



POLICE DEPARTMENT

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November 3, 2022

Honorable Eric L. Adams
Mayor of the City of New York
City Hall
New York, NY 10007

Honorable Adrienne E. Adams
Speaker
The New York City Council
250 Broadway, 18th Floor
New York, NY 10007

Honorable Jocelyn Strauber
Commissioner
Department of Investigation
180 Maiden Lane
New York, NY 10038

Jeanene Barrett, PhD
Acting Inspector General
Office of the Inspector General – NYPD
180 Maiden Lane
New York, NY 10038

Dear Mayor Adams, Speaker Adams, Commissioner Strauber and Acting Inspector General Barrett:

The New York City Police Department (“NYPD” or “the Department”) hereby submits its response to the November 2022 Report of the Office of Inspector General for the NYPD (“OIG”) titled, “An Assessment of NYPD’s Response to the POST Act” (the “Report”).

The New York City Police Department thanks the New York City Department of Investigation (“DOI”) and the Office of the Inspector General for the NYPD for their work in assessing the NYPD’s policies, practices, and procedures related to the NYPD’s compliance with the reporting requirements of the Public Oversight of Surveillance Technology (“POST”) Act.

Despite legitimate concerns during the legislative enactment of the POST Act, the NYPD undertook an intensive process to construct comprehensible Impact and Use Policies (“IUPs”) for NYPD surveillance technologies. The disclosure of these policies were an

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innovative achievement in transparency for the NYPD, and complemented a tradition of public engagement and openness surrounding the tools the NYPD uses to protect New York City that had existed prior to the POST Act. While we disagree with some of the recommendations and assertions put forward by DOI, we are pleased that they concluded that the NYPD is in compliance with the POST Act as written. The Department respectfully submits the following response to clarify our efforts to create and publish IUPs.

The POST Act took effect in July of 2020 and was intended to increase public oversight of the Department's use and implementation of surveillance technologies. The NYPD was given 180 days to comply with the law. With such a short time limit for compliance, the Department immediately went to work identifying technologies that fell under the POST Act's definition of "surveillance technology." The broad definition of surveillance technology required the Department to evaluate not only physical devices, but also software. To properly identify covered technologies, we examined our NYPD assets, legislative history, and reviewed past discussions with the City Council to coordinate our best efforts to ensure compliance with the impending law. In January 2021, the Department published draft IUPs on the NYPD website and opened them for public comment. Review of those comments commenced in February, and the comments were then consolidated and incorporated into the revised policies that were published in April.

It is important to highlight that the NYPD was involved in extensive discussions with the City Council and the Mayor's Office at the time of the bill's drafting, introduction, and during subsequent public hearings. Painstaking efforts were taken by the NYPD to ensure granular details about individual technologies were not disclosed in a manner that would reveal the limitations of these vital crime-fighting tools. The public input required by the law, prior to finalization of any IUP, was vital to our Act compliance process, and comments provided during the Department's Reform and Reinvention Collaborative in 2021 (a process that yielded over 90 meetings with stakeholders, advocates, government officials, and the public) enhanced our disclosures. In particular, public comments by organizations with technological expertise were extremely useful. It is through this lens that we raise concern over the Report's rehashing some of the very same contentious issues contemplated in the original legislative negotiations, and advocating for positions previously considered and rejected by the City Council.

The pervasive and confounding theme of the Report is that the NYPD is surreptitiously spying on the general public. The opening sentence states that the NYPD conducts "widespread surveillance" and wrongly implies that the NYPD is actively surveilling millions of citizens with no nexus to criminality. To be clear, the NYPD does not conduct mass surveillance of the public for surveillance sake. Each IUP specifically details the capabilities of the technology and the rules regulating their use. All of the technologies catalogued in our POST Act disclosures are used in support of criminal investigations. Technologies with surveillance capabilities are not used simply for the broad purpose of "surveillance" and they are certainly not deployed to aimlessly record and surveil the public.

While the report continually concludes that the NYPD's IUPs are in alignment with the POST Act, it nonetheless conflates the requirements of the law with the quixotic expectations of privacy advocacy groups, the criminal defense bar, and other organizations to subtly and confusingly suggest that the Department's efforts, while compliant, are deficient. The Department agrees with OIG that it is in compliance with the POST Act, but it is dismayed that there is virtually no acknowledgement that the Department exhibited a significant level of public transparency surrounding its technologies prior to this law taking

effect. Specifically, DOI states that NYPD should provide “greater transparency than the POST Act requires” but fails to recognize that the Department has done this in a variety of ways. For example, the Department engaged in considerable public outreach on the following technologies:

- **Unmanned Aerial Systems (“Drones”)** – The NYPD developed its drone policy throughout 2017 and 2018, culminating with publishing the policy in the Patrol Guide in 2018. During the policymaking process, the draft policy was shared with the New York Civil Liberties Union and a number of organizations under the umbrella of “Communities United for Police Reform.” Furthermore, the Department posts on its website a public report detailing the deployment of its drones and for what purpose which can be found here: <https://www1.nyc.gov/site/nypd/stats/reports-analysis/uas-drones.page>.
- **Facial Recognition** – In 2020, the Department published its Facial Recognition Policy and provided an extensive FAQ page which can be found here: <https://www1.nyc.gov/site/nypd/about/about-nypd/equipment-tech/facial-recognition.page>.
- **Body-Worn Cameras:** The Department put forward a draft policy for public comment on its website and joined with the NYU Policing Project to conduct public surveys on the policy and to issue a report assessing public feedback. The final report can be found here: [NYPD Report on Proposed Body-Worn Camera Policy — The Policing Project](#).
- **Domain Awareness System:** In response to public interest, the system’s policy was posted on the Department’s website for public review in 2013-2014. This version has since been replaced with the IUP.

Few, if any, law enforcement agencies would engage in the level of outreach that the Department has when it comes to its investigative technologies. These efforts, and this tradition of transparency, should be celebrated and deservedly acknowledged by OIG – rather than suggesting that the Department is resistant to additional public scrutiny.

The Report further asserts that the manner in which the NYPD drafted IUPs, by integrating several technologies that function similarly into the same IUP, along with several references to the IUPs containing “generic” language, was detrimental to DOI’s audit of the Department’s compliance efforts. To the contrary, the NYPD’s approach of consistency in drafting comprehensive IUPs should help facilitate a robust audit. When the underlying functions of several technologies operate in the same manner, any description of those technologies’ capabilities and components are virtually identical. This was the rationale for taking such an approach – which, as the OIG agrees, is in compliance with the POST Act.

Additionally, what the Report refers to as “generic” language within the IUPs is actually descriptions of NYPD policies relating to topics such as cybersecurity, record retention, and infrastructure. These are universal policies that stretch across nearly all technologies. Thus, it is completely appropriate that the descriptions of these specific subjects would be uniform.

Based on the above information, the NYPD responds to the OIG’s fifteen recommendations as follows:

Recommendations One through Eight, Twelve, and Thirteen: The NYPD rejects these recommendations because, as stated in the OIG's Report, the NYPD is in compliance with the requirements of the POST Act.

Recommendations Nine through Eleven, and Fourteen: The NYPD will continue to provide access to the data necessary to complete future audits, as consistent with the law.

Recommendation Fifteen: The NYPD will consider this recommendation should any new IUPs need development in the future.

Transparency and public outreach were – and continue to be - baked into the NYPD's use of technology long before the passage of the POST Act. The Department's compliance and openness with the development of the POST Act's IUPs only further bolstered this custom.

The NYPD thanks DOI and the OIG for their work in assessing its policies, practices, and procedures related to the Department's compliance with the POST Act. We commit to continuously improving our use of the technologies covered by the law and maintaining our compliance with the POST Act's requirements.

Regards,



Carrie B. Talansky
Acting Deputy Commissioner,
Legal Matters