



Coalition on Homelessness



INDIVISIBLE SF

MEDIA ALLIANCE



October 13, 2020

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- Supervisor Hillary Ronen
- Supervisor Shamann Walton
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San Francisco Board of Supervisors
 1 Dr. Carlton B. Goodlett Place
 City Hall, Room 244
 San Francisco, CA 94102-4689

Re: Accountability for SFPD’s illegal surveillance of Black Lives Matter protests

Dear Members of the Board of Supervisors,

We write to strongly condemn the San Francisco Police Department’s (“SFPD”) illegal surveillance of demonstrations to protest the police killings of George Floyd, Breonna Taylor, Tony McDade, and many other Black people across the nation. SFPD’s use of a private network of surveillance cameras to spy on Black-led protests against police violence and racism invaded the privacy of protesters, chills and deters further free speech, and disparately impacts people of color. SFPD has also violated the City’s Surveillance Technology Ordinance and this Board’s authority and control over surveillance decisions in our City. We ask that the San Francisco Board of Supervisors publicly rebuke this unlawful spying on activity squarely protected by the First Amendment and the California Constitution, and take immediate action to prevent further harm to our community.

Last June, the San Francisco Board of Supervisors passed a historic ordinance that banned the use of facial recognition technology, and brought much needed democratic control over the

acquisition and use of other kinds of surveillance technology by city departments such as SFPD. That ordinance requires that any city department obtain the Board's approval prior to acquiring, using, or borrowing surveillance technologies ranging from video cameras to drones.¹ The ordinance was supported by San Francisco residents and the undersigned dynamic coalition of privacy, civil rights, and racial justice organizations who recognized that surveillance technology poses a threat to the safety, civil rights, and civil liberties of San Franciscans. The particular risk that law enforcement could exploit surveillance technology to spy on people exercising their First Amendment rights to free speech and assembly was a primary motivation in ensuring this critical law was passed. Just one year later, SFPD's actions in response to ongoing demonstrations against police violence illustrate and underscore just how acute that risk was and continues to be.

On May 31, SFPD requested and received real-time use of a massive network of private surveillance cameras owned and operated by the Union Square Business Improvement District ("BID") for a 48-hour period to monitor for "situational awareness and enhanced response" related to mass protests following the police murder of George Floyd.² On June 2, SFPD's real-time exploitation of the BID cameras was extended through the following weekend, ending on June 7.³ SFPD officers also requested and received a "data dump" (in the BID's words) of footage from all cameras in the Union Square BID's camera network for a twelve-hour period. Because SFPD did not have authorization from the San Francisco Board of Supervisors to use this surveillance system, as is required by the City's Surveillance Technology Ordinance, SFPD's surveillance was illegal. Notably, these violations took place during the height of ongoing demonstrations for racial justice, with crowds of more than 10,000 people marching through the streets of San Francisco several days that week.⁴

SFPD's unlawful spying on Black Lives Matter protests is an affront to our City's stated commitment to civil rights and equity. Our history is filled with police forces improperly surveilling and targeting Black activists who fight for racial justice.⁵ In recent years, advances in technology have made surveillance of Black activists even more pervasive, with police agencies deploying social-media monitoring, facial recognition, and location information, among other techniques, to identify and track activists and protests as the Black Lives Matter movement has

¹ See San Francisco Admin. Code Ch. 19B, https://codelibrary.amlegal.com/codes/san_francisco/latest/sf_admin/0-0-0-47320.

² Dave Maass and Matthew Guariglia, *San Francisco Police Accessed Business District Camera Network to Spy on Protestors*, Electronic Frontier Foundation, July 27, 2020, <https://www.eff.org/deeplinks/2020/07/san-francisco-police-accessed-business-district-camera-network-spy-protestors>.

³ *Id.*

⁴ CBS SF Bay Area, *Massive Crowd Marches Across City For Peaceful San Francisco George Floyd Protest*, CBS BAY AREA, <https://sanfrancisco.cbslocal.com/2020/06/03/massive-crowd-gathers-by-mission-high-for-san-francisco-george-floyd-protest/> (Jun. 3, 2020).

⁵ See Simone Brown, *Race and Surveillance*, in HANDBOOK OF SURVEILLANCE STUDIES edited by Kirstie Ball, Kevin D. Haggerty, and David Lyon, Routledge (2012); Albert Fox Cahn and Zachary Silver, *The Long, Ugly History of How Police Have Tracked Protesters*, FAST COMPANY, <https://www.fastcompany.com/90511912/the-long-ugly-history-of-how-police-have-tracked-protesters> (Jun. 2, 2020); Democracy Now, *COINTELPRO*, <https://www.democracynow.org/topics/cointelpro> (last accessed Jun. 5, 2020).

built momentum.⁶ Those who speak truth to power have just cause to fear retaliation. Many protesters remember the police murder of Fred Hampton during the COINTELPRO era, and countless anonymous threats made against protest organizers and supporters to this day. When police deploy surveillance technology against protesters, it aggravates anxieties about the possible consequences of protesting, which can chill and deter the exercise of First Amendment rights. This underscores the need to take all possible measures to avoid identifying and tracking people as they do the necessary work of fighting for a more equitable society.

For these reasons, we call on the Board take all of the following steps:

- Request that SFPD testify at a special hearing of the Board of Supervisors and answer questions about its illegal surveillance of demonstrations taking place in our City;
- Amend the Surveillance Technology Ordinance to prohibit city departments from obtaining real-time use of private camera networks, or “data dumps” of footage from such networks; and
- Request that the Office of the Controller, pursuant to its statutory obligation under the Surveillance Technology Ordinance, address this SFPD violation of the ordinance in its annual audit of compliance with the Ordinance by City departments.⁷

As the protests continue, it is critical that the Board act decisively to defend San Franciscans’ democratic rights.

We look forward to this Board enforcing and expanding the City’s Surveillance Technology Ordinance. Please let us know if you have any questions.

CC: Office of the San Francisco Controller, Mayor London Breed, Police Chief William Scott

Signed,

ACLU of Northern California
Anti Police-Terror Project
Asian Americans Advancing Justice-Asian Law Caucus
Black Movement Law Project

⁶ See Cahn & Silver, *supra* note 5; Janko Roettgers, *Police Used Instagram, Facebook, Twitter to Monitor Black Lives Matter Protests*, VARIETY, <https://variety.com/2016/digital/news/instagram-twitter-faceook-geofeedia-aclu-1201885332/> (Oct. 11, 2016).

⁷ Section 2A.20 of the Administrative Code, as amended by the Surveillance Technology Ordinance, requires that the City Controller conduct an annual audit of the use of Surveillance Technology by city departments. “Such an audit shall include a review of whether a Department has operated and is operating in compliance with an approved Surveillance Technology Policy ordinance, and has completed an Annual Surveillance Report, and such other information as the Controller determines helpful to assess the Surveillance Technology Policy. At the completion of the audit and in consultation with the City Attorney, the Controller shall may recommend any changes to any Surveillance Technology Policy ordinance and its implementation to the Board of Supervisors.”

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