

## Portable Recording Devices

### 705.1 PURPOSE AND SCOPE

The purpose of this policy is to establish guidelines for the use of portable recording devices and the preservation of recorded evidence.

*Adopted 6-9-11 by Chief Thomas E. Schwedhelm.*

*Revised 5-16-12 by Chief Thomas E. Schwedhelm.*

### 705.2 POLICY

Recording of public contact is intended to assist employees in the performance of their duties in several ways:

- (a) Recorded contacts enable employees to preserve conversations, interviews, and other forms of communication that may be vital to successful criminal prosecutions.
- (b) Recorded contacts provide a factual record of an incident and can protect the department and its employees from false allegations.

### 705.3 GUIDELINES

- (a) All recording devices issued by the department are the property of the City; however, the responsibility for proper use, care and safekeeping rests with the employee to whom the equipment is issued. Recording equipment is to be used only for work related matters. Therefore, the recorded product is the property of the City.
  - 1. Employees shall notify their supervisor if their assigned recorder is not serviceable and a replacement will be provided.
- (b) Video or audio recordings of interviews relating to an ongoing investigation shall be retained in the appropriate official police file in accordance with the policy on Subpoenas for Department Personnel and Discovery Orders.
  - 1. Officers will make a notation in the body of the crime report that a recording pertaining to the investigation was made.
  - 2. Property/Evidence Technicians shall be responsible for the disposal of recordings in accordance with the policy on Evidence and Property Procedure.
  - 3. If the case is rejected or not submitted to the Sonoma County District Attorney, the recordings shall be retained in accordance with the department's purge criteria.
- (c) All employees who have been issued audio or video recorders are strongly encouraged when performing law enforcement duties to record public contacts that may:
  - 1. Result in or benefit any type of criminal investigation; or
  - 2. Lead to a personnel complaint.
- (d) Department employees shall not record another department employee without prior notification to that employee, except under the following circumstances:
  - 1. Pursuant to a court order.

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2. During an event where department personnel are present and it would be impractical to obtain permission prior to recording the employee.
3. Officers shall, whenever practical, notify others by use of the Radio Code 10-12, when they are recording in the presence of other officers.

#### **705.3.1 ACTIVATION OF RECORDING DEVICES**

Penal Code § 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief the conversation was private or confidential; however, Penal Code § 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation.

- (a) No member of this department may surreptitiously record a conversation of any other member of this department without the expressed knowledge and consent of all parties. Nothing in this policy is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code § 3303(g).
- (b) Any member of this department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes such a recording will be beneficial to the investigation.
  1. For the purpose of this policy, any officer contacting an individual suspected of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.

#### **705.4 RETENTION AND MANAGEMENT OF RECORDED DATA**

- (a) Each employee using a digital audio recorder shall save (download) recordings that have a criminal, civil, investigative or administrative evidential value from the digital recorders to a designated secure server using specified department computers and file management software.
- (b) Recordings made for the purpose of note dictation or report dictation are not considered evidence and shall be purged from the file management server on a routine basis. Because dictation files are not considered evidence, they shall not be retained as an official record or stored with other recordings related to criminal investigations.
- (c) If a digital recording is evidence in a criminal investigation, the employee shall attach the appropriate case number to the saved file and mark it as evidence in the file management software.
- (d) When an audio file has been identified as criminal evidence it shall be entered as an evidence item into the Evidence Tracker System. The item shall be described as a, "digital recording." The temporary storage location shall be identified as the "PUMA secure server."
- (e) Recordings made on other devices, including but not limited to cassettes, microcassettes, video cassettes, and DVDs, that are evidence in a criminal investigation shall be booked as evidence using the appropriate case number.
- (f) Employees who inadvertently or accidentally activate their digital audio recorders may delete the accidental recording before downloading to the server. Employees are otherwise prohibited from any attempt to delete, alter, edit, or otherwise change an evidentiary recording.

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1. Employees shall not make copies of recordings except as directed by a supervisor.
- (g) As part of an investigation, a supervisor may move an original recording to a secure folder on a department server, under their control. A supervisor may copy files from the secure folder and distribute those files as necessary to complete the investigative and/or disciplinary process.
- (h) Requests for copies of recordings shall be routed to the Records Bureau. Copies of digital recordings received from the Records Bureau are considered certified and shall not be released to other than the intended person or entity.
- (i) Recorded data will be retained pursuant to the department's retention policy. Written direction from a supervisor or manager must be received prior to the scheduled purge date, directing specific recordings be preserved beyond the normal retention date. Upon receipt of written direction, the department Technology Coordinator will move the specific recording(s) to a secure location on the server.
- (j) Review of Recorded Data: Recordings may be reviewed under the following circumstances:
  1. Department personnel reviewing their own recordings to conduct work related followup.
  2. An SRPD or Sonoma County District Attorney investigator who is participating in an official investigation, such as a personnel complaint, administrative investigation, or a criminal investigation.
  3. A supervisor evaluating an officer's performance.
  4. Pursuant to a subpoena authorized by a court.
  5. For training purposes.

#### **705.5 PERSONAL RECORDING DEVICES**

On duty employees are not required to carry a personal recording device. If an employee chooses to carry a personal recording device on duty, the device shall only be used in accordance with this policy to record official work related contacts or incidents. All evidentiary recorded contacts or incidents shall be entered into the Evidence Tracker System and shall not be kept, stored or retained elsewhere.