

# Bay Area Rapid Transit Police Department

Policy Manual

## Use of the AXON Flex

### 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 AXON Flex video recorder for use while on-duty. The AXON Flex is designed to record both video and audio activity of members during the course of their official police duties. The AXON Flex 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 AXON Flex 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 AXON Flex 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 Flex" 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 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.

(d) "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.

(e) "AXON Controller" is the battery pack and on off switch for the AXON Flex Camera and connects to the Flex Camera via a small gage wire.

(f) "AXON Flex Technician" An employee of the department assigned by the system administrator that will assign, oversees, and tracks Department equipment. The AXON Flex Technician shall oversee needed repairs or replacement of the AXON Flex and Evidence Transfer Manager equipment through Taser AXON representatives.

Use of the AXON Flex - 395

Adopted: 2013/10/25 © 1995-2013 Lexipol, LLC

## Bay Area Rapid Transit Police Department

Policy Manual

### *Use of the AXON Flex*

(g) "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 Flex Technician, and acts as liaison with Taser AXON representatives.

(h) "Video Recording" is the electronic recording of visual images with or without audio component.

(i) "Impound" is the process by which video and audio files are uploaded to Evidence.com by docking the AXON Flex 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.

(a) 01) INFRACTION VIOLATIONS 2 YEARS

(b) 02) DETENTIONS 2 YEAR

(c) 03) SERVICE TO CITIZENS 1 YEAR

(d) 04) COLD REPORT 1 YEAR

(e) 05) ARREST (UNTIL MANUALLY DELETED)

(f) 06) OUTSIDE ASSIST 1 YEAR

(g) 07) CONSENSUAL CONTACTS 1 YEAR

(h) 08) SICK OR INJURED PATRONS 3 YEARS

(i) 09) STATEMENTS (UNTIL MANUALLY DELETED)

(j) 10) USE OF FORCE (UNTIL MANUALLY DELETED)

(k) 11) UNATTENDED DEATH / HOMICIDE (UNTIL MANUALLY DELETED)

(l) 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 Flex will be responsible for making sure that the AXON Flex is in good working order. The AXON Flex shall be conspicuously placed on the officer's person in any configuration supported by a TASER approved AXON Flex mounting accessory. The AXON Flex 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 using a TASER approved AXON Flex mounting accessory.

Members of the Department that are assigned an AXON Flex 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 Flex and mounting systems are in good working order. Officers will conduct the following steps prior to going into service:

(a) Officers shall insure that the battery is fully charged

1. Depress the battery status button on the front of the controller and observe that the light is green

Use of the AXON Flex - 396

Adopted: 2013/10/25 © 1995-2013 Lexipol, LLC

## Bay Area Rapid Transit Police Department

Policy Manual

### *Use of the AXON Flex*

(b) Officers shall insure that the camera is able to be activated and is functioning

1. Connect the battery cable from the battery to the camera
2. Turn the camera on by clicking the on switch (should see orange sticker)
3. Observe the indicator lights are correct (blinking green)
4. Double tap button to activate recording (should hear two audible tones)
5. Observe that indication lights are correct (blinking red)
6. Press and hold to end recording (should hear one audible tone)
7. Observe that indicator lights are correct (blinking green)

(c) Officer shall insure that the player is properly paired

(d) Officer shall insure that the field of view for the camera is correct

1. Activate the Samsung Galaxy player
  2. Activate the Live Preview feature
  3. Using the player make necessary adjustments to camera
  4. Be aware that camera adjustments may be needed periodically during shift
- (e) Officers shall keep their AXON Flex on and in buffering mode at all times.

1. Except when in a bathroom or locker room.
2. Upon exiting the facilities listed in (a) the camera shall be reactivated.

### **451.4 NON-UNIFORMED OFFICER RESPONSIBILITIES**

Any officer assigned to a non-uniformed position may carry a Department-issued AXON Flex 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 Flex 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:

(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:

Use of the AXON Flex - 397

Adopted: 2013/10/25 © 1995-2013 Lexipol, LLC

## Bay Area Rapid Transit Police Department

Policy Manual

### *Use of the AXON Flex*

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 AXON Flex 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 AXON Flex and other member(s) of the Department. 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 an AXON Flex 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 AXON Flex 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 AXON Flex 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 AXON Flex.
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 AXON Flex without express approval of the Chief of Police.

#### **451.6 AXON FLEX OPERATING PROCEDURES**

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

(a) Prior to going into service each officer shall perform an inspection, consisting of the steps set forth in section 451.3 and provided to each officer at their initial AXON Flex training, to ensure that his/her AXON Flex is operational. If problems are encountered with any component of the system, the AXON Flex 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 Flex shall be issued to that officer through a supervisor prior to the officer going into service. The officer

Use of the AXON Flex - 398

Adopted: 2013/10/25 © 1995-2013 Lexipol, LLC

## **Bay Area Rapid Transit Police Department**

Policy Manual

### *Use of the AXON Flex*

and supervisor shall inform the AXON Flex Technician via email of problems that are occurring with the problem unit as well as what spare AXON Flex was assigned to the officer (number of AXON Flex unit). The problematic AXON Flex shall be routed to the AXON Flex Technician to diagnose and shall reassign a new unit to the affected employee.

(b) The officers shall report the loss or theft of an AXON Flex to their immediate supervisor. The officer shall prepare a memo to be routed via the chain of command to the Operations Deputy Chief documenting the circumstances surrounding the loss or theft of the device. The AXON Flex technician should be informed via email from the immediate supervisor of the loss. A spare AXON Flex shall be issued to the officer through a supervisor prior to going back into service. The officer and supervisor shall inform the AXON Flex Technician via email of what spare was issued (number of AXON Flex unit). The AXON Flex Technician shall assign a new unit to

the officer as soon as possible after receiving notification of the loss or theft of the camera.

(c) Once the AXON Flex 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. When the officer reasonably believes the event giving rise to the activation is over, he/she may deactivate the AXON Flex from the recording mode. If the event giving rise to the activation resumes following the officer's termination of the AXON Flex recording the officer shall reactivate their AXON Flex.

(d) When the AXON Flex 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 Flex 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 AXON Flex is activated pursuant to Section 451.5 of this policy, this fact will be documented on any relevant citation and/or police report prepared regarding the event that gave rise to the activation. Conversely, whenever the AXON Flex 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.

(e) 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.

(f) 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.

(g) If the AXON Flex 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 Flex 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 the Samsung Player prior to download.

(h) Once an officer has completed a recordable encounter he or she shall label the recording using the Samsung Player. The officers shall provide the event number,

Use of the AXON Flex - 399

Adopted: 2013/10/25 © 1995-2013 Lexipol, LLC

## Bay Area Rapid Transit Police Department

Policy Manual

### *Use of the AXON Flex*

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.

(i) Officers working overtime assignments outside of their direct report locations shall utilize a spare AXON Flex and player at the location of their overtime assignment. Officers shall inform their supervisor of the utilization of the spares and send an email to the AXON Flex Technician documenting the spare unit's number to be used for that shift. If a spare is not available the officer shall contact the supervisor to inform them of this issue. The supervisor shall attempt to locate another spare unit on the line that may be available for use and provide the officer instruction on how to obtain it. If the officer and supervisor are unable to locate a spare for the assignment this shall be documented on all reports and citations taken by the officer assigned to the overtime shift.

### **451.7 AXON FLEX IMPOUNDING PROCEDURE**

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

### **451.8 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.
- (f) 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 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.