



DIGITAL FOURTH

The Massachusetts campaign to protect digital data
from unconstitutional government surveillance

City Council Committee on Government Operations

Docket #0683, co-sponsors: Councilor Michelle Wu and Councilor Ricardo Arroyo

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Committee Chair: Lydia Edwards

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TESTIMONY ON FACIAL RECOGNITION BAN

Chairwoman Edwards and fellow Councilors, thank you for your time today discussing this important issue.

We're a volunteer-based civil liberties organization founded in 2012 to address concerns about government surveillance. We have been an active part of several municipal campaigns to pass bans on government use of face surveillance, including Cambridge, Somerville and Brookline. So we should begin by noting that since those bans passed, there have been no reports of cases that could have been resolved better had face surveillance been an available tool. The City Council should not be distracted by empty police hypotheticals playing to unverified fears of what may happen. The cities where face surveillance has been banned are, in fact, doing fine in terms of crime rates and crime prevention.

Our Fourth Amendment rights are under attack. The Fourth Amendment, and its companion text under the Massachusetts constitution, precludes government from searching your person, papers or effects, without your consent, or without probable cause, as certified by an independent judge, that you've been involved in an actual crime. Instead, nearly half of all Americans' faces are now stored pro-actively in only one of the government's many databases. More agencies are installing cameras, including the MBTA, whose cameras and video monitors were paid for by a \$6.9 million grant from the Department of Homeland Security.¹ Put simply, we're setting up the infrastructure for what NSA whistleblower William Binney terms the "turnkey totalitarian state."² The update to BriefCam 5.3 would, if permitted, allow Boston PD to start tracking and watchlisting Bostonians without oversight or permission from the Boston City Council. Law enforcement argues that cameras and facial surveillance can help decrease crime, but the evidence for that is shaky, and they can and do use these surveillance tools for other purposes, including most recently targeting innocent protesters across the city.

We can think of no better time than now for the Boston City Council to be considering the dangers of face surveillance, especially in light of recent events harming Black Boston residents, other people of color and residents of poorer neighborhoods. While Supreme Court recognition of a limited right to anonymity in public is recent, that right was recognized because of new technological threats that undermined the assumption that it was not realistic or cost-effective to track everybody's movements through public or semi-public spaces. Face surveillance offers law enforcement a new and cheap opportunity to identify and track every Boston resident. As such, if it were 100% accurate, it would be even more terrifying.

¹ <https://www.boston.com/news/local-news/2014/02/11/t-begins-installing-bus-security-cameras-officials-hoping-move-will-cut-down-on-crime>

² <https://www.npr.org/2016/10/23/499042369/police-facial-recognition-databases-log-about-half-of-americans>

As it stands, of course, face surveillance has well-known limitations and biases,³ because the software is trained on mostly white and male faces. It therefore accentuates, rather than reduces, pre-existing biases in law enforcement against Black people and other people of color. It carries a high likelihood of misidentification, and intensifies distrust between residents and the police, at a time when it's especially evident that trust needs to be rebuilt. With public outrage over police abuse across the country at the forefront of everyone's minds, banning facial recognition technology in Boston would be a step towards police reform.

Residents in Boston deserve to be treated with respect. And that means that, even when it's financially and technologically possible for the police to set up systems that pro-actively track everybody, they should not. Residents should not feel targeted or watched while they shop in stores such as Home Depot and Target, play in public parks, or visit friends and neighbors. The whole notion of treating people as potential criminals without any factual predicate is constitutionally illegitimate. Without a ban on facial recognition software, these businesses and many others will be allowed to continue to secretly use facial recognition to identify and possibly harass customers.⁴

Companies selling face surveillance technology have used the COVID-19 pandemic to increase pressure to install such cameras across the country, and here in Boston. But most Boston residents have been observing the guidelines well, resulting in substantial suppression of new

³ <https://www.nbcnews.com/news/us-news/how-facial-recognition-became-routine-policing-tool-america-n1004251>

⁴ <https://massprivatei.blogspot.com/2019/09/home-depot-and-lowes-accused-of.html>

infections. Removing the public's right to anonymity in public is a fear-based response that will erode the public's trust in, and willingness to comply with, COVID-19 measures.

Face surveillance technology particularly targets young Bostonians, especially those who fear that they will be stopped because they "fit a description." An algorithmically determined description is in some ways worse than an ordinary police description, because the endorsement of a computer system gives the identification a false veneer of objectivity. If you want young people to hide inside, avoid exercise of their bodies and their rights, and avoid offline spending in the City's businesses, face surveillance is a great way to do it. Depending on its terms, a face surveillance ban could also prevent our world-class colleges and universities from discriminating via face surveillance among people walking on their campuses.

Face surveillance in a city differs from face surveillance at an airport. People can usually choose whether to travel by air, and if they give up control over their biometrics to do so, it's more voluntary. But if you allow the City to use facial recognition, you remove that choice from all residents of, and visitors to, Boston.

For the reasons stated above, we strongly recommend that the City Council ban face surveillance in Boston.

Sincerely,

Joe Cadillic and Alex Marthews

Digital Fourth / Restore The Fourth – Boston.