AMERICAN CIVIL LIBERTIES UNION of MASSACHUSETTS

December 5, 2016

To: Hon. Andrea Campbell, Chair, and
Members of the Boston City Council's Committee on Public Safety and Criminal Justice

Re: Boston Police Department acquisition of social media monitoring software

STATEMENT of the AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS
In OPPOSITON to the proposed acquisition

The ACLU of Massachusetts opposes the Boston Police Department's plan to acquire "technology and services of social media threats" [sic] as described in an October 2016 request for proposals. If recent history is any indication, this technology would, if acquired, be used to monitor First Amendment protected speech and association, and would disproportionately impact communities of color, Muslims, and other vulnerable people and groups.

Social media monitoring software such as the kind sought by the Department facilitates dragnet, automated surveillance of individuals' speech, associations, and activities across social media platforms. The Boston Police Department would better serve its community policing mission by spending the $1.4 million allocated for this surveillance system elsewhere.

In 2012, Boston Police Department documents obtained by the ACLU and National Lawyers Guild through a public records lawsuit revealed that members of the Boston Regional Intelligence Center (BRIC) had compiled dossiers on non-violent antiwar groups such as Veterans for Peace and Codepink. The BRIC created and retained "intelligence reports" designating the peace activists as "extremists," and documented their political disagreements and activities in files that may have been shared with the FBI.[1] We have no reason to believe the Department changed its internal policies or procedures since then, so we assume this type of political monitoring continues.

Records obtained by our sister ACLU affiliate in California indicate that one of the most prominent social media surveillance software corporations, Geofeedia, marketed its product to police departments as useful for monitoring public dissent such as the protests following Michael Brown's killing in Ferguson, Missouri in 2014. The documents referred to unions and activist groups as "overt threats."[2] After the California ACLU published these records, Twitter and Facebook took steps to limit the kinds of information it would allow Geofeedia to collect about its users.[3] But we cannot rely on the goodwill of for-profit corporations to make sure police respect our civil rights and civil liberties in the digital age.

In New York City, law enforcement has used social media monitoring tools to initiate criminal proceedings against people because of their Facebook "Likes" and images. Harlem youth Jelani Henry was one person caught up in the net of the NYPD's social media surveillance. Prosecutors wrongly charged him with murder using his Facebook associations and pictures as

[1] ACLU of Massachusetts and National Lawyers Guild, "Policing Dissent: Police Surveillance of Lawful Political Activity in Boston," October 2012.
[2] Nicole Ozer, "Police Use of Social Media Surveillance Software Is Escalating, and Activists Are in the Digital Crosshairs," September 2016, ACLU.
[3] Erik Ortiz, "Facebook, Twitter, Instagram Block Geofeedia Tool Used for Police Surveillance," October 2016, NBC News.

"evidence." Henry spent nearly two years locked inside the notorious Rikers jail, nine months of which were in solitary confinement. He was ultimately released on bail and the charges against him were dropped, but the experience left him deeply traumatized. The NYPD and prosecutors thought Henry was in a gang because of his Facebook posts, but Henry was just posting pictures of people he grew up with in Harlem. As his mother told a reporter, he was punished not because he did anything wrong, but because of where he was born.[4] When members of the Boston Police Department suggest, as Commissioner Evans did last week on WGBH's Boston Public Radio,[5] that social media monitoring software would be used to fight gangs, we worry that young Black and Latino people in Boston could face police scrutiny or worse, simply because of their online associations, even in the absence of evidence of wrongdoing. Overpolicing doesn't keep communities safe, online or off.

Commissioner Evans also seemed to imply during the radio segment that taking to social media to criticize the treatment of Muslims in America would be grounds for police monitoring.[6] But criticizing American society and policy is constitutionally protected speech, and not an indicator of violence. The internet is awash with political commentary of all stripes, and the vast majority of people who express unpopular or even radical opinions will never hurt anyone.[7]

Contrary to popular misconception, government studies have shown that dragnet surveillance and data mining do not stop terrorism.[8] Indeed, social media surveillance software like that sought by the Department wouldn't only put civil liberties and civil rights at risk; it would also unnecessarily imperil public safety. Police officers and intelligence officials at BRIC should spend their time investigating serious crimes, not reading through algorithmically divined internet dossiers of critics of the incoming Trump administration or U.S. foreign policy.

Acquisition of this software would enable this police department or future police departments to conduct dragnet, warrantless monitoring of the First Amendment protected online speech of thousands of people. Such surveillance chills speech, which not only harms individuals but impoverishes our entire society.[9] If people think there is a police officer documenting their every Tweet, they may be less likely to engage in the most important political and social debates of our time. That hurts us all. Remember: Support for gay rights was considered a marginal, radical opinion in the United States within recent memory.

While the police department already monitors social media in some form, the acquisition of this costly and invasive tool would allow for monitoring of exponentially more people, making it quantitatively and qualitatively distinct from the manual monitoring the Department undertakes today. The time and resource limitations in effect now, without this software, are an appropriate

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[4] Ben Popper, "How the NYPD is using social media to put Harlem teens behind bars," December 2014, *The Verge*.
[5] Tori Bedford, "Commissioner Evans Defends Social Media Monitoring: 'We're Not Going To Snoop On Anybody,'" November 2016, *WGBH*.
[6] "According to Evans, social media monitoring could have assisted police in a shooting at Ohio State University Monday, where the shooter had posted on Facebook expressing frustration at treatment of Muslims in America. 'We're all going back to look at his social page,' Evans said. 'There were a lot of indicators that if someone had hinted us to that individual, then they could have caught that he had some views that were alarming to us.'" Ibid.
[7] Faiza Patel, "Rethinking Radicalization," 2011, The Brennan Center for Justice, NYU Law School.
[8] Ryan Singel, "Data-mining for terrorists not 'feasible,' DHS-funded study finds," October 2008, *Wired Magazine*. Michael Isikoff, "NSA program stopped no terror attacks, says White House panel member," December 2013, *NBC News*; Privacy and Civil Liberties Oversight Board, "Report on the Telephone Records Program Conducted under Section 215 of the USA PATRIOT Act and on the Operations of the Foreign Intelligence Surveillance Court," January 2014.
[9] Hugh Handeyside, "To the Government, Your Latest Facebook Rant Is Raw Intel," September 2016, ACLU.

check against unwarranted surveillance targeting people or groups who are not suspected of serious crimes.

For these reasons, the ACLU of Massachusetts respectfully asks that the Committee on Public Safety urge Mayor Walsh and Commissioner Evans to drop the Department's plans to acquire this software.