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## Portable Audio/Video Recorders

### 424.1 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 Moorhead Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

#### 424.1.1 DEFINITIONS

Definitions related to this policy include:

**Activate** - Any process that causes the BWC system to transmit or store audio-visual signals.

**Body Worn Camera (BWC)** - A device worn by an LEO that is capable of both video and audio recordings of the LEO's activities and interactions with others or collecting digital multimedia evidence as part of an investigation as provided in Minn. Stat. 13.825.

**Law Enforcement Operator (LEO)** - Primarily a licensed peace officer but on occasion may be a non-licensed representative of the Moorhead Police Department who is authorized and assigned to operate BWC equipment.

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

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

**BWC Administrator** - Command Staff who oversee's BWC program with the assistance of the BWC Technician.

**BWC Evidence Technician** - Personnel certified or trained in receiving and storing digital with proper "chain of custody" notations and any and all actions associated with digital evidence.

**BWC Technician** - Personnel trained in the operational use, duplicating methods, storage and retrieval methods and procedures, and who possess a working knowledge of video forensics and evidentiary procedures. BWC Technician assigns, tracks and maintains BWC equipment, oversees needed repairs or replacement equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor.

**Recorded media** - Audio-visual signals that are recorded or stored.

**Records Retention Schedule** - Refers to the General Records Retention Schedule for Minnesota Cities.

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#### **424.2 POLICY**

It is the goal of the Moorhead Police Department to use mobile video recording (BWC) technology to more effectively fulfill the department's mission and to ensure these systems are used securely, efficiently and in compliance with the law.

#### **424.3 BWC OPERATIONAL OBJECTIVES**

The Moorhead Police Department has adopted the use of Body Worn Cameras to accomplish the following objectives:

- To enhance LEO safety.
- To document statements and events during the course of an incident.
- To enhance the LEO's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.
- To preserve visual and audio information for use in current and future investigations.
- To provide a tool for self-critique and field evaluation during LEO training.
- To enhance the public trust by preserving factual representations of LEO-citizen interactions in the form of recorded media.
- To assist with the defense of civil actions against LEO's and the City of Moorhead.
- To assist with the training and evaluation of officers.

#### **424.4 LEO RESPONSIBILITIES**

Law Enforcement Officer safety shall be the primary consideration for the use and activation of the BWC system. LEOs that are issued a body-worn BWC will wear the BWC as part of their uniform and operate and use them consistent with this policy. LEO's may use only Department-issued BWC's in the performance of official duties for the Moorhead Police Department or when otherwise performing authorized law enforcement services as an employee of this Department.

Inspection and general maintenance of BWC equipment shall be the responsibility of the LEO to whom the BWC is assigned and performed at the beginning of each shift. If the body worn BWC system is malfunctioning, damaged or stolen, the LEO shall, as soon as reasonably possible, notify a supervisor. Further, the LEO shall obtain a functioning BWC as soon as reasonably practicable. Supervisors shall, as soon as reasonably possible, take action to address malfunctions and document the steps taken.

#### **424.5 DOCUMENTING BWC USE**

LEO's must document BWC use and non-use as follows:

- Whenever a LEO makes a recording, the existence of the recording shall be documented in the LEO's report or CAD record/other documentation of the incident.
- Whenever a LEO fails to record an incident that should be recorded under this policy or captures only a part of the activity, the LEO must document the circumstances and reasons for not recording in the LEO's report or CAD record/other documentation of the incident.

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The Department will maintain the following records and documents relating to BWC use, which are classified as public data:

- The total number of BWC's owned or maintained by an agency.
- A daily record of the total number of BWC's actually deployed and used by officers.
- The total amount of recorded BWC data collected and maintained; and
- This policy, together with the Records Retention Schedule.

#### 424.5.1 REQUIRED ACTIVATION OF THE BWC

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

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

- All enforcement and investigative contacts including stops and field interview (FI) situations
- Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- Self-initiated activity in which a member would normally notify the Dispatch Center
- Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Department members have discretion in whether or not to record potentially sensitive events or circumstances (e.g. victims of sexual assault, child victim statements/interviews, nude persons who are not the target of enforcement action, or a citizen victim, witness who requests they not be recorded while giving a statement, or where otherwise authorized in this policy.) Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Department members shall record their transportation and physical transfer of persons in their custody to/from hospitals, detox, 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 has been involved in or witnessing an adversarial encounter or use of force incident.

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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.

LEOs have no affirmative duty to inform people that a BWC system is being operated or that the individual is being recorded.

The use of the "stealth mode" should only be used when officers can articulate the need due to safety or investigative needs. When able, the officer should make other officers on scene aware. The use of "stealth mode" should not be used to surreptitiously record other employees unless following a directive stated in(424.5.4).

For all NON-UNIFORMED employees assigned a body camera, its use shall be at the employee's discretion, with the exception of any planned enforcement. For any planned enforcement investigators should follow the direction given within this policy.

Department members assigned to or temporarily working on a federal or state task force shall comply with this policy unless superseded by law or approved memorandum of understanding.

A LEO engaged in extra duty employment is not required to activate the BWC for every contact made. However, such officer shall be expected to activate the BWC if a situation or incident occurs which would otherwise require activation, when safe to do so.

#### 424.5.2 CESSATION OF RECORDING

Once activated, the BWC system should remain on until the incident has concluded unless:

- the incident or event is of such duration that the BWC is deactivated to conserve power or storage capacity;
- the officer does not reasonably believe that deactivation will result in the loss of critical evidence;
- deactivation is reasonable and necessary to protect the safety of the officer or others;
- deactivation is approved or ordered by a supervisor;
- deactivation is necessary to protect the identity of persons or other data entitled to protection under the law.

For purposes of this section, conclusion of an incident has occurred when all arrests have been made, arrestees have been transported and witnesses and victims have been interviewed. Recording may be temporarily paused or the audio muted to exchange information with other LEOs, legal counsel, or the lens obstructed to avoid capturing images of undercover officers, informants, or citizens where based on the training, experience and judgment of the officer, a recording would not be appropriate or consistent with this policy. The intention to pause and resume the recording (or to mute audio or obstruct the lens) will be noted by the LEO either verbally on the BWC or in a written report. Recording may cease during non-enforcement activities such as waiting for a tow truck or a family member to arrive, protecting accident scenes or in other non-enforcement situations.

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##### **424.5.3 WHEN ACTIVATION IS NOT REQUIRED**

Activation of the BWC system is not required when exchanging information with other officers or during breaks, lunch periods, when not in service or actively on patrol.

No member of this department may surreptitiously use City equipment to record a conversation of any other member of this department except with a court order or when lawfully authorized by the Chief of Police or the authorized designee for the purpose of conducting a criminal or administrative investigation.

##### **424.5.4 PROHIBITED RECORDING**

A BWC shall not be activated with regard to interactions solely among other employees. All surreptitious recordings of worn or placed BWC's must have written pre-approval by the Chief of Police or designee.

The BWC shall not be used to record non-work related activity.

LEOs shall not use any external device to record media that has been captured by the BWC.

##### **424.5.5 SUPERVISOR RESPONSIBILITIES**

Supervisors should assess that:

- LEOs are using their BWCs in accordance with Department policies and procedures.
- Logs reflect the proper chain of custody, including:
  1. The tracking number of the BWC system media.
  2. The date it was issued.
  3. The LEO to whom it was issued.
  4. The date it was submitted.
  5. LEO submitting the media.
  6. Holds for evidence indication and tagging as required.
- It is recommended that the operation of BWC systems by new employees is assessed and reviewed no less than biweekly or until the new employee demonstrates a working knowledge of the BWC system and the applicable policies and procedures.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, officer involved shootings, Department-involved collisions), a supervisor should respond to the scene and ensure recorded media is secured in accordance with Department policy. The media shall be processed and retained in accordance with current policy and procedures.

##### **424.6 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 Operations Procedure #55 and document the existence of the recording in any related case report.

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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.

#### **424.7 ACCESS TO BWC DATA**

All recorded media, recorded images and audio recordings are the property of the Department and are government data subject to the provisions of the MGDPA. Dissemination outside of the Department is strictly prohibited except to the extent per remitted or required under the MGDPA, PODPA or other applicable law.

- A. **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:
  - Any person or entity whose image or voice is documented in the data
  - The officer who collected the data
  - 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 are 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, businesses or other entities are presumed to be private or nonpublic data
  - Some BWC data are classified as confidential (see C. below)
  - Some BWC data are classified as public (see D. below)
- C. **Confidential data.** BWC data that are collected or created as part of an active criminal investigation are governed by Minn. Stat. 13.82 and are classified as confidential or protected nonpublic data. This classification takes precedence over the "private" classification listed above and "public" classifications listed below.
- D. **Public data.** The following BWC data are public:

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- Data that document the discharge of a firearm by an officer in the course of duty, other than for training or the killing of an animal that is sick, injured or dangerous.
  - Data that document the use of force by an officer that results in substantial bodily harm.
  - Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any subject (other than an officer) who has not consented to the public release must be redacted. In addition, any data on undercover officers must be redacted.
  - Data that are public personnel data under Minn. Stat. 13.43 subdivision 2(5).
  - 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 reveal protected identities under Minn. Stat. 13.82 (e.g., certain victims, witnesses and others) or other applicable law 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.** Officers shall refer members of the media or public seeking access to BWC data to the data practices designee, who shall process the request in accordance with the MGDPA and other governing laws. In particular:
- An individual who is the subject of the data has access to the data, including data on other individuals who are the subject of the recording, but access shall not be granted: (a) if the data were collected or created as part of an active investigation (b) 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 subdivision 17.
  - Unless the data are part of an active investigation, an individual data subject may request a copy of the recording, 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. Officers may access and view stored BWC video only when there is a business need for doing so, which includes the following:
- for use when preparing reports or statements or providing testimony;
  - to assess proper functioning of BWC systems;
  - by Department investigators assigned to a related criminal investigation, or after approval of a supervisor, for official investigations;
  - by an LEO who is captured on or referenced in the video or audio data and reviews and uses the data for any purpose relating to his/her employment;

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- when reasonable and necessary for the officer to perform the essential functions of his/her job or to defend against allegations of substandard performance or misconduct. To prevent damage to, or alteration of, the original recorded media, it shall not be copied, viewed or otherwise inserted into any device not approved by the Department BWC technician or forensic media staff. When reasonably possible, a copy of the original media should be used for viewing to preserve the original media. LEOs shall not make a copy of any BWC data except in compliance with this policy. The Department shall restrict by password protection access to all BWC data and shall maintain an electronic record of the date, time, and name of each employee who accesses the data. In no event shall any BWC data be used or shown for the purpose of ridiculing or embarrassing any employee.
- G. **Other authorized disclosures of data.** LEOs may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. 13.82. LEOs should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities 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 audio but not displaying video. In addition:
- BWC 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.
  - BWC data shall be made available to prosecutors, courts and other criminal justice entities as provided by law.
  - with the approval of the Chief of Police, the Department may make any data classified as confidential or protected nonpublic pursuant to Minn. Stat. 13.82 subdivision 7 accessible to any person, agency or the public if the Department determines that the access will aid the law enforcement process, promote public safety or dispel widespread rumor or unrest, consistent with Minn. Stat. 13.82 subdivision 15.

#### **424.8 AGENCY USE OF DATA**

Supervisors and other assigned personnel may access BWC data for the purposes of completing a Supervisory Force Review and/or for reviewing or investigating a specific incident that has given rise to a complaint or concern about LEO misconduct or performance. Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.

LEOs should contact their supervisors to discuss retaining and using BWC data for training purposes. LEO objections to preserving or using certain data for such purposes will be considered on a case-by-case basis. Field training officers may utilize BWC data with trainees for the purpose of providing coaching and feedback on trainees' performance.



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##### **424.8.1 DISTRIBUTION OF RECORDED DATA**

Recorded media shall not be used for any purpose other than for initial review by a supervisor or use for review for proper documentation by staff. Upon proper request a copy of the media will be made for use as authorized in this policy.

Original recording, meaning non-redacted media, may only be released in response to a court order or upon approval by the Chief of Police or the authorized designee.

##### **424.8.2 BWC RECORDINGS AS EVIDENCE**

Officers who reasonably believe that an BWC recording is likely to contain evidence relevant to a criminal offense, potential claim against the officer or against the Moorhead Police Department should indicate this in an appropriate report. Officers should ensure relevant recordings are preserved.

##### **424.9 BWC DATA RETENTION**

BWC data retention schedules will be established using the BWC recording categories and will be set by the Office Manager and BWC Coordinator. The retention schedule will be documented in the Moorhead Police Department Operations Procedure #55.

The following must be followed per MN Statute:

All BWC data shall be retained for a minimum period of 90 days per MN Statute 13.825.

BWC data must be maintained for at least one year and destroyed according to the Records Retention Schedule if:

- the data document the discharge of a firearm by an officer in the course of duty, other than for training or the killing of an animal that is sick, injured or dangerous;
- the data document the use of force by a peace officer that results in substantial bodily harm; or
- the data document circumstances giving rise to a formal complaint against the officer.

Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule.

Upon written request by a BWC data subject, the Department shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The Department will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.

Unintentional Recordings will be locked and reviewed for destruction after 90 days by the BWC Coordinator, or designee.

The Department will post this policy, along with its Record Retention Schedule, on its website.

##### **424.10 BWC TECHNICIAN RESPONSIBILITIES**

The BWC Technician is responsible for:

- Retrieving, storing, erasing and duplicating of all recorded media.

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- Collecting all completed media for oversight. Once collected the BWC Technician:
  1. Ensures it is stored in a secured location with authorized controlled access.
  2. Makes appropriate entries in the chain of custody log.
- Erasing of media:
  1. Pursuant to a court order.
  2. In accordance with established records retention policies.
- Ensuring that an adequate supply of recording media is available.
- Managing the long-term storage of media that has been deemed to be of evidentiary value in accordance with the department evidence storage protocols and the Records Retention Schedule.

#### **424.11 SYSTEM OPERATIONS STANDARDS**

BWC system use should be based on LEO safety requirements and device manufacturer recommendations.

The BWC system should be configured to record no more than 60 seconds prior to an activation.

The BWC system should not be configured to record audio data occurring prior to activation.

LEOs using digital transmitters that are individually synchronized to their individual BWC should activate both audio and video recording when responding in a support capacity in order to obtain additional perspectives of the incident scene.

With the exception of law enforcement radios or other emergency equipment, other electronic devices should not be used within the law enforcement vehicle in order to intentionally interfere with the capability of the BWC system.

LEOs shall not intentionally erase, alter, modify or tamper with BWC data. Only a supervisor, BWC administrator, BWC technician or other approve designee may erase media in accordance with this policy.

As required by Minn. Stat. 13.825 subdivision 9, as may be amended from time to time, this Department shall obtain an independent biennial audit of its BWC program.

#### **424.12 TRAINING**

Users of the BWC system and supervisors shall successfully complete an approved course of instruction prior to being deployed with BWC systems in operational settings.

#### **424.13 USE OF PERSONAL DIGITAL RECORDING DEVICES**

LEOs are prohibited from using personal video recording equipment in lieu of their Department-issued BWCs while on-duty. However, the Department recognizes that, in rare or unforeseen situations, it may be necessary for LEOs to use their personal video recording equipment to record or collect evidence. In such an event, the LEO must upload that media into LaserFiche or save to a DVD and place into evidence in accordance with Department policy and procedure.

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##### **424.14 COMPLIANCE**

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. 13.09.

## Mobile Device Categories and Retention Schedule

Policy Reference(s): #422 Mobile Video Recorder Procedure  
#424 Portable Audio/Video Recorders

### Procedure:

Mobile devices will have several categories for the user to select from. Users should choose the most appropriate category, including the retention schedule. Users shall report to their supervisor any concerns or questions about the proper selection of content and any considerations for suitable content retention.

### Body Worn Camera and Mobile Video Recorder Categories:

- **Criminal** – The category includes any recording of a criminal investigation or arrest, including citations, physical arrests, or transports involving criminal investigations or arrests. The detention of this category will be 7 years.
- **Non-Criminal** – The category includes any recording of a call for service, vehicle or person contact, or any other citizen contact where no criminal investigation or enforcement action is taken. The retention of this category is 1 year.
- **Administrative** – The category includes all recordings the user believes are essential to save for future use, such as potential complaints against a staff member or the department. This category will also be used when the event involves an officer's significant application of force, including the discharge of a firearm. A user may use this category in addition to another category. The retention of this category will be 1 year.
- **Equipment Review** – The category includes recording that has technical issues that need to be reviewed by the manufacturer. The retention of this category is 180 days.
- **Test Recording** – The category includes all recordings used to verify the operations of the recording device or for training purposes and does not capture any material classified by other categories. The detention of this category is 90 days.



- **Unintentional** – The category includes all recordings which resulted from the user’s inadvertence or neglect in operating the user’s BWC, providing no portion of the resulting recording has evidentiary value. Examples include, but are not limited to: recordings made in the locker room, restrooms and recordings activated while engaged in conversations of non-business, personal nature with the expectations that the conversation was not being recorded. The retention of this category is 90 days.

*Origin:*

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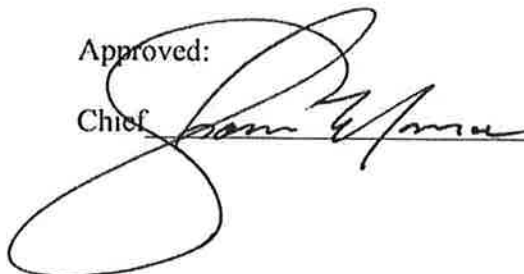
*League of MN Cities Information Memo regarding Use of Body-Worn Cameras*

*MN Statute 13.825*

*General Records Retention Schedule for MN Cities*

Approved:

Chief



Date

3/21/2023

