

MEMORANDUM

DATE: [xxx]
FROM: City of San Diego Privacy Advisory Board
TO: The Honorable Council President Elo-Rivera and Members of the San Diego City Council
RE: San Diego Police Department's Proposal for 836 Technologies CINT Commander II

I. RECOMMENDATION

The Privacy Advisory Board (PAB) recommends that the City Council approve the proposal with modifications as indicated below.

II. RECOMMENDED MODIFICATIONS

The PAB recommends the following revisions to the Surveillance Impact Report and Use Policy to bring the documents in line with the requirements of the TRUST Ordinance.

- A. **DESCRIPTION:** We recommend that the Surveillance Impact Report be updated to move information about the technology and how it operates (*e.g.*, Bluetooth pairing with multiple phones and computers; includes software and hardware) from the "Purpose" section to the "Description" section for clarity.
- B. **USE:** As with all other use policies submitted by SDPD to date, this section must be updated to provide authorized and prohibited uses, as well as the legal standard that will be used. Currently, it indicates the capabilities of the technology, rather than allowable and prohibited uses.

The following addition, taken from SDPD's Use Policy for 836 Technologies Tactical Throw Phone, which is similar in capability and use as this technology, is recommended: "In events requiring a search warrant under California Penal Code 633.8, data recorded by the CINT Commander II would be entered into evidence and documented accordingly. The documentation would then be submitted to the authorizing court."
- C. **DATA ACCESS:** The Use Policy must specify that access to recorded data is granted based on the need-to-know/right-to-know principle, ensuring that only individuals directly involved in the negotiation process or authorized supervisors can access the data.
- D. **DATA PROTECTION:** This section currently only provides information about physical security of the equipment and department access to the drive. It should be updated to provide details of the software's technical security controls and encryption information (typically from the manufacturer).
- E. **PUBLIC ACCESS (Use Policy) and IMPACT (Surveillance Impact Report):** These sections contain contradictory statements regarding evidentiary value of recordings. The Use Policy should be updated to remove the statement that recordings do not have probative value and do not become evidence. The "Public Access" section must specify how information is shared with criminal defendants.

F. **TRAINING:** The Use Policy must be modified to include training on the Policy itself. Formal training on the equipment and software should also be provided to members of the team.

G. **AUDITING AND OVERSIGHT:**

1. The Use Policy must be modified to provide information about who does audits of uses and sharing of this technology and data and who has oversight of uses. The current document does not specify any auditing requirements except for logging of access.
2. The following addition is also recommended: “Misuse of the system, data, or recordings must be reported to and investigated by the Department’s Internal Affairs unit.”

H. **PUBLIC ENGAGEMENT AND COMMENTS:** The PAB recommends that departments follow the “minimum necessary” privacy principle when utilizing personal information and refrain from providing the names or specific descriptors of those who provide comments or ask questions. This is unnecessary in the Surveillance Impact Report.

For the above stated reasons, the Privacy Advisory Board respectfully recommends that the City Council **approve the proposal** with the modifications stated.

Cc: SDPD Chief Nisleit

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