

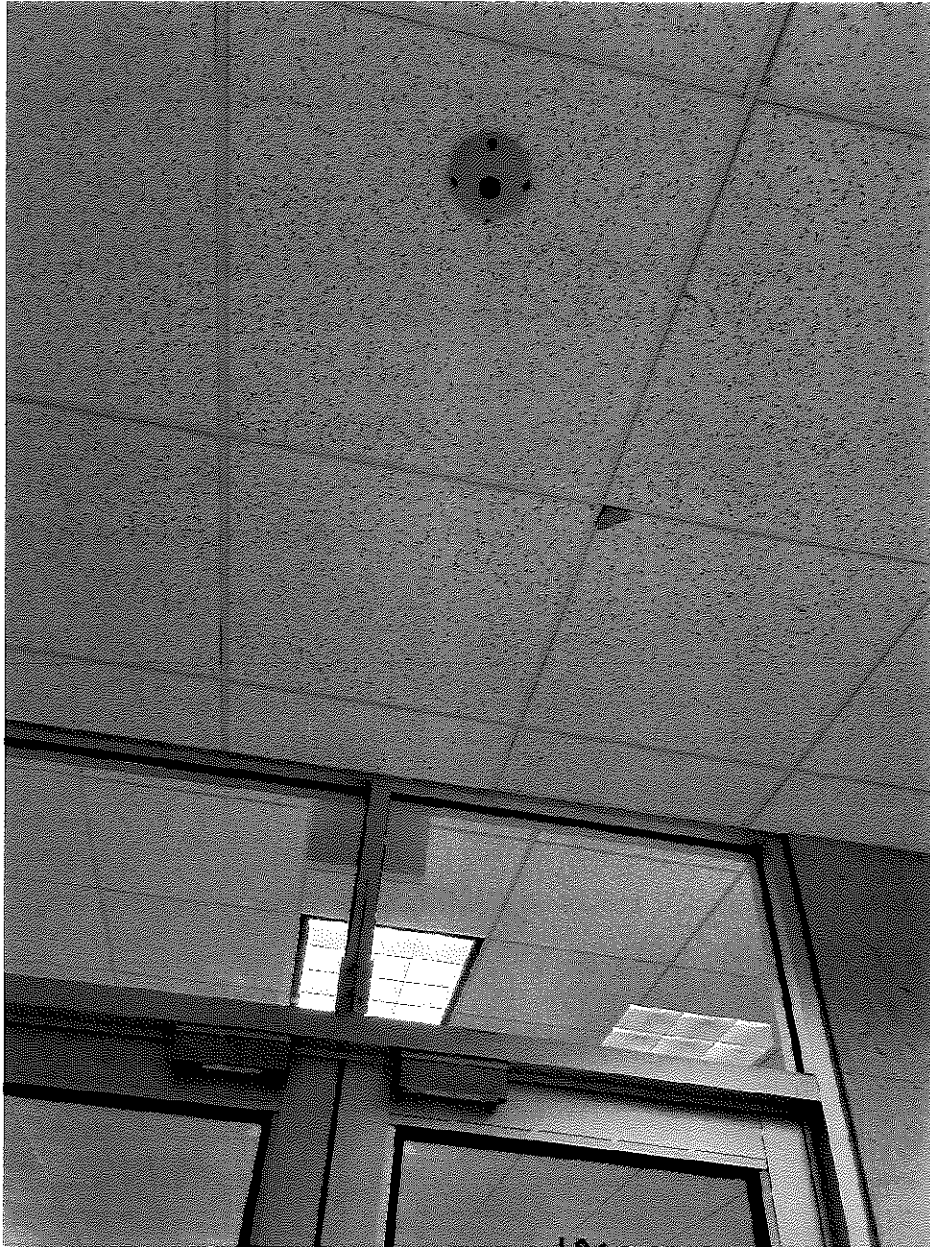
- 1.) Can public government building install audio recording which records indiscriminately? Recording private citizens personal conversations, elected officials, lawyers and their clients, developers? Essentially any citizen who attends a council meeting and goes in the hallway where you would expect privacy due to the ability to keep your voice low and the ability to see who is in the hallway. You would have sufficient time to stop a conversation if another party came near where they could hear the conversation. Also, the risk of being heard is different then the absolute risk of being recorded. Even if overheard it turns into a he said/she said argument and the chance of a person recording a conversation at any given time is very unlikely.
- 2.) Does this violate state and/or federal eavesdropping-wiretapping laws? **Wi SS 968.27, 968.31 and Federal Law 18 U.S.C. Sec 2510, 2511.**
- 3.) Is it enough for the staff to know there are audio devices and therefore if they talk with other staff or constituents in the audio recorded locations giving consent?
- 4.) **Do staff have to have given 3rd party permission to the city (Their Employer) to record?** It is understood that if they gave consent out loud on the recording it presumably would be acceptable, but at any time staff may be being recorded in these areas. **Would the employer need to prove 3rd party consent? Signed receipt of handbook acknowledgement that it was present in the handbook? Not aware that it is, but is this a requirement?**
- 5.) If any part is legal, what are signage requirements to audio record two citizens in the hallways, unaware of any recording? Or others?
- 6.) **Would the city need to have a reasonable reason to record anyone, much less private citizens?**
- 7.) What about attorney's talking with clients in the hallway outside council chambers with the expectation that attorney-client privilege is being invoked?
- 8.) Both locations on 1st and 2nd floor, one would have the ability to believe their conversations are private. They are small hallways with limited unviewable area and if speaking in a normal or low voice, one would not expect their conversation to be public. The speakers are extremely sensitive and seem to amplify the sound greatly. There is a hard drive received through a FOIA request from 11-8-22 from 1st floor of City Hall, proving they actually record audio.
- 9.) The other item of concern is that the city only holds said recordings for 60-121 days for audio and video recording. **What is the statute for time of retention of video recordings and if at all legal audio recordings?**
- 10.) The audio is being surveilled real-time by the city's police department. Access is by the Police Department, city's IT and legal department.
- 11.) We had a citizen who the city brought disorderly conduct charges against for contesting the city clerk of receiving a ballot for another person against state election laws. After having a police officer review video at city hall. Based partly on the review of video recording charges were brought. The video was destroyed after 120 days and the defendant was not afforded the ability to review the video for anything that could help in her defense. The video or what was seen in the video is not being used specifically to try the case, but was used or at least reviewed before the decision to bring civil charges were brought.
- 12.) There is confirmation via another FOIA request that audio is on 1st and 2nd floor outside the City Clerk's office, confirmed installed 7-5-22 and (2) on 2nd floor of city hall, outside the mayor's office and council chambers.
- 13.) Would city council had to have approved the installation and surveillance? Elected officials were not aware of the audio recordings outside council chambers, only recordings where their public work is being conducted.

<https://www.rcfp.org/reporters-recording-guide/wisconsin/>

<https://recordinglaw.com/united-states-recording-laws/one-party-consent-states/wisconsin-recording-laws/>

Green Bay City Hall Video/Audio Surveillance

Location	install date April 5th	install date August 9th	video	audio	Install Date
1st floor hall	X	X	X		UNK
1st floor hall clerk's office			X	X	7/5/2022
1st floor west entrance	X	X	X		UNK
1st floor south entrance	X	X	X		UNK
1st floor east entrance	X	X			UNK
2nd floor hall	X	X	X	X	
2nd floor north	X	X	X		
2nd floor south	X	X	X		
2nd floor mayor's office	X	X	X		
east parking lot	X	X	X		
north parking lot	X	X	X		
west exterior	X	X	X		
east exterior	X	X	X		



This picture is outside City Clerk's office in City Hall 1st Floor -Grey Device on ceiling
Installed 7-5-22, per FOIA request. Picture taken 8-9-22.



This picture is taken at City Hall outside 2nd Floor Main Council Chambers (North Hallway) outside chambers door and close to the elevators. Picture taken 1-17-23. Smaller grey device with black hole in middle. Unknown installation date.



This is in front of the mayors office of City Hall (South Hallway), outside Main Council Chambers 2nd floor. Unknown installation date.
Picture taken 1-17-23.

*** For Your Eyes Only ***

From: Chris Wery <chriswery@att.net>
Sent: Tuesday, January 24, 2023 5:07 PM
To: Chris Wery
Subject: Fw: Question

*** Not for Distribution or further release**

----- Forwarded Message -----





From: Kevin Warych <kevin.warych@greenbaywi.gov>
To: Chris Wery <chriswery@att.net>
Cc: Kevin Warych <kevin.warych@greenbaywi.gov>
Sent: Tuesday, January 24, 2023 at 04:24:47 PM CST
Subject: FW: Question

Alder Wery

Confidential

To follow up on Dave's email, the police department is in a transitional phase for all our cameras. We are transitioning away IndigoVision system to our net milestone system. The new milestone system stores the videos for 121 days. The old IndigoVision system stores video for 60 days (possibly less depending on the currently available storage space). The video is stored on IT controlled storage spaces and is not immediately available to non-designated city staff.

Here is a list of City Hall cameras still on the old IndigoVision system. They only record video.

-  [052] City Hall
-  [102] City-Hall-Pano1
-  [103] City-Hall-Pano2
-  [054] Council_Chambers

Here is a list of City Hall cameras on the new Milestone system.

** For Your Eyes Only **

- City Hall
- City Hall 1st Floor Clerk's Office Interior
- City Hall 1st Floor Hall
- City Hall 1st Floor Hall Clerk's Office
- City Hall 2nd Floor Hall
- City Hall 2nd Floor North
- City Hall 2nd Floor South
- City Hall East Parking Lot
- City Hall Front Exterior
- City Hall Front North
- City Hall Front South
- City Hall Mayor's Office
- City Hall North Parking Lot
- City Hall Rear Door
- City Hall Rear Exterior

Confidential

** Of the City Hall MileStone cameras these have audio recording*

** Not for Distribution
or further release*

- Microphones
- City Hall
 - City Hall 1st Floor Clerk's Office
 - City Hall 2nd Floor North
 - City Hall 2nd Floor South

*> Council Chambers
Hallway & Mayor's Office*

As far as access, the police department and city IT have access to this. For a citizen or elected, they would have to submit an open records request and follow the open records laws pertaining to its release.

Please let me know if you have any further questions.

Kevin

From: Chris Wery <chriswery@att.net>
Sent: Friday, January 20, 2023 3:38 PM
To: Shelby Edlebeck <Shelby.Edlebeck@greenbaywi.gov>; District Twelve <District.12@greenbaywi.gov>; Dave Wilquet <Dave.Wilquet@greenbaywi.gov>; Kevin Warych <Kevin.Warych@greenbaywi.gov>
Subject: Re: Question

Thanks,

968.31 Interception and disclosure of wire, electronic or oral communications prohibited.

- (1) Except as otherwise specifically provided in ss. 196.63 or 968.28 to 968.30, whoever commits any of the acts enumerated in this section is guilty of a Class H felony:
- (a) Intentionally intercepts, attempts to intercept or procures any other person to intercept or attempt to intercept, any wire, electronic or oral communication.
 - (b) Intentionally uses, attempts to use or procures any other person to use or attempt to use any electronic, mechanical or other device to intercept any oral communication.
 - (c) Discloses, or attempts to disclose, to any other person the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this section or under circumstances constituting violation of this section.
 - (d) Uses, or attempts to use, the contents of any wire, electronic or oral communication, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication in violation of this section or under circumstances constituting violation of this section.
 - (e) Intentionally discloses the contents of any oral, electronic or wire communication obtained by authority of ss. 968.28, 968.29 and 968.30, except as therein provided.
 - (f) Intentionally alters any wire, electronic or oral communication intercepted on tape, wire or other device.
- (2) It is not unlawful under ss. 968.28 to 968.37:
- (a) For an operator of a switchboard, or an officer, employee or agent of any provider of a wire or electronic communication service, whose facilities are used in the transmission of a wire or electronic communication to intercept, disclose or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of a wire or electronic communication service shall not utilize service observing or random monitoring except for mechanical or service quality control checks.
 - (b) For a person acting under color of law to intercept a wire, electronic or oral communication, where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.
 - (c) For a person not acting under color of law to intercept a wire, electronic or oral communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitution or laws of the United States or of any state or for the purpose of committing any other injurious act.
 - (d) For any person to intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public.
 - (e) For any person to intercept any radio communication that is transmitted:
 1. By any station for the use of the general public, or that relates to ships, aircraft, vehicles or persons in distress;
 2. By any governmental, law enforcement, civil defense, private land mobile or public safety communications system, including police and fire, readily accessible to the general public;
 3. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band or general mobile radio services; or
 4. By any marine or aeronautical communications system.
 - (f) For any person to engage in any conduct that:
 1. Is prohibited by section 633 of the communications act of 1934; or

2. Is excepted from the application of section 705 (a) of the communications act of 1934 by section 705 (b) of that act.

- (g) For any person to intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment, to the extent necessary to identify the source of the interference.
 - (h) For users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted.
 - (i) To use a pen register or a trap and trace device as authorized under ss. 968.34 to 968.37; or
 - (j) For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful or abusive use of the service.
- (2m) Any person whose wire, electronic or oral communication is intercepted, disclosed or used in violation of ss. 968.28 to 968.37 shall have a civil cause of action against any person who intercepts, discloses or uses, or procures any other person to intercept, disclose, or use, the communication, and shall be entitled to recover from any such person:
- (a) Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation or \$1,000, whichever is higher;
 - (b) Punitive damages; and
 - (c) A reasonable attorney's fee and other litigation costs reasonably incurred.
- (3) Good faith reliance on a court order or on s. 968.30 (7) shall constitute a complete defense to any civil or criminal action brought under ss. 968.28 to 968.37.

History: 1971 c. 40 ss. 92, 93; 1977 c. 272; 1985 a. 297; 1987 a. 399; 1989 a. 56; 1991 a. 294; 1997 a. 283; 2001 a. 109.

The testimony of an undercover police officer who was carrying a concealed eavesdropping device under sub. (2) is not the product of the eavesdropping and is admissible even assuming the eavesdropping was unconstitutional. *State v. Smith*, 72 Wis. 2d 711, 242 N.W.2d 184 (1976).

An individual, who volunteers to aid the authorities in a lawful, albeit surreptitious, investigation does not commit an injury against the investigated party under sub. (2) (c) simply by participation. Undercover informants must surely realize that evidence they receive may be potentially harmful to the target of the investigation, but this is not the type of injurious act contemplated by the statute. *State v. Maloney*, 2005 WI 74, 281 Wis. 2d 595, 698 N.W.2d 583, 03-2180.

Consent under sub. (2) (b) may be express or implied in fact from surrounding circumstances indicating that the person knowingly agreed to the surveillance. In the prison setting, an inmate has given implied consent to electronic surveillance when he or she has meaningful notice that a telephone call is subject to monitoring and recording and nonetheless proceeds with the call. *State v. Riley*, 2005 WI App 203, 287 Wis. 2d 244, 704 N.W.2d 635, 04-2321.

If a warrantless intercept complies with sub. (2) (b), commonly referred to as the one-party consent exception, the contents of the intercept may be disclosed in a felony proceeding. The phrase "person acting under color of law" does not exclude law enforcement officers. *State v. Ohlinger*, 2009 WI App 44, 317 Wis. 2d 445, 767 N.W.2d 336, 08-0135.

When determining whether a minor has the capacity to consent to "color-of-law surveillance" under sub. (2) (b), courts should consider the totality of the circumstances to determine whether consent was voluntarily given. The court should consider the minor's knowledge, intelligence, and maturity. It is also appropriate to consider the minor's education and state of mind, the demeanor and tone of voice of the officers requesting consent, the location at which consent was given, and the duration of the encounter. The court should also consider the police tactics used to elicit consent and any other relevant circumstances. *State v. Turner*, 2014 WI App 93, 356 Wis. 2d 759, 854 N.W.2d 865, 13-2101.

The use of the "called party control device" by the communications common carrier to trace bomb scares and other harassing telephone calls would not violate any law if used with the consent of the receiving party. 60 Atty. Gen. 90.

1050. SCOPE OF 18 U.S.C. § 2511 PROHIBITIONS

Section 2511 of Title 18 prohibits the unauthorized interception, disclosure, and use of wire, oral, or electronic communications. The prohibitions are absolute, subject only to the specific exemptions in Title III. Consequently, unless an interception is specifically authorized, it is impermissible and, assuming existence of the requisite criminal intent, in violation of 18 U.S.C. § 2511.

Section 2511(1)(a) is a blanket prohibition against the intentional interception, endeavor to intercept, or procurement of another person to intercept or endeavor to intercept any wire, oral, or electronic communication.

Section 2511(1)(b) is applicable only to oral communications. It is less pervasive than the prohibition against the interception of oral communications contained in Section 2511(1)(a) and was included because of a question "concerning the constitutionality of Section 2511(1)(a) as it relates to oral communications." *See* S.Rep. No. 1097, 90th Cong., 2d Sess. 92 (1968); *United States v. Burroughs*, 564 F.2d 1111, 1115 (4th Cir. 1977). The Criminal Division recommends that Section 2511(1)(b) should be charged in cases involving interception of oral communications. However, although the interception of an oral communication may violate both 2511(1)(a) and (b), a person may be convicted of only one offense under the section. *See* S.Rep. No. 1097, 90th Cong., 2d Sess. 93 (1968).

Section 2511(1)(c) and (d) of Title 18 provide additional penalties for the disclosure and use of illegally intercepted communications. The use or disclosure must be accompanied by knowledge or reason to know that the information concerned was obtained through an interception which violated 18 U.S.C. § 2511(1). The knowledge element can be satisfied either when the subject has actual knowledge or when the occurrence of the element "can reasonably be foreseen." *Pereira v. United States*, 347 U.S. 1, 9 (1954).

Section 2511(1)(e) was added as one of the miscellaneous provision in the Violent Crime Control and Law Enforcement Act of 1994. It specifically prohibits (i) intentional disclosure of the contents of a wire, oral or electronic communication, intercepted by certain authorized procedures, (ii) knowing or having reason to know that the information was obtained through interception of such a communication in connection with a criminal investigation, (iii) having obtained or received the information in connection with a criminal investigation, and (iv) with intent to improperly interfere with a duly authorized criminal investigation.

Once the contents of an intercepted communication have become "public information" or "common knowledge," disclosure or use of the contents of the communication is no longer prohibited. *See* S.Rep. No. 1097, 90th Cong., 2d Sess 93 (1968).

[cited in JM 9-60.200]