

Body-Worn Cameras

423.1 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 Oakdale Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

With the goal of enhancing public trust and transparency, the Oakdale Police Department utilizes the technology of body-worn cameras (BWCs). The BWCs are used for the purpose of documenting evidence and accurately capturing contacts between members of the department and the public. This policy sets forth guidelines governing the use of BWCs and administering the data that results. Compliance with these guidelines is mandatory, but it is recognized that officers must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving.

It is the policy of the Department to authorize and require the use of department-issued BWCs as set forth below, and to administer BWC data as provided by law.

The scope of this policy governs the use of BWCs in the course of official duties. The Chief of Police or designee may supersede this policy by providing specific instructions for BWC use to individual officers, or providing specific instructions pertaining to particular events or classes of events, including but not limited to rallies and demonstrations. The Chief of Police or designee may also provide specific instructions or standard operating procedures for BWC use to officers assigned to special units and special details.

423.1.1 DEFINITIONS

Definitions related to this policy include:

Adversarial - A law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. For the sake of this policy, encounters in which a citizen demands to be recorded or initiates recording with his or her own are deemed adversarial.

Evidentiary value - 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.

General citizen contact - 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

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with directions, summoning a tow, or receiving generalized concerns from a citizen about crime trends in their neighborhood.

Law enforcement-related information - Information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

MGDPA or Data Practices Act - Refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

Official duties - The officer is on duty and performing authorized law enforcement services on behalf of the 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.

Records Retention Schedule - The General Records Retention Schedule for Minnesota Cities.

Unintentionally recorded footage - A video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include but are not limited to, recordings made in the police facility locker rooms or 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.

423.2 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).
 - 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 OPD members and members of other governmental entities and agencies.
- (c) Establishing procedures for logging or auditing access.

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- (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 Oakdale 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 Oakdale 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 Oakdale 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.

423.3 MEMBER RESPONSIBILITIES

Officers may use only department-issued BWCs in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department. Officers shall conduct a function test at the beginning of each shift to make sure the devices are operating properly (Minn. Stat. § 13.825). Officers noting a malfunction during testing or at any other time shall promptly report the malfunction to a supervisor and shall document the issue through the BWC equipment log. Supervisors shall take prompt action to address malfunctions and facilitate a working device as soon as reasonably practicable. If using a spare device while the assigned BWC is out of operation, the officer must notify the supervisor to ensure proper upload in concert with user identification.

Uniformed members should wear the recorder at the location on their body and in the manner specified by training. The preferred location is below the chest and above the waistline.

Officers must document BWC recorder use and non-use as follows:

- Whenever an officer makes a recording, the existence of the recording shall be documented in an incident report.
- When an officer fails to record an activity that is required to be recorded under this policy or fails to record for the entire duration of the activity, the officer must document the circumstances and reasons for not recording in a narrative report. Supervisors shall review these reports and initiate any corrective action deemed necessary.

423.4 GENERAL GUIDELINES FOR RECORDING

Officers shall activate their BWCs when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, stops of a motorist or pedestrian, searches, arrests, seizures, use of force, suspect interviews, and

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during any police/citizen contacts that becomes adversarial. However, officers need not activate their BWCs when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Member Responsibilities.

Officers have discretion to record or not record general citizen contacts.

Although encouraged when practical, officers have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.

Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The officer having charge of the scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, officers shall state the reasons for ceasing the recording before deactivating their BWC. Statements such as, "everything has settled down and the action appears to be over" is an example of a statement indicating the recording will be stopped. If circumstances change, officers shall reactivate their BWCs as required by this policy.

Officers shall not intentionally block the BWCs audio or visual recording functionally to defeat the purposes of this policy.

Notwithstanding any other provision in this policy, officers shall not use their BWCs to record other personnel during non-enforcement related activities, such as during pre-shift inspections, break time, or during other private conversations, unless the recording is authorized as part of an administrative or criminal investigation approved by the Chief of Police or designee.

423.5 SPECIAL GUIDELINES FOR RECORDING

Officers may choose to use their BWCs 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 expressly prohibited.

Officers may choose to use their BWCs to take recorded statements from persons believed to be victims and witnesses of crimes, and persons suspected of committing crimes, considering the needs for the investigation and circumstances pertaining to the victim, witness, or suspect.

Officers need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs shall be activated as necessary to document any use of force and the basis for it, 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.

Officers shall have their BWC activated to record transportation until after transfer of custody to responsible parties at facilities such as jail, detox, and Hospitals. Officers should not record in

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the mentioned facilities unless the officer anticipates witnessing a criminal act or an adversarial encounter or a use-of-force incident.

Detectives and those serving in police administration positions shall wear and activate BWCs on pre-planned enforcement activities. For example, while executing a planned warrant or suspect apprehension, detectives shall use the BWC during the execution of the warrant until the scene is deemed safe. Detectives and officers shall continue the use of the BWCs should the scene remain adversarial, presence of uncooperative persons, or other circumstances that include evidentiary value.

423.6 DOWNLOADING AND LABELING DATA

Each officer using a BWC is responsible for transferring or assuring proper transfer of the data from his or her device by the end of shift. However, if the officer is involved in an officer-involved shooting, in-custody death, or other activity resulting in death or great bodily harm, a supervisor or assigned case detective shall take custody of the officer's BWC and assume responsibility for transferring the data. If it's an officer-involved shooting, the supervisor shall take the BWC after the public safety statement. The purpose of this provision is to ensure the integrity of evidence and protect the officer(s) against allegations of mishandling evidence.

Officers shall label the BWC data files at the time of capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Officers shall indicate if a BWC was utilized in the records management system by checking the designated BWC box.

Officers shall assign the following labels:

- **Evidence- Death/CSC:** The video has evidentiary value and is directly related to an investigation of a criminal sexual conduct or death investigation.
- **Evidence – Use of Force:** Whether or not enforcement action was taken, or an arrest resulted, the event involved the application of force by an officer of this agency requiring a use of force report.
- **Evidence – Criminal:** The video captures an incident involving a citation or arrest, or the incident may result in an investigation, or contains other video of evidentiary value.
- **Non-Criminal:** The recording does not contain any of the above categories of information and has no apparent evidentiary value. Recordings of general citizen contact, and unintentionally recorded footage are not evidence.
- **Test:** This label should be used for video created during squad setup, equipment testing and other none evidentiary activity within the Department or at training.

In addition to the labeling outlined above, the following list is provided as a resource noting subjects that may have rights under the MGDPA limiting disclosure of information about them. When an officer reasonably believes data involves the listed individuals, officers should tag such data in accordance with procedure and document the existence of the recording in any related case report.

- (a) Victims and alleged victims of criminal sexual conduct and sex trafficking.

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- (b) Victims of child abuse or neglect.
- (c) Vulnerable adults who are victims of maltreatment.
- (d) Undercover officers.
- (e) Informants.
- (f) When the video is clearly offensive to common sensitivities.
- (g) Victims and witnesses to crime, if the victim or witness has requested not to be identified publicly.
- (h) Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
- (i) Mandated reporters.
- (j) Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
- (k) Juveniles who are or may be delinquent or engaged in criminal activity.
- (l) Individuals who make complaints about violations with respect to the use of real property.
- (m) Officers and employees who are the subject of a complaint related to the events captured on video.
- (n) Other individuals whose identities the officer believes may be legally protected from public disclosure.

Labeling and flagging designations may be corrected or amended based on additional information.

423.7 ADMINISTERING ACCESS TO BWC DATA

423.7.1 DATA SUBJECTS

Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:

- (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 image or voice is documented in the data, regardless of whether that officer is or can be identified by the recording.

423.7.2 BWC DATA IS 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:

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

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423.7.3 CONFIDENTIAL DATA

BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the "private" classification listed above and the "public" classification listed below.

423.7.4 PUBLIC DATA

The following BWC data is public:

- (a) Data documenting the discharge of a firearm by a police officer in the course of duty, other than for training or the dispatch of an animal that is severely injured or dangerous.
- (b) Data that documents the use of force by a police 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 subject other than a police officer who has not consented to the public release must be redacted when practicable. 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.

Reference public data, 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. Statute 13.82, § Subd. 17 (certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories.

423.7.5 ACCESS TO BWC DATA BY NON-EMPLOYEES

Officers shall refer members of the media or public seeking access to BWC data to the Oakdale Police Department Records Office, 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 BWC data about him or herself and other data subjects in the recording. However, access shall not be granted for the following:
 - 1. If the data was collected or created as part of an active investigation;
 - 2. To portions of the data that 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, Subd. 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 request, but subject to the following guidelines on redaction:
 - 1. Data on other individuals in the recording who do not consent to the release must be redacted;
 - 2. Data that would identify undercover officer must be redacted;

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3. 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.

423.7.6 ACCESS BY POLICE OFFICERS AND LAW ENFORCEMENT MEMBERS

No member may have access to the department's BWC data except for legitimate law enforcement or data administration purposes illustrated below:

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

423.7.7 OTHER AUTHORIZED DISCOURSE OF DATA

Officers may display portions of BWC 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 individual identities that are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screenshots, muting audio, or playing the audio but not the 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.

423.8 DATA SECURITY SAFEGUARDS

Data shall be stored in compliance to applicable state and federal regulations. Data will be uploaded and stored through Motorola solutions cloud-based government server.

Members shall only access BWC data through designated city-owned devices. Members shall not access BWC data through personally owned devices, including but not limited to computers and mobile devices.

Members shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the Chief of Police who will document the purpose of such action.

As required by Minn. Stat. § 13.825, Subd. 9, as may amended from time to time, this agency shall conduct an independent biennial audit of the BWC program.

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423.9 AGENCY USE OF DATA

At least once a month, supervisors will randomly review BWC usage by each officer to whom a BWC is issued or available for use, to ensure compliance with this policy.

Supervisors and other assigned personnel may access BWC 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.

Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for employee discipline.

Officers should contact a supervisor to discuss retaining and using BWC 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 BWC data with trainees for the purposes of providing coaching and feedback on the trainee's performance.

423.10 DATA RETENTION

All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recoded or non-evidentiary data.

Data documenting the discharge of a firearm by a police officer in the course of duty, other than for training or the dispatching of an animal that is severely injured or dangerous must be maintained for a minimum period of one year.

Certain kinds of BWC data must be retained for six years:

- (a) Data that documents the use of deadly force by a police officer, or force of a sufficient type or degree to require a use of force report or supervisory review.
- (b) Data documenting circumstances that have given rise to a formal complaint against an officer.
- (c) 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 period.

Unless related to a reason noted below in this policy, all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.

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

The Department shall maintain an inventory of BWC recordings having evidentiary value.

The Department will post this Policy and the Records Retention Schedule on the City website.

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423.11 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.

423.12 SUPERVISOR RESPONSIBILITIES

Supervisors shall take prompt action to address malfunctions and facilitate a working device as soon as reasonably practicable. If using a spare device while the assigned BWC is out of operation, the officer must notify the supervisor to ensure proper upload in concert with user identification.

Supervisors shall review these reports and initiate any corrective action deemed necessary.

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.