

## Portable Audio/Video Recorders (AVR)

### 450.1 PURPOSE AND SCOPE

Police body-worn audio/video recorders, herein referred to as "AVR" are provided and assigned to designated personnel for use as a law enforcement tool for capturing audio/video recordings of critical incidents, interactions with the public, and to provide an additional means of evidence collection in criminal and administrative investigations. The audio/video captured by the AVR may not accurately reflect the perception of the involved officer(s). The AVR must be viewed in consideration with all other available evidence such as witness statements, observations of involved personnel, and forensic analyses. This policy provides guidelines for the use of portable AVR devices by members of the department while in the performance of their official duties.

### 450.2 POLICY

The Richmond Police Department will provide members with body-worn AVRs for use during the performance of their duties. The use of AVRs is intended to enhance the mission of the department by accurately capturing interactions between members of the department and the public.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes. Personnel are strictly prohibited from using privately-owned video recording devices to access recorded data on department-issued audio/video cameras for personal use, and from uploading recorded data onto public and social media websites.

Sworn personnel whose primary duty assignment involves the wearing of a Richmond Police uniform and frequent contacts with the public are required to wear and use a body-worn AVR when in service. Affected assignments include, but are not limited to, Patrol, Traffic/Special Events, and School Resource Officers. Body-worn AVRs may also be assigned to special units within the department for use by sworn and or civilian personnel for use during certain special activities or operations.

Body-worn AVR training is required for all personnel who are required to use or who otherwise may become involved with body-worn AVRs before these devices are deployed for official use. In addition to personnel required or assigned body-worn AVRs, training is also required for supervisors whose officers wear recorders, Records Section personnel, Property Unit personnel, training staff, and Professional Standards Unit personnel.

Body-worn AVR training shall minimally include the following:

- (a) All practices and protocols of department body-worn AVR policy;
- (b) Relevant state laws governing consent, evidence, privacy, and public disclosure of digital recordings;
- (c) Procedures for operating the equipment safely and effectively;
- (d) Scenario-based exercises that replicate situations that personnel might encounter in the field;
- (e) Procedures for downloading and indexing recorded data;
- (f) Procedures for accessing and reviewing recorded data;

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- (g) Procedures for preparing and presenting digital evidence for court;
- (h) Procedures for documenting and reporting any malfunctioning device or supporting systems.

### **450.3 PRIVACY**

All recordings made by department personnel acting in their official capacity as members of the department, are the property of the Richmond Police Department and are not considered private, regardless of whether those recordings were made with department-issued or personally owned recording devices.

Recordings shall not be made of other department personnel during routine, informal, non-enforcement related activities unless recording is required by a court order and is authorized by the Chief of Police as part of an administrative or criminal investigation. Other prohibited recordings include the following:

- (a) Conversations involving confidential informants and undercover officers;
- (b) Places where a reasonable expectation of privacy exists, such as restrooms, locker rooms;, or supervisory/management offices;
- (c) Strip searches;
- (d) Conversations with other agency personnel that involve case tactics or strategy.

In the event of an unintentional or inappropriate activation of the camera where the resulting recording is not evidence in a criminal case or administrative investigation, and when the recording may unreasonably infringe on personal privacy concerns or rights, the recording employee may request that the video file be deleted by submitting a written request to delete the file with the recording employee's supervisor. Such request shall contain the specific reasons for recommending deletion of a recording. An officer holding the rank of Captain or higher shall review the file and approve or deny the request.

### **450.4 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed Patrol officer or other department member directed to utilize an AVR will be responsible for making sure that he/she is equipped with an AVR issued by the department, and that the recorder is in good working order. Non-functioning recorders must be reported to a supervisor immediately and the officer making such a report should be equipped with a temporary replacement unit prior to going into service. It is the obligation of the assigned employee to follow up with Information Technology (IT) staff for repair or replacement of a non-functioning unit.

Uniformed members should wear the AVR in a conspicuous manner. Video recorder placement must provide a forward-looking view on the wearer. The AVR can be situated on the chest, shoulder, collar, head, or eyeglasses of the wearer with due consideration for field of vision, comfort, functionality, ease of use, and the type of AVR being used.

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Any member of the department assigned to a position outside of the Patrol Division may carry an approved portable recorder with the approval of their supervisor for work-related purposes at any time the member believes such a device may be useful.

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

The assigned member is required to note the existence of the recording in the associated incident report, crime report, citation or administrative communication. In the event an activity required, by policy, to be recorded is not captured in whole or in part, the member must articulate the reasoning in writing. It is recognized that situations could arise when circumstances justify not recording an incident.

These include, but are not limited to, the following:

- (a) When conditions make it unsafe or impossible to activate the AVR;
- (b) In the exercise of discretion, according to policy, a decision is made not to record because doing so would be detrimental to other department priorities (e.g., protecting privacy rights, preserving community relations, or facilitating intelligence gathering);
- (c) When the AVR malfunctions or otherwise fails to capture the event.

The Taser Axon Body 2 AVRs are linked to the Taser CED. When the Taser CED is taken out of 'Safe' mode, Taser AVRs that are within 30 feet of the Taser CED and turned on will be automatically activated. To minimize the number of accidental activations, officers shall adhere to the following: While at the main police building (1701 Regatta Bl), including the parking lot, officers shall turn their Taser AVRs off, unless they are on a call for service or booking a prisoner.

Additionally, Taser CEDs shall only be 'spark-tested' in one of the locker rooms, or as a group with a supervisor present.

### 450.4.1 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).

Supervisors are discouraged from using the AVR to record interactions with the public when discussing personnel complaints, unless there are compelling reasons to record such meetings.

### 450.5 ACTIVATION OF THE AUDIO/VIDEO RECORDER

Personnel shall activate their AVRs to record calls for service, traffic/investigative stops, and other enforcement-related or investigative activities, unless doing so would jeopardize officer or public safety. Enforcement-related activities include, but are not limited to:

- (a) Traffic stops

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- (b) Pedestrian stops
- (c) Vehicle pursuits/failure to yield
- (d) Emergency responses
- (e) On-view criminal activity
- (f) Arrests
- (g) Prisoner transports
- (h) Prisoner booking (excluding strip searches)

Certain conversations need not be recorded:

- (a) Conversations with confidential informants or members of the public providing crime tips or other information where they wish to remain anonymous;
- (b) Sexual assault victim interviews;
- (c) Conferring with other officers, including supervisors, for strategic or tactical purposes;
- (d) Personal conversations.

Personnel shall not deactivate their AVR until after the conclusion of the specified activity.

While there may be circumstances in which the AVR cannot be activated immediately, the goal is to capture interactions with the public while providing police services. In the event an officer decides not to turn on the AVR based on the belief that their safety or the safety of the public is in jeopardy, the onus of providing evidence of such a fact is the employee's responsibility. Any failure to activate the AVR in a circumstance in which the objective facts dictate otherwise, may be cause for discipline.

### 450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Personnel 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).

Personnel shall not surreptitiously record another department member without a court order and authorization from the Chief of Police or the authorized designee.

### 450.5.2 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until the officer's 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.

Officers 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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### 450.5.3 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.

### 450.5.4 TIMING OF ACTIVATION

Personnel shall activate their AVRs as follows:

Non-emergency calls for service:

- (a) Prior to arriving on-scene, exiting the police vehicle, or contacting the involved parties.
- (b) For calls for service involving property loss or property damage only, and where the officer does not reasonably anticipate making contact with a suspect; after making contact with the victim the officer may de-activate his/her AVR.

Emergency calls for service and/or anytime an officer is responding Code 3:

- (a) At the time of dispatch.
- (b) When a decision is made to respond to a call for service (as primary or cover officer).

On-view or self-initiated activities:

- Prior to exiting the police vehicle, or contacting the involved parties.

### 450.5.5 SPECIALIZED UNITS/ASSIGNMENTS

School Resource Officers (SRO):

- (a) While on or around school grounds, SROs are restricted to activating their AVRs in cases of suspected criminal activity or when assisting school staff with matters related to disorderly or disruptive behavior in the school environment.
- (b) SROs should not activate their AVRs for routine interactions on school grounds, or when present for administrative meetings between staff, parents, and students.

Crime Scene Investigators (CSI):

- CSIs shall activate and deactivate their AVRs in the manner prescribed by this policy. However, CSIs may deactivate their AVRs when they transition into duties specifically related to crime scene investigation.

### 450.6 NOTIFICATION TO THE PUBLIC

Personnel should notify others that they are being recorded as soon as is practical. Upon initial contact, when feasible officers should provide the public with the following information:

- (a) Professional greeting
- (b) Name of the officer
- (c) Richmond Police Department
- (d) Notification of being audio and video recorded

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Such notifications are mandatory on traffic/investigative stops, enforcement related activities, and calls for service. If multiple officers are involved in an incident, it is only necessary for one employee to make such notification.

### **450.7 PROHIBITED USE OF AVRS**

Recordings and copies of recordings are for official use only. Officers are prohibited from using department-issued AVRs for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Officers 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.

Recordings shall not be used by any employee for the purpose of embarrassment or ridicule of any person.

Any employee who may have questions regarding the application of this policy is encouraged to seek clarification from supervisory personnel.

### **450.8 DOWNLOAD AND RETENTION OF RECORDINGS**

All recordings in a criminal investigation constitute evidence and shall be preserved. It is the responsibility of the individual officer to download data from the AVR by the end of each shift in which the AVR was used. In circumstances where the officer cannot complete the task, the officer's supervisor shall immediately take custody of the AVR and be responsible for downloading the data. AVR data will be downloaded and indexed as follows:

Incidents that result in the issuance of a case number:

- (a) Title - In the Title field, officers must type in the crime code.
- (b) ID - In the ID field, officers must type in the case number.
- (c) Categories - The Categories field sets the retention categories for the incident. In the Categories field, officers must select from one of the following:
  - 1. Felony (indefinitely)
  - 2. Felony w/use of force (indefinitely)
  - 3. Misdemeanors (5 yrs)
  - 4. Misdemeanors w/use of force (5yrs)
  - 5. Protocol Incident (indefinitely)
- (d) Tags - The Tags field is a free-form area where officers have the ability to enter any information deemed relevant. For the following case types, the officer must type in the most appropriate Tag, more than one Tag may apply to one incident:
  - (a) Canine contact

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- (b) CED activation
  - (c) CED display/point
  - (d) Hands/Feet
  - (e) Hate Crime
  - (f) Impact Weapon
  - (g) Vehicle Pursuit
- (e) Entering information into the CASES, DESCRIPTIONS, and NOTES fields are optional.

Incidents that result in a call clearance of Miscellaneous Complaint Report (MCR):

- (a) Title - In the Title field, officers must type in the acronym MCR and the appropriate MCR code number.
- (b) Categories - The Categories field sets the retention categories for the incident. In the Categories field, officers must select from one of the following:
  - 1. MCR Primary (1 yr)
  - 2. MCR Cover (1 yr)
  - 3. ADMIN (e.g., property damage, training, citizen complaint, etc.) - (5 yrs)
  - 4. TEST
  - 5. Accidental Activations
- (c) Entering information in the ID, CASES, TAGS, DESCRIPTIONS, and NOTES is optional.

### 450.8.1 RETENTION REQUIREMENTS

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 180 days.

### 450.9 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, employees should review their recordings as a resource. However, employees should not use the fact that a recording was made as a reason to write a less-detailed report. Employees are also allowed unrestricted access to relevant recordings to review in preparing for court testimony and consultation with the District Attorney or City Attorney. Supervisors are authorized to review relevant recordings as follows:

- (a) When they are investigating a complaint against an employee or a specific incident in which an employee was involved;
- (b) During an employee's probation period and when an employee is with a trainer;
- (c) When a supervisor needs to identify videos for training purposes, reports of meritorious conduct, or whenever such recordings would be beneficial in reviewing the employee's performance.

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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) By media personnel with permission of the Chief of Police or the authorized designee;
- (c) In compliance with a public records request, if permitted, and in accordance with the Release of Records and Information Policy;
- (d) In accordance with periodic, random internal audits of AVR footage to monitor compliance with the program, and to assess overall officer performance;
- (e) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case;
- (f) The Police Commission will have view only access whenever the file is associated with a Police Commission investigation, or upon authorization of the Chief of Police.

In accordance with the Contra Costa County Law Enforcement-Involved Fatal Incident (LEIFI) Manual, the initial interview of an officer involved in a LEIFI shall occur before the officer has reviewed any audio or video recordings of the incident. An involved officer will have an opportunity to review recordings after the initial statement has been taken, and he/she can be re-interviewed if either the officer or members of the investigating team believe it is necessary.

The AVRs of actor officers involved in a law enforcement involved fatal incident are to surrender their devices to a supervisor as soon as it is practical to do so. Actor officers are not to download their footage of the incident. It will be the responsibility of the investigative team supervisor to coordinate with the involved officers' supervisor to obtain footage of the incident.

In instances when administrative investigations are undertaken where any audio or video recordings of the incident exist, the initial interview of the subject employee shall occur before the employee has reviewed the recordings. An involved officer will have an opportunity to review recordings after the initial statement has been taken, and he/she can be re-interviewed if either the officer or the investigators believe it is necessary.

### **450.10 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;

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- (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) Ensure required personnel receive training on an annual basis;
- (i) Ensure all policies and procedures regarding AVR are evaluated and updated continually to reflect case law and best practices.