

Portable Audio/Video Recorders

426.1 PURPOSE AND SCOPE

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The primary purpose of using Portable Audio/Video Recorders is to capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of Portable Audio/Video Recorders and administering the data that results. Compliance with these guidelines is mandatory, but it is recognized that deputies must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving. 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.

This policy governs the use of Portable Audio/Video Recorder's in the course of official duties. It does not apply to the use of squad-based (dash-cam) recording systems. The Sheriff or Sheriffs designee may supersede this policy by providing specific instructions for Portable Audio/Video Recorder use to individual deputies, or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The chief or designee may also provide specific instructions or standard operating procedures for Portable Audio/Video Recorder use to deputies assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.

426.1.1 DEFINITIONS

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- (a) MGDPA or Data Practices Act refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.
- (b) Records Retention Schedule refers to the General Records Retention Schedule for Minnesota Cities.
- (c) Law enforcement-related information means information captured or available for capture by use of a Portable Audio/Video Recorder that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.
- (d) 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 deputy.
- (e) 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

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not limited to, assisting a motorist with directions, summoning a wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

- (f) 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 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.
- (g) Unintentionally recorded footage is a video recording that results from an deputy's inadvertence or neglect in operating the deputies Portable Audio/Video Recorder, 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 station house locker rooms, restrooms, and recordings made while deputies were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.
- (h) Official duties, for purposes of this policy, means that the deputy is on duty and performing authorized law enforcement services on behalf of this agency.

426.2 POLICY

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It is the policy of the Aitkin County Sheriff's Office to authorize and require the use of office issued Portable Audio/Video Recorder's as set forth below, and to administer Portable Audio/ Video Recorder data as provided by law. All recordings made by members on any office-issued device at any time or while acting in an official capacity of this office, shall remain the property of the Office. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

426.3 USE AND DOCUMENTATION

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- (a) Deputies may use only office-issued Portable Audio/Video Recorder's in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of the Aitkin County Sheriff's Office.
- (b) Deputies who have been issued a Portable Audio/Video Recorder shall operate and use them consistent with this policy. Deputies shall conduct a function test of their issued Portable Audio/Video Recorder at the beginning of each shift to make sure the devices are operating properly. Deputies noting a malfunction during testing or at any other time shall promptly report the malfunction to the deputy's supervisor and shall document the report in writing. Supervisors shall take prompt action to address malfunctions and document the steps taken in writing. If the Portable Audio/Video Recorder cannot be returned to full working condition, it shall be removed from service for repair and the deputy may use one of the spares until their issued Portable Audio/ Video Recorder is repaired.

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- (c) Deputies should wear their issued Portable Audio/Video Recorders at the location on their body and in the manner specified in training.
- (d) Deputies must document Portable Audio/Video Recorder use and non-use as follows:
 - 1. Whenever an deputy makes a recording, the existence of the recording shall be documented in an incident report
 - 2. Whenever a deputy fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the deputy must document the circumstances and reasons for not recording in an incident report. Supervisors shall review these reports and initiate any corrective action deemed necessary.
- (e) The office will maintain the following records and documents relating to Portable Audio/Video Recorder use, which are classified as public data:
 - 1. The total number of Portable Audio/Video Recorder's owned or maintained by the agency;
 - 2. A record of the total number of Portable Audio/Video Recorder's actually deployed and used by deputies;
 - 3. The total amount of recorded Portable Audio/Video Recorder data collected and maintained; and
 - 4. This policy, together with the Records Retention Schedule.

426.4 GENERAL GUIDELINES FOR RECORDING

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- (a) Deputies shall immediately activate their Portable Audio/Video Recorder when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, Terry stops of motorists or pedestrians, arrests, searches, suspect interviews and interrogations, and during any police/citizen contacts that becomes adversarial. However, deputies need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Use and Documentation guidelines, part (D)(2) (above).
- (b) Deputies have discretion to record or not record general citizen contacts.
- (c) Deputies have no affirmative duty to inform people that a Portable Audio/Video Recorder is being operated or that the individuals are being recorded.
- (d) Once activated, the Portable Audio/Video Recorder should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The deputy/investigator having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, deputies shall state the reasons for ceasing the recording on

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camera before deactivating their Portable Audio/Video Recorder. If circumstances change, deputies shall reactivate their cameras as required by this policy to capture information having evidentiary value.

- (e) Deputies shall not intentionally block the Portable Audio/Video Recorders audio or visual recording functionality to defeat the purposes of this policy.
 - 1. Deputies have the discretion of utilizing the mute function on the Portable Audio/Video Recorder when having conversations regarding tactics, operations planning or anything regarded as private and/or confidential.
- (f) Notwithstanding any other provision in this policy, deputies shall not use their Portable Audio/Video Recorders to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

426.4.1 SPECIAL GUIDELINES FOR RECORDING

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Deputies may, in the exercise of sound discretion, determine:

- (a) To use their Portable Audio/Video Recorder's to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.
- (b) To use their Portable Audio/Video Recorder's to take recorded statements from persons believed to be victims of and witnesses to crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.

In addition,

- (a) Deputies need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, Portable Audio/Video Recorder's shall be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.
- (b) Deputies shall use their Portable Audio/Video Recorder's or squad-based audio/video systems to record their transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the deputy anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of force incident.

426.5 DOWNLOADING AND LABELING DATA

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- (a) Each deputy using a Portable Audio/Video Recorder is responsible for transferring or assuring the proper transfer of the data from his or her camera to the cloud by the

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end of that deputy's shift. However, if the deputy is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor shall take custody of the deputy's Portable Audio/Video Recorder and assume responsibility for transferring the data from it.

- (b) Deputies shall tag the Portable Audio/Video Recorder data files after the video transfer to storage as soon as practicable, and should consult with a supervisor if in doubt as to the appropriate tag to be used. A few examples listed below but not limited to. Deputies should assign as many of the following tags as are applicable to each file:
1. **Criminal:** The information has evidentiary value with respect to an actual or suspected criminal incident or charging decision above the level of Petty Misdemeanor. The recording has potential evidentiary value for reasons identified by the deputy at the time of labeling. Whether or not enforcement action was taken or an arrest resulted, an deputy seized property from an individual or directed an individual to dispossess property.
 2. **Use of Force/Pursuit:** Whether or not enforcement action was taken or an arrest resulted, the event involved the application of force by a law enforcement deputy of this or another agency.
 3. **Civil/Non-Criminal:** The information is related to a civil/non-criminal event or complaint and no criminal investigative action was taken and/or information was provided by the deputy directing the complainant to seek remedy in civil court. This could include Mental Health cases.
 4. **Adversarial/Administrative:** The incident involved an adversarial encounter or resulted in a complaint against a deputy.
 5. **Training Value:** The event was such that it may have value for training.
 6. **Unintentional Recording:** Footage captured through unintentional activation will be tagged as such for later handling by a supervisor.
 7. **General:** The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recordings of general citizen contacts are not evidence.
 8. **Search Warrant/Entry:** This video footage documents the execution of search warrants whether by Deputies, Investigator's or the S.E.R.T. Team.
 9. **K-9 Deployment:** This recording is for documenting the use of the K-9 in any event type.
 10. **Traffic Arrest:** The recording is documenting the arrest as a result of a traffic stop whether DWI, warrant or probable cause of traffic violation resulting in an arrest of an individual(s).
 11. **Traffic/Other Citation:** The information has evidentiary value where a citation was issued at the time of the contact or was issued after the contact was made and the citation was later issued.
- (c) Annotating and tagging designations may be corrected or amended based on additional information.

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426.6 ADMINISTERING ACCESS TO PORTABLE AUDIO/VIDEO RECORDING DATA

Agency Content

- (a) Data subjects. Under Minnesota law, the following are considered data subjects for purposes of administering access to Portable Audio/Video Recorder data:
 - 1. Any person or entity whose image or voice is documented in the data.
 - 2. The deputy who collected the data.
 - 3. Any other deputy whose voice or image is documented in the data, regardless of whether that deputy is or can be identified by the recording.
- (b) Portable Audio/Video Recorder data is presumptively private. Portable Audio/ Video Recorder recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
 - 1. Portable Audio/Video Recorder data pertaining to people is presumed private, as is Portable Audio/Video Recorder data pertaining to businesses or other entities.
 - 2. Some Portable Audio/Video Recorder data is classified as confidential (see C. below).
 - 3. Some Portable Audio/Video Recorder data is classified as public (see D. below).
- (c) Confidential data. Portable Audio/Video Recorder 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 Audio/Video Recorder data is public:
 - 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 officer must be redacted.
 - 4. Data that documents the final disposition of a disciplinary action against a public employee.
 - 5. However, if another provision of the Data Practices Act 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 Audio/Video Recorder data by non-employees. Deputies shall refer members of the media or public seeking access to Portable Audio/Video Recorder

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data to Aitkin County Sheriffs Office Records Division, 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 Audio/Video Recorder data about him- or herself and other data subjects in the recording, but access shall not be granted:
 - (a) If the data was collected or created as part of an active investigation.
 - (b) To portions of the data that the office 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.
 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.
 - (a) Data on other individuals in the recording who do not consent to the release must be redacted.
 - (b) Data that would identify undercover deputies must be redacted.
 - (c) Data on other deputies who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.
- (f) Access by peace officer and law enforcement employees. No employee may have access to the department's Portable Audio/Video Recorder data except for legitimate law enforcement or data administration purposes:
1. Deputies may view stored Portable Audio/Video Recorder video only when there is a business need for doing so. 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
 - (a) Deputies are prohibited from reviewing Portable Audio/Video Recorder footage following a police-citizen critical incident that results in great bodily harm or death to a citizen prior to giving a voluntary statement to the investigating authority.
 - (b) Under rare circumstances, when a given fact-set calls for clarification of a critical incident, and with unanimous agreement of the Sheriff or his/her designee, the investigating authority, and the prosecuting authority, an involved deputy may be authorized to review video prior to or during an investigatory interview of an incident. In the event that pre-statement Portable Audio/Video Recorder footage viewing is authorized, the Sheriff or his/her designee shall make pre-statement review authorization and the reason for the authorization publicly available upon request.
 2. Office personnel shall document their reasons for accessing stored Portable Audio/Video Recorder data in the Visual Labs cloud at the time of each access. Office personnel are prohibited from accessing Portable Audio/Video Recorder data for non-business reasons and from sharing the data for non-

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law enforcement related purposes, including but not limited to uploading data recorded or maintained by this agency to public and social media websites.

3. Employees seeking access to Portable Audio/Video Recorder data for nonbusiness reasons may make a request for it in the same manner as any member of the public.
- (g) Other authorized disclosures of data. Deputies may display portions of Portable Audio/Video Recorder footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Deputies should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video. In addition,
1. Portable Audio[Video Recorder data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.
 2. Portable Audio/Video Recorder data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

426.6.1 SPECIAL CONSIDERATIONS OF DATA PRIOR TO RELEASE

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Prior to release of data, a supervisor shall determine if a file is appropriate for release if it contains subjects who may have rights under the MGDPA limiting public disclosure of information about them. These individuals include:

- (a) Victims and alleged victims of criminal sexual conduct.
- (b) Victims of child abuse or neglect.
- (c) Vulnerable adults who are victims of maltreatment.
- (d) Undercover officers.
- (e) Informants.
- (f) When the video is clearly offensive to common sensitivities.
- (g) Victims of and witnesses to crimes, if the victim or witness has requested not to be identified publicly.
- (h) Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
- (i) Mandated reporters.
- (j) Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
- (k) Juveniles who are or may be delinquent or engaged in criminal acts.
- (l) Individuals who make complaints about violations with respect to the use of real property.

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- (m) Deputies and employees who are the subject of a complaint related to the events captured on video.
- (n) Other individuals whose identities the deputy believes may be legally protected from public disclosure.

Prior to release of Portable Audio/Video Recorder data, the Records Division will consult with the deputy/investigator to ensure that any of the above listed person's are potentially on any footage captured by the Portable Audio/Video Recorder.

426.7 DATA SECURITY SAFEGUARDS

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- (a) All safeguards in place by Visual Labs will meet or exceed required security parameters. In addition:
- (b) Personally owned devices, including but not limited to computers and mobile devices, shall not be programed or used to access or view agency Portable Audio/Video Recorder data.
- (c) Deputies shall not intentionally edit, alter, or erase any Portable Audio/Video Recorder recording unless otherwise expressly authorized by the Sheriffs or his/her designee.
- (d) As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its Portable Audio/Video Recorder program.

426.8 OFFICE USE OF DATA

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- (a) Supervisors will randomly review Portable Audio/Video Recorder usage by each officer to ensure compliance with this policy
- (b) In addition, supervisors and other assigned personnel may access Portable Audio/Video Recorder data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about deputy misconduct or performance.
- (c) Nothing in this policy limits or prohibits the use of Portable Audio/Video Recorder data as evidence of misconduct or as a basis for discipline.
- (d) Deputies should contact their supervisors to discuss retaining and using Portable Audio/Video Recorder footage for training purposes. Deputy objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training officers may utilize Portable Audio/Video Recorder data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

426.9 DATA RETENTION

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- (a) All Portable Audio/Video Recorder data shall be retained for a minimum period of 180 days. There are no exceptions for erroneously recorded or non-evidentiary data.

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- (b) Data documenting the discharge of a firearm by a peace deputy in the course of duty, other than for training or the 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. Data that documents the use of deadly force by a peace deputy, or 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.
- (d) Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.
- (e) Subject to Part F (below), all other Portable Audio/Video Recorder footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 180 days.
- (f) Upon written request by a Portable Audio/Video Recorder data subject, the office shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 365 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.

426.10 COMPLIANCE

Agency Content

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of Portable Audio/Video Recorder data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. § 13.09 and/or Minn. State Statute 262.8473.