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## **Purpose**

This policy provides guidelines for the use of portable audio/video recording devices by officers of the La Crescent Police 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 La Crescent Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

## **Policy**

The La Crescent Police Department may provide officers 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 officers of the Office and the public.

## **Coordinator**

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

- (a) Establishing procedures for the security, storage, and maintenance of data and recordings.
  1. The coordinator should work with the Custodian of Records and the officer 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 La Crescent Police Department officers and officers 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 La Crescent Police Department.
    2. Daily record of the total number deployed and used by officers 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 La Crescent 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 La Crescent Police Department 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.

## **Officer Privacy Expectation**

All recordings made by officers 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. Officers shall have no expectation of privacy or ownership interest in the content of these recordings.

## **Officer Responsibilities**

Prior to going into service, uniformed officers 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 officer becomes aware of a malfunction at any time, the officer shall promptly report the failure to their supervisor and obtain a functioning device as soon as reasonably practicable. Officers will be responsible for ensuring that the portable recorder's battery is properly charged at all times. Uniformed officers should wear the recorder in a conspicuous manner as close to center of shirt, and as close to even with shirt pockets as possible. Officers will notify persons that they are being recorded, whenever reasonably practicable (Minn. Stat. § 626.8473).

Any officer assigned to a non-uniformed position may carry an approved portable recorder at any time the officer believes that such a device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed officers 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 officer 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.

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 officer deactivated the recording (Minn. Stat. § 626.8473). Officers should include the reason for deactivation.

## **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. Officers should activate the recorder any time the officer 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, vehicle crashes
- (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 officer would normally notify Dispatch
- (d) Any Contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- (e) Any other contacts that will have evidentiary value.

Officers 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 officer that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by officers 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 officer 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.

## **Cessation of Recording**

Once activated, the portable recorder should remain on continuously until the officer 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 or other breaks from direct participation in the incident.

Officers will limit muting the audio recording on the portable recorder only when necessary and then will document in their written report as to why the audio recording was muted. Officers can also place the portable recorder into Sleep mode when they use the restroom facilities or go home on their designated break time. In stead of using Sleep Mode officers can also take off the potable device and leave at work station or in their squad during these situations.

## **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).

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

Officers shall not surreptitiously record another office officer without a court order unless lawfully authorized by the Sheriff or the authorized designee.

## **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.

## **Prohibited Use of Audio/Video Recorders**

Officers 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.

Officers are also prohibited from retaining recordings of activities or information obtained while on-duty, whether the recording was created with office-issued or personally owned

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

Officers are prohibited from using personally owned recording devices while on-duty without the express consent of the Chief Deputy and/or Lieutenant. Any officer who uses a personally owned recorder for office-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 officer for the purpose of embarrassment, harassment or ridicule.

### **Retention of Records**

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 180 days.

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

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

### **Release of Audio/Video Recordings**

Requests for the release of audio/video recordings shall be processed in accordance with the La Crescent Police Department's data retention practices.

### **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.

## **Identification and Preservation of Recordings**

To assist with identifying and preserving data and recordings, officers should download, tag or mark the recordings in accordance with procedure and document the existence of the recording in any related case report.

A officer should transfer, tag or mark recordings when the officer 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 officer reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the officer should promptly notify a supervisor of the existence of the recording.

## **Review of Recorded Media Files**

When preparing written reports, officers should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). 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.

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 officer'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 officer 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).

### **Accountability**

Any officer 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).