



AGENDA REPORT

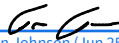
TO: Jestin D. Johnson
City Administrator

FROM: Floyd Mitchell
Chief of Police

SUBJECT: OPD Crime Lab DNA Instrumentation
Use Policy Update

DATE: June 9, 2024

City Administrator Approval


Jestin Johnson (Jun 25, 2024 10:37 PDT)

Date: Jun 25, 2024

RECOMMENDATION

Staff Recommends That City Council Adopt A Resolution: (1) Receiving The Annual Surveillance Report On The Oakland Police Department's Criminalistic's Laboratory (Crime Lab) Biometrics DNA Technology DNA Instrumentation And Analysis Software Biometric Technology; And (2) Approving Proposed Amendments To The Crime Lab DNA Instrumentation And Analysis Software Biometric Use Policy As Recommended By The Privacy Advisory Commission (PAC)

EXECUTIVE SUMMARY

The Oakland Police Department (OPD) requests approval for updates to the OPD Criminalistics Laboratory (Crime Lab) for DNA Instrumentation and Analysis. The technology is considered biometric technology according to the City's Surveillance Technology Ordinance; all policy changes require City Council approval. The City Council approved the original Use Policy and Impact report after the City's Privacy Advisory Commission voted to recommend the documents on October 1, 2020.

The Crime Lab requested minor updates to the use policy and impact report, which included updating the version of instrumentation, the costs to run the instruments, and minor terminology updates. The PAC unanimously voted on May 2, 2024, to approve the revisions to the Use Policy (**Attachment A**) and Impact Report (**Attachment B**) and to accept the Annual Report (**Attachment C**).

BACKGROUND / LEGISLATIVE HISTORY

The Oakland Police Department (OPD) Criminalistics Laboratory's (Crime Lab) Forensic Biology / DNA (Deoxyribonucleic Acid¹) Unit utilizes specialized DNA collection and analysis instrumentation and software to perform forensic DNA testing. This is a biometric analysis that produces potentially sensitive information. During the lengthy and complicated process of obtaining a DNA profile from evidence or a reference sample, numerous steps may be necessary, including, but not limited to, Digestion, Extraction, Quantitation, Normalization / Amplification, Typing, Interpretation, and Database upload. OPD does not use Forensic DNA

¹ <https://www.genome.gov/genetics-glossary/Deoxyribonucleic-Acid>

Analysis to surveil residents of Oakland; indeed, samples are only eligible to upload to Combined DNA Index System (CODIS) when the evidentiary item from which a profile is obtained has an extant and articulable nexus to a crime.

DNA Instrumentation and Oakland's Privacy Regulations

The Surveillance Technology [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) and covers policy areas related to surveillance technology. The [OMC 9.64](#) "surveillance technology" definition² refers to "biometric identification hardware" as follows:

*"Surveillance Technology" means any software, electronic device, system utilizing an electronic device or similar technological tool used, designed, or primarily intended to collect, retain, analyze, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of surveillance technology include, but is not limited to the following: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems; body-worn cameras; social media analytics software; gait analysis software; video cameras that record audio or video, and transmit or can be remotely accessed. It also includes software designed to monitor social media services or forecast criminal activity or criminality, **biometric identification hardware** or software.*

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 developed a Use Policy and Impact Report for review by the PAC and City Council. The Use Policy covers the following required categories:

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

² "Surveillance Technology" means any software, electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect, retain, analyze, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of surveillance technology include, but is not limited to the following: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems; body-worn cameras; social media analytics software; gait analysis software; video cameras that record audio or video, and transmit or can be remotely accessed. It also includes software designed to monitor social media services or forecast criminal activity or criminality, biometric identification hardware or software.

The Impact Report covered the following required categories:

- Information describing the system and how it works;
- Purpose of the technology;
- Locations where and situations in which the technology may be used;
- Privacy Impact of the technology;
- Mitigations to prevent privacy impacts;
- Data Types and Sources.

During several meetings in 2020, the PAC reviewed drafts of the OPD Crime Lab DNA Instrumentation and Analysis Software Biometric Technology Surveillance Use Policy and Impact Report. This process allowed staff and the PAC commissioners to address concerns about how the technology is used and how data is protected. Later at the October 1, 2020 meeting, the PAC voted unanimously to recommend City Council adoption of the Use Policy and Impact Report.

On December 1, 2020, after review by the PAC, the City Council approved the OPD Crime Lab DNA Instrumentation and Analysis Software Biometric Technology Surveillance Use Policy (SUP) and associated Surveillance Impact Report (SIR) via adoption of [Resolution No. 88388 C.M.S.](#) The Council-adopted resolution also states 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.”

ANALYSIS AND POLICY ALTERNATIVES

This resolution advances the Citywide priority of responsive, trustworthy government. Investigations depend on the efficacy and efficiency of the Crime Lab and its ability to process evidence. This software helps OPD successfully process evidence.

OPD Crime Lab staff in 2024 needed to update the DNA Instrumentation and Analysis Software Biometric Technology Use Policy and Impact Reports (see **Attachments A** and **B**) for a few reasons:

1. Updates and changes to the instrumentation detailed in the original use policy and
2. Update the costs to run the instrumentation
3. Changing reference to a single document of the Laboratory Operations and Quality Assurance Manual (LOQAM) to reference the Laboratory Operations manual separately from the Quality Assurance Manual (LO/QAM)

The purpose of DNA Instrumentation and Analysis Software Biometric Technology by the OPD Crime Lab has not changed; however, the list of instrumentation has.

PAC commissioners voted unanimously to recommend the changes outlined in the May 2, 2024, meeting to recommend the updates to the Use Policy (**Attachment A**) and Impact Report (**Attachment B**) and accept the Annual Report (**Attachment C**).

FISCAL IMPACT

There is no fiscal impact associated with the approval of this Impact Report and Use Policy.

PUBLIC OUTREACH / INTEREST

The PAC reviewed the OPD Criminalistics Laboratory DNA Instrumentation and Analysis Software Biometric Technology Use Policy (**Attachment A**) and Surveillance Impact Report (**Attachment B**) at publicly noticed meetings on October 1, 2020, and updates to these documents on June 8, 2023 and May 2, 2024. This report also complies with standard legislative noticing requirements.

COORDINATION

This report and accompanying resolution were reviewed by the Office of the City Attorney. OPD also coordinated with PAC for the review of this use policy.

SUSTAINABLE OPPORTUNITIES

Economic: There is no economic impact associated with this report.

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

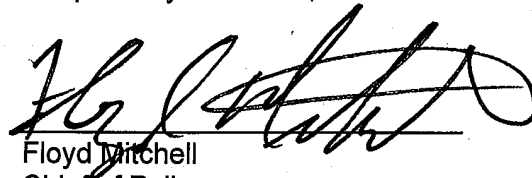
Race and Equity: The public has a significant interest in ensuring that the OPD Crime Lab can effectively process evidence; successfully processed evidence helps the OPD with investigations that lead to effective criminal prosecutions. The public safety for all Oakland residents and visitors is enhanced through greater OPD investigative capacity.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That City Council Adopt A Resolution: (1) Receiving The Annual Surveillance Report On The Oakland Police Department's Criminalistic's Laboratory (Crime Lab) Biometrics DNA Technology DNA Instrumentation And Analysis Software Biometric Technology; And (2) Approving Proposed Amendments To The Crime Lab DNA Instrumentation And Analysis Software Biometric Use Policy As Recommended By The Privacy Advisory Commission (PAC)

For questions regarding this report, please contact Dr. Sandra Sachs, Crime Lab Manager, at ssachs@oaklandca.gov.

Respectfully submitted,



Floyd Mitchell
Chief of Police
Oakland Police Department

Reviewed by:
Frederick Shavies, Deputy Chief of Police
OPD, Bureau of Investigation (BOI)

Dr. Tracey Jones, Police Services Manager
OPD, Research, and Planning

Prepared by:
Dr. Sandra Sachs, Criminalistics Laboratory Mgr.
OPD Criminalistics Laboratory

Attachments (3):

A: OPD Crime Lab DNA Instrumentation And Analysis Software Biometric Technology Use Policy

B: OPD Crime Lab DNA Instrumentation And Analysis Software Surveillance Impact Report

C: OPD Crime Lab DNA Instrumentation And Analysis Software Biometric Technology Annual Report