

**Media Alliance Comments on the Framework for Discussion of Privacy and Data Retention Policy for the Oakland Domain Awareness Center**

March 2, 2014

Thank you for the opportunity to submit comments.

As a disclaimer, it's obvious this framework is in its very early stage and in reviewing it, Media Alliance felt there was a great deal still to be established, so we would like to reserve the right to file additional comments on iterations that may follow. We are largely trying to highlight areas we feel need to be clarified rather than submitting comprehensive recommendations at this time.

**I – Derivation of Joint City-Port Recommendation**

It isn't clear from the language in the report the origin of the suggestion to develop a joint city-port Domain Awareness Center using port security funds available via the American Recovery and Reinvestment Act (ARRA).

Is the document stating the recommendation was received from ARRA fund administrators in the Obama administration, from the Department of Homeland Security, from the Port of Oakland, or from the City of Oakland itself? By whom were the port and city encouraged to develop a joint city-port DAC? Is there a definition of what specific ways this is beneficial to the goal of enhanced security at the Port of Oakland facility?

**II – Mission Statement**

The mission statement of the Domain Awareness Center is characterized differently in two descriptions to wit:

1) *The mission of the Domain Awareness Center (DAC) is to: (1) improve readiness to prevent, respond to, and recover from major emergencies at the Port and in the greater Oakland region and (2) ensure better multi-agency coordination in response to emergencies across the larger San Francisco Bay Area.*

And

2) *The Joint City -Port domain awareness goal is to improve readiness to prevent, respond to and recover from major emergencies in the Oakland region and would ensure better multi-agency coordination across the larger San Francisco Bay Area. This goal continues to be the focus of the DAC project along with leveraging the system's capabilities to reduce crime and enhance day-today first responder operations, as other cities have done nationally.*

While there can be some granular differences between a project's "mission" and its "goals", when developing a framework of this kind, Media Alliance would suggest that one or the other version be articulated as the purpose of the project and that "along-with" drop-ins be avoided. If the project's mission is to respond to and recover from major emergencies and ensure better multi-agency coordination during emergencies across the larger Bay Area, then the project's framework needs to support those specific goals. Muddying the waters by adding crime reduction and enhancing day-to-day police, fire and ambulance operations introduce an entirely different set of constituencies, concerns and parameters to the project.

At a minimum, the goals and mission need to be congruent statements. Media Alliance would go a bit further and recommend that the DAC Privacy Framework cannot be developed to serve multiple masters and multiple operations. The expansion of the project from emergency services coordination into crime-reduction is the source of much of the community opposition and is placing the city in the position of being unable to control the project's boundaries and development.

### **III – The Definition of an Emergency**

The framework defines the term emergency as follows:

*Air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the state Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, which are likely to be beyond the control of the services, personnel, equipment, and facilities of the City of Oakland and require the combined forces of other political subdivisions to combat.*

This is specific language and defines the uses to which the DAC may be used. Media Alliance would recommend this means and the document should specify a correlations between the use of the DAC and incidents defined as emergencies on the provided list. It might also be a good idea to refine the definitions a bit, because while an emergency can certainly consist of air pollution, or a riot, or an animal infestation, not all incidents that fall under these terms (smoggy days, rats in DT Oakland, a protest) rise to the level of a bona fide emergency requiring the combined forces of other political subdivisions to combat. It is also possible that less militaristic language with regard to inter-city agency cooperation would ease the concerns of some members of the community.

### **IV – Facial/Gait Recognition Software**

The framework says no facial or gait recognition software will be installed or is planned for Phase 2 of the project. This wording does not indicate if there is facial or gait recognition software planned for Phase 3 or 4 or 5 of the project and the specificity of the wording suggests the author is unwilling to warranty that there is not. Any privacy framework is not strictly for "Phase 2" of the project, but for the Domain Awareness Center in its entirety, whatever that turns out to be. So if there is facial or gait recognition software planned or possibly planned for any phase or potential phase of the project, its uses and the requirements for handling that kind of data must be developed within the framework. Or the framework needs to state conclusively that no facial or gait recognition software will be used in any phase of the Domain Awareness Center.

## **V – Drag Racing at the Port**

The framework identifies the use of object sensors to identify vehicles traveling above the speed limit, which are used to alert for drag racing activities at the Port.

While there are undoubtedly risks associated with drag racing and with drag racing at or near the port facility, the reference re-introduces some of the mission creep in the document. Is drag racing at the Port an emergency as defined in the document: “a condition that is beyond the control of the services, personnel, equipment and facilities of the City of Oakland that requires the combined forces of other political subdivisions to combat”?

Again, the purpose of the project need to be clear and then the authorized equipment and tools will follow from clarity of purpose.

## **VI – Shot Spotter Alerts**

The document seems to make two contradictory statements about the Shot Spotter Alerts.

*“The DAC receives Shot Spotter alerts from the system provider identifying geo-location and coordinates on a Geographic Information System (GIS) Map”*

*“Before any future integration of Shot Spotter technology into the DAC System, staff will return to Council for approval. If integration of Shot Spotter technology is approved by Council, the DAC Privacy and Data Retention Policy will be updated prior to implementation to address the use of Shot Spotter at the DAC.”*

If the DAC “receives” the alerts than what is the meaning of the statement that this policy framework will be updated prior to implementation. Again, Media Alliance would assert that the purpose of the document under discussion is to establish operating requirements for the tools and equipment to be put into use for the project. How can something stated to be already happening be described as an activity in the future?

## **VII – Social Media**

The framework states that:

*“Individual operators of the DAC could also potentially access social media using their own means according to that individual’s employment agreement, Human Resources policy or other applicable policy”*

While of course this is true, and all employers including the City of Oakland are struggling to update their technology use policies to keep up with social media environment, it would be helpful for this document to encapsulate what social media access policies already exist, and whether or not they are sufficient to address the additional issues the DAC may present and also what are the enforcement mechanisms for breaching those policies.

It seems obvious that while social media invasions of privacy are not unknown, access to geolocation data via the DAC combined with social media access, could lead to significant safety issues for individuals with regard to stalking, sexual harassment, domestic violence, hate crimes and other human rights concerns. DAC operators cannot be assumed to be immune from the various human situations that sometimes result in these kinds of situations.

The framework document also repeats the teaser statement regarding Phase 2, that needs to be eliminated from the document and clarified with regard to the total project.

*“No Social Media feed is either currently linked to DAC or planned for Phase 2. Before any future integration between Social Media feeds and the DAC System, staff will return to Council for approval. If integration of Social Media feed is approved by Council, the DAC Privacy and Data Retention Policy will be updated prior to implementation”.*

### **VIII – Employee Status of DAC Operators**

The framework got this part right. Media Alliance heartily endorses the use of City and Port employees in all DAC operations.

*“Only City of Oakland and Port of Oakland Employees will be used to monitor any data systems or camera feeds that will come into the DAC. No private contractors will serve such a role. All employees who are assigned to monitor the data systems and camera feeds coming into the DAC will be required to undergo security background checks at the local level as well as security clearances at state and/or federal levels to ensure data and information security”.*

### **IX – Training**

The framework states:

*“All City of Oakland and Port Employees who are assigned to monitor the data systems and camera feeds coming into the DAC will be required to participate in specific training around constitutional rights, protections, and appropriate uses of the data systems and the camera surveillance systems”.*

The document should state the entity that will be providing the mandatory training.

### **X – Major Emergencies vs. Minor Emergencies**

**The Framework states:**

*“During a major emergency, City of Oakland Agency Directors and/or their designees in the Emergency Operations Center (EOC) and outside governmental agencies and non-governmental agencies’ staff assisting with the major emergency or disaster (such as the Red Cross) that would report to EOC may have access to the DAC computers and displays. Such access will only be provided on a need to know, right to know basis and if there was a direct correlation between the major emergency or disaster and DAC operations”*

This policy is understandable to an extent, but introduces several issues that are inadequately dealt with in the document. Specifically, the differentiation between “major” and “minor” emergencies is completely undefined – (use the drag racing at the port example again here – is that a major or a minor emergency?. It also introduces the issue of emergencies placing DAC equipment and data in the hands of any number of people who a) have not completed the civil liberties/surveillance training and b) are not City of Oakland/Port of Oakland employees bound by whatever policies guide employee use.

When the framework sets out inexact criteria for DAC access to not only non-DAC City of Oakland employees but also outside governmental agencies and the staff of non-governmental agencies, then basically the loophole mitigates most of the assurances provided in other parts of the document which are now conditional on “unless it's a major emergency and then all bets are off”. Basically the City of Oakland is warranting that in a major emergency or maybe even in a minor one, DAC data will not be protected and will be accessible to any City of Oakland employee, any governmental agency or any non-governmental agency that in a hectic situation makes a case that they have a need to know. That is the definition of a fusion center and it is a civil liberties violation of everyone who works or resides in the City of Oakland.

## **XI – Third Party Audits**

The framework states:

*“Third Party Auditors, Federal, State, or Local grantor auditors or the City Auditor may have access to any stored data solely for audit purposes”.*

The first question here is the basis for these requests to be filed. Written request? Subpoena? Are there any bounds on the extent of the data available to the state and federal government, the city auditor or local “grantors”?

The second question is what facilitating audits has to do with the mission statement of the Domain Awareness Center to effectively respond to emergencies and assist with multi-agency coordination during emergencies.

I hope these comments have been helpful in identifying some areas in the initial framework that require further development.

Thank you for the opportunity to comment.

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