

**New York City Council
Committee on Technology**

Rejecting Corporate Capture of New York City’s Public AI Infrastructure Projects

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Written Testimony of Kate Brennan
Associate Director, AI Now Institute

Good afternoon Chair Gutiérrez and the members of the Committee on Technology. My name is Kate Brennan and I am the Associate Director at the AI Now Institute, a New York City-based organization producing policy research on artificial intelligence. In particular, we focus on policy strategies to shape artificial intelligence in the public interest and redirect the AI industry away from its current path: unbridled commercial surveillance, power concentration in a few dominant firms, and a lack of public accountability. With those interests in mind, I am testifying today regarding the MyCity Portal.

Introduction

We are at a critical inflection moment in the trajectory of AI technology development. Large companies are selling narratives that AI is going to change the world and our lives for the better. In particular, we are repeatedly told that AI can be used to make our governments and public institutions more “efficient” and effective.¹ Under this logic of efficiency, governments are funneling millions of dollars into private contracts to develop AI technology presumably for the public’s benefit.

The MyCity portal appears to be following in a similar direction. Beginning with his earliest campaign promises, Mayor Adams has said that his vision for MyCity is to establish a single data platform for all city government services, referring to himself as an “efficiency czar.”² This vision includes data sharing across agencies to “go from a reactive management approach to being proactive and, eventually, predictive.”³ As we know, “predictive” is a buzzword used to imply the use of AI. Predictive management approaches typically leverage the use of automated decision systems (“ADS”), which refer to “data-driven technologies used to automate

¹ Mayor Adams Releases First-of-Its-Kind Plan For Responsible Artificial Intelligence Use In NYC Government, Oct. 16, 2023, <https://www.nyc.gov/office-of-the-mayor/news/777-23/mayor-adams-releases-first-of-its-kind-plan-responsible-artificial-intelligence-use-nyc#/0>.

² Samar Khurshid, “Eric Adams Vows to Overhaul How City Government Works; Experts Point to Several Essentials to Following Through,” Gotham Gazette, Oct. 31, 2021, <https://www.gothamgazette.com/city/10870-eric-adams-promises-overhaul-how-city-government-works-experts?edchoice=side>

³ Id.

human-centered procedures, practices, or policies for the purpose of predicting, identifying, surveilling, detecting, and targeting individuals or communities.”⁴

Many of the harms of uncritical use of ADS without safeguards are now well known, and we have experience to draw from when it comes to New York City’s use of ADS. In 2019, a wide ranging NGO coalition produced a “Shadow Report” (a response to the report published by the City’s ADS Task Force) that documented the various intractable concerns with the use of ADS in government—including concerns with bias and discrimination as well as privacy and security harms—and offered actionable policy recommendations for governments, advocacy coalitions, and legislators around the use of ADS in providing government services.⁵

My testimony today addresses **three principal concerns** with New York City’s current trajectory of the MyCity Portal, and in particular the future vision of MyCity as a centralized, predictive data platform. First, MyCity Portal must not be used to justify and entrench Big Tech corporate interests in public infrastructure while creating a centralized surveillance system that violates New Yorkers’ privacy and autonomy. Second, we cannot allow private firms to hide behind corporate secrecy laws and must ensure corporate accountability within public infrastructure projects. Third and finally, we must push back against the City’s prioritization of outsourced private contracts over in-house, public tech jobs.

1. All Roads Lead to Big Tech? MyCity Reliance On Private Contractors Exacerbates Power Concentration in the Tech Industry

The current backbone of MyCity’s technological infrastructure is being built through private contracting and corporate partnerships. Despite a major campaign promise to build the MyCity portal in-house with city workers, the New York City government has spent more than \$3.4 million dollars contracting with 14 different technology firms to build the portal.⁶ A search on NYC Checkbook reveals over 50 external contracts for the MyCity Portal development, with totals exceeding over \$10 million dollars.⁷ The City recently awarded over \$5M to Mobility Capital Finance (“MoCaFi”),⁸ a private financial tech company who just raised \$23.5M Series B funding. Finally, we know that the city contracted with Microsoft to build the MyCity Chatbot, though the financial details of this investment are unclear given the opacity of the city’s Master Service Agreement with Microsoft which exists outside of the public record.

⁴ Rashida Richardson, ed., “Confronting Black Boxes: A Shadow Report of the New York City Automated Decision System Task Force,” AI Now Institute, December 4, 2019, <https://ainowinstitute.org/ads-shadowreport-2019.html>.

⁵ Id.

⁶ Samar Khurshid, “Civic Tech Experts Question Mayor Adams' Decision to Contract Out Signature 'MyCity' Portal,” Gotham Gazette, May 17, 2023, <https://www.gothamgazette.com/city/11961-mayor-adams-mycity-contracts-services>.

⁷ Checkbook NYC,

https://www.checkbooknyc.com/smart_search/citywide?search_term=mycity!*domain%3Dcontracts&page=0

⁸ “Community-Based Technology Platform, Disbursement Services and Related Financial Services,” The City Record Online, <https://a856-cityrecord.nyc.gov/RequestDetail/20231213101>.

Building a “predictive” dashboard for New York City will all but require partnering with one of these large corporations. Already we know that the MyCity Chatbot was built using Microsoft’s Azure AI technology. Other government agencies around the country have contracted with other Big Tech firms to provide crucial government services. For example, the Nevada Department of Employment, Training and Rehabilitation is contracting with Google AI to issue rulings on people’s unemployment benefits⁹ and the Minnesota Department of Driver and Vehicle Services partnered with Google to provide a virtual assistant.¹⁰ Even where agencies do not contract with Big Tech firms directly, these firms benefit because they control all essential inputs in the AI supply chain, such as cloud computing, data centers, and foundation models..¹¹

Why is this a problem?

We’re at a key inflection point where the perils of market concentration in the tech industry are now writ large: from the risks of creating single points of failure for security breaches¹² to the stifling of innovation that occurs when large monopolies become too big to fail.¹³ The current AI boom only further entrenches power in the existing Big Tech firms as they leverage their dominance across different points of the AI supply chain—from data advantages accumulated through unregulated commercial surveillance over the last decade and control over cloud and computational power, to a clear edge when it comes to AI talent. When governments invest millions of dollars into building public AI infrastructure projects with private companies, these large firms receive more data, gain more power, and become more deeply entrenched into the tangled webs of local government infrastructure.

Moreover, this concentrated power implicates significant individual privacy concerns as well as concerns regarding the stability of public tech infrastructure.

a. Concentrated Tech Power Implicates Serious Concerns for Individual Privacy and Unlawful Surveillance

⁹ Eric Neugeboren, “Nevada Agencies Eye Artificial Intelligence to Speed Jobless Claims, DMV Queries,” The Nevada Independent, June 3, 2024, <https://thenevadaindependent.com/article/nevada-agencies-eye-artificial-intelligence-to-speed-jobless-claims-dmv-queries>.

¹⁰ Department of Public Safety Blog, “DVS Language Project’s Service to Minnesotans Receives National Recognition,” October 16, 2023, <https://dps.mn.gov/blog/Pages/20231016-dvs-language-project-nascio.aspx>.

¹¹ Jai Vipra and Sarah Meyers West, “Computational Power and AI,” The AI Now Institute, Sept. 27, 2023, <https://ainowinstitute.org/publication/policy/compute-and-ai>.

¹² Declan Harty and Steven Overly, “Gensler’s Warning: Unchecked AI Could Spark Future Financial Meltdown,” POLITICO, March 19, 2024, <https://www.politico.com/news/2024/03/19/sec-gensler-artificial-intelligence-00147665>.

¹³ Lina Khan, “Remarks by Chair Lina M. Khan As Prepared for Delivery Carnegie Endowment for International Peace, March 13, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/2024.03.13-chair-khan-remarks-at-the-carnegie-endowment-for-intl-peace.pdf.

Public infrastructure projects like MyCity will allow Big Tech firms to entrench their data advantages using citizen data and create more opaque infrastructures for citizen surveillance. This, in turn, worsens market concentration and raises serious privacy flags.

For example, the City’s Chief Technology Officer Matthew Fraser outlined a vision for MyCity that includes replacing traditional government payroll and city benefit checks with centralized digital wallets that allow government agencies to track how New Yorkers are spending their money. In fact, Fraser earnestly suggested a dystopian surveillance system where the city could provide “incentive points” for people who spend their food benefits on “something healthy versus sugary snacks or soda.”¹⁴ This raises serious privacy concerns, and begs the question why tracking intimate data about people’s spending habits is necessary for the effective or efficient delivery of government services.

Further, who will control this data? It is not hard to imagine how information about people’s spending habits may become training data for automated decisions made across different agencies, especially in light of the recent “One City” Act proposed in the New York State Assembly. This proposed Act allows agencies to share data that would otherwise be restricted for disclosure to another agency for the purposes of providing government benefits or services.¹⁵ This means that people’s food spending habits may be used against them by agencies providing other essential services, such as agencies providing the allocation of necessary health resources.

Data may also be used by the NYPD to increase the surveillance and policing of low-income, criminalized, communities of color. In fact, in an interview with the New Yorker, Mayor Adams said that he hopes to turn MyCity into a “CompStat” for the city,¹⁶ which refers to a centralized predictive policing platform that is now well-documented to produce discriminatory outcomes.¹⁷

Finally, we have seen how government data leaks have enabled private actors to gain unauthorized access to people’s sensitive data. For example, in 2015 Google gained access to private records of over one million patients of Britain’s National Health Service (NHS).¹⁸ Without proper safeguards in place, private tech firms can be enriched with massive amounts of people’s private data without their consent.

b. More Generally, Concentrated Power Can Lead to Critical Lapses in Stability and Security, Which Can Reverberate Across City Governance Infrastructure

¹⁴ Nicholas Liu, “How the Adams Administration is Thinking About Blockchain and Cryptocurrency,” *Gotham Gazette*, March 17, 2023, <https://www.gothamgazette.com/city/11883-city-council-mayor-adams-blockchain-cryptocurrency>.

¹⁵ New York Assembly Bill A9642, <https://www.nysenate.gov/legislation/bills/2023/A9642>

¹⁶ Eric Lach, “Eric Adams Wants to CompStat New York City,” *New Yorker*, May 22, 2021, <https://www.newyorker.com/news/our-local-correspondents/eric-adams-wants-to-compstat-new-york-city>.

¹⁷ Ángel Díaz, “New York City Police Department Surveillance Technology,” *Brennan Center for Justice*, Oct. 4, 2019, <https://www.brennancenter.org/our-work/research-reports/new-york-city-police-department-surveillance-technology>.

¹⁸ “DeepMind Faces Legal Action Over NHS Data Use,” *BBC*, Oct. 1, 2021, <https://www.bbc.com/news/technology-58761324>.

Overreliance on a single technology provider also implicates security concerns for our public systems more generally, which can lead to disastrous effects on the provision of critical government services.

We need look no further than the July 2024 CrowdStrike global technology outage, where over 8 million computer systems running Microsoft Windows crashed due to a faulty software update.¹⁹ The outages had widespread and damaging effects across numerous industries and government services, including 911 operators, hospitals, and airlines. The fact that one faulty software update caused a major, global outage reflects not only the fragility of a concentrated tech infrastructure but also the widespread negative ramifications this concentration has for delivering essential public services.

Global leaders have raised the alarm on the security risks posed by a concentrated tech ecosystem. The Chair of both the Security & Exchange Commission and the Bank of England have raised concerns that concentrated ecosystems are creating single points of failure that constitute systemic risks to the financial order.²⁰ FTC Commissioner Lina Khan has warned that concentrated industries are vulnerable to cyberattacks or outages that can lead to significant national security risks.²¹

Given the state of the industry, and the broader federal and global scrutiny on accountable concentrated power in Big Tech firms, it is worth asking whether New York City wants its public infrastructure to be built on the backs of these large, corporate interests.

2. Resisting Corporate Secrecy and Ensuring Corporate Accountability

Outsourcing city AI technology to private firms heightens the risk that private companies will leverage corporate secrecy laws to evade accountability and make it difficult for the public to seek redress when their systems fail. As we documented in our 2019 Shadow Report, vendors of ADS tend to invoke trade-secrecy or confidentiality claims whenever government agencies, members of the public request, or parties to a legal complaint request information about their

¹⁹ Adam Satariano, Paul Mozur, Kate Conger and Sheera Frenkel, “Chaos and Confusion: Tech Outage Causes Disruptions Worldwide,” NYTimes, July 19, 2024, <https://www.nytimes.com/2024/07/19/business/microsoft-outage-cause-azure-crowdstrike.html>.

²⁰ Declan Harty and Steven Overly, “Gensler’s Warning: Unchecked AI Could Spark Future Financial Meltdown,” POLITICO, March 19, 2024, <https://www.politico.com/news/2024/03/19/sec-gensler-artificial-intelligence-00147665>.

²¹ Lina Khan, “Remarks by Chair Lina M. Khan As Prepared for Delivery Carnegie Endowment for International Peace, March 13, 2024, https://www.ftc.gov/system/files/ftc_gov/pdf/2024.03.13-chair-khan-remarks-at-the-carnegie-endowment-for-intl-peace.pdf.

ADS. As we wrote, this functions as a barrier to due process and makes it difficult to “assess bias, contest decisions, or remedy errors.”²²

Legal scholars have identified how this outsourcing leaves public officials and the public at large without understanding of the system’s mechanics or the legal risks they may pose, which range from “discrimination and disparate treatment to lack of due process, discontinuance of essential services, and harmful misrepresentations.”²³ If a government agency were to engage in discrimination, disparate treatment, or lack of due process when providing government services, they could be held liable for Constitutional violations. However, private companies cannot be held legally liable for Constitutional violations because they are not state actors, thus creating a significant gap in accountability.²⁴

We have already seen this harmful cycle play out with the MyCity Portal. In 2023, New York City partnered with Microsoft to build and launch a “MyCity Chatbot” that provides wrong—and illegal—information to people. For example, the chatbot told one user that it was legal to fire an employee if they file a sexual harassment complaint.²⁵ (It is not.²⁶) As of this testimony, the chatbot still warns users that it “may occasionally provide incomplete or inaccurate responses,”²⁷ making it difficult to understand how fact-checking an AI bot on the very answers it is supposed to provide benefits anyone in the name of efficiency—that is, except Microsoft, the private company responsible for building the chatbot.

Crucially, when the city attempted to understand the data the Chatbot was trained on, Microsoft claimed that the training data was “proprietary to the vendor,” evading any accountability and leaving government oversight committees in the dark.²⁸ In an investigation by The Markup into the problems with the chatbot, Microsoft “declined to comment or answer questions about the company’s role in building the bot.”²⁹

This is one of potentially countless examples. While the City has been remarkably quiet and obscure about what it is developing within the MyCity Port, we know that over 50 contracts have been signed outsourcing development to private firms.

²² Rashida Richardson, ed., “Confronting Black Boxes: A Shadow Report of the New York City Automated Decision System Task Force,” AI Now Institute, December 4, 2019, <https://ainowinstitute.org/ads-shadowreport-2019.html>.

²³ Kate Crawford and Jason Schultz, “AI Systems as State Actors,” *Columbia Law Review*, 2019.

²⁴ *Id.*

²⁵ Jake Offenhardt, “NYC’s AI Chatbot was Caught Telling Businesses to Break the Law. The City Isn’t Taking it Down,” AP News, Apr. 3, 2024, <https://apnews.com/article/new-york-city-chatbot-misinformation-6ebc71db5b770b9969c906a7ee4fae21>

²⁶ New York State Human Rights Law, Section 296, Unlawful Discriminatory Practices.

²⁷ MyCity Chatbot Beta, <https://chat.nyc.gov>.

²⁸ New York City Office of Technology & Innovation, “Summary of Agency Compliance Reporting of Algorithmic Tools,” 2023, <https://www.nyc.gov/assets/oti/downloads/pdf/reports/2023-algorithmic-tools-reporting-updated.pdf>

²⁹ Colin Lecher, “NYC’s AI Chatbot Tells Businesses to Break the Law,” *The Markup*, Mar. 29, 2024, <https://themarkup.org/news/2024/03/29/nycs-ai-chatbot-tells-businesses-to-break-the-law>

In our 2019 Shadow Report, we offered actionable recommendations to government agencies to protect against this evasion of corporate responsibility. We urge this Committee to take these recommendations seriously for the future development of the MyCity portal:

- Agencies should not procure or use ADS that are shielded from independent validation and public review because of trade-secret or confidentiality claims.
- City agencies should not enter purchase agreements or licenses that require the agency to indemnify vendors for any negative outcomes.
- If a contractor is contracting with the City of New York, the City of New York needs to ensure that the technology they are purchasing is not being used to actively discriminate.

3. New York Must Prioritize City Jobs Over Corporate Contracts

Third and finally, MyCity Portal should be built by public tech employees and not outsourced private contractors. As noted above, New York City has spent millions on over 50 outsourced contracts for the MyCity Portal.³⁰

There are three primary reasons why it is important that New Yorkers—rather than private, outsourced contractors—are building the MyCity portal.

First, New York City should use the MyCity investment as a key opportunity to develop the pipeline of technical workers who can support the long-term sustainability and growth of city technical infrastructure. Outsourcing jobs to private companies ensures a dependent relationship on outside firms and depletes the talent pool of public workers.

Second, leveraging city workers ensures that New Yorkers have an input in the way in which technology is being built. If MyCity is genuinely supposed to be a tool to make it “easier for New Yorkers to access city services,” as Mayor Adams suggested,³¹ New Yorkers should have a direct say in how those services are provided to the public.

Third and finally, hiring city workers is particularly important for their ability to organize against nefarious uses of AI technology that may be used on the MyCity Portal in the future, for example, if the NYPD begins to use cross-agency data for surveillance or harmful predictive policing practices. Outsourcing creates a lack of accountability measures to the New York City public at large.

³⁰ Samar Khurshid, “Civic Tech Experts Question Mayor Adams' Decision to Contract Out Signature 'MyCity' Portal,” Gotham Gazette, May 17, 2023, <https://www.gothamgazette.com/city/11961-mayor-adams-mycity-contracts-services>; Checkbook NYC, https://www.checkbooknyc.com/smart_search/citywide?search_term=mycity!*domain%3Dcontracts&page=0.

³¹ NYC Gov., “Mayor Adams Launches First Phase of MyCity Portal to Easily Help New Yorkers Check Eligibility, Apply For, and Track City Services and Benefits,” March 29, 2023, <https://www.nyc.gov/office-of-the-mayor/news/217-23/mayor-adams-launches-first-phase-mycity-portal-easily-help-new-yorkers-check-eligibility-#0>

We strongly recommend this Committee hold the Adams Administration to its early campaign promise and commit to building MyCity fully in house, thus supporting public tech workers over corporate profit.

Conclusion

MyCity could change course and be a model for ground up, democratically governed digital infrastructures.

But it is far from it on the current path. **We must reject public investment in AI projects that line the pockets of large corporations at the expense of New Yorkers' privacy, autonomy, and jobs.** This Committee has the opportunity—and the responsibility—to interrupt MyCity's development trajectory and ensure that New York City invests in technology built by and for its people.