

February 25, 2021

NYPD Commissioner Shea
New York Police Department
One Police Plaza
New York, NY 10038
Via Email

Re: S.T.O.P. Comment on NYPD's Draft Thermographic Cameras Impact & Use Policy

Dear Commissioner Shea:

The Surveillance Technology Oversight Project (“S.T.O.P.”)¹ hereby submits our comment in response to the Draft Thermographic Cameras Impact and Use Policy (“Policy”) published by the New York City Police Department (“NYPD”) on January 11, 2021 pursuant to the Public Oversight of Surveillance Technology Act (“POST Act”). Not only did S.T.O.P. work extensively to promote passage of the POST Act, the law’s enactment was one of the reasons we were founded. Sadly, upon review, the Policy is so grossly inadequate that it not only undermines public trust and accountability, it violates the NYPD’s reporting obligations under the POST Act.

Instead of publishing an impact statement that tells New Yorkers what surveillance tools the NYPD uses, we were provided copy-and-paste responses that are opaque, misleading, and, at times, blatantly wrong. As written, the Policy primarily tell New Yorkers one thing: the NYPD cannot be trusted to use thermographic cameras.

Vendors and Product Disclosure

Perhaps no aspect of the Policy is more antithetical to the text and spirit of the POST Act than the Department’s systematic failure to specify the make and model of equipment used for thermographic cameras. The driving impetus for the POST Act was the Department’s historical failure to disclose what tools it purchased to monitor New Yorkers until years or decades after the fact. This type of surreptitious procurement is antithetical to democratic government and the role of the City Council in overseeing agency purchases. Rather than comply with the POST Act’s reporting obligations, the Policy describes the Department’s thermographic cameras program in vague, non-descript terms. The Policy fails to include a single vendor name, let alone the comprehensive listing of tools that lawmakers required to be provided. At a minimum, the revised policy must include the name of every single thermographic cameras system employed by the NYPD, the system’s manufacturer, and the names of any other vendors involved in creating or operating the system. The NYPD should also provide a comprehensive evaluation of what data is accessed and/or retained by vendors.

¹ S.T.O.P.” is a non-profit organization that advocates and litigates for New Yorkers’ privacy rights, fighting discriminatory surveillance. For more information see <https://www.stopspying.org/>.

Racial Ethnic, and Religious Bias

Racial discrimination and bias have defined New York City's policing since before the NYPD was even founded, and that deadly legacy of injustice has continued to this day. The POST Act provided the Department with a unique opportunity to address the ways that its surveillance operations have been driven by, and in turn fueled, discrimination for decades. Sadly, rather than addressing this challenge head on, the Department simply ignored the POST Act's requirements, responding with a terse and unbelievable claim that "The NYPD prohibits the use of racial and bias-based profiling in law enforcement actions." This statement is patently absurd. The NYPD has long been emblematic to the country as a symbol of biased-policing,² and after the Department's violent and discriminatory response to recent protests, it's clear just how little has changed.³ Thermographic cameras exacerbate officers' bias, discriminating against BIPOC and LGBTQ+ communities, putting over-surveilled New Yorkers at risk of wrongful arrests and worse.

NYPD Training

The Policy recognizes the self-evident truth that training is an important factor for the NYPD's use of thermographic cameras. For example, the Policy states that NYPD employees that are using thermographic cameras must "receive command level training on the operation of thermographic cameras and associated equipment". Sadly, this is not the introductory clause to an expansive training policy, this is almost the whole of the Policy's details on the topic. The Policy's training section is grossly insufficient to say the least. The Policy leaves unclear if officers are still trained to use pseudoscientific techniques or other approaches that would increase the error rate of thermographic cameras.

Comparison of the POST Act to other CCOPS Jurisdictions

The Department's failure to provide the public with meaningful details is particularly egregious in light of the strong national record of compliance with analogous efforts. As of today, more than a dozen localities have adopted Community Control Over Police Surveillance (CCOPS). The POST Act is an outlier, both in that it is one of the weakest laws in the country and because the NYPD's response has shown an unprecedented effort to circumvent even the most minimal transparency requirements.⁴ While many municipalities' legislations require acquisition approval, bans non-disclosure agreements and provide a right of action for private citizens, the POST Act only requires the NYPD to provide annual reports and use policies. Notwithstanding this, the NYPD is unable to meet the requirements set out in the POST Act, by only providing opaque or boiler-plate responses in the Policy, hiding the details needed for meaningful public engagement. As a result, it is clear that more aggressive legislative responses are required.

Concluding Remarks

The cumulative impact of the forgoing errors and omissions is clear: the NYPD is breaking the law. The POST Act is not a formality, it is not a nicety, it is binding legislation with full force of law.

² Lauren del Valle, *NYPD didn't substantiate any complaints of police bias over 4 years. Report cites need to improve*, CNN (Updated 12:10 PM EDT, Jun. 27, 2019), <https://www.cnn.com/2019/06/27/us/nypd-bias-complaints-report/index.html>.

³ See Julie Ciccolini and Ida Sawyer, "Kettling" Protesters in the Bronx Systemic Police Brutality and Its Costs in the United States, Human Rights Watch (Sep. 30, 2020), <https://www.hrw.org/report/2020/09/30/kettling-protesters-bronx/systemic-police-brutality-and-its-costs-united-states>.

⁴ Hogan Lovells and Surveillance Technology Oversight Project, *New CCOPS On The Beat* (Feb. 10, 2021), <https://static1.squarespace.com/static/5c1bfc7ee175995a4ceb638/t/602430a5ef89df2cc6894ce1/1612984485653/News+CCOPS+On+The+Beat.pdf>.

When the NYPD fails to comply with the statute, it seeks to overturn the will of the New York's elected leaders, accomplishing by force what it failed to do through lobbying. If the NYPD persists in this flagrant disregard for its statutory reporting requirements, it will simply hasten the enactment of far more sweeping changes to the Department's surveillance powers in the coming months.

Sincerely,

/s/ _____

Albert Fox Cahn, Esq.

Executive Director