

**SILVER BAY POLICE DEPARTMENT
PORTABLE AUDIO/VIDEO RECORDERS
POLICY# D-17**

PURPOSE AND SCOPE

The primary purpose of using body-worn cameras is to capture evidence arising from police-citizen encounters. This policy reflects a balance between the desire to establish exacting and detailed requirements and the reality that officers must attend to their primary duties and the safety of all concerned, often in circumstances that are tense, uncertain and rapidly evolving. This policy also sets forth rules governing access to and retention of body-worn camera data.

This policy covers the use of body worn cameras in the course of official duties. It does not apply to the use of squad based (dash-cam) recording systems. MSS 13.825 subd 1(b). The Chief or designee may supersede this policy by providing specific instructions for the use of body worn cameras to individual officers or providing specific instructions for the use of body worn cameras pertaining to certain events or classes of events, including but not limited to: political rallies and demonstrations. The Chief or designee may also provide specific instructions or standard operating procedures for body worn cameras to officers assigned to specialized details, such as courts, guarding prisoners or patients in hospitals and mental health facilities.

DEFINITIONS

Definitions related to this policy include:

A. MGPA or Data Practices Act refers to the Minnesota Government Data Practices Act, MSS 13.01 et seq.

B. Records retention schedule refers to the General Records Retention Schedule for Minnesota Counties.

C. Law enforcement related information means information captured or available for capture by use of a body-worn camera 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 tow truck, or receiving generalized concerns from a citizen about crime trends in his or 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 towards the other. Or, at least one person directs towards 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 body-worn camera, 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 station house locker rooms, restrooms 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.

H. Official duties, for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this agency.

I. Test recording, a momentary check of the body-worn camera system conducted by a Officer to ensure the camera is functioning properly.

POLICY

It is the policy of this office to authorize and require the use of office-issued body worn cameras as set forth below, and to administer access to body worn camera data as provided by law.

MEMBER RESPONSIBILITIES

Prior to going into service, uniformed members will be responsible for making sure that they are equipped with a portable recorder issued by the Office, 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. (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, and badge 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.

GENERAL GUIDELINES FOR RECORDING

A. Officers shall activate their body worn cameras when anticipating that they will be involved in, become involved in, or witness other officers of this agency or another agency involved in a pursuit, vehicle or Terry Stop of a motorist or pedestrian, search, seizure, arrest, use of force, adversarial contact, any time lights or sirens are activated, domestics, disorderly, weapons calls and during other activities likely to yield information having evidentiary value. However, officers

need not activate their body worn cameras when it would be unsafe, impossible, or impractical to do so. Such instances on non-recording when otherwise required shall be documented in the officer's report.

B. When officers are executing a Search Warrant, an officer may turn off their body camera after the area is deemed safe. The camera can remain off while they are conducting the search of the premises, buildings, and/or vehicles if these searches are documented by photographs. The cameras must be reactivated when the situation dictates as per policy.

C. Officers have no affirmative duty to inform people that a body worn camera is being operated or that the individuals are being recorded (MSS 626.8473 subd 3(b)(5)).

D. Once activated, the body worn camera should continue recording until the conclusion of the incident or encounter, or 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 may state the reasons for ceasing the recording on camera before deactivating their body worn camera. If circumstances change, officers shall reactivate their body worn cameras as required by this policy.

E. Officers shall not intentionally block the body worn cameras audio or visual recording functionality to defeat the purposes of this policy (MSS 626.8473 subd 3(b)(6)).

F. Notwithstanding any other provision in this policy, officers shall not use their body worn cameras to record other agency personnel during non-enforcement related activities, such as: locker rooms, meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation (MSS 626.8473 subd 3(b)(4)).

G. Employees should expect to be recorded by audio, video or both when in physical proximity to an employee when assigned to a call.

H. Body worn cameras (BWC) shall not be remotely activated by dispatch or a supervisor solely for verifying policy compliance, or to inquire on a user's current locations or actions. The use of the remote activation feature shall be employed judiciously and solely for employee safety. Remote activation may also be used in circumstances when employees would likely know their devices are being activated: i.e. threat incident at an educational facility or civil disturbance detail.

I. 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.

SPECIAL GUIDELINES FOR RECORDING

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

1. To use their body worn cameras 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 prohibited.

2. Officers need not record persons being provided medical care, unless there is reason to believe the recording would document information having evidentiary value. Body worn cameras shall be activated as necessary to document any use of force and the basis therefore and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.

3. Officers should use their squad mounted camera system, to record the transportation of persons in their custody to hospitals, detox, mental health care facilities, juvenile detention facilities and jails. Body worn cameras will be used to record the physical transfer of said persons from squad to the facility. Officers shall not record within these facilities unless direct Law Enforcement action is needed.

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.

UPLOADING AND LABELING DATA

A. Each officer using a body worn camera is responsible for assuring the proper transfer of the data from their camera during his or her shift without incurring overtime. The intent is to prevent an excessive build-up of data on the body worn camera/DVR. However, if the body worn camera contains data that is likely to be needed immediately for an on-going investigation or is of a serious nature, the officer shall upload the data prior to the end of their shift.

B. Officers shall categorize the body worn camera data files by choosing the category that best describes the event within the provided menu options.

C. In addition, records shall "flag" each file as appropriate to indicate that it contains information about data subjects who may have rights under MGDPA, limiting disclosure of information about them. These individuals include:

1. Victims and alleged victims of criminal sexual conduct and sex trafficking.
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 activity.

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 the video.

14. Other individuals whose identities the officer believes may be legally protected from public disclosure.

R133.6 ADMINISTERING ACCESS TO BODY WORN CAMERA DATA

A. Under Minnesota Law, the following are considered data subjects for purposes of administering access to body worn camera data:

1. Any person or entity whose image or voice is documented in the data (MSS 13.825 subd 4(a)).

2. The officer who collected the data (MSS 13.825 subd 4(a)). 3. 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 (MSS 13.825 subd 4(a)).

B. Body worn camera data is presumptively private. Body worn camera recordings are classified as private data about the subjects unless there is specific law that provides differently. As a result:

1. Body worn camera data pertaining to people is presumed private, as is body worn camera data pertaining to businesses or other entities (MSS 13.825 subd. 2(a)).

2. Some body worn camera data is classified as confidential (see below).

3. Some body worn camera data is classified as public (see below).

C. (Confidential Data). Body worn camera data that is collected or created as part of an active criminal investigation is confidential while the investigation remains active (MSS 13.82 subd. 7). This classification takes precedence over the "private" classification listed above and the public data classification listed below (MSS 13.825 subd. (2)(a)(3).[1].

D. (Public data) The following body worn camera data is public:

1. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the euthanasia of an animal that is sick, injured, or dangerous (13.825 subd, 2(a)(1)).

2. Data that documents the use of force by a peace officer that results in substantial bodily harm (MSS 13.825 subd. 2(a)(1)).

3. 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 also be redacted (MSS 13.825 subd. 2, MSS 13.82 subd. 17(a)).

4. Data that documents the final disposition of a disciplinary action against a public employee (MSS 13.825 subd 2(a)(4). MSS 13.43 subd. 2(5).

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that classification (MSS 13.825 subd. 2(a)(5)).

E. Officers shall refer members of the public or media seeking access to body worn camera data to the records office to have their request processed in accordance with MGDPA.

1. An individual shall be allowed to review recorded body worn camera data about that person and other data subjects in the recording (MSS 13.825 subd. 4(b), except when:

a. The data was collected or created and is being maintained as part of an on-going active investigation (MSS 13.82 subd. 2 and 7).

b. Access shall not be granted to portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as the identities of informants, certain witnesses, juvenile offenders and victims of criminal sexual conduct or sex trafficking (MSS 13.82 subd. 17).

2. An individual data subject shall be provided with a copy of the recording upon request but subject to the following guidelines on redaction before the copy is provided (MSS 13.825 subd. 4(b):

a. Data on 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. No employee may have access to the office's body worn camera data except for legitimate law enforcement or data administration purposes (MSS 13.825 subd. 7(b)).

1. Officer may access and view stored body worn camera video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. 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.

2. Agency personnel are prohibited from accessing body worn camera data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to: uploading body worn camera data recorded or maintained by this agency to public and social media websites.

3. Employees seeking access to body worn camera data for non-business reasons, may make a request for it in the same manner as any member of the public.

G. Officers may display portions of body worn camera footage to witnesses as necessary for purposes of investigation as allowed by MSS 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 the video.

1. Body worn camera data may be shared with other law enforcement agencies only for legitimate law enforcement purposes and are documented in writing at the time of the disclosure (MSS 13.825 subd. 8(a)).
2. Body worn camera data shall be made available to prosecutors, courts and other criminal justice entities as provided by law.

DATA SECURITY SAFEGUARDS

- A. Officers shall not erase, alter, reuse, modify or tamper with body worn camera recordings. Only approved administrative personnel may erase recordings in accordance with this policy.
- B. Access to body worn camera data is only allowed from county owned computers or devices. Personally owned computers and mobile devices shall not be programmed or used to access body worn camera data.
- C. Officers shall not intentionally edit, alter, or erase any body worn camera recordings.
- D. As required by MSS 13.825 subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its body worn camera program.

AGENCY USE OF DATA

- A. At least once a month, supervisors may randomly review body worn camera recordings made by each officer to ensure the equipment is operating properly and officers are using the devices in accordance with this policy (MSS 626.8473 subd. 3(b)(8)).
- B. In addition, supervisors and other assigned personnel may access body worn camera 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.
- C. Nothing in this policy limits or prohibits the use of body worn camera data as evidence of misconduct or as a basis for discipline.
- D. Officers should contact their supervisors to discuss retaining and using body worn camera 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 body worn camera data with trainees for the purpose of providing coaching and feedback on the trainee's performance.

DATA RETENTION

- A. All body worn camera data shall be retained for a minimum period of 90 days (MSS 13.825 subd. 3). Test recordings are exempt from this retention period.
- B. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than training or to euthanize a sick, injured or dangerous animal, must be maintained for a period of one year MSS 13.825 subd. 3(b)(1)(i).
- C. Certain kinds of body worn camera data must be retained for six years:

1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review (MSS 13.825 subd. 3(b)(1)(ii); General records retention schedule for Minnesota cities, Code POL 05920.

2. Data documenting circumstances that have given rise to a formal complaint against an officer MSS 13.825 subd. 3(b)(2) Gen. Records Ret'n sched for Minn Ctities, Code POL 05880.

D. Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable retention period.

E. Subject to part F (below), all other body worn camera footage that is classified as no evidentiary, becomes classified as non-evidentiary, or is not maintained for training, shall be destroyed after 90 days (MSS 13.825 subd. 3(a).)

F. Upon written request by a body worn camera data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject, up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is made (MSS 13.825 subd. 3(c)).

G. The office shall maintain an inventory of body worn camera recordings having evidentiary value.

COMPLIANCE

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of body worn camera data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to MSS 13.09, MSS 626.8473 subd 3(b)(8).