

BOARD of SUPERVISORS



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MEMORANDUM

TO: All City Department Heads via Sophia Kittler, Mayor's Office
Cheryl Leger, Administrator, Sunshine Ordinance Task Force
Lily Lang, Committee on Information Technology

FROM: Victor Young, Assistant Clerk
Rules Committee

A handwritten signature in black ink that reads "Victor Young".

DATE: September 11, 2019

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following substitute legislation on September 3, 2019:

File No. 190643

Ordinance amending the Administrative Code to implement the Privacy First Policy in Charter, Section 16.130, by creating an Office of Data Privacy under the City Administrator, headed by a Chief Privacy Officer ("CPO") with responsibilities for implementing the Policy; requiring City departments to provide information to the CPO regarding their collection, storage, sharing, and use of personal information to enable the CPO to provide guidance and recommendations to departments, and recommendations to the City Administrator, for implementing the Policy; authorizing the City Administrator to adopt rules and regulations to implement the Policy, and to delegate that authority to the CPO and the Purchaser; requiring the City Administrator to make periodic reports describing the City's implementation of the Policy; and authorizing the City Administrator rather than the Mayor to appoint the Chief Data Officer ("CDO") and shifting responsibilities for determining which data sets are appropriate for public disclosure from the CDO to the CPO.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Andres Power, Mayor's Office
Rebecca Peacock, Mayor's Office
Eddie McCaffrey, Mayor's Office

1 [Administrative Code - Implementing the Charter's Privacy First Policy]

2

3 **Ordinance amending the Administrative Code to implement the Privacy First Policy in**

4 **Charter, Section 16.130, by creating an Office of Data Privacy under the City**

5 **Administrator, headed by a Chief Privacy Officer (“CPO”) with responsibilities for**

6 **implementing the Policy; requiring City departments to provide information to the CPO**

7 **regarding their collection, storage, sharing, and use of personal information to enable**

8 **the CPO to provide guidance and recommendations to departments, and**

9 **recommendations to the City Administrator, for implementing the Policy; authorizing**

10 **the City Administrator to adopt rules and regulations to implement the Policy, and to**

11 **delegate that authority to the CPO and the Purchaser; requiring the City Administrator**

12 **to make periodic reports describing the City’s implementation of the Policy; and**

13 **authorizing the City Administrator rather than the Mayor to appoint the Chief Data**

14 **Officer (“CDO”) and shifting responsibilities for determining which data sets are**

15 **appropriate for public disclosure from the CDO to the CPO.**

16 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.

17 **Additions to Codes** are in *single-underline italics Times New Roman font*.

18 **Deletions to Codes** are in ~~*italics Times New Roman font*~~.

19 **Board amendment additions** are in double-underlined Arial font.

20 **Board amendment deletions** are in ~~Arial font~~.

21 **Asterisks (* * * *)** indicate the omission of unchanged Code

22 subsections or parts of tables.

23 Be it ordained by the People of the City and County of San Francisco:

24 Section 1. The Administrative Code is hereby amended by adding Chapter 22F,

25 consisting of Sections 22F.1, 22F.2, 22F.3, 22F.4, 22F.5, and 22F.6, to read as follows:

1 **CHAPTER 22F: OFFICE OF DATA PRIVACY**

2
3 **SEC. 22F.1. OFFICE OF DATA PRIVACY; CHIEF PRIVACY OFFICER.**

4 (a) Establishment of Office. There is hereby established the Office of Data Privacy, under the
5 authority of the City Administrator.

6 (b) Head of Office. The City Administrator shall appoint a Chief Privacy Officer for the City to
7 head the Office of Data Privacy, which shall include such officers and employees as are authorized
8 pursuant to the budgetary and fiscal provisions of the Charter. The Chief Privacy Officer shall serve
9 at-will under the City Administrator. For purposes of this Chapter 22F, where duties, functions, or
10 powers are assigned to the Chief Privacy Officer, the term "Chief Privacy Officer" shall include any
11 designee of the Chief Privacy Officer, unless stated otherwise.

12
13 **SEC. 22F.2. PRIVACY FIRST POLICY.**

14 (a) When considering the adoption of privacy-protective laws, regulations, policies, and
15 practices, and when exercising their responsibilities under this Chapter 22F, the Chief Privacy Officer,
16 Purchaser, and City Administrator, as applicable, shall be guided by the following principles derived
17 from the City's Privacy First Policy in Charter Section 16.130(e):

18 (1) Engage with and inform individuals and communities likely to be impacted by the
19 collection, storage, sharing, or use of their Personal Information prior to authorizing and prior to any
20 change regarding the collection, storage, sharing, or use of their Personal Information.

21 (2) Ensure that Personal Information is only collected, stored, shared, or used
22 pursuant to a lawful and authorized purpose.

23 (3) Allow individuals to access Personal Information about themselves that has been
24 collected, and provide access and tools to correct any inaccurate Personal Information.

1 (4) Solicit informed consent to the collection, storage, sharing, or use of Personal
2 Information, and provide alternative and equal access to goods and services for those who deny or
3 revoke consent.

4 (5) Discourage the collection, storage, sharing, or use of Personal Information,
5 including Personal Information that may identify an individual's race, religion or creed, national
6 origin, gender, sexual orientation, age, physical or mental disability, or other potentially sensitive
7 demographic information, unless necessary to accomplish a lawful and authorized purpose.

8 (6) De-identify data sets, when collected for research, statistical, or other analytical
9 purposes, thereby removing the ability to connect personal characteristics with specific individuals,
10 and implement technical safeguards to prevent re-identification of information.

11 (7) Adopt and make public, or cause to be made public, policies and practices for
12 responding to requests or demands for Personal Information from governmental entities.

13 (8) Allow individuals to move and organize throughout the City without being tracked
14 or located in a manner that subjects them to collection of Personal Information without their consent.

15 (9) Evaluate and mitigate bias or inaccuracy in the collection, storage, sharing, or use
16 of Personal Information, and anticipate potential bias in secondary uses of and algorithms used in
17 connection with Personal Information.

18 (10) Retain Personal Information for only as long as necessary to accomplish a lawful
19 and authorized purpose.

20 (11) Secure Personal Information against unauthorized or unlawful processing or
21 disclosure; unwarranted access, manipulation, or misuse; and accidental loss, destruction, or damage.

22 (b) For purposes of this Chapter 22F, "Personal Information" shall have the meaning derived
23 from Charter Section 16.130(d): any information that identifies, relates to, describes, or is capable of
24 being associated with, a particular individual. Personal Information includes, but is not limited to, an
25 individual's name, signature, social security number, physical characteristics or description, address,

1 geolocation data, IP address, telephone number, passport number, driver's license or state
2 identification card number, insurance policy number, education, employment, employment history,
3 bank account number, credit card number, debit card number, or any other financial information,
4 medical information, genetic and biometric data, or health insurance information.

5
6 **SEC. 22F.3. DUTIES AND FUNCTIONS OF CHIEF PRIVACY OFFICER.**

7 (a) The Chief Privacy Officer shall be responsible for overseeing the implementation of the
8 Charter's Privacy First Policy, Charter Section 16.130, and laws and regulations governing data
9 privacy; for performing any other functions related to data privacy as assigned by the City
10 Administrator; and for performing any other functions as provided by ordinance.

11 (b) The Chief Privacy Officer, in consultation with the City Attorney's Office as to legal issues,
12 shall provide guidance for City departments that is intended to aid in the implementation of the Privacy
13 First Policy.

14 (c) Data collection and reporting.

15 (1) The Chief Privacy Officer shall request information from all City departments
16 (defined broadly for purposes of this Chapter 22F to include all City offices and entities) on the data
17 they collect, the legal and programmatic basis for its collection, how it is stored and for how long, how
18 it is used, and with whom it is shared, and the names of any outside vendors used for data-related
19 functions, and such other information as the Chief Privacy Officer deems necessary or appropriate to
20 facilitate implementation of the Privacy First Policy. To aid in the gathering of this information, the
21 Chief Privacy Officer shall provide departments with a template or standard format for submitting the
22 requested data.

23 (2) Within six months of the request for information described in subsection (c)(1), each
24 department shall provide the information requested to the Chief Privacy Officer. The Chief Privacy
25 Officer may extend this deadline for one or more departments if the Chief Privacy Officer makes a

1 written determination, as to each such department, that the extension is necessary or appropriate. All
2 departments shall cooperate with the Chief Privacy Officer in their efforts to provide the data requested
3 under subsection (c)(1).

4 (3) After collecting the department reports, the Chief Privacy Officer shall review the
5 department data collected and send a composite report with findings to the City Administrator. The
6 Chief Privacy Officer shall recommend policies and procedures, as appropriate, to departments and to
7 the City Administrator, regarding the collection, storage, sharing, and use of personal identifying
8 information while taking into consideration each department's unique mission, subject matter
9 expertise, and legal obligations.

10 (4) The process for data collection and reporting as outlined in subsections (c)(1)-(3)
11 shall be repeated at least every three years.

12 (d) Within six months after a new City department is established, the Chief Privacy Officer
13 shall conduct a review of how data is collected, stored, shared, and used for the new department's
14 programs or projects. The Chief Privacy Officer shall thereafter inform the department of the privacy
15 risks, if any, associated with a program or project as well as ways to reduce or eliminate those risks.

16 (e) No information that is required to be reported or disclosed pursuant to this Chapter 22F
17 shall be reported or disclosed in a manner that would violate any applicable provision of federal, state,
18 or City law relating to privacy, or would interfere with a law enforcement investigation or other
19 investigative activity by an agency, or would compromise public safety.

20
21 **SEC. 22F.4. RULES AND REGULATIONS.**

22 (a) The City Administrator may adopt rules and regulations that are consistent with the
23 Charter and that implement the Privacy First Policy, including the privacy principles stated in Charter
24 Section 16.130(e).

1 (b) Such rules and regulations shall be adopted after a public hearing, preceded by 10 days'
2 notice on the City Administrator's website, at which members of the public have an opportunity to
3 comment. Substantial amendments of rules and regulations shall be subject to the same notice and
4 hearing requirements. The hearing requirement may be waived, or the time for public notice
5 shortened, if the City Administrator makes a written determination that such waiver or shortening of
6 time is necessary to serve the public interest.

7 (c) The City Administrator may delegate any powers under subsections (a) and (b) to the Chief
8 Privacy Officer, but those powers may not be delegated to a designee of the Chief Privacy Officer.

9 (d) The City Administrator may delegate powers under subsections (a) and (b) regarding
10 procurement to the Purchaser, but those powers may not be delegated to a designee of the Purchaser.

11
12 **SEC. 22F.5. REPORTS.**

13 Within one year of the effective date of this Chapter 22F, the City Administrator shall submit to
14 the Board of Supervisors and the Mayor a written report describing the City's implementation of the
15 Privacy First Policy. The City Administrator shall submit a subsequent report to the Board of
16 Supervisors and the Mayor within three years of the effective date of this Chapter 22F describing
17 implementation of the Privacy First Policy, and also addressing as appropriate the other matters
18 identified in Charter Section 16.130(g). Thereafter, the City Administrator shall submit a report to the
19 Board of Supervisors and the Mayor every three years as required by Charter Section 16.130(g).

20
21 **SEC. 22F.6. UNDERTAKING FOR THE GENERAL WELFARE.**

22 In enacting and implementing this Chapter 22F, the City is assuming an undertaking only to
23 promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an
24 obligation for breach of which it is liable in money damages to any person who claims that such breach
25 proximately caused injury.

1
2 Section 2. Chapter 12M of the Administrative Code is hereby amended by revising
3 Section 12M.1, to read as follows:
4

5 **SEC. 12M.1. DEFINITIONS.**

6 For the purposes of this Chapter, the following definitions shall apply to the terms used
7 herein.

8 * * * *

9 (e) "Private Information" shall mean any information that (1) could be used to identify
10 an individual, including without limitation name, address, social security number, medical
11 information, financial information, date and location of birth, and names of relative; or (2) the
12 law forbids any person from disclosing. "Private Information" shall also include Personal
13 Information as defined in Charter Section 16.130(d): any information that identifies, relates to,
14 describes, or is capable of being associated with, a particular individual. Personal Information
15 includes, but is not limited to, an individual's name, signature, social security number, physical
16 characteristics or description, address, geolocation data, IP address, telephone number, passport
17 number, driver's license or state identification card number, insurance policy number, education,
18 employment, employment history, bank account number, credit card number, debit card number, or any
19 other financial information, medical information, genetic and biometric data, or health insurance
20 information.

21 * * * *

22
23 Section 3. Chapter 22D of the Administrative Code is hereby amended by revising
24 Sections 22D.2 and 22D.3, to read as follows:
25

1 **SEC. 22D.2 CHIEF DATA OFFICER AND CITY DEPARTMENTS.**

2 (a) **Chief Data Officer.** In order to coordinate implementation, compliance, and
3 expansion of the City's Open Data Policy, the ~~Mayor~~ City Administrator shall appoint a Chief
4 Data Officer (CDO) for the City and County of San Francisco. The CDO shall be responsible
5 for drafting rules and technical standards to implement the open data policy, ~~and determining~~
6 ~~within the boundaries of law which data sets are appropriate for public disclosure. In making this~~
7 ~~determination, the CDO shall balance the benefits of open data set forth in Section 22D.1, with the~~
8 ~~need to protect from disclosure information that is proprietary or confidential and that may be~~
9 ~~protected from disclosure in accordance with law. Nothing in the rules and technical standards shall~~
10 ~~compel or authorize the disclosure of privileged information, law enforcement information, national~~
11 ~~security information, personal information, unless required by law. Nothing in the rules or technical~~
12 ~~standards shall compel or authorize the disclosure of information which is prohibited by law. The~~
13 Chief Privacy Officer, in consultation with the Chief Data Officer if and to the extent the Chief Privacy
14 Officer deems appropriate, shall determine which data sets are appropriate for public disclosure,
15 consistent with Administrative Code Sections 22F.3 and 22F.4. Nothing in the rules or technical
16 standards shall compel or authorize the disclosure of Personal Information, as defined in
17 Administrative Code Section 22F.2(b), that would violate any applicable provision of federal, state, or
18 City law relating to privacy, or would interfere with a law enforcement investigation or other
19 investigative activity by an agency, or would compromise public safety.

20 (b) The CDO's duties shall include, but are not limited to the following:

21 (1) Draft rules and technical standards to implement the open data policy
22 ensuring the policy incorporates the following principles:

- 23 (A) Data prioritized for publication should be of likely interest to the public;
- 24 (B) Data sets should be free of charge to the public through the web
- 25 portal;

1 (C) Data sets shall not include privileged or confidential information, law
2 enforcement information, national security information, personal information, proprietary
3 information or information the disclosure of which is prohibited by law; and

4 (D) Data sets shall include, to the extent possible, metadata descriptions,
5 API documentation, and the description of licensing requirements. Common core metadata
6 shall, at a minimum, include fields for every dataset's title, description, tags, last update,
7 publisher, contact information, unique identifier, and public access level as defined by the
8 CDO.

9 (E) That data sets are managed consistent with the City's Privacy First Policy in
10 Charter Section 16.130.

11 * * * *

12 ~~(9) Establish a process for providing citizens with secure access to their private data~~
13 ~~held by the City;~~

14 (10) Establish guidelines for licensing open data sets released by the City and
15 evaluate the merits and feasibility of making City data sets available pursuant to a generic
16 license, such as those offered by "Creative Commons." Such a license could grant any user
17 the right to copy, distribute, display and create derivative works at no cost and with a minimum
18 level of conditions placed on the use; and,

19 (11) Prior to issuing universally significant and substantial changes to rules
20 and standards, solicit comments from the public, including from individuals and firms who
21 have successfully developed applications using open data sets.

22 (c) **City Departments.** Each City department, board, commission, and agency
23 ("Department") shall:

24 (1) Make reasonable efforts to make publicly available all data sets under the
25 Department's control, provided however, that such disclosure shall be consistent with the

1 rules and technical standards drafted by the CDO and adopted by COIT and with applicable
2 law, including laws related to privacy *and the City's Privacy First Policy*;

3 (2) Review department data sets for potential inclusion on DataSF and ensure
4 they comply with the rules and technical standards adopted by COIT;

5 (3) Designate a Data Coordinator (DC) ~~no later than three months after the~~
6 ~~effective date of Ordinance No. 285-13,~~ who will oversee implementation and compliance with the
7 Open Data Policy within his/her respective department. Each DC shall work with the CDO to
8 implement the City's open data policies and standards. The DC shall prepare an Open Data
9 plan for the Department which shall include:

10 (A) A timeline for the publication of the Department's open data and a
11 summary of open data efforts planned and/or underway in the Department;

12 (B) A summary description of all data sets under the control of each
13 Department (including data contained in already-operating information technology systems);

14 (C) All public data sets proposed for inclusion on DataSF;

15 (D) Quarterly updates of data sets available for publication.

16 (4) The DC's duties shall include, but are not limited to the following:

17 (A) ~~No later than six months after the effective date of Ordinance No. 285-13,~~
18 ~~p~~ublish on DataSF, a catalogue of the Department's data that can be made public, including
19 both raw data sets and application programming interfaces (API's).

20 (B) Appear before COIT and respond to questions regarding the
21 Department's compliance with the City's Open Data policies and standards;

22 (C) Conspicuously display his/her contact information (including name,
23 phone number or email address) on DataSF with his/her department's data sets;

24 (D) Monitor comments and public feedback on the Department's data
25 sets on a timely basis and provide a prompt response;

1 (E) Notify the ~~Department of Technology~~Chief Data Officer upon publication
2 of any updates or corrective action;

3 (F) Work with the CDO to provide citizens with secure access to their
4 own private data by outlining the types of relevant information that can be made available to
5 individuals who request such information;

6 (G) Implement the privacy protection guidelines established by the ~~CDO~~
7 Chief Privacy Officer and ~~hold primary responsibility for~~ ensuring that each published data set
8 does not include information that is private, confidential, or proprietary; and

9 (H) Make reasonable efforts to minimize restrictions or license-related
10 barriers on the reuse of published open data.

11 * * * *

12
13 **SEC. 22D.3. STANDARDS AND COMPLIANCE.**

14 (a) The CDO and COIT shall work with the Purchaser to develop contract provisions
15 to promote Open Data policies. The provisions shall include rules for including open data
16 requirements in applicable City contracts and standard contract provisions that promote the
17 City's open data policies, including, where appropriate, provisions to ensure that the City
18 retains ownership of City data and the ability to post the data on data.sfgov.org or make it
19 available through other means.

20 (b) ~~The following Open Data Policy deadlines are measured from effective date of Ordinance~~
21 ~~No. 285-13:~~

22 ~~(1) Within three months, department heads designate Department Data Coordinators~~
23 ~~to oversee implementation and compliance with the Open Data Policy within his/her respective~~
24 ~~department;~~

1 ~~———(2) Within six months, each Department shall begin conducting quarterly reviews of~~
2 ~~their progress on providing access to data sets requested by the public through the designated web~~
3 ~~portal;~~

4 ~~———(3) Within six months, each Department shall publish on DataSF a catalogue of their~~
5 ~~Department's data that can be made public, including both raw datasets and APIs; and~~

6 ~~———(4) Within one year, the CDO shall present updated citywide Open Data~~
7 ~~implementation plan to COIT, the Mayor and Board of Supervisors.~~

8 ~~———(5) The CDO may propose a modification, for adoption by COIT, of the timelines set~~
9 ~~forth in the legislation.~~

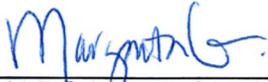
10
11 Section 4. Severability. If any section, subsection, sentence, clause, phrase, or word
12 of this ordinance, or any application thereof to any person or circumstance, is held to be
13 invalid or unconstitutional by a decision of a court of competent jurisdiction, such decision
14 shall not affect the validity of the remaining portions or applications of the ordinance. The
15 Board of Supervisors hereby declares that it would have passed this ordinance and each and
16 every section, subsection, sentence, clause, phrase, and word not declared invalid or
17 unconstitutional without regard to whether any other portion of this ordinance or application
18 thereof would be subsequently declared invalid or unconstitutional.

19
20 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
21 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
22 numbers, letters, punctuation marks, charts, diagrams, or any other constituent parts of the
23 Administrative Code that are explicitly shown in this ordinance as additions, deletions, Board
24 amendment additions, and Board amendment deletions in accordance with the "Note" that
25 appears under the official title of the ordinance.

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Section 6. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board of Supervisors overrides the Mayor's veto of the ordinance.

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: 
MARGARITA GUTIERREZ
Deputy City Attorney

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