



July 14, 2016

VIA US MAIL AND EMAIL

Hon. Mayor Karen Stepper (kstepper@danville.ca.gov)
Hon. Newell Arenrich (arnerich@danville.ca.gov)
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Hon. Mike Doyle (mdoyle@danville.ca.gov)
Danville Town Offices
510 La Gonda Way
Danville CA 94526

Re: Automated License Plate Readers (ALPR)

Dear Honorable Mayor Stepper and Town Council Members:

As members of the Oakland Privacy Working Group (OPWG), we write to share with you our concerns regarding the City of Danville's automated license plate reader use policy.

OPWG is a citizen's coalition that works regionally to defend the right to privacy and enhance public transparency and oversight regarding the use of surveillance techniques and equipment. We were instrumental in the creation of the first standing municipal citizens' privacy advisory commission in the City of Oakland, and we have engaged in successful privacy enhancing legislative efforts with the Counties of Alameda and Santa Clara. In 2015, we successfully urged the California State Legislature to pass SB 34, which now regulates the use of ALPR throughout the state.

DANVILLE'S ALPR POLICY DOES NOT COMPLY WITH SB 34

Placed before the Town Council in the June 21, 2016 agenda packet for the ALPR item was a use policy written by the Contra Costa County Sheriff, which was most recently revised on May 6, 2016 ("CoCo Policy"). Even though the policy was apparently revised after SB 34 went into effect on January 1, 2016, it is not compliant with the new law.¹ This should be concerning to the Town Council,

¹ The Police Services Update, attached to the agenda item as Attachment B, states confusingly that the CoCo Policy will be combined with the Danville policy on use of fixed cameras and applied to ALPR. See Page 6, ¶2. Neither the fixed camera or CoCo Policy reflect this. Some of the language used throughout the agenda packet and the CoCo Policy itself, indicates prospective action and future policy and protocol work. We encourage Danville to continue revising its ALPR

as Danville Police Chief Simpkins stated on June 21, 2016 that your city has been using ALPR for “up to a year”, meaning that Danville has been in violation of SB 34 since January 1, 2016, and continues to be with each passing day. Assuming no public comment hearings on ALPR were held prior to June 21, 2016, Danville has also violated Cal. Civil Code, §1798.90.55, by using ALPR in 2016 without first holding a public hearing on the matter. The statement on page 2 of the Staff Report that “[t]hese policies are consistent with the provisions of SB 34” is untrue, for many of the reasons below.

Pursuant to Cal. Civil Code, §1798.90.53(b), Danville’s ALPR policy must at minimum contain the following:

- (2) *The usage and privacy policy shall, at a minimum, include all of the following:*
 - (A) *The authorized purposes for accessing and using ALPR information.*

The Police Services Update, included in the June 21, 2016 agenda packet as Attachment B, states that only “law enforcement investigative personnel would have access to the data. All data would be collected and stored separately from any personal identifying information. Images are only reviewed by law enforcement personnel when required based upon...” and lists the following specific allowable uses:

- Locating wanted, stolen vehicles
- Locating suspect(s) of criminal activity or arrest warrant, based on suspect’s known license plates
- Locating witnesses or victims or violent crimes
- Locating missing children or elder alerts (Amber Alerts)
- Follow-up investigation to reported criminal activity.

OPWG supports Danville’s reasonable limitations on ALPR use and the separation of personally identifying information (PII) from the images. While the CoCo Policy does state that ALPR may be used in the above scenarios, it does not restrict use to these categories as the staff report represented. In order to prevent mission creep or unintended consequences, Danville’s future policy should expressly limit use to the categories as stated in Attachment B, instead of the current vague “official business only” and “official and legitimate law enforcement purposes.” See CoCo Policy, sections II (A) and (E)-1, respectively. Tiburon’s ALPR policy contains such a prohibition on use: “The ALPRS will not be used for any purpose not directly related to the investigation of reported crime or disaster management.” See Tiburon ALPR Policy, Section 461.4.4.

Recent use policies successfully adopted in Alameda County and the City of Oakland have wisely and clearly specified the allowable uses that surveillance equipment may be used for, as a precaution against mission creep, where a tool was stated to be solely intended for one purpose but is later used for another with unintended and harmful consequences that can result in harm to taxpayers and the injured party.

(B) A description of the job title or other designation of the employees and independent contractors who are authorized to access and use ALPR information. The policy shall identify the training requirements necessary for those authorized employees and independent contractors.

Throughout the CoCo Policy, the generic term “volunteers” is used. See CoCo Policy, section II(A), (B)1-2, and (F)-1. In order to better comply with SB 34, the CoCo Policy should be amended to identify who these additional volunteers are, and what qualifications they must possess. Furthermore, as Jeremy Walsh reported in the *Danville/San Ramon*, Danville Police Chief Steve Simpkins stated to the Town Council on June 21, 2016, that only law enforcement investigators will have access to the ALPR data.² OPWG supports this limitation. An express prohibition on access to ALPR data by non law enforcement agents and entities should be included in the policy to make clear that this restriction is reflected in Danville’s revised ALPR policy. The policy’s current language leaves it open to interpretation whether non-law enforcement agents may access the data.

(C) A description of how the ALPR system will be monitored to ensure the security of the information accessed or used, and compliance with all applicable privacy laws and a process for periodic system audits.

The CoCo Policy does not address compliance with applicable privacy laws, nor describe a process for periodic system audits. In addition to addressing compliance with applicable privacy laws, the CoCo Policy section IV (E)-6 should describe the process for, and period of time, that audits will occur.

(D) The purposes of, process for, and restrictions on, the sale, sharing, or transfer of ALPR information to other persons.

Section IV (E)-3 should be revised to mandate a “need to know” concept that we have successfully introduced in other jurisdictions. A major concern of the public since the Edward Snowden revelations is the unrestricted sharing of data between law enforcement agencies, for no apparent law enforcement purpose. With the use policies OPWG has had a direct involvement in drafting, governing bodies throughout the Bay Area have seen the wisdom in requiring that a direct involvement in the investigatory process be present in order to obtain data, as opposed to unrestricted use of ARIES in the CoCo Policy. We see no compelling reason that all sworn officers be provided access to this data without a demonstrated need for it. As stated in the agenda packet, “[s]trong policies should be in place prior to implementation, to guide the operation and use of ALPRs.” See Agenda Packet Attachment B, Police Services Update, page 5, ¶8. OPWG agrees with this statement.

(E) The title of the official custodian, or owner, of the ALPR information responsible for implementing this section.

Danville appears to be in compliance with SB 34 here.

² <http://danvillesanramon.com/news/2016/06/22/license-plate-recognition-cameras-coming-to-danville>

(F) A description of the reasonable measures that will be used to ensure the accuracy of ALPR information and correct data errors.

The CoCo Policy fails to address how incorrect data errors will be corrected. Furthermore, section IV (D)-1 should be replaced, as it is written in error.³ This sentence should state that an operator “shall confirm” that the observed license plate matches the Hot List number. Recent legal action against the City of San Francisco by a woman wrongfully detained at gunpoint pursuant to an incorrect license plate scan shows the wisdom of ensuring accuracy in license plate images. After losing its legal appeal, in 2015 the City of San Francisco paid Denise Green \$495,000 for this very costly mistake.⁴

(G) The length of time ALPR information will be retained, and the process the ALPR end-user will utilize to determine if and when to destroy retained ALPR information.

The CoCo Policy fails to address the process for determining if and when to destroy retained ALPR information. In order to reduce risk of misconduct, OPWG believes that the data should be destroyed the instant there is no clear need for it. We address retention limits separately, further below.

STATEMENTS MADE TO THE COUNCIL ARE NOT REFLECTED IN THE POLICY

Certain statements intended to address privacy concerns were made to the Town Council in the staff report contained in the agenda packet, and also in comments made by Chief Simpkins on June 21. These representations include statements that :

- ALPR is intended to identify vehicles (not vehicle occupants) (See Agenda Packet Attachment B, Police Services Update, page 5, ¶1)
- ALPR is not intended to work with facial recognition software (See Agenda Packet Attachment B, Police Services Update, page 5, ¶1)
- Only law enforcement would have access to ALPR data (See Agenda Packet Attachment B, Police Services Update, page 6, ¶3)
- ALPR images are only reviewed by law enforcement personnel when required based upon certain specific uses (See Agenda Packet Attachment B, Police Services Update, page 6, ¶3)
- ALPR cannot be used for Red Light infractions (Chief Simpkins comments to Town Council on June 21, 2016).
- ALPR will only be used for investigating crime (Chief Simpkins comments to Town Council on June 21, 2016).

³ “the operator should confirm that the observed license plate matches the license plate of the observed vehicle” is written poorly. The intent here likely was to require that the operator confirm that the observed license plate matches the Hot List alert license plate number.

⁴ <https://sfgov.legistar.com/View.ashx?M=F&ID=4094981&GUID=5940D244-9174-41E7-A442-BF1046C986B1>

OPWG supports all these restrictions on ALPR use. However, the CoCo Policy contained in the agenda packet contains none of these prohibitions or narrow uses. The Town Council should revise the ALPR policy to prohibit and/or narrow these uses.

For an example of what an ALPR image can contain, please see the attached photo of OPWG member Mike Katz-Lacabe, obtained via public record request. The image captured is obviously much larger and more revealing than just a license plate's surface area, revealing what Mike and his two minor age daughters look like, in addition to a residential address. An important fact not communicated in either the staff report or in comments to the Town Council is that the housing unit for ALPR contains *two* cameras, one to capture the image, and one to capture the surrounding area as the Katz-Lacabe photo shows. This will necessarily and intentionally reveal more information than just license plate numbers.

Furthermore, Danville has selected local powerhouse Vigilant as its ALPR vendor. Vigilant is heavily marketing its facial recognition software capabilities and ALPR/facial recognition combo package. As the CoCo Policy does not prohibit using ALPR with facial recognition software, its foreseeable that eventual mission creep will occur here. OPWG recommends that Danville amend its ALPR policy to expressly prohibit the use of facial recognition and other analytical software.

REPORTING METRICS ENABLE THE COUNCIL TO MAKE INFORMED DECISIONS

As with any tool, measuring the effectiveness of use is important for both taxpayer and civil liberties concerns. The staff report on this item states without support that ALPR are effective in reducing crime. How will Danville demonstrate this, when the CoCo Policy fails to include any metrics or efficacy reports? OPWG recommends that measurable reporting statistics be included in a required annual or quarterly report to the Council. The Town Council will also be unable to determine if Danville's purchase, according to Councilmember Storer, "will absolutely be money well spent", as quoted in the *Danville/San Ramon* article. Danville's purchase is rather expensive for an ALPR system. Councilmember Arnerich stated at the June 21 hearing that it was one of the largest expenditures Danville has made recently. Danville's future SB 34-compliant ALPR policy should include in its annual report a category for total costs, including ongoing maintenance and support, personnel, licensing, and any other related cost, and a summary of uses and results of any criminal investigations, so that the Town Council can make an informed decision as to whether continued use is justified. Tiburon's ALPR policy requires that its chief of police present an annual report that includes annual system costs and a summary of any policy violations. See Tiburon ALPR Policy, Section 461.9.

RETENTION OF DATA MUST BE DETERMINED BY NEED

The existing policy authorizes the storage of license plate scans for one year.⁵ Danville police did not offer any support for this position in the staff report, nor in comment before the Town Council on June 21, 2016. There is no legal requirement that data be retained for up to one year. Tiburon keeps its data no longer than 100 days, unless required for an active investigation.⁶ Oakland and Menlo Park keep

⁵ Section IV (E)-5

⁶ <http://www.townoftiburon.org/DocumentCenter/View/697>, Section 461.5 Accountability and Safeguards

their data for 6 months.⁷⁸ State law requires that the California Highway Patrol delete its data after 2 months.⁹

The longer data is retained, the more likely it is that an invasion of privacy will occur, that data will be misused or stolen by hackers, and costs of storage will certainly increase. While a single data point may not intrude greatly into our right to privacy, the likelihood of infringement increases as more data points are accumulated and retained. A mosaic, or pattern, emerges as to one's travel and associations. As data from various systems and containing different sorts of information is uploaded to law enforcement databases like ARIES and NCRIC without careful thought, the ability of law enforcement to access a very revealing portrait of our lives should give Danville pause before granting such power to its police department. After a reporter correctly figured out where he lived based on Oakland's ALPR data, Oakland Councilmember Dan Kalb stated that he believed that the purpose of ALPR was only to track down stolen vehicles. "It raises the question: what's the purpose of retaining records for a long period of time?"¹⁰ OPWG believes this question should be asked by Danville's Council when considering ALPR use.

The annual reporting metrics suggested in the previous section can also provide guidance here as to the appropriate retention time. As efficacy data is collected, amendments to the policy can be made by the Council if a different retention time is needed. Comparing license plate images to a Hot List database takes but a second. If the image is not a 'hit', what is the justification and purpose of retaining the ALPR data, which could include photos of people and other personal information, as demonstrated above? Absent reasonable suspicion that the observed license plate belongs to a vehicle owner suspected of a crime, or that the vehicle itself was involved in a crime, OPWG sees no compelling reason that ALPR data of innocent people be retained.

REASONABLE SUSPICION IS NOT REQUIRED

The CoCo Policy states that neither the reasonable suspicion nor probable cause standards are required to utilize ALPR.¹¹ OPWG disagrees with this position. When law enforcement acts without at least a reasonable suspicion that criminal wrongdoing has occurred, the door is opened to civil liberties infringement including upon our right to privacy, and to targeting and profiling of innocent citizens that lacks a rational and defined basis. Communities across the country have been expressing resistance to undefined targeting by law enforcement, most notably in the New York City stop-and-frisk policy that was ruled unconstitutional.¹² OPWG would be happy to work with Danville to develop language that protects privacy and civil liberties, without preventing law enforcement from lawfully investigating suspected crime.

⁷ <http://arstechnica.com/tech-policy/2015/08/cops-decide-to-collect-less-license-plate-data-after-80gb-drive-got-full/>

⁸ <http://www.codepublishing.com/CA/MenloPark/?MenloPark02/MenloPark0256.html&?f>, Section 2.56.030(b)

⁹ Cal. Vehicle Code, §2413(b)

¹⁰ <http://arstechnica.com/tech-policy/2015/03/we-know-where-youve-been-ars-acquires-4-6m-license-plate-scans-from-the-cops/2/>

¹¹ CoCo Policy, IV (B)-4

¹² <http://ccrjustice.org/home/press-center/press-releases/landmark-decision-judge-rules-nypd-stop-and-frisk-practices>

In order to minimize the potential for unconstitutional policing and infringement upon our right to privacy, Danville should seek to minimize the collection *and* retention of data, to the least amount possible.

CONCLUSION

Modern technology has introduced a host of new challenges in navigating the balance between security and freedom. OPWG believes these challenges are best met with a public conversation between elected leaders and their constituents, which examines the potential impact to privacy and all civil liberties from use of surveillance equipment. If we can provide any supplementary information or assistance with Danville's privacy policy for ALPR implementation, please do not hesitate to contact us.

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