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**Testimony of Daniel Schwarz
On Behalf of the New York Civil Liberties Union
Before the New York City Council Committees on
Public Safety, on Technology, and on Governmental Operations
Regarding the Oversight of NYPD Radio Encryption**

November 20, 2023

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony regarding the oversight of NYPD radio encryption. The NYCLU, the New York affiliate of the American Civil Liberties Union, 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 defend and promote the fundamental principles, rights, and values embodied in the Bill of Rights, the U.S. Constitution, and the Constitution of the State of New York. The NYCLU works 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.

This summer, the NYPD began to encrypt its radio communications, effectively shutting out journalists and members of the public from access to emergency communications. Already ten precincts have adopted encrypted radio technology, with plans for all other precincts to go dark by the end of 2024.¹

For almost a century, the press and the public at large have been able to access emergency communications, such as broadcasts on natural disasters, police activity, and other newsworthy information. Although radio technology has changed over the decades, radio scanners continue to provide independent access for journalists and the public alike to receive and respond to breaking news in their neighborhoods. It has also been a crucial tool for police transparency by informing reporters in real-time of the killing of Eric Garner during his arrest in Staten Island, the police shooting of Amadou Diallo, and the police shooting of Sean Bell.² Access to radio communications have also been key for public and press scrutiny of police

¹ Todd Maisel, *Over and out? City Council Hearing Eyes NYPD Radio Encryption Plan That Could Shut Press and Public out of Breaking Crime News*, AMNY (2023), <https://www.amny.com/news/city-council-nypd-radio-encryption-hearing-planned/>.

² Ibid.

responses at protests against police brutality.³ Public access to emergency communications is a public safety and a police oversight issue. Secrecy undermines trust in law enforcement, it impedes accountability, and ultimately makes New Yorkers less safe.

It bears reminding of the NYPD's substantial history of evading disclosure requirements to avoid public scrutiny. This step towards locking the public out from access to radio communications falls within a broader pattern of secrecy, routinely denying or delaying requests for public records and attempting to shield itself from oversight. This year alone, the NYCLU filed three lawsuits against the NYPD for withholding or delaying the release of vehicle stops data.⁴ Similarly, the effort for the release of officer misconduct data and the repeal of Section 50-a was met with heavy pushback from the NYPD and even more secrecy.⁵

The NYPD has also consistently fought any disclosures of its vast arsenal of surveillance technologies. The Council passed the Public Oversight of Surveillance Technology ("POST") Act in response to the NYPD's long and troubling history of engaging in surveillance tactics that target political dissent, criminalize communities of color, and jeopardize all New Yorkers' privacy. The subsequent disclosures were a clear attempt at releasing an absolute minimum of information.⁶

This latest move to shut out public access to communications that have been readily accessible for decades merits close scrutiny by and skepticism from this body. The NYPD's purported concerns about public safety with respect to their radio communications must be viewed within the context of an agency that has repeatedly and hyperbolically invoked fears about public safety as a means of shutting down debate and erecting a wall of secrecy around its operations. And these concerns must also be weighed against the strong public and journalistic interest in having the ability to monitor and engage in real-time oversight as an independent check against an agency that has historically resisted calls for basic transparency and accountability.

In conclusion, we thank the Committees for the opportunity to provide testimony. Police transparency is a central requirement to ensure public safety and trust. We urge the Council to protect long-standing transparency practices in emergency communications, particularly at a moment when New Yorkers are rightly demanding greater oversight of law enforcement.

³ Joseph Cox, *Thousands of People Are Monitoring Police Scanners During the George Floyd Protests*, VICE (Jun. 1, 2020), <https://www.vice.com/en/article/pkybn8/police-radio-scanner-apps-george-floyd-protests>.

⁴ For Third Time This Year, NYCLU Sues NYPD for Traffic Stop Data, NYCLU, October 31, 2023, <https://www.nyclu.org/en/press-releases/third-time-year-nyclu-sues-nypd-traffic-stop-data>.

⁵ See, e.g., Testimony In Support of S.3695, Repealing Civil Rights Law Section 50-a, NYCLU, October 17, 2019,

https://www.nyclu.org/sites/default/files/field_documents/final_testimony_for_senate_codes_50a_hearing_-_2019.10.17.pdf.

⁶ Comments on Draft Surveillance Impact and Use Policies, NYCLU, February 24, 2021,

https://www.nyclu.org/sites/default/files/field_documents/nyclu_letter_on_post_act_draft_policies_0.pdf.