

Oakland Police department (OPD) Response to Oakland Privacy Advisory Commission (PAC) Documents Supporting the PAC Justification for Voting to recommend Termination of OPD’s Automated License Plate Reader (ALPR) Program

Brian Hofer, PAC Chair, provided a document (see **Attachment C**) for the first time at the February 4, 2021 PAC meeting; OPD staff who had previously brought ALPR Use Policies to the PAC could only see the document as Mr. Hofer shared his screen and then review the document after the meeting where the PAC voted to ban ALPR for two years. Each of PAC Chair Hofer’s findings is detailed with an OPD response in Attachment D. below with an OPD response.

1. “ALPR may be useful and appropriate, when scanning plates against hot lists of suspected wrongdoing or at-risk persons.”

OPD Response: *OPD agrees, and the 2019 and 2020 OPD ALPR annual reports (see Attachments C and D) speak to the number of “hits” the system provides to OPD patrol personnel in ALPR-equipped vehicles.*

2. “OPD’s proposed use policy goes far beyond such use, by collecting and retaining data on all vehicles scanned, as indiscriminate mass surveillance. OPD has acknowledged that they are unaware of any legal authority that allows such action to occur. We concur that there is no legal authority authorizing law enforcement to indiscriminately collect sensitive data on individuals not suspected of wrongdoing.”

OPD Response: *OPD’s draft Surveillance Impact Report (see Attachment A) “Data Types and Sources” (pages 6,7) articulates where OPD’s ALPR program complies with California Civil Code Title 1.81.23 governs “Collection of License Plate Information” and data retention schedules outlined in California Government Code section 34090 applies. Furthermore, OPD expressed a willingness in their updated Impact Report for the February 4, 2021 meeting to address PAC-expressed concerns of OPD having access to ALPR data. ALPR is now a standard in police investigations. Street crime in the 21st century is mostly carried out with vehicles as the form of transportation. ALPR helps to investigate the transportation equation of many crimes. The ALPR system is a technology that if securely housed and controlled can provide for more productive and efficient police investigations. In the years 2019 and 2020 the amount of times ALPR was queried equals to 0.09 percent of the total number of scans (less than a tenth of one percent of total scans) indicating that this system is not being used as a dragnet to target law abiding citizens. This system is being used to target a very small segment of the population engaged in criminal activity.*

3. “OPD has failed under our ordinance requirements to provide evidence that ALPR use should be approved pursuant to its existing policy. A few unverifiable anecdotal reports compared against millions of plate scans is inadequate¹, especially in conjunction with

¹ <https://arstechnica.com/tech-policy/2015/03/we-know-where-youve-been-ars-acquires-4-6m-license-plate-scans-from-the-cops/>

the failure for five consecutive years to provide annual reports, maintain a record of third-party data requests, and maintain a record of internal access required by SB 34².”

OPD Response: *OPD agrees that all stakeholders deserve evidence of the effectiveness of the ALPR system. Early drafts of the Impact Report only provided five examples (a missing person + Homicide Case, three human trafficking Cases, and a sexual assault case). OPD recognizes the need to document more cases where ALPR was instrumental given OPD’s consistent claim of the technology’s critical role in investigations. The **appendices A and B** to the draft Surveillance Impact Report (see Attachment ...) now contains over 100 cases of noted stolen vehicles (many associated with other crimes) as well as over 30 examples where ALPR played a critical role in violent crime investigations – and OPD was prepared to share this document via share-screen technology at the February 4 PAC meeting; the PAC commissions, however, did not allow for this information to be shared.*

OPD’s “failure...to provide annual reports” can be explained as follows. Firstly, there was never any intention to not produce and bring these reports to the PAC. OPD has brought forward annual reports per OMC 9.64 for other PAC and Council approved policies. OPD’s current ALPR Policy “ALPR 430” does require an annual report; the current OPD staff supporting the PAC did not develop this policy and was focused on the annual reports that had more recently been reviewed by the PAC (e.g., cell-site simulator, live-stream transmitter, ShotSpotter and OPD-federal partner agency annual reports). In late 2020 OPD staff began developing 2019 and 2020 annual reports to support the new policy development. OPD staff supporting surveillance technology policy development have been focused on developing an ALPR Use Policy as well as developing other Use Policies and revising the Surveillance Use Policy. There are no full-time staff members in the City Administrator’s Office nor OPD devoted exclusively to supporting the PAC; the failure to provide annual reports before 2021 is thus a collective challenge for all parties to be better track deliverables managed by OMC 9.64.

3rd Party Data Requests: OPD does maintain a record of third-party data requests as outlined in the Use Policy and Impact Report; this data is provided in the 2019 and 2020 annual reports.

Record of Internal Access – OPD explained to the PAC at the January 7, 2021 meeting that the current OPD ALPR technology is outdated and thus OPD is limited to providing a list of scans and hits. The software company that owns the system no longer supports the outdated database, making “internal access” queries (e.g. who used the system and what was searched) extremely difficult if not impossible. OPD would prefer to purchase a more modern system with much better internal access query functionality for better auditing and to comply with local and State requirements. However, OPD cannot purchase a new system with better audit functions unless and until the PAC and City Council approve OPD’s Use Policy.

4. “OPD has failed under our ordinance to specifically justify its proposed 1-year retention period. Our ordinance requires the reasons why such retention period is justified. In fact, OPD’s revised February 2021 impact statement directly contradicts the need for a one-

² https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB34

year retention period, stating that “a recent analysis of ALPR queries shows that most revealed data that was less than one month old (13 cases), and the number of cases using older data diminishes.”

OPD Response: *The draft Impact Report provided to the PAC before the January 7, 2021 meeting already explained that the proposed two-year data retention schedule is informed by California Government Code section 34090. However, as explained in #2 above, OPD chose to limit its data retention despite sound legal alignment to respect PAC concerns with a longer data retention period. The **Appendix B** to OPD’s ALPR Surveillance Impact Report which OPD was prepared to share with the PAC at the February 4, 2021 meeting illustrates that the age of the ALPR data in these listed cases is between one month and twelve months – which justifies a data retention period for at least 12 months. Furthermore, there are likely more cases where even older data has been instrumental with investigations – but OPD current data systems cannot automatically track such usage.*

5. “OPD has also failed to answer seemingly basic questions about the technical capabilities of its use, such as manually adding a plate to a hot list, or even how many hot lists there are despite repeated written requests for such information.”

OPD Response: *Page 1 of the Impact Report provided to the PAC clearly explains, “OPD’s ALPR system updates daily with three California Department of Justice (CA DOJ) hotlists: felony wants, stolen plates, stolen vehicles – there is no OPD ALPR connection to any federal database.” OPD has explained verbally multiple times (April 4, 2019 and January 7, 2021 how specific license plates can be added into the system so that the in-vehicle systems will alert officers if there is a match; OPD has also explained that this feature can be initiated to expire (e.g., after one week). Furthermore, OPD has invited Mr. Hofer, PAC Chair to come to the Police Administration Building and be shown OPD’s ALPR system for his own review.*

6. “OPD has been subject to federal Court oversight for eighteen years due to racial profiling and has failed to comply with its own negotiated settlement agreement for that same period of time, costing the taxpayers of Oakland millions of dollars and creating a lack of trust in our police department.”

OPD Response: *In 2003, the City and OPD agreed to comply with 50 separate tasks under the Federal Negotiated Settlement Agreement (NSA). These 50 tasks in turn can comprise myriad subtasks which include such weighty projects as developing policies, tracking systems, databases, trainings and other important yet time-consuming tasks. And “non-compliance” with a task and all of its subtasks does not take into account whether OPD is in substantial compliance, meaning that all but hitting a technical milestone remain. OPD has worked diligently over the past almost two decades to whittle the NSA tasks and subtasks down to a handful that remain left to completely fulfill and continues to make progress towards complete compliance on all NSA tasks. OPD constantly collaborates with all NSA stakeholders (e.g., federal judge, Compliance Director, Plaintiff Attorneys, and the Oakland Police Commission).*

*It is unclear, however, what OPD's NSA compliance has to do with ALPR technology. This technology is in wide use, not just across the state of California, but across the Country. It is a lawful law enforcement tool, and OPD wishes to continue its use in conformity with the law.*³

7. "Independent expert analysis by the Electronic Frontier Foundation in 2015 has demonstrated that OPD's use of ALPR, even after controlling for property crime, disproportionately impacts certain communities⁴."

OPD Response: *OPD agrees with the Electronic Frontier Foundation's Privacy Statement that "Respect for individuals' autonomy, anonymous speech, and the right to free association must be balanced against legitimate concerns like law enforcement."⁵ OPD has collaborated with the PAC for years with this same ethos of balancing privacy, public safety and legitimate law enforcement activity. OPD also appreciates that the article quoted and footnoted in finding #7 titled, "What You Can Learn from Oakland's Raw ALPR Data" explains that OPD has been more transparent with ALPR data than some other California law enforcement agencies – providing raw data to a public records request. The raw data provided by OPD was analyzed by the EFF for this article. OPD finds however, that the EFF utilized OPD data out of context and drew inaccurate conclusions that Chair Hofer reiterates in #7 above.*

*The map in the article (see **Figure 1** below) follows the statement, "The data indicates lower-income neighborhoods are disproportionately captured by ALPR patrols, with police vehicles creating a grid of license plates in the city's poorest neighborhoods." The blue darkened lines in the map reflect where license plates have been captured, reflecting drive patterns of OPD patrol. OPD officers are constantly responding to calls for service, which occur throughout the City (as the map shows) but disproportionately occur in lower-income areas below the 580 Highway. At the time of the EFF report Oakland had around 35 ALPR vehicles assigned to vehicles in the Patrol division. There are around 90 vehicles assigned to patrol not taking into account vehicles that are taken out of service for maintenance. The data was for one week in July of 2014. During this time period these ninety vehicles were crisscrossing the city normally along major thoroughfares to decrease response times to calls. Additionally, commercial thoroughfares such as San Pablo Avenue, Broadway, Fruitvale Avenue, and International Boulevard are used regularly by patrol officers to move about the City efficiently.*

³ ACLU, et al. v. Superior Court (Real Party County of L.A. et al.), 3 Cal.5th 1032 (2017).

⁴ <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>

⁵ <https://www.eff.org/issues/privacy>

Figure 1: EFF Map: OPD ALPR Data vs Oakland Per Capita Income Areas

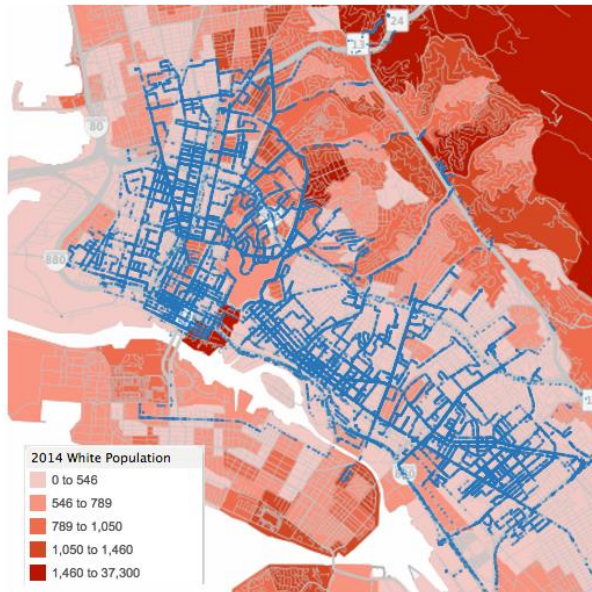
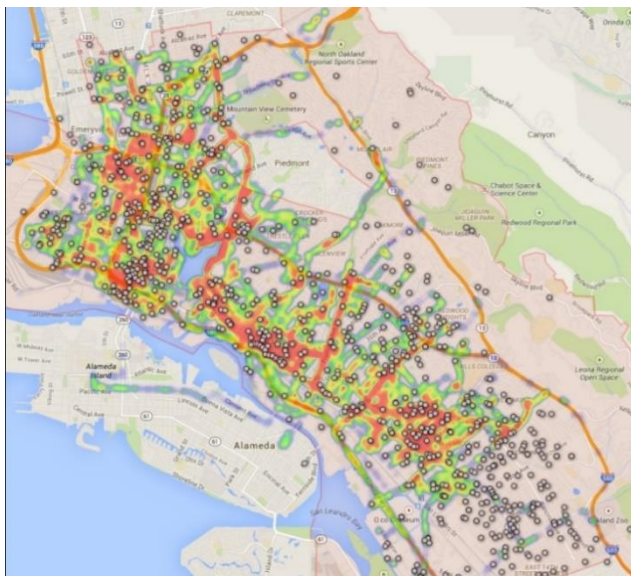
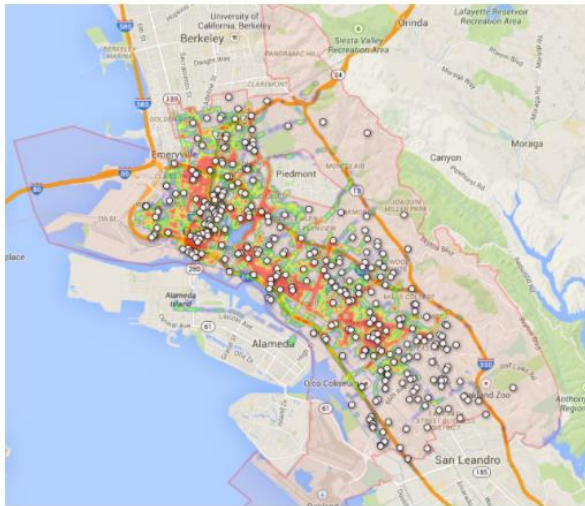


Figure 2: EFF Map: ALPR Data vs. Crime Data



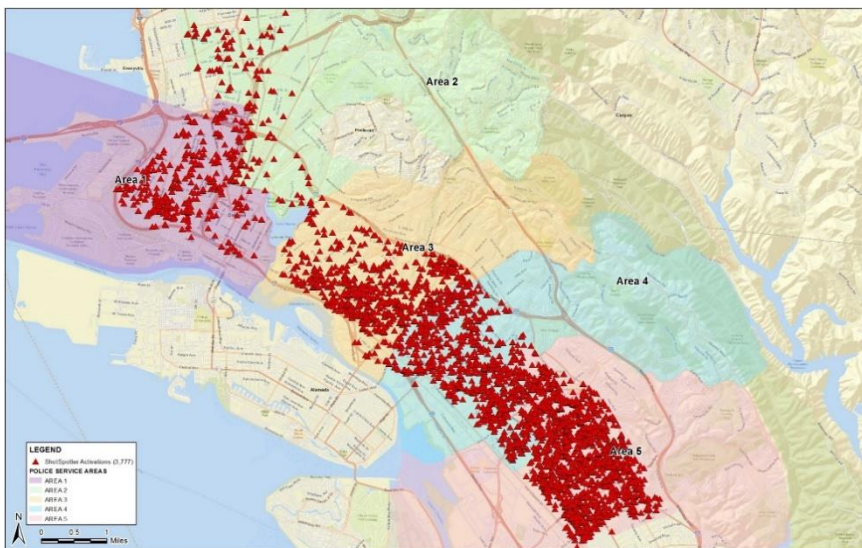
The EFF uses this second map to correlate crime data with OPD patrol patterns (based on ALPR scans) to make their conclusion that “ALPRs are clearly not being used to deter automobile-related crimes.” However, the EFF here is using all crime and then looking at “auto-related crime.”

Figure 3: EFF Map: Auto-Related OPD Crime Data



OPD finds that the EFF's analysis is inaccurate and misleading. Firstly, OPD does not uniformly deploy patrol vehicles across all residential and commercial neighborhoods. Officers are responding to calls for service and prioritizing violent crime. The ShotSpotter Activations Map below for July 1, 2020 through December 31, 2020 shows that gunshots do occur in particular areas of the city almost exclusively below the 580 Freeway; OPD does not prioritize auto-related crimes (part of what the EFF analyzed above) but does prioritize responding to gun-related crimes; it follows that OPD patrol vehicles would be tracked through ALPR data along these thoroughfares and areas where gun crimes occur.

Figure 4: ShotSpotter Activations: July 1, 2020-December 31, 2020



The EFF analysis is also inaccurate and misleading because they assume that OPD responds to all crime data. 24.9% (277 out of 1,112 crimes) of the data the EFF analyzed was in fact self-reported crime (reported online after the crime occurred e.g., theft) where an officer would not have responded to the location to take a report. 24.9

percent of the crime data analyzed by the EFF to draw conclusions about OPD patrol patterns are not calls for service. Unfortunately, the EFF uses overall crime data to draw an inaccurate analysis that PAC Chair Hofer cites for a reason to ban OPD use of ALPR.

8. "OPD has failed to follow critical provisions of SB 34 since it was enacted January 1, 2016, a state law specifically addressing the use of ALPR."

OPD Response: *OPD finds this statement to be inaccurate. California Senate Bill (SB) 34 as well as other existing State Law requires⁶:*

- a. An "ALPR operator" (e.g. OPD) to maintain reasonable security procedures and practices to protect ALPR information and implement a usage and privacy policy with respect to that information – contained in OPD's current a new draft Use Policy.

⁶ SB34 is enacted under Sections 1798.90.51 and 1798.90.52:

An ALPR operator shall do all of the following:

- (a) Maintain reasonable security procedures and practices, including operational, administrative, technical, and physical safeguards, to protect ALPR information from unauthorized access, destruction, use, modification, or disclosure.
- (b) (1) Implement a usage and privacy policy in order to ensure that the collection, use, maintenance, sharing, and dissemination of ALPR information is consistent with respect for individuals' privacy and civil liberties. The usage and privacy policy shall be available to the public in writing, and, if the ALPR operator has an Internet Web site, the usage and privacy policy shall be posted conspicuously on that Internet Web site.
- (2) The usage and privacy policy shall, at a minimum, include all of the following:
 - (A) The authorized purposes for using the ALPR system and collecting ALPR information.
 - (B) A description of the job title or other designation of the employees and independent contractors who are authorized to use or access the ALPR system, or to collect ALPR information. The policy shall identify the training requirements necessary for those authorized employees and independent contractors.
 - (C) A description of how the ALPR system will be monitored to ensure the security of the information and compliance with applicable privacy laws.
 - (D) The purposes of, process for, and restrictions on, the sale, sharing, or transfer of ALPR information to other persons.
 - (E) The title of the official custodian, or owner, of the ALPR system responsible for implementing this section.
 - (F) A description of the reasonable measures that will be used to ensure the accuracy of ALPR information and correct data errors.
 - (G) The length of time ALPR information will be retained, and the process the ALPR operator will utilize to determine if and when to destroy retained ALPR information.

1798.90.52.

If an ALPR operator accesses or provides access to ALPR information, the ALPR operator shall do both of the following:

- (a) Maintain a record of that access. At a minimum, the record shall include all of the following:
 - (1) The date and time the information is accessed.
 - (2) The license plate number or other data elements used to query the ALPR system.
 - (3) The username of the person who accesses the information, and, as applicable, the organization or entity with whom the person is affiliated.
 - (4) The purpose for accessing the information.
- (b) Require that ALPR information only be used for the authorized purposes described in the usage and privacy policy required by subdivision (b) of Section 1798.90.51

- b. Require an ALPR operator to maintain a specified record of requests for access to ALPR data – OPD does maintain records of access requests (see #1 and #3 above).
- c. Requires a public agency that operates or intends to operate an ALPR system to provide an opportunity for public comment at a regularly scheduled public meeting.
- d. Prohibits a public agency from selling, sharing, or transferring ALPR information, except to another public agency, as specified – OPD has always complied with these rules.
- e. Requires any agency to disclose any security breach – OPD has explained in the Impact Report that there has not been a security breach.

OPD has complied with all of these provisions.

- 9. “OPD has violated its own policy enacted in 2016, by refusing to provide or retain the following:
 - a. Annual Reports for 2016, 2017, 2018, 2019, 2020
 - b. Audits for 2016, 2017, 2018, 2019, 2020
 - c. Maintaining a “record of access” as referenced in the policy, and as required by SB 34 for 2016, 2017, 2018, 2019, 2020.
 - d. Maintaining a record of third-party access requests for 2016, 2017, 2018, 2019, 2020

OPD Response: *OPD finds this statement to be inaccurate; OPD personnel have never refused to provide an annual report. #3 above explains the reasons why there are no 2016-2018 annual reports, and that OPD has created 2019 and 2020 annual reports and is prepared to produce annual reports ongoing. #3 also explains that OPD does maintain 3rd party access requests (in annual reports) as well as data on scans and hits. OPD does lack data to provide reports prior to 2019. The same section (#3 above) explains that OPD needs a newer ALPR system to monitor “record of access” and will conduct annual audits of this information for future annual reports – if and when OPD is allowed to buy a modern ALPR system with the necessary functionality. Furthermore, in February 2021 OPD worked with the Information Technology Department and ALPR software vendor to access the system raw data from the server for 2019 and 2020.*

- 10. “OPD has violated formal public record requests into SB 34 compliance. The footnoted request was submitted March 18, 2019 and OPD has provided no response to date⁷. The resulting litigation will thereby cause a further negative impact to the taxpayers of Oakland.”

OPD Response: *Per relevant case law, OPD is evaluating whether it is unduly burdensome to gather, review and redact over three years’ worth of data under the Public Records Act’s catch-all exemption.⁸*

- 11. “OPD has violated a formal public record request into the alleged “147 emails” that OPD referenced in its April 2019 written Impact Report (and verbally at the April PAC meeting) that supposedly justified its data retention practices and the need for historical search.

⁷ <https://oaklandca.nextrequest.com/requests/19-1382>

⁸ ACLU, et al. v. Superior Court (Real Party County of L.A. et al.), 3 Cal.5th 1032, 1043-45 (2017).

There is no evidence that these emails ever existed. The footnoted request was submitted April 16, 2019, and OPD has provided no response to date⁹. The resulting litigation will thereby cause a further negative impact to the taxpayers of Oakland.”

OPD Response: OPD is in the process of identifying the emails, and reviewing them for any necessary redactions.

12. Expert witnesses advise that only four geo-spatial (time, location) data points are needed to identify over 95% of people, demonstrating that there is a measurable and significant privacy invasiveness to use of this equipment¹⁰.

OPD Response: *SB34 – the law that Mr. Hofer and the PAC refer to above – was designed with an understanding that ALPR has demonstrated value for law enforcement as well as the potential for negative privacy impacts. SB34 therefore requires the numerous regulations listed above; OPD follows these guidelines.*

13. In 2018, the US Supreme Court ruled in *Carpenter v US* that the government’s warrantless acquisition of Mr. Carpenter’s cell-site records violated his Fourth Amendment right against unreasonable searches and seizures¹¹. The question that was before the Supreme Court is the same one that is here - how do we apply the Fourth Amendment to a new phenomenon: the ability to chronicle a person’s past movements through the recording of his travel patterns? As stated so eloquently by Chief Justice Roberts – “A person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, what one seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected (quoting Katz). For that reason, society’s expectation has been that law enforcement agents and others would not secretly monitor and catalogue every single movement of an individual’s car for a very long period (quoting Jones).” The CA Vehicle Code requires that license plates be visible and requires that driver ID be presented upon demand. Driver’s do not voluntarily reveal such information.

OPD Response: *Private telephone records have always enjoyed protection from “unreasonable” searches and seizures under the Fourth Amendment. This protection was expanded to encompass records of public telephones in US v. Katz. And again in US v. Carpenter, the US Supreme Court was similarly confronted with the protection of information connected with the use of a private cell phone. Unlike private telephone / public phone box / private cell phone jurisprudence, ALPR technology collects information that is already publicly available: the publicly available license plate numbers, locations and times vehicles are parked when scanned by ALPR cameras. No Driver’s License information is ever collected through ALPR readers. This information – license plate numbers, locations and dates – in and of itself is simply not subject to the Fourth Amendment’s warrant-or-exception requirements. And as the California Supreme Court has made clear, ALPR technology is lawful.¹²*

⁹ <https://oaklandca.nextrequest.com/requests/19-1897>

¹⁰ <https://www.nature.com/articles/srep01376>

¹¹ https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf

¹² *ACLU, et al. v. Superior Court (Real Party County of L.A. et al.)*, 3 Cal.5th 1043-45 (2017).

14. Demonstrating a lack of mindfulness, OPD misstates the law by claiming in its proposed use policy that all scans are “investigatory records” and thereby not subject to public disclosure, contradicted by a 2017 CA Supreme Court ruling¹³.

OPD Response: *In ACLU v. Superior Court (City and County of LA), the California Supreme Court observed that petitioners (ACLU) conceded that Government Code §6254(f) (the “investigatory records” exemption) protects from disclosure ALPR scan data that matches vehicles linked to investigations under Section 6254(f).¹⁴ And while OPD may not be permitted to use Section 6254(f) to impose a blanket exemption on ALPR data, it may use the balancing test under Government Code §6255, in addition to a case-by-case use of Government Code §6254(f). Importantly, the California Supreme Court affirmed the lawfulness of agencies’ use of ALPR technology.¹⁵*

15. OPD knowingly misrepresented verbally and in writing (in the proposed Use Policy) to the PAC at its January and February 2021 meetings that audits would be performed per its policy, even though OPD knew at the time it made such representations that its system was incapable of performing such audits, and indeed confirmed at the January 2021 meeting that performing the audits was impossible.

OPD Response: *#3 above explains that OPD can provide limited audit functions (how many scans and hits) but that the system can no longer provide full audit functions (who used system, reason for use). #3 above also explains that OPD would prefer to purchase a more modern system with much better internal access query functionality for better auditing and to comply with local and State requirements. However, OPD cannot purchase a new system with better audit functions unless and until the PAC and City Council approve OPD’s Use Policy.*

16. Demonstrating its lack of regard for the annual reporting obligation, and despite having six years of informal notice, and three years of formal notice of the legal obligation, OPD now states in its impact report that it will begin a “multi-year review process” to track use of this technology.

OPD Response: *#3 and #9 above explain how OPD has met its reporting obligations and is prepared to continue remaining compliant with all reporting obligations.*

17. OPD knowingly misrepresented in writing (in the proposed Use Policy) to the PAC at its January and February 2021 meetings that it would comply with SB34, which includes among other things an obligation to “maintain a record of access” as discussed above, even though OPD knew at the time it made such a representation that it would not maintain such a record, and that it never has maintained such a record since the law took effect January 2016.

OPD Response: *#3 and #9 above explain how OPD has met its reporting obligations and is prepared.*

18. The potential and actual negative impact from use of such technology according to the OPD use policy outweigh the speculative and unverified benefits from use of such

¹³ <https://www.eff.org/document/aclu-v-la-superior-court-ca-supreme-court-opinion>

¹⁴ *Ibid.*

¹⁵ *Ibid.*

technology. OPD has failed to meet the standard imposed by our ordinance that the benefits outweigh the costs to civil liberties and the taxpayer.

OPD Response: *There is nothing speculative nor unverified about the benefits ALPR provides to OPD and to the Oakland community. The **appendices A and B** to the ALPR Surveillance Impact Report which OPD was prepared to provide as explained above, provides many examples of where ALPR helped provide needed evidence to investigate major violent crimes – crimes that may have never been solved without such evidence. Arguably less people have suffered through the terrors of human trafficking for example, because ALPR has helped OPD to investigate trafficking cases which have led to successful prosecutions. OPD agrees, as explained in the Impact Report, that in the “potential” for negative impacts from this type of surveillance technology – that is why the draft Use Policy and Impact Report provide numerous safeguards.*

Analysis of Lou Katz’s (PAC Commissioner) Comments

During the February 4, 2021 PAC meeting Commission Katz read his comments and provided them to Chief Privacy Officer Joe DeVries so that OPD can also review them. OPD’s response follows each section of Mr. Katz’s comments.

- “I have read through the two documents on ALPRs presented to the Commission for our meeting on February 4, 2021: "OAKLAND POLICE DEPARTMENT - Surveillance Impact Use Report for the Automated License Plate Reader" and "DEPARTMENTAL GENERAL ORDER I-12: AUTOMATED LICENSE PLATE READERS." The DGO completely ignored the clearly stated concerns of the PAC at the January meeting regarding data retention criteria. We specifically objected to items "(c) Research, (e) Training and (f) Other Departmental Need" as being allowable, as they are loopholes big enough to drive a Bearcat filled with a SWAT Team through. The inclusion of these items in the face of our strong objections indicates to me either incompetence or deliberate intent on the part of those who created the document.”

OPD Response: *OPD staff attending PAC meetings continue to be ready to discuss Use Policy details. The PAC commissioners stated their concerns about the above Use-Policy language. However, no ad-hoc meeting occurred between the January and February meetings, and thus there has been no opportunity to actually discuss this language. OPD staff continue to be open to collaboration that leads to changes to Use Policies.*

- “Data retention and data sharing are extremely important, since under normal use, about 100,000 reads of license plates are captured each month, out of which only about 2 may be related to criminal or civil investigation (and 99,998 are not). Legislation is being introduced in Sacramento to limit the retention of ALPR data for which no 'hits' are recorded to 24 hours, yet OPD prefers to argue to hold on to these data for 24 MONTHS! Their own data show that a very very small number of database enquiries happen after 2 months (and no data were presented to show whether the enquiries that were done were either useful or effective).”

Data sharing policies are crucial to limiting privacy harm from this vast data collection. Unfortunately experience and history have shown that any data that are collected WILL be misused. In specifying access to the collected data we get the bland, vague "law enforcement agencies". Nowhere is this clarified. The collected data could go to any

"law enforcement agency", perhaps even to another country, but certainly no jurisdictional specifications are given. Careful reading of the "Restrictions on Use" (B-2)-1 could be used to authorize almost anyone to have access. There are no statements regarding the retention policies of those to whom we may transfer data, so even if OPD has a fixed time retention policy, data could be given to an agency that would keep those data forever."

OPD Response: *OPD has explained above that the **Appendices A and B** to the Impact Report provides many examples where longer data retention periods have been critical to solving violent crime cases. OPD has also expressed through amended Use Policy to change the 730-day data retention to 365 days. Furthermore, there is zero evidence that any "misuse" of this data has ever occurred.*

- "ALPRs are a costly and invasive technology. The Impact Use Report lists a grand total of 5 cases for the year 2020 where ALPR played a "pivotal" role. The funds for ALPRs mentioned in this document come to approximately \$400,000. Along with annual costs, this will come out to over \$50,000 per year, so the ROI is around \$10,000 per case? The pie chart which is presented for data retention shows all of 13 database accesses for data collected in the current month and an additional 5 for the previous month, possibly making another 18 uses for querying hundreds of thousands of normal personal activity. This does not make a case for data retention measured in months. The document does contain the self-serving analysis by the City Attorney trying to justify a 730 day retention but then admits that MAYBE they could somehow do 12 months. I am not a lawyer, but I would certainly want a second opinion."

OPD Response: *This analysis is misleading.... Commissioner Katz points to a representation in the Impact Report of only some cases. The reality is that even the 40-50 cases provided thus far in the Impact Report are only a subset of all the times ALPR is helpful identifying stolen cars or in investigating cases. Therefore, the true per-case cost of ALPR is far less expensive.*

- "The DGO also has statements which I would most charitably characterize as misleading: "(A-1) ALPR technology works by automatically scanning license plates on vehicles that are publicly visible" (Impact use report) "in the public right of way and/or on public streets" yet it is asserted that "because such data contains investigatory and/or confidential information, it is not open to public review". This is inherently contradictory, as hundreds of thousands of license plate images from the public streets cannot be characterized as investigatory or confidential."

OPD Response: In *ACLU v. Superior Court (City and County of LA)*, the California Supreme Court observed that petitioners (ACLU) conceded that Government Code §6254(f) (the "investigatory records" exemption) protects from disclosure ALPR scan data that matches vehicles linked to investigations under Section 6254(f).¹⁶ And while OPD may not be permitted to use Section 6254(f) to impose a blanket exemption on ALPR data, in addition to the case-by-case exemption under Section 6254(f), OPD may use the balancing test under Government Code §6255. Importantly, the California Supreme Court affirmed the lawfulness of agencies' use of ALPR technology.¹⁷ In fact, the California Supreme Court held that ". . . the balance of interests under section 6255(a)

¹⁶ *ACLU, et al. v. Superior Court (Real Party County of L.A. et al.)*, 3 Cal.5th 1032, 1036 (2017).

¹⁷ *ACLU*, 3 Cal.5th at 1043-45.

weighed clearly against disclosure of raw ALPR scan data.”¹⁸ What the court could not answer, however, was whether the petitioner’s one-week request of specific data points could be segregated from the remainder of the redacted raw data. Petitioners requested one weeks’ worth of specific data points including ‘at a minimum, the license plate number, date, time, and location information of each license plate recorded’.¹⁹ Here, the PAC, by or through its Commissioners, has requested over *three years*’ worth of data. Under existing case law, this information may be exempt pursuant to Government Code §6255.

- “With regard to its use "more intensely in certain areas", the fact that the ALPRs are not affixed to poles or structures is irrelevant. Patrol cars do not cover the city uniformly. I don't believe that I have seen a patrol car pass my house in the hills more than twice last year. ALPRs certainly can be useful tools for OPD and it should be possible to work out policies and procedures that enable usefulness while protecting privacy. These documents do not.
Lou Katz
Commissioner, District 4

OPD Response: The Impact Report explicitly details how patrol vehicles equipped with ALPR are based out of both the downtown Police Administration Building (PAB) and East Oakland Eastmont Station. The response to #7 of Chair Hofer’s “findings” shows that OPD patrol patterns (and thus use of ALPR) correlate with response to violent crime.

¹⁸ *Id.*, at 1043.

¹⁹ *Id.*, at 1038.

