



September 23, 2015

Supervisor Cindy Chavez
 Supervisor Dave Cortese
 Supervisor Joe Simitian
 Supervisor Mike Wasserman
 Supervisor Ken Yeager

Santa Clara County Board of Supervisors
 70 West Hedding, 10th Floor
 San Jose, California 95110

Re: Support Ordinance Securing Community Participation, Transparency, Oversight and Accountability for Surveillance

Dear Supervisor Chavez:

We are a broad coalition of organizations from Santa Clara County. We strongly urge the Santa Clara County Board of Supervisors to bring to a vote and adopt the surveillance and community safety ordinance introduced by Supervisor Simitian in the spring of this year. This ordinance mandates community participation, transparency, oversight, and accountability wherever surveillance technology is proposed or used. It protects our civil rights and privacy, limits unnecessary costs or waste of public resources, and strengthens our community.

We were heartened by the Board's decision this past February to require a use policy be in place as a condition of the purchase of a controversial cell phone surveillance device known as a Stingray. We were further encouraged when we learned that the county would not move forward with the Stingray purchase after it was unable to come to an agreement with the device's manufacturer about its use.

Technologies like these not only pose a threat to our civil liberties, their invasive nature risks harm to the community's trust of law enforcement. As community advocates, surveillance can chill our First Amendment rights, and our ability to work towards progress. For example, we know police in Michigan sought "information on all the cell phones that were congregating in an area where a labor-union protest was expected."¹ That's why such technology should only be adopted with community input and used with caution under the purview of an enforceable use-policy to protect our civil rights. Currently, state or federal law is not clear on when warrants are required for use of many surveillance technologies, putting our community at risk of misused surveillance programs such as the one in Michigan.

While federal grant dollars make the acquisition of many of these technologies appear free at the onset, upkeep, maintenance, data storage, and staffing costs can add up. In its 2014 report, "Making Smart Decisions About Surveillance,"² the ACLU of California found that despite spending \$65 million to obtain surveillance technologies, not a single California community did a comprehensive cost-benefit analysis prior to acquisition. This has consequences for both taxpayers and community rights. A city audit of Oakland revealed that \$2 million was squandered on hardly-used police technology between 2006 and 2011.³ And the misuse of license plate readers not only led to the violation of a San Francisco resident's civil rights, but also a multi-year costly lawsuit against the City.⁴ It is imperative that our county protects itself from unintended costs that could waste public tax dollars otherwise used for the social services we need.

Like Santa Clara County, communities across California are increasingly grappling with decisions about surveillance technologies. However, very few communities are making these decisions in a transparent manner that includes community conversation, a cost-benefit analysis, or even a vote by elected officials before moving forward. In San Jose, many of us were outraged

¹ Michael Isikoff, *FBI Tracks Suspects' Cell Phones Without a Warrant*, Newsweek, Feb 18, 2010 (updated Mar. 13, 2010), available at <http://www.newsweek.com/fbi-tracks-suspects-cell-phones-without-warrant-75099>.

² ACLU of California, *Making Smart Decisions About Surveillance: A Guide for Communities* (Nov. 2014), available at <https://www.aclusocal.org/community-making-smart-decisions-surveillance/>.

³ See Oakland City Auditor, *Police Technology Performance Audit: FY 2006-07 through 2010-11* (2012), available at <http://www.oaklandauditor.com/images/oakland/auditreports/0pd%20tech.pdf>.

⁴ Matt Cagle, *San Francisco - Paying the Price for Surveillance Without Safeguards*, ACLU of Northern California, May 22, 2014, <https://www.aclunc.org/blog/san-francisco-paying-price-surveillance-without-safeguards>.

when we learned that the police department had purchased a drone without any public debate. Our local democratic process requires more. We have a right to know what types of technologies are being used in our communities and to meaningfully weigh in on how they should be used to accomplish community goals. Without oversight, abuse and overreach happens, such as the case of NYPD positioning automatic license plate readers and other surveillance to “target mosques and their congregations with tactics normally reserved for criminal organizations.”⁵

The ordinance introduced in Santa Clara County should formalize as policy the following key public process principles:

- **Informed Public Debate at the Earliest Stage of Process:** Public notice, production and distribution of a Surveillance Impact Report and other information about the proposal as well as public debate prior to seeking funding or otherwise moving forward with surveillance technology proposals or using existing technology in a manner or in a location not previously approved by civilian-elected officials.
- **Determination that Benefits Outweigh Costs and Concerns:** Local leaders, after facilitating a meaningful and informed public debate, expressly consider costs (fiscal and civil liberties) and determine whether surveillance technology is appropriate before moving forward.
- **Thorough Surveillance Use Policy:** With community member input, the transparent crafting of a legally enforceable Surveillance Use Policy with robust civil liberties, civil rights, and security safeguards approved by the Board of Supervisors.
- **Ongoing Oversight & Accountability:** Proper oversight of surveillance technology use and accountability through annual reporting, review and enforcement mechanisms.

The input of all community members must be considered when technologies that can invade civil liberties and erode civil rights are proposed or used. An ordinance that formalizes the above principles is sound policy and a sensible solution that will allow communities to make smart decisions about surveillance.

Sincerely,

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⁵ Matt Apuzzo and Adam Goldman, *With Cameras, Informants, NYPD Eyed Mosques*, Associated Press, Feb 23, 2012, available at <http://www.ap.org/Content/AP-In-The-News/2012/Newark-mayor-seeks-probe-of-NYPD-Muslim-spying>.

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