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"INTEGRITY…FAIRNESS…SERVICE"

SPECIAL ORDER # 2023-01 **DATE: January 3, 2023**

TO: <u>All Police Department Personnel. To be Announced at Roll Call and a Copy Posted on the Department's Intranet Site.</u>

RE: External Digital Evidence Collection Program.

EFFECTIVE: Immediately.

BACKGROUND: During 2021, the Department identified a need to improve the storage and viewability of external digital evidence (e.g., security camera videos, cell phone videos, digital photographs, etc.) provided by members of the public. Under the direction of the Technology Section, select investigative units within the Criminal Investigations Bureau participated in a pilot program to use Axon Citizen and Evidence Upload XT to collect external digital evidence. The pilot program was a success as these products were found to greatly simplify collecting, viewing, and sharing this type of evidence. As a result of these findings, use of the products will now be expanded Department-wide. Once trained, all Department members may begin utilizing Axon Citizen to send invites to members of the public to allow the upload of external digital evidence directly to the Department's digital evidence management system (DEMS) (i.e., Evidence.com) in accordance with this policy. Evidence Upload XT may be used as an alternate method of collection for submission to the DEMS.

Axon Citizen is a system designed to allow law enforcement agencies to securely receive digital evidence directly from members of the public for upload into the DEMS. Axon Citizen allows members encountering persons who possess digital evidence to send individual invites (i.e., via their Department issued cell phone or Body Worn Camera system mobile device using Axon Capture with connectivity, or by logging into the DEMS) to the individual's mobile phone number or e-mail address. The individual is then able to use the link they receive to share the digital evidence with the Department by uploading it directly into the DEMS. Evidence Upload XT is a Windows-based program that uploads files to the DEMS.

By storing the digital evidence in the DEMS, members will be able to have immediate access to view the digital evidence, in accordance with the Department's Body Worn Camera System Recordings policy. This program will also help minimize the risk that external data and hardware may cause security vulnerabilities and damage to the Department's computer equipment.

PURPOSE: To provide members with procedures for the External Digital Evidence Collection Program.

RELATIONSHIP TO DEPARTMENTAL VALUES: The External Digital Evidence Collection Program supports the Department's value of ***SERVICE*** by providing a mechanism for members of the public to provide digital evidence for upload into the DEMS so that it may be immediately accessible to Department members, in accordance with the Department's Body Worn Camera System Recordings policy.

POLICY: It is the policy of this Department to allow members to utilize Axon Citizen and Evidence Upload XT for the collection of external digital evidence, upon being trained to do so.

PROCEDURES:

GENERAL

- The following types of files may be uploaded as part of the External Digital Evidence Collection Program:
  1. Video files.
  2. Image files.

  EXCEPTION: Video or image files may not be collected if they are zipped files or if they contain child pornography.
  3. Audio recordings of interviews/interrogations created by authorized members using Department-approved handheld/pocket recorders.

     NOTE: These files may be uploaded using Evidence Upload XT only.
- The following types of files may not be uploaded under this program and must be preserved by other means:
  1. Files that are zipped.
  2. Files containing child pornography.
  3. Media packages.
  4. Document files.
  5. Audio only files recorded by a member of the public.
  6. Any other file type not specifically allowed by this policy.
- Digital files submitted to the DEMS via Axon Citizen and Evidence Upload XT are considered evidence and are subject to discovery, may be subject to release under the Maryland Public Information Act (MPIA), etc.
- External digital evidence collected via Axon Citizen or Evidence Upload XT will:
  1. Look and function like all other evidence located in the DEMS;
  2. Be accessible to Department members in accordance with the Department's Body Worn Camera System Recordings policy.
- First name, last name, phone number or e-mail address, Internet Protocol (IP) address, and captions added to submissions by members of the public utilizing Axon Citizen to upload digital evidence will be retained in the audit trail and other locations within the system.
  NOTE: This information can be removed before sharing, when necessary.

CRITERIA FOR USE OF THE EXTERNAL DIGITAL EVIDENCE COLLECTION PROGRAM

- The member is trained to use the Digital Evidence Collection Program.
- A supervisor has approved the use of the Digital Evidence Collection Program, when supervisor approval is required.
- The subject with the digital evidence has the ability to successfully submit it using the Digital Evidence Collection Program.
- The files do not require enhancements or other analysis by the Forensic Services Section (FSS).

MEMBERS

- Will make every effort to ensure all digital evidence is collected (i.e., via this program or via traditional methods (e.g., collection by the FSS, submission to the Evidence Management Unit (EMU), etc.)).
- Will not use Axon Citizen or Evidence Upload XT:
  1. Until they have been trained to do so; and
  2. Unless the criteria for use of the program have been met.
- Are prohibited from:
  1. Collecting images or videos of child pornography via this program.

2. Utilizing Axon Capture or Axon Citizen on their personal cell phones (Refer to Field Manual, Article 7, Section 13.0, Photographs, for procedures regarding the use of personal equipment/devices to preserve evidence in exigent circumstances.)
3. Sending themselves or other members an Axon Citizen link in order to collect and upload digital evidence to the DEMS.
   EXCEPTION: Upon approval from the Technology Section Video Manager.
   NOTE: This does not preclude members who are a victim/witness outside of the scope of their employment from submitting external digital evidence in the same manner as any other victim/witness (i.e., via Axon Citizen upon receipt of a link from the investigating member, etc.).

MEMBERS PARTICIPATING IN THE EXTERNAL DIGITAL EVIDENCE COLLECTION PROGRAM

- Must consult the supervisor of the investigating entity to determine if digital evidence may be collected via the Digital Evidence Collection Program, when:
  1. The digital evidence is in reference to a felony crime against a person; or
  2. When the member is unable to authenticate the date/time stamp or other information related to the digital evidence.

  NOTE: When the program is not authorized, traditional methods of collection shall be used.
- Explain the Digital Evidence Collection Program, and offer to collect electronic files via Axon Citizen, when the criteria for use of the program have been met.
  EXCEPTION: Members who do not have the ability to send an invitation via Axon Citizen.
- Ensure evidence is collected.
  NOTE: Evidence shall be collected via traditional methods (e.g., collection by the FSS, submission to the Evidence Management Unit (EMU), etc.) when the methods explained in this policy (i.e., Axon Citizen or Upload XT) cannot be used.
- Preview electronic files to be submitted, prior to sending an invite via Axon Citizen to an individual for upload, when possible.
- Will not make an assessment of evidentiary value for digital files that a member of the public believes are of potential evidentiary value, prior to sending a link for upload to Axon Citizen.
  NOTE: If an individual has digital evidence to provide, the Department will accept it.
- Notify individuals providing electronic files that:
  1. Files uploaded will automatically become digital evidence stored in the DEMS and are subject to discovery.
     NOTE: This includes any file that is uploaded by the individual in error.
  2. Captions used when uploading digital evidence will be retained in the file's audit trail and will be viewable by defense attorneys, etc.
  3. Electronic file metadata, including geolocation data, will be retained as part of the electronic file, and will be viewable by defense attorneys, etc.
  4. The link may only be used one time and cannot be shared.
  5. The link expires after a limited number of days.
- Create Axon Citizen invitations using their Department-issued cell phone, Body Worn Camera system mobile device, or by logging into the DEMS.
  NOTE: Each invitation allows for submission of a limited number of electronic files. If an individual possesses more files than may be uploaded using a single invitation, subsequent invitations will be sent.
- Complete the required fields, as follows, prior to sending an invite:
  1. Evidence Metadata
     a. *ID* – Central Complaint (CC) Number.
     b. *Categories.*
  2. Community Member Information
     a. *Delivery Method* – E-mail or text message.
        NOTE: Members will ask the individual which method they prefer, prior to sending an invitation.
     b. *E-mail* or *Phone* – Contact information provided by the individual.

c. *First Name.*
d. *Last Name.*

NOTE: "Refused" will be entered in lieu of a subject's name, if the subject wishes to remain anonymous.

- Ensure the individual has received the evidence submission request, and is able to successfully submit the electronic files, whenever possible.
  NOTE: The member sending the invitation will be shown as the file owner and uploader in the DEMS.
- Confirm that the recording device is functioning properly, when practicable.
- Compare the date and time settings of the device from which the files were created/collected to the current date and time and document the concurrence, or any date/time offset, when practicable.
- Document in the appropriate incident report:
  1. Whether the recording device was functioning properly;
  2. The verification of the date and time concurrence or existence of any date/time offset;
     NOTE: This will be used to authenticate the time of the video/photograph in court, if needed.
  3. Circumstances regarding the existence of the digital video (e.g., the type of recording device, the location of the recording device, direction camera is pointed, etc.);
  4. Identifying information for the subject providing the video and/or the owner of the recording device.
     NOTE: All known identifiers will be included in the incident report narrative, if the person providing the digital evidence wishes to remain anonymous;
  5. That an Axon Citizen invitation has been sent;
  6. Whether or not the electronic files were uploaded via the invitation link.

  NOTE: The Case Folder will remain "Open" until the electronic files have been uploaded, or until it has been determined, after follow-up attempts, that the files will not be sent.
- Ensure the uploaded videos are properly categorized in the DEMS in accordance with Department policy (Refer to Field Manual, Article 16, Body Worn Camera Program).

<u>SUPERVISORS</u>

- Of the investigating entity will determine if evidence may be collected via the Digital Evidence Collection Program when the case involves:
  1. A felony crime against a person; or
  2. When the member is unable to authenticate the date/time stamp or other information related to the digital evidence.

  NOTE: The supervisor will consider all relevant factors, including but not limited to the nature of the case, the possibility the digital evidence could be lost if not immediately collected, etc.
- Shall select "Restricted" from the *Access Class* field and select all applicable members that require access for the purpose of conducting the investigation, when digital evidence is sensitive or confidential in nature (e.g., sex crimes, crimes against children, homicides, etc.).
- Ensure Case Folders remain open until files are received or until it is concluded that the files will not be sent.

IMPLEMENTATION: This Special Order will be distributed electronically to all Department members. Shift/Unit supervisors will be responsible for the referencing of this Special Order.

By order of,

Dennis J. Delp
Chief of Police