



**Privacy Advisory Commission**  
**November 8, 2017 5:00 PM**  
**Oakland City Hall**  
**Hearing Room 1**  
**1 Frank H. Ogawa Plaza, 3rd Floor**  
***Special Meeting Agenda***

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**Commission Members:** *District 1 Representative: Reem Suleiman, District 2 Representative: Vacant, District 3 Representative: Brian M. Hofer, District 4 Representative: Lou Katz, District 5 Representative: Raymundo Jacquez III, District 6 Representative: Clint M. Johnson, District 7 Representative: Robert Oliver, Council At-Large Representative: Saied R. Karamooz, Mayoral Representative: Vacant*

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*Each person wishing to speak on items must fill out a speaker's card. Persons addressing the Privacy Advisory Commission shall state their names and the organization they are representing, if any.*

1. 5:00pm: Call to Order, determination of quorum
2. 5:05pm: Review and approval of October meeting minutes
3. 5:10pm: Open Forum
4. 5:15pm: Discuss and take possible action on Oakland Police Department Immigration Policy No. 415
5. 5:45pm: Receive staff status update on Surveillance Equipment Ordinance labor discussions and take possible action.
6. 6:00pm: Subcommittee status update on ALPR policy conversion project
7. 6:05pm: Further discussion of citywide Privacy Initiative and Privacy Program (Seattle)
8. 7:00pm: Adjournment



**Privacy Advisory Commission**  
**October 5, 2017 5:00 PM**  
**Oakland City Hall**  
**Hearing Room 1**  
**1 Frank H. Ogawa Plaza, 3rd Floor**  
***Meeting Minutes***

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**Commission Members:** **District 1 Representative:** Reem Suleiman, **District 2 Representative:** Vacant, **District 3 Representative:** Brian M. Hofer, **District 4 Representative:** Lou Katz, **District 5 Representative:** Raymundo Jacquez III, **District 6 Representative:** Clint M. Johnson, **District 7 Representative:** Robert Oliver, **Council At-Large Representative:** Saied R. Karamooz, **Mayoral Representative:** Vacant

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*Each person wishing to speak on items must fill out a speaker's card. Persons addressing the Privacy Advisory Commission shall state their names and the organization they are representing, if any.*

1. 5:00pm: Call to Order, determination of quorum

*All members were present.*

2. 5:05pm: Review and approval of July 6 meeting minutes

*The minutes were approved unanimously.*

3. 5:10pm: Open Forum

*There were no Open Forum Speakers*

4. 5:15pm: Discussion with the Oakland Police Department regarding the August 16 ICE operation.

*Chairperson Hofer presented a packet of information about the ICE Operation and inconsistencies in what was reported in the media initially and the follow-up information that he has since collected. Specifically, he raised concern that ICE was not involved in a criminal investigation of human trafficking but instead was conducting civil immigration enforcement operation. Because OPD has a policy to not participate in such operations, he was concerned that OPD had violated that policy.*

*Lt. Hookfin addressed the commission on OPD's role in the operation. He stated that officers provided traffic control only to assure no pedestrians entered the area. He stated that OPD's sole purpose was to protect public safety and provide traffic control. He was asked if it was routine for OPD to provide traffic control for outside agencies that are conducting operations in Oakland and he said yes, that it happens all the time.*

*Chairperson Hofer made a motion for the PAC to request to the City Council that they conduct a hearing at which they require the Chief of Police to provide a report addressing the concerns raised in his submission.*

*This motion passed by consensus.*

*Several public speakers additionally aired their concerns about the event.*

5. 5:35pm: Discuss and take possible action on Oakland Police Department Immigration Policy No. 415.

*Several members of the public spoke in favor of the policy's limits on OPD involvement with ICE immigration operations. Members raised concern that ICE will act under false pretense (citing the above agenda item) and therefore discussed taking the policy further to cease OPD involvement in ANY ICE operation, not just immigration. A motion was made but then withdrawn as the PAC decided that the recently passed SB54 may have some guidance written into it that could be useful to this conversation.*

6. 5:50pm: Review and take possible action on an ordinance prohibiting City business with vendors that provide services to ICE

*Similar to the Council action prohibiting contracts with any firm involved with the building of the border wall, the PAC discussed this ordinance prohibiting the city from contracting with any firm that has contracts with ICE. Several people spoke in favor of the ordinance and the PAC voted unanimously to recommend that the City Council adopt the ordinance.*

7. 6:10pm: Staff status update on Surveillance Equipment Ordinance labor discussions

*Joe DeVries provided a brief update: staff met with OPOA and with OPD leadership and has developed some revised language to add clarity to the ordinance and to address concerns raised about enforcement mechanisms. He expects to meet again with OPOA and to bring revisions back to the PAC again before proceeding to the City Council.*

8. 6:15pm: Staff status update on database review project

*Tim Birch with OPD noted that the one database the department shares with other agencies is the CRIMS Database and therefor he recommends the group begin with assessing that database and what is shared. He will continue to look for other databases that may share information.*

9. 6:25pm: Review and discussion of Seattle citywide Privacy Initiative and Privacy Program

*Chairperson Hofer and Joe DeVries discussed their shared vision to develop an overarching City of Oakland Privacy Policy like the Seattle model. Joe explained that Seattle started there and now is looking at regulating individual technologies/devices which is the opposite of how these issues evolved in Oakland. Due to the building of the DAC, Oakland began by looking at a particular technology and then continued to do so with the FLIR Policy, Cell Site Simulator, etc. With a citywide policy, there can be greater clarity for all city departments and training that can raise the level of awareness about the significance of collecting Personally Identifiable Information and how the City uses and protects it.*

*It was agreed that an ad hoc working group would begin to look at the Seattle policies as well as federal policies and begin to draft recommendations to the PAC.*

## Immigration

### 415.1 PURPOSE AND SCOPE

The purpose of this immigration policy is to provide guidance and direction to the members of the Oakland Police Department (OPD) on Federal, State, and local immigration laws.

The responsibility for enforcement of immigration laws rests solely with the U.S. Immigration and Customs Enforcement agency (ICE) under the direction of the United States Department of Homeland Security (DHS), and not with local or state law enforcement agencies. OPD is committed to equal enforcement of the law and equal service to the public regardless of a person's immigration status. This commitment increases our effectiveness in protecting and serving the entire community.

### 415.2 DUE PROCESS RIGHTS OF ALL PERSONS

OPD shall not provide federal immigration agencies access to individuals solely for the purpose of immigration enforcement.

If OPD receives a federal immigration detainer request for an individual in OPD custody, Officers shall provide the individual with a copy of the request.

Officers shall not inquire or request proof of immigration status or citizenship when providing services or benefits except where the receipt of such benefits or services is contingent upon one's immigration status, such as in the processing of a U visa or T visa.

Individuals with limited English proficiency must be given access to translation or interpretation and must receive documents in their native language if available.

### 415.3 FEDERAL LAW

The responsibility for enforcement of immigration laws rests solely with ICE, under the direction of DHS.

Immigration detainers or requests, sometime called "ICE holds," are not compulsory. Instead, they are merely requests enforceable at the discretion of the agency holding the arrestee. Federal regulations define immigration detainers as "requests" rather than commands.<sup>1</sup> Courts have also held that ICE detainers are voluntary requests that "do not and cannot compel a state or local law enforcement agency to detain suspected aliens subject to removal."<sup>2</sup> Thus, local agencies are "free to disregard [an] ICE detainer."<sup>3</sup>

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<sup>1</sup> 8 C.F.R. § 287.7(a).

<sup>2</sup> *Galarza v. Szalczyk*, 745 F.3d 634 (3<sup>rd</sup> Cir. 2014); see also *Flores v. City of Baldwin Park*, No. CV 14-9290-MWF, 2015 WL 756877, at \*4 (C.D. Cal. Feb. 23, 2015) ("federal law leaves compliance with immigration holds wholly within the discretion of states and localities").

<sup>3</sup> *Galarza*, 745 F.3d at 645.

# Oakland Police Department

## Policy Manual

### *Immigration*

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The mere fact that an individual is unlawfully in the United States is not a criminal offense.<sup>4</sup> Thus, unlawful presence in the United States, by itself, does not justify continued detention beyond that of an individual's normal release date. This applies even where ICE or United States Customs and Border Protection (CBP) provide an OPD officer with administrative forms that use the terms "probable cause" or "warrant." A lawful detention under the Fourth Amendment must be supported by probable cause that a person has committed a crime.<sup>5</sup>

#### **415.4 CITY POLICY**

Members of OPD shall not:

- Enforce or assist ICE in the enforcement of violations of civil immigration laws
- Initiate investigations or use personnel or resources where the only objective is to discover whether an individual is in violation of a civil immigration law
- Detain individuals for a violation of civil immigration law<sup>6</sup>

#### **415.5 REQUESTS FOR ASSISTANCE FROM DHS OR ICE**

Unless the circumstances present an imminent danger to officer or public safety, requests by DHS or ICE for any operational assistance from OPD (including but not limited to ICE detainer requests), shall immediately be directed to the watch commander on duty for approval, who in turn shall immediately notify the Chief of Police, or the Chief's designee.

In the event a determination needs to be made about whether an ICE detainer request should be fulfilled, the Chief of Police, or the Chief's designee, shall consider the merits of each request carefully. In making this determination, the Chief, or Chief's designee, shall comply with the California TRUST Act,<sup>7</sup> assess whether the individual poses a risk to public or officer safety, and consider the availability of OPD personnel and resources necessary to comply with the request.

#### **415.6 INFORMATION SHARING**

OPD does not collect or maintain any information regarding a person's immigration status, unless the information is gathered specifically for the purposes of completing U visa or T visa documents.

Officers shall not share non-public information about an individual's address, upcoming court date, or release date with ICE or CBP. Officers shall respond to an ICE or CBP request for non-public information only when a judicial warrant accompanies the request.

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<sup>4</sup> *Arizona v. United States*, 567 U.S. 387, 132 S. Ct. 2492, 2505 (2012); *Melendres v. Arpaio*, 695 F.3d 990, 998, 1000 (9<sup>th</sup> Cir. 2012).

<sup>5</sup> *Gerstein v. Pugh*, 420 U.S. 103, 120 (1975).

<sup>6</sup> See November 29, 2016, Oakland City Council "Resolution Denouncing Tactics Used to Intimidate Immigrants Residing in Oakland and Re-affirming the City's Declaration as a City of Refuge" (Resolution No. 86498).

<sup>7</sup> See Gov't Code, §§ 7282, 7282.5. The TRUST Act limits the discretion of law enforcement officials to detain an individual pursuant to a federal immigration detainer request, should an agency choose to do so, unless two conditions are met. First, the continued detention must "not violate any federal, state, or local law, or any local policy," and second, the detainee must have a qualifying criminal history as enumerated in Government Code section 7282.5(a) or be the subject of an outstanding federal felony arrest warrant.

### *Immigration*

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#### **415.7 U VISA AND T VISA NONIMMIGRANT STATUS**

Under certain circumstances, federal law allows temporary immigration benefits, known as a U visa, to victims and witnesses of certain qualifying crimes. Similar immigration protection, known as a T visa, is available for certain qualifying victims of human trafficking.

Any request for assistance in applying for a U visa or T visa should be forwarded in a timely manner to the Special Victims Section (SVS) Lieutenant for review and endorsement. The SVS Lieutenant may consult with the assigned investigator to confirm the applicant is cooperative with the investigation.

The SVS Lieutenant or their designee shall approve or deny the request and complete the certification or declaration, if appropriate, within the time frame required under Penal Code § 679.10(h).<sup>8</sup> The instructions for completing certification and declaration forms can be found on the U.S. Department of Homeland Security (DHS) website and under Penal Code § 679.10.

The OPD website has information regarding the U visa or T visa application process as well as a non-profit organization that can assist with the application process.

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<sup>8</sup> "A certifying entity shall process an I-918 Supplement B certification within 90 days of request, unless the noncitizen is in removal proceedings, in which case the certification shall be processed within 14 days of request." Penal Code § 697.10(h).

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## **ENFORCEMENT OF IMMIGRATION LAWS**

The purpose of this order is to establish policies regarding the San Francisco Police Department's role in the enforcement of immigration laws and cooperation with U.S. Immigration and Customs Enforcement ("ICE"), U.S. Customs and Border Protection ("CBP") or successor agencies whose role is to enforce immigration laws, in conformity with state and federal laws and San Francisco Administrative Code Chapters 12H and 12I.

### **I. POLICY.**

It is the policy of the San Francisco Police Department to foster respect and trust between law enforcement and residents, to protect limited local resources, to encourage cooperation between residents, City officials, and law enforcement, and to ensure community security. It is also Department policy, consistent with its obligations under state and federal law, to adhere to San Francisco Administrative Code Chapters 12H and 12I. These Chapters generally prohibit the use of City resources to assist in the enforcement of federal immigration laws, except as required by federal or state law.

### **II. STATE AND LOCAL LAW.**

In accordance with Chapter 12H and state law, members of the Department shall, in performing their official duties, adhere to all of the following:

- A. DETENTION:** Members shall not stop, question, or detain any individual solely because of the individual's national origin, foreign appearance, inability to speak English, or immigration status (also see DGO 5.03, Investigative Detentions). Members shall not inquire into an individual's immigration status.
- B. DOCUMENTS:** In the course and scope of their duties e.g., traffic enforcement, investigations, and taking reports, members shall not require individuals to produce any document to prove their immigration status.
- C. ASSISTING ICE/CBP:** Members shall not cooperate with or assist ICE/CBP in any investigation, detention, or arrest procedures, public or clandestine, where in any such instance the purpose is enforcing federal immigration laws.



**D. INFORMATION GATHERING/DISSEMINATION FOR IMMIGRATION ENFORCEMENT PURPOSES:**

- 1) **Release Status/Confidential Information for immigration enforcement purposes.** Members shall not request information about, or disseminate information, regarding the release status of any individual or any other confidential, identifying information such as home, work, or family or emergency contact information, except as required by federal or state law.
- 2) **Services.** The Department shall not include on any application, questionnaire, or interview form it uses in relation to benefits, services, or opportunities provided by the City and County of San Francisco, any questions regarding immigration status other than those required by federal or state law.

**E. ICE/CBP DETAINERS/ADMINISTRATIVE (CIVIL) WARRANTS:**

Members shall not arrest or detain an individual, or provide any individual's personal information to a federal immigration officer, solely on the basis of an administrative (civil) warrant, prior deportation order, or other civil immigration document that only addresses alleged violations of the civil provisions of immigration laws. Members shall not place an administrative (civil) immigration hold or detainer on an individual who is in custody. National Crime Information Center ("NCIC") or California Law Enforcement Telecommunication System ("CLETS") warrant responses currently make clear whether the warrant is administrative (civil) or criminal.

Members shall adhere to all of the following when reviewing or examining outstanding warrants in the NCIC or CLETS system. Members:

- 1) Shall contact the Sheriff's Central Warrant Bureau ("CWB") to confirm any warrant before taking action on the warrant.
- 2) Shall not enforce federal administrative (civil) warrants for arrest (currently Department Homeland Security ("DHS") Form I-200) or for removal/deportation (currently DHS Form I-205).
- 3) Shall not enforce Administrative Immigration Detainer – Notice of Action (currently DHS Form I-247A).
- 4) May enforce criminal warrants after consulting with CWB and confirming the criminal warrant.
- 5) Shall record the name of the individual from CWB staff who confirmed the criminal warrant in the incident report. (See DGO 6.18, Warrant Arrests.)

### **III. PROVIDING EMERGENCY ASSISTANCE TO ICE/CBP.**

- A. ICE/CBP REQUESTS FOR EMERGENCY ASSISTANCE:** Members may provide emergency assistance to ICE/CBP to the same extent members would respond to emergency assistance to any other law enforcement agency. For example, members may provide emergency assistance when the member determines there is an emergency posing a significant and immediate danger to public safety or to the ICE/CBP agents.
- B. DUTIES OF MEMBERS:** Members providing emergency assistance to ICE/CBP shall immediately notify their supervisor and complete an incident report describing the reasons for their assistance.
- C. DUTIES OF SUPERVISORS:** When notified that a member is providing emergency assistance to ICE/CBP, supervisors shall immediately respond to the location and ensure that such assistance is warranted.
- D. TRANSPORTATION:** Members shall not assist ICE/CBP in transporting individuals suspected solely of violating federal immigration laws.
- E. ASSISTANCE:** Members shall not provide assistance to ICE/CBP agents for routine ICE/CBP operations, investigations, or raids. If ICE/CBP requests assistance that does not amount to an emergency as outlined in this section, members shall follow the protocols listed for Interagency Operations. (See DGO 5.14, Interagency Operations.)

### **IV. ASSISTING OTHER LAW ENFORCEMENT AGENCIES AND FOREIGN GOVERNMENT.**

- A. INTERAGENCY OPERATIONS:** If ICE/CBP requests assistance with a planned, unplanned, or spontaneous operation, members must obtain approval from the member's Assistant Chief. (See DGO 5.14, Interagency Operations.)
- B. JOINT CRIMINAL OPERATIONS:** Members may continue to collaborate with other law enforcement agencies, with approval of the member's Assistant Chief, to protect public safety and participate in joint criminal investigations that are permitted under Department policy or applicable city or state law. When a member becomes aware that the criminal investigation involves the enforcement of immigration laws, the member shall:
  - 1) Notify a Supervisor; and
  - 2) Cease operations if doing so would not pose a risk to the officers or the public; and
  - 3) Suspend Interagency Operations.

**DGO 5.15**  
**Rev. 07/05/17**

**C. ASSISTING FOREIGN GOVERNMENT:** Members shall not assist or cooperate with any investigation, surveillance, or gathering of information conducted by foreign governments, except for cooperation related to an alleged violation of City and County, State, or Federal criminal laws. (See DGO 8.10, Guidelines for First Amendment Activities.) Any assistance or cooperation with a foreign government must be approved by the member's Assistant Chief. (See DGO 5.14, Interagency Operations.) Members requesting approval of the Interagency Operation shall notify the Officer-In-Charge ("OIC") of the Special Investigations Division ("SID") who will evaluate whether the U.S. State Department should be notified of the assistance or cooperation.

**V. DEPARTMENT BULLETINS.** Department Bulletins describing current versions or relevant examples of DHS forms and the most current samples of NCIC or CLETS print-outs of both administrative (civil) and criminal warrants will be issued as necessary.

**VI. COMPLIANCE WITH OTHER STATE OR LOCAL LAWS.** Nothing in this General Order prohibits members from performing their duties in enforcing state and local laws.

References

DGO 5.03, Investigative Detentions  
DGO 5.14, Interagency Operations  
DGO 6.18, Warrant Arrests  
DGO 8.10, Guidelines for First Amendment Activities





# City of Seattle

## Privacy Principles

The City of Seattle collects personal information from the public so that we can provide many important services including community and critical infrastructure protection, 911 call response, waste management, electricity delivery and other services.

*We work to find a fair balance between gathering information to provide needed services and protecting the public's privacy.*

While privacy laws protect some personal information, the information we collect becomes a government record that others can ask to see through public records requests. Therefore, it is important for you to know when and how your personal information is collected, how we use it, how we disclose it and how long we keep it.

The following Privacy Principles guide the actions we take when collecting and using your personal information:

**1** **We value your privacy...**  
Keeping your personal information private is very important. We consider potential risks to your privacy and the public's well-being before collecting, using and disclosing your personal information.

**2** **We collect and keep only what we need...**  
We only collect information that we need to deliver City services and keep it as long as we are legally required and to deliver those services. Whenever possible, we tell you when we are collecting this information.

**3** **How we use your information...**  
When possible, we make available information about the ways we use your personal information at the time we collect it. We commit to giving you a choice whenever possible about how we use your information.

**4** **We are accountable...**  
We are responsible for managing your personal information in a manner that is consistent with our commitments and as required by law. We protect your personal information by restricting unauthorized access and by securing our computing resources from threats.

**5** **How we share your information...**  
We follow federal and state laws about information disclosure whenever we work with outside governmental agencies and in answering Public Disclosure Requests (PDRs). Business partners and contracted vendors who receive or collect personal information from us or for us to deliver City services must agree to our privacy requirements.

**6** **Accuracy is important...**  
We work to maintain and use accurate personal information for City business. When practical, we will work to correct inaccurate personal information. We also direct our partners and contracted vendors to follow the same guidelines.

### Purpose

The purpose of this policy is to set forth requirements City departments will observe when information systems or other forms and applications collect the public's [personal information](#) or Personally Identifiable Information (PII). This includes the collection of metadata collected from browsing web pages openly available to the public.

### Affected Departments

- All City departments

### Policy

#### *Privacy Principles and Privacy Statement*

City departments will adhere to the requirements of the [Privacy Principles](#) and [Privacy Statement](#) and will be held accountable for compliance to the commitments outlined in these documents. This includes obligations regarding:

- **Notice:** Providing notice about the collection, use and sharing of personal information at the time such information is collected. This includes instructions about opting out of this collection, whenever possible.
- **Retention:** Adhering to the [City data retention schedule](#) and disposing of or de-identifying information as outlined in this schedule.
- **Accountability:** Maintaining documentation, available for public review and third-party monitoring, to evidence compliance with our privacy practices.
- **Accuracy:** Providing individuals the opportunity to correct data inaccuracies.

#### *Privacy Toolkit*

The Privacy Program Manager and others, as appropriate, will review projects with potential privacy impacts and provide requirements and recommendations to mitigate those impacts. City departments will use the Privacy Toolkit [Insert link] for direction regarding City privacy policies, standards and the privacy review process. The review process includes completion of the following forms, as directed by the Privacy Program Manager:

- The [Privacy Threshold Analysis](#) form that documents information systems that handle the public's personal information or Personal Identifiable Information (PII) that are evaluated for potential privacy impacts.
- The [Privacy Impact Assessment](#) (PIA) about information systems that are identified through the Intake Form review process as requiring further review by the Privacy Program Manager and others.

 <b>City of Seattle</b>	<b>Privacy Policy</b>
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### ***Review***

The Privacy Program Manager will review this policy annually. Any revisions to this policy will be released in the first quarter of the year.

### ***Direction***

This policy will be added to the Department of Information [Technology Policies and Standards](#) webpage.

### ***Guidance***

- City of Seattle [Privacy Principles](#)
- City of Seattle [Privacy Statement](#)
- [NIST 800-53 R4](#) (Appendix J: AR-2, AR-5, TR-1)

### ***Exceptions***

- Exceptions to this policy, unless expressly covered by separate ordinance, must be submitted via the [Exception Process](#).

### ***Document Control***

**Owning Organizations:** Department of Information Technology, Privacy Program.

**Reviewed/ Accepted/ Adopted:** By the Technology Board.

**Update Cycle:** To be reviewed annually by the Privacy Program for possible changes; amendments will be reviewed, accepted and approved by the Technology Board, or considered for change at any time, if requested.

### **Record of Versions:**

Version	Content	Status/Comments
V 1.0	Initial Draft by Ginger Armbruster	Drafted for review July 9, 2015
	Final Version	Date accepted: 7/21/2015

Authorized this 21day of 2015 by:

Michael Mattmiller  
 Chief Technology Officer  
 City of Seattle