



NYCLU

NEW YORK CIVIL LIBERTIES UNION

125 Broad Street
New York, NY 10004
(212) 607 3300
Fax (212) 607 3318
www.nyclu.org

March 26, 2009

Commissioner Raymond Kelly
New York City Police Department
One Police Plaza
New York, N.Y. 10007

Christopher Dunn
Associate Legal Director
(212) 607-3300, ext. 326
cdunn@nyclu.org

Richard A. Falkenrath
Deputy Commissioner for Counter Terrorism
New York City Police Department
One Police Plaza
New York, N.Y. 10007

Re: Public Security Privacy Guidelines

Dear Commissioner Kelly and Deputy Commissioner Falkenrath:

On behalf of the New York Civil Liberties Union, we write in response to a preliminary draft of "Public Security Privacy Guidelines" that the Department posted on its website on February 25 and for which it invited public comment. While we find it significant that the NYPD finally has acknowledged that the video surveillance system being created in conjunction with the Lower Manhattan Security Initiative implicates basic privacy concerns, we object to virtually every aspect of these "guidelines."

Background

As you are aware, the NYPD for many years has been planning an integrated video surveillance system for downtown Manhattan. Formally known as the Lower Manhattan Security Initiative and also referred to as the Ring of Steel, the system, according to public reports, will rely on approximately 3,000 public and private cameras to monitor the movement of all vehicles and people in Manhattan below Canal Street. Using a centralized database and digitized images, the system reportedly is intended to allow the NYPD to identify certain suspicious persons, vehicles, behaviors, or items and then to respond, using officers and even physical barriers. Virtually all of the enormous information gathered and maintained by the system will be about people engaged in wholly lawful activity.

According to public reports, the system will cost approximately \$100 million in federal and local funds to create; we are unaware of estimates about ongoing maintenance. Though the system involves massive expenditures of public money, there have been no public hearings about any aspect of the system.¹ To our knowledge, no government entity has sought to impose any

¹We are aware that Commissioner Kelly has provided some testimony about the system in the context of New York City Council budget hearings.

restrictions on the system's collection, use, dissemination, or retention of information about lawful activity. The NYPD has not formally disclosed any information about the system as it relates to privacy concerns, though it has allowed at least one reporter to tour the supposedly secret command center.²

Concerned about the enormous privacy implications of the Ring of Steel and about the lack of public disclosure about the system, the NYCLU in October 2007 served the NYPD with a Freedom of Information Law request seeking information about the system as it affected privacy interests. The Department initially produced one page and then, after an NYCLU administrative appeal, another 91 pages. In September 2008 we filed suit, believing that many more documents existed. In its responsive papers the NYPD acknowledged that it had withheld another 2,100 pages of documents about the system.

We are now awaiting a ruling from the court on our lawsuit. Meanwhile, on February 25, 2009, the Department posted on its website a proposed set of "privacy guidelines" and sought public comment by March 26, 2009. We submit these comments in response to that notice.

General Comments

As an initial matter, we reject the very premise of these proposed guidelines, namely that it is appropriate for the NYPD alone to develop guidelines pertaining to the Ring of Steel. Rather, a system that implicates the fundamental privacy rights of hundreds of thousands of law-abiding New Yorkers and that entails huge expenditures of public funds should be governed by legislation enacted by the City Council following appropriate public hearings, with input from the Mayor and other elected officials. And in conjunction with that process, the threshold discussion should focus not on guidelines for such a system but instead on whether it is useful and appropriate to implement the surveillance system in the first place.

Moreover, even if the decision were made to proceed with the Ring of Steel and the Department were authorized, pursuant to appropriate legislation, to develop more detailed guidelines, we reject the notion that any such guidelines should not be legally enforceable, as this proposal states would be the case with these proposed guidelines. *See Proposed Guidelines at 7.* From our perspective, informal internal NYPD guidelines such as these (which we note seem wholly unconnected to standard NYPD policies and procedures) are meaningless.

Finally, we reject the Department's assertion of "plenary power" over all matters touching on public safety. *See Proposed Guidelines at 1.* While section 435(a) of the City Charter authorizes the NYPD to take certain actions in certain matters, the Department plainly does not have "plenary power" in the manner the guidelines suggest. Among other things, the Department is of course subject to the laws and Constitution of the United States and of the State of New York as well as to regulation by the New York City Council.

²*See Associated Press, "NYPD Opens New Counterterrorism Nerve Center," Nov. 18, 2008 (discussing LMSI command center and noting, "An Associated Press reporter was allowed into the nerve center on the condition he not disclose the exact location.")*

Specific Comments

Typically, the NYCLU provides detailed comments and even proposes alternative language when responding to regulatory or statutory proposals emanating from New York City agencies, including the NYPD. We do this to provide constructive input with the hope that the rules that ultimately are adopted will respond to our concerns.

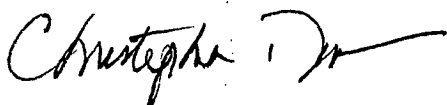
In this instance, however, we do not believe that the Department can do anything to correct the problems inherent in its set of proposed privacy guidelines. Indeed, for the reasons set out above, we believe this entire enterprise is illegitimate and inappropriate, and we have no intention to assist the Department in "improving" these guidelines.

We will note for the record, however, a number of fundamental flaws in the guidelines:

- * The guidelines do not limit police surveillance and databases to suspicious activity;
- * Though the guidelines purport to limit police surveillance to areas where no legally protected reasonable expectation of privacy exists, they do not in any way seek to define or describe that critically important and deeply disputed concept;
- * Though the Department's press office suggested to reporters that the guidelines called for destruction of data after 30 days, the guidelines in fact effectively allow the NYPD to retain all information indefinitely;
- * The guidelines place no meaningful limits on the Department's use, sharing, or dissemination of information collected by the surveillance system;
- * The guidelines are unenforceable;
- * There is no independent oversight or monitoring of compliance with the guidelines.

Rather than proceed with these guidelines, we encourage you to consult with the City Council and other elected officials and to agree to a process that will result in a formal and public review of the Ring of Steel.

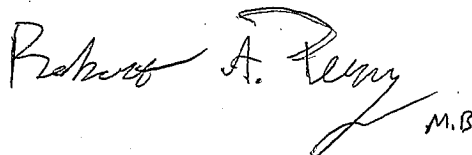
Sincerely,



Christopher Dunn
Associate Legal Director



Donna Lieberman
Executive Director



Robert Perry
Legislative Director

c: City Council Speaker Christine Quinn
Mayor Michael R. Bloomberg