



Statement for the New York City Council Committee on Public Safety for its Nov. 20, 2023 Oversight Hearing on NYPD Radio Encryption held jointly with the Committee on Technology and the Committee on Government Operations

The Deadline Club is the New York City chapter of the Society of Professional Journalists, the country's oldest journalism organization with a membership of more than 4,000 and a mission that includes promoting the free flow of information to an informed citizenry.

The Society's Code of Ethics has been the news industry's most widely accepted moral guidepost for more than 50 years. Among its planks are:

- *Recognize a special obligation to serve as watchdogs over public affairs and government. Seek to ensure that the public's business is conducted in the open, and that public records are open to all.*

This foundational tenet of the Society is directly at odds with the New York Police Department's yet-to-be defined plans, which are already being implemented, to deny the public and the press access to its radio transmissions by encrypting them.

Encrypting NYPD radio transmissions would shroud the activities of one of the city's key public agencies in an opaque fog. News vital to New Yorkers – civil unrest, hostage situations, active shooter incidents, manmade and natural disasters – would be suppressed at the moment they need it most. If news of these events finds its way into the public domain at all, it would be well after the fact and at the discretion of NYPD public information officers.

Worse, a police radio blackout, or even delayed transmissions, could lead to the spread of misinformation. Journalists are trained to report news accurately and quickly. But just because news crews, photographers and reporters aren't at a major crime scene that the NYPD has kept under wraps doesn't mean that other people won't be there. That would leave the initial reporting of such events to a random gathering of people who are untrained in reporting, but equipped with cellphone cameras and the ability to add commentary on social media that may or may not comport with the facts.

It was access to police radio transmissions that enabled journalists to quickly respond to and report countless breaking news stories, including the September 11 attacks, the 2016 Chelsea bombing and the chokehold death of Eric Garner.

Several police departments across the country have already confronted the encryption issue with mixed results. Some have declined to go ahead with it, others have kept the press plugged in while others have closed off their communications or put them on a 30-minute delay.

As the largest U.S. police force, the NYPD wields influence beyond the five boroughs. It is therefore disturbing, not only for the city but the entire country, that the NYPD has already blacked out its communications in 10 Brooklyn precincts. The NYPD has been less than forthcoming about how it plans to continue its encryption rollout.

It's not as if New York's journalism community hasn't tried to find common ground with the NYPD.

Aware that encryption was being planned, representatives of several press organizations in the city, including the Deadline Club, met with NYPD officials in January to register our concern and gather facts. The officials asked our group, known as the New York Media Consortium, to make our case in writing, which we did in February. In return, we got very little information about how or when the encryption project would be handled or what was driving the decision to launch it, other than some vague concerns about security.

It's not easy for one party to find a solution for another party's problem when the problem hasn't been adequately defined. But we tried. Although our preference would have been to keep radio transmissions open to all, as they have been for almost 90 years, the Consortium offered options. Those options included streaming police communications through an online platform where real-time access to outsiders could be restricted to qualified journalists.

Defining "journalist" is always difficult and never perfect. Fortunately, New York State already has definitions of "journalist" and "newscaster" that have worked adequately for decades. They're found in subdivisions 6 and 7 of Civil Rights Law - CVR § 79-h, commonly known as the Shield Law, which exempts these news professionals from being cited for contempt for refusing to reveal confidential sources. The state adopted the same definition late last year when it exempted journalists and newscasters from the newly enacted ban on the sale of body armor.

The same definition also could be used to determine who gets access to NYPD radio transmissions if they become encrypted.

Since our initial meeting in January, Consortium members have been unable to reestablish contact with the NYPD, despite having spelled out our concerns and offered solutions in what we hoped would be an ongoing dialogue.

In the interest of finding an amicable solution, we have shown a willingness to give deference, up to a point, to the NYPD's expertise in maintaining public safety and security. But that deference cannot come at the expense of the public's right to know about the activities of the country's largest police force. In the inevitable tension between society's needs for information and for security, a truly free society requires that priority go to the former.

The Deadline Club opposes any restrictions on access to the NYPD's radio transmissions beyond those that the Consortium has already offered and urges the City Council to take all steps necessary to preserve and protect the public's right to stay informed of NYPD matters.

Respectfully submitted,

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