

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

450.1.1 DEFINITIONS

Body worn cameras (BWC) - A device individually worn by officers that can capture audio and video when activated by the officer.

Digital audio recorder (DAR) - A device individually worn by officers that can capture audio when activated by the officer.

Digital Evidence Management System (DEMS) – A management system designed to digitally collect, store, secure, disseminate and purge recorded media. The digital recordings are accessible to authorized personnel and maintain an audit trail of user activity.

450.2 POLICY

The Union City Police Department may provide employees 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. Officers shall only use a department-issued DAR or BWC. All video and/or audio recordings created while on duty, to include photos of crime scenes, traffic accidents, arrests, subject stops, traffic stops, prisoner and witness interviews, evidence, and any other daily activity are the property of the Union City Police Department. Officers shall not mix work related recordings with their personal information or personal recordings. Additionally, officers shall not use department issued video or audio recording devices and recording media for personal use.

Officers shall utilize their DAR and BWC in accordance with the provisions of this policy in order to ensure the proper and most effective use of these devices.

Except for official law enforcement related purposes, duplication or dissemination of any recording outside the Union City Police Department is strictly prohibited without specific written authorization from the Chief of Police or his/her authorized designee.

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

Union City Police Department

Union City PD Policy Manual

Portable Audio/Video Recorders

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 employee issued a BWC will be responsible for making sure that he/ she is equipped with a charged BWC and that the BWC is in good working order. Employees shall keep their BWC powered ON whenever there is a likelihood that use of the BWC might be required as outlined in policy. Powering down BWCs to save on battery life is permissible when employees are inside the Police Administrative Building (PAB) or department substations for extended periods of time. However, it is incumbent on members who choose to power OFF the BWC to power ON the BWC upon exiting department buildings or when there is a likelihood of BWC activation in accordance with policy.

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.

If the BWC is not in working order or malfunctions at any time, the employee shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed employees should wear the BWC in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

When using a DAR, the assigned employee should record his/her name, UCPD 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 should document the existence or lack of existence of a recording in any report or other official record of the contact. Members should also document any instance where the BWC or DAR malfunctioned or the member deactivated the recording prior to concluding a contact that otherwise requires the use of a BWC or DAR.

Employees are not required to wear a BWC while attending a ceremonial event where enforcement activities are not anticipated.

450.4.1 NON-UNIFORMED EMPLOYEE RESPONSIBILITIES

Employees issued a BWC, and who are assigned to non-uniformed positions, should have their BWC or DAR available to be used if needed. Such non-uniformed employees are responsible for ensuring the recording devices are in good working order prior to going on duty and shall use the device in accordance with this policy whenever they are involved in pre-planned events or pre-planned enforcement as listed in this policy.

Union City Police Department

Union City PD Policy Manual

Portable Audio/Video Recorders

Non-uniformed employees assigned to a special assignment or task force should follow the policies and guidelines for use as set forth and agreed upon by the Chiefs of Police whose members make up the task force.

Supervisors or managers may waive an employee's designation to carry or use a device when the circumstances dictate that carrying the device would jeopardize officer safety or the investigation; including but not limited to confidential informants or special investigations. Any supervisor who waives an employee's designation to carry the device should be able to explain the circumstances of the police operation or conditions that would be jeopardized or inhibited by the employee carrying the recorder.

450.4.2 SUPERVISOR RESPONSIBILITIES

Supervisors shall ensure proper performance pursuant to this policy regarding DARs and BWCs.

Supervisors shall ensure that officers properly document the activation of their DAR or BWC in the associated report. In cases where the officer's DAR or BWC was not activated pursuant to this policy, the supervisor is expected to ensure proper documentation by the officer of the incident on the appropriate form and submit the form to his or her appropriate Lieutenant.

When improper use of the DAR or BWC becomes apparent, supervisors shall document the officer's policy violation accordingly based on the Standards of Conduct and Evaluation of Employees policies.

Supervisors should ensure the information captured on a BWC or DAR is downloaded to the server 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 (Penal Code § 832.18).

450.5 ACTIVATION OF THE BODY WORN CAMERA OR DIGITAL AUDIO RECORDER

Employees shall record the scene of enforcement contacts and field interrogation situations and any other time the employee reasonably believes that a recording of an on-duty contact may be useful. At no time is an employee expected to jeopardize his/her safety in order to activate a BWC or change the recording media. Employees shall, whenever possible, activate their recorder prior to initiating a contact to ensure the entire contact is captured in its entirety. Once started, recordings should continue without interruption until the contact ends. Employees issued portable recording devices shall activate the recorder for all pre-planned enforcement, detention, or search-related events (ie: search warrants, probation searches, warrant services) and for all field briefed events or incidents wherein a field briefing or other setup or impromptu planning occurs for an unfolding enforcement, detention or search-related action. 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. Employees who intentionally or unintentionally fail to record activity which is required by virtue of this policy shall be prepared to explain why the activity or a portion thereof, was not recorded.

Whenever reasonably possible, the portable recorder shall be activated prior to the beginning of any of the following situations:

Union City Police Department

Union City PD Policy Manual

Portable Audio/Video Recorders

- (a) All enforcement and detention contacts, including stops and field interview (FI) situations
- (b) Traffic stops and traffic violations
- (c) Vehicle pursuits
- (d) Any time a "Code Three" response is initiated
- (e) Responding to calls for service involving reported or suspected mentally ill persons
- (f) Suspect contact or contact with any visibly agitated or argumentative parties during any criminal investigation
- (g) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Employees 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 employee that such privacy may outweigh any 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.

BWCs and DARs may be deactivated pursuant to the conditions set forth in this policy.

450.5.1 TACTICAL OPERATIONS RECORDING

By their nature, pre-planned and impromptu tactical operations often involve increased levels of risk of confrontation with persons whose domicile, place of hiding, or fortification will be legally and tactically entered for police action. Intelligence briefings, tactical planning, or other discussion of police tactics occurring as part of the planning process for a tactical operation need not be recorded, but the points of confrontation during actual implementation of a tactical operation shall be recorded by personnel involved at the points of confrontation. For the purpose of this policy, points of confrontation during a tactical operation are defined as the points at which a domicile, structure, or area is tactically entered, searched for a suspect in hiding, or cleared with a search to determine whether suspects or threats are present.

Whenever reasonably possible, each officer directly deployed at a point of confrontation during a tactical event shall activate his or her portable recorder prior to the beginning of any of the following situations:

- (a) Dynamic, tactical, and/or forcible entries to structures
- (b) Contiguous with a tactical entry, the clearing of a structure to determine presence of threats or persons
- (c) Coordinated tactical takedowns or interventions of suspects in vehicles
- (d) Area searches for hidden or barricaded suspects

Union City Police Department

Union City PD Policy Manual

Portable Audio/Video Recorders

Officers involved in a tactical operation but not at a point of confrontation (e.g., outside perimeter positions, command post assignments, traffic control or other periphery assignments) need not activate their recorder unless circumstances arise as outlined in this policy.

Officers and supervisors should consider the use of the live feed application of the BWC during critical incidents. When used, officers at the scene should be informed that the live feed has been activated.

450.5.2 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.

450.5.3 CESSATION OF RECORDING

Once activated, the BWC or DAR should remain on continuously until the employee'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 or other breaks or disconnections from direct participation in the incident.

Employees may deactivate their BWC or DAR when dealing directly with victims or witnesses during an active investigation when the recording would jeopardize or impede the employee from gathering relevant information or while planning tactical operations.

Employees 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).

450.5.4 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.

450.6 PROHIBITED USE OF BODY WORN CAMERAS AND DIGITAL AUDIO RECORDERS

Members are prohibited from using a department-issued BWC or DAR 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 personally 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.

Union City Police Department

Union City PD Policy Manual

Portable Audio/Video Recorders

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. Recordings shall not be shared without supervisor approval.

450.6.1 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).

450.7 RETENTION REQUIREMENTS

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule.

450.8 RELEASE OF RECORDINGS

Recordings made using a BWC or DAR pursuant to this policy are department records and may only be released as provided in the Release of Records and Information Policy or for other authorized legitimate department business purposes.

450.9 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. Supervisors may also review recordings for auditing 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 the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release and Policy.

Union City Police Department

Union City PD Policy Manual

Portable Audio/Video Recorders

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.

Those reviewing video recordings should be aware that video footage has some limitations and also lacks human factors that may be associated with rapidly evolving and/or life threatening situations. These limitations and factors include, but are not limited to: cameras are two dimensional, the camera's view may be blocked by the wearer's hands or other objects, the camera may not capture what the wearer's eyes are actually seeing, lighting may affect the camera lens differently than human eyesight, wearers oftentimes have to make split second decisions, human physiological and psychological effects are often involved in life-threatening situations which may not be captured by the camera, the reactionary process, and other additional factors. These factors and limitations should be taken into consideration when reviewing video footage as it pertains to usage or an investigation.

As directed by the Chief of Police or their designee, under extenuating circumstances some recordings may not be available for review by officers.

450.10 TRAINING

Officers must complete an agency approved training to ensure understanding of this policy and proper use and operations of DARs and BWCs. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance and to incorporate changes, updates or other revisions in policy or equipment.

450.11 REVISIONS

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