

Portable Recording Systems

422.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable recording systems by members of this department while in the performance of their duties (Minn. Stat. § 626.8473). Portable recording systems 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 Barnesville Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

422.1.1 DEFINITIONS

Definitions related to this policy include:

Activate - Any process that causes the portable recording system or device to record, transmit, or store audio/video signals.

MGDPA - The Minnesota Government Data Practices Act, Minnesota Statute Chapter 13.

PODPA - The Peace Officer Discipline Procedures Act, Minnesota Statute Section 626.89.

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.

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

422.2 POLICY

The Barnesville Police Department may provide members with access to portable recording systems 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.

422.3 PORTABLE RECORDING SYSTEM 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).

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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 BPD 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 Barnesville 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 Barnesville 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 Barnesville 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.

422.4 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.

422.5 MEMBER RESPONSIBILITIES

Prior to going into service, uniformed members will be responsible for making sure that they are equipped with a portable recording system 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. Members have no affirmative duty to inform people that a portable recorder is being operated or that the individuals are being recorded. Members may notify persons that they are being recorded. If an individual asks if they are being recorded, members should tell the person

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they are being recorded unless the member believes that disclosure would result in a safety issue for the member or public.(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.

422.6 ACTIVATION OF THE PORTABLE RECORDING SYSTEM

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.

Understanding that members encounter tense, uncertain, and rapidly evolving situations, activation of recording systems should occur at their earliest opportunity and before arriving on scene or initiating any law enforcement action when recording is required by this policy.

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

- (a) While responding to any dispatched or self-initiated calls for service that could reasonably result in enforcement or investigative action
- (b) When a member is assisting another officer at a call or incident
- (c) All enforcement and investigative contacts including stops, interviews, searches, arrests, and transports
- (d) Traffic stops including, but not limited to, traffic violations, pursuits, stranded motorist assistance and all crime interdiction stops
- (e) Non-enforcement activity that are civil in nature; including property removal or disputes, child custody disputes, child exchanges, and vehicle crashes
- (f) Non-enforcement activity that involve a member potentially damaging or seizing personal property; including vehicle impounds, vehicle unlocks, and seizure of property

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- (g) When responding to an apparent mental health crisis that could result in the use of force or could have evidentiary value
- (h) when directed by a supervisor
- (i) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- (j) If a member is unsure if activation is required

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.

Members need not record persons being provided medical care unless there is a reason to believe the recording would document information having evidentiary value.

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.

422.6.1 CESSATION OF RECORDING

Once activated, the portable recorder should remain on continuously until or unless:

- the member reasonably believes that his/her direct participation in the incident is complete;
- the situation no longer fits the criteria for activation;
- approved or ordered by a supervisor;
- the completion of a subject's physical transfer to personnel at a jail, hospital, detox, mental health care facility, or juvenile facility unless the member anticipates witnessing a criminal event or being involved in, or witnessing, an adversarial encounter or use of force incident.
- necessary to protect the identity of persons or data entitled to protection under the law.

Recording may be stopped during significant periods of inactivity such as report writing, waiting for the arrival of a tow truck, or other breaks from direct participation in the incident.

Recordings may be temporarily paused or the audio muted to exchange information with other officers or legal council. The video lens may be obstructed to avoid capturing images of undercover officers, informants, or citizens where a recording would not be consistent with this policy. The reason to pause, mute audio, or obstruct the lens shall be verbally articulated by the member on the portable recorder or documented in a report or dispatch record.

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422.6.2 SURREPTITIOUS RECORDINGS

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

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

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

422.6.3 EXPLOSIVE DEVICE

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

422.7 PROHIBITED USE OF AUDIO/VIDEO RECORDERS

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

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

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Chief of Police. 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 a 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.

422.8 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 90 days.

If an individual captured in a recording submits a written request, the recording shall be retained for an additional 180 days. The requester shall be notified that the recording will then be destroyed unless a new request is made prior to destruction. (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).

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422.8.1 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.

422.8.2 ACCESS TO RECORDINGS

All recorded media, recorded images and audio recordings are the property of the Department and are government data subject to the provisions of the Minnesota Government Data Practices Act (Minn. Stat. § 626.89). Dissemination outside of the Department is strictly prohibited except to the extent permitted or required by law.

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

Data Subjects. Under Minnesota law, the following are considered data subjects for the purpose of administering access to portable recording systems:

- (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.

Portable Recording System data is presumptively private. Recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:

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

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

Public data. The following 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. 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.

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- (e) 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.

Access to data by non-members. Members shall refer media personnel or citizens seeking access to portable recording system data to the Chief of Police who shall process the request in accordance with the MGDPA and other governing laws. In particular:

- (a) An individual shall be provided with access and allowed to review recorded data about him/herself and other data subjects in the recording, but access shall not be granted
 - if the data was collected or created as part of an active investigation
 - 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. § 13.82.17.
- (b) Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon written request, but subject to the following guidelines on redaction:
 - Data on other individuals in the recording who do not consent to the release must be redacted.
 - Data that would identify undercover officers must be redacted (Minn. Stat. § 13.82, Subd. 17).
 - 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.

Access by members of the department. No member may have access to the department's portable recording system data except for legitimate law enforcement or data administration purposes.

- (a) Members may access and view stored video only when there is a business need for doing so, including:
 - When preparing written reports, statements, or courtroom testimony (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases)
 - Assessing the proper function of the device and system
 - 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.
 - By a member who is captured on, or referenced, in the data for review and use for employment purposes
 - When reasonable and necessary for the member to perform the essential functions of his/her job
 - To defend against an allegation of misconduct or substandard performance

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- (b) Members shall document their reasons for accessing stored data in the manner provided within the database at the time of each access. Members are prohibited from accessing data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to, uploading data recorded or maintained by this agency to public and social media websites.
- (c) Members seeking access to data for non-business reasons may make a request for it in the same manner as any member of the public.

Other authorized disclosures of data. Members may display portions of recorded footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82. 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,

- (a) Data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.
- (b) Data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

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.

Agency Use of Data. Supervisors are authorized to review relevant recording when:

- (a) investigating alleged misconduct or reports of meritorious conduct
- (b) whenever such recordings would be beneficial in reviewing the member's performance in which additional training or guidance is required.
- (c) conducting random usage by each member of this department to ensure compliance with this policy
- (d) as part of an internal audit and reviews as required by Minn. Stat. 626.8473

The Chief of Police may authorize the access of recorded data for training purposes. Members should contact their supervisors to discuss retaining and using footage for training purposes. Member objections to preserving or using certain footage for training will be considered on a case-by-case basis.

Field training officers may access data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

Recorded files may be used 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.

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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).

422.9 IDENTIFICATION AND PRESERVATION OF RECORDINGS

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

A member should transfer, tag or label 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.

Members using a portable recording device are responsible for transferring, or assuring the proper transfer, of the data from his/her camera to the device's storage location by the end of that member'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 member's recording device and assume responsibility for transferring the data from it.

Members shall use the portable recording system's user interface to select the appropriate label from available categories based on the type of activity recorded and its corresponding data retention schedule. Members shall consult with a supervisor with any questions regarding the proper category selection. Members shall select at least one of the following categories when labeling a recording:

- **Evidence - Criminal:** This data has evidentiary value with respect to an actual or suspected criminal incident or charging decision; including physical arrests, citations, or transports involving criminal investigations or arrests. The retention of this category is 7 years.

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- **Evidence - Non-criminal:** Recording of calls for service, traffic stops, field contacts, or any other citizen contact where no enforcement action is taken or further criminal investigation is needed. The retention of this category is 1 year.
- **Evidence - Administrative:** Whether or not enforcement action is taken or an arrest resulted; the event involved the application of force by a member of this department; a member seized property from an individual or directed an individual to dispossess property; involved an adversarial encounter or resulted in a complaint against a member of this department. The retention of this data is 1 year.
- **Not Evidence:** Recording does not contain any data classified by another category and has no apparent evidentiary value; including recordings used to verify the operation of the device, unintentional activation, or general citizen contacts. The retention period is 90 days.

Recordings that require longer retention periods according to Minnesota laws will be exported from the portable recording system's storage and saved with the related case file or personnel record. These recordings would include deaths, investigations with extended statute of limitations, and personnel-related dispositions.

422.10 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).