

City Council of Cambridge, Massachusetts
Hearing on Proposal for Homeland Security Cameras
March 9, 2009

STATEMENT OF THE CONSTITUTION PROJECT REGARDING THE
HOMELAND SECURITY GRANT FOR INSTALLATION
OF SURVEILLANCE CAMERAS

The Constitution Project thanks the City Council for the opportunity to submit this statement on the proposal to operate a system of surveillance cameras in Cambridge. The Constitution Project is a nonprofit organization in Washington, DC that promotes and defends constitutional safeguards by bringing together liberals and conservatives who share a common concern about preserving civil liberties. The Project's Liberty and Security Committee, launched in the aftermath of September 11, 2001, brings together members of the law enforcement community, legal academics, former government officials, and advocates from across the political spectrum who develop and advance proposals to protect civil liberties as well as our nation's security. As part of this work, the Constitution Project released a report, *Guidelines for Public Video Surveillance: A Guide to Protecting Communities and Preserving Civil Liberties*, which presents specific recommendations on how communities can establish surveillance systems that minimize intrusions on individual rights—and on how to balance law enforcement needs with the privacy rights of residents. The report includes model legislation that can help jurisdictions to codify our recommendations.

On January 22, 2009, the Civic Unity Committee held a hearing to discuss the Homeland Security grant for installation of surveillance cameras in Cambridge. According to the committee's report, the Homeland Security agency has offered grants for a Critical Infrastructure Monitoring System (CIMS) to link the communities of Cambridge, Boston, Somerville, Revere, Everett, Chelsea, Winthrop, and Quincy. The CIMS system has two components: a secure network linking each of the Metro Boston communities, and video cameras located in chosen areas of each community. If a community chose to join the secure network, it was required to agree to the installation of video cameras. The city of Cambridge applied for a grant to use the system for evacuation monitoring, and cameras have been installed in eight locations as a result. Cameras were scheduled to become operational approximately one month later.

The Constitution Project submits this statement to outline some of the important questions that should be answered before the city decides whether a surveillance system is needed, as well as to recommend key protections to be implemented if Cambridge chooses to operate such a system.

Core Recommendations for Establishment and Use of Public Surveillance Systems

Video surveillance is an area in which technology is developing much more quickly than the law. Without proper safeguards, a system of linked cameras has the

potential to invade residents' privacy and intrude on constitutionally protected rights. Thus, before implementing a video surveillance system, city officials should take steps to ensure that privacy rights and civil liberties will be protected.

The Constitution Project's report, *Guidelines for Public Video Surveillance*, recommends a process for jurisdictions to follow in determining whether to establish a video surveillance system. The report also includes guidelines on establishing proper safeguards in the event that a community decides to proceed with such a project.

In short, the Constitution Project offers the following four core or minimum recommendations:

1.) First, video surveillance systems should only be implemented to further a clearly articulated law enforcement purpose. After the purpose is identified, the system should be carefully and narrowly designed to serve that purpose.

2.) Second, the jurisdiction should conduct a cost-benefit analysis to assess whether a video surveillance system is the most cost-effective way to achieve the law enforcement purpose. In weighing the overall cost of the system, officials should include not only the economic cost, but also the potential adverse impact of the system upon constitutional rights and individual values. In assessing the anticipated benefits of the system, the community should evaluate the expected efficacy of the system.

3.) Third, if a community decides to establish a video surveillance system, it should develop clear written guidelines to govern the system's operation. This should include, but is not limited to, procedures for training operators, limits on data retention, and rules governing access to stored footage. A list of detailed recommendations regarding usage rules can be found in the Constitution Project's *Guidelines for Public Video Surveillance*.

4.) Finally, it is important that communities conduct an open process—one that includes the public—for both the consideration and development of public video surveillance camera systems.

Applying These Core Recommendations to the Cambridge Proposal

Based upon the report of the Civic Unity Committee's hearing on January 22, 2009, we are encouraged that Cambridge appears to be following several of the above recommendations. The January hearing itself was an important step toward an open process and the Constitution Project urges that this transparency continue. Nonetheless, several important questions remain to be answered.

The Civic Unity Committee's report indicates that the stated purpose of the homeland security cameras would be for use in evacuation monitoring in the event of a major incident or disaster. Police Commissioner Robert Haas stated publicly that the cameras would not be used for stopping crime. It is unclear, however, whether the use of

the proposed surveillance system would be limited to this emergency evacuation purpose. This should be clarified.

The cost-benefit analysis in this case is somewhat skewed by the availability of grant funds. Could the funding be redirected to some use other than cameras? Several witnesses at the January hearing testified about their concerns on whether cameras would be effective, and about studies showing that video cameras are not effective. These factors should be considered in weighing the costs of the system.

The City Council must evaluate the system's stated purpose, costs and benefits, and determine whether to proceed with plans to operate the proposed camera system. If Cambridge chooses to proceed with the system, it is critical that the city design the system narrowly to serve its stated purpose. If the system is solely intended to conduct evacuation monitoring during disasters, then certain design limits would naturally follow from that narrow purpose. For example:

- Cameras would not need to be turned on except during actual disasters or periodic tests to ensure the equipment is in good working order;
- Camera locations would be restricted to key intersections and locations where traffic flow is considered problematic; and
- Any recorded footage should only be retained during the actual emergency operations, unless certain footage was briefly retained beyond that period in order to assess the need for improved evacuation procedures.

Finally, if the Council decides to proceed with such a system, it is critical that the city develop clear written guidelines to govern the system's operation and use. Chief Reardon publicly described protocols for controlling the use of the system. He stated that a draft policy covering acceptable use has been developed. This policy should be reviewed by the Council, and final written guidelines should be adopted.

Further Rules to Govern System Design and Operation

In addition to the four minimum requirements outlined above, the Constitution Project recommends specific additional rules to govern the operation and use of video surveillance systems. These proposed rules cover three basic areas.

Minimization: First, communities should follow the principle of minimization, and adopt use limitations to minimize the negative impact on constitutional rights and values. For example, a camera installed to monitor a dangerous intersection for evacuation monitoring or even traffic accidents does not need to be equipped with facial recognition capabilities to identify passengers in the stranded cars. Similarly, law enforcement should be required to obtain additional approvals before implementing more intrusive technologies such as automatic tracking or automatic identification.

Data Safeguards and Security: Any surveillance system should incorporate procedures to safeguard the data that is collected. First and foremost, all personnel who

have access to the system must be trained on the rules governing the system's use. Further, Cambridge should create technical and administrative safeguards for the use of stored video footage, and establish a data retention policy. As noted above, if the system's sole purpose is to provide evacuation monitoring, there would generally be no need to retain recorded footage beyond the disaster requiring evacuation. The city might wish to permit authorities to designate certain footage to be retained for a longer period to permit review of problem areas for the purpose of developing better evacuation procedures. But any such exception should be limited, and the time period for retention should be no longer than is required for the relevant analysis.

Accountability: Communities should engage in periodic audits to assess the system's effectiveness, its impact on the community, and its adherence to the system's primary purpose. Further, if communities intend to rely upon footage from privately owned and operated cameras, it is important to apply the same standards that control public video surveillance data to any law enforcement use of privately collected data.

Conclusion

The City Council should carefully evaluate whether a video surveillance system is the best way to address its law enforcement needs. If Cambridge decides to proceed with the proposed video surveillance system, the city should establish proper safeguards and written guidelines to ensure that the system also protects residents' privacy rights and civil liberties. Any surveillance system should be designed narrowly to serve its specific law enforcement purpose and to minimize intrusions on civil and constitutional rights.

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Electronic Copies of the *Guidelines* and accompanying model legislation can be found on the Constitution Project's website, at http://www.constitutionproject.org/pdf/Video_Surveillance_Guidelines_Report_w_Model_Legislation4.pdf