

## Portable Recorders

### 800.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable recording devices by members of this department while in the performance of their duties (Minn. Stat. § 626.8473). Portable recording devices include all recording systems whether body-worn, handheld or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews or interrogations conducted at any Burnsville Police Department facility, undercover operations, wiretaps or eavesdropping (concealed listening devices) unless captured by a portable recording system.

#### 800.1.1 DEFINITIONS

Definitions related to this policy include:

**Portable recording system** - A device worn by a member or integrated into portable equipment 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.

**Live Streaming** - to transfer portable recording data in a continuous stream for immediate viewing.

### 800.2 POLICY

The Burnsville Police Department will provide members with access to portable recorders for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

Officers should use only department issued portable recording devices in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department. (Minn. Stat. § 13.825 Subd 6.)

#### 800.2.1 MOBILE VIDEO RECORDER OBJECTIVES

The Burnsville Police Department has adopted the use of portable recorders to accomplish the following objectives:

- (a) To enhance officer safety.
- (b) To document statements and events during the course of an incident.
- (c) To enhance the officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.
- (d) To preserve audio and visual information for use in current and future investigations.
- (e) To provide a tool for self-critique and field evaluation during officer training.
- (f) To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of audio-video recordings.

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- (g) To assist with the defense of civil actions against law enforcement officers and the City of Burnsville.
- (h) To assist with the training and evaluation of officers

### **800.3 MEMBER RESPONSIBILITIES**

Uniformed patrol personnel, who have been trained and issued the portable recorder are required to wear the portable recorder while on-duty. Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order (Minn. Stat. § 13.825). If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable.

Any member assigned to a non-uniformed position should carry an approved portable recorder at any time the member believes that such a device may be useful (search warrant entry, preplanned arrests, transports, etc) or in accordance with the needs of their assignment or at the direction of a supervisor.

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.

#### **800.3.1 SPARE DEVICES**

When using a spare portable recorder, or one that is not assigned to the member, it is the member's responsibility to notify the watch commander of the reason they are unable to use their issued recorder. In addition, it is the member's responsibility to notify the Records Supervisor to ensure the evidence that was recorded on that recorder can be reassigned to the recording member in evidence.com.

### **800.4 SUPERVISOR RESPONSIBILITIES**

Supervisors shall ensure officers are using their portable recorders per policy.

Supervisors shall determine corrective action for non-functioning portable recorders.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, peace officer-involved shootings, department-involved collisions), a supervisor shall ensure that the portable recorders are properly uploaded.

At least once a month, supervisors will review portable recorder data to ensure compliance with this policy

### **800.5 COORDINATOR**

The Chief of Police or the authorized designee should designate a coordinator responsible for (Minn. Stat. § 626.8473; Minn. Stat. § 13.825):

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- (a) Establishing procedures for the security, storage and maintenance of data and recordings.
  - (a) The coordinator will oversee 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).
- (b) Establishing procedures for accessing data and recordings.
- (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 Burnsville 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 Burnsville 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 Burnsville Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders.

#### **800.6 ACTIVATION OF THE AUDIO/VIDEO RECORDER**

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 shall activate the portable recorder any time the member believes it would be appropriate or valuable to record an incident.

The portable 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) Self-initiated activity in which a member would normally notify Dakota Communications Center
- (d) 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.

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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.

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.

**Live Streaming:** Portable recording devices have the capabilities of being streamed live. Portable recording devices will not be live streamed unless for legitimate law enforcement purposes.

- When practical, real-time notice should be provided to any involved member when their portable recording device is being live streamed. If real-time notification is not practical under the circumstances, the officer should be notified of the live stream activation as soon as reasonably possible.

#### 800.6.1 CESSATION OF RECORDING

Once activated, the portable recorder should usually remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation.

Recording may be temporarily ceased or the audio muted to exchange information with other officers, legal counsel, or the lens obstructed in order to avoid capturing images of undercover officers, informants, or citizens where based on training and experience, in the judgement of the officer a recording would not be appropriate or consistent with this policy. The reason to cease and resume recording (or to mute audio or obstruct the lens) will be noted by the officer either verbally on the portable audio/video recorder or in a written report.

Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Formal statements recorded on portable recorders shall be recorded as separate recordings. Recordings shall be categorized, titled and labeled in accordance with established policies and procedures.

#### 800.6.2 WHEN ACTIVATION IS NOT REQUIRED

Activation of the portable recorder system is not required:

- (a) During encounters with undercover officers or informants.
- (b) When an officer is on break or is otherwise engaged in personal activities.
- (c) In any location where individuals have a reasonable expectation of privacy, such as a restroom, locker room or break room.
- (d) When not on a call for service.

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### 800.6.3 SURREPTITIOUS RECORDINGS

Burnsville Police Department peace officers have no affirmative duty to inform people that a portable recording system is being operated or that the individuals are being recorded. (Minn. Stat. § 626.8473 Subd. 3)

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.

### 800.7 REVIEW OF RECORDED MEDIA FILES

The Chief of Police authorizes Police Department members access to non public portable recording system data for legitimate, specified law enforcement purposes.

When preparing written reports, members are permitted to 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) 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.
- (b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (c) 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.

**Other authorized disclosures of data.** Officers may display portions of portable recorder 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 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 the audio but not displaying video. In addition,

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- (a) Portable recorder data may be shared with other law enforcement agencies only for legitimate law enforcement purposes.
- (b) Portable recorder data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

Members shall document in the Post Note field of Evidence.com the purpose for accessing the digital recording. This documentation is to clarify the reason for viewing the digital recording when developing the audit trail.

All recordings should be reviewed by the Custodian of Records (Records Supervisor) 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).

### **800.8 RECORDING MEDIA STORAGE AND INTEGRITY**

At the end of their shift, officers should place the portable recorder into the docking station. This will allow the data to be transferred from the portable recorder through the docking station to Evidence.com. The data is considered impounded at this point and the portable recorder is cleared of existing data. The portable recorder should not be removed from the docking station until the data has been uploaded and the battery has been fully recharged.

#### **800.8.1 COPIES OF RECORDING MEDIA**

Evidentiary copies of digital recordings will be accessed and copied from Evidence.com for legitimate law enforcement purposes only. Access rights may be given to the Dakota County Attorney, the Burnsville City Attorney, or other prosecutorial agencies associated with any future prosecution arising from an incident in which the portable recorder was utilized.

Officers shall ensure relevant recordings are preserved. Officers or portable recorder administrators may prevent automatic deletion by changing the category of the media at any time prior to deletion.

### **800.9 SYSTEM OPERATIONAL STANDARDS**

- (a) Portable recorder system use should be based on officer safety requirements and device manufacturer recommendations.
- (b) The portable recorder system should be configured to minimally buffer for 30 seconds prior to activation. Officers are permitted to use the "sleep mode" function of the body camera. Sleep mode disables auto activation of the camera from Bluetooth triggers (ie. Taser, Fleet 3). Sleep mode will be commonly used for privacy reasons while officers are at the police department. A video started out of sleep mode will not contain a buffer. Officers should deactivate sleep mode when no longer needed.

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- (c) For each digital recording, officers shall select the proper category. Members shall enter the 8-digit case file number or the full citation number and descriptive title. The title should clearly describe the nature of the recording. For example:
  - 1. Initial Contact (if use of force was used, add UOF)
  - 2. Booking
  - 3. Transport (if The Wrap was used, add Wrap)
  - 4. Impound
  - 5. Narr (narrative report)
  - 6. IC Jane Doe (implied consent)
  - 7. SS John Doe (suspect statement)
  - 8. VS Jane Doe (victim statement)
  - 9. WS Jane Doe (witness statement)
  - 10. Telephone Call with John Doe
- (d) Digital recordings shall be retained according to the department's retention schedule or as required by the rules of evidence, unless a specific request is made to store them for a longer period of time by an authorized person.
- (e) Members shall not attempt to delete, alter, reuse, modify or tamper with portable audio/video recorder systems or recordings.

### **800.10 CLASSIFICATION OF PORTABLE RECORDER DATA**

Portable recording data is presumptively private. Nothing in this policy shall be interpreted as changing the underlying classification of data collected by portable recorder systems. The classification of data collected by portable recorder systems will need to be determined on a case-by-case basis upon application and interpretation of the MGDPA and other laws.

### **800.11 PROHIBITED USE OF AUDIO/VIDEO RECORDERS**

Members are prohibited from using department-issued portable recorders 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.

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

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### **800.12 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 may be retained for additional time period. The coordinator should be responsible for notifying the individual prior to destruction of the recording (Minn. Stat. § 13.825).

#### **800.12.1 RELEASE OF PORTABLE RECORDINGS**

Requests for the release of portable recordings shall be processed in accordance with the Records Maintenance and Release Policy.

#### **800.12.2 ACCESS TO PORTABLE RECORDINGS**

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

Any person captured in a portable 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 Burnsville Police Department has no affirmative duty to inform individuals that are blurred or obscured that a copy of the recording has been provided to a requestor. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17.

### **800.13 UNAUTHORIZED ACCESS TO DATA**

Any member who accesses or releases portable recordings without authorization will be subject to discipline (See the Standards of Conduct and the Protected Information policies) (Minn. Stat. § 626.8473).

### **800.14 TRAINING**

Users of the portable recorders, and related systems will be trained on the use prior to being utilized.