

EXHIBIT D



August 29, 2019

VIA ELECTRONIC MAIL

R. Mark Glover, Esq.
Baker Donelson
Bearman, Caldwell & Berkowitz, PC
2000 First Tennessee Building
165 Madison Ave.
Memphis, TN 38103

Re: *ACLU-TN v. City of Memphis*, Case No. 2:17-cv-02120-JPM-jay:
August 28, 2019, Response to Court Direction re: Coordination Opinion

Dear Mark:

This letter responds to your email of Wednesday, August 28, 2019, a copy of which is enclosed. Both documents will be treated as sensitive and, as with earlier and similar correspondence of this kind, submitted directly to Judge McCalla to decide whether, and, if so, to what extent, they should be made public.

Your request to keep the Crime Stoppers program and the Multi-Agency Gang Unit in operation pending Judge McCalla's consideration of the City's soon-to-be-filed motion on their continuing viability under the *Kendrick* Consent Decree is granted.

With respect to the admissions process at City Hall, the interim process proposed by Mr. McMullen on August 22, 2019, may remain in place until the City obtains further guidance from the court. Will your soon-to-be-filed motion address this process?

With respect to your question about the PSP Symposium to be hosted by the City from September 9-11, 2019, I, like you, would like an opportunity to review the transcript from our *in camera* conference with the court at Tuesday's hearing. I continue to believe that § H of the consent decree prohibits the City from doing the following:

- sharing personal information collected in any way other than via lawful criminal investigation (as such information may not be maintained in the first instance); and

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- sharing personal information collected via lawful criminal investigation unless such sharing is with another governmental law enforcement agency and that agency already is engaged in a lawful criminal investigation.

(Coordination Opinion, August 21, 2019, at 1.)

Likewise, in my view, § I of the consent decree prohibits the City from receiving any information from the FBI, the Secret Service, or any other law enforcement agencies unless the City first verifies that the information was not acquired in any way that the consent decree prohibits. (*See id.* at 2-3.)

My understanding from Tuesday's *in camera* conference on this subject is two-fold: First, I understand Judge McCalla to read §§ H and I the same way that I do. Second, I understand Judge McCalla to have authorized a limited, non-precedential departure from § I for purposes of providing security and public safety for the symposium. That departure allows the City to receive intelligence from the FBI, the Secret Service, and other law enforcement agencies without first verifying that such intelligence was acquired consistently with the consent decree's requirements. As your email correctly recites, this departure does not allow the City or the MPD to (1) request that other law enforcement agencies "plan or conduct any investigation, activity or conduct prohibited by th[e] [d]ecree," § I; or (2) act on any information the City receives that, on its face, reflects that it was acquired in some way that the consent decree prohibits.

I do not understand Judge McCalla to have authorized a departure from § H. In other words, in my view, the City and the MPD remain fully bound by § H as they prepare for and work with other law enforcement agencies before and during the symposium. They thus may share personal information with other law enforcement agencies, as opposed to receiving it from them, only as prescribed by § H.

I also should note that the example on which I understand Judge McCalla to have premised the City's limited, non-precedential departure from § I was an "active shooter" hypothetical scenario that you put forward. In my view, the City's ability to act in such a scenario is governed by § G of the Consent Decree rather than § I, because § G specifically concerns criminal investigations that "may result in the collection of information about the exercise of First Amendment rights, or interfere in any way with the exercise of such First Amendment rights." § G(1). I read § G to enable the City to conduct such investigations as it otherwise would as long as the investigations are approved and documented as § G requires. As a result, the MPD would not need a departure from § I to coordinate with other law enforcement agencies or otherwise act on an "active shooter" scenario because such action separately is authorized by § G—again, as long as the action is approved and documented as § G requires.

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For this reason, please note that if, as a result of the limited, non-precedential departure from § I that Judge McCalla has authorized, the City receives information that it uses to begin or further a criminal investigation that may result in the collection of information about, or interfere with, the exercise of First Amendment rights, then that investigation will be subject to § G.

Finally, for purposes of establishing an open line of communication when the City anticipates receiving the information that has been authorized by Judge McCalla, please continue using the contact information that we provided via email on June 14, 2019, reproduced here for easy reference:

Name	Office Telephone	Email	Cellular Phone
Edward L. Stanton III	(901) 680-7369	edward.stanton@butlersnow.com	(901) 302-7085
Jim Letten	(504) 299-7777	jim.letten@butlersnow.com	(504) 421-0020
Gadson W. Perry	(901) 680-7341	will.perry@butlersnow.com	(901) 494-6772

Thank you for your time and attention to this matter.

Sincerely,

BUTLER SNOW LLP



Edward L. Stanton III

ES:tw

cc: Bruce A. McMullen, Esq. (via email only)

Jim Letten, Esq. (via email only)

Gadson W. Perry, Esq. (via email only)

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From: Glover, R. Mark [<mailto:mglover@bakerdonelson.com>]
Sent: Wednesday, August 28, 2019 9:48 AM
To: Edward L. Stanton III; Will Perry
Cc: McMullen, Bruce; Tullis, Mary Wu; Jill Silk; Saleem, Zayid-mem
Subject: Request For Monitor Approval or Advice

Ed,

Please treat this request as containing sensitive security information so that if it is to be submitted to the Court it will be done under circumstances which will allow the Court to determine whether to file it under seal as has been done with earlier and similar requests of this type.

While I have not yet obtained and reviewed the Court transcript from our in-chambers conference with His Honor, it is my understanding that for the purpose of the September 9-11 event, involving the convergence in Memphis of high level law enforcement officials from throughout the United States for a symposium, MPD is not prohibited from receiving intelligence from U. S. Secret Service, FBI or other federal law enforcement agencies which those agencies may gather (or may have already gathered) in order to provide security and protection for the attendees at this event, even though we will not be able to independently verify that such intelligence was gathered by those agencies in strict compliance with the guidelines that would govern MPD's own intelligence gathering as restricted and governed by the Kendrick Consent Decree. At the same time, we are also mindful that MPD may not make requests that those agencies conduct investigations as a surrogate for MPD or as a way to circumvent the Consent Decree's restrictions. We further understand that, even if gathered by federal governmental agencies, we would not be able to act on information which, on its face, demonstrates that it was collected for an inappropriate purpose. (We have no reason to expect that such would be the case.) Under those circumstances, we understand that MPD would be permitted to cooperate with those federal law enforcement agencies in providing security for the event and its attendees. We understand that this is a determination of the Court based upon the matter before it and does carry precedential value for other circumstances which have not yet been studied and passed upon by the Court. Please let us know if your understanding differs from ours so I can be sure I accurately advise my client.

We would be happy for the Monitor to have one of its law enforcement experts present 24 hours/day during the days when we anticipate receiving the type of information anticipated above, to be on site for discussions as issues arise or information is received; or to establish an open line of ongoing communication of some other kind to keep you fully apprised of the events as they unfold. Alternatively, we could provide appropriate MPD personnel for a debriefing by the Monitor at the conclusion of the event. Obviously we are open to suggestions of any other ways in which you would like to be kept fully informed as these activities occur.

We further understand that while the "Lobbyguard" photo system at City Hall is to remain unused

going forward, it was considered permissible to ask for identification for persons entering City Hall and to continue the use of the metal detector. Again, if I am mistaken on this point, please kindly correct me.

Our time before His Honor in chambers was limited, and although he did not give full consideration to issues which were raised concerning either the Multi-Agency Gang Unit or Crime Stoppers, we intend to file a motion under seal dealing with those, and perhaps other, discreet issues within the next few business days. It seems to me that considerations involving multi-law enforcement agency cooperation surrounding the Multi-Agency Gang Unit raise several issues similar to those involved in the Court's analysis of MPD receipt of information from other law enforcement agencies in connection with the September 9-11 event. Moreover, I believe there is recognition by everyone before the Bar in this case that we are in an interim or transition period pending final implementation of the policy and procedure revisions ordered by the Court and are feeling our way along in attempting to strike a balance to allow continuity of public safety while coming into compliance with the Consent Decree. For these reasons, we would respectfully request that we not be required to shut down these two programs pending Court consideration of our soon-to-be-filed motion on those subjects. Thank you for your time and consideration.

Mark Glover

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