

Portable Audio/Video Recorders

450.1 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 Menlo Park Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

450.2 POLICY

The Menlo Park Police Department shall 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.

450.3 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.

450.4 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 shall 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.

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When using a portable recorder, the assigned member shall record his/her name, MPPD 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.

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 should include the reason for deactivation.

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).

450.5 ACTIVATION OF THE AUDIO/VIDEO RECORDER

Members shall activate the recorder during all on duty contacts with citizens other than a contact with another member, without their knowledge.

Members shall activate their recording devices prior to arriving to any in-progress or serious or high priority calls for service to preclude arriving on scene and being unable to activate the unit.

Members will have discretion to keep recording devices off during conversations with crime witnesses and members of the community who wish to report or discuss criminal activity. When determining whether to record interviews with witnesses and members of the community who wish to share information, members should always consider both the evidentiary value of the recording and the subject's comfort with speaking on camera. To better capture evidence, it is recommended that members record statements made by witnesses and people sharing information. However, if a person will not talk unless the recording device is turned off, members may decide that obtaining information is more important than recording.

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. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer an 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 should be activated in all situations as soon as reasonably practicable.

450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

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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.

450.5.2 SURREPTITIOUS USE OF AUDIO/VIDEO RECORDER DURING INVESTIGATIONS OF PERSONNEL COMPLAINTS

Members are prohibited from surreptitiously recording any conversation in which a person is making a personnel complaint or allegation of such. In these situations, the member taking the complaint shall advise the complainant that the conversation is being recorded. If the complainant refuses to be recorded, the member shall discontinue recording, and will indicate this fact in the documentation created regarding the complaint or allegation. It is recommended that a witness member be utilized in cases which a complainant refuses to be recorded.

450.5.3 CESSATION OF RECORDING

Once activated, the portable audio/video recorder should remain on continuously until the member's direct participation in the incident is complete. Recordings may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident, or when speaking to other members outside the presence of involved parties to the incident. Officers shall reactivate the recording device upon reinitiating contact or a new contact with any citizen.

450.6 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.

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, harassment or ridicule.

450.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS

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Members shall upload all digital recorded files in accordance with current procedures for storing digital files, at the end of their shift and anytime the storage capacity is nearing its limit.

Any time a member uploads a digital file that will or may be used as evidence in a criminal or non-criminal case, the member shall mark the file with all pertinent information required by the department's digital recording software, and will cause that file to be marked as "evidence" in the system.

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.

450.8 RETENTION OF RECORDS

Citizen contact recordings shall be retained for a minimum of (2.5) years. All recordings which are classified as evidence will be retained for a period of time determined by applicable laws and the City of Menlo Park's retention guidelines.

450.8.1 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 Menlo Park 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 180 days.

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

450.8.2 AUDIO/VIDEO RECORDING DESTRUCTION REQUEST AND WAIVER

Under certain circumstances, a member of the public may request that a video and/or audio recording of a "non-event" they were involved in may be destroyed after one (1) year. The circumstances allowing a destruction of what is defined as a "non-event" include:

- (a) Requesting person must be at least eighteen (18) years of age or have written approval by a parent or guardian.
- (b) Event cannot include any contact involving criminal activity which resulted in a citation, arrest or administrative action to any person involved.
- (c) Event cannot be part of or related to any active or ongoing criminal investigation by any public agency.
- (d) If the recording involves more than one person, all persons captured in the recording must agree to terms set forth.
- (e) Requesting individuals waive ALL rights to file claims or suits against all members of the City of Menlo Park and any of their agents.
- (f) Requesting individuals waive their ability to file ANY criminal or civil complaint in federal or state court concerning the incident in which the recording device was used.
- (g) Requesting individuals waive the ability to submit a personnel complaint to the Menlo Park Police Department or other government agency concerning the incident in which the recording device was used.

The police department also reserves the right to deny any request for any reason not set forth above.

450.8.3 AUDIO/VIDEO RECORDING DESTRUCTION WAIVER REQUEST AND PROCEDURES

The police department shall make available an "Audio/Video Recordings Destruction Request" form, both electronically and in paper, for any individual who meets the criteria in section 450.8.1 to request a destruction of a qualified event. The form shall enumerate both general instructions and terms of the agreement for the destruction and shall be signed by the requesting party which must be witnessed and attested to by a Notary Public.

Any request which is submitted and is missing required information, signatures or attestations, shall be deemed incomplete and shall not be acted upon.

When a completed request is received by any member of the department, the request shall be routed to the Administrative Sergeant who shall investigate the request and determine whether it fits the criteria

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enumerated in section 450.8.1. The Administrative Sergeant shall generate a report with their conclusions and recommendations, which shall be forwarded to the Special Operations Commander, who shall make a final recommendation to be forwarded to the Chief of Police for a final determination.

The requesting person shall be notified of the department's decision within sixty (60) days of the request.

All decisions will be considered final and no appeals will be allowed.

If a request is denied, the recording in question shall be maintained pursuant to section 450.8.

All completed requests shall be maintained by the Administrative Sergeant for two and one half (2.5) years.

450.9 RELEASE OF RECORDINGS

All recordings shall 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 by law or order of the court.

450.10 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:

- 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.

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450.11 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.