



VIA EMAIL AND U.S. MAIL

September 21, 2018

Charles Parkin
City Attorney
Office of the City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, California 90802

Robert G. Luna
Chief
Long Beach Police Department
400 W. Broadway
Long Beach, CA 90802

RE: Long Beach Police Department's use of TigerText application

Dear Mr. Parkin and Chief Luna,

On September 18, 2018, Al Jazeera and Beachcomber published investigative reports based in part on documents obtained by our office that revealed the Long Beach Police Department (“LBPd” or the “Department”) uses a mobile and desktop messaging application called TigerText that enables Department officers to exchange messages between each other that automatically self-destruct.¹ The Al Jazeera investigation reported that Department officers use the application to share messages between each other that they do not want disclosed in discovery or to the public. The ACLU Foundation of Southern California (“ACLU SoCal”) is deeply troubled by these allegations. The use of TigerText by the Department violates California law requiring the preservation of city records, and may call into question the integrity of many hundreds of civil and criminal cases that rely upon evidence provided by LBPd officers.

The Department responded to the reports by announcing a suspension of the application’s use “pending further review.” While suspending use of TigerText is a step in the right direction, the City must come into full compliance with the law by permanently discontinuing its use, promulgating affirmative policies prohibiting officers from using self-destructing messaging applications for work-related functions, and conducting a thorough internal investigation into the

¹ Simon Boazman & Jeremy Young, *Exclusive: US police ‘using Tiger Text app to conceal evidence*, AL JAZEERA (September 18, 2018), <https://www.aljazeera.com/news/2018/09/exclusive-police-tiger-text-app-conceal-evidence-180918052839766.html>; Stephen Downing, *TigerText – LBPd’s Illegal Destruction of Evidence*, Beachcomber (September 18, 2018, 8:52 a.m.), <https://beachcomber.news/content/tigertext-%E2%80%93-lbpd%E2%80%99s-illegal-destruction-evidence>.

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use of TigerText and its impacts on closed and pending cases. We also renew our request for additional documents yet to have been disclosed to us in response to records requests, and further request any additional documents concerning the City's suspension of the application's use.

I. TigerText is an ephemeral messaging application that allows users to send self-destructing messages to each other.

TigerConnect, Inc. is a corporation that specializes in selling communications tools for the healthcare industry, one of which it calls "TigerText." TigerText is a mobile messaging platform that offers users the ability to send messages between each other with a "message lifespan" feature that sets a "message lifespan to dictate when messages will be automatically deleted."² TigerText also incorporates "messaging recall," which can "retract errant messages before or after they're read."³ Together, these functions allow removal of all traces of a message from a conversation, similar to a well-known feature employed by the popular messaging application Snapchat.

Documents obtained by ACLU SoCal reveal that LBPDP contracted with TigerConnect since as early as 2014 for licenses to use its TigerText application. According to the Al Jazeera report, LBPDP leadership subsequently instructed officers to use TigerText to send messages they did not want revealed to the public or disclosed in criminal or civil discovery. Their sources reported that Department detectives used the service to discuss investigations of police killings, as well as internal personnel matters within the Department.

II. California law prohibits using TigerText to destroy text messages concerning City business.

The Department's use of TigerText to delete messages related to police investigations and other Department business violates the City of Long Beach's legal obligation to preserve records under California law, and may violate state and federal court rules that require disclosure of evidence in litigation. Text messages sent by government officials about city business constitute "public records" under California law, even when those texts are sent on private devices. *City of San Jose v. Superior Court*, 2 Cal. 5th 608 (2017). Government Code section 34090(d) prohibits a city government from destroying public "[r]ecords less than two years old." The destruction of these messages also violates City of Long Beach policy that requires the preservation of emails and instant messages,⁴ which LBPDP policy describes as "formal communications tools."⁵ The Department's intentional and automatic destruction of records—particularly about internal investigations in police killings, matters of intense public interest—violates these clear legal requirements.

In addition, multiple legal rules obligate LBPDP to disclose and testify about records in response to requests made in civil and criminal litigation. The Department's use of TigerText implicates obligations to produce exculpatory evidence in criminal cases established by the

² TigerText Essentials Datasheet, TigerConnect, at 2, <https://www.tigerconnect.com/wp-content/uploads/2018/09/datasheet-TigerText-Essentials-smb-tc.pdf> (last visited September 20, 2018).

³ *Id.*

⁴ Administrative Regulation AR8-17, Issue 2 ("Electronic Mail and Instant Messaging Use and Retention Policy"), City of Long Beach (last revised May 2009).

⁵ Section 3.48 ("Internet Usage"), Long Beach Police Department Manual.

Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963). Under *Brady*, the City and district attorneys may have violated a criminal defendant's constitutionally protected due process rights if LBPB officers communicated sensitive or important information to each other concerning the defendant's case, then destroyed those communications and prevented their disclosure. In addition to potential *Brady* violations, using TigerText may also have violated legal obligations to respond accurately to document requests in civil rights cases, and obligations to truthfully testify under oath about communications made concerning a police investigation. If LBPB officers used TigerText to discuss matters related to civil and criminal cases without disclosing the communications, they may have violated these litigation rules and threatened the integrity of the cases' outcomes.

III. LBPB must immediately promulgate policy prohibiting use of self-destructing messages and must investigate use of TigerText.

Given the illegality of TigerText's use by the Long Beach Police Department and the potential impact of the application's use on pending and closed cases, ACLU SoCal calls on the Department to take immediate steps to remedy its use of the application. In particular, the Department must:

1. Terminate its contract with TigerConnect for the use of TigerText.
2. Promulgate policy prohibiting LBPB officers from using any self-destructing messaging applications for investigations or other Department business, including on private devices, and instruct officers to comply with California state law and city policy mandating records preservation.
3. Conduct a thorough internal investigation into the use of TigerText, including how its officers utilized the application, what types of messages they sent, the contents of those messages, and how many ongoing and closed cases LBPB officers used TigerText to communicate about. The conclusion of that investigation must be made public.
4. If any investigations into TigerText reveal that detectives used the application to discuss any particular civil or criminal case, provide prompt notice to all impacted litigants and their counsel.

We understand the Department issued a press release announcing a "suspension" in the use of TigerText "pending further review," and have reviewed Chief Luna's September 18, 2018 Special Order announcing the same. While we commend LBPB's immediate response to the TigerText revelations, more must be done to ensure compliance with California law and to regain the trust of the public in the Department's operations.

IV. The City of Long Beach must produce documents related to TigerText and its suspension.

In addition to the above, the City must fully respond to ACLU SoCal's June 1, 2018 Public Records Act request, and provide further documents consistent with the new Request contained in this letter below. On June 1, ACLU SoCal submitted a request under the California Public Records Act for documents concerning the Department's use of TigerText (Reference number: P000739-060118). The City produced a subset of responsive documents, but failed to

provide a complete record of TigerText invoices and contracts, communications concerning or referencing TigerText, records from TigerText vendor TigerConnect, or any policies and manuals governing the use of the application.

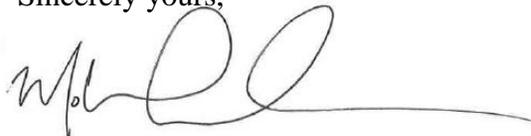
We subsequently sent a letter to the City on July 6 requesting the missing documents. We did not receive a response. We thereafter sent a third letter to the City on August 15, 2018, again soliciting a response to our July 6 letter. I communicated with LBPD Sergeant Byron Blair via telephone on August 27, 2018, and informed him of the remaining categories of records missing from the City's initial production. Sergeant Blair informed me he would work on the request further and respond within two weeks. After failing to receive a response, I wrote to Sergeant Blair on September 5, 2018, again seeking the missing records. We have to date not received any of the missing documents. Through this letter, I renew for the fourth time our demand for a complete production of records in response to our June 1 request as outlined in our prior communications.

Further, please treat this letter as a new Request under the California Public Records Act for all records or documents concerning TigerText created since June 1, 2018, including but not limited to any non-privileged documents concerning public records requests about TigerText, documents concerning the publication of the Al Jazeera report, and documents concerning the City of Long Beach's decision to suspend use of the TigerText application.

If you determine that some but not all the above-requested information is exempt from disclosure and that you intend to withhold it, we ask that you redact it for the time being and make the remaining responsive records available as requested. In any event, please provide a signed notification citing the legal authorities on which you rely if you determine that any or all of the information is exempt and will not be disclosed. Because this request is on a matter of public concern, and the ACLU of Southern California is a nonprofit public interest organization, we request a fee waiver. *See North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144 (1994). We also request that documents be provided in electronic format if possible. Doing so would eliminate the need to copy the materials and provides another basis for our requested fee waiver. If, however, such a waiver is denied, we will reimburse you for the reasonable cost of copying. Please inform us in advance if the cost will be greater than \$50.

We expect that the City Attorney's office, in conjunction with LBPD, will take the steps discussed above within 30 days from the receipt of this letter, and inform us (and the public) about these efforts accordingly. In the event the City and Department fail to do so, ACLU SoCal will consider all available legal options to ensure compliance with the law.

Sincerely yours,



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