

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE

18 Low Ave. # 12
Concord, NH 03301

THE *CONCORD MONITOR*

1 Monitor Drive
Concord, NH 03301

v.

CITY OF CONCORD

41 Green Street
Concord, NH 03301

217-2019-CV-00462
No. _____

PETITION FOR ACCESS TO PUBLIC RECORDS

(PRIORITY HEARING REQUESTED PURSUANT RSA 91-A:7)

NOW COME Petitioners American Civil Liberties Union of New Hampshire and The *Concord Monitor*, and respectfully petition this Honorable Court for relief pursuant to RSA ch. 91-A and Part I, Article 8 of the New Hampshire Constitution.

INTRODUCTION

This is a Right-to-Know action under RSA ch. 91-A and Part I, Article 8 of the New Hampshire Constitution. On May 24, 2019, the *Concord Monitor* reported that the City of Concord had requested \$5,100 for secret communications equipment. The Town Manager and the Chief of Police were tight-lipped when asked about the nature of the secret equipment by members of the City Council. ACLU-NH and the *Concord Monitor* filed Right-to-Know requests with the City, and received 29 pages of heavily redacted documents in response.

The City redacted the name of the vendor, the signature block of the person signing the contract for the vendor, the choice of law provision in the contract, the nature of the services, the types of information the vendor gathers, and what the vendor does with the wide variety of information it does gather. Troublingly, the contract the City produced includes a broad nondisclosure agreement that prohibits the City from sharing the existence or nature of the secret equipment from courts, grand juries, and defense counsel. It states: “. . . Licensee shall not (and shall ensure that Licensee Users shall not) disclose Confidential Information to any third party, or allow Confidential Information to be disclosed to any third party without a court order. Without limitation, the foregoing does not allow Confidential Information to be disclosed in . . . *court documents or legal filings*, judicial or administrative proceedings (including, without limitation, in pre-trial matters, in search warrants or related affidavits, in grand jury proceedings, or in any phase of a criminal or civil trial or appeal), or during public forums or other proceedings without a court order . . . In no event unless compelled by a court, shall Licensee allow the defense in a criminal proceeding to see the [redacted] name or mark.” (emphasis added).

ACLU-NH and the *Concord Monitor* filed this lawsuit seeking access to unredacted copies of the documents. The Petitioners do not know the nature of the secret equipment or what it does. But they do know that the City and the vendor have agreed to keep everything as secret as possible, thereby leaving Concord taxpayers in the dark. The public has a compelling interest in knowing what the City and its police department spend its money on, and the public has an interest in knowing why the City wants to keep secret communications equipment hidden from public (and judicial) view. Because there are no legal exemptions to the Right-to-Know law that justify the City’s redactions, the City should be required to produce the unredacted documents in full.

In support of this petition, Petitioners further state as follows:

FACTS

Parties

1. Petitioner American Civil Liberties Union of New Hampshire (“ACLU-NH”) is a non-profit organization with an address of 18 Low Ave # 12, Concord, NH 03301. The ACLU-NH is the New Hampshire affiliate of the American Civil Liberties Union—a nationwide, nonpartisan, public-interest organization with approximately 1.75 million members (including over 9,000 New Hampshire members and supporters). The ACLU-NH engages in litigation, by direct representation and as amicus curiae, to encourage the protection of individual rights guaranteed under federal and state law, including the right to freedom of information pursuant to Part 1, Article 8 of the New Hampshire Constitution and New Hampshire’s open records law (Chapter 91-A). The ACLU-NH has a long track record of working on open records issues both in and out of the courts.

2. Petitioner the *Concord Monitor* is the largest daily newspaper that serves the greater Concord area. It is owned by Newspapers of New England, Inc., a media corporation organized under the laws of Delaware that publishes nine daily and weekly newspapers in New Hampshire and Massachusetts. Sixty-five percent of adults in the greater Capital Region market area have read the *Concord Monitor* in the past week. In addition, the *Concord Monitor*’s primary website, www.concordmonitor.com, is the Capital Region’s top local online news destination, with more than 2 million page views in a typical month. Its address is 1 Monitor Drive, Concord, NH 03301.

3. Respondent City of Concord (“Concord” or “the City”) is a municipality and “public body” in the State of New Hampshire and, as such, is subject to the Right-to-Know law under RSA 91-A:1-a, VI and N.H. Const. Part I, Art. 8.

Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to RSA 91-A:7. “Any person aggrieved by a violation of [RSA 91-A] may petition the superior court for injunctive relief. In order to satisfy the purposes of [RSA 91-A], the courts shall give proceedings under [RSA 91-A] high priority on the court calendar. The petition shall be deemed sufficient if it states facts constituting a violation of this chapter” RSA 91-A:7.¹

5. Venue is proper in this Court pursuant to RSA 507:9 because Petitioners ACLU-NH and the *Concord Monitor* and Respondent City of Concord are located in Merrimack County.

The Petitioners’ Chapter 91-A Requests and the Department’s Response

6. On May 10, 2019, Concord’s City Manager sent a budget proposal to the Mayor and City Counsel for Fiscal Year 2020. Included in Appendix B to the proposed budget was a line item for the Police Department’s budget: a proposed expenditure of \$5,100 for “Covert Communications Equipment.” *See* Exhibit A.

7. At a May 23, 2019 Finance Committee hearing, At-Large City Councilor Fred Keach asked “Can we get a little hint what that means?” *See* “Concord’s \$66.5M Budget Proposal Has Its Secrets,” *Concord Monitor* (May 24, 2019) attached as Exhibit B. City Manager Thomas Aspell responded “I don’t know how to answer that question without ‘answering it.’” *Id.* City Manager Aspell said that the secret equipment was not a camera or a drone. He did not describe the item further except to say he had seen the item and the City “need[s] it.” *Id.*

¹ Furthermore, “[i]f any public body or public agency or officer, employee, or other official thereof, violates any provisions of [RSA 91-A], such public body or public agency shall be liable for reasonable attorney’s fees and costs incurred in a lawsuit under [RSA 91-A], provided that the court finds that such lawsuit was necessary in order to enforce compliance with the provisions of [RSA 91-A] or to address a purposeful violation of [RSA 91-A].” RSA 91-A:8. However, “[f]ees shall not be awarded unless the court finds that the public body, public agency, or person knew or should have known that the conduct engaged in was in violation of this [RSA 91-A]” *Id.*

8. The Concord Police Chief said that the City has a nondisclosure agreement with the equipment's vendor that prevents the city from publicizing what the equipment is. *Id.*

9. While this "equipment" was only publically reported recently, Concord has been using this equipment since at least 2017.

10. On May 28, 2019, the ACLU-NH sent a Right-to-Know request pursuant to RSA ch. 91-A and Part I, Article 8 of the New Hampshire Constitution. *See* Exhibit C. The request sought "1. Documents sufficient to identify the specific nature of the 'covert communications equipment' sought by the Concord Police Department at a cost of \$5,100 in the City's budget" and "2. Any contracts or agreement between the Concord Police Department or the City of Concord and the vendor providing the 'covert communications equipment' referenced above in Request No. 1. *See* attached Concord Monitor article." *Id.*

11. On May 29, 2019, Caitlin Andrews, a reporter for the *Concord Monitor*, sent a Right-to-Know request seeking "documents related to the \$5,100 'covert communications equipment' sought by the Concord Police Department in the fiscal year 2020 proposed budget." *See* Exhibit D. The request specified that it "includes any contracts or agreements between the Concord Police Department or the City of Concord and the vendor providing the equipment, documents that detail the nature of the equipment and the line items associated with the equipment in the department's budget." *Id.*

12. On June 10, 2019, the Concord Police Department responded to ACLU-NH's Right to Know request. *See* Exhibit E. The Police Department wrote that it was withholding "confidential information relative to surveillance technology that is exempt from disclosure under the law enforcement techniques and procedures for law enforcement investigations." *Id.* The Police Department sent an identical response to the *Concord Monitor*. *See* Exhibit F.

13. The Concord Police Department produced to ACLU-NH and the *Concord Monitor* 29 pages of redacted documents, including 1) License & Services Agreement, 2) Privacy Policy, 3) Refund Policy, and 4) Amendment to License and Services Agreement. *See* Exhibit G (redacted documents produced by the City).

14. The production contains heavy and unsupportable redactions. Throughout the production, the *name* of the vendor is redacted, as is the vendor's entire signature block on the Amendment to License and Services Agreement.² The *governing law* provision in the License and Services Agreement is also redacted.³ Other redactions appear throughout the documents concerning the nature of the equipment under contract, what type of information the vendor gathers, and how the vendor uses that information.

15. On June 17, 2019, counsel for the ACLU-NH sent an email to the Chief of Police in Concord, proposing to narrow the scope of ACLU-NH's Right-to-Know request. ACLU-NH's counsel wrote "In an effort to narrow the scope of our Chapter 91-A dispute, we are willing to narrow request No. 1 – while reserving our rights – to documents sufficient to generally describe the communications equipment purchased. To be clear, we are not seeking the item's specifications/capabilities and how the item will be used." *See* Exhibit I. Counsel's email was not able to resolve the present dispute.

16. The License & Services Agreement shows that the vendor is offering "Website, Applications, or Services" to the City, as well as technical support and maintenance and "optional hardware." Exhibit G, pp. 1-4. However, the name and nature of the surveillance equipment seem to be redacted. *Id.* As the *Concord Monitor* reported, "There isn't much description of what the

² There was not signature page produced for the License and License & Services Agreement.

³ *See* Exhibit G, p. 15: "This Agreement shall be construed in accordance with, and governed by, the laws of the [REDACTED] without regard to the application of conflicts of law principles."

company does aside from it offering ‘technical products and services to law enforcement agencies.’” See “Concord’s ‘Covert’ Budget Item Website-Based,” *Concord Monitor* (June 20, 2019) attached as Exhibit H.

17. The Privacy Policy is heavily redacted as well. The entirety of the section on the types of information the vendor gathers through its [redacted] service is hidden:

(B) Information We Collect Through the [redacted] Services

In addition, we may collect the following types of personal information through the [redacted] Services:

[redacted]

Exhibit G, p. 20.

18. Ominously, the Privacy Policy has a section regarding the “wide variety of” information the vendor collects at the police’s discretion which is almost entirely redacted:

(C) Information Law Enforcement Agencies Direct Us to Collect from Individuals they Authorize to Use the [redacted] Services

Law enforcement agencies may direct us to collect a wide variety of information from your [redacted] [redacted] when you use the [redacted] Services. The information may include:

[redacted]

Id.

19. The redacted documents also include a broad non-disclosure provision which prevents Concord from disclosing information gathered from the equipment to, among others,

grand juries, judges, and criminal defendants. The Amendment to License and Services Agreement reads: “. . . Licensee shall not (and shall ensure that Licensee Users shall not) disclose Confidential Information to any third party, or allow Confidential Information to be disclosed to any third party without a court order. Without limitation, the foregoing does not allow Confidential Information⁴ to be disclosed in . . . *court documents or legal filings*, judicial or administrative proceedings (including, without limitation, in pre-trial matters, in search warrants or related affidavits, in grand jury proceedings, or in any phase of a criminal or civil trial or appeal), or during public forums or other proceedings without a court order.” *See* Exhibit G, pp. 10-11. (emphasis added). It continues: “In no event unless compelled by a court, shall Licensee allow the defense in a criminal proceeding to see the [redacted] name or mark.” *Id.*

20. These non-disclosure provisions are very concerning and highlight the need for these documents to be produced in their entirety. The State, in all criminal cases, has broad discovery obligations. For example, court rules require the state produce police reports, statements of witnesses, and scientific experiments to the defendant. *See N.H. R. Crim. Pro.* 12. The State also has constitutional obligations to produce exculpatory evidence to a criminal defendant. *See Brady v. Maryland*, 373 U.S. 83 (1963); *State v. Laurie*, 139 N.H. 325 (1995).

21. The documents Concord has produced raise the troubling questions of whether the City has been using secret, unidentified technology to gather wide varieties of unknown information which it has been hiding from the courts and defendants.

ARGUMENT

22. New Hampshire’s Right-to-Know law under Chapter 91-A is designed to create transparency with respect to how the government interacts with its citizens. The preamble to the

⁴ Defined in the document as “Publically disclosing the existence, description, functions, operations, capabilities, or use of the website applications, or services.”

law states: “Openness in the conduct of public business is essential to a democratic society. The purpose of this chapter is to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.” RSA 91-A:1. The Right-to-Know Law “helps further our State Constitutional requirement that the public’s right of access to governmental proceedings and records shall not be unreasonably restricted.” *Goode v. N.H. Legis., Budget Assistant*, 148 N.H. 551, 553 (2002).

23. Chapter 91-A has a firm basis in the New Hampshire Constitution. In 1976, Part 1, Article 8 of the New Hampshire Constitution was amended to provide as follows: “Government ... should be open, accessible, accountable and responsive. To that end, the public’s right of access to governmental proceedings and records shall not be unreasonably restricted.” *Id.* New Hampshire is one of the few states that explicitly enshrines the right of public access in its Constitution. *Associated Press v. State*, 153 N.H. 120, 128 (2005). Article 8’s language was included upon the recommendation of the bill of rights committee to the 1974 constitutional convention and adopted in 1976. While New Hampshire already had RSA 91-A to address the public and the press’s right to access information, the committee argued that the right was “extremely important and ought to be guaranteed by a constitutional provision.” LAWRENCE FRIEDMAN, *THE NEW HAMPSHIRE STATE CONSTITUTION* 53 (2d ed. 2015).

24. Consistent with these principles, courts resolve questions under Chapter 91-A “with a view to providing the utmost information in order to best effectuate the statutory and constitutional objective of facilitating access to all public documents.” *Union Leader Corp. v. N.H. Housing Fin. Auth.*, 142 N.H. 540, 546 (1997) (citation omitted). Courts therefore construe “provisions favoring disclosure broadly, while construing exemptions narrowly.” *Goode*, 148 N.H. at 554 (citation omitted); *see also Lambert v. Belknap County Convention*, 157 N.H. 375, 379

(2008). “[W]hen a public entity seeks to avoid disclosure of material under the Right-to-Know Law, that entity bears a heavy burden to shift the balance toward nondisclosure.” *Murray v. N.H. Div. of State Police*, 154 N.H. 579, 581 (2006).

25. Upon a request for governmental records, an agency shall make available for filing and inspection such files when those files are immediately available for release. RSA 91-A:4, IV. If the agency is not able to make the records immediately available for inspection, “it shall, within 5 business days of request, make such record available, deny the request in writing with reasons, or furnish written acknowledgment of the receipt of the request and a statement of the time reasonable necessary to determine whether the request shall be granted or denied.” *Id.*

26. As explained below, documents related to this “covert communications equipment” must be produced because there are no exceptions to the Right-to-Know law justifying Concord’s redactions.

I. The *Murray* Exemption’s Two-Part Inquiry for Documents Compiled for Law Enforcement Purposes

27. “Every citizen during the regular or business hours of all public bodies or agencies, and on the regular business premises of such public bodies or agencies, has the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies, including minutes of meetings of the public bodies, and to copy and make memoranda or abstracts of the records or minutes so inspected, except as otherwise prohibited by statute or RSA 91-A:5.” RSA 91-A:4. RSA 91-A:5 lists ten categories of governmental records exempt from disclosure. These categories range from records of juries, RSA 91-A:5, I, to video and audio recordings made by a law enforcement officer wearing body cameras, RSA 91-A:5, X. It is important to note that none of the exemptions in RSA 91-A:5 refer to nondisclosure agreements; in other words, a governmental agency may not refuse to produce public records on the grounds that such records

are contractually required to be kept secret. The Concord Police Department, in its response to the Right-to-Know request, does not cite any of the ten exemptions in RSA 91-A:5 as justifications for the redactions. Instead, Concord relies on the so-called “*Murray* exemption” for documents compiled for law enforcement purposes.

28. The “Right-to-Know Law does not explicitly address requests for police investigative files.” *Murray*, 154 N.H. at 582. As a result, the New Hampshire Supreme Court adopted the law enforcement exemption from the federal Freedom of Information Act. *Id.*, see also 5 U.S.C. § 552(b)(7). Under the “*Murray* exemption, ‘records or information compiled for law enforcement purposes, are exempt from disclosure’ but only to the extent that” the records falls within one of six categories taken from FOIA. *38 Endicott St. N. v. State Fire Marshall*, 163 N.H. 656, 661 (2012). “Thus, the *Murray* exemption requires a two-part inquiry. First, the entity seeking to avoid disclosure must establish that the requested materials were compiled for law enforcement purposes. Second, if the entity meets this threshold requirement, it must then show that releasing the material would have one of the six enumerated adverse consequences.” *Id.* (citations and quotations omitted).

29. The FOIA and *Murray* exemption categories are records or information compiled for law enforcement purposes whose production:

- (A) Could reasonably be expected to interfere with enforcement proceedings;
- (B) Would deprive a person of a right to a fair trial or an impartial adjudication;
- (C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- (D) Could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
- (E) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or

- prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or
- (F) Could reasonably be expected to endanger the life or physical safety of an individual.

II. Concord Cannot Satisfy Part One of the *Murray* Exemption Inquiry, as the Records Were Not Compiled for Law Enforcement Purposes

30. As a threshold matter, the City will not be able to show, as it must to support these redactions, that the records were “compiled for law enforcement purposes.”

31. When the agency claiming the exemption is a “law enforcement agency,” several courts use the “rational nexus test” which “requires law enforcement agencies to establish a rational nexus between the records they seek to withhold and their authority to enforce a statute or regulation.” *38 Endicott St. N., LLC v. State Fire Marshall*, 163 N.H. 656, 662 (2012); *see also Pratt v. Bester*, 673 F.3d 408, 413-21 (D.C. Cir. 1982); *Abdelfattah v. U.S. Dep.t Homeland Sec.*, 488 F.3d 178, 184-86 (3rd. Cir. 2007) (“We emphasize, however, that Exemption 7 still requires an agency to demonstrate that the relationship to enforce a statute or regulation and the activity giving rise to the requested documents is based upon information sufficient to support at least a colorable claim of the relationship’s rationality”); *Church of Scientology of California, Etc. v. U.S. Dept. Army*, 611 F.2d 738, 748 (9th Cir. 1979).⁵

32. The records appear to be a draft contract between the City of Concord and the vendor, an addendum to that contract, a refund policy, and a privacy policy. These legal documents all appear to have been drafted by the vendor (the License & Services Agreement between the “Licensee,” referred to in the agreement as “you,” and the redacted vendor, “referred to in the agreement as “we” or “us”). The records Concord has redacted are *not* police reports, gang intelligence, criminal record histories, or internal memoranda between administrators, which likely

⁵ Other circuits have used a *per se* rule where all records from a law enforcement agency are deemed to be compiled for law enforcement purposes. *38 Endicott St*, 163 N.H. at 662. The New Hampshire Supreme Court has not decided whether to use the *per se* rule instead of the rational nexus test.

all would be compiled and used for law enforcement purposes. Instead, the documents Concord has redacted appear to be a contract for services (with addendum) and the privacy and refund policies of a private company. As a result, Concord cannot carry its burden of proving these documents were assembled for law enforcement purposes.

III. Concord Cannot Satisfy Part Two of the *Murray* Exemption Inquiry, As It Cannot Show That Disclosure Would Cause Any of the Six Enumerated Adverse Consequences

A. Production of the Records Would Not Interfere With Enforcement under Exemption A

33. The City appears to be relying on Exemption A, which permits nondisclosure when production of the records in question “Could reasonably be expected to interfere with enforcement proceedings.” *See* Exhibit E (“such disclosure could also compromise criminal investigations. . .”). The key question in this inquiry is “whether revelation of the data will tend to obstruct, impede, or hinder enforcement proceedings.” *Curran v. Dept. of Justice*, 813 F.2d 473, 474 (1st. Cir. 1987). To show that these adverse consequences would result from disclosure, the party resisting disclosure must show (1) that “enforcement proceedings are pending or reasonably anticipated” and (2) that “disclosure of the requested documents could reasonably be expected to interfere with those proceedings.” *38 Endicott St. N., LLC*, 163 N.H. at 665 (quoting *Murray*, 154 N.H. at 582–83). This burden falls squarely on the government entity resisting disclosure. *See Murray*, 154 N.H. 579 (“[i]t is not the petitioner’s responsibility to clarify the respondents’ vague categorizations.”). Put another way, in order to rely on this exception, an agency must be able to point to a *specific* pending or contemplated proceeding. *See Badran v. U.S. Dep’t. of Justice*, 652 F. Supp. 1437, 1440 (N.D. Ill. 1987) (“[i]f an agency could withhold information whenever it could imagine circumstances where the information might have some bearing on some hypothetical enforcement proceeding, the FOIA would be meaningless.”). And the agency must be able to

demonstrate that harm will come to the investigation or enforcement of that specific proceeding to justify non-disclosure under this exception.

34. The City points to no specific enforcement proceedings, nor does it explain how producing any of the redacted information will place those enforcement proceedings at risk. The City has produced no evidence in support of its position other than conclusory assertions. Such conclusory assertions are clearly insufficient. To successfully invoke Exemption A, “the government must show, by more than conclusory statement, how the particular kinds of investigatory records requested would interfere with a pending enforcement proceeding.” *Campbell v. Department of Health & Human Servs.*, 682 F.2d 256, 257 (D.D.C. 1982). Courts across the country have uniformly rejected invocation of the “law enforcement” exception based on conclusory, speculative assertions without particularized supporting facts. *See, e.g., Jane Does v. King Cty.*, 366 P.3d 936, 945 (Wash. Ct. App. 2015) (ordering release of security surveillance footage of a shooting and rejecting conclusory assertion of interference with witnesses or law enforcement; holding that proponents of secrecy “were obligated ‘to come forward with specific evidence of chilled witnesses or other evidence of impeded law enforcement’”) (citation omitted); *Sussman v. U.S. Marshals Serv.*, 494 F.3d 1106, 1114 (D.C. Cir. 2007) (exception “require[s] specific information about the impact of the disclosures” on an enforcement proceeding); *id.* (“[I]t is not sufficient for an agency merely to state that disclosure would” interfere with a proceeding; “it must rather demonstrate how disclosure” would do so); *Grasso v. I.R.S.*, 785 F.2d 70, 77 (3d Cir. 1986) (“[T]he government must show, by more than conclusory statement, how the particular kinds of investigatory records requested would interfere with a pending enforcement proceeding.” (citation omitted)); *Estate of Fortunato v. I.R.S.*, No. 06-6011 (AET), 2007 WL 4838567, at *4 (D.N.J. Nov. 30, 2007) (a “categorical indication of anticipated consequences of disclosure is

clearly inadequate.”) (quoting *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987)); *North v. Walsh*, 881 F.2d 1088, 1100 (D.C. Cir. 1989) (the government must prove release of records would “interfere in a palpable, particular way”). Here, the City has failed to meet its substantial burden.

35. Moreover, while New Hampshire courts have not provided a precise definition of “interfere” in this context, they have given a general sense of the severity of interference they consider sufficient to justify withholding information, stating that “disclosure of information may interfere with enforcement proceedings by ‘[resulting] in destruction of evidence, chilling and intimidation of witnesses, and revelation of the scope and nature of the Government’s investigation.’” *38 Endicott St.*, 163 N.H. at 667 (quoting *Solar Sources, Inc. v. United States*, 142 F.3d 1033, 1039 (7th Cir. 1998)). None of these considerations are applicable here.

B. Production of the Records Would Not Risk Circumvention of the Law under Exemption E

36. The City also appears to be relying on Exemption E, which permits nondisclosure when production of the records in question “Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.” *See* Exhibit E (“The disclosure of this information could compromise the effectiveness of the technology and allow individuals who are the subjects of investigations to employ countermeasures. . .”).

37. In *Montenegro v. City of Dover*, 162 N.H. 641, 643 (2011), the New Hampshire Supreme Court considered the application of Exemption E to a request for “the precise locations of the City’s surveillance equipment,” “the recording capabilities for each piece of equipment,” “the specific time periods each piece of equipment is operational,” and “the retention time for any

recordings.” The City had agreed to turn over “the general location and buildings” where the cameras were cited, “the number of cameras in and around each site,” “the capability and intent of the Dover Police to monitor cameras from remote locations,” the “intent of the Dover Police *not* to monitor the cameras on a regular basis,” the “cost of the security equipment,” “the names of the vendors installing the security equipment,” the contracts for the installation, and when the equipment was installed. *Id.* at 643-44 (citations and quotations omitted). The Court ruled that the withheld information “is of such substantive detail that it could reasonably be expected to risk circumvention of the law by providing those who wish to engage in criminal activity with the ability to adjust their behaviors in an effort to avoid detection.” *Id.* at 648.

38. Here, Petitioners are *not* asking for the level of “substantive detail” that could be expected to risk circumvention of the law described in *Montenegro*. Petitioners are only seeking a general description of the equipment, and—unlike in *Montenegro*—have deliberately not sought the item’s specifications/capabilities and how the item will be used (which was deemed exempt from disclosure in *Montenegro*). In addition, and significantly, the City here is withholding the vendor name and contract despite the fact that this information was actually produced by the Town in *Montenegro*. The redactions in the contract appear to black out the name of the vendor and general descriptions of the type of equipment the City has purchased, which is akin to the type of information voluntarily disclosed in *Montenegro*. Where an agency cannot demonstrate that release of records would cause circumvention, the records must be produced. *See, e.g., Am. Civil Lib. Union Found. v. U.S. Dep’t. Homel. Sec.*, 243 F. Supp. 3d 393, 402-405 (S.D.N.Y. 2017) (no showing that questions asked of unaccompanied children detained at U.S. border are exempt under this exception); *Families for Freedom v. U.S. Customs and Border Protection*, 797 F. Supp. 2d

375, 391-94 (S.D.N.Y. 2011) (rejecting agency’s withholding of border arrest statistics because release would not pose risks of circumvention of the law).

C. Production of the Records Would Not Put Lives at Risk under Exemption F

39. Finally, the City appears to be relying on Exemption F, which permits nondisclosure when production of the records in question “Could reasonably be expected to endanger the life or physical safety of an individual.” *See* Exhibit E (“The disclosure of this information could . . . endanger the lives and physical safety of the law enforcement officers who utilize the technology.”). It is incumbent upon an agency seeking to withhold production under this exemption to demonstrate that there is a nexus between the production of the records and risk of harm. *See Banks v. U.S. Dep’t. of Justice*, 700 F. Supp. 2d 9, 18 (D.D.C. 2010) (ruling that agency’s declaration did not explain ‘whether there is some nexus between disclosure and possible harm.’”). In addition, the agency must show an increased risk of danger to specific individuals. *See Am. Civil Lib. Union v. U.S. Dep’t. of Defense*, 543 F.3d 59, 70-71 (2nd Cir. 2008) (rejecting government’s contention that photographs showing abuse of detainees at Abu Ghraib facility could be exempted from disclosure because of increased risk to United States forces in Afghanistan generally: “the defendants do not identify a single person and say that the release of the Army photos could reasonably be expected to engager that person’s life or physical safety; the threat to any one person is far too speculative. . . It is plainly insufficient to claim that releasing documents could reasonably be expected to endanger some unspecified member of a group so fast as to encompass all United States troops. . .”) *overturned by statute as recognized by* 901 F.3d 125 (2nd Cir. 2018).

40. Concord has not been (and will not be) able to demonstrate—as it must to justify the withholding of these records—that producing the name of the company supplying this

equipment or the nature of the data collected by the vender, would pose an increased risk to the lives and safety of the operators of this equipment.

Conclusion

41. Concord's effort to keep secret its contract for services and the vendor's privacy and refund policies should be rejected. While the nature of equipment the City has purchased is not clear, what is clear is that the City has entered into a non-disclosure agreement with an unnamed vendor that requires the City to take steps to prevent disclosure of important information to courts, grand juries, and defense counsel. However, Concord will not be able to demonstrate that the redacted information comes within any of the Right-to-Know exemptions, and, as a result, Concord should be compelled to produce the non-redacted records in their entirety.

Prayer for Relief

WHEREFORE, Petitioners respectfully pray that this Honorable Court:

- A. Give this action "priority on the Court calendar" as required by RSA 91-A:7, by issuing Orders of Notice forthwith and scheduling a hearing on the relief Petitioners seek;
- B. Permit counsel for the Petitioners to review the unredacted documents pursuant to a mutually available protective order;
- C. Rule that the unredacted License & Services Agreement, Privacy Policy, Refund Policy, and Amendment to License and Services Agreement requested by Petitioners is a public record that must be made available for inspection by Petitioners and members of the public under Chapter 91-A and Part I, Article 8 of the New Hampshire Constitution;
- D. Pursuant to RSA 91-A:8, I grant Petitioners reasonable attorneys' fees and costs as this lawsuit was necessary in order to enforce compliance with the provisions of Chapter 91-A or to address a purposeful violation of Chapter 91-A. Fees are appropriate because Respondent knew or should have known that the conduct engaged in was in violation of Chapter 91-A; and
- E. Award such other relief as may be equitable.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF NEW
HAMPSHIRE AND THE *CONCORD MONITOR*

By and through their attorneys affiliated with the
American Civil Liberties Union of New Hampshire
Foundation,

/s/ Henry R. Klementowicz

Gilles R. Bissonnette (N.H. Bar No. 265393)

Henry R. Klementowicz (N.H. Bar No. 21177)

AMERICAN CIVIL LIBERTIES UNION OF NEW
HAMPSHIRE FOUNDATION

18 Low Avenue

Concord, NH 03301

Tel.: 603.333.2201

gilles@aclu-nh.org

henry@aclu-nh.org

Date: July 23, 2018

EXHIBIT A

Appendix B

Program Change Requests

	Department	Manager
Legal		
1099 Expert Fees	\$20,000	\$0
1128 Solicitor/Deputy Solicitor Labor Grade Increase	\$7,275	\$7,275
Total Department	\$27,275	\$7,275
Assessing		
1070 Measure & Inspection of Comm/Ind & Exempt Prop	\$145,000	\$0
Total Department	\$145,000	\$0
Human Resources		
1076 Change Safety and Training Coordinator Position	\$2,076	\$0
Total Department	\$2,076	\$0
Finance		
1066 Adobe Acrobat DC	\$400	\$400
1079 Annual Munis Conference	\$2,000	\$0
1065 Promotion to Purchasing Agent II	\$8,336	\$0
1118 Staff Development	\$250	\$250
Total Department	\$10,986	\$650
Information Technology		
1100 Employee Security Awareness training	\$8,500	\$0
1102 New Helpdesk Technician	\$48,228	\$0
1103 New Network Security Engineer	\$71,024	\$0
1101 Technology Related Compensation Study	\$5,000	\$5,000
Total Department	\$132,752	\$5,000
City Clerk - Elections		
1080 Elections - Additional Overtime	\$5,648	\$5,648
1082 Elections - Temporary Staffing	\$7,738	\$7,738
1083 Voting System	\$26,400	\$0
Total Department	\$39,786	\$13,386
Police		
1015 2 FT Police Officers	\$74,982	\$0
1012 Ammunition	\$6,280	\$6,280
1108 CID Desk Top Computer	\$3,200	\$0
1007 Covert Communications Equipment	\$5,100	\$5,100
1016 CSA Step Increase	\$776	\$0
1025 CSD - Promotional and Educational Materials	\$2,500	\$1,000
1060 Employee Recognition	\$10,000	\$0
1003 Fitness Room Equipment and Maintenance	\$5,000	\$0
1005 FT Admin Tech II Records	\$65,680	\$0
1002 Honor Guard Uniforms	\$1,500	\$0
1001 Leads Online Service	\$5,600	\$0

Appendix B

	Department	Manager
Police (continued)		
1006 Plausawa Hill Tower Rental	\$8,300	\$8,300
1053 Police Canine Unit	\$49,270	\$0
1014 Police Motorcycle Instructor	\$5,000	\$0
1056 Polygraph Examiner Training	\$7,500	\$0
1055 School Resource Officer - MVMS	\$106,179	\$106,179
1152 School Resource Officer - MVMS	(\$79,635)	(\$79,635)
1000 Specialized Investigative Training	\$5,000	\$0
1008 SRO Training	\$6,600	\$0
1011 TASER Equipment	\$8,070	\$8,070
1013 Tuition Reimbursement	\$4,950	\$0
1057 Uniform Badge Replacement	\$3,300	\$0
1004 Workstation Replacement Program	\$5,000	\$0
	Total Department	\$310,152
		\$55,294
Fire		
1052 Additional Ambulance Company	\$833,210	\$0
1051 Admin Specialist II to Fiscal Supervisor	\$3,723	\$3,723
1137 AirVac Filters	\$9,135	\$9,135
1050 Assistant Fire Marshal Position	\$56,182	\$0
1049 Fire Alarm & Traffic Technician	\$39,955	\$0
1098 Hazardous Materials Sensors	\$1,000	\$1,000
1024 New Fire Training Facility O&M Costs	\$5,400	\$5,400
	Total Department	\$948,605
		\$19,258
General Services		
1067 Downtown Snow Removal Contracted Services	\$3,560	\$3,560
1097 Equipment Replacement	\$5,560	\$5,560
1029 Fleet Repairs, Parts, and Supplies	\$68,709	\$40,000
1039 Mail Room Door	\$4,500	\$0
1040 Professional Development for PPD Staff	\$2,190	\$2,190
1119 Rental Space for the Shattuck Wagon	\$2,400	\$2,400
1021 Sealing Concrete Sidewalks from Main St. Project	\$7,500	\$7,500
1022 Sidewalk Fence Replacement - N.Spring by Cambridge	\$16,400	\$0
1090 Snow and Ice Control Overtime Increase	\$56,150	\$0
1031 Street Tree Planting	\$13,000	\$13,000
1153 Street Tree Planting Revenue	(\$13,000)	(\$13,000)
	Total Department	\$166,969
		\$61,210

Appendix B

	Department	Manager
Community Development		
1084 Adobe Pro Software Annual Subscriptions	\$540	\$540
1116 Certification Exams and Study Guides	\$250	\$250
1075 ED - 2nd IEDC Conference	\$2,550	\$2,550
1063 Microfilm & Fiche Reader/Printers	\$4,000	\$0
1088 New iPads for ADR Committee	\$4,000	\$0
1062 Office Partitions	\$11,963	\$0
1059 Protective Footwear	\$800	\$0
1089 Solar RFP Consultant Services	\$7,000	\$7,000
Total Department	\$31,103	\$10,340
Library		
1121 FT Lib Assistant II to FT Lib Technician	\$4,767	\$4,767
1122 Phone Stipend	\$600	\$600
Total Department	\$5,367	\$5,367
Parks & Recreation		
1019 Additional Horticultural Supplies	\$5,000	\$0
1104 Computer for Green Street Community Center	\$3,100	\$0
1091 Filters for HVAC	\$1,400	\$1,400
1047 Laptop for Memorial Field	\$1,800	\$0
1034 Leased Truck	\$10,800	\$0
1094 Lifeguard Certification Reimbursement	\$4,000	\$4,000
1092 National Playground Inspector Training	\$1,400	\$0
1046 Park Rules and Regulation Signage	\$4,800	\$0
1130 Parks OT Increase	\$18,960	\$18,960
1129 Revenue Management School	\$2,510	\$2,510
1087 Skate House at White Park Operation Full Year	\$63,725	\$63,725
1105 Skate House at White Park Operation Full Year	(\$64,000)	(\$64,000)
1026 Software and iPad for Playground Inspections	\$1,600	\$0
Total Department	\$55,095	\$26,595
Human Services		
1037 Admin Specialist II PT to PPT	\$11,679	\$0
1064 Education and Training	\$350	\$350
1058 Language Bank	\$200	\$200
1074 Prescription Assistance	(\$1,000)	(\$1,000)
1044 Burial and Transportation Assistance	\$2,450	\$2,450
Total Department	\$13,679	\$2,000
Total General Fund	\$1,888,845	\$206,375

Appendix B

	Department	Manager
Parking		
1133 Labor Grade Adjustments	\$5,293	\$5,293
1134 Meter Expansion Phase 2	\$42,608	\$42,608
1150 Meter Expansion Phase 2	(\$92,209)	(\$92,209)
1131 Non-meter Ticket Revenue / General Fund Admin Fee	(\$100,000)	\$0
1151 Non-meter Ticket Revenue / General Fund Admin Fee	\$50,000	\$0
1132 Staffing Adjustments	\$125,519	\$125,519
1149 Staffing Adjustments Associated Revenue	(\$259,436)	(\$259,436)
1143 State Street Garage Pressure Washing	\$26,260	\$26,260
1135 Storrs Street 20 Meters (Dixon to Holiday Inn)	\$3,268	\$3,268
1148 Storrs Street 20 Meters Associated Revenue	(\$6,736)	(\$6,736)
1136 Storrs Street 60 Meters (Theatre to S. Main)	\$11,698	\$11,698
1147 Storrs Street 60 Meters Associated Revenue	(\$46,244)	(\$46,244)
Total Parking Fund	(\$239,979)	(\$189,979)
Sears Block Tax Increment Finance District (SBTIF)		
1146 Sealing Concrete Sidewalks from Main St. Project	\$7,500	\$7,500
Total SBTIF Fund	\$7,500	\$7,500
Golf		
1138 Club House Repairs	\$5,000	\$5,000
1142 Golf Temp Labor	\$5,000	\$5,000
1141 Lime for Turf	\$5,000	\$5,000
1139 Lighting Upgrade	\$4,000	\$4,000
1140 Tent and Event Expenses	\$5,140	\$5,140
Total Golf Fund	\$24,140	\$24,140
Arena		
1124 Credit Card Processing	\$8,700	\$8,700
1127 Skate Sharpener	\$15,800	\$15,800
Total Arena Fund	\$24,500	\$24,500
Solid Waste		
1120 Closed Landfill Engineering Services	\$19,600	\$19,600
1023 Continued NHDES Required PFAS Testing	\$3,600	\$3,600
1144 Recycling Dumpster Lid Change	\$32,139	\$32,139
1145 Recycling Dumpster Lid Change	(\$18,200)	(\$18,200)
Total Solid Waste Fund	\$37,139	\$37,139
Water		
1117 Chemical Increase (Hutchins Street)	\$14,430	\$14,430
1125 Equipment Replacement (Water)	\$200	\$200
1033 Part-time Fiscal Technician II	\$16,972	\$0
Total Water Fund	\$31,602	\$14,630

Appendix B

	Department	Manager
Wastewater		
1111 Additional Laboratory Analytical (PFAS Sampling)	\$3,500	\$3,500
1123 Additional Laboratory Analytical Supplies	\$1,880	\$1,880
1110 Chemical Increase (Hall Street and Penacook)	\$6,720	\$6,720
1126 Equipment Replacement (Wastewater)	\$3,150	\$3,150
1109 HVAC Electricity Increase	\$23,000	\$23,000
1038 Natural Gas Increase	\$22,250	\$22,250
	Total Wastewater Fund	\$60,500
	Total All Funds	\$1,834,247
		\$184,805

EXHIBIT B

CONCORD MONITOR

(<https://www.concordmonitor.com>)

News > Local (/News/Local/)

Concord's \$66.5M budget proposal has its secrets



Concord City Hall

By [CAITLIN ANDREWS \(/byline?byline=By CAITLIN ANDREWS\)](#)

Monitor staff

Published: 5/24/2019 5:59:03 PM

Modified: 5/24/2019 5:58:49 PM

With a proposed \$66.5 million operating budget like Concord's, it's easy to miss the little things.

But city officials say a \$5,100 line item in the police department's budget has to be kept secret.

The city began its fiscal year 2020 budget proceedings this week and will continue to do so for the next few weeks.

The city has budgeted for a \$233,000 increase in the police department's budget. But it was the \$5,100 "covert communications equipment" item that caught At-Large City Councilor Fred Keach's attention Monday.

"Can we get a little hint at what that means?" he asked, saying he assumed the material could be used for police officers to talk to each other, but that people might think "the worst" if not clarified.

"I don't know how to answer that questioning without 'answering it,' " Aspell said. He said the equipment wasn't body cameras or a drone and didn't describe the item further except to say he'd seen it "and we need it."

On Thursday, Concord police Chief Bradley Osgood said the city has a non-disclosure agreement with the equipment's vendor that prevents the city from publicizing what the equipment is.

Items like the \$650,000 Storrs Street expansion design and the \$1.4 million increase in Concord's \$66.5 million operating budget were sure to stand out after the budget dropped two weeks ago. And when the total package is over 600 pages long (<http://www.concordnh.gov/DocumentCenter/View/13742/Full-BookPaginated>), it would be easy to miss the small things.

But this week's discussion shows how every dollar can count when it comes to budget discussions.

For instance, Ward 6 Councilor Linda Kenison was curious on Monday about how many additional miles of road the ¼ additional neighborhood street paving at a cost of \$105,000 would buy.

The answer is "One small road," Aspell said, noting the costs associated with paving roads has increased.

Councilors also spent about half-hour on Thursday discussing whether to restore \$5,000 worth of funding to the New American Africans, a nonprofit that provides educational and cultural programming for the city's immigrant community.

Aspell said the money was not included in this year's budget because the council had agreed to provide \$5,000 for three years to the organization in 2017.

Victoria Adewumi, board chairwoman for New American Africans, said the money goes a long way. She said their operating costs are around \$100,000, but that figure has been impacted as other grant sources have fallen through.

"We feel like we've done our best to max out the investment," she said. "In three years we've been able to expand a lot of our youth programming."

That programming can include literacy coaching and college visits for students, but also dances and fundraising events, Adewumi said.

Mayor Jim Bouley asked that a copy of the New American Africans' budget be provided to the city to see if they could find a "bigger solution" to the group's funding problem.

Cable TV franchise revenue makes up about 1.2% of the city's roughly \$66 million revenue streams, but a \$68,000 decline from this year's budgeted revenues to next year's projected revenues could have big implications for nonprofit ConcordTV.

The group broadcasts and keeps streams of the city's council, zoning and planning meetings and several school board meetings in addition to providing community programming and training.

The revenue is directly related to how many cable packages residents are buying from Comcast. The city receives a portion of that money and keeps about 66.5% of it. The rest goes to ConcordTV.

That revenue has declined almost \$80,000 since 2017, city budget documents show.

ConcordTV executive director Doris Ballard said the station will have to cut services and staff if the trend continues. She asked the council to consider adding 3% of their franchise fee revenues to the station's budget, which would be roughly \$23,000. She estimated if the city were to attempt to provide its own recording services, that would cost around ¾ of a million dollars.

Schedule going forward

There are just a few meetings before the city council is expected to vote on the budget. They all kick off at 5:30 p.m. in the city council chambers.

May 30 will touch on community development, leisure services like the library and parks and recreation, human services and the capital improvement program.

June 3 will include presentations on special revenue funds, like the airport, arena and golf course, along with enterprise funds.

The council will look to pass the budget on June 6, but two additional meetings are tentatively planned for mid-June if that doesn't happen.

(Caitlin Andrews can be reached at 369-3309, candrews@cmonitor.com or on Twitter at @ActualCAndrews.)

concord nh (/keyword/?keyword=concord nh) concord city council (/keyword/?keyword=concord city council)

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Instant connection 42 years later, a Loudon woman meets her mother (/Hi-mom-I-m-your-daughter-25659709)

By RAY DUCKLER - Today

EXHIBIT C



May 28, 2019

VIA EMAIL (bosgood@concordpolice.com)

Bradley C. Osgood
Chief of Police
Concord Police Department
35 Green Street
Concord, NH 03301

Re: Right-to-Know Request Regarding \$5,100 Budget Line Item and Contract

Dear Chief Osgood:

This is a Right-to-Know request to the Concord Police Department (“the Department”) pursuant to RSA 91-A and Part I, Article 8 of the New Hampshire Constitution by the American Civil Liberties Union of New Hampshire (“ACLU-NH”). The ACLU-NH defends and promotes the fundamental principles embodied in the Bill of Rights and the U.S. and New Hampshire Constitutions. In furtherance of that mission, the ACLU-NH regularly conducts research into government activities in New Hampshire. We ask that your Department waive fees associated with responding to this request. Please contact me to discuss the fee waiver in advance of preparing any copies.

Below is the specific request:

1. Documents sufficient to identify the specific nature of the “covert communications equipment” sought by the Concord Police Department at a cost of \$5,100 in the City’s budget.
2. Any contracts or agreements between the Concord Police Department or the City of Concord and the vendor providing the “covert communications equipment” referenced above in Request No.1. *See* attached Concord Monitor article.

In responding to this request, please consider the time limits mandated by the Right-to-Know law. In discussing those limits in *ATV Watch v. N.H. Dep’t of Res. & Econ. Dev.*, 155 N.H. 434 (2007), the New Hampshire Supreme Court has stated that RSA 91-A:4, IV requires that a public body or agency, “within 5 business days of the request, make such records available, deny the request in writing with reasons, or to furnish written acknowledgement of the receipt of the request and a statement of the time reasonably necessary to determine whether the request shall be granted or denied.” *Id.* at 440.

If produced, these records must be produced irrespective of their storage format; that is, they must be produced whether they are kept in tangible (hard copy) form or in an electronically-stored format, including but not limited to e-mail communications. If any records are withheld, or any portion redacted, please specify the specific reasons and statutory exemption relied upon. *See* RSA 91-A:4, IV (official must “make such record available” or “deny the request in writing with reasons”) (emphasis added).

Thank you for your anticipated cooperation. I look forward to hearing from you as soon as possible. Of course, if you have any questions or concerns, do not hesitate to contact me.

Very truly yours,

/s/ Gilles Bissonnette

Gilles Bissonnette
ACLU-NH, Legal Director
Gilles@aclu-nh.org

Cc: James Kennedy, Esq.

EXHIBIT D

CONCORD MONITOR

One Monitor Drive
Post Office Box 1177
Concord, NH 03302-1177
603-224-5301



May 29, 2019

Bradley Osgood
City of Concord
41 Green St.
Concord, NH 03301

Dear Chief Osgood,

Pursuant to the state's Right-to-Know law, RSA 91-A, we respectfully request the city provide us with documents related to the \$5,100 "covert communications equipment" sought by the Concord Police Department in the fiscal year 2020 proposed budget.

This includes any contracts or agreements between the Concord Police Department or the City of Concord and the vendor providing the equipment, documents that detail the nature of the equipment and the line items associated with the equipment in the department's budget.

As you know, the Right-to-Know law affords every citizen "the right to inspect all governmental records in the possession, custody, or control of such public bodies or agencies."

If you choose to deny any part of this request, please cite the specific statutory exemptions on which you rely. If possible, we request that the information be provided to us electronically.

Thank you for your attention to this request. Please contact me as soon as possible if I can clarify the information I am seeking. Otherwise, I look forward to hearing from you within five business days, as required by state law.

Sincerely,

Caitlin Andrews
369-3309
candrews@cmonitor.com

EXHIBIT E



Bradley C. Osgood
Chief of Police

City of Concord, New Hampshire

POLICE DEPARTMENT

35 Green Street • 03301-4299

(603) 225-8600

FAX (603) 225-8519

www.concordpolice.com

June 10, 2019

VIA EMAIL (Gilles@aclu-nh.org)

Gilles Bissonnette
American Civil Liberties Union
18 Low Avenue
Concord, NH 03301

Re: Right-to-Know Request

Dear Mr. Bissonnette:

The City has completed its review of its files for the requested documents in your May 28, 2019 Right-to-Know request, under RSA Ch. 91-A. The documents, totaling 29 pages, are attached for your review in PDF format. There is no charge for these documents because they exist in an electronic format and are being produced in that manner.

Please note that the contract has been redacted because it contains confidential information relative to surveillance technology that is exempt from disclosure under the law enforcement exemption set forth in RSA 91-A:4. This information, if released, would disclose techniques and procedures for law enforcement investigations. The disclosure of this information could compromise the effectiveness of the technology and allow individuals who are the subjects of investigations to employ countermeasures, and such disclosure could also compromise criminal investigations and endanger the lives and physical safety of the law enforcement officers who utilize the technology.

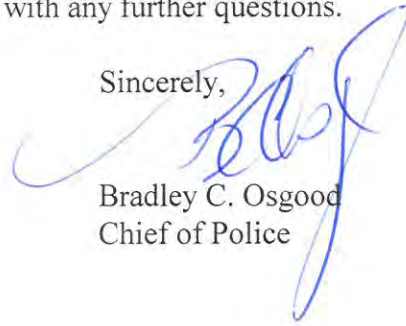
The New Hampshire Supreme Court has stated that information may be withheld if disclosure "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." *Murray v. State Police*, 154 N.H. 579, 582 (2006). Although this exclusion does not prevent the disclosure of routine techniques and procedures already well known to the public, it does protect from disclosure "detailed law enforcement surveillance procedures," such as locations of surveillance equipment, recording capabilities for each piece of equipment, the specific time periods each piece of equipment is expected to be operational, and the retention time for any recordings. *Montenegro v. City of Dover*, 162 N.H. 641, 649 (2012). The Court recognizes that this "information is of such substantive detail that it could reasonably be expected to risk circumvention of the law by providing those who wish to engage in criminal activity with the

"Community Committed"

ability to adjust their behaviors in an effort to avoid detection.” *Id.* Accordingly, we have redacted this confidential information from the contract.

Please feel free to contact me with any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'BCO', is written over the typed name and title.

Bradley C. Osgood
Chief of Police

Attachment

EXHIBIT F



Bradley C. Osgood
Chief of Police

City of Concord, New Hampshire

POLICE DEPARTMENT
35 Green Street • 03301-4299
(603) 225-8600
FAX (603) 225-8519
www.concordpolice.com

June 10, 2019

VIA EMAIL (candrews@concordmonitor.com)

Caitlin Andrews
Concord Monitor
Post Office Box 1177
Concord, NH 03302-177

Re: Right-to-Know Request

Dear Ms. Andrews:

The City has completed its review of its files for the requested documents in your May 29, 2019 Right-to-Know request, under RSA Ch. 91-A. The documents, totaling 29 pages, are attached for your review in PDF format. There is no charge for these documents because they exist in an electronic format and are being produced in that manner.

Please note that the contract has been redacted because it contains confidential information relative to surveillance technology that is exempt from disclosure under the law enforcement exemption set forth in RSA 91-A:4. This information, if released, would disclose techniques and procedures for law enforcement investigations. The disclosure of this information could compromise the effectiveness of the technology and allow individuals who are the subjects of investigations to employ countermeasures, and such disclosure could also compromise criminal investigations and endanger the lives and physical safety of the law enforcement officers who utilize the technology.

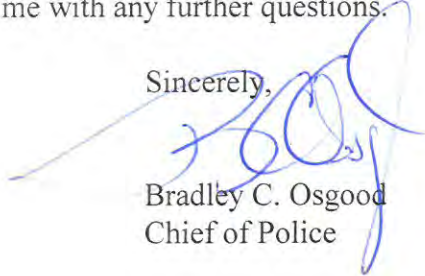
The New Hampshire Supreme Court has stated that information may be withheld if disclosure "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." *Murray v. State Police*, 154 N.H. 579, 582 (2006). Although this exclusion does not prevent the disclosure of routine techniques and procedures already well known to the public, it does protect from disclosure "detailed law enforcement surveillance procedures," such as locations of surveillance equipment, recording capabilities for each piece of equipment, the specific time periods each piece of equipment is expected to be operational, and the retention time for any recordings. *Montenegro v. City of Dover*, 162 N.H. 641, 649 (2012). The Court recognizes that this "information is of such substantive detail that it could reasonably be expected to risk circumvention of the law by providing those who wish to engage in criminal activity with the

"Community Committed"

ability to adjust their behaviors in an effort to avoid detection.” *Id.* Accordingly, we have redacted this confidential information from the contract.

Please feel free to contact me with any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. Osgood', is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the left.

Bradley C. Osgood
Chief of Police

Attachment

EXHIBIT G

License & Services Agreement

This is an agreement between you and any entity, organization, or governmental entity you are authorized to bind (hereinafter collectively referred to as "Licensee," "You," or words of similar import) and [REDACTED] and its subsidiaries and affiliates (collectively [REDACTED] "we," "us," or words of similar import). In order to use any [REDACTED] software applications ("Applications"), access the information contained on the [REDACTED] or otherwise make use of any of the services or materials provided by [REDACTED] (the "Services"), you must first read this agreement (the "Agreement") and accept it. You may not use or permit any person to access or use under your or authority or direction (whether they are acting in accordance in the course of such access or use or not) the Website, Applications, or Services if You do not accept this Agreement and the terms herein. You accept the terms of the Agreement by clicking to accept, by agreeing to the terms of the Agreement in the user interface for any of the Website, Applications, or Services, or by using the Website, Applications, or Services. In the latter case, You understand and agree that [REDACTED] will treat Your use of the Website, Applications, or Services as acceptance of the terms from that point onwards. From your acceptance of these terms and conditions, these terms and conditions shall replace any other terms of service that may have previously applied to your use of the Website, Applications or Services.

By putting a check mark next to I AGREE and clicking on SIGN & CONTINUE or by using the Website, Applications, or Services, You represent that You have read and agree to the terms and conditions of this Agreement, which also include and incorporate [REDACTED] Acceptable Use Policy and Privacy Policy. These terms and conditions will remain in effect throughout Your use of the Website, Applications, and Services and continue after this Agreement expires or is terminated as set forth herein. These terms and conditions are legally binding should You choose to proceed with use of the Website, Applications, or Services.

RECITALS

WHEREAS, [REDACTED] offers various technical products and services to law enforcement agencies; and

WHEREAS, Licensee desires to use certain products and services offered by [REDACTED]

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, [REDACTED] and Licensee agree as follows:

1. License, Restrictions, Ownership

A. License. For the Term (as defined below) of this Agreement, [REDACTED] hereby grants to Licensee a limited, non-assignable, non-exclusive, non-sublicenseable, revocable license to use the Website and any Applications and Services to which Licensee subscribes in accordance with the terms of this Agreement.

B. Restrictions. Except as otherwise provided herein, Licensee shall not itself, or permit any person to:

- i. copy, sell, transfer, sublicense, publish, or otherwise distribute or dispose of the Website, Applications, or Services, in whole or in part;
- ii. allow any unauthorized third party to access the Website, Applications, or Services for any purpose whatsoever;
- iii. modify, decode, reverse-engineer, decompile, or disassemble the Website, Applications, or Services, in whole or in part; nor
- iv. act as a "service bureau" of the Website, Applications, or Services to third parties.

C. Non-Competition / Non-Reproduction. During the Term of this Agreement and for two years thereafter, Licensee shall not develop or assist another in developing any applications, products or services for internal or external use that compete with or perform similar functions as the Website, Applications, or Services.

D. Ownership by [REDACTED] [REDACTED] retains exclusive title to and ownership of the Website, Applications, and Services, and all Intellectual Property Rights created in the course of or otherwise arising out of the provision of the Services, including but not limited to Intellectual Property Rights in the Website and in the Applications made available to Licensee or any Licensee User (as defined below), any source code used to provide the Website, Applications, or Services and the processes employed by [REDACTED] in relation to the Services, and any customizations, modifications and derivative works thereof. No implied rights are granted to Licensee by this Agreement, and all such rights shall vest in and be owned absolutely by [REDACTED] on creation.

E. Ownership by Licensee. Licensee shall retain exclusive title to and ownership of [REDACTED] [REDACTED] location information, and other data generated by Licensee's use, or use by any person acting under Licensee's authority, direction, or permission ("Licensee Users"), of the Website, Applications, and Services ("Customer Data"), and any of Licensee's pre-existing intellectual property rights created prior to the date of this Agreement.

F. Availability of Customer Data. During the Term of this Agreement, [REDACTED] will make commercially reasonable efforts to ensure that Customer Data not stored on a Network Appliance (as defined below) will remain available to Licensee via the Website for the Term of this Agreement (as defined below).

G. Intellectual Property Rights. In this Agreement, "Intellectual Property Rights" means rights in patents (including utility models), designs (whether or not capable of registration), semi-conductor topography rights, copyright, moral rights, database rights, trademarks, trade and business names, rights to sue for passing off, rights in the nature of unfair competition rights, trade secret, confidentiality and other proprietary rights including rights to know-how and other technical information and applications to register any of the foregoing and all rights in the nature of any of the foregoing anywhere in the world.

2. Technical Support, Maintenance, and Unavailability

A. Technical Support. During the Term of this Agreement [REDACTED] shall provide technical support for the Website and any Applications and Services to which Licensee subscribes, via telephone or through electronic mail, as follows:

- i. reasonable assistance in the installation and initial deployment of the any Applications and Services to which Licensee subscribes;
- ii. an initial orientation in the use of any Applications and Services to which Licensee subscribes; and
- iii. reasonable responses to Licensee's requests for follow-up technical support regarding the use of any Applications and Services to which Licensee subscribes on an as-needed basis.

B. Maintenance. During the Term of this Agreement, [REDACTED] shall provide Licensee with revisions and updates to any Applications and Services to which Licensee subscribes (but not new Applications or Services, which shall only be provided on terms as determined by [REDACTED] in its sole and absolute discretion) as and when generally released to the public by [REDACTED] shall use commercially reasonable efforts to remedy errors or malfunctions of any Applications and Services to which Licensee subscribes that are not caused, directly or indirectly, by Licensee or anyone acting with Licensee's permission.

C. Unavailability. The Website, Applications, or Services, or any part of them, may not be available for the duration of any unanticipated or unscheduled downtime or unavailability of any portion or all of the Services for any reason, including but not limited to:

- i. internet outages, system failures or other interruptions;
- ii. [REDACTED] network outages, delays, or other interruptions; and
- iii. [REDACTED] election to suspend access to any portion or all of the Website, Applications, or Services at any time (collectively, an "Application Suspension");

(I) for scheduled downtime to permit [REDACTED] to conduct maintenance or make modifications to the Website, Applications or Service;

(II) in the event of a denial of service attack (DDoS) or other attack on an Website, Applications, or Service, or other event that [REDACTED] determines may create a risk to the applicable Website, Application, or Service to any Licensee, if the Website, Application, or Service were not suspended; or

(III) upon [REDACTED] determination, in its sole and absolute discretion, that any Website, Application, or Service is prohibited by applicable law or that suspension is necessary or prudent for legal or regulatory reasons.

WITHOUT LIMITATION TO SECTION 10 HEREOF, [REDACTED] AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITIES, LOSSES (INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES (INCLUDING PERSONAL INJURY OR DEATH) THAT LICENSEE MAY INCUR AS A RESULT OF ANY APPLICATION SUSPENSION. To the extent [REDACTED] is able, [REDACTED] will endeavor to provide Licensee notice of any Application suspension and to post updates on the Website regarding resumption of Applications or Services following any such suspension, but shall have no liability for the manner chosen or the failure to do so.

3. Optional Hardware

A. Ownership. [REDACTED] may, in its sole and absolute discretion, offer to furnish Licensee with a Network Appliance for Licensee's use with the Services during the Term of the Agreement. The Network Appliance is and shall remain the property of the Licensee. Risk in the Network Appliance shall transfer to Licensee on delivery, and shall remain with Licensee.

B. Unavailability. In the event of internet outages, system failures or other interruptions, data will not be transferred to a Network Appliance or available on the Website until the Network Appliance's connection is restored.

C. Network Security and Updates. Licensee is solely responsible for determining and providing the necessary physical, network, and other security for any Network Appliance, and for determining and applying any updates or patches to the Network Appliance. [REDACTED] reserves the right to terminate its support of Licensee's Network Appliance for any reason, including (but not limited to) its learning that Licensee has failed to adequately secure or update the Network Appliance.

D. Limitation of Liability. WITHOUT LIMITATION TO SECTION 10 HEREOF, [REDACTED] AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGE, LIABILITIES, LOSSES (INCLUDING ANY LOSS OF DATA OR PROFITS) OR ANY OTHER CONSEQUENCES (INCLUDING PERSONAL INJURY OR DEATH) THAT LICENSEE MAY INCUR AS A RESULT OF ITS USE OF A NETWORK APPLIANCE SUPPLIED BY [REDACTED]

4. Fees and Payment

A. Optional Free Trial. [REDACTED] may, in its sole and absolute discretion, offer a free trial subscription to its Website, Applications, and/or Services, and such trial subscription shall be of limited duration determined by [REDACTED]. If Licensee is offered and accepts such a free trial subscription, it shall not seek nor accept another such free trial subscription at any time, directly or indirectly through an affiliate or other Representative (as defined below). If Licensee or its affiliates or Representatives creates multiple free trial accounts, [REDACTED] may suspend those accounts without notice and take any actions to prevent additional violations.

B. Fees. Except during the term of a valid free trial subscription, Licensee shall pay the applicable fees for use of the Applications, Website, and Services, as set forth on the Website or otherwise communicated in writing to Licensee before Licensee begins using the Applications, Website, or Services (the "Fees"). [REDACTED] may increase or add new Fees upon 30 days' advance notice. All Fees are exclusive of applicable taxes and duties, including, without limitation, VAT and applicable sales tax, for which Licensee shall be solely responsible. Licensee shall provide [REDACTED] will provide such information as reasonably required to determine whether [REDACTED] is obligated to collect VAT from Licensee.

C. Manner of Payment. Licensee shall pay the Fees in the manner set forth on the Website or as otherwise communicated in writing to Licensee. All Fees payable by Licensee under this Agreement shall be made without setoff or counterclaim and without deduction or withholding. If any deduction or withholding is required by applicable law, Licensee shall notify [REDACTED] and shall pay such additional amounts to [REDACTED] as necessary to ensure that the net amount that [REDACTED] receives, after such deduction and withholding, equals the amount [REDACTED] would have received if no such deduction or withholding had been required. Additionally, Licensee shall provide [REDACTED] with documentation

that the withheld and deducted amounts have been paid to the relevant authority requiring such deduction or withholding.

D. Fee Disputes. Should Licensee have any dispute as to Fees charged, Licensee shall notify [REDACTED] of such dispute at [REDACTED] within sixty (60) days of the date of the activity that generated such dispute. Any and all refunds issued to resolve such a dispute shall be issued as credits to Licensee's account, but in no event shall there be any cash refunds. Licensee waives and shall not pursue any claims against [REDACTED] regarding any dispute as to Fees that is not raised with [REDACTED] at [REDACTED] within sixty (60) days of the date of the activity that generated such dispute.

E. Default Interest. [REDACTED] shall be entitled to charge interest on any validly issued invoices paid late at a rate equal to the lesser of (a) 1.5% per month, or (b) the maximum amount allowed by applicable law. Interest due under this Section shall accrue until actual payment of the overdue amount, whether before or after judgment.

5. Marks

Neither party shall use or display the other party's names, trademarks, service marks, logos, or domain names (individually and collective referred to as the "Marks") without the other party's written permission, and then in accordance with, and without violating, the terms of this Agreement (such as, but not limited to, Section 8 [Confidentiality]).

6. Licensee Obligations

A. [REDACTED] Policies. Licensee shall, and shall ensure that Licensee Users shall, abide by the terms of [REDACTED] Acceptable Use Policy and Privacy Policy posted on the Website, as updated during the Term of this Agreement from time to time (such revised versions to become effective (10) calendar days after the date of posting on the Website). Licensee agrees to periodically access the Acceptable Use Policy and Privacy Policy to ensure its ongoing compliance with them.

B. [REDACTED] Intellectual Property. Licensee may not, and shall ensure that Licensee Users shall not, remove, obscure, or alter any notices of any [REDACTED] trademark, service mark or other intellectual property or proprietary right appearing on or contained within the Website, Applications, or Services.

C. Emergency Services. Licensee shall not, and shall ensure that Licensee Users shall not, use any Applications to [REDACTED]. The Applications are not intended to replace any [REDACTED] and may not be used to [REDACTED].

D. Export Restrictions. The Applications and Services may include data subject to restrictions under export control laws and regulations. Licensee agrees that it will, and will ensure that Licensee Users will, comply with these laws and regulations, and will not export or re-export the Applications or Services, or any part of the Applications or Services, in violation of any laws and regulations, directly or indirectly.

E. Security. Licensee acknowledges that it bears sole responsibility for adequate security, protection and backup of all Customer Data downloaded from the [REDACTED] and all data stored on Licensee's Network Appliance. WITHOUT LIMITATION TO SECTION 10, [REDACTED] WILL HAVE NO LIABILITY FOR ANY UNAUTHORIZED ACCESS, USE, CORRUPTION, DELETION, DESTRUCTION OR LOSS OF SUCH DATA.

F. Credentials. A Licensee User is the only person authorized to use that Licensee User's user ID and password, and Licensee shall ensure that each Licensee User will maintain the confidentiality of its user ID and password. Licensee shall ensure that Licensee Users shall not permit or allow other persons to have access to or use that Licensee User's user ID and password. Licensee is responsible for the use of the Website, Applications, or Services under each Licensee User's user ID. Licensee authorizes and directs [REDACTED] to carry out all transactions initiated with a Licensee User's user ID and/or password. If a Licensee User's password is compromised, Licensee shall ensure that the relevant Licensee User changes its password and notify [REDACTED] immediately to prevent unauthorized use of Licensee User's account.

G. Compliance With Law. Licensee acknowledges that [REDACTED] undertakes no responsibility for determining whether Licensee's or a Licensee User's use of the Website, Applications, or Services complies with or violates any applicable law, and disclaims any such liability. WITHOUT LIMITATION TO SECTION 10, LICENSEE ASSUMES FULL AND EXCLUSIVE RESPONSIBILITY FOR, AND [REDACTED] SHALL HAVE NO LIABILITY FOR, MAKING SUCH A DETERMINATION, AND FOR ANY CONSEQUENCES IF USE OF THE WEBSITE, APPLICATIONS, OR SERVICES BY LICENSEE, LICENSEE'S USERS, LICENSEE'S REPRESENTATIVES, OR ANY THIRD PARTY ACTING AT LICENSEE'S AUTHORIZATION OR DIRECTION IS FOUND TO VIOLATE ANY APPLICABLE LAW.

H. Use By Authorized Third Parties. In the course of public safety operations or criminal investigations, Licensee may authorize or direct Licensee Users who are [REDACTED] third parties to utilize the Applications to which Licensee has subscribed if those Licensee Users agree in writing to release [REDACTED] and its successors, parent companies, subsidiary companies, affiliates, and assigns, and its and their past, present, and future officers, directors, shareholders, agents, employees, representatives, assigns, and successors in interest (collectively, "Representatives") of any liability

for claims for loss or damage to property or personal injuries, including death, to the fullest extent allowed by applicable law.

I. Licensee User Access. Prior to permitting any Licensee User to access the Website, Applications or Services, the Licensee shall provide the Licensee User with the following notice in a written agreement with the Licensee User to which it grants access to the Website, Applications and Services:

[Licensee] is providing [Licensee User] with use of one or more software applications licensed by, or services that are provided by [REDACTED]. [Licensee User] assumes all risks of using these software applications and services. [Licensee User] acknowledges that [REDACTED] has no responsibility for determining whether the use of the services complies with, or violates any applicable laws, or whether using the services will provide evidence that is admissible in any criminal or civil proceedings. In exchange for and as a condition of being granted the ability to use the software applications and the services, [Licensee User] releases and discharges [REDACTED] together with its successors, parent companies, subsidiary companies, affiliates, and assigns, and its and their past, present, and future officers, directors, shareholders, agents, employees, representatives, assigns, and successors in interest, from any and all past, present or future claims of any nature whatsoever, known or unknown, including (but not limited to) claims for loss or damage to property or personal injuries, including death, to the fullest extent allowed by applicable law.

J. Notice of Threats. The Licensee shall notify [REDACTED] in writing promptly on becoming aware of any threat to the Website, Application or the Services, or to any [REDACTED] Personnel or any [REDACTED] Representatives, providing reasonable detail about the nature of the threat and any recommended mitigating action that could be taken by [REDACTED] with respect to the threat.

7. Term & Termination

A. Term. The term of this Agreement ("Term") shall commence upon Licensee's acceptance, and will remain in effect until and unless terminated in accordance with this Section 7, unless sooner terminated pursuant to the terms of this Agreement.

B. Suspension by [REDACTED] may suspend Licensee's and Licensee Users' right and license to use the Website, Applications, and/or Services if:

i. Licensee breaches any material term of this Agreement (including but not limited to a failure to pay on a timely basis any undisputed amount due), and such breach remains uncured for ten (10) days following written notice from [REDACTED]

ii. Licensee breaches any term of the Acceptable Use Policy, the Privacy Policy, or [REDACTED] has a good-faith reason to believe Licensee is breaching any term of the Acceptable Use Policy;

iii. There is an unusual spike or increase in Licensee's use of the Website, Applications, or Services for which there is reason to believe such traffic or use is fraudulent or negatively impacting the operating capability of the Website, Applications, or Services; or

iv. [REDACTED] determines, in its sole and absolute discretion, that provision of any Applications or Services to Licensee is prohibited by applicable law, or has become impractical or unfeasible for any legal or regulatory reason.

During the suspension, Licensee and Licensee Users shall not have access to the Website, Applications, or Services unless and until the breach or other circumstance causing the suspension has been cured or otherwise resolved by the parties in writing. Fees will continue to accrue for any Website, Applications or Services that are not suspended, and Licensee shall remain liable for all Fees incurred through the date of suspension. If the breach or other circumstance causing the suspension remains uncured for thirty (30) days after written notice from [REDACTED] may exercise its termination rights set forth below.

C. Termination for Cause.

i. Either party may terminate this Agreement, in whole or in part as it applies to a specific Website, Application, or Service, immediately if the other party breaches any material term of this Agreement and such breach remains uncured for thirty (30) days following written notice by the non-breaching party of such breach.

ii. [REDACTED] may terminate this Agreement, in whole or in part as it applies to a specific Website, Application or Service, immediately if any breach or circumstance creating a right for [REDACTED] to implement a suspension pursuant to Section 7.B hereof remains uncured after thirty (30) days following written notice from [REDACTED]

iii. [REDACTED] may terminate this Agreement, in whole or in part as it applies to a specific Website, Application or Service, immediately upon Licensee's liquidation, commencement of dissolution proceedings, disposal of assets, failure to continue business, assignment for the benefit of creditors, or upon the initiation of a voluntary or involuntary bankruptcy or similar proceeding.

iv. Upon termination of this Agreement, Licensee shall remain liable for all Fees incurred through the date of termination, and Licensee's and License Users' rights under this Agreement shall immediately terminate.

D. Consequences of Termination. Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination. On termination of this Agreement:

i. the Licensee and License Users shall immediately cease all use of the Website, Applications and Services;

ii. each party shall return or, with respect to [REDACTED] allow Licensee to retrieve (or destroy, if requested by the other party in writing) the other party's Confidential Information;

iii. at the other party's request, following the return or destruction of Confidential Information in accordance with Section 7.D.ii above, the party returning or destroying the Confidential Information shall provide the other party with a certificate signed by a director confirming its compliance with that Section; and

iv. the rights and obligations under provisions of this Agreement which expressly or by their nature survive termination shall remain in full force and effect, including the Sections identified in Section 12.L.

8. Confidentiality

A. Non-Disclosure of Confidential Information. PUBLICLY DISCLOSING THE EXISTENCE, DESCRIPTION, FUNCTIONS, OPERATIONS, CAPABILITIES, OR USE OF THE WEBSITE, APPLICATIONS, OR SERVICES ("CONFIDENTIAL INFORMATION") COULD COMPROMISE THE EFFECTIVENESS OF THE TECHNOLOGY AND MAY ALLOW INDIVIDUALS WHO ARE THE [REDACTED] SUCH DISCLOSURE COULD COMPROMISE CRIMINAL AND PUBLIC SECURITY INVESTIGATIONS AND COULD ENDANGER THE LIVES AND PHYSICAL SAFETY OF LAW ENFORCEMENT OFFICERS, [REDACTED] PERSONNEL, AND OTHER THIRD PARTIES, HAMPERING LAW ENFORCEMENT'S AND OTHER USERS' ABILITY TO PROTECT THE PUBLIC FROM CRIMINAL ACTIVITY AND OTHER THREATS. To ensure that the Website, Applications, and Services and similar technology continue to be available to law enforcement and other users, and to protect [REDACTED] rights, Licensee shall not (and shall ensure that Licensee Users shall not) disclose Confidential Information to any third party, or allow Confidential Information to be disclosed to any

third party, without [REDACTED] prior written consent, to be given in [REDACTED] sole and absolute discretion. Without limitation, the foregoing does not allow Confidential Information to be disclosed in press releases, interviews, court documents or legal filings, judicial or administrative proceedings (including, without limitation, in pre-trial matters, in search warrants and related affidavits, in grand jury proceedings, or in any phase of a criminal or civil trial or appeal), or during public forums or other proceedings. Licensee Data downloaded from the Website is purposely free of [REDACTED] to prevent disclosure in court documents. In no event, unless compelled by a court, shall Licensee allow the defense in a criminal proceeding to see the [REDACTED] name or mark. The foregoing does not prevent the disclosure and use of evidentiary results obtained through use of the Website, Applications, or Services, provided no Confidential Information is disclosed (such as, without limitation, the means by which the evidentiary results were obtained).

B. Prevention Of Disclosure. If (1) Licensee learns that any Licensee Representative, District Attorney, prosecutor, court or other judicial or administrative tribunal, or other person, entity, or governmental body is considering using or intends to use or provide any Confidential Information in any case or legal or administrative proceeding, (2) if there is any discovery request, motion or other request made or filed in any case or legal or administrative proceeding for use or disclosure of any Confidential Information, (3) any request is made pursuant to the Freedom of Information Act (5 U.S.C. Â§ 552), any public records or open records law or an equivalent law for disclosure of Confidential Information, or (4) IF ANY COURT OR OTHER JUDICIAL OR ADMINISTRATIVE TRIBUNAL ORDERS THE DISCLOSURE OF ANY CONFIDENTIAL INFORMATION, THEN LICENSEE WILL IMMEDIATELY INFORM [REDACTED] AND COOPERATE IN ANY EFFORT BY [REDACTED] TO INTERVENE AND PREVENT SUCH USE OR DISCLOSURE. [REDACTED]

C. Non-Disclosure of Customer Data. [REDACTED] shall not disclose Customer Data to any third party without Licensee's prior written consent, to be given in Licensee's sole and absolute discretion, or unless compelled by a regulator or required by law. In the event a request or demand by any non-party or government (in the form of a subpoena, court order or otherwise) is provided to or served on [REDACTED] for information regarding Customer Data, [REDACTED] shall, unless prohibited by law, notify Licensee to the extent practicable. [REDACTED] shall not access Customer Data without the consent of Licensee, unless such access is directly related to [REDACTED] provision of the Website, Applications, or Services or other actions contemplated by this Agreement.

D. Damages Not an Adequate Remedy. The Parties agree that damages may not be an adequate remedy for breach of this Section 8 and (to the extent permitted by the court) that the party not in breach shall be entitled to seek an injunction or specific performance with respect to such breach.

9. Representations & Warranties

A. Mutual Representations and Warranties. Each of the parties represent, warrant and covenant to the other party that they have full power and authority to enter into this Agreement, and to carry out their respective obligations hereunder.

B. Licensee's Representations and Warranties. Licensee represents and warrants that it has, and shall maintain for the duration of the term of this Agreement and 12 months thereafter, all consents, licenses, authorizations required to use the Website, the Applications and the Services in accordance with applicable laws and that all customizations of the Applications or Services performed by Licensee, all content and material Licensee provides to [REDACTED] (including but not limited to customizations or branding to be performed by [REDACTED] at Licensee's specific instruction), all Customer Data, and all of Licensee's use of the Website, Services, or Applications shall not:

- i. infringe any Intellectual Property Rights of any third party;
- ii. constitute defamation, invasion of privacy, or unlawful publicity, or otherwise violate any rights of any third party;
- iii. violate any civil, criminal, or other application law, or be used in any illegal activity or to promote illegal activities; or
- iv. contain a virus, trojan horse, worm or other disruptive or harmful software or data.

C. DISCLAIMER. LICENSEE AGREES AND ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE WEBSITE, APPLICATIONS AND SERVICES ARE PROVIDED "AS IS" TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE PARTIES AGREE THAT THE LIMITED WARRANTIES PROVIDED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTY WITH RESPECT TO THE FOLLOWING, EACH OF WHICH [REDACTED] EXPRESSLY DISCLAIMS:

- i. ACCURACY, RELIABILITY, QUALITY OR CONTENT OF THE WEBSITE, APPLICATIONS OR SERVICES OR ANY CONTENT LINKED THERETO;
- ii. FREEDOM AND SECURITY FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION;
- iii. TITLE AND NON-INTERFERENCE WITH OR NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS;

iv. THE AVAILABILITY OF THE WEBSITE, APPLICATIONS AND SERVICES AND ACCESS TO THE WEBSITE, APPLICATIONS AND SERVICES AT ANY TIME OR FROM ANY LOCATION;

v. THAT THE LICENSEE'S (OR ANY LICENSEE USER'S) USE OF THE WEBSITE, APPLICATIONS OR SERVICES WILL SATISFY OR ENSURE COMPLIANCE WITH ANY LEGAL OBLIGATIONS, LAWS OR REGULATIONS;

vi. THE TRANSFER, COLLECTION OR STORAGE OF DATA; OR

vii. IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

DISCLAIMS ANY LIABILITY FOR THE FOREGOING. IF ANY OF THE EXCLUSIONS OF IMPLIED WARRANTIES ARE NOT PERMITTED BY LAW, ANY SURVIVING IMPLIED WARRANTIES ARE LIMITED TO 60 DAYS FROM THE DATE OF THE PURCHASE OR DELIVERY OF ACCESS TO THE WEBSITE, APPLICATIONS OR SERVICES, WHICHEVER IS SOONER.

10. Limitation of Liability and Indemnification

A. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF [REDACTED] AND ITS REPRESENTATIVES FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID FOR THE WEBSITE, APPLICATIONS, OR SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE SUCH CLAIM ACCRUED. SUBJECT TO APPLICABLE LAW, [REDACTED] AND ITS REPRESENTATIVES ARE NOT LIABLE FOR ANY OF THE FOLLOWING: (A) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; OR (B) DAMAGES RELATING TO FAILURES OF TELECOMMUNICATIONS, THE INTERNET, ELECTRONIC COMMUNICATIONS, CORRUPTION, SECURITY, LOSS, DESTRUCTION, CORRUPTION OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF BUSINESS, REVENUE, PROFITS OR INVESTMENT, OR USE OF SOFTWARE OR HARDWARE THAT DOES NOT MEET [REDACTED] ACCEPTABLE USE REQUIREMENTS. THE ABOVE LIMITATIONS APPLY EVEN IF [REDACTED] AND ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS AGREEMENT SETS FORTH THE ENTIRE LIABILITY OF [REDACTED] AND ITS REPRESENTATIVES AND LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO THE WEBSITE, APPLICATIONS, AND SERVICES AND THEIR USE.

B. Indemnification. To the extent permitted by law, Licensee shall indemnify, defend, and hold ██████████ and its Representatives harmless from any and all claims, liability, expenses, fines and penalties, including reasonable attorneys' fees and costs, arising out of any claim that the Website, Applications or Services infringe any applicable law, or with respect to any breach of this Agreement or use of the Website, Applications, or Services by Licensee, Licensee's Representatives, or any Licensee User (collectively referred to as "Claims"). Licensee shall reasonably cooperate as requested by ██████████ in the defense of any Claims. ██████████ reserves the right, in its sole and absolute discretion and at its own expense, to assume the exclusive defense and control of any Claims. Licensee waives any sovereign, governmental, or similar immunity with respect to the foregoing indemnification obligation, and any other obligation set forth in this Agreement.

C. Contract Price. The limitations and exclusions of liability under this Section 10 shall not limit the Licensee's liability under this Agreement for payment of the Fees in accordance with this Agreement.

11. Notices

All notices, requests, demands and other communications required under this Agreement shall be in writing and shall be and shall be given or made (and shall be deemed to have been duly given or made upon receipt) as follows:

A. personally delivered;

B. delivered by registered or certified mail, return receipt requested, postage prepaid and addressed as provided below; or

C. delivered by a courier delivery service providing overnight or "next-day" delivery; and

if to Licensee: to Licensee's main contact at the address provided at the time of payment, and if to ██████████ (or at such other address for a party as shall be specified in a notice given in accordance with this Section 11).

12. Miscellaneous Provisions

A. Amendment. The terms and conditions set forth herein may be amended in ██████████ sole and absolute discretion from time to time. The most current version of this Agreement will be posted on the Website. When changes are made, ██████████ will make a new copy of the Agreement available at the Website and will also update the "Last Updated" date at the top of the Agreement. Any changes to the Agreement will be effective immediately for new users of the Website, Applications and Services, and for all other users such amended Agreement shall be effective thirty (30) calendar days

after posting to the Website. If an update is material, we will notify you in accordance with Section 11 of this Agreement and we may require you to provide consent to the updated terms of the Agreement in a specified manner before further use of the Website, Applications and Services is permitted. If an update is material and results in a material detriment to Licensee, and Licensee notifies [REDACTED] within the thirty (30) day period following receipt of notice of the update, Licensee may terminate the Agreement and will be entitled to a refund of any portion of the Fees that corresponds to the period between the date Licensee gives notice it wishes to terminate and the end of any term for which Fees have been pre-paid. Otherwise, the change will be deemed accepted once the thirty (30) day notice period has expired. Please check the Website regularly to view our then-current terms and conditions.

B. Rights of Third Parties. This Agreement shall not create any rights or benefits which are enforceable by anyone other than the parties.

C. Relationship. The relationship of [REDACTED] to Licensee is that of an independent contractor. Neither party shall have the right to bind each other to any obligation to third parties.

D. Assignment. [REDACTED] may assign this Agreement to an affiliate or any successor in connection with a merger, acquisition or consolidation, or the sale of all or substantially all of [REDACTED] assets. Licensee shall not assign this Agreement without the prior written consent of [REDACTED]. Any assignment in violation of this Section shall be void. This Agreement and all of its obligations shall be binding upon, inure to the benefit of, and be enforceable by and against the successors and permitted assigns of the parties to this Agreement.

E. Waiver. Neither the failure nor any delay on the part of a party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude other or further exercise of the same or any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power, or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver shall be binding unless executed in writing by the party making the waiver.

F. Governing Law and Arbitration of Disputes. This Agreement shall be construed in accordance with, and governed by, the laws of the [REDACTED] without regard to the application of conflicts of law principles. The parties agree that any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration conducted in the English Language, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Except as may be required by law, neither a party nor an arbitrator may

disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also may, without waiving any remedy under this agreement, seek from any court having jurisdiction any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitral tribunal (or pending the arbitral tribunal's determination of the merits of the controversy). Any litigation involving the Parties shall be conducted under seal, and any court filings shall be filed under seal. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

G. Attorney Fees. Should any arbitration or other legal action be brought by either party arising out of or relating to this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs as may be fixed by the arbitrator, court, or tribunal.

H. Authority. Each signatory hereto hereby warrants that he/she is authorized to bind the party designated in the signatory block of this Agreement.

I. Severability. Should any provision(s) of this Agreement be deemed unenforceable by a court, arbitrator, or other tribunal of competent jurisdiction, it shall be deemed deleted to the minimum extent necessary in the relevant jurisdiction (which can include deleting only part of the relevant provision) and the remaining provisions of this Agreement shall remain in force and enforced to carry out the intentions of the parties as set forth herein.

J. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements and understandings of the parties with respect to the subject matter hereof. The parties acknowledge that no party and no agent, representative or attorney of any party has made any promise or representation whatsoever, express or implied, concerning the subject matter of this Agreement (or to induce the execution of this Agreement) which is not expressly set forth herein. It is further acknowledged that in executing this Agreement the parties have not relied upon any promise or representation made by any other party or any other party's agent, representative or attorney except as such promises or representations are expressly set forth herein. No waiver, modification or amendment of this Agreement shall be binding and enforceable unless executed in writing by the parties.

K. Terminology. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any individual, corporation, company, group, partnership or other entity. The words such as "herein," "hereinafter," "hereof," "hereto," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise

requires. The word "including" or any variation thereof means (unless the context of its usage otherwise requires) "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it. As used herein, any reference to (i) the masculine, feminine or neuter gender includes the other two genders and (ii) the singular or plural number includes the other number.

L. Survival. Sections 8 (Confidentiality), 9 (Representations and Warranties), 10 (Limitation of Liability and Indemnification), and 12 (Miscellaneous Provisions) of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely.

M. Precedence. Should there be any conflict or inconsistency between the terms of this Agreement and [REDACTED] Acceptable Use Policy, [REDACTED] Privacy Policy and/or [REDACTED] Terms of Use & Service, the terms of this Agreement shall prevail unless expressly stated otherwise.

N. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Privacy Policy

Last updated: October 1st, 2016

██████████ and its affiliates and subsidiaries (collectively ██████████) respect your privacy. This Privacy Notice applies to your visits to the public portions of our website ██████████. It also applies to your use of our ██████████, and the non-public portions of our website that are accessible through a log-in ██████████. This Privacy Notice describes the types of information we collect, how we may use or share the information, and the choices you may have regarding your information.

██████████ may maintain separate privacy notices for other websites or ██████████ that it offers.

This Privacy Notice is intended to explain our privacy practices and covers the following areas:

1. [The ██████████ Services; Relationship Between ██████████ and Law Enforcement Agencies](#)
2. [Personal Information We Collect](#)
3. [How We Use Personal Information We Collect](#)
4. [Personal Information We Share](#)
5. [Data Retention](#)
6. [Your Rights and Choices](#)
7. [Operating ██████████ Abroad](#)
8. [How We Protect Personal Information](#)
9. [Links To Other Websites](#)
10. [Updates To Our Privacy Notice](#)
11. [How To Contact Us](#)

The ██████████ Services; Relationship Between ██████████ and Law Enforcement Agencies

██████████ makes available the ██████████ Services to law enforcement agencies. The law enforcement agencies may authorize their employees or other individuals to use its ██████████ Services. The law enforcement agencies determine the features and functionality of its ██████████ Services that are made available to you. This Privacy Notice does not apply to the privacy practices of any law enforcement agency.

Personal Information We Collect

In connection with your use of the public portions of our website or the ██████████ Services:

- You may submit information to us directly
- We may obtain information about you from law enforcement agencies or their employees
- We or our service providers may use automated means to collect certain information about your use of our website or the [REDACTED] Services

The types of personal information we collect through the public portions of our website and the [REDACTED] Services may differ. In addition, law enforcement agencies may direct us to collect personal information from your [REDACTED] through the [REDACTED] Services. We describe the information we collect and the types of personal information law enforcement agencies direct us to collect through your use of the [REDACTED] Services below:

(A) Information We Collect Both Through the Public Portions of Our Website and through the [REDACTED] Services

The types of personal information we collect through the public portions of our website and the [REDACTED] Services may include:

- Business or personal contact information (such as name, postal or e-mail address, and phone number)
- Demographic details (such as state and ZIP code)

We may also collect certain information by automated means, such as cookies, web beacons and other technologies. A "cookie" is a text file that websites send to a visitor's computer or other Internet-connected device to uniquely identify the visitor's browser or to store information or settings in the browser. A "web beacon," also known as an Internet tag, pixel tag or clear GIF, is used to transmit information back to a web server. We also may use third-party analytics tools that collect information about visitor traffic on our sites and use of [REDACTED]. The information we may collect by automated means includes:

- Details about the devices our visitors use to access our websites and [REDACTED] (such as the IP address and the device, browser and operating system type)
- Dates and times that you use our websites and [REDACTED]
- Information on actions taken using our websites and [REDACTED] (such as the webpages you view and your navigation between webpages, or the features of our [REDACTED] [REDACTED] that you use and your navigation between screens on our [REDACTED] [REDACTED])
- URLs that refer visitors to our websites
- Search terms that individuals use to reach our website or locate our [REDACTED]

We do not collect, nor do we knowingly permit third parties to collect, personal information about your activities over time and across third-party websites or online services.

(B) Information We Collect Through the [REDACTED] Services

In addition, we may collect the following types of personal information through the [REDACTED] Services:

[REDACTED]

(C) Information Law Enforcement Agencies Direct Us to Collect from Individuals they Authorize to Use the [REDACTED] Services

Law enforcement agencies may direct us to collect a wide variety of information from your [REDACTED] [REDACTED] when you use the [REDACTED] Services. The information may include:

[REDACTED]

How We Use Personal Information We Collect

We may use the personal information we obtain about you to:

- Process your registration and manage and maintain your account in connection with the [REDACTED] Services
- Communicate with you about the products and services we offer
- Provide customer support
- Operate, evaluate and improve our business and the products and services we offer
- Analyze and enhance our marketing communications and strategies (including by identifying when emails sent to you have been received and read)
- Protect against and prevent fraud, unauthorized use, claims and other liabilities, and manage risk exposure
- Comply with applicable legal requirements, judicial process, and our company policies
- Provide the relevant law enforcement agency with access to the information that it directed us to collect from [REDACTED]

We also may use your personal information in other ways for which we provide specific notice at the time of collection.

Personal Information We Share

We do not sell or otherwise disclose your personal information, except as described in this Privacy Notice. The manner in which we share personal information obtained through the public portions of our website and through the [REDACTED] Services may differ:

(A) Information We Share in Connection the Public Portions of Our Website and the [REDACTED] Services

We may share the information that we obtain in connection with the public portions of our website and the [REDACTED] Services with:

- Our parent, affiliate and subsidiary companies, for the purposes described in this Privacy Notice
- Service providers that perform services on our behalf (such as companies that provide technology outsourcing and hosting services), for the purposes described in this Privacy Notice. We contractually require these service providers to use or disclose the personal information only as necessary to perform services on our behalf or comply with legal requirements

We also may share the information about you in other ways for which we provide specific notice at the time of collection.

We may also disclose information about you to third parties if we are required to do so by law or legal process, but [REDACTED] will, unless prohibited by law, notify the relevant law enforcement agency that directed us to collect your information, to the extent practicable. We may also disclose information about you as directed by the relevant law enforcement agency.

Unless prohibited by the relevant law enforcement agency in connection with [REDACTED] services, we reserve the right to transfer the information we maintain in the event we sell or transfer all or a portion of our business or assets. If we engage in such a sale or transfer, we will use reasonable efforts to direct the recipient to use your personal information in a manner that is consistent with this Privacy Notice. After such a sale or transfer, you may contact the recipient with any inquiries concerning the processing of your personal information.

(B) Information We Share in Connection with the [REDACTED] Services

In addition, we may share the information we obtain in connection with the [REDACTED] Services with the relevant law enforcement agency and their service providers.

Data Retention

We will retain your personal information for as long as is necessary for the processing purpose for which it was collected; however, if a law enforcement agency directs us to delete information that it had directed us to collect, we typically comply with that request. We may also retain certain transaction details and correspondence for as long as necessary to defend against legal claims or to comply with regulatory requirements. We may retain an archived copy of your records as required by law or for legitimate business purposes.

Your Rights and Choices

You have certain rights regarding the personal information we maintain about you:

- If you receive marketing emails from [REDACTED] you may opt out or unsubscribe by following the directions provided in the email.
- In addition, you may have certain rights under applicable data protection law to access your personal information held by us. We may charge a fee to meet our costs in providing you with details of the personal information we hold about you, and there may be certain categories of information that we may be unable to, or have no right to, provide.

In addition, in connection with the [REDACTED] Services:

- If your employer provides your personal information to [REDACTED] you may have certain choices with respect to [REDACTED] use or disclosure of the information. If applicable, please contact your employer to learn about and to exercise your choices.
- You may choose to uninstall [REDACTED] or otherwise choose to no longer use the [REDACTED] Services.
- Please direct any access requests to the relevant law enforcement agency that authorized your use of the [REDACTED] Services. If you do not have the law enforcement agency's contact information, you may request that information from us.

It is the relevant law enforcement agency's responsibility to comply with any notification or information rights or duties to you in their use of the [REDACTED] Services, although there are exemptions in relation to the prevention and detection of crime which may override these duties.

Operating [REDACTED] Abroad

You may choose to use [REDACTED] Services outside of the United States, for example in the course of international investigations. While operating [REDACTED] outside of the United States, we may transfer personal information that we collect in a foreign country back to law enforcement agencies, affiliates, service providers, and other third parties in the United States, unless otherwise directed by the relevant law enforcement agency.

The countries from which personal, non-evidentiary information was collected may not have the same data protection laws as the United States.

How We Protect Personal Information

[REDACTED] maintains administrative, technical and physical safeguards designed to protect the personal information we maintain against accidental, unlawful or unauthorized destruction, loss, alteration, access, disclosure or use. However, we cannot guarantee that the measures we maintain will guarantee the security of the personal information. Any transmission of personal information to us is completed at your own risk.

Links To Other Websites

For your convenience and information, we may provide links to websites that are not owned or operated by [REDACTED]. These websites may have their own privacy notices or policies. [REDACTED] is not responsible for the privacy practices of any entity that it does not own or control.

Updates To Our Privacy Notice

When we update this Privacy Notice, we will notify you of changes deemed material under applicable legal requirements by posting a notice on our website through the [REDACTED] Services. We may also notify you of changes in the Privacy Notice in other ways in our discretion, such as via email or other contact information you have provided.

Any changes to this Privacy Notice deemed material under applicable legal requirements will be effective thirty (30) calendar days following our posting of notice of the changes. We therefore encourage you to review this Privacy Notice from time to time to stay informed of how we are using personal information.

How To Contact Us

You may contact us with questions or comments about this Privacy Notice or our privacy practices or to request access to or correction of your information by emailing [redacted] (e-mail address hidden).

Refund Policy

Last updated: October 1st, 2016

Should You have any dispute as to fees associated with Your account, please contact us at [REDACTED] (e-mail address hidden) within 90 days of the date of the activity that generated such dispute, and we will attempt to resolve the matter. Any and all refunds issued to resolve such a dispute shall be issued as credit to Your account, but in no event shall there be any cash refunds. Disputes older than 90 days shall not be entitled to any refunds or credits.

Amendment to License and Services Agreement

The undersigned parties hereby amend their License and Services Agreement as follows:

1. Delete Section 4(B) and replace it with the following:

B. Fees. Except during the term of a valid free trial subscription, Licensee shall pay the applicable fees for use of the Applications, Website, and Services, as set forth on the Website or otherwise communicated in writing to Licensee before Licensee begins using the Applications, Website, or Services (the "Fees"). [REDACTED] may increase or add new Fees upon 30 days' advance notice and with the written approval of Licensee. All Fees are exclusive of applicable taxes and duties, including, without limitation, VAT and applicable sales tax, for which Licensee shall be solely responsible. Licensee shall provide [REDACTED] will provide such information as reasonably required to determine whether [REDACTED] is obligated to collect VAT from Licensee.

2. Delete Section 4(D) and replace it with the following:

Fee Disputes. Should Licensee have any dispute as to Fees charged, Licensee shall notify [REDACTED] of such dispute at [REDACTED] within sixty (60) days of the date of the activity that generated such dispute or reasonable notice of the dispute, whichever is later. Any and all refunds issued to resolve such a dispute shall be issued as credits to Licensee's account, but in no event shall there be any cash refunds. Licensee waives and shall not pursue any claims against [REDACTED] regarding any dispute as to Fees that is not raised with [REDACTED] at [REDACTED] within sixty (60) days of the date of the activity that generated such dispute or reasonable notice of the dispute.

3. Delete Section 6(A) and replace it with the following:

A. [REDACTED] Policies. Licensee shall, and shall ensure that Licensee Users shall, abide by the terms of [REDACTED] Acceptable Use Policy and Privacy Policy posted on the Website, as updated during the Term of this Agreement from time to time (such revised versions to become effective (10) calendar days after the date of posting on the Website). Licensee agrees to periodically access the Acceptable Use Policy and Privacy Policy to ensure its ongoing compliance with them. [REDACTED] shall provide written notice via email to all Licensee's [REDACTED] users of any updates to the Acceptable Use Policy and Privacy Policy.

4. Delete Section 6(I) in its entirety.

5. Delete Section 8(A) and replace it with the following:

A. Non-Disclosure of Confidential Information. PUBLICLY DISCLOSING THE EXISTENCE, DESCRIPTION, FUNCTIONS, OPERATIONS, CAPABILITIES, OR USE OF THE WEBSITE, APPLICATIONS, OR SERVICES ("CONFIDENTIAL INFORMATION") COULD COMPROMISE THE EFFECTIVENESS OF THE TECHNOLOGY AND MAY ALLOW [REDACTED]

DE [REDACTED]

██████████ SUCH DISCLOSURE COULD COMPROMISE CRIMINAL AND PUBLIC SECURITY INVESTIGATIONS AND COULD ENDANGER THE LIVES AND PHYSICAL SAFETY OF LAW ENFORCEMENT OFFICERS, ██████████ PERSONNEL, AND OTHER THIRD PARTIES, HAMPERING LAW ENFORCEMENT'S AND OTHER USERS' ABILITY TO PROTECT THE PUBLIC FROM CRIMINAL ACTIVITY AND OTHER THREATS. To ensure that the Website, Applications, and Services and similar technology continue to be available to law enforcement and other users, and to protect ██████████ rights, Licensee shall not (and shall ensure that Licensee Users shall not) disclose Confidential Information to any third party, or allow Confidential Information to be disclosed to any third party without a court order. Without limitation, the foregoing does not allow Confidential Information to be disclosed in press releases, interviews, court documents or legal filings, judicial or administrative proceedings (including, without limitation, in pre-trial matters, in search warrants and related affidavits, in grand jury proceedings, or in any phase of a criminal or civil trial or appeal), or during public forums or other proceedings without a court order. Licensee Data downloaded from the Website is purposely free of ██████████ Marks to prevent disclosure in court documents. In no event, unless compelled by a court, shall Licensee allow the defense in a criminal proceeding to see the ██████████ name or mark. The foregoing does not prevent the disclosure and use of evidentiary results obtained through use of the Website, Applications, or Services, provided no Confidential Information is disclosed (such as, without limitation, the means by which the evidentiary results were obtained).

6. Delete Section 8(B) and replace it with the following:

B. Prevention Of Disclosure. If (1) Licensee learns that any Licensee Representative, District Attorney, prosecutor, court or other judicial or administrative tribunal, or other person, entity, or governmental body is considering using or intends to use or provide any Confidential Information in any case or legal or administrative proceeding, (2) if there is any discovery request, motion or other request made or filed in any case or legal or administrative proceeding for use or disclosure of any Confidential Information, (3) any request is made pursuant to the Freedom of Information Act (5 U.S.C. Â§ 552), any public records or open records law or an equivalent law for disclosure of Confidential Information, or (4) IF ANY COURT OR OTHER JUDICIAL OR ADMINISTRATIVE TRIBUNAL ORDERS THE DISCLOSURE OF ANY CONFIDENTIAL INFORMATION, THEN LICENSEE WILL IMMEDIATELY INFORM ██████████ AND COOPERATE IN ANY EFFORT BY ██████████ TO INTERVENE AND PREVENT SUCH USE OR DISCLOSURE.

7. Delete Section 10(A) and replace it with the following

A. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE ENTIRE LIABILITY OF ██████████ AND ITS REPRESENTATIVES FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE APPLICABLE LIMITS OF ██████████ LIABILITY INSURANCE COVERAGE. TO THE EXTENT THAT THE CLAIM INVOLVES A CLAIM THAT IS NOT COVERED BY ██████████ LIABILITY

12 ██████████

INSURANCE, THE ENTIRE LIABILITY OF [REDACTED] AND ITS REPRESENTATIVES FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO TWO TIMES THE FEES PAID FOR THE WEBSITE, APPLICATIONS, OR SERVICES DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE SUCH CLAIM ACCRUED.-SUBJECT TO APPLICABLE LAW, [REDACTED] AND ITS REPRESENTATIVES ARE NOT LIABLE FOR ANY OF THE FOLLOWING: (A) INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; OR (B) DAMAGES RELATING TO FAILURES OF TELECOMMUNICATIONS, THE INTERNET, ELECTRONIC COMMUNICATIONS, CORRUPTION, SECURITY, LOSS, DESTRUCTION, CORRUPTION OR THEFT OF DATA, VIRUSES, SPYWARE, LOSS OF BUSINESS, REVENUE, PROFITS OR INVESTMENT, OR USE OF SOFTWARE OR HARDWARE THAT DOES NOT MEET [REDACTED] ACCEPTABLE USE REQUIREMENTS. THE ABOVE LIMITATIONS APPLY EVEN IF [REDACTED] AND ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS AGREEMENT SETS FORTH THE ENTIRE LIABILITY OF [REDACTED] AND ITS REPRESENTATIVES AND LICENSEE'S EXCLUSIVE REMEDY WITH RESPECT TO THE WEBSITE, APPLICATIONS, AND SERVICES AND THEIR USE.

[REDACTED] further agrees that it will monitor and test its data safeguards in accordance with commercially reasonable standards and in accordance with any applicable laws and regulations, and further agrees to adjust its data safeguards as necessary in light of relevant circumstances or the results of any relevant testing or monitoring. If [REDACTED] suspects or becomes aware of any unauthorized access to any Customer Data by any unauthorized person or third party, or becomes aware of any other security breach relating to Customer Data or other personal data held or stored by [REDACTED] under this Agreement, [REDACTED] shall immediately notify Licensee in writing and shall fully cooperate with Licensee to prevent or stop such data breach. In the event of such data breach, [REDACTED] shall comply with all applicable laws, and shall take the appropriate steps to remedy such data breach.

8. Delete Section 10(B).

9. Delete Section 12(F) and replace it with the following:

F. Governing Law and Arbitration of Disputes. This Agreement shall be construed in accordance with, and governed by, the laws of the State of New Hampshire, without regard to the application of conflicts of law principles. Any disputes shall be resolved within the venue of the State of New Hampshire, Merrimack County Superior Court, or its equivalent jurisdictional successor. Any litigation involving the Parties shall be conducted under seal, and any court filings shall be filed under seal. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

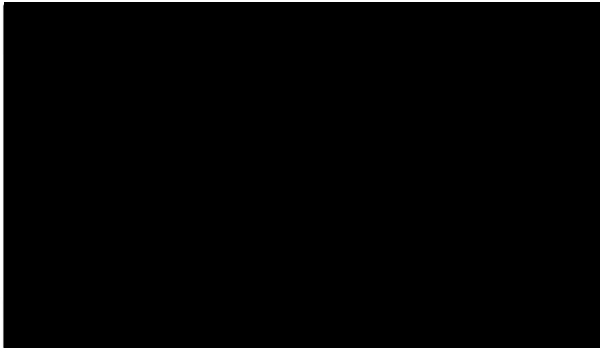
02 [REDACTED]

10. Delete Section 12(G) and replace it with the following:

G. Attorney Fees. Should any legal action be brought by either party arising out of or relating to this Agreement or to enforce any provision herein, the prevailing party of such action shall be entitled to reasonable attorneys' fees, court costs and such other costs to the extent awarded by the court or tribunal.

Except as expressly set forth in this amendment, the License and Services Agreement is unchanged and shall continue in full force and effect in accordance with its terms. If there is conflict between this amendment and the License and Services Agreement or any earlier amendment, the terms of this amendment shall prevail.

Dated this 28th day of December, 2017.



City of Concord, New Hampshire

By: *Joseph B. P...*

Its: *Prochesse Manager*

EXHIBIT H

CONCORD MONITOR

(<https://www.concordmonitor.com>)

News > Local (/News/Local/)

Concord's 'covert' budget item website-based

By CAITLIN ANDREWS (/byline?byline=By_CAITLIN_ANDREWS.)

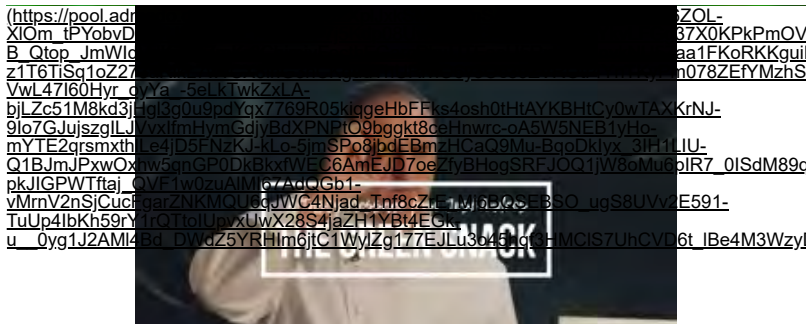
Monitor staff

Published: 6/16/2019 6:14:02 PM

It looks like \$5,100 will buy the city of Concord access to a website and services that can be used to collect data for law enforcement purposes.

[A \(https://www.concordmonitor.com/Concord-NH-budget-2020-parking-enterprise-funds-capital-improvement-projects-25678282\)](https://www.concordmonitor.com/Concord-NH-budget-2020-parking-enterprise-funds-capital-improvement-projects-25678282) *Monitor* article mentioned (<https://www.concordmonitor.com/Concord-NH-budget-2020-parking-enterprise-funds-capital-improvement-projects-25678282>) a few weeks ago that Concord's proposed budget for next year – a \$66.5 million plan detailed in over 600 pages – has at least one line item that can't be explained by city officials. This “covert communications equipment” is covered by a non-disclosure agreement through the city and its vendor. Even the line-by-line version of the budget doesn't offer clues.

City Manager Tom Aspell has previously said the equipment isn't body cameras or drones.



AD

SKIP AD >

But a license and service agreement between the city and the unknown vendor gives a little more insight into what that equipment may be and how Concord's relationship with the described “independent contractor” will work.

A redacted version of the agreement was provided to the *Monitor* last week by Concord police Chief Bradley Osgood through a right-to-know request. Osgood cited a law enforcement exemption in RSA 91-A:4 as the reason for the redactions as well as New Hampshire Supreme Court cases *Murray v. State Police* and *Montenegro v. City of Dover*.

“The contract has been redacted because it contains confidential information relative to surveillance technology,” Osgood wrote.

The contract, signed Oct. 28, 2017, by former Concord purchasing manager Douglas Ross, details how the vendor's “Website, Applications, or Services” can be used by the city. There isn't much description of what the company does aside from it offering “technical products and services to law enforcement agencies.”

The agreement has stringent confidentiality rules.

"Publicly disclosing the existence, description, functions, operations, capabilities, or use of the website ... could compromise the effectiveness of the technology," the agreement reads in capital letters.

The agreement also says disclosing the use of the vendor's services could compromise "public security investigations" and endanger law enforcement lives.

Should Concord learn that anyone – district attorneys, judges or members of the public, for example – are planning to use the information the vendor collects, obtain it through open records laws, or if a judicial or administrative tribunal orders its release, the city is required to notify the vendor.

"Licensee will immediately inform (redacted) and cooperate in any effort by (redacted) to intervene and prevent such use or disclosure," the agreement reads.

The vendor appears to have a public portion of its website through which it can collect business or personal contact information such as names, phone numbers and demographic detail.

It also appears law enforcement can collect data from the city when they use the service, according to the agreement. What kind of data they will collect is unknown.

The contract doesn't detail how long the agreement will last.

License & Services Agreement

This is an agreement between you and any entity, organization, or governmental entity you are authorized to bind (hereinafter collectively referred to as "Licensee," "You," or words of similar import) and [REDACTED] and its subsidiaries and affiliates (collectively [REDACTED] "we," "us," or words of similar import). In order to use any [REDACTED] software applications ("Applications"), access the information contained on the [REDACTED] or otherwise make use of any of the services or materials provided by [REDACTED] (the "Services"), you must first read this agreement (the "Agreement") and accept it. You may not use or permit any person to access or use under your or authority or direction (whether they are acting in accordance in the course of such access or use or not) the Website, Applications, or Services if You do not accept this Agreement and the terms herein. You accept the terms of the Agreement by clicking to accept, by agreeing to the terms of the Agreement in the user interface for any of the Website, Applications, or Services, or by using the Website, Applications, or Services. In the latter case, You understand and agree that [REDACTED] will treat Your use of the Website, Applications, or Services as acceptance of the terms from that point onwards. From your acceptance of these terms and conditions, these terms and conditions shall replace any other terms of service that may have previously applied to your use of the Website, Applications or Services.

By putting a check mark next to I AGREE and clicking on SIGN & CONTINUE or by using the Website, Applications, or Services, You represent that You have read and agree to the terms and conditions of this Agreement, which also include and incorporate [REDACTED] Acceptable Use Policy and Privacy Policy. These terms and conditions will remain in effect throughout Your use of the Website, Applications, and Services and continue after this Agreement expires or is terminated as set forth herein. These terms and conditions are legally binding should You choose to proceed with use of the Website, Applications, or Services.

RECITALS

WHEREAS, [REDACTED] offers various technical products and services to law enforcement agencies; and

WHEREAS, Licensee desires to use certain products and services offered by [REDACTED]

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, [REDACTED] and Licensee agree as follows:

1. License, Restrictions, Ownership

The Concord City Council will be voting on the item, along with the rest of the \$66.5 million operating budget, Monday at 7 p.m. A public comment portion of the meeting will precede the vote.

(Caitlin Andrews can be reached at 369-3309, candrews@cmonitor.com or on Twitter at @ActualCAndrews.)



Bradley C. Osgood
Chief of Police

City of Concord, New Hampshire

POLICE DEPARTMENT
35 Green Street • 03301-4299
(603) 225-8600
FAX (603) 225-8519
www.concordpolice.com

June 10, 2019

VIA EMAIL (candrews@concordmonitor.com)

Caitlin Andrews
Concord Monitor
Post Office Box 1177
Concord, NH 03302-1777

Re: Right-to-Know Request

Dear Ms. Andrews:

The City has completed its review of its files for the requested documents in your May 29, 2019 Right-to-Know request, under RSA Ch. 91-A. The documents, totaling 29 pages, are attached for your review in PDF format. There is no charge for these documents because they exist in an electronic format and are being produced in that manner.

Please note that the contract has been redacted because it contains confidential information relative to surveillance technology that is exempt from disclosure under the law enforcement exemption set forth in RSA 91-A:4. This information, if released, would disclose techniques and procedures for law enforcement investigations. The disclosure of this information could compromise the effectiveness of the technology and allow individuals who are the subjects of investigations to employ countermeasures, and such disclosure could also compromise criminal investigations and endanger the lives and physical safety of the law enforcement officers who utilize the technology.

The New Hampshire Supreme Court has stated that information may be withheld if disclosure "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." *Murray v. State Police*, 154 N.H. 579, 582 (2006). Although this exclusion does not prevent the disclosure of routine techniques and procedures already well known to the public, it does protect from disclosure "detailed law enforcement surveillance procedures," such as locations of surveillance equipment, recording capabilities for each piece of equipment, the specific time periods each piece of equipment is expected to be operational, and the retention time for any recordings. *Montenegro v. City of Dover*, 162 N.H. 641, 649 (2012). The Court recognizes that this "information is of such substantive detail that it could reasonably be expected to risk

edpick (/keyword/?keyword=edpick) concord nh (/keyword/?keyword=concord nh) downtown (/keyword/?keyword=downtown)
concord city council (/keyword/?keyword=concord city council)

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(<https://www.facebook.com/sharer/sharer.php?s=100&u=https%3a%2f%2fwww.concordmonitor.com%2fConcord-NH-police-covert-communications-budget-item-still-secret-26171749>)

Share on Twitter

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EXHIBIT I

To: [Osgood, Bradley](#)
Cc: ["Kennedy, James"](#)
Date: Monday, June 17, 2019 2:19:00 PM

Chief Osgood,

I hope all is well, and thanks for sending this information. In an effort to narrow the scope of our Chapter 91-A dispute, we are willing to narrow request No. 1 – while reserving our rights -- to documents sufficient to generally describe the communications equipment purchased. To be clear, we are not seeking the item's specifications/capabilities and how the item will be used. As to Request No. 2, we will continue to insist on the agreement. If the City continues to be unwilling to produce the agreement, I would ask the City to at least provide us with the name of the vendors/contractors contracting with the City.

With these modifications to our Chapter 91-A request, we are not seeking the type of information that was deemed exempted in *Montenegro v. City of Dover*, 162 N.H. 641, 643 (2011). Indeed, in *Montenegro*, the petitioner was generally aware that the equipment in question constituted surveillance cameras, while deeming exempt the precise locations of the City's surveillance equipment, the recording capabilities for each piece of equipment, and the specific time periods each piece of equipment is operational. Indeed, in *Montenegro*, the City provided the following information to the petitioner: "the general location and buildings where cameras are, or are proposed to be, sited; the number of cameras in or around each site; '[t]he capability and intent of the Dover Police to monitor cameras from remote locations'; the 'intent of the Dover Police not to monitor the cameras on a regular basis,' but to view them as needed when it would assist in law enforcement; '[t]he cost of the security equipment'; '[t]he names of the vendors installing the security equipment'; '[t]he contracts for installing the security equipment'; and when the equipment was installed.

Please let me know this week if you can. Thanks.

Best,
Gilles Bissonnette
ACLU-NH Legal Director

From: Osgood, Bradley <BOsgood@concordpolice.com>
Sent: Monday, June 10, 2019 10:35 AM
To: Gilles Bissonnette <gilles@aclu-nh.org>
Subject: Right to Know Request

Gilles: Attached is the response to the May 28, 2019 Right to Know Request.

Brad