

April 29, 2024

City Council Members
New York City Council
250 Broadway
N.Y., N.Y. 10007

Re: Memorandum of Support for Intros 0480-2024 and 0168-2024

We, the undersigned organizations, urge the Council to pass Intro 0480-2024 and Intro 0168-2024. These two bills would add much-needed provisions to the Public Oversight of Surveillance Technology (POST) Act, taking a vital step towards accountability for NYPD surveillance abuses.

The Public Oversight of Surveillance Technology (POST) Act, enacted in 2020, was the first New York City surveillance law since 9/11, and it required the NYPD to detail every technology it uses and how NYPD data is shared.¹ The law came in response to widespread outrage over the ineffectiveness, invasiveness, and cost of NYPD's growing surveillance arsenal. Prior to the POST Act, the NYPD attempted to hide its use of invasive tools including IMSI catchers ("StingRays"), which mimic cellphone towers,² social media monitoring, Wi-Fi-based location tracking, the Domain Awareness System, and much more.³

The POST Act was an essential first step in gaining some level of transparency over the state of surveillance in New York City, but the NYPD has blatantly disregarded the requirements it imposes, necessitating the passage of the additional provisions proposed in Intros 480 and 168. The Department's draft "impact and use" policies, published for public comment in January 2021, consisted largely of boilerplate language not specific to each individual technology. During this public comment period, it became clear that the public demanded, and needed, much more information. However, when NYPD published its revised policies in April 2021, the same boilerplate language remained, and both the needs of the public and the requirements of the law were ignored.

The problems with NYPD's reporting were confirmed when the "impact and use" policies were audited by the Department of Investigation's Office of the Inspector General for NYPD ("OIG").⁴ In its audit, OIG could not even verify whether NYPD's reporting was accurate, because it was so woefully incomplete that OIG did not have sufficient information to review.⁵ As a result, OIG recommended a series of changes to the POST Act that would clarify and strengthen NYPD's reporting requirements.⁶ Intros 0480-2024 and 0168-2024 implement many of the most important of these recommendations.

The need for oversight of NYPD surveillance continues to be paramount given the Department's sustained discrimination against BIPOC communities, Muslim New Yorkers, and LGBTQ+ New

¹ Public Oversight of Surveillance Technology (POST) Act, N.Y. CITY COUNCIL § 14-188 (N.Y. 2017),

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3343878&GUID=996ABB2A-9F4C-4A32-B081-D6F24AB954A0>.

² *NYPD Has Used Stingrays More Than 1,000 Times Since 2008*, NYCLU, Feb. 11, 2016, <https://www.nyclu.org/en/pressreleases/nypd-has-used-stingrays-more-1000-times-2008>.

³ Ayyan Zubair, *Domain Awareness System*, SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT, Sept. 26, 2019, <https://www.stopspying.org/latest-news/2019/9/26/domain-awareness-system>.

⁴ *An Assessment of NYPD's Response to the POST Act*, N.Y.C. DEP'T OF INVESTIGATION OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD, Nov. 2022, https://www.nyc.gov/assets/doi/reports/pdf/2022/POSTActReport_Final_11032022.pdf.

⁵ *Id.* at 3.

⁶ *Id.* at 6-7.

Yorkers.⁷ Surveillance technology amplifies historical policing biases, targeting especially low-income communities of color.⁸ And too often, these surveillance systems create a risk of information sharing with federal agencies, including Immigrations and Customs Enforcement (“ICE”).⁹ Because of NYPD lack of transparency, we do not know what data ICE can access through fusion centers and other data sharing agreements. We do not know what private contractors get access to our info. And, disturbingly, we do not know how much disparate harm to vulnerable communities the NYPD deems acceptable in its surveillance tools.

The amendments proposed in these bills would take crucial steps towards giving the public answers to these urgent questions. And these proposals are in no way radical: they were explicitly recommended by OIG in its audit.¹⁰ OIG made fifteen specific and straightforward recommendations, all of which remained unimplemented as of June 2023. NYPD rejected fourteen outright and only even considered implementing one—potentially issuing press releases when it publishes new impact and use policies.¹¹ NYPD’s blatant disregard for its obligations under the law makes it clear that the Council must take additional steps to rein in the Department. Cities like Berkeley, Seattle, and Cambridge have all passed similar Community Control of Police Surveillance (CCOPS) laws, but their laws enact more stringent requirements of their police departments, such as by mandating that they provide names of specific vendors and models of technology and that they list the vendors and third-party entities with access to surveillance data.¹² Passing Intros 480 and 168 would bring New York closer in line with these other cities around the country.

Intro 480 would implement four of OIG’s recommendations by clarifying language in the original POST Act. Specifically, the bill requires: (1) that NYPD publish Impact and Use policies for each individual surveillance technology used by the Department; (2) that such Impact and Use policies fully identify each external entity by name that receives data gathered from such technology; (3) that such Impact and Use policies report on the safeguards in place to prevent dissemination of surveillance data; and (4) that such Impact and Use policies adequately disclose evaluation of potential disparate impacts on protected groups arising from the NYPD’s use of such technologies.

Intro 168 would add important new provisions to the POST Act and implement another five of the recommendations in the OIG report. It would require that NYPD, upon request, provide the Department of Investigation (DOI) with an itemized list of all surveillance technologies currently in use, and provide information on all data access and retention policies for data collected by such technologies. Importantly, the legislation would also require that NYPD provide DOI with quarterly

⁷ See, e.g., *Floyd v. City of New York*, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013) (finding NYPD practices “resulted in the disproportionate and discriminatory stopping of blacks and Hispanics.”); Ed Pilkington, *NYPD Settles Lawsuit After Illegally Spying on Muslims*, THE GUARDIAN, Apr. 5, 2018, <https://www.theguardian.com/world/2018/apr/05/nypd-muslim-surveillance-settlement>; Isabelle Levy & Jared Trujillo, *The NYPD Can’t Pinkwash Its History of LGBTQ+ Violence*, NEW YORK CIVIL LIBERTIES UNION, June 22, 2021, <https://www.nyclu.org/en/news/nypd-cant-pinkwash-its-history-lgbtq-violence>.

⁸ Eleni Manis et al., *Scan City: A Decade of NYPD Facial Recognition Abuse*, SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT, July 8, 2018, <https://www.stopspying.org/scan-city>.

⁹ Lily Hay Newman, *Internal Docs Show How ICE Gets Surveillance Help From Local Cops*, WIRED, March 13, 2019, <https://www.wired.com/story/ice-license-plate-surveillance-vigilant-solutions/>.

¹⁰ *An Assessment of NYPD’s Response to the POST Act*, N.Y.C. DEP’T OF INVESTIGATION OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD, Nov. 2022, https://www.nyc.gov/assets/doi/reports/pdf/2022/POSTActReport_Final_11032022.pdf.

¹¹ *Ninth Annual Report*, N.Y.C. DEP’T OF INVESTIGATION OFFICE OF THE INSPECTOR GENERAL FOR THE NYPD, March 2023, 5, <https://www.nyc.gov/assets/doi/reports/pdf/2023/13OIGNYPDRpt.Release.03.30.2023.pdf>

¹² *New CCOPS on the Beat: An Early Assessment of Community Control Over Police Surveillance Laws*, SURVEILLANCE TECHNOLOGY OVERSIGHT PROJECT & HOGAN LOVELLS, LLP, Feb. 10, 2021, <https://www.stopspying.org/ccops>.

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updates on all newly acquired or discontinued surveillance technologies and updates to any data access and retention policies established in recently executed contracts for surveillance technologies.

Intros 480 and 168 would go a long way towards promoting transparency of NYPD's use of surveillance technology. However, two important OIG recommendations were omitted. We call upon the City Council to amend Intro 0480-2024 to include these two recommendations: (1) that the NYPD revise the Health & Safety Reporting sections of all published Impact and Use policies, to include any safety hazards that are identifiable on the basis of existing research, manufacturer warnings, or evaluations by experts in the field, or to state that no such hazards have been identified after a search for relevant information; and (2) that the NYPD create an internal tracking system for every instance in which the Department provides an external agency with data collected via surveillance technologies that the Department controls, including the name of the agency, the date the data was provided, and a detailed description of the information that the provided data contained.

These requirements are minimal transparency measures that should not be controversial. They were initially recommended by the Department of Investigation. They are also critically important given that NYPD surveillance practices are currently hidden behind a dangerous veil of secrecy. New Yorkers deserve to know what the NYPD is really doing. We urge that the City Council swiftly pass these bills, with the above proposed amendments.

Sincerely,

Surveillance Technology Oversight Project (S.T.O.P.)
The Legal Aid Society
New York Civil Liberties Union
Brennan Center for Justice at NYU Law
Legal Defense Fund
Brooklyn Defender Services
Policing Project
Amnesty International USA
Arab American Association of New York
Center on Race, Inequality, and the Law at NYU School of Law
Policing and Social Justice Project
Restore The Fourth
Encode Justice New York
Surveillance Resistance Lab
Freedom To Thrive
Project On Government Oversight
Electronic Frontier Foundation
National Lawyers Guild – NYC Chapter
TakeRoot Justice
Chinese-American Planning Council, Inc.
RootsAction.org
Perlmutter Center for Legal Justice at Cardozo Law
Secure Justice
Jim Owles Liberal Democratic Club
Oakland Privacy