



John “Chip” Moore, Chair
Police Accountability Board
dpa@cityofberkeley.info

June 16, 2023

VIA ELECTRONIC MAIL

Chief Jennifer Louis
Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Re: Objection to the Berkeley Police Department Surveillance Acquisition Report – Fixed Automated License Plate Readers (ALPR) and Proposed Policies 422 and 1305

Dear Chief Jennifer Louis,

I am writing to you as the Chair of the Police Accountability Board (PAB) regarding the recent proposal for the acquisition of fixed automated license plate readers (ALPRs) and the corresponding proposed policies (422 and 1305). Pursuant to our authority under BMC 2.99.030, the PAB has conducted a thorough review of the Berkeley Police Department Surveillance Acquisition Report – Fixed Automated License Plate Readers and the proposed policies (422 and 1305). On June 16, 2023, at a Special Meeting, the Board voted to object to the proposal of the acquisition and the policies as written.

We acknowledge the importance of maintaining public safety and recognize the Berkeley Police Department's dedication to serving and protecting our community. Our aim is to balance public safety and the protection of civil liberties and privacy without compromising one for the other. By addressing and clarifying the concerns we raise in this letter, we can work together to create a safe and secure environment for all members of the Berkeley community while upholding their rights and privacy.

Our decision to object to the proposal was based on careful consideration of various factors. We considered the comments and observations from individual Board members, an independent report authored by the Office of the Director of Police Accountability (ODPA) expressing concerns about the technology and lack of clarity in the drafted policies, input from community members

who participated in the public forum of the Board, and insights from subject matter experts who cautioned us about approving the acquisition and corresponding policies without a careful analysis of the community implications.

In the analysis, the PAB identified four specific areas where the acquisition report and proposed policies lack clarity and may run contrary to the values of our community and the work underway to reimagine public safety in the City of Berkeley:

- 1) **Civil Liberties Protections**¹: The proposed acquisition report and policies need to provide stronger safeguards and assurances for protecting civil liberties and privacy rights. It is essential to ensure that the acquisition and use of ALPRs do not infringe upon the rights of individuals in our community. For example:
 - a. One of our Board members expressed concerns that the acquisition report or the policies don't provide safeguards for this surveillance technology or its data being used in a way that could run afoul of reproductive rights by recording movements or location patterns of individuals seeking medical attention or health services for reproductive rights.
 - b. We are concerned that the Department indicates "*Reasonable suspicion or probable cause is not required before using an ALPR*", but provides no clear examples of a scenario where the technology may be required to be used without reaching these important legal thresholds.
 - c. There appears to be unclear language about retention periods. In one section the Department indicates, "*The ALPR vendor will purge their data at the end of the 30 days of storage.*" Then, the Department includes seemingly contradictory language in its policy: "*However, this will not preclude Berkeley Police Department from maintaining any relevant vehicle data obtained from the system after that period pursuant to the established City of Berkeley retention schedule mentioned above or outlined elsewhere.*" (see Section 1305.4 of the proposed policy)

¹ As indicated by BPD Sergeant LeDoux at the June 16, 2023 Special Meeting of the Board, the Department is considering acquiring cameras from a specific vendor. Watchdogs like the ACLU have raised civil liberties concerns about the potential vendor. For your consideration please consider this article from the ACLU regarding Flock's surveillance systems:

Chad Marlow, J. S. (2023, June 13). *How to pump the brakes on your police department's use of Flock's mass surveillance license plate readers*: ACLU. American Civil Liberties Union. <https://www.aclu.org/news/privacy-technology/how-to-pump-the-brakes-on-your-police-departments-use-of-flocks-mass-surveillance-license-plate-readers>

- 2) **Lack of Empirical Support or Data justifying the need or its intended use:** We have noted a lack of empirical evidence or data demonstrating the effectiveness of the technology in achieving its intended goals here in the City of Berkeley. While the PAB is aware the BPD has reported² an increase in crime in specific categories over the years, comparable jurisdictions with or without this technology have not been analyzed to determine potential effectiveness for those crime categories. Before moving forward with the acquisition, it is crucial to have solid evidence that ALPRs will significantly contribute to solving criminal investigations and enhancing public safety beyond the highlighted cases the Department cites in the Acquisition Report.
- a. The ODPa's report cited the IACP (2022) survey³ which indicated, "*Although research is sparse, there is some evidence that suggests LPR use is effective at preventing crime.*" However, the Acquisition Report fails to adequately provide a data-based justification for why the City of Berkeley needs to adopt this technology.
 - b. As noted in the ODPa report, as currently written, the *Purpose* section of the BPD's Acquisition Report does not explicitly mention a data-based justification for the use of ALPRs (beyond the highlighted cases of interest). To strengthen the justification for the acquisition, the BPD needs to provide statistical analyses (or other data analyses) demonstrating the effectiveness of ALPRs in reducing the specific crime problems the City would like to resolve.
- 3) **Concerns about True Financial Costs:** The PAB has concerns about the true costs associated with the technology, including potential hidden costs, maintenance expenses, and long-term financial commitments. It is essential to have a comprehensive understanding of the financial implications and ensure that the benefits outweigh the costs.
- 4) **Lack of Completeness of the Acquisition Report and Proposed Policies:** The proposed policies require further clarity, elaboration, and editing. Particularly, the Department should clearly outline the intended uses of the data, retention periods, access controls, and measures to protect against potential misuse or unauthorized access (to include more information about minimum training requirements for the users of the technology). For example:

² Gecan, A. N. (2023, March 20). Berkeley crime on the rise following pandemic "anomalies." Berkeleyside. <https://www.berkeleyside.org/2023/03/17/crime-reports-berkeley-police>

³ "IACP LPR Survey Results." International Association of Chiefs of Police (IACP). Accessed June 15, 2023. https://www.theiacp.org/sites/default/files/IACP_LPR_Survey_Results_5.16.22.pdf

- a. In the proposed policies, the Department uses language to emphasize the importance of data privacy, protection of civil liberties, and accountability but has a weak approach to misuse in Section 422.5 of the proposed policy, “ *Anyone who engages in an impermissible use of the ALPR system or associated scan files or hot lists **may be subject to administrative sanctions**, up to and including termination, pursuant to and consistent with the relevant collective bargaining agreements and departmental policies.*” (emphasis added). Adherence to the policy needs to be non-negotiable, therefore the Department needs to modify the language to indicate that impermissible uses **SHALL** be subject to administrative sanctions.
- b. Section 422.10 of the proposed policy mentions the requirement for training but does not specify what that will look like. As noted in the ODPa report, the BPD should outline the minimum training requirements provided to officers on the proper use of ALPRs and adherence to privacy and civil rights standards.
- c. Without clear articulation of the minimum training requirements, the Board has concerns regarding Sections 422.5 and 1305.3 of the proposed policies which encapsulate conditions for use, standards to be observed for various circumstances (stop of car vs. stop of person for example), and required verification before certain activities can be taken.

We sincerely appreciate your attentiveness to this matter. We eagerly anticipate continued dialogue and collaboration on this significant issue. We firmly believe that addressing complex and intricate problems requires consideration of multiple, and at times conflicting, perspectives, which may yield various potential solutions.

Sincerely,



John "Chip" Moore

John “Chip” Moore, Chair
Police Accountability Board

cc: **Via Email Only**
Terry Taplin, City Councilor (Chair of Public Safety Committee)
Police Accountability Board
Dee Williams-Ridley, City Manager
Mark Numainville, City Clerk
Farimah Brown, Berkeley City Attorney

Attachments:

- JUNE 16, 2023 - POLICE ACCOUNTABILITY BOARD SPECIAL MEETING
_PACKET
- JUNE 16, 2023 - POLICE ACCOUNTABILITY BOARD SPECIAL MEETING
_SUPPLEMENTAL PACKET