

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: BART Citizen Review Board

DATE: May 8, 2013

FROM: Independent Police Auditor

SUBJECT: **Policy Recommendation – BPD Policy 450**

Chapter 1-04(G) of the Citizen Oversight Model (Model) states that the Office of the Independent Police Auditor (OIPA) shall develop recommendations concerning General Orders and Directives, procedures, practices, and training of the BART Police Department (BPD), with the goal of improving professionalism, safety, effectiveness, and accountability. In accordance with this section of the Model, OIPA has developed a recommendation with regard to *BPD Policy 450 – Use of Video and Audio Recorders*.

The most recent version of Policy 450 was issued on November 10, 2012 in the form of Special Order #12-03, and in conjunction with the deployment, over time, of Mobile Video Recorders (MVRs) to all BPD patrol officers and sergeants. It is OIPA's understanding that Policy 450 will, in the near future, be more directly incorporated into the BPD Policy Manual; further, it is acknowledged that some adjustments to the most recently-issued policy (both in format and content) might appear in the finalized version that is incorporated into the manual.

BPD consulted with its two police unions as well as the BART Citizen Review Board (CRB) prior to implementation of this policy. At the October 2012 CRB meeting, BPD discussed its then-prospective policy and received feedback from the CRB members. Also at this meeting, OIPA took the opportunity to participate in the discussion and verbally raise some of the concerns that are detailed further in writing here.

As OIPA discussed at the October CRB meeting, it has a number of suggested edits to what has now become BPD policy. Some of the edits are less substantive than others, but each one bears some importance in the view of OIPA. One suggestion in particular, however, presents a significant departure from the substance of Policy 450. As specified in the suggested language (*see edits to policy Section 450.6 and 450.8*), OIPA recommends restricting the access to review recorded media in any circumstance when an officer knows or reasonably should know that he or she is the subject of, or a witness to, alleged misconduct involving an incident that might have been recorded.

OIPA feels that the most prudent way to think about a video recording of an incident is to consider it a separate witness account of what occurred. Just as with other witness accounts

given by people at the scene or by police officers involved in the encounter, the video recording should be one factor in the attempt by an investigator to determine what transpired.¹

Any good investigation seeks to minimize the circumstances in which one witness statement contaminates another; that is, it is preferable to receive each witness account independently such that one witness does not conflate his or her observations with those of any other witness, whether knowingly or unknowingly. It is only by avoiding such contamination that an investigator may receive the most complete account of what transpired when all statements are taken together in aggregate. Therefore, as a video recording of an incident is essentially another witness account of what occurred, it is preferable to minimize the circumstances in which it might contaminate the recollection of another witness, such as the officer who made the recording.

Based on this reasoning, OIPA feels that stricter limitations must be incorporated into Policy 450 regarding when an officer may have access to view a recording he or she has made. At minimum, as indicated by the suggested edits, an officer should be prohibited from viewing any recorded media that might have captured any part of an incident about which the officer knows or reasonably should know that he or she is the subject of, or a witness to, alleged misconduct.

Following is an unmarked copy of Policy 450, as issued under Special Order #12-03; an annotated copy of Policy 450, displaying the edits suggested by OIPA as well as explanations for those edits (with regard to the suggested changes in the restrictions on accessing recorded video, the reasoning is that which has already been stated here); and a copy of what Policy 450 would look like after incorporating the edits suggested by OIPA.



Mark P. Smith
BART Independent Police Auditor

¹ OIPA also acknowledges, of course, that there are other important similarities and differences between video recordings and eyewitness accounts of an incident. They are different, for instance, in that video recordings do not change over time in the same manner that a person's recollection sometimes does, whether due to the passage of time or to (often unintentional) contamination from other witnesses' statements or media reports. Yet they are similar in that they usually only provide only a partial account of an incident, as neither a camera nor a person can always capture every angle or viewpoint that might bear some importance in determining what occurred.



BART POLICE DEPARTMENT
KENTON W. RAINEY, CHIEF OF POLICE

SPECIAL ORDER NO 12-03
DATE OF ISSUE: 11/10/12

Policy 450 - Use of Video and Audio Recorders

450.1 PURPOSE AND SCOPE

The San Francisco Bay Area Rapid Transit District Police Department (BART) is providing each of its sworn sergeants and officers with a wearable Mobile Video Recorder (MVR) for use while on-duty. The MVR is designed to record both video and audio activity of members during the course of their official police duties. The MVR is intended to assist officers in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident.

The use of the MVR provides documentary evidence for criminal investigations, civil litigation, and allegations of officer misconduct. Video documentation shall be maintained by the Police Department if it supports a criminal investigation based on reason to believe the subject of the investigation is or may be involved in criminal conduct, or for purposes of an administrative investigation on the conduct of a member(s) of the Police Department.

Officers shall utilize the MVR in accordance with the provision of this Policy in order to maximize the effectiveness of the device, enhance transparency, and ensure the integrity of evidence.

450.2 DEFINITIONS

- A. **“Mobile Video Recorder” (MVR)** This refers to any system that captures audio and video signals that is capable of installation in a vehicle or individually worn by officers and that includes at a minimum a recorder, microphone, and paired monitoring device.
- B. **“Audio Recording”** is the electronic recording of conversation or other spoken words.
- C. **“Evidence.com”** is the online web-based digital media storage facility. The virtual warehouse stores digitally-encrypted data (photographs, audio and video recordings) in a highly secure environment. The digital recordings are accessible to authorized personnel based upon a security clearance and maintain an audit trail of user activity.
- D. **“Evidence Transfer Manager” (ETM)** is a docking station that simultaneously recharges the AXON Flex Camera and AXON Flex Controller and uploads all data captured from the camera’s point of view during officer’s shift to bartpd.evidence.com. The ETM ensures that evidence handling is secured and cannot be altered.
- E. **“AXON Flex Camera** connects to the AXON Flex Controller. The Flex Camera manages the video compression and storage and is capable of playback via a Bluetooth paired smart device. The AXON Flex Camera ensures that evidence handling is secured and cannot be

altered. Once plugged into the docking station, the AXON Flex Camera will upload digitally-encrypted data through the Evidence Transfer Manager to bartpd.evidence.com.

- F. **“AXON Controller”** is the battery pack for the AXON Flex Camera and connects to the Flex Camera via a small gage wire.
- G. **“MVR Technician”** The Community Service Officer(s) assigned to administrative services that assign, oversee, and track Department equipment. The CSO(s) shall oversee needed repairs or replacement of the MVR and Evidence Transfer Manager equipment through Taser AXON representatives.
- H. **“System Administrator”** The Administrative Services Supervisor will be the bartpd.evidence.com system administrator with full access to user rights who controls passwords, coordinates with the MVR Technician, and acts as liaison with Taser AXON representatives.
- I. **“Video Recording”** is the electronic recording of visual images with or without audio component.
- J. **“Impound”** is the process by which video and audio files are uploaded to Evidence.com by docking the MVR to the Evidence Transfer Manager thereby ensuring files are secure and unable to be altered.

450.2a CATEGORIES AND RETENTION PERIODS

The BART Police Department has nine (9) 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, Evidence Specialist, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee. Categories can also be added if needed.

- 01) COLD REPORT- 1 YEAR
- 02) CONSENSUAL CONTACTS -1 YEAR
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- 05) ARREST – MISDEMEANOR / FELONY 3 YEARS
- 06) STATEMENT – VICTIM / SUSPECT / WITNESS 3 YEARS
- 07) USE OF FORCE – UNTIL MANUALLY DELETED
- 08) SICK / INJURED PATRON – 3 YEARS
- 09) UNATTENDED DEATH / HOMICIDE – UNTIL MANUALLY DELETED

450.3 UNIFORMED OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed patrol officer equipped with a Department issued MVR will be responsible for making sure that the MVR is in good working order. The MVR shall be conspicuously placed on the officer’s person in one of the Department approved mounting positions, which are limited to an eye glass clip, ear mount, collar clip, or epaulet clip.

The MVR shall be worn in such a way as to provide an unobstructed camera view of officer/citizen contacts. . The camera shall be considered mounted correctly if it is mounted in one of the department approved mounting positions.

Members of the Department that are assigned an MVR shall receive mobile video training prior to deployment of the device in an operational setting. At this training, each officer will be provided a standard checklist of steps they are required to complete in order to ensure their MVR's and MVR mounting systems are in good working order. Officers will conduct the following steps prior to going into service:

1. Officers shall insure that the battery is fully charged
 - a. Depress the battery status button on the front of the controller and observe that the light is green
2. Officers shall insure that the camera is able to be activated and is functioning
 - a. Connect the battery cable from the battery to the camera
 - b. Turn the camera on by clicking the On switch
 - c. Observe the indicator lights are correct (blinking green)
 - d. Double tap button to activate recording
 - e. Observe that indication lights are correct (blinking red)
 - f. Press and hold to end recording
 - g. Observe that indicator lights are correct (blinking green)
3. Officer shall insure that the player is properly paired
4. Officer shall insure that the field of view for the camera is correct
 - a. Activate the Samsung Galaxy player
 - b. Activate the Live Preview feature

450.4 NON-UNIFORMED OFFICER RESPONSIBILITIES

Any officer assigned to a non-uniformed position may carry a Department-issued MVR at any time the officer believes that such a device may be utilized in order to assist the officer in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident. However, whenever a non-uniformed officer is working a uniformed patrol assignment he/she shall wear a Department - issued MVR in accordance with this policy.

450.5 ACTIVATION OF THE VIDEO/AUDIO RECORDER

Penal Code Section 632 prohibits any individual from surreptitiously recording any conversation (confidential communication) in which any party to the conversation has a reasonable belief that the conversation is private or confidential. This excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded. However Penal Code Section 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation as follows:

- (a) No member of the Department may surreptitiously record a contact with or conversation of any other member of this Department without the expressed knowledge and consent of all parties present, including the member whose acts or conversation are being recorded. Nothing in this Section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code Section 3303(g).
- (b) Any member 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:
 - (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.
 - (2) For the purpose of this Policy, it shall further be presumed that any individual contacted by a uniformed officer wearing a conspicuously mounted MVR will have knowledge that such a contact is being recorded. This subsection shall not apply to contact between a member of the Department wearing a conspicuously mounted MVR and other member(s) of the Department. For purposes of this policy, contact between members of this Department is governed by section 450.5(a), and 450.5(b)(1).
- (c) All on-scene officers (inclusive of all initiating and witness officers) equipped with an MVR shall activate their cameras prior to making contact with individuals in any of the following circumstances:
 - (1) Any enforcement contact e.g. detentions, vehicle stops, walking stops (officers are encouraged to activate their MVR on consensual encounters also), as outlined in Policy section 322.3.
 - (2) Probation and parole searches
 - (3) Service of a search or arrest warrant
 - (4) Any contact with a subject suspected of criminal behavior
- (d) Members of the Department are expected to activate their MVRs any time they reasonably believe that a recording of an on-duty contact with a member of the public may be of future benefit to the Department.
 - (1) At no time should an officer jeopardize his/her safety or the safety of another in order to activate their MVR.
 - (2) Members of the Department are expressly prohibited from utilizing Department recorders and recorded media for personal use.
 - (3) Members of the Department will not make copies of any recordings for their personal use and are prohibited from using a recording device (such as a phone camera or

secondary video camera) to record media from bartpd.evidence.com or the AXON Flex Camera unit. Nothing in this policy shall be construed as limiting an officer's right to carry and use a personal device such as a smart-phone, however officers shall not carry or use another mobile video recorder in addition to the District issued MVR without express approval of the Chief of Police.

450.6 MOBILE VIDEO OPERATING PROCEDURES

Members of the Department that are assigned an MVR shall receive mobile video training prior to deployment of the device in an operational setting.

1. Prior to going into service each officer shall perform an inspection, consisting of the steps set forth in section 450.3 and provided to each officer at their initial MVR training, to ensure that his/her MVR is operational. If problems are encountered with any component of the system, the MVR equipment will not be used.
2. The officers shall report malfunctions, damage, loss or theft of an MVR to their immediate supervisor prior to placing the unit out of service. The officer placing the MVR unit out of service shall notify the MVR Technician in writing of the suspected cause of equipment failure and/or recommendations for corrective action. If the officer does not know what the suspected cause of equipment failure is and/or has no recommendations for corrective action, they may indicate this in writing to the MVR technician. In case of loss or theft of an MVR, the officer shall notify the MVR technician and their immediate supervisor as soon as they become aware of the loss or theft of the device. When so notified, the MVR technician shall immediately deactivate the device. The assigned officer shall document the status of the device, including all relevant circumstances via the appropriate Departmental report. A spare MVR shall be issued to an officer through a supervisor with the Watch Commander's approval prior to going into service. The Watch Commander shall log the assignment of a spare MVR with the Department MVR Technician.
3. Once the MVR is activated it should remain on until the incident or contact of interest has reached a conclusion and/or the officer leaves the scene, whichever occurs first. Where the officer reasonably believes the incident or contact of interest is over, they may shut the MVR record mode off. If the incident resumes following the officer's termination of the MVR recording, the officer shall re-activate their MVR.
4. When the MVR is used in any incident, investigation, or during a traffic stop, this fact will be documented on any relevant citation and/or report prepared regarding the incident. Conversely, when the MVR is not used in any incident, investigation, or during a traffic stop, the reason for non-use will be documented on any relevant citation and/or report prepared regarding the incident.
5. Except in circumstances prohibited by statute, or as directed by the Chief of Police, or his or her designee, an officer may have access to review his/her recordings when preparing written reports and/or statements relevant to any incident, to help ensure accuracy and consistency of accounts. To prevent damage, original recordings shall

not be viewed in any equipment other than the equipment issued or authorized by the MVR manufacturer.

6. Department personnel shall not intentionally erase, alter, reuse, modify or tamper with audio-video recordings, nor shall they attempt to erase, alter, reuse, modify or tamper with audio-video recordings.
7. If the MVR is accidentally activated, an officer may submit a written memorandum to his or her immediate supervisor requesting the recording be deleted. The request shall be routed via the chain of command to the requesting officer's Deputy Chief. The Deputy Chief shall either approve or deny the request in writing, after they ensure the recording has been reviewed and contains nothing of evidentiary value. (For purposes of this section "in writing" means checking the appropriate box and signing the form).

8.

450.7 MOBILE VIDEO RECORDER IMPOUNDING PROCEDURE

At the end of each shift, officers shall place the MVRs into an assigned open slot on the Evidence Transfer Manager (docking station). This will allow the data to be transferred from the MVR, via the docking station, to bartpd.evidence.com. The data is considered impounded at this point and the MVR is cleared of existing data.

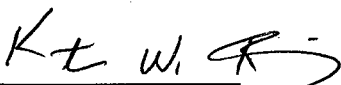
450.8 REVIEW OF RECORDED MEDIA

Recorded files shall be reviewed in any of the following situations:

- (a) By a supervisor investigating a specific incident, issue, and/or act of officer conduct.
- (b) By any member of the Department who is authorized to participate in an official investigation in the following type of cases only: personnel complaints, administrative investigations, or criminal investigations.
- (c) Pursuant to a lawful process or by members of the District Attorney's office or court personnel otherwise authorized to review evidence in a related case.
- (d) By the Independent BART Police Auditor or his/her investigator.
- (e) With the expressed permission of the Chief of Police or authorized designee.

450.9 MOBILE VIDEO RECORDERS

The Department assigned MVR (Taser Axon Flex) shall be the only mobile video recorder allowed for Department employees while on-duty. Any other mobile video recorder shall only be used with the expressed permission of the Chief of Police.


Kenton W. Rainey
Chief of Police

Use of Video and Audio Recorders

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The use of the MVR provides documentary evidence for criminal investigations, civil litigation, and allegations of officer misconduct. ~~Video documentation~~ Such evidence shall be maintained by the Police Department if it supports a criminal investigation based on reason to believe the subject of the investigation is or may be involved in criminal conduct, or for purposes of an administrative investigation on the conduct of a member(s) of the Police Department.

Officers shall utilize the MVR in accordance with the provision of this Policy in order to maximize the effectiveness of the device, enhance transparency, and ensure the integrity of evidence.

Comment [OIPA1]: OIPA feels that the term "Video documentation" in this sentence is too restrictive, as all evidence obtained via the use of the MVR should be maintained in the same manner, regardless of whether it is video, audio, or otherwise.

A simpler and more inclusive way to begin the sentence would be to reference the previous sentence by saying, "Such evidence shall be maintained..."

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- C. **"Evidence.com"** is the online web-based digital media storage facility. The virtual warehouse stores digitally-encrypted data (photographs, audio and video recordings) in a highly secure environment. The digital recordings are accessible to authorized personnel based upon a security clearance and maintain an audit trail of user activity.
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Comment [OIPA2]: OIPA feels that a definition of "Audio Recording" that is limited only to conversation or spoken words is unnecessarily restrictive, as audio recordings may commonly contain a multitude of other sounds that could prove relevant in a variety of circumstances. If "Audio Recording" is to be defined here, OIPA feels that the definition should simply say that it "is the electronic recording of sounds." OIPA further believes that the suggested definition is a more appropriate and equivalent counterpart to the definition of "Video Recording" in Section 450.2.1 of this policy.

- F. **“AXON Controller”** is the battery pack for the AXON Flex Camera and connects to the Flex Camera via a small gage wire.
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 - (3) Service of a search or arrest warrant
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- (d) Members of the Department are expected to activate their MVRs any time they reasonably believe that a recording of an on-duty contact with a member of the public may be of future benefit to the Department.
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2. The officers shall report malfunctions, damage, loss or theft of an MVR to their immediate supervisor prior to placing the unit out of service. The officer placing the MVR unit out of service shall notify the MVR Technician in writing of the suspected cause of equipment failure and/or recommendations for corrective action. If the officer does not know what the suspected cause of equipment failure is and/or has no recommendations for corrective action, they may indicate this in writing to the MVR technician. In case of loss or theft of an MVR, the officer shall notify the MVR technician and their immediate supervisor as soon as they become aware of the loss or theft of the device. When so notified, the MVR technician shall immediately deactivate the device. The assigned officer shall document the status of the device, including all relevant circumstances via the appropriate Departmental report. A spare MVR shall be issued to an officer through a supervisor with the Watch Commander's approval prior to going into service. The Watch Commander shall log the assignment of a spare MVR with the Department MVR Technician.
3. Once the MVR is activated it should remain on until the incident or contact of interest has reached a conclusion and/or the officer leaves the scene, whichever occurs first. Where the officer reasonably believes the incident or contact of interest is over, they may shut the MVR record mode off. If the incident resumes following the officer's termination of the MVR recording, the officer shall re-activate their MVR. Once the MVR is activated pursuant to Section 450.5 of this policy, it shall remain on until the event giving rise to the activation has reached a conclusion and/or the officer leaves the scene of the event, whichever occurs first. When the

Comment [OIPA3]: OIPA feels that Sections 450.6.1 and 450.6.2 are not as clear as they could be, specifically with regard to the need for replacement of a non-functioning MVR before an officer is allowed to go into service. To be more clear, OIPA suggests moving some of the wording from Section 450.6.2 (with slight modifications) to the end of Section 450.6.1.

Comment [OIPA4]: OIPA believes that the intent of Section 450.6.3 is apparent, but that the language used leaves some room for interpretation that could plausibly be cited as a source of confusion in the future. The circumstances during which the MVR must be activated are listed in Section 450.5, and that section could be explicitly referenced here to avoid confusion as to the meaning of "incident or contact of interest".

officer reasonably believes the event giving rise to the activation is over, he/she may deactivate the MVR from recording mode. If the event giving rise to the activation resumes following the officer's termination of the MVR recording, the officer shall reactivate his/her MVR.

4. When the MVR is used in any incident, investigation, or during a traffic stop, this fact will be documented on any relevant citation and/or report prepared regarding the incident. Conversely, when the MVR is not used in any incident, investigation, or during a traffic stop, the reason for non-use will be documented on any relevant citation and/or report prepared regarding the incident. Whenever the MVR is activated pursuant to Section 450.5 of this policy, this fact will be documented on any relevant citation and/or report prepared regarding the event that gave rise to the activation. Conversely, whenever the MVR is not activated as required by Section 450.5 of this policy, the reason for the lack of activation will be documented on any relevant citation and/or report prepared regarding the event that otherwise would have given rise to an activation.

5. Except in circumstances prohibited by statute, or as directed by the Chief of Police, or his or her designee, an officer may have access to review his/her recordings when preparing written reports and/or statements relevant to any incident, to help ensure accuracy and consistency of accounts. Except in circumstances prohibited by statute, as directed by the Chief of Police or his/her designee, or as further described within this section, an officer may have access to review his/her recordings when preparing written reports and/or statements relevant to any incident, to help ensure accuracy. However, as soon as an officer becomes aware, or reasonably should be aware, that an allegation of misconduct has been made against him/her related to any incident that was recorded, in part or in whole, by an MVR, that officer shall not review any MVR recordings related to the incident unless and until receiving permission from a supervisor to do so. Similarly, as soon as an officer becomes aware, or reasonably should be aware, that he/she is a witness to alleged misconduct related to any incident that was recorded, in part or in whole, by an MVR, that officer shall not review any MVR recordings related to the incident unless and until receiving permission from a supervisor to do so.

Supervisors shall not grant such permission until verifying with all entities involved in investigating the allegation of misconduct that it is acceptable for the involved officer to review his/her recordings related to the incident that gave rise to the allegation.

Additionally, immediately upon receiving a request, in any form, from a supervisor, a member of the Department's Office of Internal Affairs, or an employee of the Office of the Independent Police Auditor, an officer shall cease reviewing those recordings indicated by the requester unless and until subsequently receiving

Comment [OIPA5]: Similar to the previous subsection, OIPA feels that the language used here with regard to incident, investigation or traffic stop could potentially be misconstrued as a limitation.

Comment [OIPA6]: As specified in the suggested language, OIPA recommends restricting the access to review recorded media in any circumstance when an officer knows or reasonably should know that he or she is the subject of, or a witness to, alleged misconduct involving an incident that might have been recorded.

OIPA feels that the most prudent way to think about a video recording of an incident is to consider it a separate witness account of what occurred. Just as with other witness accounts given by people at the scene or by police officers involved in the encounter, the video recording should be one factor in the attempt by an investigator to determine what transpired.

Any good investigation seeks to minimize the circumstances in which one witness statement contaminates another; that is, it is preferable to receive each witness account independently such that one witness does not conflate his or her observations with those of any other witness, whether knowingly or unknowingly. It is only by avoiding such contamination that an investigator may receive the most complete account of what transpired when all statements are taken together in aggregate. Therefore, as a video recording of an incident is essentially another witness account of what occurred, it is preferable to minimize the circumstances in which it might contaminate the recollection of another witness, such as the officer who made the recording.

Based on this reasoning, OIPA feels that stricter limitations must be incorporated into Policy 450 regarding when an officer may have access to view a recording he or she has made. At minimum, as indicated by the suggested edits, an officer should be prohibited from viewing any recorded media that might have captured any part of an incident about which the officer knows or reasonably should know that he or she is the subject of, or a witness to, alleged misconduct.

permission from the requester to review them. To prevent damage, original recordings shall not be viewed in any equipment other than the equipment issued or authorized by the MVR manufacturer.

~~5.6.~~ Department personnel shall not intentionally erase, alter, reuse, modify or tamper with audio-video recordings, nor shall they attempt to erase, alter, reuse, modify or tamper with audio-video recordings.

~~6.7.~~ If the MVR is accidentally activated, an officer may submit a written memorandum to his or her immediate supervisor requesting the recording be deleted. The request shall be routed via the chain of command to the requesting officer's Deputy Chief. The Deputy Chief shall either approve or deny the request in writing, after they ensure the recording has been reviewed and contains nothing of evidentiary value. (For purposes of this section "in writing" means checking the appropriate box and signing the form).

450.7 MOBILE VIDEO RECORDER IMPOUNDING PROCEDURE

At the end of each shift, officers shall place the MVRs into an assigned open slot on the Evidence Transfer Manager (docking station). This will allow the data to be transferred from the MVR, via the docking station, to bartpd.evidence.com. The data is considered impounded at this point and the MVR is cleared of existing data.

450.8 REVIEW OF RECORDED MEDIA

Recorded files shall be reviewed in any of the following situations. In circumstances not already covered by Section 450.6.5 of this policy, MVR recordings may be reviewed only in the following situations or by the following persons:

- (a) By a supervisor investigating a specific incident, issue, and/or act of officer conduct.
- (b) By any member of the Department who is authorized to participate in an official investigation in the following type of cases only: personnel complaints, administrative investigations, or criminal investigations.
- (c) Pursuant to a lawful process or by members of the District Attorney's office or court personnel otherwise authorized to review evidence in a related case.
- (d) By the Independent BART Police Auditor or his/her investigator.
- (e) With the expressed permission of the Chief of Police or authorized designee.

Comment [OIPA7]: OIPA is unclear on the intent of this section of the policy. It appears that it may be intended as a restraint on who may review recorded media and in what situations. Along these lines, OIPA feels that the suggested phrase will be more effective as an introduction to the section.

450.9 MOBILE VIDEO RECORDERS

The Department assigned MVR (Taser Axon Flex) shall be the only mobile video recorder allowed for Department employees while on-duty. Any other mobile video recorder shall only be used with the expressed permission of the Chief of Police.

Use of Video and Audio Recorders

450.1 PURPOSE AND SCOPE

The San Francisco Bay Area Rapid Transit District Police Department (BART) is providing each of its sworn sergeants and officers with a wearable Mobile Video Recorder (MVR) for use while on-duty. The MVR is designed to record both video and audio activity of members during the course of their official police duties. The MVR is intended to assist officers in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident.

The use of the MVR provides documentary evidence for criminal investigations, civil litigation, and allegations of officer misconduct. Such evidence shall be maintained by the Police Department if it supports a criminal investigation based on reason to believe the subject of the investigation is or may be involved in criminal conduct, or for purposes of an administrative investigation on the conduct of a member(s) of the Police Department.

Officers shall utilize the MVR in accordance with the provision of this Policy in order to maximize the effectiveness of the device, enhance transparency, and ensure the integrity of evidence.

450.2 DEFINITIONS

- A. **“Mobile Video Recorder” (MVR)** This refers to any system that captures audio and video signals that is capable of installation in a vehicle or individually worn by officers and that includes at a minimum a recorder, microphone, and paired monitoring device.
- B. **“Audio Recording”** is the electronic recording of sound.
- C. **“Evidence.com”** is the online web-based digital media storage facility. The virtual warehouse stores digitally-encrypted data (photographs, audio and video recordings) in a highly secure environment. The digital recordings are accessible to authorized personnel based upon a security clearance and maintain an audit trail of user activity.
- D. **“Evidence Transfer Manager” (ETM)** is a docking station that simultaneously recharges the AXON Flex Camera and AXON Flex Controller and uploads all data captured from the camera’s point of view during officer’s shift to bartpd.evidence.com. The ETM ensures that evidence handling is secured and cannot be altered.
- E. **“AXON Flex Camera** connects to the AXON Flex Controller. The Flex Camera manages the video compression and storage and is capable of playback via a Bluetooth paired smart device. The AXON Flex Camera ensures that evidence handling is secured and cannot be altered. Once plugged into the docking station, the AXON Flex Camera will upload digitally-encrypted data through the Evidence Transfer Manager to bartpd.evidence.com.
- F. **“AXON Controller”** is the battery pack for the AXON Flex Camera and connects to the Flex Camera via a small gage wire.

- G. **“MVR Technician”** The Community Service Officer(s) assigned to administrative services that assign, oversee, and track Department equipment. The CSO(s) shall oversee needed repairs or replacement of the MVR and Evidence Transfer Manager equipment through Taser AXON representatives.
- H. **“System Administrator”** The Administrative Services Supervisor will be the bartpd.evidence.com system administrator with full access to user rights who controls passwords, coordinates with the MVR Technician, and acts as liaison with Taser AXON representatives.
- I. **“Video Recording”** is the electronic recording of visual images with or without audio component.
- J. **“Impound”** is the process by which video and audio files are uploaded to Evidence.com by docking the MVR to the Evidence Transfer Manager thereby ensuring files are secure and unable to be altered.

450.2a CATEGORIES AND RETENTION PERIODS

The BART Police Department has nine (9) 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, Evidence Specialist, BPD System Administrator for evidence.com, or by the Chief of Police or his/her designee. Categories can also be added if needed.

- 01) COLD REPORT- 1 YEAR
- 02) CONSENSUAL CONTACTS -1 YEAR
- 03) DETENTIONS- 2 YEARS
- 04) INFRACTION VIOLATIONS 2 YEARS
- 05) ARREST – MISDEMEANOR / FELONY 3 YEARS
- 06) STATEMENT – VICTIM / SUSPECT / WITNESS 3 YEARS
- 07) USE OF FORCE – UNTIL MANUALLY DELETED
- 08) SICK / INJURED PATRON – 3 YEARS
- 09) UNATTENDED DEATH / HOMICIDE – UNTIL MANUALLY DELETED

450.3 UNIFORMED OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed patrol officer equipped with a Department issued MVR will be responsible for making sure that the MVR is in good working order. The MVR shall be conspicuously placed on the officer’s person in one of the Department approved mounting positions, which are limited to an eye glass clip, ear mount, collar clip, or epaulet clip. The MVR shall be worn in such a way as to provide an unobstructed camera view of officer/citizen contacts. . The camera shall be considered mounted correctly if it is mounted in one of the department approved mounting positions.

Members of the Department that are assigned an MVR shall receive mobile video training prior to deployment of the device in an operational setting. At this training, each officer will be provided a standard checklist of steps they are required to complete in order to ensure their MVR's and MVR mounting systems are in good working order. Officers will conduct the following steps prior to going into service:

1. Officers shall insure that the battery is fully charged
 - a. Depress the battery status button on the front of the controller and observe that the light is green
2. Officers shall insure that the camera is able to be activated and is functioning
 - a. Connect the battery cable from the battery to the camera
 - b. Turn the camera on by clicking the On switch
 - c. Observe the indicator lights are correct (blinking green)
 - d. Double tap button to activate recording
 - e. Observe that indication lights are correct (blinking red)
 - f. Press and hold to end recording
 - g. Observe that indicator lights are correct (blinking green)
3. Officer shall insure that the player is properly paired
4. Officer shall insure that the field of view for the camera is correct
 - a. Activate the Samsung Galaxy player
 - b. Activate the Live Preview feature

450.4 NON-UNIFORMED OFFICER RESPONSIBILITIES

Any officer assigned to a non-uniformed position may carry a Department-issued MVR at any time the officer believes that such a device may be utilized in order to assist the officer in the performance of their duties by providing an objective, unbiased video and audio record of a contact and/or incident. However, whenever a non-uniformed officer is working a uniformed patrol assignment he/she shall wear a Department - issued MVR in accordance with this policy.

450.5 ACTIVATION OF THE VIDEO/AUDIO RECORDER

Penal Code Section 632 prohibits any individual from surreptitiously recording any conversation (confidential communication) in which any party to the conversation has a reasonable belief that the conversation is private or confidential. This excludes a communication made in a public gathering or in any legislative, judicial, executive or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded. However Penal Code Section 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation as follows:

- (a) No member of the Department may surreptitiously record a contact with or conversation of any other member of this Department without the expressed knowledge and consent of all parties present, including the member whose acts or conversation are being recorded. Nothing in this Section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code Section 3303(g).
- (b) Any member 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:
- (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.
 - (2) For the purpose of this Policy, it shall further be presumed that any individual contacted by a uniformed officer wearing a conspicuously mounted MVR will have knowledge that such a contact is being recorded. This subsection shall not apply to contact between a member of the Department wearing a conspicuously mounted MVR and other member(s) of the Department. For purposes of this policy, contact between members of this Department is governed by section 450.5(a), and 450.5(b)(1).
- (c) All on-scene officers (inclusive of all initiating and witness officers) equipped with an MVR shall activate their cameras prior to making contact with individuals in any of the following circumstances:
- (1) Any enforcement contact e.g. detentions, vehicle stops, walking stops (officers are encouraged to activate their MVR on consensual encounters also), as outlined in Policy section 322.3.
 - (2) Probation and parole searches
 - (3) Service of a search or arrest warrant
 - (4) Any contact with a subject suspected of criminal behavior
- (d) Members of the Department are expected to activate their MVRs any time they reasonably believe that a recording of an on-duty contact with a member of the public may be of future benefit to the Department.
- (1) At no time should an officer jeopardize his/her safety or the safety of another in order to activate their MVR.
 - (2) Members of the Department are expressly prohibited from utilizing Department recorders and recorded media for personal use.

- (3) Members of the Department will not make copies of any recordings for their personal use and are prohibited from using a recording device (such as a phone camera or secondary video camera) to record media from bartpd.evidence.com or the AXON Flex Camera unit. Nothing in this policy shall be construed as limiting an officer's right to carry and use a personal device such as a smart-phone, however officers shall not carry or use another mobile video recorder in addition to the District issued MVR without express approval of the Chief of Police.

450.6 MOBILE VIDEO OPERATING PROCEDURES

Members of the Department that are assigned an MVR shall receive mobile video training prior to deployment of the device in an operational setting.

1. Prior to going into service each officer shall perform an inspection, consisting of the steps set forth in section 450.3 and provided to each officer at their initial MVR training, to ensure that his/her MVR is operational. If problems are encountered with any component of the system, the MVR equipment will not be used. The officer to whom the problematic equipment is assigned shall report the problem to his/her immediate supervisor upon becoming aware of it. A spare MVR shall be issued to that officer through a supervisor with the Watch Commander's approval prior to the officer going into service. The Watch Commander shall log the assignment of a spare MVR with the Department MVR Technician.
2. The officers shall report malfunctions, damage, loss or theft of an MVR to their immediate supervisor prior to placing the unit out of service. The officer placing the MVR unit out of service shall notify the MVR Technician in writing of the suspected cause of equipment failure and/or recommendations for corrective action. If the officer does not know what the suspected cause of equipment failure is and/or has no recommendations for corrective action, they may indicate this in writing to the MVR technician. In case of loss or theft of an MVR, the officer shall notify the MVR technician and their immediate supervisor as soon as they become aware of the loss or theft of the device. When so notified, the MVR technician shall immediately deactivate the device. The assigned officer shall document the status of the device, including all relevant circumstances via the appropriate Departmental report.
3. Once the MVR is activated pursuant to Section 450.5 of this policy, it shall remain on until the event giving rise to the activation has reached a conclusion and/or the officer leaves the scene of the event, whichever occurs first. When the officer reasonably believes the event giving rise to the activation is over, he/she may deactivate the MVR from recording mode. If the event giving rise to the activation resumes following the officer's termination of the MVR recording, the officer shall reactivate his/her MVR.
4. Whenever the MVR is activated pursuant to Section 450.5 of this policy, this fact will be documented on any relevant citation and/or report prepared regarding the event that gave rise to the activation. Conversely, whenever the MVR is not

activated as required by Section 450.5 of this policy, the reason for the lack of activation will be documented on any relevant citation and/or report prepared regarding the event that otherwise would have given rise to an activation.

5. Except in circumstances prohibited by statute, as directed by the Chief of Police or his/her designee, or as further described within this section, an officer may have access to review his/her recordings when preparing written reports and/or statements relevant to any incident, to help ensure accuracy. However, as soon as an officer becomes aware, or reasonably should be aware, that an allegation of misconduct has been made against him/her related to any incident that was recorded, in part or in whole, by an MVR, that officer shall not review any MVR recordings related to the incident unless and until receiving permission from a supervisor to do so. Similarly, as soon as an officer becomes aware, or reasonably should be aware, that he/she is a witness to alleged misconduct related to any incident that was recorded, in part or in whole, by an MVR, that officer shall not review any MVR recordings related to the incident unless and until receiving permission from a supervisor to do so.

Supervisors shall not grant such permission until verifying with all entities involved in investigating the allegation of misconduct that it is acceptable for the involved officer to review his/her recordings related to the incident that gave rise to the allegation.

Additionally, immediately upon receiving a request, in any form, from a supervisor, a member of the Department's Office of Internal Affairs, or an employee of the Office of the Independent Police Auditor, an officer shall cease reviewing those recordings indicated by the requester unless and until subsequently receiving permission from the requester to review them. To prevent damage, original recordings shall not be viewed in any equipment other than the equipment issued or authorized by the MVR manufacturer.

- ~~5.6.~~ Department personnel shall not intentionally erase, alter, reuse, modify or tamper with audio-video recordings, nor shall they attempt to erase, alter, reuse, modify or tamper with audio-video recordings.
- ~~6.7.~~ If the MVR is accidentally activated, an officer may submit a written memorandum to his or her immediate supervisor requesting the recording be deleted. The request shall be routed via the chain of command to the requesting officer's Deputy Chief. The Deputy Chief shall either approve or deny the request in writing, after they ensure the recording has been reviewed and contains nothing of evidentiary value. (For purposes of this section "in writing" means checking the appropriate box and signing the form).

450.7 MOBILE VIDEO RECORDER IMPOUNDING PROCEDURE

At the end of each shift, officers shall place the MVRs into an assigned open slot on the Evidence Transfer Manager (docking station). This will allow the data to be transferred from the MVR, via the docking station, to bartpd.evidence.com. The data is considered impounded at this point and the MVR is cleared of existing data.

450.8 REVIEW OF RECORDED MEDIA

In circumstances not already covered by Section 450.6.5 of this policy, MVR recordings may be reviewed only in the following situations or by the following persons:

- (a) By a supervisor investigating a specific incident, issue, and/or act of officer conduct.
- (b) By any member of the Department who is authorized to participate in an official investigation in the following type of cases only: personnel complaints, administrative investigations, or criminal investigations.
- (c) Pursuant to a lawful process or by members of the District Attorney's office or court personnel otherwise authorized to review evidence in a related case.
- (d) By the Independent BART Police Auditor or his/her investigator.
- (e) With the expressed permission of the Chief of Police or authorized designee.

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