



August 8, 2018

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Vice President Nick Josefowitz
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Director John McPartland
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Bay Area Rapid Transit District Board of Directors
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Dear BART Board of Directors,

We are a group of Bay Area civil rights and racial justice organizations urging the BART Board of Directors to withhold approval of the surveillance portions of the “BART Safety and Security Action Plan,” (the “proposal”) listed as item 5d on the August 9, 2018 agenda. The Board should reject parts 6, 7, and 9 of this flawed and hurried proposal and give the public the information and time they need for an informed debate. The Board should also explicitly assure the public that it will not be acquiring face surveillance technology that is being promoted by one BART Director.

We are concerned that in response to the tragic murder of Nia Wilson, BART would be considering dangerous systems that power discriminatory surveillance. Public safety and racially motivated violence against BART riders of color are critical concerns that need to be discussed, and these conversations require transparency and space. We are worried that the measures being proposed are rushed, and as currently described, pose a unique threat to people of color, immigrants, and activists.

We are also troubled to see that this proposal does not follow the process currently being forged by community stakeholders, civil rights organizations, and BART staff to ensure community input during the consideration of surveillance technology. For more than two years, community partners including the ACLU of Northern California and Oakland Privacy have engaged in discussions with BART staff on a draft surveillance ordinance that would ensure that the public is given adequate information and the ability to speak up about surveillance proposals that have the potential to harm civil rights. We did not receive notice of this proposal from BART staff prior to August 6th, 2018 and have heard the same concerns from community partners. BART appears to be sidelining a measure designed to protect rider safety by rushing a surveillance proposal that violates the measure's core principles of transparency, accountability, and oversight.¹ BART should continue those stakeholder discussions before considering surveillance proposals.

What follows is a summary of our concerns with this surveillance proposal, our specific concerns with BART's rumored exploration of dangerous face surveillance, and an explanation of how the proposal fails to follow the principles of BART's draft surveillance technology ordinance.

1. The Board and the public do not have access to the information they need to evaluate a sweeping expansion of BART's surveillance systems

The proposal here calls for a sweeping expansion of BART's surveillance camera network and for new software to analyze the collected footage. Specifically, the proposal asks the Board to approve a project to expand BART's digital camera network (part 6) and to create a "Physical Security Information Management System" (PSIM) that would extend "video analytics" to nearly 2,000 existing cameras (part 7), as well as the installation of screens to remind riders they are under surveillance (part 9).

This proposal asks the Board to spend millions of taxpayer dollars on surveillance systems without the information necessary for an informed public safety decision, or an understanding of the potential harms this expansion could bring. No government entity should acquire new surveillance technology without a full public debate and ample time for constituents to consider a proposal. Yet these sweeping proposals before the Board omit two key elements of information necessary for their proper evaluation by the Board and the public: first, the proposal lacks information about how the systems will function and their varying capabilities; and second, the proposal lacks a set of draft written rules that would limit how these systems can be used, who they can be aimed at, what data will be collected, or how such data can be retained or shared. We address each of these deficiencies in turn.

First, the Board and the public have not been provided with adequate information to evaluate this proposal. The proposal does not explain how many cameras will be purchased, or how those new cameras will prevent crime that the current BART cameras have demonstrably failed to prevent. The proposal does not explain what "video analytics" means and whether it will involve biometric surveillance or rider-specific tracking (notably, Vice President Josefowitz has stated in the press that

¹ One point of clarification: the August 9, 2018 Board agenda packet could be read as implying that the ACLU and community partners have approved a final or near-final version of the draft surveillance technology ordinance, which the agenda confusingly refers to as a "Technology Enhancement Policy." We have not. In fact, the ACLU and Oakland Privacy sent critical and constructive feedback on the draft ordinance to BART staff on June 20, 2018. BART staff replied to our feedback with a new draft on August 6, 2018, the same day that this sweeping surveillance proposal was publicly announced.

BART should explore facial recognition technology²). The proposal does not explain which stations will be part of the surveillance expansion. The proponents of this surveillance expansion should answer these questions well before the Board begins debate on this proposal.

Second, the Board and the community cannot begin to consider these systems without knowing how BART authorities intend to use them. The dearth of information provided about these proposals leaves gaps in the public and the Board’s understanding and raises serious questions about BART’s plans. To name a few: we do not know who will and won’t be tracked using these enhanced systems. We do not know how BART Police will interpret and act on alerts from the system or how BART will prevent racially biased policing. We don’t know how BART will prevent police from detaining and possibly harming people if the system falsely identifies them as threats. We do not know if BART prohibits use of the system to track law-abiding riders. And alarmingly, BART is potentially creating a new database that may be subject to legal demands from Immigration and Customs Enforcement authorities seeking assistance in locating undocumented riders within the BART system.³ It would be irresponsible to approve the proposal with these questions unanswered.

Finally, the proposal recommends the installation of video screens in BART stations “to remind riders that the area” – and the riders themselves – are “under video surveillance.” The proposal does not explain how these screens will aid BART’s public safety mission. There is no explanation of exactly what will be displayed on these screens, inviting the concern that BART will display personal information about riders and use the system to humiliate or shame people singled out by operators. This type of approach is characteristic of authoritarian regimes⁴ – BART should reject the use of intimidation tactics to further its public safety goals.

The Board should refuse to rubber stamp a sweeping surveillance system without knowing how it works, how it will improve public safety, who may be most harmed by it, or how the community will be protected against its misuse.

2. Face surveillance technology is biased, dangerous, and it has no place in the BART system

We are extremely concerned that BART may be considering acquiring face surveillance technology to scan and identify the faces of riders and persons filmed by the thousands of cameras within and around BART stations and train cars. As noted above, part 7 of agenda item 5d proposes a PSIM system featuring “video analytics.” Elsewhere, Board Vice President Josefowitz has expressed a desire for

² Rachel Swan, *BART announces new safety measures in aftermath of recent violent attacks*, San Francisco Chronicle, Aug. 6, 2018, <https://www.sfchronicle.com/bayarea/article/BART-announces-new-safety-measures-in-aftermath-13135744.php>; Kate Larsen, *BART director wants to explore facial recognition technology in cameras*, ABC 7 News, Aug. 6, 2018, <https://abc7news.com/bart-director-wants-to-explore-facial-recognition-tech/3897812/?sf195034415=1>.

³ In addition, we could not locate any information in the “BART Safety & Security Plan” explaining how these expanded surveillance systems comply with BART’s “Safe Transit” sanctuary policy, which the Board adopted on June 22, 2017 and that prohibits the use of BART “district funds or resources to assist in the enforcement of federal immigration law or to gather or disseminate information” about BART riders. BART Board of Directors Agenda at p. 47, June 22, 2017, available at: https://www.bart.gov/sites/default/files/docs/agendas/06-22%20Board%20Packet_0.pdf.

⁴ The New York Times recently discussed how Chinese government officials shame citizens using surveillance technology. In one case, officials installed a large outdoor screen displaying surveillance footage and the photos of lawbreakers, their names, and government I.D. numbers as a method of socially shaming citizens into compliance with jaywalking laws. Paul Mozur, *Inside China’s Dystopian Dreams: A.I., Shame and Lots of Cameras*, N.Y. Times, July 8, 2018, <https://www.nytimes.com/2018/07/08/business/china-surveillance-technology.html>.

BART to deploy face surveillance in the BART system. The Board should explicitly and unequivocally refuse to go down this dangerous path.

The addition of facial recognition technology to BART camera feeds would subject the millions of people who ride BART to suspicionless surveillance by a technology whose efficacy remains unproven, has such a tremendous capacity for abuse, and that has been shown to be biased against and less accurate when scanning faces of color. People should be free to go about their daily commutes without automatically being secretly surveilled by BART software or having a record of their every movement stored in a BART database. Face surveillance technology threatens the very freedom of movement at the core of BART's service. Using this technology, officials would have the power to identify and track law-abiding BART riders without their consent as well as activists and non-riders protesting or meeting with friends outside of BART stations.

Face surveillance poses a particular threat to people of color. Multiple tests of this technology indicate it is less accurate for darker-skinned people. Last month, a test of Amazon's Rekognition facial surveillance product by the ACLU of Northern California falsely matched 28 members of Congress with arrest booking photos.⁵ Of those false matches, 39 percent were people of color, even though people of color only constitute 19 percent of Congress. Peer-reviewed academic research by Joy Buolamwini and Timnit Gebru has demonstrated that prominent facial recognition technology products perform more poorly for people with darker skin and women.⁶

Face surveillance will not make riders or community members safer and could lead to grave harm. It subjects riders to continuous monitoring and potentially violent contacts with the police. If BART Police are using face surveillance technology, it is not hard to imagine an officer getting a "match" that indicates that a person has a previous arrest, biasing the officer before an encounter even begins. An identification—whether accurate or not—could cost people their freedom or even lives.

Face surveillance also enables the automated tracking of riders from whom BART has no individualized suspicion of wrongdoing, and it will invite requests from other governmental entities, including ICE and the federal government. The use of this flawed technology could entangle BART in the federal government's deportation machine. At a time when public protest is at an all-time high and the federal government is attacking immigrants and activists, the proposed system could easily be co-opted to conduct dangerous, authoritarian surveillance.

Face surveillance technology poses a risk to public safety and the ability of BART riders to travel freely within the BART system. BART should explicitly reject this technology.

3. The Board should follow the principles of BART's draft surveillance ordinance and give the public sufficient time to review and debate the proposal

⁵ Jacob Snow, *Amazon's Face Recognition Falsely Matched 28 Members of Congress With Mugshots*, ACLU Free Future Blog, July 26, 2018, <https://www.aclu.org/blog/privacy-technology/surveillance-technologies/amazons-face-recognition-falsely-matched-28>; Natasha Singer, *Amazon's Facial Recognition Wrongly Identifies 28 Lawmakers*, A.C.L.U. Says, New York Times, July 26, 2018, <https://www.nytimes.com/2018/07/26/technology/amazon-aclu-facial-recognition-congress.html>.

⁶ Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, Proceedings of Machine Learning Research 81: 1-15, 2018, <http://proceedings.mlr.press/v81/buolamwini18a/buolamwini18a.pdf>.

This proposal also falls short of the standards that BART staff have proposed for BART officials seeking new surveillance technology, and disregards community calls for transparency and debate. As discussed above, BART staff have been working with community stakeholders on a draft surveillance technology ordinance. That draft generally requires the publication of information about surveillance proposals and of written rules to prevent abuse 45 days prior to the Board's consideration of a new technology. Together, those documents help the public and the Board understand and evaluate a proposed acquisition of surveillance technology. BART staff have not provided the public with that information here. BART told the public about this sweeping proposal only three days before it was set for a vote.

The proposal also fails to meet the draft ordinance's mandate that the Board may only approve a new acquisition of surveillance technology if its benefits outweigh its costs and the proposal will reasonably safeguard civil liberties and civil rights. That standard has not been met here – while the civil liberties and civil rights threats of this proposal are clear, proponents have not put forth information about its public safety benefits or a set of proposed written rules to protect the community from harm.

That this proposal fails to meet the standards of BART and community stakeholders is yet another reason to reject it.

4. Conclusion

The Board should refuse to approve parts 6, 7, and 9 of agenda item 5d, a hurried proposal that lacks transparency and would unleash new and invasive surveillance within the BART system. BART should provide the necessary information and space for the community to engage in a full discussion about both the dangers of discriminatory surveillance, as well as the public safety reforms needed to address racialized vigilante violence. Please let us know if you have any questions or would like to discuss our concerns.

Sincerely,

ACLU of Northern California
Anti Police-Terror Project
Center for Media Justice
Coalition on Police Accountability
Council on American-Islamic Relations – San Francisco Bay Area
Defending Rights & Dissent
Justice Teams Network
Media Alliance
Oakland Privacy