



DIGITAL FOURTH

The Massachusetts campaign to protect digital data
from unconstitutional government surveillance

Boston City Council

1 City Hall Square, Room 550

Boston, MA 02201-2043

June 29, 2020.

RE: BOSTON FACE SURVEILLANCE BAN

Digital Fourth commends the Boston City Council for unanimously passing a ban on the use of facial recognition technology by any agency under the City of Boston's authority. The actions taken by the City Council are a first step in reducing racial discrimination and misidentification by the Boston Police Department and other City agencies.

The ordinance does some limitations, and we'd like to highlight them to you as potential areas to improve upon.

Section (b)(1)(a)

While the ordinance bans city officials from using facial recognition obtained by non-city agencies, it does allow the Boston Police Department to use information by other third-party agencies so long as they don't request the *generation* of the image (*"Nothing in (b)(1) shall prohibit Boston or any Boston official from: (a) using evidence relating to the investigation of a specific crime that may have been generated from a face surveillance system, so long as such evidence was not generated by or at the request of Boston or any Boston official"*). If, however, Home Depot or another private corporation operating in the City of Boston has *already* generated such images for its own private uses, Boston Police Department employees could then request the image without having requested it to have been generated. This creates a loophole for city agencies to rely on non-government entities to collect data using face surveillance programs and still be compliant with the ordinance. Any city agency can request the data from these third party companies and still comply with the ban. Better language, eliminating this loophole, would read, *"Nothing in (b)(1) shall prohibit Boston or any Boston official from: (a) using evidence relating to the investigation of a specific crime, provided that the entity providing the evidence attests that it was not generated from a face surveillance system."*

Data sharing between MBTA and the City of Boston

At present, it is not public information whether MBTA uses face surveillance in its cameras. Consequently, it would fit well with the face surveillance ban to require that that the Boston Police Department obtain a probable cause warrant before obtaining footage from MBTA buses and trains who use DHS-funded surveillance cameras within the boundaries of Boston. BIPOC people using public transportation should not have to worry about being harassed or arrested in consequence of racial profiling by the MBTA police, or by the Boston Regional Intelligence Center.

Regulating private use of face surveillance

The ordinance does not include a process for city agencies to review data requests, either beforehand or after the fact, so there is no authority in the ban to oversee private companies or organizations who wish to implement face surveillance within the City of Boston. This may create an opportunity for face surveillance to be reintroduced by the back door.

To address this, the city-wide ban on face surveillance should include language on how sports stadiums like Fenway Park, the TD Garden and retail stores like Home Depot, Macy's, Best Buy and Kohl's can use face surveillance software, and require these entities to disclose the use of it to the public. Additional language should include any penalties businesses could face for ignoring a citywide ban on face surveillance, which could go as far as denying permits within the City.

Sincerely,

Alex Marthews & Joe Cadillic