



**Berkeley City Council  
Ad-Hoc Subcommittee on NCRIC and Urban Shield**

**Thursday, December 14, 2017  
1:00pm – 2:30pm  
BPD Multi-Purpose Room**

**Committee Members**

- Mayor: Jesse Arreguin
- District 2: Cheryl Davila
- District 4: Kate Harrison
- District 6: Susan Wengraf

**AGENDA**

- 1. Call to Order**
- 2. Approval of Minutes (Attachment A)**
- 3. Review Feedback from Community (Attachment B)**
- 4. Attending Urban Shield on September 8-9, 2017**
  - a. Berkeley Fire Department**
  - b. Berkeley Police Department**
- 5. Next Steps**

**Attachments:**

- A: Updated Ad-Hoc Subcommittee Minutes from September 22, 2017  
B: Community Feedback from Tracey Rosenberg on Scope and Work to Date of Ad-Hoc Committee



Office of the Mayor

Jesse Arreguín, Mayor

## MEMORANDUM

**Date:** 12/8/2017  
**To:** Mayor Jesse Arreguín, Brandi Campbell  
**From:** Kevin Klyman/Tano Trachtenberg  
**Regarding:** Updated Draft Minutes from September 22<sup>nd</sup> Urban Shield Ad-Hoc Subcommittee Meeting

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### Overview

These minutes are a condensed summary including all relevant questions, answers and discussions. The meeting is broken down into the experiences of councilmembers and staff that observed Urban Shield 2017, and potential next steps that the subcommittee outlined.

### Urban Shield 2017 Discussion

Councilmember Harrison said that her office's main focus was on the vendor expo, where the companies providing technologies for scenarios sell their equipment. She expressed concern that a "politicized group"—the Oath Keepers—were in the Sheriff's tent. She found this ironic because one of the scenarios was based on the Oath Keepers (Tano clarified that it was scenario 4, in which armed protestors occupied a Bureau of Land Management in Oregon). Harrison found that CERT, which is available to the public, had a lot of value. She requested that the subcommittee hear from members of the Berkeley Fire Department that participated in Urban Shield. Harrison also moved that the ad-hoc subcommittee discuss NCRIC in the near future.

Councilmember Harrison also underscored several concerns with the scenarios. First, the scenarios are focused on terrorism rather than de-escalation. She explained that her office was tasked with categorizing past scenarios, and that last year only one scenario was based on de-escalation. This year a scenario at a children's hospital purportedly advanced de-escalatory tactics, yet in the real-world example the perpetrator survived while the scenario instructed officers to kill the perpetrator. Harrison noted that some fire-related scenarios pertained to the potential for terrorism in the aftermath of a fire. A scenario in which officers used Execushield's technology, presumed that the terrorist group Hezbollah had come to the United States through South America - meaning that members of the Columbian police force were involved, was particularly troublesome.

Second, vendors largely shape the scenarios. Harrison said that the scenarios are "built around the vendors." As a result, Urban Shield was militaristic. Harrison reported that a representative of Execushield claimed that the "military and the police are coming closer and closer together". Third, there is too little time spent on feedback. Harrison highlighted that her impression of events might be different if there was less time spent on vendor input and more time spent on feedback for officers. Fourth, the Sheriff is insufficiently listening to elected civilian officials.

Harrison observed that the Alameda County task force hoped to limit surveillance at Urban Shield, yet there were surveillance-based technologies used at the event.

Councilmember Wengraf stated that she and Lori (a member of her staff) attended the events on Friday and Saturday. She expressed that the seminars on Friday were informative: the seminar on drones was “interesting,” while the seminar on the Ghost Ship was “emotionally difficult” yet provided “a sense of the coordination that goes on at the regional level.” The expo, according to Councilmember Wengraf, was “mostly weapons,” including automatic, military-style weapons, which didn’t interest the councilmember. She remarked that the booths were expensive, and so it was unsurprising that large weapons manufacturers rented the space. On Saturday, Councilmember Wengraf attended scenarios with Tano and Chris (staff members from Mayor Arreguín and Councilmember Harrison’s offices respectively). She reported that the scenarios were “very short,” and that BPD got feedback indicating that they did well. One scenario was a hostage crisis in which officers deployed a ball with a camera in it, where the manufacturer of the ball was present, which was “odd.” Another scenario involved a truck hitting pedestrians, for which the observers did not hear feedback, perhaps because the time allotted for feedback was extremely short.

Councilmember Davila began by stating that the whole event was “highly stressful.” Davila explained that most people there were not friendly to her group, merely emphasizing their hope that the observers were keeping an “open mind” about Urban Shield. Furthermore, participants consistently emphasized to observers that Urban Shield was “great”. This limited the observers’ ability to watch the scenarios, with Davila noting “we hardly saw any scenarios.” She pointed out that at the debrief good questions were asked. Davila asked about the cost of the SWAT team’s training the day before Urban Shield, to which Chief Greenwood replied that there was “very little cost,” mostly consisting of overtime.

Councilmember Davila felt that many aspects of Urban Shield were problematic. On Friday, (i) during the drone seminar most of the people being followed by drones were people of color; (ii) most of the officers did not go to the seminars; and (iii) the militarized weapons, surveillance equipment, and facial recognition technology was “concerning.” On Saturday, (i) events were militarized, with young marines in “Sheriff’s outfits”; (ii) a scenario next to the Santa Rita jail used live ammunition; (iii) there was a heated conversation with Officer Cummings in which he demanded that the Councilmember “define militarization of the police”; and (iv) on the whole, there was too much of a focus on terrorism rather than community emergency preparedness and de-escalation.

Mayor Arreguín began by sharing that he felt that some of Friday’s seminars were helpful. He noted that while they were interesting, particularly the seminar on drones, he wasn’t sure how important they were. He didn’t see the officers from any of the teams participating in those seminars. Mayor Arreguín shared that while there were no gun sales at the expos, due to the criteria set by the Board of Supervisors the event was “frankly a gun show”. He said that he expected a lot more diversity of vendors, and wasn’t sure if it was common for assault weapons to be the main vendor items. Mayor Arreguín expressed further concerns about the Vendor’s influence on the event saying that “Police officers are kind of being used as guinea pigs to test equipment” and that the relationship between the vendors and the event planning is a “little

alarming". He added that he might feel differently if our department was more actively consulted.

Mayor Arreguín went on to express his alarm at the presence of the Oath Keepers at the Community Preparedness Fair. He said that this group came to Berkeley to physically protect alt-right groups. This came a week or two after the Sheriff's deputy "accidentally retweeted Richard Spencer". Mayor Arreguín conceded that he didn't know what went into the decision and that there were no offensive shirts at the expo.

Later Mayor Arreguín asked that Chief Greenwood share the training that the SRT team in Berkeley already receives. Chief Greenwood agreed to present on the trainings as well as on the tools that they use, adding that there is not much that's "top secret".

Tano, a staff member in Mayor Arreguín's office, shared his observations from Saturday. He felt that the design of the scenarios was illustrative of the vendors having additional access. For example, at the hostage scenario the group attended, representatives of the technology merchants were in the room with Berkeley PD during the briefing, however, our group was only allowed to watch a video feed without sound. Additionally, Tano expressed his concern about how relevant the real-world scenarios were to the Bay Area and how closely the design of the scenario actually followed what occurred in real life. The Mumbai attacks that were supposedly based in an urban area had SWAT teams getting in boats to approach a cabin in a wooded area. Tano asked the liaison, Sgt. Tucker what the relationship was between the Mumbai attacks and what the group witnessed, and she said that each incident command handles the design of their scenario. He felt that the explanation was inadequate. Tano added finally that he felt that there was a missed opportunity to understand more about the context of vehicle terrorism, in the last scenario he watched, but was disappointed when the debrief lasted less than ninety seconds.

Chris, staff in councilmember Harrison's office, felt that while it is important for our SWAT team to be prepared for a terrorist event, Urban Shield is "a simulation of war". He added that it seems that the UASI money given to the Sheriff has strings attached since it has to be terrorist related. Chris also expressed concern about vendor relations, and viewed it as a potential "conflict of interest", with publicly funded officers helping to test private technology.

Chief Greenwood began by saying he had a "markedly different but frustrating experience". In the past he could be in whatever room he asked to be in and thought that would be the group's experience. He wanted everyone to see the BPD team and "be in the room" and it was frustrating that observers weren't allowed. He was concerned that nobody had spoken about BPD's reaction and proposed having the SRT team come give testimony on their experience in Urban Shield (the group agreed). Chief expressed that we might be undervaluing the opportunity to try out our tactics in the exercises. He also felt that we were undervaluing the Fire Department's participation since we hadn't heard from them yet. He added, in response to Tano's observation in the vehicle terrorist exercise, he saw what he wanted to see. The scenarios are about the tactical side, and the fact that experienced evaluators said the team did a good job was very positive. Chief Greenwood added that seeing the Emergency Operations center was important for the ACSO to discuss as Berkeley is trying to do something similar to

handle major events. But CERT training was a “slag in time” (referring to the fact that the group did not get to see any CERT exercises and people seemed anxious to move on). Responding to the presence of the Oath Keepers, Chief Greenwood said “I don’t have anything on that [the image of the Oath Keepers]” indicating displeasure.

Chief expressed that the BPD participants felt the weekend had real value for them, and the fact that they placed 9<sup>th</sup> is a “huge validation of our policies”. He did not feel that there are a bunch of alternatives [meaning trainings or exercises] to that. Chief Greenwood also wanted to hear from the Sheriff’s office about the Vendors. His guess was that they are involved to put up money that allows us to have more training. However, he did not feel that their presence was having an effect on the team since they didn’t come back enthusiastically requesting to purchase new things. Chief reiterated that the entire conversation to that point hadn’t taken into account what the participants experienced. However, he expressed sympathy to the discomfort of Councilmember Davila and other civilians’ that aren’t around weapons a lot.

Chief also responded to Councilmember Davila’s inquiry about what the cost and preparation is for Urban Shield. He said there is “very little cost”, only 8 people get overtime for their participation. The officers try to flex their shift but they may have to backfill, which results in overtime. The preparation is voluntary he said, mainly just exercising.

Lori, a staff member for Councilmember Wengraf, shared feedback that she received from the ten agencies that her office contacted who decided not to use Urban Shield. One of the agencies said that they didn’t do Urban Shield because it is not POST-certified. Others, like Palo Alto, said that they took a break from Urban Shield but then were unable to get back in. Similarly, some agencies shared that they wanted to attend but were unable to get in. Some said that they do SWAT training locally and create US like scenarios in their counties, or do weekend trainings -- some go Vegas, some work with LAPD. A lot of the agencies said that Urban Shield is simply too expensive due to the costs of backfilling and overtime.

Deputy City Manager Jovan shared that he wanted to “dispassionately point out that this is how these conferences happen” (while acknowledging that he was not present at the event and could not speak to specifics). Jovan said that in his experience as a consultant, the vendors, who display tools of the trade, underwrite the costs. For example, at a public works conference Caterpillar is a sponsor of the fair. In this case, the tools of the trades are, unfortunately, weapons. Mayor Arreguin contended that this is a different situation, distinguishing a machine gun manufacturer from a consulting firm

George Lippman, the chair of the Police Review Commission prefaced his observations by sharing that racist rhetoric and displays had been cleaned up for this year. George said that the focus should be on the big picture, on what kind exercise we want to have and how do we want BPD to compete and participate. He explained that the focus of urban shield remains on counter-terrorism, and that while this is valuable it is not what Berkeley primarily needs. George also felt that the collaboration with the Colombian military was disturbing since Colombia has been one of the worst human rights violators for decades. Finally, he added that while there was a bit about de-escalation, it did not permeate the event.

As a whole, the group acknowledged that without the opportunity to see any of the Fire scenarios, it would be important to have some people from the Fire department share their experiences with the group. Mayor Arreguin suggested that they meet within three weeks, before his trip to Japan and after “Free Speech Week”.

#### Follow Up

1. Distribute these minutes (or a modified version) as well as minutes from the previous meeting on August 9<sup>th</sup> so that the ad-hoc subcommittee can review them.
2. Share the ad-hoc committee’s agenda with public groups.
3. Organize SRT team and Fire to share at the next meeting.
4. Set next meeting date



Berkeley City Council  
Urban Shield/NCRIC Subcommittee  
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Attn: Trano Trachtenberg, Legislative Assistant  
Office of the Mayor TTrachtenberg@cityofberkeley.info  
cc: Brandi Campbell Bcampbell@cityofberkeley.info  
From: Tracy Rosenberg, Oakland Privacy

**Comments re: Berkeley City Council June 20 Resolutions for US/NCRIC Subcommittee**

Thank you for the opportunity to submit comments on behalf of Oakland Privacy. I appreciate the chance to provide supplementary information to the subcommittee. Please note that on previous occasions, sometimes as an individual, sometimes on behalf of the nonprofit I direct, Media Alliance, I have submitted written and oral comments over the last few years. This document is supplementary to those communications. I will attempt to address the specific question set provided here..

**Northern California Regional Intelligence Center (NCRIC)**

Our assessment as privacy rights advocates is that participation in NCRIC information sharing is providing data to Berkeley's Police Department gathered by means that citizens of Berkeley might find objectionable and that ALPR requests from BPD provide location data to NCRIC and all their federal partners on some Berkeley residents without evidence connecting them to a crime or a violation of law.

*How and on what basis is data entered into the database by BPD, other law enforcement agencies at city, county, state, and federal levels, and by other agencies, organizations, or the public?*

To the best of my knowledge, Berkeley interacts with the Northern California Regional Intelligence Center in three ways. I will deal with each independently.

The first level of interaction with NCRIC is the voluntary submission of "Suspicious Activity Reports" or SARS. SARS are incident reports believed to potentially have some connection to terrorism activity that are collected by law enforcement around the country and submitted to the local fusion center, in this case NCRIC, where they are accessible to NCRIC members which include most federal law enforcement (DEA, ATF, FBI, JTTF, ICE , IRS et al). I wrote an article, published in an academic journal and later in the national publication *Utne Reader*, on fusion center and SARS reporting, called *Fusing California*. It reviews some of the history of the fusion center suspicious activity reporting program<sup>1</sup>. Suffice it to say that there have been problems, most clearly described in Congressional overview documents, with the misdefining of what constitutes "suspicious activity" - with documented incident reports being submitted for things as innocuous as anti-death penalty activism, "Muslim

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1 <http://www.utne.com/politics/fusing-california-zm0z16wzsel?pageid=1#PageContent1>

lobbyists”, third party voting, fishing in a place not normally used for fishing, and distributing a know-your-rights pamphlet. All of these are constitutional and legal activities and reporting them to a federal fusion center as “suspicious” is, at best, a broad judgment call and at worst, a civil liberties abuse. NCRIC's SAR Reporting Guidelines documents echo some of these concerns regarding the range of information submitted to them and their partners via the SAR program. <sup>2</sup>

Berkeley law enforcement Suspicious Activity Reporting has been the subject of previous municipal review by the Police Review Commission (PRC) and significant revisions to the guidelines have been developed and can be found in your general order N-17, last updated in November 2016. <sup>3</sup>

I feel confident that these guidelines, developed collaboratively between the Berkeley PD and the PRC, are reasonably thought out to prevent abuses. Their implementation has greatly reduced the number of suspicious activity reports filed by Berkeley (the number being 1 in 2016 and the summary of the content of that report did not evoke a substantive terrorist threat). <sup>4</sup>The question of efficacy may be the important one. If there seems to be little ongoing need to file suspicious activity reports under the revised guidelines, then is there really a need for a formal suspicious activity reporting program on an ongoing basis? It seems at least arguable that the solitary 2016 suspicious activity incident (described to the Council as an argument) did not justify creating a fusion center record accessible to multiple agencies nationwide and kept for an indeterminate period of time.

The second interface between Berkeley and the Northern California Regional Intelligence Center is with the automated license plate reader (ALPR) database. Automated license plate readers record the license plates and some of the visual characteristics of automobiles at a certain location at a certain time and record the information. Many California law enforcement agencies use the readers to some extent or another (Los Angeles<sup>5</sup> and Oakland<sup>6</sup> extensively, Berkeley somewhat minimally<sup>7</sup>). As a service, NCRIC offers to store license plate reader data by contract, usually for at least a year, and to run searches for participating agencies on the entire database. Berkeley does not store its license plate reader data at NCRIC, nor upload its data to the central ALPR database, but according to a staff report, it does make requests for data from the ALPR database. <sup>8</sup>

ALPR collection is problematic for a number of reasons. It constitutes bulk mass surveillance without any reasonable suspicion or probable cause. While one license plate scan, if not at a sensitive location like an oncology clinic, a cannabis dispensary, an abortion facility, a protest, or a mosque, may not prove terribly informative, a vast collection of them over time provides a pretty comprehensive pattern of an individual's life and activities. *Ars Technica* chronicled what ALPR data revealed about Oakland City Council member Dan Kalb in 2015. <sup>9</sup>Oakland's Privacy Commission has documented the ALPR database is available to NCRIC member ICE, and it is likely that the database is accessible to other NCRIC member agencies including ATF, DEA, FBI, IRS and the Joint Terrorism Task Force. <sup>10</sup> The head of the ICE San Francisco headquarters, special agent Ryan Spradlin,

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2 <https://ncric.org/default.aspx?menuitemid=587&menugroup=NCRIC+Public+Home>

3 [https://www.cityofberkeley.info/Police/Home/Berkeley\\_Police\\_General\\_Orders.aspx](https://www.cityofberkeley.info/Police/Home/Berkeley_Police_General_Orders.aspx)

4 [https://www.cityofberkeley.info/.../2017-04-25\\_Item\\_55\\_Compendium\\_Items.aspx](https://www.cityofberkeley.info/.../2017-04-25_Item_55_Compendium_Items.aspx)

5 <https://www.scpd.org/news/2017/08/31/75239/california-supreme-court-says-police-license-plate/>

6 <https://www.autoblog.com/2015/03/26/oakland-police-department-releases-millions-of-license-plate-rea/>

7 <http://www.berkeleyside.com/2017/07/13/motorists-beware-berkeley-votes-expand-parking-enforcement/>

8 [https://www.cityofberkeley.info/.../2017-04-25\\_Item\\_55\\_Compendium\\_Items.aspx](https://www.cityofberkeley.info/.../2017-04-25_Item_55_Compendium_Items.aspx)

9 <https://arstechnica.com/tech-policy/2015/03/we-know-where-youve-been-ars-acquires-4-6m-license-plate-scans-from-the-cops/2/>

10 <https://ncric.org/default.aspx?menuitemid=105>

is a member of the NCRIC Board of Directors.<sup>11</sup> Some civil liberties advocates have argued that the routine submission of a person's travel patterns to the government absent reasonable suspicion of wrongdoing may be unconstitutional<sup>12</sup> -

In the case of Berkeley's download-only participation, there are two issues that present themselves. The first is the information submitted with a request, which per NCRIC's written policy, includes some case information in addition to the plate or partial plate number and which is retained and audited by NCRIC.

According to the "NCRIC ALPR Policy" document cited by PRC officer Katharine Lee as the governing document for these transactions:<sup>13</sup>

"Access to and use of ALPR data is logged for audit purposes. Audit reports will be structured into a format that is understandable and useful and will contain at a minimum:

- Name of Law Enforcement User
- Name of Agency Employing The User
- Date and Time of Access
- Activities Executed, Including Any License Plates Searched For
- The Supplied Law Enforcement Authorization Or Public Safety Justification Offered For Access
- Case Number Associated With The Investigation

*(Note. This document is written by NCRIC, not by Berkeley PD).*

If, for example, an individual was being sought for immigration detention by ICE, the provision of a license plate number linked to that individual or someone they associate with could hypothetically lead ICE to their location in our city, which could hypothetically constitute a sanctuary city violation. While one would hope that license plate information requests would not be sent to NCRIC lacking probable cause that a crime had been committed by the individual, Berkeley lacks written guidelines and standards on the matter, so there is no way to be certain. The establishment of a case number does not determine probable cause or reasonable suspicion. In some cases, individuals may be "persons of interest" without necessarily being the perpetrator of any crime, including family members, friends, co-workers and other associates. The use of partial license plate requests further muddies the issue as should, e.g., my personal license plate number resemble that of an individual of interest in a BPD investigation, a NCRIC request would probably result in a download of a year's worth of my travels across the nine-county Bay Area without my consent or notification, and without any relation to the incident being investigated.

The lack of a written standard for requesting license plate scans from NCRIC's ALPR database is problematic in an additional way, in that it is a continuing breach of municipal law. The 1973 voter approved ordinance 4640(S) – as recorded in the City Charter states:

*2.04.170 Approval--Public hearing required.*

*After April 17, 1973, no such agreement, understanding or policy shall be valid or effective unless specifically approved by the City Council following public hearings on the same as hereinafter provided. All terms and conditions of such agreements, understanding or policies shall be reduced to writing*

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11 <https://www.ice.gov/news/releases/law-enforcement-veteran-returns-california-lead-hsi-san-francisco>

12 [digitalcommons.hamline.edu/cgi/viewcontent.cgi?article=1054&context=hlr](https://digitalcommons.hamline.edu/cgi/viewcontent.cgi?article=1054&context=hlr)

13 <https://ncric.org/html/NCRIC%20ALPR%20POLICY.pdf>

*and presented to the City Council for approval by the Berkeley Police Department or appropriate City official, accompanied by a statement of the rationale therefor, projections of the costs of implementation, and other information or explanations requested by the council. (Ord. 4640-NS § 3, 1973)*<sup>14</sup>

The memorandum of understanding document submitted to the Berkeley City Council for approval per Section 2.04.170 is called Item 3.12. The document states it is the compliance document for section 2.04.170 of the municipal code, that it describes the Berkeley Police Department's relationship with the Northern California Regional Intelligence Center (NCRIC) as governed by General Order N-17, and moreover it states that "Berkeley Police Department General Order N-17 governs the relationship between the Berkeley Police Department and NCRIC".<sup>15</sup>

General Order N-17 describes the Suspicious Activity reporting program and the designation of Terrorism Liaison Officers (TLO's), which we shall discuss further below. General Order N-17 does not authorize nor mention the acquisition of ALPR data from NCRIC, nor the sending of hundreds of Berkeley Police Department case numbers and investigation data to NCRIC.

Accordingly, it is my belief that the ALPR activity is currently unauthorized per the terms of the voter-approved ordinance, regardless of whatever verbal understandings may be in place, and would likely be halted in a court of law until the paperwork is brought into compliance, were any resident of Berkeley to challenge it.

The third point of interface between the Berkeley Police Department and the Northern California Regional Intelligence Center is the designation of Terrorism Liaison Officers (TLO's) in the department. Berkeley's Police Review Commission reports there are three officers so designated. Terrorism Liaison Officers, by definition, are joint sworn officers who serve both their local police departments and the Department of Homeland Security. TLO's undergo a training course and are certified by their local fusion center.<sup>16</sup> The TLO curriculum, in the last publicly available version, addressed domestic terrorism including animal rights activists, environmental groups and anarchists, including Animal Liberation Front and Earth First, along with sovereign citizens, white supremacists and anti-abortion extremists. A more updated version would probably include Black Lives Matter per the recent FBI designation of Black Identity Extremists as domestic terrorists.<sup>17</sup> The curriculum notes anti-abortion extremists are "not usually violent." Examples of International terrorism are given as Muslim/Islamic groups, citing Hamas, Hezbollah, Al Qaeda and Jamiyyat Ul Islam, and use the standard suicide bomber, jihad, holy warrior, and martyr stereotypes. The provided curriculum does not cite any groups designated as "Foreign Terrorist Associations" by the US State Department that are not linked to the Middle East and Islam, like ETA (France, Spain), FARC (Colombia), Tamil Tigers (Sri Lanka), or Shining Path (Peru). It is possible that your subcommittee can access a more recent version of the TLO curriculum from your department and if so, that might be helpful to your deliberations.

The job description of a certified TLO requires them, due to collateral duty aspects of the position, to take directions from federal authorities, usually the local Joint Terrorism Task Force (JTTF) working out of the local FBI office.<sup>18</sup> San Francisco, and recently Oakland passed municipal ordinances that required joint sworn officers to comply with city laws. San Francisco's ordinance was passed in 2011. San Francisco suspended participation

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14 <http://www.codepublishing.com/CA/Berkeley/html/Berkeley02/Berkeley0204/Berkeley0204170.html#2.04.170>

15 [https://www.cityofberkeley.info/.../2017-04-25\\_Item\\_55\\_Compendium\\_Items.aspx](https://www.cityofberkeley.info/.../2017-04-25_Item_55_Compendium_Items.aspx)

16 <https://publicintelligence.net/terrorism-liaison-officer-tlo-program/>

17 <http://www.businessinsider.com/fbi-warns-against-black-identity-extremists-terrorist-threats-2017-10>

18 <https://publicintelligence.net/terrorism-liaison-officer-tlo-program/>

in the Joint Terrorism Task Force in 2016.<sup>19</sup> Oakland's ordinance became law on October 3, 2017.<sup>20</sup>

Berkeley's General Order N-17 defines the parameters of Terrorism Liaison Officer (TLO's) duties from the City's perspective as restricted to the preparation of suspicious activity reports. While, as mentioned earlier, the City's guidelines for SARS reporting and associated activities are restrictive, Berkeley's internal documents cannot be considered as binding on the federal agencies, specifically NCRIC and the FBI/JTTF. It isn't clear what would happen if either of those bodies were to, as they are authorized to do, direct the Berkeley TLO's to embark on an investigation or take a set of actions. It is important to note such directions can be considered classified or confidential and are not necessarily shared with the local law enforcement bureau. Non disclosure agreements (NDA) are signed by each TLO<sup>21</sup>. Berkeley's staffing level of TLO's seems larger at 2-3 officers than the filing of 1-5 suspicious activity reports annually would require.

In terms of the participation of other law enforcement agencies, organizations and the public, NCRIC itself receives "tips" or suspicious activity-type reports from a variety of sources including local police and public safety agencies, private sector companies (700+) including nuclear and weapons manufacturers, information technology firms, financial services, and energy firms, from any member of the public, including anonymous tips, and from the nation's dozens of other fusion centers.<sup>22</sup>

Apart from the periodic Senate oversight reports, there is probably little way to ascertain the quality of these information streams into the NCRIC and then out to the police departments via Terrorism Liaison Officers.

*How and on what basis does BPD have access to the data? Details must include who can access the data, under what circumstances, how often or how frequently, and in what ways the data can be accessed.*

It is outside my relevant knowledge base to indicate how data received from NCRIC is handled internally within the Berkeley Police Department. SARS data, once submitted, is available to the entire law enforcement NCRIC membership base, which includes dozens of other fusion centers across the country and the federal agencies ATF, DEA, CHP, ICE, CBP, HSI, FBI, IRS, US Marshals and JTTF<sup>23</sup>. License plate number requests transfer Berkeley case numbers and explanations of the public safety threat or reason for the request to NCRIC, where they are held, audited and available to the above parties.

*Does NCRIC retain the license plate numbers and associated information about which BPD has queried from the NCRIC database?*

Yes. They specifically state that they do so on NCRIC's website.<sup>24</sup>

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19 [https://www.washingtonpost.com/world/national-security/san-francisco-police-department-pulls-out-of-fbi-anti-terrorism-task-force/2017/03/10/62e05bcc-fd09-11e6-8f41-ea6ed597e4ca\\_story.html?utm\\_term=.4bafcb346a09](https://www.washingtonpost.com/world/national-security/san-francisco-police-department-pulls-out-of-fbi-anti-terrorism-task-force/2017/03/10/62e05bcc-fd09-11e6-8f41-ea6ed597e4ca_story.html?utm_term=.4bafcb346a09)

20 <https://www.eastbayexpress.com/SevenDays/archives/2017/10/02/town-business-oakland-police-agreements-with-federal-law-enforcement-will-be-subjected-to-greater-oversight>

21 <https://ncric.org/default.aspx?menuitemid=634&menugroup=NCRIC+Public+Home>

22 <https://ncric.org/default.aspx?menuitemid=343>

23 <https://ncric.org/default.aspx?menuitemid=105&AspxAutoDetectCookieSupport=1>

24 <https://ncric.org/html/ALPR-FAQ-Feb-2015.pdf>

*Does the database include data gathered by means that citizens of Berkeley might find objectionable?*

Yes. NCRIC's databases contain data gathered by means that citizens of Berkeley might find objectionable. Fusion centers across the country have been documented in Senate oversight report filing suspicious activity reports on a variety of legal and objectively non-suspicious actions like First-Amendment protected activities like lobbying and voting for a third party. Creating nationwide profiles and storing them indefinitely absent any reasonable suspicion of wrong-doing is a profiling and tracking activity that can be rife with abuses related to the political and cultural bias of those doing the collecting and reporting. The inclusion of random anonymous tips from members of the public and NCRIC's large private sector membership base can open the door to submissions that can be motivated in dubious ways by personal or business disputes. When objective evaluations have been done by oversight bodies, they have not concluded high intelligence value from the SARS reporting program. A few examples:

The 2009-2010 Senate Report documented that of 22,000 incident reports submitted that year, only 200 led to actionable intelligence or 9/10 of one percent of all the information submitted to the fusion center network.<sup>25</sup> In 2014, the National Network on Fusion Centers report announced that 94.5% of SARs did not generate any investigation at all.

The 2012 Senate report provided a few examples of non-actionable incidents reported. One drug-smuggling activity report featured two fisherman in a bass boat who avoided eye contact and whose boat was low in the water. The Senate report stated "the fact that some guys were hanging out in a boat where people do not normally fish might be an indicator of something abnormal but does not reach the threshold of something we should be reporting and should never have been nominated for production nor passed through three reviews." Another suspicious activity report featured a foreigner with an expired visa caught shoplifting. The assessment in the October 3, 2012 Senate report declared, "I am stunned this report got as far as it did because the entire knowledge about the subject was that he tried to steal a pair of shoes from Neiman Marcus. I have no idea what value this would be adding to the intelligence community."<sup>26</sup>

The problems have already been identified in the 2012 Senate Report<sup>27</sup>: ambiguous lines of authority; excessive data mining; inaccurate or incomplete information; unclear relationships with the military and the private sector; and mission creep. The vast majority of SARs targeted subjects based on commonplace activities. Thousands of dossiers exist filled with suspicion of Muslim lobbyists, death penalty activists, motorcyclists, shoplifters and misplaced fishermen. There is no question that the suspicious activity reporting program contains significant quantities of information collected inappropriately, labeled

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<sup>25</sup> <http://www.utne.com/politics/fusing-california-zm0z16wzsel?pageid=1#PageContent1>

<sup>26</sup> <https://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>

<sup>27</sup> <https://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>

suspicious with little to no merit, often chronicling fully legal and constitutionally protected activities or petty crimes with no significant intelligence value.

As mentioned earlier, the ALPR database constitutes mass bulk surveillance of vehicle operators absent any evidence of wrong-doing, and makes their personal travel patterns available to the federal government on request.

*What jurisdictions do not participate in or use NCRIC, and what alternatives do they use in place of NCRIC participation?*

I can cite a public records request from earlier this year indicating the Bay Area cities that have full memorandums of understanding in place with NCRIC, followed with those who have “informal” information sharing practices, like that of Berkeley. This data is self-reported by NCRIC in response to a CPRA request, so I cannot personally vouch for its accuracy.<sup>28</sup>

*Is it possible for BPD to segment what information it receives?*

This question requires some clarification. What information would be segmented from other information? If the intent is to omit information received in the form of dubious interpretations of suspicious activities, then no, such segmentation would not be possible.

*Review other databases Berkeley has access to that can provide similar or the same types of information, and potential pros and cons of using those databases*

DMV has a license plate database available for criminal justice use. The Berkeley Police Department describes the primary advantage of using the NCRIC ALPR database over the DMV database as the ability to run partial license plate requests without the entire license plate number available.<sup>29</sup> However, the submission of information to NCRIC and its retention by NCRIC for an unlimited period of time, as well as the privacy implications of releasing to law enforcement extensive travel pattern information based on only a partial license plate match, has significant privacy and civil rights downside not present in the use of the DMV database. It might be helpful for your deliberations to inquire how many of the license plate requests submitted to NCRIC over the past few years contained partial license plate data, as opposed to the full plate numbers. In an emergency situation, a neighboring jurisdiction with a NCRIC MOU in place, could probably run a partial license plate query and share the information with BPD as needed.

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28 [https://www.mediafire.com/file/94qjhof9mvtuy45/CPRA\\_response\\_061317.pdf](https://www.mediafire.com/file/94qjhof9mvtuy45/CPRA_response_061317.pdf)

29 Oral Testimony BPD Chief at Berkeley City Council Meeting – June 20, 2017.

In terms of a general survey of law enforcement databases, we would point you towards a comprehensive database review, a process begun in Oakland with some help from graduate students on the UCB campus who could probably provide similar services to Berkeley municipal government. The current progress on that database review has been publicly distributed.<sup>30</sup>

*Consider whether Berkeley should end its relationship with NCRIC, continue, and/or create formal protocols to limit Berkeley's contribution and access to the database*

Our assessment as privacy rights advocates is that participation in NCRIC information sharing is providing data to Berkeley's Police Department gathered by means that citizens of Berkeley might find objectionable and that ALPR requests from BPD provide location data to NCRIC and all their federal partners on some Berkeley residents without evidence connecting them to a crime or a violation of law.

The Suspicious Activity Reporting program has already been reduced to a minimal effort on Berkeley's part and the cited Senate Oversight Report has documented the limited value of the SARS reporting program as a whole in delivering actionable intelligence.

The DMV database provides license plate information to aid investigative work without delivering Berkeley case information to NCRIC member agencies. Using DMV for license plate queries also protects Berkeley from inadvertently or unintentionally triggering an ICE raid, with all the attendant negative publicity for a sanctuary jurisdiction, should a license plate query disclose the work or residential location of undocumented people in the City and given the Trump Administration's declaration of increases in aggressive civil immigration enforcement in California's sanctuary cities<sup>31</sup>.

With regard to NCRIC's newsletter service, it is unknown to me whether failing to participate in the SARS reporting program on an ongoing basis would result in BPD-affiliated officers being banned from receiving it, but if the newsletter is perceived to have value to the Department, an inquiry should be made to NCRIC if that would be the case.

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30 <https://www.mediafire.com/file/5pxhdtms9jbw968/Updated%20OPD%20Database%20Info.xlsx>

31 <http://www.cnn.com/2017/10/17/politics/ice-crackdown-workplaces/index.html>

## Urban Shield

*How does Urban Shield contribute to or detract from public safety and the safety of police and firefighters and other medical and law enforcement personnel?*

Urban Shield is a weapons expo and a 48-hour series of practice anti-terrorism drills structured as a scored contest for SWAT, Fire and EMS teams. Due to the parameters set up for event funding by the Department of Homeland Security, the Urban Shield event must contain a “nexus to terrorism”.<sup>32</sup>

The nexus to terrorism link, as mandated by DHS, requires that a substantive amount of the practice drills be formulated as anti-terrorism exercises, which has usually taken the form of re-enacting various incidents from across the world. This has public responders acting out scenarios that are at best, unusual and quite unlike their day to day activities. At a Berkeley Police Review Commission meeting in 2015, when the option of taking a sabbatical from Urban Shield was raised by then-Commissioner and now Council Member Ben Bartlett, a female BPD officer who had attended Urban Shield and was presenting at the PRC stated that the Department “repurposes” Urban Shield training for the kinds of situations they actually encounter on a regular basis.

The nature of the scenario contest is that teams, who work primarily by themselves, enter rapid-fire into some 30 scenarios over 48 hours including travel time, with little to no sleep, which prioritizes adrenaline, and quick and often violent solutions to kidnappings, active shooters, suicide bombers, chemical spills, dam breaks, hijackings, snipers, poisonings and building collapses.<sup>33</sup> In real life, it is probably unlikely that most of these tragedies would be resolved in less than an hour. Many of the techniques that might lead to a non-violent or less violent resolution including hostage negotiations and de-escalation cannot be practiced under the Urban Shield model, as is reflected in the scoring process.

Many of the scenarios are sponsored by equipment manufacturers whose weapon products are featured in the scenario, which can distort the purpose of a training drill into an exhibition and sampler of the sponsor's products to facilitate future sales to participating departments.

Potential contributions to public safety and officer safety from Urban Shield consist of practice at confronting a mass shooting or dramatic attack on an installation by a gang of assailants should such an event occur in Berkeley and require first responders to launch an assault on a facility to attack and kill or injure several perpetrators to prevent mass fatalities.

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32 [http://www.bayareauasi.org/sites/default/files/resources/FY%202018%20Project%20Proposal%20Guidance\\_Adopted\\_0.pdf](http://www.bayareauasi.org/sites/default/files/resources/FY%202018%20Project%20Proposal%20Guidance_Adopted_0.pdf)

33 <https://www.mediafire.com/file/4y99sx5cihkh8a2/Scenarios%202015-2016.xlsx>

The Urban Shield model detracts from public safety by concentrating emergency training resources on threat models that are infrequent while de-emphasizing the majority of first responder activities. In the case of SWAT activities, 93% of deployments do not involve hostages, barricades or active shooters<sup>34</sup>, the scenarios Urban Shield emphasizes, and the majority involve search warrants for drug activities. In the case of EO and Fire, the great majority of deployments involve natural disasters and the growing threat of extreme weather incidents. Public safety is not enhanced by the use of military commando-style tactical training for scenarios where it is not merited and can increase the possibility of inappropriate use of force.

For first responders themselves, Urban Shield can reinforce a military-style culture inside police departments. In a visit to the vendor exposition on September 8 2017 that I personally conducted as a guest of the Alameda County Urban Shield Task Force, I can vouch for the fact that at a majority of the supplier booths I visited, I was told that the products I was viewing had been either “developed for the military”, used “by the military” or featured “military-grade technology”, expressing a clear parallel between the work of military forces and that of local law enforcement. And until community pressure resulted in vendor changes, Urban Shield for the past 8 years hosted supply vendors who specialized in militarized and macho insignia with an emphasis on violence.<sup>35</sup> Berkeley's SWAT participants were visible at the 2017 vendor expo and participated in sales pitches from assault weapon vendors emphasizing the killing potential of the featured guns. The cultural aspects of the event can and do reinforce problems in American policing that many Berkeleysans are working to reform.

*What are the benefits and costs of participation in Urban Shield? Are there any specific elements that are commendable or objectionable, given Berkeley's values and needs?*

The costs of participation in Urban Shield include the concentration of training resources in anti-terrorism activities and the neglect of emergency preparation and training in mental health incidents and natural disasters. The intermingling of public health and emergency training with the political Homeland Security agenda distorts the provided training and the event has been resistant to addressing those distortions when they are pointed out.

To give one small example, in August of 2017 it came to my attention that the event was issuing a contract to a vendor called Strategic Operations in San Diego for about \$50,000 for “hyper-realistic” training aids for Urban Shield scenarios. Taking a look at the vendor's website, it became clear that they trafficked in racial stereotyping, providing practice “target dummies” that could be ordered in

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34 <https://www.aclu.org/sites/default/files/assets/jus14-warcomeshome-report-web-rel1.pdf>

35 T-shirt mottos: “Black Rifles Matter”, “This Is My Peace Sign (picture of rifle butt)”, “Keep Calm and Return Fire”, “Destruction Cometh And They Shall Seek Peace and Find None” <https://www.google.com/search?q=urban+shield+t-shirts&tbm=isch&tbo=u&source=univ&sa=X&ved=0ahUKEwjvntbh9ZjXAhWMSiYKHaqLBDgQsAQIJw&biw=1517&bih=653>

one's choice of skin tone (3 choices, brown, browner or black) and providing crisis actors and stage sets in a variety of middle-eastern stereotypes including “desert cafes” and cell-phone wielding women in burqas.<sup>36</sup> When the racially charged images were brought to the attention of the Alameda County Board of Supervisors, they did not approve the vendor contract. However it came to light later that Alameda County Sheriff's Department staff coordinating Urban Shield went ahead as planned with the vendor anyway, pulling the vetoed funds from their discretionary funds. This small example is provided to demonstrate that when objectionable incidents that portray racialized stereotypes are pointed out, the event does not make a change, but instead doubles down on the objectionable and distorted content.

This particular incident is significant because the makeup, props and actors were used in a re-enactment of the Florida Pulse Nightclub shooting, an incident later conceded to have been motivated by the perpetrator's internalized homophobia, and not to any mosque or ISIS, as the “hyper-realistic props” implied.<sup>37</sup>

Berkeley is now grappling with stops data revealing, as it has revealed in most police department countries across the country, racial disparities in community interactions and their outcomes.<sup>38</sup> When department-authorized emergency response training has an indifferent response to blatant racialized stereotyping, it does not contribute to a serious municipal effort to address these disparities and remove them.

*Does Berkeley's participation in the program positively influence or enhance Urban Shield, and how might the city's positive impact be enhanced in the future, should Berkeley continue to participate?*

The Bay Area community has made substantial efforts to positively influence and/or enhance Urban Shield, including a voted-down proposal in 2015 for Berkeley to take a 1-year sabbatical to highlight concerns about police militarization, approaches to the UASI fiscal sponsor in San Francisco to express concerns, and the convening of a large task force in Alameda County. To date, all of these efforts have been forcefully opposed by the coordinating Alameda County Sheriff's Department. Over a dozen community reform suggestions submitted to the Alameda Task Force were “tabled” and the final meeting of that task force was tarred by accusations directed at community organizations like the American Friends Service Committee, Buddhist Peace Fellowship, Jewish Voice for Peace, Arab-American Organizing Center, and Ella Baker Center that they were “terrorists” by an Urban Shield gun

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36 <https://media-alliance.org/stopping-stops-urban-shield-vendor-vetoed-due-to-racist-stereotyping/>

37 [http://www.slate.com/blogs/outward/2016/06/12/pulse\\_nightclub\\_shooting\\_and\\_tragic\\_history\\_of\\_violence\\_at\\_lgbtq\\_clubs\\_in.html](http://www.slate.com/blogs/outward/2016/06/12/pulse_nightclub_shooting_and_tragic_history_of_violence_at_lgbtq_clubs_in.html)

38 <http://www.dailycal.org/2017/07/28/police-review-commission-discusses-center-policing-equity-report-surveillance-authority/>

dealer appointed to the Task Force by Supervisor Scott Haggerty based on a recommendation from the Sheriff's Department.<sup>39</sup> When the event added a community fair this past September, the Alameda Sheriff's booth facing the public was staffed by the Oathkeepers<sup>40</sup>, a sovereign citizen group that has engaged in freelance "security" of white supremacist and alt-right speaker events in Berkeley.<sup>41</sup> Given these recent events, it does not seem that community efforts to reform the event have made much progress to date. .

*Does Berkeley's participation support or run contrary to Berkeley's values or interests, and how or why might the city's involvement be continued, enhanced, limited or ended if this is the case?*

As was debated in 2015, Berkeley has an opportunity to express concerns about police militarization by articulating those concerns and suspending participation in Urban Shield. As has been indicated above, reform suggestions that have not been accompanied by municipal non-participation, including Board of Supervisor resolutions, funding vetos, and a dedicated task force have not made significant changes to the event or addressed the problems community groups have been highlighting for years.

The co-mingling of public safety and disaster response training with the politically charged "war on terrorism" has debilitated badly needed emergency response training funds into quixotic pursuits like spraying bloody Muslim body parts over a vacant lot to enhance "realism",<sup>42</sup> and helping the Oath Keepers "explain who they are".<sup>43</sup> None of this enhances public safety. It is both consistent with Berkeley's expressed municipal values and Berkeley's interests to demand depoliticized and more broadly focused emergency training that meaningfully addresses public health, mental health services, natural disasters and de-escalation and violence prevention techniques, and to suspend further municipal participation unless and until those needs are met.

Thank you for your work and for the opportunity to submit these comments.

Sincerely,

Tracy Rosenberg

Member, and on behalf of, Oakland Privacy

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39 <https://www.eastbayexpress.com/SevenDays/archives/2017/09/25/urban-shield-task-force-appointee-and-gun-dealer-calls-police-critics-terrorists>

40 <https://www.eastbayexpress.com/SevenDays/archives/2017/09/15/right-wing-extremist-group-had-booth-at-urban-shield-to-explain-who-they-are>

41 <https://www.oathkeepers.org/help-defend-free-speech-berkeley/>

42 <https://medium.com/surjbayarea/i-went-behind-the-scenes-at-urban-shield-it-was-more-racist-than-i-could-have-imagined-cdbb3c935fc6>

43 <https://www.eastbayexpress.com/SevenDays/archives/2017/09/15/right-wing-extremist-group-had-booth-at-urban-shield-to-explain-who-they-are>