

## Portable Audio/Video Recorders-Post Mandate

### 421.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties (Minn. Stat. § 626.8473). Portable audio/video recording devices include all recording systems whether body-worn, hand-held, or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews, or interrogations conducted at any Prior Lake Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

#### 421.1.1 DEFINITIONS

Definitions related to this policy include:

**Portable recording system** - A device worn by a member that is capable of both video and audio recording of the member's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and as provided in Minn. Stat. § 13.825.

### 421.2 POLICY

The Prior Lake Police Department may provide members with access to portable recorders for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

### 421.3 COORDINATOR

The Chief of Police or the authorized designee should designate a coordinator responsible for (Minn. Stat. § 626.8473; Minn. Stat. § 13.825):

- (a) Establishing procedures for the security, storage, and maintenance of data and recordings.
  1. The coordinator should work with the Custodian of Records and the member assigned to coordinate the use, access, and release of protected information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) and other applicable laws (Minn. Stat. § 13.01 et seq.) (see the Protected Information and the Records Maintenance and Release policies).
  2. The coordinator should work with the Custodian of Records to identify recordings that must be retained for a specific time frame under Minnesota law (e.g., firearm discharges, certain use of force incidents, formal complaints).
- (b) Establishing procedures for accessing data and recordings.
  1. These procedures should include the process to obtain written authorization for access to non-public data by PLPD members and members of other governmental entities and agencies.

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- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging, or marking events.
- (e) Establishing an inventory of portable recorders including:
  1. Total number of devices owned or maintained by the Prior Lake Police Department.
  2. Daily record of the total number deployed and used by members and, if applicable, the precinct or district in which the devices were used.
  3. Total amount of recorded audio and video data collected by the devices and maintained by the Prior Lake Police Department.
- (f) Preparing the biennial audit required by Minn. Stat. § 13.825, Subd. 9.
- (g) Notifying the Bureau of Criminal Apprehension (BCA) in a timely manner when new equipment is obtained by the Prior Lake Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders.
- (h) Ensuring that this Portable Audio/Video Recorders Policy is posted on the Department website.

#### **421.4 MEMBER PRIVACY EXPECTATION**

All recordings made by members on any department-issued device at any time or while acting in an official capacity of this department, regardless of ownership of the device, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

#### **421.5 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order (Minn. Stat. § 13.825). If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable (Minn. Stat. § 626.8473).

Portable recording systems must be worn at or above the mid-line of the waist in a position that maximizes the recording system's capacity to record video footage of the officer's activities (Minn. Stat. § 626.8473).

Officers assigned a portable recording system shall wear and operate the system in compliance with the agency's policy adopted under this section while performing law enforcement activities under the command and control of another chief law enforcement officer or federal law enforcement official (Minn. Stat. § 626.8473).

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Unless conducting a lawful recording

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in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

When using a portable recorder, the assigned member shall record his/her name, employee number and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the recording device and related software captures the user's unique identification and the date and time of each recording.

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording (Minn. Stat. § 626.8473). Members should include the reason for deactivation.

#### **421.6 ACTIVATION OF THE AUDIO/VIDEO RECORDER**

This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify Dispatch
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

##### **421.6.1 CESSATION OF RECORDING**

Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete, advised by a supervisor to stop recording or the situation no longer fits the criteria for activation. Recording may be stopped during

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significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

#### 421.6.2 SURREPTITIOUS RECORDINGS

Minnesota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02).

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

#### 421.6.3 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

#### 421.6.4 OFFICER DOCUMENTATION

Whenever an officer makes a recording, the existence of the recording shall be documented in an incident report in LETG, the record management system. Accidental or Test recordings need only be documented in axon's evidence.com unless further documentation is necessary.

Whenever an officer fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the officer must document the circumstances and reasons for not recording in an incident report or CAD record. Supervisors shall review these reports and initiate any corrective action deemed necessary.

Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her camera to the designated storage location by the end of that officer's shift. However, if the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or substantial bodily harm, a supervisor or investigator shall take custody of the officer's BWC and assume responsibility for transferring the data from it.

Officers shall label the BWC data files at the time of video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Officers should assign the appropriate label in according with the data retention table in this policy.

In addition, if the officer is aware at the time of the recording, officers should flag each file as appropriate to indicate that it contains information about data subjects who may have rights under the MGDPA limiting disclosure of information about them. These individuals include:

- (a) Victims and alleged victims of criminal sexual conduct and sex trafficking.

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- (b) Victims of child abuse or neglect.
- (c) Vulnerable adults who are victims of maltreatment.
- (d) Undercover officers.
- (e) Informants.
- (f) When the video is clearly offensive to common sensitivities.
- (g) Victims of and witnesses to crimes, if the victim or witness has requested not to be identified publicly.
- (h) Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
- (i) Mandated reporters.
- (j) Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
- (k) Juveniles who are or may be delinquent or engaged in criminal acts.
- (l) Individuals who make complaints about violations with respect to the use of real property.
- (m) Officers and employees who are the subject of a complaint related to the events captured on video.
- (n) Other individuals whose identities the officer believes may be legally protected from public disclosure.

Labeling and flagging designations may be corrected or amended based on additional information.

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### **421.7 PEACE OFFICER USE OF DEADLY FORCE**

- Any person is prohibited from altering, erasing, or destroying any recording made with a peace officer's portable recording system or data and metadata related to the recording prior to the expiration of the applicable retention period under section [13.825, subdivision 3](#), except that the full, unedited, and unredacted recording of a peace officer using deadly force must be maintained indefinitely (Minn. Stat. § 626.8473).
- Notwithstanding any law to the contrary, when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency must allow the following individuals, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within five days of the request, except as otherwise provided in this clause and clause (5):
  - the deceased individual's next of kin
  - the legal representative of the deceased individual's next of kin; and
  - the other parent of the deceased individual's child.
- A law enforcement agency may deny a request if the agency determines that there is a compelling reason that inspection would interfere with an active investigation. If the agency denies access, the chief law enforcement officer must provide a prompt, written denial to the individual who requested the data with a short description of the compelling reason access was denied and must provide notice that relief may be sought from the district court pursuant to section [13.82, subdivision 7](#);
- If an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency shall release all portable recording system data, redacted no more than what is required by law, documenting the incident no later than 14 days after the incident, unless the chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by section [13.82, subdivision 7](#);

### **421.8 PROHIBITED USE OF PORTABLE RECORDERS**

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Patrol Sergeant. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

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Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule.

#### **421.9 PROHIBITED USE OF AUDIO/VIDEO RECORDERS**

Members are prohibited from using department-issued portable recorders and recording media for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Members are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with department-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Patrol Sergeant. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements and should notify the on-duty supervisor of such use as soon as reasonably practicable.

Recordings shall not be used by any member for the purpose of embarrassment, harassment or ridicule.

#### **421.10 RETENTION OF RECORDINGS**

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 90 days.

If an individual captured in a recording submits a written request, the recording shall be retained for an additional time period. The coordinator should be responsible for notifying the individual prior to destruction of the recording (Minn. Stat. § 13.825).

Members shall not alter, erase, or destroy any recordings before the end of the applicable records retention period (Minn. Stat. § 626.8473).

##### **421.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS**

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.

##### **421.10.2 ACCESS TO RECORDINGS**

Except as provided by Minn. Stat. § 13.825, Subd. 2, audio/video recordings are considered private or nonpublic data.

Any person captured in a recording may have access to the recording. If the individual requests a copy of the recording and does not have the consent of other non-law enforcement individuals captured on the recording, the identity of those individuals must be blurred or obscured sufficiently to render the subject unidentifiable prior to release. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17.

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#### **421.11 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, members should download, tag or mark the recordings in accordance with procedure and document the existence of the recording in any related case report.

A member should transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an under-cover officer or confidential informant.
- (g) The recording or portions of the recording may be protected under the Minnesota Data Practices Act.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

#### **421.12 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) By a supervisor as part of internal audits and reviews as required by Minn. Stat. § 626.8473.
- (b) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation.
- (c) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (d) By media personnel with permission of the Chief of Police or the authorized designee.



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- (e) In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to Minn. Stat. § 13.82, Subd. 15, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy). Recordings that are clearly offensive to common sensibilities should not be publicly released unless disclosure is required by law or order of the court (Minn. Stat. § 13.82, Subd. 7; Minn. Stat. § 13.825, Subd. 2).

#### **421.13 ACCOUNTABILITY**

Any member who accesses or releases recordings without authorization may be subject to discipline (see the Standards of Conduct and the Protected Information policies) (Minn. Stat. § 626.8473).

##### **421.13.1 DATA RETENTION**

- (a) All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.
- (b) Videos should be labeled according to the classifications in the table contained in this policy.

Classification	Definition	Retention
Accidental activation/test	System check at beginning of duty tour/Accidental activation	90 days
Arrest	Custodial Arrest	3 years
Citation	Any citation for traffic or other crimes where no custodial arrest is made	3 years
DWI or flee in m.v.	Arrest for DWI related offense or Footage of vehicle refusing to stop	7 years
Emer. Veh. Response	Response to CFS that does not result in any other classification	90 days
General contact	Recorded contact with the public: generally no evidentiary value, no comments required	90 days
Speed Trigger	Activation of camera due to speed of vehicle	90 days
Traffic /no citation	Traffic stop resulting in no citation issued	90 days
Training	Event that could assist in department training - viewable to all personnel	90 days

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Use-of-Force	Footage or audio of documented Use-of-Force. Excludes firearms discharge during training or killing of a sick, injured, or dangerous animal	6 years
Pending review	Retention period not immediately apparent or able to be determined	These all are held until manually deleted or moved to another category
Permanent	Video to be retained permanently per retention schedule	
Restricted	Video of a sensitive nature	
MGDPA flag	Videos that contain info about data subjects protected under MN government data practices act	90 days

- (c) Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.
- (d) Certain kinds of BWC data must be retained for six years:
  - 1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review.
  - 2. Data documenting circumstances that have given rise to a formal complaint against an officer. Such data shall be classified as restricted.
- (e) Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.
- (f) Subject to Part G (below), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.
- (g) Upon written request by a BWC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.
- (h) Officers or Supervisors that are informed of a reason to reclassify a recording and retention period shall make appropriate notification to do so to a supervisor or system administrator (e.g. a formal complaint received)
- (i) The department shall maintain an inventory of BWC recordings having evidentiary value.
- (j) The department will post this policy, together with a link to its Records Retention Schedule, on its website.