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March 24, 2019

VIA EMAIL

Honorable President
and Members of the Board of Estimates
c/o Clerk, Board of Estimates
204 City Hall
100 N. Holliday Street
Baltimore, MD 21202

Protest re: Baltimore Police Department – Professional Services Agreement
                Board of Estimates Agenda, March 25, 2020, pp. 42-43

Dear President Scott and Members of the Board of Estimates,

I write on behalf of the ACLU of Maryland, and its approximately 4,300 members who reside in Baltimore City, to protest the inclusion of the professional services agreement between the Baltimore Police Department (BPD) and Persistent Surveillance Systems, LLC (PSS) on the routine agenda for the March 25, 2020 Board of Estimates, and urge you to postpone any consideration of this item.

Our protest rests on multiple grounds. First, there is has been inadequate public information about the decision to enter into this contract. The Consent Decree between the BPD and the United States Department of Justice requires that before the BPD adopts any new technology that is used in enforcement activities (as the technology at issue here will be), it must "timely disclose to the public on its website or disclose to any civilian oversight entity agreed upon by the Parties: (1) the type of new equipment or technology sought; and (2) BPD's intended use of the equipment." *United States v. Police Department of Baltimore City*, No. 17-00099, Consent Decree, Dkt. No. 2-2, Jan. 12, 2017, ¶ 276. As discussed below, the BPD's disclosures regarding this technology have been critically incomplete and misleading.

The BPD had initially scheduled three public meetings to discuss the decision to resume the persistent wide-area motion imagery (WAMI) surveillance of the entire City of Baltimore. However, due to the COVID-19 pandemic crisis, only the first (sparsely attended) meeting was held. The subsequent meetings were moved to online Facebook Live presentations, the first of which was held on March 23. A majority of those who commented during that presentation appeared opposed to the decision to resume the surveillance, or raised questions that were

not meaningfully answered in the presentation. And we are also aware that when persons attempted to submit questions by email to the specified address, questions@baltimorepolice.org, prior to the presentation, the emails were returned as undeliverable, with the message that delivery to that address was restricted. Further, the very existence of the COVID-19 pandemic, and the public health crisis and disruption it has engendered, has significantly impacted the public's ability to focus on or participate in any public discussion of this far reaching new technology.

The public's access to necessary information has also been critically limited by the fact that the contract with PSS, and any memoranda of understanding governing PSS's use of the data, have not yet been publicly disclosed, even though Commissioner Harrison has said during the public presentations that all of the privacy protections for the data were contained in those documents. Without the ability to review those documents before the Board of Estimates votes on them, the public has no meaningful ability to comment or address whether such protections are even minimally adequate.

Further, the BPD's public statements about the surveillance technology that is being deployed have been shamefully and materially misleading, thereby further frustrating the public's ability to understand and comment on what is being proposed. Commissioner Harrison has repeatedly and inaccurately said that the technology is not "surveillance" even though that is precisely what it is (indeed, the company providing the technology is called Persistent Surveillance Systems). And he has repeatedly and inaccurately said that the technology cannot identify anyone, when the entire point of the surveillance is precisely, and only, to identify people.

In design and intent, Persistent Surveillance Systems' technology seeks to create a permanent video record of everywhere that everyone in Baltimore goes any time they go outside. It does this by stitching together and storing incredibly high resolution wide angle photographs taken once per second that capture about half of the City in each frame. Multiple planes will image approximately 90% of the City at a time. This provides a slow frame video that can be zoomed in to show individual people (or cars) moving about the city. And because the video is stored, it is a virtual time machine, allowing police to go back in time to any location or person they are interested in, and to follow a particular person or car backwards (and forwards) in time to see where they went or came from. It is the technological equivalent of having a police officer follow you every time you walk outside (while the plane is flying, which is planned to be at least 40 hours per week). But because it is being done remotely, via high tech surveillance equipment, we do not viscerally experience the intrusion that would be obvious to all if an officer did this.

While it may be true that the current camera resolution is such that a person cannot be identified from a single frame of the video recording, such a statement

is completely misleading, since the sole purpose of capturing the footage is to identify people or vehicles. This is done in multiple ways. First, the person or vehicle being tracked on the stored footage can be linked to images captured by Baltimore's network of more than 700 ground based Citywatch cameras, or to Baltimore's fixed or mobile Automated License Plate Readers, and people and vehicles can be identified that way. Moreover, because the aerial footage allows people or cars to be tracked forward and backward in time until the people enter or leave particular buildings, it can also, without any other technology, be used to identify those same people, which, again, is the entire point. Telling people that this technology is not surveillance, and does not identify people, is not being honest about what is being proposed.

The decision to put all of Baltimore's residents under persistent wide area motion surveillance is a fateful step, that will impact the privacy rights of residents for generations to come. Like most police technologies, this one will have the greatest impacts in Baltimore's black and brown neighborhoods, because it is intimately tied to the City's ground-based cameras, which are concentrated in those communities. The technology represents an utterly new kind of surveillance of American life, which permits the mass collection of information about people across time and space in ways that have never been possible before. The fight over whether it should go forward will be one of the most significant battles in the history of surveillance.

Further, the decision to implement this technology raises grave constitutional concerns, because the Supreme Court has already stated that government acquisition of public movement data over time is a search governed by the Fourth Amendment's restrictions. *E.g. Carpenter v. United States*, 138 S. Ct. 2206 (2017).

It is shameful that the Board of Estimates is the only body that includes elected officials that, under current laws, will ever consider this fateful step. Given that responsibility, and the intense public interest and debate about this technology, any decision to approve the contract with PSS should be postponed until after the current pandemic emergency, and until after the public has a chance to be fully and accurately informed about what is being done, and a chance to fully participate in the debate and make its views known to the Board.

Thank you for considering our protest.

Sincerely,

David Rocah
Senior Staff Attorney