



WRITTEN DIRECTIVE	No.	PD16-0405	Page:	1 of 4
	Subject:	Effective	01-21-16	
	USE OF RECORDING DEVICES	Date:	01-21-16	
		Supersedes/ Amends:	PD13-0405	
	Reference:			



I. Purpose

The purpose of this directive is to establish guidelines and procedures for employee use of recording devices to reliably and lawfully record contacts with others. This policy is not intended to apply to the Body Worn Camera System (*refer to PD-0408 Body Worn Camera System*).

II. Policy

Lynchburg Police Department employees may record conversations or images when such recording is appropriate to the proper performance of their duties, where the recording is consistent with departmental policy, and the recording is not made outside the limits of State, Federal or Constitutional law.

Police Department employees must follow a code of conduct that reflects the highest ethical standards and promotes public confidence in the Department. Conduct may be unethical, even if it is lawful. The surreptitious recording of the conversations of others can be appropriate in connection with criminal investigations or when dealing with threatened or actual criminal activity. However, as a general rule, the non-consensual recording of a conversation with another person outside of criminal investigations is not appropriate and is incompatible with the best interest of the Police Department.

III. Procedure

A. GENERAL

1. Approved recording devices may be used by LPD employees for the following purposes:
 - a. Accurately document the circumstances or statements made during police-public contacts, arrests, and other incidents.
 - b. Enhance the documentation of crime or crash scenes or other events, including the confiscation and documentation of evidence or contraband.
 - c. Enhance the accuracy of reports.
 - d. Enhance the department's ability to review an employee's work performance.

2. The use of recording devices is governed by the provisions of Virginia State Code Section 19.2-63.1 which provides that all recording devices used by employees of this Department are under the control of the Chief of Police. Use of a recording device without the approval and knowledge of the Chief of Police or his designee is considered to be a violation of Section 19.2-63.1 and a violation of department policy.
3. The retention of any recording, either video, audio, or image made by an employee is governed by the provisions of the Virginia Freedom of Information Act, the Virginia Public Records Act, and rules of evidentiary disclosure in criminal and civil court proceedings.
 - a. As such, the *status* of the person making the recording governs the ownership of such recordings and not the ownership of the device making the recording.
 - b. Any recording made by an employee of this Department is considered a public record under the provisions of the Virginia Freedom of Information Act. All recordings made while on-duty or conducting employment related functions are subject to the provisions of the Virginia Freedom of Information Act and must be maintained in accordance with the Library of Virginia records retention schedule as required by the Virginia Public Records Act.

B. RESTRICTIONS ON THE USE OF RECORDING DEVICES

1. Surreptitious recording is defined as a covert, clandestine, or secret audio, video, or photographic recording of another person without the knowledge and consent of the person being recorded.
2. In accordance with the provisions of Virginia State Code Section 19.2-63.1, employees wishing to use a personally owned recording device must obtain the approval of the Chief of Police or his designee prior to use of such device.
3. Employees may not surreptitiously record audio, video or images of any other LPD employee or any City employee or official without the permission of that employee's Division Captain.
4. Absent issuance of a court order, issuance of a court-ordered warrant, statutory legal authority, or the approval of the employee's Division Captain, LPD employees may not surreptitiously make any audio or image recording of any person under circumstances in which that person being recorded has a reasonable expectation of privacy without such person's knowledge and consent.
 - a. Any employee found to be surreptitiously recording another employee, for the purpose of bringing discredit to another employee, or the agency, will be subject to disciplinary action in accordance with *PD - 0212 Disciplinary System*.

C. USE OF RECORDING DEVICES

1. When using a recording device, the employee shall activate the device so as to record an entire conversation or contact to ensure integrity of the recording unless the contact moves into a restricted conversation as outlined in the policy or applicable law.
2. If an employee fails to record an entire conversation or contact, the employee will note in an incident report an explanation as to why the recording was interrupted or terminated or otherwise incomplete.
3. Any recording made or electronic data captured by an employee while on duty, conducting employment related functions, or (in the case of sworn employees); when in a Special Off-Duty employment situation shall be the property of the Lynchburg Police Department.
4. Any recording considered property of the Lynchburg Police Department shall not be given, sent, transferred, or transmitted to any other person or entity unless approved by the Chief of Police or his designee.
5. Any recording that would be considered potential evidence in any criminal or civil case shall be turned in to the Lynchburg Police Department evidence voucher system in an unedited format by the employee.
6. Any recording that would be considered a public record shall be turned in to the Lynchburg Police Department evidence voucher system in an unedited format to be retained under the provisions of the Library of Virginia File Management and Retention Schedule for electronic recordings and/or law enforcement investigative case file records.
7. Any recording that would assist in evaluating an employee's work performance or fitness for duty shall be turned over in unedited format to any LPD supervisor at that supervisor's request.
 - a. Such recording will be retained by the supervisor in a confidential file until the work performance or fitness for duty evaluation is complete.
 - b. Upon completion of the evaluation, the original recording will be returned to the employee and if deemed necessary by the supervisor, a copy of such recording will be maintained in the employee's personnel file.
8. It is not the intent of the Lynchburg Police Department to observe or listen to recordings of a personal nature that may be captured on an employee's personal recording device. However, to ensure the integrity of the recording the employee shall not edit any recording or captured data before turning that recording over to a supervisor or in to the evidence voucher system.

9. Any time a supervisor is reviewing a recording made by an employee, the supervisor will discontinue reviewing the portion of the recording that is of a personal nature and has no relation to the employee's work performance as soon as the supervisor recognizes the personal nature of the recording.

Original Signed

Raul M. Diaz
Chief of Police

January 21, 2016

Date