



December 10, 2020

VIA E-MAIL ONLY

- Hon. Rebecca Kaplan (atlarge@oaklandca.com)
- Hon. Dan Kalb (dkalb@oaklandca.com)
- Hon. Nikki Fortunato-Bas (district2@oaklandca.com)
- Hon. Lynette McElhaney (lmcElhaney@oaklandca.com)
- Hon. Sheng Thao (sthao@oaklandca.com)
- Hon. Noel Gallo (ngallo@oaklandca.com)
- Hon. Loren Taylor (ltaylor@oaklandca.com)
- Hon. Larry Reid (lreid@oaklandca.com)

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

Re: Community Support for the Privacy Advisory Commission’s Proposed Amendments to O.M.C. 9.64 prohibiting the use of predictive policing and biometric surveillance technologies

Dear Honorable Members of the Oakland City Council:

The undersigned coalition urges the Oakland City Council to approve the Privacy Advisory Commission (“PAC”)’s unanimously proposed amendments to O.M.C. 9.64 (surveillance technology ordinance), noticed as Item 10 on your December 15, 2020 agenda. This coalition represents diverse Oakland and Bay Area residents who are concerned with the ever-increasing number of surveillance technologies in use by government agents that infringe upon our human rights to privacy and freedom of association, and that accelerate dangerous racial profiling and targeting of marginalized communities.

Predictive Policing Analytics

Building upon Oakland’s existing prohibition against the use of facial recognition technology, the PAC’s proposed amendments would expand the prohibition to encompass other dangerous biometric surveillance technologies such as gait analysis and voice recognition, and also prohibit the use of predictive policing technologies, which have a well substantiated disproportionate impact on Black and brown communities¹.

In fact, awareness of the potential harm that could occur from the use of such technology recently led to over 1,500 American mathematicians and researchers joining a boycott that pledged to sever all ties related to law enforcement’s use of predictive analytics. "Given the structural racism and brutality in U.S. policing, we do not believe that mathematicians should be collaborating with police departments in this manner," the authors write in the letter. "It is simply too easy to create a 'scientific' veneer for racism."²

It was partly due to the structural racism present in American law enforcement that PAC recommended that Oakland ban the use of predictive analytics due to the “feedback loop” phenomenon: based on past data which was likely collected in a disproportionate manner as certain communities are policed more than others, a computer algorithm directs police back to the very same community being over-policed because “that’s where the crime is occurring.” Then the “new” data is combined with the old, thereby causing the algorithm to rate that same area or individual as an even higher risk because that is what the collected data supports. Predictive analytics thereby serve to cement or even accelerate existing biases and

¹ During the course of their review with the Oakland Police Department, the PAC excluded from the definition of *biometric surveillance technology* the manual capture of finger and palm prints collected during the course of a criminal investigation, and excluded traditional heat maps that only visually represent past data without attempting to predict future action from the definition of *predictive policing technology*.

² <https://www.popularmechanics.com/science/math/a32957375/mathematicians-boycott-predictive-policing/>

disproportionately impact marginalized communities that have long suffered from police brutality.

In addition, predictive surveillance technology does not work. “In 2011, the LAPD began using predictive policing software called the Los Angeles Strategic Extraction and Restoration (LASER), which it eventually stopped using in April 2019. “The [Los Angeles Police Department] looked into this and found almost no conclusion could be made about the effectiveness of the software,” Hoffman says. “We don't even really know if it makes a difference in where police are patrolling.”³ Locally, former Richmond Police Chief Richard Magnus ended a contract with popular predictive analytics vendor PredPol because he found it wasn't worth the price.⁴ Additional analysis by the East Bay Express showed that such technology at best has produced statistically insignificant results.⁵

Biometric Surveillance Technology and Mission Creep

On June 25, 2019, the United Nations Special Rapporteur David Kaye released a report on surveillance technology, calling for a worldwide moratorium on invasive technology like facial recognition software. “Surveillance tools can interfere with human rights, from the right to privacy and freedom of expression to rights of association and assembly, religious belief, non-discrimination, and public participation,” the Special Rapporteur said in statement. “And yet they are not subject to any effective global or national control.”⁶

No tool with more than one use ever remains confined to a single use for very long. Just ten years ago, license plate readers were introduced to recover stolen vehicles more effectively, to overcome the “hiding in plain sight” phenomenon. Today, they are used for all criminal investigations, at-risk and witness locates, civil investigations such as insurance and worker's comp fraud, and administrative purposes like neighborhood parking passes and payment of parking fees. We believe that biometric surveillance technologies are even more versatile than a license plate reader, and thus subject to even greater mission creep concerns, because we cannot separate ourselves from our faces, voice, gait, heartbeat, retina, or other identifying physical characteristics, and thus the impact and mission creep will be larger if you crack open the door for limited uses now. In addition, the expensive part of a citywide mass surveillance system ripe for analytics use is already in place – cameras are everywhere, typically linked together and remotely viewable. All that remains is the flip of a switch to enable facial, gait, and voice analysis of every Oaklander and visitor to our city. This would be an extremely concerning shift in the balance of power between the governed and the government.

³ <https://www.popularmechanics.com/science/math/a32957375/mathematicians-boycott-predictive-policing/>

⁴ <https://richmondstandard.com/beyond-richmond/2015/06/24/richmond-police-chief-says-department-plans-to-discontinue-predictive-policing-software/>

⁵ <https://www.eastbayexpress.com/oakland/oakland-mayor-schaaf-and-police-seek-unproven-predictive-policing-software/Content?oid=4362343>

⁶ <https://news.un.org/en/story/2019/06/1041231>

Biometric Surveillance Technology is Anti-Democracy and Anti-Privacy.

We have a human right to privacy, and in California, a statutory right to privacy enshrined in our constitution. The United States Supreme Court has consistently ruled for decades that we have the right to be anonymous in public. As a people, we have never consented to law enforcement tracking us. We have never been forced to, nor agreed to, carry a visible ID around with us as we move about our lives. We have consistently said we do not need to identify ourselves walking around, yet with this technology, it is the equivalent of forcing us to identify ourselves to others simply by participating in modern day life and walking outside our front door. We do not need to speculate about this threat – China is presently using facial recognition against its minority Muslim Uighur population by tracking certain ethnic facial features.

If Oakland was to allow the use of biometric surveillance technology, the inevitable mission creep will cause it to become ubiquitous, and this is our primary concern: this technology is the most radical, and the most intrusive, that we have ever seen in our lifetimes. If used widely, and certainly by those with police power, it will destroy our First Amendment protections due to its chilling effect and erode Fourth and Fifth Amendment protections.

No young person exploring their sexuality will be comfortable exploring a gay bar for the first time. Muslims will be nervous attending their mosques. Inter-racial and same sex relationships, cannabis use, aiding immigrant refugees, all these actions occurred in the “underground”, requiring privacy, before they became accepted as the new normal and decriminalized. In a world of perfect surveillance, these types of social changes will no longer be possible, because the status quo will become cemented.

A March 2019 David Binder Research poll conducted for the ACLU revealed that over 82% of likely California statewide voters, and 79% of likely Bay Area voters, **oppose** the government using biometric information to monitor and track who we are, and where we go.

On June 27, 2019, Axon publicly issued a statement affirming that they will not use facial recognition technology in conjunction with their body cameras, following the advice of its independent ethics board. Axon now joins Google and Microsoft as major players that are saying no to the use of their technology in harmful, biased ways. The California legislature has prohibited the use of biometric surveillance technology (including facial recognition) in body cameras statewide.

The health of our democracy depends on our ability to occasionally say no – that certain technology, more so than others, is too radical for use in our community. We are already losing our ability to move about and associate freely, without this intrusive, error-prone technology. Our locational history is tracked by license plate readers, Stingrays, and cellphone tower dumps. There are already thousands of cameras in place, just waiting for biometric surveillance technology to be coupled with them that can capture our unique, very personal identifying characteristics without our knowledge, working at a distance. We do not have to accept as inevitable that technology will creep further into our lives.

Sincerely,

Anti Police-Terror Project
Asian Americans Advancing Justice – Asian Law Caucus
Council on American-Islamic Relations – SF Bay Area
Defending Rights & Dissent
Electronic Frontier Foundation
Ella Baker Center For Human Rights
Fight For The Future
Greenlining Institute
Immigrant Defense Advocates
Immigrant Legal Resource Center
Justice Teams Network
MediaJustice
San Francisco Public Defenders – Racial Justice Committee
Secure Justice
Support Life Foundation
Wellstone Democratic Renewal Club
Yemeni Alliance Committee