DAVIS POLICE DEPARTMENT
RELEASE OF VIDEO EVIDENCE
Interim Policy and Procedure 4.13-A

DEPARTMENT MANUAL

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On July 31, 2018, the Davis City Council, in accordance with the Surveillance Technology Ordinance, adopted the following Interim Release of Video Evidence Policy (26.07.030 Davis Municipal Code).

Notwithstanding this policy, commencing July 1, 2019, a video or audio recording that relates to a critical incident, as defined in 6254 (f) (4) (C) of the California Government Code will be released pursuant to state law.

I. POLICY

It is the policy of the Davis Police Department that video evidence of critical incidents involving Davis police officers that is within the Department’s possession be released to the public within 45 days of the incident. Video may be released earlier if the Police Chief determines that earlier release is in the public interest. This release shall consist of relevant video imagery that depicts the actions and events leading up to and including the critical incident. Relevant video imagery is video and accompanying audio footage that is typically considered by the Police Chief and criminal prosecutors to determine the propriety of an officer’s conduct during such critical incidents. The release of video shall be accompanied by additional information to provide context based on the evidence available at the time of release.

Critical Incidents: This policy applies to video imagery concerning the following types of incidents:

- Officer-involved shootings, regardless of whether a person was hit by gunfire;
- A use of force resulting in death or serious bodily injury to another;
- All deaths while an arrestee/detainee is in the custodial care of the Department unless there is no preliminary evidence of any of the following: misconduct, a use of force, or an act committed by an arrestee/detainee that appears intended to cause injury or death; or
- Any other police encounter where the Police Chief, the Independent Police Auditor and the City Manager determine the release of video is in the public interest.

II. PROCEDURE

A. Statement of Intent

It is the intent of the Department, through the adoption of this policy, to increase transparency with respect to the operations of the Davis Police Department, and in doing so, foster greater public
trust. The community has an undeniable interest in being informed, in a timely fashion and based on the most accurate information available, about how their police department conducts its business, especially where officers use lethal force or where the use of force by the police result in the death or serious injury of a person.

This policy sets the standards and criteria for the public release of video recordings that capture critical incidents involving Davis police officers. This policy is intended to balance two important interests: the public’s interest in transparency and police accountability, and the privacy interests of the individuals depicted in such videos. The public has a strong interest in obtaining timely access to information, including video footage, regarding incidents where officers use lethal force and/or where a person has died or suffered a serious injury as a result of a police encounter or while in police custody. At the same time, the individuals who appear in these videos have a privacy interest which must be considered. These individuals include not only the involved individuals and the police officers, but also witnesses, bystanders, and the subject upon whom force is used.

There are considerations, such as preserving the integrity of related investigations, that may justify a delay or deviation from the standard procedure, and these considerations are also detailed in this policy. In recognizing that a video may not tell the whole story, the Davis Police Department will also provide the necessary context when releasing video so the public has the most accurate picture of what occurred based on the information known at the time of release.

B. Video Sources

The sources of video that may be released pursuant to this policy includes, but are not limited to, body-worn camera video, digital in-car video and video captured by third parties that is in the Department’s possession.

C. Privacy Protections

Video will not be released where prohibited by law or court order. Further, consistent with the protections afforded juveniles and the victims of certain crimes, video imagery shall be redacted or edited to the extent necessary to ensure that the identity of said individual(s) is protected. Where the video cannot be sufficiently redacted or edited to protect the person’s identity, it will be withheld. In addition, video may also be redacted or edited to protect the privacy interests of other individuals who appear in the video. In each instance, such redaction may include removing sound or blurring of faces and other images that would specifically identify involved individuals, sensitive locations, or reveal legally protected information. Further, where possible, such redaction or editing shall not compromise the depiction of what occurred during the incident.

D. Delayed Release

There may be circumstances under which the release of such video must be delayed to protect one or more of the following:

- Safety of the involved individuals, including officers, witnesses, bystanders, or other third parties;
- Integrity of an active investigation (including criminal or administrative);
- Confidential sources or investigative techniques; and
- Constitutional rights of an accused

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These reasons may not be general; they must have a factual basis and be specific to the individual case. For example, investigators have identified but not yet been able to interview a key witness to the incident. The delay of the release of video, in accordance with this policy, shall be made pursuant only to the decision of the Police Chief, the Independent Police Auditor and the City Manager. Any decision to permit a delay shall be re-assessed every fourteen days thereafter, with any continued justification for delay, as well as anticipated time frame for release. The video imagery in question shall be released as soon as the reason for delay has been resolved.

E. Notifications

Absent exigent circumstances, reasonable attempts shall be made to notify the following individuals or entities forty-eight (48) hours prior to the release of video imagery:

- Officers depicted in the video and/or significantly involved in the use of force.
- Subject upon whom force was used.
  - If the subject is deceased, the next of kin will be notified.
  - If the subject is a juvenile, the juvenile’s parents or legal guardian will be notified.
  - If the subject is represented by legal counsel, that representative will be notified.
- District Attorney’s Office
- Davis Police Officers Association
- Other individuals or entities connected to the incident as deemed appropriate.

F. Posting

Released video will be posted on the Department’s website for a period of 6 months.

G. Limited Waiver

The release of any specific video imagery does not waive the Department’s right to withhold other video imagery or investigative materials in the same case or any other case, as permitted by law.

This policy is not intended to displace or supersede any legal right or remedy available to any person or entity, and it is also not intended to prevent or hinder compliance by the Department with respect to any legal disclosure requirements, including but not limited to, any court order or disclosure provisions of the California Public Records Act. This policy applies only to incidents occurring after the effective date of this policy.

H. Records Released Pursuant to State Law

1. California law requires law enforcement agencies to release certain public records. Audio and video recordings will be released as required by the California Government Code.

6254 (f) (4) Notwithstanding any other provision of this subdivision, commencing July 1, 2019, a video or audio recording that relates to a critical incident, as defined in subparagraph (C), may be withheld only as follows:

(A)  
(i) During an active criminal or administrative investigation, disclosure of a recording related to a critical incident may be delayed for no longer than 45 calendar days after the date the agency knew or reasonably should have known about the
incident, if, based on the facts and circumstances depicted in the recording, disclosure would substantially interfere with the investigation, such as by endangering the safety of a witness or a confidential source. If an agency delays disclosure pursuant to this paragraph, the agency shall provide in writing to the requester the specific basis for the agency’s determination that disclosure would substantially interfere with the investigation and the estimated date for disclosure.

(ii) After 45 days from the date the agency knew or reasonably should have known about the incident, and up to one year from that date, the agency may continue to delay disclosure of a recording if the agency demonstrates that disclosure would substantially interfere with the investigation. After one year from the date the agency knew or reasonably should have known about the incident, the agency may continue to delay disclosure of a recording only if the agency demonstrates by clear and convincing evidence that disclosure would substantially interfere with the investigation. If an agency delays disclosure pursuant to this clause, the agency shall promptly provide in writing to the requester the specific basis for the agency’s determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and provide the estimated date for the disclosure. The agency shall reassess withholding and notify the requester every 30 days. A recording withheld by the agency shall be disclosed promptly when the specific basis for withholding is resolved.

(B)

(i) If the agency demonstrates, on the facts of the particular case, that the public interest in withholding a video or audio recording clearly outweighs the public interest in disclosure because the release of the recording would, based on the facts and circumstances depicted in the recording, violate the reasonable expectation of privacy of a subject depicted in the recording, the agency shall provide in writing to the requester the specific basis for the expectation of privacy and the public interest served by withholding the recording and may use redaction technology, including blurring or distorting images or audio, to obscure those specific portions of the recording that protect that interest. However, the redaction shall not interfere with the viewer’s ability to fully, completely, and accurately comprehend the events captured in the recording and the recording shall not otherwise be edited or altered.

(ii) Except as provided in clause (iii), if the agency demonstrates that the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction as described in clause (i) and that interest outweighs the public interest in disclosure, the agency may withhold the recording from the public, except that the recording, either redacted as provided in clause (i) or unredacted, shall be disclosed promptly, upon request, to any of the following:

(I) The subject of the recording whose privacy is to be protected, or his or her authorized representative.

(II) If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected.
(III) If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject whose privacy is to be protected.

(iii) If disclosure pursuant to clause (ii) would substantially interfere with an active criminal or administrative investigation, the agency shall provide in writing to the requester the specific basis for the agency’s determination that disclosure would substantially interfere with the investigation, and provide the video or audio recording. Thereafter, the recording may be withheld by the agency for 45 calendar days, subject to extensions as set forth in clause (ii) of subparagraph (A).

(C) For purposes of this paragraph, a video or audio recording relates to a critical incident if it depicts any of the following incidents:

(i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.

(ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or in great bodily injury.

(D) An agency may provide greater public access to video or audio recordings than the minimum standards set forth in this paragraph.

(E) This paragraph does not alter, limit, or negate any other rights, remedies, or obligations with respect to public records regarding an incident other than a critical incident as described in subparagraph (C).

Darren Pytel
Police Chief
August 2, 2018

Revised
06/19 changes to state law

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