

September 22, 2022

CBD Tolling Program  
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**Re: Comments by the New York Civil Liberties Union to the  
Central Business District's Tolling Program Environmental  
Assessment**



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New York, NY 10004  
[nyclu.org](http://nyclu.org)

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The NYCLU is the New York affiliate of the American Civil Liberties Union. It is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU's mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution. This includes work to expand the right to privacy, increase the control individuals have over their personal information, and ensure civil liberties are enhanced rather than compromised by technological innovation. Our mission also includes work to identify and challenge the ideologies and impacts of racism, including environmental and economic injustices, and their impact on low-income communities, communities of color, and low-wage workers.

While the NYCLU takes no formal position on the congestion pricing plan as a whole, we recognize the value of tackling urban air pollution, *and* the critical importance of ensuring large government programs are designed with civil rights and civil liberties values at their forefront – including racial justice, disability rights and access, and respect for New Yorker's right to privacy.

Throughout New York, low-income communities and communities of color are disproportionately exposed to toxic air, unsafe water, and other adverse environmental conditions. The NYCLU recognizes the need to lower the impacts of air pollution, specifically in overburdened communities, however we have serious concerns regarding the lack of privacy considerations during the environmental assessment process and the program's potentially unequal impact on people based on race, socioeconomic status, and age, and on people with disabilities.



Privacy and data confidentiality cannot be treated as an afterthought. The Central Business District Tolling Program (CBDTP) sets out to create a complete street-level surveillance system of anyone entering and exiting Manhattan's Central Business District (CBD). Without significant efforts to safeguard people's privacy, the proposal threatens to severely undermine New Yorkers' constitutional protections, in particular their rights under the First and Fourth Amendments.

### **I. Privacy Concerns About CBDTP's Surveillance Technology**

The CBDTP sets out to install thousands of cameras and RFID readers at 120 locations, covering every road in and out of Manhattan's CBD. The system will create unique vehicle travel profiles through the use of EZ Pass transponders and various artificial intelligence and machine learning tools including video analytics for license plate recognition, vehicle fingerprinting (by utilizing additional information about the car make, model, color, and other characteristics), and shape-based classification for volume recognition, as well as other potential features and expansions.

Yet at no step of the way – neither in the legislation, the Request for Proposals, nor the newly released 4,000+ page long Environmental Assessment (EA) report – have any serious privacy protections been included. The EA report in its entirety does not mention privacy a single time. There are no efforts towards data minimization, de-identification, or limiting access, sharing, and retention.

Without meaningful safeguards, this surveillance infrastructure could reveal to the government where we go to work, who we meet, which healthcare providers we visit, which protests we attend, and which places of worship we frequent, especially as these patterns emerge over longer periods of time and are easily correlated with other databases – whether already in government control or purchased through data brokers.

The CBDTP tracking infrastructure would also threaten to surveil First Amendment-protected activities such as protests and marches. The George Floyd protests, the Women's March, the People's Climate March, the Climate Strike, and many others took place in



areas that would be covered by the proposed plan. The sheer presence of the imposing surveillance towers risks chilling free speech, expression, and association.

The NYPD has already tens of thousands of cameras deployed across the city – many of which come from the Metropolitan Transportation Authority (MTA) – and are often capable of license plate recognition or other video analytics.<sup>1</sup> Automatic license plate readers (ALPRs) specifically were deployed near mosques as part of the NYPD’s aggressive religious profiling and unlawful surveillance of Muslims.<sup>2</sup> And the NYPD has also purchased access to a commercial database by Vigilant Solutions,<sup>3</sup> which advertised its database to consist of over 5 billion license plate reads and another 1.5 billion detections nationwide in a dedicated law enforcement agency sharing database.<sup>4</sup> Through the Domain Awareness System at least two billion locally collected license plate reads are available for analysis and search.<sup>5</sup> This software, accessible by anyone of the 36,000 officers, also offers license plate watch lists and predictive analytics algorithms to automatically alert and notify officers on vehicle behaviors and driving patterns – all of which are available without any warrant requirement.<sup>6</sup>

Beyond local law enforcement, the vast data collection raises the risk of access by or sharing with other law enforcement and immigration enforcement agencies. According to the “Coordination with Stakeholder Groups” section of the Environmental Assessment, a meeting with federal law enforcement agencies, which included the FBI, the DEA, and – most concerning – ICE, took place on December 14, 2021. No additional information is provided for the meeting. This is alarming for many reasons in a sanctuary city and sends the wrong

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<sup>1</sup> PREPAREDNESS GRANT EFFECTIVENESS CASE STUDY: NEW YORK CITY, 27 (2021), [https://www.fema.gov/sites/default/files/documents/fema\\_nyc-case-study\\_2019.pdf](https://www.fema.gov/sites/default/files/documents/fema_nyc-case-study_2019.pdf).

<sup>2</sup> NYPD defends legality of spying on mosques, CBS NEWS (2012), <https://www.cbsnews.com/news/nypd-defends-legality-of-spying-on-mosques/>. See also NYCLU, *Raza v. City of New York*, case information and documents, available at <https://www.nyclu.org/en/cases/raza-v-city-new-york-challenging-nypds-muslim-surveillance-program>.

<sup>3</sup> Automatic License Plate Readers, NEW YORK CIVIL LIBERTIES UNION (2015), <https://www.nyclu.org/en/automatic-license-plate-readers>.

<sup>4</sup> License Plate Recognition (LPR) - Vigilant Solutions, ARCHIVE.ORG (2019), <https://web.archive.org/web/20190531180740/https://www.vigilantsolutions.com/products/license-plate-recognition-lpr/>.

<sup>5</sup> E. S. Levine et al., *The New York City Police Department’s Domain Awareness System*, 47 INFORMS JOURNAL ON APPLIED ANALYTICS 70–84 (2017).

<sup>6</sup> Ibid.

signal to drivers who – especially after the passing of the Greenlight law – should feel welcome and safe to move around New York City.

For all these reasons, it is necessary to ensure full transparency about the CBDTP in its entirety and to codify tight data confidentiality rules and privacy protections. Anything less will undermine trust and misses the enormous opportunity that the CBDTP represents for New York.

## II. Concerns About CBDTP’s Vendor



Earlier this year, the selected vendor for the CBDTP, Transcore, was purchased for \$2.68 billion by Singapore Technologies Engineering (ST Engineering), a defense company majority owned by the Government of Singapore. This acquisition raises significant privacy and human right concerns: Singapore has still not ratified the International Covenant on Civil and Political Rights. The US State Department’s annual report on Singapore highlighted incidents of “monitoring private electronic or telephone conversations without a warrant; serious restrictions on free expression and media; restrictions on internet freedom; substantial legal and regulatory limitations on the rights of peaceful assembly and freedom of association.”<sup>7</sup> Singapore’s massive police CCTV network, which is currently growing to incorporate 200,000 cameras and facial recognition capabilities, is a startling example of these surveillance powers.

The New York CBDTP contract was the prime reason for the acquisition in order to expand ST Engineering’s “smart city” portfolio.<sup>8</sup> ST Engineering offers “video analytics engines for smart city applications involving recognition of people, vehicles, and objects.”<sup>9</sup> Worrisome key features advertised in their video analytics brochure include biometric surveillance such as facial recognition with

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<sup>7</sup> 2021 Country Reports on Human Rights Practices: Singapore, UNITED STATES DEPARTMENT OF STATE (2021), <https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/singapore/> (last visited Aug 25, 2022)

<sup>8</sup> News - ST Engineering Completes Acquisition of TransCore | ST Engineering, (2022), <https://www.stengg.com/en/newsroom/news-releases/st-engineering-completes-acquisition-of-transcore/> (last visited Aug 24, 2022).

<sup>9</sup> See e.g. Video Analytics Suite, ST ENGINEERING (2022), <https://www.stengg.com/media/1318896/agil-video-analytics-suite-brochure.pdf> and Nee Yuan Kuok et al., *Video Analytics AI Vision/Deep Learning Whitepaper - Accelerate Video Analytics Performance*, ST ENGINEERING, <https://www.stengg.com/media/1318862/st-engineering-video-analytics-whitepaper.pdf>.



watchlists and age as well as gender recognition, object recognition, crowd and traffic analytics, red line crossing and loitering detection, forensic searches, and other incident detections. These are not just highly invasive and dangerous proposals, but they also point to potential future inclusion and function creep by the vendor if there are no clear limits and outright bans. And in ST Engineering’s video analytics white paper, the company alarmingly dismisses privacy and security concerns: “When using public cloud infrastructure, certain use cases (e.g., *vehicle and traffic related*) may be deemed less sensitive, meriting a less-stringent security architecture.”<sup>10</sup> Such assessment should not just raise concern but is also negligent and dangerous considering the highly detailed information such comprehensive street-level surveillance can capture.

### III. Privacy Recommendations

For the CBDTP to deliver on its goals, we strongly urge for the following principles to be implemented:

- *Ban Discriminatory Technologies.* Enact bans on technologies that show discriminatory impact or threaten people’s fundamental rights. Any form of biometric surveillance should be explicitly prohibited, this includes but is not limited to facial recognition, behavior detection, red line crossing, and loitering detection.
- *No Third-Party Access.* Clear limitations on the access, sharing, or selling of data. Information should not be accessible for law enforcement without a warrant. Ban the access by or sharing with federal agencies, including Immigration and Customs Enforcement.
- *Privacy by Design.* Any involved party must work during all product stages to build privacy safeguards into CBDTP technologies.
  - *Data Minimization.* Only collect the minimum data needed for the function of the CBDTP. Clear limits on initial collection of personal information. Data should not be generated, collected, analyzed, retained, transmitted, or aggregated excessively. Design and operation of the cameras and related (video analytics) software should

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<sup>10</sup> Nee Yuan Kuok et al., *Video Analytics AI Vision/Deep Learning Whitepaper - Accelerate Video Analytics Performance*, ST ENGINEERING, <https://www.stengg.com/media/1318862/st-engineering-video-analytics-white-paper.pdf>.



- ensure that the data collection is strictly limited to roadways and license plate information.
- *Security and Encryption.* Data should be encrypted (in transit and in rest) and communications must be authenticated.
  - *Anonymize* data where possible.
  - *Minimal Retention.* Only keep data for as long as necessary for the purpose of the CBDTP and allow people to delete their data.
  - The default way to give consent must be *Opt-In*, instead of *Opt-Out*. People should be in the position to decide how, when, and why their data is processed and with whom it is shared.
- *Data Ownership* must be with the individual where possible. People must have rights over their personal data, as well as data that is derived, inferred, or predicted from their data, actions, and behavior.
  - *Full Transparency.* The public must be fully informed about the CBDTP in its entirety. This includes all legal documents, meetings, partnerships, and technologies.
  - *Community Inclusion.* Impacted people and communities need to have a seat at the table throughout the CBDTP's lifecycle. This requires rectifying the current information and power imbalance.

#### IV. Disability Concerns

New York City's transit system has 493 stations and 5,900 buses serving more than 300 routes in the five boroughs of New York. Yet only 123 of these stations, serving under 50% of the MTA ridership are accessible under the Americans with Disabilities Act. By 2029, the MTA claims, it will ensure that over 50% of stations will be fully accessible. The MTA has set itself a "goal of achieving maximum possible system-wide accessibility by 2034."<sup>11</sup>

We note that the MTA's \$51.5 billion 2020-2024 Capital Plan includes a \$5.2 billion funding allocation dedicated to sorely-needed system-wide accessibility improvements over the next decade. Clearly, the CBDTP is projected to generate significant funds that will be used to support the MTA's long-overdue capital plan accessibility projects.<sup>12</sup>

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<sup>11</sup> See *MTA Capital Program 2020-2024*, <https://new.mta.info/document/10511>.

<sup>12</sup> See *id.*



Effectuating the goal of the CBDTP – to enhance utilization of the City’s public transit system – must take into account the MTA’s admission that most of the City transit system is simply inaccessible to New Yorkers with disabilities and mobility challenges. The CBDTP should not be implemented in a manner that further disadvantages disabled New Yorkers. For example, certain vehicles providing transportation to people with disabilities are intended to be exempt from the CBDTP. This exemption is drawn too narrowly, covering only vehicles with a government-issued disability license plate and fleet vehicles owned or operated by organizations used exclusively to provide transportation to people with disabilities.<sup>13</sup> This definitional construct leaves out the vast variety of vehicles that people with disabilities utilize to get to their supported housing, medical appointments, jobs, and the range of social events located within the CBD and will effectively limit, if not outright ban, people with disabilities from accessing the CBD – unless, or only when, they are being transported in the defined disability transportation vehicle. This exemption must be expanded to include wheelchair accessible cabs, wheelchair accessible for-hire vehicles, private vehicles owned and operated by people with disabilities, and other private vehicles used to transport people with disabilities in order to effectuate the rights of people with disabilities to access New York City’s Central Business District.<sup>14</sup>

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<sup>13</sup> According to section 2.4.2.1 the CBDTP, ‘qualifying authorized emergency vehicle is defined in Consolidated Laws of the State of New York, Vehicle and Traffic Law, Title 1, Article 1 Section 101. As currently designed, qualifying vehicles transporting persons with disabilities include vehicles with government-issued disability license plates and fleet vehicles owned or operated by organizations and used exclusively to provide transportation to people with disabilities.’

<sup>14</sup> We note that people with disabilities are disproportionately indigent compared to their nondisabled counterparts. Disabled adults experience poverty at nearly twice the rate of their nondisabled counterparts. This inequity is compounded for disabled women. Poverty rates were three times higher for women with work-related disabilities than they were for nondisabled women. Moreover, their poverty rate was more than double that of men with work-related disabilities. People of color with disabilities similarly face intensified marginalization. For example, while the poverty rate for non-Hispanic whites with disabilities was 24 percent in 2015, nearly 40 percent of African Americans with disabilities lived in poverty during the same time frame. See Nanette Goodman, Michael Morris, and Kelvin Boston, “Financial Inequality: Disability, Race and Poverty in America” (Washington: National Disability Institute, 2017), available at

<http://www.nasuad.org/sites/nasuad/files/Disability-Race-Poverty-in-America.pdf>. We urge the MTA to ensure that any to access the CBDTP not be passed on to riders



## V. Conclusion

Much is at stake with the ambitious CBDTP. Thousands of cameras and RFID readers would be deployed on all streets connecting the Manhattan CBD, creating a permanent and complete surveillance system that would track the movement of everyone entering and exiting the CBD. Yet on the 4,000 pages of the Environmental Assessment report, privacy is not mentioned a single time. This is a deeply troubling and dangerous neglect, especially considering the impacts of surveillance on Black and Brown communities in New York City, whether through license plate readers deployed near mosques or stop and frisk policing. Privacy cannot remain an afterthought for the CBDTP. The project can only be a success if rigorous guardrails and protections are put in place to safeguard people's privacy interests and civil rights. And to encourage more New Yorkers to use mass transit, our transit system must be affordable, accessible, and free from police harassment.

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with disabilities. Rather, individuals with disabilities who must be transported into and around the CBT must be exempted from paying any tolls.