

LOS ANGELES POLICE DEPARTMENT



MICHEL R. MOORE
Chief of Police

ERIC GARCETTI
Mayor

P. O. Box 30158
Los Angeles, CA 90030
Telephone: (213) 847-3615
TDD: (877) 275-5273
Ref #: 14.4

April 28, 2021

Rachel Levinson-Waldman / Laura Hecht-Felella
Brennan Center for Justice at NYU School of Law
1140 Connecticut Avenue, NW, Suite 1150
Washington, CD 20036
levinsonr@brennan.law.nyu.edu
felellal@brennan.law.nyu.edu

Via NextRequest

Dear Ms. Levinson-Waldman & Ms. Hecht-Felella:

This letter is another supplemental response to the Brennan Center's records request to the Los Angeles Police Department (Department or LAPD), pursuant to the California Public Records Act (CPRA).

The request (#20-719), which was submitted on January 30, 2020 via the NextRequest platform – and to which the Department responded and provided disclosures on February 24, 2020 and March 12, 2020 – sought seventeen (17) categories of records concerning social media monitoring, for the time period January 1, 2011 to January 30, 2020.

Specifically, the request sought the categories of records listed below. The Department now summarizes its previous responses and disclosures to those categories, and further supplements its responses as follows:

Categories 1-3: Policies

Categories one through three of the request sought policies governing (i) the use of social media monitoring, (ii) collection and maintenance of location data from social media platforms, and (iii) retention, analysis, and sharing of data collected via social media. In response to these categories, the Department initially provided one record via NextRequest – Notice 14.5 regarding the Use of Social Media Sites (dated 03/28/2012). The Department also disclosed two additional policies on NextRequest – Notice 2.2.5 regarding Procedures and Guidance relating to Social Media Accounts (dated 10/19/2018), and a Social Media User Guide (dated 03/12/2015).

The Department conducted a supplemental search for policies that relate in any way to social media use, or the handling of information from social media. Specifically, the Department conducted a search for policies, notices, etc. on its LAN Network and Automated Directive Tracking System [ADTS],

containing the terms “social media” or “media monitoring.” Additionally, the Department searched for any policies previously disclosed in response to CPRA requests it previously received, using the search term “social media.”

The Department has identified the following policies, in addition to the ones previously disclosed: Notice 8.6 regarding Procedures for the Preservation of Social Media Accounts for Investigative Purposes (dated 04/27/2018); Notice 1.8 regarding LexisNexis/Accurint for Law Enforcement (dated 04/17/2014); Notice 8.3 regarding Investigative Guidelines for Internet Crimes Against Children Unit (dated 02/27/2009), and; Sections of Chapters 3 and 5 of the Emergency Operations Guide, Volume 4 (dated 2010); Department Manual Volume 3, Sections 788.30 & 788.40; Complaint Investigations: A Guide for Supervisors LAPD Internal Affairs Group 75; LAPD Communications Division Manual – 2015 Edition, Volume 1, Section 216.01; Administrative Order No. 3 regarding Scientific Investigation Division – Deactivated ... (dated 03/18/2016); Administrative Order No. 2 regarding Community Relations Section – Deactivated ... (dated 03/16/2016); Training Order 1.17 regarding Intelligence Preparation of the Operational Environment and Influencing Networks Training (dated 05/03/2016); Intelligence Guidelines for Major Crimes Division, Anti-Terrorism Intelligence Section (dated 09/25/2012); Notice 14.5 regarding Field Interview Report, Form 15.43.00-Revised (dated 05/27/2015); Operations Order No. 2 regarding Cyber Support Unit (dated 02/28/2012); Special Order No. 20 regarding Internet Usage Guidelines (dated 11/27/2012); Special Order No. 2 regarding Training Requirement for Sworn Personnel Assigned to Undercover Operations (dated 01/23/2013). These records were disclosed to you via NextRequest, along with a cover message.

Category 4: Recordkeeping

The fourth category sought records, logs, or digests reflecting the use of social media monitoring or searches of social media, including for purposes of criminal investigations and situational awareness. The Department’s original response to this category stated that the Department Operations Center (DOC) of its Communications Division keeps track on its daily watch commander logs of which of its employees are tasked with monitoring social media, but that the DOC does not maintain logs of what any such social media monitoring would consist of.

The Department conducted a supplemental search for records responsive to this category, and responds as follows: A supplemental inquiry and search was conducted by LAPD’s Department of Communications (DOC), Special Events Unit (SEU), Office of Operations (OO) and Detective Bureau (DB), and no responsive records were located. As previously explained with respect to the DOC, a DOC’s daily watch commander log records what job assignments employees are tasked with for that day – including which employee is tasked with monitoring open-sourced social media. However, the logs do not track what (if anything) such employees monitored or how they accomplished their tasks. The DOC does not create or maintain any separate logs or digests that would reflect the use of social media monitoring or searches conducted by an employee tasked with monitoring open-sourced social media.

To the extent this request seeks copies of all DOC’s daily watch commander logs for a ten-year period going back to January 1, 2011, such a request would be overly burdensome, given that (i) DOC typically generates two daily watch commander logs per day, (ii) the logs do not reflect or detail if and how an employee conducted open-sourced social media monitoring, (iii) copies of such logs are only maintained in-house for a period of approximately two years; and (iv) it would be very time-consuming to collect and make photocopies of or scan all such logs, which do not exist in electronic format. Therefore, the Department asserts the exemption of Government Code section 6255 as to such a search. Nevertheless, in an effort to assist you, the Department would be amenable to working with you to

provide examples of the DOC's daily watch commander logs and/or to narrow the time frame and scope of this request as it pertains to such logs.

Further responding, please note that to the extent this request seeks investigatory or security records, or records maintained in investigatory or security files, such records are exempt from disclosure under Government Code section 6254(f). Similarly, to the extent this request purports to require every employee of the Department to search his or her own investigatory records and files for records that might show any use of social media for investigatory or security purposes, such a request is unduly burdensome, and any such records would therefore be separately exempt under Government Code section 6255. Relatedly, to the extent this request purports to require the Department to search through the emails of each and every employee to determine if they used social media for investigatory, security, intelligence, or situational awareness purposes, such a request is also unduly burdensome, and any such records would also be separately exempt under Government Code section 6255. Accordingly, the Department is not required to, and did not, conduct the types of searches referenced in this paragraph.

Category 5: Third-Party Applications

The fifth category sought records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate social media monitoring or analysis products or services. The Department previously conducted a search, but did not identify any responsive records.

The Department conducted a supplemental search for records responsive to this category, and responds as follows: To the extent this request seeks contracts or agreements relating to social media monitoring/analysis products or services, the Department conducted searches on its LAN Network and the City Clerk's website, using the terms "Geofeedia", "Mediasonar", "Firestorm", "Dunami", "Snaptrends", "Social Sentinel", "Dataminr", "Babel Street", and "Digital Stakeout". In addition, the Department's Information Technology Bureau (ITB) conducted a search and identified records relating to the company Geofeedia. Moreover, the Department's Grants Section conducted a search and identified records relating to Geofeedia and the company Media Sonar. The Department's searches yielded responsive contracts and related documents, which the Department has been disclosing to you via NextRequest on a rolling basis.

Please note that certain pages of these records contain redactions to the extent necessary to preserve privacy rights and the confidentiality of personnel, medical, or similar information, as well as personally identifiable information and private contact information, pursuant to the exemptions of Government Code sections 6254(c), 6254(k), 6254.3, and 6255. In addition, the Department asserts the exemptions of Government Code sections 6254.7(d) and 6255, and Evidence Code section 1060 over trade secret information, and Government Code section 6254(f) over information which reveals security/investigatory information and procedures.

Finally, to the extent this category seeks communications, short of a contract or agreement, regarding the use or testing of social media monitoring/analysis products or services, the Department has identified and has also been providing, on a rolling basis, records responsive to Category No. 16, below, which may also be related to and/or responsive to this category.

Categories 6-7: Interactions with Civilians Relating to Social Media

Categories six and seven seek, respectively, records reflecting: (i) LAPD interactions with civilians' requesting information about their social media account information; and (ii) communications on social

media platforms between LAPD officers (uniformed or undercover) and civilians (excluding communications appearing on pages or accounts operated by LAPD). The Department previously conducted a search, and responded that it did not have a policy or practice of tracking the collection of social media account information or the use of social media to communicate with civilians. The Department also asserted the investigatory exemption of Government Code 6254(f) to the extent this category sought investigatory or security records.

The Department conducted a supplemental inquiry, and confirms that any records responsive to this category would be records of investigation or security, and/or records contained in such files, and therefore exempt from disclosure pursuant to Government Code section 6254(f). Similarly, to the extent this request purports to require every investigative employee of the Department to search his or her own investigatory records and files for records that might reflect interactions between LAPD personnel and civilians on social media or concerning social media account information, such a request is unduly burdensome, and any such records would therefore be separately exempt under Government Code section 6255. Accordingly, the Department is not required to, and did not, conduct the types of searches referenced in this paragraph.

Category 8: Use for Criminal Investigations

Category 8 seeks records reflecting the number of criminal investigations in which social media research has been used, the number of criminal investigations in which undercover online personas have been used, the nature of the offense(s) charged in each investigation, and the number of investigations that resulted in arrests or prosecution. The Department previously conducted a search, and responded that it did not have a policy or practice to track the use of social media platforms for criminal investigations. The Department also asserted the investigatory exemption of Government Code 6254(f) on the ground that this category sought investigatory or security records and files.

The Department conducted a supplemental inquiry, and confirms that LAPD does not track the use of social media platforms in criminal investigations. Moreover, to the extent this request seeks records of investigation or security, and/or records contained in such files, any such records would be exempt from disclosure pursuant to Government Code section 6254(f).

Moreover, to the extent this request purports to require the Department to search all of its investigatory records and files for records that might reflect or provide statistics on the use of social media for criminal investigations, such a request is unduly burdensome, and any such records would therefore be separately exempt under Government Code section 6255. Additionally, to the extent this request purports to require the Department to review its investigation records and files to compile the information requested, such a request is improper under the CPRA, which does not require an agency to create new records, compile information, or conduct statistical analyses. *Sander v. Superior Court*, 26 Cal.App.5th 651, 655, 664-666, 669 (2018) (holding that data requested was beyond the purview of, and not subject to release under, the CPRA because providing it would require the agency to create new records); *Fredericks v. Superior Court*, 233 Cal.App.4th 209, 227 (2015) (stating that a public agency is not required to create a new set of public records to respond to a CPRA request); *Haynie v. Superior Court*, 26 Cal.4th 1061, 1073-1075 (2001) (holding that the CPRA does not require an agency to create a list in response to a request). Accordingly, the Department is not required to, and did not, conduct a search of exempt investigatory and security records and files, or to create new records.

Category 9: Use for Purposes Other Than Criminal Investigations

Category 9 seeks records reflecting the number of matters in which social media research was used to collect information about individuals for purposes other than criminal investigations or background

checks, and information about each such matter. The Department previously conducted a search, and did not find any responsive records.

The Department conducted a supplemental inquiry, and confirms that LAPD does not track or maintain statistics about the use of social media platforms to obtain information about individuals. Moreover, to the extent this request purports to require the Department to search all of its records and files for records that might reflect or provide statistics on the use of social media, such a request is unduly burdensome, and any such records would therefore be separately exempt under Government Code section 6255. Additionally, to the extent this request purports to require the Department to review its records and files to compile the information requested, such a request is improper under the CPRA, which does not require an agency to create new records, compile information, or conduct statistical analyses. *Sander v. Superior Court*, 26 Cal.App.5th 651, 655, 664-666, 669 (2018) (holding that data requested was beyond the purview of, and not subject to release under, the CPRA because providing it would require the agency to create new records); *Fredericks v. Superior Court*, 233 Cal.App.4th 209, 227 (2015) (stating that a public agency is not required to create a new set of public records to respond to a CPRA request); *Haynie v. Superior Court*, 26 Cal.4th 1061, 1073-1075 (2001) (holding that the CPRA does not require an agency to create a list in response to a request). Accordingly, the Department is not required to, and did not, conduct the types of searches referenced in this paragraph, or create new records.

Category 10: Audits

Category 10 seeks records of, or communications regarding, audits or reviews of the Department's use of social media monitoring, including records reflecting any disciplinary actions, warnings, or proceedings in response to an employee's use of social media. The Department previously conducted a search, and did not find any responsive records.

The Department conducted a supplemental inquiry, and confirms that LAPD has not conducted any audits regarding the use of social media, and therefore does not have any responsive records. To the extent this category seeks communications about potential future audits or reviews, any such records would be exempt from disclosure under the deliberative process privilege pursuant to Government Code Section 6255. To the extent this request seeks peace officer personnel records, the Department asserts the exemption of Government Code Section 6254(k) and Penal Code Section 832.7(a), the latter of which makes peace officer personnel records confidential and non-disclosable except pursuant to a successful *Pitchess* motion under the Evidence Code. To the extent this request seeks personnel records of civilian employees, the Department asserts the exemption of Government Code Section 6254(c), which exempts from disclosure personnel, medical, and similar records. Accordingly, the Department is not required to, and did not, conduct a search of exempt personnel records and files.

Category 11: Training Materials

Category 11 seeks training documents discussing social media monitoring. In response to this category, the Department previously disclosed two records via NextRequest – Notice 14.5 regarding the Use of Social Media Sites (dated 03/28/2012), and Notice 2.2.5 regarding Procedures and Guidance relating to Social Media Accounts (dated 10/19/2018). The Department also disclosed a Social Media User Guide (dated 03/12/2015).

The Department conducted a supplemental search for records responsive to this category, and responds as follows: The Department's Police Training and Education (PTE) group conducted a search for training records regarding social media, and identified a record showing Telecourse MM330, which

will be provided to you. The Department's Discovery Section also conducted a search on the LAN using search terms "social media" and "social media training", and reviewed a previous CPRA request seeking training about social media monitoring; it also identified the records provided to you in 2020 and Telecourse MM330. PTE is continuing its search to determine if there exist any additional training materials, including any related to Telecourse MM330, and will provide you with any responsive, non-exempt records.

Finally, please note that records provided in response to Categories 1-3 may also be responsive to this category.

Category 12: Legal Justifications

Category 12 seeks records reflecting legal justification(s) for social media monitoring, including memos, emails, and policies and procedures. In response to this category, the Department previously disclosed two records via NextRequest – Notice 14.5 regarding the Use of Social Media Sites (dated 03/28/2012), and Notice 2.2.5 regarding Procedures and Guidance relating to Social Media Accounts (dated 10/19/2018).

The Department conducted a supplemental inquiry and search, and did not identify any records containing legal justifications regarding social media monitoring, beyond those that were originally provided. Moreover, to the extent this category seeks policies and procedures, please see the responses and disclosures to Categories 1-3, above. Finally, to the extent this category seeks communications between LAPD and legal counsel, any such records (if they exist) would be exempt pursuant to Government Code Section 6254(k) and the attorney-client privilege of Evidence Code 954. Accordingly, the Department is not required to, and did not, conduct a search of communications with legal counsel.

Category 13: Formal Complaints, Public Records Requests, and Legal Challenges

Category 13 seeks records reflecting formal complaints, public records requests, or legal challenges to LAPD regarding social media monitoring. The Department previously conducted a search, and did not find any responsive complaints or legal challenges. The Department further responded that records reflecting public records requests regarding social media monitoring could be located on the NextRequest portal, which is open to the public and searchable.

The Department conducted a further inquiry and search, and confirms that to the extent this category seeks formal complaints or legal challenges, the Department does not have any responsive records. To the extent this category seeks CPRA requests regarding social media monitoring, the Department identifies the following requests which contain the keyword "social media" and, which are available for viewing on NextRequest: NR# 19-6381, NR# 20-3566, NR# 18-2763, NR# 19-456, NR# 20-5947, NR# 20-1864, NR# 19-4995, NR# 19-1140. Additionally, the Department conducted a search for older CPRA requests on its AFDR system and in storage boxes, and identified additional CPRA requests containing the term "social media." Responsive records from those searches will be provided to you via NextRequest.

Category 14: Federal Communications

Category 14 seeks records reflecting communications, contracts, licenses, waivers, grants, or agreements with any federal agencies concerning social media monitoring products or services. The Department previously conducted a search, and did not find any responsive records.

The Department conducted a further inquiry and search, and responds as follows: To the extent this category seeks records reflecting federal grants regarding social media products or services, the Department identified one federal grant that its Robbery and Homicide Division (RHD) applied for in 2020 and will be applying for in 2021. Records relating to that grant have been provided to you via NextRequest. Additionally, information about the grant can be found online at <https://www.homelandsecuritygrants.info/GrantDetails.aspx?gid=17162>. The Department also conducted a search for emails to/from the RHD employees working on the grant and the email domain @dhs.gov, and did not identify any records. To the extent this request seeks records reflecting non-federal grants regarding social media products or services, the Department's Grants Section identified records relating to the companies Geofeedia and Media Sonar, which are also responsive to Category 5, above, and which are being provided to you via NextRequest.

Finally, to the extent this request asks for the Department to conduct an email search to/from all LAPD employees and any employee of a federal agency (of which there are many), such a request would be unduly burdensome pursuant to Government Code Section 6255. Therefore, the Department is not required to, and did not, conduct a global search of emails to/from all LAPD employees and any/all federal agencies.

Category 15: Nondisclosure Agreements

Category 15 seeks records regarding nondisclosure or confidentiality obligations in relation to contracts with third-party vendors of social media monitoring products or services. The Department previously conducted a search, and did not find any responsive records.

The Department conducted a further inquiry and search, and responds as follows: To the extent this request seeks stand-alone nondisclosure or confidentiality agreements, the Department did not identify any responsive records. To the extent this request seeks nondisclosure or confidentiality provisions or statements in vendor agreements, proposals, or communications, the Department has identified responsive contracts and communications, which are also responsive to Categories 5 and 16, and which are being disclosed to you via NextRequest on a rolling basis.

Category 16: Vendor Communications

Category 16 seeks records reflecting interactions with vendors concerning social media monitoring products or services, including sales materials, communications, memoranda, and emails relating to those products. The Department previously conducted a search, and did not find any responsive records.

The Department conducted a further inquiry and search, and responds as follows: The Department's ITB conducted searches of emails to and from the email domains @digitalstakeout.com, @geofeedia.com, @snaprends.com, @firestorm.com, @mediasonar.com, @socialsentinel.com, @dunami.com, @babelstreet.com, @cobwebs, @skopenow, and @dataminr.com. For emails to/from @dataminr.com, ITB refined the search using the keywords "social media" "monitor" and "monitoring." The Department's searches yielded responsive communications and attachments, which the Department has been disclosing to you via NextRequest on a rolling basis. Please note that the Department's servers do not maintain emails prior to January 2016, so search results will only go as far back as that date. Please also note that certain pages of these records contain redactions to the extent necessary to preserve privacy rights and the confidentiality of personnel, medical, or similar information, as well as personally identifiable information and private contact information, pursuant to

the exemptions of Government Code sections 6254(c), 6254(k), 6254.3, and 6255. In addition, the Department asserts the exemptions of Government Code sections 6254.7(d) and 6255, and Evidence Code section 1060 over trade secret information, and Government Code section 6254(f) over information which reveals security/investigatory information and procedures.

Category 17: Metrics Measuring Efficacy of Social Media Monitoring

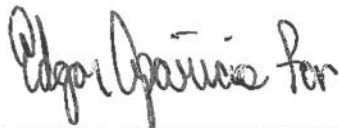
Category 17 seeks reports, metrics, graphics, or communications representing the effectiveness of the Department's use of social media monitoring. The Department previously conducted a search, and did not find any responsive records.

The Department conducted a supplemental inquiry and search, and confirms that LAPD has not conducted an assessment regarding the effectiveness of social media monitoring products or services, and therefore does not have any responsive records. To the extent this request seeks records reflecting communications from vendors touting the effectiveness of their own products and services, please see the Department's response to Category No. 16, above.

If you have any questions about any of the above, please let us know.

Respectfully,

MICHEL R. MOORE
Chief of Police

A handwritten signature in black ink, appearing to read "Marla Ciuffetelli for".

MARLA CIUFFETELLI, Lieutenant
Officer-in-Charge, Discovery Section
Legal Affairs Division