



CITY OF OAKLAND

Privacy Advisory Commission

October 7, 2021 5:10 PM

Oakland City Hall

Hearing Room 1

1 Frank H. Ogawa Plaza, 1st Floor

Special Meeting 2 Minutes

Commission Members: **District 1 Representative:** Reem Suleiman, **District 2 Representative:** Chloe Brown, **District 3 Representative:** Brian Hofer, Chair, **District 4 Representative:** Lou Katz, **District 5 Representative:** Omar De La Cruz, **District 6 Representative:** Gina Tomlinson, **District 7 Representative:** Robert Oliver, **Council At-Large Representative:** Henry Gage III, Vice Chair **Mayoral Representative:** Vacant

Pursuant to California Government Code section 54953(e), Oakland Privacy Advisory Commission Board Members/Commissioners, as well as City staff, will participate via phone/video conference, and no physical teleconference locations are required.

1. Call to Order, determination of quorum

All members were present.

2. Review and approval of the draft September meeting minutes

The September Meeting Minutes were approved unanimously.

3. Open Forum

**although accidentally omitted from the agenda, there was one Open Forum Speaker:*

Assata Olugbala raise concern about the privately funded Chinatown Camera project that had been considered by the PAC but later withdrawn. She noted concern that no one is regulating the use of those cameras or the management of the data.

4. Surveillance Equipment Ordinance – OPD – Automated License Plate Readers

Chairperson Hofer opened up noting the sequencing is off; normally an annual report would be presented and give insight to guide possible changes to a Use Policy. However, the reports are being presented along

with a Use Policy. He suggested starting with the annual reports because they do provide some insights. Since the reports are only from 2019 and 2020, he asked if OPD was asserting that it could not provide reports and data from further back in time.

Captain Figueroa stated that these reports represent what data OPD was able to acquire, he hopes that a technology upgrade would allow OPD to provide audits in the future.

DC Lindsey confirmed that the data for 2016, 2017, and 2018 has been purged as per the practice of deleting data after 2 years. She also stated that the department is not currently seeking an upgraded system.

Member Oliver asked several questions about purged data, and it was explained that during a systems upgrade in December, the information was purged in accordance with the 720 day mark. There is no data prior to that.

Member De La Cruz asked about the scan versus hit data in both annual reports, he asked about a more detailed breakdown of when scans and hits actually lead to an arrest or conviction. Captain Figueroa stated there is not a way to capture that in the current system. Chair Hofer asked about the third party request data and Captain Figueroa explained that those requests must be made via email to a Deputy Chief and those are retained.

In regard to the FBI team that was part of a task force, those agents had their own user account and therefore no requests for data from them were made via email. However, OPD could audit the system for when those users made a query. Chair Hofer emphasized that the Safe Streets MOU does not explicitly grant access to the FBI for ALPR data.

Member Brown noted that in 2019 the report states over 100 times that a hit was useful in a case where a vehicle was on a hot list but she points out from the two tables that the hit rate is .1 percent. This means the department is gathering a huge amount of data from completely innocent persons.

The department displayed its new online tracking system for request for data from outside agencies. This will make compliance much easier in future annual reports.

Chair Hofer displayed the lists of cases referred to in the reports and noted there is no evidence that retention beyond 48 hours is useful to solving crimes. He also provided data from the City of Richmond, CA where they have not had ALPR for two years and the crime rate is actually lower in those two years than in the prior years with ALPR.

In regard to the Use Policy, Chair Hofer noted the “right to know, need to know” language needs to be inserted and needs to transfer to requests from other jurisdictions as well.

DC Lindsey spoke about her concern that the department doesn't have clear direction from the PAC in how to move forward providing the beneficial data sets for this technology (or others). She noted her team is going back and trying to put together the right data and acknowledged the impediment the department has in capturing old data.

She went on to describe how investigators use this data and what they may look for in a case—citing a recent homicide in which a fatal car racing incident carried on for 30 city blocks and the department is searching for a license plate to ID the vehicle. She notes that the department can do a better job closing the loop to show, in the reports, how this data is useful in solving crimes.

DC Lindsey also explained the staffing shortage slows the department's ability to investigate serious crimes, noting the force is at only 685 officers currently. Therefore, they feel retaining data longer is important to preserve possible evidence in those cases.

Member Katz cited the cost of the system and its efficacy as well—with 8 million scans in one year equating to .1% hit rate and even fewer actual cases solved. Member Sulieman raised the same concern, retaining millions of pieces of data on people has such potential to cause harm. She stated there needs to be some rationale for retaining this data, suggesting that 99.99% of the data should be purged within a week and only a small fraction that is connected to a case needs to be retained.

Member Gage raised questions as to what guidelines dictate retention as there are some inconsistencies in the documents. There are references to two-year rate and one-year rates of retention being within the limits of the government code. Captain Figueroa suggested the department would need to seek legal counsel as to whether the retention period can go below one year. Chair Hofer challenged this and stated that the government code allows local bodies to set whatever retention period they want. He referenced NCRIC having a one-year retention period, and cited several other local jurisdictions have a thirty-day retention period. Member Gage agreed with the Chair's position based on his read of the government code.

Member Oliver stated his agreement with DC Lindsey that the department is short staffed and there is a significant crime problem, but he also believes the department's behavior and practices have damaged its relationship with the community and that break in trust hinders investigations more so than staffing or technology. He also was critical of the department for agreeing to providing data in the original policy that it could not provide in the first place.

Member Brown reiterated that the data shows the ALPR as a tool is very ineffective. In weighing privacy concerns and the cost of the technology, there need to be reasonable tradeoffs if the PAC were to recommend allowing its use. The retention period is one of those important items where OPD needs to come up with a data-supported retention period. Second, the audit data is insufficient to determine if any of the data is being misused.

DC Lindsey laid out an example of how the investigators might use data in a case long after it may have been gathered. The department may get a lead to search for a “green Honda” being on 55th Avenue months after the data was captured. She hopes that a new system would allow for the department to show its effective use of this data in the future to justify the cost and prove efficacy. There was further discussion about investigatory processes and how language in the reporting could be tightened up to display the use of ALPR.

Chair Hofer noted the OakDOT ALPR policy holds data for only 24 hours unless there is a reason to hold it. He suggests the department propose a policy like that. He asked the PAC if any member had a problem with the actual real-time scanning (without retention). Member Oliver noted it is a force multiplier for the department built at what cost. Member De La Cruz also stated he didn’t have a philosophical problem with the actual scan but is really concerned about retention.

Chair Hofer screen shared a yet-to-be published analysis of Bay Area ALPR data that shows no increase in investigative leads or an increase in recovered stolen vehicles across the Bay Area. The study is under peer review currently but so far has shown to be accurate. He went on to say if OPD could show that ALPR scans solve a measurable number of crimes especially homicides, then the PAC and City Council would likely support mass-surveillance in the name of public safety but .0001 rate of success does not support that. He advised that OPD needs to make decisions to use technology needs to be based on data.

Chair Hofer suggested another ad hoc meeting could take place as a next step.

There was one public speaker on the item: Assata Olugbala stated that she does not think OPD’s work (on Cease Fire) is data driven, she went on to cite the stop data and the racial disparities in that data set. She stated that only African Americans are being profiled and it’s not because of their license plates, it’s because of the color of their skin.

The item was continued to next month.

The meeting adjourned at 7:08.