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WILLIAM SCOTT
CHIEF OF POLICE

September 9, 2022

Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: SFPD Response to the Bar Association of San Francisco's Opposition to the SFPD Non-City Entity Surveillance Camera Policy Proposal

Dear Members of the Board of Supervisors:

The San Francisco Police Department and the Board of Supervisors received an opposition letter relating to [our proposed surveillance technology policy \(STP\)](#) from the Bar Association of San Francisco (BASF) on September 1, 2022. The Department is interested in clarifying areas outlined in the letter to provide clear understanding of our proposed policy.

Pursuant to SF Admin Code 19B.2, the Department is seeking BOS approval for one of the current ways in which we utilize surveillance technologies as defined by SF Admin Code 19B.1. The Department has presented our STP for non-city entity surveillance camera use at public hearings as required through the Privacy Surveillance Advisory Board (PSAB) who, after two hearings, recommended to move the STP to the Committee on Information Technology (COIT). After two public hearings in front of COIT, where additional amendments were accepted, COIT recommended the STP move forward to the Rules Committee for approval. We are now scheduled for our third hearing in front of the Rules Committee. The Department requests thoughtful review of our response and proposed STP.

BASF alleges that SFPD is promoting "mass surveillance".

Mass surveillance is indiscriminate surveillance that collects, processes, generates, analyzes, retains, or stores information about large numbers of people, without any regard to whether they are suspected of wrongdoing. SFPD has proposed an authorized use for temporary live monitoring of significant events with public safety concerns which includes a prohibition to record, store, or retain this data unless a misdemeanor or felony crime is witnessed. In those situations, SFPD would then request historical footage to aide in a criminal investigation, where it would be tagged as evidence. The only concern SFPD has is criminal activity and public safety.

BASF mistakenly conflates SF Administrative Code 19B requirements with the Collaborative Reform Initiatives by stating that the U.S. Department of Justice did not recommend a surveillance policy.

The San Francisco Board of Supervisors passed SF Admin Code 19B in 2019. This ordinance requires all city departments to post their current inventory of surveillance tools, as defined by 19B.1, and present policies (STPs) and impact reports (SIRs) through a prescribed process to gain BOS approval for continued use or future procurement. This process is separate and apart from the 2016 U.S DOJ recommendations and reform measures taken on by SFPD. SFPD's STP proposal is a compliance measure relating to a City and County of San Francisco law. As far as we know, the U.S. DOJ has not submitted any concerns with how SFPD collects evidence during a criminal investigation.

BASF claims that "SFPD is proposing changes to SF Administrative Code 19B that may give rise to litigation and jeopardize criminal proceedings in certain cases."

SFPD is in no way proposing changes to SF Admin Code 19B through this policy. SF Admin Code 19B prescribes a public process for each city department to propose impact reports (SIRs) and policies (STPs) that coincide with SF Admin Code Sections 19B.1-19B.4. The non-city entity surveillance camera policy is a STP that was submitted and developed through the Privacy Surveillance Advisory Board (PSAB), the Committee of Information Technology (COIT) and the Rules Committee. This process will be replicated for each item listed here <https://www.sanfranciscopolice.org/your-sfpd/policies/19b-surveillance-technology-policies>.

Several departments, including SFPD, received Board of Supervisor [approvals for several types of surveillance tools in July of 2021](#). None of these approvals amended SF Admin Code 19B and as this STP submission follows the same prescribed process, it does not have the authority to be used as a mechanism to propose changes to SF Admin Code 19B.

Separately, using video footage as an aide to criminal investigations has been a standard law enforcement practice since surveillance cameras became available. Specifically, SFPD has been utilizing video footage and systems via consent or warrant for over 20 years. Video footage provides objective, direct, and circumstantial evidence of the crime and notably, can contain exculpatory evidence in many cases. We are unaware of any case where the collection of historical or live footage has jeopardized criminal proceedings. In fact, failing to collect evidence of a crime often compromises the criminal proceedings. Finally, to the extent a defendant would want to challenge the collection of video footage, the defendant would need standing to do so and a judge would make that final determination.

BASF infers that SFPD's policy (STP) should depend on seeking expedited warrants in lieu of requesting consent from surveillance camera owners.

Consent is a recognized warrant exception. Individuals and business owners in San Francisco purchase their own surveillance systems for different reasons. One major reason is to provide footage of a crime to law enforcement to assist in the identification, investigation, arrest, or prosecution of an individual or individuals that commit misdemeanor or felony crimes in or around their home or place of business.

BASF's suggestion would remove the right of San Francisco victims or witnesses, whether they are business owners or residents, to consent or to volunteer video footage that contains evidence of a crime. Many businesses have policies prohibiting their employees from volunteering footage. Also, the Department has experienced individuals who do not consent to provide footage from their system when SFPD submits a request. In those cases, SFPD will and has sought a warrant. But more often, individuals and businesses do consent or volunteer to provide historical footage which allows SFPD to expedite an investigation.

To confirm, the SFPD STP stipulates that video footage will be received via "consent, search warrant or other court order." We are hopeful that BASF understands that San Franciscans should not be prohibited from having autonomy to utilize the surveillance equipment that they own or manage, the way the individual or business sees fit.

BASF states that this policy "radically expands SFPD surveillance capabilities."

Prior to SF Admin Code 19B, SFPD routinely requested access to live footage or historical footage relating to criminal activity from businesses and individuals throughout the city. This policy affirms and codifies this process, required by SF Admin Code 19B.2(a)(4) & (5), as well as implements new guardrails including Captain-rank approval, clear timeline limitations for temporary live monitoring and public reporting (not currently required as the STP has yet to be approved). The STP simply provides clear standardized processes for officers to comply with and provides a public policy allowing general public awareness of SFPD authorized uses and prohibitions. The benefit SF Admin Code 19B extends to the public is an awareness of all city department use of surveillance tools. The proposed STP does not radically expand SFPD's capabilities but instead radically expands the public's awareness of SFPD's use of technology during criminal investigations.

BASF claims that the proposed STP "encroaches on the rights of San Franciscans to all of their daily activities, whether to demonstrate in public, organize to do so, or visit their doctor, meet with a friend whether downtown or near public housing, attend school, or earn a paycheck, without fear of police surveillance."

This claim by BASF is irresponsible and misleading. The authorized uses proposed in the STP are clearly related to criminal activity and public safety concerns relating to significant events. To be clear, San Francisco law does not prohibit businesses and individuals from owning surveillance cameras that may capture residents and visitors on public streets where there is a decreased expectation of privacy. This SFPD STP does not include an authorized use to watch, track, retain or analyze peaceful and lawful activities carried out by San Francisco residents or visitors.

One of the prohibitions listed in the STP reads as follows: "SFPD is prohibited from accessing, requesting, or monitoring any surveillance camera live feed during First Amendment activities unless there are exigent circumstances or for placement of police personnel due to crowd sizes or other issues creating imminent public safety hazards. SFPD members are required to comply with SFPD Department General Order (DGO) 8.03 Crowd Control, DGO 8.10 Guidelines for First Amendment Activities and its annual audit requirements, and the SFPD Event Manual to

ensure the safety of those attending planned or spontaneous events.”

Another prohibition reads as follows: “SFPD is prohibited from seeking to obtain surveillance footage for purposes of enforcing prohibitions on reproductive care or interstate travel for reproductive care. Except as required by law, SFPD shall not share surveillance footage with any law enforcement agency for purposes of enforcing prohibitions on reproductive care or interstate travel for reproductive care. Unless legally required, SFPD will not share footage with non-California law enforcement agencies.”

SFPD authorized uses outlined in the STP only encroach on criminal activity either while taking place or after the fact. All the activities outlined by BASF are unrelated to the SFPD proposed authorized uses.

BASF claims that the STP “provides access to a network of cameras, from a central location, with no restrictions on, or even mention of, advanced software that will allow the government to track anyone, anywhere, so long as a camera has them in view.”

This is categorically false and has been publicly explained by SFPD at PSAB, COIT and Rules hearings. There is no central location or network for SFPD to access cameras that fall under this proposal. The requests SFPD will and have made to non-city entities or individuals, and as guided by the proposed STP, are incident based and as such require SFPD to make a request from the owner/operator/authorized user of the system, wait for consent or refusal (where SFPD may seek a warrant) to receive a copy of the footage or access to the system for temporary live monitoring from the authorized user. The STP clearly states that SFPD will present a “SFPD Form 468 consent to search form” to the owner/operator/authorized user of the system to confirm consent before receipt or access to any system and carves out many restrictions around the type of incident, occasion, monitoring time limitations, level of internal approvals required before a request can be made to a non-city entity, reporting requirements and a host of prohibitions around temporary live monitoring access and historical footage requests.

The STP does indeed mention advanced software and prohibitions around the use of facial recognition and biometric software. The data retained by SFPD is collected as evidence and is only shared with the entities identified in the STP data sharing section on p. 8 & 9 of the latest proposal. SFPD’s STP along with Evidence Code and other state and federal laws mandating evidence storage and retention, does not allow for sharing evidence of crimes to general government entities for purposes outside of criminal investigations or for tracking “anyone, anywhere, so long as a camera has them in view” as BASF suggests.

In conclusion, the SFPD is requesting to utilize video footage while still upholding the rights of individuals to ensure public safety for all. SFPD continues to make incident-based requests and does not and will not have a central location where SFPD officers can tap into a network of surveillance systems owned by non-city entities or individuals. The proposed STP simply affirms that individuals and businesses in San Francisco can choose to share their video footage relating to a criminal investigation with SFPD and assist the Department with addressing criminal activity in this city.

September 9, 2022

We are grateful to the members of PSAB, COIT, the Rules Committee and to the many members of the public who have called in to the hearings or have submitted letters in support or expressing concern. We look forward to the next Rules Committee hearing where the continued discussion directly relates to the actual content of our proposed STP.

Respectfully submitted,



WILLIAM SCOTT
Chief of Police

c: Police Commission