

CITY OF OAKLAND

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OAKLAND

2015 MAR 26 PM 3:10

SUPPLEMENTAL AGENDA REPORT

TO: John A. Flores
INTERIM CITY ADMINISTRATOR

FROM: Teresa Deloach Reed

SUBJECT: FEDERAL FY 2014/15 Port Security
Grant Program (PSGP) Grant Supplemental

DATE: March 25, 2015

City Administrator
Approval

Date

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution:

1) Authorizing The City Administrator Or His Designee To:

- A. Enter Into An Agreement With The U.S. Department Of Homeland Security For Fiscal Year 2014/2015 Port Security Grant Program (PSPG) Funds In An Amount Up To Five Hundred Seventy-Eight Thousand, Five Hundred And Twenty-Seven Dollars (\$578,527); And
- B. Accept, Appropriate, And Administer Said Funds; And
- C. Approve The Preliminary Spending Plan; And
- D. Expend Funds In Accordance With The Preliminary Spending Plan Including Purchases Of Equipment And Services In Excess Of The City Administrator's Purchasing Authority; And
- E. Authorize The Use Of Existing (Budgeted) Funding In The Amount Of One Hundred Ninety-Two Thousand, Eight Hundred And Forty Two Dollars (\$192,842) From General Purpose Fund For Personnel And Other Administrative Resources, To Satisfy The In-Kind Match Requirement; And

2) Waiving the City Of Oakland's Advertising And Bidding Requirements For Items Required To Be Purchased From The Federally Authorized Equipment List ("AEL")

OUTCOME

On September 1, 2014, the Oakland Fire Department, Emergency Management Services Division successfully applied for and was awarded grant funding in an amount up to \$578,527 from the FY 2014/15 PSGP.

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Approval of this resolution will authorize the City Administrator or designee to accept, appropriate, and spend grant funding in an amount up to \$578,527 to upgrade the existing building video security system for the Emergency Operations and Fire Dispatch Center (EOC); purchase a Forward Looking Infrared Thermal Imaging Camera System (FLIR) for the police helicopter; and authorize the use of existing funding and personnel resources to satisfy the in-kind match requirement of \$192,842.

REASON FOR SUPPLEMENTAL

The Public Safety Committee on Tuesday, March 24, 2015, requested additional information concerning the use of the Forward Looking Infrared (FLIR) Camera and the data retention policies that govern its use. This supplemental report provides specific information regarding OFD's and the Oakland Police Department's (OPD) use of the FLIR camera systems as well as how data is retained.

The Forward Looking Infrared Thermal Imaging System (FLIR) functions through camera sensors that detect infrared radiation from heat sources (thermal radiation). The technology, which has been used by OPD for over 20 years on helicopters, converts the heat imaging into a picture. FLIR technology is commonly used to improve the visibility that law enforcement staff can achieve, especially in poor visibility conditions, such as at night or when smoke is present.

The report "FEDERAL FY 2014/15 Port Security Grant Program (PSGP) Grant Fund" dated March 10, 2015, explained that PSGP grant funds will be used to purchase a FLIR camera system. The following summaries better define how both OFD and OPD will each use this camera system.

Oakland Fire Department use of FLIR

In support of the Oakland Fire Department, the FLIR equipped police helicopter will be used to assist with the following operations as needed:

- Pinpoint sources of ignition during firefighting operations;
- Identifying "Hot Spots" or areas for potential flare-ups;
- Assist firefighters on the ground, who may be unaware that they are about to be surrounded by fire;
- Facilitating search and rescue efforts over land and water;
- Provides the ability to conduct search and rescue operations at night and during low visibility (smoke and haze) situations when normal rescue operations have to be shut down; and
- Locating vehicle or aircraft accidents in remote areas.

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Oakland Police Department Use of FLIR

In support of the Oakland Police Department (OPD), the FLIR equipped police helicopter will be used to assist OPD with the following operations as needed:

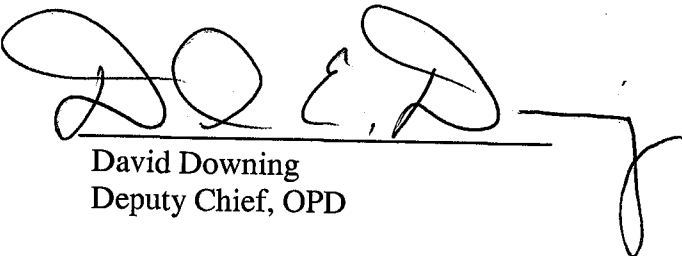
- Gather long-range intelligence with color and infrared cameras.
- Provide live situational awareness during protests or criminal activity.
- Homeland security interdiction and patrols of the port.
- Provide real time video to Incident Commanders in a Command Post for situational awareness.

FLIR Data Retention Policy

Data and or video from the FLIR camera systems will not be retained for more than three (3) years except in identified cases involving criminal investigations by OPD. In such cases only, FLIR data will be retained for as long as needed to support investigations, or to be kept as evidence for court proceedings.


For questions concerning this supplemental report, please contact Bruce Stoffmacher, Management Assistant, OPD at (510) 238-6976 or bstoffmacher@oaklandnet.com, or Oakland Fire Deputy Chief Darin White at (510) 238-4052 or dwhite@oaklandnet.com.

Respectfully submitted,



David Downing
Deputy Chief, OPD

Respectfully submitted,



Teresa Deloach Reed
Fire Chief

Reviewed by:
Cynthia Perkins
Chief of Staff
Oakland Fire Department

Attachment:

Letter from Bryan Hofer, Domain Awareness Center (DAC) Ad Hoc Committee Chair

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ATTACHMENT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

March 23, 2015

2015 MAR 25 PM 12: 22

VIA E-MAIL ONLY

Hon. Desley Brooks (dbrooks@oaklandnet.com)
Hon. Noel Gallo (ngallo@oaklandnet.com)
Hon. Dan Kalb (dkalb@oaklandnet.com)
Hon. Abel Guillen (aguillen@oaklandnet.com)
Oakland City Council
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: March 24, 2015 Agenda Item 7 – Federal FY2014/2015 PSGP Grant Funds

Dear Honorable Members of the Public Safety Committee:

As members of the DAC Ad Hoc Privacy Committee, we write to request that the Public Safety Committee amend the staff proposed resolution for the March 24, 2015 Agenda Item 7, regarding the Law Enforcement Unit Air FLIR (Forward Looking Infrared Thermal Imaging System). We believe that this is an appropriate test of the framework which the DAC Ad Hoc Committee is seeking your approval of.

The staff report states that the FY2014/15 grant deadline for purchases is June 30, 2016, so there is no imminent threat of lost funding. Due to the favorable feedback we have received from your Committee, including its February 10, 2015 “approved in concept” vote regarding the DAC Committee’s privacy policy and additional recommendations, which include a standing privacy committee, citywide privacy policy, and surveillance equipment ordinance, and because the full City Council in July 2013 wisely required a Privacy and Data Retention Policy be implemented first before activating the DAC, and because the full City Council in March 2014 gave the task of drafting the Privacy and Data Retention Policy to a citizens committee, we request that the following language be included in the March 24, 2015 Resolution:

“FURTHER RESOLVED: The [Standing Privacy Committee] [DAC Ad Hoc Committee] [citizens committee appointed by the City Council] shall draft a Privacy and Data Retention Policy that specifies the allowable uses of, and governs the collection, retention, storage, and dissemination of information processed by, the Law Enforcement Unit Air FLIR; and be it

FURTHER RESOLVED: The Law Enforcement Unit Air FLIR shall not be used in any manner until the City Council approves the Privacy and Data Retention Policy for the Law Enforcement Unit Air FLIR.”

FLIR/Thermal Imaging System

The City of Oakland does not have a use policy regarding FLIR, nor have they produced any privacy or data guidelines in response to Brian Hofer's December 30, 2014 Public Record Act Request #7354¹. The City did respond to another part of his request by stating it has no use policies or training manuals for its controversial Stingray. It is likely that no such policy exists for FLIR, and also likely that Oakland Police Department has used some version of a FLIR (air, and/or handheld) since at least 2010.²

This is of great concern because in 2001 the United States Supreme Court ruled directly on Thermal Imaging Systems, finding their use invasive, and illegal without a warrant under the Fourth Amendment. In *Kyllo*, law enforcement used a FLIR without first seeking a warrant, to detect heat emitting from a suspected marijuana grow house.

“Where, as here, the Government uses a device that is not in general public use, to explore details of a private home that would previously have been unknowable without physical intrusion, the surveillance is a Fourth Amendment “search,” and is presumptively unreasonable without a warrant.... in the case of the search of a home’s interior—the prototypical and hence most commonly litigated area of protected privacy—there is a ready criterion, with roots deep in the common law, of the minimal expectation of privacy that *exists*, and that is acknowledged to be *reasonable*. To withdraw protection of this minimum expectation would be to permit police technology to erode the privacy guaranteed by the Fourth Amendment.” *Kyllo v. United States* (533 US 27 - 2001).

Like Stingray, FLIR operates in a dragnet fashion, especially when attached to a helicopter flying over homes. Law enforcement has previously argued that it is only heat emanating from homes, and thus not intrusive. The *Kyllo* Court rejected this argument.

“Such a mechanical interpretation of the Fourth Amendment was rejected in *Katz*, where the eavesdropping device in question picked up only sound waves that reached the exterior of the phone booth to which it was attached. Reversing that approach would leave the homeowner at the mercy of advancing technology—including imaging technology that could discern all human activity in the home. Also rejected is the Government’s contention that the thermal imaging was constitutional because it did not detect “intimate details.” Such an approach would be wrong in principle because, in the sanctity of the home, *all* details are intimate details. See, *e. g.*, *United States v. Karo*, 468 U. S. 705; *Dow Chemical, supra*, at 238, distinguished. It would also be impractical in application, failing to provide a workable accommodation between law enforcement needs and Fourth Amendment interests. See *Oliver v. United States*, 466 U. S. 170, 181.” *Kyllo*, Pp. 35–40.

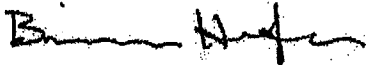
¹ <http://records.oaklandnet.com/request/7354>, see items #13, #14 re existing FLIR/Thermal Imaging.

² See March 16, 2010 Knight memo to then-Chief Batts.

You are likely aware of the recent “Rang-R” handheld Doppler radar story that broke in USA Today on January 20, 2015³. These portable devices allow the user to “see-thru” walls to locate bodies on the other side. Rang-r and Doppler devices are also the subject of the above Public Record Act Request. Stated simply – it is time to address all this equipment with the DAC Committee’s proposed surveillance equipment ordinance, which calls for the creation of use policies.

One can imagine valid uses for Air FLIR at the Port. PSGP funds are after all meant for “maritime use.” Container and cargo ship fires are two likely scenarios, and perhaps warehouse fires on port-adjacent property. The policy could specify these allowable uses, and ensure that the privacy of Oaklanders is not violated. We can craft a reasonable policy that allows the use of the equipment while protecting privacy. We did it for the DAC.

Sincerely,



Brian Hofer
Chair, DAC Ad Hoc Committee
Member, Oakland Privacy Working Group

/s/

Nadia Kayyali
Electronic Frontier Foundation
DAC Ad Hoc Committee

S-7.24

SPECIAL MEETING OF
THE OAKLAND CITY COUNCIL
MAR 31 2015

³ <http://www.usatoday.com/story/news/2015/01/19/police-radar-see-through-walls/22007615/>