IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS,	)	
Plaintiff,	)	**No. 18 CH 07758**
v.	)	**Hon. Anna Demacopoulos**
CHICAGO POLICE DEPARTMENT, THE CITY OF CHICAGO,	)	
Defendant.	)	

NOTICE OF FILING

Please take note that a copy of the attached **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF** was filed with the Clerk of the Circuit Court of Cook County, Illinois on Friday, July 27, 2018.

Dated at Chicago, Illinois, this 27th day of July, 2018.

Respectfully submitted,
Edward N. Siskel, Corporation Counsel of
The City of Chicago

BY: _____
Tia Mathew
Assistant Corporation Counsel

Attorney No. 90909
AMBER ACHILLES RITTER, Chief Assistant Corporation Counsel
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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing certify that I caused a copy of the foregoing Notice and **DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF** to be served upon the party listed above on this 27th day of July 2018, by placing the same in the mail at 30 N. LaSalle St., Chicago, Illinois.

_____
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	)	**No. 18 CH 07758**
Plaintiff,	)	
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	)	
Defendants.	)	

DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

Defendants, City of Chicago Police Department ("CPD") and the City of Chicago ("City"), by and through the Corporation Counsel of the City of Chicago, Edward N. Siskel, hereby state the following as its Answer and Affirmative Defenses to the complaint of the American Civil Liberties Union of Illinois:

INTRODUCTION

1. This is a complaint under the Illinois Freedom of Information Act ("FOIA"), 5 ILCS 140/1 et seq. In violation of FOIA, CPD delayed and ultimately failed to release certain records regarding CPD's acquisition and use of software that enables CPD to monitor citizens' social media accounts. The ACLU seeks an order commanding CPD to release the records and awarding the ACLU other appropriate relief.

ANSWER: Defendants admit that CPD did not provide responsive records prior to the filing of the instant lawsuit.

2. Members of the public including residents of Chicago, rely on social media services such as Facebook and Twitter (among others) to exchange information and ideas. The public uses social media to engage in constitutionally protected speech.

ANSWER: Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 2, and therefore neither admit nor deny the allegations, but demand strict proof thereof.

3. United States law enforcement agencies from the FBI to local police, have a history of spying on American citizens and infiltrating or otherwise obstructing political activist groups. Law enforcement agencies across America have monitored and harassed groups and individuals for doing no more than peacefully exercising their First Amendment rights.

ANSWER: Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 3, and therefore neither admit nor deny the allegations, but demand strict proof thereof.

4. CPD has acquired and used software designed to enable CPD to monitor citizens' social media accounts, and CPD maintains public records related to such acquisition and use.

ANSWER: Defendants admit the allegations in Paragraph 4.

5. CPD monitored citizens' social media accounts for content related to January 2017 protests of Donald Trump's presidential inauguration. Exhibit A contains true and correct copies of CPD First Amendment Worksheets from January 20-21, 2017, which reference such social-media monitoring.

ANSWER: Defendants admit that Exhibit A appears to be a true and correct copy of CPD First Amendment Worksheets from January 20-21, 2017, and respond that Exhibit A speaks for itself.

6. CPD's monitoring of citizens' posts on social media-including any monitoring of citizens who are engaging in nothing more than a peaceful exercise of their First Amendment rights-is an issue of paramount importance in Chicago and elsewhere.

ANSWER: Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 6, and therefore neither admit nor deny the allegations, but demand strict proof thereof.

7. In order to evaluate police conduct and hold police accountable for any unjustified

surveillance, it is critical that the public receive full and complete information about the police's monitoring of social media accounts.

ANSWER: Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 7, and therefore neither admit nor deny the allegations, but demand strict proof thereof.

8. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act. 5 ILCS 140/1.

ANSWER: Paragraph 8 merely recites the law, and therefore no admission or denial is required.

9. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.

ANSWER: Paragraph 9 merely recites the law, and therefore no admission or denial is required.

10. Public bodies must respond to FOIA requests within five business days, or if the criteria for an extension are met, within ten business days. 5 ILCS 140/3(d)-(e).

ANSWER: Paragraph 10 merely recites the law, and therefore no admission or denial is required.

11. If the court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than $2,500 nor more than $5,000 for each occurrence. 5 ILCS 140/11(j).

ANSWER: Paragraph 11 merely recites the law, and therefore no admission or denial is required. To the extent Plaintiff makes allegations against the Defendants in Paragraph 11, Defendants deny those allegations.

12. CPD violated FOIA by refusing to release documents related to its acquisition and

use of social media monitoring software after making repeated bad faith statements that the documents would be released in short order.

ANSWER: Defendants admit that CPD did not provide responsive records related to its acquisition and use of social media monitoring software as of the filing of the instant complaint. Defendants deny that CPD's statements were in bad faith.

PARTIES

13. The ACLU is an Illinois not-for-profit corporation. It is a non-partisan, statewide organization dedicated to protecting and expanding the civil rights and civil liberties enshrined in the U.S. and Illinois Constitutions. It is crucial to the ACLU's mission that it receive timely information to keep its membership and the public apprised of developments an concerns in those areas.

ANSWER: Defendants admit that ACLU is a non-for-profit corporation. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations in Paragraph 13, and therefore neither admit nor deny the allegations, but demand strict proof thereof.

14. CITY OF CHICAGO is a public body located in Cook County, Illinois.

ANSWER: Defendants admit the allegations in Paragraph 14.

15. CPD is a public body located in Cook County, Illinois. CPD is a department of CITY OF CHICAGO.

ANSWER: Defendants admit the allegations in Paragraph 15.

STATEMENT OF THE FACTS

16. On January 2, 2018, the ACLU requested from CPD certain public records ("the ACLU's Request"). CPD received the ACLU's Request on January 2, 2018, and it designated the ACLU's Request with Reference No. P437616. A true and correct copy of the ACLU's Request is attached as Exhibit B.

ANSWER: Defendants admit that Exhibit B appears to be a true and correct copy of ACLU's FOIA request, and respond that Exhibit B speaks for itself.

17. The ACLU's Request sought the following records ("the Requested Records"):

i. All contracts related to the purchase, acquisition, installation, maintenance, or use of social media monitoring software.
ii. All invoices related to social media monitoring software.
iii. All manuals, guides, training materials, or other instructional records related to social media monitoring.
iv. All policies governing access, use, or training related to social media monitoring software.
v. All directives governing access, use, or training related to social media monitoring software.
vi. All Open Source receipts (or other reports of usage) related to the use of social media monitoring software by the CPD Crime Prevention and Information Center since October 2, 2017.

The ACLU's Request defined "social media monitoring software," "social media service" and "records," as shown in Exhibit B. The definition of "social media software" included any "application that enables the monitoring, searching, collection, or analysis of user-generated content located on social media services."

ANSWER: Defendants admit that Exhibit B appears to be a true and correct copy of ACLU's FOIA request, and respond that Exhibit B speaks for itself.

18. On January 3, 2018, CPD sent an email to the ACLU indicating that it would take FOIA's maximum permitted extension of five business days and that the ACLU would receive a reply on or before January 17, 2018. A true and correct copy of the extension letter is attached as Exhibit C.

ANSWER: Defendants admit that Exhibit C appears to be a true and correct copy of CPD's extension letter, and respond that Exhibit C speaks for itself.

19. On January 17, 2018, CPD sent an email to the ACLU indicating that the ACLU's Request was in process and that CPD would provide a response or update on or before January 24, 2018. A true and correct copy of the email is attached as Exhibit D.

ANSWER: Defendants admit that Exhibit D appears to be a true and correct copy of CPD's email to the ACLU, and respond that Exhibit D speaks for itself.

20. On January 24, 2018, CPD sent an email to the ACLU indicating that CPD was awaiting a response from the Office of the First Deputy Superintendent of Police-Crime Prevention & Information Center (CPIC) regarding the ACLU's Request, and that CPD would

provide a response or update on or before January 31, 2018. A true and correct copy of the email is attached as Exhibit E.

ANSWER: Defendants admit that Exhibit E appears to be a true and correct copy of CPD's email to the ACLU, and respond that Exhibit E speaks for itself.

21. On January 31, 2018, CPD sent an email to the ACLU indicating that the ACLU's Request was in process and that CPD would provide a response or update on or before February 7, 2018. A true and correct copy of the email is attached as Exhibit F.

ANSWER: Defendants admit that Exhibit F appears to be a true and correct copy of CPD's email to the ACLU, and respond that Exhibit F speaks for itself.

22. On February 7, 2018, CPD sent an email to the ACLU indicating that the ACLU's Request was in process and that CPD would provide a response or update on or before February 7, 2018. A true and correct copy of the email is attached as Exhibit G.

ANSWER: Defendants admit that Exhibit G appears to be a true and correct copy of CPD's email to the ACLU, and respond that Exhibit G speaks for itself.

23. On February 13, 2018, the ACLU sent an email to CPD reminding CPD that the ACLU's Request had been pending since January 2, 2018. The ACLU indicated that it did not accept the indefinite delay asserted in CPD's weekly emails. The ACLU asked CPD to provide a date certain by which it would release the Requested Records. A true and correct copy of the email is attached as Exhibit H.

ANSWER: Defendants admit that Exhibit H appears to be a true and correct copy of ACLU's email to CPD, and respond that Exhibit H speaks for itself.

24. On February 15, 2018, CPD sent an email to the ACLU indicating that it had identified and been reviewing and processing documents responsive to the ACLU's Request and that CPD "hope[d] to have them for you in the next few business days." A true and correct copy of the email is attached as Exhibit I.

ANSWER: Defendants admit that Exhibit I appears to be a true and correct copy of CPD's email to the ACLU, and respond that Exhibit I speaks for itself.

25. By March 12, 2018, CPD had not released the Requested Records. On March 12, 2018, the ACLU sent an email to CPD requesting a call to discuss the status of the ACLU's Request. A true and correct copy of the email is attached as Exhibit J.

ANSWER: Defendants admit that Exhibit J appears to be a true and correct copy of ACLU's email to CPD, and respond that Exhibit J speaks for itself.

26. On Tuesday, March 13, 2018, CPD sent an email to the ACLU indicating that it was currently reviewing and following up with several units to make sure it was not missing anything. CPD proposed a call at the end of the week if the ACLU had not heard from CPD before then. A true and correct copy of the email is attached as Exhibit K.

ANSWER: Defendants admit that Exhibit K appears to be a true and correct copy of CPD's email to the ACLU, and respond that Exhibit K speaks for itself.

27. By Friday, March 16, 2018, CPD had not released the Requested Records. On the morning of Monday, March 19, 2018, the ACLU sent an email to CPD requesting a call later that day to discuss the status of the ACLU's Request. A true and correct copy of the email is attached as Exhibit L.

ANSWER: Defendants admit that Exhibit L appears to be a true and correct copy of ACLU's email to CPD, and respond that Exhibit L speaks for itself.

28. On March 19, 2018, CPD sent an email to the ACLU indicating that it could not participate in the requested call because its representative was "a bit under the weather and currently [had] no voice." CPD indicated that it was waiting to hear back from one more unit and, as soon as it heard back, the responsive records would be ready to be approved for release. A true and correct copy of the email is attached as Exhibit M.

ANSWER: Defendants admit that Exhibit M appears to be a true and correct copy of CPD's email to the ACLU, and respond that Exhibit M speaks for itself.

29. As of the filing of this Complaint, CPD has not sent any further correspondence regarding the ACLU's Request, and CPD has not released the Requested Records.

ANSWER: Defendants admit that CPD has not sent the Requested Records as of the filing of the instant complaint.

30. Upon information and belief, CPD delayed and ultimately failed to release the Requested Records in an attempt to avoid legitimate public oversight of CPD's use of social media monitoring software, not because additional time has been required to process the ACLU's request.

ANSWER: Defendants deny the allegations in Paragraph 30.

COUNT I
WILLFUL VIOLATION OF THE ACLU'S FOIA REQUEST

31. The above paragraphs are incorporated by reference.

ANSWER: Defendants reassert its response to Paragraphs 1-30 as though fully set forth herein.

32. Defendants are public bodies under FOIA.

ANSWER: Defendants admit the allegation is Paragraph 32.

33. The Requested Records are public records of Defendants.

ANSWER: Defendants admits that CPD has responsive records in its possession, however all the records requested may not be possessed by CPD.

34. Defendants violated FOIA by failing to release the Requested Records.

ANSWER: Defendants admit that CPD has not released the Requested Records as of the filing of the instant complaint.

35. Defendants have willfully and intentionally violated FOIA by refusing to release the Requested Records.

ANSWER: Defendants deny the allegation in Paragraph 35.

AFFIRMATIVE DEFENSES

The following information contained within these records is exempt from production under FOIA:

- Home addresses, instagram addresses, and internal record ("IR") numbers were redacted pursuant to Section 7(1)(b), which exempts "private information," which is defined in Section 2(c-5) to specifically include the types of information listed.

- Victim's name, Instagram addresses, icons on facebook, screennames, phots, names, twitter name and account, snapchat information, and school and employment information were redacted pursuant to Section 7(1)(c), which exempts "personal information contained within public records, the disclosure of which would constitute a clearly

unwarranted invasion of personal privacy." Graphic detail of an unrelated attempted sexual assault were also redacted pursuant to Section 7(1)(c).

- A unique and specialized investigative technique is exempt and was properly withheld pursuant to Section 7(1)(d)(v), which exempts records that would, "[d]isclose unique or specialized investigative techniques other than those generally used and known or disclose internal documents of correctional agencies related to detection, observation or investigation of incidents of crime or misconduct, and disclosure would result in demonstrable harm to the agency or public body that is the recipient of the request."

WHEREFORE, Defendants request this Honorable Court dismiss portions of Plaintiff's complaint seeking exempt information with prejudice and enter judgment in favor of Defendants, or for such other relief as this Court deems just and appropriate.

Dated: July 26, 2018

Respectfully submitted,

Edward N. Siskel
Corporation Counsel of the City of Chicago
By: Tia Mathew
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AFFIDAVIT OF INSUFFICIENT KNOWLEDGE

I, Tia Mathew, on oath deposes and says:

I am the attorney representing the party on whose behalf this answer was prepared. This answer contains certain statements of insufficient knowledge on which to base a belief as to the truth or falsity of the allegations contained in the complaint. These allegations of insufficient knowledge are true and correct.

FURTHER AFFIANT SAYETH NOT.

BY: Tia Mathew
Tia Mathew

Subscribed and sworn to me
This 26 day of July, 2018.

LaDetrica L. Wells

OFFICIAL SEAL
LADETRICA L WELLS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:07/11/21