

Rampart Defense, LLC

Audit Overview and Recommendations

Dear Beltrami County Board and Sheriff Beitel:

We have audited the body-worn camera (BWC) program of the Beltrami County Sheriff's Office (BCSO) for the two-year period ended 8/31/2021. Minnesota Statute §13.825 mandates that any law enforcement agency operating a portable recording system (PRS)¹ program obtain an independent, biennial audit of its program. This program and its associated data are the responsibility of the Beltrami County Sheriff's Office. Our responsibility is to express an opinion on the operations of this program based on our audit.

On September 9, 2021, Rampart Defense LLC (Rampart) met with Captain Jason Riggs, who provided information about BCSO's BWC program policies, procedures and operations. As part of the audit, Rampart reviewed those policies (included at the end of this report as Appendix A), procedures and operations for compliance with Minnesota Statute §626.8473, which sets forth the requirements for creating and implementing a BWC program, and Minnesota Statute §13.825, which governs the operation of BWC programs. In addition, Rampart also conducted a sampling of BWC data to verify BCSO's recordkeeping.

The purpose of this report is to provide an overview of this audit, and to provide recommendations to improve the BCSO BWC program and enhance compliance with statutory requirements.

BCSO BWC Program Implementation and Authorization

Effective August 1, 2016, Minnesota Statute §626.8473 Subd. 2 requires that:

A local law enforcement agency must provide an opportunity for public comment before it purchases or implements a portable recording system. At a minimum, the agency must accept public comments submitted electronically or by mail, and the governing body with jurisdiction over the budget of the law enforcement agency must provide an opportunity for public comment at a regularly-scheduled meeting.

In addition, §626.8473 Subd. 3(a) requires that the law enforcement agency establish and enforce a written policy governing the use of its portable recording system, and states "[t]he written policy must be posted on the agency's Web site, if the agency has a Web site."

Captain Riggs provided documentation showing that the public notification, comment and meeting requirements had been satisfied prior to the implementation of BCSO's BWC program. Specifically, Captain Riggs furnished a copy of the "Transcript of the Proceedings of the Beltrami County Board of Commissioners" dated March 19, 2019. A copy of this document has been retained in Rampart's audit

¹ It should be noted that Minnesota statute uses the broader term "portable recording system" (PRS), which includes body-worn cameras. Because body-worn cameras are the only type of portable recording system employed by BCSO, these terms may be used interchangeably in this report.

files. Rampart staff also verified that there was a working link to the Beltrami County Sheriff's Office's written BWC policy on their webpage at the time of our audit.

BCSO BWC WRITTEN POLICY

As part of this audit, we reviewed BCSO's BWC policy, a copy of which is attached to this report as Appendix A.

Minnesota Statute §626.8473 Subd. 3(b) requires a written BWC policy to incorporate the following, at a minimum:

1. The requirements of section 13.825 and other data classifications, access procedures, retention policies, and data safeguards that, at a minimum, meet the requirements of chapter 13 and other applicable law;
2. Procedures for testing the portable recording system to ensure adequate functioning;
3. Procedures to address a system malfunction or failure, including requirements for documentation by the officer using the system at the time of a malfunction or failure;
4. Circumstances where recording is mandatory, prohibited, or at the discretion of the officer using the system;
5. Circumstances under which a data subject must be given notice of a recording;
6. Circumstances under which a recording may be ended while an investigation, response, or incident is ongoing;
7. Procedures for the secure storage of portable recording system data and the creation of backup copies of the data; and
8. Procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits and reviews, and the employee discipline standards for unauthorized access to data contained in section 13.09.

Due to their complexity and interrelatedness, clauses 1 and 7 are discussed separately below. Clause 8 is also discussed separately.

In our opinion, the BCSO BWC policy is compliant with respect to clauses 2 – 6.

BCSO BWC Data Retention

BCSO's data retention policy states that "[a]ll recordings shall be maintained 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." The policy also includes an itemized list of retention periods for different categories of BWC data. These guidelines meet or exceed the requirements specified for each category of BWC data enumerated in §13.825 Subd. 3, except as noted in the following paragraph.

§13.825 Subd. 3(b) requires that the following categories of BWC data be retained for a minimum of one year:

1. Data documenting the discharge of a firearm by a peace officer in the course of duty if a notice is required under §626.533 Subd. 2;

2. Data documenting use of force by the officer resulting in substantial bodily harm; or
3. A formal complaint is made against a peace officer related to the incident.

While BCSO's policy does list these categories separately, there is no designated retention period associated with the list. This appears to be an oversight. We strongly recommend adding language specifying a retention period of one year or more for the categories identified above.

BCSO employs Panasonic body-worn cameras and manages BWC data retention on their own secure server through automated retention settings in the video managements software. The retention period for each video is determined by the data classification assigned at the time of upload; however, this retention period can be adjusted as needed.

BCSO's BWC policy requires that each officer transfer data from his or her body-worn camera to the appropriate server by the end of each shift, and also requires that the officer assign the appropriate label or labels to each file to identify the nature of the data. These labels then determine the appropriate retention period for each file.

In our opinion, BCSO's written BWC policy is compliant with respect to applicable data retention requirements, with the exception noted above.

BCSO BWC Data Destruction

Captain Riggs advised us that BCSO BWC data are stored on a server located on-site. At the time of our audit, this was a stand-alone server; however, BCSO was in the process of obtaining a second server, which will be used to mirror the primary server, thus creating a back-up copy of all BWC data.

Data on the existing server are destroyed through automated deletion and overwriting, based on a retention schedule assigned to each video. In addition, at the time it is retired from service, any BCSO-owned physical hard drive used to store BWC data will have all data deleted prior to being destroyed by physical means, specifically crushing.

In our opinion, BCSO's written BWC policy is compliant with respect to the applicable data destruction requirements.

BCSO BWC Data Access

Any request for access to BWC data by data subjects would be made in writing to the BCSO Records Department. Captain Riggs is then responsible for reviewing and fulfilling each request in accordance with the provisions of §13.825 Subd. 4(b).

BCSO BWC data is shared with other law enforcement agencies for evidentiary purposes only. All such requests must be made by email to the BCSO Records Department by the requesting agency's chief law enforcement officer (CLEO). Existing verbal agreements between BCSO and other area law enforcement agencies address data classification, destruction and security requirements, as specified in §13.825 Subd. 8(b). Access to BCSO BWC data for outside agencies is provided via optical disc.

We recommend that BCSO obtain a written acknowledgement from any outside law enforcement agency that any BWC data obtained from BCSO will be managed by the requesting agency in compliance with the requirements of §13.825 Subd. 7 and 8. A copy of this written acknowledgment should be maintained on file.

In our opinion, BCSO's written BWC policy is compliant with respect to the applicable data access requirements.

BCSO BWC Data Classification

BCSO follows the BWC data classifications set forth in Minnesota Statute §13.825, and the written BWC policy incorporates the statutory language extensively. In our opinion, this section of the policy is compliant with respect to the applicable data classification requirements.

BCSO BWC Internal Compliance Verification

Captain Riggs advised us that in addition to reviewing video any time there is a complaint against a deputy, supervisors also conduct random "spot checks" to evaluate officer safety, training, body language and other performance-related criteria.

We noted that BCSO's written policy does not include reference to these "spot checks." While §421.8 Subd. (c) of BCSO's policy does assign to the BWC Coordinator responsibility for "[e]stablishing procedures for logging or auditing access," no such procedures are included in the written policy. Minnesota Statute §626.8473 Subd. 3(b)(8) requires that a written policy must include "procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits and reviews..."

In our opinion, BCSO is not compliant with the requirement that their written policy contain internal audit and review procedures. Because it appears that BCSO has in fact established such procedures, we believe this can be easily addressed by amending their written policy to include these procedures.

§421.11 of the BCSO BWC policy states that "[a]ny member who accesses or releases recordings without authorization may be subject to discipline (See the Standards of Conduct and Protected Information policies)." In our opinion, this incorporation of BCSO's disciplinary policy by reference within their BWC policy is acceptable; however, because employee disciplinary standards are a required element of every written BWC policy, and because the BWC policy must be posted to an agency's website, we recommend also posting the disciplinary policy if it is incorporated by reference in the BWC policy in order to make this information available to the public.

BCSO BWC Program and Inventory

BCSO currently possesses 60 Panasonic body-worn cameras.

The BCSO BWC policy identifies those circumstances in which deputies are expected to activate their body-worn cameras, as well as circumstances in which they are prohibited from activating their body-

worn cameras. The policy also provides guidance for those circumstances in which BWC activation is deemed discretionary.

§421.9 of the BCSO BWC policy states in part:

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.

This policy is not compliant with Minnesota Statute §13.825 Subd. 6, Use of agency-issued portable recording systems, which states: “While on duty, a peace officer **may only use a portable recording system issued and maintained by the officer’s agency** in documenting the officer’s activities.” [Emphasis added.]

We strongly recommend that BCSO amend this section of their policy to categorically prohibit the use of personally-owned recording devices.

While BCSO does not maintain a separate log of BWC deployment or use, Captain Riggs advised us that because each uniformed deputy wears a BWC while on duty, the number of BWC units deployed with uniformed personnel each shift can be determined based on a review of BCSO payroll records. In addition, non-uniformed personnel are issued and authorized but not required to wear or use body-worn cameras. Actual BWC use would be determined based on the creation of BWC data.

As of 9/09/2021, BCSO maintained 26.8 TB of BWC data.

BCSO BWC Physical, Technological and Procedural Safeguards

BCSO BWC data are initially recorded to an internal hard drive in each deputy’s BWC. Those files are then transferred to a dedicated server at the BCSO office through one of two docking stations connected to the server by a physical cable. The server is secured behind multiple locked doors. As noted earlier in this report, BCSO is in the process of installing a second server, which will be used to mirror the primary server to guard against possible loss of data due to a hardware failure.

Officers have view-only access to their own data for report writing, trial preparation, data administration, investigatory purposes and other legitimate law enforcement purposes through the Arbitrator 360 client.

As noted above, requests by other law enforcement agencies for BCSO BWC data must be approved by Captain Riggs and are fulfilled via optical disc. A similar method is employed to submit BCSO BWC data to the Beltrami County Attorney’s Office.

Enhanced Surveillance Technology

BCSO currently employs BWCs with only standard audio/video recording capabilities. They have no plans at this time to add enhanced BWC surveillance capabilities, such as thermal or night vision, or to otherwise expand the type or scope of their BWC technology.

If BCSO should obtain such enhanced technology in the future, Minnesota Statute §13.825 Subd. 10 requires notice to the Minnesota Bureau of Criminal Apprehension within 10 days. This notice must include a description of the technology and its surveillance capability and intended uses.

Data Sampling

Rampart selected a random sample of 80 ICRs from which to review any available BWC recordings. It should be noted that not every call will result in an officer activating his or her BWC. For example, an officer who responds to a driving complaint but is unable to locate the suspect vehicle would be unlikely to activate his or her BWC. It should also be noted that because the audit covers a period of two years, while most BWC data is only required to be retained for 90 days, there is a significant likelihood that the sample population will include ICRs for which BWC data was created, but which has since been deleted due to the expiration of the retention period. The auditor reviewed the retained BWC videos to verify that this data was accurately documented in BCSO records.

Audit Conclusions

In our opinion, the Beltrami County Sheriff's Office's Body-Worn Camera Program is substantially compliant with Minnesota Statutes §13.825 and §626.8473, with the following exceptions:

1. There is no retention period specified in the written BWC policy for those categories of data identified in §13.825 Subd. 3(b) as requiring a minimum one-year retention period.
2. While BCSO conducts "spot checks" of BWC data, there are no procedures defined for internal audits or supervisory reviews in their written policy. §626.8473 Subd. 3(b)(8) requires that procedures for internal audits and/or supervisory reviews be included in an agency's written BWC policy.
3. §421.9 of the BCSO BWC written policy contains a provision allowing the shift sergeant to authorize the use of personally-owned recording devices by on-duty personnel. Such use of personally-owned recording devices is prohibited under §13.825 Subd. 6.

As discussed in the report above, all of these can be easily resolved through minor amendments or additions to BCSO's written BWC policy.

 11/08/2021
Daniel E. Gazelka

Rampart Defense LLC

APPENDIX A:

Beltrami County Sheriff's Office

Beltrami Cnty SO Policy Manual

Portable Audio/Video Recorders

421.1 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/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 Beltrami County Sheriff's Office facility, undercover operations, wiretaps or eavesdropping (concealed listening devices) unless captured by a portable recording system.

421.1.1 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.

421.2 POLICY

The Beltrami County Sheriff's Office shall 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 Office by accurately capturing contacts between members of the Office and the public.

421.3 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.

421.4 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 good working order (Minn. Stat. § 13.825). At the beginning of a member's shift they will do a test recording stating their name, Badge number, and date and time. 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, create a case in RMS documenting the serial number of the device and the nature of the failure, 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.

421.5 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 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. 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.

Deputies will not activate or record with a Portable recording device in the Beltrami County Jail Control Rooms or Administrative offices.

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.

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421.5.1 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. When ceasing the recording, the Deputy shall narrate the intent and reason, if applicable, the ending the recording.

421.5.2 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 Sheriff or the authorized designee.

421.5.3 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.

421.6 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.

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421.7 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) 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.
- (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).

421.8 COORDINATOR

The Sheriff 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 BCSO 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.

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- (e) Establishing an inventory of portable recorders including:
 - 1. Total number of devices owned or maintained by the Beltrami County Sheriff's Office.
 - 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 Beltrami County Sheriff's Office.
- (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 Beltrami County Sheriff's Office that expands the type or scope of surveillance capabilities of the office's portable recorders.

421.9 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.

For security purposes members will turn off their Portable recorders when entering the secure footprint of the Beltrami County Jail.

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

421.10 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 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).

The following retention periods apply to the following recorded video event descriptions before the videos are purged from the system whether it is the network server or evidence room.

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Event Description Retention Period

| | |
|--|------------------------|
| 1. Junk ----- | 90 days |
| 2. Traffic Stop Warning ----- | 90 |
| days 3. Traffic Stop Citation ----- | 90 |
| days 4. DWI ----- | 365 |
| days 5. Pursuit ----- | 365 |
| days | |
| 6. Arrest ----- | Until Case is resolved |
| 7. Accident ----- | 90 days |
| 8. Audio domestic ----- | 365 days |
| 9. Homicide/Sex Assault/Forever --- | Forever |
| 10. Evidence ----- | Forever |
| 11. Medical ----- | Until Case is resolved |
| 12. Statutory 6 Year Req ----- | 90 days |
| 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. | 6 years |

2. Data documenting circumstances that have given rise to a formal complaint against an officer.

A. Upon written request by a BWC and SCVC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of 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 received.

421.10.1 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.

421.10.2 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 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.

421.11 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).

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