

December 2, 2020

Mayor Jenny Durkan
Office of the Mayor
600 4th Ave, 7th Floor,
Seattle, WA 98104

Councilmember Lisa Herbold
Councilmember Alex Pedersen
Seattle City Council
600 Fourth Ave. 2nd Floor,
Seattle, WA 98104



Saad Bashir, Chief Technology Officer
Seattle Information Technology
700 5th Ave #2700
Seattle, WA 98104

RE: Seattle Police Department Use of Clearview AI

P.O. Box 2728
Seattle, WA 98111-2728
(206) 624-2184
aclu-wa.org

Tana Lin
Board President

Michele Storms
Executive Director

Dear Mayor Durkan, Councilmembers Herbold and Pedersen, and Mr. Bashir,

On behalf of the ACLU of Washington, I write to you to express concerns that the Seattle Police Department (SPD) has been using face recognition technology developed by Clearview AI, in violation of the Seattle Surveillance Ordinance.¹

Records obtained through a public records request submitted by a member of the public in June 2020² show that SPD detectives have acquired and used the surveillance tool since at least September 2019.³

The face recognition software developed by Clearview AI allows users to take a photo of an individual and compare it against the company's database of over 3 billion public photos scraped from social media and the web. These photos in Clearview AI's database have been collected without the knowledge, and much less the consent of those pictured. Software users, such as law enforcement agencies, companies, and individuals can use the database to identify people at political rallies,

¹ Seattle, Washington Municipal Code § 14.18. Available at https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT14HURI_CH14.18ACUSSUTE.

² Request from Briget Brulolo to Seattle Police Department, *Washington Public Records Act Request: Clearview AI and SPD*, MUCKROCK (June 17, 2020), <https://www.muckrock.com/foi/seattle-69/clearview-ai-and-spd-95947/>.

³ Response from Seattle Police Department to Briget Brulolo, *Washington Public Records Act Request: Clearview AI and SPD*, MUCKROCK (Nov. 2, 2020), at 13-225, 227, 230, 231, 233, 234, <https://www.muckrock.com/foi/seattle-69/clearview-ai-and-spd-95947/#file-915851>.

protests, places of worship, Alcoholics Anonymous meetings, and in public spaces such as doctor's offices or retail establishments without their consent or participation.

We are concerned that SPD's use of Clearview AI's face surveillance tool violates the Seattle Surveillance Ordinance, a law requiring that any City department intending to acquire surveillance technology, prior to acquisition, obtain Council ordinance approval of the acquisition, submit a surveillance impact report for the technology, and conduct community meetings with an opportunity for public comment and written response.⁴ Additionally, the law requires that the Chief Technology Officer submit an updated surveillance technology determination list every quarter to Council, the chair of the committee responsible for technology matters, the co-chairs of the Community Surveillance Working Group, the City Auditor, the Inspector General for Public Safety, and the Director of Central Staff.⁵

To our knowledge, SPD did not notify City Council, Seattle IT, or the public, of their intention to acquire and use Clearview AI before doing so, and in fact, has repeatedly stated that it does not use face surveillance technology.⁶

SPD's failure to follow the surveillance law is not new. In 2014, SPD secretly purchased social media tracking software from Geofeedia, violating the 2013 version of the surveillance ordinance. The public gained knowledge about this deal only due to documents obtained through public records requests.⁷ Again, we have discovered that SPD has secretly acquired surveillance technology—Clearview AI—only through a public records request, as SPD has not abided by the transparency and accountability requirements as set forth in the 2018 surveillance ordinance.

Given the unprecedented power of face surveillance technology to invade people's privacy and chill First Amendment rights, we felt compelled to bring SPD's violation of the surveillance ordinance and secret use of Clearview AI to your attention. The risks of SPD's use of Clearview AI

⁴ Seattle, Washington Municipal Code §14.18, *supra* note 1, at 14.18.020 – Council approval for acquisition of surveillance technologies.

⁵ *Id.* at 14.18.020 (b)(3) – Council approval for acquisition of surveillance technologies.

⁶ Was stated on the Oct 28, 2020 public engagement meeting for Group 3 SIRs, is stated in the 11.26.19 Community Surveillance Working Group meeting notes, was shared with ACLU-WA during our meetings with Chief Best, and is noted in this Seattle Times article: Melissa Hellmann, *Amazon speaks out in favor of U.S. regulating facial-recognition technology*, THE SEATTLE TIMES (June 11, 2019), <https://www.seattletimes.com/business/amazon/amazon-speaks-out-in-favor-of-regulating-facial-recognition/>.

⁷ Ansel Herz, *How the Seattle Police Secretly—and Illegally—Purchased a Tool for Tracking Your Social Media Posts*, THE STRANGER (Sep. 28, 2016), <https://www.thestranger.com/news/2016/09/28/24585899/how-the-seattle-police-secretly-and-illegally-purchased-a-tool-for-tracking-your-social-media-posts>.

are also greater, since in the past few months, SPD has sought to subpoena footage of protesters from news media,⁸ raising the possibility that the department may have used or is using Clearview AI to surveil protesters.

It has been well documented that face recognition technology has and will continue to disproportionately harm the most marginalized communities in our society.⁹

Given these concerns, we request that:

1. The CTO immediately direct SPD to cease any acquisition or use of Clearview AI or data collected with Clearview AI. The enforcement section in the Seattle Surveillance Ordinance gives the CTO the power to stop any use of surveillance technology by a department that is not in compliance with the law;¹⁰
2. Council Members Lisa Herbold and Alex Pedersen, as Chairs of committees that provide oversight on matters regarding SPD and technology, convene a committee hearing by the end of the year to get answers from SPD on their use of Clearview AI or any other surveillance tools; and
3. Mayor Durkan prohibit any agency use of face recognition technology, given that face surveillance invades people's privacy and civil liberties, and disproportionately harms the most marginalized communities in our society.

If you have questions or would like to discuss our concerns further, please do not hesitate to reach out.

Sincerely,

Jennifer Lee

Technology and Liberty Manager, ACLU of Washington

cc: Interim Chief Adrian Diaz, Seattle Police Department

⁸ News Media Appellants' Statement of Grounds for Direct Review by The Supreme Court, *In Re Seattle Police Department Subpoena Duces Tecum*, No. 98879-0, (Wash. 2020). Available at <https://www.courts.wa.gov/content/Briefs/A08/988790%20Stm't%20of%20Grounds%20for%20Direct%20Review.pdf>; News Media Appellants' Emergency Mot. for Stay, *In Re Seattle Police Department Subpoena Duces Tecum*, No. 98879-0 (Wash. 2020). Available at <https://www.courts.wa.gov/content/Briefs/A08/988790%20New%20Media%20App's%20Emergency%20Motion%20for%20Stay.pdf>.

⁹ Press Release, ACLU, *ACLU Sues Clearview AI* (May 28, 2020), <https://www.aclu.org/press-releases/aclu-sues-clearview-ai>.

¹⁰ Seattle, Washington Municipal Code §14.18, *supra* note 1, at 14.18.070 – Enforcement.