February 13, 2014

Via electronic mail only

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Hon. Noel Gallo (ngallo@oaklandnet.com)
Hon. Rebecca Kaplan (atalarge@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 Honorable Members of the Oakland City Council,

The American Civil Liberties Union of Northern California writes in regard to Item 13 on the February 18, 2014 Agenda of the City Council, pertaining to the Oakland Domain Awareness Center. We urge you not to approve this item.

The specific question before the Council is whether to award the Phase 2 contract to Schneider Electric. While the ACLU takes no position on that specific matter, it raises critical issues with civil liberties and other urgent public policy impacts. The question of Schneider Electric’s compliance or non-compliance with Oakland’s Nuclear Free Zone Ordinance has engendered significant controversy and entailed substantial staff and City Council time. Staff expressed the view in the supplemental report on this item that the due diligence process associated with independently identifying nuclear weapons makers would have been “cumbersome and costly” and so a “self-certification” procedure was ultimately adopted. (February 18, 2014 “Supplemental Report – DAC Phase II” at page 3.) The self-certification procedure did not bring to light significant information that, whether or not ultimately disqualifying, should have been reviewed and vetted. If meaningful privacy safeguards for the Domain Awareness Center are ultimately adopted, the oversight and due diligence associated with ensuring compliance will dwarf in complexity the compliance issues associated with the Nuclear Free Zone Ordinance. At this juncture, it is entirely unclear what privacy safeguards will apply to the DAC and what, if any, resources will be available to ensure that they enforced. The only thing that is clear is that privacy safeguards and resources to enforce them are urgently needed. We urge you not to let the DAC proceed with so many essential questions unanswered.
Potential for abuse. Information recently obtained from the Oakland Police Department through a Public Records Act request underscores our concerns about the potential for abuse. These records show that OPD has targeted political protesters based on their political ideology. The DAC would serve as a powerful surveillance tool, allowing the government to single out and comprehensively track Oakland residents.

We obtained OPD records related to political demonstrations on October 25, 2013. The day’s events included a protest against “Urban Shield,” one of the nation’s largest security conferences and weapons shows, and a commemoration of OPD’s removal of Occupy Oakland from Frank Ogawa Plaza. The operations plan instructed OPD personnel to identify and cite individuals committing crimes; officers were explicitly instructed to enforce all traffic laws. While that is entirely lawful and appropriate, the records also show that OPD engaged in selective enforcement. Numerous bicyclists associated with the Occupy Oakland protest and “FTP” symbols were cited for vehicle code violations such as running red lights. At the same time, a bicyclist who was seen committing identical vehicle code violations (running two red lights), but who “stated that he was anti-occupy and that he was in the area to try and dissuade any protest,” was instead let off with a warning and not issued any citation. Selective enforcement of criminal laws based on political ideology violates the equal protection guarantees of the Constitution. See Murgia v. Municipal Court, 15 Cal.3d 286, 302 (1975) (“a conscious policy of selective enforcement directed against members or supporters of a particular labor organization are clearly sufficient to support a claim of invidious discrimination which is prima facie invalid under the equal protection clause”).

Experience teaches that surveillance systems can and will be used in a discriminatory fashion. Studies of video surveillance in Britain, where video surveillance is pervasive, have shown that “the young, the male and the black were systematically and disproportionately targeted, not because of their involvement in crime or disorder, but for ‘no obvious reason.’” European Parliament Directorate General Internal Policies, “A Review of the Increased Used of CCTV and Video-Surveillance for Crime Prevention Purposes in Europe,” p. 15 (2009). In particular, “black people were twice as likely (68%) to be surveilled for ‘no obvious reasons’ than whites.” Id. (emphasis added). Studies in other countries have similarly found that “reliance on categorical suspicion intensifies the surveillance of those already marginalized and increases, yet further, their chance of official stigmatization.” Id. at 16.

In short, respected studies have shown that surveillance systems, such as closed circuit television, lend themselves to discrimination. The DAC is far more powerful than any single surveillance system because it would aggregate surveillance and sensor feeds – allowing the assembly of an entire mosaic from individual tiles. With that greater power, comes greater potential for abuse. Unfortunately, our concerns that the Oakland Police Department might use the DAC to target individuals based on ideology or other inappropriate factors are grounded in recent, actual events.

While the recently released draft privacy framework states that the DAC shall not be used to track individuals “unless there is a reasonable suspicion of criminal wrongdoing,” this provision does not safeguard against privacy invasions or selective enforcement. Jaywalking and

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1 Police reports documenting this selective enforcement are attached to this letter.
maliciously obstructing a sidewalk are both “crimes.” As a result, virtually every political protest involves reasonable suspicion of criminal wrongdoing and would thus trigger monitoring by the DAC under the draft privacy policy.

Need for oversight. Particularly with a project that has dramatic civil liberties impacts, legislative oversight serves as an essential check in our system of government. The DAC resolution (84593) adopted by the City Council last July was a step in the right direction by requiring the development of a privacy policy and specifying the surveillance systems that could be included in the DAC. But it did not go far enough. In particular, the City Council – and the public – lacks essential information that is necessary to engage in meaningful oversight.

First, a draft of the privacy policy has only this week been released – even though the City Council instructed staff to draft a policy over six months ago and the deadline for presenting a policy to the Council is rapidly approaching (March 2014). The safeguards contained in whatever privacy policy is ultimately adopted will dramatically change the civil liberties impacts of the project (for what purposes will records be recorded; how long will records be retained; with whom will records be shared). The privacy policy needs to be fully vetted first. Without a vetted privacy policy, the City Council lacks sufficient information to meaningfully evaluate the DAC and whether to grant the further approvals necessary for it to be built.

Moreover, even after a privacy policy is in place, it must be enforced. This takes resources. What resources will the City invest to ensure rigorous compliance? The difficulty of ensuring compliance with Oakland’s Nuclear Free Zone Ordinance provides a cautionary tale.

Second, the intended purposes of the DAC still remain opaque. Clear specification of the DAC’s purposes is critical to prevent the alarming but common phenomenon of “mission creep.” In other words, the DAC should not be “sold” to the City Council and the public as serving one purpose (for example, coordinating emergency response), but then surreptitiously used for another purpose (warrantless mass surveillance).

At the January 28, 2014 Public Safety Committee, the Port presented on the DAC and explained that its purpose was to enhance Port security by giving the City’s first responders access to Port surveillance and sensor feeds. But if the mission of the DAC is to ensure Port security, then why the need for cameras trained at Oakland residents? In addition, the draft privacy policy states that one of the “missions” of the DAC is to “improve readiness to prevent, respond to, and recover from major emergencies at the Port and in the greater Oakland region and.” See Draft Framework, Section II. It is unclear how the DAC would “prevent” a major emergency, unless it operates as a comprehensive surveillance center aimed at identifying suspicious activities that might be precursors to terrorism. Does “preventing” a major emergency mean that the DAC will be used to surveil mosques suspected of harboring potential terrorists? Cf. Adam Goldman & Matt Apuzzo, “With Cameras, Informants, NYPD Eyed Mosques,” Associated Press (Feb. 23, 2012). In light of OPD’s selective enforcement of even mundane vehicle code violations in connection with political protests, the potential for abuse of a powerful surveillance tool is troubling.

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3 Available at http://www.ap.org/Content/AP-In-The-News/2012/Newark-mayor-seeks-probe-of-NYPD-Muslim-spying.
Third, there has been an alarming lack of transparency on issues as ostensibly straightforward as cost. To date, the City Council and public have still not been provided with concrete information about the ongoing staffing and maintenance costs to the City, after the expiration of federal grant money. On the contrary, the DAC has consistently been presented as having no fiscal impact, even when that is clearly not the case. The inadequate or inaccurate fiscal information begs the question of whether other critical aspects of the DAC have not been disclosed.

* * *

In short, the potential for abuse and OPD’s history of selective enforcement underscores the need for oversight. But the lack of transparency dramatically undermines the City Council’s ability to engage in meaningful oversight. The City Council, as the legislative body elected by the residents of Oakland to set policy for the City, should vet the privacy policy and demand information about the purposes, technological capacity and cost of the DAC, before granting any further approvals. Any other approach cedes critical oversight responsibilities to unelected staff. Moreover, if the City Council does grant approval, it should do so aware that oversight will be an on-going, resource-intensive, and complex task. One-time approval of a privacy policy will not ensure that privacy rights are actually safeguarded.

Sincerely,

Linda Lye  
Staff Attorney  
ACLU of Northern California

Enclosure
On 25-Oct-13, at about 2110hrs, I was dressed in an OPD utility uniform riding an OPD motor #2208. I was assigned to work an Occupy Oakland protest. I was standing approximately 100 feet north of the Pergola at Lake Merrit, 599 El Embarcadero. There were about 20 people with bicycles listening to music and dancing inside of the Pergola. This group had left the Occupy Oakland protest some time earlier and had ridden their bicycles around Oakland, at times taking up all lanes of traffic. Until they ended up in the Pergola.

As I was standing in the park north of the Pergola with the TNT and bicycle officers, an unknown refused couple approached us from the direction of the Pergola. The male said he did not want to be involved, but there was graffiti "going on" inside the Pergola.

A short time later, the rest of the motor detail arrived. The group began to leave with members leaving in different directions. As they were leaving TNT announced via the loudspeaker to the group all traffic laws would be enforced. The group left the area.

At about 2130hrs a group of about 10 bicyclists, from the same group who were inside of the Pergola, were individually stopped for specific vehicle code violations near Bay St and Vernon St for various violations of the vehicle code (refer to the supplemental reports for details). The following people were stopped and cited:

On Monday 28 Oct 13, I went to the Pergola to look for a backpack that, allegedly, had been thrown into Lake Merrit by a member of the group in the Pergola. I did not locate a backpack. I did note what appeared to be fresh graffiti in the inside N/E corner of the Pergola. The graffiti appeared to be recent as many older instances of graffiti had been painted over using a tan paint.

There was a black "FTP" with anarchy (a capital A inside of a circle) symbol under it. There was also another "flag" painted in purple. It is unknown if the two items are related. I took photos of the graffiti with my department issued Casio GzOne cellular phone. The photos are attached to this report. I called the corbyard via dispatch to request a clean-up of the graffiti.

The above listed parties were part of the group in the Pergola. It is unknown if they are witnesses or suspects in regard to the graffiti being sprayed on the Pergola wall.
ON 25 OCT 13 AT ABOUT 2:35 HRS, I WAS WORKING AS OPO UNIT 8002. I WAS ASIGNED TO THE OCCUPY OAKLAND PROTEST AT APPROX.

THIS TIME I WAS ASIGNED TO CONDUCT TRAFFIC ENFORCEMENT ON A GROUP OF CYCLISTS THAT WERE RIDING OAKLAND WITHOUT STOPPING FOR RED LIGHTS, STOP SIGNS, AND TAKING UP ALL LANES OF TRAFFIC. I WAS WEARING FULL POLICE UNIFORM AND RIDING FULLY MARKED POLICE MOTORCYCLE 8250.

I OBSERVED RIDING A BICYCLE WITH AN ORANGE AVE. HE WAS IN A GROUP OF ABOUT 20 CYCLES. I NOTICED DID NOT HAVE A WHITE CYCLE LIGHT EVENTHOUGH IT WAS DARK OUTSIDE. I PULLED BEHIND AND STOOD TO HIS LEFT AND ACTIVATED MY EMERGENCY LIGHTS ON THE SIREN. WHEN DID NOT STOP, I USED MY PA TO TELL HIM TO STOP AND PULL OVER. HE CONTINUED TO RIDE WHO ON BAY AND THEN HİD ON 27TH ST. I STARTED TO PULL IN FRONT OF HER AND POINTED AT THE RIGHT SIDE While tell him to stop. He eventually stopped on 27TH ST. JUST W OF HARRISON.

I ADVISED THE REASON I STOPPED HER WAS BECAUSE HE WAS RIDING A BICYCLE IN THE ROADWAY WITHOUT A LIGHT. I ASKED HER FOR ID AND HE HANDED ME A GPL. I ISSUED HER CITATION AT $250/$50 FOR 21202(D) V.C.

HE DENIED THE CITATION AND WAS RELEASED. I ASKED HER IF HE HAD A WORKING BIKE LIGHT AND HE SAID HE HAD ONE, BUT HE SAID IT MIGHT NOT BE WORKING.

I DO NOT HAVE A MIND TO USE KEEP CUFF OR STAND ANYONE. I DID NOT USE FORCE OR SEE ANYONE USE FORCE. NO KNOWN WITNESSES.
**Summary:**

25 Oct 2013, I was assigned to traffic operations in support of Occupy Oakland demonstration. I was in full police uniform and rode marked OPD motorcycle 2265.

Approx 2100 hrs, I was directed by Sgt. Stensbaker to conduct traffic enforcement on bicyclists who were blocking lanes of traffic and not riding on the right side of the roadway/bicycle lane.

Approx 2145 hrs, a group of the bicyclists continued to ride in violation of multiple CVC's w/ Bay St @ Grand Ave. I eventually reached 27th St @ Harrison St. I saw a man wearing a camo long sleeve jacket riding away from the others. The bicycle didn't have any lights.

I activated my emergency lights/siren. The man, later ID'd as [redacted], began to weave in between other m/c's and screamed, "I don't have any brake".

Eventually stopped. Explained reason for stop and ID'd myself. Didn't have any ID. Officer verified his ID through CRMS. I issued Cite 5055701 for riding w/o lights and no brakes. Signed the Cite and gave him a copy and was free to leave.

Asked for my business card. I filled out an IBC and asked if he wanted to make an complaint. [redacted]. He just wanted it so he may give it to his lawyer. Sgt. Stensbaker responded and said to forego. No arrest. No use of force. No other officers used force.
Activity Information

Activity No.: FC13-022045
Activity Type: FIELD CONTACT
Agency: Oakland PD
Status: 
Reported Date: 2013/10/25 13:45:00
End Date/Time: 
Location/Address (Type): 900 BLOCK OF BROADWAY, OAKLAND, CALIFORNIA
Region (Large/Medium/Small): 1/04X

Related Officers

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<td>Oakland PD</td>
<td>DANIEL BRUCE</td>
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Activity Description

Subject: FBR NARRATIVE Author: BRUCE, DANIEL Narrative: Summary: On 25 Oct 13 I was working as OPD unit 14456 as a QRF for an Occupy Oakland event. I was wearing an OPD uniform and in marked vehicle 1443 with Ofc. C. Borjesson and B. Rivera 8460. We were directed by UC officers to stop the above listed subject who was later identified as [REDACTED] UC officers advised that [REDACTED] was riding a bicycle. UC officers observed [REDACTED] and ride his bicycle on the sidewalk. At about 1345 hrs we located [REDACTED] riding his bicycle southbound Broadway approaching 9th St. We turned in front of [REDACTED] to prevent him from continuing south on Broadway. I exited our vehicle and contacted [REDACTED]. I asked [REDACTED] to step off of his bicycle and he began to try and put the kickstand down. As [REDACTED] did this, he spontaneously stated that he had marijuana in his back pocket. I asked [REDACTED] for his ID and he told me that he did not have one, but began to look through his wallet. [REDACTED] provided his name and birthday verbally. Ofc. Rivera asked [REDACTED] if he had ever been arrested in Alameda County and [REDACTED] replied that he had [REDACTED] then provided his PFN# (REDACTED). [REDACTED] identity was confirmed via CRIMS. I was advised of why he was stopped and he apologized for the observed violations. I stated that he was anti-Occupy and that he was in the area to try and dissuade any protest. I asked [REDACTED] about the marijuana that he had. [REDACTED] showed me a bag that he had in his rear pants pocket. Inside the bag was a green leafy substance that based on my training and experience, was extremely low-grade marijuana. I elected to issue a warning to [REDACTED] for the observed violations. No known witnesses. My PDRO was activated. No force used or observed.

Related People

Relationship: Contact (Contact)
Name: [REDACTED]
Sex: MALE
Race: WHITE
Date of Birth: [REDACTED]
SSN No.: [REDACTED]
PDI No.: [REDACTED]

Person Comments:
COMPLEXION: LIGHT CLOTHING - SEE PDRD

Related Activities

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<td>FIELD INTERVIEW</td>
<td>INCIDENT</td>
<td>DISORDERLY CONDUCT (OBSTRUCTS/RESISTS PUBLIC OFFICER/ETC)</td>
<td>Oakland PD</td>
<td>13-034595</td>
<td>2013/10/25</td>
<td>1200 BROADWAY</td>
<td>OAKLAND</td>
<td>CALIFORNIA</td>
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https://service.leapportal.us/ CrimePointWeb/CPTWebPages/CPTWebMain/xMainDetails... 11/26/2013