AUTOMATIC LICENSE PLATE READERS (ALPR) IN THE CITY OF BERKELEY

A PRELIMINARY REVIEW OF PROPOSED BPD POLICIES BY THE OFFICE OF THE DIRECTOR OF POLICE ACCOUNTABILITY (ODPA) SUBMITTED TO THE POLICE ACCOUNTABILITY BOARD (PAB) SPECIAL MEETING: JUNE 16, 2023

Background

➢November 1, 2021: Public Safety Policy Committee proposes ALPR acquisition and provides a budget referral to the full Council.

➢November 30, 2021: Councilmember Taplin presents budget referral with recommendations. Those recommendations included the following:

  ➢Install ALPRs at strategic locations

  ➢Allocate funds in the FY 23-24 budget

  ➢Develop ALPR policy in compliance with city surveillance ordinances

➢Council Approved the recommendation, with majority support.

➢May 11, 2023: Police Chief provided draft policies and surveillance acquisition report to the DPA for transmittal to the Board

  ➢Policy 422: Guidelines for department's use of Fixed ALPRs

  ➢Policy 1305: Surveillance Use Policy for ALPR implementation

ODPA Literature Review

ODPA Staff conducted a preliminary literature review in which they sought to provide answers to the following questions:

1. What evidence exists regarding the effectives of ALPR systems in reducing crime rates?

2. To what extent does the implementation of ALPR technology contribute to reducing disparities in law enforcement stops?

3. What are the specific privacy concerns associated with the use of ALPR technology, and what potential safeguards can be implemented to protect individual privacy rights? How do existing legal and regulatory frameworks address the privacy concerns related to this technology?

ALPRs and Crime

- Limited research has been conducted on the effectiveness of ALPR technology and caution is needed when evaluating and interpreting available information, as it primarily comes from police technology vendors.

- In a 2022 survey conducted by the IACP, responses from 1,237 law enforcement agencies revealed that approximately 40% used ALPRs, while 52% had never used them, and 8% had used them in the past but discontinued their use.

- Among the agencies using ALPR systems, 86% had fewer than 10 units available, with vehicle-mounted and stationary/fixed units being the most commonly utilized.

- The primary reason cited by agencies not currently using ALPRs was the cost of acquisition, particularly for smaller agencies.

ALPRs and Crime (Continued)

- ALPRs are predominantly used reactively, such as in response to incidents involving stolen vehicles, hit-and-run accidents, and other specific criminal activities where vehicles are used.

- A case study of the Vallejo Police Department found that cars equipped with ALPR technology had a 140% higher ability to detect stolen vehicles, but also identified a larger number of lost or stolen license plates, potentially leading to oversight of legitimate hits.

- The study also found that fixed ALPR systems were more efficient than mobile systems in making arrest, with officers using fixed systems waiting downstream of fixed locations for hits.

- The use of fixed ALPR systems significantly increased the odds of identifying a stolen vehicle and making arrest.

ALPRs and its Effects on Racial Disparities in Law Enforcement Stops

- Abundant research on racial disparities in law enforcement stops in the state of California. Including reports issued by the Public Policy Institute of California and the Berkeley City Auditor's Report of Police Response.

- The use of ALPR technology is suggested as a *potential* solution to mitigate racial and ethnic disparities in traffic stops. It is argued that by using license plate numbers and vehicle descriptions, ALPR technology can help officers avoid making subjective judgments based on driver appearance.

- However, there is a lack of readily available research findings specifically addressing this topic, making it difficult to substantiate or disprove this claim.

ALPRs and Privacy

- The Supreme Court of the United States has not specifically examined constitutional concerns regarding the use of ALPRs by Law Enforcement but they have with other related technologies.

- In *United States v. Jones*, the Court determined that GPS tracking without a warrant violated the Fourth Amendment but did not address tracking through electronic means without physical trespass. Concurring opinions stated that limited monitoring of public movements may be acceptable, while prolonged tracking could exceed permissible boundaries.

- *Carpenter v. United States* examined the use of historical cell phone data and raised constitutional concerns about the depth, breadth, and automatic nature of data collection. Concerns raised by organizations like EFF and ACLU regarding ALPR technology echoed in the Carpenter case due to the automatic gathering of information on a massive scale.

- Stringent regulations on data retention periods not identified by the ALPR system can serve as a potential safeguard against privacy intrusions caused by ALPR technology.

Recommendations

Transparency and Oversight: The BPD's report is silent on the Police Accountability Board's or the Office of the Director of Police Accountability's access to this system's data for the performance of the duties and responsibilities set forth by the Charter or by Ordinance. The report and policies could benefit from including information about the policies and guidelines contemplated to ensure the responsible use of ALPRs by the BPD and the ability of the PAB and ODPA to complete their duties.

Privacy Safeguards: Given the potential privacy concerns associated with ALPR technology, it would be valuable to highlight the steps taken by the BPD to protect the privacy of individuals whose license plate data is captured and stored. This could involve explaining measures such as data encryption, access restrictions, and training to members and users on compliance with relevant privacy laws or regulations.

Recommendations (Continued)

Community Engagement: The report and or policies should emphasize the importance of engaging with the community and seeking public input on the use of ALPRs. The BPD could consider soliciting feedback, conducting public forums or surveys, and addressing concerns raised by community members to foster trust and transparency.

Regular Training and Accountability: The BPD should outline the minimum training provided to officers on the proper use of ALPRs and adherence to privacy and civil rights standards. Additionally, the section could mention the existence of mechanisms for reporting and investigating any alleged misuse or misconduct related to ALPR technology.

Police Accountability Board's Stance on the Proposed ALPR Policies

On June 16th, 2023 the Board voted to reject the BPD's proposed policies. They noted the following concerns:

- Four specific areas lacking clarity and alignment with community values were identified: civil liberties protections, lack of empirical support or data, concerns about true financial costs, and incomplete acquisition report and policies.

- Stronger safeguards are needed to protect civil liberties and privacy rights, including addressing concerns about reproductive rights and providing clear examples for using ALPR technology without reasonable suspicion or probable cause.

- Empirical evidence is lacking to demonstrate the effectiveness of ALPR technology in achieving its goals in Berkeley, and a data-based justification is needed.

- Concerns exist about the true financial costs, potential hidden costs, maintenance expenses, and long-term commitments associated with ALPR technology.

- The proposed policies require further clarity and elaboration, including outlining intended uses of data, retention periods, access controls, and measures against misuse or unauthorized access.

- Language and requirements related to data privacy, civil liberties, and accountability in the policies need strengthening.

- Clear articulation of minimum training requirements for officers on the proper use of ALPRs and adherence to privacy and civil rights standards is necessary.