



**Biennial Audit of the Moorhead Police Department
Portable Recording System (Body-Worn Cameras)
Conducted by LEADS Consulting
Audit Summary Report
Submitted March 30, 2018**

Pursuant to Minnesota Statute 13.825, LEADS Consulting conducted an audit of the Portable Recording System (Body Worn Cameras) at the Moorhead Police Department to ensure compliance with state law. The audit was conducted on March 1, 2018. Lieutenant Michael Detloff who manages the data collection was the point of contact for auditors. He serves as the department “Coordinator” for the maintenance of data for the Portable Recording System.

A copy of the Moorhead Police Department policy regarding “Portable Audio/Video Recorder” was reviewed and is attached to this audit as appendix A. Verbal information regarding operations and practices was received from Lieutenant Detloff who monitors the Portable Recording System (PRS). Auditors also spoke to Moorhead Information Technology Director Chris Radi and Office Manager Sandy Timian. The audit examined the policies and practices of the department in regards to the use and operation of their Portable Recording Systems including the following functions:

1. Portable Recording System Technology
2. Records Maintenance and Data Protection
3. Data Classification
4. Retention and Destruction of Data
5. Data Use and Access to Data by Agency
6. Sharing Data with other Agencies
7. Access to Data by Subjects

Moorhead Police Department Policy

The Moorhead Police Department Policy (#424) regarding their Portable Recording System is complete and specific regarding use and practices. A copy is attached to this report as appendix A.

Moorhead Portable Recording System Technology

The Moorhead Police Department has been utilizing the “L3” Body-Worn Camera System. They have two “L3 BodyVision” body cameras. Their first camera was tested in November of 2015. A second camera was deployed in August of 2016. The two cameras received intermittent use over the last 18 months and are being discontinued from use as the department upgrades its mobile squad video system to the “WatchGuard” system. The L3 cameras are not compatible with the new WatchGuard system and were removed from use at the conclusion of the on-site audit on March 1, 2018. An email announcing their discontinued use was sent to all department members at that time. The department has no immediate plans to deploy any new body-worn cameras. As of March 1, 2018 the L3 system was storing 363 body camera videos. The L3 system also maintains an audit trail showing who had accessed the video files. The department intends to maintain the L3 video data file for the next two years.

Maintenance of Records and Data Protection

The L3 system used by the Moorhead Police Department maintains detailed records showing the date and time that portable recording system data were collected. The Moorhead Police Department has a dedicated server at their City Hall to house the data and the system is password and user role protected from unauthorized intrusion.

Data Classification

The Moorhead Police Department utilizes the applicable classification of data under Minnesota Statute 13.825. Moorhead Department Policy 424.10.2 states: “Except as provided by Minnesota Statute 13.825 Subd. 2, audio/video recordings are considered private or nonpublic.” Interviews with Lieutenant Detloff and Office Manger Sandy Timian confirmed this practice. In addition, Lieutenant Detloff reported the following:

The department has not had a recording of an incident documenting the discharge of a firearm by a police officer in the course of duty or an incident documenting the use of force by a police officer that results in substantial bodily harm.

The department has not had a request from a subject of a video recording to make the data public.

Active criminal investigative data are considered confidential or protected nonpublic.

The Moorhead Police Department policies and practices regarding data classification are consistent with state statutes. Lieutenant Michael Detloff who monitors the Portable Recording System is familiar with the law pertaining to PRS classification of data.

Retention and Destruction of Data

Minnesota Statute 13.825 Subd. 3 sets out specific minimum data retention requirements for different types of incidents captured by Portable Recording System devices. PRS data that are not active or inactive criminal investigation must be maintained for 90 days. After 90 days the data may be destroyed according to the agency's records retention schedule.

The Moorhead Police Department L3 system allows the officers to create event descriptions that provide guidance as to whether the data has a further investigative purpose. The department policy states that officers should "tag or mark" those events as appropriate. Those events that do not require longer data maintenance are destroyed at a time after 90 days in a manner consistent with the department's data retention policy (424.10) which states it will be destroyed within 180 days. This policy also ensures adequate system storage for future events.

Moorhead Police Department active criminal investigative data is maintained and destroyed pursuant to MN Statute 13.87 Subd 7 and the department's retention schedule.

The department has not had a recording of an incident documenting the discharge of a firearm by a police officer in the course of duty or a recording of an incident documenting the use of force by a police officer that results in substantial bodily harm that would require that the data be maintained for one year.

The department has not had a request submitted by a subject of the video data to extend the maintenance period of the data.

The examination indicates that the Moorhead Police Department is in compliance with the retention and destruction of data provisions regarding Portable Recording Systems.

Data Use and Access to Data

Moorhead Police Department policy 424.7 states officers may review their own recordings for the purposes of preparing written reports. The policy also states, “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 a member’s performance.” The policy goes on to outline additional circumstances in which the video may be viewed including investigations of complaints, criminal investigations or court personnel authorized to review evidence in a related case.

Beyond the above provisions, section 424.8 of the Moorhead Department Police policy requires written authorization for access to video data from the “Coordinator” of the Portable Recording System who serves as the Chief’s designee for matters related to the recording system. That coordinator is Lieutenant Michael Detloff.

Auditors examined 7% of the 363 video data events including the audit trail to review appropriate use and classification. 25 randomly selected video events were reviewed. All 25 recordings were made in the line of duty. 21 of the 25 videos had not been viewed by anyone after their creation. Four of the files had been viewed and were found to be appropriate access by supervisors or records staff responsible for producing copies for court purposes. Had this review revealed any abnormalities the pool would have been expanded.

The Moorhead Police Department data use and access to data are in compliance with state law.

Sharing Data with other Law Enforcement Agencies

Moorhead Police Department policy states that written authorization must be obtained from the coordinator, Lieutenant Michael Detloff, for other law enforcement agencies to access the portable recording system data. Lieutenant Detloff states that those requests must provide a lawful reason for access. He also states that he does not believe there have been any requests from outside law enforcement agencies other than the prosecuting attorneys.

The Moorhead Police Department is in compliance with the “Sharing Among Agencies” provision of state law.

Access to Data by Subjects

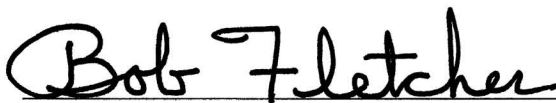
The Moorhead Police Department has policy provisions to allow for persons to access and acquire private data on them. In addition they have the capability to redact and or “fuzz” the images of other persons in the video. At the time of the audit they had not received any requests for Portable Recording System video data.

The Moorhead Police Department is in compliance with the “Access to Data by Subjects” provision of state law.

Audit Conclusion

The Moorhead Police Department has a detailed Portable Recording System policy that reflects MN statute 13.825 and contains significant specific regulations to ensure compliance with the statute. The department’s policies and practices are consistent with state law. The data system is properly maintained and professionally monitored by Lieutenant Michael Detloff.

LEADS Consulting finds the Moorhead Police Department “Portable Recording System” policies and practices to be in compliance with the provisions referenced in Minnesota Statute 13.825 Subd. 9, Biennial Audit.

A handwritten signature in black ink that reads "Bob Fletcher". The signature is written in a cursive style with a large, looped "B" and a stylized "F".

Bob Fletcher

Director

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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, handheld 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) unless captured by a portable recording system.

424.1.1 DEFINITIONS

Definitions related to this policy include:

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.

424.2 POLICY

The Moorhead Police Department may 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.

424.3 MEMBER PRIVACY EXPECTATION

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

424.4 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 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. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable (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

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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 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.

424.5 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.

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 the Dispatch 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. 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.

424.5.1 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.

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424.5.2 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 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.

424.5.3 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.

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 procedure and document the existence of the recording in any related case report.

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 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.

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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.

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).

424.8 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).
- (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 MPD members and members of other governmental entities and agencies.
- (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 Moorhead 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.

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3. Total amount of recorded audio and video data collected by the devices and maintained by the Moorhead 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 Moorhead Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders.

424.9 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.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Shift Commander. Any member who uses a personally owned recorder for department-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.

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

424.10 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 180 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).

424.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

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

424.10.2 ACCESS TO RECORDINGS

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

Any person captured in a 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

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to render the subject unidentifiable prior to release. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17.

424.11 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).