

Portable Audio/Video Recorders

423.1 INTRODUCTION

It is our mission to provide superior law enforcement services through the advancement of technology. To further achieve this goal, body-worn cameras will be used for the purpose of documenting evidence and accurately capturing contacts between members of the department and the public. The Corcoran Police Department is committed to the utilization of body-worn cameras as a means to reach this goal.

423.2 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 Corcoran Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

423.2.1 DEFINITIONS

Definitions related to this policy include:

(a.) **Portable recording system (PRS)** - 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

(b.) **MGDPA or Data Practices Act:** refers to the Minnesota Government Data Practices Act, Minn. Stat. 13.01, et seq.

(c.) **Records Retention Schedule:** refers to the General Records Retention Schedule for Minnesota Cities.

(d.) **Law Enforcement Related Information:** means information captured or available for capture by use of a portable recording device that has evidentiary value because it documents events with respect to a stop, arrest, search, citation or charging decision.

(e.) **Evidentiary Value:** means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer.

(f.) **General Citizen Contact:** means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a tow truck, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

(g.) **Adversarial:** means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or

Corcoran Police Department

Corcoran PD Policy

Portable Audio/Video Recorders

at least one person directs toward the other, verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

(h.) **Unintentional Recorded Footage:** is a video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in police department locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

(i.) **Official Duties:** for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this department.

423.3 POLICY

The Corcoran 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. The Director of Public Safety or their designee may supersede this policy by providing specific instructions for Portable recording system use to individual officers, or providing specific instructions pertaining to particular events or specialized details. This policy is a living document and any changes to the Portable recording system policy must be approved by the City Administrator.

423.4 COORDINATOR

The Director of Public Safety or the authorized designee should designate a coordinator responsible for (Minn. Stat. § 626.8473; Minn. Stat. § 13.825):

- (a) Establishing procedures for the security, storage, and maintenance of data and recordings.
 - 1. The coordinator should work with the Custodian of Records and the member assigned to coordinate the use, access, and release of protected information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) and other applicable laws (Minn. Stat. § 13.01 et seq.) (see the Protected Information and the Records Maintenance and Release policies).
 - 2. The coordinator should work with the Custodian of Records to identify recordings that must be retained for a specific time frame under Minnesota law (e.g., firearm discharges, certain use of force incidents, formal complaints).
- (b) Establishing procedures for accessing data and recordings.
 - 1. These procedures should include the process to obtain written authorization for access to non-public data by CPD members and members of other governmental entities and agencies.
- (c) Establishing procedures for logging or auditing access.

Corcoran Police Department

Corcoran PD Policy

Portable Audio/Video Recorders

- (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 Corcoran 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 Corcoran 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 Corcoran 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.

423.5 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.

423.6 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 (Minn. Stat. § 626.8473). Officers have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.

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.

Corcoran Police Department

Corcoran PD Policy

Portable Audio/Video Recorders

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.

423.7 ACTIVATION OF THE AUDIO/VIDEO RECORDER

This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops and field interview (FI) situations
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- (c) Self-initiated activity in which a member would normally notify the HCSO Dispatch Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- (e) If assigned and equipped a weapon mounted camera should be automatically activated for recordings upon the officer removing the weapon from a holster or firearm storage device . Weapon mounted cameras are not intended to be used for situations a,b,c,or d, unless they involve a use of force incident involving the use of a firearm. The intended purpose of a weapon mounted camera is for use of force encounters or incidents where the officers's firearms is deployed from the officers's holster and involves the use of a firearm.

Officers have discretion to record or not to record general citizen contacts.

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.

423.7.1 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

Corcoran Police Department

Corcoran PD Policy

Portable Audio/Video Recorders

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.

423.7.2 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 Director of Public Safety or the authorized designee.

423.7.3 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.

423.8 DATA SECURITY SAFEGUARDS

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 Director of Public Safety.

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.

Officers shall not intentionally edit, alter, or erase any Portable recording system device.

Audits conducted in compliance with Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program.

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.

Corcoran Police Department

Corcoran PD Policy

Portable Audio/Video Recorders

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.

Weapon mounted camera data and recordings will be downloaded into a password protected secured server. Downloads of data will be managed in accordance with this policy.

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:

- (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 Director of Public Safety 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.

Corcoran Police Department

Corcoran PD Policy

Portable Audio/Video Recorders

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).

423.12 ADMINISTERING ACCESS TO BWC DATA

(a) **Data subjects:** Under Minnesota law, the following are considered data subjects for

purposes of administering access to Portable Recorders data:

1. Any person or entity whose image or voice is documented in the data
2. The officer who collected the data
3. Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording

(b) **Portable Recorders data is presumptively private:** Portable Recorders recordings are classified as private data

about the data subjects unless there is a specific law that provides differently. As a result:

1. Portable Recorders data pertaining to people is presumed private, as is Portable Recorders data pertaining to businesses or other entities
2. Some Portable Recorders data is classified as confidential (see c below)
3. Some Portable Recorders data is classified as public (see d below)

(c) **Confidential data:** Portable Recorders data that is collected or created as part of an active criminal

investigation is confidential. This classification takes precedence over the “private” classification listed above and the “public” classifications listed below.

(d) **Public data:** The following Portable Recorders data is public:

Corcoran Police Department

Corcoran PD Policy

Portable Audio/Video Recorders

1. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous
2. Data that documents the use of force by a peace officer that results in substantial bodily harm
3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted if practicable. In addition, any data on undercover officers must be redacted.
4. Data that documents the final disposition of a disciplinary action against a public employee

However, if another provision of the MGDPA classifies data as private or otherwise not public,

the data retains that other classification. For instance, data that reveals protected identities under

Minn. Stat. § 13.82, subd. 17 (e.g., certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.

(e) **Access to Portable Recorders data by non-employees:** Officers shall refer members of the media or public seeking access to Portable Recorders data to the Administrative Manager, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

1. An individual shall be allowed to review recorded Portable Recorders data about him or herself, and other data subjects in the recording, but access shall not be granted:

- i. If the data was collected or created as part of an active investigation.
- ii. To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by Minn. Stat. § 13.82, subd. 17.

Corcoran Police Department

Corcoran PD Policy

Portable Audio/Video Recorders

2. Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:

- i. Data on other individuals in the recording who do not consent to the release must be redacted.
- ii. Data that would identify undercover officers must be redacted.
- iii. Data on other officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.

423.13 AGENCY USE OF DATA

- a. Supervisors and other assigned personnel may access Portable recording data data for the purposes of reviewing or investigating a specific incident that has given rise to an inquiry or concern about officer misconduct or performance.
- b. Nothing in this policy limits or prohibits the use of Portable recording data data as evidence of misconduct or as a basis for discipline.
- c. Supervisors and Field training officers may utilize Portable recording data with officers and trainees for the purpose of providing training, coaching or feedback for individuals or group training purposes.

423.14 CONCLUSION

The use of this technology will add a higher level of transparency of the professional services provided by Corcoran Police Department. This device will also aid in the documentation of events to be used in an evidentiary manner. There needs to be an understanding that the camera view will not capture the entire incident or event, thus it cannot be construed that images are a complete representation of actions by officers and citizens.