

ALAMEDA COUNTY SURVEILLANCE TECHNOLOGY WORKGROUP

Friday, February 16, 2018
12:00 p.m. – 1:30 p.m.

Chair: Nancy E. O'Malley –District Attorney

Members

Alison Bernstein
Fred Bobbitt
Matt Cagle
Peter Coletto
Marcus Dawal
Chuck Denton
Jeremy Gillula
Brian Hofer
Rich Lucia
Al Mendall
Linda Tangren
Donna Ziegler

Location: **D.A. Consumer, Environmental and Worker Protection Division**
7677 Oakport Street, Suite 650
Oakland, CA 94612

MINUTES

I. Call to Order and Approval of Minutes from January 19, 2018 meeting [Attachment](#)

Nancy O'Malley, Alameda County District Attorney called the meeting to order and the Workgroup went around the room with introductions. The Workgroup accepted and approved the Minutes of 1/9/18 Surveillance Technology meeting as written.

II. Presentation on Santa Clara County Surveillance Technology Ordinance

Presenters: Ken Ryken, District Attorney Office, Tom Madigan, Alameda County Sheriff's Office and Scott Dickey, County Counsel

•Process:

Ken Ryken had a discussion with Chief Assistant District Attorney Jay Boyarsky and Assistant District Attorney Brian Welch who headed the implementation process in Santa Clara County. They are not adverse to the concept of a surveillance technology ordinance despite challenges in implementation.

Tom Madigan reported difficulty in compliance with the policy due to slowing of law enforcement investigation process, according to the Santa Clara Assistant Sheriff and Under Sheriff.

Scott Dickey spoke with Santa Clara County Counsel Bob Coelho and Michael Leon Guerrero who were involved in the process.

Supervisor Joe Simitian, District Five, originally observed cameras being installed in the County office building and inquired about their purpose, access to footage, etc., and suggested that there ought to be policies in place regarding them.

The suggestion led to a Draft Policy that the District Attorney believes was enacted before it could be fully explored. The working draft is nearly identical to what was originally presented. It was circulated to County Counsel, the DA, and the Public Defender's office for comments. Per the Policy, each department is required to submit Impact Reports, Use Policies and Annual Reports regarding surveillance technology.

Santa Clara County Counsel received a draft of the ordinance from ACLU, which they amended to comply with California Law. The Board of Supervisors included the 25.303 exception at the end of the ordinance.

- **Challenges according to the Santa Clara County District Attorney Office and the Santa Clara County Sheriff's Office:**

Surveillance technology according to Santa Clara Policy is very broad per the DA, requiring disclosure of all available technology to County Counsel for determination on whether or not the technology is in scope. Of those submitted, items determined to be within scope include any hand held cameras, tape recorders, microphones, electronic binoculars, and cell phone technology (cell phone image captures seized as evidence pursuant to a warrant) used in the course of an investigation. Seven items determined to be within scope of the policy were submitted to Supervisor Simitian, who deemed them insufficient. The DA concern is full record disclosure regarding the annual reports.

According to Santa Clara Sheriff's Office thirty separate Use Policies and Impact Reports were submitted to Supervisor Simitian with nothing in approved form at this point. The District Attorney Investigator's Association has filed a labor complaint against the County saying there was no Meet and Confer with their Union with regard to the new policies. Among DA concerns: (1) a violation of the ordinance is prosecuted as a misdemeanor and the DA does not want to be in the position of prosecuting its own Inspectors for a misuse of policy; and (2) until there is cohesive training on items that fall within the policy, it is unfair and there are questions regarding their rightful use. They are suggesting another year may be needed before it actually results in a clear policy.

The reporting requirements are burdensome.

There were "teething problems" with the ordinance. Requiring revisions due to unintentional consequences. An amendment was adopted to the ordinance to make certain exclusions at the 1/23/18 Board of Supervisors Meeting.

DA Investigator's Association labor concern was deemed premature and did not progress, however future litigation is possible when there is conflict.

- **Challenges according to the Santa Clara County District Attorney Office and the Santa Clara County Sheriff's Office:**

The County needs to stick to the prospective and not look backward to existing technology when writing future policy. According to Santa Clara Policy the County shall seek Board Approval at a properly notice meeting before: (1) seeking funds for surveillance technology; (2) acquiring new technology; (3) using surveillance technology for any purpose in a manner or location not previously approved by the board; and (4) entering into an agreement with a non-County entity to share or otherwise use their surveillance technology. Before County funds can be used to acquire new technology, there has to be a full and fair public hearing with open disclosure and public comment.

Santa Clara County warned that the department should not assume compliance with the ordinance will be cost neutral. If a policy is written it should include some statement that if departments incur additional expenses as a result of the policy, they have the ability to go back to the board to request augmentation to their budget at County cost to support that.

As the Policy works in Santa Clara County the Board is obligated to do a cost benefit analysis with any technology to say whether the cost of the technology outweighs the benefits to public safety.

General policies regarding surveillance, audits, oversight and the discipline associated with them would be sufficient instead of this ordinance.

III. Identify and Assess Examples of Potential Surveillance Technology Reporting Documents

- **Use Policies**
- **Impact Reports**
- **Annual Reports**

[Attachment 1](#)

[Attachment 2](#)

[Attachment 3](#)

The Workgroup reviewed and discussed documents from Santa Clara County: Proposed Surveillance Use Policy for the Integrated Helicopter Mapping System, Anticipated Surveillance Impact Report for the Integrated Helicopter Mapping System and Annual Surveillance Report for an Integrated Helicopter Mapping System.

Brian Hofer provided the Workgroup with Piedmont Police Department Automatic License Plate Readers Stat Sheet.

IV. Other Business

None

V. Next Steps

Nancy O'Malley, District Attorney requested that the Workgroup be prepared to discuss the scope of surveillance equipment and the oversight of accountability.

PUBLIC COMMENT

None

ADJOURNED

The meeting was adjourned until Friday, March 23, 2018