



**AUDIOVISUAL RECORDING DEVICES, COVERT:
IMPACT AND USE POLICY**

APRIL 11, 2021

SUMMARY OF CHANGES BETWEEN DRAFT & FINAL POLICY

Update	Description of Update
Removed statement that covert audiovisual recording devices do not use artificial intelligence and machine learning.	Public comments highlighted a lack of industry-standard definitions for artificial intelligence and machine learning.
Expanded upon covert audiovisual recording device capabilities.	Added language clarifying covert audiovisual recording device capabilities. Added language describing how covert audiovisual recording devices compliment other NYPD technologies.
Expanded upon covert audiovisual recording device rules of use.	Added language clarifying covert audiovisual recording device rules of use.
Expanded upon court authorization language for covert audiovisual recording devices.	Added language clarifying what needs to be demonstrated during an application for court authorization.
Expanded upon covert audiovisual recording device safeguards and security measures.	Added language regarding information security. Added language to reflect the removal of access to covert audiovisual recording devices when job duties no longer require access.
Expanded upon covert audiovisual recording device data retention.	Added language to reflect NYPD obligations under federal, state, and local record retention laws.
Expanded upon covert audiovisual recording device external entities section.	Added language to reflect NYPD obligations under the local privacy laws.
Grammar changes.	Minor syntax edits were made.

ABSTRACT

The New York City Police Department (NYPD) uses different covert audiovisual recording devices to create objective real-time recordings, develop investigations, and to protect investigators and informants at risk during sensitive investigations.

The NYPD produced this impact and use policy because covert audiovisual recording devices create recordings containing video images of people, license plates, locations and other visual data, as well as acoustic data occurring within range of the device. The recordings are shared with NYPD investigators.

CAPABILITIES OF THE TECHNOLOGY

NYPD covert audiovisual recording devices are concealable pieces of equipment capable of simultaneously recording acoustic (i.e., sound) data and video images occurring within range of the sensors imbedded into the device. The device is housed in such a way that the identity of the device is not immediately recognizable, or is hidden or otherwise concealed. Covert audiovisual devices capture valuable evidence by creating contemporaneous and objective records during undercover law enforcement operations.

NYPD covert audiovisual recording devices are not connected into any networked camera systems. Most covert audiovisual recording devices are not used for real-time observation. However, some NYPD audiovisual recording devices are capable of transmitting audiovisual, as well as location data, to NYPD personnel observing in a remote location.

None of the NYPD covert audiovisual recording devices contain any editing features, and the devices cannot be used to change an audiovisual recording. Covert audiovisual recording devices do not use video analytics or any biometric measuring technologies. NYPD covert audiovisual recording devices do not use facial recognition technologies and cannot conduct facial recognition analysis. However, a still image can be created from the recorded video images and may be used as a probe image for facial recognition analysis.¹

RULES, PROCESSES & GUIDELINES RELATING TO USE OF THE TECHNOLOGY

NYPD covert audiovisual recording device policy seeks to balance the public safety benefits of this technology with individual privacy. Covert audiovisual recording devices must be used in a manner consistent with the requirements and protection of the Constitution of the United States, the New York State Constitution, and applicable statutory authorities.

NYPD covert audiovisual recording devices may only be used by NYPD personnel for legitimate law enforcement purposes. The devices are typically used during sensitive law enforcement operations. The underlying facts of each scenario are considered prior to the utilization of the technology, including the safety risks to undercover personnel or informants that may be involved in the operation. NYPD investigators may only use covert audiovisual recording devices to execute their lawful duties, which relate only to official business of the NYPD.

¹ For additional information on facial recognition, please refer to the facial recognition impact and use policy.

When covert audiovisual recording devices will be used in settings where individuals maintain a reasonable expectation of privacy, the devices are used with court authorization in the form of a warrant.² The prosecutor with jurisdiction over the matter assists NYPD personnel with obtaining the warrant, and the warrant application must be made under oath.

For a judge to grant the warrant, the judge must find: 1) there is probable cause to believe a person is committing, has committed, or is about to commit a designated offense³; 2) there is probable cause to believe particular observations concerning the offense will be made; and 3) normal investigative procedures have been tried and failed, are unlikely to succeed if tried, or too dangerous to employ. The warrant cannot allow the use of the NYPD covert audiovisual recording devices for any period longer than necessary; a maximum of thirty (30) days. The NYPD investigator and prosecutor can apply to the judge for an extension of the warrant, and the judge must make similar findings to the original application to extend it.

The NYPD does not seek court authorization prior to using covert audiovisual recording devices when they are used in locations that do not enjoy a reasonable expectation of privacy or under exigent circumstances.

Covert audiovisual recording devices may be utilized without first obtaining a warrant if exigent circumstances exist. In order to use covert audiovisual recording devices in exigent circumstances without first obtaining a warrant, an NYPD investigator must have probable cause to believe: 1) a person is committing, has committed, or is about to commit a designated offense⁴; (2) an emergency exists as result of the criminal conduct; (3) there is an immediate urgent need for assistance due to an imminent danger of serious bodily injury or death to any person making it impracticable to prepare a written application without such risk occurring; and (4) the effort to locate a suspect is being undertaken with the primary concern of preventing serious injury or death and is not primarily motivated by an intent to arrest and seize evidence. The possibility of flight of a suspect does not on its own constitute exigent circumstances. An emergency warrant granted by a state court judge must be obtained within twenty-four (24) hours of the emergency use of covert audiovisual recording devices. An emergency warrant granted by a federal court judge must be obtained within forty-eight (48) hours of the emergency use of covert audiovisual recording devices. An emergency warrant cannot be extended.

In accordance with the Public Oversight of Surveillance Technology Act, an addendum to this impact and use policy will be prepared as necessary to describe any additional uses of covert audiovisual recording devices.

NYPD investigations involving political activity are conducted by the Intelligence Bureau, which is the sole entity in the NYPD that may conduct investigations involving political activity pursuant to the *Handschu* Consent Decree.

² For a New York State investigation, the application is for a video surveillance warrant. If the NYPD is assisting with a federal investigation, the application is for a search warrant.

³ New York designated offense are defined by N.Y. Crim. Proc. Law § 700.05(8). If the NYPD is assisting with a federal investigation, an application for a search warrant can be made in connection to any ongoing federal criminal investigation.

⁴ Please see definition above.

No person will be the subject of police action solely because of actual or perceived race, color, religion or creed, age, national origin, alienage, citizenship status, gender (including gender identity), sexual orientation, disability, marital status, partnership status, military status, or political affiliation or beliefs.

The misuse of covert audiovisual recording devices will subject employees to administrative and potentially criminal penalties.

SAFEGUARD & SECURITY MEASURES AGAINST UNAUTHORIZED ACCESS

Covert audiovisual recording equipment is securely stored within NYPD facilities when not in use, in a location inaccessible to the public. Additionally, a squad supervisor must periodically inspect and account for all covert audiovisual recording devices. Access to covert audiovisual recording devices is limited to NYPD personnel with an articulable need to use the technology in furtherance of a lawful duty. Access to NYPD covert audiovisual recording devices is removed when the technology is no longer necessary for NYPD personnel to fulfill their duties (e.g., when personnel are transferred to a command that does not use the technology).

Recordings obtained from covert audiovisual recording devices used for remote streaming may be accessed either on the device itself, or through a private video server located at a NYPD facility. Data is encrypted both at rest on the device and in transit. The data is transmitted over a secured stand-alone network. Access to the server is limited to NYPD personnel with a need to access recordings based on a lawful duty. Authorized personnel must be authenticated by a username and password before recordings from the server may be accessed.

Recordings are retained within an appropriate NYPD computer or case management system. Only authorized users have access to recordings. NYPD personnel utilizing computer and case management systems are authenticated by username and password. Access to case management and computer systems is limited to personnel who have an articulable need to access the system in furtherance of lawful duty. Access rights within NYPD case management and computer systems are further limited based on lawful duty. Authorized users can only access data and perform tasks allocated to them by the system administrator according to their role.

The NYPD has a multifaceted approach to secure data and user accessibility within NYPD systems. The NYPD maintains an enterprise architecture (EA) program, which includes an architecture review process to determine system and security requirements on a case by case basis. System security is one of many pillars incorporated into the EA process. Additionally, all NYPD computer systems are managed by a user permission hierarchy based on rank and role via Active Directory (AD) authentication. Passwords are never stored locally; user authentication is stored within the AD. The AD is managed by a Lightweight Directory Access Protocol (LDAP) to restrict/allow port access. Accessing NYPD computer systems remotely requires dual factor authentication. All data within NYPD computer systems are encrypted both in transit and at rest via Secure Socket Layer (SSL)/Transport Layer Security (TLS) certifications which follow industry best practices.

NYPD personnel must abide by security terms and conditions associated with NYPD computer and case management systems, including those governing user passwords and logon procedures. NYPD personnel must maintain confidentiality of information accessed, created, received, disclosed or otherwise maintained during the course of duty and may only disclose information to others, including other members of the NYPD, only as required in the execution of lawful duty.

NYPD personnel are responsible for preventing third parties unauthorized access to information. Failure to adhere to confidentiality policies may subject NYPD personnel to disciplinary and/or criminal action. NYPD personnel must confirm the identity and affiliation of individuals requesting information from the NYPD and determine that the release of information is lawful prior to disclosure.

Unauthorized access of any system will subject employees to administrative and potentially criminal penalties.

POLICIES & PROCEDURES RELATING TO RETENTION, ACCESS & USE OF THE DATA

Recordings obtained by most NYPD covert audiovisual recording devices are stored locally either to the device itself or to a removable memory card inserted into the device. Once the local storage of the device or removable memory card reaches its maximum capacity, the device stops recording. The device cannot continue recording until the memory is cleared.

Remotely-streamed audiovisual recordings are stored on a private video server, and is deleted on what is known as a first-in-first-out basis; when newly recorded data needs to be stored, it is automatically recorded over the oldest data currently on the server. Length of retention varies and depends on size of storage, type of device used to create the recording, amount of movement in field of view, quality of the recordings and similar factors.

Recordings may only be used for legitimate law enforcement purposes or other official business of the NYPD, including in furtherance of criminal investigations, civil litigations, and disciplinary proceedings. Relevant recordings are be stored in an appropriate NYPD computer or case management system. NYPD personnel utilizing computer and case management systems are authenticated by username and password. Access to computer and case management is limited to personnel who have an articulable need to access the system in furtherance of lawful duty. Access rights within NYPD case management and computer systems are further limited based on lawful duty.

The Retention and Disposition Schedule for New York Local Government Records (the Schedule) establishes the minimum length of time local government agencies must retain their records before the records may be legally disposed.⁵ Published annually by the New York State Archives, the Schedule ensures compliance with State and Federal record retention requirements. The NYC Department of Records and Information Services (DORIS) publishes a supplemental records retention and disposition schedule (the Supplemental Schedule) in conjunction with the Law

⁵ See N.Y. Arts & Cult. Aff. Law § 57.19 - 25, and 8 NYCRR Part 185.

Department specifically for NYC agencies in order to satisfy business, legal, audit and legal requirements.⁶

The retention period of a “case investigation record” depends on the classification of a case investigation record. The classification of case investigation records is based on the final disposition of the case, i.e., what the arrestee is convicted of or pleads to. Further, case investigations are not considered closed unless it results in prosecution and appeals are exhausted, it results in a settlement, it results in no arrest, or when restitution is no longer sought.

Case investigation records classified as a homicide, suicide, arson (first, second or third degree), missing person (until located), aggravated sexual assault (first degree), course of sexual conduct against a child (first degree), active warrant, or stolen or missing firearms (until recovered or destroyed), must be retained permanently. Case investigation records classified as a fourth degree arson or non-fatal (including vehicular accidents) must be retained for a minimum of ten (10) years after the case is closed. Case investigation records classified as any other felony must be retained for a minimum of twenty-five (25) years after the case is closed. Case investigation records classified as a misdemeanor must be retained for a minimum of five (5) years after the case is closed. Case investigation records classified as a violation or traffic infraction must be retained for a minimum of one (1) year after the case is closed. Case investigation records classified as an offense against a child as defined by the Child Victims Act, excluding aggravated sexual assault (first degree), course of sexual conduct against a child (first degree), must be retained until the child attains at least age fifty-five (55). Case investigation records connected to an investigation that reveals no offense has been committed by an adult must be kept for a minimum of five (5) years after the case is closed. Case investigation records connected to an investigation that reveals the individual involved was a juvenile and no arrest was made or no offense was committed must be kept for at least one (1) year after the juvenile attains age eighteen (18).

Personal information data files on criminals and suspects must be retained for at least five (5) years after the death of the criminal or suspect, or ninety (90) years after the criminal or suspect’s date of birth as long as there has been no arrest in the last five (5) years, whichever is shorter. Personal information data files on associated persons, such as victims, relatives and witnesses must be retained as long as, or information as part of, relevant case investigation record.

The misuse of any recordings will subject employees to administrative and potentially criminal penalties.

POLICIES & PROCEDURES RELATING TO PUBLIC ACCESS OR USE OF THE DATA

Members of the public may request recordings obtained from NYPD use of covert audiovisual recording devices pursuant to the New York State Freedom of Information Law. The NYPD will review and evaluate such requests in accordance with applicable provisions of law and NYPD policy.

⁶ See NYC Charter 3003.

EXTERNAL ENTITIES

If a covert audiovisual recording device obtains a recording relevant to a criminal case, the NYPD will turn the recording over to the prosecutor with jurisdiction over the matter. Prosecutors will provide the recording to the defendant(s) in accordance with criminal discovery laws.

Other law enforcement agencies may request recordings contained in NYPD computer or case management systems in accordance with applicable laws, regulations, and New York City and NYPD policies. Additionally, the NYPD may provide the recording or information related to it to partnering law enforcement and city agencies pursuant to on-going criminal investigations, civil litigation, and disciplinary proceedings. Information is not shared in furtherance of immigration enforcement.

Following the laws of the State and City of New York, as well as NYPD policy, the recording or information related to it may be provided to community leaders, civic organizations and the news media in order to further an investigation, create awareness of an unusual incident, or address a community-concern.

Pursuant to NYPD policy and local law, members of the NYPD may disclose identifying information externally only if:

1. Such disclosure has been authorized in writing by the individual to whom such information pertains to, or if such individual is a minor or is otherwise not legally competent, by such individual's parent or legal guardian and has been approved in writing by the Agency Privacy Officer assigned to the Legal Bureau;
2. Such disclosure is required by law and has been approved in writing by the Agency Privacy Officer assigned to the Legal Bureau;
3. Such disclosure furthers the purpose or mission of the NYPD and has been approved in writing by the Agency Privacy Officer assigned to the Legal Bureau;
4. Such disclosure has been pre-approved as in the best interests of the City by the City Chief Privacy Officer;
5. Such disclosure has been designated as routine by the Agency Privacy Officer assigned to the Legal Bureau;
6. Such disclosure is in connection with an investigation of a crime that has been committed or credible information about an attempted or impending crime; or
7. Such disclosure is in connection with an open investigation by a City agency concerning the welfare of a minor or an individual who is otherwise not legally competent.

Government agencies at the local, state, and federal level, including law enforcement agencies other than the NYPD, have limited access to NYPD computer and case management systems. Such access is granted by the NYPD on a case by case basis subject to the terms of written agreements between the NYPD and the agency receiving access to a specified system. The terms of the written agreements also charge these external entities with maintaining the security and confidentiality of information obtained from the NYPD, limiting disclosure of that information without NYPD approval, and notifying the NYPD when the external entity receives a request for that information pursuant to a subpoena, judicial order, or other legal process. Access will not be given to other agencies for purposes of furthering immigration enforcement.

The NYPD purchases covert audiovisual recording devices and associated equipment or Software as a Service (SaaS)/software from approved vendors. The NYPD emphasizes the importance of and engages with vendors and contractors to maintain the confidentiality, availability, and integrity of NYPD technology systems.

Vendors and contractors may have access to NYPD covert audiovisual recording devices associated software or data in the performance of contractual duties to the NYPD. Such duties are typically technical or proprietary in nature (e.g., maintenance or failure mitigation). In providing vendors and contractors access to equipment and computer systems, the NYPD follows the principle of least privilege. Vendors and contractors are only allowed access on a “need to know basis” to fulfill contractual obligations and/or agreements.

Vendors and contractors providing equipment and services to the NYPD undergo vendor responsibility determination and integrity reviews. Vendors and contractors providing sensitive equipment and services to the NYPD also undergo background checks.

Vendors and contractors are legally obligated by contracts and/or agreements to maintain the confidentiality of NYPD data and information. Vendors and contractors are subject to criminal and civil penalties for unauthorized use or disclosure of NYPD data or information.

If recordings obtained using NYPD covert audiovisual recording devices are disclosed in a manner violating the local Identifying Information Law, the NYPD Agency Privacy Officer, upon becoming aware, must report the disclosure to the NYC Chief Privacy Officer as soon as practicable. The NYPD must make reasonable efforts to notify individuals effected by the disclosure in writing when there is potential risk of harm to the individual, when the NYPD determines in consultation with the NYC Chief Privacy Officer and the Law Department that notification should occur, or when legally required to do so by law or regulation. In accordance with the Identifying Information Law, the NYC Chief Privacy Officer submits a quarterly report containing an anonymized compilation or summary of such disclosures by City agencies, including those reported by the NYPD, to the Speaker of the Council and makes the report publically available online.

TRAINING

NYPD personnel using covert audiovisual recording devices receive command level training on the proper operation of the technology and associated equipment. NYPD personnel must operate covert audiovisual recording devices in compliance with NYPD policies and training.

INTERNAL AUDIT & OVERSIGHT MECHANISMS

The use of a covert audiovisual recording device, including the reasons for its use, must be discussed with a supervisor. Supervisors of personnel utilizing audio-only recording devices are responsible for security and proper utilization of the technology and associated equipment. Supervisors are directed to inspect all areas containing NYPD computer systems at least once each tour and ensure that all systems are being used within NYPD guidelines.

NYPD personnel are advised that NYPD computer systems and equipment are intended for the purposes of conducting official business. The misuse of any system or equipment will subject employees to administrative and potentially criminal penalties. Allegations of misuse are internally investigated at the command level or by the Internal Affairs Bureau (IAB).

Integrity Control Officers (ICOs) within each Command are responsible for maintaining the security and integrity of all recorded media in the possession of the NYPD. ICOs must ensure all authorized users of NYPD computer systems in their command understand and comply with computer security guidelines, frequently observe all areas with computer equipment, and ensure security guidelines are complied with, as well as investigating any circumstances or conditions which may indicate abuse of the computer systems.

Requests for focused audits of computer activity from IAB, Commanding Officers, ICOs, Investigations Units, and others, may be made to the Information Technology Bureau.

HEALTH & SAFETY REPORTING

There are no known health and safety issues with covert audiovisual recording devices or associated equipment.

DISPARATE IMPACTS OF THE IMPACT & USE POLICY

The safeguards and audit protocols built into this impact and use policy for covert audiovisual recording devices mitigate the risk of impartial and biased law enforcement. Covert audiovisual recording devices only record audio and visual information occurring within the close proximity to the device. Covert audiovisual recording devices do not use video analytics, facial recognition, or any other biometric measurement technologies.

The NYPD is committed to the impartial enforcement of the law and to the protection of constitutional rights. The NYPD prohibits the use of racial and bias-based profiling in law enforcement actions, which must be based on standards required by the Fourth and Fourteenth Amendments of the U.S. Constitution, Sections 11 and 12 of Article I of the New York State Constitution, Section 14-151 of the New York City Administrative Code, and other applicable laws.

Race, color, ethnicity, or national origin may not be used as a motivating factor for initiating police enforcement action. Should an officer initiate enforcement action against a person, motivated even in part by a person's actual or perceived race, color, ethnicity, or national origin, that enforcement action violates NYPD policy unless the officer's decision is based on a specific and reliable suspect description that includes not only race, age, and gender, but other identifying characteristics or information.