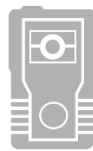




# INDEPENDENT AUDITOR'S REPORT

---

Clay County Sheriff's Office



FEBRUARY 18TH, 2025

RAMPART AUDIT LLC

## **Audit Overview and Recommendations**

Dear Clay County Board and Sheriff Empting:

We have audited the body-worn camera (BWC) program of the Clay County Sheriff's Office (CCSO) for the two-year period ended 11/23/2024. 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 Clay County Sheriff's Office. Our responsibility is to express an opinion on the operations of this program based on our audit.

On December 20, 2024, Rampart Audit LLC (Rampart) met with Lt. Josh Schroeder, who provided information about CCSO'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 CCSO's recordkeeping.

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

### **CCSO 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."

Rampart previously audited Clay County Sheriff's Office's BWC program in 2022. As part of that audit, CCSO personnel provided documentation showing that the public notification, comment and meeting requirements had been satisfied prior to the implementation of CCSO's BWC program on November 24, 2020. Specifically, CCSO furnished the following:

- A copy of a press release dated August 6, 2020, announcing CCSO's plan to implement a BWC program and inviting the public to provide comment electronically, by mail or in person at the September 22, 2020, meeting of the Clay County Board.

---

<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 CCSO, these terms may be used interchangeably in this report.

- A copy of the minutes of the September 22, 2020, Clay County Board meeting, which included a section titled “Public Hearing – Input on Body Worn Cameras for Sheriff’s Office.” The meeting minutes noted multiple comments from members of the public, all of which were in favor of adopting body-worn cameras. After further discussion, the board members voted unanimously to approve the program. Copies of these documents have been retained in Rampart’s audit files.

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

Rampart verified that there was a working link to the Clay County Sheriff’s Office’s written BWC policy on their webpage at the time of our audit, as well as a separate link to the agency’s BWC data retention schedule.

In our opinion, CCSO is compliant with this requirement.

### **CCSO BWC WRITTEN POLICY**

As part of this audit, we reviewed CCSO’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;
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 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 CCSO 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.

### **CCSO BWC Data Retention**

Minn. Stat. §13.825 Subd. 3(a) establishes a minimum retention period of 90 days for all BWC data not subject to a longer retention period, while §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.

Meanwhile, Subd. 3(c) requires that any portable recording system data documenting a peace officer's use of deadly force must be maintained indefinitely. Finally, Subd. 3(d) requires that an agency retain BWC recordings for an additional period of up to 180 days when so requested in writing by a data subject.

Section 422.10 of CCSO'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 of less than 90 days," which satisfies the requirements of Minn. Stat. §13.825 Subd. 3(a).

This same section of CCSO's BWC policy specifies that BWC data documenting a reportable firearm discharge will be maintained for at least one year, while BWC data documenting a use of "force of a sufficient type or degree to require a use of force report or supervisory review" as well as "[d]ata documenting circumstances that have given rise to a formal complaint against a deputy" will be retained for six years, which meets or exceeds the requirements of §13.825 Subd. 3(b).

This section of CCSO's BWC policy also specifies that "[d]ata that documents the use of deadly force by a peace officer whether or not death occurs must be kept indefinitely," as required by §13.825 Subd. 3(c).

This section of CCSO's BWC policy also states that "[i]f an individual captured in a recording submits a written request, the recording shall be retained for an additional 180 days. The coordinator should be responsible for notifying the individual prior to destruction of the recording," This is consistent with the requirements of §13.825 Subd. 3(d).

Finally, this section of CCSO's BWC policy states that "[m]embers shall not alter, erase, or destroy any recordings before the end of the applicable records retention period." As discussed in Clause 2 of the Policy section of this report, Minn. Stat. §626.8473 Subd. 3(d) requires that this prohibition also extend to deleting associated data or metadata prior to the expiration of the required retention period. We recommend that CCSO amend its BWC policy to meet this requirement.

CCSO currently employs Getac body-worn cameras and uses automated settings in Getac's Enterprise cloud system to manage BWC data retention. The retention period for each video is determined by the data classification assigned at the completion of the recording; however, this retention period can be adjusted as needed.

CCSO employed WatchGuard Vista body-worn cameras prior to September of 2023 and has retained BWC data stored on an on-site server. CCSO uses automated settings in Watchguard's Evidence Library video management system to manage BWC data retention on this server. As with the current Getac system, the retention period for each video is determined by the data classification assigned at the completion of the recording but can also be adjusted as needed.

A deputy's Getac body-worn camera and squad camera are linked; consequently, activating one camera automatically activates the other, provided the two cameras are turned on and within range of each other. BWC and squad camera uploads to CCSO's server are automated and self-initiate as soon as a camera is within range of the antennas at the Clay County Sheriff's Office. In addition, BWCs can be physically docked at the sheriff's office.

Deputies assign the appropriate label or labels to each file to identify the nature of the data at the time they cease recording. These labels then determine the appropriate retention period for each file. If a deputy fails to assign a label, the default retention period is 365 days to avoid the accidental loss of data.

In our opinion, CCSO's BWC policy is compliant with respect to the applicable data retention requirements, except for the requirement concerning associated data and metadata discussed above.

## **CCSO BWC Data Destruction**

As discussed above, CCSO's current BWC data are stored on Getac's cloud-based service, with data retention and deletion schedules managed automatically through the Getac software based on the assigned data classification of each video.

Getac utilizes Microsoft's Azure Government environment for cloud storage. Microsoft certifies this environment as being compliant with the current Federal Bureau of Investigation Criminal Justice Information Services Division Security Policy (5.9.2), and notes that it has signed CJIS management agreements with 45 of the 50 U.S. states, including Minnesota, to verify compliance with state CJIS requirements.

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.

CCSO's previous WatchGuard BWC data are stored on a server located on-site. WatchGuard data 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 CCSO-owned physical hard drive used to store BWC data will have all data deleted prior to being destroyed by physical means. Lt. Schroeder advised us that this is done under the supervision of Clay County IT staff.

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

## **CCSO BWC Data Access**

Any request for access to BWC data by data subjects would be made in writing to the CCSO Records Department using a specified data request form. The records supervisor is then responsible for reviewing and fulfilling each request in accordance with the provisions of §13.825 Subd. 4(b). BWC video is provided to data subjects on DVD.

The "Release of Audio/Video Recordings" section of CCSO's BWC policy addresses the access requirements related to BWC data documenting deadly force incidents, as discussed in Clauses 5 and 6 of the Policy Section of this report.

Though not addressed in the policy, CCSO BWC data is shared with other law enforcement agencies for evidentiary purposes only. All such requests are made by email and reviewed by the Lieutenant of Operations. Existing verbal agreements between CCSO and other area law enforcement agencies address data classification, destruction and security requirements, as specified in §13.825 Subd. 8(b). At the time of the audit, CCSO was evaluating the addition of a written acknowledgment of these requirements from requesting agencies. Access to CCSO BWC data for outside agencies is provided via an expiring email link.

We recommend that CCSO add language clarifying that BWC data is shared with other agencies only for legitimate law enforcement purposes that are documented in writing at the time of the request. We also recommend that they obtain a written acknowledgement from any outside law enforcement

agency that any BWC data obtained from CCSO 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, CCSO's written BWC policy is compliant with respect to the applicable data access requirements.

### **CCSO BWC Data Classification**

CCSO's written BWC policy notes that "[e]xcept as provided by Minn. Stat. §13.825, Subd. 2, audio/video recordings are considered private or nonpublic data."

In our opinion, incorporating by reference the exceptions identified in §13.825 Subd. 2 satisfies the applicable data classification requirements.

### **CCSO BWC Internal Compliance Verification**

Minnesota Statute §626.8473 Subd. 3(b)(8) requires that a written BWC policy contain "procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits or reviews..."

The Review of Recorded Media Files section of the CCSO BWC policy states that BWC recordings may be reviewed "[b]y a supervisor as part of internal audits and reviews as required by Minn. Stat. §626.8473." This section of the BWC policy also states that "[t]he Lieutenant of the Operations Division shall conduct random reviews of BWC on a monthly basis to verify the policy herein is being complied with."

In our opinion, this satisfies the requirements of §626.8473 Subd. 3(b)(8).

The Member Responsibilities section of CCSO's BWC policy states:

Any deputy assigned a portable recording system shall wear and operate the system in compliance with the Sheriff's Office policy adopted under this section while performing law enforcement activities under the command of another chief law enforcement officer or federal law enforcement official to include any secondary task force assignments.

In our opinion, this satisfies the requirements discussed in Clause 4 of the Policy section of this report.

The Accountability section of CCSO's BWC policy states that "[a]ny member who accesses or releases recordings without authorization may be subject to discipline." Because certain violations of Minn. Stat. Chapter 13 can be charged as misdemeanors, we recommend that CCSO add language noting that violations of the BWC policy may also result in criminal prosecution.

In our opinion, these sections of CCSO's BWC policy are substantially compliant with the applicable internal compliance and disciplinary requirements contained in §626.8473 Subd. 3(b)(8).

## **CCSO BWC Program and Inventory**

CCSO currently possesses 30 Getac BC-03 body-worn cameras, of which 28 are assigned to individual deputies and two are held as spares.

The CCSO BWC policy identifies those circumstances in which deputies are expected to activate their body-worn cameras, as well as circumstances in which they are prohibited from activating their body-worn cameras. The policy also provides guidance for those circumstances in which BWC activation is deemed discretionary.

The CCSO BWC policy states that “[p]rior to going into service, uniformed members will be responsible for making sure that they are equipped with a portable recorder issued by the Office, and that the recorder is in good working order.”

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

As discussed above, CCSO’s BWC policy requires that CCSO personnel use portable recorders issued by the Office. Lt. Schroeder previously advised us that CCSO-issued cell phones, which are devices owned and maintained by the agency, could be used as substitute recording devices in an emergency.

As of the date of the audit, CCSO maintained approximately 3,342 GB of Watchguard and Getac A/V data. Lt. Schroeder advised us that these totals include both BWC and squad videos, and that the vendors are currently unable to provide individual summaries.

Rampart is aware that this is a limitation with certain manufacturers’ BWC systems when used in conjunction with their squad-based cameras and has previously established that while laborious, it is possible for an agency to determine the amount of retained BWC video through a manual review and therefore meet the statutory requirement to provide such information as public data if requested.

In our opinion, CCSO’s BWC policy is compliant with respect to requirements addressed in this section.

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

CCSO BWC data are initially recorded to an internal hard drive in each deputy’s BWC. Those files are then transferred to Getac Cloud, Getac’s cloud-based storage service. Transfer can occur either through physical docking at the sheriff’s office, or via wireless upload through in-squad docking.

As discussed earlier in this report, CCSO previously used WatchGuard cameras and employed an in-house server to store BWC data. That server will continue to be held in a secure location until all retained BWC data has expired and been deleted, at which time the server will be retired from service. Upon retirement, any hard drives that have previously contained BWC data are physically destroyed under the supervision of Clay County IT staff.



Deputies have view-only access to their own data for report writing, trial preparation, data administration, investigatory purposes and other legitimate law enforcement purposes.

As noted above, requests by other law enforcement agencies for CCSO BWC data must be approved by Lt. Schroeder and are fulfilled primarily via expiring email link, though physical media may also be used as necessary. A similar method is employed to submit CCSO BWC data to the Clay County Attorney's Office.

The Member Responsibilities section of CCSO's BWC policy states: "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," while the policy merely requires that non-uniformed personnel "wear the recorder in a conspicuous manner." Because §626.8473 Subd. 3(b)(2) makes no distinction between uniformed and non-uniformed personnel, we recommend that CCSO amend their policy to direct all members to wear their BWC at or above the midline of the waist in order to fully satisfy the requirement discussed in Clause 3 of the Policy section of this report.

### **Enhanced Surveillance Technology**

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

**Audit Conclusions**

In our opinion, the Clay County Sheriff's Office's Body-Worn Camera Program is substantially compliant with Minnesota Statutes §13.825 and §626.8473 as of the date of this report.



Rampart Audit LLC

2/18/2025

# APPENDIX A:

Policy

**422**

## Clay County Sheriff's Office

Clay Cnty SO Policy Manual

---

### Portable Audio/Video Recorders

#### **422.1 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, hand-held, or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews, or interrogations conducted at any Clay County Sheriff's Office facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

##### **422.1.1 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.

#### **422.2 POLICY**

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

#### **422.3 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.

#### **422.4 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 Office, 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 deputy assigned a portable recording system shall wear and operate the system in compliance with the Sheriff's Office policy adopted under this section while performing law enforcement activities under the command of another chief law enforcement officer or federal law enforcement official to include any secondary task force assignments.

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 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.

### **422.5      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 RRRDC
- (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.

## *Portable Audio/Video Recorders*

---

### 422.5.1 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.

### 422.5.2 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.

### 422.5.3 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.

## **422.6 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.

### **422.7 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) 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). The Lieutenant of the Operations Division shall conduct random reviews of BWC on a monthly basis to verify the policy herein is being complied with.

### **422.8 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).

# Clay County Sheriff's Office

## *Portable Audio/Video Recorders*

---

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 CCSO 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 Clay 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 Clay 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 Clay 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.

### **422.9 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. Members shall not duplicate or distribute such recordings, except for authorized legitimate office business purposes. All such recordings shall be retained at the Office.

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

### **422.10 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.



# Clay County Sheriff's Office

## *Portable Audio/Video Recorders*

---

If an individual captured in a recording submits a written request, the recording shall be retained for an additional 180 days.. The coordinator should be responsible for notifying the individual prior to destruction of the recording (Minn. Stat. § 13.825).

The following data would be retained for the following retention periods.

Data that documents the use of deadly force by a peace officer whether or not death occurs must be kept indefinitely.

(a) BWC data with any evidentiary value will be retained for a minimum of 180 days.

(b) Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training, killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.

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

1. Force of a sufficient type or degree to require a use of force report or supervisory review.
- 2.. Data documenting circumstances that have given rise to a formal complaint against a deputy.

Members shall not alter, erase, or destroy any recordings before the end of the applicable records retention period (Minn. Stat. 13.825)

The Clay County Sheriff's Office BWC data retention schedule is located on the Clay County Sheriff's Office website.

### 422.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

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

If an individual dies as a result of use of force by a Clay County deputy, the Clay County Sheriff's Office shall release all portable recording system data, redacted no more than allowed by law, documenting the incident no later than 14 days after the incident, unless the Sheriff asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data shall remain classified pursuant to Minn Stat. 13.82 Subd 7.

Not with standing any law to the contrary, when an individual dies as a result of a use of force by a peace officer, the sheriff's office, if involved, must allow the deceased individual's next of kin, legal representative of the next of kin, or a parent of a deceased 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:

1. The Clay County Sheriff's Office may deny a request if the agency determines that there is a compelling reason that the inspection would interfere with an active investigation. If the Sheriff's Office denies access, the Sheriff must provide a prompt, written denial to the individual requesting the data outlining the reason access was denied and provide notice that relief may be sought through district court pursuant to Minn Stat. 13.82 Subd 7.

### **422.10.2 ACCESS TO RECORDINGS**

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

Any person captured in a recording may have access to the recording. If the individual requests a copy of the recording and does not have the consent of other non-law enforcement individuals captured on the recording, the identity of those individuals must be blurred or obscured sufficiently to render the subject unidentifiable prior to release. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17.

### **422.11 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

**422**

Clay County Sheriff's Office

Clay Cnty SO Policy Manual

---

### Portable Audio/Video Recorders

#### **422.1 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, hand-held, or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews, or interrogations conducted at any Clay County Sheriff's Office facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

##### **422.1.1 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.

#### **422.2 POLICY**

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

#### **422.3 MEMBER PRIVACY EXPECTATION**

# Clay County Sheriff's Office

## *Portable Audio/Video Recorders*

---

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.

### **422.4 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 Office, 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 deputy assigned a portable recording system shall wear and operate the system in compliance with the Sheriff's Office policy adopted under this section while performing law enforcement activities under the command of another chief law enforcement officer or federal law enforcement official to include any secondary task force assignments.

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 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.

### **422.5 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.

# Clay County Sheriff's Office

## *Portable Audio/Video Recorders*

---

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 RRRDC
- (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.

## *Portable Audio/Video Recorders*

---

### 422.5.1 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.

### 422.5.2 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.

### 422.5.3 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.

## **422.6 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.

### **422.7 REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- (a) 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). The Lieutenant of the Operations Division shall conduct random reviews of BWC on a monthly basis to verify the policy herein is being complied with.

### **422.8 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).

# Clay County Sheriff's Office

## *Portable Audio/Video Recorders*

---

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.
  - (a) These procedures should include the process to obtain written authorization for access to non-public data by CCSO members and members of other governmental entities and agencies only for legitimate law enforcement purposes that are documented in writing at the time of the request.
- (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 Clay 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 Clay 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 Clay 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.

### **422.9 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. Members shall not duplicate or distribute such recordings, except for authorized legitimate office business purposes. All such recordings shall be retained at the Office.

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

### **422.10 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.



# Clay County Sheriff's Office

## *Portable Audio/Video Recorders*

---

If an individual captured in a recording submits a written request, the recording shall be retained for an additional 180 days.. The coordinator should be responsible for notifying the individual prior to destruction of the recording (Minn. Stat. § 13.825).

The following data would be retained for the following retention periods.

Data that documents the use of deadly force by a peace officer whether or not death occurs must be kept indefinitely.

(a) BWC data with any evidentiary value will be retained for a minimum of 180 days.

(b) Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training, killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.

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

1. Force of a sufficient type or degree to require a use of force report or supervisory review.
- 2.. Data documenting circumstances that have given rise to a formal complaint against a deputy.

Members shall not alter, erase, or destroy any recordings before the end of the applicable records retention period (Minn. Stat. 13.825)

The Clay County Sheriff's Office BWC data retention schedule is located on the Clay County Sheriff's Office website.

### 422.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

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

If an individual dies as a result of use of force by a Clay County deputy, the Clay County Sheriff's Office shall release all portable recording system data, redacted no more than allowed by law, documenting the incident no later than 14 days after the incident, unless the Sheriff asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data shall remain classified pursuant to Minn Stat. 13.82 Subd 7.

Not with standing any law to the contrary, when an individual dies as a result of a use of force by a peace officer, the sheriff's office, if involved, must allow the deceased individual's next of kin, legal representative of the next of kin, or a parent of a deceased 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:

1. The Clay County Sheriff's Office may deny a request if the agency determines that there is a compelling reason that the inspection would interfere with an active investigation. If the Sheriff's Office denies access, the Sheriff must provide a prompt, written denial to the individual requesting the data outlining the reason access was denied and provide notice that relief may be sought through district court pursuant to Minn Stat. 13.82 Subd 7.

#### 422.10.2 ACCESS TO RECORDINGS

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

Any person captured in a recording may have access to the recording. If the individual requests a copy of the recording and does not have the consent of other non-law enforcement individuals captured on the recording, the identity of those individuals must be blurred or obscured sufficiently to render the subject unidentifiable prior to release. The identity of on-duty peace officers may not be obscured unless their identity is protected under Minn. Stat. § 13.82, Subd. 17.

#### **422.11 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).