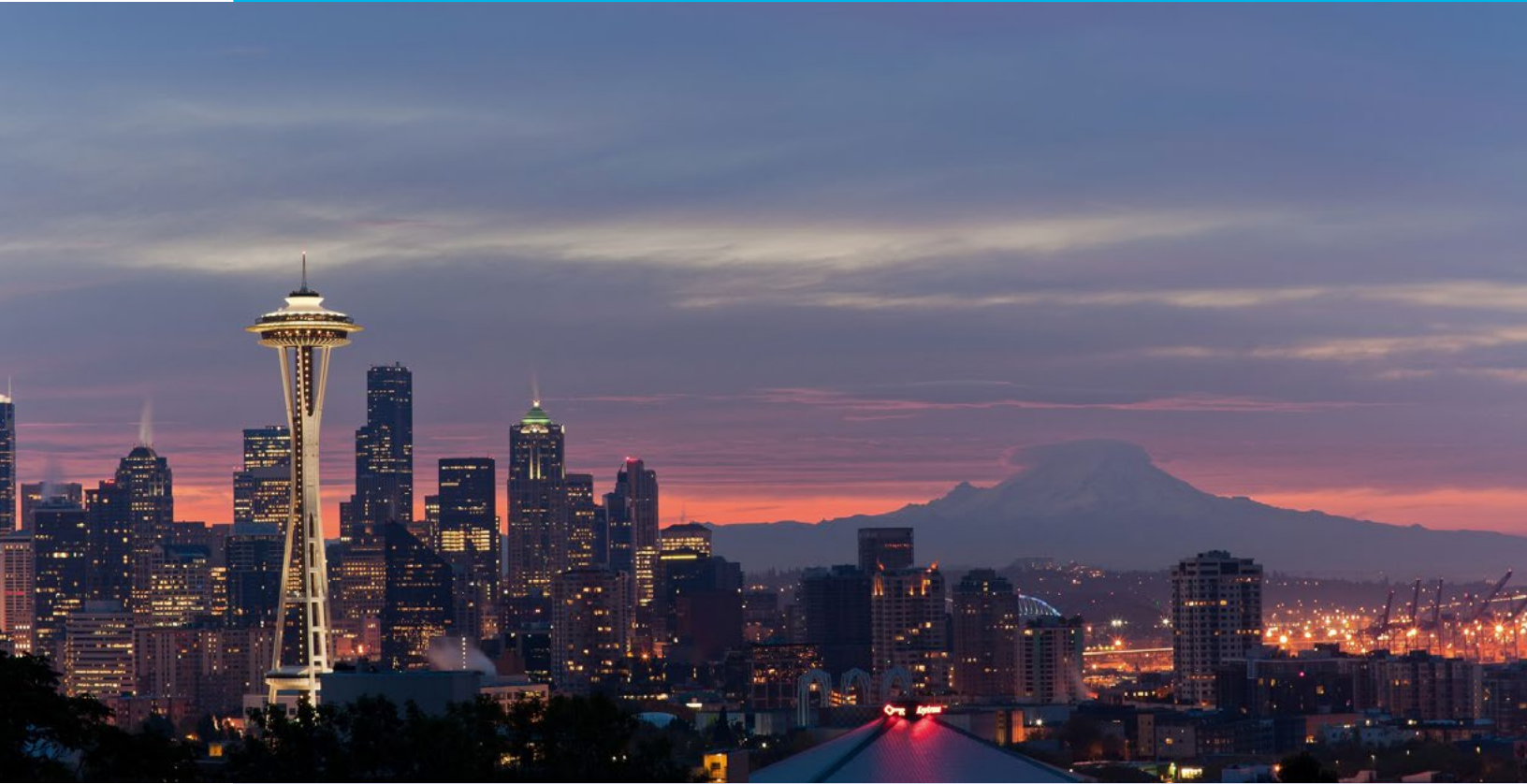




Seattle Office of
Inspector General



Source: Dave Morrow, "Seattle Sunrise". www.DaveMorrowPhotography.com

Follow-up Audit of SPD Compliance with Chapter 14.12 of Seattle Municipal Code, *Collection of Information for Law Enforcement Purposes*

December 21, 2023

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Audit Objective and Scope

Audit objective

The objective of this audit is to determine whether the Seattle Police Department (SPD) is complying with applicable regulations for the collection of private sexual information and restricted information, per the requirements in Seattle Municipal Code Chapter 14.12 (“Chapter 14.12” or “the Chapter”), and to determine the status of recommendations issued in a 2019 OIG audit of compliance with Chapter 14.12.

Audit scope

The Office of Inspector General for Public Safety (OIG) reviewed investigative activities and Chapter 14.12 authorizations issued between November 1, 2018, and June 30, 2022. OIG chose this period to include all relevant files generated after the end of the previous audit review period up to the beginning of audit fieldwork for this project.

Audit Standards

OIG conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Executive Summary

OIG initiated this audit as required by City Ordinance 125315. OIG finds SPD complied with intelligence-gathering rules outlined in Chapter 14.12, with potential exceptions related to photo and video evidence captured during protest events. OIG also finds the Chapter, now more than four decades old, should be revised to reflect changes in technology and advancements in policing practices. OIG would like to acknowledge the full and timely assistance of SPD while conducting this audit.



Key findings

- Chapter 14.12 has not kept pace with advances in technology and changes in SPD intelligence-gathering practices.
- SPD Policy on Use of Body-Worn Video at Demonstrations appears to conflict with Chapter 14.12.
- SPD took photos of demonstrators at protests between July and November 2020 that may not have been purged according to the Chapter.
- SPD appears to be following authorization requirements, but there continue to be gaps in documentation.

Implementation of past audit recommendations

OIG reviewed the implementation status of audit recommendations made during the 2019 OIG audit of this topic and found that SPD implemented four of five recommendations. These changes include updating SPD policy to better reflect the provisions of the Chapter, and creating procedures to notify OIG when the Department authorizes collection of restricted information.

The table below provides implementation status of recommendations made in the 2019 audit. See Appendix B for a comprehensive analysis of implementation of each recommendation.

	Recommendation	Status
1	The Chief of Police, in consultation with the City Attorney’s Office, should develop a clear policy for whether written authorization is required prior to collecting protected information from open sources or third parties.	Fully Implemented
2	The Chief of Police should ensure there is a procedure in place to notify OIG of all approved written authorizations to collect protected information.	Fully Implemented
3	The Chief of Police should ensure that SPD retains records relating to approved written authorizations for at least six months, to facilitate future audit reviews.	Fully Implemented
4	The Chief of Police should ensure that Policy 6.060, Collection of Information for Law Enforcement Purposes, includes all requirements of Chapter 14.12, being cognizant of any updates that are contemplated by the City, and ensure staff are updated on any changes or additions to the policy or Chapter.	Fully Implemented
5	The Chief of Police, in consultation with the City Attorney’s Office, should review Chapter 14.12, SPD policy, and state law in light of current records retention needs. The Chief of Police should either modify SPD policy or offer suggestions to the City regarding revisions to the retention provisions of Chapter 14.12 to bring SPD records retention into alignment with applicable laws.	Closed ¹

1 SPD originally concurred with Recommendation 5. However, in 2019, SPD notified OIG that it did not believe Chapter 14.12 record retention requirements conflicted with State record retention requirements.



Chapter 14.12 Overview

Origin of Chapter 14.12

In 1979, the Seattle City Council unanimously passed Ordinance 10833, restricting how the Seattle Police Department could collect, receive, transmit, and use information related to sexual orientation, politics, and religion. The ordinance became Chapter 14.12 of Seattle Municipal Code, Collection of Information for Law Enforcement Purposes. When it was passed, Ordinance 10833 was recognized as one of the first local ordinances to restrict certain information collected by police departments.² Chapter 14.12 has not been substantially altered since 1982.

Information protected by Chapter 14.12

Chapter 14.12 covers two main categories of information: private sexual information and restricted information. Private sexual information includes information on an individual's sexual orientation or sexual practices. Restricted information covers a wide range of information on the political and religious beliefs of individuals and organizations (see figure 1 below). This report uses the term "protected information" to refer to all information covered by the Chapter.

Figure 1: Categories of Information Protected by Chapter 14.12

Information protected under Chapter 14.12	
Private sexual information	Information about an individual's sexual practices or orientation.
Restricted information	Information about: <ol style="list-style-type: none">1. An individual's political or religious associations, activities, beliefs, or opinions2. The political or religious activities, beliefs or opinions and the membership, mailing, subscription, or contributor lists of certain types of organizations, including political and religious organizations; or3. An individual's membership or participation in such an organization, in a political or religious demonstration, or in a demonstration for community purposes.

Source: Seattle Municipal Code Ch. 14.12.030.

For a more detailed description of Chapter 14.12, see Appendix D.

² Michael Sweeney, "Seattle Law Limits Police in Intelligence Gathering," Washington Post, July 3, 1979, <https://www.washingtonpost.com/archive/politics/1979/07/03/seattle-law-limits-police-in-intelligence-gathering/916c9159-31da-4a1f-ab55-9804ba5efa19/>



Audit Findings

Chapter 14.12 has not kept pace with advances in technology and changes in SPD intelligence-gathering practices.

The internet and social media have made information covered by the Chapter easier to access.

Chapter 14.12 was first adopted in 1979. Since then, technological advances have dramatically changed the amount and availability of personal information. This change was highlighted in 2015 by the former police intelligence auditor’s testimony to the Seattle City Council:

“[Chapter 14.12] is now 35 years old. It was written at a time when the technology that permits data collection that we have now simply didn’t exist. This is a world in 1979 of paper files...We now are in a world of digital information and the technology was simply beyond our comprehension back in 1979. It’s worth looking at whether the kinds of information that can be collected and the methods that can be used to collect and store require revisiting.”

The internet and social media have increased the availability of personal information. A public social media profile might contain someone’s sexual orientation, participation in religious organizations or activities, and political beliefs and affiliations, all of which fall under protected categories in the Chapter. However, because it is publicly available, SPD interprets the Chapter as allowing personnel to gather and use that information without seeking an authorization, so long as it appears relevant to an authorized police function.

Chapter 14.12 is rarely applicable, given current SPD practices and interpretation of the Chapter.

Between 2019 and 2022, SPD personnel generated more than 300,000 incident reports, but only 4 authorizations to collect protected information.

Chapter 14.12 places limitations on police techniques with documented historic abuse, such as using infiltrators and paid informants to collect information. However, according to SPD personnel, the department has generally shifted away from these techniques due to staffing challenges and the availability of information on the internet. The Chapter creates exceptions for criminal investigations, where the rules of discovery and other safeguards in the criminal justice system already provide accountability. Among these exceptions, Chapter 14.12 allows SPD to collect restricted or private sexual information when it appears in “incidental” contexts.

The Chapter does not provide a definition for “incidental,” nor does it specify whether the examples of incidental references provided by the Chapter are exhaustive or illustrative. Without a firm definition, SPD has developed a broad interpretation of incidental references covering most information not directly associated with a criminal act.

According to SPD, the Department does not expect to create an authorization “where openly available information that may fall into the category of ‘restricted information’ is incidental to the crime for which the individual is being investigated” unless the Department develops reasonable suspicion for additional criminal activity upon reviewing the information. SPD provided the following example:

“In a criminal case involving an individual arrested for property destruction while participating in a political assembly, the fact that the individual was present in the assembly may be of foundational relevance (e.g., to establish that the individual was at the location in question at the time the criminal act occurred), but the individual’s association with that political cause or affiliation with such group would not be (i.e., it would be incidental to the elements of the crime charged).”



In the above example, SPD would collect restricted information about the individual's political activity (their participation in a political demonstration) to place the individual at the scene of the crime, but because it is incidental to the criminal investigation for property destruction, SPD would not need an authorization to collect the information.

This exception, taken together with changes in SPD intelligence-gathering and the volume of information available on the internet, means SPD personnel rarely collect restricted information. When officers do collect restricted information, an exception to the Chapter almost always applies.

An audit of random department files is unlikely to uncover violations.

Chapter 14.12 requires OIG to perform "a random check of Department files and indexes" every 180 days and report on any substantial violations of the chapter. OIG attempted to satisfy this requirement by performing a random review of Incident/Offense reports within Mark43, SPD's record management system.

OIG was unable to identify high-risk files. SPD reports they do not maintain 'intelligence files.' Instead, all information that may be considered 'intelligence' is collected and stored with the relevant criminal investigation. As discussed earlier, information collected as part of a criminal investigation is generally exempt from the protections of the Chapter. Absent a centralized population of intelligence files, it is not feasible to target high-risk records. A random sample of Department records is unlikely to uncover violations.

During the file review, OIG generated a random sample of 384 incident reports and reviewed the files in Mark43, SPD's record management system. OIG identified 6 reports that contained some form of possible protected information. However, all 6 incidents were covered by one or more of Chapter 14.12's exceptions. Thus, OIG did not find any instances of noncompliance with Chapter 14.12.

Recommendation 1

Update the ordinance

Seattle City Council, in consultation with SPD and OIG, should amend Chapter 14.12 of the Seattle Municipal Code to provide updated guidance on how SPD may collect and record information without unreasonably infringing upon individual rights. The updated guidance should consider modern technology and more clearly define when SPD must request an authorization to collect restricted and private sexual information.

SPD policy on use of body-worn video at demonstrations appears to conflict with Chapter 14.12.

On June 8, 2020, after more than a week of protests in Seattle sparked by the murder of George Floyd by Minneapolis police officers, the Office of the Mayor issued Executive Order 2020-07, which stated:

“Effective immediately, the Chief of Police will issue an interim policy change requiring Seattle Police Department (SPD) officers who are assigned to work demonstrations where they will have contact with the public, to have body-worn video recording during demonstrations.”

Accordingly, SPD added this requirement to its policy manual. However, implementation of this policy has created an apparent and ongoing conflict with Chapter 14.12. The Chapter restricts SPD from collecting and retaining information about an individual or organization's political beliefs without an authorization, including "an individual's membership or participation in... a political or religious demonstration." BWV of protesters will almost certainly capture footage of lawful protesters for whom officers do not have reasonable suspicion of criminal activity.³

3 SPD currently retains all body-worn video. This may also create a conflict with Chapter 14.12, as protected information collected without an authorization must be purged within five days.



The 2020 executive order acknowledged these dilemmas, noting “the Body Worn Video policy raises complicated issues of privacy, accountability and public transparency and was crafted in careful consultation under the Consent Decree process.” The order requested that SPD work to ensure information captured during protests is not used to improperly surveil the public, and that City Council amend or update Chapter 14.12 regarding BWV captured during public demonstrations. To date, Chapter 14.12 has not been amended and the conflict remains.

Recommendation 2

Provide guidance on body-worn video during demonstrations

Seattle City Council, in consultation with SPD and OIG, should amend Chapter 14.12 of Seattle Municipal Code to reconcile Chapter 14.12 and SPD body-worn video policy during protest events.

SPD took photos of demonstrators at protests between July and November 2020 that may not have been purged according to Chapter 14.12.

During the 2020 protests, SPD transferred the responsibility for investigating protest-related criminal activity from the Investigative Support Unit to the Strategic Response Group (SRG) due to staffing issues. SRG, which is primarily composed of Narcotics Unit detectives, reported taking roughly 19,000 photographs of demonstrators between July and November of 2020, which were used to identify subjects in protest-related criminal investigations.⁴ This practice included taking “baseline” photographs of individuals and groups before, during, and after protest events to aid in identifying suspects who may have donned a mask or otherwise altered their appearance. These photos likely included information about protected political activity as defined in Chapter 14.12. The photographs were retained in an SPD shared drive.

SPD currently purges all authorization documentation, so OIG could not determine whether the photographs had been covered by an authorization (OIG discusses this issue in greater detail later in the report). That said, there were no existing authorizations in place when fieldwork began on this audit in July 2022. Absent an authorization on file, SPD should not have retained the photos longer than five days.

The version of SPD’s Chapter 14.12 policy⁵ in place during the 2020 protests provided general guidance on Chapter 14.12, but did not provide procedures to aid personnel in complying with the Chapter. Notably, it did not provide a process for purging protected information that was not authorized or for which the authorization was expired. The detectives retained the photographs indefinitely, which they stated was in keeping with training on standard investigation procedures. Further, the detectives in possession of the demonstration photographs did not believe the photographs contained protected information and explained that they had not received direction on what to do with the photographs within the context of the Chapter.

4 This number does not represent photographs of individual subjects or incidents, as SRG reported using cameras with a “burst” function to take as many as 50 photographs in quick succession.

5 The SPD Policy Manual incorporates Chapter 14.12 into policy in section 6.060.



In January 2021, SPD updated its policy to provide additional guidance on demonstration photography. The revised policy added several provisions, including:

- Explicitly allowing SPD personnel to take baseline shots to later identify individuals;
- Directing the Investigation Support Unit to collect and vet all photo and video evidence collected at demonstrations;
- Directing the Investigation Support Unit to maintain a log of photos and videos taken at demonstrations;
- Requiring demonstration photos and videos covered by an authorization to be placed in the appropriate case file; and
- Adding requirements to purge photos taken without an authorization (within five days) and after an authorization expires (within five years).

Additionally, the Investigation Support Unit developed new training on Chapter 14.12 and the updated policy in December 2022. The training was also provided to Narcotics Unit detectives.

Department personnel reported the photographs were not shared outside of the unit that gathered them. Nonetheless, maintaining materials that identify individuals lawfully exercising their First Amendment rights creates an unnecessary privacy risk to those individuals.

Recommendation 3

Apply a retention policy to demonstration photos

SPD should apply a records retention policy to the SRG demonstration photo file in conformance with Policy 6.060 as currently written.

After OIG identified this issue, SPD reported purging the photographs in accordance with the Washington State Records Retention Schedule for law enforcement intelligence files. Accordingly, OIG considers this recommendation fully implemented.

SPD appears to be following authorization requirements, but there continue to be gaps in documentation.

Before SPD personnel collect restricted information on a group or individual during a criminal investigation, they must have authorization from a unit commander of the rank of lieutenant or above. Authorizations must document how the information SPD personnel seek to collect meets Chapter requirements, such as reasonable suspicion the subject of the information is engaging or will engage in criminal activity.

SPD maintains an authorization log that tracks current and historic authorizations. When an authorization expires, SPD destroys the authorization request, leaving the log entry (authorization number and status) as the only form of audit trail. Upon review of this information, OIG observed that four authorizations occurred between January 2019 and June 2022, although few details about those authorizations are known.

SPD requires OIG staff to review authorizations in-person due to their sensitive content. Because OIG experienced significant staff turnover during the period of review and SPD purges all authorization documents after they expire, this audit lacks complete documentary evidence that all authorizations within the period of review conformed to the Chapter.



To rectify this evidence gap going forward, current OIG and Investigation Support Unit (ISU) staff met to confirm the notification process to OIG when an authorization is procured, and OIG will adhere to a 14.12 audit schedule as currently required by the Chapter.

While these steps should reduce gaps in documentation going forward, OIG notes that Chapter 14.12 does not require SPD to purge all documentation related to an authorization. The Chapter authorizes SPD to “purge information that is no longer relevant,” but does not require the Department to destroy information. The Chapter’s definition of “purge” includes several methods for removing information from Department files, including securing the information in a restricted depository for, among other things, auditing compliance with Chapter 14.12:

“Purge(d)” 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 14.12 or state laws regarding records retention or public disclosure. “Purge(d)” shall include deletion of information from affected materials and from Department indexes. Nothing in this Chapter 14.12 shall prohibit indexing of materials within a secure depository.”

Retaining authorization documents is allowed by the Chapter, would increase the reliability of the audit trail, and would allow OIG to assess the circumstances of a relevant case, even after an authorization has expired.

Recommendation 4

Retain authorization documents for review

SPD should retain authorization documentation for future review in a manner consistent with Chapter 14.12.



Appendix A: Recommendations and Department Response

Recommendation 1

Update the ordinance

Seattle City Council, in consultation with SPD and OIG, should amend Chapter 14.12 of the Seattle Municipal Code to provide updated guidance on how SPD may collect and record information without unreasonably infringing upon individual rights. The updated guidance should consider modern technology and more clearly define when SPD must request an authorization to collect restricted and private sexual information.

City Council Response

- Concur
- Do Not Concur

Recommendation 2

Provide guidance on body-worn video during demonstrations

Seattle City Council, in consultation with SPD and OIG, should amend Chapter 14.12 of Seattle Municipal Code to reconcile Chapter 14.12 and SPD body-worn video policy during protest events.

City Council Response

- Concur
- Do Not Concur

Recommendation 3

Apply a retention policy to demonstration photos

SPD should apply a records retention policy to the SRG demonstration photo file in conformance with Policy 6.060 as currently written.

City Council Response

- Concur
- Do Not Concur

Implementation Plan

After OIG identified this issue, SPD reported purging the photographs in accordance with the Washington State Records Retention Schedule for law enforcement intelligence files. Accordingly, OIG considers this recommendation fully implemented.



Appendix A continued

Recommendation 4

Retain authorization documents for review

SPD should retain authorization documentation for future review in a manner consistent with Chapter 14.12.

SPD Management Response

- Concur Do Not Concur, *as written*

SPD adheres both to the requirements of Chapter 14.12 in its interpretation of “purging” documents and to the public policy of discarding intelligence records that are no longer needed for agency business, in accordance with the Washington State Law Enforcement Records Retention Schedule (see LE2010-074 (for criminal intelligence files created or accumulated by agency personnel in the course of investigating suspected or alleged criminal activity, retain until no longer needed for agency business, then destroy). While SPD does not disagree that the ordinance definition of “purge” would allow for the removal of documents to a restricted location to facilitate OIG review beyond what the Chapter’s audit schedule requires, SPD’s current practice of destroying restricted information consistent with state records retention guidelines is also wholly consistent with the ordinance definition. SPD will continue to work with OIG to accommodate records reviews in instances where OIG is unable to meet the audit schedule, but at this point is not inclined to create additional protocols around records governance.





December 20, 2023

Inspector General Lisa Judge
Office of the Inspector General

Re: 2023 SMC 14.12 Audit Review

Dear Inspector General Judge:

Thank you for the opportunity to review and respond to your 2023 annual review of SPD's compliance with SMC Chapter 14.12 (Intelligence Ordinance). Our response to the one recommendation to SPD that remains outstanding is submitted in the template provided by your office; while we are declining to expand our practice with respect to the governance of "purged" records, we are committed to working with your office to ensure that you have the documentation needed to perform your work and will look to engage in discussions to that end in the new year.

I am writing separately to address two points. First, while recommendations regarding amendments to this long-stale ordinance are not directed to SPD specifically, we do concur in full that the ordinance needs to be updated to meet the evolution in technology, law, and societal norms and expectations that has taken place over the nearly 45 years since this ordinance was codified. We stand ready to work with City Council and the City Attorney's Office to that end.

I also want to address the discussion regarding the recording of protest events over the summer of 2020 pursuant to an Executive Order issued by then-Mayor Durkan. As your report accurately notes, it was out of a perhaps over-cautious interpretation of the Intelligence Ordinance that SPD, historically (or at least since the inception of its body-worn program), has not recorded public assemblies. In so many ways, however, 2020 was pivotal in how we balance our often-coinciding obligations to safeguard civil liberties, protect against criminal elements that often seek cover in otherwise lawful activities, otherwise promote public safety, and hold ourselves accountable for our actions – the latter of which relies heavily on body-worn video.

Historical caution aside, SPD does not believe the Intelligence Ordinance, in either its language or intent,¹ precludes the use of body-worn cameras in public assemblies. Nothing

¹ This Chapter 14.12 shall be interpreted in a manner to permit the collection and recording of information for law enforcement purposes, so long as these police activities do not unreasonably: (a) infringe upon individual rights, liberties,

Appendix A continued

Inspector General Judge
December 20, 2023

about requiring officers to record their actions when engaged in law enforcement action in the public space – in an era where virtually everyone has on them a cell phone capable of recording the same, where the collection of footage is not “on account of a lawful exercise of a constitutional right or civil liberty” (see SMC 14.12.020(A)) but rather on account of situational awareness for purposes of public safety, officer accountability, and criminal investigation – runs afoul of the Intelligence Ordinance. For that reason, and while we are in steadfast agreement that the ordinance is long overdue for amendment, we do not agree that the use of body-worn cameras, as directed by Executive Order over the summer of 2020, conflicts with SMC Chapter 14.12.

We look forward to discussing and again thank you and your team for your work and commitment.

Sincerely,



Brian Maxey
Chief Operating Officer

Cc: Adrian Diaz, Chief of Police
Eric Barden, Deputy Chief of Police
Rebecca Boatright, General Counsel

and freedoms guaranteed by the Constitution of the United States – including, among others, the freedom of speech, press, association, and assembly; liberty of conscience; the exercise of religion; and the right to petition government for redress of grievances; and (b) violate an individual’s right to privacy. This Chapter 14.12 is not intended to protect criminal activity.



Appendix B: Implementation of Past Audit Recommendations

OIG issued five recommendations to SPD resulting from findings during the 2019 audit. As part of this follow-up audit, OIG looked at the implementation of these recommendations to determine if they adequately address the original finding. SPD implemented changes for four of the five recommendations from the 2019 audit in a manner that resolves the recommendation. SPD no longer concurs with Recommendation 5 and did not implement any changes in response.

Recommendation 1: The Chief of Police, in consultation with the City Attorney’s Office, should develop a clear policy for whether written authorization is required prior to collecting protected information from open sources or third parties.

Origin: Audit of SPD Compliance with Chapter 14.12 of Seattle Municipal Code (2019)

Status: Fully Implemented

Implementation status

In January 2021, SPD updated policy 6.060 to provide more guidance to officers regarding their responsibilities under SMC 14.12. Policy 6.060.2 now states, “Department Personnel Will Not Collect Private Sexual or Restricted Information about an Individual Absent an Authorization by a Lieutenant or Above” with four exceptions (relevant sections are in bold for emphasis):

- Information may be collected as part of a criminal investigation where the subject of that information supplies the information to department personnel, as in reporting of a bias crime;
- **Information may be collected as part of a criminal investigation based upon reasonable suspicion and where the subject of the investigation has made that information readily reviewable by any member of the public, as in unrestricted social media postings;**
- **Information may be collected as provided to SPD by a third party reporting a crime;**
- Information may be collected when necessary to provide religious accommodation.

Conclusion

The updated policy states clearly that SPD personnel are not required to seek an authorization prior to collecting protected information from open sources or third parties. OIG considers the recommendation fully implemented.



Appendix B continued

Recommendation 2: The Chief of Police should ensure there is a procedure in place to notify OIG of all approved written authorizations to collect protected information.

Origin: Audit of SPD Compliance with Chapter 14.12 of Seattle Municipal Code (2019)

Status: Fully Implemented

Implementation status

In response to the 2019 audit, SPD updated its “Criminal Investigation Authorization to Collect Restricted Information” form, which the Department uses to authorize the collection of restricted information. The new form includes a new set of fields for OIG notification. The new fields ask for:

- Notification date;
- Name, rank, and serial number of the SPD employee notifying OIG; and
- Name of OIG employee notified.

In addition, OIG and SPD have instituted a verbal agreement for notifying OIG of future authorizations and authorization extensions.

Conclusion

The updated authorization form provides a procedure that, if followed, should ensure that OIG will be notified of future authorizations. OIG considers the recommendation fully implemented.

Recommendation 3: The Chief of Police should ensure that SPD retains records relating to approved written authorizations for at least six months, to facilitate future audit reviews.

Origin: Audit of SPD Compliance with Chapter 14.12 of Seattle Municipal Code (2019)

Status: Fully Implemented

Implementation status

In addition to the changes outlined in Recommendation 2, SPD updated the “Criminal Investigation Authorization to Collect Restricted Information” form to include a set of fields to notify OIG 30 days before an authorization form is purged by the Department. The new fields ask for:

- Notification date;
- Name, rank, and serial number of the SPD employee notifying OIG; and
- Name of OIG employee notified.

The form specifies that the notification date is at least 30 days prior to the purging date.

Conclusion

While the implemented change is different from the recommendation OIG provided, it serves a similar function. The updated authorization form provides a procedure that, if followed, should ensure that OIG will be notified of, and have the opportunity to review, authorizations before purging. Further, Recommendation 4 in this report, if implemented, would provide for a longer or indefinite retention of redacted authorizations. OIG considers the recommendation fully implemented.



Appendix B continued

Recommendation 4: The Chief of Police should ensure that Policy 6.060, Collection of Information for Law Enforcement Purposes, includes all requirements of Chapter 14.12, being cognizant of any updates that are contemplated by the City, and ensure staff are updated on any changes or additions to the policy or Chapter.

Origin: Audit of SPD Compliance with Chapter 14.12 of Seattle Municipal Code (2019)

Status: Fully Implemented

Implementation status

SPD updated Policy 6.060 in January 2021, to provide significantly more policy guidance on the requirements of Chapter 14.12. The update includes various changes, including:

- Guidance regarding when Department personnel may collect private sexual or restricted information without an authorization,
- Requirements for obtaining authorizations to collect restricted or private sexual information and registering the authorization with the Criminal Intelligence Section,
- Requirements for collecting photo and video documentation during demonstrations, and
- Procedures to centralize Chapter 14.12 compliance in the Criminal Intelligence Section.

Before the update, Policy 6.060 did not mention the authorization process, requiring SPD personnel to be familiar with the text of the Chapter or otherwise be directed to seek an authorization when applicable. The update provided more specific guidance than the Chapter, especially around photo and video documentation of protest events, although some exceptions apply to body-worn and in-car video.

SPD staff were updated on the policy change via eDirective, an online policy change announcement, but did not receive further training. However, in December 2022, the Investigation Support Unit (ISU) launched a new training on Chapter 14.12 and Policy 6.060. This training was provided to members of ISU and the Narcotics Unit, and SPD plans to offer it to a broader audience in the future, including when on-boarding new ISU staff.

Conclusion

The Policy 6.060 update addressed the 2019 OIG audit finding that officers are not provided with sufficient guidance on the requirement to obtain a written authorization before collecting information protected by Chapter 14.12. Additionally, all Department personnel were informed of the change and all Investigative Support Unit staff received training on the update. OIG considers this recommendation fully implemented.



Appendix B continued

Recommendation 5: The Chief of Police, in consultation with the City Attorney’s Office, should review Chapter 14.12, SPD policy, and state law in light of current records retention needs. The Chief of Police should either modify SPD policy or offer suggestions to the City regarding revisions to the retention provisions of Chapter 14.12 to bring SPD records retention into alignment with applicable laws.

Origin: Audit of SPD Compliance with Chapter 14.12 of Seattle Municipal Code (2019)

Status: Closed - Non-concur

Implementation status

SPD originally concurred with this recommendation, stating: "The Department agrees that Chapter 14.12’s retention requirements do not follow a logical pattern and are difficult for staff to remember and enforce. The Chapter’s standards also conflict with State law and retention schedules established by the Washington State Archives as mandated by Chapter 40.14 RCW."

However, in a December 2019, letter to OIG, SPD provided an update to its original interpretation:

“Upon further analysis, the Department has revised its early analysis as to any potential conflict with state law. Upon initial discussions, the Department had expressed a concern that the Chapter’s standards for 60-day retention were in conflict with State records retention schedules. Upon further examination of relevant provisions, particularly of LE2010-014 of the Washington State Archives’ Law Enforcement Records Retention Schedule, SPD has determined that the 60-day retention period mandated by ordinance is not in conflict with state retention requirements; accordingly, no modification to either policy or the ordinance is necessary.”

Conclusion

SPD did not implement changes in response to this recommendation and no longer concurs with the audit finding that Chapter 14.12 records retention requirements appear to conflict with state law.



Appendix C: Audit Methodology

OIG strives to make objective, well-informed findings and recommendations as part of the audit process. Audit staff conducted the following investigatory steps to inform these findings:

- Reviewed Chapter 14.12 and SPD Policy 6.060;
- Reviewed previous audit recommendations and determined if recommendations were implemented;
- Compared Chapter 14.12 to similar local laws and law enforcement policies in US cities.
- Examined relevant training materials related to Chapter 14.12 and SPD Policy 6.060;
- Interviewed SPD personnel, including: Criminal Intelligence/Investigation Support Unit; the Bias Crimes Coordinator; Narcotics Unit; and SPD Legal Affairs, to understand interactions with and interpretations of Chapter 14.12 information;
- Reviewed Chapter 14.12 authorizations and authorization extensions where available;
- Identified and evaluated a random sample of incident reports for compliance with Chapter 14.12. The sample was drawn from all incident reports dated November 1, 2018 to June 30, 2022, marked as “complete” at the time of sampling (336,878). OIG developed the sample to provide 95% confidence that the sample reflects the total population;
- Requested and reviewed the photo/video log maintained by the Investigation Support Unit for photos/videos (excluding body-worn and in-car video) taken during demonstrations;



Appendix D: Chapter 14.12 Key Provisions

This appendix provides more information on provisions of Chapter 14.12 that are most relevant to the audit.

Collection of private sexual information

SPD personnel can collect private sexual information if it appears relevant to investigating related unlawful activity⁶ or arresting a subject or fugitive. Chapter 14.12 does not create an authorization process for SPD to collect private sexual information, as it does for restricted information (see below). SPD policy, however, does allow SPD to collect private sexual information with a valid authorization.

Collection of restricted information

Chapter 14.12 treats restricted information differently than private sexual information. Before SPD personnel can collect restricted information, they must meet the following three requirements:

1. There is reasonable suspicion that the subject of the information is engaging in unlawful activity,
2. The information is relevant to the investigation, and
3. The collection of information is consistent with the rest of Chapter 14.12.

If these requirements are met, the officer must obtain a written authorization from a unit commander or higher-ranking officer prior to collecting the restricted information. Officers may collect restricted information without an authorization if they must collect information quickly, but the officer must either follow up with obtaining a written authorization or purge the information within five days.⁷ The authorization must describe the information to be collected and explain why it is permissible under Chapter 14.12. The Chapter limits authorizations to 90 days. The Chief of Police can extend the authorization for additional 90-day periods, but not for longer than the expiration of the statute of limitations or the prosecution of a case. SPD must notify OIG of any authorization.

Exceptions to the Chapter

Chapter 14.12 includes several exceptions designed to carve out routine or lower-risk police work from the terms of the Chapter. The Chapter does not apply to:

- **Administrative records** – These include records related to Department operations or public relations.
- **Incidental references** – SPD may generally collect restricted or private sexual information when someone outside the Department shares the information with SPD.
- **Confidential communications** – These include professional or confidential communications with a lawyer, healthcare professional, or religious official.
- **Materials open to public inspection** – These include information that is readily available to the public.
- **Special investigations** – SPD may collect information upon the request of the Attorney General, corruption cases, and for background checks.
- **Exclusions** – the Chapter does not apply to officers outside of work, to internal investigations, administrative and legislative processes, and personal communications.

6 The relevant activities include a reported or observed sex crime, an apparent felony where a motivation for the crime may be reasonably suspected to be sexual in origin, or a violation of the law that by its nature is commonly related to sexual activity. See Seattle Municipal Code, Chapter 14.12.130.

7 The exact requirement depends on whether the information is needed for criminal investigation purposes or for dignitary protection purposes. See Seattle Municipal Code, Section 14.12.150 and Section 14.12.210.



Appendix D continued

Auditing protected information

Chapter 14.12 requires OIG to review police department files and records relating to Chapter-related activities at least every six months (180 days).⁸ This review includes each authorization granted in the period under review and relevant investigative files, as well as a random sample of department files and a review of files containing information scheduled to be purged (deleted). The results of the audit are sent to the Mayor, City Council, City Attorney, and City Clerk, and filed as a public record.

Files exempted from audit review

Chapter 14.12 does not allow OIG to review all files generated by the Seattle Police Department. The Chapter prohibits OIG from reviewing:

1. Department personnel files;
2. Internal Investigation Section files;
3. Files of confidential communications as defined in Section 14.12.090;
4. Personal files of the Chief of the Department that are excluded from this Chapter 14.12 by subsection 14.12.120.A.4;
5. Specific case files which the King County Prosecuting Attorney personally certifies in writing need to be withheld from the Auditor's review because the files involve investigations of corruption or malfeasance in office of a governmental official or employee, a potential conflict of interest for the Auditor, or investigations of organized criminal activity conducted as a continuing enterprise solely for the purpose of obtaining monetary gain wholly or in part through racketeering, vice, narcotics, gambling, fencing, or similar economic criminal activity; and
6. Files maintained exclusively for confidential criminal information regarding organized criminal activity received by the Department through membership in the Law Enforcement Intelligence Unit (LEIU) and files maintained exclusively for confidential criminal information regarding narcotics activity received by the Department through membership in the Western States Information Network (WSIN), which are audited under subsection 14.12.320.C.

⁸ Chapter 14.12 specifies that the mayor shall appoint an auditor for this task. Until 2015, this work was performed by Professor David Boerner. Ordinance 125315, passed in 2017, assigned this function to OIG.





Seattle Office of Inspector General

The Office of Inspector General for Public Safety (OIG) was established in 2017 via Ordinance 125315 to help ensure the fairness and integrity of the police system in its delivery of law enforcement services. OIG provides independent auditing of the management, practices, and policies of the Seattle Police Department and the Office of Police Accountability. Additionally, OIG oversees ongoing fidelity to organizational reforms implemented pursuant to the goals of the 2012 Consent Decree and Memorandum of Understanding.

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