

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

MEMORANDUM

TO: BART Police Citizen Review Board DATE: January 31, 2019

FROM: Office of the Independent Police Auditor

SUBJECT: **Proposed Revisions to BPD Policy #451 – Body Worn Camera**

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 these sections of the Model, OIPA developed the following recommendation for changes to *BPD Policy 451 – Body Worn Camera*.

BART Police Department (BPD) Policy #451, titled “Body Worn Camera” 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. According to the language of the policy, officers are required to utilize the AXON camera in accordance with the provisions of this policy in order to maximize the effectiveness of the device, enhance transparency, and ensure the integrity of evidence.

The Office of the Independent Police Auditor (OIPA) proposes the following revisions to the existing policy, with specific language to be determined through discussion and collaboration between BPD Chief Carlos Rojas, the BART Police Officers Association, the BART Police Managers Association, BPD command staff, the BART Police Citizen Review Board (BPCRB) and OIPA:

- Update language to reflect equipment and technology upgrades
- Require Chief of Police’s or designee’s authorization to view critical incident recordings
- Specify and define a “timely activation”
- Reprogram AXON camera buffering period from 30 seconds to 60 seconds with audio
- Add language requiring AXON recording auditing by BPD personnel
- Add language regarding OIPA’s review of fare inspection activities
- Require officers to notify supervisors each time a camera becomes dislodged
- Specify and define a “law enforcement contact”
- Require confirmation of equipment failures via review of required equipment tests

OIPA proposes that all references to the “AXON Flex” video recorder be changed to reflect the Department’s transition the AXON Body 2 video recorder in order to bring the policy manual in line with the currently-issued equipment.

OIPA recommends the addition of language requiring express written or verbal authorization from the Chief of Police or his designee prior to the viewing of a critical incident recording by any subject or witness officer and/or any officer's attorney or representative. This serves to protect the integrity of any administrative or criminal investigation in keeping with the Department's position that such viewings are to be authorized by the Chief on a case-by-case basis after consultation with appropriate County prosecutors and/or District Attorneys.

OIPA recommends the addition of language defining a timely activation and related instruction specifying that a determination of timeliness is not dependent on video images that may be captured during any buffering (non-audio) period. OIPA believes that any thorough review of a law enforcement contact should include review of the verbal commands issued by an officer, particularly when related to the analysis of a use of force.

In connection with the previous recommendation, OIPA proposes that BPD reprogram the camera buffering period from the current 30-second setting to a 1-minute buffering period including audio. In connection with this proposal, OIPA suggests that officers who activate their cameras after the initiation of a law enforcement contact, but still capture the entirety of a use of force (both audio and video) during the pre-activation buffering period would receive a Training Point regarding the late activation instead of disciplinary action and the required escalation of discipline pursuant to the negotiated progressive discipline process. This recommendation is suggested as a technological solution for unavoidable human error related to dynamic and rapidly evolving circumstances. This proposal will reduce the disciplinary consequences of late activations while increasing the ability of the Department and OIPA to review video related to citizen complaints, administrative investigations, and criminal investigations.

OIPA proposes the addition of language requiring regular periodic auditing by BPD personnel of the accuracy and consistency of video labeling, titling, and categorization pursuant to Section 451.2.1. Relatedly, OIPA recommends the inclusion of language reflecting OIPA's participation in the monitoring of fare inspection activities via review of body-worn camera video recordings.

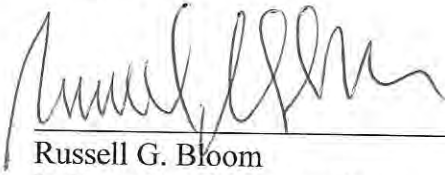
In an effort to identify and address any potential equipment hardware issues, OIPA recommends the addition of language requiring officers to notify supervisory personnel each time a camera becomes dislodged during a law enforcement contact. As OIPA has already discussed with BPD, there has been a significant increase in dislodged cameras since the distribution of the AXON Body 2 camera. Any lack of supervisory awareness of this equipment issue may increase the likelihood that a critical incident would not be captured on video because any lack of awareness may delay the Department's efforts to seek a remedy from the manufacturer.

OIPA recommends the addition of specific language clarifying the definition of a law enforcement contact. For example, OIPA is aware that in some instances officers have not characterized efforts to enforce Penal Code Section 640(d)(4) (re "Willfully blocking the free movement of another person in a system facility or vehicle") as a law enforcement activity that requires the activation of the AXON camera. Therefore, OIPA suggests additional language clarifying that any contact during which an officer issues a command or makes a demand for compliance therewith qualifies as a law enforcement contact.

OIPA is aware that on some occasions failed activations have been attributed to malfunctioning AXON equipment. OIPA recommends the addition of language requiring the confirmation of the required equipment test prior to reaching any supervisory determination regarding such malfunctions. OIPA further suggests the addition of language which provides that no failed activation may be mitigated by the assertion of an unconfirmed equipment failure unless the required pre-deployment test was properly performed and recorded.

As always, I welcome the opportunity to further discuss and work together to refine policy language as appropriate. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Russell G. Bloom", written over a horizontal line.

Russell G. Bloom
Independent Police Auditor

Body Worn Camera

451.1 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 body worn camera for use while on-duty. The body worn camera is designed to record both video and audio activity of members during the course of their official police duties. The body worn camera 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 body worn camera provides documentary evidence for criminal investigations, civil litigation, and allegations of officer misconduct. Such evidence shall be maintained by the Police Department as an investigatory record 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 body worn camera 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.

451.2 DEFINITIONS

- a. "AXON camera" This refers to the camera system that captures audio and video signals that is 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. "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.
- c. "Evidence Transfer Manager" (ETM) is a docking station that simultaneously recharges the AXON camera 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.
- d. The AXON camera manages the video compression and storage and is capable of playback via a Bluetooth paired smart device. The AXON camera ensures that evidence handling is secured and cannot be altered. Once plugged into the docking station, the AXON camera will upload digitally-encrypted data through the Evidence Transfer Manager to bartpd.evidence.com.
- e. [OIPA1] "AXON Technician" An employee of the department assigned by the system administrator that will assign, oversees, and tracks Department equipment. The AXON Technician shall oversee needed repairs or replacement of the AXON cameras and Evidence Transfer Manager equipment through AXON representatives.
- f. "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 AXON Technician, and acts as liaison with AXON representatives.
- g. "Video Recording" is the electronic recording of visual images with or without audio component.
- h. "Impound" is the process by which video and audio files are uploaded to Evidence.com by docking the AXON camera to the Evidence Transfer Manager thereby ensuring files are secure and unable to be altered.

451.2.1 CATEGORIES AND RETENTION PERIODS

The BART Police Department has twelve (12) categories to tag and retain our cases in Evidence.com. Each one is listed below with the current retention cycle. It should be noted that retention times can be extended at any time by a Supervisor, Internal Affairs, 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.

1. INFRACTION VIOLATIONS (2 YEARS)
2. DETENTIONS (2 YEAR)
3. SERVICE TO CITIZENS (1 YEAR)
4. COLD REPORT (1 YEAR)
5. ARREST (UNTIL MANUALLY DELETED)
6. OUTSIDE ASSIST (1 YEAR)
7. CONSENSUAL CONTACTS (1 YEAR)
8. SICK OR INJURED PATRONS (3 YEARS)
9. STATEMENTS (UNTIL MANUALLY DELETED)
10. USE OF FORCE (UNTIL MANUALLY DELETED)
11. UNATTENDED DEATH / HOMICIDE (UNTIL MANUALLY DELETED)
12. TESTING / ACCIDENTAL (30 DAYS)

451.3 UNIFORMED OFFICER RESPONSIBILITIES

Prior to going into service, each uniformed patrol officer equipped with a Department issued AXON camera will be responsible for making sure that the AXON camera is in good working order. The AXON camera shall be conspicuously placed on the officer's person and 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 using an AXON approved mounting accessory.

Members of the Department that are assigned an AXON camera 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 AXON camera and mounting systems are in good working order.

451.4 NON-UNIFORMED OFFICER RESPONSIBILITIES

Any officer assigned to a non-uniformed position may carry a Department-issued AXON camera 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 AXON camera in accordance with this policy.

451.5 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:

- OIPA DRAFT (DO NOT REPRODUCE OR FOR BPD Policy 451.5(b) Body Worn Camera
- 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 body worn camera 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 body worn camera and other member(s) of the Department or employees of the BART Office of the Independent Police Auditor. For purposes of this policy, contact between members of this Department is governed by section 451.5(a), and 451.5(b) (1).
 - c. All on-scene officers (inclusive of all initiating and witness officers) equipped with a body worn camera shall activate their cameras prior to making contact with individuals in any of the following circumstances:
 - 1. Any law enforcement contact:
 - a. detentions (as outlined in Policy section 322.3.1),
 - b. vehicle stops
 - c. walking stops
 - d. notification of a rule or law
 - e. Probation and parole searches
 - f. Service of a search or arrest warrant
 - g. Any contact with a subject suspected of criminal behavior
 - h. Processing, transporting, and booking of all prisoners.
 - 2. Any contact with a subject for a welfare check or suspicious person
 - 3. When speaking with a reporting party and/or witness regarding a crime
 - 4. Officers are also encouraged to activate their body worn camera on consensual encounters.
 - d. A timely activation of the body worn camera shall be defined as:
 - 1. For law enforcement contacts initiated by the officer, the officer activates prior to contacting a suspect or as soon as it is safe to do so.
 - 2. For calls for service, the officer activates either upon receipt of a call, or prior to arriving in the area of the incident when traveling to the location from a distance.
 - 3. The camera buffering period will capture the 60 seconds of audio and video prior to activation.
 - e. Members of the Department are expected to activate their body worn camera 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 body worn camera.
 - 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 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 body worn camera without express approval of the Chief of Police.

- f. When an equipment malfunction is identified as a reason for a non-activation or a late activation, a supervisor must confirm whether the officer performed the required equipment test prior to deployment.

451.6 AXON CAMERA OPERATING PROCEDURES

Prior to going into service each officer shall perform an inspection and record a test video, to ensure that his/her AXON camera is operational. If problems are encountered with any component of the system, the AXON camera equipment will not be used. The officer to whom the problematic equipment is assigned shall report the problem to their immediate supervisor upon becoming aware of it. A spare AXON camera shall be issued to that officer through a supervisor prior to the officer going into service. The officer and supervisor shall inform the AXON Technician via email of problems that are occurring with the problem unit as well as what spare AXON camera was assigned to the officer (number of AXON camera unit). The problematic AXON camera shall be routed to the AXON Technician to diagnose and shall reassign a new unit to the affected employee.

- a. The officers shall report the loss or theft of an AXON camera to their immediate supervisor. The officer shall prepare a memo to be routed via the chain of command to their Bureau Deputy Chief documenting the circumstances surrounding the loss or theft of the device. The AXON technician should be informed via email from the immediate supervisor of the loss. A spare AXON camera shall be issued to the officer through a supervisor prior to going back into service. The officer and supervisor shall inform the AXON Technician via email of what spare was issued (number of AXON camera unit). The AXON Technician shall assign a new unit to the officer as soon as possible after receiving notification of the loss or theft of the camera.
- b. Once the AXON camera is activated pursuant to Section 451.5 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. Officers shall record further interaction with suspects, including searching, processing, transporting, and booking. Any exceptions will be documented in the police report and reported to a supervisor. When the officer reasonably believes the event giving rise to the activation is over, he/she may deactivate the AXON camera from the recording mode. If the event giving rise to the activation resumes following the officer's termination of the AXON camera recording the officer shall reactivate their AXON camera.
- c. When the AXON camera 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 AXON camera 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. Conversely, whenever the AXON camera is not activated as required by Section 451.5 of this policy, the reason for the lack of activation will be documented on the relevant citation and/or police report prepared regarding the event that otherwise would have given rise to activation. For the purposes of capturing the recording or lack of recording in the police report it should be mentioned at the beginning of the narrative summary.
- d. 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. Recordings of critical incidents (i.e. Officer Involved Shootings) may only be viewed by the involved officer(s) when express permission is granted by the Chief of Police, or his or her designee.
- e. 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.
- f. If the AXON camera is accidentally activated, the officer shall inform his or her immediate supervisor requesting the recording be deleted. The request shall be sent via email and routed to the AXON Administrator. Once the video has been reviewed by the supervisor and administrator and deemed to have no evidentiary value the video will be categorized as "Testing/ Accidental" and retained for thirty (30) days prior to deletion. Officers should note accidental recordings by labeling them using their Department issued device prior to download.

- g. Once an officer has completed a recordable encounter he or she shall label the recording using their Department issued device. The officers shall provide the event number, category, and title of the video. This information will be uploaded along with the video once docked into the ETM at the end of shift. Supervisory personnel shall conduct regular audits to determine whether recordings are labeled in compliance with this section.
- h. Officers working overtime assignments outside of their direct report locations will ensure they bring their issued AXON camera to the location of their overtime assignment.
- i. When an officer discovers that his/her AXON camera battery is becoming depleted (as evidenced by a yellow indicator light and/or a sounding tone when recording), the officer shall immediately exchange the camera for a spare located in the Integrated Security Response Center (ISRC). If the officer will be delayed in exchanging the camera, or if the officer is unable to locate a charged spare Axon camera, the officer shall notify a supervisor and the supervisor will locate a charged spare Axon camera for the officer's use as soon as possible.
- j. If a camera becomes dislodged during a recording (e.g. during a use of force) the officer must notify his or her immediate supervisor afterwards. The supervisor will address any needed equipment issues.

451.7 AXON CAMERA IMPOUNDING PROCEDURE

To download the videos from their AXON cameras, officers shall place the AXON camera into an assigned open slot on the Evidence Transfer Manager (docking station). This will allow the data to be transferred from the AXON camera, via the docking station, to bartpd.evidence.com. The data is considered impounded at this point and the AXON camera is cleared of existing data.

Officers will ensure all videos capturing arrests, uses of force, and/or any incident deemed necessary by a supervisor, have been downloaded when not leaving their AXON camera in an ETM at the completion of a work shift. Any exceptions to this requirement will only be made in unusual circumstance and with supervisory approval.

451.8 REVIEW OF RECORDED MEDIA

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

- a. Recordings of critical incidents (i.e. Officer Involved Shootings) may only be viewed by the involved officer(s) when express permission is granted by the Chief of Police, or his or her designee.
- b. By a supervisor investigating a specific incident, issue, and/or act of officer conduct.
- c. 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.
- d. 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.
- e. By the Independent BART Police Auditor or his/her investigator.
- f. The Office of Independent Police Auditor is authorized to audit videos recorded by Fare Inspectors conducting Proof of Payment checks.
- g. Patrol Sergeants and Lieutenants are responsible for auditing videos recorded by personnel in their chain of command. Any policy violations should be addressed as appropriate.
- h.
- i. By the "System Administrators" for the purpose of managing the video evidence, quality assurance, and to categorize, label, provide case numbers to videos when needed.

451.9 MOBILE VIDEO RECORDERS

The Department assigned AXON camera 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.

OIPA DRAFT Policy Recommendation for BPD Policy 451 - Body Worn Camera