



INDEPENDENT AUDITOR'S REPORT

Fosston Police Department



OCTOBER 10TH, 2024

RAMPART AUDIT LLC

Audit Overview and Recommendations

Dear Fosston City Council and Chief Juve:

We have audited the body-worn camera (BWC) program of the Fosston Police Department (FPD) for the two-year period ended 04/20/2024. 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 Fosston Police Department. Our responsibility is to express an opinion on the operations of this program based on our audit.

On May 28, 2024, Rampart Audit LLC (Rampart) met with Officer Andrew Hanson who was tasked with showing Rampart the retained video from the sample and label matching. Rampart remotely communicated with Sgt Jim Juve, who provided information about FPD'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 FPD's recordkeeping.

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

FPD 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.

While Sgt Jim Juve provided documentation showing some of requirements had been met prior to the implementation of FPD's BWC program, not all were met as best he can determine. Specifically, Sgt Juve provided the following:

1. The Fosston Police Department had been disbanded years ago and was restarted in 2021 and officially swore in the new/first police chief on 12/7/2021. Sgt Juve provided City Council minutes documentation.
2. Sgt Juve provided an email stating that the FPD Motorola Account was created 4/21/2022 which would have been the earliest date they began creating BWC data.

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 FPD, these terms may be used interchangeably in this report.

3. Fosston Council meeting minutes dated 4/11/2022 noting BWC would be fully online by 4/28/2022

Rampart auditor found (and saved) a page from the Fosston City Website (also later provided by Juve) announcing a public comment solicitation from 6/16/2022 – 7/11/2022. However, no minutes could be found by Rampart nor by Sgt Juve showing that any regularly scheduled Council meeting had been held with opportunity for public comment.

Rampart advised Sgt. Juve to suspend FPD's BWC program until an after-the-fact public hearing could be held. Rampart received from Sgt. Juve proof of notice of a public hearing posted on the City Hall exterior bulletin board. The notice invited the public to submit comments about FPD's BWC program electronically or via the mail, or in person at a public hearing to be held during the September 16th, 2024, Fosston City Council meeting.

Copies of these documents have been retained in Rampart's audit files. In our opinion, Fosston Police Department made a good faith effort to meet the public notice requirement, but not the comment requirements prior to the implementation of their BWC program on or about April 21st, 2022.²

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."

Sgt Juve advised us that FPD does have a website with the policy published there. Rampart auditor confirmed a working link on the FPD website with a viewable policy. In our opinion, FPD is compliant with statutory requirements with the above noted exception of public comment at a meeting.

Prior to the completion of this report Sgt. Juve noted the public meeting had taken place with an opportunity for public comment and provided documentation via City Council Minutes.

FPD BWC WRITTEN POLICY

As part of this audit, we reviewed FPD'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) A prohibition on altering, erasing or destroying any recording made with a peace officer's portable recording system or data and metadata related to the recording prior the expiration of the applicable retention period under section 13.825 Subdivision 3, except that the full, unedited, and unredacted recording of a peace officer using deadly force must be maintained indefinitely;

² Sgt Juve (Acting interim Chief) advised us that Fosston PD's BWC program was implemented prior to his employment with the agency. From the limited records available, he determined the implementation most likely occurred on or about 4/21/2022.

- 3) A mandate that a portable recording system be worn at or above the mid-line of the waist in a position that maximizes the recording system's capacity to record video footage of the officer's activities;
- 4) A mandate that officers assigned a portable recording system wear and operate the system in compliance with the agency's policy adopted under this section while performing law enforcement activities under the command and control of another chief law enforcement officer or federal law enforcement official;
- 5) A mandate that, notwithstanding any law to the contrary, when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency must allow the deceased individual's next of kin, the legal representative of the deceased individual's next of kin, and the other parent of the deceased individual's child, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within five days of the request, with the following exception:
 - a) A law enforcement agency may deny a request if the agency determines that there is a compelling reason that inspection would interfere with an active investigation. If the agency denies access, the chief law enforcement officer must provide a prompt, written denial to the individual who requested the data with a short description of the compelling reason access was denied and must provide notice that relief may be sought from the district court pursuant to section 13.82 subdivision 7;
- 6) A mandate that, when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency shall release all portable recording system data, redacted no more than required by law, documenting the incident no later than 14 days after the incident, unless the chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by section 13.82 subdivision 7;
- 7) Procedures for testing the portable recording system to ensure adequate functioning;
- 8) 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;
- 9) Circumstances where recording is mandatory, prohibited, or at the discretion of the officer using the system;
- 10) Circumstances under which a data subject must be given notice of a recording;
- 11) Circumstances under which a recording may be ended while an investigation, response, or incident is ongoing;
- 12) Procedures for the secure storage of portable recording system data and the creation of backup copies of the data; and
- 13) 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.

In our opinion, the FPD BWC policy is compliant with respect to clauses 7 – 11.

Due to their complexity and interrelatedness, clauses 1 and 12 are discussed separately below. Clause 13 is also discussed separately.

Clauses 2 – 6 are newly added as a result of 2023 legislation and will also be discussed separately below.

FPD BWC Data Retention

A review of FPD's BWC policy and the limited retention schedule therein (which will be attached as Appendix A), has no retention schedule besides a reference in policy 423.8 that states in part that records shall be kept "...in no event for a period less than 90 days" and "The coordinator should work with the chief of police 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).

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

- 1) any reportable firearms discharge;
- 2) any use of force by an officer that results in substantial bodily harm; and
- 3) any incident that results in a formal complaint against an officer.

We recommend adding policy language to reflect these one year retention requirements.

Minn. Stat. §13.825 Subd. 3(c) requires that any portable recording system data documenting a peace officer's use of deadly force must be maintained indefinitely.

We recommend that FPD either explicitly include deadly force incidents within this retention category or create a separate deadly force category with a permanent (or indefinite) retention period.

Minn. Stat. §13.825 Subd. 3(d) requires that any portable recording system data be retained for an additional period of up to 180 days when so requested in writing by a data subject. FPD's policy states *"If an individual captured in a recording submits a written request, the recording shall be retained for an additional time period."* We recommend adding language to specify that the additional retention period shall be up to 180 days.

Prior to the submission of this report, Fosston Police Department submitted a revised BWC policy with an updated retention schedule for the recommendations noted above.

In addition, the Retention of Recordings section was revised to include the 180-day additional retention period described in Minn. Stat. §13.825 Subd. 3(d).

As noted above, FPD's BWC policy states that: "[a]ll 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;" in addition, the policy comprehensively addresses the requirements of Clause 2 of the Policy section by stating, "[M]embers shall not alter, erase, or destroy any recordings before the end of the applicable records retention period."

Prior to submission of this report, FPD submitted a revised BWC policy with language addressing these concerns. Specifically, the Retention of Recordings section of the policy now states:

"The following recordings shall be retained for the minimum period of (1) one year. 1) Any reportable firearm discharge. 2) Any use of force by an officer that results in substantial bodily harm. 3) Any incident that results in a formal complaint against an officer:

The following recordings shall be retained indefinitely: 1) Any recording documenting a Peace Officer's use of deadly force incident.

A copy of the updated policy was received and is added to this report as Appendix B.

FPD employs four (4) Motorola V300 body-worn cameras and utilizes Command Central Evidence. Every video has a 90-day minimum retention assigned. However, the current setup since inception is that all footage is retained until a manual purge takes place. Nothing that is evidentiary or falls under the statutory mandates is purged.

FPD's BWC policy has no specified written procedures with regard to uploading the data at end of shift. Sgt Juve noted that each officer is verbally trained and shown how to upload their Body Worn Camera data in the docking station. They do specify, *"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..."* Though not specified in the written policy, Sgt Juve advised Rampart that each officer is responsible for transferring or ensuring the proper transfer of the data from his/her BWC by the end of their shift and at the latest, by the end of their next scheduled duty shift.

Prior to the issuance of the report, FPD made changes to their policy by adding section 423.5.1 to incorporate mandatory labeling of the data by the end of their shift or if unable, at the next opportunity. Implied is that, to label the data, it must first be uploaded.

Officer Hanson advised us that the Motorola body-worn cameras utilize a physical docking station located at the Fosston Police Department and is uploaded physically. Sgt Juve confirmed the use of a docking station with a CAT 5/6 cable directly to their internet-based computer system which uploads directly to the Motorola cloud-based system.

The revised policy with new section as noted above is part of Appendix B.

In our opinion, FPD's revised written BWC policy is compliant with respect to applicable data retention requirements.

FPD BWC Data Destruction

As discussed above, FPD utilizes Motorola's Command Central Evidence for storage with retention periods set to indefinite. Deletion takes place manually by Chief or Sergeant as policy and statute require. Motorola certifies that its Cloud Service is compliant with the Federal Bureau of Investigation's Criminal Justice Information System Security Division Policy as required by Minnesota Statute §13.825 Subd. 11(b). Data destruction is achieved through automated deletion and overwriting, with storage devices sanitized (overwritten three or more times or degaussed) or physically destroyed upon being removed from service.

FBI CJIS policy requires that hard drives used for CJIS data storage are sanitized by overwriting at least three times or degaussing prior to being released to unauthorized individuals, while inoperable drives must be destroyed through physical means such as shredding.

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

FPD BWC Data Access

Regarding Records Maintenance and Release, FPD's BWC policy states that BWC data may be reviewed "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." It goes on to state in what other circumstances the data may be reviewed. See original policy attached as Appendix A.

FPD's BWC policy does not specifically address the sharing of BWC data with other law enforcement agencies, though it notes that BWC data may be reviewed "[p]ursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case." Sgt Juve advised us that any associated BWC data are shared with the prosecutor as part of the case submission process. And anyone can submit a written disclosure request form for body worn camera footage and would then need to be approved by the Chief of Police or the Sergeant. Citizens would receive a USB drive with the requested/approved data.

BWC video is shared via law enforcement and prosecutors through an internet link which expires after 90 days, subject to any required redaction. Sgt Juve indicated to us that FPD's obligations under §13.825 Subd. 7 and Subd. 8, which include a requirement to maintain BWC data security are currently done through verbal and mutual understanding. We suggest FPD take requests from other departments and prosecutors by email and in the response have a line indicating the other parties' obligations under Chapter 13 and maintain copies/folder of these requests. Sgt Juve indicated that they will take this advice.

As discussed in Clauses 5 and 6 of the Policy section of this report, the Minnesota State Legislature in 2023 added specific access requirements related to BWC data that document deadly force incidents, and specified that these requirements must be included in the agency's BWC policy. At the time of our audit, FPD had implemented one of the requirements (wearing BWC) but not revised its BWC policy to address the remaining requirements.

In our opinion, FPD's current written BWC policy is not compliant with respect to the applicable data access requirements:

1. The BWC policy must state that, notwithstanding any law to the contrary, when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency must allow the deceased individual's next of kin, the legal representative of the deceased individual's next of kin, and the other parent of the deceased individual's child, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within five days of the request, unless the agency determines that there is a compelling reason that inspection would interfere with an active investigation. If the agency denies access, the chief law enforcement officer must provide a prompt, written denial to the individual who requested the data with a short description of the compelling reason access was denied and must provide notice that relief may be sought from the district court pursuant to section 13.82 subdivision 7.

2. The BWC policy must state that, when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency shall release all portable recording system data, redacted no more than required by law, documenting the incident no later than 14 days after the incident, unless the chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by section 13.82 subdivision 7. Rampart Audit, LLC 7 These requirements were newly added in 2023 by the Minnesota State Legislature. Prior to the issuance of this report, FPD submitted a revised BWC policy that addresses the exceptions noted above. In our opinion, this revised BWC policy is compliant with respect to the applicable data access requirements.

However, prior to issuing this report, FPD submitted an updated policy addressing the statutory requirements of clause 5 and 6, including wording substantially similar to the block of language in Minn. Statute 13.825 subd. 2 and the updated policy is attached as Appendix B.

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

FPD BWC Data Classification

FPD's BWC Policy states that "[e]xcept as provided by Minn. Stat. §13.825, Subd. 2, audio/video recordings are considered private or nonpublic data," and further states that "BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently."

As noted in the preceding section, prior to the issuance of this report, FPD submitted a revised BWC policy that addresses the changes the Minnesota State Legislature made in 2023 regarding BWC data documenting incidents involving the use of deadly force. In our opinion, this revised policy is compliant with respect to the applicable data classification requirements.

FPD BWC Internal Compliance Verification

The FPD BWC Compliance section states that recorded files may be reviewed "[b]y a supervisor as part of internal audits and reviews as required by Minn. Stat. §626.8473." Sgt Juve advised us that he was acting Chief until FPD recently hired a new Chief. He further noted that he did monthly video reviews of officer BWC data but that it is not specified in policy or procedure. All access to BWC data is documented automatically, with reviews logged in the Motorola Evidence software as "review/audit." Sgt Juve can monitor access.

Prior to the submission of this report, FPD submitted a revised BWC policy that strengthens the internal compliance verification procedures by adding the following requirements to the Compliance section of the policy:

The CLEO [chief law enforcement officer] or designee will review BWC recordings of each recording device/officer randomly on a weekly basis. The [CLEO] or designee will randomly audit the history of the BWC files to ensure that no unauthorized downloading or viewing took place. In the event of a violation, the violator will be disciplined in accordance with department policy.

FPD's BWC policy states that:

Prior to going into service, uniformed members will be responsible for making sure that they are 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 their supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner at or above the mid-line of the waist and notify persons that they are being recorded, whenever reasonably practicable (Minn. Stat. § 626.8473).

As noted in Clause 3 of the Policy section of this report, the 2023 legislative updates require that a BWC policy specify that the device be worn at or above the mid-line of the waist. We find this portion of policy to comply with legislative requirements.

The Prohibited Use of Audio/Video Recorders section of the policy states that:

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 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.

Minn. Stat. §13.825 Subd. 6 states that "[w]hile 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."

Prior to the submission of this report, FPD submitted a revised BWC policy that amends the passage quoted above to read: "*Members are prohibited from using personally owned recording devices while on duty.*" The update removes the language allowing the chief or designee to authorize the use of personally-owned recording devices.

As discussed in Clause 4 of the Policy section of this report, the 2023 legislative changes require that an agency's BWC policy must specify that an officer assigned a BWC must wear and operate the system in compliance with the agency's BWC policy while performing law enforcement activities under the command and control of another chief law enforcement officer or federal law enforcement official. FPD's BWC policy does not contain this required provision.

Prior to the issuance of this report, FPD submitted a revised version of their BWC policy adding the language described in the preceding paragraph.

The Accountability section of FPD's written BWC policy addresses disciplinary consequences associated with the inappropriate access to or release of BWC recordings, while the revised policy addresses unauthorized alteration, destruction, downloading or viewing of BWC data. We recommend that FPD revise this language to clarify that any violation of the policy may result in disciplinary action as well as potential criminal penalties.

Prior to the issuance of this report, Rampart received a revised policy addressing the policy language noted in the preceding paragraph.

In our opinion, FPD's revised policy is compliant with respect to the compliance and disciplinary requirements contained in §626.8473 Subd. 3(b)(8).

FPD BWC Program and Inventory

FPD currently possesses four (4) Motorola V300 body-worn cameras.

The FPD BWC policy identifies those circumstances in which officers are expected to activate their body-worn cameras. The policy also provides guidance for those circumstances in which BWC activation is deemed discretionary.

Sgt Juve advised us that he is able to determine the number of BWCs deployed by reviewing Motorola software of recordings. If an officer was on duty but made no recordings, they would determine BWC deployment by the shift schedule and/or payroll data.

As of the in-person audit date, 5/28/24 FPD maintained 2,168 BWC video files.

FPD BWC Physical, Technological and Procedural Safeguards

FPD BWC data are initially recorded to a hard drive in each officer's BWC. Data from each BWC is then uploaded to Motorola's Command Central Evidence Cloud Service via a physical docking station located at the Fosston Police Department. The current default retention of BWC data is permanent/indefinite unless marked for purging by the Sgt or Chief. There is no current auto-delete function.

Officers have view-only access to their own data for report writing, trial preparation, data administration, investigatory purposes and other legitimate law enforcement purposes, as well as the ability to add or edit case numbers and titles. All BWC data access is logged automatically and available for audit purposes.

BWC data is only destroyed via an intentional purging of video after an expired retention period defined for the specific data classification in Command Central Evidence.

Enhanced Surveillance Technology

FPD currently employs BWCs with only standard audio/video recording capabilities. While Sgt Juve advised us that FPD may upgrade their BWC in the future to stay current with technology, FPD has 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 FPD 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 calls 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 FPD records.

Audit Conclusions

In our opinion, the Fosston Police Department's Body-Worn Camera Program is substantially compliant with Minnesota Statutes §13.825 and §626.8473.

Daniel E. Gazelka

Rampart Audit LLC

10/01/2024

APPENDIX A:

Policy

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Fosston Police Department

Fosston PD Policy Manual

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Portable Audio/Video Recorders

423.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties (Minn. Stat. § 626.8473). Portable audio/video recording devices include all recording systems whether body-worn, hand-held, or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews, or interrogations conducted at any Fosston Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

423.1.1 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.

423.2 POLICY

The Fosston 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.

423.3 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.

(a) The coordinator should work with the Chief of Police 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) The coordinator should work with the Chief of Police 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 FPD members and members of other governmental entities and agencies.

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(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 Fosston Police Department.

2. Daily record of the total number deployed and used by members and, if

applicable, the precinct or district in which the devices were used.

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

(h) Ensuring that this Portable Audio/Video Recorders Policy is posted on the Department website.

423.4 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.

423.5 MEMBER RESPONSIBILITIES

Prior to going into service, uniformed members will be responsible for making sure that they are equipped with a portable recorder issued by the 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 their supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner at or above the mid-line of the waist and 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 their 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

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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.

423.6 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 Dispatch
- (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.

423.6.1 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.

423.6.2 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).

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Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

423.6.3 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.

423.7 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 Sergeant. 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.

423.8 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 shall 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).

Members shall not alter, erase, or destroy any recordings before the end of the applicable records retention period (Minn. Stat. § 626.8473).

423.8.1 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.

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423.8.2 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.

423.9 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.

423.10 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:

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(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 Department 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 Chief of Police 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).

423.11 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).

APPENDIX B:

Policy

423

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Portable Audio/Video Recorders

423.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties (Minn. Stat. § 626.8473). Portable audio/video recording devices include all recording systems whether body-worn, hand-held, or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews, or interrogations conducted at any Fosston Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

423.1.1 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.

423.2 POLICY

The Fosston 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.

423.3 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.

(a) The coordinator should work with the Chief of Police 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) The coordinator should work with the Chief of Police 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 FPD members and members of other governmental entities and agencies.

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(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 Fosston Police Department.

2. Daily record of the total number deployed and used by members and, if

applicable, the precinct or district in which the devices were used.

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

(h) Ensuring that this Portable Audio/Video Recorders Policy is posted on the Department website.

423.4 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.

423.5 MEMBER RESPONSIBILITIES

Prior to going into service, uniformed members will be responsible for making sure that they are equipped with a portable recorder issued by the 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 their supervisor and obtain a functioning device as soon as reasonably practicable. Uniformed members should wear the recorder in a conspicuous manner at or above the mid-line of the waist and 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 their 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

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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.

423.5.1 PROPER MARKING OF FOOTAGE

It is the responsibility of each member to ensure all recordings are properly marked at the end of each shift. If for some reason member is unable to mark recording at the end of shift, it is to be done at the next opportunity. All recordings will be marked correctly before days off begin. Each recording shall be marked with call type, officer, and retention period. Title of each recording will be the corresponding CFS or ICR number.

423.6 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 Dispatch

(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.

423.6.1 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

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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.

423.6.2 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.

423.6.3 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.

423.7 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.

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.

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

423.8 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 shall be retained for 180 days. The coordinator should be responsible for notifying the individual prior to destruction of the recording (Minn. Stat. § 13.825).

The following recordings shall be retained for the minimum period of (1) one year.

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1) Any reportable firearm discharge. 2) Any use of force by an officer that results in substantial bodily harm. 3) Any incident that results in a formal complaint against an officer:

The following recordings shall be retained indefinitely:

1) Any recording documenting a Peace Officer's use of deadly force incident.

Members shall not alter, erase, or destroy any recordings before the end of the applicable records retention period (Minn. Stat. § 626.8473).

423.8.1 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.

Notwithstanding section 13.82, subdivision 7, when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency must allow the following individuals, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within five days of the request, subject to paragraphs (c) and (d):

(1) the deceased individual's next of kin;

(2) the legal representative of the deceased individual's next of kin; and

(3) the other parent of the deceased individual's child.

(c) A law enforcement agency may deny a request to inspect portable recording system data under paragraph (b) if the agency determines that there is a compelling reason that inspection would interfere with an active investigation. If the agency denies access under this paragraph, the chief law enforcement officer must provide a prompt, written denial to the individual in paragraph (b) who requested the data with a short description of the compelling reason access was denied and must provide notice that relief may be sought from the district court pursuant to section 13.82, subdivision 7.

(d) When an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency shall release all portable recording system data, redacted no more than what is required by law, documenting the incident no later than 14 days after the incident, unless the

chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by section 13.82, subdivision 7.

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423.8.2 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.

423.9 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.

423.10 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:

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(a) The Chief of Police or designee will review recorded files of each recording device/officer randomly on a weekly basis, minimum of 3 per month. The Chief of Police or designee will randomly audit the history of the recorded files to ensure that no unauthorized downloading or viewing took place. In the event of a violation, the violator will be disciplined in accordance with department policy.

(b) 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.

(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 Chief of Police 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 Chief of Police or designee 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).

Officers assigned a portable recording system wear and operate the system in compliance with the agency's policy adopted under this section while performing law enforcement activities under command and control of another chief law enforcement officer or federal law enforcement official; Notwithstanding any law to the contrary, when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency must allow the following individuals, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within five days of the request, except as otherwise provided in this clause and clause (5):

- (i) the deceased individual's next of kin;
- (ii) the legal representative of the deceased individual's next of kin;
- (iii) the other parent of the deceased individual's child.

A law enforcement agency may deny a request if the agency determines that there is a compelling reason that inspection would interfere with an active investigation. If the agency denies access, the chief law enforcement officer must provide a prompt, written denial of the individual who requested the data with a short description of the compelling reason access was denied and must provide notice that relief may be sought from the district court pursuant to section 13.82, subdivision 7; When an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency shall release all portable recording system data, redacted no more than what is required by law, documenting the incident no later than 14 days after the incident, unless the

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chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by section 13.82, subdivision 7.

423.11 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). Unauthorized alteration, destruction, downloading or viewing of BWC/recorded data is prohibited. Any violation of the policy may result in disciplinary action as well as potential criminal penalties.