

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 WiFi Geolocation Devices Impact & Use Policy**

Dear Commissioner Shea:

The Surveillance Technology Oversight Project (“S.T.O.P.”)<sup>1</sup> hereby submits our comment in response to the Draft WiFi Geolocation Devices 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 WiFi Geolocation Devices.

**Data Sharing Agreements**

The POST Act requires the NYPD to enumerate all entities which are able to access the Department’s WiFi Geolocation Devices data. However, instead of providing any meaningful information, the Policy merely states that unspecified “WiFi Geolocation Tracking devices used by the NYPD do not record, store, or retain any of the processed location data.” At a minimum, the Department must provide a full accounting of all agencies that access such data, along with the frequency of access and any limitations on how such data is used and retained. The NYPD would also need to provide a copy of any/all agreements with external agencies pertaining to the scope of agency access and the volume of data retained.

**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 WiFi Geolocation Devices. 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.

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<sup>1</sup> 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/>.

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 WiFi Geolocation Devices use 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 WiFi Geolocation Device employed by the NYPD, the system's manufacturer, and the names of any other vendors involved in creating or operating the system.

### **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,<sup>2</sup> and after the Department's violent and discriminatory response to recent protests, it's clear just how little has changed.<sup>3</sup> WiFi Geolocation devices exacerbate officers' bias, discriminating against BIPOC and LGBTQ+ communities, putting over-surveilled New Yorkers at risk of wrongful arrests and worse.

### **NYPD Data Security**

The NYPD is not just asking New Yorkers to allow the Department access to huge volumes of intimate data about our private lives, they want us to let that data to be accessible to anyone who can break into the NYPD's systems. Sadly, we have no way to judge the risk that this data could fall into the hands of any hacker, criminal, or rogue state that could breach NYPD security measures. That is because the NYPD's data security policy contains nothing but empty phrases. The section contains general descriptions about the safeguards in place for the Department's case management and computer systems, stating that the WiFi Geolocation Devices are "securely stored in NYPD facilities when not in use, in a location that is inaccessible to the public". The enormous amounts of highly sensitive data processed through the NYPD's WiFi Geolocation Tracking Devices call for higher security standards than what is described in the Policy.

### **NYPD Training**

The Policy recognizes the self-evident truth that training is an important factor for the NYPD's use of WiFi Geolocation Devices. For example, the Policy states that the "NYPD personnel . . . [who] operate" WiFi Geolocation Devices "are trained in the proper operation of the technology and the 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 WiFi Geolocation Devices.

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<sup>2</sup> 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>.

<sup>3</sup> 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>.

### **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.<sup>4</sup> 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, NYPD has shown 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. 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

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<sup>4</sup> Hogan Lovells and Surveillance Technology Oversight Project, *New CCOPS On The Beat* (Feb. 10, 2021), <https://static1.squarespace.com/static/5c1bfc7eee175995a4ceb638/t/602430a5ef89df2cc6894ce1/1612984485653/New+CCOPS+On+The+Beat.pdf>.