



DEPARTMENT NOTICE

21-166
11/19/21

Assembly Bill 748: the Release of Audio or Video Recordings of a Critical Incident (Re-issue DB 19-174)

The purpose of this bulletin is to inform members about Assembly Bill (AB) 748, which amends existing law related to the release of video or audio recordings regarding a critical incident, which is defined as:

- An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
- An incident in which the use of force by a peace officer or custodial officer against a person resulted in death or great bodily injury.

Critical incident recordings must be released to the public by law. However, AB 748 specifies that disclosure of critical incident recordings may be delayed under certain circumstances, including when disclosure would interfere with an active investigation or interfere with a subject's reasonable expectation of privacy.

For cases involving interference with investigations, the following guidelines apply:

- **First 45 days.** SFPD may delay disclosing audio or video recordings for up to 45 days during an active criminal or administrative investigation if disclosure would "substantially interfere" with the investigation. In these instances, the SFPD shall provide a written basis for withholding this information to the requestor.
- **45 days to 1 year,** SFPD may continue to delay disclosure if it would "substantially interfere" with an active criminal investigation.
- **After 1 year,** SFPD may continue to delay disclosure if it would "substantially interfere" with an investigation. However, SFPD must show "clear and convincing evidence" of such interference.

In each of the above circumstances, delaying disclosure can only be justified if the "facts and circumstances depicted in the recording" interfere with the investigation.

When withholding recordings after 45 days, SFPD shall provide the requester in writing the specific basis for the determination that the interest in preventing interference with an active investigation outweighs the public interest in disclosure and also provide an estimated date for the disclosure. SFPD must provide a basis for the withholding of information in writing **every 30 days**.

If the content of a recording violates the reasonable expectation of privacy of a subject depicted therein, SFPD may use redaction technology to protect that interest. However, the redaction shall

not interfere with the viewer's ability to fully, completely, and accurately comprehend the events captured in the recording. The recording shall not otherwise be edited or altered. SFPD shall provide the requestor an explanation of how the privacy interest outweighs the public interest in disclosure.


If the reasonable expectation of privacy of a subject depicted in the recording cannot adequately be protected through redaction, and that interest outweighs the public interest in disclosure, SFPD may withhold the recording from the public, except that the recording, either redacted or un-redacted, shall be disclosed upon request to any of the following:

- The subject of the recording whose privacy is to be protected, or their authorized representative; or
- If the subject is a minor, the parent or legal guardian of the subject whose privacy is to be protected; or
- If the subject whose privacy is to be protected is deceased, an heir, beneficiary, designated immediate family member, or authorized legal representative of the deceased subject, whose privacy is to be protected.

To ensure compliance with AB 748:

Members shall ensure all video footage is properly titled and categorized in Evidence.com, as enumerated in DN 21-116 ***Categorization of Body Worn Camera Footage***. Field Supervisors shall ensure the use of force forms indicate serious bodily injury when warranted and relevant BWC footage is reviewed and properly categorized.

Investigators are responsible for determining whether disclosure should be delayed under the guidelines above. Investigators shall notify Legal if recordings cannot be released, providing the reasons and an estimate of when the footage may be released. Additionally, investigators are responsible for reporting to Legal if the basis to delay disclosure no longer exists. A full text of AB 748 can be accessed using [AB 748 link](#).


WILLIAM SCOTT
Chief of Police

Per DN 20-150, all sworn & non-sworn members shall electronically acknowledge this Department document in PowerDMS. Members whose duties are relevant to this document shall be held responsible for compliance. Any questions regarding this policy should be made to sfpd.writtendirectives@sfgov.org who will provide additional information.