

# State Human Resources Policy #E24-100.10

## Recording of Conversations or Electronic Communications

**THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.**

### **DEFINITIONS**

Agency – The South Carolina Military Department/Office of the Adjutant General

Electronic Communication\* - Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, photooptical system, or any other device that affects intrastate, interstate, or foreign commerce, but does not include:

- (a) any wire or oral communication;
- (b) any communication made through a tone-only paging device;
- (c) any communication from an electronic or mechanical device which permits the tracking of the movement of a person or an object; or
- (d) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

Oral Communication\* - Any communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation and does not mean any public oral communication uttered at a public meeting or any electronic communication.

Wire Communication\* - Any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception including the use of this connection in a switching station furnished or operated by any person engaged in providing or operating the facilities for the transmission of intrastate, interstate, or foreign communications or communications affecting intrastate, interstate, or foreign commerce. The term includes any electronic storage of the communication.

*\* These definitions are provided in Federal and State statutes at 18 US Code § 2510 and SC Code § 17-30-15.*

### **POLICY**

1. In accordance with SC Code § 17-30-30, an Agency employee who is a party to an in-person conversation (oral communication), wire or electronic communication, or who has the consent of one of the parties to the communication, can lawfully record and disclose the communication. This includes the contents of text messages sent between wireless devices.

2. Agency employees who illegally record an in-person conversation, illegally intercept wire or electronic communications, disclose the contents of wire, oral or electronic communications obtained through illegal means, or accept wire, oral or electronic communication obtained through illegal means may be subject to disciplinary actions under the Agency's Progressive Discipline Policy up to and including termination. Employees' activities of this type are governed by federal wiretapping law, 18 US Code §§ 2510 through 2522, and the "South Carolina Homeland Security Act" at SC Code §§ 17-30-10 through 17-30-145. Violators may face criminal prosecution by local, State or Federal authorities under these laws.

3. In cases where an employee brings copies of wire, oral or electronic communications to another Agency employee, supervisor and/or member of the chain of command under circumstances which may violate State or Federal criminal law, the receiving employee should seek legal counsel through the chain of command to the Agency legal advisor prior to viewing, listening, or storing/accepting communications, including recordings or emails, to which the employee was not a party.

4. Agency employees conducting investigations or inquiries as part of their assigned duties will only take recorded statements (written, videoed, or recorded) in accordance with specific direction received from the Director of State Operations, Deputy Adjutant General, or The Adjutant General. In most, if not all investigations, recording is only done with consent and, if a record of that statement is kept, the employee assigned to conduct the investigation must provide a copy of the recording or statement to the person making the statement as required by State law (see SC Code § 8-15-50).