

February 6, 2023

MEMORANDUM

To: Economic Development, Technology and City Light Committee
From: Lise Kaye, Analyst
Subject: Council Bill 120504 - Authorizing approval of uses and accepting the surveillance impact report for the Seattle Police Department's use of Tracking Devices

On February 8, 2023, the Economic Development, Technology and City Light Committee will discuss [Council Bill 120504](#). This Council Bill would approve the Seattle Police Department's (SPD's) continued use of Tracking Devices and accept the Surveillance Impact Report (SIR) and an Executive Overview for these technologies.

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).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, if implemented, could restrict or modify the application of certain technologies.

This memorandum describes SPD's use of Tracking Devices, 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 memorandum identifies two policy issues for Council consideration.

Tracking Devices

Tracking devices consist of interconnected hardware and software. SPD attaches geolocation trackers to vehicles to track and locate vehicle information during criminal investigations. The software can map locations and movement and set reporting intervals. SPD uses Tracking Devices only with a court order or consent, and once the consent or terms of the order have expired all data collected is maintained only in the investigation file. The data captured by a device is downloaded and provided to the Officer/Detective leading the investigation. Consistent with Washington State Records Retention requirements, the data is then purged from the software and the hardware is reset for future deployment, meaning no data captured is stored in any

¹ The Executive Overview summarizes SPD's allowable uses of Tracking Devices. 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 100572](#).

location other than the investigation file.² Per SPD, the Department replaced its 3G units in 2021 and 2022 with 5G units to retain connectivity to a cellular network, but the new units did not add any new capability beyond those described in the SIR.

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 warrant parameters, evidence procedures, and anti-bias policies. 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 Tracking Devices makes 10 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 about the use of this operational technology." 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 "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	#3. Require that data from Tracking Devices never leaves SPD-owned equipment #4. Make equipment information publicly available, including the number of people with access to the devices and contractual documentation #5. Monthly public disclosure of deployment, outcome and data sharing #10. Validate accuracy of data
Would be inconsistent with state law	#1. Require a warrant for all use of tracking devices
See citations in Attachment A	#2. Define incident types and allowed uses #6. Provide strong access controls #7. Establish a clear data retention policy #8. Provide adequate and standardized training, including a privacy component #9. Maintain audit log and produce annual audit report

² Per the SIR, Washington State Retention Schedule for Records Documented as Part of More Formalized Records (GS2016-009) requires that such records be retained "until verification of successful conversion/keying/transcription then destroy."

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 Tracking Devices 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 Tracking Devices and the corresponding incident types, it is not possible to evaluate whether the devices are being used inequitably.

Options:

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

Attachments:

- 1. 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**

Working Group Recommendation	Whether/How Addressed by SIR, CTO or SPD and/or Current Law
1. Only use tracking devices when authorized by a court-ordered warrant.	SIR §2.1 Tracking devices are only utilized with consent of a witness, a confidential informant, or within the scope of a judicially issued search warrant. <i>Per SPD, Consent-based tracking is done through the consent of the operator of the vehicle.</i>
2. Define the incident types for which SPD may use tracking devices and how they may be used.	SIR §1, 2, 3 and 4 provide this information
3. Require that data collected via Tracking Devices never leaves SPD-owned equipment.	SIR 5.1 Data is securely stored by the vehicle tracking technology vendor and will be transferred to the case investigator only via Seattle Police Department owned and authorized technology.
4. Make publicly available the identification of the Tracking Devices, the number of such devices and how many people have access to them, and the purchase orders and contracts for each of the tracking devices.	Not addressed in the SIR
5. Make specific information available monthly about the use of tracking devices (includes the frequency and duration and outcome of use and details of data sharing).	Monthly reports on Tracking Device usage are not addressed in the SIR.
6. Provide strong access controls for tracking devices.	SIR 5.1 Data is securely stored by the vehicle tracking technology vendor and will be transferred to the case investigator only via Seattle Police Department owned and authorized technology. SIR §4.7 Only authorized SPD users can access the vehicle tracking devices or the data while it resides in the system. Access to the vehicle tracking systems/technology is specific to system and password protected. Data removed from the vehicle tracking system/technology and entered into investigative files is securely input and used on SPD's password-protected network with access limited to detectives and identified supervisory personnel. All SPD employees are backgrounded and access is controlled by SPD Manual Title 12 provisions governing Department Information Systems
7. Establish a clear data retention policy.	SIR §2.3 Washington State Retention Schedule for Records Documented as Part of More Formalized Records (GS2016-009) requires that such records be retained "until verification of successful conversion/keying/transcription then destroy."

Working Group Recommendation	Whether/How Addressed by SIR, CTO or SPD and/or Current Law
8. Provide adequate and standardized training for all personnel who use these tools, including a privacy component.	<p>SIR §3.3 Technical and Electronic Support Unit (TESU) personnel are trained by the vendor in the use of the hardware and software. When an Officer/Detective requests and deploys a tracking device from TESU, TESU personnel train the Officer/Detective in the tracker's use.</p> <p>SIR 7.2 SPD Policy 12.050 mandates that all employees receive Security Awareness Training (Level 2), and all employees also receive City Privacy Training.</p>
9. Keep an audit log of user actions with Tracking Devices and produce a publicly available annual audit report about SPD's use of Tracking Devices	<p>SIR §8.1 Each unit maintains logs of deployment.</p> <p><i>The Office of Inspector General will produce an annual technology usage review for this technology.</i></p>
10. Employ measures to validate the accuracy of the data collected by tracking devices.	<p>SIR §6.5 Tracking devices capture location information as it moves in relation to GPS satellites as it moves locations. They may also rely on cellular technology to track its location. The devices do not check for accuracy, as they are simply capturing a live information and sending position information.</p>