Team agrees.	The Team does not recommend anything further.

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197-3, PageID 6936.)	necessarily disagree with the Monitoring Team that an exigent circumstances policy requires modification of the Consent Decree. The City would propose taking this issue to the Court for clarification.			
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*Civilian Checkpoints*

**Current Policy:** Civilian checkpoints — City Hall Lobby Entry and Garage Entry 1B

Civilian checkpoints have been employed to monitor and control the movement of people and materials in order to prevent violence. All civilian entering City Hall shall be check and present valid photo identification and issued a visitor pass. Uniformed MPD officers are responsible for maintaining him/herself in a highly visible manner, deter crimes from happening on the property he/she is overseeing and ensure the people on the property are safe as well.

**City’s Proposed Civilian Checkpoint Policy:**

MPD may require visitors to City-owned buildings, including but not limited to City Hall and 170 North Main, to provide identification to gain entry to the building. MPD may require that all visitors be photographed and wear time-stamped identification badges while on City property. MPD may keep a log of all visitors to City buildings indefinitely. The practice of requiring identification, photographs, and a visitor's log is for the purpose of public and building safety, and is not for the purposes of political intelligence or interference with the exercise of First Amendment rights.

**Scenario 10:** May the City collect identifying information and photographs of all visitors to City Hall? A person attending a City Council meeting in City Hall is arguably exercising her First Amendment rights, and the photographing and documenting of that person by the commissioned MPD officers at the security desk could be construed by some as violating the Consent Decree.

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<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Prior Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Prior Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation(s)</b>
<p>The Team disagreed with the proposed policy and sought clarification about the City's security practices at City Hall. (ECF 197-3, PageID 6937.)</p>	<p><b>Response:</b> The City responds to request for clarification and acknowledged the Team's concern.</p> <p>The City uses a system called LobbyGuard to track visitors to City Hall. Every visitor must show photo identification, which is scanned into the LobbyGuard software. The visitor is then photographed, and a label with the visitor's photo is printed out. This photo label must be worn by the visitor while in City Hall. The purpose of the photo is to ensure that the visitor is the person they</p>	<p>If the Monitoring Team feels that this term is too long, the City will address the issue with the vendor to see if the visitor logs and photographs can automatically delete after the designated period of time, as agreed upon by the Monitor.</p>	<p><b>Response:</b> The Team disagrees that the public should be required to take a photograph to enter City Hall:</p> <ol style="list-style-type: none"> <li>1. the date when the City adopted its current photos-badges requirements;</li> <li>2. a copy of the minutes of the City Council related to its adoption of this requirement and its approval of the contract with the vendor of the LobbyGuard system;</li> <li>3. what other municipal buildings in addition to City Hall utilize the LobbyGuard system; and</li> <li>4. the records</li> </ol>	<p>The Monitoring Team recommends the following:</p> <ol style="list-style-type: none"> <li>1. The City and MPD may restrict access to "secure" areas inside City Hall as required to perform the business of the City. The Monitoring Team and the ACLU must agree with the City on the designation of "secure" areas.</li> <li>2. Visitors to City Hall may be screened as required for legitimate safety and security purposes.</li> <li>3. The least intrusive screening methods, such as metal detectors, should be used to enhance building safety and security.</li> <li>4. Visitors entering City Hall shall not be required to show photo identification, provide their name or sign the visitor log</li> </ol>



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	<p>purport to be. The photograph is intended to prevent such subterfuge.</p> <p>The vendor for the LobbyGuard system currently saves the photographs and visitor logs for a term of up to one year.</p>		<p>of the City showing the number of people who entered City Hall on an annual basis before and after the current system was adopted.</p> <p><b>Rationale:</b> The right of access to public areas, public governmental buildings, and public proceedings is protected by the First Amendment.</p> <p><b>Note:</b> The City responded to the Team’s additional questions with the following:</p> <ul style="list-style-type: none"> <li>a. The system was installed in 2014.</li> <li>b. Adopting this process and contracting with LobbyGuard did not require City Council approval.</li> <li>c. 170 N. Main</li> </ul>	<p>unless their presence creates an actual or likely criminal law enforcement encounter.</p> <p>5. Visitors may not be photographed in the absence of a legitimate, immediate law-enforcement predicate.</p> <p>6. Visitors requiring access to “secure” areas of City Hall may be required to sign a visitor’s log before gaining access.</p> <p>7. Photographs and any information captured on the visitor log must be automatically deleted within fourteen (14) days absent a legitimate, continuing law-enforcement predicate, certified in writing.</p>
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			<p>utilizes the LobbyGuard system.</p> <p>d. The City is not aware of existing records showing the number of people who entered City Hall prior to 2014. The current system can produce a list of persons entering City Hall. This list is only accessible to certain members of the City's Division of Information Systems. The City is not clear if this is a request for those records or just an inquiry generally, but it has attached the list that was previously provided to the ACLU. An updated list can be provided.</p>	
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*Maintenance and Storage of Information Collected by MPD Cameras*

**City's Current Policy:** MPD Real Time Crime Center Standard Operating Procedure (SOP). The relevant portion states:

Video recorded by Blue Crush cameras are stored on the hard drive located within the camera enclosure. Recorded video of criminal activity is available for download through the client camera software or, in the event of software related issues, from the camera itself. The hard drive retains 30 days of video before it is overwritten. Video evidence not retrieved within 30 days will be lost.

Upon written request from an investigative bureau, the associated video will be downloaded to DVD and given to the bureau detective for entry into their case as evidence.

(§ 1.6.)

**Scenario 11:** How should MPD handle the maintenance and storage of information collected by MPD cameras, such as SKYCOP cameras, building cameras, etc.?

<b>Team's Prior Feedback to City of Memphis</b>	<b>City of Memphis's Response to Team's Feedback</b>	<b>City of Memphis's Proposed Action in Response to Team's Feedback</b>	<b>The Team's Response to the City's Proposed Action.</b>	<b>Recommendation(s)</b>
<p>The Team recommended adding the following language to the existing policy:</p> <p>"Upon written request from an investigative bureau, and approval by the Police Director or the Director's</p>	<p><b>Response:</b> The City accepts the recommendations.</p>	<p>The City agrees to make the changes.</p>	<p><b>Response:</b> The Team agrees.</p>	<p>The Team does not recommend anything further.</p>

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<p>Designee, the associated video will be downloaded to DVD or other portable media and given to the bureau for entry into their case as evidence. (§ 1.6.)"</p> <p>The Team further recommended changing "lost" to "destroyed." (ECF 197-3, PageID 6938.)</p>				
<p>The Team suggested that MPD's policies regarding the collection and dissemination of information may violate the Consent Decree. (ECF 197-3, PageID 6938-6939.)</p>	<p><b>Response:</b> The City agrees with the Team's observation but states that it must be able to collect and maintain personal information about persons, even if they are not the subjects of lawful investigations.</p> <p><b>Rationale:</b> This is a matter of best police practices.</p>	<p>The City proposes taking this issue to the Court for clarification.</p>	<p><b>Response:</b></p>	<p>MPD's policies regarding the collection, maintenance, and storage of information may violate the consent decree. (See ECF 197-3, PageID 6938-6939.) Section C(1) of the consent decree prohibits the City from "engag[ing] in political intelligence," and section B(4) states that political intelligence includes "the gathering, indexing, filing, maintenance], [and] storage . . . of information . . . relating to any person's . . . exercise of First Amendment rights."</p>

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				The maintenance and storage of information collected by MPD's cameras, such as SKYCOP cameras, must therefore have a lawful purpose and be authorized and documented according to the protocols established by §§ G or H of the consent decree.
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