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Amadea Scott
Amadea Scott (Feb 10, 2023 14:55 PST)

CITY ATTORNEY'S OFFICE

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OAKLAND CITY COUNCIL

RESOLUTION NO. 9065 2 C.M.S.

RESOLUTION APPROVING THE OAKLAND POLICE DEPARTMENT'S (OPD) THROW PHONE POLICY IN ORDER FOR OPD TO ACQUIRE AND USE THE LETS THROW PHONE TECHNOLOGY

WHEREAS, the Surveillance Technology Ordinance (codified in relevant part at Oakland Municipal Code Section 9.64.030.1.C) requires City Council approval for new and existing surveillance technology; additionally, OMC Section 9.64.020.1 requires that, "Prior to seeking City Council approval for existing city surveillance technology under Section 9.64.030, City staff shall submit a Surveillance Impact Report (SIR) and Surveillance Use Policy (SUP) to the Privacy Advisory Commission (PAC) for its review at a regularly noticed meeting. The SIR and SUP must address the specific subject matter specified for such reports as defined under 9.64.010"; and

WHEREAS, OPD is prohibited from acquiring any new Surveillance Technology, based on the requirements of OMC 9.64, until a SUP and SIR are reviewed by the PAC and approved by the City Council; and WHEREAS, the Oakland Police Department (OPD) has drafted Departmental General Order I-29: LETS Enforcement Technology Systems (LETS)-Throw Phone Policy (a SUP) and an accompanying SIR, and presented these items to the PAC for feedback at regularly scheduled PAC meetings on October 3, 2024 and November 20, 2024; and

WHEREAS, on November 20, 2024, the PAC voted unanimously to recommend that the City Council approve OPD's draft Departmental General Order I-29 and the accompanying SIR for LETS hostage throw phone; and

WHEREAS, the SIR LETS throw phone (**Attachment B**) covers the following areas as required by the Surveillance Ordinance: • Information describing the system and how it works; • Purpose of the technology; • Locations where, and Situations in which the technology may be used; • Privacy Impact of the technology; • Mitigations to prevent privacy impacts; • Data Types and Sources; • Data Security; • Costs; • Third Party Dependence; • Alternatives Considered; and • Track Record of Other Entities; and

WHEREAS, the amended DGO I-29: LETS throw phone (**Attachment A**) covers relevant areas required of a Surveillance Use Policy as required by OMC 9.64.030, including: • Technology Description; • Authorized Use; • Use Restrictions; • Data Access, Data Collection and Retention, and Security; • Monitoring and Reporting; • System Training; and • the FLIR camera system; now, therefore, be it

WHEREAS, funding will be available through General-Purpose Fund (1010), Org. (101110), Account (53117), and Project (1000008).

RESOLVED: That City Council hereby adopts and approves OPD's amended Departmental General Order I-29: LETS throw phone (AMC) Use Policy, as a Surveillance Use Policy (**Attachment A** as noted above) and approves the accompanying Surveillance Impact Report (**Attachment B**, as noted above); and be it

FURTHER RESOLVED: That pursuant to OMC Section 9.64.020.2, for the reasons referenced above and in the Agenda Report (Agenda Report) and Surveillance Impact Report accompanying this resolution, and after considering the recommendation of the PAC referenced above and discussed in the Agenda Report, the City Council hereby finds that the benefits to the community of the surveillance technology outweigh the costs (cost-benefit determination); that the proposal will safeguard civil liberties and civil rights, and that no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective; and so authorizes the City Administrator or designee to acquire and use a LETS throw phone.

IN COUNCIL, OAKLAND, CALIFORNIA,

MAR 4 2025

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, HOUSTON, KAPLAN, RAMACHANDRAN, UNGER, AND


PRESIDENT PRO TEMPORE GALLO - 7

NOES -

ABSENT - COUNCIL PRESIDENT JENKINS (serving as Mayor pursuant to Charter Section 303)

ABSTENTION

ATTEST:


ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California



DEPARTMENTAL GENERAL ORDER

I-29: Law Enforcement Technology Systems (LETS) – Throw Phone Policy

Effective Date: DD MMM YY

Coordinator: Special Operations Division

COMMAND INTENT

The Oakland Police Department believes in protecting and serving its diverse community and city through fair, equitable, and constitutional policing. OPD believes in the usage of technology to aid in this mission and in the investment into progressive forms of surveillance technology which both protects the rights of members of the community, while also ensuring and enhancing the safety of community members, officers, and engaged persons. This includes a multipronged approach related to tactics, methodology, and technology that allows for de-escalation in often rapidly evolving and tumultuous environments and crisis events.

It shall be the policy of the Oakland Police Department to deploy the *throw phone* to maximize the safety of all individuals involved in an incident. The *throw phone* shall be used as a tool to assist in communication from safe distances, which ultimately provides more time for interaction and de-escalation. Regardless of deployment, the *throw phone* will be utilized in accordance with OPD Core Values and our Mission.

A. Description and Purpose of the Technology

A - 1. Throw Phone

The hostage negotiation “throw phone” is a phone that has historically been contained in a hardened protective case that is part of a communications system for use during police hostage/crisis situations. The phone case included microphones and speakers to enable two-way communications in an overt or covert manner. It also included hidden cameras to support threat and tactical assessments. Technology has advanced and replaced the previous cumbersome equipment with a mobile phone that is easy to deploy and utilize, while also being equipped with a Lockdown feature. The Lockdown feature is a specialized LETS app that only allows the deployed phone to text or call the Crisis Negotiators.

City-owned iPhones do not have the standalone capability to record calls (incoming or outgoing). The Oakland Police Department may use city-owned (Department managed) Apple iPhones to communicate with the person using the LETS throw phone. The LETS throw phone is equipment that may be deployed during a critical incident (to include but not limited to: barricaded suspect, hostage incident, search warrants) for the purpose of de-escalating an incident and minimizing risk by establishing communications between an OPD member and a victim, suspect, or involved person(s).

A - 2. LETS

LETS is the name of the company which makes and supplies the throw phone and software. LETS stands for "Law Enforcement Technology Systems."

A - 3. LETS Respond

The LETS Respond application is a smartphone application available via both Apple and Android. The LETS Respond app allows negotiators and authorized users to listen and communicate to a subject's call with the negotiator.

Any city of Oakland owned Apple iPhone is capable of utilizing the LETS Respond application, allowing approved members and commanders to monitor the application.

A - 4. LETS Android Throw Phone

The LETS Android throw phone is an Android device that is part of a communications system for use in police hostage/crisis negotiations with subjects. The phone is enabled with two-way communication in an overt or covert manner.

This system is intended to provide a reliable means of communication between a hostage taker or barricaded subject and a member of the Hostage Negotiation Team (HNT). At times there are no other means of phone communication with the subject and this system allows for safe and reliable communication from a distance. The system allows the HNT team to monitor and record conversations to facilitate the development of negotiation strategies and ensure the safety related information is relayed. In addition to the overt communication capabilities, this technology may also capture images and audio of identifiable individuals (additional suspects or victims/hostages), some of whom are unaware of the recording.

Throw phone systems of this nature are standardized equipment for Hostage/Crisis Negotiation Teams according to the National Council of Negotiation Associations, FBI Crisis Negotiation Unit, National Tactical Officers' Association, and other industry standards. Approximately 15 years ago, the industry standard for these systems began to include video monitoring capabilities. Such monitoring capabilities were deemed important to be able to assess the demeanor of the subject and whether there were any life-safety factors present such as the injured parties or threats of violence.

The LETS throw phone has the capability to “lockdown” so the HNT member may control the Android from a Command Post or the Negotiation Operations Center.

A - 5. Utilized Throw Phone

The Department utilizes the *throw phone* technology with the following platforms:

- An Android cell phone with LETS software preinstalled; The Android has the capability to “lockdown” so the HNT member may control the Android from the Command Post or Negotiation Operations Center.
- A City of Oakland owned Apple iPhone provided by the IT department.

Any city of Oakland owned Apple iPhone may download and utilize the LETS Respond application, allowing approved members or commanders to monitor the application during a crisis event.

B. Use of the LETS Android Throw Phone

B - 1. HNT Authorized Users

The LETS Android throw phone, and the LETS Respond application, will only be used by HNT members who have been authorized and trained in its use. The LETS Android throw phone or the application will not be used by officers who are not certified or trained in its use unless required by exigent circumstances.

B - 2. Authorized Uses

The LETS Android throw phone shall only be used in circumstances where there is a credible threat to life or a vital infrastructure to include but not limited to: barricaded suspect, hostage incident, kidnapping incident, suicidal incident, mass homicide threat.

Although any City-owned Apple iPhone is capable of downloading the LETS Respond application, only HNT Members will be granted access to the OPD account. Furthermore, only HNT Members may monitor the application during active negotiations. Any member not on the HNT shall not utilize the LETS Respond Application during any crisis event.

B - 3. Prohibited Use

1. The LETS Android throw phone shall not be equipped with, or have its data processed through, analytics capable of identifying groups or individuals, including but not limited to Artificial Intelligence, facial recognition, and gait analysis.
2. The LETS Android throw phone shall not be used for the following activities:
 - a. Conducting surveillance of anyone not subject to an active investigation.
 - b. Targeting a person or group of people based on their characteristics, such as but not limited to race, ethnicity, national origin, religion, disability, gender, clothing, tattoos, sexual orientation and/or perceived affiliation when not connected to actual information about specific individuals related to criminal investigations.
 - c. For the purpose of harassing, intimidating, or discriminating against any individual or group.
 - d. To conduct personal business of any type.

B - 4. Deployment and Reporting Requirements

Prior to the activation of the LETS Android throw phone in the field, HNT shall obtain authorization of the incident commander, who shall be of the rank of Lieutenant of Police or above. Pre-planned operations that may require the use of the LETS Android throw phone should be included within the operations plan and be pre-approved.

The default deployment will include audio recordings and text messages. Per authorization by the Incident Commander, the visual recordings and still images will be utilized if the circumstances of the incident warrant its use (i.e. circumstances where there is a credible threat to life or a vital infrastructure to include but not limited to: barricaded suspect, hostage incident, kidnapping incident, suicidal incident, mass homicide threat).

Pursuant to *Penal Code Section 633.8*:

As explained in the statute, "It is the intent of the Legislature in enacting this section to provide law enforcement with the ability to use electronic amplifying or recording devices to eavesdrop on and record the otherwise confidential oral communications of individuals within a location when responding to an emergency situation that involves the taking of a hostage or the barricading of a location."

The statute requires a complex procedure that officers must follow *after* the *emergency* had been defused. Specifically, **within 48 hours** they must apply for an eavesdropping warrant that must comply with all the requirements for a California *wiretap* order.

B - 5. Privacy Considerations

Members utilizing the LETS Android throw phone shall only use the device related to specific crisis incidents.

B - 6. Data Collection and Access

The data captured by the LETS Android throw phone is automatically uploaded to the secure LETS cloud. The data is encrypted and stored separately, and it cannot be accessed by any other agency or third party. The data may include audio recordings, visual recordings, still images and text messages.

The LETS cloud has unlimited storage and will be managed only by those who have access to the OPD account. The OPD account will only be accessed by a username and password given to authorized users. The incident can be deleted only upon the approval of the HNT Commander, or their designee.

If the data and information uploaded to the Cloud is not relevant to any ongoing investigation, or subject to a specific document retention request, then the Tactical Negotiation Team Commander or designee shall ensure the data is deleted after thirty days.

The data will be protected from unauthorized access as it's uploaded to the Cloud, which is only accessible by authorized HNT members via username and password.

B - 7. Annotation and Categorization of LETS Files

All authorized HNT members shall annotate LETS files (saved phone calls/text messages/video streams) once the crisis incident is concluded. The associated report number shall be annotated on every LETS data file.

B - 8. Data Sharing

All images and recordings uploaded by the LETS application is for the official use of this department. Some information may not be disclosable to the general public. Investigatory records are not generally disclosable in response to a public records request. Non-investigatory records shall be disclosed in response to a public records request. Requests for information by non-law enforcement or non-prosecutorial agencies will be processed in accordance with Government Code §6253 et seq, this policy, and applicable case law and court orders.

B – 9. Third Party Data Sharing

All data and recordings uploaded by the LETS application may be shared only as otherwise permitted by law and this policy.

OPD personnel may share LETS data and information when there is a legal obligation to do so, such as a subpoena, court order or warrant to share such information, such as the following:

- The District Attorney's Office for use as evidence to aid in prosecution, in accordance with laws governing evidence;
- The Public Defender's Office or criminal defense attorney via the District Attorney's Office in accordance with applicable California criminal discovery laws;
- California law enforcement agencies as part of a formal criminal or administrative investigation;
- To a party to civil litigation, or other third parties, in response to a valid court order only.

When there is no legal obligation to provide the requested data, requests for LETS data and information from other California law enforcement agencies shall be made in writing and may only be approved by the BOS deputy director or designee per the protocol below. These requests shall be maintained in a secure folder so that information about these requests can be shared in required annual reports with the Privacy Advisory Commission. Server access shall be restricted only to authorized OPD personnel who will extract the required information and forward it to the requester.

1. The requesting party shall have a right to know, and a need to know. A right to know is the legal authority to receive information pursuant to a court order, statutory law, case law, or sworn officer status. A need to

know is a compelling reason to request information such as direct involvement in an investigation.

2. The Department shall record the requesting party's name and document the right and need to know the requested information.
3. The Department shall record whether the request was honored or denied, the reason for such action, and the name of the Department officer that processed the request.

C. ADMINISTRATIVE INFORMATION

C - 1. Training

The SOD Commander shall ensure that all authorized HNT members have completed all department-approved training in the operation, applicable laws, policies, and procedures regarding the use of the LETS Android throw phone.

C - 2. Auditing and Oversight

The SOD Commander, or other designated HNT personnel, shall develop a protocol for documenting all HNT deployments in accordance to this policy with specific regard to safeguarding the privacy rights of the community. The SOD Commander, or other designated HNT personnel, will develop a record of successful deployments of the LETS Android throw phone, as well as maintain a roster of authorized users. An annual report will be provided to the Privacy Advisory Committee.

C - 3. Maintenance

The SOD Commander or other designated HNT personnel, are responsible for ensuring that the LETS Android throw phone device is functional and operating in a manner that allows the device to both serve its crisis resolution purpose and operate within policy and law.

By order of

DEPARTMENTAL GENERAL ORDER
OAKLAND POLICE DEPARTMENT

I-29

Effective Date
DD MMM YY

Floyd Mitchell
Chief of Police

Date Signed: _____



Surveillance Impact Report

Throw Phone (LETS) System

A. Description

The LETS Android throw phone is an Android device that is part of a communications system for use in police hostage/crisis negotiations with subjects. The phone is enabled with two-way communication in an overt or covert manner.

This system is intended to provide a reliable means of communication between a hostage taker or barricaded subject and member of HNT. At times there are no other means of phone communication with the subject and this system allows for safe and reliable communication from a distance. The system allows the HNT team monitoring and recording conversations to facilitate the development of negotiation strategies and ensure the safety related information is relayed. In addition to the overt communication capabilities, this technology also may also capture images and audio of identifiable individuals (additional suspects or victims/hostages), some of whom are unaware of the recording.

Throw phone systems of this nature are standardized equipment for Hostage/Crisis Negotiation Teams according to the National Council of Negotiation Associations, FBI Crisis Negotiation Unit, National Tactical Officers' Association, and other industry standards. Approximately 15 years ago, the industry standard for these systems began to include video monitoring capabilities. Such monitoring capabilities were deemed important to be able to assess the demeanor of the subject and whether there were any life-safety factors present such as the injured parties or threats of violence.

The LETS throw phone has the capability to "lock down" so the HNT member may control the Android from the Command Post or Negotiation Operations Center.

B. Purpose

The LETS Throw Phone is used for the following operational purposes:

- ❖ There is credible threat to life or a vital infrastructure to include but not limited to: barricaded suspect, hostage incident, kidnapping incident, suicidal incident, mass homicide threat
- ❖ Allows negotiators and authorized users to listen and communicate to a subject's call with the negotiator
- ❖ Provides a reliable means of communication between a hostage taker or barricaded subject and a member of HNT. At times there are no other means

Impact Report – LETS Throw Phone

- of phone communication with the subject, this system allows for safe and reliable communication from a distance
- ❖ May capture images and audio of identifiable individuals (additional suspects, victims/hostages) in addition to the location of the subjects within a target location
- ❖ Monitoring capabilities to assess the demeanor of the subject and any life-safety factors present such as injured parties or threats of violence

C. Location

The LETS Throw Phone will be stored in the designated Tactical Negotiation Team Command Post.

The LETS Respond application will be downloaded to the City of Oakland owned Apple iPhone's assigned to the Tactical Negotiation Team Members. Only those members will be granted access to the OPD account.

D. Impact

All communication and data generated by the LETS Throw Phone are for the official use of the Department for the expressed purpose of enhancing the safety of its members and the subjects we're communicating with. It bolsters communication during critical incidents by providing a direct line of communication allowing negotiators to establish a rapport and communicate calmly and clearly. Effective communication can prevent the situation from escalating into violence, illustrating our commitment to resolving conflicts peacefully.

E. Mitigations

The Department does not foresee any points of concern related to a negative impact on the community. The Department will conduct an assessment of the technology and analyze any negative impacts if they are discovered during the annual report.

F. Data Types and Sources

The data captured by the LETS Android throw phone is automatically uploaded to the secure LETS cloud.

The LETS cloud has unlimited storage and will be managed only by those who have access to the OPD account. The OPD account will only be accessed by a username and password given to authorized users. The incident can be deleted only upon the approval of the Tactical Negotiation Team Commander, or their designee.

Impact Report – LETS Throw Phone

If the data and information uploaded to the Cloud is not relevant to any ongoing investigation, or subject to a specific document retention request, then the Tactical Negotiation Team Commander or designee may determine that it will delete such data or information after 2 years.

G. Data Security

The data will be protected from unauthorized access as it's uploaded to the Cloud, which is only accessible by authorized users via username and password. The use of LETS data is regulated by Department policy (DGO I-29).

H. Fiscal Cost

The LETS system costs \$6045 and includes a FirstNet Throw phone Bundle with a 2-year subscription. The bundle includes the LETS license, access to the application from the application store, evidence manager, the LETS Respond Service, the LETS Lock-down app, and Transmitter app for FirstNet phone and 2 years of FirstNet cell service.

I. Third Party Dependence

The Department will rely on LETS support for technology related issues, consistent with the support offered related to the Motorola Radio systems.

All images and recordings uploaded by the LETS application is for the official use of this department. Some information may not be disclosable to the general public. Investigatory records are not generally disclosable in response to a public records request. Non-investigatory records shall be disclosed in response to a public records request. Requests for information by non-law enforcement or non-prosecutorial agencies will be processed in accordance with Government Code §6253 et seq, this policy, and applicable case law and court orders.

J. Alternatives

Though there are several more expensive alternative Throw Phones offered by various companies, there is no other technology able to directly replace and fulfill the need and benefits of a throw phone in a critical incident.

A less ideal alternative would be to use a regular department-issued cell phone as a makeshift solution.

Impact Report – LETS Throw Phone

K. Track Record

Most law enforcement agencies nationwide, particularly larger and well-resourced ones, have Throw Phones as part of their crisis negotiation and tactical response equipment. Smaller agencies or those with limited budgets might not have their own dedicated throw phones, but they often rely on nearby larger agencies or specialized units for assistance in critical situations that require such equipment. Throw Phones have been a proven critical tool in the negotiation arsenal to establish a secure and reliable line of communication. They indisputably enhance the safety of everyone involved and help facilitate a peaceful resolution to critical incidents.