

**PUEBLO POLICE  
DEPARTMENT**



# DIRECTIVE

Issued By:  
Chief Luis Velez

Date:  
January 19, 2015

## Effective Immediately

In compliance with Section 106.3 of the Pueblo Police Department Policy Manual, the following directive is being issued by the Chief of Police or the authorized designee. This directive shall modify those provisions of the Policy Manual to which it pertains, and remain in effect until such time as it can be permanently incorporated into the Policy Manual.

Effective immediately, Policy 450 and Policy 810 of the Pueblo Police Department shall be superseded by the following policies:

## ***Portable Audio/Video Recorders***

### **450.1 PURPOSE AND SCOPE**

*This policy provides guidelines for the use of portable recorders by members of the Pueblo Police Department while in the performance of their duties. Unless otherwise specified, the provisions set forth in this policy shall apply to all portable audio/video recording devices.*

*This policy is intended to provide officers with instructions on when and how to use these portable recorders so that members may reliably record their contacts with the public in accordance with the law.*

*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).*

### **450.1.1 DEFINITIONS**

*Definitions related to this policy include:*

**BWC** - Body-worn camera.

**BWC Equipment Control Officer** - Sergeant who manages the Pueblo Police Department's BWC equipment, including the assignment of BWC equipment to individual members, the tracking of repairs to BWC equipment by TASER® AXON, and the management of replacement BWC equipment through TASER® AXON representatives.

**BWC System Administrator** - Evidence.com system administrator with full access to user rights who controls passwords, maintains the Evidence Transfer Manager, conducts quality control checks of video and sound quality, coordinates with the BWC Equipment Control Officer, prepares BWC recordings for release pursuant to requests from third-parties and public, and acts as a liaison with TASER® AXON representatives.

**Evidence Transfer Manager** - Docking station that simultaneously recharges BWC recording equipment and securely uploads all data captured by the camera to Evidence.com.

**Evidence.com** - Online, web-based, digital media storage facility. The virtual warehouse stores digitally encrypted data in a secure environment accessible to personnel based upon unique security clearance levels.

**iPod®** – Portable media player linked to the BWC via Bluetooth® signal, which allows the user to view and label videos captured by the BWC. The iPod® does not store video captured by the BWC.

**Portable recorder** - Includes all portable audio and/or video recording systems and devices, whether body-worn, hand held or integrated into portable equipment. For the purpose of this policy, any and all references to portable recorders will include BWCs.

#### **450.2 POLICY**

The Pueblo 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 portable recorders is intended to enhance the mission of the Pueblo Police Department by accurately capturing contacts between members of the Department and the public.

It is the policy of this department that members shall activate their BWC when such use is appropriate to the proper performance of his or her official duties, where the recordings are consistent with this policy and law.

The Pueblo Police Department has adopted the use of BWCs to accomplish several objectives. The primary objectives are as follows:

- (a) BWCs allow for accurate documentation of police-public contacts, arrests, and critical incidents. They also serve to enhance the accuracy of officer reports and testimony in court.
- (b) Audio and video recordings enhance the Department's ability to review probable cause for arrest, officer and suspect interaction and evidence for investigative and prosecutorial purposes, and also provide additional information for officer evaluation and training.
- (c) The BWC may also be useful in documenting crime and accident scenes or other events that include the confiscation and documentation of evidence or contraband.

#### **450.3 MEMBER PRIVACY EXPECTATIONS**

All recordings made by members acting in an official capacity shall remain the property of the Pueblo Police Department, regardless of whether those recordings were made with department-issued or personally-owned portable recorders. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

#### **450.4 MEMBER RESPONSIBILITIES**

*BWC equipment is issued primarily to uniformed personnel as authorized by this agency. Members who are assigned BWC equipment must use the equipment unless otherwise authorized by supervisory personnel.*

*Members shall use only BWCs issued by this department. Personally-owned BWCs may be used, provided that the equipment is compatible with Evidence.com and the member obtains approval from the Chief of Police or his/her authorized designee. All data, images, video, and metadata captured, recorded, or otherwise produced by BWC equipment, whether the equipment is department-issued or personally-owned, are the sole property of the Pueblo Police Department and shall be entered into evidence prior to the end of the member's tour of duty.*

*Police personnel who are assigned BWCs 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.*

*Prior to going into service, each member who is assigned a BWC will be responsible for making sure that he/she is equipped with a BWC issued by the Department, and that the equipment is in good working order. If the BWC is not in good 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 shall wear the BWC equipment in a conspicuous manner on their person, unless otherwise authorized by his/her supervisor.*

*Members shall not edit, alter, erase, duplicate, copy, share, or otherwise distribute in any manner recordings without prior written authorization and approval of the Chief of Police or his/her designee.*

*Members are encouraged to inform their supervisor of any recordings that may be of value for training purposes.*

*Members may review recordings as they relate to:*

- (a) Their involvement in an incident for the purposes of completing a criminal investigation and preparing official reports.*
- (b) Prior to courtroom testimony or for courtroom presentation.*
- (c) Providing a statement pursuant to an administrative inquiry, including officer-involved shooting investigations.*
- (d) Critical incidents: members are encouraged to consult legal representation and may review their recordings prior to providing a statement pursuant to an administrative inquiry.*

*Requests for deletion of portions of the recordings (e.g., in the event of a personal recording) must be submitted in writing and approved by the Chief of Police or his/her designee in accordance with state record retention laws. All requests and final decisions shall be kept on file.*

*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 portable recorder in a conspicuous manner on their person.*

*When using a portable recorder, the assigned member shall record his/her name, their individual employee 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 portable recorder and related software captures the user's unique identification and the date and time of each recording.*

*Members shall document the existence of a recording in any report or other official record of the contact. The member shall also document any instance where the portable recorder malfunctioned or the member deactivated the recording. Members shall include the reason for deactivation.*

*Recordings are not a replacement for written reports.*

#### **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 shall activate the portable recorder any time the member believes it would be appropriate or valuable to record an incident.*

*BWCs shall be activated in any of the following situations:*

- (a) All enforcement and investigative contacts including stops and field interviews (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; and*
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.*

*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 portable recorder shall be activated in situations described above as soon as practicable.*

*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. 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.*

#### **450.5.1 SURREPTITIOUS USE OF THE PORTABLE RECORDER**

*Colorado law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (CRS § 18-9-303).*

*Members 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 BWC shall remain on continuously until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.*

#### **450.5.3 EXPLOSIVE DEVICE**

*Portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves if utilizing Bluetooth® or any type of data transmission system. These transmissions could trigger an explosive device depending on the proximity to the possible explosive device or the power of the transmission. Therefore, do not utilize Bluetooth® or any transmission system when an explosive device may be present.*

#### **450.6 PROHIBITED USE OF PORTABLE RECORDERS AND IPODS®**

*Portable recorders shall be used only in conjunction with official law enforcement duties. Portable recorders should not generally be used to record:*

- (a) Personal communications with other police personnel without the permission of the Chief of Police;*
- (b) Encounters with undercover officers or confidential informants;*
- (c) When on break or otherwise engaged in personal activities; or*
- (d) In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.*

*Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.*

*Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally-owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained by the Pueblo Police Department.*

*Members are prohibited from using personally-owned BWCs while on-duty without the express consent of the Chief of Police or his/her authorized designee. Any member who uses a personally-owned portable recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.*

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

*iPods® are multi-purpose devices with numerous functions and features. iPods® shall be used only in conjunction with official law enforcement duties. Members are prohibited from using department-issued iPods® for personal use.*

#### **450.7 RETENTION OF RECORDINGS**

*Any time a member records any portion of a contact with a BWC that the member reasonably believes constitutes evidence in a criminal case, the member shall record the related case number, transfer the file via the Evidence Transfer Manager, and document the existence of the*

*recording in the related case report. BWC recordings that do not constitute evidence in a criminal case shall be recorded with the related CAD event number and transferred via the Evidence Transfer Manager. Transfers shall occur at the end of the member's shift, or any time the storage capacity is nearing its limit.*

*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.*

*(a) All files shall be securely downloaded periodically and no later than the end of each shift. Each file shall contain information related to the date, BWC identifier, and assigned officer.*

*(b) All images and sounds recorded by the BWC are the exclusive property of this department. Accessing, copying, or releasing files for non-law enforcement purposes is strictly prohibited.*

*(c) All access to BWC files must be specifically authorized by the Chief of Police or his/her designee, and all access is to be audited to ensure that only authorized users are accessing the data for legitimate and authorized purposes.*

*(d) Files should be securely stored in accordance with state records retention laws and no longer than useful for purposes of training or for use in an investigation or prosecution. In capital punishment prosecutions, recordings shall be kept for the minimum amount of time as required by law.*

#### **450.7.1 RETENTION REQUIREMENTS**

*All recordings shall be retained for a period consistent with the requirements of the Department's records retention schedule but in no event for a period less than 90 days.*

#### **450.8 REVIEW OF RECORDINGS**

*When preparing written reports, members should review their recordings as a resource. 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, reports of meritorious conduct, or whenever such recordings would be beneficial in reviewing the member's performance.*

*Supervisors shall randomly review BWC recordings no less than on a monthly basis to ensure that their subordinates are using the devices appropriately and in accordance with policy, to identify any areas in which additional training or guidance is required, and to ensure that the equipment is operating properly.*

*Recorded files may also be reviewed:*

*(a) Upon approval by a supervisor, by any department member 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.*

## **450.9 RELEASE OF RECORDINGS TO THIRD-PARTIES AND PUBLIC**

*Recordings may be released to third-parties and the public pursuant to the provisions of the Colorado Open Records Act and/or the Colorado Criminal Justice Records Act, and policies and procedures of the Records Custodian (see the Records Release and Security Policy).*

# **Records Release and Security**

## **810.1 PURPOSE AND SCOPE**

*The purpose of this section is to establish a reference and procedure for the security and release of Department public records in accordance with the Colorado Open Records Act (CRS § 24-72-200.1 to § 24-72-206) and the Colorado Criminal Justice Records Act (CRS § 24-72-301 to CRS § 24-72-309).*

*This policy does not prevent the Department from voluntarily making part or all of specific records available to the requesting person, or the public, unless disclosure is deemed exempt, confidential, private or expressly prohibited by law.*

*The Federal Freedom of Information Act (FOIA) does not apply to state or local records.*

### **810.1.1 DEFINITIONS**

*Definitions related to this policy include:*

**Criminal justice records** - *All books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law.*

**Public records** - *All writings, unless excepted by statute, made, maintained, or kept by the Department for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. Criminal justice records are not public records.*

**Records Custodian** - *A person assigned the responsibility for the public and criminal justice records of Pueblo Police Department, regardless of whether the records are in his/her actual personal custody and control (CRS § 24-72-202(2) and CRS § 24-72-302(5)). For the purpose of this policy, the Records Manager shall serve as the Records Custodian subject to those specific exclusions found within this Policy Manual.*

### **810.2 PUBLIC REQUESTS FOR RECORDS**

*The Records Custodian is responsible for the retention, archiving, release and destruction of department public records as follows:*

*(a) The Records Custodian will maintain a policy for the retention, archiving and destruction of Department public records (CRS § 24-72-203(1)(b)(I)).*

*(b) The Records Custodian will maintain either the Colorado Model Municipal Retention Schedule if approved by the State Archivist for use by Pueblo Police Department or other retention schedule signed by the Records Custodian, the Colorado State Archivist, the State*

Auditor's Office and the Attorney General's Office. The Records Custodian is responsible for requesting authorization to destroy records and for responding to any authorization to destroy records sent by the State Archives.

(c) The Records Custodian will establish rules regarding the inspection of department public records and criminal justice records as reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office (CRS § 24-72-203(1)(a) and CRS § 24-72-304(1)).

(d) The Records Custodian should consult periodically with the Colorado Department of Personnel and the Attorney General of Colorado regarding retention and disposition of records to determine whether records are of legal, administrative or historical value (CRS § 24-80-103).

1. Those records unanimously determined to be of no legal, administrative or historical value shall be disposed of by such method as the three officers may specify.

2. The Records Custodian shall file and preserve a list of all records disposed of, together with a statement signed by these three officers certifying compliance.

(e) The Records Custodian shall maintain a schedule of fees for public records consistent with that adopted by the City of Pueblo.

(f) The Records Custodian should prepare and make available to the public a description of the basic rights of a person who requests public information, the responsibilities of the Department and the procedures, to include the cost of inspecting or obtaining copies.

### **810.2.1 PROCESSING OF REQUESTS**

Any member of the public, including the media, may request to inspect records of this department by submitting a written and signed request on the form provided by the Department to an authorized employee during normal business hours.

Request for records of the Department will be handled by the Records Section as follows:

(a) Each request received shall be stamped in red ink with a department stamp identifying the date the request was received.

(b) Records Section personnel shall determine whether the requested record is subject to the Colorado Open Records Act or the Colorado Criminal Justice Records Act and then whether the requested record is available and/or subject to any exemption from disclosure. Response should be made to a request for public records pursuant to the Colorado Open Records Act within three days of the request, unless the Records Custodian finds there are extenuating circumstances (CRS § 24-72-203(3)(b)).

1. A finding that extenuating circumstances exist shall be made in writing by the Records Custodian and shall be provided to the person making the request within the three-day period.

2. The fact that portions of records are exempt from disclosure shall not preclude portions that are not exempt from being released. If portions of a record are redacted, those portions should be identified as redacted or the person requesting the record shall be notified of the redaction.

3. If the Records Custodian finds there are extenuating circumstances, he/she shall make such records available for inspection within seven business days.

(c) The requesting party should be required to pay in advance any established fee for each record sought.

(d) Requests for information that the Records Custodian believes is confidential and wishes to withhold from the public that is not specifically allowed by statute or judicial decision should be discussed with legal counsel for the Department.

(e) If the Records Custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial. The Records Custodian shall provide to the applicant within seventy-two hours, a written statement citing the law or regulation under which access is denied or the general nature of the public interest to be protected (CRS § 24-72-204(4), CRS § 24-72-305(6)).

(f) The Department is not required to create records which do not otherwise exist. However, existing records may be copied in such a manner as to provide the requesting party with unrestricted portions of any record.

Members shall make a reasonable effort to exclude or redact the Social Security number of any victim and witness from any document released in accordance with this policy to anyone other than the victim, the attorney for the defendant or any criminal justice agency (CRS § 24-4.1-303(18)).

### **810.3 REPORT RELEASE RESTRICTIONS**

Records shall be released in accordance with the Colorado Open Records Act and the Colorado Criminal Justice Records Act. Restrictions to disclosure include but are not limited to the following:

(a) **Victim compensation information** - Records or portions of records containing any confidential materials concerning an application for victim's compensation shall not be released (CRS § 24-72-204(2)(c); CRS § 24-4.1-107.5).

(b) **Sexual assault victim information** - The name and any other information that would identify any victim of sexual assault or of alleged sexual assault or attempted sexual assault or alleged attempted sexual assault shall be deleted prior to the release of any record (CRS § 24-72-304(4)).

(c) **Confidential information** - Records involving confidential informants, intelligence information, information that would endanger the safety of any person involved or information that would endanger the successful completion of the investigation or a related investigation should not be released.

(d) **Information received from the Safe2Tell® program** - Information as described in CRS § 16-15.8-103 (CRS § 24-72-204; CRS § 16-15.8-104).

(e) **Intelligence and security measures** - Records of intelligence information or security procedures should not be released where disclosure would be contrary to the public interest (CRS § 24-72-204(2)(a)).

(f) **Contrary to the public interest** - The Records Custodian may refuse to disclose or release any criminal justice record when it would appear that the public's interest in accessing such record is outweighed by the reason for nondisclosure (CRS § 24-72-304(1)).

(g) **Solicitation of business use** - The Records Custodian shall deny any person access to records of official actions and criminal justice records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain (CRS § 24-72-305.5).

(h) **Requests from criminal defendants** - Requests from criminal defendants and their authorized representatives, including attorneys, shall be referred to the District Attorney, City Attorney or the courts.

(i) **Personnel records** - Personnel records, medical records and similar records which would involve personal privacy shall not be made public (CRS § 24-72-204(3)(a)).

(j) **Work product** - Any record which was created exclusively in anticipation of potential litigation involving this department shall not be subject to public disclosure.

(k) **Other records** - Any other record not addressed in this policy shall not be subject to inspection where (CRS § 24-72-204(1) and CRS § 24-72-305):

1. Such inspection would be contrary to any state statute.
2. Such inspection would be contrary to any federal statute or regulation.
3. Such inspection is prohibited by rules promulgated by the Supreme Court or by the order of any court.

### **810.3.1 PERSONAL IDENTIFYING INFORMATION**

*Employees shall not access, use or disclose personal identifying information, including an individual's photograph, Social Security number, driver identification number, name, address, telephone number and the individual's medical or disability information, which is contained in any driver's license record, motor vehicle record or any department record except as authorized by the Department and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721, 18 USC § 2722).*

### **810.4 SUBPOENA DUCES TECUM**

*Any subpoena duces tecum or discovery request should be promptly provided to a supervisor for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.*

*All questions regarding compliance with any subpoena duces tecum should be promptly referred to the City Law Department and other legal counsel for the Department so that a timely response can be prepared.*

### **810.5 RELEASED RECORDS TO BE STAMPED**

*Each record released, including those released pursuant to a subpoena duces tecum, shall be stamped in red ink with a Department stamp identifying the date the record was released.*

### **810.6 PRIVACY AND SECURITY OF RECORDS**

*Records such as offense reports, arrest reports, juvenile records or other sensitive records shall be secured in such a manner as to reasonably protect them from unauthorized disclosure.*