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New York City Council Committee on Public Safety
Oversight Hearing on the POST Act (Int. 1482- 2017)
Testimony of the New York Civil Liberties Union

June 14, 2017

The New York Civil Liberties Union respectfully submits the following testimony in support of Int. 1482, the Public Oversight of Surveillance Technologies Act (“POST Act”). The NYCLU, the New York state affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with eight offices across the state, and over 160,000 members and supporters statewide. The NYCLU’s mission is to defend and promote the fundamental principles, rights and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York, including the right to be free of unwarranted government surveillance and unjustified police actions.

The NYPD uses numerous forms of powerful, invasive and covert surveillance technologies to police New York City streets every day. These surveillance technologies can capture vast amounts of information about the places we visit, people we communicate with, the frequency of those communications, where we are located inside our home, and our most recent social media post. While surveillance technologies, by themselves, can pose significant risks to privacy, public health and other civil liberties and rights, the lack of transparency and oversight regarding how these technologies are acquired and used by the NYPD threatens our democracy. We urge the City Council to take action in defense of these principles by passing the POST Act into law.

To date, most of what we know regarding the NYPD’s use of surveillance technologies is based on costly FOIL litigation by the NYCLU and other organizations, investigative journalism, and inquiries by the criminal defense community. Two examples that illustrate the problems created by the lack of transparency and oversight regarding the NYPD’s acquisition and use of surveillance technologies are Stingrays and X-ray vans.

Stingrays are surveillance devices that mimic cell site towers and allow the NYPD to pinpoint a person’s location, and some models can collect the phone numbers that a person has

been texting and calling as well as intercept the contents of communications. When Stingrays seek information for a targeted phone, they also sweep up information from hundreds or thousands of nearby cell phones. Stingray devices can cost over \$100,000 per unit, and this does not include the additional costs of the training and maintenance packages that are necessary to use the devices.

In 2015, the NYCLU sent a FOIL request to the NYPD about Stingrays. We learned that the NYPD used these devices in more than 1,000 investigations since 2008, ranging from robbery and drug cases to criminal contempt of court. The NYPD has been successful in concealing their use of Stingrays because they are used without a warrant and without an internal policy guiding their use. Currently, all that the public knows regarding the NYPD's use of stingrays is based on the results of our FOIL request. We still do not know the full fiscal implications of the NYPD's use of Stingrays because they have failed to reveal how many they own or which models have been purchased. Stingrays raise a number of privacy and civil liberties concerns because they can track a person's location, including inside a home, a place of worship, or at a protest. It is also concerning that NYPD's failure to maintain adequate internal policies and safeguards for the data captured by Stingrays, can put many New Yorker's personal data at risk to malicious third party actors.

X-ray vans are military-grade surveillance equipment, which utilizes x-ray radiation to see inside of cars and buildings. These devices were used to search for roadside bombs in Afghanistan, but are also used on the streets of New York City. The company that manufactures X-ray vans determined that the vans expose bystanders to a 40% larger dose of ionizing radiation than that delivered by similar airport scanners. Exposure to ionizing radiation can mutate DNA and increase the risk of cancer. In fact, the European Union and United States Transportation Security Administration banned the use of this type of radiation technology in airports citing privacy and health concerns. Additionally, X-ray vans cost between \$729,000 and \$825,000 per unit, which can have significant fiscal implications. Until ProPublica's FOIL lawsuit, nearly five years ago, which reveal some of what we know about x-ray vans, the NYPD has largely refused to disclose anything about how it uses x-ray vans on the streets of New York. The NYPD's attempt to keep these devices secret runs counter to best practices because other agencies, including the Department of Homeland Security, already revealed the same types of information sought by ProPublica in its FOIL lawsuit.

It is clear from these two examples that the NYPD's continued use of invasive surveillance technologies pose significant risks to privacy, public health, civil liberties and civil rights. The secretive and concealed process by which the NYPD obtains and uses these technologies runs counter to good governance principles, often violates the Constitution, and threatens the digital security of all New York City residents and visitors. The NYCLU has been at the forefront of bringing the NYPD's use of surveillance technology into the light for many

years. However, the public should not have to learn about these technologies through costly litigation, and this is why we need the City Council to pass the POST Act now.

The POST Act will require the NYPD to publish impact and use policies for each surveillance technology it employs. These policies will include important information about each surveillance tool, including its description, capabilities, guidelines for use, security measures designed to protect any data it collects. The bill provides for audit mechanisms to ensure the NYPD is following its own policies. The POST Act will not inhibit the NYPD's ability to employ constitutionally sound investigatory and police practices to protect public safety, but it will ensure the NYPD is considering the potential risks and consequences of emerging and often invasive surveillance technologies.

The need for the City Council to pass the POST Act is all the more critical under the Trump Administration, who has fueled fears that the federal government will target certain communities for increased surveillance. It is also important for the City Council to know how municipal funds are being spent, particularly at a time the Trump Administration is threatening to cut or eliminate significant federal funding to New York City and State.

With the Trump Administration threatening to bully local law enforcement into carrying out its agenda, it is incumbent on the City Council to identify solutions for improving the relationship between police and communities. In addition to promoting broader transparency and oversight, the City Council must use its authority to reform the actual practices that create mistrust in the first place. It is time for the City Council to pass the Right to Know Act (Intro. 182-B and Intro. 541-A), two bills that have majority support among councilmembers and across the city. Along with the POST Act, the Right to Know Act will play a vital role in enhancing communication and trust between the NYPD and members of the public by promoting transparency and accountability in everyday police encounters. We urge the City Council to pass the POST Act and the Right to Know Act as soon as possible because the civil liberties and civil rights of New Yorkers depend on it.