



BALTIMORE POLICE DEPARTMENT



Stephanie Rawlings-Blake
Mayor

Kevin Davis
Police Commissioner

September 20, 2016

Natalie A. McKeown Finegar
Deputy District Public Defender
Office of the Public Defender
District One – Baltimore City Administration
201 Saint Paul Place, 5th Floor
Baltimore, Maryland 21202

Dear Ms. Finegar,

Thank you for your August 26th letter regarding the Community Support Program (CSP), in which the Baltimore Police Department (BPD) is testing the use of wide-area imagery technology in support of law enforcement investigations. As you state in your letter, the BPD and OPD enjoy an open and cordial relationship. I value the incredibly important roles both our agencies play in Baltimore, and I have every intention to continue this relationship. I am equally committed to ensuring constitutional police practices in Baltimore, including respecting the 4th Amendment and the Due Process of rights of every citizen of Baltimore.

The CSP has consisted of two phases to date, totaling approximately 300 hours. There are a limited number of hours remaining in the second phase which may be used on later dates in 2016. While I respect your request to suspend the CSP, we have no intention of doing so at this time. The testing phase of this technology is near conclusion. No decisions have been made at this point on whether BPD will seek to implement this technology on a permanent basis. However, I am committed to ensuring that decision will be made in an open and transparent manner with a full consideration of all legal and constitutional questions that arose as a result of the pilot phases.

Your letter raises several broad concerns about the 4th Amendment and a request not to conduct any analysis without prior judicial authorization in the form of a search warrant or equivalent court order. While it is inappropriate to engage in a legal debate in the form of correspondence, I will just quickly note that United States Supreme Court precedent has made clear that “what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.”¹ The OPD is very familiar with BPD’s use of its CCTV camera network footage for the purposes of criminal investigations. BPD uses this footage in attempt to piece together information about incidents that occurred in public spaces in view of a CCTV camera. While such information is routinely used to establish the probable cause supporting an arrest, such investigation does not require a warrant. The aerial imagery technology used in connection with the CSP is used in the same manner.

¹ *United States v. Karo*, 468 U.S. 705, 730 (1984) (quoting *Katz v. United States*, 389 U.S. 347, 351 (1967))
c/o 242 West 29th Street • Baltimore, Maryland 21211-2908

Below is the additional information you request and our responses.

1. A list of all dates and times that surveillance under this program was conducted.

Response: Please find enclosed document labeled "Request 1 –BCSP FlightTimes 7 Sept 2016," provided as responsive to this request, capturing all "dates and times surveillance under this program was conducted."

2. That all data gathered under this program be preserved regardless of whether the BCPD intends to use or has used it in furtherance of investigations.

Response: Vendor, Persistent Surveillance Systems (PSS), has verified that all images recorded/captured during the pilot program have been saved and archived and are therefore available, regardless of whether the images were provided to BPD for use in investigations. BPD has requested of PSS that all recorded/captured data and images from the pilot period, regardless if same have already been provided by PSS to BPD for use in an investigation, not be destroyed/deleted without the express consent from BPD.

3. A clarification of whether this data is owned by the Baltimore City Police Department or Persistent Surveillance Systems or any other private or public entity.

Response: All data collected under this program is exclusively owned by PSS.

4. The retention protocol for surveillance data.

Response: Please refer to BPD's response for #2 above. Under the pilot phases, the retention protocol has been to preserve all data captured.

5. Any policies, regulations or agreements entered into between the Baltimore City Police Department, Persistent Surveillance Systems or any other private or public entity regarding the establishment or operation of this program.

Response: No responsive documents.

6. Any internal BCPD policies or regulations regarding the establishment or operation of this program.

Response: Because CSP is in testing phase only, the Department has generally been instructed by Departmental Policy 1014 – Video Surveillance Procedures. Enclosed please find this policy, labeled as "Request 6 – Policy 1014 – Video Surveillance Procedures," for your review.

7. Any training protocols for civilian or police department employees with regards to this surveillance program.

Response: No responsive documents.

8. Any warrants or court orders sought authorizing the analysis of data collected by the aerial surveillance program.

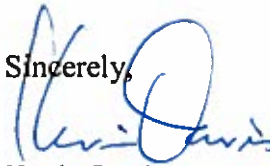
Response: No responsive documents.

9. Any legal authority, relied upon by the Police Department or Persistent Surveillance Technologies, for the use of the aerial surveillance technology.

Response: BPD believes that current U.S. Supreme Court jurisprudence clearly authorizes the use of aerial surveillance for law enforcement purposes where an individual has no reasonable expectation of privacy.

I hope you find this information helpful and responsive to your concerns. I look forward to a continued open dialogue.

Sincerely,



Kevin Davis
Police Commissioner