

April 6, 2009

**COMMENTS OF THE CONSTITUTION PROJECT REGARDING THE  
NEW YORK CITY POLICE DEPARTMENT'S PROPOSED  
PUBLIC SECURITY PRIVACY GUIDELINES  
FOR THE DOMAIN AWARENESS SYSTEM**

The Constitution Project submits these comments upon the proposed *Public Security Privacy Guidelines* for the New York City Police Department's (NYPD) "Domain Awareness System," including the Lower Manhattan Security Initiative.

The NYPD had published its proposed Guidelines for public comment ending on March 26, 2009. When representatives of the Constitution Project learned of the proposed rules shortly after the public comment period had expired, the Deputy Commissioner of Counterterrorism invited the Project to submit informal comments outside the formal public comment period.

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.

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, city officials should take steps to ensure that privacy rights and civil liberties will be protected. The Project submits these comments to recommend improvements to the proposed Guidelines to properly balance the security needs and civil liberties of New York residents.

**Positive Features of the Proposed Guidelines**

The proposed Guidelines to govern operation of the Domain Awareness System include several important provisions to protect civil liberties. The Constitution Project commends NYPD for incorporating such rules, including:

- A clear statement of the intended purpose for the system, namely for counterterrorism;
- An explicit prohibition on using cameras to target individuals on the basis of race, gender, religion, and other protected categories;
- A requirement for signage to advise the public of the presence of cameras;
- Distinctions between archival and pre-archival data, with different access and usage rules for each category;
- A data retention period for video footage that is limited to 30 days, unless particular footage is designated as evidence in connection with a particular incident;
- A requirement that the system may only be used for secondary law enforcement purposes beyond counterterrorism with written approval from the authorized supervisory official;
- Data security procedures;
- Training requirements and rules for limiting system access to trained authorized users;
- Rules to prevent access by private “stakeholder” representatives to personally identifiable information captured by the system; and
- Accountability procedures including possible disciplinary action and audit requirements.

### **Recommendations for Needed Improvements to Guidelines**

Despite these positive features, the proposed Guidelines require further improvements to properly protect residents’ privacy rights and civil liberties. The Guidelines should be designed to minimize the potential intrusion by the system on residents’ rights, and to ensure that the system is serving its intended purpose. These needed improvements include:

- **Limiting the retention period for data other than video data:** Whereas the Guidelines state that video data will be retained for only thirty days, they provide that data from license plate readers (LPR) and metadata will be retained for *five years*. Although LPR data may generally be less intrusive of personal privacy than actual video images, LPR data can be closely associated with given individuals and can serve to document a particular individual’s movements throughout the jurisdiction. Further, metadata can actually be *more* intrusive of privacy rights. Metadata can include personally identifiable information which tags given images as associated with particular individuals. There is no stated rationale in the rules for why a five year retention period is needed or reasonable. Even if NYPD determines that LPR data and metadata are reasonably subject to a longer standard retention period than for video data, that period should be far closer to thirty days than to five years.
- **Private access and privately collected data:** The rules governing private “stakeholder” access to the system and its data should be more stringent. The

Guidelines should include explicit limits on the purposes for which representatives of private stakeholders will be permitted to obtain access to the system, and on the number and identity of stakeholder representatives who will be granted such access. Further, the rules should explicitly state that whenever footage from privately owned and operated cameras is taken into the NYPD's domain Awareness System, it will be subject to the same rules and restrictions as footage from government owned and operated cameras.

- **Audit requirements:** The proposed Guidelines require that the Counterterrorism Bureau's Integrity Control Officer conduct "periodic reviews of audit logs" to ensure compliance with the rules. It is also critical, however, that the system be subject to regular reviews to assess the *effectiveness* of the camera system in serving its intended purpose. These reviews should be conducted at least every two years and should use metrics appropriate to assess whether the Domain Awareness System is promoting its stated counterterrorism purposes. If not, the system should be reevaluated and either modified or abandoned.

### Further Questions

Some policies are not entirely clear from the proposed Guidelines and raise further questions. The Guidelines should be revised to clarify the answers to these questions. Depending upon the answers, additional improvements to the Guidelines may be needed beyond the specific recommendations outlined above. These questions include:

- What does the term "environmental data" cover? Does this category consist of readings of radioactivity levels and/or readings from devices that detect trace chemicals? Does it include any information regarding particular individuals or any personally identifiable information? If the data do contain any information about any specific individuals or any personally identifiable information, then the indefinite time period for data retention poses serious privacy concerns, and the applicable retention period should be strictly limited as discussed above.
- What types of metadata are being collected and appended to records? Does this category include any personally identifiable information? If it does, then the indefinite time period for data retention poses serious privacy concerns, and the applicable retention period should be strictly limited as discussed above.

### Conclusion

NYPD has taken some important steps toward protecting privacy rights and civil liberties, and should be commended for publishing the proposed Guidelines. However, several critical improvements are still needed to ensure that the surveillance system is designed narrowly to serve its specific law enforcement purpose and to minimize intrusions on civil liberties and constitutional rights.

After NYPD has modified and finalized its Public Security Privacy Guidelines for

the Domain Awareness System, those rules should be made available to the public and should be posted on the NYPD website.

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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](http://www.constitutionproject.org/pdf/Video_Surveillance_Guidelines_Report_w_Model_Legislation4.pdf)