



CITY OF OAKLAND

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OAKLAND

2020 FEB 11 PM 5:22

# AGENDA REPORT

**TO:** Sabrina B. Landreth  
City Administrator

**FROM:** Joe DeVries  
Chief Privacy Officer

**SUBJECT:** Privacy Advisory Commission Annual  
Report 2018-19

**DATE:** January 30, 2020

City Administrator Approval

Date:

2/10/2020

## RECOMMENDATION

**Staff Recommends That The City Council Receive The 2018-19 Annual Informational Report From The Privacy Advisory Commission.**

## EXECUTIVE SUMMARY

On January 19, 2016, the City Council adopted Ordinance No. 13349 C.M.S., which created and defined the duties of the Privacy Advisory Commission. Among those duties the PAC is required to submit annual reports and recommendations to the City Council regarding: (1) the City's use of surveillance equipment, and (2) whether new City surveillance equipment privacy and data retention policies should be created or to amend existing policies.

The attached report (**Attachment A**) was prepared by the Chair of the PAC and approved by its members to be forwarded to the City Council.

## ACTION REQUESTED BY THE PUBLIC SAFETY COMMITTEE

Staff recommends that the Public Safety Committee receive the Privacy Advisory Commission 2018-19 Annual Report.

Public Safety Committee  
February 25, 2020

For questions regarding this report, please contact Joe DeVries, Assistant to the City Administrator at (510) 238-3083.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Joe DeVries', is written over a horizontal line.

Joe DeVries  
Chief Privacy Officer  
City Administrator's Office

**Attachment A- PAC 2018-19 Annual Report**

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**TO:** Public Safety Committee, City  
Administrator Sabrina Landreth

**FROM:** Privacy Advisory  
Commission (PAC)

**SUBJECT:** PAC 2018-2019 Annual Reports

**DATE:** February 25, 2020

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The following pages contain the PAC 2018 & 2019 Annual Reports. It is formatted in the Council Agenda Report template to make it easier to read and follow.

### **EXECUTIVE SUMMARY**

The objective of this report is to provide City stakeholders with an update on the activities of the Privacy Advisory Commission (PAC), including making recommendations on:

1. **Sanctuary City Ordinance** (Council approved)
2. **Surveillance Equipment Ordinance** (Council approved)
3. **Annual Reports To Date** (Council approved)
4. **Exigent Circumstances Reports** (Council approved)
5. **Sanctuary Contracting Ordinance** (Council approved)
6. **U.S. Department of State – International Visitors** (N/A)
7. **Bay Area Roundtable** (N/A)
8. **Facial Recognition Ban** (Council approved)
9. **Privacy Principles** (Pending)

### **BACKGROUND / LEGISLATIVE HISTORY**

In March 2014, the City Council established an Ad Hoc Advisory Committee to develop a Privacy and Data Retention Policy for the Domain Awareness Center (DAC), a City-Port security project located at the Emergency Operations Center.

This Committee developed a Policy for the DAC and proposed a set of additional recommendations for the City Council to consider. One of the key recommendations that the City Council considered and adopted was the Creation of a Permanent Standing Privacy Advisory Commission to develop and advise on citywide privacy concerns.

On January 19, 2016, the City Council adopted Ordinance No. 13349 C.M.S., which created and defined the duties of the Privacy Advisory Commission. Those duties broadly stated are:

- Provide advice and technical assistance to the City of Oakland on best practices to protect citizen privacy rights in connection with the City's purchase and use of surveillance equipment and other technology that collects or stores citizen data.
- Draft for City Council consideration, model legislation relevant to privacy and data protection, including a Surveillance Equipment Usage Ordinance.
- Submit annual reports and recommendations to the City Council regarding: (1) the City's use of surveillance equipment, and (2) whether new City surveillance equipment privacy and data retention policies should be developed or such existing policies be amended.

- Provide analyses to the City Council of pending federal, state and local legislation relevant to the City's purchase and/or use of technology that collects, stores, transmits, handles or processes citizen data.
- Conduct public hearings, make reports, findings and recommendations either to the City Administrator or the City Council, as appropriate including an annual report to be presented in writing to the City Council.
- Review and make recommendations to the City Council regarding any proposed changes to the operations of the Domain Awareness Center ("DAC") and/or proposed changes to the City's Policy for Privacy and Data Retention for the Port Domain Awareness Center ("DAC Policy") as specified in Resolution 85638 C.M.S.

Excerpt From Enabling Ordinance 13349:

*Section 2. Duties And Functions*

*e. Submit annual reports and recommendations to the City Council regarding: (1) the City's use of surveillance equipment, and (2) whether new City surveillance equipment privacy and data retention policies should be developed or such existing policies be amended.*

*...*

*g. The Privacy Commission shall make reports, findings and recommendations either to the City Administrator or the City Council, as appropriate. An annual report will be presented in writing to the City Council...*

**RECENT ACHIEVEMENTS**

1. **Surveillance Equipment Ordinance:** After two years of deliberations with staff, community stakeholders, outside subject matter experts, and motivated by the Domain Awareness Center discussion, the PAC forwarded a ground-breaking draft of legislation to govern the city's procurement and use of surveillance technology, the first such ordinance to involve a citizens commission in the vetting and policy crafting, and the first to prohibit non-disclosure agreements, and add enhanced whistleblower protections. Ordinance No. 13489 was unanimously adopted on May 15, 2018.
2. **Surveillance Equipment Ordinance Policies** – Pursuant to the Surveillance Equipment Ordinance, staff must propose a Use Policy, and the policy must receive City Council approval, to continue (for pre-existing equipment) or begin use (for new acquisitions) of surveillance technology. In 2018-2019, the following policies were approved by the City Council: DOT Automated License Plate Readers, Dockless Mobility Data Sharing, StarChaser GPS, and ShotSpotter. The following policies have been recommended for approval by the PAC, and await a decision by the City Council: DOT Drone, and OFD Data Collection For Fire Inspections.
3. **Surveillance Equipment Annual Reports** – Due to the mid 2018 approval date of the Ordinance, most annual reports will be reviewed and presented to the Council and public in this coming year. The City Council has received two annual reports pertaining to the Cell-Site Simulator (cell phone tracker) after the PAC reviewed and recommended that they be accepted. The annual reports revealed no disparate impact or civil liberties violations, and that the equipment was used appropriately to pursue homicide suspects.

4. **Facial Recognition Ban** – Following the ground-breaking lead of San Francisco in prohibiting city staff's use of facial recognition technology, Oakland became the third city in the nation to ban the technology. At least seven cities across the country have done so to date, and two states (CA, MA) have imposed moratoriums on the technology.
5. **Sanctuary City Ordinance/Sanctuary Contracting Ordinance** – Following an ICE raid that occurred in 2017 in West Oakland, a large community coalition successfully advocated for a true non-cooperation Sanctuary City Ordinance, giving our sanctuary city proclamation the weight of law. As the data mining practices of ICE became more exposed, and as Trump's policy of family separation dominated the headlines, the PAC recommended a contracting ordinance that followed similar ordinances such as the Border Wall Contractors prohibition, and the Anti-Nuclear Weapons Ordinance, prohibiting the city from entering into contracts with entities that supply federal immigration agencies with data, extreme vetting analytics, or detention facility support.
6. **Hosting Special Guests** – PAC Chair Brian Hofer and CPO Joe DeVries met with two groups of international visitors, facilitated by the U.S. Department of State. The visitors were comprised of law enforcement and government policy officials, cybersecurity and cybercrime investigators, journalists, and human rights advocates. On February 28, 2019, PAC Co-Chair Heather Patterson and UC Berkeley's Center for Long-Term Security researcher Steve Trush and team co-hosted a roundtable for local municipal professionals with a direct involvement in policy making pertaining to surveillance technology, data collection and retention, and community outreach. The roundtable was joined by Kelsey Finch, policy council at the Future of Privacy Forum, and PAC members participate in a monthly "Municipal Privacy Professionals" conference call hosted by Ms. Finch, where PAC members and other municipal staff discuss best practices and share and review work product.

#### **UPCOMING PROJECTS**

9. **Surveillance Equipment Policies** – The PAC will continue to work with staff on Use Policies for existing surveillance technology used by the City, and on new proposals to come.
10. **Privacy Principles Rollout** – Conditioned upon City Council approval of the PAC's recommended Privacy Principles, the PAC and relevant city staff will undertake an estimated 2-3-year rollout across all city departments, to review existing data collection and retention practices, create boilerplate language to be used with the public, vendors, permits and contracts, and to conduct community outreach.

#### **SPECIAL RECOGNITION**

The PAC would like to specially recognize those listed below for their past and present assistance in policy writing, legal research, and technical expertise.

11. Clint Johnson (former Commissioner, co-chair)
12. Raymundo Jacquez, III (former Commissioner, co-chair)
13. UC Berkeley Law, School of Information's Prof. Deirdre Mulligan (former Commissioner)

14. Saied Karamooz (former Commissioner)
15. Tim Birch (former OPD Office of the Chief staff liaison to the PAC)
16. Deputy Chief Roland Holmgren (OPD Office of the Chief; primary policy writer)
17. Bruce Stoffmacher (OPD Office of the Chief staff liaison to the PAC; primary policy writer)
18. UC Berkeley Law's Prof. Catherine Crump (advisor and guest speaker)
19. UC Davis Law's Prof. Elizabeth Joh (guest speaker)
20. Mike Sena, Executive Director of NCRIC (guest speaker)
21. Darlene Flynn, Director of Race & Equity
22. Chloe Brown – U.S. House Oversight Committee Detailee (current PAC Commissioner)
23. UC Berkeley's Samuelson Law, Technology, and Public Policy Clinic (students Courtney Reed, Amisha Gandhi, Nomi Conway; supervising attorneys Erik Stallman, Megan Graham)
24. UC Berkeley's School of Information (Steve Trush, Daniel Griffin, Peter Rowland, Amy Turner)
25. Timandra Harkness "Big Data: Does Size Really Matter?" (featuring DAC ad hoc commission)
26. Cyrus Farivar "Habeas Data: Privacy vs. The Rise of Surveillance Tech" (featuring PAC)
27. Policing Project/Latham & Watkins (formal study of the PAC)

For questions regarding this report, please contact Brian Hofer, PAC Chair, at 510-303-2871.

Respectfully submitted,



Brian Hofer  
Privacy Advisory Commission, Chair

Reviewed by:

Privacy Advisory Commission

Joe DeVries, Assistant to the City Administrator

Prepared by:

Brian Hofer

PAC Chair