SEATTLE CITY COUNCIL
CENTRAL STAFF

July 16, 2021

M E M O R A N D U M

To:	Clerk File
From:	Lise Kaye, Analyst
Subject:	Council Designation of Facial Recognition Technology as Surveillance Technology

Council approval of Clerk File No. 314479 would designate facial recognition technology as "surveillance technology." As a result acquisition of any new facial recognition technology would be subject to the documentation and reviews outlined in SMC 14.18.020. In addition to describing this designation, this memo also includes a short background on Seattle's Surveillance Ordinance, provides a brief overview of facial recognition technology, and identifies surveillance and privacy concerns with respect to the technology.

Background: Seattle Surveillance Ordinance, codified in SMC 14.18

The Seattle City Council in 2017 passed 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, codified in Seattle Municipal Code (SMC) 14.18, defines "surveillance" and "surveil" 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.

Determination of 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. SMC 14.18.020 (A1) 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.

SMC 14.18.020 (B4) allows the Council to designate at any time 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," any Council action is filed with the City Clerk and the Council directs the Chief Technology Officer to designate the

technology as a "surveillance technology" in the Information Technology Department's Technology Determination lists.

Facial Recognition Technologies

Facial recognition technology works by comparing images of an unknown person's face with a database of known individuals' faces to identify the unknown person. Some cities limit the use of facial recognition to identification purposes (e.g., to identify a suspect whose photo they already have), as did the Seattle Police Department from 2014-2018.[1] Other cities conduct real-time facial recognition surveillance, in which cameras can recognize and rapidly compare faces to a database. Businesses use facial recognition technology for security purposes and newer versions of the iPhone allow users to unlock their phones using facial recognition.

Surveillance and Privacy Concerns with Facial Recognition Technologies

Recent studies show that facial recognition systems misidentify people of color and female faces more often than white people, potentially leading to discriminatory impacts. According to a 2019 study from the federal National Institute for Standards and Technology, facial recognition systems misidentified people of color more often than white people. A study published in 2018 by MIT Media Lab found that facial recognition software was better at matching white males than darker skinned or female faces.

Nearly two dozen cities and at least seven states have limited government use of facial recognition over concerns about civil rights violations, racial bias and invasion of privacy.[2] Locally, King County recently passed an [ordinance](#) banning facial recognition technology, and, effective July 1, 2021, [RCW 43.386](#) requires State or local government agencies to produce an accountability report prior to developing, procuring or using a facial recognition service. Seattle's Information Technology Department's [Guideline GUI-115](#) prohibits acquisition of technology meeting the RCW 46.386 definition of a facial recognition service unless the review and approval requirements outlined in the State law are met.

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[1] From 2014 – 2018 SPD used facial recognition technology to identify people taken into custody when they could not be identified by other means. Source: [National League of Cities Facial Recognition Report](#)
[2] As reported by [US News and World Report, May 5, 2021](#).

Council Designation of Facial Recognition Technology as Surveillance Technology

Under the authority prescribed in Seattle Municipal Code 14.18.020.B4, this Clerk File No. 314479 would, upon Council approval, establish the Council's determination that facial recognition technology as defined herein is surveillance technology and therefore subject to the documentation and reviews outlined in SMC 14.18.020. The Chief Technology Officer is accordingly ordered to designate Facial Recognition Technology as a Surveillance Technology on a surveillance technology determination list.

A. <u>Definition.</u> "Facial recognition technology" means any computer software or application that performs facial recognition.

B. <u>Exceptions.</u>

 1. "Facial recognition technology" does not include:

    a. The analysis of facial features to grant or deny access to an electronic device; or

    b. The use of an automated or semiautomated process for the purpose of redacting a recording for release or disclosure by city departments or offices, to protect the privacy of a subject depicted in the recording, if the process does not generate or result in the retention of any facial recognition information.

 2. Nothing in this designation shall prevent the City of Seattle from complying with the National Child Search Assistance Act. 34 U.S.C. §§ 41307-41308.

cc: Dan Eder, Interim Director
      Aly Pennucci, Policy and Budget Manager