

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

ACLU OF TENNESSEE, Inc.)	
)	
Intervening Plaintiff,)	
v.)	No. 2:17-cv-02120-jpm-DKV
)	
THE CITY OF MEMPHIS,)	
)	
Defendant.)	

**DEFENDANT’S NOTICE OF FILING QUARTERLY SUBMISSION OF SEARCH
TERMS AS HIGHLY SENSITIVE DOCUMENTS**

I. Background

Pursuant to the Court’s October 27, 2018 Opinion and Order the Court imposed certain sanctions on the Defendant, the City of Memphis (“the City”) and ordered compliance by a date certain. (ECF No. 151.)

Under the Order, the Court required, in part, that:

5) The City shall maintain a list of all search terms entered into social media collators or otherwise used by MPD officers collecting information on social media while on duty. This list shall be filed under seal every three months until the Court orders otherwise. The first filing shall be submitted no later than January 14, 2019 and shall reflect all such social media searches conducted from November 1, 2018 through December 31, 2018.

(ECF No. 151, PageID 6275.)

Pursuant to that Sanction, the City has submitted eight sets of social search terms used by MPD. (*See* ECF Nos. 183, 199, 214, 239, 275, 308, 353, & 383.)

II. The recent security breach of the Court’s CM/ECF system.

On January 6, 2021, the City learned of a significant cybersecurity breach of the Court’s Case Management/Electronic Case Filing (CM/ECF) system.

On January 22, 2021, the Court entered Administrative Order No. 2021-03,¹ which instructed litigants seeking designation of a particular document as highly sensitive documents (“HSDs”) to file a motion seeking such designation and to submit a proposed order.

In response to Administrative Order No. 2021-03, on January 28, 2021, the City filed an unopposed Motion to Have Its Quarterly Search Term Submissions Treated as HSDs and Removed from the CM/ECF System. (ECF No. 393.) On April 20, 2021, the Court granted the City’s Motion to Have its Search Term Submissions Treated as HSDs. (ECF No. 400.)

III. This Quarter’s Search Term Submission

Accordingly, the City hereby files this Notice of Filing this Quarter’s Submission of Search Terms as HSDs. Pursuant to Administrative Order No. 2021-05, the City will deliver two paper copies of the search terms to the Clerk’s Office in sealed envelopes marked “HIGHLY SENSITIVE DOCUMENT.” A copy of the HSD’s caption page will be affixed to the outside of each envelope. Each envelope will contain the following: the certificate of service, a copy of the Court’s Order ECF No. 400, and the search terms. The search terms collected from the majority of MPD officers were compiled as Exhibit A.

Due to the heightened sensitivity of investigations conducted by certain investigative units within MPD, those units’ search terms were collected in a non-electronic manner, and are compiled and submitted as Exhibit B. The officers in those units printed their search terms and hand-delivered them to their supervisors. The City redacted any information on the printouts that could identify the officers, including names and avatars.

The City has consulted with the ACLU-TN and the Monitor, who both agreed to accept service copies of the City’s submission of search terms via encrypted hard drive. Those hard

¹ On February 3, 2021, the Court vacated Administrative Order No. 2021-03 and replaced it with Administrative Order No. 2021-05. Relevant to the City’s search term submissions, Administrative Order No. 2021-05 states that a document may be deemed an HSD if it involves “sensitive on-going law enforcement investigations.”

drives will be sent via overnight delivery service. The password to each hard drive will be sent separately.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.

s/ Bruce McMullen

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CERTIFICATE OF SERVICE

I hereby certify that on April 22, 2021, the foregoing document will be served by the Court's ECF system to:

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Attorneys for Intervening Plaintiff

I hereby certify that on April 22, 2021, the documents referenced as Attachments A and B that were filed under seal as HSDs will be served on encrypted hard drive via overnight delivery service to:

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/s Bruce McMullen
