



POLICE DEPARTMENT

Council Meeting Date: January 27, 2015
Staff Report #: 15-014

REGULAR BUSINESS: **Review and Discuss the Police Department's Policy on the Use of Body Cameras and the Retention of Recordings and Determine Whether Council Desires to Adopt a Policy or Ordinance**

RECOMMENDATION

Review and discuss the Police Department's policy on the use of body cameras and the retention of recordings and determine whether Council desires to adopt a policy or ordinance. It is the Police Chief and Police Department's recommendation that Council not adopt a policy or ordinance regarding retention or use of audio and video recorders worn by police officers.

POLICY ISSUES

This item involves Menlo Park Police Policy #450 - Use of Audio/Video Recorders, and whether it is appropriate or necessary for the City Council to adopt a policy or ordinance regarding the use of body cameras and or retention of recordings.

BACKGROUND

For almost a decade, the Menlo Park Police Department has issued and required officers to use digital audio recorders, recording all contacts with citizens. These audio files were uploaded to a secure internal server and used as evidence in criminal cases, civil cases, use of force reviews, personnel complaints and State and Federal law suits. In 2011, City Council approved the purchase of 40 body worn cameras through COPS grant funding. These cameras were beta tested and then issued to all patrol officers. In 2015, Council approved the purchase of upgraded body cameras to replace the existing units along with allowing for extra units to be used as back up cameras in case units required maintenance.

The Department created Menlo Park Police Policy #450-Use of Audio Recorders in 2005 when digital recorders were first introduced to the department. This policy was created using the Lexipol system which suggests best practices based on existing laws, rules and regulations. In 2011, Policy #450 was modified to include the body camera video recorders, revised and renamed "Use of Audio/Video Recorders". The revisions to the policy were again based on Lexipol recommendations and best practices.

ANALYSIS

A review of Policy #450 has been completed and some changes and modifications will be implemented in the policy. The modifications are as follows:

- Section 450.5 - add the following paragraphs:
 - “Members shall activate their recording devices while responding to any in-progress, serious or high priority call for service to preclude arriving on scene and being unable to activate the unit.”
 - “Members will have the discretion to keep recording devices off during conversations with confidential informants.”
 - “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 was not turned on for any portion of the contact. The member shall include the reason for not activating the recorder.”

- Add Section 450.5.3 to read - “Cessation of Recording-Once activated, the portable 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 of the presence of involved parties to the incident. Officers shall reactivate the recording device upon reinitiating contact or a new contact with any citizen.

The above modifications are based on best practices found in Lexipol, the U.S. Department of Justice Community Oriented Policing Services (COPS) Office report *Implementing a Body-Worn Camera Program*, and the ACLU report *Police Body-Mounted Cameras: With Right Policies in Place, a Win For All*.

There has been some discussion as to the retention of recordings, which at this time are maintained for a minimum 2.5 years, unless they are marked as evidence in which case they are maintained indefinitely. A minimum retention schedule of 2.5 is essential due to the following issues:

- The statute of limitations on Federal Title 42 USC 1983 lawsuits are two years and due to filing deadlines, the City may not be served until after two years from the incident.
- The statute of limitations on California state lawsuits is one year.
- There is no statute of limitations on Personnel Complaints involving officer misconduct; although a police department is required by law to complete any internal affairs investigation and serve discipline on an officer a year from the date of the filing of a complaint.

IMPACT ON CITY RESOURCES

None

ENVIRONMENTAL REVIEW

Not Applicable

PUBLIC NOTICE

Public Notification was achieved by posting the agenda, with this agenda item being listed, at least 72 hours prior to the meeting.

ATTACHMENTS

- A. Menlo Park Police Policy #450 – Use of Audio/Video Recorders

Report prepared by:

Dave Bertini

Police Commander

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Use of 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.

This policy does not apply to surreptitious interception of electronic communications for lawful authorized investigative purposes or to mobile audio video recordings.

450.2 POLICY

The Menlo Park 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.

450.3 PRIVACY

All recordings made by personnel acting in their official capacity as members of this department shall remain the property of the Department and should not be considered private, regardless of whether those recordings were made with department-issued or personally owned recorders.

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. Uniformed members shall wear the recorders in such a way as to have easy access to the function buttons and in a manner that renders the recorder secure.

Any member assigned to a non-uniformed position shall carry an approved portable recorder. The recorder shall be carried in a way that renders the recorder secure with the ability to record any contact with a citizen.

At the beginning of each shift, the member shall test the recorder to assure it is working properly. This can be accomplished by making a test recording that can then be deleted.

450.5 ACTIVATION OF THE AUDIO RECORDER

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

At no time is a member expected to jeopardize his/her safety in order to activate a recorder or change the recording media. However, the recorder should be activated in all situations as soon as practical.

450.5.1 SURREPTITIOUS USE OF THE AUDIO RECORDER

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be beneficial to the investigation (Penal Code § 633).

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Use of Audio/Video Recorders

Members shall not surreptitiously record another department member without a court order or unless lawfully authorized by the Chief of Police or the authorized designee.

450.5.2 SURREPTITIOUS USE OF AUDIO 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.

450.6 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.

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

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

450.7 RETENTION OF RECORDINGS

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.

450.7.1 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.

450.8 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.

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Use of Audio/Video Recorders

450.9 RELEASE OF RECORDINGS

Recordings made using portable recording devices 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.

450.10 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, members should review their recordings as a resource. However, 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, 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) In compliance with a public records request, if permitted, and in accordance with the Release of Records and Information Policy.

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