



Via electronic mail only

March 4, 2014

Hon. Desley Brooks (dbrooks@oaklandnet.com)
Hon. Noel Gallo (ngallo@oaklandnet.com)
Hon. Rebecca Kaplan (atlarge@oaklandnet.com)
Hon. Pat Kernighan (Pkernighan@oaklandnet.com)
Hon. Lynette McElhaney (lmcElhaney@oaklandnet.com)
Hon. Dan Kalb (dkalb@oaklandnet.com)
Hon. Larry Reid (lreid@oaklandnet.com)
Hon. Libby Schaaf (lschaaf@oaklandnet.com)

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 14 on the agenda for the March 4, 2014 meeting of the Oakland City Council. The item again asks the City Council to allow the City Administrator to enter into a contract for the construction of Phase II of the Domain Awareness Center (DAC). EFF urges the City Council to deny approval for the DAC, and to commit to addressing the issues around Phase 1 of the DAC.

A no vote today is not the last step. The Council must then take responsibility for addressing Phase 1 of the DAC. EFF warns the Council that it must seriously consider how exactly a port-only DAC will work, taking into account the serious technical and legal concerns that accompany the DAC even as it currently exists. EFF again reminds the Council that any financial consequences of limiting the DAC are no reason to pursue a course of action that will seriously endanger civil liberties in Oakland. EFF urges the Council to consider the egregious lack of information and transparency that has surrounded this project and to vote against any expansion of the DAC.

* * *

Current status of DAC and Background Information¹

At the meeting on February 18th, 2014, the Council was asked to vote on the same resolution at issue for this meeting. That resolution would give the City Administrator authority to negotiate a contract to build the DAC with Schneider Electric or another contractor without coming back to the Council. The Council asked a number of questions regarding the DAC. In particular, the Council seemed unclear on what DAC capabilities were already active. Phase 1, which was completed on Jun 30, 2013, includes Port Security Cameras, an intrusion detection system, ShotSpotter, 40 City Traffic cameras, and City GIS.² The Council asked whether it was possible to “turn off” anything that is currently active, as well

¹ For further reference, see EFF’s February letter, available at: <https://www.eff.org/document/oakland-domain-awareness-center-phase-2-letter-eff>

² See Staff supplemental report, July 23, 2013 available at <https://oakland.legistar.com/calendar.aspx>.



as whether it was possible to stop the expansion of the DAC.

To be clear, there is no reason that the DAC must move forward at this time. The Council can vote no on Phase II approval. Furthermore, while the Council's authority regarding the DAC as it stands may be limited due to the governance structure of the Port, the Council can certainly limit the intrusion of the Port DAC on the City of Oakland. That may include removing city camera input from the DAC, not providing city staff to the DAC, and taking steps to ensure the use of DAC information is limited to the Port.

I. SUPPLEMENTAL STAFF REPORT AND TRANSPARENCY ISSUES

A. Supplemental Report

Staff issued a supplemental report on February 25, 2014.³ This report adds some additional information for the Council's approval, but it does not address the concerns that have been raised by advocates and the community. Furthermore, it makes the level of opacity around the DAC exceedingly obvious.

This report continues to punt key issues around the DAC to the future, regardless of the fact that many members of the Council prudently expressed concern about approving the project without a full delineation of what is being approved. These questions include, among others, what types of cameras and other data sources will be included, what relationships and information sharing agreements exist between the City and federal agencies, how DAC analytics will work, how exactly public engagement will occur, when the privacy policy advisory committee will meet and who will be on that committee.

B. Transparency and process issues

One key point the Council must consider is that staff has had months to respond to the concerns voiced by community members. It is only in the last month that any public outreach has happened, and it has been minimal at best. There has been one meeting regarding the privacy policy framework, at which staff did not address most of the concerns brought up by those in attendance.⁴ Furthermore, while the supplemental report and the privacy policy framework have answered few of the Council and public's questions, the DAC project has continued to move forward. Staff is asking for the trust of the Council and the public in ensuring that DAC capabilities are not used for violating civil liberties, but has demonstrated that transparency and engagement with the public are low on their list of priorities and capabilities.

Transparency must also include responsiveness to PRAs. Some of the records obtained by advocates indicate that staff strategized on public record requests. One email stated, "We were able to dodge an Urban Shield request completely because the requestor actually didn't want anything from the Fire Dept. even though we got the request (it was forwarded from the city clerk with no previous discussion). We didn't know that until Chief Hoffmann called her. In future, let's strategize a bit more upfront."⁵ In fact, PRAs continue to be denied by staff with little explanation of why.

³ See Staff supplemental report, February 25, 2014 available at <https://oakland.legistar.com/calendar.aspx>.

⁴ Privacy Policy Framework available at <http://www2.oaklandnet.com/w/OAK045549>

⁵ Oakland DAC Emails 2014-2, page 72 available at <http://publicintelligence.net/oakland-dac-emails/>.



II. INFORMATION SHARING AND PARTNERSHIPS

A. Existing information and resource sharing agreements between Oakland and federal partners

At the February 18, 2014 meeting, city staff asserted that the City currently has no data-sharing agreements with NSA, FBI, or CIA. However, implying that there is any sort of firewall between DAC information and the federal government is disingenuous at best. As has been pointed out to the Council, Oakland already shares information with the FBI through its participation in a Joint Terrorism Task Force.⁶ Similarly, the Oakland Police Department participates in the Bay Area Urban Area Security Initiative (UASI), a Department of Homeland Security program. In fact, Renee Domingo is part of the “Approval Authority” for UASI. The Approval authority “provides policy direction and is responsible for final decisions regarding projects and funding,” to UASI.⁷

Implying that the DAC has no relationship to fusion centers is also disingenuous. UASI is one of the primary funders for the Northern California Regional Intelligence Center (NCRIC), the regional Bay Area fusion center.⁸ Furthermore, the DAC itself has been “featured” regarding information sharing in relationship to NCRIC and other federal agencies; in a 2013 port security workshop that included Department of Homeland Security, NCRIC and Port of Oakland officials and brought in other federal agencies, law enforcement, and private interests, the DAC and NCRIC were used as models for information sharing relationships.⁹ In fact, pursuant to City Council resolutions, the Oakland Police Department and Fire Department staffed the Northern California Regional Intelligence Center in 2011 and 2012.¹⁰

B. Information sharing and the DAC

The most recent staff report states: “Information sharing agreements have not been thoroughly discussed or contemplated by City staff at this time. City staff will return to City Council and provide a list of potential agencies that staff would want to enter into information sharing agreements and provide why and what the benefits of sharing information would be. Any information sharing agreements for the DAC information that is collected and stored would have to be approved by City Council.”

Presentations made by staff to the City Council at various meetings indicate that the DAC will partner with a variety of organizations, including NCRIC. Staff has also noted that funding for fusion centers might be available for the DAC.¹¹ It is unclear whether this was ever pursued, but even the interest in such funding is concerning, considering the assertions made by staff regarding partnerships with federal law enforcement. Putting these issues off until later is simply unacceptable.

⁶ Ali Winston, *Oakland Police Tight-lipped on Role in Joint Terrorism Task Force*, KALW INFORMANT (May 18, 2011) <http://araborganizing.org/oakland-police-tight-lipped-on-role-in-joint-terrorism-task-force/>

⁷ “Approval Authority Members,” BAY AREA URBAN SECURITY INITIATIVE (Accessed March 3, 2014), <http://www.bayareauasi.org/about-uasi/authority-members>

⁸ For an overview of fusion centers and the risks they pose, see Michael Price, *National Security and Local Police*, Brennan Center for Justice (2013) available at http://www.brennancenter.org/sites/default/files/publications/NationalSecurity_LocalPolice_web.pdf.

⁹ Lyla Englehorn et. al, Multimodal Information Sharing Team, Oakland Seaport, CA, (2013) available at <http://www.sfmix.org/support/amsc/webdocs/Multimodal%20Information%20Sharing%20Team%20Port%20of%20Oakland%202013.pdf>

¹⁰ Oakland City Council Resolution no. 82778, passed May 13, 2010 and Oakland City Council Resolution no. 84005, passed July 11, 2012 available at <https://oakland.legistar.com/Legislation.aspx>

¹¹ Oakland DAC Emails, *supra* note 5. (The specific emails regarding fusion center funding are at pages 795-796 of the document entitled “Folders 1-3.”)



C. Outstanding questions regarding partnerships and information

1. How do the institutional partnerships displayed in the various city staff slides work? Are there Memoranda of Understanding between the city and these agencies? If not, are these verbal agreements? Is there any documentation of the agreements at all? Do the partnerships have to do with funding? Information sharing? Access to shared databases? Shared staff? Shared spaces?
2. In particular, what sort of relationship would the DAC have with the Oakland JTTF? The FBI field office? The Northern California Regional Intelligence Center?
3. Is OPD part of the National Suspicious Activity reporting initiative?¹²
4. Does OPD have Terrorism Liaison Officers? What exactly is the function of Oakland's "Terrorism Advisor" designation?¹³ Are those TLOs? What would the relationship be between TLOs or Terrorism Advisors and the DAC?
5. Has funding for the DAC to be converted into a fusion center been pursued at all?

III. TECHNICAL SPECIFICATIONS

The City Council meeting on February 18, 2014, made it clear that there are significant questions regarding what the DAC system is, what it will be connected to, and how it will operate. These questions are not answered by the most recent staff report.

A. Data sources for the DAC

Materials provided to the city council by Staff have discussed several data sources that are intended to be part of Phase II of the DAC, including computer aided dispatch (CAD) system, police and fire records management system (RMS), and "news feeds and alerts." CAD and RMS could potentially facilitate the sharing of enormous amounts of information, but the way in which they will be integrated is unclear. Furthermore, the most recent report states that "news feeds and alerts" would not be considered a full integration, meaning that social media such as Twitter or Facebook could potentially be included, regardless of any limiting language in the Privacy Framework.

The report also states: "The various types of video cameras that would be used by the DAC staff and how they will be used and for what purpose will be delineated in the DAC Privacy and Data Retention Policy." Knowing the types of cameras included in the DAC is essential to understanding the privacy impacts. At various times, Staff have stated that there will be CCTV from schools, traffic cameras that have no recording capabilities, other city-owned cameras, and potentially transit cameras.

Currently, City resolution 84593 and the privacy policy framework state: "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 systems*."¹⁴ (Emphasis added). Regardless of what Staff have stated in various reports and slideshows, the bottom line is that this is the language

¹² See Price, *supra* note 8.

¹³ Memorandum of Understanding between City of Oakland and the Oakland Police Officers Association, (July 1, 2006-June 30, 2015) available at <http://www2.oaklandnet.com/oakca1/groups/hrm/documents/agenda/oak030399.pdf>

¹⁴ Oakland City Council Resolution no. 84593, passed July 30, 2013 available at <https://oakland.legistar.com/Legislation.aspx>



passed by the Council, and it includes more cameras than the Staff have discussed, as well as license plate recognition systems. These systems represent a major intrusion on the privacy of Oakland residents.

B. Physical Security Information Management software

“Physical Security Information Management (PSIM)” software is at the core of the DAC. Staff reports have not fully addressed the functionality of PSIM. While Schneider Electric does not explain what PSIM is on its website, CNL Software, a company that creates PSIM software and has partnered with Schneider in the past, has this explanation: “PSIM software combines various information feeds into a single user interface” collecting and correlating events from existing disparate security devices and information systems such as CCTV video, access control, sensors, analytics, networks and building systems. . . . A complete PSIM software system has six key capabilities: Collection, Analysis, Verification, Resolution, Reporting and Audit trail.”¹⁵ The CNL system can display multiple cameras on one screen, provide information based on types of incidents, and aggregate data. This explanation is in line with the minimal description provided by staff.¹⁶ PSIM software creates exactly the kind of comprehensive surveillance the community and advocates have warned of.

C. Outstanding questions regarding technical capabilities of the DAC

1. Would CAD and RMS be available in real time?
2. Would CAD and RMS data be fed into any PSIM data analytics?
3. Would DAC be connected to any other databases?
4. Would there be an integrated process for accessing any databases the DAC would be connected to? Would that process be part of the PSIM user interface?
5. How does PSIM analyze data? What feeds go into that analysis?
6. Staffing of the DAC does not seem to be clearly assigned, based on the MOU between the City and the Port. Are there any specifications beyond the grant MOU regarding staffing?
7. What recording and retention capabilities will the DAC have?
8. What kind of security measures would be in place for the data gathered by the DAC? Will encryption be used for any information sent over networks?
9. Are there any plans for a barrier between the federal databases OPD has access to through the Joint Terrorism Task Force or any other partnerships and the DAC?

IV. COST ISSUES

While cost is not EFF’s primary concern, the obfuscation by city staff around the actual cost of the DAC is a symptom of the lack of transparency around this project since its inception.

1. What exactly are the shared responsibilities of OPD and Port re: the DAC?
2. Has there been any thorough financial analysis of what the cost will be to Oakland outside of the federal grant?

¹⁵ “What is PSIM?,” CNL SOFTWARE (Accessed March 3, 2014), <http://www.cnlsoftware.com/ipscIntroduction.php>

¹⁶ See Staff supplemental report, February 7, 2014 *available at* <https://oakland.legistar.com/calendar.aspx>.



3. How did the Staff calculate costs of removing DAC components?

V. PRIVACY POLICY

As EFF expressed in its last letter to the council and in statements to the council on February 18, while we understand the document that has been made public is not a final policy, it is seriously flawed.

A. Outstanding questions regarding the privacy policy

1. Who created the framework for the privacy policy?
2. Why doesn't the privacy policy include a system of enforcement?
3. If the Council votes to keep the DAC port-only, will there be a privacy policy created to address isolating the port DAC from the city?

VI. NEXT STEPS

A. Port Only DAC

Some city council members expressed an interest in a "port-only" DAC. Since there are already non-Port systems in place, if this option were pursued, it would raise several issues:

1. What would a "port-only" DAC look like? Would the City Council commit to removing city traffic cameras and other non-port data sources from the DAC, or would the DAC continue to incorporate all Phase I systems?
2. Would a port-only DAC come with clear informational/technical firewalls between the port and police?
3. Resolution 84593 recommends the creation of a privacy policy during Phase II. Would the City continue to develop a privacy policy even if it does not approve Phase II, considering that Phase I is already in place?

B. Funding

1. If grant funding expires, will city council seek or authorize staff to seek further grant funding?

* * *

CONCLUSION

EFF applauds the Council's responsiveness to the significant privacy concerns raised by community members and advocates at its last meeting. A vote to allow the DAC to move forward today would negate that. There are far too many unanswered questions. There is no complete privacy policy. There is every indication that neither the council nor the public has a full picture of the technology involved and the staff's intentions.

Sincerely,

Nadia Kayyali, Activist, Electronic Frontier Foundation