

## Gerard, Jennie

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**From:** Kernighan, Pat  
**Sent:** Thursday, May 22, 2014 7:24 PM  
**To:** Gerard, Jennie  
**Subject:** FW: DAC

### *Pat Kernighan*

Oakland City Council President  
And Councilmember for District 2  
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**From:** Linda Lye [mailto:llye@aclunc.org]  
**Sent:** Monday, February 24, 2014 5:21 PM  
**To:** Kernighan, Pat  
**Subject:** RE: DAC

Dear Councilmember Kernighan,

Thank you so much for agreeing to meet with me tomorrow afternoon. The ACLU very much appreciates your interest in a Port-only approach to the Domain Awareness Center, as expressed at the last City Council meeting on February 18, 2014. I hope you continue to hold that view and would be happy to discuss any concerns you may have if questions have arisen for you since the last meeting. In advance of our meeting tomorrow, I wanted to share with you some potential resolution language.

In order to implement a Port-only approach, the proposed resolution should be amended to specify the surveillance systems / capabilities that are authorized for inclusion in the DAC and to make clear that no new systems or capabilities can be added without express City Council approval. When I say "surveillance systems," I mean for example: "shot spotter" or "port security cameras." When I say "capabilities," I mean certain technological functionalities, such as facial recognition, other forms of analytics (like "gait analysis," in which someone can be identified based on the way they walk) or other capabilities that haven't yet been invented but are soon to come. I've included some potential language for your consideration below, and flagged issues of particular concern.

**Why a new City Council resolution is necessary:** Resolution 84593 enacted last summer authorized the inclusion of various City-based surveillance systems (such as Automated License Plate Readers) so if the City Council wishes to authorize a Port-only system, new resolution language is required to make clear that the previously authorized City-based systems are now *not* authorized for inclusion.

**The resolution should specify the surveillance systems/capabilities authorized for inclusion.** It is critical to be very specific in the resolution language what systems/capabilities are and are not included. Councilmember Kalb had suggested more generic language that would have said that the DAC is limited to "Port-only surveillance systems," or something like that. I would be concerned that this gives staff significant discretion to determine – without City Council oversight – what system is or is not Port-related. The staff may have some rationale as to why shot spotters are Port-related, but the Council should be the entity that makes the decision as to whether a particular system is Port related.

**What systems are at issue?** The Supplemental Report (page 7 of the powerpoint) for this item listed the systems that were included in Phase 1 and the systems slated for inclusion for Phase 2. The agenda items are linked [here](#) (there were 3 attachments – it is the Second attachment, a copy of which is attached to this email for your convenience). According to this Supplemental Report (page 7), the following systems were already built into the DAC during Phase 1: Port Security Cameras (approx. 135), Intrusion Detection System (IDS), Shot Spotter, City Traffic Cameras (approx. 40) and City GIS. According to the Supplemental Report, the following systems are slated for inclusion during Phase 2: Port GIS, Port Vessel Tracking System, Port Truck Management System, Police and FIRE CAD Data, Police and Fire Records Management System, WEBEOC Notifications, Tsunami Alerts, Police and Fire Vehicle Location, NOAA Weather Alerts, USGS Earthquake Info, News Feeds and Alerts. Page 8 of the Supplemental Report includes a map identifying the 40 City Traffic Cameras already included in Phase 1 (they appear to be in commercial corridors).

**Some of the systems built in during Phase 1 are City-based; they need to be and can be removed if the City Council wants to make the DAC a Port-only system.** Two to three of the systems included during Phase 1 are City-focused and would have to be *removed* in order for the DAC to be Port-only. At the Feb.18 City Council meeting, Mr. Baig said, in response to a question from CM Schaaf as to the feasibility of removing systems included in Phase 1, that it would in fact be feasible to remove a system that had already been included – that it would simply take the City IT staff working with the contractor to turn off that functionality.

The City-based systems built into the DAC during Phase 1 are Shot Spotter, City Traffic Cameras, and possibly GIS. The ACLU recommends that Shot Spotter and City Traffic Cameras be removed so that the DAC is truly Port-only. The ACLU does not have enough information about whether City GIS is necessary for the stated goal of coordinating a response by the City's first responders to an emergency at the Port.

If the City Council believes it is appropriate to include City Traffic Cameras (the ACLU does not agree), then we would urge you to specify that the only City Traffic Cameras authorized for inclusion are those specifically depicted on the map on page 8 of the supplemental report. Otherwise, staff could without City Council oversight increase city traffic cameras in both number and location – and add for example many cameras in residential neighborhoods.

**The City Council should assess which systems to include in Phase 2 based on the factual information to be presented by staff at the next City Council meeting.** The ACLU does not have enough information about each of the systems listed in the Supplemental Report as slated for inclusion during Phase 2 to assess whether they are truly related to furthering the goal of Port-security, or whether they go beyond that. We would encourage you to ask staff about what each of these systems does and to include only those that in the City Council's judgment is tied directly to Port security, and to exclude those that serve other purposes.

**Implementing language would look like this:**

**RECOMMENDATION 1:** A new paragraph should be added to the proposed resolution:

FURTHER RESOLVED: The previously stated limits on current and future technology allowed in the DAC specified in Resolution 84593 are superseded and shall be limited as follows: the following operational capabilities already completed in Phase 1 are authorized for inclusion in the DAC: Port Security Cameras, Port Intrusion Detection System; the following operational capabilities previously included in Phase 1 shall be removed from the DAC: Shot Spotter, City Traffic Cameras, and City GIS [DEPENDING ON THE STAFF REPORT, YOU MAY DECIDE IT MAKES SENSE TO INCLUDE "City GIS" IN THE AUTHORIZED SYSTEMS LISTED IN THE PREVIOUS CLAUSE]; only the following operational capabilities shall be included in Phase 2: [THE COMPLETE LIST SET FORTH IN THE SUPPLEMENTAL REPORT FOLLOWS BUT PLEASE INCLUDE ONLY THOSE SYSTEMS THAT IN THE COUNCIL'S JUDGMENT ACTUALLY FURTHER PORT SECUTITY, BASED ON THE INFORMATION TO BE PRESENTED BY STAFF] Port GIS, Port Vessel Tracking System, Port Truck Management System, Police and Fire CAD Data [NEED MORE INFO ON THIS ONE], Police and Fire Records Management System [NEED MORE INFO ON THIS ONE], WebEOC Notifications[NEED MORE INFO ON THIS ONE], Tsunami Alerts, Police and Fire Vehicle Location [NEED MORE INFO ON THIS ONE], NOAA Weather Alerts, USGS Earthquake Information and News Feeds & Alerts; and that the addition of any new capability or data source, including but not limited to new surveillance

or security sensor systems, new components of existing surveillance or security sensor systems, or analytics capability, shall require approval of the Council, including confirmation of compliance by the DAC and all City and Port data sources with the City's Privacy and Data Retention Policy to the extent allowed by law;

**Crucial language:**

As noted above, it is critical for the Council to enumerate the systems that are and are not included because the Council may have a very different view of what is Port-related than staff. Thus, we would have grave concerns about language that did not list systems and capabilities and instead merely said "only Port-related systems and capabilities are to be included in the DAC." This would cede far too much discretion to staff to make what is fundamentally a policy decision that should rest with the City Council.

In addition, it is also essential to keep the following language: "the addition of any new capability or data source, including but not limited to new surveillance or security sensor systems, new components of existing surveillance or security sensor systems, or analytics capability, shall require approval of the Council." The purpose of this is to make sure that new types of surveillance systems (e.g., automated license plate readers, drones, etc.) aren't added without City Council approval, or that additional cameras aren't added to existing systems (e.g., there may only be 40 city traffic cameras now, and the fact that there are only 40 traffic cameras in residential neighborhoods may assuage some concerns about privacy invasions, but staff should not be allowed to unilaterally add traffic cameras, including in residential neighborhoods without Council approval). Similarly, this language would ensure that no new capabilities (such as facial recognition, gait analysis, or other predictive analytics software) are added without express City Council approval.

**ALTERNATIVE RECOMMENDATION:** While we recommend that the City Council remove City traffic cameras, if the Council concludes they should remain in the DAC, I would strongly urge you to use the following language referencing traffic cameras to make sure that Council approval is required before more cameras are added and/or placed in additional (e.g., residential) locations not identified in the Supplemental Report. Language that differs from our primary recommendation above appears in underline:

**FURTHER RESOLVED:** The previously stated limits on current and future technology allowed in the DAC specified in Resolution 84593 are superseded and shall be limited as follows: the following operational capabilities already completed in Phase 1 are authorized for inclusion in the DAC: Port Security Cameras, Port Intrusion Detection System, and the 40 City Traffic Cameras in the non-residential locations specifically identified in the Supplemental Report prepared for the January 28, 2014 Public Safety Meeting; the following operational capabilities previously included in Phase 1 shall be removed from the DAC: Shot Spotter and City GIS [AS NOTED ABOVE, DEPENDING ON THE STAFF REPORT, YOU MAY DECIDE IT MAKES SENSE TO INCLUDE "City GIS" AMONG THE AUTHORIZED SYSTEMS IN THE PRIOR CLAUSE]; only the following operational capabilities shall be included in Phase 2: [THE COMPLETE LIST SET FORTH IN THE SUPPLEMENTAL REPORT FOLLOWS BUT PLEASE INCLUDE ONLY THOSE SYSTEMS THAT IN THE COUNCIL'S JUDGMENT ACTUALLY FURTHER PORT SECURITY, BASED ON THE INFORMATION TO BE PRESENTED BY STAFF] Port GIS, Port Vessel Tracking System, Port Truck Management System, Police and Fire CAD Data [NEED MORE INFO ON THIS ONE], Police and Fire Records Management System [NEED MORE INFO ON THIS ONE], WebEOC Notifications[NEED MORE INFO ON THIS ONE], Tsunami Alerts, Police and Fire Vehicle Location [NEED MORE INFO ON THIS ONE], NOAA Weather Alerts, USGS Earthquake Information and News Feeds & Alerts; and that the addition of any new capability or data source, including but not limited to new surveillance or security sensor systems, new components of existing surveillance or security sensor systems, or analytics capability, shall require approval of the Council, including confirmation of compliance by the DAC and all City and Port data sources with the City's Privacy and Data Retention Policy to the extent allowed by law;

**Crucial language:** As discussed above, if you include any City Traffic Cameras, we urge you to specify that it is only the 40 traffic cameras depicted in the Supplemental Report that are authorized for inclusion. Staff should not be able to add cameras in either number or location (e.g., residential areas) without Council approval.

Thanks very much for your interest in this issue. Apologies for this lengthy email. I'd be happy to answer any questions or discuss any concerns.

Sincerely,

Linda Lye  
Staff Attorney, ACLU-NC

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**From:** Kernighan, Pat [<mailto:PKernighan@oaklandnet.com>]  
**Sent:** Monday, February 24, 2014 2:36 PM  
**To:** Linda Lye  
**Subject:** RE: DAC

Dear Ms. Lye,

Tomorrow my schedule is pretty jammed (it is our Committee day), but I may be able to meet with you (or talk on the phone) at 1:00. Would you be willing to send me your suggested Resolution language in the meantime? Also, have you talked to CM Schaaf since the last Council meeting about language?

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**From:** Linda Lye [<mailto:llye@aclunc.org>]  
**Sent:** Monday, February 24, 2014 12:02 PM  
**To:** Kernighan, Pat  
**Subject:** DAC

Dear Councilmember Kernighan,

I'm a staff attorney with the ACLU and was hoping to meet with you this week about the Domain Awareness Center (or if that is not possible, to speak with you on the phone) in advance of next week's City Council meeting. You expressed interest in a port-only approach and I wanted to share some thoughts on resolution language that would be essential in implementing such an approach (Councilmember Kalb's proposal would not have sufficed), and also be available to answer any questions or concerns that may have arisen in your mind about that approach since the last council meeting.

Do you have any availability tomorrow afternoon? Thanks.

Best, Linda

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