

## **5-181      BODY CAMERA DATA RECORDING SYSTEM**

Audio and video recordings captured by assigned personnel during law enforcement or investigative actions are evidence and a public record, and, therefore subject to rules of evidence and Wisconsin Public Records Law, Wis. Stat. § 19.31-19.39.

It is understood the recording captured from a Body Worn Camera provides an objective record of the event, however, does not necessarily reflect the experience, state of mind of the individual assigned personnel, or events occurring outside the recording capabilities of the camera angle. The video recording has limitations and may depict events differently than the events recalled by the involved personnel. Specifically, it is understood the Body Worn Camera may capture information that may not have been heard and/or observed by the involved employee and may not capture information observed by the employee.

This policy provides guidelines for the use of portable audio/video recording devices by Officers of this Department while in the performance of their duties. Portable audio/video recording devices include all recording systems, whether body-worn, hand-held, or integrated into portable equipment (Wis. Stat. § 165.87).

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

### **I.      POLICY**

The Town of Beaver Dam Police Department may provide Officers with access to portable recorders, either audio or video or both, 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 Officers of the Department and the public.

Any member using equipment under this policy shall first be trained prior to using the equipment, and shall review and understand all procedures for the use of that equipment, including this policy.

### **II.     PRIVACY EXPECTATION**

☐. All recordings made by Officers on any Department-issued device at any time, and any recording made while acting in an official capacity of this department, regardless of ownership of the device it was made on, shall remain the property of the Department. Officers shall have no expectation of privacy or ownership interest in the content of these recordings.

### **III.    RESPONSIBILITIES OF OFFICERS**

Prior to going into service, each member will be responsible for making sure that if he/she is equipped with a portable recorder issued by the Department, that the recorder is in good

working order. 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 the Chief and obtain a functioning device as soon as reasonably practicable.

When using a portable recorder, the assigned member shall record his/her name, identification 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. Officers 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. Officers should include the reason for deactivation.

Wisconsin is a one-party consent state in regards to recording conversations. There is no legal requirement to notify the person that they are being recorded as long as the deputy is present. If a person inquires if they are being recorded, it is the discretion of the deputy to disclose that information.

The device issued to agency Officers shall be worn or carried in a manner in which to best allow the capture of video and/or audio given the uniform and clothing requirements that exist at the time.

#### **IV. ACTIVATION OF THE AUDIO/VIDEO RECORDER**

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

1. All enforcement and investigative contacts, as well as all contacts specifically related to a call for service by uniformed sworn personnel wearing a Body Worn Camera will be recorded.
2. Circumstances when a Body Worn Camera may not be used include but are not limited to:
  - Speaking with an informant or community member providing information who request deactivation of Body Worn Camera prior to providing information.
  - A health care provider is discussing medical issues with a patient
  - While in the hospital waiting for a person in custody to be medically cleared unless their behavior dictates the need for continued activation of the Body Worn Camera.
  - While debriefing with other officers regarding specific details or tactics of a call for service.
  - When developing a tactical plan or creating a safety plan for a victim.
  - Personnel are prohibited from utilizing the issued Body Worn Camera for personal use.
  - Any other incident where the officer can articulate the necessity and totality of the circumstances that led to not activating the Body Worn Camera.

3. A Body Worn Camera should be activated when an officer is engaged in emergency vehicle operation.

## **V. WHEN TO STOP 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 will remain active at all times until the conclusion of the Officer's involvement in the incident, unless privacy concerns as defined above are present.

## **VI. SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Wisconsin law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Wis. Stat. § 968.31(2)(b)).

Officers 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.

Officers shall not surreptitiously record another Department member without a court order unless lawfully authorized by the Chief or the authorized designee.

## **VII. PROHIBITED USE OF PORTABLE RECORDERS**

Officers 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.

Officers 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. Officers shall not duplicate or distribute such recordings, except for authorized legitimate Department business purposes. All such recordings shall be retained at the Department.

Officers are prohibited from using personally owned recording devices while on-duty without the express consent of the Chief of Police. 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 Chief of such use as soon as reasonably practicable.

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

## **VIII. IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, Officers should download these in accordance with procedure as outlined in the user guide and document the existence of the recording in any related case report.

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 the Chief of the existence of the recording.

## **IX. REVIEW OF RECORDED MEDIA FILES**

When preparing written reports, Officers may review their recordings. However, Officers shall not retain personal copies of recordings. Officers should not use the fact that a recording was made as a reason to write a less detailed report.

The Chief or his/her designee are authorized to review relevant recordings any time they are investigating alleged misconduct, or reports of meritorious conduct, or whenever such recordings would be beneficial in reviewing the member's performance.

Recorded files may also be reviewed:

- a. Upon approval by the Chief, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation, or criminal investigation.
- b. Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- c. By media personnel with permission of the Chief or the authorized designee.
- d. In compliance with a public records request, if permitted, 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 unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court (Wis. Stat. § 165.87(3)).

## **X. COORDINATOR**

The Chief of Police is designated the coordinator responsible for (Wis. Stat. § 165.87):

- a. Establishing procedures for the security, storage, and maintenance of data and recordings.
- b. Establishing procedures for accessing data and recordings.
- c. Establishing procedures for logging or auditing access.
- d. Establishing procedures for transferring, downloading, tagging, or marking events.
- e. To provide training on this policy to:
  1. Officers who are authorized to use portable audio/video recorders.
  2. Officers of the Department who use, maintain, store, or are responsible for the release of records and recordings.

- f. Periodically reviewing the Department's practices relating to the use, maintenance, and storage of body cameras and data to confirm compliance with this policy.

## **XI. DATA DOWNLOAD, STORAGE AND RETENTION**

The responsibility for downloading recorded data shall be the responsibility of the user of the equipment. Downloading will be performed in accordance with procedures established for the specific equipment issued.

Data should be downloaded regularly to prevent internal storage from reaching capacity. Recordings of significant events (ie: significant use of force events, incidents where there is a high likelihood of citizen complaint, or as otherwise directed by a supervisor) shall be downloaded as soon as practical prior to the end of the user's shift. Downloading should otherwise occur at the end of each shift.

Data will be stored and preserved locally on a server maintained by Town of Beaver Dam in accordance with procedures for the device used.

Data will be retained for a period of no less than 120 days for all records. Criminal cases should be maintained at least 180 days post conviction with no appeal pending. Forfeiture case shall be retained no less than 60 days post conviction. Any other cases deemed necessary to be held longer at the direction of the Chief or designee may be retained longer and/or may be archived to another media source for retention.