



Custodial Operations Practice Directive

Process Owner: Custodial Operations	Security Classification: Official/Public
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Scope
1. Human Rights
2. Limitation of Human Rights
[Redacted]
5. System Reports, Printouts and Archiving
[Redacted]
8. Code of Conduct
[Redacted]
11. Listening Devices Operational Requirements
[Redacted]





Custodial Operations Practice Directive

1. Human Rights

It is unlawful for corrective services officers to act or make decisions in a way that is not compatible with human rights, or in making a decision, fail to give proper consideration to a human right relevant to the decision.

Giving proper consideration to human rights entails identifying human rights which may be relevant to a decision and considering whether the decision would be compatible with human rights.

The human rights which may be relevant include:

- a) recognition and equality before the law, including the right to equal and effective protection against discrimination;
- b) freedom of movement, including the right to move freely within Queensland and to enter and leave it;
- c) the right to protection from torture and cruel, inhuman or degrading treatment;
- d) the right to privacy and to reputation; and
- e) the right to humane treatment when deprived of liberty.

2. Limitation of Human Rights

In determining whether a limitation may be reasonable and demonstrably justified, the following factors are relevant to the decision:

- a) The nature of the human right – this involves looking at the purpose and underlying value of the human right. For example, the right to privacy and reputation provides that a person has the right not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with;
- b) The nature and the purpose of the limitation – this involves considering the actual purpose or legitimate aim/reason for limiting the human right. This document limits the right to privacy by providing for the management of security systems and intercoms used by a corrective services facility to monitor and record persons and activities within the facility, to facilitate the safety and security of the centre;
- c) The relationship between the limitation and its purpose – this involves considering the connection between the limitation of the right and whether this will assist with achieving the purpose or legitimate aim. For example, does the recording of persons and activities achieve the enhanced safety and security goals of the corrective services facility?
- d) Whether there are less restrictive ways to achieve the purpose of the limitation – this involves a 'necessity analysis' where it is necessary to consider the purpose of the limitation and whether it can be achieved in any other way. For example, whether or not there are less restrictive ways to ensure the safety and security of the corrective services facility. To mitigate the limit to the right to privacy, this practice directive ensures that the monitoring devices in use are operated within the relevant legislative requirements; and
- e) The importance between the purpose of the limitation and preserving the human right – this involves balancing the benefits obtained by the limitation and the harm caused to the human right. For example, is the safety and security of the corrective services facility facilitate by the use of electronic security equipment and systems, balanced against the consequent limit to the right to privacy?

A person's human rights should only be limited to the extent that is reasonably and demonstrably justified.



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4.5 Monitoring of CCTV generally

CCTV systems are critical to ensuring the safe operations of corrective services facilities. QCS is committed to protecting and ensuring the integrity, confidentiality, security and availability of CCTV systems and recordings.

All staff must comply with the QCS Management of Closed Circuit Television and Body Worn Camera Systems Policy. QCS staff monitoring or accessing CCTV systems or recordings must be aware of their obligations under the *Public Service Act 2008*, the Code of Conduct for the Queensland Public Service and this COPD when using these as part of their official duties.

QCS will ensure compliance with the *Information Privacy Act 2009* (IP Act) and the Information Privacy Principles, regarding how personal information, including recordings are collected, stored, used or disclosed and subsequently disposed of.

The operation of CCTV systems within corrective services facilities must be:

- a) in accordance with legislative requirements;
- b) consistent with the QCS Information security policies and the QCS Information Security Management System;
- c) managed in accordance with the QCS Risk Management Framework; and
- d) monitored and used in a manner that considers privacy implications and the human rights of prisoners, staff and members of the public.

QCS has the highest expectation of all officers authorised to use and monitor CCTV systems as part of their role to:

- a) at all times, act in an honest and legal manner when operating CCTV systems;
- b) treat all live and recorded images in an ethical manner, with the utmost of care, respect and dignity and in a manner that protects the human rights and privacy of individuals; and
- c) only utilise CCTV systems and recordings for purposes related to official duties.

4.6 Management of monitoring device recording during a search requiring the removal of clothing

If the prisoner is detained in a women's corrective services facility, steps must be taken to ensure that no male corrective services officer views the search through an electronic device that monitors the area in which the prisoner is searched.

If the prisoner is detained in a men's corrective services facility, steps must be taken to ensure that no female corrective services officer views the search through an electronic device that monitors the area in which the prisoner is searched.

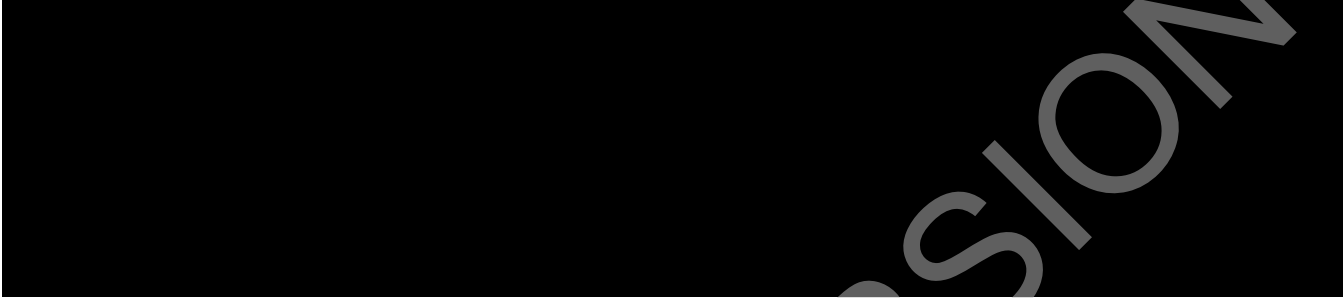




Custodial Operations Practice Directive

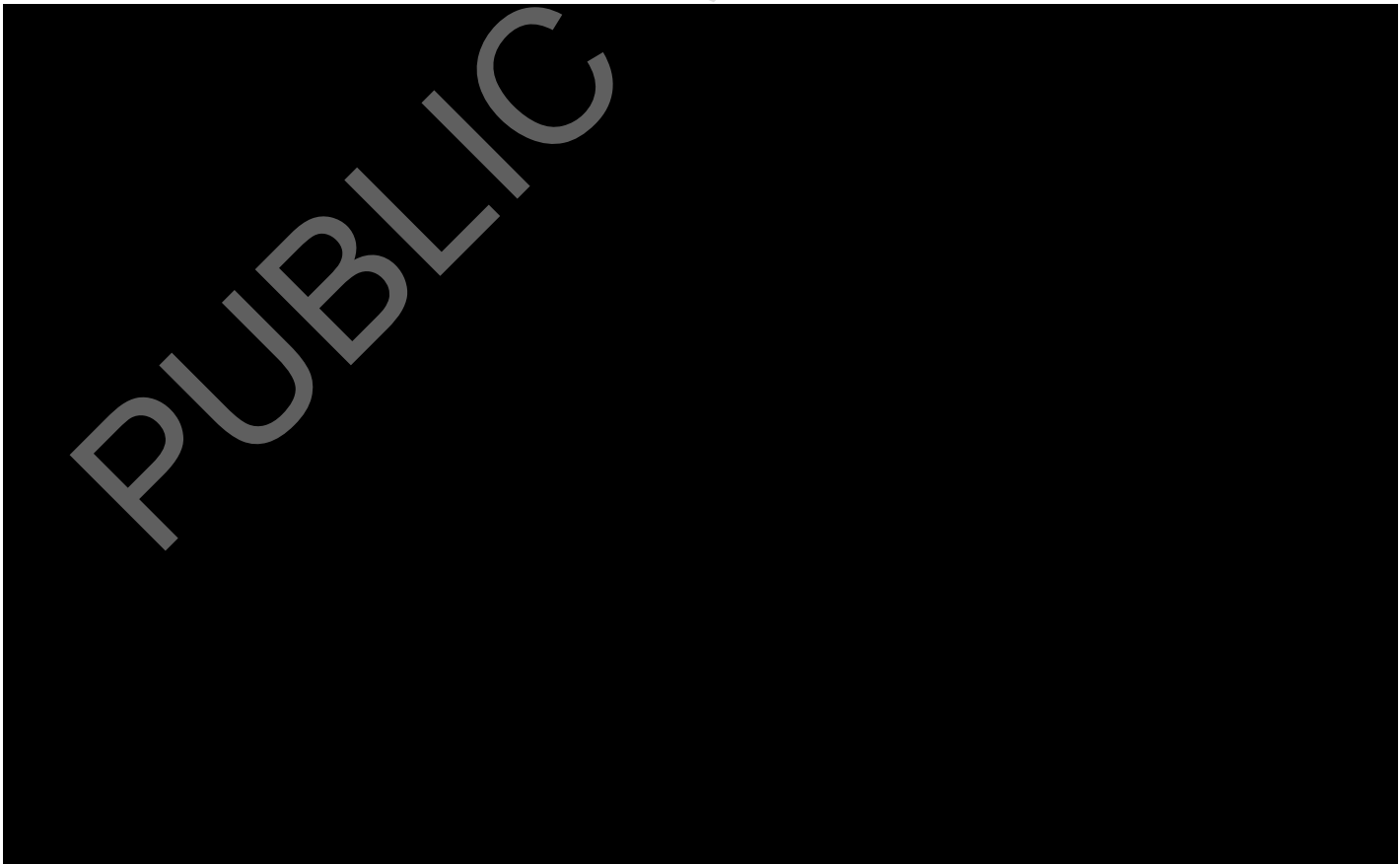
Where this is not possible, steps must be taken to ensure the officer does not view the recording, such as the officer turns away from viewing the recording, to preserve the dignity of the prisoner. Refer to COPD Search: Prisoner Search for definitions of the above terms.

However, the above restrictions do not apply if a Supervisor reasonably believes there is no suitable corrective services officer readily available to monitor the area during the search and it is being conducted in circumstances of imminent risk to the life or safety of the prisoner or staff.



If a recording is made on a video recorder or visual monitoring device of a search under section 10(1) of the Corrective Services Regulation 2017 (CSR), the recording must be kept in a secure place. If the recording is subsequently downloaded for any reason, the recording must be dealt with in accordance with this COPD.

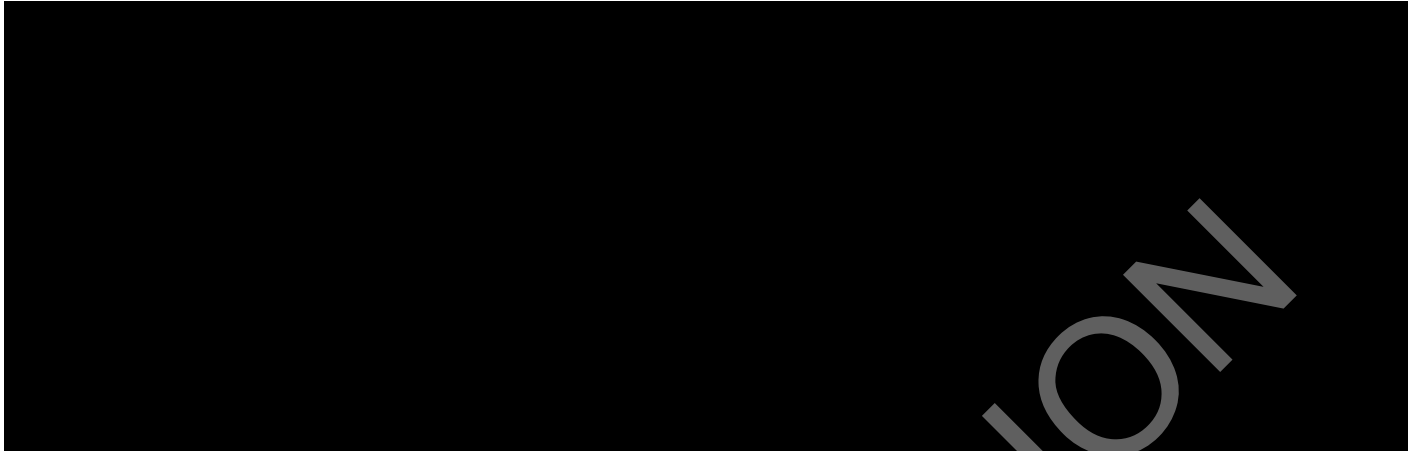
The recording must not be shown to anyone other than persons listed in section 10(2) of the CSR.





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5. System Reports, Printouts and Archiving



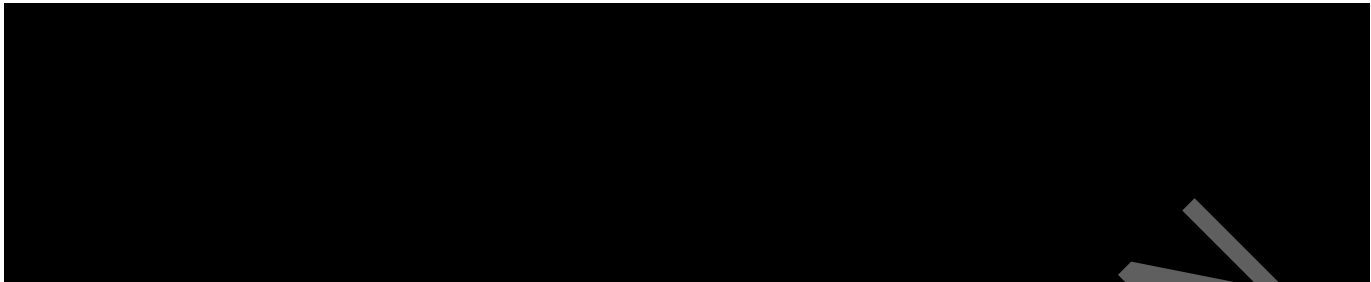
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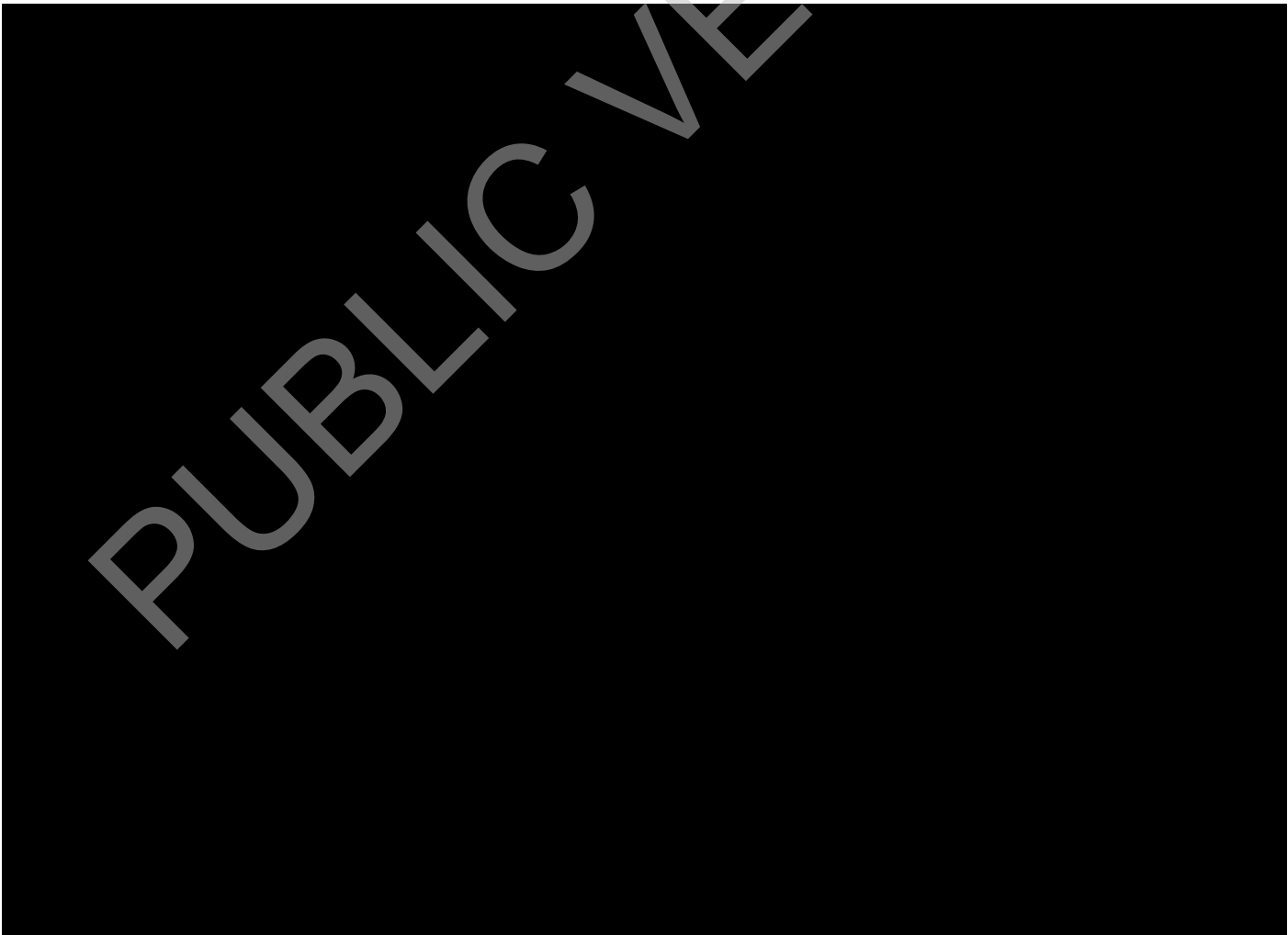


The Information Management Unit, Digital Services and Information Technology are responsible for the QCS RDS and will provide advice regarding requirements for retention and disposal of recordings.

5.3 Right to Information and Information Privacy requests

Persons may request to access CCTV or BWC recordings under provisions of the *Right to Information Act 2009* and the IP Act. All such requests must be referred to the QCS Right to Information and Privacy Unit.

Advice must be sought from the QCS Right to Information and Privacy Unit when responding to requests for CCTV or BWC recordings arising from a warrant or subpoena.





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8. Code of Conduct

The Chief Superintendent of a corrective services facility must ensure that all personnel operating closed circuit television monitoring and recording devices are instructed on and acknowledge the intent of the Code of Conduct for the Queensland Public Service.

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11. Listening Devices Operational Requirements

11.1 Authority

- a) *Corrective Services Act 2006 (CSA)*, section 52 Recording or monitoring prisoner communication, section 158 Monitoring personal visitors, section 263 Functions and powers of Chief Executive, section 264, Administrative directions, section 341 Confidential information, section 349 Protection from liability; and
- b) *Invasion of Privacy Act 1971*.

The *Invasion of Privacy Act 1971* states that a person may use a listening device where:

- a) the person using the listening device is a party to the private conversation;
- b) the hearing of a private conversation by means of a telephone was unintentional; or
- c) the use of a listening device by a police officer or another person is authorised under a provision of an Act.

A person who uses a listening device to overhear, record, monitor or listen to any private conversation to which the person is not a party must not communicate or publish the substance or meaning of that private conversation otherwise than in the performance of the person's duty.

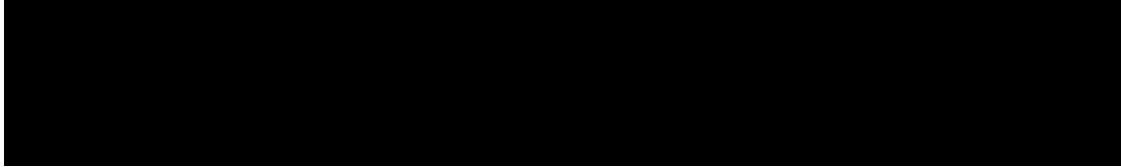
Refer to sections 43(2) and (3) of the *Invasion of Privacy Act 1971*.

11.2 Purpose

The Chief Superintendent of a corrective services facility must implement processes that ensure a use of a listening device by a person in a corrective services facility is only undertaken in accordance with this COPD and the authorising legislation. This must include that effective governance, oversight, and control for the use of a listening device is in place.

Where the use of a listening device is undertaken with the authority of a court order or warrant or by a law enforcement agency under delegated legislative authority, this COPD will apply only to the extent that it is consistent with the court order or warrant or law enforcement agency authority.





11.3 Listening device notices

The Chief Superintendent of a corrective services facility must ensure a copy of the Warning Closed Circuit Television (CCTV) resource is placed in the following locations:

- a) master control room;
- b) control room (Princess Alexandra Hospital Secure Unit);
- c) movement control stations;
- d) front entry to corrective services facility;
- e) visits area;
- f) visits processing;
- g) reception store; and
- h) facility prisoner induction handbook.

11.4 Verbal notice in prisoner escort vehicles

All secure prisoner escort vehicles must have a recorded verbal message that informs a prisoner that their communications and actions are being recorded.

The recording must be played to all prisoners at the beginning of each prisoner escort.

Refer to the Appendix ESC2 Prisoner Escort Vehicle Statement.



11.7 Monitoring personal visits – section 158 of the *Corrective Services Act 2006*

Section 158 of the CSA provides that the Chief Executive may make and keep an audio visual or visual recording of a personal visit of a prisoner and to monitor a personal visit.





Custodial Operations Practice Directive

Only an authorised delegate may approve the use of a standard SMS listening device under this section of the legislation, refer to the Queensland Corrective Services Instrument of Delegation of Chief Executive Powers – the CSA.

11.8 Management of a listening device recording

The following applies to the management of a listening device:

- a) Retrieval and Storage - a recording from a listening device must be managed strictly in accordance with Storage and Disposal Requirements. Refer to the Procedure - General - Custodial Operations Standard Operating Procedure - Storage and Disposal of Audio and Video Recordings used for Monitoring Purposes;
- b) Where may indicate an offence - if a recording from a listening device may become a legal exhibit it must be managed strictly in accordance with the Appendix IM12 Requirements for Preservation of a Crime Scene; *and*
- c) Incident Management: Incident Management Process - use of information - refer to section Request by a Law Enforcement Agency for Assistance in the Management of a *Human Source for Invasion of Privacy Act 1971*, section 43 requirements.

Information received by use of a listening device may also constitute confidential information in accordance with section 341 of the CSA. An informed person must only disclose confidential information:

- a) for the purposes of the CSA;
- b) to discharge a function under another law or if it is otherwise authorised under another law;
- c) for a proceeding in a court, if the informed person is required to do so by order of the court or otherwise by law;
- d) for confidential information that consists of a person's private details—if authorised by the person to whom the information relates;
- e) if authorised by the Chief Executive because a person's life or physical safety could otherwise reasonably be expected to be endangered or it is otherwise in the public interest;
- f) if the information merely informs someone of the corrective services facility in which a prisoner is being held in custody; or
- g) for an offender who is subject to a parole order or a community based order—that the offender is subject to the order.

11.10 Storage of audio and video/visual recordings

Audio and video recordings used for monitoring purposes are public records and are subject to the provisions of the *Public Records Act 2002*.





Custodial Operations Practice Directive

The storage and disposal of audio and video recordings used for monitoring purposes must be in accordance with QCS General Retention and Disposal Schedule.

For recordings of major breaches of discipline, refer to the COPD - Breaches.

A Chief Superintendent of a corrective services facility must establish a process that ensures recordings required for evidentiary purposes are retained in accordance with this COPD following finalisation of Queensland Police Service (QPS) investigative processes, court proceedings or appeals processes.

11.11 Isolation of recordings

If an incident, or occurrence, occurs and the likelihood exists that a recording/s may be required for evidentiary or investigative purposes, then the recording/s in question must be isolated and stored in a secure place in accordance with this COPD.

The recording/s must remain isolated until a determination is made as to whether or not they will be required. A Chief Superintendent of a corrective services facility will make this determination following consultation with any investigating authority. All recordings are to be retained in accordance with the QCS GRDS.

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