

DRAFT Berkeley PD Policy

Portable Audio/Video Recorders

TR APR 25 edits on TR Apr 19 draft---FOR DISCUSSION AT OUR APR 27 MTG.

Notes^[TR1]:

1. We still need to eventually go back and look at the proposed changes in red in sections: 450.2a, 450.3a, 450.4, and 450.4.1
2. I updated my Apr 19 draft to include our agreed upon revisions per our Apr 20 discussion. I revised section 450.7 near the end (uploading and viewing recordings) to merge with Richmond wording per our Apr 6 discussion. We should start our Apr 27 discussion by reviewing my edits, and then complete our review of sec 450.7 and beyond.
3. I have added GL wording from his draft at various locations as noted for discussion on Apr 27.

450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices (PRD) 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 otherwise.

This policy does not apply to lawful surreptitious audio/video recording, interception of communications for authorized investigative purposes or to mobile audio/video recordings (see the Investigation and Prosecution and Mobile Audio/Video policies).

450.2 POLICY

The Berkeley Police Department recognizes that video recording of contacts between Department personnel and the public provides an objective record of these events and that the use of a recording system complements field personnel in the performance of their duties by providing a video record of enforcement and investigative field contacts which can enhance criminal prosecutions, limit civil liability, increase transparency, and enhance professionalism in policing. A video recording of an event or contact also enables the delivery of timely, relevant, and appropriate training to maximize safety for both community members and BPD personnel and will improve the delivery of police services to the community.

While recordings obtained from video recorders provide an objective record of events, it is understood that video recordings do not necessarily capture all events, activities and information, or reflect the full experience ~~or state of mind~~ of the individual member(s) in a given incident.

450.2a Confidential Nature of Recordings^[TR2].

Body Worn Video use is limited to enforcement and investigative activities involving members of the public. The recordings will capture video and audio evidence for use in criminal investigations, administrative reviews, and other proceedings protected by confidentiality laws and Department policy. Officers shall comply with all applicable laws and policies

regarding confidential information. Unauthorized use or release of BWV recordings may compromise ongoing criminal and administrative investigations or violate the privacy rights of those recorded. Therefore, any unauthorized use or release of recordings or other violation of confidentiality laws

Department policies are considered serious misconduct and subject to disciplinary action^[TR3].

450.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

450.3a Training Required^[TR4].

Officers who are assigned PRD's must complete department-approved training in the proper use and maintenance of the devices before deploying to the field.

As part of a continual improvement process, regular review should be conducted by BPD staff of the training on this policy and the related use of PRD's under this policy. BPD shall develop a training curriculum which shall be reviewed by the PRC periodically.

450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed^[a5] 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 malfunctions at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever possible.

Officers are not required to obtain consent to record from members of the public when the officer is lawfully at the location ~~in the area~~ where the recording takes place.

Upon the approval of the police chief or his/her designee ~~Any~~ non-uniformed members may use an approved portable recorder. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use and notify persons that they are being recorded, whenever possible.

When using a portable recorder, the assigned member shall record his/her name, BPD 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 are required to document all activations of their PRD's except for test or accidental recordings and document the^[TR6] 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. In the event activity outlined in section 450.5 is not captured in whole or in part the member will need to document this and the reason the footage was not captured.

Documentation shall be provided in at least one of the following reports: crime report; consolidated arrest report, or Juvenal record, field interview, CAD notes, use of force report^[TR7]

Members are required to upload any video footage prior to conclusion of the shift^[TR8]. If the member is unable to do so the supervisor will perform the function^[TR9]

450.4.1 SUPERVISOR RESPONSIBILITIES

Supervisors ~~should~~ shall take immediate physical custody of a portable audio/video recording device ~~as soon as practicable~~ when the device may have captured an incident involving a use of force, an officer-involved shooting or death or other serious incident, and ensure the data is downloaded^[TR10] in a timely manner as prescribed by BPD policy^[TR11]; (Penal Code § 832.18).

Supervisors shall also^[TR12]:

- o Ensure that officers assigned PRD equipment have completed Department-required training and are familiar with applicable policies and procedures;
- o Conduct periodic inspections of officers assigned PRD equipment and ensure that the cameras are properly affixed to the officers' uniforms and fully operable;
- o Ensure officers upload all BWV recordings at the end of their shifts; and,^{[TR13][TR14]}
- o Review relevant PRD recordings prior to submitting any administrative reports (e.g. non-categorical use of force investigations, pursuits, officer-involved traffic collisions)

^[TR15]

Supervisors shall report any defective equipment, remove it from service, and ensure it is immediately replaced.

450.5 ACTIVATION OF THE PORTABLE RECORDER

Members shall - activate the recorder as required by this policy or at any time the member believes it would be appropriate or valuable to record an incident within the limits of privacy described herein.

The portable recorder shall be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations

(b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops

(c) Self-initiated activity in which a member would normally notify the Communications Center

(d) Probation or parole searches

(e) Service of a search or arrest warrant

(f) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

~~(g) Detentions and arrests~~

~~(h) Vehicle pursuits~~

~~(i) Conducting searches of persons or property~~

~~(g) Transporting any detained or arrested citizen^{TR16}~~

Crowd Control Activation^{TR17}.

During crowd control, protest or mass arrest incidents members shall use their PRD's consistent with this policy, and when directed by the Incident Commander. The Incident Commander shall document their orders in an appropriate report (e.g. Operations Plan or After Action Report) and provide the orders to all personnel. (Okay 2/10)

Add GL Wording on General Order C1 below(just new paragraph)

The ban in BPD General Order C-1, Intelligence Procedures for First Amendment Activities, on intelligence gathering on "political, religious, or social views or activities of individuals or groups, unless such views or activities directly relate to criminal conduct," prohibits cameras being used to gather intelligence on First Amendment protected speech, associations, or religion.

Recording is permitted, but not required under any of the following circumstances (from OPD policy):

1. Members taking a report when the information available to them indicates the suspect is not on the scene;
2. During a preliminary investigation with a child abuse victim or a victim of a sexual assault;
3. Members meeting with an Confidential Informant; or
4. Members on guard assignment on police, medical, psychiatric, jail or detention facility. Members shall assess the circumstances (e.g., suspect's demeanor/actions, spontaneous statements, etc.) of each guard assignment, on a continuing basis, to determine whether to discretionarily activate or de-activate their recorder.

Personnel shall advise or obtain consent from victims or witnesses when taking a recorded statement.

Statement Taking

Personnel are authorized to use the PRD's to record statements in lieu of taking a written statement. Personal shall advise and obtain consent from child abuse or sexual assault victims, or their guardians before taking a PRD recorded statements. PRDs, however, shall not be used to record statements from child abuse or sexual assault victims.

a. Personnel shall advise or obtain consent from victims or witnesses when taking a PDRD recorded statement.

b. PDRD statements shall be recorded as an individual separate file, baring exigent circumstances. Therefore, during a required activation, where none of the de-activation criteria have been met, members may temporarily de-activate their PRD to record individual separate statements.

c. Personnel whose PDRD is not already activated shall activate it before and deactivate it after each statement is taken to create a separate individual file.

Members 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 member that such privacy may outweigh any legitimate law enforcement interest in recording or where privacy will not be maintained in accordance with this policy. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Informal community interactions differ from "consensual encounters" in which officers make in an effort to develop reasonable suspicion to detain or probable cause to arrest. To strengthen relationships between police and citizens, officers may use discretion regarding the recording of informal, non-enforcement related interactions with members of the community, but in no case will recordings be made that are in conflict with the provisions of this policy. [TR18]

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 situations described in this policy [TR19] above as soon as practicable.

Stopped here as of 2/10/16

450.5.1 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.

450.5.2 CESSATION OF RECORDING [JJ20]

Once activated, the portable recorder should remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria required herein for

activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Members 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).

Members shall not de-activate their PDRD, when it was activated as required by this policy, until one of the following occurs^[TR21]^[JJ22]:

- a. Their involvement in the citizen contact, arrest or detention has concluded or the officer becomes a hospital guard. ~~becomes a hospital guard;~~
- b. They receive an order from a ~~higher ranking~~ higher-ranking member to deactivate;
- c. They are discussing administrative, tactical or law enforcement sensitive information away from the citizen;
- d. They are at a location where they are not likely to have interaction or a chance encounter with the suspect (e.g. outer perimeter post, traffic control post, etc.);
- e. The searches requiring activation ~~as~~ have concluded and the member believes they will have no further interaction with the person;
- f. They reasonably believe the recording at a medical facility ~~hospital~~ may compromise patient confidentiality;
- g. A pursuit has been terminated and the member performs the required actions or notifies Communications they are in-service;
- h. They are interviewing an informant for the purpose of gathering intelligence. At the conclusion of the interview, the PDRD shall be re-activated until no longer required by policy.
- i. They are meeting with an undercover officer. At the conclusion of the meeting, the PRD shall be re-activated until no longer required by policy.

After a member de-activates their PRD, it is their responsibility to ensure they re-activate their PDRD should the circumstances require

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 or giving or sending copies to others unless authorized by this policy.

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^[TR23].~~ Members shall not duplicate or distribute such recordings, except as authorized by this policy. for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned ~~recording~~ devices for video recording while^[TR24] 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^[TR25].~~

Note: Sgt. Okies has concerns about not allowing exceptions for personal devices^[TR26] if there is no other way to get the evidence.

TR note on above. Oakland prohibits the use of personal devices (pg. 1, I.F), LA-no personal devices unless expressly authorized by supervisor., Richmond-prohibited use of personal devices unless approved by Watch Commander, BART – dept issued devices required unless expressly approved by police chief^[TR27].

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

PROHIBITION AGAINST MODIFICATION OF RECORDINGS. Officers shall not copy, edit, alter, erase, or otherwise modify in any manner PRD recordings except as authorized by law or Department policy. Any violation of this provision is considered serious misconduct and subject to disciplinary action. (LA pg. 3)

450.7 RETENTION AND VIEWING^[TR28] OF RECORDINGS

Any time a member records any portion of a contact that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number and transfer the file in accordance with current procedure for storing digital files^{[TR29][JJ30]} and document the existence of the recording in the related case report. Transfers should occur at the end of the member's shift, or any time the storage capacity of the recorder is nearing its limit. In circumstances when the officer cannot complete this task, the officer's supervisor shall immediately take custody of the portable recorder and be responsible for downloading the data. Officers must properly categorize and tag video recordings any time they are downloaded.

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 and document the contact appropriately.

Members are prohibited from intentionally erasing, altering, reusing, modifying, or tampering with audio video recordings. Any violation of this provision is considered serious misconduct and subject to disciplinary action. (LA pg. 3)^[TR31]

Left off here on 3/23/24/16—Review this on Apr 6 after reviewing the previous sections noted

Start here on Mar 23^[TR32]

Start here (again) on Apr 20^[TR33]

Start here and Review Use of Force definition and other TR edits per previous mtgs on Apr 27

Uploading and Viewing Recordings ----All wording through 4.C below is from Oak policy

A. Level 1 Use of Force, Level 1 Pursuit or In-Custody Death^[TR34]

1. In the event of a Level 1 use of force, Level 1 pursuit or an in-custody death, all PDRD recordings shall be uploaded to the server as soon as practical.

a. An involved or witness member's PDRD shall be taken from them and secured by a supervisor, commander or appropriate investigator, as necessary. Involved members are not to download their footage of the incident. It will be the responsibility of the investigation team's supervisor to coordinate with the involved member(s) supervisor to obtain footage of the incident. The recordings shall be uploaded by personnel designated by the CID investigator.

b. After the recordings are uploaded, the CID investigator or designee shall turn the PDRD in to property until the CID and IAD Commander determine it may be released back to the member. The CID investigator shall ensure the chain of custody is documented in their report.

c. All personnel uploading secured PDRDs shall document that fact in their report and the "Comment" field of each video file they uploaded.

b. Personnel uploading secured PDRD video files shall not view the files unless authorized by the CID investigator.

2. No personnel involved in or a witness to the incident may view any audio/video recordings prior to being interviewed by the appropriate investigative unit and receiving command approval.

3. Once a member's report(s) has been submitted and approved and the member has been interviewed by the appropriate investigator, the investigator will show the member his/her audio/video. This will occur the involved member will have an opportunity to review the recordings prior to the conclusion of the interview process.

Personnel An involved member will be given the opportunity to provide additional information to supplement their statement in a separate document or separate section of the report and may be asked additional questions by the investigators. In no case shall a member alter a report made prior to reviewing the recording.

B. Investigation of a Member

1. Criminal - Personnel who are the subject of a criminal investigation may not view any audio/video recordings related to the incident except upon approval, as specified below, by the lead investigator or IABCID or IAD Commander.

2. Administrative — Personnel having received notification (Complaint Notification Report (CNR)) from the IAD and who are considered to be a subject or witness officer, may not view any audio/video recordings related to the incident except upon approval, as specified below, by the IAD Commander. In instances where a complaint has been filed and administrative investigations are undertaken where any audio or video recordings of the incident exist, the initial interview of the subject employee or witness (added by TR) shall occur before the employee or witness (added by TR) 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 necessary.

As of Apr 6 subcom has not reviewed sections below this point.

3. Requesting Review of Audio/Video Recordings

Subject or witness personnel wanting to view any of the audio/video recordings related to the incident shall make a request to do so, in writing or via email, to the CID or IAD Commander, as appropriate.

4. Approval or Denial to Review Audio/Video Recordings

a. The CID or IAD Commander receiving the above request shall notify the member, in writing or via email, of the approval or denial to view the recordings. The CID or IAD Commander shall document the approval or denial in the case file notes/log or include a copy of the approval or denial correspondence in the case file.

b. Approval to view the audio/video recordings may be made by the CID or IAD Commander as long as he/she has determined that allowing the recordings to be viewed will not be detrimental to the investigation.

C. Investigatory Review

Personnel assigned to CID or other investigatory units are authorized to view any PDRD video file associated to their active investigations, unless otherwise prohibited by policy.

Investigators conducting criminal or internal investigations shall:

1. Advise the Project Administrator or a System Administrator to restrict public disclosure of the PDRD file in criminal or internal investigations, as necessary.
2. Review the file to determine whether the PDRD file is of evidentiary value and process it in accordance with established protocols.
3. Investigators shall notify the System Administrator to remove the access restriction when the criminal/internal investigation is closed.

The subcom wanted to consider the Richmond language on the above section along with Oaklands. Below is Richmonds language [TR43] (pg. 66 sec 450.9):

In accordance with the Contra Costa County Law Enforcement Involved Fatal Incident (LEIFI), 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 AVR's 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 investigating 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 necessary [TR44]-[TR45]

450.7.1 RETENTION REQUIREMENTS (See GL's draft for his comments)

The Berkeley Police Department has twelve (12) categories to tag and retain our cases in Evidence.Com. Each one is listed below with the current retention cycle. It should be noted that retention times can be extended at any time by a Supervisor, Internal Affairs Bureau, Id Technician, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee. Categories can also be added if needed.

The requirements below are essentially the same as BART Pg. 38^[TR46]

- (a) 01) INFRACTION VIOLATIONS 2 YEARS
- (b) 02) DETENTIONS 2 YEARS
- (c) 03) AID TO CITIZEN 1 YEAR (GL---shorter)
- (d) 04) COLD REPORT 1 YEAR (GL need more)
- (e) 05) ARREST (AT STATUTE OF LIMITATIONS) ^[TR47] (GL---unclear)
- (f) 06) OUTSIDE ASSIST 1 YEAR (GL---need more)
- (g) 07) CONSENSUAL CONTACTS 1 YEAR (GL----shorter)
- (h) 08) SICK OR INJURED COMMUNITY MEMBERS 3 YEARS ^[TR48] (GL----shorter)
- (i) 09) STATEMENTS (AT STATUTE OF LIMITATIONS) ^[TR49] (GL----need more)
- (j) 10) USE OF FORCE (UNTIL MANUALLY DELETED) ^[TR50] (GL---unclear)
- (k) 11) UNATTENDED DEATH / HOMICIDE (UNTIL MANUALLY DELETED) ^[TR51] (GL----unclear)
- (l) 12) TESTING / ACCIDENTAL 30 DAYS

450.8 REVIEW OF RECORDINGS.

When preparing written reports, members should review their recordings as a resource^[TR52]. However, members shall not retain personal copies of recordings. Members shall ^[TR53] ~~should~~ not use the fact that a recording was made as a reason to write a less detailed report.

See Oak, Pg. 8,c,d,2,3 for ideas on above.^[TR54]

Supervisors^[TR55] 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^[TR56], 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 or District Attorney personnel who are otherwise authorized [TR57] to review evidence in a related case.

Unredacted footage should be made available in a timely manner to the attorney of any filmed subject who is seeking to file a complaint or who is a criminal defendant regarding the filmed incident [TR58].

(c) By media personnel with permission of the Chief of Police or the authorized designee. [TR59]

(d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

Make footage available to promote accountability with appropriate privacy safeguards in place. Footage that captures police use of force should be made available to the public and press, within the constraints of the law. The identities of civilians who appear in the recording may be obscured when responding to requests from members of the public or press who do not appear in the recording [TR60].

(e) By training staff [TR61] regarding incidents which may serve as a learning or teaching tool.

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.

In the event of an officer involved shooting or other incident involving the death of a subject officers shall provide an initial interview before they review 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 or she can be re-interviewed if either the officer or members of the investigating team believe it is necessary.

Footage that does not have a connection to criminal activity under the definition of BPD General Order N-17 (Suspicious Activity Reporting/SAR) shall not be shared with law enforcement, national security, military, or other government agencies outside of Berkeley, other than to aid in the examination of police practices, or as directed by a court.¹ [TR62]

¹ "The standard by which the determination as to whether information may be used to create a SAR is made in circumstances involving a named or identified individual or group. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount to a misdemeanor or felony.... Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.... Race, ethnicity, national origin, or religious affiliation should not be considered as factors that create suspicion (although these factors may be used as specific suspect descriptions)."

<http://www.ci.berkeley.ca.us/uploadedFiles/Police/Level 3 - General/GO%20N-17 18Sept12.pdf>

450.9 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.

~~(h) 2. User training. As part of a continual improvement process, regular review should be conducted by BPD staff of the training on when to activate and de-activate cameras. The PRC should also review the training curriculum [TR63].~~

~~450.10 Consequences for non-compliance.~~

~~An employee who fails to activate the recorder as prescribed above, shall be subject to appropriate counseling.~~

~~When an officer exhibits a pattern of failure to record as required, or of willful failure, or of destruction of evidence, particularly evidence of Level 1 force, the officer should be considered for disciplinary action [TR64]. In addition, internal affairs will adopt rebuttable evidentiary presumption in favor of findings against [TR65] officers in misconduct investigations, when relevant video evidence that should have been produced was not captured or was destroyed [TR66].~~

~~450.11 Surveillance: do not use facial recognition and other biometric technologies together with body camera images until a BPD policy is adopted addressing the uses of such technologies [TR67].~~

~~>> PRC should consider a side recommendation, perhaps outside of the proposed General Order, that the PRC also conduct spot-monitoring of captured video, on condition of strict confidentiality.² [TR68]~~

² Under *Berkeley Police Assn. vs. City of Berkeley*, 76Cal.app.3d 931, the California Court of Appeals ruled that Chief Wesley Pomeroy was entitled to order that a PRC member was allowed to sit in on departmental board of review hearings and a BPD officer would attend PRC BOIs, bring departmental investigative reports and answer questions of commission members on the complaints. "Since disclosure of the allegedly 'confidential' internal affairs bureau reports to individuals outside the department has always been authorized if ordered by a

450.12 Disciplinary Action. All members shall comply with the provisions of this policy. Any violation of the policy is considered misconduct and is subject to departmental disciplinary action [TR69].

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commanding officer, Chief Pomeroy's decision to disclose the contents of such reports to members of the police review commission is in full compliance with existing department rules and regulations.... In light of the city's announced policies of closer cooperation between the police review commission and the department... to bar implementation of the new procedures would "effectively nullify 'a strong rule of policy, adopted for the benefit of the public,...'" (City of Long Beach v. Mansell, supra, 3 Cal.3d at p. 493) namely, the decision of public officials in the delicate area of police-community relations." <http://law.justia.com/cases/california/court-of-appeal/3d/76/931.html> The *Copley* decision places no restriction on the power of a city to release confidential information to a police review commission so long as the commission maintains the confidentiality of the information.

GL wording above for discussion on Apr 27

