

April 19, 2022

MEMORANDUM

To: Economic Development, Technology and City Light Committee
From: Lise Kaye, Analyst
Subject: Council Bill 120307 – Approves the use of and accepts the surveillance impact report for the Seattle Police Department’s use of Audio Recording Systems

On Wednesday, April 27, 2022, the Economic Development, Technology and City Light Committee will discuss [Council Bill 120307](#). This Council Bill would approve the Seattle Police Department’s (SPD’s) continued use of Audio Recording Systems and accept the Surveillance Impact Report (SIR) and an Executive Overview for this technology. The bill is intended to meet the requirements of [Seattle Municipal Code Chapter 14.18](#), Acquisition and Use of Surveillance Technologies, which requires City departments to obtain advance Council approval of the acquisition of surveillance technology and of a surveillance impact report (SIR).¹ Departments must also submit a SIR for surveillance technology in use when [Ordinance 125376](#) was adopted in 2017 (referred to in the ordinance as “retroactive technologies”), but failure to approve an ordinance for a retroactive technology does not require SPD to discontinue its use. Councilmembers may choose to amend the ordinance to request additional information or to request that SPD develop new and/or revised operational policies, which could restrict or modify the use of certain technologies.

This memo describes the Audio Recording Systems, summarizes recommendations from the Community Surveillance Working Group, describes whether and how each recommendation is addressed in the SIR and/or by current law, and summarizes responses by the Chief Technology Officer (CTO) and/or SPD. Finally, the memo identifies policy issues for Council consideration.

Audio Recording Systems

SPD uses Audio Recording Systems to covertly obtain information during a criminal investigation. SPD’s policies allow such use only after obtaining appropriate consent and/or legal search warrant authority, although SPD reports that they only use Audio Recording Systems with a search warrant. SPD conceals a device to capture conversations between individuals in which at least one participant is unaware of the recording. The SIR does not disclose the specific Audio Recording Systems used by SPD to avoid the risk of countermeasures and due to safety concerns for officers and cooperating witnesses. SPD reports that the department mitigates potential civil liberties risks and the risks of racial or ethnicity-based bias from the use of these systems and associated data sharing, storage and retention through its evidence procedures, anti-bias policies and warrant parameters. The Racial Equity Toolkit does not identify metrics to be used as part of the CTO’s required annual equity assessments.

¹ The Executive Overview summarizes SPD’s allowable uses of Audio Recording Systems. See also the [memo](#) summarizing process for developing a Surveillance Impact Report (SIR), consistent with [Ordinances 125376](#) and [125679](#) and [Ordinance 108333](#), Seattle’s “Intelligence Ordinance,” adopted in 1979 and amended in 1982 via adoption of [Ordinance 100572](#).

Surveillance Working Group Recommendations and CTO Response

The Community Surveillance Working Group’s Impact Assessment for SPD’s Audio Recording Systems makes nine recommendations to Council. The CTO’s response to the Impact Assessment finds that the “policy, training and technology limitations enacted by SPD provide adequate mitigation for the potential privacy and civil liberties concerns raised by the Working Group.” The CTO’s response does not specifically address the Working Group’s recommendations, but it identifies relevant citations from the SIR for each of the Working Group’s “key concerns.” **Table 1** describes whether the SIR as drafted and/or current law addresses the Working Group’s recommendations, as well as relevant responses from the CTO and/or SPD.

Table 1. Working Group Recommendations

Working Group Recommendation	Whether/How Addressed by SIR, CTO or SPD and/or Current Law
<p>1. The purpose and allowable uses of Audio Recording Systems must be narrowly and clearly defined, and any SPD use of Audio Recording Systems must be limited to that specific purpose and those allowable uses. There must be a requirement for SPD to state for which specific incident types of Audio Recording Systems may be used.</p>	<p>Executive Overview. Operational Policies represent the only allowable uses of the equipment and data collected by this technology.</p> <p><i>SMC 14.12 (the “Intelligence Ordinance) governs the collection of data for a criminal investigation.</i></p>
<p>2. There must be a requirement for SPD to publicly disclose the names of the manufacturers, vendors, model names, and model numbers of the Audio Recording Systems in use.</p>	<p><i>SPD has requested not to publicly disclose this information to avoid the risk of countermeasures and due to safety concerns for officers and cooperating witnesses. OIG has confirmed that they can conduct their annual usage review without this information having been publicly disclosed.</i></p>
<p>3. There must be a requirement for SPD to make clear the warrant and/or consent procedures authorizing the use of a recording device</p>	<p>SIR §2.1 Audio recording systems allow SPD to pursue resolution of criminal investigations expeditiously by recording conversations of suspects, wherein an appropriate determination that sufficient probable cause exists has been made and a warrant has been issued.</p> <p>SIR §3.0 Once an Officer/Detective has obtained consent and/or a court order, having established probable cause, to utilize an audio recording device, s/he makes a verbal request to the TESU [Technical and Electronic Support Unit]. TESU staff completes TESU’s Request Form that requires a reason for the request, a case number associated with the investigation, and a copy of the consent form and/or court order. Each request is screened by the TESU Supervisor prior to deployment.</p> <p>SIR §4.9 On probable cause, the court can issue order authorizing interception, transmission, and recording of private communications or conversations when one party to the conversation or communication has consented.</p>

Working Group Recommendation	Whether/How Addressed by SIR, CTO or SPD and/or Current Law
<p>4. There must be clear rules for the issuance of recording devices and processing of all recordings that limit the role of the investigating officer and ensure oversight by a supervisor. These rules should include a data-deletion protocol that makes clear who is responsible for deleting improperly collected data, ensuring regular oversight of deletion, and providing clarity as to what data must be deleted when no warrant is used.</p>	<p>SIR §3.0 See description above re: issuance of recording devices.</p> <p>SIR §2.5 The Technical and Electronic Support Unit (TESU) downloads data related to the investigation or within the scope of the consent form and/or court order to a thumb drive or external hard drive and gives it to the Officer/Detective for inclusion in the investigation file and then purges all data from the recording device.</p> <p><i>According to SPD, case detectives are responsible for reviewing audio recordings as part of their investigation.</i></p>
<p>5. There must be clear procedures for securely sharing data with third parties, including a policy that ensures the erasure of shared data.</p>	<p>SIR §6.1 In addition to SPD Policies 12.050 and 12.110, SPD’s data sharing is governed by federal and state criminal justice policies and procedures including state records retention schedules.²</p>
<p>6. There must be a requirement for SPD to disclose how they ensure authenticity of recordings and individuals in audio recordings.</p>	<p>Not addressed in the SIR.</p> <p><i>Per SMC 14.12.290, SPD must confirm the degree of accuracy of information about incidents of unlawful activity “whenever possible.”</i></p> <p><i>According to SPD, case detectives are responsible for identifying individuals and reviewing any recordings obtained during investigations.</i></p>
<p>7. There must be a requirement for SPD to disclose for how many incidents per year they use Audio Recording Systems.</p>	<p>Not addressed in the SIR.</p> <p><i>According to SPD, TESU maintains request forms/log sheets, which are subject to audit by SPD and the Office of Inspector General for Public Safety (OIG).</i></p>
<p>8. There must be a requirement for an independent audit of SPD’s Audio Recording Systems and that audit must be made publicly available.</p>	<p>SIR § 4.2. All deployment of these devices are [sic] documented by TESU and subject to audit by the OIG and federal monitor at any time.</p> <p><i>Per Ordinance 125376, the OIG must conduct an annual review of all approved surveillance technologies.</i></p>
<p>9. There must be a prohibition on use of biometric technology³ on or with audio recordings.</p>	<p>Not addressed in SIR.</p> <p><i>According to SPD, the department does not use biometric technology in conjunction with Audio Recording Systems.</i></p>

² LE06-01-04 Rev. 1

³ Examples of biometrics include an individual’s DNA, fingerprints, eyeballs/irises/retinas, voiceprints, handprints, and facial geometry. Source: [American Bar Association Publication](#), Biometric Information – Permanent Personally Identifiable Information Risk, Alan S. Wernick, February 14, 2019.

Policy Considerations

Central Staff has identified the following potential policy considerations. Requests for additional reports and/or policies may require additional resources, potentially via a supplemental budget appropriation.

1. Annual equity assessment metrics. SPD has not yet finalized metrics to be used in evaluating use of Audio Recording Systems as part of the CTO's annual equity assessments. These assessments are intended to play a key role in determining whether the City's surveillance legislation is meeting the goals of the Race and Social Justice Initiative.

Options:

- A. Request a report on the proposed metrics by a date certain.
- B. Take no action.

2. Mitigation of Civil Liberties Impacts. The SIR provides only a boilerplate reference to SPD's general anti-bias policing policies as providing mitigation against the risk of disproportionate surveillance and/or civil liberties impacts. In the absence of data tabulating the frequency of use of the Audio Recording Systems and the corresponding incident types, it is not possible to evaluate whether the Systems are being used inequitably.

Options:

- A. Request that SPD report on deployment of Audio Recording Systems by incident type and location for the past three years and identify any disproportionate impacts.
- B. Take no action.

3. Authentication of Recordings. The SIR does not address whether or how SPD ensures the authenticity of its audio recordings. Verification of authenticity would confirm that individuals have been accurately identified and that recordings haven't been accidentally or deliberately compromised.

Options:

- A. Request that SPD develop policies and procedures for verifying the authenticity of its covert Audio Recordings.
- B. Take no action.

cc: Aly Pennucci, Deputy Director
Brian Goodnight, Supervising Analyst