

April 03, 2024

MEMORANDUM

To: Parks, Public Utilities and Technology Committee
From: Tamaso Johnson, Analyst
Subject: Council Bill 120754 – Authorizing approval of uses and accepting the surveillance impact report for the Seattle Police Department’s use of Hostage Negotiation Throw Phone

On Wednesday, March 27, 2024, the Parks, Public Utilities and Technology Committee discussed Council Bill (CB) 120754. The bill is intended to meet the requirements of [Seattle Municipal Code Chapter 14.18](#), Acquisition and Use of Surveillance Technologies.¹ CB 120754 would approve the Seattle Police Department’s (SPD’s) continued use of existing Hostage Negotiation Throw Phone (“throw phone”) technology and accept the Surveillance Impact Report (SIR) and an Executive Overview for this technology. The Executive Overview summarizes the operational policy statements which represent SPD’s allowable uses of throw phone equipment and data.

This memo describes throw phone technology and summarizes potential civil liberties impacts, potential disparate impacts on historically targeted communities and vulnerable populations, and the public engagement process, as reported in the SIR. It also summarizes key concerns and recommendations from the Community Surveillance Working Group’s Impact Assessment and, where relevant, responses to the Impact Assessment included in the version of the throw phone SIR submitted pursuant to this legislation. Finally, the memo identifies policy issues and potential amendments for Council consideration.

Hostage Negotiation Throw Phone

Hostage Negotiation Throw Phones are two-way communication and observation devices housed in a durable enclosure used to communicate in situations where SPD personnel cannot otherwise directly reach subjects, such as hostage or crisis situations where the subject has barricaded themselves inside a location. SPD has been using throw phones in various configurations for over 20 years as part of the Hostage Negotiation Team (HNT) response. Throw phones in use by SPD HNT and Special Weapons And Tactics (SWAT) team currently include microphones and speakers for two-way communication via a handset, an external speaker used to alert the subject to the presence of the technology, as well as multiple cameras that can transmit live video feed from the device. Throw phones are exclusively used by HNT and SWAT team members within SPD, and all deployments must be authorized by the HNT supervisor, incident commander, and SWAT commander if present. All throw phone deployments are logged in after-action reports.

¹ (Ord. [125679](#), § 1, 2018; Ord. [125376](#), § 2, 2017.)

Civil Liberties and Potential Disparate Impacts on Historically Marginalized Communities

Departments submitting a SIR complete an adapted version of the Racial Equity Toolkit (RET) to highlight and mitigate impacts on racial equity from the use of the technology. The RET for the SPD's use of throw phones identifies potential civil liberties impacts related to the collection of personally identifiable information and other surveillance data of community members through covert use of this technology. According to the SIR, SPD mitigates these risks by the situational use of this technology exclusively by the HNT unit in the limited number of crisis situations presenting particular logistical challenges requiring the use of a throw phone for communication. The SIR further clarifies that deployment of throw phones into constitutionally protected areas requires authorized entry into those areas via warrant or warrant exception (e.g. consent, exigent circumstances, community caretaking/emergency).

The SIR also identifies data sharing, storage and retention as having the potential to contribute to structural racism and/or disparate impacts on historically targeted communities. According to the SIR, SPD mitigates these risks through policies regarding the dissemination of data in connection with criminal prosecutions, the [Washington Public Records Act](#), and other authorized researchers. The SIR specifically references an express exception in state law, at [RCW 9.73.030\(2\)](#), to general recording consent rules that allows for use of such law enforcement technology without consent in circumstances related to communications with a hostage or barricaded person. In addition, the SIR cites [SPD Policy 5.140m](#), which forbids bias-based policing and outlines processes for reporting and documenting any suspected bias-based behavior, as well as accountability measures.

Public Engagement

The Executive conducted two public meetings for this SIR on April 18, 2023, and April 28, 2023, and the public comment period closed on May 17, 2023. The throw phone SIR includes all comments pertaining to this technology received from members of the public (Appendix C) and letters from organizations or commissions (Appendix D). Public comments about this technology included concerns and questions about: the deployment of throw phones by units other than HNT for more generalized surveillance, including of protestors; use of this technology in conjunction with other surveillance and video and audio analysis technology including biometrics; and the storage and use of video and audio recordings captured by throw phones, including applicable retention periods.

Privacy and Civil Liberties Impact Assessment

The Impact Assessment prepared by the [Community Surveillance Working Group](#) ("Working Group") identified seven "key concerns" about the use of this technology, including: lack of policy clearly limiting the use of throw phones to HNT unit deployments as described by SPD, versus use at protests or in other similar contexts; lack of clarity about the number of throw phones owned by SPD and usage data beyond the 2021 statistics included in the SIR; inadequate policies on retention of recorded audio and video; and the potential for application of biometric analysis tools. The Chief Technology Officer ("CTO") submitted a response to concerns raised by the Working Group Impact Assessment as well as some public comments. While the CTO response was substantively responsive to many of the concerns raised by the Impact Assessment, several areas where there may be room for additional clarity regarding SPD use of throw phones are discussed below as options for potential Committee amendments.

Policy Considerations

Central Staff has identified the following potential policy considerations. The policy considerations and options described here may inform potential Committee actions, including amendments, to the SIR approval legislation for this technology.

1. Use of throw phones exclusively for HNT unit activities involving hostages or barricaded persons. The CTO response notes that use of this technology outside of the scope described in the SIR, for purposes of communication with barricaded persons or hostage crisis situations, would be impermissible and in violation of the approval ordinance. However, the Council may wish for SPD to provide further clarification in department policy specifically limiting throw phone use to the described contexts, and/or expressly prohibiting it for use in response to other incidents such as protests.

Options:

- A. The Committee may wish to request that SPD draft additional policy governing the use of throw phones, potentially restricting this technology to HST and SWAT use only, without delaying approval of this SIR. The Committee might also consider requesting that the department engage with the Office of Inspector General (OIG) when developing this policy.
 - B. The Committee may wish to defer approval of this SIR, pending completion of such policy. This could cause a lengthy delay to the adoption of the SIR, although the technology would remain available to SPD in the interim.
 - C. Take no action.
2. Throw phone deployment information and statistics. SPD has provided statistics on the use of throw phones in 2021 as an example of the frequency of deployment opportunities and actual use. Additional information about the use of throw phones by SPD in years other than 2021 could help better illustrate the utility of the technology to SPD operations and help the public understand the scope of this technology, and whether the department could address potential civil liberties issues through additional policies that regulate the use of the technology.

Options:

- A. The Committee may wish to request a report from SPD by a date certain, on a one time or recurring basis, on throw phone deployment data in years beyond 2021, to be provided to Council and Central Staff, without delaying approval of this SIR.
- B. The Committee may wish to defer approval of this SIR, pending receipt of SPD data on throw phone deployment.
- C. Take no action.

Committee Action

Options for Council action are as follows:

1. Pass CB 120754 as transmitted;
2. Request Central Staff to prepare amendments to the Council Bill to address additional concerns or issues; or
3. Take no action.

cc: Benjamin Noble, Director
Aly Pennucci, Deputy Director