



CITY OF DALY CITY

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September 12, 2017

Honorable Leland Davis, III
Judge of the Superior Court
c/o Charlene Kresevich
Hall of Justice
400 County Center, 2nd floor
Redwood City, CA 94063-1655

Re: A Delicate Balance: Privacy vs. Protection

Dear Judge Davis,

We are in receipt of the Grand Jury's final report "A Delicate Balance: Privacy vs. Protection." Pursuant to your request for response, the Daly City, City Council held a public meeting on September 11, 2017 and approved this response. The City of Daly City responds to the Grand Jury's findings, conclusions and recommendations as follows:

Findings:

F1. The County of Santa Clara passed an ordinance in 2016 requiring agencies to adopt policies related to any surveillance technology before such technology is acquired or activated. The ordinance also requires agencies to issue annual reports explaining how the technologies are used and what they discovered.

Response: The City neither **agrees nor disagrees** with this finding. The City is not intimately familiar with local ordinances in other jurisdictions regarding surveillance technology and does not have enough information to comment on this finding.

F2. The County and cities in San Mateo County have not enacted any ordinances governing their acquisition and use of surveillance technology, or the accessibility, management, or retention of the information acquired.

Response: The City **agrees** it has not enacted any ordinances governing the acquisition and use of surveillance technology, or the accessibility or management of the information acquired. However, the City has signed a records sharing and data retention agreement for warehousing

data with the Northern California Regional Intelligence Center (NCRIC). This agreement ensures that data warehoused within the NCRIC is subject to federal standards and guidelines for data retention and sharing that are more stringent than state guidelines.

F3. The County and cities in San Mateo County do inform residents about the use of some surveillance tools (Automated License Plate Readers and Body Worn Cameras) at public forums and city council meetings:

- City or Town Council meeting or staff reports posted on website: Atherton, Burlingame, Daly City, East Palo Alto, Hillsborough, Menlo Park, Pacifica, Redwood City, San Bruno, San Carlos, San Mateo, South San Francisco
- Public meeting or Town Halls: East Palo Alto, Hillsborough, Menlo Park, Redwood City, San Carlos, Millbrae, Portola Valley, Ladera, and Emerald Hills.
- The City of Menlo Park mentioned also having used social media for this purpose.

Response: The City **agrees** that it informs residents about the use of surveillance tools in staff reports. The City is not intimately familiar with the practices in other jurisdictions regarding surveillance technology.

F4. With the exception of Burlingame, which borrowed ALPR technology, the cities and the San Mateo County Sheriff's Office have complied with the law requiring ALPR users to "conspicuously" post a link to the ALPR usage and privacy policy on their websites.

Response: The City **agrees** that it complies with the law requiring ALPR users to "conspicuously" post a link to the ALPR usage and privacy policy on their websites. The City is not intimately familiar with the practices in other jurisdictions regarding surveillance technology.

F5. With the exception of the City of San Mateo, the generic ALPR policies posted by cities and the Sheriff's Office do not provide specific information that is helpful to residents.

Response: The City **disagrees** with this finding and believes that the ALPR links provided on the Police Department web page are both specific and helpful to residents. The City is not intimately familiar with the practices in other jurisdictions regarding surveillance technology.

Recommendations:

R1. In addition to providing a conspicuous link to usage and privacy policies on operator websites (as required by law for ALPRs), all law enforcement agencies in the County should create an easily accessible and simply written information webpage by December 31, 2017, which lists the types of surveillance tools (such as ALPRs) and investigative tools (such as ShotSpotter and body worn cameras) utilized by the agency. At a minimum, such a webpage shall include these details about each tool:

- What is the use and purpose of the technology, such as assisting in ongoing criminal investigations, locating missing children, or locating stolen vehicles
- Who is authorized to collect or access the data collected
- How the system is monitored to ensure that the data are secure
- Who owns the surveillance technology
- What measures were taken to ensure the accuracy of the data
- How long the data will be retained

Response: This recommendation will be implemented in part. San Mateo County Law Enforcement Agencies have already, by law, posted privacy policy information on their websites as related to ALPRs. The City will expand its ALPR privacy and usage policy to include additional electronic equipment where the release of such information does not unnecessarily jeopardize public safety and criminal investigations, and will place that information in a conspicuous location on its website by December 31, 2017.

R2. All law enforcement agencies in the County shall increase the number and types of opportunities for community members to voice support for or opposition to any proposed addition of new surveillance technologies including, but not limited to:

- Surveying residents to better understand their concerns about law enforcement's use of surveillance tools and address those concerns in public meetings, Town Halls, Neighborhood Watch sessions and other local gatherings.
- Using social media platforms such as Nextdoor© to keep residents engaged and informed about surveillance technologies and its uses in your community.

Response: The City believes this request to be reasonable for tools used in the conduct of basic police business such as Body Worn Cameras and ALPRs. Furthermore, the City recognizes that not all community members utilize internet and social media, and will seek opportunities at public meetings, including neighborhood association meetings, neighborhood watch gatherings, and publicly noticed city meetings to share this information.

However, this recommendation will not be implemented for law enforcement investigative tools and techniques primarily used for complex criminal investigative purposes. It is neither appropriate nor reasonable for law enforcement agencies to publicly explain and

expose certain critical investigative techniques or technology in any type of public forum. Nor would law enforcement agencies seek public input or conduct feedback surveys from the public on the specialized tactics and techniques employed within the criminal justice system designed to detect criminal activity. Checks and balances already exist through the legal system regarding the use of these techniques. Certain specialized electronic tools are precisely aimed at members of criminal organizations, career criminals, and those under investigation for violent crimes, with minimal to no impact to the law-abiding public.

Public discussion of law enforcement technologies and investigative techniques would be detrimental to ongoing criminal investigations, compromise capabilities to protect communities, and allow individuals involved in criminal activity to more easily avoid detection.

All agencies in San Mateo County have signed a data and records sharing agreement with the Northern California Regional Intelligence Center (NCRIC) that places data in a secure repository located in a federal facility subject to federal and state statutes and policies addressing access, storage, and disclosure.

R3. Staff shall bring to the city or town council (in the case of a police department or police bureau) or the Board of Supervisors (in the case of the Sheriff's Office) a policy or ordinance for consideration at a public meeting by December 31, 2017. Such ordinances or policies should require, at a minimum:

- Plans to acquire new surveillance technology be announced at public meetings and other forums to ensure that the community is aware and engaged when new technology is under consideration.
- Any "use policies" related to surveillance technology be readily available and easy to access on the city or County websites.
- Oversight and accountability be supported by posting periodic reports on the effectiveness of the surveillance tools used in the community.

Response: Existing law requires that law enforcement agencies provide information to local governing bodies when acquiring certain new technologies. Law enforcement agencies make policies that govern the use of our basic police surveillance tools and technologies publicly available.

This recommendation will not be implemented because it is not warranted or reasonable. The recommendation contains obstacles that would limit law enforcement's ability to adapt and evolve to criminal activity and would compromise the safety and security of residents. Law enforcement agencies are unable to wait for regularly scheduled public meetings of their governing bodies while in pursuit of criminals and crimes in progress. Existing state law protects law enforcement agencies from having to disclose investigative, intelligence and security records under the California Public Records Laws.

Government Code 6254 (f) recognizes the need for discretion and protects law enforcement agencies from disclosing investigative and tactical information that would compromise our crime fighting capabilities. Existing laws also prohibit the release of information derived from, or related to the security of our technology systems specifically to ensure those upholding and protecting the public are not compromised.

Under California Penal Code 1546 – 1546.4, known as the Electronic Communications Privacy Act, law enforcement is required to obtain court orders related to electronic communications intercept surveillance under Penal Code 629.50, pen register of trap and trace device under Penal Code 630, and for electronic tracking devices court orders are required under Penal Codes 1524 and 1534.

The City of Daly City appreciates the opportunity to provide written responses to the San Mateo County Civil Grand Jury Report “A Delicate Balance: Privacy vs. Protection.”

Should the Grand Jury require any additional information, please contact me directly at 650-991-8127.

Sincerely,

A handwritten signature in blue ink that reads "Patricia E. Martel". The signature is fluid and cursive, with the first name being the most prominent.

Patricia E. Martel
City Manager

cc: City Council
Annette Hipona, City Clerk
Rose Zimmerman, City Attorney