

CANADIAN
CIVIL LIBERTIES
ASSOCIATION

90 Eglinton Ave E., Suite 900
Toronto, ON M4P 2Y3
Telephone (416) 363-0321
FAX (416)861-1291
Email: mail@ccla.org



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July 22, 2018

Dear Mayor Tory,

The Canadian Civil Liberties Association has serious concerns regarding the impact of new police surveillance technologies for the city of Toronto. This fundamental shift to state surveillance in Canada could run afoul of constitutional privacy rights, risking the admissibility of any evidence obtained, resulting in untold millions wasted in technology and policing costs. Worse, if placed in poor or diverse neighbourhoods, the new technology may be an unconstitutional sucker punch to racialized communities of Toronto.

The risk of constitutional invalidation requires analysis yet to be done by the City. Give us 10 days to complete and submit a legal risk analysis to the City; this would also permit community feedback, and allow you to share the TPS case for this purchase, before the money is spent.

When it comes to expanding public surveillance in Toronto, city residents deserve assurance that the decision to install privacy-invasive technologies is firmly supported by evidence that such an expansion is necessary, proportionate, constitutional, and effective, that the chosen technologies are the correct tools for the job at hand, and that they are designed and will be used in keeping with our civic values and constitutional protections.

In fact, privacy law requires such an approach. Video surveillance cameras collect personal information. While the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) allows personal information to be collected for the purposes of law enforcement, guidance from the Information and Privacy Commissioner of Ontario specifies that in general, such collection of personal information must be not just useful, but “necessary.” In the absence of data suggesting that the public safety objectives of installing surveillance technologies will be met, and cannot be met using less intrusive means, it is reasonable to question whether the collection is truly “necessary”. Privacy best practice guidelines for video surveillance from both the federal Privacy Commissioner’s office and the Ontario Information and Privacy Commissioner also specify that the impact of the proposed video surveillance on privacy should be assessed before it is put in place, and public consultation should precede any decision to introduce video surveillance. It is unclear if the former has taken place in this instance, and certain that the latter has not.

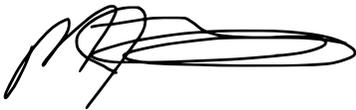
As for ShotSpotter, this represents an entirely new technology which has not been to the best of our knowledge used in a Canadian context. It is thus entirely untested in relation to its privacy impacts, its potential use as a tool with evidentiary value in our Canadian courts, or the constitutionality of its use more generally.

There is also a profoundly practical question yet to be answered: what is its purpose, exactly, and will that purpose be met? Does the City have reliable evidence that ShotSpotter technology is effective at reducing gun violence? This should not be anecdotal, word of mouth stories from the vendor or other individuals with a stake in justifying an investment in the system, but rather, grounded in data and conducted independently of system stakeholders. The only public data we have seen, conducted in 2016 by Forbes with statistics from seven US cities, suggests that 30-70% of alerts led to police being called out with no result. Playing it by ear, apparently, may have more cons than pros, if any.

We also have several specific concerns with terms of the ShotSpotter privacy policy, and with possible gag provisions that may be in the terms of service which would limit the ability of Torontonians to make access to information requests regarding the effectiveness of the technology if it is put in place, upon which we would be happy to elaborate.

Increased surveillance on our streets fundamentally changes our city. It decreases the privacy of every Torontonian walking on our streets. Before we are asked to give up that right, it must be demonstrated that the city and police response is necessary and proportionate and that the decision has been made with full consideration of the potential benefits and substantial risks. Please give us the time to inform your decision.

Sincerely,



Michael Bryant
Executive Director
Canadian Civil Liberties Association



Brenda McPhail, Ph.D.
Director, Privacy, Technology & Surveillance Project
Canadian Civil Liberties Association