

CITIZEN ACCESS TO LAW ENFORCEMENT AUDIO/VIDEO RECORDINGS

To Be Seen or Not to Be Seen?

SUMMARY

In October 2011, the 2011-12 Santa Barbara County Grand Jury (Jury) published a report endorsing the use of audio/video (A/V) recording capability in all Santa Barbara County law enforcement patrol vehicles. Agencies without the capability agreed with the recommendation and are currently seeking funds to comply.

Recently, the Jury received a complaint inquiring if there was access to the law enforcement A/V recordings by affected citizens, including parents/guardians.

While certain California government codes and court decisions preclude access to recordings except through standard court procedures, the Jury found that other California government codes allow law enforcement officials discretion to provide access. A discretionary period of time exists between the law enforcement contact and the filing of a criminal complaint or petition by the agency when citizens could view the recordings.

The Jury also learned that when citizens and parents/guardians are informed that they can have access, the vast majority choose not to pursue a citizen complaint or lawsuit.

The Jury recommends that citizens and parents/guardians have access to A/V recordings during the discretionary period of time; that they are informed that they may have access; and that each law enforcement agency report to its respective government possible savings of time and money.

BACKGROUND

On October 7, 2011, the Jury released a report entitled *Grand Jury Endorses Patrol Vehicle Cameras*. According to the report all but two law enforcement agencies in Santa Barbara County had A/V recording cameras in their patrol vehicles. The cities of Guadalupe and Santa Barbara did not have this capability. Since the report was issued, the City of Santa Barbara has stated that it is prepared to move forward with this project once funding is secured. The City of Guadalupe is committed to move forward once the equipment is identified and the funding secured.

After the release of the Jury's report, a citizen complaint was received asking if a citizen could access the A/V recordings. It was suggested that such viewings could result in

CITIZEN ACCESS TO LAW ENFORCEMENT AUDIO/VIDEO RECORDINGS

better law enforcement practices and lower rates of complaints and lawsuits against law enforcement agencies. The complaint to the Jury also suggested that a citizen may well back off of a complaint against law enforcement officials if the A/V recording was made available. The complainant asked if money could possibly be saved if citizens who had contacts with law enforcement and later questioned some aspect of officer behavior could see the actual A/V recording. A final part of the citizen's complaint inquired as to whether parents/guardians have access to A/V recordings of law enforcement contacts with juveniles to assist them in the proper counseling of their youngsters.

Subsequently, an investigation was initiated by the Jury into the legal issues surrounding citizen access to A/V recordings; parental/guardian access to A/V recordings of law enforcement contact with their children; and any financial impacts on law enforcement agencies and local government that such policy implementations might have.

METHODOLOGY

The objective of the Jury's inquiry was to determine if government codes allowed public access to A/V recordings after a law enforcement contact with a citizen. The Jury was also interested in whether parents/guardians could have access to patrol vehicle A/V recordings of their under-age children. Questions were submitted to law enforcement agencies in Santa Barbara County that currently have A/V recording capability which includes the cities of Lompoc and Santa Maria, and the Santa Barbara County Sheriff's Department. The Jury then conferred with the Santa Barbara County Office of County Counsel as to whether government codes allowed for citizen review of A/V recordings at any point prior to a criminal complaint or a juvenile petition being filed.

Law enforcement officials were interviewed regarding the effectiveness of citizen and parental/guardian viewing of A/V recordings as a way of eliminating further action by citizens such as filing complaints or lawsuits. In addition, the Jury reviewed relevant documents and government codes. The Jury also viewed samples of patrol vehicle A/V recordings.

OBSERVATIONS AND ANALYSIS

The purpose of the Jury's investigation was to determine the legal basis for allowing citizen and parent/guardian access to patrol vehicle A/V recordings. The Jury also believed that if access could be gained early in the process the number of citizen complaints and lawsuits might be reduced. The obvious benefit to the public could be significant both in terms of reduced staff time and expenses and increased transparency of law enforcement activities. In addition, the Jury sought to determine if parent/guardian access would help them in dealing with their children by seeing the

CITIZEN ACCESS TO LAW ENFORCEMENT AUDIO/VIDEO RECORDINGS

episode first-hand.

Inquiries were made of all County law enforcement agencies that currently have A/V capability in their patrol vehicles. Responses from these agencies were virtually the same:

1. Citizens are not routinely informed by law enforcement personnel that patrol officer incidents are being recorded
2. Citizen access to A/V recording can be gained through legal processes, court requests, or subpoenas
3. Parents/guardians can access A/V recordings through legal processes
4. Legal restrictions that limit citizen access were cited as Government Code Section 6254, *Oziel v. Superior Court* (1990) 223 Cal. App. 3d 1284 and *Walters v Superior Court* (2000), 80 Cal. App. 4th 1074

The Jury then explored the possibility of a citizen or parent/guardian accessing A/V recordings prior to any legal proceedings being initiated.

The Jury conferred with the Office of County Counsel to determine if there was any point between initial law enforcement contact and a possible criminal investigation when a citizen or parent/guardian could gain access to A/V recordings. The response to the Jury was as follows:

1. "... a law enforcement agency retains discretion to produce an investigative record, such as a video recording. (89 Ops.Cal.Atty.Gen. 204; 86 Ops.Cal.Atty.Gen. 132). Accordingly, an agency may allow the viewing of video recording by the person arrested or, in the case of a minor, his or her parent."¹
2. "It should be noted, however, that once discretion is exercised in favor of disclosing the video recording, the exemption of disclosure is waived and it must be provided to all who request it for viewing. (Government Code Section 6254.5)."

It is clear, based on the above cited opinion, that there is legal discretion available to the heads of law enforcement agencies to provide citizen and parent/guardian access to A/V recordings *prior* to the filing of a legal complaint or juvenile petition.

Given the short amount of time between the incident and possible filing of a legal complaint or juvenile petition, it follows that citizens should be informed immediately of their ability to access the A/V recording. The Jury believes this information should be both verbal and on a form or card that is given to citizens. The information should include whom to contact and how to contact them.

As a practical matter it would be incumbent on the agency to directly contact a parent/guardian of the availability of an A/V recording of a law enforcement contact involving their child. It is unlikely that all juveniles would inform the parent/guardian

¹ *Government Code section 6252(f)*

CITIZEN ACCESS TO LAW ENFORCEMENT AUDIO/VIDEO RECORDINGS

that there is a recording available for viewing the incident.

Law enforcement personnel were interviewed about important potential outcomes of allowing citizen access, such as:

1. Would such access reduce the number of citizen complaints/lawsuits against law enforcement agencies?
2. Would parent/guardians take advantage of the access?

The answer to both questions was “Yes.” It was stated that when citizens and parents/guardians inquired about an incident and were informed that there was an A/V recording, in an overwhelming number of cases, the issue was dropped.

Currently the cities of Santa Barbara and Guadalupe do not have patrol vehicle A/V recording capability. As Santa Barbara moves forward toward installing A/V equipment and Guadalupe succeeds in its quest for funding, they too should implement A/V viewing procedures.

The 2011-12 Santa Barbara County Grand Jury concludes that the benefits of viewing patrol vehicle A/V recordings are considerable. The time and money saved as a result of the citizenry knowing that the incident was recorded could be substantial, especially if a lawsuit is avoided by an early review of the incident. Parents/guardians could clearly benefit by knowing they could witness the incident through viewing the recording. Finally, the transparency that such access could bring to the process, especially at the beginning, could benefit all involved.

FINDINGS AND RECOMMENDATIONS

Finding 1

Government Code section 6252(f) allows law enforcement agencies discretion to provide citizen access to patrol vehicle audio/video recordings.

Finding 2

Law enforcement agencies in Santa Barbara County do not provide routine citizen access to patrol vehicle audio/video recordings.

Finding 3

Law enforcement agencies in Santa Barbara County do not routinely inform the affected citizen that there is an audio/video recording being made during a patrol vehicle stop.

Finding 4

Law enforcement agencies in Santa Barbara County do not routinely inform the parent/guardian that there is a patrol vehicle audio/video recording of the agency’s contact with their juvenile.

Finding 5

CITIZEN ACCESS TO LAW ENFORCEMENT AUDIO/VIDEO RECORDINGS

Law enforcement officials reported that, upon learning of patrol vehicle audio/video recordings, the overwhelming majority of citizens did not follow up or file complaints and/or lawsuits, thereby potentially saving governments considerable time and money.

Finding 6

The City of Guadalupe does not currently have the funds to install audio/video equipment in patrol vehicles.

Finding 7

The City of Santa Barbara is in the process of obtaining audio/video recording equipment in all patrol vehicles.

Recommendation 1

That all Santa Barbara County law enforcement agencies permit citizens stopped by patrol officers to view audio/video recordings prior to filing a legal complaint or a juvenile petition.

Recommendation 2

That all Santa Barbara County law enforcement agencies provide verbal as well as a printed notice to citizens contacted by a patrol officer that there has been an audio/video recording of the incident and when and where they may view it.

Recommendation 3

That the parent/guardian of a juvenile contacted by a patrol officer be informed that an audio/video recording of a contact with their child has been made and when and where they may view it.

Recommendation 4

That all Santa Barbara County law enforcement agencies that currently have patrol vehicle audio/video recording capability evaluate the financial savings and report to their city councils and/or Board of Supervisors the impact of initiating Recommendations 1, 2, and 3.

Recommendation 5

That the City of Guadalupe initiate Recommendations 1, 2, 3, and 4 as soon as audio/video equipment has been installed in its patrol vehicles.

Recommendation 6

That the City of Santa Barbara initiate Recommendations 1, 2, 3, and 4 as soon as audio/video equipment has been installed in its patrol vehicles.

REQUEST FOR RESPONSE

In accordance with California Penal Code Section 933.05, each agency and government body affected by or named in this report is requested to

CITIZEN ACCESS TO LAW ENFORCEMENT AUDIO/VIDEO RECORDINGS

respond in writing to the findings and recommendations in a timely manner. The following are the affected agencies for this report, with the mandated response period for each.

Santa Barbara County Sheriff's Department – 90 days

Findings 1, 2, 3, 4

Recommendations 1, 2, 3, 4

Santa Maria Police Department – 90 days

Findings 1, 2, 3, 4

Recommendations 1, 2, 3, 4

Lompoc Police Department – 90 days

Findings 1, 2, 3, 4

Recommendations 1, 2, 3, 4

Guadalupe Police Department – 90 days

Finding 6

Recommendation 5

Santa Barbara Police Department – 90 days

Finding 7

Recommendation 6