

3102: Portable Audio/Video Recorders

3102.1 PURPOSE AND SCOPE

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

3102.1.1 DEFINITIONS

Definitions related to this policy include:

Member(s) – An officer of the Foley Police Department.

Office – The Foley Police Department.

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.

3102.2 POLICY

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

3102.2.1 RECORDINGS COORDINATOR

The Chief or authorized designee should assign a supervisor to be the agency's Recordings Coordinator. It shall be the responsibility of the Recordings Coordinator to establish procedures for the recording, storage, security, and transfer of data for this agency's portable audio/video recording devices. The Recordings Coordinator shall be responsible for ensuring compliance with this policy.

3102.3 MEMBER PRIVACY EXPECTATION

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

3102.4 MEMBER RESPONSIBILITIES

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 Office, and that the recorder is in

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good working order by testing the portable recording system to ensure adequate functioning (Minn. Stat. § 13.825). The portable recording device shall be worn at or above the mid-line of the waist in a position that maximizes the portable recording system's capacity to record video footage of the member's activities. If the recorder is not in working order or the member becomes aware of a malfunction or failure at any time, the member shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. The member shall promptly document the malfunction or failure. Uniformed members should notify persons that they are being recorded, whenever reasonably practicable (Minn. Stat. § 626.8473).

Commented [AB3]: MN Stat. 626.8473 Subd. 3(b)(6) requires procedures for testing. We could include more information on what testing would include.

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Any member assigned to a non-uniformed and/or non-licensed 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 and/or nonlicensed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

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When using a portable recorder, the assigned member shall record his/her 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.

3102.5 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 should activate the recorder any time the member believes it would be appropriate or valuable to record an incident and not intentionally block the audio or visual recording functionality to defeat the purposes of this policy.

The 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 Dispatch
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

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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.

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.

3102.5.1 CESSATION OF RECORDING

Once activated, the portable recorder should 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 stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Officers may when deemed necessary, mute the audio for the purposes of sensitive or tactical conversations with other officers, supervisors, and legal counsel.

3102.5.2 SURREPTITIOUS RECORDINGS

Minnesota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02). Members of the Office 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 office member without a court order unless lawfully authorized by the Chief or the authorized designee.

3102.5.3 EXPLOSIVE DEVICE

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

3102.6 IDENTIFICATION AND PRESERVATION OF RECORDINGS

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

A member should transfer, tag or mark recordings or after every shift:

- (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.

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(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.

3102.6.1 RETENTION REQUIREMENTS

Portable recordings may be considered criminal investigative data subject to public disclosure (Minn. Stat. § 13.82, Subd. 7). All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule and Minn. Stat 13.825 but in no event for a period less than 180 days.

Altering, erasing, or destroying any recording made with a member's portable recording system is prohibited prior to the expiration retention period stated in Minn. Stat. § 13.825, subd. 3, or for a period of not less than 180 days, whichever is longer.

In the event of a recording made with a member's portable recording system of a Member using deadly force, the Office shall retain the full, unedited, and unredacted recording indefinitely.

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3102.7 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

(a) By a supervisor as part of internal audits and reviews as required by Minn. Stat. § 626.8473.

(b) Upon approval by a supervisor, by any member of the Office who is participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation.

€ Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.

(d) By media personnel with permission of the Chief or the authorized designee (e) In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to Minn. Stat. § 13.82, Subd. 15, and in accordance with the Records Maintenance and Release Policy.

(f) When an individual dies as a result of a use of force by a member, the deceased individual's next of kin, the legal representative of the deceased individual's next of kin, and the other parent of the deceased individual's child may inspect the recording upon request. The recording shall not be redacted no more than what is required by law and document this incident within five (5) days of the request. This request can be denied if it is determined that there is a compelling reason that inspection would interfere with an

active investigation. If access is denied, the chief law enforcement officer of the Office must provide a prompt, written denial to the individual who requested the data with a short description of the compelling reason why access was denied and must provide notice that relief may be sought from the district court pursuant to MN. Stat. § 13.82, Subd. 7.

(g) When an individual dies as a result of a use of force by a member, the Office shall release all portable recording system data, redated more than what is required by law, documenting the incident no later than fourteen (14) days after the incident, unless the chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data shall remain classified by MN Stat. § 13.82, Subd. 7.

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).

In all cases, recordings shall only be accessed for legitimate law enforcement or data administration purposes. Prior to accessing recordings, staff shall document the specific law enforcement purpose for the viewing of the recording in the Event Notes section of the Event

Details associated with the recording. Law enforcement officers from other agencies shall submit a written request for any non-public recordings. This written request must include the specific law enforcement purpose for which the recording is sought.

3102.8 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).

The Recordings Coordinator shall establish regular intervals at which supervisors will conduct a review of audio/video recorder data to ensure compliance with Chief's office policy and Minnesota Statutes, Chapter 13.

3102.9 PROHIBITED USE OF AUDIO/VIDEO RECORDERS

Members are prohibited from using office-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 office-issued or personally owned recorders. Members shall not duplicate or distribute such recordings, except for authorized legitimate office business purposes. All such recordings shall be retained at the Office.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Shift Sergeant. Any member who uses a personally owned recorder for office-related activities shall comply with the provisions of this policy, including retention and release requirements and should notify the on-duty supervisor of such use as soon as reasonably practicable.

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

3102.10 INVENTORY OF PORTABLE RECORDING SYSTEM TECHNOLOGY

The Recordings Coordinator shall ensure the following public data is available upon request:

- (1) the total number of recording devices owned or maintained by the agency;
- (2) a daily record of the total number of recording devices actually deployed and used by deputies and, if applicable, the precincts in which they were used;
- (3) the policies and procedures for use of portable recording systems required by section 626.8473; and
- (4) the total amount of recorded audio and video data collected by the portable recording system and maintained by the agency, the agency's retention schedule for the data, and the agency's procedures for destruction of the data.

3102.11 WEARING PORTABLE RECORDING DEVICES UNDER THE COMMAND OF ANOTHER OFFICE

Any member assigned a portable recording system shall wear and operate the system in compliance with this Office's policy while performing law enforcement activities under the command and control of another chief law enforcement officer or federal law enforcement official.

3102.12 POST BOARD INSPECTION

Per Minn. Stat. § 626.8473, Subd. 3(c), the POST Board has the authority to inspect this policy to ensure compliance. The POST Board may conduct an inspection based upon a complaint received or through a random selection process. The POST Board may impose licensing sanctions and seek injunctive relief under Minn. Stat. 214.11 for failure to comply.

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