

November 6, 2020

Seattle Information Technology  
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Seattle, WA 98104

RE: ACLU of Washington Comments on Group 3 Surveillance Technologies

On behalf of the ACLU of Washington, I write to offer our comments on the surveillance technologies included in Group 3 of the Seattle Surveillance Ordinance implementation process.

The three Seattle Police Department (SPD) technologies in Group 3 are covered in the following order:

1. Forward Looking Infrared – King County Sheriff's Office Helicopters
2. Video Recording Systems
3. Situational Awareness Cameras Without Recording

These comments should be considered preliminary, given that the Surveillance Impact Reports (SIR) for each technology leave a number of important questions unanswered. Specific unanswered questions for each technology are noted in the comments relating to that technology. Answers to these questions should be included in the updated SIRs provided to the Community Surveillance Working Group and to the City Council prior to their review of the technologies.

### **Forward Looking Infrared - KCSO Helicopters**

#### *Background*

Forward Looking Infrared (FLIR) is a powerful thermal imaging surveillance technology that raises a number of privacy and civil liberties concerns because of its ability to enable dragnet surveillance of individuals in public as well as in private spaces.

FLIR cameras sense infrared radiation to create images assembled for real-time video output. This technology detects small differences in heat, or emitted thermal energy, and displays them as shades of gray or with different colors. Because all objects emit different amounts of thermal energy, FLIR cameras are able to detect temperature differences and translate them into images.<sup>1</sup>

Advanced thermal imaging systems like FLIR allow governments to increase their surveillance capabilities. Like any device used for surveillance, government agents may use it inappropriately to gather information on people based on their race, religion, or political views. While thermal imaging devices cannot “see” through

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<sup>1</sup> ACLU of Washington, *Thermal Imaging Surveillance*, THEYAREWATCHING.ORG, <https://theyarewatching.org/technology/thermal-imaging-surveillance> (last visited Nov. 5, 2020).



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walls, pointing a thermal camera at a building can still reveal sensitive information about what is happening inside. Drug detectives often use these devices to identify possible marijuana growers by looking for heat consistent with grow lights.<sup>2</sup> Furthermore, privacy and civil liberties concerns with FLIR are magnified when FLIR is used in conjunction with other powerful surveillance tools such as facial recognition and drones.

The Seattle Police Department (SPD) uses three King County Sheriff's Office helicopters that are equipped with FLIR technology as well as 30-million candlepower "Night Sun" searchlights, Pro Net and LoJack radio tracking receivers, still and video cameras, and communications equipment for communicating with local, state, and federal law and firefighting agencies on their frequencies. SPD can use FLIR technology and these helicopters to monitor human beings (whose body temperatures are fairly consistent) through clouds, haze, and darkness.

There are serious concerns with SPD's use of KCSO's helicopters as described in the SIR. The policies attached in the SIR do not include purpose limitations, adequate privacy and security protections, or restrictions on use. The SIR also does not specify how long KCSO retains still images and recordings attained when assisting SPD, or whether SPD's Digital Evidence Management System (DEMS) is an on-premise or a Software-as-a-Service (SaaS) deployment.

At the public engagement meeting held on October 28, 2020,<sup>3</sup> SPD officers were asked if SPD had ever used KCSO helicopters or FLIR technology for the purpose of surveilling protesters and if SPD had any policies prohibiting use of these technologies for protester surveillance. The officers were also asked over which neighborhoods the helicopters had been deployed, given that the SIR states that in 2018, Guardian One was deployed 45 times to SPD events. For both questions, SPD officers declined to answer and told the public to submit public records requests. However, because SPD's Public Records Act request portal states that the minimum response timeline is in excess of 6-12 months, members of the public would not be able to receive answers to these questions in time to submit public comments on these technologies.

Given the lack of adequate policies in the SIR and the number of unanswered questions that remain, we have concerns that SPD's use of KCSO's helicopters and FLIR technology may infringe upon people's civil rights and civil liberties. KCSO's FLIR-equipped helicopters may be used to disproportionately surveil historically targeted communities, individuals exercising their constitutionally protected right to protest, or people just going about their lives.

### *Specific Concerns*

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<sup>2</sup> In the 2001 case *Kyllo v. United States*, the U.S. Supreme Court ruled that federal agents violated the Fourth Amendment when they used a thermal imaging device to detect marijuana plants growing inside a home.

<sup>3</sup> Seattle Police Department, *Surveillance Technology Public Comment Meeting*, CITY OF SEATTLE (Oct. 28, 2020), <https://www.seattle.gov/Documents/Departments/Tech/Privacy/Group%203%20Presentation.pdf>.

- **There are inadequate policies defining purpose of use.** The policies cited in the SIR do not impose meaningful restrictions on the purpose for which SPD may request that KCSO helicopters and FLIR technology be used. Policy 16.060 – King County Sheriff’s Office Air Support Unit<sup>4</sup> simply states that “Guardian One offers air support for patrol and specialized missions” and that “Guardian Two offers air support for special operations such as search and rescue (SAR) and tactical missions.” This policy only describes the process by which SPD may request support from KCSO’s air support unit but does not state the specific purposes for which SPD may or may not request support. Section 4.9 of the SIR<sup>5</sup> states that SPD may request video from KCSO’s Air Unit “[w]hen necessary and pertinent to a specific investigation” but does not specify the types of investigations for which SPD may request data from KCSO or how it is determined if such data is necessary and pertinent. Policy 6.060 – Collection of Information for Law Enforcement Purposes<sup>6</sup> states that “Information will be gathered and recorded in a manner that does not unreasonably infringe upon: individual rights, liberties, and freedoms guaranteed by the Constitution of the United States and the State of Washington” and Policy 5.140 – Bias-Free Policing states that “officers will not engage in bias-based policing.”<sup>7</sup> However, SPD’s answers at the October 28 public engagement meeting do not make clear whether and how SPD prohibits use of KCSO helicopters to engage in surveillance of protesters or biased policing. Section 1.4.2 of the Racial Equity Toolkit (RET) section of the SIR specifically asks: “How are decisions made where the technology is used or deployed? How does the Department work to ensure diverse neighborhoods are not specifically targeted?”<sup>8</sup> The response from SPD directs attention to SPD Policy 16.060, which does not provide adequate purpose limitations.
- **There are inadequate policies restricting data collection.** The policies cited in the SIR do not place any restrictions on the amount or types of data SPD may request from KCSO. At the October 28 public engagement meeting, SPD officers did not answer whether or how SPD places time or geographic limitations on the data it may request from KCSO.

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<sup>4</sup> Seattle Police Department, *Seattle Police Department Manual: 16.060 - King County Sheriff's Office Air Support Unit*, CITY OF SEATTLE (Mar. 1, 2016), <http://www.seattle.gov/police-manual/title-16---patrol-operations/16060---king-county-sheriffs-office-air-support-unit>.

<sup>5</sup> Seattle Police Department, *2020 Surveillance Impact Report: Forward Looking Infrared Real-Time Video (FLIR) (KCSO Helicopters)*, CITY OF SEATTLE, at 12, [http://www.seattle.gov/Documents/Departments/Tech/Privacy/FLIR%20-%20KCSO%20Helicopters%20Public\\_Engagement%20SIR.pdf](http://www.seattle.gov/Documents/Departments/Tech/Privacy/FLIR%20-%20KCSO%20Helicopters%20Public_Engagement%20SIR.pdf) (last visited Nov. 5, 2020).

<sup>6</sup> Seattle Police Department, *Seattle Police Department Manual: 6.060 - Collection of Information for Law Enforcement Purposes*, CITY OF SEATTLE (May 19, 2004), <http://www.seattle.gov/police-manual/title-6---arrests-search-and-seizure/6060---collection-of-information-for-law-enforcement-purposes>.

<sup>7</sup> Seattle Police Department, *Seattle Police Department Manual: 5.140 - Bias-Free Policing*, CITY OF SEATTLE (Aug. 1, 2019), <http://www.seattle.gov/police-manual/title-5---employee-conduct/5140---bias-free-policing>.

<sup>8</sup> *2020 Impact Report: Infrared Video*, supra note 5, at 23.

- **It is unclear if and how SPD protects the privacy of individuals unrelated to an investigation.** The SIR does not include any policies regarding how it redacts or deletes information. At the October 28 public engagement meeting, SPD officers did not provide an answer to the question of whether and how it redacts or deletes information collected that may compromise the privacy of individuals unrelated to an investigation.
- **It is unclear how data collected are stored and protected.** SPD stated at the October 28 public engagement meeting that it is unaware of how long KCSO retains still images and recordings obtained when assisting SPD. While SPD officers stated that SPD stores video requested from KCSO in its Digital Evidence Management System (DEMS)—not Evidence.com, this is not made clear within the SIR. Additionally, SPD officers did not answer whether SPD’s DEMS is on on-premise or Software-as-a-Service (SaaS) deployment.
- **The SIR does not provide the dates and neighborhoods over which KCSO helicopters and FLIR technology have been deployed.** Though the SIR states that there have been 45 deployments of Guardian One to support SPD in 2018, the SIR does not include an analysis of the locations of those deployments.<sup>9</sup> Additionally, during the October 28 public engagement meeting, SPD declined to state the neighborhoods over which the helicopters had been deployed. It is important that SPD include this information in the Racial Equity Toolkit section of the final SIR in order to address the following questions in Section 1.4.2: “How are decisions made where the technology is used or deployed? How does the Department work to ensure diverse neighborhoods are not specifically targeted?”<sup>10</sup>

#### *Outstanding Questions*

- What are the registration and/or tail numbers for each helicopter?
- In 2019 and 2020, did the KCSO Air Support Unit have any additional helicopters aside from the three listed in the SIR?
- How long does KCSO retain still images and recordings attained when assisting SPD?
- Is SPD’s Digital Evidence Management System (DEMS) an on-premise deployment or is it Software-as-a-Service?
- Has SPD ever requested KCSO ASU services or obtained data from KCSO’s helicopters and/or FLIR technology to surveil protesters?
- What are the neighborhoods over which KCSO’s helicopters have been deployed?

#### *Recommendations for Regulation*

At this stage, pending answers to the questions above, we can make only preliminary recommendations for the regulation of SPD’s use of KCSO’s helicopters and FLIR technology. We recommend that the Council adopt, via ordinance, at a minimum, clear and enforceable rules that ensure the following:

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<sup>9</sup> *Id.* at 9.

<sup>10</sup> *Id.* at 23.

- **SPD must abide by a specific and restricted purpose of use:** The ordinance should define a specific purpose of use for KCSO's helicopters and FLIR technology, and any SPD use of KCSO's helicopters and FLIR technology and data collected with these technologies must be restricted to that specific purpose.
- **SPD must adopt processes to ensure it is not targeting diverse neighborhoods.** The ordinance should prohibit SPD from using KCSO's helicopters and FLIR technology to disproportionately surveil communities of color and other historically over-policed communities.
- **SPD must protect the privacy of individuals unrelated to a specific search or investigation.** The ordinance should require SPD to redact or delete information collected that may compromise the privacy of individuals not related to a specific search or investigation, restricted by the purpose of use.
- **SPD must produce a publicly available annual report detailing its use of KCSO helicopters and FLIR technology.** The ordinance should require that SPD produce an annual report including details on how SPD used the data collected, the amount of data collected, for how long data were retained and in what form, where the data are stored, and the neighborhoods over which KCSO helicopters and/or FLIR technology were deployed.

### Video Recording Systems

#### *Background*

SPD uses two cameras systems to record and/or monitor members of the public within SPD interview rooms, Blood Alcohol Collection (BAC) rooms, and precinct holding cells: Genetec Video Management System and Milestone Systems XProtect Video Management Software and Products.

Genetec Video Management System is a permanently installed system primarily used to record in-person interactions and interviews with crime victims, witnesses, and suspects in seven designated interview rooms located at the SPD headquarters in the Seattle Justice Center. This system is used to create a video record of interviews for the purposes of use in criminal justice proceedings. Milestone Systems XProtect Video Management Software and Products is a permanently installed system in SPD's Blood Alcohol Collection (BAC) rooms and precinct holding cells. They record continuously all activity in those locations.<sup>11</sup>

SPD's use of these video recording systems can pose threats to people's privacy and civil liberties if used without adequate safeguards. The SIR does not provide adequate purpose limitations regarding SPD's use of these technologies, does not include full details of the capabilities of these systems, and does not adequately specify technical and procedural safeguards to prevent improper viewing,

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<sup>11</sup> Seattle Police Department, *2020 Surveillance Impact Report: Video Recording Systems (Interview, Blood-Alcohol Collection Room, and Precinct Holding Cell Audio)*, CITY OF SEATTLE, at 4, [https://www.seattle.gov/Documents/Departments/Tech/Privacy/Video%20Recording%20Systems%20Public\\_Engagement%20SIR.pdf](https://www.seattle.gov/Documents/Departments/Tech/Privacy/Video%20Recording%20Systems%20Public_Engagement%20SIR.pdf) (last visited Nov. 5, 2020).

collection, or storage of the images or video footage.

### *Specific Concerns*

- **There are inadequate policies defining purpose of use.** Section 4.9 of the SIR asks, “What are acceptable reasons for access to the equipment and/or data collected?”<sup>12</sup> The response does not specifically detail how and for what purpose the equipment and/or data collected from the equipment may be used.
- **The capabilities of the Genetec and Milestone systems are unclear.** SPD does not provide links or attachments providing specific details about either of the systems they use. Both Genetec<sup>13</sup> and Milestone<sup>14</sup> advertise facial recognition systems that may be integrated with its video management systems.
- **It is unclear how data are collected, stored, and protected.** The SIR does not make clear whether SPD stores the data they receive in the Digital Evidence Management System or Evidence.com, a cloud-based digital evidence platform owned by Axon. The SIR simply references SPD policy 7.110 – Recorded Statements, which states that data may be uploaded to the Digital Evidence Management System (DEMS) or Evidence.com.<sup>15</sup> Additionally, the SIR does not include information about the security practices SPD follows to protect the privacy of members of the public who are recorded by the Genetec and Milestone video management systems. Finally, the SIR does not specify who has permission to modify the pan, tilt, and/or zoom of the cameras.

### *Outstanding Questions*

- Does SPD use a Genetec or Milestone partner add-on that enables facial recognition or other biometric data collection/identification?
- How are firmware/software updates applied to the Genetec systems?
- What security practices does SPD follow?
- Where does the SPD Evidence Section store the Genetec-generated recordings and Milestone recordings they receive?
- For both the Genetec and Milestone systems, who has permission to modify the pan, tilt, and/or zoom of the cameras?

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<sup>12</sup> *Id.* at 12.

<sup>13</sup> *Security Center Omnicast IP video surveillance*, GENETEC, <https://resources.genetec.com/video-modules-and-add-ons/omnicast-ip-video-surveillance> (last visited Nov. 5, 2020).

<sup>14</sup> *Dahua Face Recognition Plugin for Milestone VMS*, MILESTONE, <https://www.milestonesys.com/marketplace/zhejiang-dahua-technology-co.-ltd/dahua-face-recognition-plugin-for-milestone-vms/> (last visited Nov. 5, 2020); *Id-Guard Face Recognition Plugin*, MILESTONE, <https://www.milestonesys.com/marketplace/llc-recfaces/id-guard-face-recognition-plugin/> (Nov. 5, 2020).

<sup>15</sup> Seattle Police Department, *Seattle Police Department Manual: 7.110 - Recorded Statements*, CITY OF SEATTLE (Oct. 1, 2020), <https://www.seattle.gov/police-manual/title-7---evidence-and-property/7110---recorded-statements>.

### *Recommendations for Regulation*

At this stage, pending answers to the questions above, we can make only preliminary recommendations for the regulation of SPD's use of video recording systems. We recommend that the Council adopt, via ordinance, at a minimum, clear and enforceable rules that ensure the following:

- **SPD must abide by a specific and restricted purpose of use:** The ordinance should define a specific purpose of use for any video recording systems used by SPD, and any use must be restricted to that specific purpose.
- **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.

### **Situational Awareness Cameras Without Recording**

#### *Background*

SPD uses four types of portable cameras to observe both public and private areas during tactical operations. The four types of cameras and their vendors are:

- Robot-mounted cameras – RoboteX
- Pole-mounted cameras – Tactical Electronics & Smith and Wesson
- Placeable cameras – Remington & Tactical Electronics
- Throwable cameras – Remington & Tactical Electronics<sup>16</sup>

SPD's use of these situational awareness cameras can pose threats to people's privacy and civil liberties if used without adequate safeguards. The SIR does not provide adequate purpose limitations regarding SPD's use of these technologies, does not include full details of the capabilities of the cameras, and does not adequately specify technical and procedural safeguards to prevent improper viewing, collection, or storage of the images or video footage.

#### *Specific Concerns*

- **There are inadequate policies defining purpose of use.** Section 4.9 of the SIR asks, "What are acceptable reasons for access to the equipment and/or data collected?" The response states: "The decision to use situational awareness cameras is made on a case-by-case basis. These devices allow officers to monitor a subject or watch situation from a position of safety and distance. Absent exigent circumstances, a signed warrant is obtained prior to the use of this technology in any protected area."<sup>17</sup> This response does not

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<sup>16</sup> Seattle Police Department, *2020 Surveillance Impact Report: Situational Awareness Cameras Without Recording*, CITY OF SEATTLE, at 5, [https://www.seattle.gov/Documents/Departments/Tech/Privacy/Situational%20Awareness%20Cameras%20Public\\_Engagement%20SIR.pdf](https://www.seattle.gov/Documents/Departments/Tech/Privacy/Situational%20Awareness%20Cameras%20Public_Engagement%20SIR.pdf) (last visited Nov. 5, 2020).

<sup>17</sup> *Id.* at 8.

provide a clear and limited purpose for which this technology may or may not be used. While SPD's response states that a warrant is obtained prior to use of the cameras in protected areas, such as inside a home, it does not state the specific purposes for which SPD may or may not use the cameras without a warrant.

- **The capabilities of the situational awareness cameras are unclear.** The SIR does not provide manuals or the complete model names and/or numbers of each of the camera technologies. During the October 28 public engagement meeting, SPD stated that their situational awareness cameras do not support recording. However, the vendor websites advertise situational awareness cameras that do support recording. For example, the Tactical Electronics Core Monitor,<sup>18</sup> Pole Camera,<sup>19</sup> and Under Door Camera<sup>20</sup> can either take photos, record video, and/or record audio.
- **It is unclear what technical and procedural safeguards are in place to prevent the improper viewing, collection, and storage of images.** During the October 28 public engagement meeting, SPD stated that there is no way that images, video, or audio footage could be collected and stored. In order to verify that information, SPD must provide detailed information about the technologies it uses as stated above. Additionally, even if the cameras themselves cannot record footage, it is unclear if there are policies and procedures in place to prevent live-streamed situational camera footage from being recorded via a different device.

#### *Outstanding Questions*

- What are the complete model names/numbers for each of the equipment in scope for the Situational Awareness Cameras?
- What technical safeguards are in place to prevent the storage/retention of images?
- 7.3 of Situational Awareness Cameras SIR states “[the SWAT Unit] have mitigated the risk of improper viewing of the protected areas.” How specifically have they mitigated the risk?
- What (if any) sections of the SPD Manual specifically cover the use of these technologies by SWAT?

#### *Recommendations for Regulation*

At this stage, pending answers to the questions above, we can only make preliminary recommendations for the regulation of SPD's use of situational awareness cameras. We recommend that the Council adopt, via ordinance, at a minimum, clear and enforceable rules that ensure the following:

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<sup>18</sup> *Core Monitor*, TACTICAL ELEC., <https://www.tacticalectronics.com/product/core-monitor/> (last visited Nov. 5, 2020).

<sup>19</sup> *Core Pole Camera*, TACTICAL ELEC., <https://www.tacticalectronics.com/product/core-pole-camera/> (last visited Nov. 5, 2020).

<sup>20</sup> *Core Under Door Camera*, TACTICAL ELEC., <https://www.tacticalectronics.com/product/core-under-door-camera/> (last visited Nov. 5, 2020).

- **SPD must abide by a specific and restricted purpose of use:** The ordinance should define a specific purpose of use for situational awareness cameras used by SPD, and any use must be restricted to that specific purpose.
- **SPD must not use any situational awareness cameras that have capabilities beyond what is strictly necessary to fulfill the purpose of use defined by the ordinance.** The ordinance should prohibit SPD from using cameras that have facial recognition or recording capabilities.
- **SPD must adopt technical and procedural safeguards to prevent misuse of the situational awareness cameras.** The ordinance should require SPD adopt safeguards that prevent use of the cameras or the footage streamed from the cameras for purposes beyond what is defined in the ordinance.

Thank you for your consideration of our comments and for facilitating this public review process.

Sincerely,

Jennifer Lee  
Technology and Liberty Project Manager