

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

#### 423.1.1 DEFINITIONS

AXON System:

- Software system accessible at designated workstations and utilized by the Department to store and verify the authenticity of digital images and which provide secure storage of digital audio files.

AXON SYSTEM PDRD:

- Portable Digital Recording Device

### 423.2 POLICY

The Vallejo 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.

#### 423.2.1 DESIGNATED SOFTWARE SYSTEM

**AXON:**

- The Department utilizes the AXON portable digital recording device (PDRD). Only trained personnel shall operate Department PDRD's
- Digital video recordings which constitute evidence shall be downloaded and stored within the Department's Evidence.com system. An Evidence Property Report shall be completed identifying the location as Evidence.com server.
- The use, duplication, and/or distribution of AXON files for anything other than booking a physical copy of a video into evidence for use in a criminal court case requires prior authorization from the Chief of Police.

### 423.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department regardless of whether those recordings were made with department-issued or personally owned recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings

## *Portable Audio/Video Recorders*

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### **423.4 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 malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members shall wear the recorder in a conspicuous manner. Whenever practical, members should notify persons that they are being recorded.

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

Prior to going in service, personnel shall test PDRD equipment to ensure the unit is properly charged. Personnel shall position the PDRD to facilitate recording, in accordance with operating instructions. PDRD are activated and deactivated manually.

Members shall 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 shall include the reason for deactivation.

Personnel shall upload PDRD data files at designated Axon workstations once, at minimum, during any shift in which the device is utilized, to:

- (a) Ensure storage capacity is not exceeded; and/or,
- (b) View uploaded data.

Defective devices shall be submitted to the Evidence Section, with a written description of the defect, including the serial number of the affected device.

After setting up an online account with Axon, members will then be able to access their individual videos through Evidence.com. Additionally, members will be able to access videos via their smartphone or a station computer.

Members will place the camera in the docking station which will simultaneously charge and upload all the videos into a secure cloud-based evidence storage facility. Members will also be able to tag videos with a case number or description through the members smartphone via a wireless connection.

#### **423.4.1 AXON DOCUMENTATION**

In addition to any Property Report or RIMS Evidence Property Manager entry, personnel utilizing a PDRD shall document its use in the pertinent:

- (a) Offense report
- (b) Citation
- (c) Arrest Report
- (d) In CAD, in the "Comment" section.

## Portable Audio/Video Recorders

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### 423.4.2 DATA RETENTION AND RELEASE

- It is the responsibility of the member(s) downloading a PDRD to identify any digital file associated with an investigation by noting the case number in the "Comments" section.
- Any PDRD files downloaded to physical media, including but not limited to CD ROM, DVD ROM, and/or thumb drives, shall be booked into evidence and are the responsibility of the Evidence Section. See *Computers and Digital Evidence Policy* for the submission of digital media.
- Members are prohibited from attaching any PDRD file to an email.
- Members shall not post PDRD videos to the Internet. (i.e. YouTube or any other website or form of social media).
- Employees shall not electronically forward or physically remove any PDRD video from the police department, unless a video is being signed out from the evidence section for use in a criminal court case.
- Digital PDRD files not associated with an investigation are automatically deleted from the evidence.com after two years.

### 423.4.3 SUBMISSION OF DIGITAL MEDIA

See *Computers and Digital Evidence Policy* for required procedures for the submission of digital media used by cameras or other recording devices.

### 423.5 ACTIVATION OF THE PORTABLE RECORDER

This policy is not intended to describe every possible situation in which the portable recorder shall be used, although there are many situations where its use is appropriate.

Members shall activate their recorder whenever there is a reasonable expectation of an adversarial encounter, violence, inter-personal conflict, use of force, or display of weapons or any time the member believes it would be appropriate or valuable to record an incident.

In addition, the portable recorder shall be activated in any of the following situations:

- (a) Prior to arrival at dispatched or self-initiated responses to calls for service
- (b) All enforcement and investigative contacts including stops and field interview (FI) situations
- (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.

## *Portable Audio/Video Recorders*

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Requests by members of the public to stop recording should be considered using this same criterion. Recording shall resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Activation of the PDRD is not required for routine, unplanned police-citizen interactions or public contacts including but not limited to providing directions/information, signing off mechanical violations, friendly greetings, or casual conversations with citizens or city officials.

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 reasonably practicable.

### **423.5.1 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.

### **423.5.2 CESSATION OF RECORDING**

Once activated, the portable recorder shall 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).

### **423.5.3 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.

### **423.6 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. All such recordings shall be retained at the Department.

## *Portable Audio/Video Recorders*

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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.

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

### **423.6.1 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).

### **423.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

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

A member shall transfer, tag and categorize 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 shall promptly notify a supervisor of the existence of the recording.

### **423.8 REVIEW OF RECORDINGS**

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.

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:

# Vallejo Police Department

Vallejo PD Policy Manual

## *Portable Audio/Video Recorders*

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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.

### **423.9 PDRD SYSTEM 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.

### **423.10 RETENTION OF RECORDINGS**

By law, recordings of the below listed incidents should be retained for a minimum of two years (Penal Code § 832.18). However, the Vallejo Police Department retains all recordings for a minimum of five years:

- (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

# Vallejo Police Department

Vallejo PD Policy Manual

## *Portable Audio/Video Recorders*

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- (d) Recordings relevant to a formal or informal complaint against an officer or the Vallejo 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).

In the event of an accidental activation of a PDRD where the resulting recording is of no evidentiary value, the recording member may request that the recording be deleted by submitting an email request to their division commander. If appropriate, the division commander will approve and forward the request to the PDRD System Coordinator for deletion.

### 423.10.1 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.