

Based on OPD's proposal, and my own independent research on this matter, I find that:

1. ALPR may be useful and appropriate, when scanning plates against hot lists of suspected wrongdoing or at-risk persons.
2. OPD's proposed use policy goes far beyond such use, by collecting and retaining data on all vehicles scanned, as indiscriminate mass surveillance. OPD has acknowledged that they are unaware of any legal authority that allows such action to occur. We concur that there is no legal authority authorizing law enforcement to indiscriminately collect sensitive data on individuals not suspected of wrongdoing.
3. OPD has failed under our ordinance requirements to provide evidence that ALPR use should be approved pursuant to its existing policy. A few unverifiable anecdotal reports compared against millions of plate scans is inadequate¹, especially in conjunction with the failure for five consecutive years to provide annual reports, maintain a record of third party data requests, and maintain a record of internal access required by SB 34.
4. OPD has failed under our ordinance to specifically justify its proposed 1-year retention period. Our ordinance requires the reasons why such retention period is justified. In fact, OPD's revised February 2021 impact statement directly contradicts the need for a one-year retention period, stating that "a recent analysis of ALPR queries shows that most revealed data that was less than one month old (13 cases), and the number of cases using older data diminishes."
5. OPD has also failed to answer seemingly basic questions about the technical capabilities of its use, such as manually adding a plate to a hot list, or even how many hot lists there are despite repeated written requests for such information.
6. OPD has been subject to federal Court oversight for eighteen years due to racial profiling and has failed to comply with its own negotiated settlement agreement for that same period of time, costing the taxpayers of Oakland millions of dollars and creating a lack of trust in our police department.
7. Independent expert analysis by the Electronic Frontier Foundation in 2015 has demonstrated that OPD's use of ALPR, even after controlling for property crime, disproportionately impacts certain communities².
8. OPD has failed to follow critical provisions of SB 34 since it was enacted January 1, 2016, a state law specifically addressing the use of ALPR.
9. OPD has violated its own policy enacted in 2016, by refusing to provide or retain the following:
 - a. Annual Reports for 2016, 2017, 2018, 2019, 2020
 - b. Audits for 2016, 2017, 2018, 2019, 2020

¹ <https://arstechnica.com/tech-policy/2015/03/we-know-where-youve-been-ars-acquires-4-6m-license-plate-scans-from-the-cops/>

² <https://www.eff.org/deeplinks/2015/01/what-we-learned-oakland-raw-alpr-data>

- c. Maintaining a “record of access” as referenced in the policy, and as required by SB 34 for 2016, 2017, 2018, 2019, 2020
 - d. Maintaining a record of third-party access requests for 2016, 2017, 2018, 2019, 2020
10. OPD has violated formal public record requests into SB 34 compliance. The footnoted request was submitted March 18, 2019 and OPD has provided no response to date³. The resulting litigation will thereby cause a further negative impact to the taxpayers of Oakland.
 11. OPD has violated a formal public record request into the alleged “147 emails” that OPD referenced in its April 2019 written Impact Report (and verbally at the April PAC meeting) that supposedly justified its data retention practices and the need for historical search. There is no evidence that these emails ever existed. The footnoted request was submitted April 16, 2019, and OPD has provided no response to date⁴. The resulting litigation will thereby cause a further negative impact to the taxpayers of Oakland.
 12. Expert witnesses advise that only four geo-spatial (time, location) data points are needed to identify over 95% of people, demonstrating that there is a measurable and significant privacy invasiveness to use of this equipment⁵.
 13. In 2018, the US Supreme Court ruled in *Carpenter v US* that the government’s warrantless acquisition of Mr. Carpenter’s cell-site records violated his Fourth Amendment right against unreasonable searches and seizures⁶. The question that was before the Supreme Court is the same one that is here - how do we apply the Fourth Amendment to a new phenomenon: the ability to chronicle a person’s past movements through the recording of his travel patterns? As stated so eloquently by Chief Justice Roberts – *“A person does not surrender all Fourth Amendment protection by venturing into the public sphere. To the contrary, what one seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected (quoting Katz). For that reason, society’s expectation has been that law enforcement agents and others would not secretly monitor and catalogue every single movement of an individual’s car for a very long period (quoting Jones).”* The CA Vehicle Code requires that license plates be visible and requires that driver ID be presented upon demand. Driver’s do not voluntarily reveal such information.
 14. Demonstrating a lack of mindfulness, OPD misstates the law by claiming in its proposed use policy that all scans are “investigatory records” and

³ <https://oaklandca.nextrequest.com/requests/19-1382>

⁴ <https://oaklandca.nextrequest.com/requests/19-1897>

⁵ <https://www.nature.com/articles/srep01376>

⁶ https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf

thereby not subject to public disclosure, contradicted by a 2017 CA Supreme Court ruling⁷.

15. OPD knowingly misrepresented verbally and in writing (in the proposed Use Policy) to the PAC at its January and February 2021 meetings that audits would be performed per its policy, even though OPD knew at the time it made such representations that its system was incapable of performing such audits, and indeed confirmed at the January 2021 meeting that performing the audits was impossible.
16. Demonstrating its lack of regard for the annual reporting obligation, and despite having six years of informal notice, and three years of formal notice of the legal obligation, OPD now states in its impact report that it will begin a “multi-year review process” to track use of this technology.
17. OPD knowingly misrepresented in writing (in the proposed Use Policy) to the PAC at its January and February 2021 meetings that it would comply with SB34, which includes among other things an obligation to “maintain a record of access” as discussed above, even though OPD knew at the time it made such a representation that it would not maintain such a record, and that it never has maintained such a record since the law took effect January 2016.
18. The potential and actual negative impact from use of such technology according to the OPD use policy outweigh the speculative and unverified benefits from use of such technology. OPD has failed to meet the standard imposed by our ordinance that the benefits outweigh the costs to civil liberties and the taxpayer.

Motion by Hofer

Based on the above findings, my motion and recommendation to the City Council is that due to a) the years-long refusal of OPD to comply with its own policy, b) the years-long refusal of OPD to comply with state law pertaining to use of such technology, c) the years-long refusal of OPD to honor public record requests into such use, d) the lack of demonstrated efficacy from use of such technology, and e) the negative impact to our privacy interests and civil liberties from the collection of highly revealing location and association data without a necessary criminal predicate justifying such collection, that OPD’s use of automated license plate readers immediately terminate, that the Chief of Police shall certify in writing to the City Council and the PAC that such use has terminated within thirty (30) days, and that for a period of two years OPD may not seek City Council approval for ALPR use. The above findings #1-18 are to be incorporated into the PAC’s recommendation to the Council.

⁷ <https://www.eff.org/document/aclu-v-la-superior-court-ca-supreme-court-opinion>