



# INDEPENDENT AUDITOR'S REPORT

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Blackduck Police Department



DECEMBER 11TH, 2023  
RAMPART AUDIT LLC

## **Audit Overview and Recommendations**

Dear Blackduck City Council and Chief Arhart:

We have audited the body-worn camera (BWC) program of the Blackduck Police Department (BPD) for the two-year period ended 5/31/2022. Minnesota Statute §13.825 mandates that any law enforcement agency operating a portable recording system (PRS)<sup>1</sup> program obtain an independent, biennial audit of its program. This program and its associated data are the responsibility of the Blackduck Police Department. Our responsibility is to express an opinion on the operations of this program based on our audit.

On October 12, 2023, Rampart Audit LLC (Rampart) met with Chief Josh Arhart, who provided information about BPD's BWC program policies, procedures and operations. As part of the audit, Rampart reviewed those policies, 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 BPD's recordkeeping.

The Beltrami County Sheriff's Office (BCSO) hosts both the records management system (RMS) employed by BPD to record calls for service and cases, and the secure servers on which BPD's BWC data are stored; consequently, Chief Arhart met with Rampart at the Sheriff's Office in Bemidji, where we also conducted BCSO's BWC audit. Also present for a portion of the audit was Darby Shegrud of Beltrami County's Information Technology department.

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

### **BPD 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."

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<sup>1</sup> 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 BPD, these terms may be used interchangeably in this report.

Chief Arhart provided documentation showing that the public notification, comment and meeting requirements had been satisfied prior to the implementation of BCSO's BWC program. Specifically, Chief Arhart furnished the following:

1. A "Notice of Public Hearing to Receive Public Comment," which announced that a public hearing would be held at Blackduck City Hall at 6:00 P.M. on October 28, 2019, "to receive public comment for the Blackduck Police Department to purchase and implement a portable recording system." The notice indicated that comments could be submitted in writing or electronically before the meeting or in person during the meeting. While no specific directions were provided for submitting written or electronic comments, we noted that Blackduck City Hall's physical address was listed in the document, and that there was an email address included with the city's contact information at the bottom of the page.
2. An agenda dated October 28, 2019, for a Public Hearing on the "Implementation and Purchase [of] a portable recording system for the Blackduck Police Department." The contents of the agenda included: a description of Minn. Stat. §626.8473 Subd. 2; a review of the Portable Audio/Video Recorders policy, the Records Maintenance and Release Policy and the Protected Information policy; and a General Question and Answer session. The agenda also included the text of each of these items.
3. The minutes of the October 28, 2019, Public Hearing, which described information provided during the public hearing, as well as the discussion that followed.

Copies of these documents have been retained in Rampart's audit files. Rampart staff also verified that there was a working link to the Blackduck Police Department's written BWC policy on their webpage at the time of our audit.

In our opinion, BPD met the public notice and comment requirements prior to the implementation of their BWC program.

### **BPD BWC WRITTEN POLICY**

As part of this audit, we reviewed BPD'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 BPD BWC policy is compliant with respect to clauses 2 – 6.

### **BPD BWC Data Retention**

The Retention of Recordings section of BPD's BWC 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." BPD did not, however, provide a copy of their records retention schedule at the time of the audit.

In addition to the minimum 90-day retention period established in §13.825 Subd. 3(a), 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.

§13.825 Subd. 3(d) requires that, upon receipt of a written request from a data subject, the agency must retain a BWC recording beyond the applicable retention period for an additional period of time requested by the data subject of up to 180 days. BPD's policy does address such requests, but states merely that such videos "*may* [italics added] be retained for additional time period," and does not specify the length of that additional time period.

Prior to the issuance of this report, BPD submitted a revised BWC policy that includes the required retention periods specified in Subdivision 3(b) and 3(d). The revised policy is attached to this report as Appendix B.

BPD employs Panasonic body-worn cameras. The Beltrami County Sheriff's Office manages BWC data retention on BPD's behalf on their own secure server through automated retention settings in the Arbitrator 360 video management 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.

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

### **BPD BWC Data Destruction**

BCSO IT Technician Shegrud advised us that BPD BWC data are stored on a total of four BCSO-owned servers located on-site at the sheriff's office. These servers are backed-up on a nightly basis through an automated process to guard against unintentional loss of data.

Data on these servers 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, BPD's written BWC policy is compliant with respect to the applicable data destruction requirements.

### **BPD BWC Data Access**

Any request for access to BWC data by data subjects would be made in writing to the Beltrami County Sheriff's Office Records Department, which serves as the Custodian of Records for BPD BWC data. Chief Arhart and BCSO Records staff are then responsible for reviewing and fulfilling each request in accordance with the provisions of §13.825 Subd. 4(b).

BPD 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 BPD and other area law enforcement agencies address data classification, destruction and security requirements, as specified in §13.825 Subd. 8(b). Access to BPD BWC data for outside agencies is provided via optical disc.

BPD's BWC policy states that BPD's procedures should include a "process to obtain written authorization for access to non-public data by City of Blackduck members and members of other governmental entities and agencies," but does not identify such a process. We recommend that BPD obtain a written acknowledgement from each outside law enforcement agency that any BWC data obtained from BPD 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, BPD's written BWC policy is compliant with respect to the applicable data access requirements.

### **BPD BWC Data Classification**

BPD's BWC policy identifies all BWC data as private or nonpublic, "[e]xcept as provided in Minn. Stat. §13.825 Subd. 2." In our opinion, incorporating by reference the exceptions identified in §13.825 Subd. 2 satisfies the applicable data classification requirements.

### **BPD BWC Internal Compliance Verification**

The Review of Recorded Media Files section of the BPD BWC policy states that "[s]upervisors 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," but does not address the mandatory "supervisory or internal audits and reviews" to ensure compliance with the policy, as mandated by §626.8473 Subd. 3(b)(12).

Prior to the issuance of this report, BPD submitted a revised BWC policy that states: "[s]upervisors will periodically conduct spot checks (audits) of deputies Body Worn Camera footage and insure (sic) that officers are compliant with this policy." The policy also contains an amendment adding such audits as one of the authorized reasons for reviewing BWC footage.

The Accountability section of the BPD 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)." This subsection also references Minn. Stat. §626.8473. The revised BWC policy contains additional language noting that "[m]embers of the Blackduck Police Department that violate this policy will be subject to progressive discipline."

In our opinion, this revised policy is compliant with respect to the compliance and disciplinary requirements contained in §626.8473 Subd. 3(b)(12).

### **BPD BWC Program and Inventory**

BPD currently possesses two (2) Panasonic body-worn cameras.

The BPD BWC policy identifies those circumstances in which officers 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.

The Prohibited Use of Audio/Video Recorders section of the BPD BWC policy states in part that "[m]embers are prohibited from using personally owned recording devices while on-duty without the express consent of the Chief of Police or designee," and that "[m]embers are prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with office-issued or *personally owned recorders* [italics added]."

Minn. Stat. §13.825 Subd. 6, Use of agency-issued portable recording systems, states: "While on duty, a peace officer *may only use a portable recording system issued and maintained by the officer's agency* [italics added] in documenting the officer's activities."

Prior to the issuance of this report, BPD submitted a revised BWC policy that removes the language allowing the Chief of Police or designee to authorize the use of personally-owned equipment; however the reference to recordings created with personally owned recorders was not removed. We recommend removing the phrase referencing “personally owned recorders.” While nothing in BPD’s revised BWC policy authorizes the use of personally-owned recording devices, we also recommend that BPD add language to specifically prohibit the use of such devices.

While BPD does not maintain a separate log of BWC deployment or use, Chief Arhart advised us that because each officer wears a BWC while on duty, the number of BWC units deployed each shift can be determined based on a review of BPD payroll records. Actual BWC use would be determined based on the creation of BWC data.

As of 10/12/2023, BPD maintained approximately 60 BWC data files.

### **BPD BWC Physical, Technological and Procedural Safeguards**

BPD BWC data are initially recorded to an internal hard drive in each officer’s BWC. Those files are then transferred to the dedicated BWC servers at the Beltrami County Sheriff’s Office by means of a physical docking station utilizing a wired connection to the BCSO servers. The servers are secured behind multiple locked doors. As noted earlier in this report, BCSO employs multiple servers 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 BPD BWC data must be approved by Chief Arhart and are fulfilled via optical disc. A similar method is employed to submit BPD BWC data to the Beltrami County Attorney’s Office.

### **Enhanced Surveillance Technology**

BPD 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 BPD 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 132 calls for service (CFS) 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.

Due to changes in agency personnel, this audit occurred 17 months after the end of the review period; consequently, there were no retained BWC videos for any of the calls included in our call sample. The auditor then selected 10% of the videos that had been retained and reviewed them to verify that this data was accurately documented in BPD records.

### **Auditor's Note**

Minnesota Statutes §13.825 and §626.8473 were revised during the 2022-23 legislative session, with updates posted to the Revisor website after the completion of our audit fieldwork but prior to the issuance of this report.

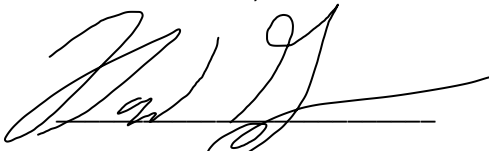
In reviewing these updates, we noted new requirements that are not addressed in Blackduck PD's current BWC policy in the following areas:

- Retention, access and public release of BWC data documenting deadly force incidents.
- Specifications regarding where a BWC is to be worn.
- Specific policy language prohibiting alteration, erasure or destruction of BWC data prior to the expiration of the applicable retention period.
- A requirement that the BWC policy mandate that an officer issued a BWC wear and operate it in compliance with his or her agency's policy while performing law enforcement activities under the command and control of another chief law enforcement officer or federal law enforcement official.

While not included in the scope of this audit, we encourage Blackduck Police Department to review these new requirements and revise their BWC policy accordingly.

### **Audit Conclusions**

In our opinion, the Blackduck Police Department's revised Body-Worn Camera Program is substantially compliant with Minnesota Statutes §13.825 and §626.8473 as posted on the Minnesota Revisor website as of October 12, 2023.



Daniel E. Gazelka

Rampart Audit LLC

12/11/2023



# APPENDIX A:

## PORTABLE AUDIO / VIDEO RECORDERS

### 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 City of Blackduck law enforcement, undercover operations, wiretaps or eavesdropping (concealed listening devices) unless captured by a portable recording system.

### 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.

### POLICY

The Blackduck 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.

### MEMBER PRIVACY EXPECTATION

All recordings made by members on any department issued device at any time or while acting in an official capacity of the 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.

### 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 shall 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 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.

### **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 Communication 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 reasonable 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.

### **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 officer shall narrate the intent and reason, if applicable, then ending the recording.

**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.

**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 any explosive device may be present.

**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 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.

**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 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 requests, if permitted or required by the Act, including pursuant of 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).

**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 shall 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 City of Blackduck members and members of other governmental entities and agencies.
- c. Establishing procedures for logging and 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 Blackduck Police Department.
  - 2. Daily record of the total number of 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 Blackduck 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 Blackduck Police Department that expands the type of scope of surveillance capabilities of the department's portable recorders.

### **PROHIBITED USE OF AUDIO / VIDEO RECORDERS**

Members are prohibited from using office-issued 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 of 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 maintained at the department.

Members are prohibited from using personally owned recording devices while on-duty without the express consent of the Chief of Police or designee. 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.

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

**RETENTION OF RECORDS**

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 on a recording submits a written request, the recording may be retained for an additional time period. The coordinator should be responsible for notifying the individual prior to destruction of the recording. (Minn. Stat. § 13.825).

**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.

**ACCESS TO RECORDINGS**

Except as provided in 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.

**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).

## APPENDIX B:

Copyright Lexipol, LLC 2023/03/08, All Rights Reserved. Published with permission by Beltrami County Sheriff's Office \*\*\*DRAFT\*\*\* Portable Audio/Video Recorders - 1 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. Members of the Beltrami County Sheriff's Office that violate this policy will be subject to progressive discipline. 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 turn on the portable recorder and insure it turns on, boots up, goes into standby mode, and is capable of being activated to initiate a recording. Deputies will periodically check to insure the device is recording and offloading to the portable recorder server. 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 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. 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. 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. Supervisors and Sergeants will periodically conduct spot checks (audits) of deputies Body Worn Camera footage and insure that Deputies are compliant with this policy. Recorded files may also be reviewed: (a) By a supervisor as part of internal audits and reviews as required by Minn. Stat. § 626.8473. (b) Upon approval by a supervisor, by any member of the Office who is participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation. (c) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case. (d) By media personnel with permission of the Sheriff or the authorized designee. (e) In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to Minn. Stat. § 13.82, Subd. 15, and in accordance with the Records Maintenance and Release Policy. 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). 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 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. (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. (h) Ensuring that this Portable Audio/Video Recorders Policy is posted on the Office website.

**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. 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.

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

In addition to the above retention periods, data which contains the following will be retained for the following categories:

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 including the use of force by a Deputy that results in substantial bodily harm
2. Data that documents the discharge of a firearm by a Deputy in the course of his duties
3. Data documenting circumstances that have given rise to a formal complaint against an officer

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.

**i. 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.

**ii. 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. b.

**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).