

## Mobile Audio/Video

### 419.1 PURPOSE AND SCOPE

**Discretionary**

The Village of Cold Spring Police Department has equipped marked law enforcement vehicles with Mobile Audio/Video (MAV) recording systems to provide records of events and to assist officers in the performance of their duties. This policy provides guidance on the use of these systems.

#### 419.1.1 DEFINITIONS

**Best Practice**

Definitions related to this policy include:

**Activate** - Any process that causes the MAV system to transmit or store video or audio data in an active mode.

**In-car camera system and MAV system** - Synonymous terms that refer to any system that captures audio and video signals, that is capable of installation in a vehicle, and that includes, at a minimum, a camera, microphone, recorder and monitor.

**MAV technician** - Personnel certified or trained in the operational use and repair of MAVs, duplicating methods, and storage and retrieval methods, and who have a working knowledge of video forensics and evidentiary procedures.

**Recorded media** - Audio/video signals recorded or digitally stored on a storage device or portable media.

### 419.2 POLICY

**Best Practice**

It is the policy of the Village of Cold Spring Police Department to use mobile audio/video technology to more effectively fulfill the mission of the Department and to ensure these systems are used securely and efficiently.

### 419.3 OFFICER RESPONSIBILITIES

**Discretionary**

Prior to going into service, each officer will properly equip him/herself to record audio and video in the field. At the end of the shift, each officer will follow the established procedures for providing to the Department any recordings or used media and any other related equipment. Each officer should have adequate recording media for the entire duty assignment. In the event an officer works at a remote location and reports in only periodically, additional recording media may be issued. Only Village of Cold Spring Police Department identified and labeled media with tracking numbers is to be used.

At the start of each shift, officers should test the MAV system's operation in accordance with manufacturer specifications and department operating procedures and training.

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System documentation is accomplished by the officer recording his/her name, serial number, badge or personal identification number (PIN) and the current date and time at the start and again at the end of each shift. If the system is malfunctioning, the officer shall take the vehicle out of service unless a supervisor requests the vehicle remain in service.

### **419.4 ACTIVATION OF THE MAV**

#### **Best Practice**

The MAV system is designed to turn on whenever the vehicle's emergency lights are activated. The system remains on until it is turned off manually. The audio portion is independently controlled and should be activated manually by the officer whenever appropriate. When audio is being recorded, the video will also record.

#### **419.4.1 REQUIRED ACTIVATION OF THE MAV**

##### **Best Practice**

This policy is not intended to describe every possible situation in which the MAV system may be used, although there are many situations where its use is appropriate. An officer may activate the system any time the officer believes it would be appropriate or valuable to document an incident.

In some circumstances it is not possible to capture images of the incident due to conditions or the location of the camera. However, the audio portion can be valuable evidence and is subject to the same activation requirements as the MAV. The MAV system should be activated in any of the following situations:

- (a) All field contacts involving actual or potential criminal conduct within video or audio range:
  1. Traffic stops (including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops)
  2. Priority responses
  3. Vehicle pursuits
  4. Suspicious vehicles
  5. Arrests
  6. Vehicle searches
  7. Physical or verbal confrontations or use of force
  8. Pedestrian checks
  9. Driving while intoxicated (DWI) investigations, including field sobriety tests
  10. Consensual encounters
  11. Crimes in progress
  12. Responding to an in-progress call

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- (b) All self-initiated activity in which an officer would normally notify Dispatch
- (c) Any call for service involving a crime where the recorder may aid in the apprehension and/or prosecution of a suspect, including:
  - 1. Domestic violence
  - 2. Disturbance of the peace
  - 3. Offenses involving violence or weapons
- (d) Any other contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording
- (e) Any other circumstance where the officer believes that a recording of an incident would be appropriate

Activation of the MAV system is not required when exchanging information with other officers, during breaks or lunch periods, or when not in service or not actively on patrol.

#### 419.4.2 CESSATION OF RECORDING

##### **Best Practice**

Once activated, the MAV system should remain on until the incident has concluded. For the purpose of this section, conclusion of an incident has occurred when all arrests have been made, arrestees have been transported and all witnesses and victims have been interviewed. Recording may cease if an officer is simply waiting for a tow truck or a family member to arrive, or in other similar situations.

#### 419.4.3 SURREPTITIOUS RECORDING

##### **Best Practice**

No member of this department may surreptitiously record a conversation of any other member of this department except with a court order or when lawfully authorized by the Officer-in-Charge or the authorized designee for the purpose of conducting a criminal or administrative investigation.

#### 419.4.4 SUPERVISOR RESPONSIBILITIES

##### **Best Practice**

Supervisors should determine if vehicles with non-functioning MAV systems should be placed into service. If these vehicles are placed into service, the appropriate documentation should be made, including notification of Dispatch.

At reasonable intervals, supervisors should validate that:

- (a) Beginning and end-of-shift recording procedures are followed.
- (b) Logs reflect the proper chain of custody, including:
  - 1. The tracking number of the MAV system media.
  - 2. The date the media was issued.

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3. The name of the department member or the vehicle to which the media was issued.
  4. The date the media was submitted for retention.
  5. The name of the department member submitting the media.
  6. Holds for evidence indication and tagging as required.
- (c) The operation of MAV systems by new members is assessed and reviewed no less than biweekly.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, officer-involved shootings, department-involved traffic accidents), a supervisor shall respond to the scene and ensure that the appropriate person properly retrieves the recorded media. The media may need to be treated as evidence and should be handled in accordance with current evidence procedures for recorded media.

Supervisors may activate the MAV system remotely to monitor a developing situation, such as a chase, riot or an event that may threaten public safety, officer safety or both, when the purpose is to obtain tactical information to assist in managing the event. Supervisors shall not remotely activate the MAV system for the purpose of monitoring the conversations or actions of an officer.

#### **419.5 REVIEW OF MAV RECORDINGS**

##### **Best Practice**

All recording media, recorded images and audio recordings are the property of the Department. Dissemination outside of the Department is strictly prohibited, except to the extent permitted or required by law.

To prevent damage to, or alteration of, the original recorded media, it shall not be copied, viewed or otherwise inserted into any device not approved by the Department, MAV technician or forensic media staff. When reasonably possible, a copy of the original media shall be used for viewing (unless otherwise directed by the courts) to preserve the original media.

Recordings may be reviewed in any of the following situations:

- (a) By officers for use when preparing reports or statements
- (b) By a supervisor investigating a specific act of officer conduct
- (c) By a supervisor to assess officer performance
- (d) To assess proper functioning of MAV systems
- (e) By department investigators who are participating in an official investigation, such as a personnel complaint, administrative inquiry or a criminal investigation
- (f) By department personnel who request to review recordings
- (g) By an officer who is captured on or referenced in the video or audio data, and reviews and uses such data for any purpose relating to his/her employment

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- (h) By court personnel through proper process or with the permission of the Officer-in-Charge or the authorized designee
- (i) By the media through proper process
- (j) To assess possible training value
- (k) For training purposes. If an involved officer objects to showing a recording, his/her objection will be submitted to the command staff to determine if the training value outweighs the officer's objection.
- (l) As may be directed by the Officer-in-Charge or the authorized designee

Members desiring to view any previously uploaded or archived MAV recording should submit a request in writing to the Supervisor. Approved requests should be forwarded to the MAV technician for processing.

In no event shall any recording be used or shown for the purpose of ridiculing or embarrassing any member.

#### **419.6 DOCUMENTING MAV USE**

##### **Best Practice**

If any incident is recorded with either the video or audio system, the existence of that recording shall be documented in the officer's report. If a citation is issued, the officer shall make a notation on the back of the records copy of the citation indicating that the incident was recorded.

#### **419.7 RECORDING MEDIA STORAGE AND INTEGRITY**

##### **State**

Once submitted for storage, all recording media will be labeled and stored in a designated secure area. All recording media that is not booked as evidence will be retained for a minimum of 180 days and disposed of in accordance with the established records retention schedule.

##### **419.7.1 COPIES OF ORIGINAL RECORDING MEDIA**

###### **Best Practice**

Original recording media shall not be used for any purpose other than for initial review by a supervisor. Upon proper request, a copy of the original recording media will be made for use as authorized in this policy.

Original recording media may only be released in response to a court order or upon approval by the Officer-in-Charge or the authorized designee. In the event that an original recording is released to a court, a copy shall be made and placed in storage until the original is returned.

##### **419.7.2 MAV RECORDINGS AS EVIDENCE**

###### **Best Practice**

Officers who reasonably believe that a MAV recording is likely to contain evidence relevant to a criminal offense or to a potential claim against the officer or against the Village of Cold Spring

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Police Department should indicate this in an appropriate report. Officers should ensure relevant recordings are preserved.

### **419.8 SYSTEM OPERATIONAL STANDARDS**

#### **Discretionary**

- (a) MAV system vehicle installations should be based on officer safety requirements and the vehicle and device manufacturer's recommendations.
- (b) The MAV system should be configured to minimally record for 30 seconds prior to an event.
- (c) The MAV system may not be configured to record audio data occurring prior to activation.
- (d) Unless the transmitters being used are designed for synchronized use, only one transmitter, usually the primary initiating officer's transmitter, should be activated at a scene to minimize interference or noise from other MAV transmitters.
- (e) Officers using digital transmitters that are synchronized to their individual MAVs shall activate both audio and video recordings when responding in a support capacity. This is to obtain additional perspectives of the incident scene.
- (f) With the exception of law enforcement radios or other emergency equipment, other electronic devices should not be used inside MAV-equipped law enforcement vehicles to minimize the possibility of causing electronic or noise interference with the MAV system.
- (g) Officers shall not erase, alter, reuse, modify or tamper with MAV recordings. Only a supervisor, MAV technician or other authorized designee may erase and reissue previous recordings and may only do so pursuant to the provisions of this policy.

### **419.9 MAV TECHNICIAN RESPONSIBILITIES**

#### **Discretionary**

The MAV technician is responsible for:

- (a) Ordering, issuing, retrieving, storing, erasing and duplicating of all recorded media.
- (b) Collecting all completed media for oversight and verification of wireless downloaded media. Once collected, the MAV technician:
  - 1. Ensures it is stored in a secure location with authorized controlled access.
  - 2. Makes the appropriate entries in the chain of custody log.
- (c) Erasing of media:
  - 1. Pursuant to a court order.

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2. In accordance with the established records retention schedule, including reissuing all other media deemed to be of no evidentiary value.
  - (d) Assigning all media an identification number prior to issuance to the field:
    1. Maintaining a record of issued media.
  - (e) Ensuring that an adequate supply of recording media is available.
  - (f) Managing the long-term storage of media that has been deemed to be of evidentiary value in accordance with the department evidence storage protocols and the established records retention schedule.

#### **419.10 TRAINING**

##### **Best Practice**

All members who are authorized to use the MAV system shall successfully complete an approved course of instruction prior to its use.

## Personal Communication Devices

### 701.1 PURPOSE AND SCOPE

**Best Practice**

The purpose of this policy is to establish guidelines for the use of mobile telephones and communication devices, whether issued by the Department or personally owned, while on-duty or when used for authorized work-related purposes.

This policy generically refers to all such devices as Personal Communication Devices (PCDs) but is intended to include all mobile telephones, personal digital assistants (PDAs), wireless capable tablets and similar wireless two-way communications and/or portable Internet access devices. PCD use includes, but is not limited to, placing and receiving calls, text messaging, blogging and microblogging, emailing, using video or camera features, playing games and accessing sites or services on the Internet.

### 701.2 POLICY

**Best Practice**

The Village of Cold Spring Police Department allows members to utilize department-issued PCDs and to possess personally owned PCDs in the workplace, subject to certain limitations. Any PCD used while on-duty, or used off-duty in any manner reasonably related to the business of the Department, will be subject to monitoring and inspection consistent with the standards set forth in this policy.

The inappropriate use of a PCD while on-duty may impair officer safety. Additionally, members are advised and cautioned that the use of a personally owned PCD either on-duty or after duty hours for business-related purposes may subject the member and the member's PCD records to civil or criminal discovery or disclosure under applicable public records laws.

Members who have questions regarding the application of this policy or the guidelines contained herein are encouraged to seek clarification from supervisory staff.

### 701.3 PRIVACY EXPECTATION

**Best Practice**

Members forfeit any expectation of privacy with regard to any communication accessed, transmitted, received or reviewed on any PCD issued or funded by the Department and shall have no expectation of privacy in their location should the device be equipped with location detection capabilities (see the Information Technology Use Policy for additional guidance).

### 701.4 DEPARTMENT-ISSUED PCD

**Best Practice**

Depending on a member's assignment and the needs of the position, the Department may, at its discretion, issue a PCD for the member's use to facilitate on-duty performance. Department-issued PCDs may not be used for personal business either on- or off-duty unless authorized by



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the Officer-in-Charge or the authorized designee. Such devices and the associated telephone number, if any, shall remain the sole property of the Department and shall be subject to inspection or monitoring (including all related records and content) at any time without notice and without cause.

Unless a member is expressly authorized by the Officer-in-Charge or the authorized designee for off-duty use of the PCD, the PCD will either be secured in the workplace at the completion of the tour of duty or will be turned off when leaving the workplace.

### **701.5 USE OF PCD**

**Best Practice** **MODIFIED**

The following protocols shall apply to all PCDs that are carried while on-duty or used to conduct department business:

- (a) A PCD may not be used to conduct personal business while on-duty, except for brief personal communications (e.g., informing family of extended hours). Members shall endeavor to limit their use of PCDs to authorized break times, unless an emergency exists.
- (b) Members may use a PCD to communicate with other personnel in situations where the use of radio communications is either impracticable or not feasible. PCDs should not be used as a substitute for, as a way to avoid, or in lieu of regular radio communications.
- (c) Members are prohibited from taking pictures, audio or video recordings or making copies of any such picture or recording media unless it is directly related to official department business. Disclosure of any such information to any third party through any means, without the express authorization of the Officer-in-Charge or the authorized designee, may result in discipline.
- (d) Members will not access social networking sites for any purpose that is not official department business.
- (e) Using PCDs to harass, threaten, coerce or otherwise engage in inappropriate conduct with any third party is prohibited. Any member having knowledge of such conduct shall promptly notify a supervisor.

### **701.6 SUPERVISOR RESPONSIBILITIES**

**Best Practice**

The responsibilities of supervisors include, but are not limited to:

- (a) Ensuring that members under their command are provided appropriate training on the use of PCDs consistent with this policy.
- (b) Monitoring, to the extent practicable, PCD use in the workplace and taking prompt corrective action if a member is observed or reported to be improperly using a PCD.

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1. An investigation into improper conduct should be promptly initiated when circumstances warrant.
2. Before conducting any administrative search of a member's personally owned device, supervisors should consult with the Officer-in-Charge or the authorized designee.

### **701.7 OFFICIAL USE**

#### **Best Practice**

Members are reminded that PCDs are not secure devices and conversations may be intercepted or overheard. Caution should be exercised while utilizing PCDs to ensure that sensitive information is not inadvertently transmitted. As soon as reasonably possible, members shall conduct sensitive or private communications on a land-based or other department communications network.

### **701.8 USE WHILE DRIVING**

#### **State**

The use of a PCD while driving can adversely affect safety, cause unnecessary distractions and present a negative image to the public. Officers operating emergency vehicles should restrict the use of these devices to matters of an urgent nature and should, where practicable, stop the vehicle at an appropriate location to use the PCD (Vehicle and Traffic Law § 1225).

Except in an emergency, members who are operating vehicles that are not equipped with lights and siren shall not use a PCD while driving unless the device is specifically designed and configured to allow hands-free use. Hands-free use should be restricted to business-related calls or calls of an urgent nature.

## Property Room

### 802.1 PURPOSE AND SCOPE

**Best Practice**

This policy provides guidelines for the proper processing, storage, security and disposition of evidence and other property. This policy also provides for the protection of the chain of custody and identifies those persons authorized to remove and/or destroy property.

#### 802.1.1 DEFINITIONS

**Best Practice**

Definitions related to this policy include:

**Property** - All articles placed in secure storage within the Property Room, including the following:

- Evidence - Items taken or recovered in the course of an investigation that may be used in the prosecution of a case, including photographs and latent fingerprints.
- Found property - Items found by members of the Department or the public that have no apparent evidentiary value and where the owner cannot be readily identified or contacted.
- Safekeeping - Items received by the Department for safekeeping, such as a firearm, the personal property of an arrestee that has been not taken as evidence and items taken for safekeeping under authority of law.

### 802.2 POLICY

**Best Practice**

It is the policy of the Village of Cold Spring Police Department to process and store all property in a manner that will protect it from loss, damage or contamination, while maintaining documentation that tracks the chain of custody, the location of property and its disposition.

### 802.3 PROPERTY ROOM SECURITY

**Best Practice**

The Property Room shall maintain secure storage and control of all property in the custody of this department. A property officer shall be appointed by and will be directly responsible to the Patrol Supervisor or the authorized designee. The property officer is responsible for the security of the Property Room.

#### 802.3.1 REFUSAL OF PROPERTY

**Best Practice**

The property officer has the obligation to refuse any piece of property that is hazardous or that has not been properly documented or packaged. Should the property officer refuse an item of property, he/she shall maintain secure custody of the item in a temporary property locker or other safe location and inform the submitting member's supervisor of the reason for refusal and the action required for acceptance into the Property Room.

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#### 802.3.2 KEY CONTROL

##### **Best Practice**

Property Room keys should be maintained by the property officer and members assigned to the Property Room. An additional set of keys should be kept in a sealed and initialed envelope in an after-hours key box. Property Room keys shall not be loaned to anyone and shall be maintained in a secure manner. If a Property Room key is lost, all access points shall be re-keyed and new keys issued as necessary. After-hours access to the Property Room via the additional set of keys must be documented in a memorandum and submitted to the Patrol Supervisor as soon as practicable.

#### 802.3.3 ACCESS

##### **Best Practice**

Only authorized members assigned to the Property Room shall have access to property storage areas. Any individual who needs to enter a property storage area (e.g., maintenance or repair contractors) must be approved by the Patrol Supervisor and accompanied by the property officer. Each individual must sign the Property Room access log and indicate:

- (a) The date and time of entry and exit.
- (b) The purpose for access, including the specific case or property number.

Each access log entry shall be initialed by the accompanying department member.

#### 802.4 PROPERTY HANDLING

##### **Best Practice**

The member who first comes into possession of any property is generally responsible for the care, custody and control of such property until it is transferred to the property officer and/or processed and placed in a temporary property locker or storage area. Care shall be taken to maintain the chain of custody for all items of evidence.

Whenever property is taken from an individual, a property receipt form will be completed. The receipt shall describe the property and contain a notice on how to retrieve the property from the Department. A copy of the property receipt form shall be given to the individual from whom the property was taken.

#### 802.4.1 PROCESSING AND PACKAGING

##### **Best Practice**

All property must be processed by the responsible member prior to the member going off-duty, unless otherwise approved by a supervisor. Members shall process and package property as follows:

- (a) A property form shall be completed describing each item. List all known information, including:
  1. The serial number.
  1. The owner's name.
  2. The finder's name.

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3. Other identifying information or markings.
  - (b) Each item shall be marked with the member's initials and the date processed using a method that will not damage, deface, degrade or devalue the item. Items too small or too delicate to mark should be individually packaged and labeled and the package marked with the member's initials and date.
  - (c) Property shall be packaged in a container suitable for its size.
  - (d) A property tag shall be completed and attached to the property or container in which the property is stored.
  - (e) The case number shall be indicated on the property tag and the container.
  - (f) The property form, without the hard card portion (property control card), shall be submitted with the case report.
  - (g) The property control card shall be submitted with the property directly to the property officer or placed in a temporary property locker. Items too large to fit in a temporary property locker may be placed in a designated storage area that can be secured from unauthorized entry, and the property control card placed in a temporary property locker.

#### 802.4.2 EXCEPTIONAL PROCESSING

##### **Best Practice**

The following items require special consideration and shall be processed as follows, unless special conditions dictate a reasonable deviation:

**Bicycles** - Bicycles and bicycle frames shall have a property tag securely attached and should be placed in the bicycle storage area.

**Biological and related items** - Evidence that may contain biological samples shall be indicated as such on the property form.

Property stained with bodily fluids, such as blood or semen, shall be air-dried in a secure location (e.g., locked drying cabinet) prior to processing.

Items of evidence collected from a crime scene that require specific storage requirements pursuant to laboratory processing shall have such storage requirements clearly indicated on the property form.

Items that are potential biohazards shall be appropriately packaged and marked "Biohazard" to reduce the risk of exposure or contamination.

**Cash** - Cash shall be counted in the presence of another member. The cash shall be placed in a property envelope and initialed by both members. A supervisor shall be contacted for cash in excess of \$1,000. The supervisor shall witness the count, initial, and date the envelope, and specify any additional security procedures that may be necessary. Cash shall be further secured in a safe or locked cabinet.

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**Explosives and fireworks** - Explosives will not be retained in the police facility. Fireworks that are considered stable and safe, as well as road flares or similar signaling devices, may be stored in proper containers in an area designated for storage of flammable materials.

The property officer is responsible for transporting to the fire department, on a regular basis, any fireworks or signaling devices that are not retained as evidence.

**Firearms and other weapons** - Firearms shall be unloaded and packaged separately from ammunition. Knife boxes should be used to package knives. Firearms shall be further secured within the evidence room by means of a locked cabinet or a cable and lock.

**Government property** - License plates that have not been reported stolen or are of no evidentiary value should be placed in the designated container for return to the New York State Department of Motor Vehicles. No formal property processing is required.

Village property that is of no evidentiary value should be released directly to the appropriate Village department. No formal property processing is required.

If no responsible Village personnel can be located, the property should be held for safekeeping.

**High value items** - Evidence or property reasonably believed to be of extraordinary value such as jewelry, precious gems and metals, artwork, historic artifacts, coins, and stamps should be locked within a safe or cabinet within the property storage area.

**Sharps** - Syringe tubes should be used to package syringes and needles.

### 802.4.3 CONTROLLED SUBSTANCES

#### **State**

- (a) Controlled substances shall not be packaged with other property, but shall be processed separately using a separate property form.
- (b) The member processing controlled substances shall retain such property in the member's possession until it is weighed, packaged, tagged, and placed in the designated controlled substances locker, accompanied by the property control card and lab copy of the property form.
- (c) Prior to packaging and if the quantity allows, a presumptive test should be made on all suspected controlled substances. If conducted, the result of the test shall be included in the crime report.
  1. The member shall package controlled substances as follows:
    - (a) Maintain the property in the container in which it was seized and place it in a property envelope of appropriate size.
    - (b) Seal and initial the property envelope and cover the initials with cellophane tape.
    - (c) Weigh the property envelope to obtain the Gross Package Weight (GPW).
    - (d) Write the GPW and then initial and date both the outside of the package and the property form.

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- (d) When the quantity of controlled substances exceeds the available safe storage capacity as determined by the property officer, the quantity shall be photographed and weighed.
  - 1. A representative sample of sufficient quantity to allow scientific analysis of the controlled substances should be taken as allowed by state law and placed in a separate package or container.
  - 2. Excess quantities should be stored or disposed of as required by law or directed by court order.
  - 3. For cases involving the sale or possession of controlled substances, a qualitative and quantitative analysis, including weight, shall be performed within 45 days after receipt (CPL § 715.50).
- (e) Cannabis with any perceptible moisture content shall be loosely packaged in a container that allows for drying or shall be dried prior to storage. The property officer shall monitor stored cannabis for growth of mold.
- (f) All controlled substances shall be further secured in a safe, locked cabinet, or secondary secure storage.

### 802.4.4 BALLISTICS PROCESSING

**State**

The property officer shall coordinate with the Training Officer for test-firing and ballistics information to be collected from seized and recovered firearms or ammunition when there is a reasonable belief they are associated with a crime, as well as abandoned or discarded firearms, and ammunition associated with an unlawful discharge of a firearm. The property officer should provide the OIC with enough information to meet reporting and data-sharing requirements required by Executive Law § 230.

### 802.5 RECORDING OF PROPERTY

**Best Practice** **MODIFIED**

The property officer receiving custody of property shall ensure a property control card for each item or group of items is created. The property control card will be the permanent record of the property in the Property Room. The property officer will record on the property control card his/her signature, GPW if the package contains controlled substances, the date and time the property was received and where the property will be stored.

A unique property number shall be obtained for each item or group of items from the property log. This number shall be recorded on the property form, property tag and the property control card. The property log shall document the following:

- (a) Property number
- (b) Case number
- (c) Property tag number
- (d) Item description

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- (e) Item storage location
- (f) Receipt, release and disposal dates

Any change in the location of property held by the Village of Cold Spring Police Department shall be noted in the property log.

#### **802.6 PROPERTY CONTROL**

##### **Best Practice**

The property officer temporarily relinquishing custody of property to another person shall record on the property control card his/her signature, the date and time the property was released, the name and signature of the person accepting custody of the property and the reason for release.

Any member receiving property shall be responsible for such property until it is returned to the Property Room or released to another authorized person or entity.

The return of the property to the Property Room should be recorded on the property control card, indicating the date, the time, the name and the signature of the person who returned the property and the name and signature of the person to whom the property was returned.

##### **802.6.1 EVIDENCE**

###### **Best Practice**

Every time evidence is released or received, an appropriate entry on the property control card shall be completed to maintain the chain of custody. No evidence is to be released without first receiving written authorization from the Patrol supervisor or investigator.

The temporary release of evidence to members for investigative purposes or for court proceedings shall be noted on the property control card, stating the date, time and to whom it was released. Requests for items of evidence needed for court proceedings shall be submitted to the property officer at least one day prior to the court date.

Requests for laboratory analysis shall be completed on the appropriate lab form and submitted to the property officer. This request may be submitted any time after the property has been processed.

##### **802.6.2 TRANSFER OF EVIDENCE TO CRIME LABORATORY**

###### **Best Practice**

The property officer releasing items of evidence for laboratory analysis must complete the required information on the property control card. The transporting member will acknowledge receipt of the evidence by indicating the date and time on the property control card. The lab form will be transported with the evidence to the examining laboratory. Upon delivering the item, the member will record the delivery time on the lab form and the property control card, and obtain the signature of the person accepting responsibility for the evidence. The original copy of the lab form will remain with the evidence and a copy of the form will be returned to the Office of the OIC for filing with the case.



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### 802.6.3 CONTROLLED SUBSTANCES

#### **Best Practice**

The Patrol will be responsible for the storage, control and destruction of all controlled substances coming into the custody of this department. The GPW will be verified every time controlled substances are checked in or out of the Property Room and any discrepancies noted on the outside of the package. Any change in weight should be immediately reported to the Patrol Supervisor.

### 802.6.4 UNCLAIMED MONEY

#### **Best Practice**

The property officer shall submit an annual report, or more frequently as directed, regarding money that is presumed to have been abandoned to the Officer-in-Charge and the Village department responsible for auditing property. The property officer may deposit such money in compliance with existing laws upon receipt of proper authorization from the Officer-in-Charge.

### 802.7 RELEASE OF PROPERTY

#### **State**

The Patrol shall authorize the release of all property coming into the care and custody of the Department.

When a request by a crime victim is made to return stolen property owned by the victim, Property Room members shall notify the defendant or their counsel as soon as practicable. Property Room members will make the property available to the defense counsel and/or the prosecutor for examination (Penal Law § 450.10).

Release of property shall be made upon receipt of an authorized property release form, listing the name and address of the person to whom the property is to be released. The property release form shall be signed by the authorizing supervisor or investigator, and must conform to the items listed on the property control card or must specify the specific items to be released. Release of all property shall be documented on the property control card.

All reasonable attempts shall be made to identify the rightful owner of found property and items held for safekeeping.

Found property and property held for safekeeping shall be retained for the period of time required by law. During such period, Property Room members shall attempt to contact the rightful owner by telephone and/or mail when sufficient identifying information is available. The final disposition of all such property shall be fully documented on the property control card.

A property officer shall release such property when the owner presents proper identification and an authorized property release form has been received. The signature of the person receiving the property shall be recorded on the property control card.

If any item listed on a property control card has not been released, the property control card will remain with the Property Room. When all property listed on the card has been released, the card shall be forwarded to the Office of the OIC for filing with the case, and the release or reason for refusal of all items shall be documented in the property log.

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#### 802.7.1 DISCREPANCIES

##### **Best Practice**

The Supervisor shall be notified whenever a person alleges that there is a shortage or discrepancy regarding his/her property. The Supervisor will interview the person claiming the shortage. The Supervisor shall ensure that a search for the alleged missing items is completed and shall attempt to prove or disprove the claim.

#### 802.7.2 DISPUTED CLAIMS TO PROPERTY

##### **State**

Occasionally, more than one party may claim an interest in property being held by this department, and the legal rights of the parties cannot be clearly established. Such property shall not be released until one party has obtained a valid court order or establishes an undisputed right to the property.

All parties should be advised that their claims are civil. In extreme situations, legal counsel for this department should be contacted.

#### 802.7.3 RELEASE OF FIREARMS

##### **Federal**

Neither a firearm, ammunition, nor a license to carry concealed weapons or firearms may be released until it has been verified that the person receiving the firearm is not prohibited from receiving or possessing the firearm or ammunition under federal or state law (18 USC § 922(d)).

#### 802.7.4 RELEASE OF WEAPONS, FIREARMS AND LICENSES IN FAMILY OFFENSE MATTERS

##### **State**

Weapons, firearms, and licenses seized pursuant to CPL § 140.10 shall be returned to the lawful owner within 48 hours as long as there is no court order or pending criminal charge or conviction that would prevent the owner from possessing the firearm, weapon, or license, and upon a written finding that there is no legal impediment to the owner's possession as provided in CPL § 140.10.

#### 802.7.5 RELEASE OF PROHIBITED ITEMS IN EXTREME RISK PROTECTION ORDER MATTERS

##### **State**

Prohibited items (e.g., firearms, shotguns, rifles) that were surrendered or seized pursuant to an extreme risk protection order or temporary extreme risk protection order should be released to the person or lawful owner upon court order (CPLR § 6343; CPLR § 6344).

The Department should release a prohibited item to a person upon demonstration that ownership has been legally transferred to the person and that he/she is permitted by federal and state law to own or possess the item.

#### 802.8 DESTRUCTION OR DISPOSAL OF PROPERTY

##### **State**

An authorized Patrol investigator or supervisor shall approve the destruction or disposal of all property held by this department.

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All property not held for evidence in a pending criminal investigation or proceeding may be destroyed or disposed of in compliance with existing laws upon receipt of proper authorization from a supervisor. The disposition of all property shall be entered on the property control card and property log.

The following types of property shall be destroyed or disposed of in the manner and at the time prescribed by law, unless a different disposition is ordered by a court:

- Weapons or devices declared by law to be illegal to possess, including firearms or weapons declared a nuisance one year after its surrender to the Department (Penal Law § 400.05)
- Controlled substances declared by law to be illegal to possess without a legal prescription
- Unlawful fireworks (Penal Law § 405.05)
- Unauthorized recordings (Penal Law § 420.00)
- Stolen property (Penal Law § 450.10)
- Prohibited items from an extreme risk protection order after a minimum of two years after surrender or seizure unless otherwise released according to this policy (Penal Law § 400.05; CPLR § 6343; CPLR § 6344).
- Prohibited items from a family offense pursuant to CPL § 140.10 after a minimum of two years (CPL § 140.10; Penal Law § 400.05).

#### 802.8.1 BIOLOGICAL EVIDENCE

##### **Best Practice**

The property officer shall ensure that no biological evidence held by this department is destroyed without adequate notification to the following persons, when applicable:

- (a) The defendant
- (b) The defendant's attorney
- (c) The appropriate prosecutor and Attorney General
- (d) Any sexual assault victim
- (e) The Patrol Supervisor

Biological evidence shall be retained for a minimum period established by law, the statute of limitations, or the expiration of any sentence imposed related to the evidence, whichever time period is greater. Following the retention period, notifications should be made by certified mail and should inform the recipient that the evidence will be destroyed after a date specified in the notice, unless a motion seeking an order to retain the sample is filed and served on this department within 90 days of the date of the notification. A record of all certified mail receipts shall be retained in the appropriate file. Any objection to, or motion regarding, the destruction of the biological evidence should be retained in the appropriate file and a copy forwarded to the Patrol Supervisor.

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Biological evidence related to a homicide shall be retained indefinitely and may only be destroyed with the written approval of the Officer-in-Charge and the head of the applicable prosecutor's office.

Biological evidence from an unsolved sexual assault should not be disposed of prior to expiration of the statute of limitations. Even after expiration of the applicable statute of limitations, the Patrol Supervisor should be consulted and the sexual assault victim should be notified.

### 802.8.2 EVIDENCE FROM SEXUAL ASSAULT CASES

#### **State**

Evidence from a sexual assault case should not be disposed of prior to expiration of the statute of limitations or the storage period established by law, whichever time period is greater (Public Health Law § 2805-i).

If the Village of Cold Spring Police Department has possession of the sexual assault evidence, then the Property Officer, or an assigned member, shall make a reasonable effort to notify the victim 90 days before the retention period is set to expire that (Executive Law § 838-b):

- (a) The evidence will be discarded in compliance with state and local health codes on a date set forth in the notice.
- (b) The victim's clothes and personal effects will be returned to the victim upon request.

### 802.8.3 CANNABIS

#### **Best Practice**

At the first sign of mold growth, stored cannabis shall be photographed showing the mold growth. As soon as practicable, the property officer shall make efforts to lawfully destroy the contaminated cannabis, in compliance with this policy. The property officer should consult with the member assigned to the case investigation for authorization to destroy the remaining cannabis, after taking representative samples, and should request assistance from the appropriate prosecutor in obtaining a court order for immediate destruction.

### 802.8.4 MEDICAL CANNABIS

#### **Best Practice**

The investigating member should advise the property officer and the prosecutor if the party from whom the cannabis was seized holds a valid medical permit to possess cannabis or claims that the possession of the cannabis is for medical purposes.

The property officer shall store cannabis, drug paraphernalia, or other related property that is seized from a person engaged in or assisting with the use of medical cannabis in a manner that is consistent with the provisions of the Medical Cannabis Policy.

Cannabis that is infected with mold shall not be returned. This includes cannabis seized from a person who holds a valid medical permit to possess cannabis or who claims that possession of the cannabis is for medical purposes.

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### **802.9 INSPECTION OF THE PROPERTY ROOM**

#### **Best Practice**

The Patrol Supervisor shall ensure that periodic, unannounced inspections of the Property Room operations and storage facilities are conducted to ensure adherence to appropriate policies and procedures. The Patrol Supervisor also shall ensure that an audit is conducted annually, or as directed by the Officer-in-Charge. Inspections and audits shall be conducted by a member of this department who is not routinely or directly connected with the Property Room operations.

Whenever there is a change of assignment for any member with authorized access to the Property Room, an audit of all property shall be conducted by a person who is not associated with the Property Room or its function. This is to ensure that all property is accounted for and the records are correct.

#### **802.9.1 STATE-SPECIFIC AUDIT AND INVENTORY REQUIREMENTS**

##### **Discretionary**

Audits shall minimally include five percent of the total Property Room inventory or 50 items, whichever is less.

An inventory shall minimally include ten percent of the total Property Room inventory or 100 items, whichever is less.

All audits and inventories in the Property Room shall include a sampling of money, firearms, controlled substances, and high-value items.

A report shall be completed identifying the items that were inventoried or audited.

#### **802.9.2 AUDIT AND INVENTORY MANAGEMENT**

##### **Best Practice**

The inventory and the audit shall not be conducted within four months of each other and should not include the same items unless the total available sample size dictates otherwise.

### **802.10 TRAINING**

#### **Best Practice**

All members assigned the duties of a property officer shall successfully complete a course in Property Room management within one year of being assigned such duties.

The Training Officer is responsible for scheduling the training and maintaining records of the training.

## Records Maintenance and Release

### 804.1 PURPOSE AND SCOPE

**State**

This policy provides guidance on the maintenance and release of department records. Protected information is separately covered in the Protected Information Policy.

### 804.2 POLICY

**State**

The Village of Cold Spring Police Department is committed to providing public access to records in a manner that is consistent with the New York State Freedom of Information Law (Public Officers Law § 85 et seq.).

### 804.3 PROCESSING REQUESTS FOR PUBLIC RECORDS

**State** **MODIFIED**

Any department member who receives a request for any record shall route the request to the Officer-in-Charge or the authorized designee.

#### 804.3.1 REQUESTS FOR RECORDS

**State** **MODIFIED**

The processing of requests for any record is subject to the following (Public Officers Law § 87; Public Officers Law § 89):

- (a) A request for records shall be in writing and reasonably describe the records requested.
  1. Requests shall also be accepted by electronic mail and responded to by electronic mail provided that the written request does not seek a response in some other form.
- (b) The Department is not required to create records that do not exist.
- (c) A request for records shall be responded to within ten business days of receipt of the request by:
  1. Making the record available.
  2. Denying the request by written notice that includes the reason for denial.
    - (a) Notice shall be promptly provided to the appropriate parties (e.g., the requester, presiding judge) when the basis of denial is that disclosure would interfere with a judicial proceeding or law enforcement investigation (Public Officers Law § 87).
  3. Furnishing a written acknowledgement of the request and providing a reasonable date the request will be granted or denied, including, where appropriate, that access will be determined in accordance with Public Officers Law § 89(5).

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- (a) If a request is to be granted in whole or in part and circumstances prevent disclosure of the record within 20 business days from the date of acknowledgement, the Department shall provide the requester a written statement of the reason for the inability to grant the request and a certain date within a reasonable period when the request will be granted in whole or in part.
- (d) Requests that are not complied with in the described time limitations will be considered a denial and subject to an appeal.
- (e) When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.
  - 1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the department-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.
- (f) Records shall be provided on the medium requested by the requester if the Department can reasonably make a copy or a copy can be made by engaging an outside professional service.
- (g) Upon request, certification shall be provided in the following circumstances:
  - 1. The Department ensures that the copy of the record is correct.
  - 2. The Department does not have possession of the record.
  - 3. The record cannot be found after a diligent search.

#### 804.3.2 APPEAL OF DENIALS

**State**

When a record request is denied, the requester may appeal the determination to the Officer-in-Charge within 30 days. The notice of the appeal shall be routed to the Records Access Officer and the Officer-in-Charge. The Department shall have the burden of proving that the denial was subject to one of the exemptions pursuant to Public Officers Law § 87(2).

A detailed written response to the appeal shall be provided to the requester within 10 business days explaining the reasons for further denial or that access will be provided to the record. A copy of the appeal and written determination shall be immediately forwarded to the Committee on Open Government (Public Officers Law § 89(4)).

#### 804.4 RELEASE RESTRICTIONS

**State**

Examples of release restrictions include (Public Officers Law § 87(2); Public Officers Law § 89(2)):

- (a) Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical

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or disability information that is contained in any driver license record, motor vehicle record, or any department record, including motor vehicle accident reports, are restricted except as authorized by the Department, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).

- (b) Information in personnel or similar files that would be an unwarranted invasion of personal privacy.
- (c) Records that if disclosed would constitute an unwarranted invasion of personal privacy.
- (d) Records that are compiled for law enforcement purposes and which, if disclosed, would:
  - 1. Interfere with law enforcement investigations or judicial proceedings.
  - 2. Deprive a person of a right to a fair trial or impartial adjudication.
  - 3. Identify a confidential source or disclose confidential information relating to a criminal investigation.
  - 4. Reveal criminal investigative techniques or procedures (except routine techniques and procedures).
- (e) Identities of victims of sex offenses (Civil Rights Law § 50-b).
- (f) Records relating to a case involving a youth who has been adjudicated a youthful offender (CPL § 720.35).
- (g) Records relating to the arrest and disposition of juvenile delinquents (Family Court Act § 381.3).
- (h) Interagency or intra-agency memoranda that are not statistical or factual tabulations or data; instructions to members that affect the public; final agency policy or determinations; or external audits, including but not limited to audits performed by the comptroller and the federal government.
- (i) Records that would jeopardize the security of the department computer systems.
- (j) Records that would endanger the life or safety of any person.
- (k) Records that would impair present or imminent contract awards or collective bargaining negotiations.
- (l) Recordings of calls made to the E911 system (County Law § 308).
- (m) Protected criminal history records.
- (n) The addresses, personal telephone numbers, personal cell phone numbers, and personal email addresses of a member, unless required to do so under Article 14 of the Public Employees Fair Employment Act or compelled to do so by lawful process (e.g., a subpoena) (Civil Service Law § 209-a).
- (o) Protected personal information contained in disciplinary records (Public Officers Law § 87(4-a); Public Officers Law § 87(4-b); Public Officers Law § 89(2-b); Public Officers Law § 89(2-c)).



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- (p) Any other information that may be specifically exempted from disclosure by state or federal statute.

### **804.5 SUBPOENAS AND DISCOVERY REQUESTS**

#### **Best Practice**

Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Records Access Officer for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, Village Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Department so that a timely response can be prepared.

### **804.6 RELEASED RECORDS TO BE MARKED**

#### **Best Practice**

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the department name and to whom the record was released. Each audio/video recording released should include the department name and to whom the record was released.

### **804.7 SECURITY BREACHES**

#### **State**

Members who become aware that any Village of Cold Spring Police Department system containing private information may have been breached should notify the OIC as soon as practicable.

The OIC should provide notice in the form, manner, and to all entities as required by federal, state, and local law.

Notice should be given as soon as reasonably practicable.

Any determination to delay notification (e.g., notification will impede a criminal investigation, measures are being taken to determine the scope of the breach and restore the integrity of the system) and any determination that notice of the breach is not required (e.g., the exposure was an inadvertent disclosure by authorized persons and the Department determines that the exposure will not result in misuse or harm) should be documented. Such documentation should be retained in accordance with the records retention schedule and provided to the state attorney general when required by state or local law.

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If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the OIC should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

### **804.8 SEALED RECORDS**

**State**

Sealed records orders received by the Department shall be reviewed for appropriate action by the Records Access Officer. The Records Access Officer shall seal such records as ordered by the court. Records may include, but are not limited to, a record of arrest, investigation, detention or conviction. Once sealed, members shall respond to any inquiry as though the record did not exist.

## Protected Information

### 805.1 PURPOSE AND SCOPE

**Best Practice**

The purpose of this policy is to provide guidelines for the access, transmission, release and security of protected information by members of the Village of Cold Spring Police Department. This policy addresses the protected information that is used in the day-to-day operation of the Department and not the public records information covered in the Records Maintenance and Release Policy.

#### 805.1.1 DEFINITIONS

**Best Practice**

Definitions related to this policy include:

**Protected information** - Any information or data that is collected, stored or accessed by members of the Village of Cold Spring Police Department and is subject to any access or release restrictions imposed by law, regulation, order or use agreement. This includes all information contained in federal, state or local law enforcement databases that is not accessible to the public.

### 805.2 POLICY

**Best Practice** **MODIFIED**

Members of the Village of Cold Spring Police Department will consult with the Officer-in-Charge regarding all applicable laws, orders, regulations, use agreements and training related to the access, use, dissemination and release of protected information.

### 805.3 RESPONSIBILITIES

**Best Practice** **MODIFIED**

The Officer-in-Charge shall coordinate the use of protected information.

The responsibilities of the Officer-in-Charge include, but are not limited to:

- (a) Ensuring member compliance with this policy and with requirements applicable to protected information, including requirements for the National Crime Information Center (NCIC) system, National Law Enforcement Telecommunications System (NLETS), New York State Department of Motor Vehicles (DMV) records and New York State Division of Criminal Justice Services (DCJS)/eJusticeNY Integrated Justice Portal.
- (b) Developing, disseminating and maintaining procedures that adopt or comply with the U.S. Department of Justice's current Criminal Justice Information Services (CJIS) Security Policy.
- (c) Developing, disseminating and maintaining any other procedures necessary to comply with any other requirements for the access, use, dissemination, release and security of protected information.
- (d) Developing procedures to ensure training and certification requirements are met.

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## Protected Information

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- (e) Resolving specific questions that arise regarding authorized recipients of protected information.
- (f) Ensuring security practices and procedures are in place to comply with requirements applicable to protected information.

### **805.4 ACCESS TO PROTECTED INFORMATION**

**Best Practice**

Protected information shall not be accessed in violation of any law, order, regulation, user agreement, Village of Cold Spring Police Department policy or training. Only those members who have completed applicable training and met any applicable requirements, such as a background check, may access protected information, and only when the member has a legitimate work-related reason for such access.

Unauthorized access, including access for other than a legitimate work-related purpose, is prohibited and may subject a member to administrative action pursuant to the Personnel Complaints Policy and/or criminal prosecution.

### **805.5 RELEASE OR DISSEMINATION OF PROTECTED INFORMATION**

**Best Practice** **MODIFIED**

Protected information may be released only to authorized recipients who have both a right to know and a need to know.

A member who is asked to release protected information that should not be released should refer the requesting person to the Officer-in-Charge for information regarding a formal request.

Unless otherwise ordered or when an investigation would be jeopardized, protected information maintained by the Department may generally be shared with authorized persons from other law enforcement agencies who are assisting in the investigation or conducting a related investigation. Any such information should be released through the Office of the OIC to ensure proper documentation of the release (see the Records Maintenance and Release Policy).

Protected information, such as Criminal Justice Information (CJI), which includes Criminal History Record Information (CHRI), should generally not be transmitted by radio, cellular telephone or any other type of wireless transmission to members in the field or in vehicles through any computer or electronic device, except in cases where there is an immediate need for the information to further an investigation or where circumstances reasonably indicate that the immediate safety of officers, other department members or the public is at risk.

Nothing in this policy is intended to prohibit broadcasting warrant information.

### **805.6 SECURITY OF PROTECTED INFORMATION**

**Federal** **MODIFIED**

The Officer-in-Charge will oversee the security of protected information.

The responsibilities of this position include, but are not limited to:

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- (a) Developing and maintaining security practices, procedures and training.
- (b) Ensuring federal and state compliance with the CJIS Security Policy and the requirements of any state or local criminal history records systems.
- (c) Establishing procedures to provide for the preparation, prevention, detection, analysis and containment of security incidents including computer attacks.
- (d) Tracking, documenting and reporting all breach of security incidents to the Officer-in-Charge and appropriate authorities.

### 805.6.1 MEMBER RESPONSIBILITIES

#### **Best Practice**

Members accessing or receiving protected information shall ensure the information is not accessed or received by persons who are not authorized to access or receive it. This includes leaving protected information, such as documents or computer databases, accessible to others when it is reasonably foreseeable that unauthorized access may occur (e.g., on an unattended table or desk, in or on an unattended vehicle, in an unlocked desk drawer or file cabinet, on an unattended computer terminal).

### 805.7 TRAINING

#### **Best Practice**

All members authorized to access or release protected information shall complete a training program that complies with any protected information system requirements and identifies authorized access and use of protected information, as well as its proper handling and dissemination.