

Portable Audio/Video Recorders

450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this office 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 Mower County Sheriff's Office facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

450.1.1 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.

450.2 POLICY

The Mower County Sheriff's Office may provide members with access to body worn cameras for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Sheriff's Office by accurately capturing contacts between members of the Sheriff's Office and the public.

450.3 MEMBER PRIVACY EXPECTATION

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

450.4 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 Office, 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

Mower County Sheriff's Office

Mower County SO Policy Manual

Portable Audio/Video Recorders

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.

450.5 ACTIVATION OF THE BODY WORN CAMERA (BWC)

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

The BWC 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) Pursuits
- (d) Adversarial contacts, uses of force situations, arrests, seizures of property or evidence
- (e) When dealing with individuals believed to be experiencing a mental health crisis or event
- (f) Self-initiated activity in which a member would normally notify dispatch
- (g) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require BWC recording
- (h) While working in the Mower County Government Center or Justice Center and the deputy becomes involved in a situation requiring enforcement action or intervention

Deputies have the discretion to record or not record any general citizen contacts not meeting the requirements for BWC activation covered in this policy. (Minn. Stat. 626.8473 Sub 3 (b)(4))

Deputies may use their BWC's to take recorded statements from persons believed to be victims of or witnesses to a crime, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.

The Sheriff or the Sheriff's designee may provide specific instructions for BWC use to deputies that are identified as Brady-Giglio impaired.

Mower County Sheriff's Office

Mower County SO Policy Manual

Portable Audio/Video Recorders

Deputies that have made an arrest based upon their active criminal investigation shall use their BWC and squad based audio visual recording system (Watch Guard) to record the physical transport and transfer of the person in their custody. Deputies shall turn off their BWC after narrating why they are stopping the recording such as the person is no longer in their custody, or the criminal investigation is concluded.

Deputies transporting inmates who are already in custody between facilities should use their BWC when securing the inmate and placing them in the vehicle. The BWC may be turned off during the transport but should be reactivated if issues occur with the subject during transport. The BWC should be re-activated when the inmate is removed from the transport vehicle and custody is transferred.

Deputies responding to calls that require PPE such as ANSI high visibility vest or communicable disease gown, the deputy should articulate verbally to the BWC and the audience the reason for diminished or covered video feed, document that in the written narrative if a report is necessary and/ or in the CAD notes for the call.

At no time is a deputy expected to jeopardize his or her safety in order to activate a BWC or change the recording media. However the BWC should be activated in situations described above as soon as reasonably practicable, and the circumstances documented in the narrative report.

450.5.1 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 deputy having charge of the scene or event shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. Deputies shall state the reasons for ceasing the recording on camera before deactivating their BWC's. If circumstances change, deputies shall reactivate their BWC's required by this policy to capture information having evidentiary value. (Minn. Stat. 626.8473 Sub 3(b)(6))

As an example, a deputy may state a phrase similar to the following to announce they will no longer be recording: "Everything has settled down and the action appears to be over."

Deputies shall not intentionally block the the BWC audio or visual recording functionality to defeat the purpose of this policy. (Minn. Stat. 626.8473 Sub.(3)(b)(6))

Intentional interference with the recording functionality of the BWC without sufficient justification to do so may constitute grounds for corrective action.

This policy does allow for momentary blocking of the BWC in the following circumstances: Undressed bystander within a private residence, images of a mobile computer screen displaying private or confidential data, audio of deputies conferring about an arrest decision or tactical situation.

Portable Audio/Video Recorders

450.5.2 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 and 626.8473 Sub 3(b)(4)).

Deputies have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded. Nothing in this policy or guidelines prevents a deputy from informing an individual that the encounter is being recorded. Deputies may find it useful to inform an individual that the encounter is being recorded in order to have a civilizing effect during an incident.

Deputies shall not use their BWC's to record other agency personnel during non-law enforcement related activities, such as during pre and post briefings, during meal breaks, or during private conversations, unless authorized as part of an administrative or criminal investigation by the Sheriff or the Sheriff's authorized designee. (Minn. Stat. 626.8473Sub 3(b)(4))

450.5.3 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.

450.6 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.

Portable Audio/Video Recorders

450.7 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 Office 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 Sheriff 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).

450.8 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).

450.8.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of BWC recordings shall be processed in accordance with the Records Maintenance and Release Policy. Any BWC recordings made inside the Mower County Justice Center, except video that is evidence of a crime, is classified as nonpublic security information

Mower County Sheriff's Office

Mower County SO Policy Manual

Portable Audio/Video Recorders

pursuant to Minn. Stat. 13.37 subd. 1(a). Any BWC recordings classified as security information will only be released when authorized by judicial order.

450.8.2 ACCESS TO RECORDINGS

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

Any person or entity whose image or voice is documented in the data. (Minn. Stat. 13.825 Sub 4 (a))

The deputy who collected the data. (Minn. Stat. 13.825 sub 4 (a))

Any other deputy or peace officer whose voice or image is documented in the data, regardless of whether that deputy or peace officer is or can be identified in the recording. (Minn. Stat. 13.825 Sub 4 (a))

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:

BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities. (Minn. Stat. 13.825 Sub 2 (a))

However some BWC data is classified as confidential, and some BWC data is classified as public. (See below)

Confidential data

BWC data that is collected or created as part of an active criminal investigation is confidential while the investigation remains active. (Minn. Stat. 13.82 Sub 7) This classification takes precedence over the "private" classification listed above and the "public" classification listed below. (Minn. Stat. 13.82 Sub (2)(a)(3))

Public Data

The following BWC data is public:

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 injured, sick, or dangerous animal. (Minn. Stat. 13.825 Sub 2(a)(1))

Data that documents the use of force by a peace officer that results in substantial harm. (Minn. Stat. 13.825 Sub 2 (a)(1)) "Substantial bodily harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes a fracture of any bodily member. (Minn. Stat. 609.02 Sub 7)

Data that a data subject requests to be made accessible to the public, is subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted. In addition, any data on undercover deputies or undercover peace officers must also be redacted. (Minn. Stat. 13.825 Sub 2 (a)(2); Minn. Stat. 13.82 Sub 17(a))

Mower County Sheriff's Office

Mower County SO Policy Manual

Portable Audio/Video Recorders

Data that documents the final disposition of a disciplinary action against a public employee. (Minn. Stat. 13.825 Sub 2(a)(4); Minn. Stat. 13.43 Sub 2(5))

However if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that classification. (Minn. Stat. 13.825 Sub 2(a)(5)) For instance, data that reveals protected identities under Minn. Stat. 13.82 Sub 17 should not be released even if it would otherwise fit into one of the public categories listed above.

ACCESS TO BWC DATA BY NON-EMPLOYEES

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

An individual shall be allowed to review recorded BWC data about that person and other data subjects in the recording. (Minn. Stat. 13.825 Sub 4 (b))

Except when,

The data was collected or created, and is being maintained as part of an ongoing, active criminal investigation. (Minn. Stat. 13.82 Sub 7)

And,

Access shall not be granted to portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as the identities of informants, certain witnesses, juvenile offenders, and victims of criminal sexual conduct or sex trafficking. (Minn. Stat. 13.82 Sub 17)

An individual data subject shall be provided with a copy of the recording upon request but subject to the following guidelines on redaction before the copy is provided: (Minn. Stat. 13.825 Sub 4(b))

Data on other individuals in the recording that do not consent to the release must be redacted.

Data that would identify undercover peace officers must be redacted.

Data on other peace officers who are on duty and engaged in the performance of official duties and not undercover, may not be redacted.

ACCESS BY PEACE OFFICERS AND LAW ENFORCEMENT EMPLOYEES

No employee may have access to the agency's BWC data except for legitimate law enforcement or data administration purposes. (Minn. Stat. 13.825 Sub 7(b))

Therefore all members of the Mower County Sheriff's Office and administrative personnel that show a legitimate business need to access data, that is not public, is hereby granted by the sheriff or the Sheriff's designee. This includes but is not limited to the use of data for the report writing, investigative purposes, administrative purposes, redaction for release, etc..

Additionally,

Portable Audio/Video Recorders

Deputies may access and view stored BWC data only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Deputies may review video footage of an incident they were involved in prior to preparing a report, giving a statement, or providing testimony about the incident. Agency personnel shall document their reason for accessing stored BWC data at the time of each access per manufacture's instructions. Agency personnel are prohibited from accessing and sharing BWC data for non-law enforcement purposes including but not limited to copying in any manner or format, or uploading to public or social media websites.

OTHER AUTHORIZED DISCLOSURES OF BWC DATA

BWC data may be shared with other law enforcement agencies for legitimate law enforcement purposes only, that are documented in writing at the time of disclosure. (Minn. Stat. 13.825 Sub 8(a))

BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

BWC data that is classified as confidential or protected nonpublic pursuant to Minn. Stat. 13.82 Sub 7 or as private under Minn. Stat. 13.825 may be accessible to any person, agency, or the public if the Sheriff or the Sheriff's designee determines that access to the BWC data will aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest. (Minn. Stat. 13.82 Sub 15)

450.9 COORDINATOR

The Sheriff 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.

Mower County Sheriff's Office

Mower County SO Policy Manual

Portable Audio/Video Recorders

1. These procedures should include the process to obtain written authorization for access to non-public data by MCSO 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 Mower County Sheriff's Office.
 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 Mower County Sheriff's Office.
- (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 Mower County Sheriff's Office that expands the type or scope of surveillance capabilities of the office's portable recorders.
- (h) Ensuring that this Portable Audio/Video Recorders Policy is posted on the Office website.

450.10 PROHIBITED USE OF AUDIO/VIDEO RECORDERS

Members are prohibited from using Sheriff's Office-issued BWC 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 BWC recordings of activities or information obtained while on-duty, whether the BWC recording was created with Sheriff's Office-issued or personally owned devices. Members shall not duplicate or distribute in any way such BWC recordings, except for authorized legitimate Sheriff's Office law enforcement purposes. All such BWC recordings shall be retained at the Sheriff's Office.

Members are prohibited from using personally owned BWC recording devices while on-duty without the express consent of the Sheriff and/or Chief Deputy. Any member who uses a personally owned BWC recorder (having prior approval from the Sheriff and/or Chief Deputy) for Sheriff's Office-related activities shall comply with the provisions of this policy, including retention and release requirements and should notify the on-duty supervisor and BWC coordinator of such use as soon as reasonably practicable.

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

Mower County Sheriff's Office

Mower County SO Policy Manual

Portable Audio/Video Recorders

450.11 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).