



Sent via e-mail and first class mail.

November 12, 2015

Office of the Attorney General
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096

Re: Public Records Request Regarding Gathering of Information on Oregonians Using
#BlackLivesMatter Through Social Media

Dear Ms. Rosenblum:

This is a request, by the American Civil Liberties Union Foundation (ACLU) of Oregon, made under the Oregon Public Records Act (ORS 192.420 to 192.505), which provides that every person has the right to inspect any nonexempt public record of a public body in Oregon. The ACLU of Oregon defends and promotes civil liberties and the fundamental principles embodied in the Oregon and United States Constitutions.

I. Background of this request.

This request generally concerns the use of data collection and analysis tools by state law enforcement agencies to obtain and aggregate information about the political and social views of Oregonians based on posts on social media and other publicly available websites.

On November 10, 2015, it was publicly revealed that the Criminal Division of the Oregon Department of Justice conducted digital surveillance on Oregonians on social media. It is our understanding that, using the tool DigitalStakeout, the Criminal Division searched the Twitter feeds of Oregonians who used the hashtag Black Lives Matter. While we do not know how many Oregonians were swept into this data collection and analysis program, we do know that Erious Johnson, the Director of the Civil Rights Division, was targeted for a preliminary, and then, a more extensive “threat assessment.”

Earlier this year, documents disclosed in response to Freedom of Information Requests revealed that the Department of Homeland Security was tracking hashtags and other social media associated with Black Lives Matter.¹ The recent revelation about activity by the Criminal Division of the Oregon Department of Justice and the proximity of this event to revelations about the Department of Homeland Security has led the ACLU of Oregon to investigate the connection between various data collection and analysis activities taken by state and federal law enforcement agencies. Not only is this kind of data collection illegal under Oregon law, but it seriously threatens our democracy by chilling First

¹ George Joseph, *Exclusive: Feds Regularly Monitored Black Lives Matter Since Ferguson*, INTERCEPT, July 24, 2015 at <https://theintercept.com/2015/07/24/documents-show-department-homeland-security-monitoring-black-lives-matter-since-ferguson>.

Amendment speech and activities.² Moreover, the Oregon Department of Justice's tracking of those who use the hashtag Black Lives Matter also opens the door to racial profiling because that social movement is Black led.

Accordingly, the ACLU of Oregon seeks records regarding the Oregon Department of Justice's collection and analysis of information on Oregonians using the hashtag Black Lives Matter, or any other hashtag, phrase, word, or search term reflecting a political, religious, or social view, on social media sites.

II. Request for records regarding acquisition of social media data.

We hereby request disclosure of all records in your possession³ relating to your acquisition of social media data of people in Oregon using the hashtag Black Lives Matter, any variation on that hashtag, and any other hashtag, phrase, word, or search term reflecting a political, religious, or social view. For purposes of the below requests, please assume that the phrase "BlackLivesMatter or any variation on the hashtag" includes, but is not limited to, searches for the following terms: Black Lives Matter, BlackLivesMatter, #BlackLivesMatter, #BLM, and BLM. For purposes of the below requests, please assume that the phrase "FuckThePolice or any variation on the hashtag" includes, but is not limited to, searches for the following terms: Fuck The Police, FuckThePolice, #FuckThePolice, #FTP, and FTP. These requests are time-limited to policies current as of November 10, 2015, and all other documents or data created after July 31, 2014.

In order to assist the public in understanding current Oregon Department of Justice ("Department") policies, procedures, and practices, we request that you provide copies of the following records:

1. All documents reflecting or relating to policies, procedures, and practices describing the Department's collection and analysis of social media data.
2. All documents reflecting or relating to policies, procedures, and practices of management, supervision, or oversight of the use of DigitalStakeout, or any other tools, procedures, or services to collect or analyze social media data.
3. All documents reflecting or relating to the description of DigitalStakeout, or any other data collection or analysis tool, procedure, or service used to obtain, collect, aggregate or analyze social media data, including manuals and instructions.
4. All agreements between the Department and any other local, county, state, or federal agency pertaining to the monitoring, collection, or analysis of information or data from social media.

² ORS 181.575, passed in 1981, squarely prohibits this kind of surveillance by state law enforcement agencies. ORS 181.575 ("No law enforcement agency, as defined in ORS 181.010 (Definitions for ORS 181.010 to 181.560 and 181.715 to 181.730), may collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.")

³ For purposes of this request, "your possession" should be read to include add departments of the Oregon Department of Justice including the Oregon TITAN Fusion Center.

5. All documents reflecting or relating to information about the purchase or acquisition of, or subscription to, DigitalStakeout or any other social media data collection or analysis tools, procedures, or services, and related equipment or software, including identification of the equipment, software, or tools acquired, the amount of funds expended, and the nature of the acquisition (whether by expenditure or receipt of operating funds, loans, grants, or gifts).
6. All current policies and procedures describing employees' use of DigitalStakeout or any other social media data collection or analysis tools, procedures, or services and the data collected or analyzed by the use of social media data collection or analysis tools, procedures, or services.
7. All documents that describe the data currently collected by the Department's use of social media data collection or analysis tools, procedures, or services, including descriptions of the information fields maintained, used, or stored by the social media data collection or analysis tools, procedures, or services and related systems.
8. All documents reflecting or relating to the data collected or analyzed regarding Erious Johnson.
9. All documents reflecting or relating to the data collected or analyzed regarding Teresa Raiford.⁴
10. All documents reflecting or relating to the data collected or analyzed on any member of the public using the hashtag BlackLivesMatter or any variation on the hashtag, phrase, word or search term. This includes all documents pertaining to the use of that data, and the sharing or dissemination of that data with any other local, county, state, or federal agency or employee.
11. All documents reflecting or relating to the data collected or analyzed on any member of the public using the hashtag FuckThePolice or any variation on the hashtag, phrase, word or search term. This includes all documents pertaining to the use of that data, and the sharing or dissemination of that data with any other local, county, state, or federal agency or employee.
12. All documents reflecting or relating to the data collected or analyzed on any member of the public using the hashtag DontShootPDX or any variation on the hashtag, phrase, word or search term. This includes all documents pertaining to the use of that data, and the sharing or dissemination of that data with any other local, county, state, or federal agency or employee.
13. All documents reflecting or relating to the data collected or analyzed on any member of the public using any hashtag, phrase, word or search term. This includes all documents

⁴ For purposes of this request, "Teresa Raiford" should be read to include Teresa Mazique or any alternative name used.

pertaining to the use of that data, and the sharing or dissemination of that data with any other local, county, state, or federal agency or employee.

14. All documents reflecting or relating to the Department's decision to use the hashtag BlackLivesMatter, or any variation on the hashtag, phrase, word or search term, and any reason for use of the hashtag, phrase, word or search term, in conducting threat assessments.
15. All documents reflecting or relating to the Department's decision to use the hashtag FuckThePolice, or any variation on the hashtag, phrase, word or search term, and any reason for use of the hashtag, phrase, word or search term, in conducting threat assessments.
16. All documents reflecting or relating to the use of any hashtag or other social media identifier and any reason for the use of the hashtag, phrase, word or search term in conducting threat assessments.
17. All documents reflecting or relating to the description of a threat assessment.
18. All current Department policies and procedures reflecting or relating to the submission or dissemination of the data collected or analyzed on any member of the public using any hashtag or other social media identifier to other state, local, or federal agencies.
19. All current Department policies and procedures reflecting or relating to the storage, retention, and destruction of data used or stored by DigitalStakeout, or any other social media data collection or analysis tools, procedures, or services and related systems.
20. All user level data controls, including activity logs, user analytics, user activity rules, alerts, or any other log reflecting the use of DigitalStakeout by the Department.
21. All documents reflecting or relating to the use of DigitalStakeout's "Intelligent Discovery" mechanisms, any categories used, how those categories are detected by the tools, and how those "detections" are integrated into the workflow of the investigators.

We ask that any of the requested records available in electronic form be provided in that form. Because the ACLU of Oregon is a non-profit public interest organization, we request a fee waiver. ORS 192.440(5) provides that a public body "may furnish copies without charge or at a substantially reduced fee if the custodian determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public."

"A matter or action is commonly understood to be 'in the public interest' when it affects the community or society as a whole, in contrast to a concern or interest of a private individual or entity." *In Defense of Animals v. OHSU*, 199 Or App 160, 188 (2005). There is an important public interest in the observance of the law and the administration of justice, as both the Oregon and United States Supreme Courts have recognized. *See, e.g., State v. Durbin*, 355 Or 183, 190 (2003). The residents of Oregon have the right to be aware of the ways in which the Oregon Department of Justice may be collecting and

using social media data on them and others. The ACLU of Oregon will make our findings on this issue available to the public.

Thank you for your prompt attention to this matter. Please furnish all applicable records electronically to me at mdossantos@aclu-or.org. If a fee is required, please let me know and I will promptly provide it. If you have any questions or believe that a narrower response to what is requested would provide us with the information we are seeking, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mat dos Santos', with a large, stylized flourish at the end.

Mat dos Santos
Legal Director
ACLU of Oregon