



Chesa Boudin
District Attorney

September 15, 2021

President Malia Cohen
San Francisco Police Commission
Police Commission Office
San Francisco Police Headquarters
1245 3rd Street, San Francisco, California 94158

RE: Department General Order 5.16, Search Warrants

Dear President Cohen,

I am writing to provide preliminary formal feedback on the draft revisions to the San Francisco Police Department General Order (DGO) 5.16, Search Warrants. We appreciate the opportunity to inform the Police Commission as it moves to set policy for the San Francisco Police Department (SFPD).

We are aware that DGO 5.16 for search warrants is over 20 years old and an update is long overdue. However, the San Francisco District Attorney's Office (SFDA) did not until recently, receive the latest draft of the DGO for review. SFPD did previously solicit input from SFDA, and we last provided feedback to SFPD on DGO 5.16 in January of this year. Moving forward, we recommend a more formal process that includes the opportunity for SFDA and the public to provide feedback at more frequent intervals as DGO drafts evolve.

While some of SFDA's concerns expressed in January have been addressed by the latest version of the DGO, SFDA continues to be concerned specifically about the limited types of search warrants that must be presented to SFDA for review as prescribed by section 5.16.03, Procedures, Search Warrant Preparation and Review, subsection G.1., Submission to the District Attorney's Office or prosecuting agency. In addition to search warrants sought for the search of premises, SFDA recommends that the DGO require the following types of search warrants be submitted to SFDA/prosecuting agency for review, subject to the same exigent circumstances provided in subsection G.1.

1. Any search warrant that seeks potentially privileged information requiring a special master, including but not limited to search warrants for legal or medical records.
2. Any search warrant that involves complex/unusual elements or emerging law, including but not limited to search warrants for geofencing data or tracking devices.
3. Any search warrant related to individual(s) that SFDA is currently prosecuting.

SFDA will often be responsible for defending the lawfulness of search warrants in court. These types of search warrants often involve heightened privacy concerns and would benefit from additional layers of review. Focusing the scope of these search warrants to balance investigative interests against statutory and constitutional rights will enable SFDA to more effectively utilize evidence obtained from the execution of these search warrants.

Thank you for your time and consideration of this feedback on the draft Department General Order 5.16, Search Warrants.

Sincerely,



David Campo
Chief of Staff

Cc: Commission Vice President Cindy Elias
Commissioner Larry Yee
Commissioner John Hamasaki
Commissioner James Byrne
Commissioner DionJay Brookter
Chief William Scott, San Francisco Police Department
Director Paul Henderson, Department of Police Accountability