

Gallo, Noel

From: Linda Lye <llye@aclunc.org>
Sent: Tuesday, January 28, 2014 11:01 AM
To: Gallo, Noel; 'lmcclhaney@oaklandnet.coml'; Kalb, Dan; 'lschaaf@oakland.net'
Subject: Domain Awareness Center
Attachments: 2014.01.28 Letter to Public Safety re DAC.pdf

Honorable Members of the Public Safety Committee, Please find a letter from the ACLU urging you not to approve the DAC (items 6 on the January 28, 2014 Public Safety Agenda) as currently proposed.

Thank you.

Linda Lye
Staff Attorney
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, California 94111
tel. (415) 621-2493
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January 28, 2014

Via electronic mail only

Members of the Public Safety Committee
Oakland City Council
1 Frank H. Ogawa Plaza
Oakland, CA 94612
ngallo@oaklandnet.com
lmcelhaney@oaklandnet.com
dkalb@oaklandnet.com
lschaaf@oakland.net

re: Domain Awareness Center, Phase 2 Contract Award

Dear Honorable Members of the Public Safety Committee,

The American Civil Liberties Union of Northern California writes in regard to Item 6 on the January 28, 2014 Agenda of the Public Safety Committee, in which staff seeks authorization (1) to negotiate and execute a contract with Schneider Electric to build Phase 2 of the DAC, and (2) to select, negotiate with, and enter into a contract with a substitute contractor without returning to the City Council, if negotiations with Schneider Electric fail. We urge you not to approve this item as currently proposed. Given the enormous privacy and other urgent public policy implications of the Domain Awareness Center, we urge you to demand greater transparency about and to exercise meaningful oversight over the DAC. Unfortunately, the staff report submitted in connection with this agenda item leaves the public and the City Council in the dark about essential aspects of the proposed contract with Schneider Electric that have significant civil liberties impacts. In addition, the proposed resolution would prevent the City Council from exercising oversight over the selection of a substitute contractor. The City Council should demand greater information about the project, and it certainly should not cede its oversight role.

We have previously expressed to you our concerns about the vast privacy implications of the DAC. The DAC has the potential to collect and stockpile comprehensive information about Oakland residents who have engaged in no wrongdoing whatsoever. This offends basic privacy norms, as well as state and constitutional principles. It is essential that the public and the City Council have a complete picture of the intended and potential uses of the DAC. This is necessary for meaningful evaluation and oversight of the DAC by the City Council.

MICKY WELSH, CHAIRPERSON | DENNIS McNALLY, AJAY KRISHNAN, MAGAN RAY, GEORGE PEGELOW, VICE CHAIRPERSONS | ALAN FRANCISCO-TIPGOS, SECRETARY/TREASURER

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Lack of transparency. We are troubled by what we see as a recurring lack of sufficient transparency about the DAC. Staff seeks a blank check to negotiate and execute a contract with Schneider Electric, even though the public and the City Council remain in the dark about the true purpose, cost, and technological capabilities of the DAC. The DAC's purpose and its technological capabilities have significant civil liberties implications. Cost is also a significant public policy issue and a matter of public interest. The public has a right to information about all of these aspects of the DAC before it goes forward. "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." *CBS, Inc. v. Block*, 42 Cal.3d 646, 651-652 (1986); *see also* Gov. Code §6250 ("access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state").

One of our many concerns about the DAC is that its intended purposes are not entirely clear. Is the DAC merely intended to enhance Port security by providing Oakland first responders with access to the Port's surveillance systems? Or is it intended to entail more comprehensive surveillance of Oakland residents? If so, what communities will the DAC target for surveillance, and for what purposes? While the answers to such basic questions remain opaque, they have a dramatic impact on civil liberties. The purposes of the DAC should be clearly articulated in grant documents pertaining to federal funding. Our understanding, however, is that Port and Office of Emergency Services staff have refused to disclose to the public any such grant documents. This refusal is troubling as a matter of public policy and baseless as a matter of law. Grant applications should be disclosed to the public under the Public Records Act. That statute was enacted "to ensure public access to vital information about the government's conduct of its business." *CBS*, 42 Cal.3d at 651-652 (1986). Courts have recognized the public interest in disclosure of documents that shed light on how public resources are expended. *See, e.g., California State University v. Superior Court*, 90 Cal. App. 4th 810, 833 (2001). Grant applications relating to the DAC would set forth the project's intended purposes and highlight any federal conditions attached to receipt of funds. This is all critical information that sheds light on "the government's conduct of its business." *CBS*, 42 Cal.3d at 652.¹

We have also seen a lack of transparency with respect to cost. The most recent staff report related to the DAC states, like earlier staff reports, that there is no fiscal impact to the

¹ The Port and Office of Emergency Services are likely to contend that the information may be withheld under the Public Records Act's exemption for investigatory, intelligence, or security files. *See* Gov. Code §6254(f). Any such argument is meritless. Documents fall under this exemption only if the "primary purpose" for which they were compiled was "correctional, law enforcement, or licensing." *See Uribe v. Howie*, 19 Cal.App.3d 194, 212-13 (1971). Grant application materials were compiled for the primary and exclusive purpose of obtaining funding, not for investigative or intelligence-related activity. *See id.* at 213. Moreover, even if some portions of the grant materials could be deemed sensitive intelligence information, this would justify at most withholding selected portions of the grant materials and disclosing the remainder. *See* Gov. Code §6257 (stating that "any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt by law"). No intelligence or security purpose would be compromised by disclosing the overall purposes of the DAC or federal conditions on grant funding.

General Fund, pointing instead to federal grant funds. But the staff report omits the fact that staff have long been aware of the need for the City of Oakland to commit to ongoing support costs for the DAC, to the tune of potentially \$1.2 million a year. *See* Darwin BondGraham & Ali Winston, "The Hidden Costs Of Oakland's Surveillance Center," East Bay Express (Jan. 22, 2014). Another cost issue that is not addressed is the potential impact on the City's coffers if the work by the contractor is not completed by June 2014. The staff report states: "Because of the grant performance deadlines, all this work needs to be completed by June 2014 for invoices processing and reconciliation." (See Staff Report, dated January 20, 2014, approved by City Administrator January 16, 2014, filed January 16, 2014, at page 4.) The report fails to address the impact on the City if the contractor does not complete the work in the time allotted. In a worst case scenario, the contractor (either due to its own fault or perhaps due to circumstances beyond its control) is unable to complete the work by June 2014 but finishes sometime thereafter. Will the City be unable to recover federal grant reimbursement because of the missed June 2014 deadline, but still on the hook to the contractor for services rendered? Or will the contract be drafted to provide that the City is not liable to the contractor for any work performed and for which the City is unable to recover federal grant reimbursement? Critical fiscal impact issues such as this are unaddressed.

Finally, there is insufficient information about the technological capabilities of the DAC. This is important information that sheds light on the manner and extent of privacy intrusions posed by the DAC. An understanding of "the technology involved" in a particular surveillance method is necessary to "appreciate [its] constitutional implications." *In re Order Pursuant to 18 U.S.C. Section 2703(d)*, 930 F.Supp.2d 698, 702 (S.D. Tex 2012) (denying government's request for information about all telephones that registered with four cell towers because request, while potentially identifying robber at crime scene, would also identify "innocent subscribers whose information will [also] be compromised"). In addition, a clear understanding of the DAC's capacity is necessary in order to understand the functions that need to be regulated. In other words, the City Council cannot provide meaningful oversight over an entity, if it does not understand what the entity is capable of doing. The Request for Proposal should presumably describe in broad brushes the DAC's intended capabilities – the purpose of the RFP, after all, is to retain a contractor that can build out these functions. But staff has refused to disclose key portions of the RFP. (See Staff Report, dated January 20, 2014, approved by City Administrator January 16, 2014, filed January 16, 2014, at page 4.)

We remain concerned that the City Council lacks essential information about key aspects of the DAC. This lack of transparency on crucial issues such as the DAC's purpose, cost, and technological capabilities runs afoul of basic notions of open government and impairs the Council's ability to engage in any kind of meaningful evaluation or oversight of a project that has the potential to be used for warrantless mass surveillance of Oakland residents. The City Council should demand more information with respect to all of these issues before granting staff unfettered discretion to negotiate and execute a contract with Schneider Electric.

Oversight. In addition to authorizing the City Manager to negotiate and execute a contract with Schneider Electric, the proposed resolution would also delegate to the City Manager authority to select, negotiate, and execute a contract with a substitute contractor *without*

returning to the City Council, if the negotiations with Schneider Electric are unsuccessful. The lack of transparency has already significantly impaired the City Council's ability to exercise its critical oversight function. It should not expressly give up its oversight role. The present agenda item is only in front of the City Council because staff did not determine that the prior contractor was out of compliance with Oakland's Nuclear Free Zone Ordinance. We understand that members of the community have raised concrete concerns that Schneider Electric is similarly out of compliance. Any substitute contractor should certainly come back to the City Council for approval. This is especially so given the information attached to the staff report about possible alternative contractors. See Staff Report, Attachment B (Britain's attorney general found that G4S Technology LLC "charged ... millions for people they were not actually monitoring" and company faced "further investigation by the Serious Fraud Office"; County Executive of Santa Clara requested investigation into Motorola Solutions, Inc., for misrepresentations regarding project readiness).

While the ACLU of Northern California takes no position on the suitability of any of these particular contractors, we do believe it is essential for the City Council to take an active role in reviewing contractors. Particularly on a project with significant civil liberties implications, oversight by the legislative branch is an essential check in our system of government.

* * *

In conclusion, we urge you not to approve the agenda item as currently proposed. The City Council should first demand greater transparency, and at no juncture should it surrender its oversight of the contractor, as contemplated by the proposed resolution.

Sincerely,

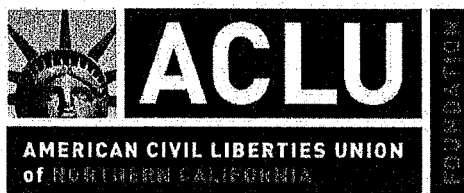


Linda Lye
Staff Attorney
ACLU of Northern California

Gallo, Noel

From: Linda Lye <llye@aclunc.org>
Sent: Thursday, February 13, 2014 10:37 AM
To: Brooks, Desley; Gallo, Noel; At Large; Kernighan, Pat; McElhaney, Lynette; Kalb, Dan; Reid, Larry; Schaaf, Libby
Subject: Oakland Domain Awareness Center
Attachments: 2014.02.13 Letter to City Council.pdf; 2014.02.13 Letter to City Council.Enclosure re OPD police reports.pdf

Dear Honorable Councilmembers,
Attached please find a letter from the ACLU regarding the Domain Awareness Center, which is on the City Council's upcoming February 18 agenda.
Thank you.
Sincerely,
Linda Lye
Staff Attorney, ACLU of Northern California



February 13, 2014

Via electronic mail only

Hon. Desley Brooks (dbrooks@oaklandnet.com)
Hon. Noel Gallo (ngallo@oaklandnet.com)
Hon. Rebecca Kaplan (atlarge@oaklandnet.com)
Hon. Pat Kernighan (Pkernighan@oaklandnet.com)
Hon. Lynette McElhaney (lmcelhaney@oaklandnet.com)
Hon. Dan Kalb (dkalb@oaklandnet.com)
Hon. Larry Reid (lreid@oaklandnet.com)
Hon. Libby Schaaf (lschaaf@oaklandnet.com)
Oakland City Council
1 Frank H. Ogawa Plaza
Oakland, CA 94612

re: Domain Awareness Center, Phase 2 Contract Award

Dear Honorable Members of the Oakland City Council,

The American Civil Liberties Union of Northern California writes in regard to Item 13 on the February 18, 2014 Agenda of the City Council, pertaining to the Oakland Domain Awareness Center. We urge you not to approve this item.

The specific question before the Council is whether to award the Phase 2 contract to Schneider Electric. While the ACLU takes no position on that specific matter, it raises critical issues with civil liberties and other urgent public policy impacts. The question of Schneider Electric's compliance or non-compliance with Oakland's Nuclear Free Zone Ordinance has engendered significant controversy and entailed substantial staff and City Council time. Staff expressed the view in the supplemental report on this item that the due diligence process associated with independently identifying nuclear weapons makers would have been "cumbersome and costly" and so a "self-certification" procedure was ultimately adopted. (February 18, 2014 "Supplemental Report – DAC Phase II" at page 3.) The self-certification procedure did not bring to light significant information that, whether or not ultimately disqualifying, should have been reviewed and vetted. If meaningful privacy safeguards for the Domain Awareness Center are ultimately adopted, the oversight and due diligence associated with ensuring compliance will dwarf in complexity the compliance issues associated with the Nuclear Free Zone Ordinance. At this juncture, it is entirely unclear what privacy safeguards will apply to the DAC and what, if any, resources will be available to ensure that they enforced. The only thing that is clear is that privacy safeguards and resources to enforce them are urgently needed. We urge you not to let the DAC proceed with so many essential questions unanswered.

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Potential for abuse. Information recently obtained from the Oakland Police Department through a Public Records Act request underscores our concerns about the potential for abuse. These records show that OPD has targeted political protesters based on their political ideology. The DAC would serve as a powerful surveillance tool, allowing the government to single out and comprehensively track Oakland residents.

We obtained OPD records related to political demonstrations on October 25, 2013. The day's events included a protest against "Urban Shield," one of the nation's largest security conferences and weapons shows, and a commemoration of OPD's removal of Occupy Oakland from Frank Ogawa Plaza. The operations plan instructed OPD personnel to identify and cite individuals committing crimes; officers were explicitly instructed to enforce all traffic laws. While that is entirely lawful and appropriate, the records also show that OPD engaged in selective enforcement. Numerous bicyclists associated with the Occupy Oakland protest and "FTP" symbols were cited for vehicle code violations such as running red lights. At the same time, a bicyclist who was seen committing identical vehicle code violations (running two red lights), but who "stated that he was anti-occupy and that he was in the area to try and dissuade any protest," was instead let off with a warning and *not* issued any citation.¹ Selective enforcement of criminal laws based on political ideology violates the equal protection guarantees of the Constitution. *See Murgia v. Municipal Court*, 15 Cal.3d 286, 302 (1975) ("a conscious policy of selective enforcement directed against members or supporters of a particular labor organization are clearly sufficient to support a claim of invidious discrimination which is prima facie invalid under the equal protection clause").

Experience teaches that surveillance systems can and will be used in a discriminatory fashion. Studies of video surveillance in Britain, where video surveillance is pervasive, have shown that "the young, the male and the black were systematically and disproportionately targeted, not because of their involvement in crime or disorder, but for 'no obvious reason.'" European Parliament Directorate General Internal Policies, "A Review of the Increased Use of CCTV and Video-Surveillance for Crime Prevention Purposes in Europe," p. 15 (2009).² In particular, "*black people were twice as likely (68%) to be surveilled for 'no obvious reasons' than whites.*" *Id.* (emphasis added). Studies in other countries have similarly found that "reliance on categorical suspicion intensifies the surveillance of those already marginalized and increases, yet further, their chance of official stigmatization." *Id.* at 16.

In short, respected studies have shown that surveillance systems, such as closed circuit television, lend themselves to discrimination. The DAC is far more powerful than any single surveillance system because it would aggregate surveillance and sensor feeds – allowing the assembly of an entire mosaic from individual tiles. With that greater power, comes greater potential for abuse. Unfortunately, our concerns that the Oakland Police Department might use the DAC to target individuals based on ideology or other inappropriate factors are grounded in recent, actual events.

While the recently released draft privacy framework states that the DAC shall not be used to track individuals "unless there is a reasonable suspicion of criminal wrongdoing," this provision does not safeguard against privacy invasions or selective enforcement. Jaywalking and

¹ Police reports documenting this selective enforcement are attached to this letter.

² Available at <http://www.statewatch.org/news/2009/apr/ep-study-norris-cctv-video-surveillance.pdf>.

maliciously obstructing a sidewalk are both “crimes.” As a result, virtually every political protest involves reasonable suspicion of criminal wrongdoing and would thus trigger monitoring by the DAC under the draft privacy policy.

Need for oversight. Particularly with a project that has dramatic civil liberties impacts, legislative oversight serves as an essential check in our system of government. The DAC resolution (84593) adopted by the City Council last July was a step in the right direction by requiring the development of a privacy policy and specifying the surveillance systems that could be included in the DAC. But it did not go far enough. In particular, the City Council – and the public – lacks essential information that is necessary to engage in meaningful oversight.

First, a draft of the privacy policy has only this week been released – even though the City Council instructed staff to draft a policy over six months ago and the deadline for presenting a policy to the Council is rapidly approaching (March 2014). The safeguards contained in whatever privacy policy is ultimately adopted will dramatically change the civil liberties impacts of the project (for what purposes will records be recorded; how long will records be retained; with whom will records be shared). The privacy policy needs to be fully vetted first. Without a vetted privacy policy, the City Council lacks sufficient information to meaningfully evaluate the DAC and whether to grant the further approvals necessary for it to be built.

Moreover, even after a privacy policy is in place, it must be enforced. This takes resources. What resources will the City invest to ensure rigorous compliance? The difficulty of ensuring compliance with Oakland’s Nuclear Free Zone Ordinance provides a cautionary tale.

Second, the intended purposes of the DAC still remain opaque. Clear specification of the DAC’s purposes is critical to prevent the alarming but common phenomenon of “mission creep.” In other words, the DAC should not be “sold” to the City Council and the public as serving one purpose (for example, coordinating emergency response), but then surreptitiously used for another purpose (warrantless mass surveillance).

At the January 28, 2014 Public Safety Committee, the Port presented on the DAC and explained that its purpose was to enhance Port security by giving the City’s first responders access to Port surveillance and sensor feeds. But if the mission of the DAC is to ensure Port security, then why the need for cameras trained at Oakland residents? In addition, the draft privacy policy states that one of the “missions” of the DAC is to “improve readiness to prevent, respond to, and recover from major emergencies at the Port and in the greater Oakland region and.” See Draft Framework, Section II. It is unclear how the DAC would “prevent” a major emergency, unless it operates as a comprehensive surveillance center aimed at identifying suspicious activities that might be precursors to terrorism. Does “preventing” a major emergency mean that the DAC will be used to surveil mosques suspected of harboring potential terrorists? Cf. Adam Goldman & Matt Apuzzo, “With Cameras, Informants, NYPD Eyed Mosques,” *Associated Press* (Feb. 23, 2012).³ In light of OPD’s selective enforcement of even mundane vehicle code violations in connection with political protests, the potential for abuse of a powerful surveillance tool is troubling.

³ Available at <http://www.ap.org/Content/AP-In-The-News/2012/Newark-mayor-seeks-probe-of-NYPD-Muslim-spying>.

Third, there has been an alarming lack of transparency on issues as ostensibly straightforward as cost. To date, the City Council and public have still not been provided with concrete information about the ongoing staffing and maintenance costs to the City, after the expiration of federal grant money. On the contrary, the DAC has consistently been presented as having no fiscal impact, even when that is clearly not the case. The inadequate or inaccurate fiscal information begs the question of whether other critical aspects of the DAC have not been disclosed.

* * *

In short, the potential for abuse and OPD's history of selective enforcement underscores the need for oversight. But the lack of transparency dramatically undermines the City Council's ability to engage in meaningful oversight. The City Council, as the legislative body elected by the residents of Oakland to set policy for the City, should vet the privacy policy and demand information about the purposes, technological capacity and cost of the DAC, *before* granting any further approvals. Any other approach cedes critical oversight responsibilities to unelected staff. Moreover, if the City Council does grant approval, it should do so aware that oversight will be an on-going, resource-intensive, and complex task. One-time approval of a privacy policy will not ensure that privacy rights are actually safeguarded.

Sincerely,



Linda Lye
Staff Attorney
ACLU of Northern California

Enclosure

CONTINUED REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD #
15-054595

CRIME	<input type="checkbox"/> SUPPLEMENTAL	INCIDENT # 185	V-1	VICTIM: LAST, FIRST, MIDDLE State of Ca
SUSPECT: LAST, FIRST, MIDDLE		INCIDENT LOCATION 599 El Embarcadero	DATE OF THIS REPORT 31 Oct 13	ORIGINAL DATE REPORTED 25 Oct 13

DOMESTIC VIOLENCE		<input type="checkbox"/> MARRIED <input type="checkbox"/> COHABITANT	<input type="checkbox"/> DIVORCED	<input type="checkbox"/> CHILD IN COMMON	<input type="checkbox"/> OTHER	VICTIM RELOCATED TO ALTERNATE SHELTER <input type="checkbox"/> YES <input type="checkbox"/> NO	# OF CHILDREN PRESENT AGES
DATES OF PREVIOUS INCIDENTS	MO/YR	MO/YR	MO/YR	MO/YR	MO/YR	TOTAL REPORTED INCIDENTS	PRIOR RESPONSE BY LAW ENFORCEMENT FOR SAME VICTIM AND ABUSER? <input type="checkbox"/> NO <input type="checkbox"/> YES FREQUENCIES (e.g., 3 times last 6 months)
INJURIES <input type="checkbox"/> SEVERE <input type="checkbox"/> MODERATE <input type="checkbox"/> MINOR <input type="checkbox"/> NONE <input type="checkbox"/> COMPLAINT OF PAIN		MEDICAL TREATMENT <input type="checkbox"/> YES <input type="checkbox"/> NO		RESTRAINING ORDER IN EFFECT <input type="checkbox"/> YES <input type="checkbox"/> NO			
DESCRIBE		PROVIDED BY		ORDER NO.	EXP. DATE	ISSUING COURT	
PHOTOS TAKEN <input type="checkbox"/> YES <input type="checkbox"/> NO							
I DECLARE UNDER PENALTY OF PERJURY THAT I ADVISED THE SUSPECT OF THE PROVISIONS OF THE RESTRAINING ORDER				OFFICER'S SIGNATURE		SERIAL NO.	DATE TIME

VICTIM ADVISED OF EMERGENCY PROTECTIVE ORDER (EPO) <input type="checkbox"/> YES <input type="checkbox"/> NO	IF ALSO CASE WAS VICTIM ADVISED OF PRIVATE PERSON ARREST PROCEDURES? <input type="checkbox"/> YES <input type="checkbox"/> NO IF VICTIM REFUSES TO PROSECUTE LIST REASON	DOMESTIC VIOLENCE RESOURCE CARD GIVEN <input type="checkbox"/> YES <input type="checkbox"/> NO
SUSPECT UNDER INFLUENCE OF ALCOHOL OR CONTROLLED SUBSTANCE? <input type="checkbox"/> YES <input type="checkbox"/> NO	FIREARM OR DEADLY WEAPON AT SCENE? <input type="checkbox"/> YES <input type="checkbox"/> NO FIREARM OR DEADLY WEAPON RECOVERED? <input type="checkbox"/> YES <input type="checkbox"/> NO	VICTIM ADVISED TO NOTIFY THE INVESTIGATOR OF ANY ADDRESS OR PHONE NUMBER CHANGE <input type="checkbox"/> YES <input type="checkbox"/> NO

CRIME	2	COMMON NAME Vandalism	SECTION / SUBSECTION 594(b)(4) PC	CODE	PERTAINS TO V-1
CRIME	3	COMMON NAME	SECTION / SUBSECTION	CODE	PERTAINS TO V-1

ITEM #	QUANTITY	PROPERTY (and/or NARRATIVE)	ITEM TYPE, BRAND, MODEL #, SIZE, COLOR, MARKS, ETC.	SERIAL #	VALUE
<p>On 25 Oct 13, at about 210hrs, I was dressed in OPD utility uniform riding OPD motor #2208. I was assigned to work an Occupy Oakland protest. I was standing approximately 100 feet north of the Pergola at Lake Merritt, 599 El Embarcadero. There were about 20 people with bicycles listening to music and dancing inside of the Pergola. This group had left the Occupy Oakland protest some time earlier and had ridden their bicycles around Oakland, at times taking up all lanes of traffic, until they ended up in the Pergola.</p> <p>As I was standing in the park north of the Pergola with the TNT and bicycle officers, an unknown refused couple approached us from the direction of the Pergola. The male said he did not want to be involved, but there was graffiti "going on" inside of the Pergola.</p> <p>A short time later, the rest of the motor detail arrived. The group began to leave with members leaving in different directions. As they were leaving TNT announced via the loudspeaker to the group all traffic laws would be enforced if the group left the area.</p> <p>At about 2130hrs a group of about 10 bicyclists, from the same group who were inside of the Pergola, were individually stopped for specific vehicle code violations near Bay St and Vernon St for various violations of the vehicle code (refer to the supplemental reports for details). The following people were stopped and cited:</p>					

<p>[REDACTED]</p>					
<p>On Monday 28 Oct 13, I went to the Pergola to look for a backpack that allegedly had been thrown into Lake Merritt by a member of the group in the Pergola. I did not locate a backpack. I did note what appeared to be fresh graffiti in the inside N/E corner of the Pergola. The graffiti appeared to be recent, as many older instances of graffiti had been painted over using a tan paint.</p> <p>There was a black "FTP" with an anarchy (a capital A inside of a circle) symbol under it. There was also another "tag" painted in purple. It is unknown if the two items are related. I took photos of the graffiti with my department issued Casio GzOne cellular phone. The photos are attached to this report. I called the corpyard via dispatch to request a clean-up of the graffiti.</p> <p>The above listed parties were part of the group in the Pergola. It is unknown if they are witnesses or suspects in regard to the graffiti being sprayed on the Pergola wall.</p>					
REPORTED BY Sgt. S. Palch	SERIAL NO. 8121	AREA 9F02	WATCH 1	SUPERVISOR L.P. Lau	PAGE 2 OF 2

OPD 3 Pm 8121 25 OCT 13 ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

RD #

13-054595

CRIME OCCUPY OAKLAND PROTEST	BB SUPPLEMENTAL	INCIDENT # 185	V1	VICTIM LAST, First, MI. STATE OF CA
SUSPECT LAST, First, MI. [REDACTED]	INCIDENT LOCATION 24th ST. & HARRISON ST.	DATE OF THIS REPORT 25 OCT 13	ORIGINAL DATE REPORTED	

SUPPLEMENTAL

ON 25 OCT 13 AT ABOUT 2135 HRS. I WAS WORKING AS OPD UNIT 81002. I WAS ASSIGNED TO THE OCCUPY OAKLAND PROTEST AT APPROX.

THIS TIME I WAS ADVISED TO CONDUCT TRAFFIC ENFORCEMENT ON A GROUP OF BICYCLISTS THAT WERE RIDING ^{AROUND} OAKLAND WITHOUT STOPPING FOR RED LIGHTS, STOP SIGNS, AND TAKING UP ALL LANES OF TRAFFIC. I WAS WEARING FULL POLICE UTILITY UNIFORM AND RIDING FULLY MARKED POLICE MOTORCYCLE #2260.

I OBSERVED [REDACTED] RIDING A BICYCLE W/B ON GRAND AVE. HE WAS IN A GROUP OF ABOUT 20 BICYCLES. I NOTICED [REDACTED] DID NOT HAVE A WHITE BICYCLE LIGHT EVENTHOUGH IT WAS DARK OUTSIDE. I PULLED BEHIND [REDACTED] AND DUT TO HIS LEFT AND ACTIVATED MY EMERGENCY LIGHTS AND SIREN. WHEN [REDACTED] DID NOT STOP, I USED MY PA TO TELL HER TO STOP AND PULL OVER. HE CONTINUED TO RIDE W/B ON BAY AND THEN W/B ON 27th ST. I STARTED TO PULL IN FRONT OF HER AND POINTED AT THE RIGHT SIDE WHILE TELLING HER TO STOP. HE EVENTUALLY STOPPED ON 27th ST. JUST W OF HARRISON.

I ADVISED [REDACTED] THE REASON I STOPPED HER WAS BECAUSE HE WAS RIDING A BICYCLE IN THE ROADWAY WITHOUT A LIGHT. I ASKED HER FOR ID AND HE HANDED ME A COL. I ISSUED HER CITATION # 5250018 FOR 21201(d) V.C. HE SIGNED THE CITATION AND WAS RELEASED. I ASKED HER IF HE HAD A WORKING BEKE LIGHT AND HE SAID HE HAD ONE, BUT HE SAID IT MUST NOT BE WORKING.

I DO NOT HAVE A PORD I DID NOT HANDCUFF OR SEARCH ANYONE. I DID NOT USE FORCE OR SEE ANYONE USE FORCE. NO KNOWN WITNESSES.

REPORTED BY G. HARA	SERIAL # 8549T	WATCH	DISTRICT	SUPERVISOR Sgt S. PAUL 8121	SERIAL #	PAGE 1 OF 1
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OPD ADDITIONAL INFORMATION REPORT

OAKLAND POLICE DEPARTMENT
455 - 7th Street
Oakland, CA 94607

AS 7819 25 Oct 13
RD #
13 - 054595

CRIME	<input checked="" type="checkbox"/> SUPPLEMENTAL	INCIDENT # 185	V1	VICTIM LAST, First, Mid.
SUSPECT LAST, First, Mid.	INCIDENT LOCATION 27th St & Harrison St		DATE OF THIS REPORT 25 OCT 2013	ORIGINAL DATE REPORTED

SUMMARY:

25 OCT 2013, I WAS ASSIGNED TO TRAFFIC OPERATIONS IN SUPPORT OF OCCUPY OAKLAND DEMONSTRATION. I WAS IN FULL POLICE UNIFORM AND RODE MAERZS OPD MOTORCYCLE 2269.

APPROX 2100 HRS. I WAS DIRECTED BY SGT. STEINBERGER TO CONDUCT TRAFFIC ENFORCEMENT ON BICYCLISTS WHO WERE BLOCKING LANES OF TRAFFIC, RUNNING RED LIGHTS AND NOT RIDING ON THE RIGHT SIDE OF THE ROADWAY/BICYCLE LANE.

APPROX. 2145 HRS, A GROUP OF THE BICYCLIST DEMONSTRATORS CONTINUE TO RIDE IN VIOLATIONS OF MULTIPLE CVC'S W/3 Bay St @ Grand Ave. I EVENTUALLY REACHED 27th St & Harrison St. I SAW A MAN WEARING A CAMOUFLAGE JACKET RIDING AWAY FROM THE OTHER BICYCLISTS. THE BICYCLE DIDN'T HAVE ANY LIGHTS.

I ACTIVATED MY EMERGENCY LIGHTS/SIREN. THE MAN, LATER ID AS [REDACTED] BEGAN TO WEAVE IN BETWEEN OTHER M/C'S AND SCREAMED, "I DON'T HAVE ANY BRAKES".

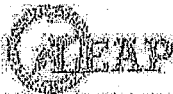
[REDACTED] EVENTUALLY STOPPED. I EXPLAINED REASON FOR STOP AND ID MYSELF. [REDACTED] DIDN'T HAVE ANY ID. OFF. B. KO VERIFIED HIS ID THROUGH CRIMS. I ISSUED [REDACTED] CITE 5055701 FOR RIDING W/O LIGHTS AND NO BRAKES. [REDACTED] SIGNED HIS CITE AND I GAVE HIM A COPY AND WAS FREE TO LEAVE.

[REDACTED] ASKED FOR MY BUSINESS CARD. I FILLED OUT AN IBC AND ASKED IF HE WANTED TO MAKE A COMPLAINT. [REDACTED] SAID NO. HE WOULD WANT THE INFO SO HE MAY GIVE IT TO HIS LAWYER. SGT STEINBERGER RESPONDED AND TRIED TO [REDACTED] PD RD ACTIVATED. NO USE OF FORCE. NO OTHER OFFICERS USED FORCE.

REPORTED BY R RALP	SERIAL # 7715 P	WATCH	DISTRICT	SUPERVISOR SGT STEINBERGER 7819 P	SERIAL #	PAGE 1 OF 1
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836-937 (1/97)

ORI 00109



Activity Information

Activity Details

Activity No.: FC13-022045
 Activity Type: FIELD CONTACT
 Agency: Oakland PD
 Status:

Reported Date:
 Start Date/Time: 2013/10/25 13:45:00
 End Date/Time:
 Location/Address (Type):
 900 BLOCK OF BROADWAY, OAKLAND, CALIFORNIA
 Region (Large/Medium/Small): 17/04X

Related Officers

Agency	Name	Sex	Badge Number	Phone Number	Activity Category	Assignment Category	LEOKA Category
Oakland PD	DANIEL BRUCE				REPORTING OFFICER		

Activity Description

Subject: FBR NARRATIVE Author: BRUCE, DANIEL Narrative: Summary: On 25 Oct 13 I was working as OPD unit 14A56 as a QRF for an Occupy Oakland event. I was wearing an OPD uniform and in marked vehicle 1443 with Ofc. C. Borjesson and B. Rivera 8480. We were directed by UC officers to stop the above listed subject who was later identified as [REDACTED]. UC officers advised that [REDACTED] was riding a bicycle. UC officers observed [REDACTED] run two red lights and ride his bicycle on the sidewalk. At about 1345 hrs we located [REDACTED] riding his bicycle southbound Broadway approaching 9th St. We turned in front of [REDACTED] to prevent him from continuing south on Broadway. I exited our vehicle and contacted [REDACTED]. I asked [REDACTED] to step off of his bicycle and he began to try and put the kick stand down. As [REDACTED] did this, he spontaneously stated that he had marijuana in his back pocket. I asked [REDACTED] for his ID and he told me that he did not have one, but began to look through his wallet. [REDACTED] provided his name and birthday verbally. Ofc. Rivera asked [REDACTED] if he had ever been arrested in Alameda County and [REDACTED] replied that he had. [REDACTED] then provided his PPN# [REDACTED]. [REDACTED] identity was confirmed via CRIMS. [REDACTED] was advised of why he was stopped and he apologized for the observed violations. [REDACTED] stated that he was anti-occupy and that he was in the area to try and dissuade any protest. I asked [REDACTED] about the marijuana that he had. [REDACTED] showed me a bag that he had in his rear pants pocket. Inside the bag was a green leafy substance that based on my training and experience, was extremely low-grade marijuana. I elected to issue a warning to [REDACTED] for the observed violations. No known witnesses. My PDRD was activated. No force used or observed.

Related People

Relationship: Contact (Contact)
 Name: [REDACTED]
 Sex: MALE
 Race: WHITE
 Date of Birth: [REDACTED]
 SSN No.: [REDACTED]
 FBI No.: [REDACTED]

Person Comments:

COMPLEXION : LIGHT CLOTHING - SEE PDRD

Related Activities

Relationship	Activity Type	Activity Category (Agency Activity)	Agency	Activity Number	Start Date	Street Address	City	State/Prov
FIELD INTERVIEW TO INCIDENT	INCIDENT	Disorderly Conduct (OBSTRUCTS/RESISTS PUBLIC OFFICER/ETC)	Oakland PD	13-054595	2013/10/25	1200 BROADWAY	OAKLAND	CALIFORNIA

Gallo, Noel

From: Linda Lye <llye@aclunc.org>
Sent: Tuesday, March 04, 2014 9:52 AM
To: Brooks, Desley; Gallo, Noel; Kalb, Dan; At Large; Kernighan, Pat; McElhaney, Lynette; Reid, Larry; Schaaf, Libby
Subject: Domain Awareness Center
Attachments: 2014.03.04 Letter to City Council.pdf

Dear Honorable Councilmembers, Attached please find a letter from the ACLU regarding the Domain Awareness Center.
Best wishes, Linda Lye

Linda Lye
Staff Attorney
ACLU Foundation of Northern California
39 Drumm Street
San Francisco, California 94111
tel. (415) 621-2493
fax. (415) 255-8437

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March 4, 2014

Via electronic mail only

Hon. Desley Brooks (dbrooks@oaklandnet.com)
Hon. Noel Gallo (ngallo@oaklandnet.com)
Hon. Rebecca Kaplan (atlarge@oaklandnet.com)
Hon. Pat Kernighan (Pkernighan@oaklandnet.com)
Hon. Lynette McElhaney (lmcelhaney@oaklandnet.com)
Hon. Dan Kalb (dkalb@oaklandnet.com)
Hon. Larry Reid (lreid@oaklandnet.com)
Hon. Libby Schaaf (lschaaf@oaklandnet.com)

Oakland City Council
1 Frank H. Ogawa Plaza
Oakland, CA 94612

re: Domain Awareness Center, Phase 2 Contract Award

Dear Honorable Members of the Oakland City Council,

The American Civil Liberties Union of Northern California writes in regard to Item 14 on the March 4, 2014 Agenda of the City Council, pertaining to the Oakland Domain Awareness Center. Once again, we urge you not to approve the resolution proposed by staff. We reiterate our previously expressed grave concerns about the DAC and its enormous potential for abuse. In this letter, we address three further points. *First*, while we urge you not to grant the DAC any further approvals at this time, numerous City Council members at the last Council meeting expressed interest in a Port-only approach. The proposed resolution fails to implement that approach. *Second*, the City Council expressly instructed staff to provide additional information about the component systems of the DAC so that the Council could decide which systems are and are not Port related. Yet the staff report (filed February 27, 2014) once again fails to provide the Council with the basic factual information it needs to engage in oversight. This omission allows staff to usurp what is fundamentally the Council's policy-making prerogative of deciding what systems to include in the DAC. Unfortunately, rather than providing a balanced or complete factual account, the staff report omits essential factual and legal issues. *Third*, both the public and members of the City Council have expressed reservations about the potential for federal access to information collected and retained by the DAC. The staff report suggests that any such concerns are unfounded because "information sharing would be limited unless there is a written agreement for information sharing." (Staff Report at page 14.) The staff report entirely fails to mention that the federal government under the Patriot Act can obtain a wide array of information without such niceties as a voluntary information sharing agreement.

MICKEY WELSH, CHAIRPERSON | DENNIS McNALLY, AJAY KRISHNAN, MAGAN RAY, GEORGE PEGELOW, VICE CHAIRPERSONS | ALAN FRANCISCO-TIPGOS, SECRETARY/TREASURER

ABDI SOLTANI, EXECUTIVE DIRECTOR | NATASHA MINSKER, ASSOCIATE DIRECTOR | CHERI BRYANT, DEVELOPMENT DIRECTOR
SHAYNA GELENDER, ORGANIZING & COMMUNITY ENGAGEMENT DIRECTOR | REBECCA FARMER, COMMUNICATIONS DIRECTOR

ALAN SCHLOSSER, LEGAL DIRECTOR | NOVELLA COLEMAN, MARGARET C. CROSBY, ELIZABETH GILL, LINDA LYE, JULIA HARUMI MASS, LINNEA NELSON, MICHAEL RISHER, JORY STEELE, STAFF ATTORNEYS
PHYLLIDA BURLINGAME, ALLEN HOPPER, NICOLE A. OZER, POLICY DIRECTORS | STEPHEN V. BOMSE, GENERAL COUNSEL

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA

39 DRUMM STREET, SAN FRANCISCO, CA 94111 | T/415.621.2493 | F/415.255.1478 | TTY/415.863.7832 | WWW.ACLUNC.ORG

The proposed resolution does not reflect the views of City Council members that the DAC should be limited to Port-only systems. Numerous City Councilmembers expressed the view at the last City Council meeting that the DAC should include only those systems that are related to the Port. The proposed resolution does not reflect that perspective.

A new City Council resolution is necessary to implement a Port-only approach because Resolution 84593, enacted last summer, authorized the inclusion of various City-based surveillance systems (such as Automated Licensed Plate Readers and City-owned cameras). 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.

In addition, a new City Council resolution should specify the systems and capabilities that are authorized for inclusion and that no additional systems or capabilities may be added without express City Council authorization. The determination whether a particular system or capability is or is not Port-related reflects a policy choice. That choice should be made by the Council, not staff.

The staff report's omission of key factual and legal information interferes with the Council's ability to engage in meaningful oversight. Despite the Council's express instruction to staff to provide information on the component systems already included in Phase 1 and slated for inclusion in Phase 2, the staff report continues to provide insufficient information for the City Council to make an informed decision about what systems to include in the DAC. The descriptions of each component systems leaves open many unanswered questions. For example:

* **Shot spotter (Phase 1).** The staff report's description states that Shot Spotter "detects gunfire in the City and quickly locates the incident on a map." (Staff Report at page 3.) It does not explain *how* Shot Spotter does so. While the staff report fails to explain this, Shot Spotter's website states that it detects gunshots through "[w]ide-area acoustic surveillance," which consists of "the deployment of multiple collaborative acoustic sensors through a coverage area to create a robust, redundant coverage array stretch from a single square mile up to 20 or more square miles."¹ *What type of information is recorded through this "wide-area acoustic surveillance"? How does wide-area acoustic surveillance (as distinct from the location of gun shots) help further Port security and why should it be included in the DAC?* The staff report states that "seeing the entire picture is critical to responder safety and effective response" (page 3), but this "justification" would also justify including cameras in schools and other systems that the City Council has decided to exclude from the DAC.

* **Traffic cameras (Phase 1).** The staff report states that "Traffic cameras are focused on important traffic areas in the City." (Staff Report at page 4.) *But what information do traffic cameras capture and record? Do they capture a wide swath of information that sweeps up pedestrians? Do they record information at sufficient resolution to capture the images of individuals in vehicles, record license plates, and other information that would allow identification of individuals? How does each of these capabilities further Port security?*

¹ Available at <https://www.shotspotter.com/technology/wide-area-acoustic-surveillance>.

- * **Police and Fire CAD Data (Phase 2).** The Staff Report states that the “[s]ystem ... tracks incidents/dispatches and includes all incident records and details.” (Staff Report at page 6.) This sentence provides so little information that it is difficult to understand what the system is. *What is an “incident”? How does the system “track” it? And what is included in the universe of “all incident records and details”? How does access to each type of information tracked by the CAD system further Port security?* The staff report states that access to this information would allow “EOC staff to keep updated on specific incidents without tying up dispatcher’s time” but this rationale is so broad (keeping EOC staff “updated”) as to justify collection of all kinds of information, including information that the City Council has already decided should not be included in the DAC (such as surveillance feeds from Oakland schools).

- * **Police and Fire Records Management System (Phase 2).** The Staff Report states that the Records Management System “tracks and includes case records for OPD and OFD.” (Staff Report at page 6.) Again, this sentence provides so little information that it is entirely unclear what this system is and how it differs from the CAD system. *What is a “case record” within this system? Does it include all arrest records, including records of arrests that did not lead to charge or conviction? How does this system “track” such records? How does access to each type of record tracked by the RMS system (such as records of arrests that did not lead to charge or conviction) further Port security? Does DAC access to OPD arrest records comport with state law restrictions on access to criminal history information?* To the extent that the RMS includes all of OPD’s arrest reports, access to this information would amount to access to comprehensive criminal history information – in effect, a “rap sheet” – about thousands of individuals, including information about arrests that did not lead to charge or conviction. State law places strict limitations on the distribution of protected rap sheet information. *See Penal Code §13300; International Federation of Professional and Technical Engineers, Local 21 v. Superior Court*, 42 Cal.4th 319, 339 (2007) (“Penal Code section 13300 . . . generally prohibits a local criminal justice agency, including a court, from distributing information that relates a person’s criminal history”); *Ops.Cal.Atty.Gen. 06-203, 12* (2006) (prosecutor may not produce in response to Public Record Act request the criminal history of an individual in the county, including all arrests and case dispositions, because the information is protected rap sheet information pursuant to Penal Code §§13300-13305). Depending on who would have access to this information through the DAC, inclusion of the RMS within the DAC may violate state law provisions governing rap sheet information.

- * **Various News Feeds & Alerts (Phase 2).** The Staff Report states that alerts “may come in via email, web feed, RSS, or other means.” (Staff Report at page 8, emphasis added.) *What “other means” would feed into this system? Would it include social media feeds?* National Public Radio recently aired a story about new investigative tools that monitor social media feeds. *See Martin Kaste, “As Police Monitor Social Media, Legal Lines Become Blurred,” NPR* (Feb. 28, 2014).² As Vernon Keenan, the director of the Georgia

² Available at <http://www.npr.org/blogs/alltechconsidered/2014/02/28/284131881/as-police-monitor-social-media-legal-lines-become-blurred>.

Bureau of Investigation stated, “For law enforcement to be there and to take photographs of all the participants [of a political protest] — monitoring — is not against the law, but it's not acceptable.” *Id.* As a result, “Keenan requires his agents to get permission from a supervisor before they scan social media. They have to explain what they’re monitoring and why.” *Id.* Law enforcement monitoring of social media, especially through sophisticated new technology, raises cutting edge legal and public policy questions that need to be aired thoroughly.³ The City Council should not inadvertently authorize the DAC to include social media monitoring without first examining and debating the issues, and allow the public to present all perspectives. If the City Council is inclined to include this system in the DAC, it should expressly clarify that only the feeds listed in the Staff Report (US Coast Guard notifications, State Warning Center, Homeland Security Information Alerts, Cal Fire Alerts, FEMA News releases, and California Dept. of Fish and Game) are included and that all other email and web feeds, including social media, are excluded.

The Staff Report also states that “[t]hese feeds will allow creation of automatic alerts of events that meet thresholds. Alerts can signal EOC staff to execute pre-written action plans specific to the event. The pre-written action plans will be embedded into the system.” (Staff Report at page 8.) *What kinds of “thresholds” will the automatic alerts trigger? What are the “pre-written action plans” that will be executed?*

The federal government can access information in the DAC under the Patriot Act.
Various City Councilmembers and the public have repeatedly expressed concerns about the DAC in light of the Snowden revelations of pervasive NSA spying. The Staff Report suggests that concerns about federal access to information aggregated by the DAC are unfounded because “information sharing would be limited unless there is a written agreement for sharing information collected and stored by the DAC” and “information received in the DAC is considered third party information and the City of Oakland cannot provide the information unless it is the owner of the video and data.” (Staff Report at 14). It is unclear why the City of Oakland would not be considered the “owner” of video or data from, for example, City Shot Spotter, City traffic cameras, or records of the City police and fire departments, all either already included in Phase 1 or slated for inclusion in Phase 2. More significantly, the Staff Report fails to acknowledge that the federal government can demand information without any information sharing agreement, a warrant, or a subpoena. Under Section 215 of the Patriot Act (codified at 50 U.S.C. §1861), the FBI can obtain secret court orders from the Foreign Intelligence Surveillance Court compelling third parties to produce “any tangible thing” that is “relevant” to foreign intelligence or terrorism investigations. Section 215 includes a “gag order” provision, such that the recipient of an order is generally prohibited from disclosing it. *See* 50 U.S.C. §1861(d). Unfortunately, involvement of the Foreign Intelligence Surveillance Court provides little assurance that the government will not use Section 215 to engage in dragnet and intrusive sweeps for information. The government has relied on Section 215 in obtaining metadata of all

³ In December 2012, the San Francisco District Attorney issued a subpoena to Twitter seeking “tweets” of several individuals who had been arrested at a political protest. After the ACLU and Electronic Frontier Foundation filed an amicus brief urging the court to quash the subpoena, the District Attorney – in a tacit acknowledgment of the complex legal issues implicated by the subpoena – voluntarily withdrew the subpoena. *See* Xenia Jardin, “SF District Attorney withdraws subpoenas seeking Twitter users’ account data,” BoingBoing (Jan. 2, 2013), available at <http://boingboing.net/2013/01/02/sf-district-attorney-withdraws.html>.

domestic telephone calls from Verizon, as revealed by Edward Snowden last summer. *See* Glenn Greenwald, "NSA collecting phone records of millions of Verizon customers daily," *The Guardian* (June 5, 2013).⁴ While the ACLU is currently challenging the constitutionality of Section 215, the statute currently remains in force.

* * *

For the foregoing reasons, we urge you not to approve the proposed resolution.

Sincerely,

A handwritten signature in black ink, appearing to read 'Linda Lye', with a stylized flourish at the end.

Linda Lye
Staff Attorney
ACLU of Northern California

⁴Available at <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>.