

Portable Audio/Video Recorders

450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties. Portable audio/video recording devices include all recording systems whether body-worn, hand held or integrated into portable equipment (Utah Code 77-7a-102).

This policy does not apply to mobile audio/video recordings, interviews or interrogations conducted at any Provo City Police Department facility, undercover operations, wiretaps or eavesdropping (concealed listening devices).

Additional guidance regarding the use of body-worn cameras during the execution of a warrant is found in the Warrant Service Policy.

450.2 POLICY

The Provo City 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 MEMBER PRIVACY EXPECTATION

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity of this department, regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

450.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable (Utah Code 77-7a-104; Utah Code 77-7a-105).

Police personnel who are assigned personal recorders must complete an agency approved and/or provided training program to ensure proper use and operations. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and equipment.

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Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable(Utah Code 77-7a-104)

When using a portable recorder, the assigned member shall record his/her name, PPD 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 (Utah Code 77-7a-104).

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members should include the reason for deactivation (Utah Code 77-7a-104). Appropriate disciplinary action shall be taken against any officer who is found to have intentionally failed to adhere to the recording or retention requirements contained in this policy, or to have intentionally interfered with a portable recorder's ability to accurately capture audio/video footage.

450.5 ACTIVATION OF THE PORTABLE RECORDER

This policy is not intended to describe every possible situation in which the portable recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable recorder shall be activated in any of the following situations (Utah Code 77-7a-103; Utah Code 77-7a-104):

- (4) An officer shall activate the body-worn camera prior to any law enforcement encounter, or as soon as reasonably possible.
- (5) An officer shall record in an uninterrupted manner until after the conclusion of a law enforcement encounter, except as an interruption of a recording is allowed under this section.

A member "may not activate a body-worn camera in a hospital, health care facility, human service program, or clinic of a health care provider, except during law enforcement encounter, and with notice under Section 77-71a-105." (Utah Code 77-71a-104(11b)). However, a portable recorder should be activated in the previous locations for the following exceptions:

1. During times when all parties being visibly or audibly recorded are in a private room with consent for such recording
2. While affecting an arrest
3. While controlling a person through response to resistance techniques; or
4. Any other circumstances that are extraordinary

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Recordings made pursuant to an arrest or search of the residence or person(s) is not considered a consensual encounter for the purposes of this policy. The portable recorders should remain activated until the event is completed in order to ensure the integrity of the recording.

450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER

Utah law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Utah Code 77-23a-4).

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.

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

Once activated, "the officer may not deactivate the body-worn camera until the officer's direct participation in the law enforcement encounter is complete, except as provided in Subsection 9." Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident, and/or consultation with a supervisor or other officer (Utah Code 77-7a-104).

A member may deactivate a portable recorder when speaking with a victim, a witness, or a person wishing to report or discuss criminal activity if the subject of the recording requests the deactivation and the member believes the value of the information outweighs the value of the potential recording. The member should record the request to deactivate the portable recorder (Utah Code 77-7a-104).

When interacting with a person seeking to anonymously report a crime or assist in ongoing law enforcement investigation, an officer should, as soon as feasible, ask the person seeking to remain anonymous, if they would like to remain anonymous and would like the officer to discontinue use of the portable recorder. If the person seeking to remain anonymous responds affirmatively, the officer should immediately discontinue use of the portable recorder..

"If an officer deactivates a body-worn camera, the officer shall document the reason for deactivating a body-own camera in a written report." (Utah Code 77-7a-104(10))

450.5.3 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

450.6 PROHIBITED USE OF 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-

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duty or while acting in their official capacity. Members may not alter or delete a recording captured on a portable recorder (Utah Code 77-7a-106).

Members are also prohibited from retaining recordings of activities or information obtained while on-duty whether the recording was created with a department-issued or personally owned recorder. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department (Utah Code 77-7a-106).

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements, and should notify the on-duty supervisor of such use as soon as reasonably practicable.

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

450.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS

To assist with identifying and preserving data and recordings members should download, tag or mark these in accordance with procedure and document the existence of the recording in any related case report.

A member should transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an under-cover officer or confidential informant.
- (g) Recorded content contains sound or images from a residence (Utah Code 63G-2-302).
- (h) Recorded content contains sound or images from a hospital, health care facility, human service program or the clinic of a health care provider (Utah Code 63G-2-305).

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.

All department digital data will be downloaded as soon as feasible, and will be cataloged and stored in a secure database with access limited to appropriate members.

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450.8 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Civilians shall not be allowed to review the recordings at the scene.

450.9 COORDINATOR

The Chief of Police or the authorized designee should designate a coordinator responsible for establishing procedures for (Utah Code 77-7a-102):

- (a) The security, storage and maintenance of data and recordings.
- (b) Accessing data and recordings.
- (c) Logging or auditing access.
- (d) Transferring, downloading, tagging or marking events.

450.10 RETENTION OF RECORDINGS

All recordings shall be retained for a period consistent with the requirements of the established records retention schedule and as required by any applicable federal, state and local law (Utah Code 77-7a-107).

Data gathered by the portable recorder shall be retained and stored by this department for a minimum of three years if a longer retention period is voluntarily requested by:

1. Officer, if the video footage is being retained solely and exclusively for department training purposes;

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2. Any member of the public who is a subject of the video footage;
- 3 Any parent or legal guardian of a minor who is the subject of the video footage; or
4. A deceased person's next of kin or legally authorized designee

Any member of the public, parent or legal guardian of a minor, or a deceased subject's next of kin or legally authorized designee, upon request of GRAMA, who is subject of video footage, shall be permitted to review that specific video footage in order to make a determination as to whether they will voluntarily request it to be subject to a three year retention period.

450.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.

450.11 PUBLIC ACCESS

The Records Supervisor should ensure that this policy is available to the public in written format as well as published to the department website (Utah Code 77-7a-105). Pursuant to Utah Government Records Access Act and Provo City Code 3.13.020, it is the goal of this policy to support and promote openness in government by releasing public video recordings to the public upon request. This policy must also ensure that the privacy of victims, witnesses, and suspects is maintained whenever feasible. Video may be redacted dependent upon controlled, protected or private information contained therein.

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.

450.12 OTHER PHOTO, ELECTRONIC AND RECORDING DEVICES

Department members shall not use a personal electronic recording or imaging device while performing police duties except in rare events to record evidence when departmental issued equipment is not available.

All photographs containing any individually identifiable patient information are covered by HIPAA privacy laws and must be protected in the same manner as patient care reports and documentation.

Any on-scene images/recordings taken by any officer in the course and scope of their duties may be used, printed, copied, scanned, e-mailed, posted, shared, reproduced or distributed in any manner, unless for official law enforcement purposes. This prohibition includes the posting of any department photographs on personal websites including but not limited to, Facebook, MySpace, YouTube, other public safety agency websites, or e-mailing to friends, relatives or colleagues without prior approval of the Chief of Police.

450.13 AUDITING

Portable recorder audio/video will be audited by a designated supervisor on a periodic basis.

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Documented audits should be completed on the most recently available devices and by selecting downloads at random. These audits will focus on the following areas such as customer service, training, demeanor, appropriate action taken, officer's articulation for the microphone, officer safety issues, and any other issue that could result in generating a citizen complaint, a hindrance to prosecution or liability for the officer of this department.

The designated auditing supervisor shall keep a log documenting findings during MVR device auditing.

450.14 DELETION OF UNINTENTIONAL RECORDING

In the event of an unintentional activation of the portable recorder system during a non-enforcement or non-investigative activity, including but not limited to, restroom, meal break, or other areas where a reasonable expectation of privacy exists, officers may request the recording to be deleted. A memorandum detailing the circumstances of the unintentional recording will be forwarded via the chain of command to the Chief of Police or designee. If approved, the actual deletion requires two-party authorization. One of those parties will be the Chief of Police or designee and the other party will be an Evidence Section supervisor.