

INSPECTOR GENERAL'S REPORT

Case No. 2017-OIG-14

INTRODUCTION

I have been contacted in my role as Inspector General for the City of Springfield by Mayor James Langfelder and asked to investigate the circumstances surrounding the discovery that the new camera and recording system in the Springfield Police Department's Criminal Investigation Division interview rooms was buffering or recording on a 24/7 continuous basis and not just when a detective user of the system started and stopped recording a particular interview.

In response to this request, I have conducted ten in-person and three telephone interviews with SPD personnel, the Union President, the vendor of the recording system and the Chief of Police of a comparable community which also purchased the same recording system. Additionally, I have reviewed emails, the contract with the recording system vendor and website materials.

BACKGROUND

The Springfield Police Department maintains five interview rooms at police headquarters in Municipal Center East. These rooms are primarily used by Springfield detectives and occasionally other Springfield officers for interviews conducted while investigating cases. Prior to the end of February 2017, these rooms were equipped with analog cameras which resulted in interviews being saved to DVDs. In 2014, it was determined that the former system was outdated and it would cost too much to update.

A now retired deputy chief and retired technology employee began looking for a new system and had narrowed their choices to two systems, including one manufactured by Axon (f/k/a as Taser) and passed those two options on to Commander Wendell Banks who led the Criminal Investigations Unit starting in mid-2016. Stefan Schurmann, Senior Regional Manager for Axon, worked closely with the Department as Axon's sales representative. SPD was familiar with Axon having purchased body cams from that company. SPD's primary criteria were ease of use and integration with the existing body cam system.

Ultimately, the Axon Digital Evidence Management System was purchased on November 30, 2016. This resulted in the installation of a total of six cameras in the five interview rooms, the purchase and installation of a dedicated server and the purchase of the Evidence.com software license from Axon. Under that system, interviews recorded by a detective would be sent to the server and then uploaded to Evidence.com on the cloud. Thereafter, the detectives would access their Evidence.com account to view the recording of each interview they had conducted.

The system was installed with the assistance of the City of Springfield IT Department (ISD) during the month of February 2017. Axon representatives conducted training for all users upon completion of the installation. Among the features that were emphasized during training of the

detectives was one called "Masking" or mute. A recording session would be started by the detective on a touchscreen and, if at any time, a defense attorney was present in the interview room and wanted a private conversation with his or her client, the Masking feature was to be started which caused the video recording to be black and the audio portion to be muted ensuring the attorney privacy with the client. The recording of the black screen and no sound continued to preserve the integrity of the recording so that there would be no time gap on the recording log. At the end of an interview, the detective would hit the stop button on the touchscreen.

ISSUE

The Axon/Evidence.com system was well-liked by its users and no significant issues were noted until October 10, 2017, when a detective contacted Sergeant Jeff Barr who had been in charge of planning and research since March 2017, and whose duties include overseeing the Axon system. The detective was alarmed that he could not find a lengthy interview that he had conducted on Evidence.com. Sergeant Barr turned the matter over to Michael Gardner, SPD's Information Technology Software Specialist. Mr. Gardner attempted a variety of known search features for Evidence.com, but was unable to find the missing interview. He then looked on the dedicated server for the interview using the date and timeframe that the interview took place according to the detective. Mr. Gardner is the only SPD person with credentials authorizing him to access the dedicated server. When he accessed the server, he found a directory on the storage drive called "Archives." Using the date and time parameters, he found the missing interview which had been stored in ten-minute increments. He "stitched together" those ten-minute segments to create the entire missing interview. Mr. Gardner saw that there were other ten-minute intervals before and after the interview that he found for the detective. When first looking for the missing video, the detective sat beside Mr. Gardner and both said that the server first showed two segments that were dark which occurred before the video of the missing interview appeared. Both stated that they saw each of the dark videos for only several seconds each and recall seeing no one in the room and no audio. With the exception of these several seconds of dark video, the detective saw no other recording other than his missing interview. Mr. Gardner, when interviewed, said that other than those few seconds of dark video, he has viewed nothing other than the reconstructed interviews.

Mr. Gardner's experience in finding the missing video led him to believe for the first time that the Axon system was recording audio and video on a 24/7 basis. The detective confirmed that it was obvious Gardner just discovered the 24/7 recording as they sat together looking for the missing interview. The City's IT system is set up to save materials on City servers, including the server dedicated to Axon, for a 45-day period.

In response to reaching the conclusion that the evidence room cameras were recording on a 24/7 basis, Mr. Gardner reported this information to his supervisor, Sergeant Barr. On October 11, 2017, Barr sent an email to his superiors, Commander Wendell Banks and Lieutenant Brian Oakes, asking for a meeting about the interview rooms saying, "Nothing pressing just some information I want you both to be aware of." Lieutenant Oakes, who had only joined the Detective

Bureau on July 23, 2017, (five months after the Axon system was activated), called upon Deputy Chief Shawn Handlin because Commander Banks was on a brief vacation.

Deputy Chief Handlin learned that Sergeant Barr was informing persons in the Detective Bureau regarding the continuous recording by the interview room cameras. Handlin and Lieutenant Oakes met with Sergeant Barr and the discussion was had about the interview rooms “buffering” video and audio footage. Handlin directed Sergeant Barr to stop talking about the issue because Handlin believed the information to be incorrect. When interviewed by me, Deputy Chief Handlin stated that he thought that Sergeant Barr was referring to “SD cards” that were loaded into each of the cameras. (An SD card is a memory device used in many consumer and professional cameras and camcorders.) As a result, Deputy Chief Handlin directed Mike Gardner and Sergeant Barr to remove all of the SD cards from the cameras. They were found to be blank, but all of the SD cards were placed into a sealed envelope initialed by Mr. Gardner, Sergeant Barr and Commander Banks and were placed in, and still remain in, a safe in the Criminal Investigations Division. Deputy Chief Handlin stated, “I did not inform the Chief as to my conversations with Sergeant Barr, as I believed the issue had been handled with me speaking with him.” In my interviews with both Deputy Chief Handlin and Sergeant Barr, both stated that there may have been confusion when they were speaking on October 11 or 12 and that Sergeant Barr now believes that Deputy Chief Handlin was thinking that the issue was with SD cards when Sergeant Barr was describing the 24/7 buffering feature.

Twice, between October 11 and October 24, 2017, Mike Gardner was again contacted by two different detectives who also had missing lengthy interviews. In each instance, Mr. Gardner was able to find the interviews on the server in 10-minute increments and pieced together complete copies of the interviews for the detectives. Mr. Gardner stated that he saw no footage prior to or after either of the additional interviews which he recreated. Ultimately, it was determined that the three missing interviews were being blocked by the City of Springfield ISD firewalls which would not upload the interviews because the files in each case were massive. The problem was rectified by creating a direct pathway from the Criminal Investigation Division’s server to Evidence.com. There have been no additional incidents of missing interviews using this new protocol and the detectives have been able to access even very lengthy interviews on Evidence.com, as the system is designed to do.

Nothing further regarding the interview room 24/7 recording occurred until 2:52 p.m. on October 24, 2017, when Ron Stone, attorney for Springfield Police Benevolent and Protective Association Unit No. 5 emailed a letter to Springfield Police Chief Kenny Winslow in which Stone writes on behalf of the Union with questions regarding 24-hour recording in the CID interview rooms. When I interviewed Chief Winslow, he indicated that Stone’s letter was the first he had heard regarding the 24/7 recording issue. As will be detailed below, all of the persons who I have interviewed, including Axon’s sales representative, confirmed that Chief Winslow had no knowledge of the situation until the Stone letter. In fact, Axon’s Stefan Schurmann confirmed in

writing and confirmed during my interview of him, that even he had no knowledge of the 24/7 recording feature until contacted on October 26 by Chief Winslow.

Within two hours of the email being sent, Chief Winslow reviewed it and immediately contacted the Command Staff and the Assistant Corporation Counsel assigned to advise on police matters asking them, "Can you weigh in on this and advise?" A meeting with Commander Banks and Assistant Corporation Counsel commenced immediately thereafter.

The next morning, October 25, 2017, Sergeant Barr and IT Specialist Gardner contacted Axon regarding the situation and were able to immediately disable audio recording during the 24/7 "buffering" period. The audio recording feature remains disabled as of this date and will continue to be disabled. Stefan Schurmann, the Axon sales representative, appeared in Springfield later in the day on October 25, 2017, and had access to Axon engineers. Mr. Schurmann of Axon expressed his complete surprise that the system buffered on a 24/7 basis and, after assisting with disabling the audio portion, he advised SPD that there was not currently software available to disable the video recording. Based upon this knowledge, Commander Banks immediately printed signs which were placed outside of each of the five interview rooms stating that video was being recorded on a 24/7 continuous basis.

Those SPD members who met with Axon's Stefan Schurmann that day uniformly reported to me that Mr. Schurmann appeared visibly upset regarding his lack of knowledge of the 24/7 recording and indicated that he had sold the system to other police agencies, including Joliet, Illinois.

On Friday, October 27, Chief Winslow and a member of Corporation Counsel's office contacted Joliet, Illinois, Police Chief Brian Benton to inquire whether or not he knew that the Axon system was recording 24/7. I have interviewed Chief Benton who stated that he told Chief Winslow that Winslow's call was the first that he had heard of that occurring and that he immediately turned the matter over to Joliet PD's IT team which took similar steps. Chief Benton advised me that Stefan Schurmann was also their Axon sales representative and that the first knowledge that Joliet PD had of the 24/7 recording capability came from Chief Winslow during the October 27 phone call.

On or about October 25, Chief Winslow and his staff were advised by Axon that the vendor would have its software team create a "patch" to disable the 24/7 video buffering which would take approximately 2 weeks to develop. The same promise was made to Joliet PD. As of my most recent contact with Mr. Schurmann at Axon, the proposed patch still is several weeks away.

I have reviewed the contract between Axon and SPD for the Axon system. A part of the contract is called "Statement of Work & Configuration Document" which states as to each of the five interview rooms under the heading "Video Capture Device," "Recording Activation." "Recording will be manually triggered via the POS-X Touch Panel." During training, Axon instructed the detectives using the system to initiate recording by touching a button on the

touchscreen controller and to terminate recording by touching the corresponding stop recording button on the touchscreen controller.

Additionally, in the specifications included in the contract under "TASER Digital Evidence Solution Description," it states that the system can have, "Up to seven minute pre- and post- event buffering periods." The "up to 7 minutes" buffering period mentioned would clearly send the message that the system was saving up to 7 minutes before and after a detective would start a recording session, meaning that anything which occurred more than 7 minutes before was deleted and anything that occurred more than 7 minutes after the recorded interview was deleted. Axon described this as a feature and my interviews have led to the conclusion that this feature was never activated so that SPD would expect that recording began only when a detective pushed the touchscreen to begin the recording session and ended when the touchscreen was touched ending the recording session. This contract language is clearly contrary to Axon's later disclosure of the 24/7 buffering.

On October 25, Chief Winslow was sent a letter from Axon signed by Isaiah Fields, Vice-President and Associate General Counsel, in which he states, in part, "I understand that it may not have been clearly communicated to your agency that the pre-event buffer would be set for an extended period of time. I apologize to the extent this information may not have been called out or highlighted in our marketing and product materials."

Thereafter, on October 27, 2017, Axon, again through Isaiah Fields, wrote to Chief Winslow and states among other things, "It has been brought to my attention that the Springfield Police Department (SPD) was unaware of the existence of the Axon Interview Solution's long-term backup buffer. Let me start by saying that I apologize for any lack of communication on the part of Axon that may have caused this misunderstanding." The letter then goes on to state, "A lengthy backup video buffer is common in the industry as it allows agencies to retrieve an interview or confession that for whatever reason may not have been captured as a 'recording' at the time it occurred. Critically, buffered video does not get pushed to Evidence.com and there is no viewing mechanism contained with the Axon Interview Solution. Instead, it sits on an agency's local storage and can only be retrieved by an individual who has been specifically granted administrative access to the agency's directory."

Mr. Fields' letters reinforce two important issues. First, that SPD was not adequately informed of the product's "buffering" settings and, second, that the 24/7 buffering is not saved to Evidence.com (which would be accessible to all detective users) but only accessible to those who have specifically granted administrative access. In this case, that is Mike Gardner.

On October 27, Stefan Schurmann from Axon, along with Commander Banks, Deputy Chief Handlin, Lieutenant Oakes, Mike Gardner and Assistant Corporation Counsel Rice held a 45-minute meeting at CID with all available detectives to explain the status of the 24/7 buffering issue and to solicit questions from the detectives.

On October 27, 2017, Mr. Gardner made a computer “snapshot” of the 24/7 buffered material for the preceding 45 days. The ISD settings for saving information delete any items older than 45 days, therefore, the maximum number of prior days that were saved in the snapshot was 45. This snapshot, according to Mike Gardner, was placed in a Comm Vault which is accessible only to him on behalf of SPD and to a small number of ISD administrators. Since being placed in the Comm Vault, even Mike Gardner and ISD administrators may not access the snapshot without prior approval of Chief Winslow and Corporation Counsel Zerkle. To date, no such access has been requested or granted. At the expiration of 45 days from the last snapshot or on the day when Axon installs the patch which will terminate 24/7 video buffering, Mr. Gardner will make an additional snapshot and again place it in the Comm Vault with the same restrictive access.

Most significantly, Mr. Gardner has provided me detailed records regarding all log-in access to the secure server. I have been given this material in three formats: first, a printout in computer code of every single access to the server since its installation; secondly, a computer record of every access to the system including the name of the person making access; and, finally, a summary sheet showing the access log in layman’s terms. These logs definitely confirm that Springfield ISD accessed the server on a number of occasions between February 6 and February 9 while the system was being installed and again on April 26 for a matter of a few seconds. The ISD administrator who logged in on April 26 said that it may have been in response to a warning message or could even have been accessing the wrong server accidentally. This administrator emphatically stated that he saw absolutely no video and heard no audio during the extremely brief access period. All other access to the dedicated server was by Mike Gardner and Axon. (Axon has no access unless Gardner participates in granting access for routine maintenance of the server and its software.) Mr. Gardner states, unequivocally, that other than viewing the interview videos on the server for the three missing interrogations that he reconstructed, he has seen no other footage and, except as noted with the first interrogation reconstruction, has viewed absolutely no portion of the 24/7 buffered recordings.

In addition to questioning Mr. Gardner extensively about viewing the 24/7 videos, I have asked each of the 13 parties whom I have interviewed, including Union President Grant Barksdale, if they themselves saw any of the 24/7 buffered video or knew of anyone who had seen any of the buffered video and each answered with an absolute no. This means, other than the few seconds of dark video seen by Mr. Gardner and the detective when first reconstructing the initial missing interrogation, absolutely no one has seen any of the 24/7 buffered video. As stated above, this is definitively confirmed by the detailed log-in information in my possession.

In a related matter, during my interview of Union President Officer Grant Barksdale he stated that he had found a statement on Axon’s website regarding the 24/7 recording. I have reviewed Axon’s website and spoken with Axon’s salesperson Stefan Schurmann and Vice President Isaiah Fields and find that on Axon.com under the tab “Solutions” there is a section called “At the Station” and below that a section entitled “Interview Recording” which states in full, “Never miss a moment from critical interviews and interrogations with our interview room

video solution, which has a 24/7 buffer and lets you tag and annotate in real time.” Even though this language appears on the website, even Axon’s experienced salesperson Stefan Schurmann who sold the system to the City in November of 2016, did not become aware of the 24/7 buffering until contacted by Chief Winslow on October 26, 2017. Additionally, both SPD employees who began the search for the evidence room camera system have retired and the SPD command staff that made the decision to purchase the Axon system did so based upon the recommendation of the retiring staff. Mr. Schurmann also indicated that his dealings in selling SPD the Axon interview equipment was not based on a website contact but instead based upon the relationship that had developed when Axon sold SPD body cameras.

It is significant to note that there has been a great deal of confusion regarding what the words “buffering” and “cache” mean. These two terms were used extensively in additional conversations with Axon and SPD personnel starting with the October 26, 2017, call from Chief Winslow to Axon. According to techterms.com, a buffer is defined as, “A buffer contains data that is stored for a short amount of time, typically in the computer’s memory (RAM). The purpose of a buffer is to hold data right before it is used.” The same website defines the word “cache” as follows, “Cache...stores recently used information so it can be quickly accessed at a later time. Computers incorporate several different types of caching in order to run more efficiently, thereby improving performance.” It is relevant to note that neither term, buffering in particular, are defined as recording. During the time after Chief Winslow’s initial October 26, 2017, contact with Axon, Mr. Schurmann, the salesperson, and others continually referred to the “feature” of buffering. SPD and corporation counsel personnel who were involved in these meetings repeatedly asked what buffering meant and after initial reluctance, Axon confirmed that buffering in this case means recording.

According to both Sergeant Barr and Deputy Chief Handlin, confusion over the term “buffering” contributed to the delay in Chief Winslow being made aware of the issue. Sergeant Barr thought of buffering as a recording and Deputy Chief Handlin thought that it meant temporarily stored data on SD cards leading him to believe that the removal of the SD cards resolved any issue. Even at the time of my interviews, multiple SPD personnel continued to express concerns with confusion over the interchanging of the words “buffering”, “cache” and “recording”.

The final matter to be considered is whether or not the 24/7 buffering creates any issues with attorney-client privilege if an attorney was present alone with a client in one of the interview rooms prior to the warning signs being placed. Those I interviewed that had knowledge of the situation stated that it is rare for an attorney to be present but that when an attorney requests a private consultation with his or her client during the recording of an interrogation, the detectives uniformly have used the masking feature (which, as stated above, has operated correctly at all times) which keeps the recording timer going but mutes all audio and records only a black image. If an attorney spoke to a client in an interview room prior to a detective starting a recording, or after a detective stopped the recording, it is possible that was recorded during the 24/7 buffering.

As outlined in my recommendations below, it is my opinion that any attorney known to have been present during an interrogation in the 45 days before October 25, 2017, should be notified. However, since it has been absolutely established that no one has viewed any of the buffered recording other than the few seconds by Mike Gardner and the detective who saw nothing and heard nothing, no one has seen or heard any of the recording and, therefore, no criminal case would be impacted by the never seen footage.

CONCLUSION

Based upon extensive interviews, review of emails, correspondence, the contract and website, it is obvious that Axon did not advise SPD that the camera system and Evidence.com that were activated in mid-February, 2017, were recording the five interview rooms on a 24/7 basis. No one had any knowledge of a 24/7 recording until Mike Gardner discovered it while attempting to retrieve a lengthy interview for a detective on October 10, 2017. Thereafter, Mr. Gardner notified his superior, Sergeant Barr who notified his superiors the following day. Thereafter, a period of confusion ensued driven by miscommunication and misunderstanding regarding the term "buffering" which resulted in the cameras SD cards being removed and placed in a safe. Deputy Chief Handlin felt that he had resolved the matter.

It is patently clear that Chief Winslow had no knowledge of the 24/7 recording until receipt of the letter from the Union's attorney, Ron Stone. Chief Winslow commenced an investigation into the matter within 2 hours of the receipt of Mr. Stone's letter resulting in the 24/7 audio recording being disabled the next day and with the immediate arrival of Axon sales representative, Stefan Schurmann who expressed shock that the feature existed which was confirmed by numerous people who met with Mr. Schurmann over the ensuing days.

The 24/7 audio and video recording for the 45 days prior to October 27, 2017, has been preserved and access thereto has been absolutely restricted. Detailed logs of access to the served dedicated to the Axon recording system have been reviewed and show no unauthorized access and all of my interviews have turned up no one who has viewed any of the 24/7 buffered material with the exception of Mike Gardner and the detective sitting with him who viewed a few seconds of dark silent video when they first looked for the detective's missing interrogation.

Axon has admitted fault in not clearly advising SPD that the 24/7 buffering or recording was occurring since the system went online in mid-February, 2017.

RECOMMENDATIONS

1. The buffered recordings made during the 45 days prior to October 27, 2017, which were saved as a "snapshot" by Mike Gardner should be preserved and access should be denied. Future access should only be pursuant to a court order on individual cases.

2. It is recommended that SPD command survey all users of the evidence rooms during the saved 24/7 recording to compile a list of any attorneys who may have been present in the room and specifically note those who may have been present before or after the detective started and stopped the interview room cameras. I recommend that I contact any such attorney to provide a copy of this report to them and to the Sangamon County State's Attorney.

3. It is obvious that a police officer's role in the future will involve the ever-increasing use of technology. While those officers will be trained and will become proficient in operating ever-changing technology, it cannot be assumed or expected that police personnel understand what makes that technology work. To that end, it is critical that SPD maintain information technology specialists such as Mike Gardner and likely more than one information technology specialist going forward as police dependence on technology increases. Regular consultation with such an information technology specialist will help to eliminate some of the confusion evidenced in this matter wherein computer vendors and SPD were faced with conflicting understanding of technical computer terminology.

Dated: December 5, 2017

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Holmes', with a long horizontal line extending to the right.

Roger W. Holmes, Inspector General