



February 18, 2014

*Via electronic mail only*

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Oakland City Council  
1 Frank H. Ogawa Plaza  
Oakland, CA 94612

Re: Domain Awareness Center, Phase 2 Contract Award

Dear Oakland City Council,

The Electronic Frontier Foundation writes regarding Item 13 on the February 18, 2014 agenda of the City Council, in which staff asks the Council to adopt a resolution authorizing the City Administrator to 1) Negotiate a contract with Schneider Electric to Design/Build/Maintain the Domain Awareness Center and 2) If negotiations fail, to negotiate and enter into a contract with another vendor without returning to the City Council for approval. We urge you to reject this resolution, and to cease any further plans to expand the Domain Awareness Center (DAC) from the Port of Oakland to the City of Oakland at this time. The deadlines attached to federal grant funding for the DAC expansion do not justify pushing this project forward in the face of civil liberties issues and public opposition.

EFF opposes the idea of extending the DAC into a citywide system for law enforcement use, far from its original intended use as a port security measure to prevent terrorist attacks. Furthermore, the privacy policy that has been drafted by City Administrator Santana is inadequate; although given the expanded purpose of the DAC, it is doubtful that any privacy policy could salvage it.

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### ***Civil Liberties Concerns***

The DAC, by its very nature, enables unconstitutional surveillance. It will enable unprecedented access to information from around the city by aggregating previously unrelated data sources.<sup>1</sup> This aggregation exponentially increases the reach of every piece of technology included, creating a web of surveillance that stretches across the city and allows for a comprehensive picture of the activities of

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<sup>1</sup> As discussed below, the full reach of the system is, as of yet, unclear.

Oakland residents. Under the California Constitution, surveillance should be specific and targeted.<sup>2</sup> Instead, this allows for persistent and pervasive surveillance of all Oakland residents.

The domain awareness center has the potential to facilitate serious civil liberties violations by law enforcement, which are particularly concerning considering the Oakland Police Department's record. As stated above, this is a system initially designed to address port security problems, in particular terrorist attacks. It should not be extended to the entire city, especially when concerns about the Oakland Police Department misusing the DAC are based in the OPD's long and documented history of civil liberties abuses and selective enforcement.<sup>3</sup> The Oakland Police Department has a record of vigilante justice, a failure to follow crowd control procedures arrived at through settlement of class action lawsuits, violations of the First and Fourth Amendment in day-to-day and protest policing, and excessive force against demonstrators.<sup>4</sup> The Department has narrowly avoided federal receivership, has been appointed independent oversight by Judge Thelton Henderson, and has paid out millions of dollars to protestors and victims of civil rights abuses in settlements.<sup>5</sup>

Contrary to assertions of the City Administrator in the privacy policy framework memo that the DAC will focus on emergencies and the Port area, the stated purpose of the DAC is to increase understanding of "anything associated with all areas" of Oakland "that could impact the security, safety, economy, or environment" and to "ensure better multi-agency coordination across the larger San Francisco Bay Area." This is an incredibly wide net to cast. The DAC is not simply an emergency response system.

In fact, emails obtained through a Public Records Act request by the Oakland Privacy Working Group indicate that city staff are interested in pursuing the integration of the DAC as a fusion center.<sup>6</sup> Fusion centers are local-state-federal data sharing collaborations that were the subject of a scathing senate report last year that focused on the proliferation of useless data and the waste of federal money.<sup>7</sup> Instead of focusing on public safety or counterterrorism operations, fusion centers have mainly focused on drug crimes, and have facilitated unconstitutional surveillance.<sup>8</sup> Those same documents also show

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2 *White v. Davis*, 13 Cal 3d 757 (1975).

3 In documents recently received by the ACLU through a public records act request, an OPD officer "elect[ed] to issue a warning for the observed violations" of running a red light and possession of what looked like marijuana to an individual who said he was not in downtown Oakland for an "Occupy Oakland" demonstration, while individuals who were identified as demonstrators were given tickets for not possessing bicycle lights and running red lights. OPD's experience with federal receivership and civil litigation hardly needs to be repeated here

4 Significant class action litigation includes *Spalding et. al v. City of Oakland*, *Campbell v. City of Oakland*, and *Allen, et. al v. City of Oakland*.

5 Kate Conger, *Timeline: A History of Oakland Police's Crowd-Control Policy*, (Aug. 7, 2013), SAN FRANCISCO BAY GUARDIAN, <http://www.sfweekly.com/2013-08-07/news/occupy-oakland-sri-louise-coles-riders-case/>

6 The emails are available at <http://publicintelligence.net/oakland-dac-emails/>. The specific emails regarding fusion center funding are at pages 795-796 of the document entitled "Folders 1-3."

7 *Federal Support for and Involvement in State and Local Fusion Centers*, UNITED STATES SENATE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS, COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS, (Oct. 3, 2012), available at <http://www.hsgac.senate.gov/download/?id=49139e81-1dd7-4788-a3bb-d6e7d97dde04>

8 *Id.*, *What's Wrong with Fusion Centers?* (Dec. 5, 2007), ACLU, available at <https://www.aclu.org/technology-and-liberty/whats-wrong-fusion-centers-executive-summary>.

that city staff are interested in the use of the DAC to monitor political protests.<sup>9</sup>

The Oakland Police Department cannot be allowed access to such a pervasive and powerful system. It is doubtful that any privacy policy could provide the necessary civil liberties protections to restrain OPD from misusing the DAC.

### ***Transparency/Process***

The process for approval of the DAC has been flawed from the start. As noted above, questions remain about the contractors involved in the process and the exact nature of the technology that will be included in the DAC, and there is no finalized privacy policy. The process at this point appears to be that the DAC contract will be approved but that “DAC capabilities will not be activated until the City Council approves the Privacy and Data Retention Policy.” This is not a democratic process, and it is not acceptable.

The debate regarding the DAC has been going on for months, and the process of approval has been going on for years, and yet City Administrator Deanna Santana's privacy framework memorandum was released on February 11, 2014. This document appears to be intended as a draft privacy policy open to public comment. It is deeply flawed, and it is tardy. At the July meeting, when Phase 2 of the DAC was approved, the City Council amended the resolution to require that a privacy policy be completed and presented for approval by March. Unless the public is completely excluded from participation in the formulation of the policy, this deadline will not be met.

The “Use Restrictions” described in the privacy policy are minimal. Definitions of critical terms are missing or unclear. What's more, there are no means of enforcement included in the policy. As the Oakland Police Department's disregard for its crowd control policy has made clear, mere policy is insufficient. Without a means of enforcement, any policy will be meaningless.

As noted above, the memorandum also contains a broad description of the reach of the DAC, while providing a misleading description of the term “domain awareness.” The memorandum implies that domain awareness is simply an effective understanding of the city and port. This glosses over the fact that the purpose of domain awareness is to respond to that information. Domain awareness has a record of civil liberties problems. Documents obtained through Freedom of Information Act requests by the ACLU showed that the FBI's use of domain awareness led to extensive racial mapping of Arab, Muslim, and other communities.<sup>10</sup> The FBI has stated that: “Expanding domain awareness will improve the breadth, understanding, and scope of national security or criminal threats, and the FBI's ability to

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9 Darwin Bond Graham and Ali Winston, *The Real Purpose of Oakland's Surveillance Center*, East Bay Express (Dec. 18, 2013), <http://www.eastbayexpress.com/oakland/the-real-purpose-of-oaklands-surveillance-center/Content?oid=3789230&showFullText=true%20%20%28> (the article cites directly to emails and other communications by Port and city staff.)

10 Charlie Savage, *F.B.I. Scrutinized for Amassing Data on American Communities*, THE NEW YORK TIMES (Oct. 20, 2011), [http://www.nytimes.com/2011/10/21/us/aclu-releases-fbi-documents-on-american-communities.html?\\_r=0#h\[\]](http://www.nytimes.com/2011/10/21/us/aclu-releases-fbi-documents-on-american-communities.html?_r=0#h[]); original FOIA documents are available at: <https://www.aclu.org/national-security/aclu-eye-fbi-fbi-engaged-unconstitutional-racial-profiling-and-racial-mapping>.

anticipate and neutralize them.”<sup>11</sup>

The City Administrator's memo states that any new technology to be added to the DAC must be approved by City Council. However, the technology involved is, itself, unclear. The memo lists what surveillance systems will be included in the DAC, but nothing presented to the City Council or the public at this point has demonstrated how exactly the various technologies will be integrated and how the data will be analyzed.<sup>12</sup> The memo minimizes the capacity of the DAC, but presentations made to the City Council have emphasized how comprehensive those technical capacities truly are. For example, a May 2013 presentation by City staff indicated that the DAC would include 35 CCTV cameras, 40 live video surveillance cameras, 25 traffic camera sites, and over 700 cameras at Oakland public schools.<sup>13</sup> The presentation also noted that partners in the project include the Northern California Regional Intelligence Center (NCRIC). NCRIC is a fusion center that has direct access to comprehensive criminal intelligence databases, including the FBI's eGuardian database and other federal databases.

EFF finds the unanswered questions about how exactly the DAC will work extremely concerning. Technological advances in surveillance are increasing rapidly. Without a clear and detailed description of the way DAC will operate, what hardware and software it uses, how it interacts with outside systems, and exactly how access will be controlled, no privacy policy can be properly formulated, rendering the City Administrator's privacy framework even more inadequate. Lacking such specific information and lacking a privacy policy, DAC should be neither approved nor implemented.

### **Background**

The DAC was originally a Port of Oakland system funded by federal Department of Homeland Security dollars.<sup>14</sup> At some point in 2009, the City made the decision to make the DAC a joint City/Port project. In October 2012, Phase 1 of the project was built. Phase 1 apparently “included the Design/build that would include equipment, services and the key City systems' integration.”<sup>15</sup>

Since July 2013, when the City Council was presented with a request to approve Phase 2 of the DAC, dozens of Oakland residents have taken the time to attend meetings of the City Council and the Public

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11 *National Information Sharing Strategy*, THE FEDERAL BUREAU OF INVESTIGATION (2011), available at <https://www.fas.org/irp/agency/doj/fbi/infoshare.pdf>.

12 The memo lists: “Port Video and Intrusion Detection Cameras, Port of Oakland Vessel Tracking System, City of Oakland traffic cameras, City of Oakland-owned cameras operated by the City in non-residential areas, City of Oakland Shot Spotter Audio Sensor System, and License Plate Recognition system....”

13 The presentation is available at <http://www.slideshare.net/Yehoshua7/oakland-dac#btnNext>. IT is worth noting that a spokesperson for Oakland Unified has made it clear that the schools have not been a part of the discussion around the DAC. See, Cyrus Farivar, *Oakland accepts federal funds for controversial, vast surveillance setup*, ARS TECHNICA (Jul. 31, 2013) <http://arstechnica.com/tech-policy/2013/07/oakland-accepts-federal-funds-for-controversial-vast-surveillance-setup/>.

14 A thorough timeline, compiled by concern Oakland residents and based on publicly available records, City Council meetings, and records obtained through Public Records Act requests, can be found at <http://oaklandwiki.org/dac-faq-v1> and [http://oaklandwiki.org/Domain\\_Awareness\\_Center#Timeline](http://oaklandwiki.org/Domain_Awareness_Center#Timeline).

15 Agenda Report from City of Oakland Fire Chief Teresa Deloach Reed to City Administrator Deanna Santana, June 23, 2013

Safety Committee and vocally express opposition to this project. Unfortunately, the only change that has been made is that some members of the City Council have asked for a privacy policy, and have ensured DAC opponents that the system will not be fully activated until that policy is in place.

On February 11, a week before the City Council is being asked to give final authority to approve the DAC to the City Administrator, the City Administrator issued a “Framework for Discussion of the Domain Awareness Center (DAC) Privacy and Data Retention Policy.” This is not a completed privacy policy. It is a document that outlines what appears to be a mediocre set of suggestions for what a privacy policy might look like and includes some perfunctory engagement of the public. It so poorly defines what the DAC will do, as well as key terms, that it is unclear what exactly it applies to and appears to provide little to no legal protection against civil liberties abuses.

At this point significant privacy and civil liberties issues persist, as they have since the inception of this project. In fact, the City Administrator's memo outlines a deeply flawed draft privacy policy and highlights the City staff's failure to properly engage the public in the discussion around the DAC or to be responsive to the Council's concerns around the DAC. Furthermore, the resolution would prevent the City Council from exercising oversight over the selection of a substitute contractor should negotiations with Schneider fail, regardless of the fact that lack of oversight resulted in the need to cancel the city's first contract due to a violation of the city's Nuclear Free Ordinance. The City Council should demand greater information about the project, and it certainly should not cede its oversight role amidst serious civil liberties concerns. The availability of federal money does not mean that this project is *fait accompli*. It can still be halted.

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It is a mistake to grant any further approvals regarding the DAC at this time. City staff have not answered any of the questions that have been raised by attorneys, community members, and privacy advocates. Unelected city staff have been irresponsible and unresponsive and yet are asking for what is essentially a blank check to go forward with the DAC. Approving the resolution today would be an abdication of the City Council's oversight role. The project must not go forward.

Sincerely,

Nadia Kayyali  
Activist  
Electronic Frontier Foundation