
Portable Audio/Video Recorders

423.1 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 St. Charles Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

423.2 SCOPE

This policy provides guidelines for the use of BCWs by members of this department while in the performance of their duties (Minn. Stat. § 626.8473) and administering the data that result. The Chief of Police or the 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.

This policy does not apply to the use of squad-based (dash-camera) recording systems, interviews or interrogations conducted at any St. Charles Police Department facility, undercover operations, wiretaps or eavesdropping (concealed listening devices), nor personal digital voice recording devices, unless captured by a BWC.

423.3 POLICY

The St. Charles 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. Furthermore, 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.

423.4 DEFINITIONS

The following phrases and words have special meaning as used in this policy:

Body Worn Camera (BWC)- 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. Stat. § 13.01, et seq.

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Records Retention Schedule- Refers to the General Records Retention Schedule for the City of St. Charles.

Law enforcement-related information- means information captured or available for capture by use of 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 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, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

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.

Department- means the St. Charles Police Department, St. Charles, Minnesota.

Member- means a St. Charles Police Department employee, who has been issued a BWC and who has been properly trained in its use, who is acting in a St. Charles Police Department job description which requires that person be licensed by the Minnesota Board of Peace Officer Standards and Training.

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.

Redact- means to blur video or distort audio so that the identity of the subject in a recording is obscured sufficiently to render the subject unidentifiable.

CAD- means Computer Aided Dispatch

Critical Incident- means an incident involving: the use of deadly force by a peace officer; the discharge of a firearm by a peace officer in the course of duty, if a notice is required under section

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626.553, subdivision 2; an in-custody death; and/or the use of force by a peace officer that resulted or was likely to result in substantial bodily harm, great bodily harm or death.

423.5 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 SCPD members and members of other governmental entities and agencies.
- (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 St. Charles 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 St. Charles 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 St. Charles 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.

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423.6 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.

423.7 MEMBER RESPONSIBILITIES

Prior to going into service, uniformed members will be responsible for making sure that they are 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 their supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner at or above the mid-line of the waist and notify persons that they are being recorded, whenever reasonably practicable (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 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 their 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.

423.8 GENERAL GUIDELINES FOR BODY-WORN CAMERA RECORDING

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 at any time the member believes it would be appropriate or valuable to record an incident.

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.

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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.

423.8.1 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.

423.8.2 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.

423.8.3 ACTIVATION OF THE BWCS

- A. Member shall activate their BWCs when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, Terry stops of motorists or pedestrians, arrests, searches, suspect, victim and witness interviews and interrogations, prisoner transports and during any law enforcement/ citizen contacts that becomes adversarial. The BWC should be activated when arriving at the location of the call or complaint before deputy gets out of the squad car. If a member is handling a call for service by telephone the BWC should be activated prior to making a phone call. The deputy should place the phone on speaker mode to capture both the deputy side of the conversation as well as the person the deputy is speaking to.
- B. However, members need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Members Responsibility section of this policy (423.7) mentioned above.
- C. Members have discretion to record or not record general citizen contacts.
- D. Members have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.
- E. 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. 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, members shall reactivate their cameras as required by this policy to capture information having evidentiary value.

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- F. When members are conducting search warrants of people or places the BWC should be activated. If searching places, once all non law enforcement personnel have left the scene or area of the search the BWC may be muted. The BWC may be muted during the search to prevent any operational security breaches of on going investigations. The recording of any evidence that is located during the search should still be video recorded on the BWC and the BWC should not be shut off until the search is complete and members have left the scene of the search.

423.8.4 PROHIBITED USE OF BWCS

Members are prohibited from using department-issued BWCs 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 BWC. Members shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

Notwithstanding any other provision in this policy, members 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.

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

Members shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy.

To the extent possible, members shall not use BWCs to record video depicting strip searches, reviews of private sexual images and/or videos, and/or images and videos showing or suspected of showing child sexual exploitation. It does not defeat the purpose of this policy to block the video recording, but maintain audio recording, of strip searches, reviews of private sexual images and/or videos, and/or images and videos showing or suspected of showing child sexual exploitation.

423.9 SPECIAL GUIDELINES FOR RECORDING

Members may, in the exercise of sound discretion, determine:

- A. To use their BWCs to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value unless such recording is otherwise expressly prohibited.
- B. Officers shall use their BWCs and squad-based audio/video system to record the transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident.

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- C. The BWC system is equipped with a remote Live Stream feature which allows authorized individuals to remotely start a live stream of an officers BWC. An officers BWC who has been remotely started for live streaming shall always be notified prior to and when the live streaming of the BWC happens. Notification attempts to the member that a live stream will be started will be made by phone by calling or texting the member prior to the live stream starting.
- D. The BWC system has an automatic trigger which activates the system when an officer is traveling at 90 mph or faster.
- E. Officers need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs shall be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.

423.10 DOWNLOADING AND LABELING BWC DATA

- A. Each member using a BWC is responsible for assuring the data from his or her camera properly transferred to the designated cloud storage. However, if the officer is involved in a critical incident, the Shift Commander or the Chief of Police shall take custody of the officer's BWC and assume responsibility for assuring the transfer of the data from it.
- B. Members shall label the BWC data files at the time of capture or transfer to storage as trained and should consult with a shift commander or the Chief of Police if in doubt as to the appropriate labeling or selecting the appropriate retention.
- C. Members shall use the appropriate tag when categorizing their BWC recordings. Members shall label the recording with the appropriate ICR number. Members shall also set the appropriate retention for the BWC recording by either leaving the recording set to the default 180 days or changing to 7 years or indefinite.
- D. The following are examples of incidents or situations for setting the appropriate retention of BWC videos but is not all inclusive. If a member is in doubt as to what to set the retention for a recording, they should error on the side of setting the retention to 7 years.
 - 1. Incidents or encounters that do not result in arrests or the need for continued investigation, casual encounters with citizens that are not adversarial, traffic stops that do not result in citations and are not adversarial, incidents deemed by an officer's discretion will not be needed for further evidentiary value. All the BWC recordings can have the retention schedule of 180 days.
 - 2. Incidents or encounters where an individual is arrested or charged with a crime, is likely to be charged with a crime, is given a traffic citation or some other citation. All the BWC recordings aforementioned can have the retention schedule of 7 years

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3. Incidents or encounters that results in the use of force or are deemed to be critical incidences as defined in the St. Charles Police Department policy. All the BWC recordings aforementioned can have a retention schedule of indefinite.

423.11 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 180 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).

423.12 ADMINISTERING ACCESS TO BWC DATA

- A. **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:
 1. Any person or entity whose image or voice is documented in the data.
 2. The officer who collected the data.
 3. 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.
- B. **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:
 1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.
 2. Some BWC data is classified as confidential (see C. below).
 3. Some BWC data is classified as public (see D. below).
- C. **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.
- D. **Public data.** The following BWC data is public:
 1. 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.
 2. Data that documents the use of force by a peace officer that results in substantial bodily harm.
 3. 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

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consented to the public release must be redacted. In addition, any data on undercover officers must be redacted.

4. 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.

E. Access to BWC data by non-employees. Members shall refer members of the media or public seeking access to BWC data to the Chief of Police, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

1. An individual shall be provided with access and allowed to review recorded BWC data about him- or herself and other data subjects in the recording, but access shall not be granted:
 - (a) If the data was collected or created as part of an active investigation.
 - (b) To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access. Examples could include portions that would reveal identities protected by Minn. Stat. § 13.82,17; Minn. Stat. § 626.557 and/or Minn. Stat. § 260E.35.
2. 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:
 - (a) Data on other individuals in the recording who do not consent to the release must be redacted.
 - (b) Data that would identify undercover officers must be redacted.
 - (c) 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.

F. 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:

1. Members 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.
2. The Chief of Police is authorized to review relevant recordings any time he is investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.
3. When involved in a critical incident, neither the member nor the officer's attorney will be permitted to view any video(s), including BWC and/or dash camera materials, prior to providing a voluntary interview. However, the member may view the video following the voluntary interview if they request to do so to assist

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in clarifying any portion of their statement. The viewing of the video will be limited to the incident captured on the member's own dash camera or BWC.

4. Members 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.
 5. Members 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.
- G. **Other authorized disclosures of data.** Members may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Members should generally limit these displays in order to protect against the incidental disclosure of individual identities that are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video. In addition,
1. BWC data may be shared with other law enforcement agencies only for legitimate law enforcement, specified purposes that are documented in writing at the time of the disclosure.
 2. BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

423.13 DATA SECURITY SAFEGUARDS

- A. Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view agency BWC data.
- B. Members shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the Chief of Police.
- C. Members shall not change any technical settings to their BWC or the BWC application without prior authorization from the Sheriff or his/her designee.
- D. 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.

423.14 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).