

Attachment III

March 7, 2017

CPC Striker Amending SMC 14.12.310 and 14.12.320, to transfer Police Intelligence Auditor Responsibilities to OIG

Chapter 14.12 - COLLECTION OF INFORMATION FOR LAW ENFORCEMENT PURPOSES^{[13](#)}

Sections:

Footnotes:

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Statutory reference— For comparable or useful statutory provisions regarding the dissemination of criminal records, see RCW 10.97.070; for statutory provisions regarding the disclosure of public records, see RCW Ch. 42.17.

Severability— If any provision of this chapter, or its application to any person or circumstances, is held invalid, the remainder of this chapter, or the application of the provision to other persons or circumstances, shall not be affected. (Ord. 110572 § 40, 1982; Ord. 108333 § 41, 1979.)

Subchapter I - General Provisions

14.12.010 - Statement of purpose.

This chapter 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—including, among others, the freedom of speech, press, association, and assembly; liberty of conscience; the exercise of religion; and the right to petition government for redress of grievances; or (b) violate an individual's right to privacy. This ordinance is not intended to protect criminal activity.

(Ord. 110572 § 1, 1982; Ord. 108333 § 1, 1979.)

14.12.020 - Policies.

The following policies shall govern the collection and recording of information by department personnel:

- A. 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;
- B. All information collected shall reasonably appear relevant to the performance of an authorized police function; no information shall be collected or used for political purposes;
- C. When a police officer knows of two (2) or more techniques to collect restricted information and each would be equally practical and effective, the officer should use the technique which he reasonably believes will have the least adverse impact upon lawful political and/or religious activity;
- D. 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;
- E. To protect the rights of privacy of the citizenry 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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(1) criminal justice agencies in the performance of their official functions; (2) persons with a legitimate interest in the information and persons making inquiry with their consent; (3) persons with a right to disclosure under a statute, implementing regulation, ordinance, or court order; (4) persons 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 purposes for the disclosure, unless the disclosure occurs pursuant to a subpoena or court order, the Public Disclosure Act (Chapter 42.17 RCW), the Criminal Records Privacy Act (RCW 10.97.070), or other statute mandating disclosure, or the subject of the information consents to its disclosure.

(Ord. 110640 § 1, 1982; Ord. 110572 § 2, 1982; Ord. 108333 § 2, 1979.)

14.12.030 - Definitions.

When the following words or their derivations are **emphasized**, the definitions below apply:

- A. "Auditor" means the person described in Section 14.12.310.
- B. "Collect" means to write down, or preserve in another tangible form, information as a record or file of the **Department**, which is retrievable by **Department personnel**. "Collect" excludes making personal notes which are not retrievable by other **Department personnel**.
- C. "Department" means the Police Department of The City of Seattle.
- D. "Departmental personnel" means an officer or employee of the City assigned to the **Department**, and any individual paid by the City pursuant to vouchers drawn by the Chief of the **Department** or a fiscal officer assigned to the **Department** and acting under the direction and control of an officer or employee in the **Department**.
- E. "Infiltrator" means a person acting under the direction of the **Department** who is a member or associate—or poses or acts as a member or associate—of a political or religious organization, an organization formed for the protection or advancement of civil rights or civil liberties, or an organization formed for community purposes, and who agrees to provide or provides information about the organization to the **Department** on a continuing basis without disclosing his or her relationship to the **Department**.
- F. "Informant" means a **person** other than an officer or employee of the City assigned to the **Department**:
1. Who provides information to **departmental personnel** about a **person** in consideration of a personal benefit; or
 2. Who is engaged, directed, or controlled by the **Department**.
- G. "Person" means any individual, group of individuals, unincorporated association, and/or corporation. "Person" excludes a government or agency thereof.
- H. "Private sexual information," when not emphasized in Sections 14.12.060, 14.12.070, 14.12.080, and 14.12.090 D, means any information about an individual's sexual practices or orientation. When **emphasized**, it excludes any such information within the scope of Sections 14.12.070 through 14.12.120 dealing with administrative records, incidental references, confidential communications, materials open to public inspection, special investigations, and exclusions, respectively.

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- I. "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.
- J. "Reasonable suspicion" means a rational inference that is based on articulable facts.
- K. "Restricted information," when not **emphasized** in Sections 14.12.060, 14.12.070, 14.12.080, 14.12.090 D, 14.12.250, 14.12.350 A3, and 14.12.370, means any information within subsections 1 through 3 of this subsection K. When emphasized, it excludes any such information within the scope of Sections 14.12.070 through 14.12.120 dealing with administrative records, incidental references, confidential communications, materials open to public inspection, special investigations, and exclusions, respectively. "Restricted information" means information about:
1. An individual's political or religious associations, activities, beliefs, or opinions;
 2. The political or religious activities, beliefs, or opinions and the membership, mailing, subscription, or contributor lists of a political or religious organization, an organization formed for the protection or advancement of civil rights or civil liberties, or an organization formed for community purposes; or
 3. An individual's membership or participation in such an organization, in a political or religious demonstration, or in a demonstration for community purposes.
- L. "Working day" means from 8 a.m. to 5 p.m. of each day from Monday through Friday, except days designated as legal holidays by RCW 1.16.050, Fridays immediately preceding any such legal holiday falling on a Saturday, and Mondays immediately following any legal holiday falling on a Sunday.

(Ord. 110640 § 2, 1982; Ord. 110572 § 3, 1982; Ord. 108333 § 3, 1979.)

14.12.040 - Usages.

- A. The singular number includes the plural, unless the context clearly indicates otherwise.
- B. The masculine includes the feminine with respect to a particular office or position.
- C. Unless otherwise indicated, a reference to a City Attorney, a Prosecuting Attorney, a District Attorney, or an Attorney General includes any Deputy or Assistant acting on the official's behalf.
- D. Unless otherwise indicated, reference to the Criminal Information Section includes reference to any successor entity.
- E. The subchapters identified with Roman numerals and the section captions are for convenient reference only and do not limit or modify the substance of the text of this chapter.

(Ord. 110572 § 4, 1982; Ord. 108333 § 39, 1979.)

14.12.050 - Application.

This chapter shall not affect any action taken prior to its effective date. [114](#)

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(Ord. 108333 § 40, 1979.)

Footnotes:

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Editor's note— Ord. 108333 became effective on January 1, 1980. Ord. 110572 became effective on June 9, 1982. The amendments derived from Ord. 110640 became effective on June 9, 1982.

Subchapter II - Scope—Exemptions and Exclusions

14.12.060 - Scope.

- A. Those sections of this chapter controlling the **collection**, receipt, and/or transmission of information (Sections 14.12.130 through 14.12.240) do not apply to administrative records (Section 14.12.070), incidental references (Section 14.12.080), confidential communications (Section 14.12.090), materials open to public inspection (Section 14.12.100), special investigations (Section 14.12.110), and the exclusions (Section 14.12.120), provided that **Department** indexing does not cite any private sexual or restricted information other than the information in a proper name, unless specifically authorized by this chapter.
- B. Except for the exclusion of Section 14.12.120 A1, the policies in Section 14.12.020 apply to the provisions of this chapter. All **Department** records are subject to audit unless excluded by Section 14.12.320 A1 through A6.

(Ord. 110640 § 3, 1982: Ord. 110572 § 5, 1982: Ord. 108333 § 4, 1979.)

14.12.070 - Administrative records.

Administrative records pertain to Department operations and/or public relations, are comparable in character to files and records maintained by other City departments, and exclude investigatory files of the **Department**. Examples of administrative records include routine correspondence files; employment and personnel records; jail records on prisoners' religious preferences and customs; information for providing chaplain, escort, and ancillary community services; records of evidence, lost or stolen property, and custodial property inventoried without regard to informational content; and itinerary information used for providing security and protection for an official, dignitary, or consenting individual. Indexing may cite private sexual or restricted information only for a valid administrative purpose.

(Ord. 110640 § 4, 1982: Ord. 110572 § 6, 1982: Ord. 108333 § 5, 1979.)

14.12.080 - Incidental references.

- A. Private sexual or restricted information may be **collected** when 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.
- B. Private sexual or restricted information may be **collected** when it 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,

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unconscious, or kidnapped victim during the seventy-two (72) hours immediately preceding an incident or investigation.

- C. In addition, private sexual or restricted information that comes within one of the following classifications may be collected when:
1. The information relates to a suspect whose identity is unknown and may not then be indexed by a true name;
 2. The subject of the information supplies the information to known **departmental** personnel;
 3. The information arises in the course of and is used exclusively for Traffic Code [15](#) enforcement and traffic safety purposes;
 4. 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;
 5. 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;
 6. The information appears in records relating to child abuse or protective custody services contemplated by Chapter 26.44 RCW; or in unit records of Community Service Officers used in handling domestic disputes, youth counseling, or like community services; and/or
 7. The information appears as part of the text of 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.
- D. Information **collected** pursuant to subsection C7 of this section may be indexed separately for purposes of the Public Disclosure Act (Chapter 42.17 RCW), provided that such information shall not be cross-referenced within other Department files.

(Ord. 110572 § 7, 1982; Ord. 108333 § 6, 1979.)

Footnotes:

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Editor's note— The Traffic Code is codified in Title 11 of this Code.

14.12.090 - Confidential communications.

The following communications and materials are confidential:

- A. A professional consultation between **departmental personnel** and a **Department** psychologist, or between a person detained in the City Jail and a jail physician or other medical personnel when a confidential relationship exists between the participants;
- 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 or other religious official; or

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- D. Information identifying the name of an **informant** which is privileged from disclosure in a court of law and information **collected** about an **informant** as part of and relevant to a background investigation to determine his or her reliability, provided the **informant** has consented to its **collection**. Such a confidential communication may not contain private sexual information or restricted information about any **person** other than the **informant**, except as an incidental reference (Section 14.12.080).

(Ord. 110572 § 8, 1982: Ord. 108333 § 7, 1979.)

14.12.100 - Materials open to public inspection.

- A. Materials such as the following qualify as materials open to public inspection if any person may examine them during regular **Department** business hours and the materials are readily available and may be obtained promptly:
1. Information about anticipated political or religious events—such as parades, processions, rallies, demonstrations, or assemblies contemplated in Chapter 11.25 of this Code, or its successor traffic code—and such materials as may be necessary in connection with the events for the direction and control of traffic, to protect the public health and safety, and to secure public liability insurance covering the City, provided that the complainant identification information may be kept confidential when required by RCW 42.17.310(1)(e);
 2. Information in a reference center or library;
 3. Printed literature from a criminal justice agency relating to law enforcement duties that may be obtained pursuant to the public disclosure rules of the **Department** prepared pursuant to state law; and/or
 4. Any arrest circular or "Wanted" poster received by the **Department** as part of a general circulation by a governmental agency to law enforcement agencies.
- B. Materials qualifying as materials open to public inspection pursuant to subsections A2 and A3 of this section may be indexed separately for the purposes of the Public Disclosure Act (Chapter 42.17 RCW), provided that such materials shall not be cross-referenced within other **Department** files.

(Ord. 110640 § 5, 1982: Ord. 110572 § 9, 1982: Ord. 108333 § 8, 1979.)

14.12.110 - Special investigations.

Information may be **collected** in connection with the following special investigations when:

- A. The information is **collected** upon the request of the Attorney General of the State, 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 after commitment proceedings have been filed, and the information is reasonably relevant to the investigation or judicial proceedings.
- B. The information is **collected** about a **person reasonably suspected** of involvement in corruption or malfeasance in office of a governmental official or employee, and the information reasonably appears relevant thereto; and/or

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- C. The information is **collected** about an applicant as part of and relevant to a background investigation of the applicant for employment or promotion with the City or a City license or commission; or the subject of the information has consented in writing to its **collection** .

(Ord. 110572 § 10, 1982: Ord. 108333 § 9, 1979.)

14.12.120 - Exclusions.

- A. This chapter shall not restrict:

1. Activities by **departmental personnel** as private citizens not related to their law enforcement functions;
2. The **collection** of information about police conduct by the **Department** Internal Investigations Section;
3. The participation of **departmental personnel** in their official capacities in the City's administrative and legislative processes with respect to **Department** operations to the same extent and in the same manner as other City departments; or
4. Personal communications to, and personal papers of, the Chief of the **Department** personally maintained in his own office, provided such materials do not include investigatory information.

- B. Nothing in this chapter shall restrict or forbid **departmental personnel** from complying with a court order.

(Ord. 110572 § 11, 1982: Ord. 108333 § 10, 1979.)

Subchapter III - Handling Private Sexual Information

14.12.130 - Collection and use.

Private sexual information shall not be collected unless the information involves: a reported or observed sex crime; an apparent felony where a motivation for the crime may reasonably be suspected to 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 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**.

(Ord. 110640 § 6, 1982: Ord. 110572 § 12, 1982: Ord. 108333 § 11, 1979.)

14.12.140 - Receipt and transmission.

- A. Unless Section 14.12.130 applies, **private sexual information** received from another criminal justice or governmental agency shall be **purged** within the sooner of seven (7) **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.

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- B. **Private sexual information** shall not be transmitted to another criminal justice or governmental agency unless:
1. The recipient agency has a need for the **information** which satisfies the requirements of Section 14.12.130, 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
 2. 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.

(Ord. 110572 § 13, 1982; Ord. 108333 § 12, 1979.)

Subchapter IV - Handling Restricted Information for Criminal Investigations

14.12.150 - Collecting restricted information.

- A. **Departmental personnel** shall not collect any **restricted information** for any use other than for dignitary protection without an authorization by a unit commander of the rank of lieutenant or above; provided, when time is of the essence, **departmental personnel** may **collect restricted information** under the condition that it shall be **purged** within five (5) **working days** unless an authorization for its **collection** is granted.
- B. An investigating officer may secure an authorization under this section 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 request from a Prosecuting Attorney, a City Attorney, the Attorney General of the State, or the Attorney General of the United States made in the court of and for performance of the duties of their respective offices.
- C. Such an authorization may be granted only when:
1. There is a **reasonable suspicion** that the subject of the **restricted information** has engaged in, is engaging in, or is about to engage in unlawful activity, or that the **restricted information** about the subject may reasonably lead to his or her arrest, or that the restricted information is collected about a victim or witness for the purpose of discovering his or her knowledge or evaluating his or her reliability;
 2. The **restricted information** to be collected appears relevant to the investigation of the suspected unlawful activity described in subsection C1 of this section, or appears relevant to making an arrest of the subject of the **restricted information**; and
 3. The **collection** of the **restricted information** is consistent with the statement of purpose, policies, and other provisions of this chapter.
- D. No **informant** or **infiltrator** may be used to **collect restricted information** about a victim or witness; **restricted information** about a victim or witness may not be indexed under his or her name.
- E. Notice of each authorization shall be given to the **Auditor**.
- F. Authorizations shall be in effect for no more than ninety (90) days.

(Ord. 110572 § 14, 1982; Ord. 108333 § 13, 1979.)

14.12.160 - Contents of an authorization.

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A unit commander or higher-ranking officer of the **Department** shall include in the written authorization his or her opinion that the criteria in Section 14.12.150 are satisfied, as well as the following information:

- 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;
- C. An explanation of the **restricted information** likely to be sought and its relevance to the violation of law or the arrest of the subject;
- D. A statement of the facts and circumstances creating a reasonable suspicion that the subject of the **restricted information** has engaged in, is engaging in, or is about to engage in unlawful activity, or that **restricted information** may lead to the subject's arrest; or if the **restricted information** concerns a victim or witness, the facts and circumstances creating a **reasonable suspicion** that the victim or witness has information about the particular incident under investigation, and an explanation of why **collection** of the **restricted information** is deemed necessary;
- E. If an **informant** or **infiltrator** will be used to gather **restricted information**, the reasons why the use of an **informant** or **infiltrator** is deemed necessary for law enforcement purposes.

(Ord. 110572 § 15, 1982; Ord. 108333 § 14, 1979.)

14.12.170 - Additional authorizations.

After an authorization expires, the Chief of the **Department** may authorize the **collection** of **restricted information** for additional periods of up to ninety (90) days each as often as may be necessary for the completion of an investigation of specified unlawful activity, but in no event longer than the expiration of the statute of limitations or the prosecution of a case. The additional authorization, together with the documentation preceding it, shall describe the **restricted information** already **collected** and identify the investigation to be completed or the case to be prosecuted. An additional authorization shall satisfy the criteria in Sections 14.12.150 and 14.12.160, be substantiated by the information already collected, and justify the need to **collect** additional **restricted information** .

(Ord. 110572 § 16, 1982; Ord. 108333 § 15, 1979.)

14.12.180 - Actions after authorization.

The **collection**, maintenance, and use of **restricted information** pursuant to an authorization under Sections 14.12.150/14.12.160, or 14.12.170 shall be limited to the scope stated in the authorization.

(Ord. 110572 § 17, 1982; Ord. 108333 § 16, 1979.)

14.12.190 - Receipt of restricted information.

Unless an authorization has been given under Sections 14.12.150/14.12.160, 14.12.170, or 14.12.230, **restricted information** received from another criminal justice or governmental agency shall be **purged** or, if the **restricted information** is useful for dignitary protection, transferred to departmental personnel with such responsibilities within the sooner of seven (7) **working days** or of the placement of other material

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which was received with the **restricted 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.

(Ord. 110572 § 18, 1982; Ord. 108333 § 17, 1979.)

14.12.200 - Transmission of restricted information.

- A. **Restricted information** shall not be transmitted to another criminal justice or governmental agency unless:
1. The recipient agency has a need for the **information** based upon facts sufficient to obtain an authorization under Sections 14.12.150/14.12.160 or 14.12.230, or a subpoena, court order, or statutory mandate requires the production of the **information**; a log of each written transmission shall be maintained which contains the name of the subject of the **information** and the recipient agency; or
 2. 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.
- B. Wherever practical, the first page and each page containing **restricted information** in a document transmitted to a recipient agency shall contain a prominent notice limiting dissemination or use to the specific purpose for which the document was transmitted, unless otherwise authorized by the Chief of the **Department**.
- C. Nothing in this section 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.

(Ord. 110640 § 7, 1982; Ord. 110572 § 19, 1982; Ord. 108333 § 18, 1979.)

Subchapter V - Handling Restricted Information for Protecting Dignitaries

14.12.210 - Collecting and filing restricted information.

- A. **Departmental personnel** assigned the duty of providing for the security and protection of visiting officials and dignitaries may collect **restricted information** for investigatory purposes under Sections 14.12.150 through 14.12.190, or for dignitary protection under Sections 14.12.220, 14.12.230, and 14.12.240, and may transmit **restricted information** in accordance with Sections 14.12.200 or 14.12.240.
- B. Unless an authorization pursuant to Sections 14.12.150/14.12.160 or 14.12.170 allows its use for a criminal investigation, **restricted information** collected under Sections 14.12.220, 14.12.230, and 14.12.240 shall be subject to the following conditions:
1. The **restricted information** shall be maintained in a separate record system under the custody of the **departmental personnel** assigned to providing security and protection for visiting officials and dignitaries (called **dignitary protection files** herein), indexed separately, and accessible only to these **departmental personnel** and their supervisors;
 2. **Collection of restricted information**, other than unsolicited communication, may not begin before **departmental personnel** receive notice of an anticipated arrival date of the visiting

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official or dignitary for whom security and protection are to be provided, and shall cease upon notice that the anticipated visit will not occur or upon the visitor's departure from the City, whichever occurs sooner;

3. A log shall be kept, including each access made to the dignitary protection files and the reason thereof;
4. The **restricted information** shall be used only for providing necessary security and protection for visiting officials and dignitaries;
5. The **restricted information** shall be **purged** within sixty (60) days after the authorization for its **collection** expires, unless a unit commander certifies that the subject of the **information** poses, has posed, or has made a threat to the life or safety of a visiting official or dignitary; or the retention of the **information** may be necessary for pending or future civil or criminal litigation involving the City; and
6. 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** under Sections 14.12.220 or 14.12.230 with an authorization under Sections 14.12.150, 14.12.160, and 14.12.170.

(Ord. 110640 § 8, 1982; Ord. 110572 § 20, 1982; Ord. 108333 § 19, 1979.)

14.12.220 - Collecting restricted information without an authorization.

Departmental personnel assigned the duty of providing for the security and protection of visiting officials and dignitaries may, without an authorization:

1. **Collect restricted information** from records open for public inspection, newspapers and libraries, and written communications directed at the general public;
2. **Collect restricted information** about a demonstration or activity directly from a person who is planning the demonstration or activity in connection with a visiting official or dignitary and who is advised of the purpose of the inquiry;
3. Accept an unsolicited communication;
4. **Collect restricted information** from another criminal justice or governmental agency which was originally derived from public sources, from direct communication with the subject of the **information**, or as an unsolicited communication; and/or
5. 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 under Sections 14.12.150 or 14.12.230.

(Ord. 110572 § 21, 1982; Ord. 108333 § 20, 1979.)

14.12.230 - Authorizations for dignitary protection.

- A. The Chief of the **Department** may authorize the collection of **restricted information** when there is a **reasonable suspicion** that the subject of the restricted information could pose a threat to the life or safety of a visiting official or dignitary. When time is of the essence, an authorization may be requested

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and given orally, but the authorization shall be reduced to writing within two (2) **working days**. An authorization under this section shall limit the use of the **restricted information collected** to dignitary protection purposes, unless an authorization granted under Sections 14.12.150/14.12.160 or 14.12.170 allows the **information** to be used for a criminal investigation.

- B. An authorization for dignitary protection shall include:
 - 1. The identity of the subject about whom the **restricted information** will be **collected**, if known;
 - 2. The name of the visiting official or dignitary to be protected and his or her anticipated date of arrival;
 - 3. An explanation of the **restricted information** likely to be sought;
 - 4. The facts and circumstances that provide the Chief of the **Department** a **reasonable suspicion** that the subject of the **restricted information** could pose a threat to the life or safety of a visiting official or dignitary; and
 - 5. If an **informant** or **infiltrator** will be used to gather restricted information, the reasons why the use of an **informant** or **infiltrator** is deemed necessary for dignitary protection.
- C. Notice of each authorization shall be given to the **Auditor**.
- D. The **collection of restricted information** pursuant to an authorization for dignitary protection shall be limited to the scope stated in the authorization.

(Ord. 110640 § 12, 1982; Ord. 110572 § 22, 1982; Ord. 108333 § 21, 1979.)

14.12.240 - Receipt and transmission of restricted information.

- A. Sections 14.12.190 and 14.12.200 controlling the receipt and transmission of **restricted information** from and to another criminal justice or governmental agency applies to the handling of **restricted information** by **departmental personnel** assigned the duty of providing for the security and protection of visiting officials and dignitaries, unless the information is collected and transmitted in conjunction with a task force. **Restricted information collected** for an operating task force may be transmitted or **purged** with other task force materials.
- B. **Departmental personnel** serving on or working with a task force of cooperating law enforcement and governmental agencies to provide security and protection while a visiting official or dignitary is present, and/or for a period of up to ten (10) days prior to his or her scheduled visit, may:
 - 1. **Collect restricted information** from cooperating agencies, provided that the **information** shall be **purged** within ten (10) days after the visiting official or dignitary departs, unless an authorization under Sections 14.12.150/14.12.160 or 14.12.170 or a certification under Section 14.12.210 B5 allows its retention; and/or
 - 2. 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** .
- C. A log of each written transmission shall be maintained which contains the name of the subject of the **restricted information** and the recipient agency.

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- D. Nothing in this section 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.

(Ord. 110572 § 23, 1982; Ord. 108333 § 22, 1979.)

Subchapter VI - Police Operations

14.12.250 - Use of infiltrators.

No **infiltrator** shall be used or recruited to collect 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 14.12.150/14.12.160, 14.12.170, or 14.12.230;
- 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: (1) confine **collection** of the restricted information to matters contemplated by the authorization; (2) conduct the **collection** of the information in a manner consistent with the statement of purpose, policies, and provisions of this chapter; 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 all rules, regulations, and procedures designed to minimize the acquisition, retention, and disclosure of restricted information which does not relate to the matter under investigation and to protect against unreasonable infringement upon the rights, liberties, and freedoms described in Section 14.12.010 A.

(Ord. 110640 § 10, 1982; Ord. 110572 § 24, 1982; Ord. 108333 § 23, 1979.)

14.12.260 - Use of informants.

An informant paid by the City to **collect restricted information** shall be instructed that in carrying out an assignment he or she shall not:

- A. Participate in unlawful acts of violence;
- B. Use unlawful techniques to obtain information;
- C. Initiate a plan to commit criminal acts; or
- D. Participate in criminal activities of **persons** under investigation, except insofar as the supervisor over the investigation determines that such participation is necessary to obtain information needed for purposes of prosecution.

(Ord. 110640 § 11, 1982; Ord. 110572 § 25, 1982; Ord. 108333 § 24, 1979.)

14.12.270 - Use of modus operandi (MO) files.

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Restricted information about a person under a true name may only be added to an MO file where there is probable cause to suspect the subject of the **restricted information** has committed unlawful activity. This section does not limit indexing **restricted information** about an incident by subject matter.

(Ord. 110572 § 26, 1982; Ord. 108333 § 25, 1979.)

14.12.280 - Prohibited activities.

Departmental personnel in the course and scope of their duties shall not wilfully:

- A. Incite any **person** to commit unlawful violent activity or engage another **person** to do so, provided that nothing in this section shall be interpreted to prohibit thwarting, detecting, or securing evidence of unlawful activity conceived by another, or the use of decoys; or
- B. Communicate information known to be false or derogatory with the intention of disrupting any 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.

(Ord. 110640 § 12, 1982; Ord. 110572 § 27, 1982; Ord. 108333 § 26, 1979.)

Subchapter VII - Criminal Information Section

14.12.290 - Powers and functions.

Whenever appropriations for the **Department** Criminal Information Section are included in the City's annual operating budget, the Section shall be authorized to perform the following functions, subject to the provisions of this chapter:

- A. To collect, evaluate, organize, and analyze data and specific investigative information about the existence, structure, activities, and operations of organized criminal activity which appears to involve regular coordination and organization among a number of individuals, and the participants in such activities;
- B. To collect, evaluate, and classify information about incidents of unlawful activity, confirming the degree of accuracy of the information whenever possible; to store and/or disseminate only that **private sexual** or **restricted information** which appears to have a reasonable degree of reliability and to store and disseminate other information only if it is accompanied by an assessment of reliability; and to **purge** information that is no longer relevant;
- C. To coordinate such information into a centralized system of criminal intelligence information and to study, detect, and explain any meaningful patterns of unlawful activities;
- D. To furnish and exchange relevant criminal intelligence information with criminal justice agencies, to maintain liaison with other criminal intelligence activities, and to initiate inquiries and conduct criminal investigations;
- E. To support other **Department** activities and units by delivering pertinent criminal intelligence information and to coordinate information that involves multiple investigatory divisions or units, at the direction of the Chief of the **Department** ;
- F. Upon request and at the direction of the Chief of the **Department** , to assist law enforcement agencies, the City Attorney, the King County Prosecuting Attorney, and the United States District Attorney in developing evidence for purposes of criminal prosecution of organized criminal activities;

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- 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 Information Section; and
- H. To develop methods for evaluating the effectiveness of the Criminal Information Section in accomplishing its law enforcement purposes and safeguarding the constitutional rights and privacy of all individuals.

(Ord. 110572 § 28, 1982: Ord. 108333 § 27, 1979.)

14.12.300 - Responsibilities.

In performing their responsibilities, **departmental personnel** assigned to the Criminal Information Section shall:

- A. Maintain the integrity and security of all information contained in the **Department's** Criminal Information Section filing system;
- B. Follow ethical and legal police procedures in obtaining information, including, but not limited to, the provisions of this chapter; and
- C. Whenever practical, avoid direct involvement in the conduct of tactical law enforcement operations.

(Ord. 110572 § 29, 1982: Ord. 108333 § 28, 1979.)

Subchapter VIII - Auditing and Notice Requirements

14.12.310 - Appointment and responsibilities of Auditor.

- A. ~~The Mayor shall appoint an Auditor, subject to confirmation by the City Council, to monitor compliance with this chapter. The Auditor shall serve for a term of three (3) years and may be reappointed by the Mayor, subject to confirmation by the City Council. The Auditor may be removed from office for cause by the Mayor by filing a statement of reasons for the removal with the City Council. The Deputy Inspector General shall serve as the Police Intelligence Auditor (Auditor).~~
- B. The **Auditor** should possess the following qualities and characteristics:
 - 1. A reputation for integrity and professionalism, as well as the ability to maintain a high standard of integrity in the office;
 - 2. A commitment to and knowledge of the need for and responsibilities of law enforcement, as well as the need to protect basic constitutional rights;
 - 3. A commitment to the statement of purpose and policies in this chapter;
 - 4. A history of demonstrated leadership experience and ability;
 - 5. The potential for gaining the respect of **departmental personnel** and citizens of the City;
 - 6. 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
 - 7. The ability to work effectively under pressure.

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- C. ~~The Chief of the Department shall cause a thorough background check of nominees for Auditor identified by the Mayor and shall report the results to the Mayor. The background check for the Auditor shall be conducted pursuant to subsection 3.29.100(C).~~
- D. Except as limited by Section 14.12.320, the **Auditor** shall have access to all **Department** files and records, including nonconviction data pursuant to RCW 10.97.050(4).

~~(Ord. 110640 § 13, 1982; Ord. 110572 § 31, 1982; Ord. 109237 § 1, 1980; Ord. 108333 § 29, 1979.)~~

14.12.320 - Limitations on the Auditor.

- A. The **Auditor** shall not examine the following:

~~1. Department personnel files;~~

~~2. Internal Investigation Section files;~~

~~3.~~ Files of confidential communications as defined in Section 14.12.090;

~~4.~~ Personal files of the Chief of the **Department** which are excluded from this chapter by Section 14.12.120 A4;

~~5.~~ Specific case files which the King County Prosecuting Attorney personally certifies in writing need to be withheld from the **Auditor's** review because the files involve investigations of corruption or malfeasance in office of a governmental official or employee, a potential conflict of interest for the **Auditor**, or investigations of organized criminal activity conducted as a continuing enterprise solely for the purpose of obtaining monetary gain wholly or in part through racketeering, vice, narcotics, gambling, fencing, or similar economic criminal activity. As to each file, the Prosecuting Attorney's certificate shall state that he has personally reviewed the case file and found that the file complies with this chapter. The Prosecuting Attorney's certificate shall also include a summary apprising the **Auditor** of the scope and purpose of the investigation. With respect to the certified files, the Prosecuting Attorney shall exercise all the powers and discharge all the responsibilities normally exercised and discharged by the **Auditor** under the provisions of this chapter;

6. Files maintained exclusively for confidential criminal information regarding organized criminal activity received by the **Department** through membership in the Law Enforcement Intelligence Unit (LEIU) and files maintained exclusively for confidential criminal information regarding narcotics activity received by the **Department** through membership in the Western States Information Network (WSIN), which are audited under subsection C.

- B. In discharging his or her responsibilities, the **Auditor** shall protect the confidentiality of **Department** files and records, and shall also be bound by the confidentiality provisions of the Criminal Records Privacy Act (RCW 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 public report required by this chapter. The **Auditor** shall not remove from **Department** facilities any record, extract, or other information, the disclosure of which is exempt from public disclosure under the Public Disclosure Act (RCW 42.17.310). Any violation of the confidentiality of **Department** files and records or the provisions of this chapter shall be sufficient cause for removal of the **Auditor**.

- C. The Chief of the **Department** shall exercise all the powers and discharge all the responsibilities normally exercised and discharged by the **Auditor** with respect to files maintained exclusively for confidential criminal information obtained through the **Department** membership in the Law

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Enforcement Intelligence Unit (LEIU) and the Western States Information Network (WSIN), which shall be limited to and subject to the following definitions and conditions:

1. All information designated for audit by the Chief shall meet all the provisions of this chapter controlling the **collection**, receipt and/or transmittal of information.
 2. Only information regarding organized criminal activity obtained by a designated departmental LEIU representative, or information regarding criminal narcotics activity obtained by a designated departmental WSIN representative, from designated LEIU or WSIN representatives, respectively, in other agencies, will be audited under this subsection by the Chief. All other information **collected** from outside agencies will be subject to audit by the appointed **Auditor**.
 3. "Organized criminal activity" is defined as conduct that relates to a continuing enterprise engaged in solely for the purpose of obtaining monetary gain wholly or in part through racketeering, vice, narcotics, gambling, fencing, or similar criminal activity.
 4. "Criminal narcotics activity" is defined as conduct that relates to the illegal manufacture, transportation, distribution, or sale of narcotics or other controlled substances.
 5. All information designated for audit by the Chief shall be filed separate from other **Department** files.
 6. Access to the information designated for audit by the Chief shall be limited to police officers specifically designated by the Chief of Police.
 7. Information designated for audit by the Chief shall not be referenced or indexed in other **Department** files.
- D. The Chief of the **Department** shall submit a final report of his/her audit to the Mayor. The Chief's report shall be comparable to that of the **Auditor** as prescribed in Section 14.12.330 B2, except that the Chief's report shall include a description of each type of document audited without disclosing its contents, the number of each type of document audited, the number of documents received from LEIU or WSIN, and the number of documents received from designated LEIU or WSIN representatives. The Chief's report shall also include a current set of bylaws for LEIU and for WSIN. The Mayor shall certify the report as the final audit to the City Council, the City Attorney, and the City Clerk for filing as a public record. The Mayor, in the exercise of all of his/her duties under the City Charter, shall supervise the Chief of the **Department** to ensure that he/she faithfully performs the duties assigned under this chapter and section.
- E. Failure of the Chief of the **Department** to send any notice required by Section 14.12.340 or to report any substantial violation of this chapter as required by Section 14.12.330 B2 shall effect his immediate suspension from office without pay and shall be cause for his/her removal from office. Failure of the Chief of the **Department** to discharge any other duties required by this subsection may be cause for his/her suspension or removal from office.

(Ord. 117242 § 15, 1994; Ord. 110640 § 13, 1982; Ord. 110572 § 31, 1982; Ord. 108333 § 30, 1979.)

14.12.330 - Audit procedures and standards.

- A. The **Auditor** shall conduct an in-place audit of **Department** files and records at unscheduled intervals not to exceed one hundred eighty (180) days since the last audit. The **Department** shall provide temporary space for the **Auditor** to conduct the audit in secure areas close to the records to be reviewed by the Auditor.

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- B. The audit shall be prepared and published pursuant to the following provisions:
1. In conducting an audit, the **Auditor** shall:
 - a. Review each authorization granted pursuant to Sections 14.12.150/14.12.160, 14.12.170, or 14.12.230, together with investigative files associated with the authorizations;
 - b. Perform a random check of **Department** files and indexes;
 - c. Review files and records containing **private sexual** or **restricted information** designated for purging except information not yet **collected** or **purged** pursuant to Sections 14.12.140, 14.12.150, 14.12.190, or 14.12.240; and
 - d. Prepare and forward a written report of the audit to the Mayor, the City Council, the City Attorney, and the City Clerk for filing as a public record.
 2. The **Auditor's** report shall contain a general description of the files and records reviewed and a discussion of any substantial violation of this chapter discovered during the audit. A preliminary report shall be delivered by the **Auditor** to the Chief of the **Department** for review and comment. The Chief of the **Department** shall review and comment on the preliminary report within twenty (20) days after receipt of the report. The **Auditor shall submit the final report within thirty (30) days after receipt of the Chief's comments.**
 3. The **Chief of the Department** shall:
 - a. Forward to the Mayor, the City Council, the City Attorney, and the City Comptroller within ten (10) **working days** of receipt of the **Auditor's** final report the Chief's written comments on the report; and
 - b. Cause an immediate investigation into the circumstances of any apparent violations of this chapter reported by the **Auditor**.

(Ord. 117242 § 16, 1994; Ord. 110572 § 32, 1982; Ord. 108333 § 31, 1979.)

14.12.340 - Notice of substantial violations.

- A. The **Auditor** shall notify by certified mail any **person** about whom **restricted information** has been **collected** where the **Auditor** has a reasonable belief that the **restricted information** was collected in violation of this chapter and would create civil liability under Section 14.12.350. Notice shall be sent to the person's last known address within six (6) months after the expiration of the last authorization, or within sixty (60) days after the **Department**, the City Attorney, or the King County Prosecuting Attorney determines that no prosecution will be brought as a result of the unlawful activity prompting the investigation, whichever date is earlier. The **Auditor's** notice does not constitute an admission of fact or liability by the City.
- B. At least five (5) **working days** before mailing the notice, the **Auditor** shall inform the Chief of the **Department** of his/her intent to mail the notice. If during the interim the **Auditor** receives information that the notice would endanger an ongoing investigation, the **Auditor** shall delay the mailing for such period of time as he or she is satisfied that mailing the notice would endanger the ongoing investigation.
- C. The **Auditor** shall identify the information giving rise to the notice of substantial violation. The **Department** shall retain the information until expiration of the statute of limitations for civil action by the subject of the notice.

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(Ord. 110572 § 33, 1982; Ord. 108333 § 32, 1979.)

Subchapter IX - Civil Liability, Enforcement and Penalties

14.12.350 - Civil liability.

- A. Subject to the limitations of this section and Section 14.12.360, a **person** shall have a right of action against the City based on this chapter for injuries proximately caused by **departmental personnel** wilfully in the scope and course of their duties:
1. **Collecting private sexual information** when Section 14.12.130 prohibits **collection** of such **information**;
 2. **Collecting restricted information** where the prohibition of Section 14.12.150 applies, no authorization was obtained, and under the facts and circumstances known to **departmental personnel**, no authorization could validly have been granted; or alternatively, the **restricted information collected** was both outside the scope of the authorization granted and was not relevant to an investigation of unlawful activity, the making of an arrest or a judicial proceeding;
 3. Using an **infiltrator** with the intention of **collecting** restricted information 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 in violation of Section 14.12.250 where there is no **reasonable suspicion** that the subject of the restricted information has engaged in, is engaging in, or is about to engage in unlawful activity, or that the restricted information will lead to the subject's arrest;
 4. Inciting another **person** to commit unlawful violent activity or engaging another person to do so in violation of Section 14.12.280 A; and/or
 5. Communicating information known to be false or derogatory with the intention of disrupting any lawful political or religious activity in violation of Section 14.12.280 B, provided no cause of action may be based upon an arrest based upon probable cause or an order to disperse an assemblage made in accordance with Section 12A.12.020 of this Code.
- B. Absent evidence establishing a greater amount of damages, the damages payable in event of an injury proximately caused by **collection of private sexual or restricted information** in violation of this chapter, as contemplated by subsections A1 or A2, shall be Five Hundred Dollars (\$500.00) to each subject of the **private sexual or restricted information** for all such **information** collected, and for the use of an **infiltrator** in violation of Section 14.12.250, as contemplated by subsection A3, shall be One Thousand Dollars (\$1,000.00) aggregate for the organization and all its members as a class. The payment of damages under subsection A3 to the organization, or its members as a class, is in addition to any rights of any **person** within the organization under subsections A1 or A2.
- C. No cause of action may be based upon the activity of **departmental personnel** in complying with a court order, or an action taken pursuant to and within the scope of an authorization under Sections 14.12.150/14.12.160, 14.12.170, 14.12.230 or 14.12.250.
- D. The City reserves all defenses at law consistent with this chapter, including but not limited to consent, privilege, participation, and waiver, and as to **departmental personnel** or a City official, any defense arising in the employer/employee or principal/agent relationship.

(Ord. 110640 §§ 14, 15, 1982; Ord. 110572 § 34, 1982; Ord. 108333 § 33, 1979.)

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14.12.360 - Liability of officers and employees.

No cause of action may be based upon this chapter 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, individually, for such an action or omission, and the officer or employee cooperates fully in defense of the lawsuit, the City Attorney may represent the individual and defend the litigation. If the claim is deemed a proper one or judgment is rendered against the City officer or employee individually, the judgment shall be paid by the City in accordance with its procedures for the settlement of claims and payment of judgments.

(Ord. 110572 § 35, 1982; Ord. 108333 § 34, 1979.)

14.12.370 - Rules and regulations.

- A. Consistent with the statement of purpose, policies, and provisions of this chapter, the Chief of the **Department** shall promulgate rules and regulations to implement this chapter in accordance with the procedures of Ordinance [102228](#) (the City's Administrative Code), [1161](#) as amended, or a successor ordinance. The rules and regulations shall be designed to protect constitutional rights and personal privacy, so that investigations are conducted without an unreasonable degree of intrusion and that private sexual and restricted information obtained in the course of an investigation is properly authorized under this chapter.
- B. The Chief of the **Department** shall also promulgate rules and regulations to govern the use of **informants, infiltrators**, and photographic surveillance related to restricted information, consistent with the statement of purpose, policies, and provisions of this chapter, and may promulgate rules and regulations governing other investigatory techniques to the extent he deems necessary to carry out the statement of purpose, policies, and provisions of this chapter.

(Ord. 110572 § 36, 1982; Ord. 108333 § 35, 1979.)

Footnotes:

--- (16) ---

Editor's note— The Administrative Code is codified in Chapter 3.02 of this Code.

14.12.380 - Department reporting.

The Chief of the Department shall submit an annual report on the implementation of this chapter to the Mayor, the City Council, and the City Clerk for filing as a public record. The annual report shall indicate the number of authorizations granted under Sections 14.12.150/14.12.160, 14.12.170, or 14.12.230; the number of certifications issued under Section 14.12.210 B5; the number of files withheld from the **Auditor** by the King County Prosecuting Attorney under Section 14.12.320 A5; 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 precautions were involved, and other meaningful information; a summary of any internal disciplinary action taken to enforce this chapter;

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and a description of other actions taken to implement this chapter. The foregoing information may be included in the **Department** 's annual report.

(Ord. 117242 § 17, 1994: Ord. 110640 § 16, 1982: Ord. 110572 § 37, 1982: Ord. 108333 § 36, 1979.)

14.12.390 - Administrative penalties.

Any **departmental personnel** in an office or other place of employment of the City who violates this chapter, or any implementing rule or regulation of the Chief of the **Department** shall be subject to the disciplinary proceedings and punishment authorized by the City Charter, Article XVI, [171](#) including reprimand, suspension without pay, and discharge, or provided by Ordinance 107790, as amended (the City's Public Safety Personnel Ordinance), or a successor ordinance.

(Ord. 110572 § 38, 1982: Ord. 108333 § 37, 1979.)

Footnotes:

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Editor's note— The City Charter is included at the beginning of this Code.

** Editor's Note— Ord. 107790 is codified in Chapter 4.04 of this Code.

14.12.400 - Administrative penalties for supervisors.

An official who has authorized pursuant to Section 14.12.130 through 14.12.200 of this chapter, inclusive, the **collection of restricted information** shall be subject to administrative discipline, as contemplated in Section 14.12.390, for misconduct of a subordinate officer in collecting the **information** authorized if the authorizing official knows or should have known of the misconduct.

(Ord. 110572 § 39, 1982: Ord. 108333 § 38, 1979.)