

April 29, 2021

MEMORANDUM

To: Transportation and Utilities Committee
From: Lise Kaye, Analyst
Subject: Council Bill 120053 - Authorizing approval of uses and accepting the surveillance impact report for the Seattle Police Department's use of Forward Looking Infrared Real-Time Video

On Wednesday, April 7, 2021 the Transportation and Utilities Committee will discuss [Council Bill \(CB\) 120053](#). The bill is intended to meet the requirements of [Seattle Municipal Code Chapter 14.18](#), Acquisition and Use of Surveillance Technologies.¹ CB 120053 would approve the Seattle Police Department's (SPD's) continued use of existing Forward Looking Infrared Real-Time Video technology (FLIR Video) as deployed by King County Sheriff's Office (KCSO) helicopters and accept the Surveillance Impact Report (SIR) and an Executive Overview for this technology.² The Executive Overview summarizes the operational policy statements which represent SPD's allowable uses of the FLIR Video equipment and data.

This memo describes the FLIR Video technology and summarizes potential civil liberties impacts, potential disparate impacts on historically targeted communities and vulnerable populations, and the public engagement process, as reported in the SIR. It also summarizes key concerns and recommendations from the Community Surveillance Working Group's Impact Assessment and the Chief Technology Officer's response ("CTO's Response) to the Impact Assessment. Finally, the memo identifies policy issues for Council consideration.

Forward Looking Infrared Real-Time Video (FLIR Video)

SPD officers may currently request helicopter support from the KCSO Air Unit to track the movement of crime suspects and to gain situational awareness of disaster scenes.³ The FLIR Video technology installed on the helicopters provides heat signature-type images, which represent the exterior temperature of an object or person. [SPD Policy 16.060 - King County Sheriff's Office Air Support Unit](#) allows officers to directly request air support assistance when a helicopter is on-duty and operating; if the helicopter is "off-duty," a sergeant will screen a request from an officer and coordinate with Communications personnel. KCSO helicopters are available at SPD's request, if not otherwise engaged, at no charge to SPD.⁴

¹ (Ord. [125679](#), § 1, 2018; Ord. [125376](#), § 2, 2017.) Attachment 1 to this memo summarizes these requirements and process by which the Executive develops the required Surveillance Impact Reports (SIRs))

² FLIR Systems, an Oregon-based company, supplies the FLIR Video technology installed on KCSO helicopters. (It also supplies Acyclica technology used by the Seattle Department of Transportation to calculate vehicle travel times.) As reported by the [Seattle Times on March 7, 2021](#), FLIR Systems has a history of violations associated with international technology sales.

³ The KCSO Air Unit operates three helicopters as "Guardian One" and "Guardian Two," with the latter primarily supporting Search and Rescue

⁴ [SPD Policy 16.060](#)-POL (1)

When SPD obtains FLIR Video recordings for evidentiary or investigative purposes, the Department currently retains the recordings consistent with State requirements for retention of criminal justice data.⁵ The SPD Evidence Unit stores the video in its Digital Evidence Management System (DEMS). The system automatically logs attempts to access and view photographic evidence in DEMS and Evidence.com. SPD may share FLIR Video with outside entities in connection with criminal prosecutions and in response to public disclosure requests made through the Washington Public Records Act. The KCSO Air Support Unit also records audio and video of their operations and occasionally releases these recordings to the public, including video posted on their YouTube channel.

The SIR reports that, in 2018, Guardian One responded to 45 SPD events, and Guardian Two was not dispatched to any SPD calls for service. That year, Guardian One most commonly participated with SPD in the following types of events: robbery (eight events), followed by automotive theft and/or recovery (seven events), assault (six events), and burglary (six events). Other less-frequent event types included domestic violence; kidnapping/abduction; prowler; traffic violations; warrant services; weapons; and missing, found or runaway person; suspicious person/object; and theft. The CTO’s Response to the Working Group’s Impact Assessment provided a table showing Guardian One Dispatches by month and [precinct](#) in 2018, reproduced as Table 1, with added totals by month, year and precinct:

Table 1. SPD’s 2018 use of FLIR Video technology as deployed by KCSO helicopters

2018 Guardian One Dispatches for Seattle Police Department													
Precinct	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec	Total
East		1									1		2
North	2	3		2			1				2		10
South	3	3	2	4		1	4	1	2				20
South-west	1			1			1	1		1		3	8
West	1			1			1	1					4
Outside Seattle				1									1
Total	7	7	2	9	0	1	7	3	2	2	3	3	45

Source: FLIR Video SIR, CTO’s Response to Privacy and Civil Liberties Impact Assessment p. 37.

Note: Table as printed in the SIR did not include a column for the month of May, which had no deployments, or totals.

⁵ Washington State’s [law enforcement agency retention requirements](#) vary by type of record (e.g. case status and type of investigation)

Civil Liberties and Potential Disparate Impacts on Historically Marginalized Communities

Departments submitting a SIR identify potential civil liberties impacts and complete an adapted version of the Racial Equity Toolkit (RET) to highlight and mitigate impacts on racial equity from the use of the technology. The RET for the SPD's use of FLIR Video technology identifies the risk that private information may be obtained about third parties as a potential civil liberties impact. The RET notes that the FLIR Video does not capture "even the most generic of identifiable individual characteristics such as race, age, or gender."

The RET identifies the risk of disproportionate surveillance of vulnerable or historically targeted communities as a second potential civil liberties concern. The RET notes that [SPD Policy 5.140](#) forbids bias-based policing and provides for accountability measures and identifies alternative practices that would result in less disproportionate impact. The SIR also identifies data sharing, storage and retention as having the potential to contribute to structural racism, thereby creating a disparate impact on historically targeted communities.⁶ SPD mitigates this risk through policies regarding the dissemination of data in connection with criminal prosecutions, the [Washington Public Records Act](#), and other authorized researchers. No metrics were provided in the RET for use as part of the CTO's annual equity assessments.⁷

Public Engagement

The Executive accepted public comments on this technology from October 7 – November 7, 2020 and conducted one public meeting for this and the two other "Group 3" SIRs on October 28, 2020. The FLIR Video SIR includes all comments pertaining to this technology received from members of the public (Appendix C) and letters from organizations or commissions (Appendix D). Multiple comments about this technology expressed concern about use of this technology against protesters and disproportionate use in neighborhoods and against people of color. Other comments expressed concern about the use of this technology in conjunction with other surveillance technology, such as video recording; guidelines for use and sharing of data; invasion of privacy; and the use of military technology. Several responses noted no concerns. One response also detailed concerns about the duration and structure of the public engagement process for the Group 3 Technologies.

Privacy and Civil Liberties Impact Assessment

The Impact Assessment prepared by the Community Surveillance Working Group ("Working Group") identified five "key concerns" about the use of this technology, including inadequate policies defining the specific purposes for which SPD may request support from KCSO's air support unit; inadequate policies restricting data collection; the privacy of individuals unrelated to an investigation; how data are stored and protected; and the locations of the 45 deployments of "Guardian One" to support SPD in 2018. Tables 2 and 3 summarize the CTO's Response to the

⁶ Historical community or department practices could produce data that would portray certain communities as higher in crime than in other neighborhoods or elevate the involvement in potential criminal events by certain demographic groups. An approach to storage, retention, and integration of these data that was not cognizant of these possibilities might allow for the continuation of these perceptions, with potential disparate enforcement responses.

⁷ [SMC 14.18.050B](#) requires that the CTO produce and submit to the City Council a Surveillance Technology Community Equity Impact Assessment and Policy Guidance Report that addresses whether Chapter 14.18 of the SMC is effectively meeting the goals of the Race and Social Justice Initiative.

“key concerns” and describe whether and how the SIR as drafted would address the Working Group’s recommendations.

Key Concerns and the CTO’s Response. Table 2 summarizes the CTO’s Response to each of the Working Group’s “key concerns.” The CTO’s Response finds that the SIR addresses each concern, but it also provides KCSO helicopter deployment data from 2018 reproduced in Table 1 that was not provided in body of the SIR. The CTO’s Response notes that “while SPD cannot change the KCSO use policies, SPD has outlined their own policies about use of the images and video obtained from the Air Support Unit operation of the aircraft.”

Table 2. CTO Response to Privacy and Civil Liberties Impact Assessment of SPD’s use of FLIR Video technology as deployed by KCSO helicopters

Working Group Key Concern	CTO Response
1. Specific purposes for which SPD may request support from KCSO’s air support unit	While SPD cannot change the KCSO use policies, SPD has outlined their own policies about use of the images and video obtained from the Air Support Unit operation of the aircraft. The SIR responses are clear and provide adequate transparency and policy guidance about technology use.
2. Inadequate policies regarding data collection	SPD has adequate controls and policies in place to limit use and collection of data to appropriate emergency situations and access by authorized individuals.
3. If and how SPD protects the privacy of individuals unrelated to an investigation	SPD only retrieves video or evidence from KCSO helicopters that is related to an ongoing investigation. SPD Policies 7.010 and 7.090 govern documenting and storing collected evidence and photographic evidence.
4. How data are stored and protected	SPD has appropriate policy in place, follows appropriate data storage security measure, and has clearly stated data sharing partners and practices.
5. SIR does not provide dates and neighborhoods over which KCSO and FLIR Video technology has been deployed	SPD Policy 16.060 -KCSO Air Support Unit governs and outlines the use and approval process for officers to request air support at the discretion of the KCSO. ⁸

Recommendations. The Impact Assessment recommends that Council ensure that SPD adopt “clear and enforceable rules that ensure, at a minimum, the following:

1. The purpose and allowable uses of FLIR technology and KCSO’s helicopters must be clearly defined, and any SPD use of KCSO’s helicopters and FLIR technology and data collected with these technologies must be restricted to that specific purpose and those allowable uses.
2. SPD must be prohibited from using FLIR technology and KCSO’s helicopters to disproportionately surveil communities of color and other historically over-policed communities, and must adopt policies and processes to ensure it is not targeting such communities.

⁸ See Table 1 which reproduces the information provided in the CTO’s Response showing Guardian One dispatches in 2018.

3. SPD must be required to redact or delete information collected that may compromise the privacy of individuals not related to a specific investigation of [sic]search that is restricted by the purpose of use.
4. SPD must be required to produce a publicly available annual report detailing its use of FLIR technology and KCSO helicopters. This report must include at a minimum, details on how SPD used the data collected, the amount and types of data collected, for how long data were retained and in what form, where the data are stored, and the neighborhoods over which KCSO helicopters and/or FLIR technology were deployed.”

Table 3 describes how the SIR as drafted would address these four recommendations. Areas not fully addressed are included in the “Policy Considerations” section.

Table 3. Working Group Recommendations Addressed in the SIR

Working Group Recommendation	Whether/How Addressed in SIR
1. Define the purpose and allowable uses of FLIR technology and KCSO’s helicopters and restrict SPD’s use to that purposes and those allowable uses.	Executive Overview. Operational Policies represent the only allowable uses of the equipment and data collected by this technology. <i>See Policy Consideration #2.</i>
2. Prohibit use of FLIR technology and KCSO’s helicopters to disproportionately surveil communities of color and other historically over-policed communities and adopt policies and processes to ensure it is not targeting such communities.	RET 1.3 SPD Policy 5.140 forbids bias-based policing and outlines processes for reporting and documenting any suspected bias-based behavior, as well as accountability measures.
3. Require SPD to redact or delete information that may compromise the privacy of individuals not related to a specific investigation.	7.3 SPD addresses risks of disclosure of personally identifiable information by activities such as redacting released video and information.
4. Require SPD to produce a publicly available annual report detailing its use of FLIR technology and KCSO helicopters. Include use of data, amounts and types of data; retention and storage of data; and locations where the technologies were deployed.	Seattle’s Office of Inspector General would be required to produce an annual surveillance technology usage review, which would include FLIR Video technology, in the event that Council approves CB 120053.

Policy Considerations

Central Staff has identified the following potential policy considerations.

1. Annual equity assessment metrics. SPD has not yet finalized metrics to be used in evaluating use of FLIR Video technology 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. Council may wish to request a report on the proposed metrics by a date certain.
 - B. Council may wish to defer approval of this SIR, pending completion of these metrics.
 - C. Take no action.
2. Circumstances when SPD may/must request assistance from KCSO's Air Support Unit. As noted by the Working Group, SPD's policies as cited in the SIR do not make explicit the specific purposes for which SPD may request support from KCSO's air support unit. Nor does the SIR identify any SPD policies or criteria defining the circumstances in which SPD officers may or must request assistance from KCSO's Air Support Unit. In the absence of such policies or criteria, it is unclear why the data in Table 1 provided in the CTO's Response shows a much higher incidence of 2018 Guardian One Dispatches in the South Precinct than the other four SPD precincts.

Options:

- A. Council may wish to request a report from SPD by a date certain as to the circumstances that warrant a request for FLIR assistance from KCSO's Air Support Unit.
- B. Council may wish to defer approval of this SIR, pending completion of SPD policies that establish specific policies or criteria that allow or require a request for FLIR assistance from KCSO's Air Support Unit.
- C. Take no action.

Committee Action

Options for Council action are as follows:

1. Pass CB 120053 as transmitted;
2. Request Central Staff to prepare amendments to the Council Bill to address additional concerns or issues; or
3. Take no action.

Attachment:

1. Background Summary and Surveillance Impact Report Process

cc: Dan Eder, Interim Director
Aly Pennucci, Budget and Policy Manager

Attachment 1 - Background Summary and Surveillance Impact Report Process

Recent Legislative History

[Ordinance 125376](#), passed by Council on July 31, 2017, required City of Seattle departments intending to acquire surveillance technology to obtain advance Council approval, by ordinance, of the acquisition and of a surveillance impact report (SIR).¹ Departments must also submit a SIR for surveillance technology in use when Ordinance 125376 was adopted (referred to in the ordinance as “retroactive technologies”). The Executive originally included 28 “retroactive technologies,” on its [November 30, 2017 Master List](#) but revised that list to 26 in [December 2019](#). The Council has approved two SIRs and twice extended the initial March 3, 2020 deadline for completion of SIRs for all 26 technologies: first by six months to accommodate extended deliberation of the first two SIRs; and then by a second six months due to COVID-related delays. Either the Chief Technology Officer or the Council may determine whether a specific technology is “surveillance technology” and thus subject to the requirements of SMC 14.18. Each SIR must describe protocols for a “use and data management policy” as follows:

- How and when the surveillance technology will be deployed or used and by whom, including specific rules of use
- How surveillance data will be securely stored
- How surveillance data will be retained and deleted
- How surveillance data will be accessed
- Whether a department intends to share access to the technology or data with any other entity
- How the department will ensure that personnel who operate the technology and/or access its data can ensure compliance with the use and data management policy
- Any community engagement events and plans
- How the potential impact of the surveillance on civil rights and liberties and potential disparate impacts on communities of color and other marginalized communities have been taken into account; and a mitigation plan
- The fiscal impact of the surveillance technology

Community Surveillance Working Group

On October 5, 2018, Council passed [Ordinance 125679](#), amending SMC 14.18, creating a “community surveillance working group” charged with creating a Privacy and Civil Liberties Impact Assessment for each SIR.² At least five of the seven members of the Working Group

¹ As codified in SMC 14.18.030, Ordinance 125376 identified a number of exemptions and exceptions to the required Council approval, including information voluntarily provided, body-worn cameras and cameras installed in or on a police vehicle, cameras that record traffic violations, security cameras and technology that monitors City employees at work.

² Ordinance 125679 also established a March 31, 2020 deadline for submitting SIRs on technologies already in use (referred to as “retroactive technologies”) when Ordinance 125376 was passed, with provision to request a six-month extension.

Attachment 1 - Background Summary and Surveillance Impact Report Process

must represent groups that have historically been subject to disproportionate surveillance, including Seattle’s diverse communities of color, immigrant communities, religious minorities, and groups concerned with privacy and protest.³ Each Privacy and Civil Liberties Impact Assessment must describe the potential impact of the surveillance technology on civil rights and liberties and potential disparate impacts on communities of color and other marginalized communities and will be included in the SIR. Prior to submittal of a SIR to Council, the Chief Technology Officer may provide a written statement that addresses privacy rights, civil liberty or other concerns in the Working Group’s impact assessment.

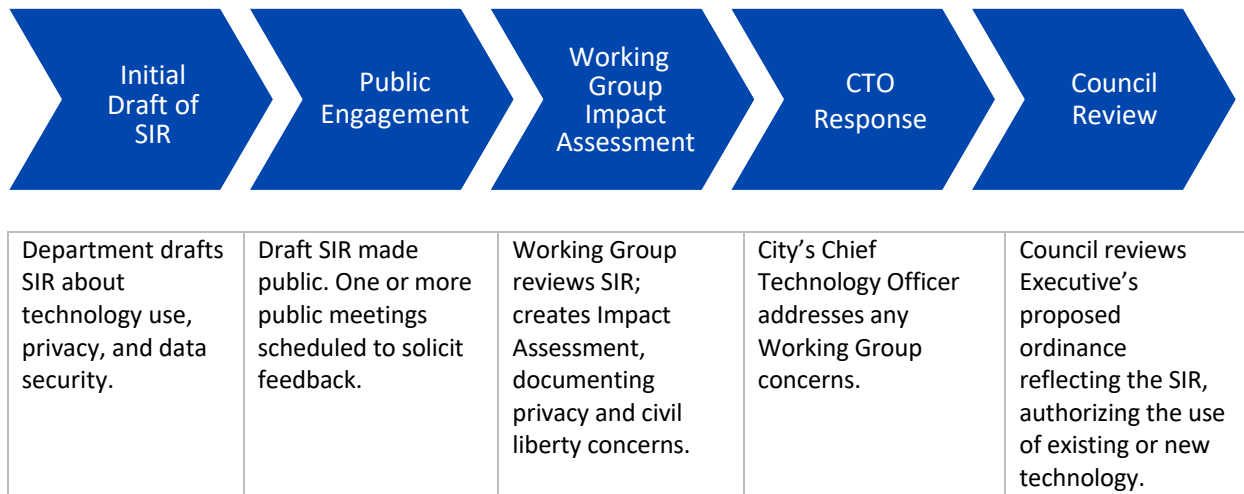
Executive Overviews

In May 2019, members of the Governance, Equity, and Technology Committee requested that IT staff prepare a summary section for each of the two lengthy SIR documents under review at that time. The Committee then accepted the resultant “Condensed Surveillance Impact Reports (CSIRs) together with the complete SIRs. The Executive has continued this practice with subsequent SIRs but has renamed the documents “Executive Overviews.” The Operational Policy Statements in the Executive Overview represent the only allowable uses of the subject technology.

SIR Process

Chart 1 is a visual of the SIR process from inception to Council Review:

Chart 1. Surveillance Impact Report (SIR) Process



³ The Mayor appoints four members and Council appoints three members.