




Office of the City Manager

February 14, 2019

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager 

Subject: City of Berkeley and Data Brokers

This memo is intended to provide Council with additional information when considering an ordinance that would prohibit the City of Berkeley from entering into, amending or extending any contract or agreement with contractors who also provide “data broker” or “extreme vetting services” to U.S. Immigration and Customs Enforcement.

The City of Berkeley has strong policies that protect the rights of all who are in our city, regardless of immigration status. We do not ask citizenship status to receive our services. We strive to serve all equally. Berkeley Police, Mental Health and Public Health, in particular, have strong policies on protecting the rights of all individuals, regardless of citizenship status or nationality, and in accordance with Council policy. This stance increases our effectiveness to provide services and protect our community.

While our policies and practices are clear, our ability to control or navigate around the marketplace is limited. The data broker and extreme vetting services subject to the potential ordinance are frequently offered by corporations that have often also amassed unavoidable market power and breadth into essential operations required of our civic government. The potential impacts include the following:

1. Impede the City’s ability to do legal research;
2. Prevent officers from entering police reports;
3. Harm the City’s ability to meet financial regulations;
4. Curb the City’s ability to audit, respond to, and administer some programs; and
5. Significantly increase costs and staff workload while hindering the City’s ability to collect revenue.

The ordinance, if adopted, would significantly obstruct the baseline work of multiple departments, including Finance, Information Technology, Police, Fire, and the City Attorney’s Office. The City of Berkeley has significant business needs to access commercial subscription data services for various city functions that the proposed Ordinance would compromise should it be adopted. These potential impacts include the following examples:

- To defend the city from lawsuits and to enforce our laws, the City Attorney’s Office conducts legal research and investigations using WestLaw, a legal research service.

Lexis-Nexis, which was previously used for the same purpose, would also be prohibited if the ordinance was in effect.

- To enter police reports and have them integrated into our 911 dispatch system, officers use a system called CopLogic, which is a division of Lexis-Nexis.
- To maintain regulatory financial reporting requirements, the City uses an IBM system that we are required to keep and maintain for at least another seven years.
- To determine information about property revenue analysis and collection, the Finance Department uses CoreLogic and Lexis Nexis.
- Loss of revenue from critical grant applications due to the lack of access to research services.

Additional costs and challenges should the ordinance be passed include:

- Staff time to research possible methods to replace the existing contracts including various grant-based programs, and, if alternatives are found, the costs to terminate the contracts; the costs to locate and contract with compliant vendors; and the potential termination of grants or clawback of monies from grantors if deadlines are missed.
- Daily review of all purchases by all departments for compliance with the ordinance would be staff time intensive.
- Daily monitoring for community member complaints of potential compliance matters and to ensure proper investigations occurs

Such an ordinance would require significant Finance staff time to identify contracts and Purchase Orders (POs) issued to companies included in a potential list of prohibited business entities. General Services issues approximately 15,000 new Purchase Orders (POs), and hundreds of PO change orders each fiscal year. Additionally, there are several hundred active contracts at any time. Assessing all these agreements would be a vast task for a currently short-staffed division.

Staff would also be required to develop, in conjunction with the Peace and Justice Commission and City Attorney, solicitation and contracting certification procedures and tools to determine each vendor's compliance. Also, the ordinance would require a periodic re-certification process with tools and procedures as well as monitoring and enforcement protocols.

In addition to measures the City follows to protect our community's personal information, we also follow Federal and State laws, such as HIPAA and the California Consumer Privacy Act (CCPA) of 2018.

This memo is only intended to provide details of key issues for council, but it does not cover other potential impacts, such as implications for the City's joint powers insurance authority, creating verifiable lists of data brokers, the City's reliance on data from other agencies using the same data brokers, and the need to provide hearings for barred companies who may believe their due process rights were affected.

cc: Paul Buddenhagen, Deputy City Manager
Jenny Wong, City Auditor
Mark Numainville, City Clerk
Savita Chaudhary, Director of Information Technology
Matthai Chakko, Assistant to the City Manager / Public Information Officer