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## Portable Audio/Video Recorders

### 448.1 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 Chula Vista Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

### 448.2 POLICY

The Chula Vista 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.

### 448.3 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.

### 448.4 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, CVPD 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.

# Chula Vista Police Department

Chula Vista PD Policy Manual

## *Portable Audio/Video Recorders*

---

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.

### **448.4.1 SUPERVISOR RESPONSIBILITIES**

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

### **448.5 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. Generally, members shall advise members of the public when they are being recorded. It is suggested that members make the advisement in a language the recorded person(s) can understand, to the extent that members are able to communicate in this language.

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

- (a) All anticipated enforcement actions and investigative contacts including stops and field interviews (FI) situations.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated activity in which a member would normally notify the Communications Center.
- (d) Generally, members do not need to record routine report calls where there is no anticipated enforcement action.
- (e) When practical, all suspect, victim, and witness statements.
- (f) When transporting members of the opposite sex.
- (g) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording or in the event the member believes the recording would protect the interests of the member or the Department.

Members may encounter special circumstances which should not be recorded:

- (a) Members should not record other public safety personnel without their consent or notification. Members should notify other public safety personnel, such as firefighters, paramedics, or other law enforcement officers as soon as practical when they are being recorded during an incident.
- (b) Members are not required to record non-enforcement contacts, such as citizen flags for directions or non-enforcement related contacts with the public.
- (c) Victims of child abuse or molest generally should not be video recorded, however, audio recording of such victim's statements is encouraged.

# Chula Vista Police Department

## Chula Vista PD Policy Manual

### *Portable Audio/Video Recorders*

---

- (d) Victims of sexual assault generally should not be video recorded without consent; however, audio recording of such victims' statements is encouraged.
- (e) Victims who are partially unclothed or nude shall generally not be video recorded; however, audio recording is appropriate.
- (f) Suspects who are nude or partially unclothed shall be covered as soon as reasonably possible to protect their personal privacy and dignity.
- (g) Members should generally not record victims or suspects in hospital or emergency room settings. In the event a member elects to make a recording, whether audio or video under this section, the member shall take all reasonable steps in consideration of the HIPPA rights of patients and the privacy of hospital staff. Members may video or audio record a suspect if the suspect's conduct is violent or threatening to staff or to members.
- (h) Members should use care when recording pre-planned tactical operations such as search warrants to avoid unnecessary public disclosure of current law enforcement entry tactics.
- (i) Members shall 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. This concern also applies when members enter a home in a non-warrant or non-exigent circumstance.
- (j) Requests by members of the public to stop recording shall be evaluated similarly, balancing the request for privacy with legitimate law enforcement interest in recording. 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 shall be activated in situations described above as soon as practicable.

#### 448.5.1 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.

#### 448.5.2 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.

# Chula Vista Police Department

Chula Vista PD Policy Manual

## *Portable Audio/Video Recorders*

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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).

### 448.5.3 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.

### **448.6 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. 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, such as training. 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, intimidation or ridicule. As part of the investigative record, recordings shall not be shared with others without a legitimate professional interest in the case, and should be considered "need to know" content.

Members without the "need to know" about the investigation shall be prohibited from viewing the video without the express permission of the division commander.

### **448.7 RETENTION OF RECORDINGS**

Any time a member records any portion of a contact that is required per the categorization schedule, the member shall categorize the video, record the related case number and transfer the file in accordance with current procedures for storing digital files. The member shall also document the existence of the recording in the related case report. Transfers shall occur at the end of the member's shift, or any time the storage capacity is nearing its limit or as otherwise directed by a supervisor.

While using Body Worn Cameras in conjunction with Evidence.com, members shall use the categorization and notation functions of Evidence.com to make notes within the system on cases where enforcement action was taken or for videos which should be retained. Notes such as case numbers, suspect names, and citation numbers will facilitate flagging videos for review, discovery and retention.

# Chula Vista Police Department

## Chula Vista PD Policy Manual

### *Portable Audio/Video Recorders*

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Members need not make notes on every recording, only recordings which should be retained according to the categorization schedule. Members using Taser Axon in conjunction with Evidence.com shall designate retention of their videos in Evidence.com according to the nature of the incident (felony, misdemeanor, traffic stop, field interview, etc.) by using the categorization feature. Uncategorized videos will be deleted after 90 days so it is critical that videos are appropriately categorized.

A member should transfer, tag or mark recording 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 or citizen complaint); the member shall promptly notify a supervisor of the existence of the recording. Supervisors, managers or evidence administrators may re-categorize recordings as they deem necessary.

The Department shall take all reasonable measures to ensure the security of stored recordings, whether audio or video, in an effort to prevent unauthorized access to said stored recordings.

#### 448.7.1 RETENTION REQUIREMENTS

It is the responsibility of the member making the recording to affirmatively categorize recordings in Evidence.com based upon the circumstances of the incident. All recordings shall 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 90 days.

While it is critical to retain recordings of evidentiary value, it is almost as important that files of insignificant incidents are deleted in a timely fashion according to schedule. The following retention schedule should serve as a guide; however, the camera program supervisor or any other supervisor or manager may extend the retention schedule of a recording based upon the significance of a case:

- (a) Homicides -permanent retention in Evidence.com AND all videos shall be recorded to a backup media, such as DVDs and logged into evidence in the Crime Lab.
- (b) Cases involving potential civil liability to the City -Until manually deleted
- (c) Felony (3 year retention)
- (d) All instances involving use of force, to include muscling techniques (3 year retention)
- (e) Misdemeanors including traffic related misdemeanors (2 year retention)

# Chula Vista Police Department

Chula Vista PD Policy Manual

## *Portable Audio/Video Recorders*

---

- (f) Citations (2 year retention)
- (g) Field Interviews (2 year retention)
- (h) Uncategorized (NO ACTION REQUIRED) - routine incident with no apparent investigative value -90 day retention

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

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

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

### **448.8 REVIEW OF RECORDINGS**

Audio and video recordings are designated by the Department as investigative records and are not subject to routine release through requests via the California Public Records Requests Act (CPRA), the Freedom of Information Act (FOIA), or other non-court ordered requests for audio or video records.

When preparing written reports, members should review their recordings as a resource and shall be granted access to review them upon request. However, members should not use the fact that a recording was made as a reason to write a less detailed report. With the exception of a timely public safety statement, members who are involved in a critical incident shall be allowed to review their own recording of the incident prior to giving a voluntary or compelled statement. Under no circumstances will such a delay be longer than 48 hours after the incident in the event of a compelled statement.

In the event that the recording of a member involved in a critical incident is damaged, destroyed, of poor quality or in the event that other members' recordings offer a better perspective of the critical incident than that of the subject member(s), members may be allowed to review the recordings of other members involved in said critical incident prior to giving a voluntary or compelled statement.

In such rare instances, at the discretion of the Chief of police, members may be allowed to review another member's recording if the other member was in the immediate proximity of the subject member and their recording offered the same scene orientation and perspective of the incident

# Chula Vista Police Department

## Chula Vista PD Policy Manual

### *Portable Audio/Video Recorders*

---

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance. Recordings may also be randomly audited by the Professional Standards Unit or Body Worn Camera program supervisor for quality control purposes.

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 an authorized designee or when the Chief determines such release is in the public's interest and the release will not compromise the integrity of the ongoing investigation.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (e) For purposes of training law enforcement personnel once the case has been adjudicated. Such training use shall not be disparaging or demeaning to members of the Department or the subjects of the recording. Examples of useful recordings may include contact and cover, pursuits, tactics or de-escalation techniques.

The Chief of Police shall have final Departmental authority in determining the release of recordings where not otherwise required by court order, statutory authority or other lawful authority.

All recordings should be reviewed by the Departmental Custodian of Records prior to public release (see PDM 810 -Records Release and Security). 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.

#### **448.9 EDITING, TAMPERING OR COPYING**

All audio and video recordings are part of the investigative record and shall be preserved in their original format without deletion, editing or tampering according to the retention schedule.

Members may not delete, copy, photograph, video record, or otherwise tamper with Department recordings without the express permission of the primary Body Worn Camera system administrator. Unauthorized tampering, editing or deletion of a video may result in discipline, up to and including termination.

Evidence.com has editing features which may be used to redact or obscure portions of recordings which may be sensitive. The editing features do not modify or alter the original recording;

# Chula Vista Police Department

Chula Vista PD Policy Manual

## *Portable Audio/Video Recorders*

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rather they create a second edited version for special circumstances. Only designated program personnel will have access to editing features.

### **448.10 COORDINATOR**

The Chief of Police or the authorized designee shall appoint a member of the [Department/Office] 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.

### **448.11 RETENTION OF RECORDINGS**

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

- (a) Incident 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 Chula Vista 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 90 days.

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

#### **448.11.1 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.