The City of San Diego

Staff Report

DATE ISSUED: November 6, 2023

TO: Privacy Advisory Board

FROM: San Diego Police Department (SDPD)

SUBJECT: Presentation of Use Policies and Surveillance Impact Reports Associated with MSAB's
                    XRY – Mobile Forensics and Data Recovery Software

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Council District(s): Citywide

OVERVIEW:

On August 10, 2022, the City of San Diego amended and added Chapter 2, Article 10, of the San Diego Municipal Code – the "Transparent and Responsible Use of Surveillance Technology" (Surveillance Ordinance). The Surveillance Ordinance is designed to provide greater transparency to the City Council and the public when the City uses or acquires any technology that meets the City's definition of surveillance. The Surveillance Ordinance requires that for each technology that meets the criteria for surveillance, City Departments must:

- Hold at least one or more community meetings in each City Council district where the proposed surveillance technology is deployed, with an opportunity for public comment and written response.
- Prepare a Surveillance Use Policy that includes the purpose, use, data collection, data access, data protection, data retention, public access, third-party data sharing, training, auditing, oversight, and maintenance.
- Prepare a Surveillance Impact Report including description, purpose, location, impact assessment, mitigations, data types and sources, data security, fiscal cost, third-party dependence, alternatives, track record, public engagement, and comments.
- Present the item to the Privacy Advisory Board for review.
- Present the item to the City Council for the acquisition and deployment of all new and currently used surveillance technologies.
- Provide annual reports on surveillance technology use, impact, and acquisitions.

PROPOSED ACTIONS:

In accordance with the Board Notification and Review Requirements outlined in section 210.0102 of the Surveillance Ordinance, the Department is requesting approval for the use, funding, acquisition, and sharing of technology that falls within the definition of surveillance technology under the ordinance. Specifically, the item being requested is known as MSAB's XRY – Mobile Forensics and Data Recovery Software (MSAB XRY).

DISCUSSION OF ITEM:

SDPD's mission is to provide the highest quality police services to the communities it serves. SDPD values transparency, and public input and welcomes open dialogue about its practices and operations. The preservation and sustainability of public safety, officer safety, and civil rights are paramount. SDPD further recognizes the importance and value of public disclosure regarding the qualified surveillance technology we use. We intend to present to the Privacy Advisory Board our use of MSAB's XRY.

SDPD's lead, Internet Crimes Against Children Task Force (SDICAC) is one of a national network of sixty-one coordinated task forces, representing over 5,400 federal, state, and local law enforcement agencies, dedicated to investigating, prosecuting, and developing effective responses to internet crimes against children. SDICAC is composed of thirty-three law enforcement agencies and four prosecutorial bodies spanning three counties: San Diego, Riverside, and Imperial Valley. As the lead agency of the task force, the Commander, a San Diego Police Department Detective Sergeant, is responsible for providing and procuring technology/equipment, training, and travel to each member of the task force, ensuring each agency/investigator/prosecutor is capable of executing their duties to proactively and reactively protect children from online predators. SDICAC is funded primarily through grant funding awarded by the Department of Justice, Office of Juvenile Justice and Delinquency Program. Additional grant funding is provided by the California Governor's Office of Emergency Services (CalOES).

MSAB's XRY software is used to extract cell phone data by members of SDICAC. MSAB's XRY can extract call logs, text messages, emails, photos, videos, contacts, browsing history, app data, and location data. MSAB's XRY can also extract data from some social media apps on the phone. This information is utilized in the investigation into child exploitation and/or enticement cases. Once the data has been extracted, MSAB's XRY is used to categorize extracted data into readable reports for assigned investigators.

Data extracted and analyzed by MSAB's XRY is obtained only with proper legal authority, such as approved search warrants, or with written consent of the possessor of the device. Only authorized task force members who have successfully passed training provided by MSAB may utilize this tool.

MSAB's XRY is maintained on a SDICAC computer, not linked to City or SDPD networks, located at the San Diego ICAC's secure law enforcement office. Only authorized members of the task force have access to the office. Data retained is limited to the files extracted by the software and selected by

the task force member to be downloaded into their digital case file located on the ICAC Network Attached Storage (NAS) system.

Smartphones and tablets are used to commit crimes, including crimes against children, and, thanks to the science of digital evidence forensics, SDICAC uses technology to fight crime, protect children, and obtain the evidence necessary to prosecute those victimizing children online.

Digital evidence is information stored or transmitted in binary form that may be relied on in court. It can be found on a computer hard drive, a smartphone phone, a tablet, or on loose digital media, among other places. Digital evidence is commonly associated with the online exploitation and enticement of children. Digital evidence can be used to prosecute all types of online crimes perpetrated against children. For example, a suspect's e-mail, image files, chat logs, or other phone files might contain critical evidence regarding their intent, their whereabouts at the time of a crime, and their relationship with the victim and/or other suspects. In 2022, SDICAC conducted 4271 investigations. As a result of those investigations, 1771 digital storage devices, including smartphones and tablets, were forensically examined after proper legal authority was granted. Those examinations resulted in the arrest and prosecution of more than 128 persons who were victimizing children online.

In an effort to fight the online exploitation and enticement of children and to collect relevant digital evidence, SDICAC incorporates the collection and analysis of digital evidence, also known as digital forensics, into its infrastructure. SDICAC, as with all law enforcement agencies, is challenged by the ever-growing world of online predators and is constantly seeking the most effective means to collect digital evidence, such as MSAB's XRY, keeping up with rapidly evolving technologies such as smartphones and tablets.

. The materials required under the Surveillance Ordinance accompany this Staff Report in compliance with the ordinance to provide information surrounding the proposed use of MSAB's XRY and answer the many questions associated with their use and community impact.

David Nisleit

Chief of Police