

December 18, 2018

MEMORANDUM

To: Governance, Equity, and Technology Committee Members
From: Greg Doss, Council Central Staff
Subject: GrayKey Technologies – Clerk File 314411

Background: Seattle Surveillance Ordinance

In 2017, the Seattle City Council passed, and Mayor Ed Murray signed [Ordinance 125376](#) (“Surveillance Ordinance”) to provide greater transparency around the City’s use of existing surveillance technologies and acquisition of new surveillance technologies. The Surveillance Ordinance and [SMC 14.18.010](#) define Surveillance as follows:

"Surveillance" or "surveil" means to observe or analyze the movements, behavior, or actions of identifiable individuals in a manner that is reasonably likely to raise concerns about civil liberties, freedom of speech or association, racial equity or social justice. Identifiable individuals also include individuals whose identity can be revealed by license plate data when combined with any other record. It is not surveillance if an individual knowingly and voluntarily consented to provide the information or had a clear and conspicuous opportunity to opt out of providing the information.

"Surveillance technology" means any electronic device, software program, or hosted software solution that is designed or primarily intended to be used for the purpose of surveillance.

Process for determining which technologies are Surveillance Technologies:

The Surveillance Ordinance requires the Executive to establish a process for determining whether a technology is a surveillance technology as defined in Seattle Municipal Code (SMC) Chapter 14.18.¹ [SMC 14.18.020.A.1](#) requires the process to take into consideration factors that include (1) potential impacts and uses that may adversely affect disadvantaged groups or communities and (2) the likelihood that individually identifiable information will be shared with non-City entities. The Executive’s process for determining surveillance technologies largely follows the definitions in 14.18.010 (above) and the provisions in SMC 14.18.020.A.1.

SMC 14.18.020.B.4 allows the Council at any time to designate that a technology is a Surveillance Technology and is thereby subject to the full requirements of Chapter 14.18. If the Council designates a technology as a Surveillance Technology, then SMC 14.18.020.B.5 provides that (a) such Council action shall be filed with the City Clerk and (b) the Council shall direct the Seattle Information Technology Department’s (Seattle IT’s) Chief Technology Officer (CTO) to designate the technology as a Surveillance Technology on Seattle IT’s Technology Determination Lists.

¹ SMC 14.18.010

GrayKey Technologies:

According to the Executive, GrayKey technology provides the ability to access any data that is held on a cell phone. After the device is unlocked, the full contents of the file system are downloaded to the GrayKey device. From there files can be accessed through a web-based interface on a connected computer and downloaded for analysis.

Executive's preliminary review of GrayKey:

On September 17th, Seattle IT staff completed an initial assessment² of the GrayKey technology. The assessment indicates that the technology would be used for the forensic investigation of Internet Crimes Against Children (ICAC) cases. The Executive's review indicates that the technology would be used in conjunction with a search warrant for recovery of information.

Seattle IT staff review included a determination that GrayKey does not meet the definition of a surveillance technology. However, Seattle IT staff indicated that there is a high privacy risk associated with this technology and that the technology would be of interest to the Council and public. For this reason, both Seattle IT staff and Seattle Police Department (SPD) staff have indicated that they will complete a Privacy Impact Assessment³ before acquiring the technology, which is expected to occur in the third quarter of 2019. The Privacy Impact Assessment is a document that is intended to gather information about the collection, use, sharing, security and access controls for data. It also requires information about policies, training and documentation that govern use of the technology and data collected. The Privacy Impact Assessment is not required to be submitted to the Council under SMC 14.18.

Surveillance and Privacy Concerns with GrayKey:

A representative of the American Civil Liberty Union (ACLU) has contacted Councilmembers with concerns about GrayKey technologies, which the ACLU believes falls within the definition of surveillance technology set forth under the surveillance ordinance (SMC 14.18). The ACLU notes that the unlocking of a cell phone and downloading of its contents will allow for an analysis of the behavior and movements of the individual who owns the phone. ACLU staff have recommended that the City Council find that GrayKey is surveillance technology as defined in SMC 14.18.010. If the City Council uses its authority to do so under SMC 14.18.020.B.4 then the Executive would be required to submit a Surveillance Impact Report⁴ for the City Council's review. In this event, the Executive would be prohibited from acquiring GrayKey until and unless the City Council passes an ordinance that authorizes Seattle IT and SPD to purchase the device.

Council designation of GrayKey as Surveillance Technology:

Under the authority prescribed in Seattle Municipal Code 14.18.020.B.4 the attached Clerk File would – if approved by a majority vote of the Full Council – establish the City Council's determination that GrayKey technologies, or any technology with similar capabilities, as

² One Trust Privacy Management Software, Assessment Summary Report, September 17, author Jimi Robinson

³ Privacy Program and Privacy Impact Assessment are discussed here:

<http://www.seattle.gov/tech/initiatives/privacy/about-the-privacy-program>

⁴ See SMC 14.18.020

surveillance technology subject to the documentation and reviews outlined in SMC 14.18.020. The effect of establishing the Council's determination in a Clerk File would be to require that Seattle IT's Chief Technology Officer designates GrayKey technologies as a Surveillance Technology on a surveillance technology determination list and to follow the steps laid out in SMC 14.18 accordingly.

cc: Kirstan Arestad, Central Staff Director
Dan Eder, Deputy Director