



August 26, 2020

VIA E-MAIL ONLY

Hon. Deborah Allen
Hon. Mark Foley
Hon. Rebecca Saltzman
Hon. Robert Raburn
Hon. John McPartland
Hon. Liz Ames
Hon. Lateefah Simon (President)
Hon. Janice Li
Hon. Bevan Dufty
BART Board of Directors
E-Mail: boardofdirectors@bart.gov

Re: Surveillance Technology Annual Reports – Item 5 D

Dear Honorable Directors:

I write on behalf of Secure Justice to comment on the seven annual reports pertaining to BART's use of surveillance technology, provided for Item D 5 on tomorrow's agenda. We recommend that several of the annual reports be returned to staff for further improvements, as discussed below.

Secure Justice is a non-profit organization advocating against state abuse of power, and for reduction in government and corporate over-reach. We target change in government contracting, and corporate complicity with government policies and practices that are inconsistent with democratic values and principles of human rights.

Surveillance Technology Ordinance

Like other California jurisdictions, BART enacted a surveillance technology vetting framework to a) provide greater transparency into BART's use of surveillance technology, b) provide sufficient information to make better informed decisions, and c) allow for public input into the proposed use policies and general appropriateness of using said technology. I worked with BART staff for over two years on drafting the ordinance.

We appreciate that several BART staffers have proactively reached out to community organizations and subject matter experts when proposing a use policy. In collaboration with Mimi Bolaffi, and at the suggestion of Secure Justice, BART enacted a license plate reader policy that reduced the data retention period to 30 days, and BART also completely firewalled its data from federal immigration agencies via the NCRIC memorandum of understanding. These

two actions are noteworthy, and we applaud BART again for moving significantly in the right direction towards greater protection of its riders' civil liberties.

As this is the first time BART has reached this stage of the ordinance vetting framework, we are encouraged at the good faith effort put forth in the annual reports. However, we have identified several deficiencies that warrant discussion and possible report revision, which are more fully explained below.

Although we believe there is room for improvement, we are **not** issuing this letter as a “right to cure” notice of violation per Section 8 of the ordinance. Ordinance compliance in this framework is an iterative process, tracking systems must be put into place (and funded), and as this is BART's first attempt at the annual reporting stage, we are encouraged by the progress we have seen.

1. Closed Circuit Television

Although this report generally complies with the requirements set forth in the ordinance, there are three omissions that are critical to understanding whether or not this technology is effective at achieving its purported public safety goals and whether the use policy is sufficiently protecting our civil liberties – identification of third party data sharing is absent, no audits were performed (or reported on), and information that would help the public and Board assess whether this equipment is useful is also not provided (or perhaps more accurately stated, information is provided in different sections that could potentially support a causal effect, but is not clearly presented to the reader).¹

The report fails to name the recipient(s) of data received, which is expressly called for in the ordinance. In addition, although the annual report links to an outside source that captures reports of crime, no analysis or attempt to prove causation has been provided in the report or linked data. The mere fact that a crime has been reported is not justification to use the technology, nor support for its effectiveness at crime fighting. The nexus is missing.

Under the “Costs” section, there is additional information provided about the number of requests for video evidence. This information should be copied and also used under “Crime Statistics.” Although prosecution of any crime is up to the District Attorney, and not all crimes are prosecuted, it would be helpful if BART staff provided data on how many crimes the DA's office has prosecuted based on video evidence provided to it from BART's CCTV system. As written, the Crime Statistics category provides conclusory statements without supporting data². This is insufficient to justify continued use and funding.

In addition, no audits were performed (or reported on). It is important that BART periodically audit its use of technology to ensure that the Board approved use policy is adhered to and that data is properly safeguarded. If no audit was performed, that fact should be clearly stated.

¹ Ordinance Section 2 Annual Report, 1(b), (e), respectively.

² We appreciate the honesty and specificity supplied in the Automated License Plate Reader “Crime Statistics” section. It is appropriate to state that more data is required before a casual effect can be determined. Crime has many variables, and the year-over-year comparison is helpful to provide the reader with some sense of efficacy from the use of the technology.

2. Public Video Monitors

This annual report suffers from two of the same deficiencies as above – no audits were performed (or reported on), and no analysis has been provided to demonstrate the efficacy (or lack thereof) of this technology. In addition, the “Costs” section is woefully inadequate. The “mindfulness” component implied in this vetting framework requires consideration of fiscal costs as well. Cost information, especially during a pandemic budget crisis that is greatly impacting BART’s ability to provide service, must be provided and should be readily available.

The stated purpose of this technology was to deter crime and fare evasion. BART is required by the ordinance to supply data demonstrating that those goals are being achieved. Section 7 of the ordinance requires the Board to find that the benefits outweigh the costs (both fiscal, and as to civil liberties) to justify continued use. If no benefits are identified, the Board can only reach one conclusion – use must cease.

3. Public Emergency Phone Towers

This report suffers from many of the same deficiencies as those above – no third-party data recipients have been identified. This report also makes the same conclusory statement that no violations of the use policy have occurred, but there is no evidence that an audit was performed. The status quo of “just trust us” is not appropriate and was a primary motivator for enactment of the ordinance. The Costs section also provides no specificity, which violates the ordinance. The ordinance requires specific costs be identified.

4. Mobile Applications

We have no comment.

5. Automated License Plate Reader (ALPR)

This is a well written report. The sole improvement we recommend is to provide at least an estimate of ongoing costs, as that information is expressly required by the ordinance. As mentioned above in our footnote, it is appropriate to state that causation is not yet demonstrable, especially as Covid has drastically reduced BART’s ridership and lead to less data points necessary to establish a causal effect.

6. Research Data Collection

We have no comment.

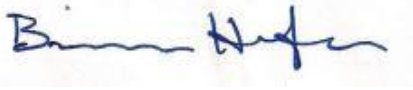
7. Trip Verification Technology

We have no comment.

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Overall, BART staff has done a good job producing the first annual reports under your ordinance. We are encouraged by these good faith efforts and stand ready to assist as we move forward together.

Sincerely,

A handwritten signature in blue ink that reads "Brian Hofer". The signature is written in a cursive style with a long horizontal stroke at the end.

Brian Hofer
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