

**NEW YORK CITY COUNCIL  
COMMITTEE ON PUBLIC SAFETY**

**HEARING:**

Creating Comprehensive Reporting and  
Oversight of NYPD Surveillance Technologies

**DATE:**

December 18, 2019

**TESTIMONY OF BARRY FRIEDMAN**

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**Honorable Members of the New York City Council:**

You have asked me to testify about Int. No. 487-2018, a Local Law to amend the administrative code of the city of New York to create comprehensive reporting and oversight of NYPD surveillance technologies, which I will refer to simply as “the Law.” I intend to speak largely in favor of the Law, because it is essential to democratic accountability. But as I explain briefly here, and elaborate below, I think as written the legislation falls short in any number of ways.

- First, although the Law properly asks the NYPD to report to the public on adoption of certain information-gathering technologies and on the policies that will govern their use, and to obtain and consider public comment, it does not require the NYPD to respond to those comments in any way. This is a form of “notice-and-comment rulemaking,” but it is missing a key ingredient of such an administrative process: the requirement that the agency give reasons acknowledging why it has adopted one form of policy over another.
- Second, although I do not know, it is not entirely clear to me that the NYPD is the only agency of New York City government that acquires and uses the sort of “surveillance technology” that the Law addresses. If it is the case that more agencies use such technologies, then it is not clear to me why only the NYPD should be regulated.

## *Testimony of Barry Friedman*

- Third, I find the Law to be badly named, and in a sense that matters. Surveillance carries a negative connotation that is both under- and over- inclusive. These technologies are used in an effort to keep the people of New York City safe. Agree or disagree with them, it would be remarkable to ask the police to assure public safety and not collect any information. And indeed, although some of the technologies you seek to regulate are used for “surveillance,” the deeper concern with technology of this sort is data acquisition, use, and retention. Ideally, this would be a bill about comprehensive reporting and oversight of information-gathering technologies used by any agency to prevent crime or detect wrongdoing.
- Fourth, although the Law requires a great deal of information about the use of these technologies, it is remarkably silent about *why* there is a need for regulation and what sort of impacts this body is concerned about. The use of these technologies, even for the best of motives, threatens individual privacy, First Amendment freedoms, and can—and has—led to overcriminalization and deeply troubling racial disparities, to name but a few of the central concerns. It is odd to call for disclosure about these technologies and not explain what the basis is for that disclosure.
- Fifth, I believe—and experience elsewhere has shown—that the 180 day period for evaluating existing technologies may well be too short to expect NYPD compliance.
- Finally, NYPD officials have expressed concern that revealing some of this information about the technologies it uses will permit evasion by those who would do us harm. To the extent these arguments are offered wholesale, as a basis for absolutely no disclosure, I believe they are overstated. But, to the extent the arguments might have validity about particular technologies or particular uses, the Law makes absolutely no provision for this eventuality.

Thus, I find this Law a step in the right direction, but all things considered I would rework it somewhat before enacting it.

### ***Background for Testimony***

I am the Jacob D. Fuchsberg Professor of Law and Affiliated Professor of Politics at New York University School of Law. For over thirty years I have taught a number of courses relevant to this legislation, including Constitutional Law, Criminal Procedure, and Democratic Policing. I also am the author of numerous publications, in both the scholarly and public realm, about regulating policing, including *Unwarranted: Policing Without Permission*.

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Perhaps most germane, I also am the Faculty Director of the Policing Project at NYU Law School. Our mission is to “partner with communities and police to promote public safety through transparency, equity, and democratic engagement.”<sup>1</sup> We conduct research, but also do work on the ground all over the country, both with policing agencies and the communities they serve, to promote democratically-accountable policing. Ours is an all-stakeholders approach. Everywhere we work, we endeavor to do so both with communities affected by policing, and with the police themselves. In that way we hope to move the needle toward greater public safety that is just, non-discriminatory, and effective. We have done precisely that, here in New York. To name two examples, we joined the Open Society Foundation and the NYPD in hosting a summit on racial disparities in policing. We also worked with both the NYPD and the plaintiffs in the *Floyd* stop and frisk litigation in obtaining public input into the NYPD’s policy for its use of body cameras. If you are interested in the full scope of our work, you can learn more at our website, [www.policingproject.org](http://www.policingproject.org).

### ***The Need for “Front-End Accountability”***

Legislation like this is at the core of the Policing Project’s mission. To explain why that is, I would like to draw an important distinction between what we refer to as “front-end” and “back-end” accountability.

There has been a great deal of concern in this city and in the country over the last few years about the impact of policing. Some of that concern has been about the sorts of technology you seek to regulate here, for example facial recognition, license plate readers, cell site simulators, CCTV, and the like. But it also has been about uses of force and coercion, be it police shootings

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<sup>1</sup> *Our Mission*, Policing Project, [www.policingproject.org/about-landing](http://www.policingproject.org/about-landing).

or pedestrian and traffic stops. And when those issues are discussed, the word “accountability” often is used.

But there are two kinds of accountability and they are very different. Most of what we hear about is “back-end accountability.” The police have done something that people feel is wrong, and they want to assign responsibility and see that there is responsive action taken. Examples include proceedings in court to exclude evidence that is obtained unlawfully, or the prosecution of officers, the creation of bodies like our Civilian Complaint Review Board, federal investigations or civil rights suits, such as around the *Floyd* litigation—which ended up with a court-appointed monitor, and the like. All these are aimed at accountability after-the-fact, after something has happened.

As I argue in my book *Unwarranted*, and in my scholarly writings, what has been almost entirely missing from policing is accountability of a very, very different sort. It is ironic, because that is the sort of accountability we find prominent in the rest of government: front-end accountability. By that I mean to say that in most of government we seek sound, public, decision-making before agencies act. Legislative bodies pass laws regulating agency conduct. Administrative agencies adopt rules and regulations. And three things are true of that sort of lawmaking: (1) the public and its representatives have a voice in what is adopted; (2) the rules themselves are transparent, which is to say we all know what they are; and (3) we do our utmost best to make sure the laws do more good than harm, that they make sense, sometimes through the use of a technique such as cost-benefit analysis.

That is exactly what most people think of when they think of democratically-accountable government. Lawmaking by public officials in a way we can all watch and comment upon, with the goal of bettering society.

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Although this sort of thing is common in society, around policing not so much. We delegate power to the police in the most general of terms, asking them to assure public safety, such as in New York City Charter § 435, but give them almost no direction about how to do this.<sup>2</sup> The police are of course experts in public safety, just as all agencies of government are expert in their fields. All agency officials deserve a certain amount of deference and exercise a certain degree of discretion. Still, with most agencies other than the police, we do not let them just do what they choose. Rather, we always rely on this sort of front-end accountability to provide guidelines and create guardrails. We have back-end accountability throughout government too, of course: lawsuits and oversight hearings and the like. But it is unthinkable that the rest of government would run without front-end accountability.

It is worth reviewing some of the reasons that front-end accountability is essential, because these are equally true of the police as of all other agencies.

First, there is our basic commitment to democracy. In administrative government we properly rely on the expertise of the dedicated public servants who act in our name. But it is a fundamental principle of American governance that the public sets the rules and standards by which those agencies act. Governance is not supposed to happen in secret, out of view of those

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<sup>2</sup> “The police department and force shall have the power and it shall be their duty to preserve the public peace, prevent crime, detect and arrest offenders, suppress riots, mobs and insurrections, disperse unlawful or dangerous assemblages and assemblages which obstruct the free passage of public streets, sidewalks, parks and places; protect the rights of persons and property, guard the public health, preserve order at elections and all public meetings and assemblages; subject to the provisions of law and the rules and regulations of the commissioner of traffic, regulate, direct, control and restrict the movement of vehicular and pedestrian traffic for the facilitation of traffic and the convenience of the public as well as the proper protection of human life and health; remove all nuisances in the public streets, parks and places; arrest all street mendicants and beggars; provide proper police attendance at fires; inspect and observe all places of public amusement, all places of business having excise or other licenses to carry on any business; enforce and prevent the violation of all laws and ordinances in force in the city; and for these purposes to arrest all persons guilty of violating any law or ordinance for the suppression or punishment of crimes or offenses.” NEW YORK CITY CHARTER § 435(a).

who are governed. Policing is no different, though it may have special needs for secrecy in some situations, something to which I will return.

Second, that commitment to democracy assures the basic level of legitimacy that government requires in order to act effectively. Government is supposed to be a collaboration between the governed and the governors, in which public participation assures the legitimacy of the actions government takes. If anything, this is more true, not less so, around policing. We have all seen the difficulty of policing when the public resents the police and refuses to cooperate, because they question the legitimacy of what the police are doing. The Task Force on 21<sup>st</sup> Century Policing appointed by President Obama called for the “co-production” of public safety to address this issue. Three consecutive Commissioners of the NYPD—Bratton, O’Neill, and now Shea—have expressed a recognition of the importance of public support, and have embodied this notion in the form of Neighborhood Policing. What the NYPD has done in this regard can be a model for the country; indeed, we at the Policing Project are currently working with the City of Chicago, the Chicago Police Department, and grassroots activists to establish neighborhood policing in that city.

Third, we simply get better decisions when decision-making is open to many voices, even (or especially) dissenting ones. Agencies are mission-oriented, and the police are—again—no different. We want them to be that way. But mission-orientation also can lead to tunnel vision if decisions are isolated from public and critical views. People affected by policing have a lot to offer about what works and what does not, and it is essential to hear those voices and their views in order to formulate the best policy.

***Two Models of Democratic Governance***

I have been speaking generally about democratic governance and front-end accountability, but in this country, and this city, there are two basic models of how this operates. (There are more, but these two are both sufficient and essential to evaluate this proposed Law.)

The first model is legislative. Elected bodies pass laws that govern all of us, including those who govern in our name. That model obviously is familiar to this Council; that is your job. This model is being used around policing technologies presently. In many places in the country, municipal and state legislative bodies are adopting laws that regulate the use of specific policing technologies, such as drones or license plate readers. And in a few places in the country, legislative bodies have passed laws governing these technologies more generally. Typically those laws require policing and other government agencies to report to the city council in much the way this Law would have the NYPD report, but then leave it to the city council to approve acquisition and use of the technology. Often these laws are variations of a model statute promoted by the American Civil Liberties Union called the Community Control of Police Surveillance, or CCOPS.<sup>3</sup> On our website you can find a link to the CCOPS statute, as well as two variants we have drafted. One, the Authorized Police Technologies (or APT) Act, is intended to do what CCOPS does, but to make the burden of compliance somewhat more manageable.<sup>4</sup> The other, the Authorized Data and Police Technologies (or ADAPT) Act, adds the regulation of certain databases, such as gang

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<sup>3</sup> *Community Control Over Police Surveillance (CCOPS) Model Bill*, ACLU, <https://www.aclu.org/other/community-control-over-police-surveillance-ccops-model-bill>.

<sup>4</sup> *Authorized Police Technologies (APT) Act Model Legislation*, Policing Project, <https://www.policingproject.org/apt-act>.

databases, to the mix.<sup>5</sup> Versions of statutes like these are in use in thirteen jurisdictions, including Seattle, Oakland, Nashville, and Cambridge, MA.<sup>6</sup>

The second model is administrative. Under an administrative model, legislative bodies delegate authority to administrative agencies to do the regulating. This model often is thought to be more manageable in complex and changing areas not susceptible to constant legislative monitoring, and it takes advantage of agency expertise. Legislation instructs the administrative agency in broad terms what is to happen, then the agency adopts rules and regulations, and engages in enforcement, to see that the legislative will is carried out. Agency regulation can happen in a number of ways but the most common is through notice-and-comment rulemaking. The agency proposes a rule, the public (especially affected parties) are permitted to comment, and the agency then reviews those comments and adopts a final rule. Although the agency need not adopt the public's views, the rule of law requires the agency to explain publicly the reasons it went with its final version, especially when it rejects others' views. (Often there is judicial review of this sort of process.)

The NYPD is an agency of New York City government, and it actually has experimented with forms of notice-and-comment rulemaking. I know, because the Policing Project was deeply involved with one variant, adoption of the NYPD's general order regarding body cameras. We were asked by the department to facilitate a process of public comment. Working with the court-appointed monitor in the *Floyd* case, the lawyers for the plaintiffs, and others, including members from this body, we created a survey that was made available to New Yorkers. We also created a

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<sup>5</sup> *Authorized Databases and Police Technologies (ADAPT) Act Model Legislation*, Policing Project, <https://www.policingproject.org/adapt-act>.

<sup>6</sup> See *Community Control Over Police Surveillance #TakeCTRL*, ACLU, <https://www.aclu.org/issues/privacy-technology/surveillance-technologies/community-control-over-police-surveillance> (citing "Participating Cities" graphic).

portal for more elaborate comments. We received some 30,000 surveys, and comments from about 50 organizations. We then wrote a report summarizing all of this.<sup>7</sup> Ultimately the NYPD considered those views, and released its own report summarizing what it had done, and why.<sup>8</sup>

Many advocates ultimately were unhappy with the direction the NYPD took on some issues regarding its use of body-worn cameras.<sup>9</sup> I was too, though I co-authored an op-ed in the *Gotham Gazette* explaining the value of the process.<sup>10</sup> I adhere to those views, though I think that particular process was far too exhausting to occur regularly. But the NYPD has engaged in variants, including—for example—hearing from stakeholders including Council members on its drone policy.

In some jurisdictions one variant of the administrative model is to create a police commission of lay individuals, which engages in rulemaking for the department. That is the model in Los Angeles and San Francisco. There is an advisory variant in Seattle. The Chicago City Council presently is considering an ordinance that would create such a body for that city..

The point I want to stress is that the Law you are considering is a form of administrative notice-and-comment rulemaking. In the balance of my remarks I intend to evaluate it as such.

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<sup>7</sup> POLICING PROJECT, REPORT TO THE NYPD SUMMARIZING PUBLIC FEEDBACK ON ITS PROPOSED BODY-WORN CAMERA POLICY (Apr. 2017), <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/59ce7edfb0786914ba448d82/1506705121578/Report+to+the+NYPD+Summarizing+Public+Feedback+on+BWC+Policy.pdf>.

<sup>8</sup> NYPD, NYPD RESPONSE TO PUBLIC AND OFFICER INPUT ON THE DEPARTMENT'S PROPOSED BODY-WORN CAMERA POLICY (Apr. 2017), [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/body-worn-camera-policy-response.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/body-worn-camera-policy-response.pdf).

<sup>9</sup> See, e.g., *NYPD Body Camera Policy Ignores Community Demands for Police Accountability*, ACLU, (Apr. 7, 2017), <https://www.nyclu.org/en/press-releases/nypd-body-camera-policy-ignores-community-demands-police-accountability>.

<sup>10</sup> Barry Friedman & Maria Monomarenko, *Pulling the Public into Police Accountability*, (Apr. 13, 2017), <https://www.gothamgazette.com/opinion/6869-pulling-the-public-into-police-accountability>.

***Why regulate police information-gathering technology?***

Members of the NYPD have commented unfavorably in the past about the sort of Law you are considering.<sup>11</sup> Although one understandable reason is that no one likes to be told what to do, and this is an area in which the NYPD (as with other departments) long has been left to to make decisions entirely on its own, members of the NYPD have advanced a more practical reason. Public disclosure of the technology it possesses will enable those determined to do us harm to step up their game and evade detection.

I take the claim about preserving public safety very seriously. We all should. This city, like all cities, is susceptible to crime. And this city is perhaps uniquely susceptible to terrorism, as we all know too well. I live in Greenwich Village and have since 1999; the events of 9/11 are indelibly stamped in my mind.

But there are two problems with this argument advanced by the NYPD, which require that we deal with it at retail, not at wholesale. By which I mean we must address to what extent disclosure actually is a problem, and not simply use the argument as a way to avoid any and all regulation whatsoever.

First, there are all the reasons I gave above for democratic regulation of government generally. Taken to its extreme, this argument of these NYPD officials would mean there is simply no democratic oversight of how technology is deployed.

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<sup>11</sup> See, e.g., Alison Fox, *POST Act Would 'Help Criminals and Terrorists,' NYPD Deputy Commissioner Says*, AM NEW YORK, (Jun. 18, 2017), <https://www.amny.com/news/post-act-would-help-criminals-and-terrorists-nypd-deputy-commissioner-says-1-13746321/>; Morning Joe, *In New York City, a Battle Over a Surveillance Bill*, MSNBC, (Jun. 16, 2017), <http://www.msnbc.com/morning-joe/watch/in-new-york-city-a-battle-over-a-surveillance-bill-969162307587>.

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Now, if the risk of harm from disclosing this information was sufficiently high, and the need for regulation very low, we might tilt in favor of allowing the NYPD simply to make its own decisions in private.

But though I cannot assess the risk fully without more information, we are all aware that the use of these technologies come replete with a series of harms. I believe that is why we are here today. These harms are not hypothetical; they are all too real. I will review a few of them briefly; I have written about them extensively elsewhere.<sup>12</sup>

First, the sorts of technologies we are discussing pose a very real threat to privacy. It should take no lengthy discussion to establish this. Whether it is cameras tracking our movements, or license plate readers identifying and retaining them, or facial recognition, or cell site simulators, all of these have been written about extensively in terms of their risk to individual privacy and autonomy.

Second, the availability of these technologies can chill First Amendment freedoms. This is hardly hypothetical, whether one refers to the notorious COINTELPRO efforts of law enforcement agencies during the civil rights era, or the conduct of the NYPD that led to the Handschu guidelines. There is a persistent inclination of government to investigate dissent, and it is essential to ensure that dissent is not silenced in any way.

Third, these technologies can have very serious racial impacts. Again, this is not hypothetical. We can put aside entirely if one wishes the use of any police tactic in a deliberately discriminatory way, something for which none of us including the NYPD should stand. But it simply is an unfortunate fact in our country that communities of color and immigrant communities often are poorer and plagued with more crime. Where there is crime, technology will be deployed

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<sup>12</sup> Barry Friedman, *Unwarranted: Policing Without Permission* 29–233 (2017).

to attack it. The result, an unavoidable result, will be greater technological scrutiny of these communities, including, I suspect, the collection and retention of data.

Finally (though I am skipping over other harms), surveillance can lead to over-criminalization. This too is hardly hypothetical. To take just one technology, license plate readers can and are used in some places in this country to enforce traffic violations, and to track down those with outstanding warrants, warrants that too often exist because people are simply too poor to pay for their infractions. Where license plate readers are deployed, enforcement will occur. If they are deployed unevenly in a city, where they are employed most often will yield the most enforcement. In a study of Oakland, California, the Electronic Freedom Foundation established how license plate reader use was concentrated in communities of color.<sup>13</sup>

I want to stress that none of this means we should not use technology. There may be some technologies so dangerous we would choose to ban them entirely; I am aware, for example, that some feel that way today about facial recognition.

What it does mean, however, is that if we are to obtain the benefits of these technologies, we must ensure that we eliminate to the greatest degree possible the harms.

And the way we do that is through sound regulation. That is what the Law under consideration here aims to do.

Before moving on to whether the Law in question achieves this, I want to make one other argument in favor of regulation, one that I think is becoming clearer to policing agencies throughout the country. If we do not regulate these technologies soundly, and as the public becomes cognizant of the harms, the risk is that we simply will start to ban them. Thus, I deeply believe it is in the interests of us all, *including the police*, to support sound regulation of the sorts

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<sup>13</sup> Dave Maass & Jeremy Gillula, *What You Can Learn from Oakland's Raw ALPR Data*, (Jan. 21, 2015), <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>.

of technologies we are discussing. The Policing Project is committed to such sound regulation, taking into account as best we are able the benefits and harms of such technologies.

***Is Int. No. 487 Appropriate Regulation?***

As I indicated at the outset, I believe this Law is a step in the right direction. Were it this or nothing, I'd take this. That said, I think it suffers from a number of flaws, which tilt in "both" directions, by which I mean I am going to offer some critiques I suspect those who want more regulation will find sympathetic, and some that I suspect some who want less regulation will favor. It may be that I am about to make everyone unhappy.

First, the affirmative case. The Law is a step in the right direction because it fosters the sort of transparency that is essential to democratic governance. It informs the public about the technologies the NYPD is deploying, and asks the NYPD to assess the impact of those technologies. In addition, it requires the NYPD to draft and disclose use policies. This is essential. Often the best way to maximize the benefits of a technology, while minimizing harms, is by detailing how the technology is used, including permissible and impermissible uses. This could be accomplished by legislation, but also by general orders. The Law delegates to the NYPD the responsibility of drafting use policies, and to the Inspector General of the NYPD the responsibility for auditing whether use is consistent with those policies. So far, so good.

But, as I say, there also are some serious issues with the Law, and I would like to elaborate upon them here for your consideration.

*1. Why only the NYPD?*

On this first point I am somewhat in ignorance, but wish to raise it anyway. Are the sorts of technologies about which you are concerned utilized only by the NYPD? If so, then this objection is irrelevant. But if not, then it stands to reason that any agency using these technologies

should be similarly regulated. For what it is worth, the ACLU's CCOPS model, as well as our related alternatives, regulate *technologies*, not agencies, and that seems the right way to go.

2. *Why "surveillance" technologies?*

The word "surveillance" is descriptive of a function these technologies can perform, and so perhaps it is apt, but it also is the case that "surveillance" often is used with negative connotations. To the extent this is so, this Law has been badly named, in an unnecessarily incendiary way, both for the public and for the NYPD.

My assumption is that this body wants the NYPD to use some of these technologies. And I assume that is because of an assessment that some of these technologies play a valuable role in fostering public safety. I also assume this body appropriates the funds for acquisition of these technologies—and I would want to go on record as saying that neither the NYPD nor any other agency ever ought to be using technologies such as those regulated by the Law that were not appropriated by a democratically-responsible body. If I am wrong about these assumptions of what the Council believes, then I do not understand why the technologies are permitted at all.

If at least some of the technologies are welcome, under some sort of regulation, and if the word "surveillance" does indeed carry a negative connotation, then I would refer to what is being regulated as "public safety" or "information-gathering" technologies.

3. *No guidance as to what impact the City Council is concerned about?*

It simply strikes me as both odd and inappropriate that this Law so clearly regulates the use of "surveillance technology" and requires the NYPD to inform us about its "impact," yet says not one word about what sorts of impacts the Council has in mind. If there were no downsides to the use of these technologies, why regulate them at all? At the least, the technologies cost money, and so if there is no benefit to them why spend the money? But as I make clear above, there are

legitimate concerns about the harms of these technologies. Given that, it behooves this body to be clearer about what precisely it wants the NYPD to evaluate. Once again, the ACLU's CCOPS model law, as well as our APT and ADAPT Acts, are quite specific in this regard and could serve as models.

4. *No response to public comments by NYPD?*

The keystone to the administrative model of democratic governance is rationality—agencies must adopt rules and procedures that make sense, particularly if those rules and procedures have the capacity to cause harm. As I've discussed, notifying the public, and inviting comment from those who might have relevant and useful perspectives, is important. And I would hope and assume the NYPD will take those comments seriously. Still, the Law as written is a bit of an oddity—it requires the NYPD to take comments, but gives no guidance on what the NYPD should do with them.

In the ordinary administrative model, the agency must review the comments and respond. This can be time-consuming and costly, but it serves an essential function in assuring that the agency understands what the public is saying, and based on all the relevant considerations acts in a rational and responsive way. Again, the agency need not agree with or follow those comments, but it must give a set of basic explanations for why it chose the course it did, including why it ignored public views. Those explanations are what assure the rule of law and allow public evaluation—including by this body—of what the agency is doing.

5. *180 days may be too short a time*

The NYPD deploys a wide variety of technologies. Fulfilling the requirements of the Law will take time. This will be a learning experience of sorts for the NYPD. Experience in other jurisdictions suggests that more time may be needed in order to perform this task properly.

In September 2017, Seattle adopted a statute requiring use and impact statements like those proposed in the Law. That law allowed Seattle agencies two months to compile a master list of all current technologies in use, which would then need to be reviewed in the 2018-2019 year, with completed Surveillance Impact Reports (SIRs) for each technology. Although Seattle has logged twenty-nine surveillance technologies currently in use in its master list, it has only been able to complete SIRs for 15 of these technologies in the last two years.

In other jurisdictions, compliance has occurred in a boilerplate way that also is unhelpful. For example, the city of Berkeley’s Police Department provided copy-and-paste paragraphs in each of its use policies regarding the civil rights and liberties impacts of data obtained from its body-worn cameras, GPS trackers, and automated license plate readers, simply stating that “these policies will ensure the data is not used in a way that would violate or infringe upon anyone/s civil rights and/or liberties. . . .”<sup>14</sup> This is not what the Council wants out of the NYPD, nor, I would hope, what the NYPD would aspire to do.

I would recommend the NYPD be given at least a year to come into full compliance regarding technologies already in use.

6. *Provisions for legitimate concerns about security*

Finally, the Law does nothing to accommodate the NYPD’s security concerns regarding disclosure. As I indicated above, when confronted with legislation like this in the past, NYPD officials have expressed some concern—as noted above—about the impact on public safety of disclosure.

I lack the information to be able to assess the validity of these claims by NYPD officials. This is an argument I hear in other jurisdictions about disclosure, and certainly when it is advanced

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<sup>14</sup> See City of Berkeley Police Review Commission, Regular Meeting Agenda at 21, 33, 36, (July 10, 2019).

at wholesale it is unpersuasive. It simply is not credible that revealing any use of any technology threatens public safety. And, frankly, it is the *public's* entitlement to decide what information it is safe for them to know, not any particular government official's.

But I assume the NYPD's argument is more particularized: that there are *some* things that cannot safely be revealed. Assuming there is something to the NYPD's arguments at retail, the question becomes how to assess them on a case-by-case basis. One can imagine a variety of procedures to take these concerns into account, whether it is evaluation by a small group of public officeholders such as the Public Advocate or members of this body, or judicial review.

What I do know is that if the NYPD can make the case, that is a serious matter, and a failure to address it is a shortcoming of this legislation.

### ***Conclusion***

I want to thank you for the opportunity to testify today. The matter you are considering is extremely consequential. We would of course be willing to provide any other information that could be of use.