

Amended and Posted on 09/5/2017

September 7, 2017

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

A DELICATE BALANCE: PRIVACY VS. PROTECTION

Dear Honorable Leland Davis, III:

This letter is in response to the 2016/2017 Grand Jury report of July 12, 2017, which contained findings that pertain to the City of Brisbane. Listed below are the Jury's findings and recommendations followed by the City of Brisbane response. The Brisbane City Council reviewed and approved the below recommendations at a public hearing on September 7, 2017. The City of Brisbane responds to the Grand Jury's findings, conclusions and recommendations as follows:

The San Mateo County 2016-2017 Grand Jury makes the following findings to the City Councils of the cities of San Mateo County:

- 1. 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 of Brisbane Agrees with the finding. We have no reason to disagree with the information contained in the Grand Jury's report.

- 2. 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 of Brisbane Agrees with the finding. We have no reason to disagree with the information contained in the Grand Jury's report.

However, the City of Brisbane 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.

- 3. 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, Sheriff's Office**

- **The City of Menlo Park mentioned also having used social media for this purpose.**

RESPONSE: The City of Brisbane Agrees with the finding. We have no reason to disagree with the information contained in the Grand Jury's report.

- 4. 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 of Brisbane Partially Agrees with the finding. Along with Burlingame, the City of Brisbane has only borrowed ALPR technology and did so prior to the legislation requiring the posting of ALPR policies. As such we have not posted any information on our website regarding ALPR. Other than that fact, we have no reason to disagree with the information contained in the Grand Jury's report.

- 5. 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 of Brisbane understands what is represented in the Grand Jury Report. The City is not intimately familiar with the practices in other jurisdictions regarding surveillance technology.

The San Mateo County 2015-2016 Grand Jury makes the following recommendations to the City Councils of the cities of San Mateo County:

- 1. The Grand Jury recommends 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. The City of Brisbane will post the requested information for applicable surveillance tools 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.

- 2. 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 of Brisbane will implement this recommendation for tools used in the conduct of basic police business such as Body Worn Cameras and ALPRs. Furthermore, the City of Brisbane 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.*

This recommendation cannot be fully implemented for certain law enforcement investigative tools and techniques primarily used for complex criminal investigations without jeopardizing the ability to gather evidence for the serious crimes in question. Therefore, the City will not hold public forums or conduct similar outreach on certain investigative techniques or technology where doing so might compromise critical investigations. Checks and balances already exist through the legal system, including various warrant requirements and Fourth Amendment protections, 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. The City does and will continue to take steps to ensure that the informational privacy of persons who are not suspects or involved in such investigations will be respected.

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.

3. 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.*

However, this recommendation will not be implemented in full because it creates obstacles that could limit law enforcement's ability to adapt and evolve to criminal activity and could compromise the safety and security of residents. Law enforcement agencies may, under certain circumstances, be unable to wait for regularly scheduled public meetings of their governing bodies while in pursuit of criminals and crimes in progress.

Furthermore, existing protections for both personal information and investigatory activities are adequate to address the Grand Jury's concerns. Existing state law, in the form of Government Code 6254(f), exempts investigative, intelligence, and security records from disclosure under the California Public Records Laws. This exception to disclosure protects the integrity of investigations and the criminal legal process, as well as allowing jurisdictions to withhold certain information regarding individuals acquired as a result of an investigation. It is not absolute, however, and the public retains

adequate access to information about police activities to be able to monitor a department's overall approach.

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

In addition to the guarantees of the Fourth Amendment, California law specifically protects certain kinds of personal information. For example, 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.

In sum, the City remains committed to an open and public process regarding law enforcement techniques wherever it is feasible and will not compromise sensitive investigations into serious criminal activity. In those contexts in which a full public discussion is not possible, the City nonetheless rigorously adheres to existing legal constraints to ensure that both public safety and personal privacy are protected.

On behalf of the City of Brisbane, I would like to thank the members of the Grand Jury for their efforts.

Sincerely,

Lori S. Liu
Mayor, City of Brisbane

CC: San Mateo County Grand Jury
City Clerk