



AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Darren Allison
Acting Chief of Police

SUBJECT: Mobile ID Privacy Policy

DATE: February 21, 2020

City Administrator Approval

Date:

3/9/2020

RECOMMENDATION

Staff Recommends That The City Council Adopt A Resolution Approving The Oakland Police Department (OPD) Mobile Identification Device (MID) Use Policy And Surveillance Impact Report.

EXECUTIVE SUMMARY

OPD has access to small Mobile Identification Devices (MID) through the Alameda County Sherriff's Office, which use a radio standard to send a scanned image of a fingerprint to verify for a match against arrests from Alameda and Contra Costa County. This technology is useful in situations where OPD must identify an individual facing arrest. Approval of the proposed resolution will allow officers to scan an individual to see if there is a fingerprint match with Alameda County and/or Contra Costa County arrest databases.

State Law requires officers to custodially arrest individuals in such cases. Individuals must then be taken to Santa Rita Jail. There are cases where officers can cite an individual for a misdemeanor not requiring custodially arrest. The MID allows officers to scan an individual to see if there is a fingerprint match with Alameda County and/or Contra Costa County arrest databases. OPD developed its Use Policy and Surveillance Impact Report to comply with the City's Surveillance Technology Ordinance. The Privacy Commission reviewed the OPD policies and after recommended that the City Council adopt the new OPD Use Policy and Surveillance Impacts Report after OPD presentenced modified and improved versions at the February 5, 2020 meeting of the Privacy Advisory Commission.

BACKGROUND / LEGISLATIVE HISTORY

Mobile Identification Devices (MID) are small enough to be handheld and contain an optical sensor to scan fingerprints and transmit them to look for matches within local databases. MIDs are not investigative tools – they only allow personnel to attempt to match fingerprints of individuals who are to be arrested with possible matches from past arrests in Alameda and Contra Costa Counties.

Public Safety Committee
March 24, 2020

The MID uses the Bluetooth radio standard to send a scanned image of a fingerprint to a police vehicle mobile data terminal (MDT), which can connect with special software. The software accesses a regional fingerprint database shared by Alameda and Contra Costa Sheriff's Offices called Cogent Automated Fingerprint Identification System (CAFIS).

The MDT software sends the fingerprint digital image to CAFIS where the Alameda and Contra Costa County CAL-ID Mobile Web ID system runs the fingerprint against the Alameda County Consolidated Records Information Management System (CRIMS) and the Contra Costa County Automated Regional Information Exchange System (ARIES) Systems to cross reference the scanned image to look for matches. The software match process uses a graphic representation of the print as a mathematical model of the relationships between the ridges of the fingerprint image. This mathematical measuring of friction ridges allows the image to be transmitted as a string of numbers the Automated Fingerprint Identification System (AFIS) databases can use.

Search results are sent back to MDTs. If a search result ends in a match with CAFIS, a fingerprint record will appear in the MID with the following:

- Transaction Number;
- Main Number,
- Name on Record;
- Date of Birth (DOB);
- Sex;
- Person File Number (PFN) / Juvenile File Number (JFN); and
- Arrest Booking Photo (if one is on file).

The hit will only return with the record hit (not a list of possible matches); a hit means a 100 percent match. No hits return with the display, "No hit." A "No Hit" means only that the subject's fingerprints are not in the CAFIS database.

Section 11 "Track Record of Other Entities" of the Surveillance Impact Report for Mobile Identification Devices (see **Attachment B**) lists different city and county law enforcement agencies in California that now use the same technology for identification purposes.

ANALYSIS AND POLICY ALTERNATIVES

The sole purpose of the MID is to allow police to identify individuals who do not possess acceptable forms of identification (e.g. driver's license or passport) in cases where they otherwise do not need to be booked in the Alameda County Jail. State law requires police to identify individuals to be cited for an infraction or misdemeanor; arrest and booking into jail is legally required when an acceptable form of ID cannot be obtained. Police need to know who the person in question is when a citation is deemed appropriate.

For situations where an individual must face custodial arrest, OPD currently transports individuals to the Alameda County Sheriff's Office (ACSO) Santa Rita Jail in Dublin, CA, where they are turned over to ACSO deputies for intake and identification. In 2018, there were eight arrests where California Vehicle Code section 40302(a) or (b) was one of the listed offenses (one case as for 2019 as of October 17, 2019). These are instances where the initial stop and/or citation was merely for a traffic violation, but adequate identification could not be made.

However, the arrests involving 40302 Vehicle Code (VC) are not the only instances of subjects being booked on citable misdemeanors due to a lack of identification.

There are countless situations where individuals faced custodial arrest at Santa Rita Jail where a citation would have been an appropriate remedy. For 2018, OPD made 8,239 custodial arrests for 16,853 charges. 6,940 of these arrests (84 percent) included either a felony charge, a misdemeanor charge that required an arrest (warrant, domestic violence, firearms violation), or both. The remaining 1,299 arrests involved over 100 different charges; **Table 1** below lists the top categories (>30 arrests each). In many of these cases, custodial arrest would be the best option even when the arrestee could provide identification. For example, individuals who are highly inebriated may need to be arrested for their own safety, so they can recover in a safe place and not be susceptible to outdoor exposure and/or victimization. However, there are cases such as the 58 battery custodial arrests where identification could have afforded the officers the ability to issue a simple citation without custodial arrest.

Table 1: OPD 2018 Non-Required Custodial Arrests Top Categories

| Statute Code | Description | Charge Count |
|--------------|---|--------------|
| PC647 (F) | DISORDERLY CONDUCT: ALCOHOL | 203 |
| PC647 (B) | DISORDERLY CONDUCT: PROSTITUTION | 200 |
| VC23152 (A) | DUI* ALCOHOL/DRUGS | 158 |
| PC166 (A)(4) | CONTEMPT OF COURT: DISOBEY COURT ORDER/ETC | 101 |
| PC653.22(A) | LOITER: INTENT: PROSTITUTION | 89 |
| PC242 | BATTERY | 58 |
| PC 166(C)(1) | CONTEMPT OF COURT: VIOLATE PROTECTIVE ORDER/ETC | 32 |

*DUI = driving a vehicle under the influence of alcohol or other intoxicant

Officers are not allowed to transport subjects to Santa Rita Jail alone. Each arrest requires hours of time of at least two officers and wastes significant time for the arrested individuals who need to return to Oakland or elsewhere upon release. Officers can more efficiently utilize patrol service time in the community. OPD would rather cite people for low-level crimes when appropriate, and allow individuals to not face the hassles and burdens of being temporarily removed from society and going to jail some 26 miles from Oakland. Individuals who could be cited for an infraction or misdemeanor but cannot provide ID will be saved the burden of transportation back to Oakland after the full arrest and booking process. Additionally, the arrest can cause varying levels of stress for individuals and lead to escalations of anger, noncompliance, and even use of force. Furthermore, if an individual who must face custodial arrest has a vehicle at the arrest location, their vehicle may face parking fees and towing – causing an additional burden. By providing rapid ID when records exist, MIDs can mitigate these challenges as well as offer other benefits.

MIDs and Oakland's Surveillance Ordinance

Oakland's Surveillance Ordinance No.13489 C.M.S., adopted by the City Council on May 15, 2018, adds Chapter 9.64 to the Oakland Municipal Code (OMC) covering policy areas related to surveillance technology. OMC 9.64.030.1.C requires City Council approval for new and existing

surveillance technology. Additionally, OMC Section 9.64.020.1 requires that, "Prior to seeking City Council approval for existing city surveillance technology under Section 9.64.030 city staff shall submit a surveillance impact report and surveillance use policy to the Privacy Advisory Commission (PAC) for its review at a regularly noticed meeting. The surveillance impact report and surveillance use policy must address the specific subject matter specified for such reports as defined under 9.64.010."

OPD staff first presented a draft MID Use Policy and Surveillance Impact Report to the PAC at the December 5, 2019 meeting. The Use Policy covers several relevant areas required by OPD as well as the Surveillance Ordinance, including the following area:

- Technology Description;
- Authorized Use;
- Use Restrictions;
- Data Access, Data Collection and Retention, and Security;
- Monitoring and Reporting; and
- System training.

The Surveillance Impact Use Report covers the following areas as required by the Surveillance Ordinance:

- Information describing the system and how it works;
- Purpose of the technology;
- Locations where, and Situations in which the technology may be used (along with area crime data);
- Privacy Impact of the technology;
- Mitigations to prevent privacy impacts;
- Data Types and Sources;
- Data Security;
- Costs;
- Third Party Dependence;
- Alternatives Considered; and
- Track Record of Other Entities

The PAC commissioners had questions regarding the technology:

- What the MID shows in terms of results for fingerprint matches;
- What databases the system uses to review matches – CAFIS and ARIES)
- How the system would be used and when an officer could offer a citation in lieu of a custodial arrest (explained above);
- How will officers have access to MIDs – are there protocols in place to mitigate abuse; and
- Whether OPD would have access to use data to see how much any officer used the technology to verify patterns of overuse and/or system abuse.

OPD listened to the concerns of the PAC and modified the documents to articulate how OPD would ensure that PAC concerns were properly addressed. The new documents (see **Attachment A** - DGO I-21 "Mobile Identification Devices" and the Surveillance Impact Report for Mobile Identification Devices - **Attachment B**) better explain how the system uses existing prints (if they exist in Alameda County and/or Contra Costa County databases from prior arrests). The documents clearly explain OPD protocols related to arrest for citable

misdemeanors. Page 2 of DGO I-21 also explains under "C. Authorized Use, C.2 Use Procedure" how officers have to request the technology from a patrol sergeant when use is requested. DGO I-21 "F Technology Administration, F.5 "Auditing and Oversight" explains that the System Coordinator will collaborate with ACSO "to produce a report detailing use of each device" for the required annual report to the Privacy Commission. The PAC, with these amendments, made the unanimous motion to recommend that the City Council approve The Oakland Police Department (OPD) Mobile Identification Device (MID) Use Policy and Surveillance Impact Report – the resolution accompanying this report officially allows for this action.

FISCAL IMPACT

There is no fiscal impact associated with this report and privacy policy, nor from OPD use of MIDs, as ACSO will accept all costs to furnish OPD with MID technology. ACSO will also maintain responsibility for maintenance costs.

PUBLIC OUTREACH / INTEREST

No public outreach was conducted other than the required posting on the City's website

COORDINATION

The Office of the City Attorney reviewed this report for legality.

SUSTAINABLE OPPORTUNITIES

Economic: There are no economic opportunities associated with this report.

Environmental: There are no environmental opportunities associated with this report.

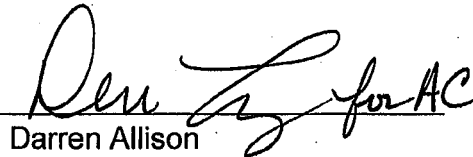
Race and Equity: All Oakland residents and visitors have a right and an expectation of privacy. Additionally, OPD strives to ensure the public safety of all Oakland residents and visitors. OPD has developed its MID Use Policy and Surveillance Impact Report with the goals of utilizing technology to mitigate the need to arrest individuals purely for not having adequate personal identification. An arrest can cause varying levels of stress for individuals and lead to escalations of anger, noncompliance, and even use of force. Furthermore, if an individual who must face custodial arrest has a vehicle at the arrest location, their vehicle may face parking fees and even towing – causing an additional burden. By providing rapid ID when records exist, MIDs can mitigate these challenges as well as offer other benefits. This effort to use citations over custodial arrests where appropriate can promote equitable outcomes for Oakland residents and visitors.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Adopt A Resolution Approving The Oakland Police Department (OPD) Mobile Identification Device (MID) Use Policy And Surveillance Impact Report.

For questions regarding this report, please contact Bruce Stoffmacher, Management Assistant at 510-238-6976.

Respectfully submitted,



Darren Allison
Acting Chief of Police
Oakland Police Department

Reviewed by:
Roland Holmgren, Deputy Chief
OPD, Bureau of Field Operations

Reviewed by:
Philip Best, Police Services Manager
OPD, Training Division, Research and Planning

Prepared by:
Bruce Stoffmacher, Management Assistant
OPD, Training Division, Research and Planning

Attachments (2):

A: DGO I-21 "Mobile Identification Devices

B: Surveillance Impact Report for Mobile Identification Devices


City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

Introduced by Councilmember _____

RESOLUTION APPROVING THE OAKLAND POLICE DEPARTMENT (OPD) MOBILE IDENTIFICATION DEVICE (MID) USE POLICY AND SURVEILLANCE IMPACT REPORT

WHEREAS, Oakland's Surveillance Ordinance No.13489 C.M.S., adopted by the City Council on May 15, 2018 adds Chapter 9.64 to the Oakland Municipal Code (OMC) covering policy areas related to surveillance technology; and

WHEREAS, OMC 9.64.030.1.C requires City Council approval for new and existing surveillance technology. Additionally, OMC Section 9.64.020.1 requires that, "Prior to seeking City Council approval for existing city surveillance technology under Section 9.64.030 city staff shall submit a surveillance impact report and surveillance use policy to the Privacy Advisory Commission (PAC) for its review at a regularly noticed meeting. The surveillance impact report and surveillance use policy must address the specific subject matter specified for such reports as defined under 9.64.010,"; and

WHEREAS, OPD staff presented a draft MID Use Policy "Department General Order (DGO) I-21: Mobile Identification Devices" and the Surveillance Impact Report to the PAC at their December 5, 2019 and February 6, 2020 meetings; and

WHEREAS, the Use Policy DGO I-21 covers several relevant areas required by OMC 9.64.030, including the following area:

- Technology Description;
- Authorized Use;
- Use Restrictions;
- Data Access, Data Collection and Retention, and Security;
- Monitoring and Reporting; and
- System Training; and

WHEREAS, the Surveillance Impact Report covers the following areas as required by the Surveillance Ordinance:

- Information describing the system and how it works;

- Purpose of the technology;
- Locations where, and Situations in which the technology may be used (along with area crime data);
- Privacy Impact of the technology;
- Mitigations to prevent privacy impacts;
- Data Types and Sources;
- Data Security;
- Costs;
- Third Party Dependence;
- Alternatives Considered; and
- Track Record of Other Entities; and

WHEREAS, through robust discussion and collaboration, OPD has developed substantial privacy mitigations outlined in the report accompanying this resolution; and

WHEREAS, OPD staff made a second presentation of a revised MID Use Policy and Surveillance Impact Report to the PAC on February 6, 2020, and at this meeting, after another robust discussion between PAC commissioners and OPD staff, the PAC voted unanimously to recommend that the City Council approve OPD's MID Use Policy (DGO I-21) and MID Surveillance Impact Report; therefore be it

RESOLVED: that City Council does hereby approve the OPD Mobile Identification Devices Use Policy as provided in **Attachment A** to the report accompanying this resolution; and be it

FURTHER RESOLVED: that City Council does hereby approve the OPD Surveillance Impact Report as provided in **Attachment B** to the report accompanying this resolution; and be it

FURTHER RESOLVED: that pursuant to OMC chapter 9.64, City Council has considered the PAC's recommendation to favor City Council authorization of the acquisition and use of OPD Mobile Identification Device technology; and be it

FURTHER RESOLVED: That pursuant to OMC chapter 9.64, for the reasons referenced above by City staff and addressed in the agenda report and surveillance impact report accompanying this resolution, the City Council finds that the benefits to the community of the surveillance technology outweigh the costs (cost benefit determination); that the proposal will safeguard civil liberties and civil rights, and that, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective; and so authorizes the City Administrator or designee's acquisition and use of the Mobile Identification Device technology; and be it

FURTHER RESOLVED: That in accordance with the City Charter, the MOU authorized by this resolution shall be approved by as to form and legality before execution, and a copy of the fully executed agreement shall be placed on file with the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR,
THAO AND PRESIDENT KAPLAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California