To: Toronto Police Services Board

Date: 15 December 2021

Re: Use of New Artificial Intelligence Technologies Policy - Public Consultation

**Introduction**

This letter is in response to the invitation to the public for comments on the draft Use of Artificial Intelligence Technologies Policy developed by the Toronto Police Services Board. There are five issues with the draft policy on Use of Artificial Intelligence Technologies.

1. Coverage of Pilot Projects
2. Proactivity through Procurement Processes
3. Need for an Algorithm Register
4. Internal and External Audits
5. Intersections with other policies and strategies

**1. Coverage of Pilot Projects**

The policy does not adequately cover pilot projects of AI applications by Toronto Police Service (TPS). A number of recent uses of AI by law enforcement agencies across Canada have been in the form of pilot projects, including the use of Clearview AI (Mac, Haskins, Sacks, and McDonald, 2021). These pilot projects are not usually paid for and therefore are not part of procurement records. Pilot projects are also often not formally sanctioned through the management decision making process and therefore management is often unaware of the piloting of AI applications by rank and file employees. AI applications have different risks than other software applications and therefore all pilot AI implementations, whether they are formally procured or not, need to be approved by TPS management internally, and then listed publicly in accordance with the stated requirements for all procured AI applications.

**2. Proactivity Through Procurement Processes**

Procurement Processes are a major point of leverage in addressing the fairness and bias issues that are now known for AI applications. Procurement processes can be proactive and can mitigate risks with AI applications before they happen, rather than taking a reactionary approach in dealing with issues after they happen. For example, TPS can adopt the approach taken by the government of Canada in creating a list of AI vendors that meet stated requirements (Government of Canada, 2021). A list of preferred AI vendors for the TPS would need to pass a minimum set of requirements and subsequently a public list of preferred AI vendors will enable citizens and community groups to review these organizations. As part of the procurement and contracting process TPS can follow Open Contracting standards to publish the contracts before the contract vendor is decided, and after a contract with a vendor is signed (Open Contracting Partnership, 2021). Proactive procurement policies also need to ensure that the AI application functions are not simply outsourced to vendors. i.e. it is not only sufficient to not be using a harmful or biased AI application, but TPS cant circumvent the process by simply outsourcing the task to a different organization that deploys a harmful or biased algorithm. Governments in Canada often do not engage in some forms of data collection due to privacy legislation, but purchase this data form other organizations who do not follow the same rules. In other words the principles implemented for AI fairness and bias by the TPS need to be implemented along the entire “Data Supply Chain” involving external vendors.

**3. Need for an Algorithm Register**

The policy does not require the active publication of a list of AI applications used by TPS. A list of AI applications used by the TPS must be published and kept current as part of an Algorithm Register. An Algorithm Register is a publicly available listing of algorithms used by government agencies (Open Government Partnership, 2021). The term algorithm is used intentionally instead of AI, as many software applications use AI for some functions, but not all functions. An Algorithm Register ensures all software applications are listed rather than getting into debates about whether an application is an AI application or not when it utilizes AI for some, but not all functions. An Algorithm Register enables public oversight of the use of technology applications by law enforcement. As a related item, the policy explicitly requires the name of the company but not the product. For large AI vendors such as IBM, Microsoft etc. who sell hundreds of AI related products, simply listing the name of the company is insufficient, the name of the product must be clearly published as part of any register.

**4. Internal and External Audits**

The policy specifies information that could be auditable and alludes to audits but does not specify the requirements for audits. Both internal audits and external audits are required to mitigate the issues of bias and fairness prevalent in AI applications. The first line of defense against bias in AI applications is internal audits performed by the TPS themselves on all AI projects. The advantage of internal AI bias audits, is that they can be applied to all projects in an organization, and tailored to organization specific culture and strategy. The disadvantage of internal AI bias audits, is that non-mandatory requirements may not be followed by all projects consistently. Internal audits often have no enforcement mechanisms for ensuring risks are adequately identified and addressed. The advantage of external AI bias audits, is that they can recognize and identify risks that were not identified internally. External audits are tools for accountability in managing risks, particularly when they are made publicly available. The disadvantage of external AI bias audits, is that external auditing organizations may not have incentives to be completely independent, and therefore some risks don’t get identified or addressed. Therefore both internal and external AI bias audits are required since they are complementary. Although TPS is the appropriate organization for internal AI bias audits, the Toronto Police Services Board is the appropriate organization for leading external AI bias audits.

**5. Connection to other Policies and Strategies**

The Toronto Police Service has in partnership with community groups and in response to legislation, developed a Race Based Data Collection Strategy (Toronto Police Service, 2021). The current focus of this strategy is limited to in person interactions between police officers and citizens. Police agencies collect data from citizens in many ways, from street checks, to traffic stops, to technology mediated collection of data utilizing AI applications. The improvements in race based data collection processes actively negotiated with community groups that have culminated in co-created policies cannot be separate and siloed from AI applications. Whenever the police collects data on citizens, whether it is through facial recognition applications such as Clearview AI, sound recognition applications such as Shotspotter, or mobile device identification such as Stingray, the approved policies on race based data collection must be applied. The Use of Artificial Intelligence Technologies policy cannot be considered in isolation without applying the intersecting requirements from other policies. Otherwise we could end up in a situation where for example the race based data collection policy is applied to non-technology interactions, mitigating some risks, while the same risks are perpetuated or even amplified through AI applications without adequate analysis of intersection of policies.

**References**

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