

Portable Audio/Video Recorders (BWC)

423.1 PURPOSE AND SCOPE

The primary purpose of using body-worn-cameras (BWCs) is to promote transparency and accountability and build public trust, enhance officer and public safety and capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of BWCs and administering the data that results. Compliance with these guidelines is mandatory, but it is recognized that officers must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving.

It is the policy of this department to authorize and require the use of department-issued BWCs as set forth below, and to administer BWC data as provided by law.

This policy governs the use of BWCs in the course of official duties. It does not apply to the use of squad-based (dash-cam) recording systems. The chief or chief's designee may supersede this policy by providing specific instructions for BWC use to individual officers, or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The chief or designee may also provide specific instructions or standard operating procedures for BWC use to officers assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.

423.1.1 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.

MGDPA or Data Practices Act refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

Records Retention Schedule refers to the General Records Retention Schedule for Minnesota Cities.

Law enforcement-related information means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

Evidentiary value means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer.

General citizen contact means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting

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a motorist with directions, summoning a wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

Adversarial means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, shouting, or encounters in which a citizen "demands" to be recorded.

Unintentionally recorded footage is a video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in station house locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

Official duties, for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this agency.

423.2 POLICY

The Shakopee 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.

423.3 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.
 - (a) The coordinator should work with the Records Supervisor 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).
 - (b) 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.
 - (a) These procedures should include the process to obtain written authorization for access to non-public data by SPD 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:
 - (a) Total number of devices owned or maintained by the Shakopee Police Department.
 - (b) Daily record of the total number deployed and used by members.
 - (c) Total amount of recorded audio and video data collected by the devices and maintained by the Shakopee 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 Shakopee 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.

423.4 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.

423.5 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 as specified in training (Minn. Stat. § 626.8473).

BWC shall be worn 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.

Officers shall conduct a daily function test to assure the BWC is working correctly. This can be done along with their daily squad check.

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.

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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, officer failed to activate, or the member deactivated the recording (Minn. Stat. § 626.8473). Members should include the reason for failure to activate or deactivation.

Supervisors shall review these reports and initiate any corrective action deemed necessary.

423.6 ISSUANCE OF BODY-WORN CAMERAS (BWC)

BWC's will be mandatory for uniformed officers assigned to the Patrol Division for daily use. Furthermore, BWC will be mandatory for non-uniformed personnel during warrant service and any other law enforcement activity likely to involve an arrest or response to resistance and when they wear a "raid vest" or body armor. Uniformed officers performing contracted overtime services will wear BWC's as part of their uniform. Cameras will be made available to all officers, such as investigators for instances when the officer reasonably believes he / she will be in contact with the public and the use of a BWC will enhance the officer's ability to achieve the operation objectives outlined above.

423.7 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.

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A recording may be muted briefly by an officer for the purpose of conferring with a fellow officer or supervisor, but the officer must narrate the reason prior to muting. The audio must resume after conferring and continue through the duration of the recording.

Notwithstanding any other provision in this policy, officers shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

423.7.1 CESSATION OF RECORDING

Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The officer having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, officers shall state the reasons for ceasing the recording on camera before deactivating their BWC. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.

423.7.2 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.

423.7.3 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.

423.8 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.

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Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. 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.

423.9 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).

423.9.1 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.

423.9.2 ADMINISTERING ACCESS TO BWC DATA

Data Subjects: Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:

- (a) Any person or entity whose image or voice is documented in the data.
- (b) The officer who collected the data.
- (c) Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording.

423.9.3 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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423.9.4 DOWNLOADING AND CATEGORIZING DATA

- (a) Video files shall be maintained in an approved storage location, such as a server, storage device, cloud storage, website or other approved secure storage media, authorized by the Chief of Police. Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her camera 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 great bodily harm, a supervisor or investigator shall take custody of the officer's BWC and assume responsibility for transferring the data from it.
- (b) Officers shall categorize 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 as many of the following labels as are applicable to each file:
 1. From BWC
 - (a) ICR only /90-day retention
 - (b) Cancelled Activation / 90-day retention
 - (c) No ICR or Follow for Conduct / 90 day retention
 - (d) Training Demo / 90 day retention
 - (e) Squad Check / 90 day retention
 - (f) Traffic Citation / 3 year retention
 - (g) Arrest / 7 year retention
 - (h) DWI/ Traffic Criminal / 7 year retention
 - (i) Response to Resistance (response to resistance) / 7year retention
 - (j) Active Case- Pending Charges / 7 year retention
 - (k) Death/CSC/Arson / Permanent retention
 2. All videos, except for squad checks, cancelled activations, No ICR or follow for conduct shall have an ICR assigned. The ICR number shall be documented on the video along with the classification.

423.10 BWC DATA PRIVACY

423.10.1 PRIVATE DATA

BWC data is presumptively private. BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:

- (a) BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.
- (b) Some BWC data is classified as confidential
- (c) Some BWC data is classified as public

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423.10.2 CONFIDENTIAL DATA

BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the "private" classification listed above and the "public" classifications listed below.

423.10.3 PUBLIC DATA

The following BWC data is public:

- (a) 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.
- (b) Data that documents the use of force by a peace officer that results in substantial bodily harm.
- (c) Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted (if practicable). In addition, any data on undercover officers must be redacted.
- (d) Data that documents the final disposition of a disciplinary action against a public employee.

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under Minn. Stat. § 13.82, subd. 17 (e.g., certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.

423.11 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.

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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.

423.12 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.
- (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).

423.12.1 REVIEW AND ACCESS BY NON-EMPLOYEES

Officers shall refer members of the media or public seeking access to BWC data to the Services Division Captain, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

- (a) An individual shall be allowed to review recorded BWC data about himself / herself and other data subjects in the recording, but access shall not be granted:
 1. If the data was collected or created as part of an active investigation.
 2. To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by Minn. Stat. § 13.82, subd. 17.

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- (b) Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:
 - 1. Data on other individuals in the recording who do not consent to the release must be redacted.
 - 2. Data that would identify undercover officers must be redacted.
 - 3. Data on other officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.
- (c) When a subject dies as a result of a use of force used by a peace officer of this agency, we will provide the following individual, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within 5 days of the request unless there is compelling reason that inspection would interfere with an active investigation. If the request is denied, the Chief must provide a prompt, written denial to the individual who requested access with short description of the reason for denial and must provide notice that relief may be sought from the district court
 - 1. The deceased individual's next of kin.
 - 2. The legal representative of the deceased individual's next of kin
 - 3. The other parent of the deceased individual's child

423.12.2 REVIEW AND ACCESS BY PEACE OFFICERS AND LAW ENFORCEMENT EMPLOYEES

No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes:

- (a) Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.
- (b) Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.
- (c) Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.
- (d) 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 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.:

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1. the deceased individual's next of kin;
2. the legal representative of the deceased individual's next of kin; and
3. 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.

423.13 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).

Any person who willfully violates the provisions any rules adopted under this policy or whose conduct constitutes the knowing unauthorized acquisition of not public data, as defined in section 13.055, subdivision 1, is guilty of a misdemeanor.

Willful violation of this policy, including any action subject to a criminal penalty, by any public employee constitutes just cause for suspension without pay or dismissal of the public employee.

423.14 TRAINING

Users of the BWC system and supervisors shall successfully complete a Minnesota P.O.S.T. Board approved course of instruction prior to being deployed with a BWC in an operational setting.

423.15 POLICY AND PROGRAM EVALUATION

As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program and procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits and reviews, and the employee discipline standards for unauthorized access to data contained in section 13.09.