

February 6, 2023

## MEMORANDUM

**To:** Economic Development, Technology and City Light Committee  
**From:** Lise Kaye, Analyst  
**Subject:** Council Bill 120499 - Authorizing approval of uses and accepting the surveillance impact report for the Seattle Police Department's use of Camera Systems

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On February 8, 2023, the Economic Development, Technology and City Light Committee will discuss [Council Bill \(CB\) 120499](#). This CB would approve the Seattle Police Department's (SPD's) continued use of Camera Systems and accept the Surveillance Impact Report (SIR) and an Executive Overview for this technology.<sup>1</sup>

The bill is intended to meet the requirements of [Seattle Municipal Code Chapter 14.18](#), Acquisition and Use of Surveillance Technologies, which requires City of Seattle departments intending to acquire surveillance technology to obtain advance Council approval of that acquisition and of a surveillance impact report (SIR).<sup>2</sup> 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, if implemented, could restrict or modify the application of certain technologies.

This memorandum describes the SPD's use of Camera 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. In addition, the memorandum identifies two policy issues for Council consideration.

### Camera Systems

SPD uses the Camera Systems covered by this SIR to covertly obtain information during a criminal investigation. They may be concealed on a person or at a particular location and may continuously record or be motion activated. A person carrying a concealed camera controls its activation. SPD also uses cameras for video recording in the presence of a confidential informant or undercover officer as allowed by law. These cameras do not capture sounds. SPD's policies allow covert use of these cameras after obtaining appropriate consent and/or legal search warrant authority and also allows covert use without a warrant in areas where no reasonable expectation of privacy exists. The SIR does not disclose the specific Camera Systems used by SPD

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<sup>1</sup> The complete title of the SIR is "Camera Systems - Images or Non-Auditory Video Recordings."

<sup>2</sup> The Executive Overview summarizes SPD's allowable uses of Camera Systems. See also the [memorandum](#) 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 110572](#).

to avoid the risk of countermeasures that could compromise ongoing and future investigations. SPD reports that the department mitigates potential civil liberties risks, including the risk of unlawful surveillance 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.

### Surveillance Working Group Recommendations and CTO Response

The Community Surveillance Working Group's Impact Assessment for Camera Systems makes 11 recommendations to Council. The CTO's response 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 provides detailed responses to each of the ten "key concerns" raised by the Working Group.

Table 1 summarizes which recommendations have been addressed in the SIR and/or are a matter of state law, and which would require a revised SPD policy and/or procedure. Attachment 1 provides additional detail on whether the SIR as drafted or current law addresses the Working Group's recommendations as well as relevant responses from the CTO and/or SPD.

*Table 1. Surveillance Working Group (SWG) Recommendations Addressed in SIR and/or State Law*

Addressed in SIR or State Law	SWG Recommendation(s) – Abbreviated
Would require revised SPD policy and/or procedure and updated SIR	#5. Restrict use to serious and violent offenses #6. Make equipment identification publicly available, including number of cameras and number of people with access to them, and contract documentation #7. Monthly public disclosure of deployment
Would be inconsistent with state law	#1. Require legal representation when camera systems are used with consent #2. Require warrant for all use of covert camera systems
Neither is described in the SIR as an authorized use	#3. Prohibit biometric functionality #4. Prohibit use for predictive policing
See citations in Attachment A	#8. Provide strong access controls #9. Provide a clear data retention policy #10. Provide adequate and standardized training, including a privacy component #11. Maintain audit log and produce annual audit report

## **Policy Considerations**

Central Staff has identified the following potential policy considerations and options.

### **1. Annual equity assessment metrics.**

SPD has not yet finalized metrics to be used in evaluating use of Camera 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 Camera 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 covert Camera Systems by incident type and location for the past three years and identify any disproportionate impacts.
- B. Take no action.

## **Attachment:**

- 1. Surveillance Working Group Working Group Recommendations: SIR Citations, Current Law, and CTO and SPD Responses

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

**Attachment 1: Surveillance Working Group Working Group Recommendations:  
SIR Citations, Current Law, and CTO and SPD Responses**

<b>Working Group Recommendation</b>	<b>Whether/How Addressed by SIR, CTO or SPD and/or Current Law</b>
1. Prohibit the use of camera systems with consent without legal representation present.	<b>SIR §1.1</b> State law, including RCW 9.73, allows the use of camera systems with consent.
2. Use of covert camera systems may only be used with authorization of a court-ordered warrant.	<b>SIR §1.1 and §2.4</b> SPD must have probable cause, but does not need a warrant, to make video recordings in areas where individuals do not have a reasonable expectation of privacy, as defined in federal and state law. <sup>3</sup>  <b>CTO Response:</b> Section 3.2 of the SIR details use of covert camera systems capturing plain view events only when reasonable suspicion of criminal activity exists, and in areas where no reasonable expectation of privacy exists.
3. Prohibit use of biometric functionality in combination with camera footage.	Not described in the SIR as an authorized use of camera systems and a change would require Council approval of an updated SIR  <i>Per SPD, the Department does not use biometrics in combination with footage from these video cameras.</i>
4. Prohibit use of predictive policing tools with camera systems and any footage obtained with them.	Not described in the SIR as an authorized use of camera systems and a change would require Council approval of an updated SIR  <i>Per SPD, the Department does not use predictive policing tools with camera systems.</i>
5. Use of covert cameras must be restricted to serious and violent offenses; evidence of same must be required in warrant applications.	<i>Neither the SIR, SMC nor SPD policies restrict the use of covert cameras to serious and violent offenses.</i>
6. Make the following information publicly available: make, model, manufacturer of cameras; number of camera systems and number of people who have access to them; purchase orders and contracts for the camera systems.	<b>CTO Response:</b> The policies in place in the SIR and SPD Manual apply to all in scope camera systems, regardless of vendor, make, or model.  <i>SPD has requested not to publicly disclose this information to avoid the risk of countermeasures that could compromise ongoing and future investigations.</i>
7. Make detailed information about the deployed purposes and uses of the cameras publicly available at least monthly.	<b>SIR §6.1</b> Individuals may request data from covert video recording devices through the Washington Public Records Act, <a href="#">Chapter 42.56 RCW</a> , and SPD will apply “applicable extensions” to the data before disclosing it to a requester.
8. Provide strong access controls for accessing data collected via covert camera systems.	<b>CTO Response:</b> Only authorized SPD users may access camera systems and the data when it is stored on the device. Further, access to the technology for deployment and data extraction purposes is limited to TESU personnel. See also SIR Sections 2.5, 3.1 and 4.7.

<sup>3</sup> Per SPD, privacy rights in protected places are established in the US 4th amendment and WA Constitution Article 1, section 7.

Working Group Recommendation	Whether/How Addressed by SIR, CTO or SPD and/or Current Law
9. Provide a clear data retention policy.	<b>CTO Response:</b> Retention associated with this data is governed by Washing Secretary of State’s Law Enforcement Records Retention Schedule which states the data should be retained, “for 1 year after transcribed verbatim and verified OR until disposition of pertinent case file, whichever is sooner, then Destroy” (LE06-01-04 Rev. 1).” See also SIR §5.1 and §5.2.
10. Provide adequate and standardized training, including a privacy component, for all personnel who use covert cameras.	<b>SIR §7.2</b> Detectives in the Technical and Electronic Support Unit (TESU) receive vendor training and, per <a href="#">SPD Policy 12.050</a> , all employees, including TESU personnel, must receive Security Awareness Training and City Privacy Training.
11. Maintain a detailed direct audit log of user actions and require SPD to produce a publicly available annual audit report about the use of the camera systems.	<b>CTO Response:</b> SPD is subject to audits conducted by the Office of Inspector General, unit supervisors, or the federal monitor. Audit, Policy & Research Section personnel can also conduct audits of all data collection software and systems. Additionally, the Surveillance Ordinance mandates yearly auditing of these technologies by the Office of Inspector General and the IT department in some circumstances. See also SIR section 8.2 describing deployment logs and publicly accessible audit data.