

DRAFT for PAB Consideration

MEMORANDUM

DATE: February 27, 2024

FROM: City of San Diego Privacy Advisory Board (PAB)

TO: The Honorable Council President Elo-Rivera and Members of the San Diego City Council

RE: San Diego Police Department's (SDPD) Use Policy for Magnet Forensics AXIOM

I. RECOMMENDATION

The PAB recommends that the City Council approve the proposal with modifications as indicated below.

II. RECOMMENDED MODIFICATIONS

On February 15, 2024, SDPD provided written responses to PAB questions and answered follow-up questions about this technology ("SDPD Response"). The PAB recommends that content from these answers be incorporated into the Use Policy and Surveillance Impact Report to provide the City and the public additional details. Below we provide more detailed guidance, extracting information from the SDPD Response and providing recommendations about placement of information in the current Use Policy.

- A. USE: This section should be updated to include information from the SDPD Response that the "cell phone information is not compared against a database or model."
- B. DATA ACCESS: The Use Policy should be modified to provide concrete information about access to the data and results, not merely access to the software. The following, from the SDPD Response, should be added: *The following SDPD personnel have access to the results of an extraction:*
- *The SDPD Crime Laboratory's Forensic Technology Unit (FTU) – FTU criminalists are the administrators of the mobile device extraction network,*
 - *The officer/detective/FTU criminalist who conducted the device extraction,*
 - *The requesting investigator, and*
 - *IT/Data Systems analysts who oversee network security and management.*

In addition, the Use Policy should be modified to include a statement that access to resulting reports will only be authorized when directly relevant to an ongoing investigation.

- C. DATA RETENTION: Because the underlying cell phone extraction technologies do not allow for limited extractions (*i.e.*, extractions from mobile devices are "all or nothing"), the retention section should be modified to specify how long information that is unrelated and irrelevant to the investigation will be maintained.
- D. TRAINING: The Use Policy should be modified to include the specific trainings outlined in the SDPD Response in addition to training on the Policy itself.

E. AUDITING AND OVERSIGHT:

1. The Use Policy should be modified to provide information about who does audits of SDPD uses of this technology and who has oversight of uses. The current document does not specify any auditing requirements except for logging of access.
2. The following modification is recommended: “Misuse of the Magnet Forensics AXIOM, data, or resulting reports, or violations of the laws, the Department Policies, or user agreement terms ~~would~~ **must** be reported to and investigated by the Department’s Internal Affairs unit.”

- F. MAINTENANCE: The maintenance section of the Use Policy does not provide any meaningful information. This section should be updated to reflect who specifically is responsible for maintenance, how they are conducted, and who monitors for updates and new versions.

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

Cc: SDPD Chief Nisleit
CPT Jim Jordon
LT. Eric Portnoy
Chloe Madison