



County of San Mateo

Inter-Departmental Correspondence

Department: COUNTY MANAGER

File #: 16-637

Board Meeting Date: 10/17/2017

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: John L. Maltbie, County Manager

Subject: Board of Supervisors' Response to the 2016-2017 Civil Grand Jury Report, "A Delicate Balance: Privacy vs. Protection"

RECOMMENDATION:

Approve the Board of Supervisors' Response to the 2016-2017 Civil Grand Jury Report, "A Delicate Balance: Privacy vs. Protection."

BACKGROUND:

On July 12, 2017, the 2016-2017 San Mateo County Civil Grand Jury issued a report titled "A Delicate Balance: Privacy vs. Protection." Recommendations Follow-Up." The Board of Supervisors is required to submit comments on the findings and recommendations pertaining to the matters over which it has some decision making authority within 90 days. The Board's response to the report is due to the Honorable Leland Davis, III no later than October 24, 2017.

DISCUSSION:

The Grand Jury made five findings and three recommendations in its report. Each finding and recommendation, along with County staff's recommended response, is set forth below:

FINDINGS

Finding 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 information necessary to either agree or disagree with this finding is not contained within the County Manager and Sheriff's Office's files.

Finding 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 information necessary to either agree or disagree with this finding is not contained within the County Manager and Sheriff's Office's files. However, the Sheriff's Office 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 state policies for data retention and sharing.

Finding 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 information necessary to either agree or disagree with this finding is not contained within the County Manager and Sheriff's Office's files. However, the Sheriff's Office informs residents about the use of surveillance tools at public forums at community and city council meetings.

Finding 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 information necessary to either agree or disagree with much of this finding is not contained within the County Manager and Sheriff's Office's files. The Sheriff's Office 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.

Finding 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 helpful to residents.

Response:

The Sheriff's Office does not agree with this finding and believes that the policy posted on the Sheriff's Office web page is both specific and helpful to residents. The policy describes

authorized purposes, restrictions on collection of data, training, audits, data quality and accuracy, security of data and retention of data.

RECOMMENDATIONS

Recommendation 1:

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:

Portions of this recommendation have already previously been implemented in part and portions will be implemented in part, but portions of the recommendation will not be implemented. The San Mateo County Sheriff's Office has already posted privacy policy information on its website as to ALPRs. The Sheriff's Office 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.

Recommendation 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 Sheriff's Office will not implement this recommendation because it views its current robust efforts to obtain community input, e.g., as to ALPRs, as having been sufficient and intends to continue its robust efforts if it ever begins using new technologies. The Sheriff's Office recognizes that not all community members utilize internet and social media, and will continue to seek opportunities at public meetings, including neighborhood association meetings,

neighborhood watch gatherings, and publicly noticed meetings to share this information.

This recommendation will also not be implemented for law enforcement investigative tools and techniques primarily used for complex criminal investigative purposes. It is not always appropriate or reasonable for law enforcement agencies to publicly explain and expose certain critical investigative techniques or technology. 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.

Recommendation 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 can require 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 when they are public records.

But this recommendation will not otherwise be implemented because it is not warranted or reasonable. The recommendation contains obstacles that would limit law enforcement's ability to quickly adapt and evolve to criminal activity.

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 confidentiality and protects law enforcement agencies from disclosing investigative and tactical information that would compromise 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.

It is also of note that, law enforcement agencies are already required to obtain court orders: under California Penal Code 1546 - 1546.4 related to specified electronic communications; under Penal Code 629.50, for wire and other specified electronic communications; and for electronic tracking devices under Penal Codes 1524 and 1534. Further disclosure of advanced investigative technology and techniques would limit law enforcement's ability to adapt and evolve to criminal activity and would compromise the safety and security of residents of San Mateo County.

FISCAL IMPACT:

There is no Net County Cost associated with accepting this report.