

Portable Audio/Video Recorders

423.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews or interrogations conducted at any Santa Clara Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

The purpose of portable audio/video recorders is to record officers' interactions with members of the public to increase transparency and trust. It is not intended to capture the interactions between officers and/or supervisors or decision making deliberative investigative process that takes place outside the presence of members of the public.

423.2 POLICY

The Santa Clara Police Department may provides members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

423.3 COORDINATOR

The Chief of Police or the authorized designee shall appoint a member of the Department to coordinate the use and maintenance of portable audio/video recording devices and the storage of recordings, including (Penal Code § 832.18):

- (a) Establishing a system for downloading, storing and security of recordings.
- (b) Ensuring Body Worn Camera (BWC) files are reviewed and released in accordance with federal, state, and local statutes and the City of Santa Clara retention policy.
- (c) Establishing a maintenance system to ensure availability of operable portable audio/video recording devices.
- (d) Establishing a system for tagging and categorizing data according to the type of incident captured.
- (e) Establishing a system to prevent tampering, deleting and copying recordings and ensure chain of custody integrity.
- (f) Working with counsel to ensure an appropriate retention schedule is being applied to recordings and associated documentation.
- (g) Maintaining logs of access and deletions of recordings.
- (h) Policy and procedure review and evaluation.
- (i) Training

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423.4 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity for this department, regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

423.5 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. A deactivation is defined as shutting off any video and/or audio portion of a recording. During normal enforcement activations, the video portion of the recording should remain on at all times. Department members may deactivate the audio when discussing tactics or investigative steps when they are not interacting with a member of the public. Members shall include the reason for the deactivation in their report or the body worn camera prior to deactivation.

Members shall not remove, dismantle, or tamper with any hardware and/or software component or part of the portable recorder.

Members shall dock their portable audio/video recording devices for automated upload of BWC data files daily at the end of their shift to ensure storage capacity is not exceeded and/or to view uploaded audio/video.

Per-diem Special Even Officers are exempt from this policy unless they are provided a portable audio/video recorder by the Department.

423.5.1 SUPERVISOR RESPONSIBILITIES

Supervisors will ensure officers utilize the portable audio/video recording devices according to policy guidelines. Supervisors should take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving an officer-involved shooting or death, or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

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Supervisors shall not review recordings for the sole purpose of searching for violations of department policy or law not related to a specific complaint or incident.

423.6 ACTIVATION OF THE PORTABLE RECORDER

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations.
- (b) Detectives shall use their portable/video recording device when conducting any enforcement action in plainclothes and during any interview in accordance with the Santa Clara County Protocols.
- (c) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (d) Self-initiated activity in which a member would normally notify the Communications Center.
- (e) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

423.6.1 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code § 636).

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It shall be deemed a violation of this policy for any member to fail to activate their portable/video recorder device when required by this policy, or intentionally terminate a recording in order to commit a violation of the law or Department policy.

423.6.2 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

423.6.3 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

423.7 PROHIBITED USE OF PORTABLE RECORDERS

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements, and should notify the on-duty supervisor of such use as soon as reasonably practicable.

Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule.

423.7.1 PROHIBITED USE OF BIOMETRIC SURVEILLANCE SYSTEM

The installation, activation, or use of biometric surveillance systems, including facial recognition, in connection with portable recorders is prohibited (Penal Code § 832.19).

423.8 IDENTIFICATION AND PRESERVATION OF RECORDINGS

To assist with identifying and preserving data and recordings, members should download, tag or mark these in accordance with procedure and document the existence of the recording in any related case report.

A member should transfer, tag or mark recordings when the member reasonably believes:

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- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

423.9 RETENTION OF RECORDINGS

Recordings of the following should be retained for a minimum of two years (Penal Code § 832.18):

- (a) Incidents involving use of force by an officer
- (b) Officer-involved shootings
- (c) Incidents that lead to the detention or arrest of an individual
- (d) Recordings relevant to a formal or informal complaint against an officer or the Santa Clara Police Department

Recordings containing evidence that may be relevant to a criminal prosecution should be retained for any additional period required by law for other evidence relevant to a criminal prosecution (Penal Code § 832.18).

All other recordings should be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 180 days.

Records or logs of access and deletion of recordings should be retained permanently (Penal Code § 832.18).

423.9.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.

423.10 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, members should review their recordings as a resource. However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report. In an Officer-Involved Incident members shall follow the Santa Clara County Protocol to review media files.

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Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (e) Supervisors have the ability to immediately resolve citizen complaints by reviewing video captured by a portable audio/video recording device. In those circumstances where a complaint is resolved with no further action necessary, supervisors shall write a memo to the Watch Commander explaining the events surrounding the complaint. This will allow Professional Standards personnel to capture incidents that are resolved by the portable audio/video recording devices.
- (f) Prior to courtroom testimony.
- (g) Prior to an internal affairs interview when the event recorded is the subject of the investigation, except in the case of the officer-involved and critical incidents, as set forth below.
- (h) When exigent circumstances occur, such as when an officer is injured, or to obtain identifying suspect information or other pertinent information.
- (i) Professional Standards personnel to view video in order to assist in an investigation.
- (j) For potential training purposes as directed by the Chief of Police or his/her designee. After a case has been adjudicated no longer has evidentiary value, the Department may wish to use portions of recorded footage for training purposes. Prior to using this footage, the Department will contact any officers involved or depicted in the footage and advise them of the desire to present the footage for training.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.