

ORDINANCE 108333

1
2 AN ORDINANCE establishing policies governing the Seattle Police Department in
3 collecting, receiving, and transmitting information; establishing procedures,
4 controls, and prohibitions on the collection and use of particular types of
5 information; regulating and forbidding certain police operations; establishing
6 the powers of a criminal intelligence section and its personnel; and providing
7 enforcement procedures, administrative penalties, and civil remedies.

8 WHEREAS, freedom of speech, press, thought, association, and assembly, as well as
9 the right to petition the government for redress of grievances, are among our
10 most cherished civil liberties, and the right of privacy is indispensable to
11 individual liberty; and

12 WHEREAS, the duty of the Seattle Police Department is to protect the public
13 safety and individual rights; and

14 WHEREAS, the substantive prohibitions in this ordinance which preclude: (1) the
15 collection of private sexual or restricted information in the absence of
16 requisite facts (Sections 11 and 13); (2) the use of infiltrators absent certain
17 circumstances (Section 23); (3) the incitement of unlawful violent activity
18 (Section 26(a)); and (4) the use of false or derogatory information to disrupt
19 lawful religious or political activity (Section 26(b)) are for the benefit of
20 individual citizens in relation to their rights of personal privacy, as well as
21 their constitutional rights and liberties; if an injury proximately results from
22 a violation of any of these substantive prohibitions, expending public funds to
23 make the injured party whole fulfills a public purpose; and

24 WHEREAS, as distinct from the substantive prohibitions, all authorization pro-
25 cedures and internal controls are for the administration of municipal govern-
26 ment and the Seattle Police Department; none of the procedures and controls
27 establishes any protections or rights owing to or for the benefit of anyone
28 individually; no private rights are created in or may be based upon the
absence of an authorization alone or a procedural irregularity; and the civil
liability established in Section 33 against The City of Seattle is, and is
intended to be, exclusive of all causes of action arising under this ordinance;
and

WHEREAS, The City of Seattle's annual operating budgets have provided for a
Criminal Intelligence Section in the Seattle Police Department; and stating
the powers, functions, and responsibilities of the Section's personnel will
provide guidance for the performance of their duties and a standard by which
to measure their conduct; Now, Therefore,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

I. PURPOSE, POLICIES, AND DEFINITIONS

Section 1. Statement of Purpose. This ordinance shall be interpreted and
implemented 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, and freedoms guaranteed by the
Constitution of the United States or of the State of Washington -- 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

1 redress of grievances; or (b) violate an individual's right to privacy.

2 Section 2. Policies. The following policies shall govern the collection and
3 recording of information by departmental personnel:

- 4 (a) No person shall become the subject of the collection of information on the
5 account of a lawful exercise of a constitutional right or civil liberty; no
6 information shall be collected upon a person who is active in politics or
7 community affairs, unless under the same or similar circumstances the in-
8 formation would be collected upon another person who did not participate
9 actively in politics or community affairs;
- 10 (b) All information collected shall reasonably appear relevant to the performance
11 of an authorized police function; no information shall be collected or used for
12 political purposes;
- 13 (c) When a police officer knows of two or more techniques to collect restricted
14 information and each would be equally practical and effective, the officer
15 should use the technique which he reasonably believes will have the least
16 adverse impact upon lawful political and/or religious activity;
- 17 (d) Information indexed for ready retrieval, other than correspondence files, shall
18 be reviewed periodically and only that deemed relevant to present and future
19 law enforcement activities or required by law shall be retained;
- 20 (e) To protect rights of privacy of the citizenry and to preserve the confiden-
21 tiality of communications, disclosure of information shall be limited to re-
22 cords open for public inspection; to arrest notices and information disclosed
23 to the public for law enforcement purposes, and/or to information needed by:
24 (1) criminal justice agencies in the performance of their official functions; (2)
25 persons with a legitimate interest in the information and persons making
26 inquiry with their consent; (3) persons with a right to disclosure under a
27 statute, implementing regulation, ordinance, or court order; (4) persons
28 conducting research for scientific or law enforcement purposes under
assurance of confidentiality; and (5) agencies with regulatory responsibilities
for which the information is pertinent; and
- (f) Disclosure of information from records closed to public inspection shall be
limited to those facts and materials reasonably deemed relevant to the

1 purposes for the disclosure, unless the disclosure occurs pursuant to a sub-
2 poena or court order, the Public Disclosure Act (RCW Chapter 42.17), the
3 Criminal Records Privacy Act (RCW 10.97.070), or other statute mandating
4 disclosure, or the subject of the information consents to its disclosure.

5 Section 3. Definitions. When the following words or their derivations are
6 emphasized, the definitions below apply:

- 7 (a) Auditor means the person described in Section 29.
- 8 (b) Collect means to write down or preserve information in a tangible form as a
9 record or file of the Department.
- 10 (c) Department means the Police Department of The City of Seattle.
- 11 (d) Departmental personnel means an officer or employee of The City of Seattle
12 assigned to the Department, and any individual paid by the City pursuant to
13 vouchers drawn by the Chief of the Department or a fiscal officer assigned to
14 the Department and acting under the direction and control of an officer or
15 employee in the Department.
- 16 (e) Infiltrator means a person acting under the direction of the Department, who
17 is a member or associate -- or poses or acts as a member or associate -- of a
18 political or religious organization, an organization formed for the protection
19 or advancement of civil rights or civil liberties, or an organization formed for
20 community purposes, and who agrees to provide or provides information about
21 the organization to the Department on a continuing basis without disclosing
22 his or her relationship to the Department.
- 23 (f) Informant means a person other than an officer or employee of The City of
24 Seattle assigned to the Department:
- 25 (i) who provides information to departmental personnel about a person in
26 consideration of a personal benefit; or
- 27 (ii) who is engaged, directed, or controlled by the Department.
- 28 (g) Person means any individual, group of individuals, unincorporated association,
and/or corporation.
- (h) Private sexual information -- when not emphasized in Sections 4, 5, 6, and
7(d) -- means any information about an individual's sexual practices or

1 orientation. When emphasized, it excludes any such information within the
2 scope of Sections 5 through 10 dealing with administrative records, incidental
3 references, confidential communications, materials open to public inspection,
4 special investigations, and exclusions, respectively.

5 (i) Purge means to return, destroy, or deny use of information by means such as
6 removal to a secure depository with access restricted solely to specific
7 individuals for purposes of defending a lawsuit, complying with a court order,
8 preserving evidence possibly valuable to a defendant in a criminal case or
9 pending commitment proceeding, and auditing compliance with this ordi-
10 nance. Purge shall include deletion of information from affected materials
11 and from Department indexes.

12 (j) Reasonable suspicion means a rational inference that is based on articulable
13 facts.

14 (k) Restricted information -- when not emphasized in Sections 4, 5, 6, 7(d), 23,
15 33(c), and 35 -- means any information within paragraphs (i) through (iii)
16 below. When emphasized, it excludes any such information within the scope
17 of Sections 5 through 10 dealing with administrative records, incidental
18 references, confidential communications, materials open to public inspection,
19 special investigations, and exclusions, respectively. Restricted information
20 means information about:

21 (i) an individual's political or religious associations, activities, beliefs, or
22 opinions;

23 (ii) the political or religious activities, beliefs, or opinions and the mem-
24 bership, mailing, subscription, or contributor lists of a political or
25 religious organization, an organization formed for the protection or
26 advancement of civil rights or civil liberties, or an organization formed
27 for community purposes; or

28 (iii) an individual's membership or participation in such an organization, in a
political or religious demonstration, or in a demonstration for com-
munity purposes.

1 II. SCOPE, EXEMPTIONS, AND EXCLUSIONS

2 Section 4. Scope. Those sections of this ordinance controlling the collection,
3 receipt, and/or transmission of information (Sections 11 through 22) do not apply to
4 administrative records (Section 5), incidental references (Section 6), confidential
5 communications (Section 7), materials open to public inspection (Section 8), special
6 investigations (Section 9), and the exclusions (Section 10), as long as Department
7 indexing does not cite any private sexual or restricted information other than
8 information in a proper name, unless specifically authorized by this ordinance.

9 Except for the exclusion of Section 10(a), the policies in Section 2 apply to
10 the provisions of this ordinance. All Department records are subject to audit,
11 unless excluded by Section 30(a) through (e).

12 Section 5. Administrative Records. Administrative records pertain to De-
13 partment operations and/or public relations, are comparable in character to files
14 and records maintained by other City departments, and exclude investigatory files
15 of the Department. Examples of administrative records include routine correspon-
16 dence files; employment and personnel records; jail records on prisoners' religious
17 preferences and customs; information for providing chaplain, escort, and ancillary
18 community services; records of evidence, lost or stolen property, and custodial
19 property inventoried without regard to informational content; and itinerary
20 information used for providing security and protection for an official, dignitary, or
21 consenting individual. Indexing may cite private sexual or restricted information
22 only for a valid administrative purpose.

23 Section 6. Incidental References. Private sexual or restricted information
24 within one of the following classifications may be collected as an incidental refer-
25 ence:

- 26 (a) The information appears as an incidental reference in a standard report form,
27 in response to a general questionnaire completed by an applicant or witness
28 using his or her own words, or in a more general description or statement;
- (b) 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 rea-
sonably be anticipated; or an incidental part of the activities or associations

1 of a homicide, unconscious, or kidnapped victim during the seventy-two (72)
2 hours immediately preceding an incident or investigation;

- 3 (c) The information relates to a suspect whose identity is unknown and may not
4 then be indexed by a true name;
- 5 (d) The subject of the information supplies the information to known depart-
6 mental personnel;
- 7 (e) The information arises in the course of and is used exclusively for traffic
8 code enforcement and traffic safety purposes;
- 9 (f) The information is part of a recording maintained in connection with in-
10 coming emergency calls or a video and/or sound recording authorized by RCW
11 9.73.090;
- 12 (g) The information is collected and maintained by the Department Communi-
13 cations Division for use exclusively in connection with emergency calls and is
14 isolated from general Department files;
- 15 (h) The information appears in records relating to child abuse or protective
16 custody services contemplated by RCW Chapter 26.44; or in confidential
17 records of Community Service Officers used in handling domestic disputes,
18 youth counseling, or like community services; and/or
- 19 (i) The information appears as part of the text of a printed law enforcement
20 manual, the disclosure of which would be detrimental to effective law en-
21 forcement.

22 Section 7. Confidential Communications. The following communications and
23 materials are confidential:

- 24 (a) A professional consultation between departmental personnel and a Depart-
25 ment psychologist, or between a person detained in the City Jail and a jail
26 physician or other medical personnel when a confidential relationship exists
27 between the participants;
- 28 (b) A confidential communication between departmental personnel and any legal
advisor assigned to the Department or to represent the Department or
departmental personnel, as well as memoranda of such communications;
- (c) A confidential communication between departmental personnel and a chaplain

1 or other religious official; or

- 2 (d) Information identifying the name of an informant which is privileged from
3 disclosure in a court of law, and information collected about an informant as
4 part of and relevant to a background investigation to determine his or her
5 reliability, provided the informant has consented to its collection. Such a
6 confidential communication may not contain private sexual information or
7 restricted information about any person other than the informant, except as
8 an incidental reference (Section 6).

9 Section 8. Materials Open to Public Inspection. Materials such as the fol-
10 lowing qualify as materials open to public inspection if any person may examine
11 them during regular Department business hours:

- 12 (a) Information about anticipated political or religious events -- such as parades,
13 processions, rallies, demonstrations, or assemblies contemplated in Ordinance
14 108200, Chapter 11.25 (The Seattle Traffic Code), as amended, or a successor
15 traffic code -- and such material as may be necessary in connection with the
16 events for the direction and control of traffic, to protect the public health
17 and safety, and to secure public liability insurance covering The City,
18 provided that complainant identification information may be kept confiden-
19 tial when required by RCW 42.17.310(1)(e);
20 (b) Information in a reference center or library;
21 (c) Printed literature from a criminal justice agency relating to law enforcement
22 duties that may be obtained pursuant to the public disclosure rules of the
23 Department prepared pursuant to State law; and/or
24 (d) Any arrest circular or "Wanted Poster" received by the Department as part of
25 a general circulation by a governmental agency to law enforcement agencies.

26 Section 9. Special Investigations. Information may be collected in connec-
27 tion with the following special investigations when:

- 28 (a) The information is collected upon the request of the Attorney General of the
State of Washington, a prosecuting attorney, a city attorney, or the
Department of Justice with respect to a person charged with a crime or
ordinance violation, or with respect to a person facing civil commitment

1 after commitment proceedings have been filed, and the information reason-
2 ably appears relevant to the investigation or judicial proceedings.

- 3 (b) The information is collected about a person reasonably suspected of involve-
4 ment in corruption or malfeasance in office of a governmental official or
5 employee, and the information reasonably appears relevant thereto; and/or
6 (c) The information is collected about an applicant as part of and relevant to a
7 background investigation of the applicant for employment or promotion with
8 The City of Seattle or a City License or Commission; or the subject of the
9 information has consented in writing to its collection.

10 Section 10. Exclusions. This ordinance shall not apply to:

- 11 (a) Activities by departmental personnel as private citizens not related to their
12 law enforcement functions;
13 (b) The collection of information about police conduct by the Department In-
14 ternal Investigations Section;
15 (c) The participation of departmental personnel in their official capacities in The
16 City's administrative and legislative processes with respect to Department
17 operations to the same extent and in the same manner as other City
18 departments; or
19 (d) Personal communications to, and personal papers of, the Chief of the De-
20 partment personally maintained in his own office, provided such materials do
21 not include investigatory information.

22 Nothing in this ordinance shall restrict or forbid departmental personnel from
23 complying with a court order.

24 III. HANDLING PRIVATE SEXUAL INFORMATION

25 Section 11. Collection and Use. Private sexual information shall not be
26 collected unless the information involves a reported or observed sex crime; an
27 apparent felony where a motivation for the crime may reasonably be suspected to
28 be sexual in origin; 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 the information is about a subject or fugitive and may reasonably

1 lead to his or her arrest. The private sexual information collected shall reasonably
2 appear relevant to the investigation of unlawful activity or to making an arrest of
3 the subject of the information.

4 Section 12. Receipt and Transmission. Unless Section 11 applies, private
5 sexual information received from another criminal justice or governmental agency
6 shall be purged within the sooner of seven working days or of the placement of
7 other material which was received with the private sexual information into an
8 investigatory file, the commingling of the other material with other Department
9 files and records, or the indexing of the other material in the Department's record
10 system.

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

- 13 (a) The recipient agency has a need for the information which satisfies the
14 requirements of Section 11, or a subpoena, court order, or statutory mandate
15 requires the production of the information; and a log of each written
16 transmission is maintained which contains the name of the subject of the
17 information and the recipient agency; or
18 (b) The information is transmitted to the King County Prosecuting Attorney or
19 the City Attorney in connection with a pending investigation of unlawful
20 activity or a judicial proceeding.

21 IV. HANDLING RESTRICTED INFORMATION FOR CRIMINAL INVESTIGATIONS.

22 Section 13. Collecting Restricted Information. Departmental personnel shall
23 not collect any restricted information for any use other than for dignitary
24 protection without an authorization by a unit commander of the rank of lieutenant
25 or above; provided, when time is of the essence, departmental personnel may
26 collect restricted information under the condition that it shall be purged within
27 twenty-four (24) hours unless an authorization for its collection is granted.

28 An investigating officer may secure an authorization under this Section 13
from a lieutenant or higher ranking officer who is in his or her chain of command or
has supervision over the investigation. The authorization may adopt a written

1 request from a prosecuting attorney, a city attorney, the Attorney General of the
2 State of Washington, or the Attorney General of the United States made in the
3 course of and for performance of the duties of their respective offices.

4 Such an authorization may be granted only when:

- 5 (a) There is a reasonable suspicion that the subject of the restricted information
6 has engaged in, is engaging in, or is about to engage in unlawful activity, or
7 that the restricted information about the subject may reasonably lead to his
8 or her arrest, or that the restricted information is collected about a victim or
9 witness for the purpose of discovering his or her knowledge or evaluating his
10 or her reliability;
- 11 (b) The restricted information to be collected appears relevant to the inves-
12 tigation of the suspected unlawful activity described in subsection (a) above,
13 or appears relevant to making an arrest of the subject of the restricted
14 information; and
- 15 (c) The collection of the restricted information is consistent with the statement
16 of purpose, policies, and other provisions of this ordinance.

17 No informant or infiltrator may be used to collect restricted information
18 about a victim or witness. Restricted information about a victim or witness may
19 not be indexed under his or her name.

20 When time is of the essence, an authorization may be requested and given
21 orally, but the authorization shall be reduced to writing within two business days.

22 Notice of each authorization shall be given to the Auditor.

23 Authorizations shall be in effect for no more than ninety (90) days.

24 **Section 14. Contents of an Authorization.** A unit commander or higher
25 ranking officer of the Department shall include in the written authorization his or
26 her opinion that the criteria in Section 13 are satisfied, as well as the following
27 information:

- 28 (a) The identity of the subject about whom the restricted information will be
collected, if known;
- (b) The violation of law under investigation to which the restricted information is
deemed relevant and, in the event that the violation of law has not yet
occurred, the approximate date of the violation, if known;

- 1 (c) An explanation of the restricted information likely to be sought and its rele-
2 vance to the violation of law or the arrest of the subject;
- 3 (d) A statement of the facts and circumstances creating a reasonable suspicion
4 that the subject of the restricted information has engaged in, is engaging in,
5 or is about to engage in unlawful activity, or that restricted information may
6 lead to the subject's arrest; or if the restricted information concerns a victim
7 or witness, the facts and circumstances creating a reasonable suspicion that
8 the victim or witness has information about the particular incident under
9 investigation, and an explanation of why collection of the restricted
10 information is deemed necessary;
- 11 (e) If an informant or infiltrator will be used to gather restricted information,
12 the reasons why the use of an informant or infiltrator is deemed necessary for
13 law enforcement purposes; and
- 14 (f) An explanation of the protective measures to be taken to avoid unreasonable
15 infringement upon the rights, liberties, and freedoms described in Section
16 1(a).

17 Section 15. Additional Authorizations. After an authorization expires, the
18 Chief of the Department may authorize the collection of restricted information for
19 additional periods of up to ninety (90) days each as often as may be necessary for
20 the completion of an investigation of specified unlawful activity, but in no event
21 longer than the expiration of the statute of limitations or the prosecution of a case.
22 The additional authorization, together with the documentation preceding it, shall
23 describe the restricted information already collected and identify the investigation
24 to be completed or the case to be prosecuted. An additional authorization shall
25 satisfy the criteria in Sections 13 and 14, be substantiated by the information
26 already collected, and justify the need to collect additional restricted information.

27 Section 16. Actions After Authorization. The collection, maintenance, and
28 use of restricted information pursuant to an authorization under Sections 13/14 or
15 shall be limited to the scope stated in the authorization and shall conform to its
protective measures.

Section 17. Receipt of Restricted Information. Unless an authorization has

1 been given under Sections 13/14, 15, or 21, restricted information received from
2 another criminal justice or governmental agency shall be purged or, if the
3 restricted information is useful for dignitary protection, transferred to depart-
4 mental personnel with such responsibilities within the sooner of seven working days
5 or of the placement of other material which was received with the restricted
6 information into an investigatory file, the commingling of the other material with
7 other Department files and records, or the indexing of the other material in the
8 Department's record system.

9 **Section 18. Transmission of Restricted Information.** Restricted information
shall not be transmitted to another criminal justice or governmental agency unless:

- 10 (a) The recipient agency has a need for the information based upon facts suf-
11 ficient to obtain an authorization under Sections 13/14 or 21, or a subpoena,
12 court order, or statutory mandate requires the production of the information;
13 a log of each written transmission shall be maintained which contains the
14 name of the subject of the information and the recipient agency; or
15 (b) The information is transmitted to the King County Prosecuting Attorney or
16 the City Attorney in connection with a pending investigation of unlawful
17 activity or a judicial proceeding.

18 Wherever practical, the first page and each page containing restricted information
19 in a document transmitted to a recipient agency shall contain a prominent notice
20 limiting dissemination or use to the specific purposes for which the document was
21 transmitted, unless otherwise authorized by the Chief of the Department.

22 Nothing in this Section 18 shall prevent departmental personnel from trans-
23 mitting an evaluation of information or pooling information in a common inves-
24 tigation of a series of related incidents as long as restricted information is not
25 disclosed.

26 **V. HANDLING RESTRICTED INFORMATION FOR PROTECTING DIGNITARIES**

27 **Section 19. Collecting and Filing Restricted Information.** Departmental
28 personnel assigned the duty of providing for the security and protection of visiting
officials and dignitaries may collect restricted information for investigatory pur-

1 poses under Sections 13 through 17, or for dignitary protection under Sections 20,
2 21, and 22, and may transmit restricted information in accordance with Sections 18
3 or 22.

4 Unless an authorization pursuant to Sections 13/14 or 15 allows its use for a
5 criminal investigation, restricted information collected under Sections 20, 21, and
6 22 shall be subject to the following conditions:

- 7 (a) The restricted information shall be maintained in a separate record system
8 under the custody of the departmental personnel assigned to providing secur-
9 ity and protection for visiting officials and dignitaries (called "dignitary
10 protection files" herein), indexed separately, and accessible only to these
11 departmental personnel and their superiors;
- 12 (b) Collection of restricted information, other than an unsolicited communi-
13 cation, may not begin before departmental personnel receive notice of an
14 anticipated arrival date of the visiting official or dignitary for whom security
15 and protection are to be provided, and shall cease upon notice that the
16 anticipated visit will not occur or upon the visitor's departure from The City,
17 whichever occurs sooner;
- 18 (c) A log shall be kept, including each access made to the dignitary protection
19 files and the reason therefor;
- 20 (d) The restricted information shall be used only for providing necessary security
21 and protection for visiting officials and dignitaries;
- 22 (e) The restricted information shall be purged within sixty (60) days after the
23 authorization for its collection expires, unless a unit commander certifies
24 that the subject of the information poses, has posed, or has made a threat to
25 the life or safety of a visiting official or dignitary; or the retention of the
26 information may be necessary for pending or future civil or criminal litigation
27 involving The City of Seattle; and
- 28 (f) The dignitary protection files shall be reviewed annually under the direction
of the Chief of the Department, and the restricted information deemed no
longer relevant to protecting visiting officials and dignitaries shall be purged.
Transfers to other uses may be made of restricted information collected

1 under Sections 20 or 21 with an authorization under Sections 13, 14, and 15.

2 Section 20. Collecting Restricted Information Without an Authorization.

3 Departmental personnel assigned the duty of providing for the security and pro-
4 tection of visiting officials and dignitaries may, without an authorization:

- 5 (a) Collect restricted information from records open for public inspection, news-
6 papers and libraries, and written communications directed at the general
7 public;
- 8 (b) Collect restricted information about a demonstration or activity directly
9 from a person who is planning the demonstration or activity in connection
10 with a visiting official or dignitary and who is advised of the purpose of the
11 inquiry;
- 12 (c) Accept an unsolicited communication;
- 13 (d) Collect restricted information from another criminal justice or governmental
14 agency which was originally derived from public sources, direct communica-
15 tion with the subject of the information, or as an unsolicited communication;
16 and/or
- 17 (e) When time is of the essence, collect restricted information on the condition
18 that it shall be purged within twenty-four (24) hours after receipt, unless an
19 authorization is granted under Sections 13 or 21.

20 Section 21. Authorizations for Dignitary Protection. The Chief of the De-
21 partment may authorize the collection of restricted information when there is a
22 reasonable suspicion that the subject of the restricted information could pose a
23 threat to the life or safety of a visiting official or dignitary. When time is of the
24 essence, an authorization may be requested and given orally, but the authorization
25 shall be reduced to writing within two business days. An authorization under this
26 Section 21 shall limit the use of the restricted information collected to dignitary
27 protection purposes, unless an authorization granted under Sections 13/14 or 15
28 allows the information to be used for a criminal investigation.

An authorization for dignitary protection shall include:

- (a) The identity of the subject about whom the restricted information will be
collected, if known;

- 1 (b) The name of the visiting official or dignitary to be protected and his or her
2 anticipated date of arrival;
- 3 (c) An explanation of the restricted information likely to be sought;
- 4 (d) The facts and circumstances that provide the Chief of the Department a
5 reasonable suspicion that the subject of the restricted information could pose
6 a threat to the life or safety of a visiting official or dignitary;
- 7 (e) If an informant or infiltrator will be used to gather restricted information,
8 the reasons why the use of an informant or infiltrator is deemed necessary for
9 dignitary protection; and
- 10 (f) An explanation of the protective measures to be taken to avoid unreasonable
11 infringement upon the rights, liberties, and freedoms described in Section
12 1(a).

12 Notice of each authorization shall be given to the Auditor.

13 The collection of restricted information pursuant to an authorization for
14 dignitary protection shall be limited to the scope stated in the authorization and
15 shall conform to its protective measures.

16 Section 22. Receipt and Transmission of Restricted Information. Sections 17
17 and 18 controlling the receipt and transmission of restricted information from and
18 to another criminal justice or governmental agency applies to the handling of
19 restricted information by departmental personnel assigned the duty of providing for
20 the security and protection of visiting officials and dignitaries, unless the
21 information is collected and transmitted in conjunction with a task force. Re-
22 stricted information collected for an operating task force may be transmitted or
23 purged with other task force materials.

24 Departmental personnel serving on or working with a task force of cooper-
25 ating law enforcement and governmental agencies to provide security and pro-
26 tection while a visiting official or dignitary is present, and/or for a period of up to
27 ten days prior to his or her scheduled visit, may:

- 28 (a) Collect restricted information from cooperating agencies, provided that the
information shall be purged within ten days after the visiting official or
dignitary departs, unless an authorization under Sections 13/14 or 15 or a

certification under Section 19(e) allows its retention; and/or

- (b) Transmit restricted information collected by departmental personnel to other cooperating agencies provided that, wherever practical, the first page and each page containing restricted information in a document transmitted shall contain a prominent notice limiting dissemination or use of the information to the specific purposes for which the document was transmitted, unless otherwise authorized by the Chief of the Department.

A log of each written transmission shall be maintained which contains the name of the subject of the restricted information and the recipient agency. Nothing in this Section 22 shall prevent departmental personnel from transmitting an evaluation of information or pooling information in a common investigation of a series of related incidents as long as restricted information is not disclosed.

VI. POLICE OPERATIONS

Section 23. Use of Infiltrators. No infiltrator shall be used or recruited to gather restricted information on a continuing basis from within and about a political or religious organization, an organization formed for the protection or advancement of civil rights or liberties, or an organization formed for community purposes, unless:

- (a) Use of the infiltrator is contemplated by an authorization to collect restricted information on the organization pursuant to Sections 13/14, 15, or 21;
- (b) The Chief of the Department approves in writing the use of the infiltrator and certifies that infiltrating the organization is necessary and that reasonable means have been designed to (i) confine collection of the restricted information to matters contemplated by the authorization; (ii) conduct the collection of the information in a manner consistent with the statement of purpose, policies and provisions of this ordinance; and (iii) conform to protective measures specified by the authorization to avoid unreasonable infringement upon the rights, liberties, and freedoms described in Section 1(a); and
- (c) The Chief of the Department or his designee has established a procedure for review at the end of each authorization period to determine compliance with

1 all rules, regulations, and procedures designed to minimize the acquisition,
2 retention, and disclosure of restricted information which does not relate to
3 the matter under investigation and to protect against unreasonable infringe-
4 ment upon the rights, liberties, and freedoms described in Section I(a).

5 Section 24. Use of Informants. An informant paid by the City to collect
6 restricted information shall be instructed that in carrying out an assignment he or
7 she shall not:

- 8 (a) Participate in unlawful acts of violence;
9 (b) Use unlawful techniques to obtain information;
10 (c) Initiate a plan to commit criminal acts; or
11 (d) Participate in criminal activities of persons under investigation, except
12 insofar as the supervisor over the investigation determines that such par-
13 ticipation is necessary to obtain information needed for purposes of prose-
14 cution.

15 Section 25. Use of Modus Operandi (MO) Files. Restricted information about
16 a person under a true name may only be added to an MO file where there is
17 probable cause to suspect the subject of the restricted information has committed
18 unlawful activity. This Section 25 does not limit indexing restricted information
19 about an incident by subject matter.

20 Section 26. Prohibited Activities. Departmental personnel in the course and
21 scope of their duties shall not willfully:

- 22 (a) Incite any person to commit unlawful violent activity or engage another
23 person to do so, provided that nothing in this Section 26 shall be interpreted
24 to prohibit thwarting, detecting, or securing evidence of unlawful activity
25 conceived by another, or the use of decoys; or
26 (b) Communicate information known to be false or derogatory with the intention
27 of disrupting any lawful political or religious activity, unless such com-
28 munication occurs in the course of or in connection with a judicial proceed-
ing, or serves a valid law enforcement purpose.

VII. CRIMINAL INTELLIGENCE SECTION

1 Section 27. Powers and Functions. Whenever appropriations for the
2 Department's Criminal Intelligence Section are included in the City's annual
3 operating budget, the Section shall be authorized to perform the following
4 functions, subject to the provisions of this ordinance:

- 5 (a) To collect, evaluate, organize, and analyze data and specific investigative
6 information about the existence, structure, activities, and operations of
7 organized criminal activity which appears to involve regular coordination and
8 organization among a number of individuals, and the participants in such
9 activities;
- 10 (b) To collect, evaluate, and classify information about incidents of unlawful
11 activity, confirming the degree of accuracy of the information whenever
12 possible; to store and/or disseminate only that information which appears to
13 have a reasonable degree of reliability; and to purge information that is no
14 longer relevant;
- 15 (c) To coordinate such information into a centralized system of criminal in-
16 telligence information and to study, detect, and explain any meaningful
17 patterns of unlawful activities;
- 18 (d) To furnish and exchange relevant criminal intelligence information with
19 criminal justice agencies, to maintain liaison with other criminal intelligence
20 agencies, and to initiate inquiries and conduct criminal investigations;
- 21 (e) To support other Department activities and units by delivering pertinent
22 criminal intelligence information and to coordinate information that involves
23 multiple investigatory divisions or units, at the direction of the Chief of the
24 Department;
- 25 (f) Upon request and at the direction of the Chief of the Department, to assist
26 law enforcement agencies, the City Attorney, the King County Prosecuting
27 Attorney, and the United States District Attorney in developing evidence for
28 purposes of criminal prosecution of organized criminal activities;
- (g) To develop training programs that assist the Department's tactical units in
detecting and gathering information relevant to criminal investigations being
conducted by the Criminal Intelligence Section; and

- 1 (h) To develop methods for evaluating the effectiveness of the Criminal Intel-
2 ligence Section in accomplishing its law enforcement purposes and safeguard-
3 ing the constitutional rights and privacy of all individuals.

4 Section 28. Responsibilities. In performing their responsibilities, depart-
5 mental personnel assigned to the Criminal Intelligence Section shall:

- 6 (a) Maintain the integrity and security of all information contained in the De-
7 partment's Criminal Intelligence Section filing system;
8 (b) Follow ethical and legal police procedures in obtaining information, including,
9 but not limited to, the provisions of this ordinance; and
10 (c) Whenever practical, avoid direct involvement in the conduct of tactical law
11 enforcement operations.

12 VIII. AUDITING AND NOTICE REQUIREMENTS

13 Section 29. Appointment and Responsibilities of the Auditor. The Mayor
14 shall appoint an Auditor, subject to confirmation by the City Council, to monitor
15 compliance with this ordinance. The Auditor shall serve for a term of three years
16 and may be reappointed by the Mayor, subject to confirmation by the City Council.
17 The Auditor may be removed from office for cause by the Mayor by filing a
18 statement of reasons for the removal with the City Council.

19 The Auditor should possess the following qualities and characteristics:

- 20 (a) A reputation for integrity and professionalism, as well as the ability to main-
21 tain a high standard of integrity in the office;
22 (b) A commitment to and knowledge of the need for and responsibilities of law
23 enforcement, as well as the need to protect basic constitutional rights;
24 (c) A commitment to the statement of purpose and policies of this ordinance;
25 (d) A history of demonstrated leadership experience and ability;
26 (e) The potential for gaining the respect of departmental personnel and citizens
27 of The City of Seattle;
28 (f) The ability to work effectively with the Mayor, the City Council, the City
Attorney, the Chief of the Department, departmental personnel, public
agencies, private organizations, and citizens; and

1 (g) The ability to work effectively under pressure.

2 Except as limited by Section 30, the Auditor shall have access to all De-
3 partment files and records, including non-conviction data pursuant to RCW
4 10.97.050(4).

5 Section 30. Limitations on the Auditor. The Auditor shall not examine the
6 fo'lowing:

- 7 (a) Department personnel files;
- 8 (b) Internal Investigation Section files;
- 9 (c) Files of confidential communications as defined in Section 7;
- 10 (d) Personal files of the Chief of the Department which are excluded from this
11 ordinance by Section 10(d); and
- 12 (e) Specific case files which the King County Prosecuting Attorney personally
13 certifies in writing need to be withheld from the Auditor's review because the
14 files involve investigations of corruption or malfeasance in office of a
15 governmental official or employee, a potential conflict of interest for the
16 Auditor, or investigations of organized criminal activity conducted as a
17 continuing enterprise solely for the purpose of obtaining monetary gain wholly
18 or in part through racketeering, vice, narcotics, gambling, fencing, or similar
19 economic criminal activity. As to each file, the Prosecuting Attorney's
20 certificate shall state that he has personally reviewed the case file and found
21 that the file complies with this ordinance. The Prosecuting Attorney's
22 certificate shall also include a summary apprising the Auditor of the scope
23 and purpose of the investigation. With respect to the certified files, the
24 Prosecuting Attorney shall exercise all the powers and discharge all the
25 responsibilities normally exercised and discharged by the Auditor under the
26 provisions of this ordinance.

27 In discharging his or her responsibilities, the Auditor shall protect the
28 confidentiality of Department files and records and shall also be bound by the
confidentiality provisions of the Criminal Records Privacy Act (RCW Chapter
10.97), the Public Disclosure Act (RCW 42.17), and the provisions of RCW
43.43.856. The Auditor shall not identify the subject of an investigation in any

1 public report required by this ordinance. The Auditor shall not remove from
2 Department facilities any record, extract, or other information, the disclosure of
3 which is exempt from public disclosure under the Public Disclosure Act (RCW
4 42.17.310). Any violation of the confidentiality of Department files and records or
5 the provisions of this ordinance shall be sufficient cause for removal of the
6 Auditor.

7 Section 31. Audit Procedures and Standards. The Auditor shall conduct an
8 in-place audit of Department files and records at unscheduled intervals not to
9 exceed one-hundred eighty (180) days since the last audit. The Department shall
10 provide temporary space for the Auditor to conduct the audit in secure areas close
11 to the records to be reviewed by the Auditor.

The audit shall be prepared and published pursuant to the following provisions:

12 (a) In conducting an audit, the Auditor shall:

- 13 (i) Review each authorization granted pursuant to Sections 13/14, 15, or
14 21, together with investigative files associated with the authorizations;
15 (ii) Perform a random check of Department files and indexes;
16 (iii) Review files and records containing private sexual or restricted
17 information designated for purging; and
18 (iv) Prepare and forward a written report of the audit to the Mayor, the
19 City Council, the City Attorney, and the Seattle Comptroller for filing
20 as a public record.

21 (b) The Auditor's report shall contain a general description of the files and re-
22 cords reviewed and a discussion of any substantial violation of this ordinance
23 discovered during the audit. A preliminary report shall be delivered by the
24 Auditor to the Chief of the Department for review and comment. The Chief
25 of the Department shall review and comment on the preliminary report within
26 twenty (20) days after receipt of the report. The Auditor shall submit the
27 final report within thirty (30) days after receipt of the Chief's comments.

28 (c) The Chief of the Department shall:

- (i) Forward to the Mayor, the City Council, the City Attorney, and the
City Comptroller within ten working days of receipt of the Auditor's
final report the Chief's written comments on the report; and

- 1 (ii) Cause an immediate investigation into the circumstances of any
2 apparent violations of this ordinance reported by the Auditor.

3 Section 32. Notice of Substantial Violations. The Auditor shall notify by
4 certified mail any person about whom restricted information has been collected
5 where the Auditor has a reasonable belief that the restricted information was
6 collected in violation of this ordinance and would create civil liability under Sec-
7 tion 33. Notice shall be sent to the person's last known address within six months
8 after the expiration of the last authorization, or within sixty (60) days after the
9 Department, the City Attorney, or the King County Prosecuting Attorney deter-
10 mines that no prosecution will be brought as a result of the unlawful activity
11 prompting the investigation, whichever date is earlier. The Auditor's notice does
12 not constitute an admission of fact or liability by The City of Seattle.

13 IX. CIVIL LIABILITY, ENFORCEMENT, AND PENALTIES.

14 Section 33. Civil Liability. Subject to the limitations of this Section 33 and
15 Section 34, a person shall have a right of action against The City of Seattle based
16 on this ordinance for injuries proximately caused by departmental personnel
17 willfully in the scope and course of their duties:

- 18 (a) Collecting private sexual information when Section 11 prohibits collection of
19 such information;
- 20 (b) Collecting restricted information where the prohibition of Section 13 applies,
21 no authorization was obtained, and under the facts and circumstances known
22 to departmental personnel, no authorization could validly have been granted;
23 or, alternatively, the restricted information collected was both outside the
24 scope of the authorization granted and was not relevant to an investigation of
25 unlawful activity, the making of an arrest, or a judicial proceeding;
- 26 (c) Using an infiltrator with the intention of collecting restricted information
27 from within and about a political or religious organization, an organization
28 formed for the protection or advancement of civil rights or liberties, or an
organization formed for community purposes in violation of Section 23 where
there is no reasonable suspicion that the subject of the restricted information

1 has engaged in, is engaging in, or is about to engage in unlawful activity, or
2 that the restricted information will lead to the subject's arrest;

3 (d) Inciting another person to commit unlawful violent activity or engaging
4 another person to do so in violation of Section 26(a); and/or

5 (e) Communicating information known to be false or derogatory with the inten-
6 tion of disrupting any lawful political or religious activity in violation of
7 Section 26(b), provided no cause of action may be based upon an arrest based
8 upon probable cause or an order to disperse an assemblage made in accor-
9 dance with Ordinance 102843, Section 12A.16.040.

10 Absent evidence establishing a greater amount of damages, the damages
11 payable in event of an injury proximately caused by collection of private sexual or
12 restricted information in violation of this ordinance, as contemplated by Section 33
13 (a) or (b), shall be Five Hundred Dollars (\$500.00) to each subject of the private
14 sexual or restricted information for all such information collected, and for the use
15 of an infiltrator in violation of Section 23, as contemplated by Section 33(c), shall
16 be One Thousand Dollars (\$1,000.00) aggregate for the organization and all its
17 members as a class. The payment of damages under Section 33(c) to the organiza-
18 tion, or its members as a class, is in addition to any rights of any person within the
19 organization under Sections 33(a) or (b), above.

20 No cause of action may be based upon the activity of departmental personnel
21 in complying with a court order, or an action taken pursuant to and within the
22 scope of an authorization under Sections 13/14, 15, 21, or 23.

23 The City reserves all defenses at law consistent with this ordinance, including
24 but not limited to consent, privilege, participation, and waiver, and as to de-
25 partmental personnel or a City official, any defense arising in the employer/em-
26 ployee or principal/agent relationship.

27 Section 34. Liability of Officers and Employees. No cause of action may be
28 based upon this ordinance against the Mayor, the Chief of the Department, any
departmental personnel, or any other City officer or employee, individually, for any
action or omission made in good faith in the scope and course of his or her duties.
In the event such a lawsuit is brought against a City officer or employee,

1 individually, for such an action or omission, and the officer or employee cooperates
2 fully in defense of the lawsuit, The City Attorney may represent the individual and
3 defend the litigation. If the claim is deemed a proper one or judgment is rendered
4 against the City officer or employee individually, the judgment shall be paid by The
5 City in accordance with its procedures for the settlement of claims and payment of
6 judgments.

7 Section 35. Rules and Regulations. Consistent with the statement of pur-
8 pose, policies, and provisions of this ordinance, the Chief of the Department shall
9 promulgate rules and regulations to implement this ordinance in accordance with
10 the procedures of Ordinance 102228 (the City's Administrative Code), as amended,
11 or a successor ordinance. The rules and regulations shall be designed to protect
12 constitutional rights and personal privacy, so that investigations are conducted
13 without an unreasonable degree of intrusion and that private sexual and restricted
14 information obtained in the course of an investigation is properly authorized under
15 this ordinance.

16 The Chief of the Department shall also promulgate rules and regulations to
17 govern the use of informants, infiltrators, and photographic surveillance relating to
18 restricted information, consistent with the statement of purpose, policies, and
19 provisions of this ordinance, and may promulgate rules and regulations governing
20 other investigatory techniques to the extent he deems necessary to carry out the
21 statement of purpose, policies, and provisions of this ordinance.

22 Section 36. Department Reporting. The Chief of the Department shall
23 submit an annual report on the implementation of this ordinance to the Mayor, the
24 City Council, and the City Comptroller for filing as a public record. The annual
25 report shall indicate the number of authorizations granted under Sections 13/14, 15,
26 or Section 21; the number of certifications issued under Section 19(e); the number
27 of files withheld from the Auditor by the King County Prosecuting Attorney under
28 Section 30(e); the number of authorizations involving the use of infiltrators and
informants; a statistical analysis of the purposes for which authorizations were
granted, the types of unlawful activity involved, the number of prosecutions based
thereon, the number of visiting officials or dignitaries for whom security

1 precautions were involved, and other meaningful information; a summary of any
2 internal disciplinary action taken to enforce this ordinance; and a description of
3 other actions taken to implement this ordinance. The foregoing information may
4 be included in the Department's annual report.

5 Section 37. Administrative Penalties. Any departmental personnel in an
6 office or other place of employment of The City who violates this ordinance, or any
7 implementing rule or regulation of the Chief of the Department, shall be subject to
8 the disciplinary proceedings and punishment authorized by the City Charter,
9 Article XVI, including reprimand, suspension without pay, and discharge, or
10 provided by Ordinance 107790, as amended (the City's Public Safety Personnel
11 Ordinance), or a successor ordinance.

12 Section 38. Administrative Penalties for Supervisors. An official authorizing
13 the collection of restricted information shall be subject to administrative
14 discipline, as contemplated in Section 37, for misconduct of a subordinate officer in
15 collecting the information authorized or failing to comply with all protective
16 measures established in this ordinance.

17 X. ANCILLARY MATTERS

18 Section 39. Usages. The singular number includes the plural, unless the
19 context clearly indicates otherwise.

20 The masculine includes the feminine with respect to a particular office or
21 position.

22 Unless otherwise indicated, a reference to a city attorney, a prosecuting
23 attorney, a district attorney, or an attorney general includes any deputy or assis-
24 tant acting on the official's behalf.

25 The subtitles identified with Roman numerals and the section captions are for
26 convenient reference only and do not limit or modify the substance of the text of
27 this ordinance.

28 Section 40. Application. This ordinance shall not affect any action taken
prior to its effective date.

Section 41. Severability. If any provision of this ordinance, or its application
to any person or circumstances, is held invalid, the remainder of this ordinance, or

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the application of the provision to other persons or circumstances, shall not be affected.

Section 42. Review. The Mayor shall review and report to the City Council on the implementation and operation of this ordinance within eighteen (18) months after its effective date. The City Council shall review and evaluate the Mayor's report and enact any necessary amendments to this ordinance.

Section 43. Effective Date. This ordinance shall take effect and be in force January 1, 1980.

Passed by the City Council the 2 day of July, 1979, and signed by me in open session in authentication of its passage this 2 day of July, 1979.

John Miller
President of the City Council

Approved by me this 2 day of July, 1979.

Charles Royer
Acting Mayor

Filed by me this 2 day of July, 1979.

ATTEST: E. L. Kiser
City Comptroller and City Clerk

(SEAL)

Published: _____

BY: Rayne Anguine
Deputy Clerk

(Original Index Sheet lost)

AMENDMENTS & RE TO..... ORDINANCE 108333

- Ord. 109237 -Amends Sec 29 re Office of Police Investigations Auditor; auth compensation on an hourly basis pursuant to contract.
- C.F.290442 -AUDIT - Police Intelligence Ordinance.
- C.F.290578 -ANNUAL REPORT for 1980 on the Police Intelligence Ordinance, prepared by the Seattle Police Dept.
- C.F.290717 -SECOND REPORT of the POLICE INTELLIGENCE AUDITOR, pursuant to the City of Seattle Ordinance No. 108333.
- C.F. 290750 -Mayor/City Council REVIEW of Seattle's Police Investigations Ordinance (108333).
- Ord. 110572 -Amends ... to extend the time for getting authorizations & delete references to protective measures; provide for assessment of reliability of information stored by the Criminal Information Section; auth background checks on the records auditor, etc.
- Ord. 110640 -Amends ... as amended by 110572 to correct several typographical errors.
- C.F. 291853 -THIRD REPORT of the Police Intelligence Auditor, pursuant to ...
- C.F. 292221 -1982 ANNUAL REPORT of the POLICE INTELLIGENCE ORDINANCE.
- C.F. 292517 -RULES & REGULATIONS promulgated pursuant to Ord. 108333, as amended, establishing policies for enforcement of the Police Intelligence Ord.
- C.F. 292552 -AUDIT REPORT of certain Police Dept. files prepared by the Chief of Police pursuant to ...; includes bylaws for the Law Enforcement Intelligence Unit (LEIU) & the Western States Information Network (WSIN).
- C.F.292696 AUDIT REPORT by the Chief of Police re Law Enforcement Intelligence Unit & Western States Info. network files; filed pursuant to ...
- C.F.292998 -1983 ANNUAL REPORT concerning activities regulated by Ord. 108333 ...
- C.F. 293160 -AUDIT by POLICE CHIEF Fitzsimons of select POLICE FILES maintained exclusively for confidential info & obtained thru the Dept.'s membership in LEIU & WSIN; filed pursuant to Ord. 108333 ...
- C.F. 293566 -AUDIT REPORT to Mayor Royer from Chief of Police Fitzsimons re audit of certain Police Dept. files pursuant to ... SMC 14.12.320C.
- C.F.293680 -FIFTH REPORT of Police Intelligence Auditor pursuant to ... by David D. Hoff, Police Intelligence Auditor.
- C.F. 293822-AUDIT REPORT re Police Intelligence Ordinance ...