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Court Orders D.C. Police to Produce Thousands of Records About Monitoring Citizens' Social Media Accounts

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After nearly three years of litigation, the [DC FOIA case](#) brought by the [Brennan Center for Justice](#) (“Brennan Center”) and [Data for Black Lives](#) (“D4BL”), has yielded a trove of records about the DC Metropolitan Police Department’s (“MPD”) use of social media monitoring. *Brennan Center for Justice and Data for Black Lives v. District of Columbia*, 2022-CA-00922B (D.C. Super.). Ultimately, the MPD produced more than 160,000 records totaling roughly 700,000 pages, which shed significant light on how MPD keeps tabs on citizens, including those engaged in lawful protest activity, through its monitoring of social media accounts. The District also agreed to pay [\\$400,000 in attorneys' fees](#).

The FOIA Requests

In December of 2020, the Brennan Center and D4BL submitted a DC FOIA Request to MPD seeking 14 categories of information about their use of social media monitoring (“SMM”). The categories included policies governing use, purchase orders and agreements with SMM vendors, training materials, complaints, and communications with federal agencies, among other things. MPD failed to respond for nearly nine months, and when it did, its response included only about a dozen documents.

Those dozen documents, as well as some that were publicly available online, however, expressly referenced numerous other responsive records that MPD neither produced nor even acknowledged. After the Mayor’s Office failed to respond to the Brennan Center’s and D4BL’s administrative appeal asserting that MPD’s search was patently inadequate, the organizations filed suit against the District.

The Road to Full Production

Shortly after filing their Complaint, Plaintiffs filed a short motion for partial summary judgment, seeking to require MPD to conduct adequate searches. The District failed to respond to the motion. At the first status conference on the matter, the Court admonished the District for ignoring the summary judgment motion and ordered it to work with Plaintiffs to promptly develop new search parameters and to produce the withheld records that Plaintiffs had specifically identified. By the time of the next status conference, however, the District had failed to consult Plaintiffs about new search parameters, to produce most of the documents that had specifically been identified in earlier-produced records, or to justify the redactions it had made to the small number of records it did produce. This pattern continued for several months, with the Court repeatedly ordering the District to promptly conduct adequate searches and produce specific records, and the District failing to do so. Eventually, the Court ordered the District to conduct several specific searches that Plaintiffs themselves proposed. After numerous “meet and confer” sessions among the parties, the District finally produced a (mostly) full set of records responsive to Plaintiffs’ requests, obtained through searches that Plaintiffs themselves designed.

Summary Judgment

After document production was complete, only two issues remained, on which the parties cross-moved for summary judgment. The first was whether internal discussions of the relative functionalities of different SMM programs were “deliberative” under DC FOIA Exemption 4. After *in camera* review, the Court determined that

MPD's redactions were appropriate. Internal emails about the value of particular SMM software that the District was considering for purchase and use, the Court held, were both "predecisional" and "deliberative," citing, *inter alia*, *Leopold v. Office of the Dir. of Nat'l Intelligence*, 442 F. Supp. 3d 266, 274 (D.D.C. 2020).

The second issue was whether the District was permitted to impose a search "cutoff" based on the date its first search was conducted in September 2021, or whether (as Plaintiffs contended) only an *adequate* search operates to supply the appropriate "cutoff" date. On that issue, the Court held that the District's position "ignore[d] . . . the spirit of this Court's prior Orders and admonitions," which were based upon the District's obvious failure to conduct adequate searches early in the litigation. Accordingly, the Court ordered the District to produce records up through the date of "the District's first reasonably thorough efforts to respond to" the FOIA requests at issue.

Impact of the Records

By the time litigation concluded, MPD had produced more than 160,000 records which shed meaningful light on MPD's use of SMM. As [the Brennan Center wrote](#) in one of three articles it recently published about the records: The documents "reveal that for years, Washington DC police have used online surveillance tools to monitor people's social media activity, collect data on individual users and their friend networks, and keep tabs on public protests. The documents provide a window into a secret world of social media surveillance that can chill the exercise of First Amendment rights." The Brennan Center has now [published and analyzed](#) all the records on its website, and, based on those records, has written about "[How DC Police Surveil Social Media Profiles and Protest Activity](#)" and how "[DC and Federal Law Enforcement Shar\[e\] Surveillance Info on Racial Justice Protests](#)."

Attorneys' Fees

Finally, following negotiations, the District agreed to pay attorneys' fees and costs, pursuant to D.C. Code § 2-537(c) in the amount of \$400,000. This outcome is reflected in an agreed judgment filed with the Court.

The Brennan Center for Justice and Data for Black Lives were represented by Seth Berlin and Alia Smith of Ballard Spahr LLP, along with their former colleague Margaret Strouse. The District was represented by the District of Columbia Office of the Attorney General.

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