



CITY OF LOMPOC
POLICE DEPARTMENT
"Where Service is Tradition"

TIMOTHY L. DABNEY
Chief of Police

August 8, 2012

Santa Barbara County Civil Grand Jury
1100 Anacapa Street
Santa Barbara, California 93101

Dear 2011-2012 Civil Grand Jury Members,

The Lompoc Police Department has received the report of the 2011-2012 Santa Barbara County Civil Grand Jury entitled "Citizen Access to Law Enforcement Audio/Video Recordings – To Be Seen or Not to Be Seen?" While it is apparent that the Civil Grand Jury has the best interest of Santa Barbara County residents at heart in seeking transparency, the fact remains that audio and video recordings associated with criminal investigations are considered to be evidence and are not subject to public disclosure outside of the discovery process described in California Penal Code Sections 1054 *et seq.* and the California Evidence Code. The arbitrary release of direct evidence, without due process, can jeopardize investigations and put witnesses and victims at risk of intimidation or retaliation.

The men and women of the Lompoc Police Department are proud to serve our community and hold sacred the public trust that has been bestowed upon each member. Our staff dedicates themselves to providing services at the highest level possible within the means of our existing resources.

On behalf of the Lompoc Police Department, we are responding to the findings and recommendations pertaining to our City issued under the "Citizen Access to Law Enforcement Audio/Video Recordings – To Be Seen or Not to Be Seen." report of the 2011-2012 Santa Barbara County Civil Grand Jury.

Finding 1:

"Government Code Section 6254(f) allows law enforcement agencies discretion to provide citizen access to patrol vehicle audio/video recordings."

The Lompoc Police Department Agrees with Finding 1.

However, most recordings associated with criminal violations are in fact items of evidence and are subject to the discovery process, subpoena, and presentation in a court of law as described under California Penal Code Sections 1054 *et seq.* and the California Evidence Code. There may be occasions in which audio or video recordings of citizen contacts are made available to the public to address concerns of citizens.

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Finding 2:

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

The Lompoc Police Department Agrees with Finding 2.

As mentioned in the response to Finding 1, audio and/or video recordings of law enforcement contacts with members of the public are most often associated with a criminal allegation and as such be subject to the discovery process under the California Penal Code and Evidence Code. The California Public Records Act protects investigative reports and evidence in an ongoing investigation. Nevertheless, audio and/or video recordings captured by equipment installed in patrol vehicles that are held as evidence or part of an investigation can be obtained through the discovery process. Pursuant to the Public Records Act and upon a request from the public, recordings that are not deemed evidence or part of an investigative report must be disclosed to the public, unless based "on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (Government Code Section 6255.)

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."

The Lompoc Police Department Agrees with Finding 3.

While it is the policy of the Lompoc Police Department to document whether or not an audio and/or video recording is associated with a citation or police report, such recordings captured by equipment in patrol vehicles are done so in a public venue where no legal expectation of privacy exists. Therefore, officers are not compelled by law to inform persons engaged in a law enforcement contact that the contact is being recorded.

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."

The Lompoc Police Department Agrees with Finding 4.

While it is the policy of the Lompoc Police Department to document whether or not an audio and/or video recording is associated with a citation or police report, such recordings captured by equipment in patrol vehicles are done so in a public venue where no legal expectation of privacy exists. Therefore, officers are not compelled by law to inform persons engaged in a law enforcement contact that the contact is being recorded.

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."

Lompoc Police Department Response to Recommendation 1:

The Lompoc Police Department finds this recommendation to be impractical to the daily operations of the Department and hinder the timely processing of cases for presentation to the District Attorney's Office. The recommendation is particularly troublesome for those individuals who are in custody for their criminal actions as the Department must deal with strict time constraints for the processing and presentation of cases.

As previously mentioned, audio and/or video recordings associated with criminal cases are considered evidence and are subject to the discovery process as prescribed by California Penal Code Sections 1054 *et seq.* and the California Evidence Code.

The Lompoc Police Department will not implement this recommendation because it is not warranted or reasonable.

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 have been an audio/video recording of the incident and when and where they may view it."

Lompoc Police Department Response to Recommendation 2:

Because there is no expectation of privacy in a law enforcement contact, officers are not required to inform citizens that any audio and/or video recording of their contact with law enforcement is being recorded.

The recommendation creates an expectation that does not account for any technical issues that may arise with audio and/or video recording equipment. Officers may be unaware that the equipment malfunctioned or failed to capture an event until after the contact with citizen is completed.

As previously mentioned, audio and/or video recordings associated with criminal cases are considered evidence and are subject to the discovery process as prescribed by California Penal Sections 1054 *et seq.* and the California Evidence Code. Recordings that are not deemed to be evidentiary or investigative in nature may be subject to release under the provisions of the California Public Records Act.

The Lompoc Police Department will not implement this recommendation because it is not warranted or reasonable.

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."

Lompoc Police Department Response to Recommendation 3:

Because there is no expectation of privacy in a law enforcement contact, officers are not required to inform citizens that any audio and/or video recording of their contact with law enforcement is being recorded.

As previously mentioned, audio and/or video recordings associated with criminal cases are considered evidence and are subject to the discovery process as prescribed by California Penal Code Sections 1054 *et seq.* and the California Evidence Code. Recordings that are not deemed to be evidentiary or investigative in nature may be subject to release under the provisions of the California Public Records Act.

The Lompoc Police Department will not implement this recommendation because it is not warranted or reasonable.

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 council and/or Board of Supervisors the impact of initiating Recommendations 1, 2, and 3."

Lompoc Police Department Response to Recommendation 4:

It is the opinion of the City of Lompoc and the Lompoc Police Department that Recommendations 1, 2, and 3 of the 2011-2012 Santa Barbara County Civil Grand Jury would not result in any cost savings, but rather increase the fiscal burden of Department operations.

The Lompoc Police Department often operates at minimum staffing levels, particularly in patrol operations. The proposal of additional time for officers to come into the station to review audio and/or video contacts with citizens contacted would result in delayed response time to emergency calls and place an undue burden upon the Department. The Lompoc Police Department does not have a fiscal analyst assigned to the Department. To compile any cost analysis regarding time, materials and resources would require the City of Lompoc Finance Department to dedicate an analyst to this project, further increasing the cost of the recommendations. However, it is unclear empirical data and methodology is available to provide a useful evaluation of such cost savings, if any. Also, expending limited public resources in the current economic climate for that purpose is not in the best interests of Lompoc, at this time.

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The addition of printed materials, additional staff time, fiscal analysis and other resources to adopt the recommendations of the Grand Jury would most certainly result in increase costs to the Department.

The Lompoc Police Department will not implement this recommendation because it is not warranted or reasonable.

Conclusion:

Although the Lompoc Police Department respectfully disagrees and will not be implementing the aforementioned recommendations for various legal and fiscal reasons, we greatly appreciate your commitment to the residents of Santa Barbara County. The City of Lompoc and the men and women who serve in the Lompoc Police Department share your dedication to the general welfare of the public we are sworn to serve.

Sincerely,



TIMOTHY L. DABNEY
Chief of Police
City of Lompoc

Attachment: Computer disc containing electronic version of this response.