

## Portable Audio/Video Recorders

### 422.1 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 San Rafael Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 422.2 POLICY

The San Rafael Police Department may provide 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.

### 422.3 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.

### 422.4 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.

When using a portable recorder, the assigned member shall record his/her name, SRPD identification number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

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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. Members should include the reason for deactivation.

##### **422.4.1 SUPERVISOR RESPONSIBILITIES**

Supervisors are expected to take custody of a portable audio/video recording device as soon as practicable when the device may have captured an incident involving the significant use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded (Penal Code § 832.18).

At reasonable intervals, supervisors are expected to validate that beginning and end-of-shift recording procedures are followed.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, officer-involved shootings, department-involved collisions), a supervisor shall respond to the scene and ensure that the appropriate supervisor, BWC technician or crime scene investigator properly retrieves the recorded media. The media may need to be treated as evidence and should be handled in accordance with current evidence procedures for recorded media.

##### **422.5 ACTIVATION OF THE PORTABLE RECORDER**

Unless it is unsafe or impractical to do so, or any physical obstruction or impairment impeding the activation of the device, or mechanical issues that impede the use of the device are present, officers shall make every reasonable effort to activate the recording device prior to making contact in any of the following incidents. If circumstances prevent recording at the beginning of an event, the officer shall begin recording as soon as practical.

- (a) Response to dispatched calls for service. Officers are encouraged to start recording emergency responses (Code 3) when the officer begins travel to the call.
- (b) Pursuits or a vehicle evading.
- (c) Enforcement or investigative encounters where there is a reasonable suspicion that the person is involved in criminal activity or a violation of the law. This includes, but is not limited to self-initiated activities, traffic stops, pedestrian checks or any other investigative or enforcement encounters.
- (d) Search of a person, vehicles or other property.
- (e) Service of search and arrest warrants.
- (f) Canine deployments (including cover officers, perimeter officers, etc.)
- (g) During prisoner transport when a prisoner has resisted, made threats towards any officer, been verbally abusive or is of the opposite sex.
- (h) All suspect statements
- (i) Any other contact that becomes adversarial, confrontational, assaultive, or enforcement-oriented after the initial contact in a situation that would not otherwise require recording.

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- (j) Personnel may activate the device before or during any other incident at their discretion.

Upon activating recording device for one of the above incidents, personnel shall not terminate recording until the incident is secure and no further communication with the parties involved is reasonably anticipated. Personnel may deactivate the camera or not record when discussing an administrative, tactical or law enforcement sensitive information away from the public.

Recording such contacts with the public shall be the rule and not the exception. If circumstances prevent an officer from recording such a contact, then this must be noted along with the explanation in any subsequent report.

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

#### **422.5.1 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.

#### **422.5.2 CESSATION OF RECORDING**

Once activated, the portable recorder is expected to 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 are expected to, as reasonably practicable, state the reason for temporarily ceasing or stopping the recording prior to deactivating the audio/video recording device.

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).

#### **422.5.3 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.

#### **422.6 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.

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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 Shift Supervisor. 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.

#### **422.7 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:

- (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.

#### **422.8 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). 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.

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:

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- (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.

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.

#### **422.9 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) Designating persons responsible for downloading recorded data.
- (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.

#### **422.10 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 San Rafael Police Department

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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).

#### 422.10.1 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.