



Written by [Michael Tennant](#) on October 15, 2015

NYPD's X-ray Van Program Lacks Transparency

The New York Police Department (NYPD) is using vans equipped with X-ray scanners to secretly search vehicles, endangering New Yorkers' constitutional liberties and possibly their health. And despite promises of transparency and a court order, the department is refusing to disclose even the most mundane details about the vans and how they are employed.



The NYPD owns a number of these Z Backscatter Vans, which were developed by Massachusetts-based American Science and Engineering (AS&E). The vans, which look like plain, white panel trucks, were first used by the military in Iraq and Afghanistan to detect roadside and car bombs. As [The New American](#) reported in 2010, AS&E has since sold hundreds of the vans to various U.S. and foreign government agencies, including law-enforcement agencies such as the NYPD.

Three years ago, while investigating security equipment that exposes people to radiation, the nonprofit website ProPublica filed a request with the NYPD for "police reports, training materials, contracts and any health and safety tests on the vans under the state's Freedom of Information Law," according to the group's [Michael Grabell](#). ProPublica said it received responses to similar inquiries from other government agencies, but the NYPD stonewalled, refusing even to say how much taxpayer money it's spending on the vans, which reportedly cost between \$729,000 and \$825,000 each.

ProPublica took the NYPD to court. There, then-NYPD deputy commissioner of counterterrorism Richard Daddario declared that releasing the requested documents "would hamper the department's ability to conduct operations and endanger the lives of New Yorkers," thereby admitting such documents existed, reported Grabell. The department's court records, by contrast, indicated that "it did not have any records detailing its policies for privacy protections, how long images from the X-ray vans could be kept or who in the NYPD could view the images," he penned.

The NYPD's contradictory testimony did not help its case, and in January, New York State Supreme Court Judge Doris Ling-Cohan ruled in favor of ProPublica. Dismissing the NYPD's arguments as "mere speculation" and "patently insufficient," Ling-Cohan [wrote](#), "While this court is cognizant and sensitive to concerns about terrorism, being located less than a mile from the 9/11 site, and having seen firsthand the effects of terrorist destruction, nonetheless, the hallmark of our great nation is that it is a democracy, with a transparent government."

Police Commissioner Bill Bratton had, in fact, promised the utmost transparency soon after his appointment to the post. "There should be no secrets in the NYPD," Bratton [told](#) the Citizens Crime



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Commission. “We are going to do more to open up the organization, to make it more inclusive, to make our information more readily available to the public, and to try and format it in a way that is more easily retrievable.”

Yet when concerned citizens asked for information on the X-ray vans, the NYPD fought it all the way to the state supreme court; and when it lost there, it immediately appealed. Now the New York Civil Liberties Union (NYCLU), the Empire State’s American Civil Liberties Union (ACLU) affiliate, has filed a motion to enter an amicus brief urging the appellate court to uphold Ling-Cohan’s decision.

“People should be informed if military grade x-ray vans are damaging their health with radiation or peering inside their homes or cars,” NYCLU executive director Donna Lieberman said in a [press release](#). “New Yorkers have a right to protect their health, welfare and privacy.”

Queried about the NYCLU’s motion Tuesday, Bratton remained defiant.

“They’re not used to scan people for weapons,” he [told](#) reporters. “The devices we have, the vehicles if you will, are all used lawfully and if the ACLU and others don’t think that’s the case, we’ll see them in court — where they’ll lose! At this time and the nature of what’s going on in the world, that concern of theirs is unfounded.”

Asked for details on the vans, Bratton said, “Those are issues I’d prefer not to divulge to the public at this time. I will not talk about anything at all about this — it falls into the range of security and counter-terrorism activity that we engage in.”

Bratton is hiding behind every American official’s post-9/11 excuse for secrecy: terrorism. Under this theory, Americans should never question whatever their government does in the name of security, even if it appears to violate the Constitution or endanger their health.

However, as ProPublica president Richard Tofel aptly put it, “Vague and wholly conclusory allusions to possible terrorist threats do not and should not create exceptions to our laws on government transparency.”

It takes little imagination to see how the X-ray vans could easily be used to violate the Fourth Amendment, allowing the police to search vehicles, shipping containers, individuals, and possibly even buildings without a warrant. It’s known, for instance, that every vehicle passing by the 2004 Republican convention in New York was forced to drive between two of the vans, which then scanned it for explosives. Also, an NYPD official, speaking on condition of anonymity, told [Newsday](#) that the vans “have appeared at special events such as the recent UN General Assembly meeting in Manhattan.”

There are also health concerns related to the use of the vans. Assuming the NYPD’s vans emit the same amount of radiation per scan as those of the U.S. Customs Department (which did respond to ProPublica’s earlier requests), they are emitting very low levels of radiation that are “well within industry standards for acceptable exposure,” wrote Grabell. However, he added, “The long-term health risks of low levels of radiation are unknown. But the National Academy [of Sciences] has taken the position that the danger comes from cumulative exposure and that even trivial amounts increase the risk of cancer.”

Of course, there’s no way of knowing whether the NYPD is using the vans to circumvent the Constitution or taking measures to ensure that they aren’t exposing people to excessive levels of radiation — Grabell noted that “many agencies have adopted strict policies to address potential harm from backscatter X-ray scans,” such as only using the scanners on unoccupied vehicles — because the



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department flatly refuses to release any documents on the vans whatsoever.

Does that mean that there is some chicanery afoot? Not necessarily. But as those with a mindset similar to Bratton's are fond of reminding surveillance-state skeptics, if the NYPD hasn't done anything wrong, then it has nothing to hide. So why won't the department come clean?

Photo of X-ray image of scanned vehicle in TSA Z Backscatter Van: AP Images



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