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Submission to: USE OF NEW ARTIFICIAL INTELLIGENCE TECHNOLOGIES POLICY - PUBLIC CONSULTATION

We offer the following feedback on the Toronto Police Services Board (TPSB)'s draft *Use of Artificial Intelligence Technology* policy (Policy), which will govern the way the Toronto Police Service (TPS) can obtain and use new artificial intelligence (AI) technologies. We are Ontario academics engaged in an ongoing research project gathering public perspectives on police use of facial recognition technologies, with a particular focus on effective means of building public engagement into the development of oversight structures. As such, we offer our comments on these two aspects of the draft Policy: 1) oversight and 2) public engagement.

OVERSIGHT

We are mindful of the role the TPSB plays in establishing objectives and priorities for the provision of police services by the TPS, and in establishing policies for the effective management of the police force through its oversight of the Chief of Police (Chief). We realize that oversight of operational matters falls to the Chief, and lies outside the jurisdiction of the TPSB. As such, we commend TPSB for a draft policy that recognizes and endeavors to address the many difficult, rights-threatening issues that AI technologies present, while still acting within the prescribed role of the Board. This means, however, that the TPBS will not be able to develop a policy that will provide the robust independent oversight that we believe is necessary to ensure that AI technologies are used only if and when they can be used in rights-protective ways. This is not to say that the TPSB has no role to play in a larger network of oversight mechanisms and bodies, but rather that TPSB's policy will by design only ever be part of a bigger oversight picture. Consequently, we offer the following suggestions for how the draft policy could be strengthened to improve the way TPSB would serve as an important component of such a broader oversight structure.

With regard to the draft policy's requirement that the Chief develop procedures and policies for the review and assessment of new AI technologies "in consultation with experts and stakeholders", our view is that this requirement is too soft. What is needed are more explicit requirements regarding *who* must be consulted (technical experts, legal experts, diverse community-based organizations, civil liberties and human rights organizations, the Information and Privacy Commissioner, the general public) and guidance as to *how* these consultations should be conducted. If these consultations are meant to be an effective means of ensuring that the procedures and policies that govern review and assessment of these technologies are

up to the job of protecting individual and collective rights and interests, then they will need to meaningfully engage with external, and potentially oppositional, viewpoint holders.

At present, the draft policy leaves far too much of the analysis of risks and impacts to the internal practices of the TPS. While there are many mechanisms for evaluating the various risks that prospective adoption of an AI technology holds (e.g. “minimum risk analysis”, “privacy risk analysis”, “initial risk analysis” as well as “appropriate tools to carry out such impact analyses”) all are currently only subject to the loose “in consultation with experts and stakeholders” general requirement. These sorts of analyses, however, require neutral, external eyes to evaluate the risks: that is, technical, legal and social impact experts and stakeholders not employed by the TPS itself who can perform an independent oversight role. For instance, while the draft policy sets out criteria for classifying a particular AI technology as posing “extreme risk” where the training or transactional data is “known or thought to be illegally sourced”, there is no indication that this determination will come from anywhere but the TPS’s own in-house counsel. This exclusive use of internal legal analysis poses serious problems for transparency, given that advice given by TPS legal counsel will not be subject to public inspection.

Similarly, while we support the requirement to post the procedures and detailed risk assessment tools on the TPS website, technical experts need to be able to independently assess the tools themselves, for effectiveness, for bias, and for data quality. While it may not be realistic to expect the TPS itself to make prospective tools available where the technology is proprietary to a private company, it would be possible to require that any AI technology that is approved for adoption must have been analyzed by neutral, independent technical experts.

While we support the requirement that TPSB evaluate and approve high and moderate risk AI technologies at the earliest point in the process (including where TPS is testing a free trial version), we also are concerned that the TPSB does not have the required expertise and independence to assess the reports it receives from the Chief prior to granting approval. For instance, the Chief is rightly required to report:

5.(f) The steps the Service will take or has taken to ensure the AI technology is used only in accordance with applicable privacy laws, the Human Rights Code and the Charter of Rights and Freedoms and other legislative and legal requirements, including training, and governance structures[.]

However, it remains unclear whether external legal experts will be consulted to arrive at these determinations or whether there will be public transparency regarding them. Further, the Chief is required to report:

5. (h) An analysis of possible unintended consequences of the proposed use of the AI technology, including possible effects on procedural fairness, due process, gender and race equality, or disproportionate impacts on Human Rights Code protected groups, and steps the Service will take to mitigate these unintended consequences’

and

(n) Proposed indicators that will be tracked by the Chief of Police until at least 12 months after full deployment of the new AI technology to determine whether the AI technology is achieving its intended goal and whether its deployment has had any unintended consequences[.]

Again, it is unclear how either of these compilations and analyses of “unintended consequences” will incorporate external review. In all cases, we suggest that a requirement of some external, independent review be a requirement incorporated into the policy.

Finally, we appreciate the requirement that TPS post an up-to-date list of AI technologies currently used by TPS on its website, with relevant details. This is a step in the right direction, though if our suggestion above is followed, this list should also indicate that there has been independent review of the technology, and by whom.

PUBLIC ENGAGEMENT

We commend the draft policy for requiring the Chief to develop and implement a public engagement strategy. However, we are concerned that the current framing does not truly engage public input in the decision-making process in that it aims “to transparently inform the public of the use of the new AI technology” which implies that it will occur after the decision to use this technology has already been made. This is not true public engagement, and does little to improve trust in any police service. As with our suggestions above, we consider consultation with external experts on public engagement strategies to be an important and at present missing component of this requirement.

Similarly, somewhat buried in the ongoing monitoring and reporting requirements for high risk technologies are “the results of a post-deployment public consultation on the impacts of the deployment”: again, there is no guidance as to what such a public consultation should look like. In our research, we have found that too often these sorts of consultations are merely performative and do not result in public sentiment that diverse views have been heard. Again, the Chief should be required to consult with external, independent experts in public engagement strategies in order to ensure that the format of the consultations is effective and broadly satisfying.

We appreciate the commitment to establishing a portal for the public to express concerns pertaining to AI technologies used by the TPS through the TPSB’s website. However, here too the TPSB’s analysis and reporting of these concerns should be more open. Rather than the Executive Director only submitting a summary of concerns, the nature of all concerns received should be reported, and be subject to public inspection. The same should go for concerns expressed by members of the public directly to the TPS. A complete record of public concerns that is subject to public access would help ensure that there is public oversight of how the TPS is responding to such concerns.

We reiterate our commendation of the TPSB for taking on this undoubtedly complex task of devising a policy framework for police procurement and use of AI technologies in Toronto. We look forward to seeing the next version of this policy, and are happy to discuss any of our suggestions and comments further.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrea Slane". The signature is fluid and cursive, with the first name being more prominent.

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A handwritten signature in black ink, appearing to read "Lisa Austin". The signature is cursive and somewhat stylized, with the first name being the most legible part.

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A handwritten signature in black ink, appearing to read "Chris O'Connor". The signature is cursive and somewhat stylized, with the first name being the most legible part.

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