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	<b>To:</b>	
ALL POLICE DIVISION PERSONNEL		
<b>Subject:</b>		
PORTABLE AUDIO/VIDEO RECORDING DEVICES		

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## **POLICY**

The Wyoming Police Department may provide members with access to portable audio/video recording devices for the 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.

## **PURPOSE**

This policy is to provide guidelines for the use of portable audio/video recording devices by members of the Wyoming Police Department while in performance of their duties (Minn. Stat. § 626.8473 and 13.825) Compliance with this policy will provide for an exacting detailed record of contacts the members of the Department have with the public. While showing accountability and transparency to the public with the balance of keeping the privacy concerns of those being recorded a priority.

## **SCOPE**

This policy governs the use of portable audio/video recording devices and data pertained by those devices in the course of official duties and applies to all members of the Wyoming Police Department. It does not apply to the use surreptitious recording devices in undercover operations, surveillance videos, wiretaps or eavesdropping (concealed listening devices), or the use of squad-based (dash-cam) video recorders.

The Chief or Chief's designee may supersede this policy by providing specific instructions for the use of portable audio/video recording devices to individual officers, or providing specific instructions for the use of portable audio/video recording devices pertaining to certain events or classes of events, including but not limited to political rallies and demonstrations.

### **2-8.01 DEFINITIONS**

- A. Portable audio/video recording devices– 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.
- B. Official Duties – For purposes of this policy, official duties means that the officer is on-duty and performing authorized law enforcement services on behalf of the Wyoming Police Department.
- C. Law Enforcement Related Information – means information captured or available for capture by use of a portable audio/video recording devices that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.
- D. 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.
- E. 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/her neighborhood.
- F. 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.

- G. Unintentionally Recorded Footage – is a video recording that results from an officer’s inadvertence or neglect in operating the officer’s portable audio/video recording device, provided that no portion of the resulting recording has evidentiary or administrative value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in restrooms, locker rooms, 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.

## **2-8.02 DEPARTMENTAL 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.

## **2-8.03 USE AND DOCUMENTATION**

- A. Officers may use only department-issued portable audio/video recording devices while on-duty or in the performance of their official duties for the Wyoming Police Department or when otherwise performing authorized law enforcement services as an employee of this department.
- B. Officers who have been issued portable audio/video recording devices shall operate and use them consistent with this policy. Officers shall check their issued portable audio/video recording devices at the beginning of each shift to make sure the devices are functioning properly and shall promptly report any malfunctions to the officer’s supervisor and obtain a functioning device as soon as reasonably practicable.
- C. Officers should wear their issued portable audio/video recording devices at the location on their body and in the manner specified in training.
- D. Officers must document portable audio/video recording devices use and nonuse as follows:
  - a. Whenever an officer makes a recording, the existence of the recording shall be documented in their report or other official record of the contact.
  - b. In any instance where the device malfunctions, Officers shall document the malfunction in their report or other official record of the contact.
  - c. In any instance where the officer deemed privacy to outweigh law enforcement interest and the audio or video was intentionally blocked, the officer must document the circumstances and reasons for why the function was intentionally blocked in their report or other official record of the contact.

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

#### **2-8.04 ACTIVATION OF THE *PORTABLE AUDIO/VIDEO RECORDING DEVICES***

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

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

- A. Officers shall activate their portable audio/video recording devices when responding to all calls or when anticipating that they will be involved in, become involved in, or witness other officers of this agency involved in a pursuit, Terry stop of a motorist or pedestrian, search, seizure, arrest, use of force, adversarial contact, and during their activities likely to yield information having evidentiary value. However, officers 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 Use and Documentation guidelines, part (D)(d) (above).
- B. Officers have discretion to record or not record general citizen contacts.
- C. Officers have no affirmative duty to inform people that a portable audio/video recording devices is being operated or that they are being recorded.
- D. Once activated, the portable audio/video recording devices 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. Officers shall state the reasons for ceasing the recording on camera before deactivating their portable audio/video recording devices. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.
- E. Officers shall not intentionally block the portable audio/video recording devices audio or visual recording functionality to defeat the purpose of this policy, unless privacy outweighs law enforcement interest. If a concern regarding privacy occurs only one function (either audio or video) may be blocked at a time.
- F. Notwithstanding any other provisions in this policy, officers shall not use their portable audio/video recording devices to record other agency personnel during

non-enforcement related activities, such as during pre- and post-shift time, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

- G. Officers shall not intentionally edit, alter, or erase any portable audio/video recording devices recording unless otherwise expressly authorized by the Chief or Chief's designee.

## **2-8.05 SPECIAL GUIDELINES FOR RECORDING**

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

- A. To use their portable audio/video recording devices 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. To use their portable audio/video recording devices to take recorded statements from persons believed to be victims and witnesses of crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.
- C. Officers shall use their portable audio/video recording devices to record their transportation and the physical transfer of persons in their custody.

## **2-8.06 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 Officer reasonably believes an explosive device to be present.

## **2-8.07 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

- A. Each officer using a portable audio/video recording device is responsible for transferring or assuring the proper transfer of the data from his or her device to the specified data storage location by the end of that officer's shift. However, if the officer is involved in a shooting, an in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor shall take custody of the officer's portable audio/video recording device and assume responsibility for transferring the data from it.
- B. Officers shall label the portable audio/video recording device 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 labels as are applicable to each file.

An Officer should label recordings when he/she 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 and/or their property.
- 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.

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

- C. In addition, officers shall label each file as appropriate to indicate that it contains information about data subjects who may have rights under the Minnesota Government Data Practices Act (MGDPA) limiting public disclosure of information about them. These individuals include:
  - 1. Victims and alleged victims of Criminal Sexual Conduct.
  - 2. Victims of child abuse or neglect.
  - 3. Vulnerable adults who are victims of maltreatment.
  - 4. Undercover officers.
  - 5. Informants
  - 6. When the video is clearly offensive to common sensitivities.
  - 7. Victims of and witnesses to crimes, if the victim or witness has requested not to be identified publicly.
  - 8. Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
  - 9. Mandated reporters.
  - 10. Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
  - 11. Juveniles who are or may be delinquent or engaged in criminal acts.
  - 12. Individuals who make complaints about violations with respect to the use of real property.
  - 13. Officers and employees who are the subject of a complaint related to the events captured on video.
  - 14. Other individuals whose identities the officer believes may be legally protected from public disclosure.
- D. Labeling designations may be corrected or amended based on additional information.

## **2-8.08 ACCESS TO PORTABLE AUDIO/VIDEO RECORDING DEVICE DATA**

**SPECIFY DATA SAFEGUARDS TO BE USED**

- A. Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view portable audio/video recording device data.
- B. Officers may access and view stored portable audio/video recording device data only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Except as provided in the critical incident response policy, 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.
- C. Officers may display portions of portable audio/video recording device 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. Officers should limit these displays to protect against the incidental disclosure of individuals whose identities are not public.
- D. Agency personnel shall document their reasons for accessing stored portable audio/video recording device data as specified in training at the time of each access. Agency personnel are prohibited from accessing portable audio/video recording device data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading portable audio/video recording device data recorded or maintained by this agency onto public and social media websites, unless otherwise expressly authorized by the Chief or the Chief's designee. Any Member of the Department who accesses or releases recordings without authorization may be subject to discipline. (Minn. Stat. § 626.8473)
- E. Officers shall refer members of the media or public seeking access to portable audio/video recording device data to the data practices designee, who will process the request in accordance with the MGDPA and other governing laws. Employees seeking access to portable audio/video recording device data for non-business reasons may make a request for it in the same manner as any member of the public, reference section 2-8.11.
- F. Portable audio/video recording device data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

#### **2-8.09 AGENCY USE OF DATA**

- A. Supervisors and other assigned personnel may access portable audio/video recording device data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.
- B. Nothing in this policy limits or prohibits the use of portable audio/video recording device data as evidence of misconduct or as a basis for discipline.
- C. This agency will conduct a biennial audit to check for the occurrence of unauthorized access to portable audio/video recording device data as required by Minn. Stat. § 13.825, Subd. 9.

- D. Officers should contact their supervisors to discuss retaining and using portable audio/video recording device footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training officers may utilize portable audio/video recording device data with trainees for the purpose of providing coaching and feedback on the trainee's performance as authorized by a supervisor.

## **2-8.10 COORDINATOR**

The Chief of Police or the authorized designee should designate a coordinator responsible for:

- A. Establishing procedures for the security, storage and maintenance of data and recordings.
  - a. The coordinator will work to ensure that procedures comply with requirements of the MGDPA and other applicable laws (Minn. Stat. § 13.01 et seq.) (See the protected Information and the Records Maintenance and Release Appendix section 2-8.11).
- B. Establishing procedures for accessing data and recording.
  - a. These procedures should include the process to obtain written authorization for access to non-public data by Wyoming PD 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:
  - a. Total number of devices owned or maintained by Wyoming 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 Wyoming 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 Wyoming Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders.

## **2.8-11 DATA RETENTION**

- A. 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.
- B. If an individual captured in a recording submits a written request, the recording may 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).

- C. Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Appendix.
- D. 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.
- E. Records Maintenance and Release Appendix.

NAME	RETENTION DURATION	CATEGORY RESTRICTIONS
Uncategorized	Until Manually Deleted	Unrestricted
Accident	3 Years	Unrestricted
Citation	3 Years	Unrestricted
DUI	7 Years	Unrestricted
Emergency Response	180 Days	Unrestricted
Evidence - Criminal	7 Years	Unrestricted
Evidence - Force	7 Years	Unrestricted
Evidence - Other	3 Years	Unrestricted
Evidence - Property	1 Year	Unrestricted
Evidence - Administrative	1 Year	Unrestricted
Health Info	180 Days	Unrestricted
Homicide	Until Manually Deleted	Unrestricted
Investigation	180 Days	Unrestricted
Non Disclosure Flag	180 Days	Restricted
Not Evidence	180 Days	Unrestricted
Officer Injury	7 Years	Unrestricted
Officer Involved Shoot	20 Years	Restricted
Pending Review	Until Manually Deleted	Unrestricted
Pursuit	7 Years	Unrestricted
Traffic Stop	180 Days	Unrestricted
Training Demo	180 Days	Unrestricted
Use of Force	7 Years	Unrestricted