Berkeley City Council
Minutes: Ad-Hoc Subcommittee on NCRIC and Urban Shield
By Tano Trachtenberg

Wednesday, March 14, 2018
3-5:00pm
Cypress Room, First Floor
2180 Milvia St.

Committee Members:
- Mayor: Jesse Arreguin
- District 2: Cheryl Davila
- District 4: Kate Harrison
- District 6: Susan Wengraf

Others in Attendance:
- Andrew Greenwood, Berkeley Chief of Police
- Michael Sena, Director of NCRIC
- Sgt. Darrin Rafferty
- Dee Williams-Ridley, City Manager

- Mathai Chakko,
- George Lippman
- Tano Trachtenberg
- Chris Naso
- Laurie McWhorter
- Bob Flasher
- Christine Schwartz
- Kelly Hammergren
- Micky Duxbury
- Ellen Brotsky
- Tracy Rosenberg

1. **Call to Order**
   Meeting was called to order at 3:12pm

2. **Public Comment**
   Bob Flasher, a member of the Disaster and Fire Safety Commission, expressed his support for Urban Shield. He believes that Urban Shield represents the best training option available.

   Ellen Brotsky shared that ending participation in Berkeley Funds does not prevent Berkeley from accepting UASI money for other training or emergency preparation. She believes training should emphasize community resilience.

   Tracy Rosenberg shared the results of a Public Records Request to NCRIC on their Automated License Plate Reader (APLR) database. In a three-month period last year, there were 165 requests from the Department of Homeland Security (DHS), 27 requests from the FBI, 28 from ICE and 18 from the IRS. Rosenberg also shared that the database can be queried for missing persons and witnesses, and therefore does not require someone be of criminal interest and wants to know the protocols for protecting these citizens from inappropriate searches. Finally, she asked about NCRIC's private sector partners.

Kelly Hammergren urged the committee to consider their work within the broader conversation of what is going on nationally.

Micky Duxbury expressed that Urban Shield focuses too much on militarism and crowds out resources for other types of training and community preparation. She cited that 20 years ago there were 4,000 SWAT interventions nationwide. Now there are 80,000.

Christine Schwartz, who recruits and volunteers for Urban Shield, feels that the event cannot be reproduced and has value for citizens and first responders.

3. **Approval of Minutes**

   Minutes were approved unanimously.

4. **Presentation and Discussion with NCRIC Director Michael Sena**

   Background on NCRIC

   Mr. Sena began the dialogue by sharing background on what NCRIC is and what their work focuses on: information sharing, working with public safety, critical infrastructure, training on what is suspicious behavior, and education. The education portion of their work focuses on privacy, civil rights, and civil liberties protections. He added that policies are in place to try to protect information from inappropriate action, or misuse or manipulation.

   The NCRIC operation is a part of a network of 78 other centers across the country. Most were established after 9/11, when the desire for greater information sharing arose. NCRIC is built upon the foundation of the high-intensity drug trafficking area's work. Mr. Sena serves as the executive director for that program as well. NCRIC focuses on collecting and sharing data on criminal activity and suspicious behaviors that are predictive of criminal acts. The primary areas of concern are counter-terrorism, human trafficking, and high-level narcotics.

   NCRIC's area of responsibility spans from Monterey up to the Oregon border, and includes 15 counties. Their 80 staff members coordinate data and info sharing as well as training on threats that are seen in the region like active shooters and people using vehicles as weapons.

   Discussion of Suspicious Activity Reports (SARs)

   Sena said the other big piece of NCRIC's work is triaging SAR. There are usually 600-800 SARS that they evaluate. Information is evaluated based on subjects' actions, not their beliefs, religion, or ethnicity. NCRIC's role is not to do investigation, but to gather info and pass it to the appropriate law enforcement agency, which is most often local. He added that they sometimes engage with federal agencies. For example, if a SAR has a nexus to terrorism NCRIC engages the Joint Terrorism Task Force (JTTF). If it is narcotics related, they generally coordinate with local narcotics units and or the DEA.

   SARS stay in their data repository for up to a year maximum. Sometimes analysts find "poison pens", a SAR that was submitted because someone does not like the person they are reporting. After follow-up, they will get rid of that data. After 12 months from date of receipt,

if a SAR is not followed up on in a criminal investigation and submitted to the ISE-SAR E-guardian system (maintained by FBI), the SAR is purged from system and the electronic file no longer exists. If someone asks about a SAR that is 13 months old that is not passed to the other system, the only info that can be shared is what somebody might remember about the SAR and could re-run through the system.

In response to Councilmember Harrison's questions about SAR retention, Mr. Sena explained that most local agencies do not have an internal SARs system. Sena said they only hold onto criminal investigation information. As of recently, SARs are sent via a link that will expire; local agencies lose access to that information when it is purged from the primary database. NCRIC only follows the federal five-year retention policy if there is a SAR of a criminal nature that meets the standards for a follow-up investigation.

Councilmember Harrison followed-up with a series of questions about NCRIC's advisories. She expressed concern about a bulletin released that focused entirely on Antifa's actions in Berkeley, but did not mention the right-wing groups as well. Sena explained that it was a situational awareness bulletin. These bulletins share the types of things that NCRIC has been observing, and are not necessarily SARs. In this case, it was about people that are trying to harm law enforcement, and getting in the way of folks that are trying to exercise their freedom of speech. He also confirmed there is a partner bulletins for other groups and they try to balance that. He acknowledged it is a hot topic, but emphasized that the focus is not on extreme viewpoints but on folks that use criminal violence.

Mr. Sena responded to Councilmember Davila's questions about the flow of SARs to the FBI's E-Guardian System and their retention within it. He explained that for data not to be purged, an analyst has to extend the timeframe within the system by providing new information and stating the reason for extension. Without this, the system will delete the information. NCRIC does extensions in 12-month cycles, rather than pushing anything over a year to the five-year frame automatically. In the NCRIC system everything is reviewed on a 12-month basis. In other centers, it could be up to five years. If inaccuracy is identified, the information has to be updated or corrected. This is a big part of what analysts do.

Mr. Sena responded to George Lippman's questions about the variation in quality control across the network of fusion centers, specifically, whether NCRIC reporting to the E-Guardian is better than other fusion centers' reporting. Sena explained that it depends on the fusion center. Some are only five people. Some have 200 people. It also depends on ability to create a liaison network of officers, firefighters, because all public safety folks can report. Providing accurate training on what you are looking for and what you are not is key.

He elaborated, describing an incident where a power plant was attacked. Information about the attack was shared with local officials. NCRIC saw an increase in reporting threats to power plants because more people were now looking for this, which does not mean that there is an increased risk. NCRIC sent out a message emphasizing this to the network.

NCRIC's Relationship with Other Agencies and Organizations

Mr. Sena explained the relationship NCRIC has with the 78 other fusion centers. Each fusion center is responsible for the SARs in their region. Right now, it is shared nationally through the E-Guardian system that the FBI maintains, and the system only covers counter-terrorism SARs. The job of each fusion center is to vet the SARs they believe meet those criteria. Last year, NCRIC had 288 SARs that met the counter-terrorism threshold to be placed in the E-Guardian system. Sena feels that this creates a problematic sharing issue, because things like school threats, which may or may not be counter-terrorism related cannot be shared effectively in that system.

Sena responded to Lippman's concerns about the ACLU report on fusion centers, which had examples of targeting Muslim-Americans. When the ACLU report on fusion centers came out, Sena said he pushed to ensure that all centers are on the same page in defining what suspicious activity is. He said as a result, the focus is now on a criteria of behaviors. Sena also added that he believes the FBI has gotten better at making case-specific complaints.

Mr. Sena responded to the Mayor's question about the MOUs NCRIC has with other agencies. He explained that they have over 50 agreements with agencies that contribute electronic data and records. These agreements are so that the agency understands that the data they contribute belongs to them, the originator, and that NCRIC can help redact or restrict information they do not want shared. Sena confirmed that ICE has no access to their database because a number of local agencies were not comfortable sharing information for immigration purposes. ICE can request information, but it has to be related to a criminal action. NCRIC sends a copy of SB 54, and requires ICE to provide a case number and explicit legal terms that they are requesting the info under. If it is local agency data, NCRIC goes back to that agency to make sure they are comfortable supporting a criminal investigation. **Sena said that NCRIC would be open to any agreements with the City, acknowledging Councilmember Harrison's concern that the City is required to have a formal MOU.**

George Lippman asked about the amount of data that comes from federal agencies. His concern is the federal definition of terrorism being laid on top of the regional fusion center because California is at odds with the Federal government in numerous ways. Sena said everyone could contribute. The FBI started sharing more of their tip line information with NCRIC after the Florida shooting. The majority of work they do is state and local. NCRIC's executive board is balanced between, federal, state and local executives. NCRIC is in support of public safety. They follow both the state guidance and the federal guidance, and when they are in conflict NCRIC has sided with the local agencies that make the biggest difference in NCRIC's work.

He explained this tension further:

> _"As far as direction coming from D.C. on things, we know that there is a lot of hostility right now. I see that everyday. And we are in the middle, which means that you're getting hit by everybody. And every group I go see, every city council, every board of supervisors, I tell them that we are here to serve your community, and we are here to uphold your values, and we are here to uphold the law. There are going to be conflicts, and there are times when I am probably going to be on the wrong side of many of those conflicts, but ultimately our job is to protect the public and also to protect privacy,_

civil rights and civil liberties. I am unpopular on both sides of the issue because I don't bend for either of them. We're going to keep a middle ground here in our region because without that we do not have information sharing, we do not have collaboration."

In response to a Councilmember Davila's question about NCRIC's competitors, Sena explained that there is no such thing. The federal government could not do this because they don't have the level of trust that state and local agencies have with each other.

Sena talked about the information shared with the critical infrastructure officials and that if it were destroyed, could cause local or large catastrophes. It could be telecommunications, banking, food supply chain, electrical grid, water, etc. For those entities NCRIC does not share law enforcement data, but they do share potential threats and offer training. NCRIC also keeps a categorical list of the almost 16,000 critical infrastructure sites. Some have cascading effects; if you don't have power, you don't have water or sewage. If you don't maintain the banking links, you can't get money out of ATMs.

NCRIC's Sources of Funding

The Office of National Drug Control Policy, which supports counter drug efforts, is about $3.2-3.5 Million dollars per year. DHS has a requirement that 25% of grant funds that are provided to states and regions have to go to law enforcement terrorism prevention activity. NCRIC gets $1.8 from the State's DHS grant program that goes through Cal OES. They also get $4.5-5 Million dollars per year from UASI.

Harrison asked why one-third of the money comes from the National Drug Control Policy, and would like information on why NCRIC is involved with that. Sena shared that drug threats represent a part of NCRIC's work that extends beyond just terrorism. He also shared what NCRIC is doing to combat fentanyl and heroin overdoses, including overdose mapping. They are looking at drug-trafficking organizations, the large targets that are laundering money and shipping in fentanyl from oversees, not users.

NCRIC's Automated License Plate Recognition [ALPR] Policy

The Mayor suggested that the purposes for the uses of data in NCRIC's policy are reasonable, but asked Sena to elaborate on what "protect participants at special events" means. Sena explained that NCRIC has a database of known and suspected terrorists in the Bay Area and beyond, and the vehicles associated with them. During the Superbowl, and events like that, NCRIC can search the system and notify if that vehicle has passed by an ALPR. Those alerts can pop up immediately and everyone at a command post will be notified. In order for a person to meet the criteria of a known or suspected terrorist, there is a corresponding case number with the FBI. In the case of missing children, adults, or any other criminal activity, NCRIC can query the database to see if they have passed a reader. NCRIC has had great success with missing people using this.

Sena gave background on another exception NCRIC has, which they have yet to use.
If a terrorist group is targeting somebody, NCRIC can do protective measures near where they live. NCRIC can also show data to a person who is a potential victim of a threat.

The ALPR is just a pointer system. It does not say if a person has committed a crime or what they have done. Sena emphasized that it is the job of the local agency, if there is an ALPR hit or alert, to run the plate through dispatch to ensure it is valid. The recognition software has an error rate and NCRIC wants to make sure that the plate is confirmed before action is taken. San Francisco was recently sued for not verifying the data before using it to make an arrest.

Councilmember Harrison expressed concern about the collection of ALPR data in bulk. Sena confirmed it is bulk data collection that does not require probable cause, but the data pulled has to have a criminal nexus, with a few exceptions. NCRIC has a drop down menu that requires the requesting officer to select type of criminal activity involved as well as input their case number. This allows for audits and reporting back to departments. Sena said they currently do not use any ALPR data from parking attendants.

Other NCRIC Questions for Director Sena

Councilmember Davila asked about suspicious behavior and racial profiling. Sena explained that for activities that are innocuous and there is no criminal behavior associated with it, they look at the context of it, like if someone took photos of locks or the location of security cameras. Sena cited that their team of analysts is diverse and includes a Vietnam veteran, Asian Americans, but no African-Americans. He says that they have instilled in their training and team that they are looking at diverse communities, and none of what they are looking like should be prejudiced. He also mentioned that they lost one of their best trainers and are looking at bringing in other subject matter efforts. They want to remove that type of information [racial bias] from their work, however he acknowledged they are dealing with people, who can make errors.

If there is no criminal activity, the data sets and systems NCRIC can include are restricted. Sena described the tiers of analysts and supervisors that look at information collected and how that data has to pass through multiple personnel. If the information meets the criteria for the E-Guardian system, then it also has to be reviewed by a supervisor at the federal level, where the Attorney General guidelines are followed.

Councilmember Davila asked if analysts have diversity or racial bias training. Sena said, "Its constant". Every time they have a meeting in their office, that's a big part of what they are talking about.

Councilmember Harrison asked if NCRIC uses data from social media. Sena said that NCRIC does not have any special access to social media. **He said he could send the Chief real-time open source analysis, about how that open source information that is out there is used, evaluated.** NCRIC worked on that for quite some time, because a lot of threats are being notified online. For example, during Oakland's riots two years ago someone posted a photo of two guns online and said they were going to Oakland to get some justice.

Councilmember asked if data around public gatherings held for longer. Sena said no, and that often it is kept for just two weeks. The data is held for a year only if the SAR reporting meets their criteria. He added that NCRIC does not move things to five years unless they find it meets the nexus to terrorism criteria.

Harrison asked if NCRIC has a standard definition of terrorism. Mr. Sena said yes and that he **will get a copy of it for the group**.

5. **Presentation from BPD Terrorism Liaison Officer (TLO)**

Sgt. Daren Rafferty is a Patrol Sergeant and a Terrorism Liaison Officer, which means he has gone through NCRIC's training. He has been a Berkeley Police Officer since 1999 and it is the only organization he has worked for. He talked about what he does in his ancillary duty as a TLO. Sgt. Rafferty's daytime job is Patrol Sergeant but he is also on the Situational Awareness Group (SAG), where he is a supervisor. His primary duty on SAG is as a TLO. All of Sgt. Rafferty's work on SAG is considered ancillary, which means it is done in addition to the other work he is primarily responsible for as patrol Sergeant.

His main focus as a TLO is the safeguarding of the community and stopping criminal wrongdoing of any kind. He assesses a huge amount of information that the NCRIC and other law enforcement agencies pass along to them, "It's a lot of reading". In early 2017 he went to the TLO training class, a daylong training. He learned basic principles on intelligence from a state, federal and local level. He also learned how different groups and organizations would take in, evaluate and share information, how they vet it, and how they prioritize it. He also received an overview of domestic and international terrorism.

Sgt. Rafferty works with other Berkeley Police Officers. As a TLO and SAG officer, Sgt. Rafferty answers to a separate patrol Lieutenant, but to the same supervisors above that—an operations captain and Chief Greenwood. On a daily basis he reads alerts, informational bulletins, advisories, and suspicious activities on a local, regional, state, federal and international scale. He reads on terrorism that extends beyond Berkeley. He said NCRIC increases his awareness, and helps him better evaluate what to share and discuss internally, and make an intelligent risk assessment for the distribution of resources when Berkeley is having an event.

Sgt. Rafferty Reviews a lot of criminal reports and consults NCRIC analysts to see if the information is part of a larger trend. When it is, they vet it and submit it as a SAR. Berkeley does not do a lot of SARs because things do not rise to that level. They are in constant communication with NCRIC even though they submit SARs infrequently. Rafferty emphasized that city borders do not restrict crime.

Chief Greenwood added his perspective as a Chief. He relies on Sgt. Rafferty to be absorbing all of this information and determining if it needs to be communicated within BPD and if there might be a regional trend. Recent trends include large-scale shoplifting and laptop thefts. Chief Greenwood wants to make sure the committee is not just focused on SARs and terrorism because the other crime reporting and awareness is important to BPD. Chief Greenwood also made it clear that TLOs are not subordinate to anyone outside the agency. Sgt. Rafferty follows Berkeley's policies including the sanctuary city policy.

Sena added that there have been semi-organized criminal groups that are pilfering communities. NCRIC hosted a session on that group and had over 140 officers show up from around the Bay Area. He emphasized that there is also value for NCRIC in bringing people together like this.

Sgt. Rafferty explained that the ALPR system is more cumbersome than he imagined, but in a good way. There are many steps to get into the system. Chief added that the log-on is two-step authentication, so the security is very tight. In terms of training to use the system, it is very simple: you input information in two or three drop down menus and put in the case number. There are terms and conditions that you have to agree upon every time you use the site.

Mayor Arreguín asked if all incoming information is processed through SAG. Sgt. Rafferty said yes and that each member has certain areas they are assigned to deal with. SAG parses out the information that is coming in and gets it to the appropriate subject matter expert in BPD on the SAG. From there, they assess it and vet it. This includes information from NCRIC, advisories, a fellow colleague or just a phone call from another law enforcement agency. The SAG is a group of officers that are looking at all of these things strategically. Greenwood added that the role of SAG is to spend the extra time looking at all the all the Information that comes to BPD to figure out how it all fits together. He also shared that when bad stuff happens, where even the public and council might be aware, BPD often gets rapid alerts with more confidential information in it.

NCRIC supports the TLOs, and they support NCRIC with free flowing information sharing based on the relationships that they have built and the agreements that they have.

Chief Greenwood offered to relay any follow-up questions to Director Sena.

6. **Adjournment**

   Meeting adjourned at 5:04pm