

April 29, 2021

MEMORANDUM

To: Transportation and Utilities Committee
From: Lise Kaye, Analyst
Subject: Council Bill 120055 - Authorizing approval of uses and accepting the surveillance impact report for the Seattle Police Department's use of Video Recording Systems

On Wednesday, April 7, 2021 the Transportation and Utilities Committee will discuss [Council Bill \(CB\) 120055](#). The bill is intended to meet the requirements of [Seattle Municipal Code Chapter 14.18](#), Acquisition and Use of Surveillance Technologies.¹ (Attachment 1 to this memo summarizes these requirements and process by which the Executive develops the required Surveillance Impact Reports.) CB 120055 would approve the Seattle Police Department's (SPD's) continued use of existing Video Recording Systems and accept the Surveillance Impact Report (SIR) and an Executive Overview for this technology. The Executive Overview summarizes the operational policy statements which represent SPD's allowable uses of the Video Recording Systems.

This memo describes the Video Recording Systems and summarizes the 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.

Video Recording Systems

SPD's SWAT (Special Weapons and Tactics) unit uses two camera systems to record and/or monitor individuals within SPD interview rooms, blood-alcohol collection rooms and precinct holding cells:

- Genetec Video Management System – unconcealed audio and video recording system used to record in-person interactions with and interviews of crime victims, witnesses, and suspects in seven interview rooms located at the SPD headquarters; and video-only view to monitor individuals in interview rooms when no SPD detective is present.
- Milestone Systems XProtect Video Management Software and Products – permanently installed and continuously recording all activity in SPD's blood alcohol collection rooms and precinct holding cells.

As described in the SIR, prior to conducting an interview, a detective will either advise the interview subject of the audio recording or the detective will explicitly ask for permission to record the interview.² SPD also posts signs advising of active video and audio surveillance at the

¹ (Ord. [125679](#), § 1, 2018; Ord. [125376](#), § 2, 2017.)

² Chapter 9.73.030(3) RCW: Where consent by all parties is needed pursuant to this chapter, consent shall be considered obtained whenever one party has announced to all other parties engaged in the communication or

entrances to and inside holding cells and blood alcohol collection areas at each precinct. Example signs shown in the SIR are in English, but SPD is working to ensure that all locations use the same multi-lingual or pictographic signage. SPD shares data from the video recording systems with attorneys and courts, if associated with criminal prosecutions; in response to a public records request; or with authorized researchers. Although not specifically cited in the SIR, [SPD Policy 10.060 – Holding Cell and Security Video](#), also describes access, signage and maintenance protocols for SPD’s video systems, including holding cells and blood alcohol collection rooms.

Both the Genetec and the Milestone systems delete recordings from the server after 90 days, but recordings from interview rooms are preserved storage in SPD’s evidence section, following “standard evidence retention rules.”³ Per SPD [Policy 7.110\(3\)](#), SPD employees may also temporarily store the recordings on a department computer “to meet an operational need” after they have been uploaded to SPD’s digital evidence site, but the employee must remove the statement from the Department computer when it is no longer needed.

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 identifies a potential civil liberties impact arising from the presence of personally identifiable and potentially sensitive personal information about community members on video or audio recordings, including information about third parties who are not present during the recordings. It also identifies over-surveillance of vulnerable or historically targeted communities as a potential civil liberties concern. SPD seeks to minimize privacy risks through [SPD Policy 6.060](#), which directs all SPD personnel that “any documentation of information concerning a person’s sexual preferences or practices, or their political or religious activities must be for a relevant reason and serve a legitimate law enforcement purpose” and through [SPD Policy 5.140](#), which forbids bias-based policing and outlines processes for reporting and documenting any suspected bias-based behavior, as well as accountability measures.

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.⁴ The SIR states that SPD mitigates this risk through [SPD Policy 5.140](#), which forbids bias-based policing, and through policies regarding the dissemination of data in connection with criminal

conversation, in any reasonably effective manner, that such communication or conversation is about to be recorded or transmitted: PROVIDED, That if the conversation is to be recorded that said announcement shall also be recorded.

³ Section 8 of [Washington State’s Law Enforcement Records Retention Schedule](#) establishes minimum retention periods for records pertaining to investigation of criminal activity, agency operations and procedures, and employee conduct.

⁴ Historical community or department practices could produce data in a CAD system 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.

prosecutions, the [Washington Public Records Act](#), and other authorized researchers. The RET does not identify metrics to be used as part of the CTO’s annual equity assessments.⁵

Public Engagement

The Executive accepted public comments on this technology from October 7 – November 7, 2020 and conducted one public meeting for this and two other “Group 3” SIRs on October 28, 2020. The SIR includes all comments pertaining to this technology received from members of the public (Appendix C), and letters from organizations or commissions (Appendix D). Comments in the six online responses and the one submitted letter expressed concern as to whether SPD uses the technology in a transparent and fair way, system security, potential system add-ons to enable biometric data collection or identification, camera operations, and distrust of the police department. 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 three “major issues” in its Impact Assessment, including unclear capabilities of the Video Recording Systems, lack of clarity about how data are collected, stored and protected, and the need for additional policy language “to define valid purposes of use.”

Key Concerns and the CTO’s Response. Table 1 summarizes CTO’s Response to each of the Working Group’s major issues.

Table 1. CTO Response to Privacy and Civil Liberties Impact Assessment of SPD’s use of Video Recording Systems

Working Group Key Concern	CTO Response
<p>1. The capabilities of the Genetec and Milestone systems are unclear</p>	<p>The capabilities of both the Genetec and Milestone systems are outlined in the SIR as well as the circumstances under which they are used. There are concerns regarding additional functionality that could be added to these systems or other systems with similar advanced functionality but features such as facial recognition are not in use by any system in SPD. Any material change to the functionality of these technologies would be covered under the scope of the SIR review process. Additionally, going into effect July of 2021, Washington has passed the first state law that provides regulation and oversight over facial recognition technologies (RCW 43.386). This law regulates the development, procurement, and use of a facial recognition service, and provides a similar level of transparency and review to the Seattle Surveillance Ordinance.</p>

⁵ [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, any recommended adjustments to laws and policies to achieve a more equitable outcome, and any new approaches and considerations for the SIRs.

Working Group Key Concern	CTO Response
2. Unclear how data are collected, stored, and protected	The process for how the technology is used and the treatment of the collected video is outlined in the SIR.
3. Additional policy language is necessary to define purposes of use	The specific and intended use of the technologies under review is governed by SPD Policy 7.110 –Recorded Statements . The process for how the technology is used and the treatment of the collected video is also outlined in the SIR. The capabilities and clear purpose for each system is outlined and distinguished in the review process.

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

- 1. SPD must abide by a specific and restricted purpose of use:** The ordinance should define a specific purpose of use for Video Recording Systems used by SPD, and any use must be restricted to that specific purpose.
- 2. SPD must not use any Video Recording Systems that have capabilities beyond what is strictly necessary to fulfill the purpose of use (e.g. recording custodial interrogations).** The ordinance should prohibit incorporating additional services such as facial recognition systems with the video recording systems.

Table 2 describes how the SIR as drafted would address these two recommendations.

Table 2. Working Group Recommendations Addressed in the SIR

Working Group Recommendation	Whether/How Addressed in SIR
1. Define the specific purpose of use for Video Recording Systems, and restrict use to that specific purpose	Executive Overview. Operational Policies represent the only allowable uses of the equipment and data collected by this technology.
2. Prohibit use of video recording systems that have capabilities beyond what is strictly necessary to fulfill the purpose of use (e.g., recording custodial interrogations). Prohibit SPD from incorporating additional services such as facial recognition systems with the video recording systems.	The SIR does not describe whether the video recording systems have capabilities to do more than audio and/or video recording. However, use of the systems for purposes other than audio or video recording would require an update to the SIR.

Policy Considerations

Central Staff has identified the following potential policy consideration.

1. Annual equity assessment metrics. SFD has not yet finalized metrics to be used in evaluating the Video Recording 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. Council may wish to request a report on the proposed equity assessment metrics by a date certain.
- B. Council may wish to defer approval of this SIR, pending completion of these metrics.
- C. Take no action.

Committee Action

Options for Council action are as follows:

1. Pass CB 120055 as transmitted;
2. Request Central Staff to prepare amendments to the Council Bill and/or to the SIR 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.

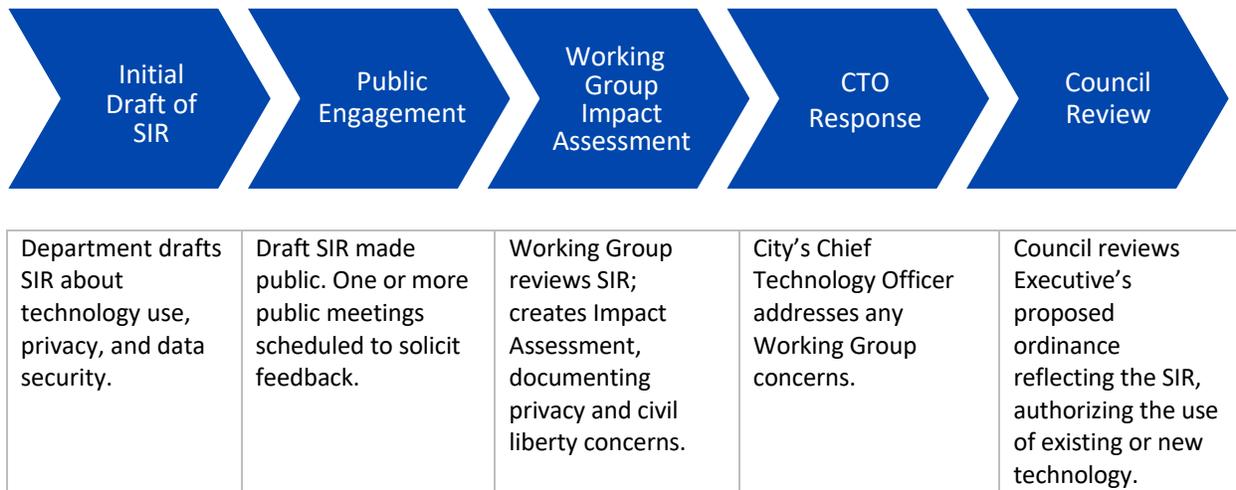
Executive Overviews

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.