



ORANGE COUNTY SHERIFF'S DEPARTMENT

SHERIFF-CORONER DON BARNES

OFFICE OF THE SHERIFF

July 24, 2019

Honorable Kirk Nakamura
Presiding Judge of the Superior Court
700 Civic Center Drive West
Santa Ana, CA 92701

RE: Response to 2018-19 Orange County Grand Jury report, *Your Call May Be Recorded*

Dear Judge Nakamura:

In accordance with Penal Code sections 933 and 933.05, enclosed please find the response to the 2018-19 Orange County Grand Jury report, *Your Call May Be Recorded*.

If you have any questions, please do not hesitate to contact my office. Thank you.

Sincerely,

A handwritten signature in blue ink that reads "Donal D. Barnes".

Don Barnes
Sheriff-Coroner

cc: Grand Jury Foreperson
Members, Orange County Board of Supervisors
Frank Kim, County Executive Officer

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Orange County Sheriff's Department
Response to Findings and Recommendations
2018-2019 Orange County Grand Jury Report
"Your Call May be Recorded"

FINDINGS

Pre-June 2018

F.1.

There was minimal centralized technical oversight of the inmate phone recording system within the OCSD prior to July 2018.

Response: *Agrees with finding.*

While oversight of the contract and performance of duties existed, there was no ability to provide oversight over proprietary technology.

F.2.

Lack of OCSD verification of the contractor's transfer of the telephone numbers from the old to the new system allowed the contractor's transfer error to survive.

Response: *Partially disagrees with finding.*

Lack of OCSD verification did not cause the error to survive. However, OCSD verification could have provided a further fail-safe to ensure errors were caught.

F.3.

Most of the legal community believed none of their telephone conversations with inmate clients would be recorded.

Response: *Disagrees with finding.*

The Sheriff cannot know what most of the legal community believed. A prompt before each telephone call indicated to users of the inmate telephone system that calls may be recorded. Attorneys have an ethical obligation to ensure their communications with clients are confidential; the prompt on the telephone system that advised the inmate and the attorney that the call may be recorded was historically sufficient to put attorneys on notice that their calls might not be confidential. Conscientious attorneys could and did inquire of OCSD of how to ensure confidential communications.

F.4.

Available features of the contractor's system were not being utilized by the OCSD to generate all available reports in order to support oversight.

Response: *The finding does not provide adequate information to properly respond.*

F.5.

OCSD did not require an on-site systems engineer be provided by the contractor to resolve technical issues in a timely manner.

Response: *Agrees with finding*

Providing an on-site systems engineer was not a foreseen need or a universal standard used by local government in their contracts for inmate phone systems.

F.6.

There was no instruction in either the inmate orientation brochure or the inmate orientation video regarding inmate's attorney-client privilege rights for telephone calls with their attorney.

Response: *Agrees with finding*

There were notices posted near the phones available to inmates for calls and the inmates heard a pre-recorded prompt advising that calls were subject to recording.

F.7.

There was no internal "policy manual" for management of the inmate telephone system.

Response: *Agrees with finding*

It is not standard practice to have separate policy manuals for any service contract. Policy concerning the inmate telephone system is part of the Custody & Courts Operations Manual.

Post-June 2018

F.8.

There is currently minimal centralized technical oversight of the inmate phone recording system within the OCSD.

Response: *Agrees with finding.*

The current contract does not allow OCSD the ability to have technical oversight over a proprietary system.

F.9.

Lack of OCSD verification of the contractor's transfer of the telephone numbers from the old to the new system is resulting in significant costs to the County of Orange.

Response: *Partially disagrees with finding.*

Costs are incurred anytime a vendor fails to perform and meet their responsibilities. OCSD relied on the vendor to properly perform its functions. Oversight of technical issues that require expert analysis of proprietary information from the vendor would also result in unnecessary costs.

F.10.

The OCSD does not provide periodic reminders to outside users (attorneys) of the Recording System regarding the method for placement of phone numbers on the DNR list.

Response: *Disagrees with finding.*

Information on methods for placing phone numbers on the DNR list is readily available in postings at the jail and on the OCSD website. Additionally a letter was sent in September 2018 to both the Orange County Bar Association and the Orange County Criminal Defense Bar Association advising of the procedures for placing phone numbers on the DNR list.

F.11.

Available features of the contractor’s system are not being utilized by the OCSD to generate all available reports in order to support oversight.

Response: *The finding does not provide adequate information to properly respond.*

F.12.

OCSD does not currently require its telephone system contractor to provide an on-site systems engineer on site to resolve technical issues.

Response: *Agrees with finding*

Providing an on-site systems engineer is not part of the current contract that remains in place while a new RFP for inmate telephone services is developed. Such on-site assistance was not deemed necessary when the existing contract and the predecessor contract with GTL was drafted as most technical issues that arise occur with GTL’s systems which are not on-site at the jails. The Contract does address technical support for hardware issues but an on-site engineer was never deemed necessary or appropriate.

F.13.

The lack of centralized technical oversight of the Recording System by the OCSD has resulted in ineffective communication between the various OCSD units that use the system.

Response: *Disagrees with finding.*

It has not been our experience that lack of technical oversight has caused ineffective communication among OCSD units.

F.14.

The lack of centralized technical oversight of the Recording System by the OCSD causes a delay in resolving issues with the system.

Response: *The finding does not provide adequate information to properly respond.*

F.15.

There is no instruction to inmates on either the inmate orientation brochure or the inmate orientation video regarding their attorney-client privilege rights for telephone calls with their attorney.

Response: *Disagrees with finding.*

The inmate orientation brochure now includes instruction on attorney-client privilege rights for telephone calls with their attorney.

F.16.

No evidence has been presented to the Grand Jury indicating that any defendant's rights to a fair and impartial trial have been improperly or adversely affected by the violation of their communication privilege with their legal counsel.

Response: *Agrees with finding*

F.17.

The OCSD and the DA have been responsive and professional in handling the situation once the recorded inmate telephone calls were discovered in June 2018.

Response: *Agrees with finding*

F.18.

As of the writing of this report, there has been no evidence of malicious intent by the OCSD or the DA regarding the use of any privileged telephone communications.

Response: *Agrees with finding*

RECOMMENDATIONS:

R.1.

By September 30, 2019, the OCSD should create an onsite unit within the Inmate Services Division to provide direct oversight of the inmate phone system.

Response: *This recommendation will not be implemented because it is not warranted.*

At the Sheriff's request, in May 2019, the Board of Supervisors approved a contract with a third party to provide assistance in managing the inmate phone system contract and developing a new RFP for services.

R.2.

By October 31, 2019, the OCSD/Inmate Phone System Oversight Management should assign:

A. One or more persons to:

Handle all phone number input and deletion actions, produce lists for audit, complete the audits, produce lists for management, manage regular communications to internal and external users and provide periodic in person training to internal users;

Response: *This recommendation has been implemented.*

Specified staff is responsible for actions associated with the inmate phone system.

B. One or more:

Systems engineers to handle all nonproprietary hardware, software and systems problems independently and other propriety changes directly with the phone call Recording System contractor.

Response: *This recommendation will not be implemented because it is not reasonable.*

This recommendation does not comport with the current agreement for inmate phone services.

We have hired Praeses who is an expert in Inmate Telephone Systems and is assisting us with the oversight, accounting and auditing processes associated with the inmate telephone system.

R.3.

By September 30, 2019, each OCSD unit that accesses the inmate phone system should designate a coordinator to interface directly with OCSD/Inmate Phone System Oversight Management.

Response: *This recommendation will not be implemented because it is not warranted.*

The limited amount of staff that have access to the inmate phone system interface directly with the manager responsible for the phone system. With such a small number of staff with access, it would be unnecessary to have a designated coordinator for each unit.

R.4.

By October 31, 2019, the OCSD/Inmate Phone System Oversight Management should develop a periodic auditing process to maintain current data and delete outdated information.

Response: *The recommendation has been implemented.*

Information is updated on an ongoing basis and the County recently approved a contract with a third party vendor to assist with oversight of the system including auditing the phone numbers that are presently in the system as do not record, etc..

R.5.

By September 30, 2019, the OCSD/Inmate Phone System Oversight Management should acquire all available system features required to have complete control of user level software settings and report generation.

Response: *This recommendation has been implemented.*

OCSD currently uses and controls the aspects of software that are necessary and appropriate for OCSD operations. The recommendation regarding the generation of reports is unclear, as OCSD currently utilizes the report function of the existing system.

R.6.

By September 30, 2019, the OCSD/Inmate Phone System Oversight Management should develop and implement a method to automate input and deletion of information on lists.

Response: *This recommendation will not be implemented because it is not reasonable.*

The automation recommended by the Grand Jury would not provide the necessary level of review needed to ensure information that is added or removed from lists is properly vetted and verified. OCSD will continue to use trained staff to perform this function.

R.7.

By October 31, 2019, the OCSD should meet directly with the legal community annually to share information on methods for assuring privileged telephone communications and receive input on best practices.

Response: *This recommendation will not be implemented because it is not reasonable.*

OCSD has posted procedures for ensuring phone numbers are properly listed on the do not record list. The information posted provides the legal community with sufficient information and does not require further outreach. Additionally, OCSD strengthened the pre-recorded prompt that inmates making calls and recipients of calls from jails receive in that the system now requires the inmate and the recipient to acknowledge that the calls are being recorded and the will be terminated if both the inmate and the recipient fail to acknowledge and agree to the recording by pressing the number "1."

R.8.

By October 31, 2019, the OCSD should develop a plan for written periodic updates to the legal community on methods for assuring privileged communications.

Response: *This recommendation will not be implemented because it is not reasonable.*

OCSD has posted procedures for ensuring phone numbers are properly listed on the do not record list. The information posted provides the legal community with sufficient information and does not require further outreach.

R.9.

By October 30, 2019, the OCSD should prepare an updated inmate orientation brochure and video that include information on the attorney-client privilege rights during phone calls with their attorney.

Response: *This recommendation has been implemented.*

The inmate orientation brochure was updated on July 2, 2019.