



## Seattle City Council

### Central Staff – Memorandum

**Date:** May 19, 2015  
**To:** Members of the Public Safety, Civil Rights, and Technology Committee  
**From:** Mark Baird, Council Central Staff  
**Subject:** Police Intelligence Auditor Legislation

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During the January 7, 2015 Public Safety, Civil Rights, and Technology Committee presentation on the last two intelligence audits, Committee Chair Harrell requested that Central Staff review the existing Seattle Municipal Code (SMC) language in Chapter 14 – Human Rights, [Section 12 – Collection of Information for Law Enforcement Purposes](#) (commonly referred to as the Police Intelligence Ordinance). He wanted to consider potential changes to the provisions related to defining files and other materials, the qualifications of the Auditor, and the audit process. This memorandum outlines proposed changes to the SMC that address CM Harrell’s interests.

#### **Background**

In 1979, the Seattle City Council passed Ordinance [108333](#) (the Police Intelligence Ordinance) which established policies that govern the collection and recording of information by Seattle Police Department (SPD) personnel. It provides that SPD may collect and record information for law enforcement purposes while ensuring that law enforcement activities do not unreasonably infringe upon individual rights, liberties, and freedoms protected by either the United States Constitution or the Washington State Constitution.

The Police Intelligence Ordinance created an Auditor position that is appointed by the Mayor and confirmed by the Council to ensure that the SPD complies with the collection, storage, and purge provisions of the legislation. The Auditor is charged with conducting semi-annual audits that include reviewing random files, looking at authorizations, checking purge logs, and writing reports that document the audit process and any findings. The Chief of Police reviews a draft and offers any feedback before the Auditor submits reports to the Mayor, the Council, the Clerk, and the City Auditor.

#### **Proposed Changes**

The proposed legislation that would amend provisions of the SMC related to the Auditor’s role and duties. It would modernize the definitions section, add new qualifications and responsibilities for the Auditor, and provide direction about the standard contents of semi-annual audit reports. These proposed changes impact three sections of the existing SMC. The proposed changes for each section are as follows:

### **1. Definitions (14.12.030)**

The proposed legislation changes:

- The definition of “Collect” to include electronic information such as digital photographs and audio and video;
- The definition of “Purge” to include “delete” and to make it clear that information may be transferred to another element of the department for a legitimate law enforcement purpose; and
- The defined terms to add a new definition for the term “File” which includes electronic information and photographs.

### **2. Appointment and Responsibilities (14.12.310)**

The proposed legislation adds:

- A stipend for the Auditor (the Auditor is currently uncompensated);
- A requirement that a qualified appointee for the position of Auditor must have experience with forensic audits; and
- A requirement that a qualified appointee for the position of Auditor must have knowledge and experience with electronic storage devices and digital photography that includes video.

### **3. Audit Procedures and Standards (14.12.330)**

The proposed legislation adds:

- The ability of the Auditor, the Chief of Police, or the Office of Professional Accountability (OPA) Director to call for a special audit;
- The requirement that audits shall be performed consistent with forensic audit standards;
- The requirement of the Auditor to be able to track digital material from capture to deletion (e.g., from camera to storage device to deletion and entry on the purge log);
- The requirement that the Auditor document the methodology and the number of files and devices examined for each audit in his or her reports; and
- The requirement that the Auditor add the OPA Director to the circulation list of the final semi-annual audit reports.

Table 1 presents the current SMC language and proposed edits per section.

**Table 1: Police Intelligence Auditor Proposed Changes**

Current	Proposed
<b>14.12.030 Definitions Section</b>	
<p>B. "Collect" means to write down, or preserve in another tangible form, information as a record or file of the <b>Department</b>, which is retrievable by <b>Department personnel</b>. "Collect" excludes making personal notes which are not retrievable by other <b>Department personnel</b>.</p>	<p>B. "Collect" means to write down, or preserve in another tangible form, information as a record or file of the <b>Department</b>, which is retrievable by <b>Department personnel</b>. <u>This includes electronic information such as digital photographs and audio and video files.</u> <del>"Collect" excludes making personal notes which are not retrievable by other <b>Department personnel</b>.</del></p>
<p>I. "Purge" means to return, destroy, or deny use of information by means such as returning to the sender or removal to a secure depository with access restricted solely to specific individuals for purposes of defending a lawsuit, complying with a court order, preserving evidence possibly valuable to a defendant in a criminal case or pending commitment proceeding, and auditing compliance with this chapter or state laws regarding records retention or public disclosure. "Purge" shall include deletion of information from affected materials and from <b>Department</b> indexes. Nothing in this chapter shall prohibit indexing of materials within a secure depository.</p>	<p>I. "Purge" means to return, destroy, or <u>delete</u>, <del>or deny use of information by means such as returning to the sender or removal to a secure depository with access restricted solely to specific individuals for purposes of defending a lawsuit, complying with a court order, preserving evidence possibly valuable to a defendant in a criminal case or pending commitment proceeding, and auditing compliance with this chapter or state laws regarding records retention or public disclosure.</del> <u>Information can be transferred to other areas of the <b>Department</b> for a legitimate law enforcement purpose.</u> "Purge" shall include deletion of information from affected materials and from <b>Department</b> indexes. Nothing in this chapter shall prohibit indexing of materials within a secure depository.</p>
New	<p><u>M. <b>File</b> means a physical collection of materials and photographs or an electronic set of documents or digital photographs, or audio or video files that reside on some electronic storage device.</u></p>
<b>14.12.310 Appointments and Responsibilities of Auditor</b>	
<p>A. The Mayor shall appoint an <b>Auditor</b>, subject to confirmation by the City Council, to monitor compliance with this chapter. The <b>Auditor</b> shall serve for a term of three (3) years and may be reappointed by the Mayor, subject to confirmation by the City Council. The <b>Auditor</b> may be removed from office for cause by the Mayor by filing a statement of reasons for the removal with the City Council.</p>	<p>A. The Mayor shall appoint an <b>Auditor</b>, subject to confirmation by the City Council, to monitor compliance with this chapter. The <b>Auditor</b> shall serve for a term of three (3) years and may be reappointed by the Mayor, subject to confirmation by the City Council. The <b>Auditor</b> may be removed from office for cause by the Mayor by filing a statement of reasons for the removal with the City Council. <u>The <b>Auditor</b> is entitled to a stipend of \$XX for each audit conducted under this ordinance.</u></p>
<p>B. The <b>Auditor</b> should possess the following qualities and characteristics:</p> <ol style="list-style-type: none"> <li>1. A reputation for integrity and professionalism, as well as the ability to maintain a high standard of integrity in the office;</li> <li>2. A commitment to and knowledge of the need for and responsibilities of law enforcement, as well as the need to</li> </ol>	<p>B. The <b>Auditor</b> should possess the following qualities and characteristics:</p> <ol style="list-style-type: none"> <li>1. A reputation for integrity and professionalism, as well as the ability to maintain a high standard of integrity in the office;</li> <li>2. A commitment to and knowledge of the need for and responsibilities of law enforcement, as well as the need to protect basic constitutional</li> </ol>

<p>protect basic constitutional rights;</p> <ol style="list-style-type: none"> <li>3. A commitment to the statement of purpose and policies in this chapter;</li> <li>4. A history of demonstrated leadership experience and ability;</li> <li>5. The potential for gaining the respect of <b>departmental personnel</b> and citizens of the City;</li> <li>6. The ability to work effectively with the Mayor, the City Council, the City Attorney, the Chief of the <b>Department, departmental personnel</b>, public agencies, private organizations, and citizens; and</li> <li>7. The ability to work effectively under pressure.</li> </ol>	<p>rights;</p> <ol style="list-style-type: none"> <li>3. A commitment to the statement of purpose and policies in this chapter;</li> <li>4. A history of demonstrated leadership experience and ability;</li> <li>5. <u>Experience with conducting forensic audits;</u></li> <li>6. <u>Knowledge of and experience with electronic storage devices, digital photography, and audio and video files;</u></li> <li><del>5-7.</del> The potential for gaining the respect of <b>departmental personnel</b> and citizens of the City;</li> <li><del>6-8.</del> The ability to work effectively with the Mayor, the City Council, the City Attorney, the Chief of the <b>Department, departmental personnel</b>, public agencies, private organizations, and citizens; and</li> <li><del>7-9.</del> The ability to work effectively under pressure.</li> </ol>
<b>14.12.330 – Audit Procedures and Standards</b>	
<p>A. The <b>Auditor</b> shall conduct an in-place audit of <b>Department</b> files and records at unscheduled intervals not to exceed one hundred eighty (180) days since the last audit. The <b>Department</b> shall provide temporary space for the <b>Auditor</b> to conduct the audit in secure areas close to the records to be reviewed by the Auditor.</p>	<p>A. The <b>Auditor</b> shall conduct an in-place audit of <b>Department</b> files and records at unscheduled intervals not to exceed 180 days since the last audit. The <b>Auditor</b> <u>may conduct additional audits at the request of the <b>Chief of Department, the City Council, the City Attorney, or the OPA Director.</b></u> The <b>Department</b> shall provide temporary space <u>and a computer workstation</u> for the Auditor to conduct the audit in secure areas close to the records to be reviewed by the <b>Auditor</b>. <u>The <b>Auditor</b> shall be given access to all drives, systems, and storage devices necessary to conduct the audit. Prior to an audit, the <b>OPA Director</b> may recommend incidents or a period of time which have caused individual or public concern or have generated an OPA complaint for the <b>Auditor</b> to review.</u></p>
<p>B. The audit shall be prepared and published pursuant to the following provisions:</p> <ol style="list-style-type: none"> <li>1. In conducting an audit, the <b>Auditor</b> shall: <ol style="list-style-type: none"> <li>a. Review each authorization granted pursuant to Sections 14.12.150/14.12.160, 14.12.170, or 14.12.230, together with investigative files associated with the authorizations;</li> <li>b. Perform a random check of <b>Department</b> files and indexes;</li> </ol> </li> </ol>	<p>B. The audit shall be prepared and published pursuant to the following provisions:</p> <ol style="list-style-type: none"> <li>1. In conducting an audit, the <b>Auditor</b> shall: <ol style="list-style-type: none"> <li>a. Review each authorization granted pursuant to Sections 14.12.150/14.12.160, 14.12.170, or 14.12.230, together with investigative files associated with the authorizations;</li> <li>b. Perform a random check of <b>Department</b> files and indexes</li> </ol> </li> </ol>

<p>c. Review files and records containing <b>private sexual or restricted information</b> designated for purging except information not yet <b>collected</b> or <b>purged</b> pursuant to Sections 14.12.140, 14.12.150, 14.12.190, or 14.12.240; and</p> <p>d. Prepare and forward a written report of the audit to the Mayor, the City Council, the City Attorney, and the City Clerk for filing as a public record.</p> <p>2. The <b>Auditor's</b> report shall contain a general description of the files and records reviewed and a discussion of any substantial violation of this chapter discovered during the audit. A preliminary report shall be delivered by the <b>Auditor</b> to the Chief of the <b>Department</b> for review and comment. The Chief of the <b>Department</b> shall review and comment on the preliminary report within twenty (20) days after receipt of the report. The <b>Auditor shall submit the final report within thirty (30) days after receipt of the Chief's comments.</b></p>	<p><u>consistent with standard forensic audit practices;</u></p> <p>c. Review files and records containing <b>private sexual or restricted information</b> designated for purging except information not yet <b>collected</b> or <b>purged</b> pursuant to Sections 14.12.140, 14.12.150, 14.12.190, or 14.12.240;</p> <p><u>d. Track any digital photographs and audio and video files from the device they were captured from through their deletion and documentation on the purge log; and</u></p> <p><del>d.e.</del> Prepare and forward a written report of the audit to <u>the OPA Director</u>, the Mayor, the City Council, the City Attorney, and the City Clerk for filing as a public record.</p> <p>2. The <b>Auditor's</b> report shall contain a general description of <u>the methodology used for the audit</u>, the files and records reviewed and a discussion of any substantial violation of this chapter discovered during the audit. <u>The Auditor and the respective public safety committee Chair will work together to develop the form and content of the audit reports.</u> A preliminary report shall be delivered by the <b>Auditor</b> to the Chief of the <b>Department</b> for review and comment. The Chief of the <b>Department</b> shall review and comment on the preliminary report within twenty (20) days after receipt of the report. <b>The Auditor shall submit the final report to the OPA Director within thirty (30) days after receipt of the Chief's comments.</b></p>
<p>3. The <b>Chief of the Department</b> shall:</p> <p>a. Forward to the Mayor, the City Council, the City Attorney, and the City Comptroller within ten (10) <b>working days</b> of receipt of the <b>Auditor's</b> final report the Chief's written comments on the report; and</p> <p>b. Cause an immediate investigation into the circumstances of any apparent violations of this chapter reported by the <b>Auditor</b>.</p>	<p>3. The <b>Chief of the Department</b> shall:</p> <p>a. Forward to the Mayor, the City Council, the OPA Director, the City Attorney, and the City <del>Comptroller</del> <u>Auditor</u> within ten (10) <b>working days</b> of receipt of the <b>Auditor's</b> final report the Chief's written comments on the report; and</p> <p>b. <u>The OPA Director shall</u> <del>cause</del> an immediate investigation into the circumstances of any apparent violations of this chapter reported by the <b>Auditor</b>.</p>