

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

IN RE )  
INVESTIGATION OF TIKTOK, INC. )  
)

Case No. 23-0298-I

FILED  
2023 SEP 15 PM 2:23  
CLERK & MASTER  
DAVIDSON CO. CHANCERY

**MOTION TO COMPEL TIKTOK'S COMPLIANCE WITH AGREED ORDER  
ON MOTION FOR AN ORDER COMPELLING TIKTOK INC. TO COMPLY  
WITH THE ATTORNEY GENERAL'S REQUEST FOR INFORMATION**

1. Through this Motion to Compel TikTok's Compliance with the Agreed Order on Motion for an Order Compelling TikTok Inc. to Comply with the Attorney General's Request for Information (the "Second Motion to Compel"), the State of Tennessee, Office of the Attorney General and Reporter (the "State" or "Attorney General"), moves this honorable Court to compel TikTok, Inc. ("TikTok") to comply with the Agreed Order on Motion for an Order Compelling TikTok Inc. to Comply with the Attorney General's Request for Information entered herein on April 17, 2023 (the "Agreed Order"). Specifically, the Attorney General requests the Court issue an order directing TikTok to: (1) provide a corporate designee with knowledge of the relevant issues for a deposition; and (2) produce the legal hold notices it circulated to employees in connection with the State's investigation.

**I. BACKGROUND**

2. The Attorney General has reason to believe TikTok engages in unfair and deceptive business acts and practices in connection with the social media platform it makes available to consumers in Tennessee and elsewhere.

3. The Attorney General is investigating TikTok pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("TCPA").

4. As part of that investigation, the Attorney General served a Request for Information (“RFI”) on TikTok, as authorized by Tenn. Code Ann. § 47-18-106(a).

5. As explained in the State’s Motion for Order Compelling TikTok, Inc. to Comply with the Attorney General’s Request for Information filed on March 6, 2023, and detailed within the Memorandum in Support of the Motion to Compel filed contemporaneously therewith (collectively the “Motion to Compel”), TikTok failed to comply with the duty to preserve evidence set forth in the RFI.

6. The State filed the Motion to Compel principally to learn the scope and extent of relevant data which TikTok may have destroyed during the State’s investigation. To that end, the State requested the Court compel TikTok to produce a witness who could provide insight on this very subject which is of vital interest.

7. The Parties resolved the Motion to Compel through the Agreed Order which required TikTok to, among other things, produce just such a witness for examination on topics related to TikTok’s destruction of evidence. The Agreed Order states “[t]he purpose of this examination will be for the Attorney General to assess the retention or potential loss of relevant data during the course of this investigation....”

8. TikTok has not provided a witness sufficiently knowledgeable about this topic.

9. Instead, as explained in greater detail in the accompanying Memorandum in support of this Motion, which the State incorporates by reference herein, the witness TikTok provided was either unwilling or unable to answer questions on topics clearly identified in the Agreed Order.

10. The Agreed Order also requires TikTok to produce documents related to the examination. TikTok has refused to produce its complete litigation hold notice and has instead

asserted privilege. However, TikTok's privilege claim is baseless because there is sufficient evidence to support a preliminary finding of spoliation.

11. The State therefore seeks an order directing TikTok to: (1) provide a corporate designee with knowledge of the relevant issues for a deposition; (2) produce the legal hold notices it circulated to employees in connection with the State's investigation; and (3) pay the State's costs in prosecuting this Motion and taking an additional examination.

12. Furthermore, paragraph nine of the Agreed Order provided that the Court would retain authority to address any failure of TikTok to comply with the terms set forth therein and the State would be entitled to recover its reasonable attorneys' fees associated with enforcement.

## II. ARGUMENT

### **A. The Court should order TikTok to produce a corporate designee/s prepared to testify on the Agreed Order's topics for which Mr. Solow lacked knowledge.**

13. The Agreed Order required TikTok to produce a witness with knowledge of the extent and scope of its document destruction on or before to June 1, 2023. TikTok failed to produce such a witness and in subsequent months has refused to offer a witness with information regarding "the retention or potential loss of relevant data during the course of this investigation," the express purpose of the examination according to the Agreed Order.

14. TikTok's conduct violates both the plain terms of the Agreed Order and settled law in the analogous context of Tennessee Rule of Civil Procedure 30.02(6), which governs corporate witnesses.

15. As more fully explained in the accompanying Memorandum of Law, TikTok's witness Warren Solow was unprepared to answer many of the State's questions relating to subjects expressly identified in the Agreed Order, including who was responsible for deleting the container files.

17. TikTok failed to comply with the Agreed Order because its corporate designee was unable to provide answers on subjects identified therein and it has not provided an alternative witness to provide sworn testimony regarding those subjects.

18. Therefore, the State requests the Court compel TikTok to produce another witness or witnesses with knowledge of the relevant issues, for examination in compliance with the Agreed Order.

**B. The Court should order production of TikTok's legal hold notices because a preliminary showing of TikTok's spoliation overcomes any claim that the notices are privileged.**

19. The Agreed Order also requires TikTok to produce documents that it intended to rely on during the examination regarding whether it discharged its duty to preserve documents after receiving the State's RFI.

20. Although Mr. Solow relied on TikTok's litigation hold notice during the examination, TikTok has refused to produce the complete document on the grounds that it is privileged.

21. TikTok's privilege claim fails because the evidence collected to date supports a preliminary showing of spoliation.

22. Specifically, while Mr. Solow's testimony was woefully inadequate, it confirmed that TikTok employees had access to various means of permanently deleting internal messages for more than a year after receiving the State's RFI. Mr. Solow also confirmed that, nearly a year after receiving the RFI, TikTok deleted metadata "container" files which would have evidenced, among other things, the scope and extent to which TikTok's custodians deleted internal messages.

23. Additionally, TikTok failed to place numerous executives on litigation hold for more than a year after the RFI was issued despite having been requested to produce their communications.

24. As is explained in the Memorandum filed concurrently herewith, under these circumstances the Court can and should compel TikTok to produce its litigation hold notice in full, notwithstanding any privilege claim.

### **III. CONCLUSION**

25. The State, by way of the Second Motion to Compel, seeks an order compelling TikTok to provide a corporate designee with knowledge of the subjects set forth in the Agreed Order for examination, and produce the legal hold notices it distributed in connection with the State's investigation.

26. The State also reserves the right to seek any additional relief necessary to determine the level of spoliation that occurred, and to seek sanctions once it determines the level of prejudice resulting from that spoliation.

27. The bases for the relief the Attorney General seeks through the Second Motion to Compel are more fully articulated in the accompanying Memorandum of Law.

### **IV. PRAYER FOR RELIEF**

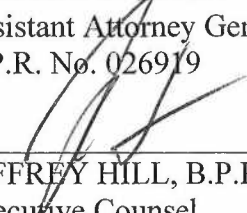
For the reasons set forth herein, Petitioner/Movant, State of Tennessee, moves this honorable Court pursuant to Tenn. Code Ann. § 47-18-106(c) as well as the Court's own equitable powers, to grant the Second Motion to Compel and:

A. Issue an order directing TikTok to provide a corporate designee with knowledge of the subjects set forth in paragraph seven of the Agreed Order for examination by the State;

- B. Issue an order compelling TikTok to produce the legal hold notices distributed in connection with the State's investigation;
- C. Award the State all attorneys' fees and costs incurred enforcing the Agreed Order pursuant to paragraph nine thereof;
- D. Tax all costs against TikTok, as no costs may be taxed against the State pursuant to Tenn. Code Ann. § 47-18-116; and,
- E. Grant the State such other and further relief as this Court deems just and proper.

Respectfully submitted,

JONATHAN STEIN  
Assistant Attorney General  
B.P.R. No. 026919



---

JEFFREY HILL, B.P.R. No. 016731  
Executive Counsel  
BRIAN PHELPS, B.P.R. No. 040705  
Assistant Attorney General  
Office of the Tennessee Attorney General  
Public Protection Section  
Consumer Protection Division  
UBS Tower, 20<sup>th</sup> Floor  
315 Deaderick Street  
Nashville, Tennessee 37243  
615.741.3533, phone  
615.532.2590, fax  
[jonathan.stein@ag.tn.gov](mailto:jonathan.stein@ag.tn.gov)  
[jeff.hill@ag.tn.gov](mailto:jeff.hill@ag.tn.gov)  
[brian.phelps@ag.tn.gov](mailto:brian.phelps@ag.tn.gov)

*Attorneys for State of Tennessee*

**NOTICE OF HEARING**

**THIS MOTION SHALL BE HEARD ON FRIDAY, THE 29<sup>TH</sup> DAY OF SEPTEMBER 2023, AT 9:00 A.M. IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE, AT NASHVILLE METROPOLITAN COURTHOUSE, 1 PUBLIC SQUARE, NASHVILLE, TENNESSEE 37201. FAILURE TO FILE AND SERVE A TIMELY WRITTEN RESPONSE TO THE MOTION WILL RESULT IN THE MOTION BEING GRANTED WITHOUT FURTHER HEARING.**

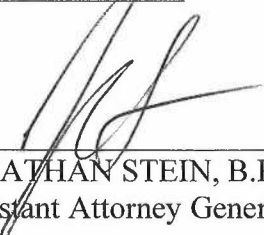
**CERTIFICATE OF SERVICE**

I, Jonathan Stein, hereby certify that I caused a copy of the foregoing to be served upon the following by electronic mail:

Craig TenBroeck, Esq.  
Travis LeBlanc, Esq.  
Cooley LLP  
10265 Science Drive  
San Diego, California 92121  
*Via E-Mail:* [ctenbroeck@cooley.com](mailto:ctenbroeck@cooley.com)  
[tleblanc@cooley.com](mailto:tleblanc@cooley.com)

Thomas Cullen, Esq.  
Kate Skagerberg, Esq.  
Nelson Mullins Riley & Scarborough, LLP  
150 Fourth Avenue North, Suite 1100  
Nashville, Tennessee 37219  
*Via E-Mail:* [thomas.cullen@nelsonmullins.com](mailto:thomas.cullen@nelsonmullins.com)  
[Kate.skagerberg@nelsonmullins.com](mailto:Kate.skagerberg@nelsonmullins.com)

This the 15<sup>th</sup> day of September 2023.



---

JONATHAN STEIN, B.P.R. No. 026919  
Assistant Attorney General



**IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE**

**IN RE**

**INVESTIGATION OF TIKTOK, INC.**

)  
)

**Case No. 23-0298-I**

CLERK OF THE COURT  
DAVIDSON COUNTY, TENNESSEE

2023 SEP 15 PM 2:23

FILED

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO COMPEL  
TIKTOK'S COMPLIANCE WITH AGREED ORDER ON MOTION FOR AN  
ORDER COMPELLING TIKTOK INC. TO COMPLY WITH THE  
ATTORNEY GENERAL'S REQUEST FOR INFORMATION**

**INTRODUCTION**

The Attorney General of the State of Tennessee (the "State") moves the Court to compel TikTok to remedy its failure to comply with the terms of the April 17, 2023, Agreed Order requiring that TikTok produce: (1) a corporate representative for examination on issues relating to TikTok's spoliation of evidence during the course of this consumer protection investigation; and (2) documents relating to that examination.

On March 6, 2023, the State filed a Motion for an Order Compelling TikTok, Inc. to Comply with the Attorney General's Request for Information ("Motion to Compel"). The State filed the Motion to Compel because it had reason to believe TikTok had failed to preserve evidence after receiving an investigatory Request for Information on March 2, 2022 ("RFI"). Specifically, the State was concerned TikTok's use of "secure" messaging and the chat "recall" function on its Lark enterprise collaboration platform resulted in potentially extensive destruction of evidence in violation of TikTok's express duty to preserve documents and data during the State's investigation.

The parties resolved the Motion to Compel through an agreed order, which the Court entered on April 17, 2023 ("Agreed Order").<sup>1</sup> The Agreed Order requires TikTok to, among other

---

<sup>1</sup> The Agreed Order is annexed hereto as EXHIBIT 1.

things, produce a corporate representative prepared to testify on a number of issues relating to data retention and preservation at TikTok. As set forth in the Agreed Order, the

purpose of this examination w[ould] be for the Attorney General to assess the retention or potential loss of relevant data during the course of this investigation and the impact that the Company's use of the Lark platform may have had on its ability to retain or export data from Lark.

Agreed Order at ¶ 7.

TikTok has not complied with the Agreed Order. Instead, TikTok produced a witness that was either unwilling or unable to testify on many topics covered by the Agreed Order, including whether TikTok destroyed documents relevant to this investigation as well as the scope of any document loss. That failure violates the Agreed Order, which requires TikTok to produce a witness knowledgeable about "whether potentially relevant materials may have been deleted during the course of the State's investigation," "company policies, instructions and practices relating to communications or collaboration systems and document retention and preservation," and the "implementation of measures to preserve documents in connection with this investigation," among other related topics. Through this Second Motion to Compel, the State seeks an order compelling TikTok to produce for examination an additional corporate representative(s) with sufficient knowledge on the issues identified in the Agreed Order, and shift to TikTok the additional costs that the Attorney General will incur as a result of any additional examination(s).

TikTok also violated the Agreed Order by failing to produce documents which it could have reasonably anticipated its corporate representative would reference during the examination. Specifically, TikTok's witness referenced TikTok's legal hold notices relating to this investigation, but TikTok refused to produce full and complete copies of the notices. TikTok asserts the notices are privileged, but there is ample evidence to demonstrate a preliminary finding of spoliation sufficient to overcome its privilege claims. Accordingly, the Court should order TikTok to

produce the complete legal hold notices as required by the Agreed Order.

### FACTUAL BACKGROUND

The State is investigating TikTok pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 to -135 (“TCPA”) for potential violations of that Act. Specifically, the State is concerned that TikTok is violating the TCPA by offering its social media platform to young people in Tennessee despite the risks that platform poses to the mental health and well-being of those consumers.

On March 2, 2022, the Attorney General served TikTok with an investigative Request for Information pursuant to Tenn. Code Ann. § 47-18-106. The RFI requests 29 categories of documents, at least seven of which expressly call for “Communications,” which the RFI defines so as to encompass “emails; instant messages; internet relay chat logs; [and] enterprise communication tools (such as, but not limited to Lark)[.]” *See* Attachment 1 to the Agreed Order.<sup>2</sup> The RFI contains a “NOTICE OF PRESERVATION DUTY” (emphasis in original), which states:

This Request for Information shall serve as notice to you [TikTok] that Documents and information that may be relevant to this investigation, including the Documents requested below, should be preserved during the pendency of this investigation and during any resulting enforcement action. Failure to preserve relevant Documents may result in a civil penalty, in addition to any other appropriate sanction, pursuant to Tenn. Code Ann. § 47-18-106(e).

Attachment 1 to the Agreed Order.

During discussions regarding the company’s responses to the RFI, TikTok’s outside counsel explained that chat threads facilitated by the Lark collaboration platform are one of, if not the, primary channels for communications between TikTok employees. Janssen Declaration ¶ 17. TikTok’s outside counsel also confirmed the Lark platform has a function by which users can

---

<sup>2</sup> The Declaration of Matthew Janssen, submitted to this Court on March 6, 2023, is annexed hereto as EXHIBIT 2. The exhibits to the Janssen Declaration have been omitted because they are either already subsumed within other exhibits hereto or are not directly relevant to this Second Motion to Compel.

“recall” previously sent messages. Janssen Declaration ¶ 21. TikTok has produced a number of documents showing missing communications that were recalled with this feature. Janssen Declaration ¶ 23.

Further, on February 6, 2023, counsel for TikTok revealed that Lark also has a “secure messaging” feature, which enables TikTok employees to send “disappearing chats.” Janssen Declaration ¶ 25. Specifically, when using the “secure messaging” tool, employees designate Lark messages for rapid deletion before a conversation begins Janssen Declaration ¶ 26. When the “secure messaging” tool is activated, a message will be preserved for no more than seven days. Janssen Declaration ¶ 27. And, according to TikTok’s counsel, once an employee initiates a “secure message” and selects a deletion date, that decision is irreversible. Janssen Declaration ¶ 28.

Notwithstanding TikTok’s duty to preserve documents and data during the pendency of the State’s investigation, TikTok’s counsel revealed that TikTok employees continued to have access to the Lark chat “recall” and “secure” messaging features for nearly a year following commencement of this investigation. Janssen Declaration ¶¶ 24, 30. In other words, TikTok employees apparently maintained the ability to irreversibly delete messages responsive to the RFI—creating a significant risk of data loss and destruction that could impede the Attorney General’s investigation.

In response to these revelations, on March 6, 2023, the State filed Motion for an Order Compelling TikTok, Inc. to Comply with the Attorney General’s Request for Information.<sup>3</sup> By

---

<sup>3</sup> Forty-six other states filed an amicus brief in support of the Motion to Compel. The accompanying brief argued that TikTok’s failure to adequately respond to requests for information impeded the states’ ability to protect their citizens.

way that Motion to Compel, the State requested, among other things, that the Court compel TikTok to preserve all potentially relevant internal messages on the Lark platform and disable any document-deletion features that undermine TikTok's preservation obligations. Stein Declaration ¶ 6<sup>4</sup>. In addition, the Attorney General requested that the Court order TikTok to provide sworn testimony through a corporate designee regarding the company's document retention practices, so that the Attorney General could assess the scope of TikTok's data loss and destruction while it was under a duty to preserve. Stein Declaration ¶ 7.

The Parties resolved the Motion to Compel through the Agreed Order, which the Court entered on April 17, 2023. Stein Declaration ¶ 8. The Agreed Order requires TikTok to "comply with its preservation obligations as required under Tennessee law." Stein Declaration ¶ 9. Further, paragraph 7 of the Agreed Order required TikTok to produce a corporate designee to testify under oath on the following "issues relating to the Lark Platform and the Company's policies and practices relating to document and data retention, preservation, integrity, and litigation hold":

- a. The Company's adoption, implementation, and use of the Lark system, including the secure messaging and recall functions;
- b. Whether potentially relevant materials may have been deleted during the course of the State's investigation;
- c. The Company's ability to produce data exported from the Lark platform in a format that approximates the user experience;
- d. Company policies, instructions, and practices relating to communications or collaboration systems and document retention and preservation;
- e. The Company's retention of metadata, "relics," or other data evidencing Lark or secure message chats;
- f. Implementation of measures to preserve documents in connection with this investigation; and
- g. The Company's response to any internal audits or reports regarding its policies

---

<sup>4</sup> The Stein Declaration is annexed hereto as EXHIBIT 3.

and practices relating to document preservation and/or document integrity, including any reports or audits regarding risks associated with the Company's use of, and reliance, on the Lark platform.

Agreed Order at ¶ 7. In addition, the Agreed Order required that “[a]t least five (5) days in advance of the sworn examination, the Company shall provide the State a set of documents that the Company reasonably anticipates its designee could reference during that sworn examination.”

Agreed Order at ¶ 7.

On June 1, 2023, the State examined TikTok's corporate representative, Warren Solow. Stein Declaration ¶ 10.<sup>5</sup> During the examination, Mr. Solow confirmed that TikTok employees maintained the ability to use Lark features to delete potentially relevant information after the State issued the RFI. However, Mr. Solow either could not or would not answer many of the State's questions regarding the potential deletion of documents that occurred after the State served the RFI. For example:

- When asked whether any documents or data responsive to the RFI were destroyed, which is relevant to paragraph 7.b and 7.d of the Agreed Order, he testified “I have no direct understanding in that regard.” (Ex. 4 at p. 78:12-15.)
- When asked how many messages had been deleted by means of the recall feature since the RFI was issued, which is relevant to paragraphs 7.a and 7.b of the Agreed Order, he testified “I do not know.” (*Id.* at p. 202:9-12.)
- When asked how the State could determine the number of secure chat messages that had been sent since the RFI was issued, which is relevant to paragraphs 7.a, 7.b, and 7.e of the Agreed Order, he testified “I'm not sure.” (*Id.* at pp. 200:25-201:7.)
- When asked how many secure chat messages are sent daily on average, which is relevant to paragraphs 7.a and 7.e. of the Agreed Order, he testified “TikTok does not have that answer, I don't believe.” (*Id.* at pp. 150:25-151:3.)
- When asked who directed the deletion of container files for secure messages (*i.e.*, files containing various pieces of metadata relating to deleted secure messages), which is relevant to paragraphs 7.a, 7.b, 7.d, and 7.e of the Agreed

---

<sup>5</sup> Relevant excerpts of Mr. Solow's deposition transcript are annexed hereto as EXHIBIT 4.

Order, he testified “I am not sure.” (*Id.* at p. 196:14-16.)

- When asked whether a potentially relevant Lark chat that was deleted by its author would be produced in response to the RFI, which is relevant to paragraph 7.c of the Agreed Order, he testified “I need to clarify whether that is the case or not.” (*Id.* at p.130:17-24.)

Stein Declaration ¶ 11. Moreover, even though Mr. Solow referenced TikTok’s legal hold notices for this investigation during his sworn examination, TikTok refused to produce the documents in accordance with the Agreed Order on grounds that they are privileged. Stein Declaration ¶ 18.

Following Mr. Solow’s examination, the State requested (1) an additional corporate representative/s prepared to testify on topics that Mr. Solow was not prepared or able to address and (2) copies of TikTok’s legal hold notices for this investigation. Stein Declaration ¶¶ 19 and 21. The State conferred with TikTok regarding these requests, but the parties were not able to reach agreement. Stein Declaration ¶¶ 20 and 22.

## LEGAL ARGUMENT

### **A. The Court should order TikTok to produce a corporate designee prepared to testify on the Agreed Order’s topics for which Mr. Solow lacked knowledge.**

TikTok violated the Agreed Order by failing to provide a witness with adequate knowledge of the issues at the heart of that Order.

The Court’s Agreed Order functioned similarly to a Rule 30.02(6) deposition notice, as it required TikTok to produce “a corporate representative/s for sworn examination” on a series of topics “relating to the Lark platform and the [TikTok]’s policies and practices relating to document and data retention, preservation, integrity, and litigation hold[.]” Agreed Order at ¶ 7. In response to a notice issued under Tenn. R. Civ. P. 30.02(6), an organization must produce a witness knowledgeable about the matters and to prepare the witness to testify not only to the witness’s own knowledge, but to the knowledge of the organization, so that the witness can give complete and

knowledgeable answers. *See e.g., Metro. Gov't of Nashville & Davidson Cnty. v. BFI Waste Servs., LLC*, No. M2011-00586-COA-R3CV, 2012 WL 1018946, at \*11 (Tenn. Ct. App. Mar. 22, 2012). If the corporate representative cannot answer questions relating to the noticed topics, the deposition may be reconvened, possibly with a new witness, at the corporation's expense. *See generally Coryn Group II, LLC v. O.C. Seacrets, Inc.*, 265 F.R.D. 235, 240 (D. Md. 2010); *see also Bobalik v. BJ's Restaurants, Inc.*, No. 3:19-CV-0661-RGJ-LLK, 2021 WL 6102394 at \*5 (W.D. Ky. Jan. 12, 2021).

Here, TikTok's corporate representative witness, Mr. Solow, was not knowledgeable about or prepared to testify on a number of issues covered by the topics set forth in the Agreed Order. As TikTok refuses to voluntarily produce an additional witness prepared and willing to testify about the topics that Mr. Solow could not address, the Court should compel TikTok to do so.

The Agreed Order required TikTok to produce a corporate representative witness for examination on several topics that would allow the Attorney General to assess the scope of TikTok's spoliation, which was the main purpose of the examination. Agreed Order at ¶ 7 (stating that the "purpose of th[e] examination w[ould] be for the Attorney General to assess the retention or potential loss of relevant data during the course of this investigation"). The topics included "[w]hether potentially relevant materials may have been deleted during the course of the State's investigation," TikTok's "policies, instructions, and practices relating to communications or collaboration systems and document retention and preservation," and TikTok's "retention of metadata, 'relics,' or other data evidencing Lark or secure chat messages." Agreed Order at ¶¶ 7.b, 7.d, 7.e. The Agreed Order also required TikTok to produce a witness knowledgeable about use of Lark features that allow TikTok employees to destroy internal company communications, including Lark's "secure messaging" and chat "recall" functions. Agreed Order at ¶¶ 7.a, 7.e.



As shown above, Mr. Solow was not prepared and thus unable to answer direct questions relating to a number of these spoliation-related issues. He could not answer basic questions about TikTok's document preservation measures in response to the RFI, including whether certain information was deleted, the scope of any such deletion, the frequency with which various deletion features were used in the ordinary course of business, and why TikTok deleted the metadata of secured and recalled messages months after the State served the RFI.

Similarly, while paragraph 7.f the Agreed Order required TikTok to produce a witness to testify on TikTok's "[i]mplementation of measures to preserve documents in connection with this investigation," Mr. Solow had little to offer on that topic either. For instance, when asked who was on TikTok's team that identified custodians to receive legal hold notices relating to this investigation, Mr. Solow testified "I'm not sure at that time." (N.T. at p. 83:9-15.) This response and others like it are inadequate for TikTok's corporate representative witness providing testimony on the company's behalf. *See QBE Ins. Corp. v. Jorda Enterprises, Inc.*, 277 F.R.D. 676, 688 (2012) ("A corporation has an affirmative duty to provide a witness who is able to provide binding answers on behalf of the corporation.").

Under the Agreed Order and this State's corporate-designee jurisprudence, it is wholly inappropriate and unacceptable for TikTok to produce a corporate representative so incapable of answering questions falling squarely within the scope of the ordered deposition. Making matters worse, TikTok has subsequently refused to produce an additional witness that can provide information the first representative lacked. *Bobalik*, 2021 WL 6102394 at \*5 ("And in the case where the deficiency of the designee becomes apparent, 'then the responding entity has a duty to timely designate additional or supplemental witnesses as substitute deponents.'") (citation omitted). To remedy the various shortcomings in Mr. Solow's corporate designee testimony and

serve the purpose of allowing the State to “assess the retention or potential loss of relevant data during the course of this investigation,” the Court should order a new deposition of a TikTok corporate designee/s prepared to testify to TikTok’s knowledge on topics 7.a, 7.b., 7.d., 7.e., and 7.f. set forth in the Agreed Order. *See Coryn Group II, LLC*, 265 F.R.D. at 240. Further, the Court should shift to TikTok the additional costs that the Attorney General will incur as a result of pursuing this additional examination pursuant to Paragraph 9 of the Agreed Order.

**B. The Court should order production of TikTok’s legal hold notices because a preliminary showing of TikTok’s spoliation overcomes any claim that the notices are privileged.**

The Agreed Order required that “[a]t least five (5) days in advance of the sworn examination, [TikTok] shall provide the State a set of documents that the Company reasonably anticipates its designee could reference during that sworn examination.” Agreed Order at ¶ 7. Despite Mr. Solow referencing TikTok’s legal hold notices for this investigation during his deposition, TikTok refused to produce full and complete copies of the notices in accordance with the Agreed Order, claiming that they are protected from disclosure as privileged communications.<sup>6</sup> Stein Declaration ¶ 22. That claim is baseless because there is sufficient evidence for this Court to make a preliminary finding of spoliation.

Although “in general hold letters [*i.e.*, legal hold notices] are privileged, the prevailing view [] is that when spoliation occurs the letters are discoverable.” *Major Tours, Inc. v. Colorel*, Civil No. 05-3091(JBS/JS), 2009 WL 2413631 at \*2 (D.N.J. 2009) (defining spoliation as the “destruction or significant alteration of evidence, or the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation”) (citing *Keir v. Unumprovident*

---

<sup>6</sup> TikTok produced a generic template of its legal hold notice, but that document is essentially irrelevant, as it does not provide specifics on the legal hold that TikTok implemented for this investigation, including the scope of relevant materials that should be preserved by legal hold recipients, and the relevant timeframe for data retention. Stein Declaration ¶ 14.

*Corp.*, No. 02–CV–8781(DLC), 2003 WL 21997747 at \*6 (S.D.N.Y. Aug. 22, 2003)). *See, e.g., Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 425 nn. 15-16 (S.D.N.Y. 2004); *Cache La Poudre Feeds, LLC v. Land O’Lakes, Inc.*, 244 F.R.D. 614, 634 (D. Colo. 2007).

Accordingly, upon a “preliminary showing of spoliation,” a court may order production of litigation holds. *United States of America, State of Indiana, Plaintiffs, v. Community Health Network, Inc., et.al., Defendants. Thomas P. Fischer, Relator.*, No. 114CV01215RLYMKK, 2023 WL 4761664, at \*4 (S.D. Ind. July, 26, 2023) (citations omitted). *See Radiation Oncology Servs. Of Cent. New York, P.C. v. Our Lady of Lourdes Mem’l Hosp., Inc.*, 126 N.Y.S.3d 873, 875 (N.Y. Sup. Ct. 2020). A preliminary showing of spoliation “may be established by deposition testimony demonstrating the destruction of documents[.]” *Tracy v. NVR, Inc.*, No. 04-CV-6541L, 2012 WL 1067889, at \*6 (W.D.N.Y. Mar. 26, 2012) (citing *Major Tours, Inc., supra*). Producing litigation holds “provide[s] a proper record for consideration of whether spoliation sanctions are warranted[.]” *Id.*; *see also Radiation Oncology Servs. Of Cent. New York, supra* at 875 (“[A] litigation hold must be produced upon a preliminary showing of spoliation to provide a proper record for consideration of whether spoliation sanctions are warranted.”).

Here, TikTok has no basis for withholding the full and complete notices on privilege grounds, since Mr. Solow’s testimony shows that TikTok has destroyed documents through various means, including: (1) Lark’s secure chat messaging feature; (2) enterprise-wide deletion of secure chat container/metadata files; and (3) Lark’s chat recall function. Accordingly, the Court should make a preliminary finding that TikTok destroyed evidence well after it had a preservation obligation, and therefore cannot claim privilege over its legal hold notices.

**1. TikTok’s destruction of secure-chat messages.**

TikTok’s internal Lark communications platform has a “secure messaging” feature, which

enables TikTok employees to send “disappearing chats” – *i.e.*, messages that TikTok employees can pre-designate for deletion within a week of being sent. Janssen Declaration ¶ 25.

Despite having the ability to so, TikTok did not disable access to Lark’s secure chat feature for any custodian subject to TikTok’s litigation hold until March of 2023—a full year after the RFI issued. (Ex. 4, pp. 142:12-17.) While Mr. Solow could not answer questions about the extent of the secure message deletion, he did confirm that TikTok employees had access to this feature and chat messages were automatically deleted by the Lark system after the RFI issued and TikTok’s duty to preserve evidence attached. (*Id.* at p. 138:6-10.) According to Mr. Solow, “secure chat have – have lived their life cycle during that period,” (*id.* at p. 138:6-14), and because these secure chats had expired, “the message and the message-level metadata is gone.” (*Id.* at p. 138:2-5.) This testimony shows that secure chat messages were destroyed by TikTok and thus were not available for production in response to the RFI.

## **2. TikTok’s deletion of secure chat container files.**

Mr. Solow testified that in addition to the secure chat messages themselves, the container-level metadata for secure chats was also deleted after the RFI issued. (Ex. 4, p. 193:16-20.)

By way of background, TikTok’s Lark system saves electronic metadata associated with secure chat messages in “container” files. These metadata container files preserve various pieces of information relating to secure chat threads, including: (1) who created the chat thread; (2) when the chat thread was created; (3) the name of the chat thread; and (4) the members of the chat thread. (*Id.* At 195:2-12).

While he lacked knowledge of many important details regarding the issue, Mr. Solow confirmed that in December of 2022—nearly a year after receiving the RFI—TikTok deleted the secure chat container files for deleted chat threads as part of its process of “deprecating inactive

secure chats.” (*Id.* at 194:2-3, 193:16-20 (Mr. Solow testifying that in 2022, “some container-level metadata for secure chats [] was lost”). The deleted metadata included “who created the chat group, when they created the group[,] the name of the chat group, and the members of the chat group.” (*Id.* at p. 195:2-12.) This metadata was important, as it could have been used to determine how many secure chats were sent and deleted after the Attorney General’s RFI issued and the potential scope of loss of relevant materials. TikTok should have preserved this data, but instead it was destroyed.

### **3. TikTok’s use of Lark’s chat recall function.**

As if continuing to use the Lark secure chat messaging feature was not enough; according to Mr. Solow, TikTok employees also continued to use Lark’s chat recall function after the RFI issued. Once a message is recalled, it is eliminated from TikTok’s servers entirely, so no evidence of the communication remains. (*Id.* at p. 167:17-21.)

By way of example, Mr. Solow offered limited testimony about three documents TikTok produced which contained messages sent by TikTok employee Victoria McCullough that were recalled after the RFI issued—even though Ms. McCullough was on litigation hold. (*Id.* at pp. 176:9-19, 180:16-25, and 184:24-185:7.). When asked why Ms. McCullough had recalled the messages, Mr. Solow admitted that employees subject to litigation holds could still use the recall feature:

Q: So why is she [Ms. McCullough] recalling messages after she was put on the litigation hold? I thought you said that didn’t happen.

A: *Well, I didn’t say that didn’t happen.* I think that the [Legal Hold Notices] asks for people to refrain from using recall on potentially relevant subject matter.

(*Id.* at p. 185:8-14 (emphasis supplied).) As Ms. McCullough’s recalled and now deleted messages are part of chat threads that TikTok produced in response to the RFI, they likely were relevant to

this investigation and should not have been destroyed after the RFI whereupon TikTok's duty to preserve evidence arose.

Mr. Solow also confirmed that TikTok employees recalled messages associated with the following topics, each of which is responsive to the RFI and potentially relevant to the State's investigation:

- "Extreme weight-loss, Imitable Depiction and Promotion Eating disorder, Suicide or NSSI Hoaxes & Designated ED Diet and ED Body Checking Challenges" (*Id.* at p. 171:5-16.);
- "TikTok's Guidelines Enforcement Report shows increases in sexualized content and fake accounts" (*Id.* at p. 174:10-15.);
- "A ten-year-old boy commits suicide, going viral on TikTok" (*Id.* at p. 179:8-180:7.);
- "Brainstorm: CSR and TnS Youth Wellbeing" (*Id.* at p. 185:10-21.); and,
- "TikTok's interest in 'NyQuil chicken' increased 1,400% following the FDA's warning about the dangerous trend." (*Id.* at p. 189:21-190:3.)

These materials should have been available for production in response to the RFI, but instead were destroyed and now are unable to be recovered.

In sum, Mr. Solow's testimony—while limited in many significant respects—nevertheless shows that TikTok destroyed, or at the very least failed to preserve, secure chat messages, container files, and recalled messages. This evidence, in conjunction with the evidence presented in the Motion to Compel, is sufficient to establish a preliminary showing of spoliation. *See Tracy, supra*, at \*6. Based on that preliminary showing, TikTok cannot claim privilege over its legal hold notices, which are central to the potential spoliation issue. Consequently, this Court should compel TikTok to produce full and complete copies of its legal hold notices in accordance with the requirement of paragraph 7 of the Agreed Order. *See Community Health Network, Inc., supra* at \*4; *Radiation Oncology Servs. Of Cent. New York, supra* at 875.

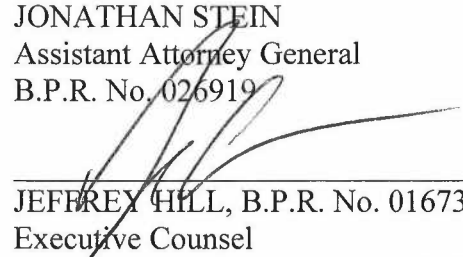
## CONCLUSION

For the foregoing reasons, the Court should compel TikTok to comply with terms of the April 17, 2023, Agreed Order requiring that TikTok produce: (1) a corporate representative witness/es for examination on issues relating to TikTok's spoliation of evidence during the course of this consumer protection investigation by the Attorney General, specifically, issues 7.a, 7.b., 7.d., 7.e., and 7.f. set forth in the Agreed Order; and (2) full and complete copies of TikTok's legal hold notices and all other documents referenced during the examination of TikTok's corporate representative, as required by paragraph 7 of the Agreed Order. Pursuant to paragraph 9 of the Agreed Order, the State also seeks to recover reasonable attorney's fees and costs incurred in pursuing this Second Motion to Compel and in connection with taking additional examinations of TikTok witnesses regarding the issues discussed herein.

The State reserves the right to seek any additional relief necessary to determine the scope and extent of TikTok's spoliation of evidence, and to seek sanctions once it determines the level of prejudice resulting from that spoliation.

Respectfully submitted,

JONATHAN STEIN  
Assistant Attorney General  
B.P.R. No. 026919



---

JEFFREY HILL, B.P.R. No. 016731  
Executive Counsel  
BRIAN PHELPS, B.P.R. No. 040705  
Assistant Attorney General  
Office of the Tennessee Attorney General  
Public Protection Section  
Consumer Protection Division  
UBS Tower, 20<sup>th</sup> Floor  
315 Deaderick Street

Nashville, Tennessee 37243  
615.741.3533, phone  
615.532.2590, fax  
[jonathan.stein@ag.tn.gov](mailto:jonathan.stein@ag.tn.gov)  
[jeff.hill@ag.tn.gov](mailto:jeff.hill@ag.tn.gov)  
[brian.phelps@ag.tn.gov](mailto:brian.phelps@ag.tn.gov)

*Attorneys for State of Tennessee*



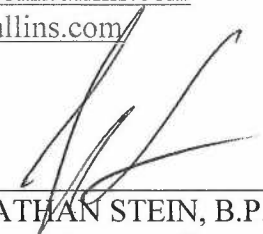
**CERTIFICATE OF SERVICE**

I, Jonathan Stein, hereby certify that I caused a copy of the foregoing to be served upon the following by electronic mail:

Craig TenBroeck, Esq.  
Travis LeBlanc, Esq.  
Cooley LLP  
10265 Science Drive  
San Diego, California 92121  
*Via E-Mail:* [ctenbroeck@cooley.com](mailto:ctenbroeck@cooley.com)  
[tleblanc@cooley.com](mailto:tleblanc@cooley.com)

Thomas Cullen, Esq.  
Kate Skagerberg, Esq.  
Nelson Mullins Riley & Scarborough, LLP  
150 Fourth Avenue North, Suite 1100  
Nashville, Tennessee 37219  
*Via E-Mail:* [thomas.cullen@nelsonmullins.com](mailto:thomas.cullen@nelsonmullins.com)  
[Kate.skagerberg@nelsonmullins.com](mailto:Kate.skagerberg@nelsonmullins.com)

This the 15th day of September 2023.

  
\_\_\_\_\_  
JONATHAN STEIN, B.P.R. No. 026919  
Assistant Attorney General

# EXHIBIT 1

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE  
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

IN RE )  
INVESTIGATION OF TIKTOK INC. ) Case No. 23-0298-I  
)

FO2

**AGREED ORDER ON MOTION FOR AN ORDER COMPELLING TIKTOK INC.  
TO COMPLY WITH THE ATTORNEY GENERAL'S REQUEST FOR INFORMATION**

COME NOW, Petitioner, the State of Tennessee (the "State"), and Respondent, TikTok Inc. ("The Company"), through their undersigned counsel, and hereby submit this Agreed Order for the State's Motion for an Order Compelling TikTok Inc. to Comply with the Attorney General's Request for Information (the "Motion").

On March 2, 2022, pursuant to Tenn. Code Ann. § 47-18-106, the Attorney General served the Company with the Request for Information ("RFI"), which is attached as **Attachment 1** to this Agreed Order.

On March 6, 2023, the State filed its Motion for an Order Compelling TikTok Inc. to Comply with the Attorney General's Request for Information (the "Motion"). In addition, on that date, forty-six states' attorneys general submitted Motion for Leave for Brief of *Amici Curiae* the Colorado Department of Law and 45 Other States in Common Interest (the "Motion of *Amici Curiae*") in support of the State's Motion.

Following the filing of the Motion and Motion of *Amici Curiae*, the parties engaged in conversations toward resolving the issues presented in the Motion. On March 17, March 27, April 10, April 13 and April 14, 2023, the parties met to discuss options for resolving the concerns raised in the Motion. The Company has also continued to produce documents while the Motion has been pending and while the parties have engaged in resolution discussions. During those discussions,

the Company made a number of proposals and commitments to the State regarding the State's RFI. The Company denies that it has not reasonably complied with the RFI. The parties nevertheless agreed to set forth those proposals and commitments in an Agreed Order to be presented to the Court for approval.

The Court is of the opinion that the Motion should be resolved in accordance with the agreed terms and that Agreed Order should be approved. It is, therefore, ORDERED, ADJUDGED, and DECREED that:

1. Jurisdiction over the subject matter and the Company, relating to the Agreed Order, in this Court is proper for purposes of approving and enforcing this Agreed Order and this Court retains jurisdiction for the purpose of enabling the State, through the Attorney General, to apply for such further orders and directions related to this Agreed Order as may be necessary and appropriate.

2. Venue in this Court is proper as to all matters between the parties relating to this Agreed Order.

3. Beginning the week of April 17, 2023, the parties shall meet and confer at least once weekly to address issues regarding the Company's performance under and progress in seeking to comply with the State's Request for Information. The parties shall continue to meet and confer on at least a weekly basis until they reach a mutual agreement in writing that meeting on a weekly basis is no longer necessary. The parties can also mutually agree in writing not to meet on any particular week for good cause.

4. From the effective date of this Agreed Order and throughout the pendency of the Attorney General's investigation and during any resulting enforcement action, the Company will comply with its preservation obligations as required under Tennessee law. The RFI defines the

preservation duty as follows:

**NOTICE OF PRESERVATION DUTY:** This Request for Information shall serve as notice to you that Documents and information that may be relevant to this investigation, including the Documents requested below, should be preserved during the pendency of this investigation and during any resulting enforcement action. Failure to preserve relevant Documents may result in a civil penalty, in addition to any other appropriate sanction, pursuant to Tenn. Code Ann. § 47-18-106(e).

*See Attachment 1.* In taking reasonable steps to comply with its duty to preserve relevant documents and information, the Company shall do the following:

- a. Ensure that its litigation hold in this matter is consistent with the Company's duty to preserve information potentially relevant to the RFI.
- b. Expand the number of litigation hold recipients in this matter from the group of 95 individuals who were subject to the hold in this matter prior to April 10, 2023, to include more than 100 additional individuals identified by the Company as potentially possessing relevant documents and information, the list of which the Company shall provide to the State pursuant to Section (f) below. The Company shall continue to internally assess the need to expand the scope and application of its litigation hold in this matter to comply with its preservation duty under the RFI and timely implement appropriate expansion of the hold. Further, the Company shall continue to meet and confer with the State on the need to further expand the scope and application of the Company's litigation hold in this matter and timely implement reasonable requests for expansion.
- c. No more than thirty (30) days from the effective date of this Agreed Order, the Company shall begin to provide training to the Company's employees subject

to its litigation hold in this matter on their duty to comply with the hold in this matter and preserve relevant documents and information in accordance with the requirements of this Agreed Order, with the goal of completing the training for those litigation hold recipients within sixty (60) days from the effective date of this Agreed Order.

- d. For all employees subject to the Company's litigation hold in this matter, the Company shall disable secure Lark chat messaging.
- e. For all employees subject to the Company's litigation hold in this matter, the Company will make good faith efforts to develop an internal solution for preserving the content of recalled Lark messages going forward.
- f. No more than ten (10) days from the effective date of this Agreed Order, the Company shall provide to the State a list of all employees subject to the Company's litigation hold in this matter, the date on which each employee was notified of and subject to the litigation hold in this matter, and the department and/or group in which the employee works, to the extent such information is available.
- g. No more than thirty (30) days from the effective date of this Agreed Order, the Company shall provide to the State a list of all employees subject to the Company's litigation hold in this matter that includes the date on which secure Lark chat messaging was disabled for each employee, and a title for each employee to the extent such information is available.
- h. Take reasonable steps to recover any metadata or "relics" of secure chats potentially responsive to the RFI that may have been deleted since the RFI was

served, such as information related to who participated in the secure chat, when it occurred, and the size of any such files.

5. The Company will retain a third-party electronic discovery vendor who will make best efforts to enhance the readability of exported Lark chat data. No more than ten (10) days from the effective date of this Agreed Order, the Company and its third-party electronic discovery vendor shall meet with the State and its electronic document review platform vendor to discuss the progress of its work and cooperate with them on an ongoing basis so that productions can be ingested into the State's electronic discovery software. Nothing in this Agreed Order will prevent the State from seeking relief from the Court at a later date if this issue cannot be resolved to its satisfaction.

6. No more than twenty-one (21) days from the effective date of this Agreed Order, the Company's counsel shall give a presentation to the State and other states that submitted the Motion of *Amici Curiae* on the Company's corporate organizational structure and how the Company's employees under litigation hold in this matter fit within the Company's corporate organizational structure. If, following this presentation, the State believes it needs additional information, the parties shall meet and confer and the Company shall make reasonable efforts to provide additional information. The Company shall continue to internally assess the need to collect and produce documents from additional Company employees with documents and information responsive to the State's RFI and shall make productions from those employees on a timely basis. Further, during the parties' meet and confers, the parties shall discuss production of documents from additional Company custodians and the Company shall comply with reasonable requests for production from additional custodians.

7. No more than forty-five (45) days from the effective date of this Agreed Order, the

Company shall produce in Nashville, Tennessee a corporate representative/s for sworn examination on issues relating to the Lark platform and the Company's policies and practices relating to document and data retention, preservation, integrity, and litigation hold, including, without limitation:

- a. The Company's adoption, implementation, and use of the Lark system, including the secure messaging and recall functions;
- b. Whether potentially relevant materials may have been deleted during the course of the State's investigation;
- c. The Company's ability to produce data exported from the Lark platform in a format that approximates the user experience;
- d. Company policies, instructions, and practices relating to communications or collaboration systems and document retention and preservation;
- e. The Company's retention of metadata, "relics," or other data evidencing Lark or secure message chats;
- f. Implementation of measures to preserve documents in connection with this investigation; and
- g. The Company's response to any internal audits or reports regarding its policies and practices relating to document preservation and/or document integrity, including any reports or audits regarding risks associated with the Company's use of, and reliance, on the Lark platform.

The purpose of this examination will be for the Attorney General to assess the retention or potential loss of relevant data during the course of this investigation and the impact that the Company's use of the Lark platform may have had on its ability to retain or export data from Lark. At least five



(5) days in advance of the sworn examination, the Company shall provide the State a set of documents that the Company reasonably anticipates its designee could reference during that sworn examination. The parties agree to negotiate the logistics for this sworn examination in good faith.

8. The Company shall use its best efforts to respond fully and completely to the State's Request for Information as soon as possible. At the request of the State, and following reasonable notice, the Company shall submit a status report on its response to the RFI to the Court by July 17, 2023.


9. In the event that the State, through the Attorney General, successfully moves for any order or direction from the Court as may be necessary and appropriate to address any failure by the Company to comply with the terms of this Agreed Order, the State shall be entitled to recover its reasonable attorney's fees and costs incurred in pursuing such motion before the Court to the extent permitted by law.

10. Pursuant to Tenn. Code Ann. § 47-18-116, all costs associated with the filing of this action shall be assessed against Respondent, TikTok Inc. No costs shall be assessed against the State.

11. Nothing in this Agreed Order will prevent the State from seeking additional relief from the Court to enforce the RFI.

12. *The motion hearing scheduled for April 19, 2023 at 1:30 pm/central*  
IT IS SO ORDERED. *is hereby removed from the Court's docket. PHH*

ENTERED this \_\_\_ day of \_\_\_\_\_, 2023.

  
PATRICIA HEAD MOSKAL  
CHANCELLOR, PART I

**Approved for Entry:**

/s/ Matthew Janssen

Matthew Janssen, B.P.R. No. 035451  
Senior Assistant Attorney General/Team Leader  
Jeffrey Hill, B.P.R. No. 016731  
Executive Counsel  
Brian Phelps, B.P.R. No. 040705  
Assistant Attorney General  
Chris Dunbar, B.P.R. No. 37829  
Assistant Attorney General  
Jonathan Stein, B.P.R. No. 026919  
Assistant Attorney General  
Office of the Tennessee Attorney General  
Public Protection Section  
Consumer Protection Division  
UBS Tower, 20<sup>th</sup> Floor  
315 Deaderick Street  
Nashville, Tennessee 37243  
615.741.3533, phone  
615.532.2590, facsimile  
[matthew.janssen@ag.tn.gov](mailto:matthew.janssen@ag.tn.gov)  
[jeff.hill@ag.tn.gov](mailto:jeff.hill@ag.tn.gov)  
[chris.dunbar@ag.tn.gov](mailto:chris.dunbar@ag.tn.gov)  
[brian.phelps@ag.tn.gov](mailto:brian.phelps@ag.tn.gov)  
[Jonathan.stein@ag.tn.gov](mailto:Jonathan.stein@ag.tn.gov)  
*Attorneys for Petitioner, State of Tennessee*

/s/ Woods Drinkwater

Thomas Cullen, B.P.R. No. 014811  
Kate Skagerberg, B.P.R. No. 040096  
Woods Drinkwater, B.P.R. No. 033838  
Nelson Mullins Riley & Scarborough, LLP  
150 Fourth Avenue North, Suite 1100  
Nashville, Tennessee 37219  
615.664.5351, phone  
[kate.skagerberg@nelsonmullins.com](mailto:kate.skagerberg@nelsonmullins.com)  
[thomas.cullen@nelsonmullins.com](mailto:thomas.cullen@nelsonmullins.com)  
[woods.drinkwater@nelsonmullins.com](mailto:woods.drinkwater@nelsonmullins.com)

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing document will be served electronically on counsel for

Petitioner as follows:

Jonathan Skremtti, Attorney General and Reporter (BPR # 031551)  
Matthew Janssen, Senior Assistant Attorney General (BPR # 035451)  
matthew.janssen@ag.tn.gov  
Jeffrey Hill, Executive Counsel (BPR # 316731)  
jeff.hill@ag.tn.gov  
Brian Phelps, Assistant Attorney General (BPR # 040705)  
brian.phelps@ag.tn.gov  
Christopher Dunbar, Assistant Attorney General (BPR # 037829)  
chris.dunbar@ag.tn.gov  
Jonathan Stein, Assistant Attorney General (BPR # 026919)  
jonathan.stein@ag.tn.gov  
Office of the Tennessee Attorney General  
Public Protection Section  
Consumer Protection Division  
UBS Tower, 20<sup>th</sup> Floor  
315 Deaderick Street  
Nashville, TN 37243  
615-741-3533 / Fax: 615-532-2590

Dated April 14, 2023

/s/ Woods Drinkwater  
Woods Drinkwater

## Attachment 1 to the Agreed Order



STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL AND REPORTER

---

**REQUEST FOR INFORMATION**  
Issued Pursuant to Tenn. Code Ann. § 47-18-106

**PENALTIES FOR NON-COMPLIANCE**

---

**IN RE INVESTIGATION OF TIKTOK, INC.**

---

**TO:** TikTok, Inc.

**SERVE:** TikTok, Inc.  
5800 Bristol Parkway  
Culver City, CA 90230

**ISSUED:** \_\_\_\_\_

**YOU ARE REQUIRED**, pursuant to Tenn. Code Ann. § 47-18-106(a)(1), to respond to the attached Requests for Production of Documents. Your response must be made in accordance with the attached definitions and instructions and must be made under oath by completing the attached Affidavit of Compliance. Contact the attorney listed below with any questions. **Your response must be received on or before the deadline of Wednesday, March 23, 2022 at 5:00 pm CT.**

Unless otherwise agreed, your response must be either hand delivered or mailed to:

Chris Dunbar, Assistant Attorney General  
Telephone: (615) 741-3519  
Email: Chris.Dunbar@ag.tn.gov

*Hand Delivery or Courier:*  
Office of the Tennessee Attorney General  
Consumer Protection Division  
UBS Tower, 20<sup>th</sup> Floor  
315 Deaderick Street  
Nashville, Tennessee 37243

*U.S. Mail:*  
Office of the Tennessee Attorney General  
Consumer Protection Division  
P.O. Box 20207  
Nashville, Tennessee 37202-0207


This Request for Information is made pursuant to Tenn. Code Ann. § 47-18-106 in connection with an investigation by the State of Tennessee, through Herbert H. Slatery III, Attorney General and Reporter (the State). The State has reason to believe that TikTok, Inc. is engaging in, has engaged in, or is about to engage in unfair or deceptive acts or practices in violation of the Tennessee Consumer Protection Act of 1977 (TCPA), Tenn. Code Ann. § 47-18-101 *et seq.*, by providing and promoting the use of its social media platform to Young Users.

Please read Tenn. Code Ann. § 47-18-106 carefully. Any petitions filed pursuant to Tenn. Code Ann. § 47-18-106(b) must be filed within 10 days of receipt of this Request for Information and served in accordance with state law. Responses to this Request for Information are confidential pursuant to Tenn. Code Ann. § 47-18-106(g).

**NOTICE OF PRESERVATION DUTY:** This Request for Information shall serve as notice to you that Documents and information that may be relevant to this investigation, including the Documents requested below, should be preserved during the pendency of this investigation and during any resulting enforcement action. Failure to preserve relevant Documents may result in a civil penalty, in addition to any other appropriate sanction, pursuant to Tenn. Code Ann. § 47-18-106(e).

Please take notice that under Tenn. Code Ann. § 47-18-106(a), you are required to produce the requested documents.

**Failure to comply with this Request for Information may result in a court action against you.**

  
HERBERT H. SLATERY III  
Attorney General and Reporter

## I. DEFINITIONS

As used herein:

- A. All definitions shall be construed to extend to all forms, tenses, capitalizations, and conjugations of the defined word.
- B. The use of the singular form of any word includes the plural and vice versa.
- C. The terms “and” and “or” are terms of inclusion and not of exclusion and shall be construed either disjunctively or conjunctively as necessary to obtain the broadest meaning possible and bring within the scope of this RFI any Document, Communication, or information that might otherwise be construed to be outside its scope.
- D. The term “any” shall be construed as “any and all.”
- E. “Bytedance” refers to ByteDance Ltd. and any D/B/As, affiliated entities, predecessor entities, successor entities, and entities owned or controlled directly or indirectly by ByteDance Ltd.
- F. “Child” or “Children” means a Person (or persons) that You know or have reason to know is/are under 13 years of age.
- G. “Communication” means any oral or written communication of any kind, including but not limited to: face-to-face communications; telephone communications (including voice mail, text messages, or any other means of communication utilizing a telephone); letters; memoranda; emails; instant messages; internet relay chat logs; enterprise communication tools (such as, but not limited to, Lark); dashboards; or other transmittal of Documents, information, or data through the use of a computer; and includes any Document that digests, memorializes, or records a communication.
- H. “Document” includes any written, printed or graphic matter of any kind, including without limitation: writings; drawings; graphs; charts; calendars; photographs; slideshows; presentations; memoranda; sound recordings; images; any electronic data transmission or compilation; and documents stored in personal computers, portable computers, tablets, smartphones, workstations, minicomputers, mainframes, servers, cloud computing servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Your premises. “Document” includes copies if the copy bears any other marking or notation of any kind, and each such document shall include all attachments, enclosures, appendices, exhibits, and drafts of each such document that are in Your actual or constructive possession, custody, or control.
- I. “Identify” (with respect to Persons) means to state, to the extent known, the full name, job title, affiliation, last known mailing address, telephone numbers, and email address.
- J. “Identify” (with respect to third party entities) means to state, to the extent known, the name and any D/B/As, the mailing and physical addresses of the entity’s headquarters

or primary location, web address, an individual point of contact, and the telephone numbers and email address of that individual.

K. "Minor" means a Person that You know or have reason to know is under the age of 18 years of age and includes Children.

L. "Person" means a natural person and includes Minors and Young Adults.

M. "Product" means the online or mobile features, platforms, or services referred to as TikTok and TikTok for Younger Users, including all related features or functions.

N. "Relating To" means in whole or in part constituting, containing, concerning, discussing, commenting upon, describing, analyzing, identifying, stating, regarding, pertaining to, referring to, or forming the basis of.

O. "Relevant Period" refers to January 1, 2018 to the present date except where otherwise indicated.

P. "User" means a Person that has one or more account(s) with Your Product.

Q. "You," "Your," or "TikTok" refers to TikTok, Inc. and any D/B/As, affiliated entities, predecessor entities, successor entities, entities owned or controlled directly or indirectly by You. "You" and "Your" also encompasses agents and all other business entities acting, or purporting to act, on Your behalf.

R. "Young User" refers to Users that are either Children, Minors, or Young Adults.

S. "Young Adult" means a Person that You know or have reason to know is 18 years of age or older but under the age of 24.

## II. INSTRUCTIONS

A. **Time Period.** Unless otherwise indicated, documents to be produced pursuant to this Request include each and every document prepared, sent, dated, received, in effect, or that otherwise came into existence during the period from January 1, 2018 to March 2, 2022.

B. **Maintaining Organization of Documents.** Produce all documents in accordance with and as they are kept in the usual course of business, keeping all document families together, and in accordance with Instruction C below.

C. **Providing All Document Versions.** For each document that you produce, produce the current version along with all earlier editions, versions, or predecessor documents during the relevant time period, even though the title of earlier documents may differ from current versions.

D. **Possession, Custody, and Control.** This Request requires you to produce all responsive documents in your possession, custody, or control without regard to the physical location of those documents or the person or persons by whom or for whom the documents were prepared (e.g., your employees, distributors or dealers, competitors, or others).



**E. Documents No Longer In Your Possession.** If any responsive documents or information requested are no longer in your possession, custody, or control, produce a description of each such document, including the following:

- a. The name of each author, sender, creator, and initiator of such document;
- b. The name of each recipient, addressee, or party for whom such document was intended;
- c. The date the document was created;
- d. The date(s) the document was in use;
- e. The title of the document;
- f. A detailed description of the content of the document;
- g. The reason it is no longer in your possession, custody, or control;
- h. The document's current location and custodian thereof;
- i. The date the document left your possession, if applicable; and
- j. The reason the document is no longer in your possession.

**F. Document No Longer Exists.** If the document is no longer in existence, in addition to providing the information indicated above, identify the person(s) responsible for such destruction, state the date and manner of the destruction, the reason for such destruction, and why such destruction does not violate Tenn. Code Ann. § 47-18-106(e).

**G. No Responsive Documents.** If you do not have any documents responsive to a particular request, state this fact within your response.

**H. Privilege.** If you assert a privilege in response to a document request, you must state the privilege and the basis for the privilege. In addition, identify the communication or document or portion thereof to which the privilege is asserted. For any document to which a privilege is asserted, state:

- a. The type of document (e.g., letter, memorandum, contract, etc.), the date of the document, and the subject matter of the same;
- b. The name, address, and position of the author of the document and of any person who assisted in its preparation;
- c. The name, address, and position of each addressee or recipient of the document or any copies of it; and
- d. The present location of the document and the identity of the person who has custody of it.

Such information must be supplied in sufficient detail to permit the State to assess the applicability of the privilege claimed. All responsive documents that are subject to an asserted privilege shall not be destroyed, mutilated, or otherwise altered, shall be maintained in their original format, and are subject to the provisions of Tenn. Code Ann. § 47-18-106(e).

I. **Continuing Obligation to Produce.** If you obtain documents responsive to any Request after you have submitted your production, you should supplement your production with any new and/or different documents that become available to you.

J. **Document Production Format.** Produce all documents electronically, unless otherwise specified or agreed to by the Office of the Attorney General. Any questions regarding electronic document production should be directed to the attorney whose contact information is listed on the front page of this Request for Information.

K. **Affidavit of Compliance.** All documents shall be produced along with the attached Affidavit of Compliance by the person(s) responsible for compiling your response.

### III. REQUESTS FOR PRODUCTION OF DOCUMENTS

In accordance with the requirements set forth in the "Definitions" and "Instructions" sections of this Request for Information, you are specifically required to respond in writing to each of the following Requests and produce responsive documents within the time frame set forth above:

1. Documents—including organizational charts—sufficient to Identify Your corporate structure, stating the names of all parents, subsidiaries, divisions, affiliates, branches, joint ventures, franchises, operations under assumed names, websites, and entities over which You exercise supervision or control. For each such entity, describe the nature of its relationship to You and the date it was created, acquired, sold, or otherwise changed ownership or control.
2. Documents that show, for each month of the Relevant Period, the number and state of residence for (1) all Users, (2) Child Users, (3) Minor Users, and (4) Young Adult Users, and the number of Child Users, Minor Users and Young Adult Users that engage with Your Product at least once a month and at least once a day.
3. Documents constituting or sufficient to Identify all processes, policies, methods, procedures, training, technologies, and parameters for identifying the ages of Users of the Product, including whether a User or prospective User is a Child, is over the age of 13 but under the age of 18, or is a Young Adult.
4. Documents constituting or Relating To investigations, reports, analyses, or presentations Relating To the number of Child Users.
5. Documents—including reports, acknowledgements, complaints, and other information—required by sections V, VI, VII, IX, and VIII of the consent decree entered with the U.S. Federal Trade Commission on or about February 27, 2019 (at <https://www.ftc.gov/news-events/press-releases/2019/02/video-social-networking-app-musically-agrees-settle-ftc>).
6. Communications and Documents, including without limitation business plans, slide decks, presentations, memoranda, or similar Documents, Relating To Your efforts to increase or retain the number of Young Users and engagement or interaction with, or use of, Your Product by Young Users, including but without limitation, any such Communications and Documents provided to or received from ByteDance.
7. Documents showing on a monthly basis over the Relevant Period engagement with Your Product by Young Users, as shown by any metrics You use to measure such engagement, including for example and without limitation, video views, time spent, viewing time, profile views, likes, comments, shares, replays, account creation, account follows, sounds, responses, content created, hashtags, retention, or advertisement click-through-rates.
8. Documents sufficient to Identify the data elements, attributes, or User interactions used or interpreted by Your recommendation system(s), including but not limited to the "For You" feed, to curate content for Young Users, including without limitation, those listed within

the Document titled "TikTok Algo 101" that was first reported upon by the New York Times on December 5, 2021.<sup>1</sup> This request includes Documents sufficient to explain or specify how each of the data elements, attributes, or User interactions used or interpreted by the recommendation system(s) for Your Product—including but not limited to, the "For You" feed—are weighted.

9. Documents that Identify all Persons, teams, groups, or divisions—including without limitation, product architects, team leaders, product managers, and project managers—responsible for maintaining or increasing the number or activity of Young Users on Your Product and all Communications during the Relevant Period by, to, or between those Persons, teams, groups, or divisions regarding efforts to maintain or increase the number or activity of Young Users on Your Product.

10. Documents constituting or reflecting employee payment or salary schedules or structures, bonus or other incentive payments, or promotions Relating To an employee's efforts to maintain or increase the number and activity of Young Users on Your Product.

11. Documents Relating To Your development and testing of techniques, strategies, or features designed to increase the use of Your Products by Young Users, including without limitation, efforts to diversify the content curated for Users by Your recommendation system. This request includes but is not limited to Documents reflecting the design, methodology, running of, and results of all testing (including without limitation, diary studies, A/B or multivariate testing, or experiments) of Your Products and any Product features concerning Young Users and expenditures for such testing.

12. Documents sufficient to Identify all Persons, teams, groups, or divisions, including without limitation, product architects, team leaders, product managers, and project managers that during the Relevant Period were involved in designing, running, testing, or interpreting tests of the Product or Product features Relating To Young Users.

13. Documents sufficient to describe Your business plans or projections Relating To identifying, encouraging, compensating, or otherwise assisting Young Users to create videos, sounds, or other content on Your Product.

14. Documents sufficient to Identify the top 100 Young Users in the Creator Fund You announced in the summer of 2020,<sup>2</sup> the ages of each such Young User at all times while being considered for or included within the Creator Fund, and the amount of money or other intangible value (e.g., rewards, coins, credits, etc.) You exchanged with each of those Young Users during the Relevant Period.

15. Documents sufficient to Identify the 100 hashtags each year during the Relevant Period that generated the highest engagement among Young Users and that Identify all metrics that reflect or measure such engagement.

---

<sup>1</sup> Smith, B., *How TikTok Reads Your Mind*, N.Y. TIMES, Dec. 5, 2021, available at <https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html>.

<sup>2</sup> See <https://newsroom.tiktok.com/en-us/introducing-the-200-million-tiktok-creator-fund>.

16. With regard to "Challenges" targeted to, created by, available to view, or viewed by Young Users, Documents sufficient to show Your efforts to create, promote, amplify, increase engagement with, or suppress videos or hashtags associated with such "Challenges," including without limitation, challenges dubbed "National Shoot Up Your School Day," "Devious Licks," the "Bathroom challenge," "Milk Crate challenge," "Skullbreaker," "Penny challenge" or "Outlet challenge," the "Hot Water challenge," the "Benadryl challenge," the "Nutmeg challenge," the "Cha-cha-cha challenge," or the "Blackout challenge."

17. Documents and Communications Relating To the creation of fake accounts whether by You or others, including without limitation, Documents Relating To the use of "Shadow Accounts."

18. Documents and Communications Relating To inauthentic or fake engagement (including without limitation, through likes, reshares, etc.) with content, whether by You or others.

19. Documents constituting or sufficient to reflect policies and procedures, training, and parameters Relating To content creation, content promotion, curation, content diversification, and content suppression on Your Product.

20. Documents that Identify the three current employees and three former employees most knowledgeable about processes, policies, methods, procedures, training, technologies, and parameters for content creation, content promotion, curation, content diversification, and content suppression for Your Product during the Relevant Period.

21. Documents constituting or Relating To studies, testing, research, risk analysis, or investigations into the prevalence of problematic use of Your Products, Your Products' impact on self-harm or suicidal ideation by Young Users, or other mental or physical health impacts or effects Relating To the use of Your Products by Young Users, including all draft, annotated, and final reports, research papers, analyses, white papers, slide decks, presentations, synopses, blog posts, talking points, or memoranda reflecting the results of such testing, studies, risk analysis, or investigations.

22. Documents that Identify, and Communications by, to, or between, all Persons that designed, conducted, researched, studied, advised, analyzed, received, commented on, or authored the tests, studies, research, risk analyses, or investigations identified in Request 21.

23. Documents and Communications Relating To or reflecting the basis and purposes for the changes to the recommendation system that You announced on December 16, 2021 (at <https://newsroom.tiktok.com/en-us/an-update-on-our-work-to-safeguard-and-diversify-recommendations>).

24. Documents Relating To interventions or Product changes discussed or implemented in response to indicators or concerns of mental or physical harm that may result from Young Users' use of Your Product, including the issues identified in the Documents responsive to Request Numbers 21 and 23.

25. Any Communications by, to, or between all Persons employed by You that hold the position (or equivalent position) of a corporate officer, senior executive, or top-level manager Relating To the use of Your Products by Young Users, the mental or physical health impacts or effects Relating To the use of Your Products by Young Users, or the diversity of content curated for Young Users by Your recommendation system.

26. Documents comprising preparatory materials, agendas, minutes or related Documents prepared by or for Your Board of Directors Relating To the use of Your Products by Young Users, the mental or physical health impacts or effects Relating To the use of Your Products by Young Users, or the diversity of content curated for Young Users by Your recommendation system.

27. Documents sufficient to show all representations to Users, potential Users, or the public Relating To the safety, risks, or benefits of Your Product to Users or Young Users, including without limitation, representations made in Your privacy policy, terms and conditions, advertising, marketing, videos, blog posts, press releases, email, pop-up screens, government testimony, public speaking, and Product menus or controls.

28. Documents sufficient to show all representations to investors, potential investors, advertisers, academics, researchers, or the government Relating To the safety, risks, or benefits of Your Product to Users or Young Users.

29. Documents, including Communications, Relating To or with Persons acting on behalf of the below entities and groups:

- a. Common Sense Networks (including but not limited to Eric Berger);
- b. National PTA (including but not limited to Leslie Boggs and Nathan R. Monell);
- c. Connect Safety (including but not limited to Larry Magid);
- d. Family Online Safety Institute (including but not limited to Stephen Balkam);
- e. MediaSmarts (including but not limited to Kathryn Ann Hill);
- f. National Center for Missing and Exploited Children (including but not limited to John Clark); and
- g. WePROTECT Global Alliance (including but not limited to Iain Drennan).

This request includes but is not limited to Documents Relating To Your provision of funding, data, or any goods or services to any of the above individuals, groups, or entities, and any agreements or contracts with any of the above individuals, groups, or entities.



STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL AND REPORTER

AFFIDAVIT OF COMPLIANCE

IN RE INVESTIGATION OF TIKTOK, INC.

State of \_\_\_\_\_  
County of \_\_\_\_\_

I, \_\_\_\_\_, being duly sworn, state as follows:

1. I am employed by \_\_\_\_\_ in the position of \_\_\_\_\_.
2. The enclosed production of documents and responses to the Request for Information of the Office of the Attorney General, dated \_\_\_\_\_, were prepared and assembled under my personal supervision.
3. I made or caused to be made a diligent, complete, and comprehensive search for all documents requested by the Request for Information, in full accordance with its definitions and instructions.
4. The enclosed production of documents to the Request for Information are complete and correct to the best of my knowledge and belief, and they are in no way misleading or calculated to withhold information that is available to me and is requested.
5. No documents responsive to the Request for Information has been withheld from this production, other than responsive documents withheld on the basis of a legal privilege.
6. All responsive documents withheld on the basis of a legal privilege have been identified on a privilege log composed and produced in accordance with the instructions in the Request for Information.
7. The documents contained in these productions are authentic, genuine, and what they purport to be.

Initials \_\_\_\_\_

8. No documents in the possession, custody, or control of TikTok, Inc. have been concealed, withheld, mutilated, falsified, or by any other means altered, nor has Tenn. Code Ann. § 47-18-106(c) been violated.
9. Attached is a true and accurate record of all persons who prepared and assembled any productions to the Request for Information, all persons under whose personal supervision the preparation and assembly of productions to the Request for Information occurred, and all persons able competently to testify: (a) that such productions are complete and correct to the best of such person's knowledge and belief; and (b) that any documents produced are authentic, genuine, and what they purport to be.

\_\_\_\_\_  
Signature of Affiant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name of Affiant

\_\_\_\_\_  
Street Address/City/State/Zip Code

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Email address

Subscribed and sworn to before me  
on \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

Initials \_\_\_\_\_





**STATE OF TENNESSEE  
OFFICE OF THE ATTORNEY GENERAL AND REPORTER**

---

**RETURN**

---

**IN RE INVESTIGATION OF TIKTOK, INC.**

---

I affirmatively state that on \_\_\_\_\_, 202\_, I served this Request for Information by

- certified mail # \_\_\_\_\_
- electronic mail (explain below the agreement to accept service via this method)
- hand-delivery

to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# EXHIBIT 2

## DECLARATION OF MATTHEW JANSSEN

I, Matthew Janssen, make the following declaration:

1. I am a Senior Assistant Attorney General/Team Leader in the Consumer Protection Division of the Tennessee Attorney General's Office. I am an attorney licensed to practice law in the State of Tennessee. My Board of Professional Responsibility number is 035451.

2. The Tennessee Attorney General is investigating TikTok, Inc. ("TikTok") in accordance with the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* ("TCPA"). I am a member of the team assigned to that investigation.

3. This declaration is submitted in support of the Attorney General's Petition Initiating a Special Proceeding Against TikTok, Inc. and Motion for an Order Compelling TikTok, Inc. to Comply with the Attorney General's Request for Information. This declaration is based on personal knowledge obtained by me in the course of my official duties.

4. On March 2, 2022, the Attorney General issued a Request for Information to TikTok ("RFI") pursuant to the Attorney General's investigative authority under the TCPA. *See* Tenn. Code Ann. § 47-18-106(a)(1). The RFI specified that TikTok's "response must be received on or before the deadline of Wednesday, March 23, 2022, at 5:00 pm CT." A copy of this RFI is attached to this declaration as **Exhibit A**. A copy of the return of service for the RFI is attached to this declaration as **Exhibit B**.

5. The Attorney General issued the RFI because he had "reason to believe that TikTok, Inc. is engaging in, has engaged in, or is about to engage in unfair or deceptive acts or practices in violation of the [TCPA] by providing and promoting the use of its social media platform to Young Users." **Exhibit A**, at page 2.

6. The RFI seeks documents and information that would enable the Attorney General to determine whether TikTok may be violating the TCPA by providing and promoting the use of its social media platform to minors, children, and young adults in Tennessee.

7. The RFI provided TikTok the following notice of its obligation to preserve documents and information:

**NOTICE OF PRESERVATION DUTY:** This Request for Information shall serve as notice to you that Documents and information that may be relevant to this investigation, including the Documents requested below, should be preserved during the pendency of this investigation and during any resulting enforcement action. Failure to preserve relevant Documents may result in a civil penalty, in addition to any other appropriate sanction, pursuant to Tenn. Code Ann. § 47-18-106(e).

8. Upon receiving the RFI, TikTok agreed to produce documents on a rolling basis.

9. Citing potential complexities involved with producing documents from its Lark platform, TikTok proposed producing documents from sources other than Lark first, followed by producing Lark communications.

10. The Attorney General agreed to that approach.

11. TikTok began producing documents other than Lark messages in May 2022.

12. The Attorney General's Office, other states investigating TikTok, and TikTok engaged in a series of meet and confers regarding various issues relating to TikTok's response to the RFI, such as confidentiality issues, search terms, custodians, and the nature of TikTok's productions.

13. During those conversations, it became clear that communications on the Lark platform could be highly significant to the Attorney General's investigation.

14. As far as the Attorney General's Office understands, Lark is both a distinct corporate entity from, and a corporate sibling of, TikTok. *See Exhibit C*, an image of ByteDance's "About Us" webpage as of February 2023.

15. In the United States, Lark markets its communications platform to enterprises, offering a suite of "messaging, video conferencing, schedule management, collaborative documents, cloud storage, email, and workflow applications[.]" *Exhibit D*, an image from Lark's "What Is Lark?" webpage as of February 2023.

16. According to TikTok's counsel, TikTok uses a customized version of Lark to facilitate its communication.

17. Counsel has further made clear that Lark's messaging platform is one of, if not the, primary means by which TikTok employees electronically communicate.

18. In January 2023, ten months after receiving the RFI, TikTok began producing Lark messages. The company produced the messages as electronic files that formatted and displayed as Excel spreadsheets. It has produced over one thousand such documents in this format. An example of such a spreadsheet bearing Bates ID No. TT-MS-AG-000203075 is attached as **Exhibit E**.<sup>1</sup>

19. For a variety of reasons, the spreadsheets are not easily readable. Counsel for the Attorney General has explained and reiterated to TikTok's counsel that the format in which TikTok produced Lark messages was highly concerning and problematic.

---

<sup>1</sup> Because TikTok designated the documents marked as **Exhibits E, F, and H** as confidential, the documents and references to their contents (*e.g.*, paragraph 22, *infra*) are not being filed with this declaration on March 6, 2023. The State requests direction from the Court regarding whether the State may file documents designated as confidential under conditional seal for *in camera* review and assessment of whether they are confidential.

20. Notwithstanding the Attorney General's feedback, TikTok has not produced Lark messages in an alternative format; rather, it has suggested that the Attorney General further reconfigure and manipulate the Excel versions of the Lark messages to improve their readability.

21. During the meet and confer process, counsel for TikTok confirmed that TikTok employees using Lark can "recall" previously sent messages.

22. After triggering a recall, the previously sent message is deleted and replaced with "[REDACTED]," which, roughly translated from Chinese, means "message retracted, cannot view content." See, e.g., **Exhibit F**.

23. TikTok has produced a number of documents showing missing communications that were recalled pursuant to this feature.

24. According to TikTok's counsel, relevant custodians continue to have access to this recall feature.

25. On February 6, 2023, TikTok explained that its custodians also continue to have access to Lark's "secure messaging" tool, which enables those employees to send "disappearing chats."

26. According to TikTok's counsel, the "secure messaging" tool allows employees to designate internal messages for rapid deletion before a conversation begins.

27. When the "secure messaging" tool is activated, a message will be preserved for no more than seven days.

28. According to TikTok's counsel, once an employee initiates a "secure message" and designates a deletion date, that decision is irreversible.

29. Following deletion of a "secure message," all information or electronic "artifacts" showing that the document ever existed are lost.

30. Counsel represented that all TikTok employees continue to have the ability to send “secure messages,” notwithstanding the RFI’s document preservation notice.

31. A recent article in *Forbes* questioned TikTok’s enterprise-wide commitment to preserving documents that may be relevant to regulators such as the Attorney General. *See Exhibit G.*

32. TikTok produced a Fraud Risk Assessment with the Bates ID No. TT-MS-AG-000204565. *See Exhibit H.*

33. Lark’s website states that its messaging function allows users to “preserve context with chat history” and to “save and manage everything in cloud storage, anytime, anywhere, on any device.” *Exhibit I*, images of Lark’s website as of February 2023.

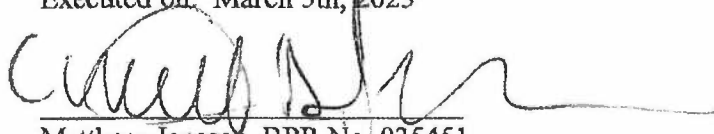
34. TikTok has confirmed that it is not producing Lark communication documents in the manner in which they are ordinarily maintained.

35. To the contrary, TikTok has stated that it retained a third-party consultant to retrieve TikTok’s Lark messages and reconfigure them into a new, non-native format. The consultant then shares the documents with outside counsel, who ultimately produces them to the Attorney General.

36. On March 2, 2023, I notified counsel for TikTok that the Attorney General intended to initiate this enforcement action pursuant to Tenn. Code Ann. § 47-18-106(c).

37. I declare under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge.

Executed on: March 5th, 2023



Matthew Janssen, BPR No. 035451  
Senior Assistant Attorney General/Team Leader  
Consumer Protection Division  
Office of the Tennessee Attorney General

**CERTIFICATE OF SERVICE**

I, Matthew D. Janssen, hereby certify that I caused a copy of the foregoing to be served upon the following by hand delivery or electronic mail:

TikTok, Inc.  
Corporation Service Company  
2908 Poston Avenue  
Nashville, Tennessee 37203-1312  
*Via Hand-Delivery*

Ashley Anguas Nyquist, Esq.  
Covington & Burling LLP  
One CityCenter, 850 Tenth Street, NW  
Washington, DC 20001-4956  
*Via E-Mail: [nyquist@cov.com](mailto:nyquist@cov.com)*

Daniel R. Suvor, Esq.  
Jonathan P. Schneller, Esq.  
Jonathan C. Le, Esq.  
O'Melveny & Myers LLP  
400 South Hope Street, 18th Floor  
Los Angeles, California 90071  
*Via E-Mail: [dsuvor@omm.com](mailto:dsuvor@omm.com)*  
*[jschneller@omm.com](mailto:jschneller@omm.com)*  
*[jle@omm.com](mailto:jle@omm.com)*

Jeffrey A. N. Kopczynski, Esq.  
O'Melveny & Myers LLP  
Times Square Tower  
7 Times Square  
New York, New York 10036  
*Via E-Mail: [jkopczynski@omm.com](mailto:jkopczynski@omm.com)*

This the 6<sup>th</sup> day of March 2023.



MATTHEW JANSSEN, B.P.R. No. 035451  
Senior Assistant Attorney General



# EXHIBIT 3

DECLARATION OF JONATHAN STEIN

FILED

2023 SEP 15 PM 2: 25

I, Jonathan Stein, make the following declaration:

1. I am an Assistant Attorney General in the Consumer Protection Division of the Tennessee Attorney General's Office. I am an attorney licensed to practice law in the State of Tennessee. My Board of Professional Responsibility number is 026919.

DAVIDSON CO. CHANCERY CT

2. The Tennessee Attorney General is investigating TikTok, Inc. ("TikTok") in accordance with the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 et seq. ("TCPA"). I am a member of the team assigned to that investigation.

3. This declaration is submitted in support of the Attorney General's Second Motion for an Order Compelling TikTok, Inc. to Comply with the Attorney General's Request for Information ("Second Motion to Compel"). This declaration is based on personal knowledge obtained by me in the course of my official duties.

4. On March 2, 2022, the Attorney General issued a Request for Information to TikTok ("RFI") pursuant to the Attorney General's investigative authority under the TCPA. See Tenn. Code Ann. § 47-18-106(a)(1). The RFI specified that TikTok's "response must be received on or before the deadline of Wednesday, March 23, 2022, at 5:00 pm CT."

5. The RFI seeks documents and information that would enable the Attorney General to determine whether TikTok may be violating the TCPA by providing and promoting the use of its social media platform to minors, children, and young adults in Tennessee.

6. On March 6, 2023, the State filed a motion to compel ("Motion to Compel") which sought, among other things, to compel TikTok to preserve all potentially relevant communications and disable Lark chat deletion functions.

7. In addition, the Motion to Compel requested the Court order TikTok to produce a corporate designee to provide sworn testimony regarding TikTok's document retention practices to ascertain the scope of document destruction which occurred after the RFI was issued and the duty to preserve evidence arose.

8. The parties resolved the Motion to Compel by an agreed order entered on April 17, 2023 (the "Agreed Order"). A true and accurate copy of the Agreed Order is annexed to the Memorandum of Law as EXHIBIT 1.

9. The Agreed Order requires TikTok to, among other things, "comply with its preservation obligations as required under Tennessee law."

10. On June 1, 2023, TikTok tendered Warren Solow ("Solow") as its corporate designee for examination pursuant to paragraph seven of the Agreed Order, and I deposed him in furtherance of the State's investigation.

11. Solow was unwilling or unable to answer many questions on topics identified in paragraph seven of the Agreed Order and was clearly unprepared for the examination on June 1, 2023. By way of example, and not limitation, Solow could not respond as to:

- Whether documents or data responsive to the RFI and relevant to this investigation were destroyed by TikTok (relevant to Agreed Order topics 7.b., 7.d, 7.e);
- The scope of the company's use of Lark's "secure messaging" functionality since the RFI issued (relevant to Agreed Order topics 7.a, 7.b, 7.d, 7.e);
- The extent to which Lark messages had been deleted by means of the "recall" feature since the RFI was issued (relevant to Agreed Order topics 7.a, 7.b., 7.d, 7.e);

- The identity of the person/s who directed the deletion of files with metadata relating to Lark secure chat messages – *i.e.*, “container” files – during the pendency of this investigation (relevant to Agreed Order topics 7.a, 7.b., 7.d, 7.e); and
- Procedures relating to TikTok’s legal hold for this investigation, including identification of employees subject to the legal hold (relevant to Agreed Order topics 7.d, 7.f).

12. Solow could not even identify the individual who deleted the “container” files of secure chat metadata despite that being of paramount importance to the State’s investigation and clearly a topic relevant to the Agreed Order.

13. On June 20, 2023, almost three weeks after the Solow’s examination, TikTok’s outside counsel identified Gang Deng as the individual responsible for deleting the container files who, according to his LinkedIn profile, is employed by ByteDance as a technical director in Mountain View, California.

14. Furthermore, TikTok produced legal hold templates similar to those distributed to custodians in its employ prior to Solow’s examination pursuant to paragraph seven of the Agreed Order; however, important information including, but not limited to, the relevant time period as well as a description of what documents and information must be preserved in compliance with the RFI was noticeably absent.

15. Solow testified he had assisted in the preparation of the legal hold notices and administered the distribution of these notices to custodians in this investigation.

16. Solow referenced the legal hold notices numerous times during his examination but repeatedly asserted he was not an attorney, and therefore was unable to determine whether specific Lark chat subjects were relevant to the State’s investigation.

17. Solow's responses raise the question what information was included in the legal hold notices TikTok distributed which would have sufficiently informed non-attorney custodians of the documents and information they must safeguard in accordance with the duty to preserve evidence set forth in the RFI.

18. The State requested TikTok produce the complete legal hold notices distributed in connection with the investigation, but TikTok refused the request despite Solow having referenced these during his examination.

19. I demanded TikTok provide another corporate designee with knowledge of the subjects set forth in paragraph seven of the Agreed Order for examination by letter dated July 27, 2023. A true and accurate copy of the aforesaid letter dated July 27, 2023, is annexed hereto as EXHIBIT A.

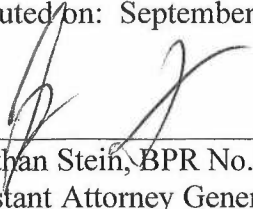
20. TikTok, by letter dated August 4, 2023, refused to produce another corporate designee for examination. A true and accurate copy of the aforesaid letter dated August 4, 2023, is annexed hereto as EXHIBIT B.

21. I demanded TikTok produce the legal hold notices it circulated to custodians by letter dated June 12, 2023. A true and accurate copy of the aforesaid letter dated June 12, 2023, is annexed hereto as EXHIBIT C.

22. TikTok, by letter dated June 26, 2023, refused to produce the complete legal hold notices it distributed to custodians asserting the notices were subject to the attorney-client and work product privileges. A true and accurate copy of the aforesaid letter dated June 26, 2023, is annexed hereto as EXHIBIT D.

23. I declare under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge.

Executed on: September 15th, 2023



---

Jonathan Stein, BPR No. 026919  
Assistant Attorney General  
Consumer Protection Division  
Office of the Tennessee Attorney General

# EXHIBIT A

STATE OF TENNESSEE

Office of the Attorney General



**JONATHAN SKRMETTI**  
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202  
TELEPHONE (615)741-3491  
FACSIMILE (615)741-2009

July 27, 2023

*Via Electronic Mail: ctenbroeck@cooley.com*

TikTok, Inc.  
c/o Cooley LLP  
10265 Science Center Drive  
San Diego, CA 92121  
Attn: Craig TenBroeck

**Re: *Deposition of TikTok, Inc. Corporate Representative pursuant to ¶ 7 of Agreed Order dated April 17, 2023***

Dear Mr. TenBroeck,

I write to address TikTok, Inc.'s ("TikTok") ongoing refusal to comply with Tennessee's Request for Information (the "RFI") and the April 2023 Agreed Order on Motion for an Order Compelling TikTok Inc. to Comply with the Attorney General's Request for Information (the "Agreed Order").

As you are aware, the State of Tennessee issued the RFI on March 2, 2022, but TikTok failed to respond adequately to the States' investigation. In addition, facts came to light evidencing TikTok was failing to comply with its duty to preserve evidence pursuant to the RFI. As a result, the State of Tennessee filed a Motion for Order Compelling TikTok, Inc. to Comply with the Attorney General's Request for Information on March 6, 2023 (the "Motion"). Thereafter, the parties discussed TikTok's deficiencies in complying with the RFI, and reached an understanding which resolved the disputes raised in the Motion. The parties' agreement was memorialized into the Agreed Order which was entered on April 17, 2023.

Paragraph seven of the Agreed Order requires TikTok to provide a corporate representative for sworn examination on numerous issues specifically set forth therein. On June 1, 2023, TikTok presented Warren Solow ("Solow") as its representative, but he was woefully unprepared to answer many questions germane to the issues identified in the Agreed Order. This violated the Agreed Order which plainly required TikTok to do more than merely present a body for examination. Rather, the Agreed Order obligated TikTok to provide a representative with



Re: TenBroeck  
July 27, 2023  
Page 2 of 2

knowledge of the issues set forth therein to assist the Attorney General in his investigation, which TikTok has not yet done.

The most glaring deficiency in Solow's testimony relates to the deletion of the container files of metadata associated with secure chat threads. As both the Motion and Agreed Order make clear, and as Tennessee repeatedly told TikTok, that issue is of paramount concern to the State. Yet Solow was remarkably ill-prepared to testify on that topic. For example, he could not even name the individual responsible for deleting the container files nor who instructed him/her to perform such action. Instead, Solow mistakenly identified a software engineer at Lark Enterprise Applications, Inc. named Deng Song as the individual responsible for deletion of the container files. Counsel eventually attempted to correct the record by identifying who counsel believes is the correct individual, but Solow's inability to speak to that issue deprived us of the ability to meaningfully examine a witness under oath about this topic which was a key element of the Agreed Order.

Additional topics on which Solow could not provide adequate responses—and which TikTok knew were important issues to the state based on the Agreed Order, the Motion, and/or our meet and confers—include, but are not limited to:

- How many secure chat messages have been sent since the RFI was issued;
- What metadata is recorded on TikTok servers related to secure chat messages;
- Whether a backup or mirror system has copies of any secure chat messages/metadata;
- Who deleted the container files, and who instructed the deletion of these files;
- Whether and with whom were there discussions regarding preserving data;
- What does a recall notification look like;
- How many messages have been recalled since the RFI was issued;
- How long does a recall notification persist before it is automatically deleted;
- Whether a backup or mirror system has copies of any recalled messages/metadata;
- Who are the administrators of the Lark platform;
- Whether any documents have been destroyed since the RFI was issued;
- Who selected the custodians in this investigation;

In light of the foregoing, TikTok has failed to comply with paragraph 7 of the Agreed Order. Accordingly, the State demands TikTok produce a representative with knowledge of the issues set forth in the Agreed Order for examination within ten (10) days of the date hereof.

I look forward to hearing back from you and working together to address these concerns.

Regards,

/s

Jonathan L. Stein  
Assistant Attorney General  
Tennessee Office of the Attorney General and Reporter

# EXHIBIT B



Travis LeBlanc  
T: +1 202 728 7018  
tleblanc@cooley.com

Via E-Mail

August 4, 2023

Jonathan L. Stein  
Assistant Attorney General  
Consumer Protection Division  
Office of the Tennessee Attorney General  
UBS Building  
315 Deaderick Street, Nashville, Tennessee 37243  
P.O. Box 20207, Nashville, Tennessee 37202

**Re: Deposition of TikTok Inc. Corporate Representative**

Dear Jonathan:

I write in response to your letter dated July 27, 2023. Your letter asserts that TikTok Inc. (“TTI”) failed to comply with Paragraph 7 of the April 2023 Agreed Order on Motion for an Order Compelling TikTok Inc. to Comply with the Attorney General’s Request for Information (the “Agreed Order”). We disagree. TTI has complied with this and all other provisions of the Agreed Order, as detailed in the Status Report filed with the Court on July 17, 2023.<sup>1</sup>

TTI designated Warren Solow, its information governance and eDiscovery lead, to provide testimony in compliance with the Agreed Order, and he sat for seven hours of questioning two months ago. If you had genuine concerns about the adequacy of his testimony, you would not have waited two months to send your letter. In any event, to the extent your examination did not yield the information your office was looking for, that is not due to any lack of preparedness on Mr. Solow’s part.

As you know, in advance of the deposition, we invited you on multiple calls to provide more specificity about the topics on which you wished to examine the witness to enable us to prepare more effectively, and you refused to do so. During the examination itself, you asked Mr. Solow hundreds of questions both within and outside the parameters of the Agreed Order. Mr. Solow attempted to interpret and address each area of inquiry, and he provided ample testimony.

Your refusal to provide us with a copy of the transcript of Mr. Solow’s testimony makes it difficult for us to respond to your specific assertions.<sup>2</sup> Nevertheless, your complaints are misplaced. You highlight as your

---

<sup>1</sup> TTI has done more than the State even requested in its initial Motion to Compel. Among other things, TikTok has produced thousands of documents, delivered a presentation on TikTok’s organizational structure and how the legal hold recipients in this matter fit within that structure, made one of its senior product managers available for an eight-hour informal interview, and engaged a technical consulting firm that spent (at TTI’s expense) more than 500 hours developing a bespoke format for the production of Lark chats to the State.

<sup>2</sup> Prior to the examination, we requested that we be provided with a copy of the transcript after the examination. You refused that request on May 24, 2023. We then noted on the record at Mr. Solow’s examination that the State had denied TTI the ability to review and correct the deposition transcript

# Cooley

Jonathan L. Stein  
August 4, 2023  
Page Two

primary example of Mr. Solow's alleged lack of preparedness (his "most glaring deficiency") his conflating the Mandarin name of an in-house attorney with the similar sounding name of an engineer (mistakenly saying Deng Song instead of Gang Deng). As you know, we notified you of this *during* the examination and corrected this error afterwards. In any event, you have not and cannot explain how you would have questioned Mr. Solow differently if he had spoken the correct name at the time. We also note that the topic to which the questioning related—the loss of certain "metadata associated with secure chat threads"—is entirely tertiary to your investigation. To be clear, this limited metadata relating to secure chat groups does not reflect the content of any message and would be highly unlikely to establish any substantive fact of consequence.

With respect to the handful of questions (out of a seven hour examination) as to which you claim Mr. Solow gave inadequate responses, either the questions were not well suited to oral examination (e.g., "How many secure chat messages have been sent since the RFI was issued," "How many messages have been recalled since the RFI was issued"); impossibly broad (e.g., "Whether and with whom were there discussions regarding preserving data"); or you simply did not like his answers. For example, Mr. Solow *did* identify the administrator of the Lark platform (Ronnie Hua); your assertion that he did not is incorrect.

I also note that you spent a significant amount of time asking Mr. Solow questions that were outside the scope of the Agreed Order or otherwise improper. For example, you asked about a number of issues (e.g., competitive bidding, vendor invoicing, the headcount for teams with anti-fraud responsibilities) that had nothing to do with the Lark platform or the Company's policies and practices relating to documents and data preservation. You also showed Mr. Solow numerous Lark chats and asked whether Mr. Solow thought they were relevant or germane to Tennessee's investigation. Mr. Solow was obviously not an appropriate witness to ask about what documents are relevant to your investigation.

We have complied with the terms of the Agreed Order and do not believe it is fair or reasonable to require TTI to produce another witness for a full day of testimony. But if there are specific factual questions that you asked Mr. Solow that you believe were not adequately answered, please bring those to our attention and we will meet and confer. If possible, we will attempt to answer those questions in writing.

Sincerely,

Cooley LLP



Travis LeBlanc

---

following this examination. TTI objected to this restriction and reserved the right to petition a Court for access to the transcript, as well as all rights to object to the accuracy or admissibility of the un-reviewed transcript in a later proceeding. Following receipt of your letter dated July 27, 2023, we again requested a copy of the transcript, noting that it was inequitable for the State to make assertions about Mr. Solow's purportedly inadequate responses while refusing to provide us with a copy of the transcript. You again refused the request, citing the "policy of the Tennessee Attorney General's Office to maintain transcripts from examinations as confidential during an ongoing investigation."

# EXHIBIT C

STATE OF TENNESSEE

Office of the Attorney General



**JONATHAN SKRMETTI**  
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202  
TELEPHONE (615)741-3491  
FACSIMILE (615)741-2009

June 12, 2023

*Via Electronic Mail: ctenbroeck@cooley.com*

TikTok, Inc.  
c/o Cooley LLP  
10265 Science Center Drive  
San Diego, CA 92121  
Attn: Craig TenBroeck

**Re: *Litigation Hold Letters***

Dear Mr. TenBroeck,

This letter is in response to TikTok, Inc.'s ("TikTok") request for the States' to put our concerns of attorney-client privilege in writing, made during the Meet and Confer on June 2, 2023. This letter only addresses claims of attorney-client privilege with respect to the content of the template legal hold notice and attached exhibit A (collectively the "Notice") produced in advance of the sworn statement offered by Warren Solow on June 1, 2023.

The States request the complete unredacted content of the Notice distributed for this investigation as well as the complete Exterro report evidencing when these Notices were sent to each individual along with which individuals acknowledged receipt of same, as requested at the Meet and Confer held on June 2, 2023. Specifically, the States are entitled to know the circumstances regarding the issuance of the litigation holds, and due to problems with the claims of attorney-client privilege TikTok asserted over these holds, the States are entitled to the copies of the actual holds by issued by TikTok.

Both state and federal courts recognized that "discovery regarding the circumstances of a company's litigation hold is not privileged." Cohen v. Trump, 2015 WL 3617124, at \*7 (S.D. Cal. June 9, 2015); see In re Ocwen Loan Servicing, 2018 Cal. Super. LEXIS 37752 at \*22-23 (Cal. Super. Ct. Aug. 22, 2018). A plaintiff is entitled to know, among other things, "what kinds and categories of ESI [the defendant's] employees were instructed to preserve and collect, and what specific actions they were instructed to undertake to that end." Cohen, 2015 WL 3617124, at \*7. A defendant "must also disclose the identities" of the employees who received the document

Re: TenBroeck  
June 12, 2023  
Page 2 of 2

retention notices. In re eBay Seller Antitrust Litig., 2007 WL 2852364 at \*1 (N.D. Cal. Oct. 2, 2007).

Because facts relating to litigation hold notices and the actions taken by the employees are not protected by either the attorney-client privilege or the work product doctrine, we request that TikTok provide this information for each litigation hold issued to its employees, and that it include the types and categories of the documents and communications that TikTok instructed their employees to preserve and collect, the identity of the recipients, the date they received the hold, and the identity of the issuer.

In regard to the Notice itself, “[l]itigation holds are generally protected from disclosure by the attorney-client privilege or as attorney work product unless a preliminary showing of spoliation is made.” Radiation Oncology Servs. of Cent. New York, P.C. v. Our Lady of Lourdes Mem'l Hosp., Inc., 69 Misc. 3d 209, 210, 126 N.Y.S.3d 873, 874 (N.Y. Sup. Ct. 2020). Spoliation has been found to be made with the destruction and alteration of electronically stored information. Hannah v. Heeter, 213 W. Va. 704, 716, 584 S.E.2d 560, 572 (2003). Untimely issued litigation holds have also been found to be outside the purview of attorney-client privilege. City of Colton v. Am. Promotional Events, Inc., No. CV0906630PSGSSX, 2011 WL 13223880, at \*1 (C.D. Cal. Nov. 22, 2011). Litigation holds from officers to groups of employees that “merely describe corporation’s document retention practices, rather than relate to any attorney’s preparations for litigation” are also not considered protected under either the attorney-client or work-product privilege. United States ex rel. Barko v. Halliburton Co., 74 F. Supp. 3d 183 (D.D.C. 2014).

Due to spoliation that occurred here, the Notice TikTok issued is not protected under attorney-client privilege and must be produced. By way of example, Shou Chew, the CEO of TikTok, was not issued a litigation hold until nearly a year after a CID was served. Additionally, Warren Solow disclosed during his testimony that numerous Lark messages were recalled after the duty to preserve arose, and that TikTok did not disable Secure/Secret Chat for any employee until after the passage of more than a year after the RFI was issued. More importantly, the container file of metadata which evidenced the extent and subjects of the Secure/Secret Chat messages which had been deleted by TikTok since the duty to preserve arose was also deleted. Given the spoliation of evidence present here, the Notice is not subject to any privilege. Therefore, we ask TikTok to provide the complete unredacted Notice forthwith without the need for our office to request Court intervention to compel its disclosure.

I look forward to hearing back from you and working together to address these concerns.

Regards,

/s

Jonathan L. Stein  
Assistant Attorney General  
Tennessee Office of the Attorney General and Reporter

# EXHIBIT D





Craig E. TenBroeck  
T: +1 858 550 6160  
ctenbroeck@cooley.com

Via E-Mail

June 26, 2023

Jonathan L. Stein, Assistant Attorney General  
Consumer Protection Division  
Office of the Tennessee Attorney General  
UBS Building, 20th Floor  
315 Deaderick Street  
Nashville, Tennessee 37243  
Mailing Address: P.O. Box 20207, Nashville, Tennessee 37202  
Jonathan.Stein@ag.tn.gov

**Re: TikTok Litigation Hold Notices**

Dear Mr. Stein:

We write on behalf of TikTok Inc. (the "Company") in response to your letter dated June 12, 2023, requesting production of the litigation hold issued in connection with the State of Tennessee's investigation and an Exterro report describing who received that litigation hold.

We will provide Exterro data reflecting who received a litigation hold in connection with the State of Tennessee's Request for Information dated March 2, 2022 ("March 2022 RFI"), when the litigation hold was sent to each individual, and information regarding acknowledgments.

However, we object to providing the litigation hold notice itself. As your letter concedes, "[i]tigation holds are generally protected from disclosure by the attorney-client privilege or as attorney work product..." *Radiation Oncology Servs. of Cent. New York, P.C. v. Our Lady of Lourdes Mem'l Hosp., Inc.*, 126 N.Y.S.3d 873, 874 (N.Y. Sup. Ct. 2020). Other courts have found legal holds to be protected under attorney-client privilege or as attorney work product. See *Shenwick v. Twitter, Inc.*, 2018 WL 833085, at \*4 (N.D. Cal. Feb. 7, 2018) ("Defendants are correct that preservation notices, if prepared by counsel and directed to the client, are protected by the attorney-client privilege."); *In re eBay Seller Antitrust Litig.*, 2007 WL 2852364, at \*2 (N.D. Cal. Oct. 2, 2007) (finding document retention notices "protected under attorney client privilege and the work product doctrine" because the documents included "counsel's analysis of plaintiffs' claims in this litigation and what may be relevant to those claims or [defendant's] defenses").

Here, the Company's litigation hold issued in connection with the March 2022 RFI was drafted by corporate counsel for corporate employees, and it contains the impressions and opinions of counsel as to what may be relevant to the State of Tennessee's claims and the Company's defenses. In addition, recipients of the hold were instructed to maintain its confidentiality. As a result, the Company's litigation hold issued in connection with the March 2022 RFI is protected under both attorney-client privilege as a confidential communication made between corporate counsel and corporate employees, and is also protected as attorney work product.

Even assuming a court *may* order production of a litigation hold after a preliminary showing of spoliation, we disagree that there has been a preliminary showing of spoliation here. Indeed, unlike in

# Cooley

Jonathan Stein, Assistant Attorney General

June 26, 2023

Page Two

circumstances in which courts have ordered the production of litigation hold notices, there has been no showing here that any relevant materials have been lost or destroyed, much less deliberately so. See *Rains v. Westminster Coll.*, 2023 WL 2894506, at \*2 (D. Utah Apr. 11, 2023) (“The burden is on the moving party to establish, by a preponderance of the evidence, each element of spoliation...”).

In addition, the Company has already produced the template used to draft legal holds at the time of the March 2022 RFI, which addresses the categories of documents and ESI the Company instructs legal hold recipients to preserve. The states are not entitled to additional, privileged information about the Company’s document preservation efforts.

Sincerely,



Craig E. TenBroeck

# EXHIBIT 4

## Excerpts of Testimony of Mr. Warren Solow

**In The Matter Of:**  
*IN RE:*  
*INVESTIGATION OF TIK TOK, INC.*

---

*WARREN SOLOW*  
*June 1, 2023*

---

*Donna J. McWhorter, LCR, RPR*  
*McWhorter Court Reporting 615.406.8805*

Original File 2023-06-01 In Re TikTok.txt  
Min-U-Script® with Word Index

**WARREN SOLOW - June 1, 2023**

1

IN RE: )  
 )  
INVESTIGATION OF )  
TIK TOK, INC. )

---

**VIDEOTAPED SWORN STATEMENT OF  
WARREN SOLOW  
THURSDAY, JUNE 1, 2023**

**Donna J. McWhorter, LCR #404, RPR  
Licensed Court Reporter  
P.O. Box 218424  
Nashville, Tennessee 37221  
(615) 406-8805  
Mcwhorterreporting@gmail.com**

1 APPEARANCES:

2

3 FOR THE STATE OF TENNESSEE ATTORNEY GENERALS OFFICE:

4 Mr. Jonathan Stein  
5 Mr. Matt Janssen  
6 Consumer Protection Division  
7 Office of the Tennessee Attorney General  
8 P.O. Box 20207  
9 Nashville, TN 37202  
10 615-837-5155

8

ALSO PRESENT:

9

10 Cheryl Erwin, Videographer  
11 Craig TenBrook, Esquire  
12 Regina Schaffer-Goldman, Esquire  
13 Ian Schattner, Esquire  
14 Woods Drinkwater, Esquire

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 bits and bytes of information. My team generally does  
2 not execute on those, you know, clerical bits-and-bytes  
3 tasks.

4 Q. So what -- what functions with respect to a  
5 litigation hold does your team fulfill?

6 A. Oversight of the platform to make sure it's  
7 working and that it is doing what's expected. We are  
8 part of the team that collaborates on the development  
9 of a -- of the template we use, you know, the stock  
10 language in a -- a Legal Hold Notice. And that's --  
11 you know, that's the core of it.

12 Q. Okay. To your knowledge, were any documents  
13 or data responsive to the RFI destroyed at any time?

14 A. I have no direct understanding in that  
15 regard.

16 Q. All right.

17 A. Actually, can you -- can you restate that  
18 question?

19 Q. Do you want me --

20 A. To my knowledge --

21 Q. -- just to repeat it?

22 A. Yeah, repeat. Yeah. Not restate. I'm  
23 sorry. Well, restate. Not --

24 Q. To your knowledge, have any documents or  
25 data responsive to the RFI been destroyed?



1 he had, but --

2 Q. Have you seen this litigation hold list  
3 before?

4 A. Not in its -- not in this iteration.

5 Q. Okay. Did you help prepare the litigation  
6 hold list in any manner, or was that strictly the case  
7 team?

8 A. That was strictly the case team.

9 Q. Do you know if anyone helped Bo Kim produce  
10 the litigation hold list?

11 A. Not specifically, but I would -- without too  
12 much conjecture, I assume his supporting staff helped.

13 Q. Okay. And who's -- who are the members of  
14 his supporting staff?

15 A. I'm not sure at the time. It may have been  
16 Lydia Kang and others. She may have -- she may have  
17 joined later. Yeah, I'm not sure of the full number of  
18 people who he, you know, interacted with for that.

19 Q. Okay. So according to the litigation hold  
20 list, only 76 employees were placed on litigation hold  
21 in March of 2022, but now there's 264. Can you explain  
22 why all 264 weren't placed on litigation hold back in  
23 March of 2022?

24 A. I suspect that additional people were added  
25 to the Legal Hold Notice as -- as information surfaced

1 Q. But let's say what was supposed to be.

2 A. Yeah. I -- I think there -- there could be  
3 an issue when you --

4 Q. Well, you're saying you think. I'm  
5 asking -- you're here as the corporate designee today,  
6 so what is TikTok's answer?

7 A. Okay. I'm -- what I'm saying is that in the  
8 course of my business, I talk about these things all  
9 the time and I refer to my colleagues and -- and -- and  
10 documents here. It's a memory test. So I apologize if  
11 the thousands of points of information are not crisp  
12 and at my disposal. I am -- I am doing my best in a  
13 forum that is, you know, atypical for how I do my job.  
14 So I make no excuses, but I want you to understand  
15 the -- the absolute launching of that.

16 Q. I understand. But getting back to the  
17 question at hand, is it -- is it TikTok's answer today  
18 that chats can be deleted by the creator of the thread  
19 and even though they might be material to an ongoing  
20 investigation, they would not be produced in response  
21 to a CID or an RFI because of some technical  
22 incompatibility?

23 A. I stick with my answer that I need to  
24 clarify whether that is the case or not.

25 Q. So -- so as you sit here, TikTok's answer is

1 A. Seven days.

2 Q. Okay. And at the end of the retention  
3 period, it's deleted, that's it, right? It's gone?

4 A. The message and the -- yeah, the message and  
5 the message-level metadata is gone.

6 Q. Have any secure chats been deleted since the  
7 RFI was served on TikTok?

8 A. I can't speak to a specific message, but I'd  
9 say that secure chats have -- have lived their life  
10 cycle during that period.

11 Q. And then it's reasonable to presume, then,  
12 that they were not produced in response to our RFI; is  
13 that correct?

14 A. That's correct.

15 Q. Any idea how many of these chats, secure  
16 chats, there were?

17 A. I couldn't presume how many secure chats  
18 that were potentially relevant to this matter.

19 Q. Okay. So let's take relevancy out of the  
20 equation. Between March 2, 2022 and today, how many  
21 secure chats would you estimate -- and, again, you're  
22 answering for the company -- how many secure chats  
23 would you estimate were initiated in that timeframe?

24 MR. TENBOECK: Are you talking in the  
25 company as a whole? Is that the question?

1 upon receiving the litigation hold. Why was it waited,  
2 because no one was apparently -- according to this  
3 litigation hold list that was produced in preparation  
4 for this meeting, no one was put on this list -- I  
5 mean, into the disallow cohort until April of 2023.

6 MR. TENBOECK: I'll just say, I don't  
7 think that is correct. There are individuals in  
8 other -- with other dates, page 7, for example.

9 MR. STEIN: Page 7? Okay. You're  
10 right. March of 2023.

11 BY MR. STEIN:

12 Q. So no one was placed in the disallow cohort  
13 until a year after the litigation hold was received.  
14 Can you explain why?

15 A. At that time, we were relying on a  
16 instruction to legal hold recipients not to use it  
17 for -- for anything related to this matter.

18 Q. And you trusted them not to use it if they  
19 were -- received such instruction?

20 A. Yes. We instruct- -- we understand the --

21 Q. Why was it necessary to create the disallow  
22 cohort?

23 A. I think it was considered an advancement or  
24 a next step forward to obviate such exchanges we're  
25 having right now, perhaps, even. But it was another

1 MR. STEIN: Do you want to take a  
2 break?

3 THE WITNESS: Just a quick break.

4 MR. STEIN: Let's take a break.

5 THE WITNESS: I saw the -- I saw the  
6 Post-It go and I thought I would --

7 MR. STEIN: That's all right.

8 THE WITNESS: -- try to double --  
9 multitask there.

10 VIDEOGRAPHER: Going off the record.  
11 The time is now 2:22.

12 (A recess was taken from 2:22 to  
13 2:37 p.m.)

14 VIDEOGRAPHER: We're back on the  
15 record. The time is now 2:37.

16 BY MR. STEIN:

17 Q. Okay. I wanted to go back over a few things  
18 that you testified to. First, you said that the use of  
19 secure chat was very small. You didn't have any kind  
20 of specifics. Where did you hear that it was very  
21 small?

22 A. In the course of my -- I said it was my -- I  
23 believe I said, and I intended to say, that in my  
24 personal, though anecdotal, experience, um --

25 Q. So what is TikTok's answer as to how many

1 secure messages are sent on an average each day?

2 A. I have -- TikTok does not have that answer,  
3 I don't believe.

4 Q. But they could have that answer, couldn't  
5 they? I mean, they might not be able to get the data  
6 because once the time period is gone, it's passed, then  
7 all the data associated with the message is -- is  
8 deleted. But when someone initiates a secure chat,  
9 they could record that, right? They could know it  
10 happened?

11 A. Maybe. I'm not -- I'm not sure of the  
12 answer to that. And, in any case, those ephemeral time  
13 periods are so short that to come up with that  
14 aggregate number, I think, would be difficult.

15 But just to finish what I was saying, in the  
16 course of my job, I interview custodians, recipients,  
17 of Legal Hold Notices on a regular basis. The  
18 answer -- the question is put as to their -- their  
19 usage, and a significant -- a majority of people don't  
20 even recognize that secure chat exists. Others say,  
21 "I've heard about it and don't" -- and it is a  
22 exceedingly small number of people who say that they've  
23 ever sent or received a secure chat. Agreed that that  
24 is not a -- a tally done in some way programmatically,  
25 but as I sit here, that's -- that's the information I

1 question.

2 THE WITNESS: Okay. Maybe I need to  
3 understand the question. Recall messages sent by a  
4 custodian are currently preserved.

5 BY MR. STEIN:

6 Q. How?

7 A. There's been recent development of the  
8 ability to preserve a recalled message from a custodian  
9 sender.

10 Q. And when was that put into production?

11 A. That development happened over the course of  
12 the last month.

13 Q. So -- so last month. So it's now June, so  
14 you're saying in May of 2023, that went into  
15 production; is that correct?

16 A. That's correct.

17 Q. So in other words, from March 2, 2022 until  
18 sometime towards the end of May 2023, if a message was  
19 recalled, it would eventually be wiped out from the  
20 ByteDance servers completely, correct?

21 A. That's correct. That's not maintained.

22 Q. Okay.

23 MR. STEIN: Here's the next exhibit.

24 (Exhibit 8 marked.)

25 ///

1 Q. Okay. Let's look at the title on Row 17,  
2 which is on the -- again, on page 4 of 8. So  
3 Column 17. Can you read out loud what the Lark title  
4 is? It's the fourth column.

5 A. "Extreme weight-loss, Imitable Depiction and  
6 Promotion Eating Disorder, Suicide or NSSI Hoaxes and  
7 Delineated ED Diet and ED Body Checking Challenges."

8 MR. TENBOECK: I just want to clarify  
9 that it says "Designated," not "Delineated."

10 THE WITNESS: Oh, sorry. Designated.  
11 Pardon me.

12 BY MR. STEIN:

13 Q. Do you think those topics are related to our  
14 investigation?

15 A. I think I'm not qualified -- I'm not an  
16 attorney -- to make that -- that call.

17 Q. Fair enough. I'd like to look at another  
18 one.

19 MR. STEIN: Craig, since you're going  
20 to ask, this is 23- -- 203096.

21 MR. TENBOECK: And this is the same  
22 scenario, this is excerpts from a CSV that was produced  
23 in this matter, but it's not the full CSV?

24 MR. STEIN: Exactly.

25 MR. TENBOECK: Thank you.



1 aggressively,'" quote/end quote, "to content  
2 moderators' class action and not informing moderators  
3 properly about the material they will be reviewing."

4 Q. And then what about the title on Row 27,  
5 which is 12 of 14? Could you read that title?

6 A. (No response.)

7 Q. Aloud, Please.

8 A. Yeah. I didn't want to make an error this  
9 time, so I was just reading it one time first.

10 "TikTok's Guidelines Enforcement Report shows increases  
11 in sexualized content and fake accounts."

12 Q. Do you think those are subjects that might  
13 be of interest in our investigation?

14 A. Again, I think that requires a legal opinion  
15 that I'm not qualified to make.

16 Q. All right. Let's look at another one. This  
17 is 203094.

18 (Exhibit 11 marked.)

19 MR. STEIN: The same caveats.

20 MR. TENBOECK: Thank you.

21 MR. STEIN: Yeah.

22 BY MR. STEIN:

23 Q. So let's look at Row 6, which is on the  
24 first page. Is that a recalled message?

25 A. Again, I don't speak Mandarin. I will take

1 THE WITNESS: Thank you.

2 MR. STEIN: I think it's in  
3 alphabetical order, so you can --

4 MR. TENBOECK: No. You're on the right  
5 page.

6 THE WITNESS: Oh, you were ready for  
7 me.

8 BY MR. STEIN:

9 Q. So when was she put on litigation hold?

10 THE WITNESS: Am I -- can I share this  
11 page? I'm sorry.

12 BY MR. STEIN:

13 Q. Victoria McCullough.

14 A. March 11th, 2022.

15 Q. So nine days after the RFI was issued. And  
16 yet this message that she sent was recalled five months  
17 after the RFI was issued, while she was on litigation  
18 hold; is that correct?

19 A. That's correct.

20 Q. Okay. Can you look at Row 9 for me?

21 A. Okay.

22 Q. So if you read the Lark text, wasn't  
23 there -- isn't there a misspelling in there? It says  
24 "so was surprised to hear she was still resigning" --  
25 "raisign it." Doesn't that -- wasn't that supposed to

1 from name blank?

2 A. I don't know.

3 Q. Okay. Could you look at the title on  
4 Row 25, which is the previous page?

5 A. Excuse me. I'm sorry. Row 25, was it?

6 Q. Twenty-five. The last -- last row on that  
7 page. Can you read that title out loud?

8 A. "A ten-year-old boy commits suicide," comma  
9 "going viral on TikTok."

10 Q. And I'm not going to make you read the whole  
11 thing out loud, but the Lark text, the next column  
12 over --

13 A. Mm-hmm.

14 Q. -- if you want to read it, is it all the  
15 details about a ten-year-old boy committing suicide in  
16 Peru, that it was filmed and put on TikTok and went  
17 viral?

18 A. Stand by while I read it, please.

19 Q. Sure.

20 (Pause in the proceedings.)

21 A. Okay.

22 Q. Does that seem to be what the message is  
23 about, a ten-year-old boy in Peru committing suicide,  
24 that gets videoed and the video is posted on TikTok and  
25 goes viral?

1 A. Yes, that's what this -- I understand this  
2 is --

3 Q. Do you think that would be germane to our  
4 investigation?

5 A. Again, I think that requires a legal opinion  
6 that I'm generally not asked to be -- to make or  
7 qualified to make.

8 Q. All right. 203093.

9 (Exhibit 13 marked.)

10 MR. TENBOECK: The same caveats?

11 MR. STEIN: Yeah.

12 BY MR. STEIN:

13 Q. Let's look at Row 3, which is on the first  
14 page. That was a recalled message, right?

15 A. Subject to our caveats.

16 Q. Okay. And when was it sent?

17 A. 8/16/2022 at 16:41.

18 Q. Okay. And now we're five and a half months  
19 out from when the RFI was issued and the duty to  
20 preserve data was created. Who is the Lark from name?

21 A. Victoria McCullough.

22 Q. So this is the second time she recalled a  
23 message months after she was put on litigation hold,  
24 right?

25 A. That's correct.

1 sorry to --

2 BY MR. STEIN:

3 Q. So isn't this talking about sharing reports  
4 and drawing learnings therefrom?

5 A. Yeah. That's a reasonable --

6 Q. Okay.

7 A. -- interpretation.

8 Q. And don't you think that would be -- given  
9 that the report was about cyberbullying or cyber risks  
10 to children, wouldn't you think that's germane to our  
11 investigation?

12 A. Again, I think that requires a legal  
13 opinion --

14 Q. Fair enough.

15 A. -- that I wouldn't be making.

16 MR. STEIN: 203092, the same caveats.

17 MR. TENBOECK: Thank you.

18 (Exhibit 15 marked.)

19 BY MR. STEIN:

20 Q. Let's look at Row 32. It's on the third  
21 page, the last message. You see it's recalled,  
22 correct?

23 A. The same caveat.

24 Q. Yeah. And what's the date on that message?

25 A. 9/26/2022 at 22:38.

1 Q. And now we're talking seven months out from  
2 when the RFI was issued and the duty to preserve data  
3 was created. Who was the Lark name from?

4 A. Victoria McCullough.

5 Q. The same Victoria that was put on litigation  
6 hold nine days after the RFI was issued, right?

7 A. I -- I assume so.

8 Q. So why is she recalling messages after she  
9 was put on litigation hold? I thought you said that  
10 didn't happen.

11 A. Well, I didn't say that didn't happen. I  
12 think that the Legal Hold Notice asks for people to  
13 refrain from using recall on potentially relevant  
14 subject matter.

15 Q. Having reviewed these exhibits, does it  
16 change your opinion of how accurately employees at  
17 TikTok adhere to those Litigation Hold Notices?

18 A. Well, I -- I -- I don't know what was  
19 recalled, actually. Actually, in all these situations,  
20 I'm not sure I know what was recalled.

21 Q. And now we can never know, right?

22 A. You can ask somebody under oath, I suppose.  
23 But, yes, I don't know what the subject matter in any  
24 of these recalled messages are, so if I -- you know,  
25 I'm not sure. An attorney --

1 right, too.

2 BY MR. STEIN:

3 Q. So she was added to the litigation hold 13  
4 months after the RFI was issued. Can you ask -- can  
5 you tell me why she was added 13 months later?

6 A. I don't know why she was added when she was  
7 added.

8 Q. Can you look at the title on Row 41? It's  
9 on page 14. Can you read that title out loud?

10 A. Forty-one, correct?

11 Q. Yeah.

12 A. Oh, even with my reading glasses. "New York  
13 state senate introduces child privacy bill which could  
14 increase online security for minors," dash or dot,  
15 "New York Post."

16 Q. And then can you look at the title on  
17 Row 46, which is on page 16? Can you read that out  
18 loud?

19 A. Which part do you want me -- the title?

20 Q. The title.

21 A. Okay. Forty-six, "TikTok's interest in,"  
22 quote, "NyQuil chicken," end quote, "increases  
23 1,400 percent following the FDA's warning about the  
24 dangerous trend."

25 Q. Do you think those messages would have been

1 germane to our investigation?

2 A. Again, I believe that requires a legal  
3 opinion I'm not qualified to make.

4 Q. Understood. And now let's talk about Lark  
5 documents.

6 MR. TENBOECK: Is this a good time for  
7 a short break?

8 THE WITNESS: Could we -- could we  
9 just -- I could be two minutes, I swear.

10 VIDEOGRAPHER: Going off the record.  
11 The time is now 3:38.

12 (A recess was taken from 3:38 to  
13 3:48 p.m.)

14 VIDEOGRAPHER: We're back on the  
15 record. The time is now 3:48.

16 BY MR. STEIN:

17 Q. Okay. So I'd like to now talk to you about  
18 Lark documents. What types of documents are created  
19 and maintained in the Lark system?

20 A. Lark docs are generally analogous to a Word  
21 document. There are analogues to Excel. We call them  
22 sheets. And then there's kind of an Excel on steroids  
23 called bytables, mind maps, generally Office Suite  
24 style documents.

25 Q. And does the system maintain different



1 A. Okay. So --

2 Q. That's why I said "Lark messages."

3 A. Okay. I thought we used -- when you sat  
4 down, you were like, "Let's talk about Lark docs." I  
5 missed the transition that happened very quickly.

6 Q. Sorry.

7 A. No, no. No problem. I will -- I'll do  
8 better. But thankfully I -- I asked for clarification.  
9 Yes, I now understand what you're referring to as a  
10 container file.

11 Q. So in February of '23, TikTok's former  
12 counsel stated that the container files were deleted in  
13 December of 2022. Is that accurate?

14 A. For what kind of --

15 Q. For Lark chats.

16 A. I think it's part of the deprecation I was  
17 discussing further that started in 2021. In 2022, in  
18 the course of a step in that deprecation, some  
19 container-level metadata for secure chats, not chats  
20 writ large, was lost.

21 Q. Now, when you say "was lost," someone  
22 deleted it, right?

23 A. Um --

24 Q. Yes or no?

25 A. Well, no, it's not a yes or no. I'd say

1 that it was -- nobody took an action to -- to delete  
2 that data. In the -- in the act of -- of deprecating  
3 inactive secure chats, data was -- was lost. But it  
4 was --

5 Q. So they --

6 A. -- not a directed action to delete data.

7 Q. So they didn't specifically delete these  
8 files, they deleted a whole bunch of files that they  
9 thought were inactive; is that accurate?

10 A. They deleted inactive containers that  
11 contained no messages.

12 Q. Okay. So who are "they"? Who deleted these  
13 messages?

14 A. Nobody deleted messages. No messages were  
15 deleted in the course of the active -- action you're  
16 talking about.

17 Q. But the metadata was deleted?

18 A. No metadata associated with a message was  
19 deleted in that -- in that action.

20 Q. Metadata associated with secure chats was  
21 deleted, correct?

22 A. Metadata associated with a empty secure chat  
23 container.

24 Q. Okay. An empty secure chat container. So  
25 what was -- what -- what data was in this empty secure

1 chat container?

2 A. There was metadata associated with the  
3 container itself, so who created the chat group, when  
4 they created the chat group --

5 Q. Was the title of the chat group deleted?

6 A. I'm working through that -- the name of the  
7 chat group, and the members of the chat group at the  
8 time that the inactive chat vessel was deprecated.

9 Q. So that was the metadata that was in this  
10 secure chat container, right?

11 A. Right. I think we're defining the terms the  
12 same. Right.

13 Q. Okay. So who deleted that container file?

14 A. I think that was done by a group of  
15 engineers that are responsible for secure chat. I -- I  
16 believe Deng Song is --

17 Q. Could you spell that?

18 A. D-e-n-g S-o-n-g.

19 Q. Deng Song?

20 A. That's right.

21 Q. He's a leader of that engineering group?

22 A. I don't know if he leads the engineering  
23 group or he's just a senior member of that engineering  
24 group.

25 Q. And who directed him to delete that secure

1 chat container, because I'm confused, because earlier  
2 on, again, you said ByteDance's policy was retain all  
3 data indefinitely? Didn't you say that? Those aren't  
4 my words. Those are your words.

5 A. I think the word you're missing that I did  
6 say was "generally." I think I said at the same time  
7 that, any discovery, there is always the possibility of  
8 some edge case. But here, I stand by I think what we  
9 were talking about then, which was that it's our  
10 intention -- and I actually carved out "secure chat"  
11 and "recall" in terms of indefinite preservation. So  
12 I'll just leave it at that. I'm quite sure I qualified  
13 those two things.

14 Q. Okay. So who directed Deng Song to delete  
15 that container file?

16 A. I am not sure.

17 Q. Who does Deng Song report to?

18 A. I don't know who his direct report is, but  
19 David Sheya [phonetic] is the --

20 Q. How do you spell that?

21 A. D-a-v-i-d, last name -- I'll be getting  
22 myself in trouble. I'm not quite sure of the spelling  
23 of Sheya [phonetic].

24 Q. She-ya [phonetic pronunciation]?

25 A. Yeah. But it's --

1 who was in that group, except at the very end. All  
2 the -- all the pieces of information that you had  
3 mentioned you would like to know before in other  
4 settings you weren't getting here, either. So I'm  
5 not -- I'm not --

6 Q. But at least we would have the names of  
7 participants so we could depose them and --

8 (Inaudible cross-talk.)

9 A. Yeah, last participant. I agree. And I'm  
10 not suggesting that I don't know where you would find  
11 value. Right? I mean, everybody -- but -- and I'm not  
12 saying that had anything to do with the decision to  
13 deprecate that. I -- I do understand that. And when  
14 there was -- when it came to light that this program  
15 extended to that, there was significant investigation  
16 into whether, you know, we could roll anything back or  
17 under -- you know, or --

18 Q. Do you have a mirror system?

19 A. The company writ large, that's how we do DR,  
20 but secure chat, because it's ephemeral, doesn't really  
21 hit the -- those systems. I think that the majority of  
22 secure chat information is kept in, you know, short-  
23 term volatile storage that I don't believe is part of  
24 the mirroring system.

25 Q. All right. So from March 2, 2022, when the

1 RFI was issued, until today, can you tell me how many  
2 secure messages were sent by TikTok employees?

3 A. I cannot.

4 Q. How can we make a determination as to how  
5 many secure messages were sent during that same  
6 timeframe?

7 A. I am not -- I'm not sure.

8 Q. Okay. And what data associated with those  
9 secure chats can be recovered, if any?

10 A. Metadata associated with inactive chats is  
11 not available. The only metadata that is obtainable is  
12 metadata associated with containers that are still  
13 active.

14 Q. So to be clear, through the secure chat, an  
15 unknown number of secured messages were sent,  
16 subsequently deleted, and all metadata associated with  
17 those messages was erased from the system; is that  
18 correct?

19 A. Can you just repeat that, just to make sure  
20 that I'm getting the caveat?

21 Q. So between March 2, 2022, when the RFI was  
22 issued and the duty to preserve data was created, and  
23 today, an unknown number of secure messages were sent,  
24 subsequently deleted from the system automatically, and  
25 all metadata on the servers was scrubbed?

1 A. All metadata associated -- you know, chat  
2 message-level metadata was deprecated.

3 Q. Okay.

4 A. "Scrubbed" sounded a little -- sounded like  
5 an opinion --

6 Q. Okay.

7 A. -- that I don't agree with.

8 Q. And let's talk about recall. Between  
9 March 2, 2022 and today, how many recalled messages --  
10 how many messages -- messages were sent and then  
11 subsequently recalled by TikTok employees?

12 A. I -- I do not know.

13 Q. How do we make a determination as to how  
14 many messages were recalled during that timeframe?

15 A. There is metadata that -- that exists and,  
16 you know, in line, when you look, it says a message has  
17 been recalled. There may be some methodology --  
18 methodology that would allow for some quantification of  
19 that. I'm not sure, but that seems like a possibility.

20 Q. But didn't the risk -- the Fraud Risk  
21 Assessment state that even those messages will  
22 eventually get -- after passage of a certain amount of  
23 time, even those notices that a message was recalled,  
24 those will vanish from the system, as well?

25 A. Yeah. I'm -- I'm not -- I think I'd have to