



Seattle Police Department Procedures & Tactics Publication

024 - Police Investigations Ordinance

Originator: Criminal Intelligence Unit

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Purpose

This Training Topic is intended to clarify City Ordinance 108333, Collection of Information For Law Enforcement Purposes, often referred to as the Investigations Ordinance. Because the ordinance is somewhat complex, Department members should carefully read this Training Topic in order to understand the impact of this ordinance on the collection of information of a private sexual orientation or of a restricted political/religious nature, and the relationship of this ordinance to the Criminal Records Privacy Act, Public Disclosure Act, and Public Records Preservation and Destruction Act.

The basic intent of the Investigations Ordinance is to restrict the Seattle Police Department from collecting political, religious, and private sexual orientation information unless it is relevant to a crime or the investigation of a criminal act. The Investigations Ordinance requires that an authorization be obtained prior to the collection of political or religious information.

The Investigations Ordinance also requires that a civilian auditor regularly review the files and records of the Department to determine if the Department is in compliance with the ordinance. The ordinance was designed to help protect citizens' civil liberties, while enabling the police to conduct effective investigations of criminal activity. The overall purpose of the ordinance is to establish an equitable and workable balance between protecting civil liberties and promoting effective law enforcement.

Summary

The Investigations Ordinance governs all information collection, maintenance, and transfer where political, religious, or "sexual orientation" information is concerned.

The most important definition to remember when thinking about this ordinance is that of "collection." Information is "collected" when it is reduced to writing or some other tangible form, as a record or file of the Department. (This includes audio/video recordings and E-mail.)

The definition of "collect" is information which is retrievable by Department personnel and excludes an officer's personal notes so long as they are not retrievable by other Department personnel.

Officers may "collect", either in the normal course of business, or with a written authorization, any and all information germane to the motivation for or commission of a past or completed crime. The case file or document must show clearly the basis for a belief that a crime may have occurred, and the way in which the private sexual or restricted information assists in understanding why the crime was committed and by

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whom. In other words, relevant facts are clearly allowed; if a reading of the file or document does not establish these linkages, the Department has a problem.

When a police officer knows of two or more techniques for collecting restricted information as defined by the Investigations Ordinance and each would be equally practical and effective, he/she should use the technique which he/she reasonably believes will have the least adverse impact on lawful political or religious activity.

In some instances (i.e., a bombing for political ends), it will be necessary to request an authorization from a section commander of lieutenant's rank or above. In such cases this will not be difficult to justify.

Future crimes will prove to be the most difficult area for investigation, especially where it is deemed necessary to gather information from within political, community, or religious groups. Even here, sufficiently detailed justifications will allow investigators to gather relevant information.

In short, this ordinance should not unduly inhibit complete and thorough investigations so long as each investigator is familiar with its provisions, and then completes reports so as to eliminate unstated assumptions and unnecessary observations.

Investigations Ordinance

The Investigations Ordinance establishes policies governing the Seattle Police Department in collecting, receiving, and transmitting information; establishes procedures, controls, and prohibitions on the collection and use of particular types of information; regulates and forbids certain police operations; establishes the powers of the Criminal Intelligence Section and its personnel; and provides enforcement procedures, administrative penalties, and civil remedies. The substantive prohibitions of this ordinance preclude:

- I. the collection of private sexual or restricted information in the absence of requisite facts;
- II. the use of infiltrators absent certain circumstances;
- III. the incitement of unlawful violent activity; and
- IV. the use of false or derogatory information to disrupt lawful religious or political activity.

These prohibitions are for the benefit of individual citizens in relation to their rights of personal privacy, as well as their constitutional rights and liberties. If an injury proximately results from a violation of any of these substantive prohibitions, public funds may be expended to compensate the injured person.

General Principles

The following section describes the general principles of each chapter of the Investigations Ordinance. It is intended as a learning guide only. When in doubt consult the text of the actual Investigations Ordinance or subsequent Department Rules and Regulations for Investigations Ordinance.

Chapter I: Investigations are not to unreasonably infringe upon constitutional rights. The collection (i.e., writing down or preserving in a tangible form to include any type of film) of information should be relevant to a criminal investigation or other legitimate police function. Restricted Information means information of a political or religious nature. Private Sexual Information means information about a person's sexual practices or orientation. Purge means to return, destroy, or secure in a restricted depository. These definitions are important.

Chapter II: Some records of the Department (e.g., administrative records, incidental references, confidential communications, special investigations, etc., as defined in the ordinance) are exempted from the provisions of this ordinance, as long as indexing does not cite unauthorized private sexual or restricted information, unless specifically authorized.

Chapter III: Private sexual information can be collected only if it is relevant and falls under one or more of the following criteria:

- I. it is relevant to the investigation of a reported or observed sex crime;
- II. involves a felony where the motivation is sexual in origin;
- III. involves a violation of law related to sexual activity, such as prostitution or lewd conduct;
- IV. involves relevant fugitive information which may lead to arrest.

The relevance of the information should be clearly stated in any related paperwork.

Private sexual information received from other criminal justice agencies must meet the same criteria stated above or be purged within seven working days. Private sexual information cannot be transmitted to another criminal justice agency unless that agency has a need for it and could have collected it under the provisions of this ordinance. A log must be kept of each written transmission for review by the Auditor.

Chapter IV: Restricted Information (i.e., political or religious) cannot be collected without a specific authorization granted under special conditions. Restricted information received from other criminal justice agencies must be purged within seven working days unless an authorization is granted. Restricted information cannot be transmitted to another criminal justice agency unless that agency submits facts sufficient to warrant an authorization. A log must be kept of each written transmission for review by an Auditor, and each written transmission should be stamped with a prominent notice limiting dissemination and use, whenever practical.

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Note: A written authorization is required for collecting restricted information, but not private sexual information.

Chapter V: When the collection of restricted information is necessary for the protection of a visiting dignitary, additional provisions are present in the Investigations Ordinance: an authorization for a criminal investigation may be obtained; information may be obtained without an authorization from public documents, demonstration organizers, and unsolicited tips; or a special authorization may be granted by the Chief of Police if the dignitary may be in danger. A log must be kept and the information shall be purged within 60 days after the authorization for its collection expires unless the Chief of Police certifies that the subject may pose a continuing threat to a dignitary.

Chapter VI: The use of infiltrators and informants to obtain restricted information is limited, as is the use of M.O. files. Department members are specifically prohibited by the Investigations Ordinance from (1) inciting a person to unlawful violent acts or (2) communicating false or derogatory information with the intention of disrupting lawful political or religious activity.

Note: Chapters V and VI deal with restricted information only. Private sexual information may not be collected under these provisions.

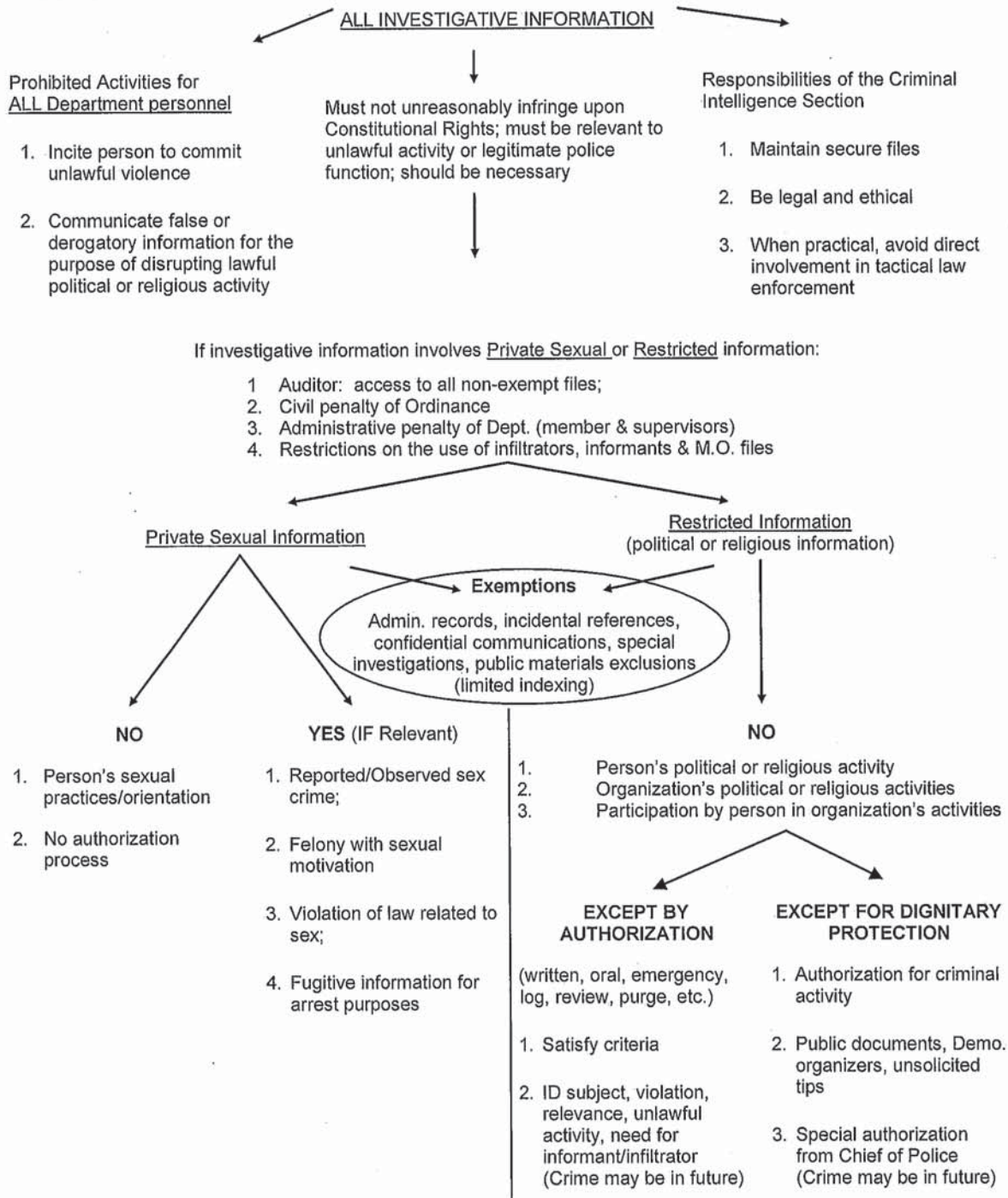
Chapter VII: The Criminal Intelligence Section is authorized under the Investigations Ordinance to collect, determine the reliability of, coordinate, disseminate, and evaluate information. The Criminal Intelligence Section is required to maintain secure files, use only legal and ethical procedures, and, whenever practical, avoid direct involvement in tactical law enforcement.

Chapter VIII: The position of "Auditor" is created to ensure that Department files are in compliance with the Investigations Ordinance. The Auditor has access to all Department files with the exception of personnel files, IIS files, personal files of the Chief of Police, and special investigative files certified by the King County Prosecutor. If the Auditor determines that this ordinance has been substantially violated regarding the collection of private sexual or restricted information he or she is to notify the subject of the collection of information by certified mail.

Chapter IX: Civil penalties for a substantial violation of the Investigations Ordinance may be imposed. The subject of the private sexual or restricted information collected in violation of this ordinance may receive \$500, while organizations about whom information has been wrongly collected may receive \$1,000. Actual damages may be awarded when evidence establishes a greater amount. The Chief of Police is obligated to issue rules and regulations regarding the implementation of this ordinance as well as the use of infiltrators, informants, and photographic surveillance techniques. Administrative penalties may be imposed for Department members violating this ordinance, and supervisors may be penalized for the actions of their subordinates.

The diagram on the following page schematically presents the general principles and processes described in the Investigations Ordinance.

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Chapter Summaries

The following section is a more in-depth presentation of each chapter of the Investigations Ordinance. Again, this is intended as a learning guide only.

Chapter I - Purpose, Policies, and Definitions (Summary)

The first chapter of the Investigations Ordinance establishes the purpose, policies, and definitions used throughout the ordinance. The purpose of the ordinance is to allow the Department to investigate and collect information on a person only so long as the investigation does not unreasonably infringe upon that person's right to privacy and other constitutionally recognized rights, liberties, and freedoms. The ordinance establishes what is a reasonable and an unreasonable infringement on a person's rights during police investigations.

THE INVESTIGATIONS ORDINANCE IS NOT INTENDED TO PROTECT CRIMINAL ACTIVITY.

The policies established in the Investigations Ordinance are:

- I. Equal enforcement of the law is necessary to protect constitutional liberties. No person shall become the subject of the collection of information on account of a lawful exercise of a constitutional right or civil liberty; no information shall be collected upon a person who is active in politics or community affairs, unless under the same or similar circumstances the information would be collected upon another person who did not participate actively in politics or community affairs.
- II. The collection of information is legal only if the information is relevant to criminal investigations or other legitimate police functions.
- III. Periodic reviews of Department files are required to determine conformance with the ordinance and their relevancy to criminal investigations and other legitimate police functions. Information indexed for ready retrieval other than correspondence files, shall be reviewed periodically and only that deemed relevant to present and future law enforcement activities or required by law shall be retained.
- IV. Standards for disclosure of information to other agencies and individuals are necessary. To protect all persons' rights of privacy and to preserve the confidentiality of communications disclosure of information shall be limited to records open for public inspection, to arrest notices and information disclosed to the public for law enforcement purposes, and/or to information needed by:

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- A. criminal justice agencies in the performance of their official functions;
 - B. persons with a legitimate interest in the information and persons making inquiry with their consent;
 - C. persons with a right to disclosure under a statute, implementing regulation, ordinance, or court order;
 - D. persons conducting research for scientific or law enforcement purposes under assurance of confidentiality; and
 - E. agencies with regulatory responsibilities for which the information is pertinent. Disclosure of information from records closed to public inspection shall be limited to those facts and materials reasonably deemed relevant to the purposes for the disclosure, unless the disclosure occurs pursuant to a subpoena or court order, the Public Disclosure Act, the Criminal Records Privacy Act, or other statute mandating disclosure, or the subject of the information consents to its disclosure.
- V. Whenever there is a choice between two equally effective investigative techniques, officers should use the technique with the least adverse impact upon lawful political or religious activity.

A number of key concepts are defined in the ordinance. Important definitions are:

- I. **restricted information**, which means information about a person's political or religious associations, activities, beliefs, or opinions;
- II. **private sexual information**, which means information about a person's sexual practices or orientation;
- III. **Departmental personnel**, which means all officers or employees of the City assigned to the Department and any individual paid by the City assigned to the Department and acting under the direction and control of an officer or employee in the Department;
- IV. **purge**, which means to return, destroy, or secure in a restricted depository;
- V. **infiltrator**, which means a person directed by the Department to pose as a member of a political, religious, or community organization to obtain information about the organization;
- VI. **informant**, which means a person directed by the Department to obtain information; and
- VII. **collect**, which means to write down or preserve information in a tangible form as a record or file of the Department, including information which is retrievable by Department personnel and to exclude an officer's personal notes.

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Because of the importance of three of the above key concepts, full definitions follow:

Restricted Information (excluding that dealing with administrative records, incidental references, confidential communications, materials open to public inspection, special investigations, and exclusions) means information about:

- I. An individual's political or religious associations, activities, beliefs, or opinions;
- II. The political or religious activities, beliefs, or opinions and the membership, mailing, subscription, or contributor lists of a political religious organization, an organization formed for the protection or advancement of civil rights or civil liberties, or an organization formed for community purposes; or
- III. An individual's membership or participation in such an organization, in a political or religious demonstration, or in a demonstration for community purposes.

Private Sexual Information (excluding that dealing with administrative records, incidental references, confidential communications, materials open to public inspection, special investigations, and exclusions) means any information about an individual's sexual practices or orientation.

Purge 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 or state laws regarding records retention or public disclosure. "Purge" shall include deletion of information from affected materials and from Department indexes. Nothing in this chapter shall prohibit indexing of materials within a secure depository.

Chapter II - Scope, exemptions, and exclusions (Summary)

The second chapter **exempts** the following types of records and information from most of the Investigations Ordinance provisions controlling the collection, receipt, or transmission of information:

- I. SPD administrative records,
- II. incidental references,
- III. confidential communications,
- IV. materials open to public inspection, and
- V. special investigations.

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Department indexing may not cite private sexual or restricted information other than information in a proper name, unless specifically authorized by this ordinance.

SPD Administrative Records include such things as routine correspondence files, employment and personnel records, records of evidence, etc. Investigatory files are not exempted. Indexing of administrative records may cite private sexual or restricted information only for a valid administrative purpose.

Incidental References to private sexual or restricted information within one of the following classifications may be collected as an incidental reference when:

- I. The information appears as an incidental reference in a standard report form, in response to a general questionnaire completed by an applicant or witness using his or her own words or in a more general description or statement;
- II. The information forms an incidental part of the statement, verification, or rebuttal of a legal defense that has been raised by a suspect or may reasonably be anticipated; or an incidental part of the activities or associations of a homicide, unconscious, or kidnapped victim during the seventy-two (72) hours immediately preceding an incident or investigation;
- III. The information relates to a suspect whose identity is unknown and may not then be indexed by a true name;
- IV. The subject of the information supplies the information to known Departmental personnel;
- V. The information arises in the course of and is used exclusively for traffic code enforcement and traffic safety purposes;
- VI. The information is part of a recording maintained in connection with incoming emergency calls or a video and/or sound recording authorized by RCW 9.73.090;
- VII. The information is collected and maintained by the Department Communications Division for use exclusively in connection with emergency calls and is isolated from general Department files;
- VIII. The information appears in records relating to child abuse or protective custody services contemplated by RCW Chapter 26.44; or in confidential records of Community Service Officers used in handling domestic disputes, youth counseling, or like community services; and/or
- IX. The information appears as part of the text of a printed informational material from a governmental law enforcement agency, the main purpose of which is instructional and the disclosure of which would be detrimental to effective law enforcement.

The definition of a "law enforcement manual" means information from a governmental law enforcement agency, the main purpose of which is instructional.

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Confidential Communications include privileged conversations involving the Department psychologist, physicians, legal advisor, chaplain, and some privileged informant relationships.

Materials Open to Public Inspection include information about public events, information in a library, criminal justice printed literature, and arrest circulars.

Reference material and information which is maintained by the Department and is open to public inspection (parade permits, newspaper articles, etc.) must now be readily available to the public and promptly obtained upon request.

Information maintained by the Seattle Police Department which is: 1) in a reference center or library; 2) printed literature from a law enforcement agency which may be obtained pursuant to public disclosure rules; 3) instructional material from a law enforcement agency; and/or 4) confidential intelligence information from LEIU or WSIN may not be cross-referenced within other Department files.

Special Investigation information may be collected when required by a prosecutor with respect to a person charged with a crime, violation, or civil commitment; or reasonably suspected of governmental corruption; or when an applicant for City employment/promotion consents to its collection as part of a background investigation. (Note narrow definition)

Exclusions: The Investigations Ordinance does not apply to activities of Department members as private citizens, IIS investigations, City administrative and legislative processes, and personal communications of the Chief of Police, other than investigatory information. Nothing in the ordinance shall forbid Department members from complying with court orders.

Chapter III - Handling Private Sexual Information (Summary)

Departmental personnel are prohibited from collecting private sexual information unless the information involves:

- I. a reported or observed sex crime;
- II. are apparent felony where a motivation for the crime may reasonably be suspected to be sexual in origin;
- III. a violation of the law that by its nature is commonly related to sexual activity (for example, prostitution, pandering, procuring, lewd conduct, or pornography); or
- IV. the information is about a subject or fugitive and may reasonably lead to his or her arrest.

The private sexual information collected shall reasonably appear relevant to the investigation of unlawful activity or to making an arrest of the subject of the information.

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Unless the above paragraph applies, private sexual information received from another criminal justice or governmental agency shall be purged within the sooner of seven working days or of the placement of other material which was received with the private sexual information into an investigatory file, the commingling of the other material with other Department files and records, or the indexing of the other material in the Department's record system.

Private sexual information shall not be transmitted to another criminal justice or governmental agency unless:

- I. The recipient agency has a need for the information which satisfies the requirements stated above, or a subpoena, court order, or statutory mandate requires the production of the information; and a log of each written transmission is maintained which contains the name of the subject of the information and the recipient agency; or
- II. The information is transmitted to the King County Prosecuting Attorney or the City Attorney in connection with a pending investigation of unlawful activity or a judicial proceeding.

Chapter IV - Handling Restricted Information for Criminal investigations (Summary)

Restricted information which is information about a person's political or religious associations, activities, beliefs, or opinions, cannot be collected without an authorization from a supervising SPD officer (Lieutenant or above). An authorization may be granted only under the following circumstances:

- I. there is a reasonable suspicion that the subject is involved in criminal activities as a principal, witness, or victim;
- II. the restricted information is relevant to the investigation or the criminal activity; and
- III. the collection of the restricted information is consistent with the policies and other provisions of the Investigations Ordinance.

The Auditor must be given notice of each authorization issued. Authorizations are effective for no more than 90 days. Additional authorizations may be granted by the Chief of Police for up to 90 day periods each as necessary to complete an investigation, but require additional documentation.

An authorization must be submitted in writing and contain the following five pieces of information:

- I. the identity of the subject (if known);
- II. the suspected violation of the law under investigation;
- III. an explanation of the restricted information and its relevancy to the violation of the law or the arrest of the subject;

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- IV. a statement of the facts and circumstances that create the reasonable suspicion that the subject was involved in criminal activity;
- V. if an informant or infiltrator is to be used, why the use of an informant or infiltrator is deemed necessary for law enforcement purposes.

Authorization forms are maintained by the Criminal Intelligence Section and are available upon request.

Restricted information received from other criminal justice agencies must be purged within seven working days, unless an authorization is obtained that includes the five pieces of information summarized above. Restricted information cannot be transmitted to other government agencies unless the agency submits facts sufficient to obtain an authorization under the Investigations Ordinance. A log must be kept of each written transmission containing restricted information to other police agencies so the Auditor may review the legality of the transmission. Wherever practical documents containing restricted information transmitted to other government agencies must be stamped with a prominent notice limiting dissemination and use of the information.

Note: While transmissions containing restricted information require this prominent notice, transmissions containing private sexual information do not.

When time is of the essence, the Department has five working days after the information is collected to obtain an authorization for the retention of political or religious information that is relevant to a crime or criminal investigation.

An authorization may be granted only when the subject of the restricted information is suspected of engaging in unlawful activity; the restricted information is relevant; the collection of the restricted information is consistent with the statement of purpose, policies, and other provisions of this chapter; no informant or infiltrator is used to collect restricted information about a victim or witness; and no restricted information about a victim or witness is indexed by name.

Photographs and videotape, as tangible records or files of the Department, should be treated according to the same principles as other collected information.

- I. Photographs and videotape not involving restricted or private sexual matters may be taken and preserved as usual.
- II. Photographs and videotape of private sexual matters may be taken and preserved or filed only if they relate to a violation of the law involving sexual activity. Permission from a sergeant or higher ranking officer must be obtained prior to taking such film.
- III. Photographs and videotape dealing with restricted information may be taken but can only be preserved or filed if an authorization for their collection has been obtained. Permission from a sergeant or higher ranking officer must be obtained prior to taking such photographs or

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videotape. If an authorization is not obtained, the photographs, film, or videotape must be purged within FIVE WORKING DAYS of the day on which the photographs or videotape were taken or within 24 hours of the time at which the photographs are received by the unit in question after development.

- IV. Photographs or videotape for dignitary protection may be taken and preserved or filed as with other dignitary information.

A supervisor who has authorized the collection of political, religious, or sexual information is subject to administrative discipline for a subordinate's misconduct in collecting the information only if the supervisor knew or should have known of the misconduct.

Chapter V - Handling Restricted Information for Protecting Dignitaries (Summary)

Department members assigned to provide necessary security for visiting officials and dignitaries may collect restricted information by:

- I. obtaining an authorization for a criminal investigation under Chapter IV of the Investigations Ordinance;
- II. reviewing public documents, talking with demonstration organizers, or accepting unsolicited tips;
- III. when time is of the essence, collect restricted information on the condition that it shall be purged within twenty-four (24) hours after receipt, unless an authorization is granted; or
- IV. obtaining a special authorization for dignitary protection where there is a reasonable suspicion that the subject of an investigation could pose a threat to the life or safety of a visiting official or dignitary. This special authorization is more limited than one for a criminal investigation. When time is of the essence, an authorization may be requested and given orally, but the authorization shall be reduced to writing within two (2) working days.

If restricted information is gathered from public documents, demonstrators, or tips, or pursuant to a special authorization, the information must be kept in limited access dignitary protection files. These files are to be used only for dignitary protection.

Special authorizations to collect restricted information for protecting a dignitary must include most of the information necessary for obtaining an authorization for a criminal investigation, must also include the anticipated date of arrival of the dignitary, and the Chief of Police must find that there is a reasonable suspicion that the subject of the investigation could pose a threat to the life or safety of a visiting dignitary. Notice of each special authorization for protecting dignitaries must be given to the Auditor.

The rules for receiving and transmitting restricted information for dignitary protection to other criminal justice agencies are generally the same rules used for receiving and transmitting restricted information

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during criminal investigations. There is one exception, however. A task force of law enforcement agencies may operate for up to ten days prior to a dignitary's visit and may exchange information to protect the dignitary during that time. All restricted information provided by the Department to other law enforcement agencies during task force operations must be prominently stamped wherever practical with a notice limiting dissemination or use of the information.

All restricted information collected by the Department in a task force for dignitary protection must be purged within ten (10) days after the visiting official or dignitary departs, unless the Chief of Police issues an authorization that the subject of the information poses a continuing threat to the dignitary. A log must be kept of all SPD/task force transmissions.

In anticipation of dignitary protection, personnel involved should consult the text of the Investigations Ordinance or subsequent Department's Rules and Regulations for Investigations Ordinance.

Chapter VI - Police Operations (Summary)

The Department cannot use infiltrators to pose or act as members of a political or religious organization, unless the infiltrator is justified as part of the authorization for a criminal investigation or a special authorization for dignitary protection. The Chief of Police must also certify in writing that the infiltrator is necessary to the investigation and that the infiltrator will perform his or her assignment in a manner designed to avoid infringement upon the political rights, religious liberties, or the freedoms of expression and association. The Chief of Police is also directed to establish Department rules and regulations for reviewing the use of infiltrators and their methods.

Informants paid to collect restricted information **must be instructed** not to use unlawful techniques to obtain information, not to participate in unlawful acts of violence, not to initiate a plan to commit criminal acts, and not to participate in criminal activity unless specifically authorized by a Department supervisor as necessary to obtain information for prosecution. Paid informants are also subject to the authorization and special authorization requirements and other regulations outlined throughout the Investigations Ordinance.

Department personnel are prohibited by this ordinance from inciting any person to commit an unlawful violent act, and from communicating information known to be false or derogatory in order to disrupt a lawful political or religious activity, unless such communication occurs in the course of or in connection with a judicial proceeding or serves a valid law enforcement purpose. Restricted information about a person under a true name may only be added to an M.O. File where there is probable cause to suspect the subject of the restricted information has committed unlawful activity. This does not limit indexing restricted information about an incident by subject matter.

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Chapter VII - Criminal Intelligence Section (summary)

The functions and responsibilities of the Criminal Intelligence Section are to:

- I. collect and analyze data about organized criminal activity;
- II. determine the reliability and accuracy of information coming through the Section;
- III. coordinate criminal intelligence information throughout the Department;
- IV. exchange relevant intelligence information with other law enforcement agencies;
- V. disseminate information between Department investigative sections to improve criminal investigations; and
- VI. develop methods to evaluate the effectiveness of the Criminal Intelligence Section.

Criminal intelligence personnel must maintain the security of criminal intelligence files and follow ethical and legal police procedures in collecting information.

The Criminal Intelligence Section will also purge information in its files when no longer relevant, develop training programs to assist tactical units in detecting and gathering information relevant to criminal investigations conducted by the Criminal Intelligence Section, and, whenever practical, avoid direct involvement in the conduct of tactical law enforcement operations.

The Criminal Intelligence Section of the Department may store and/or disseminate information only if it is accompanied by an assessment of reliability.

Chapter VIII - Auditing and Notice Requirements (Summary)

The Mayor is authorized to nominate an Auditor, subject to confirmation by the City Council. The Auditor serves a three-year term, but may be removed by the Mayor for cause. The Auditor should have:

- I. a reputation for integrity and professionalism;
 - II. a commitment to and knowledge of the responsibilities and needs for law enforcement and protection of basic constitutional rights;
 - III. demonstrated leadership experience and ability;
 - IV. the potential for obtaining the respect of police officers and citizens;
 - V. an ability to work effectively with citizens, elected officials, and government agencies; and
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VI. the ability to work effectively under pressure.

The Auditor is given access to all Department files and records except personnel files, Internal Investigation Section files, confidential communications, personal files of the Chief of Police, and special investigations which the King County Prosecutor certifies must be withheld from the Auditor's review. Special investigations designated by the prosecutor to be withheld from the Auditor's review may include investigations of governmental corruption, investigations of organized criminal activity, or potential conflicts of interest for the Auditor. Special investigations excluded from the Auditor's review shall be reviewed and certified by the prosecutor to assure compliance with the provisions of the Investigations Ordinance. For those special investigations, the prosecutor shall act in every respect as the Auditor.

The Auditor must keep Department files and records confidential, as prescribed by State law and the Investigations Ordinance. The Auditor shall audit Department files with the audit being conducted in the SPD facilities. The Auditor shall review all the authorizations issued by the Department, conduct a random check of SPD files and indexes, review materials designated for purging, and prepare a written report of the audit for the Mayor, City Council, City Attorney, and the City Clerk.

If the Auditor has a reasonable belief that restricted information has been collected in a manner substantially violating the Investigations Ordinance and creating a civil liability for the City, the Auditor must notify by certified mail any person about whom the restricted information has been collected.

The Auditor is required to delay notifying individuals who have had information collected on them in violation of the ordinance, during such time as the Auditor is satisfied that such notification will jeopardize an ongoing investigation. The Auditor is also required to identify the information that was collected in violation of the ordinance, and the Department is required to retain this information as evidence of the violation.

The Chief of Police will audit confidential intelligence information received from the Law Enforcement Intelligence Unit (LEIU) and the Western States Information Network (WSIN). The Chief must submit a detailed report of his/her audit to the Mayor for certification to the City Council. Additional penalties are placed on the Chief for failure to perform this responsibility.

The Police Department is required to perform a thorough background check on nominees for the position of Auditor.

Chapter IX - Civil Liability, Enforcement, and Penalties (Summary)

The Investigations Ordinance creates a right of action against the City of Seattle when Department personnel:

I. collect private sexual information in violation of the ordinance;

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- II. collect restricted information in violation of the ordinance when the officer knew that no authorization could validly have been granted;
- III. use an infiltrator to gather information in a political or religious organization when there is no reasonable suspicion of criminal activity;
- IV. incite another person to commit unlawful violent activity; or
- V. communicate information known to be false or derogatory with the intention of disrupting lawful political or religious activity.

Unless evidence establishes a greater amount of damages, the damages payable for injuries proximately caused by collecting private sexual or restricted information shall be \$500 for each person. The damages payable in the event of injury proximately caused by improperly using an infiltrator shall be \$1,000 for the infiltrated organization. Actual damages shall be payable when established by evidence. No cause of action may be brought against a Department member for an act or omission made in good faith.

The City reserves rights of all defenses at law for allegations of civil liability arising from the Investigations Ordinance. The City's standard claims procedure will be utilized. The Chief of Police is authorized to promulgate rules and regulations implementing the Investigations Ordinance and is required to promulgate rules and regulations governing the use of informants, infiltrators, and photographic surveillance techniques.

The Chief of Police is required to prepare an annual report indicating the number of authorizations granted and the number of authorizations involving the use of infiltrators and informants, a statistical analysis of the purposes of the authorizations, the types of unlawful activity investigated, the number of prosecutions based on information gathered pursuant to authorizations, and any internal disciplinary action taken to enforce the Investigations Ordinance.

Administrative penalties are established for officers who violate the Investigations Ordinance. Supervisors are also subject to administrative discipline for the misconduct of their subordinates. Such penalties include reprimand, suspension without pay, and discharge as provided by the City Charter.