

314 MOBILE VIDEO AND PORTABLE AUDIO/VIDEO RECORDING

Lakeville Police Department Order #314

General Order- Mobile Video and PORTABLE AUDIO/VIDEO Recording

Date: 08/2019

Personnel: All

Issued by: Chief of Police

314.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of Mobile Video Recorders and portable audio/video recording devices by law enforcement operators of this department while in the performance of their duties. Mobile Video Recorders include all recording systems affixed to department vehicles. Portable audio/video recording devices include all recording systems whether body-worn, handheld or integrated into portable equipment including telephones.

This policy does not apply to audio/video recordings, interviews or interrogations conducted at any Lakeville Police Department facility, undercover operations, crime scene documentation video, wiretaps or eavesdropping (concealed listening devices) unless captured by a portable recording system.

314.1.1 DEFINITIONS

Definitions related to this policy include:

Mobile Video Recorder (MVR) - An in-car device that is capable of both audio and video recording of law enforcement operator activities, but camera equipment is affixed to the vehicle.

Portable Recording System - A device worn by a law enforcement operator of this department that is capable of both video and audio recording of the law enforcement operator's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and as provided in Minn. Stat. § 13.825.

Law Enforcement Operator (LEO) – Primarily a licensed peace officer but may also be a non-licensed representative such as a Community Service Officer (CSO) or others who are trained, authorized and assigned to operate Mobile Video Recorders (MVRs) and/or Portable recording system equipment.

314.2 POLICY

The Lakeville Police Department may provide LEOs with access to portable recorders for use during the performance of their duties. Vehicles may be equipped with MVR. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between LEOs of the Department and the public.

314.2.1 MOBILE VIDEO RECORDER OBJECTIVES

The Lakeville Police Department has adopted the use of in-car MVR and portable audio/video recorders to accomplish the following objectives:

- A) To enhance LEO safety.
- B) To document statements and events during the course of an incident.
- C) To enhance the LEO's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.
- D) To preserve audio and visual information for use in current and future investigations.
- E) To provide a tool for self-critique and field evaluation during LEO training.
- F) To enhance the public trust by preserving factual representations of LEO-citizen interactions in the form of audio-video recordings.
- G) To assist with the defense of civil actions against law enforcement LEOs and the City of Lakeville.
- H) To assist with the training and evaluation of LEOs.
- I) To promote and enhance safe vehicle operation

314.3 LEO RESPONSIBILITIES

Prior to going into service, each LEO will be responsible for making sure that he/she is equipped with a portable recorder issued by the Department, and that the recorder is in good working order. If the recorder is not in working order or the LEO becomes aware of a malfunction at any time, the LEO shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable. LEOs shall document the malfunction report in writing by emailing the IT HelpDesk and copying their supervisor.

Uniformed LEOs should wear the portable recorder in a conspicuous manner. Officers have no affirmative duty to inform people that a portable recording system is being operated or that they are being recorded. (Minn. Stat. § 626.8473). Officers may elect to notify people they encounter that a portable recording system is being operated if it is felt that doing so may de-escalate an encounter.

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

When using a MVR and/or portable recorder, the assigned LEO shall record his/her 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.

LEOs 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 LEO deactivated the recording (Minn. Stat. § 626.8473). LEOs should include the reason for deactivation.

MVR

LEOs should test MVR systems at shift start. A test recording should be created.

LEOs may operate squads with non-functioning MVR systems if no other squad is reasonably available. If a MVR fails during the course of a shift, the LEO may continue to use that vehicle until the end of the shift.

If the recorder is not in working order or the LEO becomes aware of a malfunction at any time, the LEO shall promptly report the failure to his/her supervisor. LEOs shall document the malfunction report in writing by emailing the IT HelpDesk and copying their supervisor.

314.3.1 PORTABLE AUDIO RECORDING SPARE DEVICES

When using a spare device, or one that is not assigned to the LEO, it is the LEO's responsibility to notify the watch commander of the reason they are unable to use their issued equipment. In addition, it is the LEO's responsibility to notify Administrative Services to ensure the evidence that was recorded on that device can be reassigned to the recording LEO in video storage system.

314.4 SUPERVISOR RESPONSIBILITIES

Supervisors shall ensure LEOs are using their MVR and portable audio/video recorders per policy. Supervisors should determine corrective action for non-functioning portable audio/video recorders.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, peace officer-involved shootings, department-involved collisions), a supervisor shall ensure that the portable audio/video recorders are properly uploaded.

314.6 USE AND DOCUMENTATION

The Chief of Police or the authorized designee should designate related responsibilities (Minn. Stat. § 626.8473; Minn. Stat. § 13.825):

- A) The Police Records Analyst should coordinate the use and access.
 - 1) Establishing procedures for the security, storage and maintenance of data and recordings.
 - 2) Establishing procedures for accessing data and recordings.
 - 3) Establishing procedures for logging or auditing access.
 - 4) Establishing procedures for transferring, downloading, tagging or marking events.
- B) The Police Records Analyst will ensure the department maintains the following records and documents relating to portable recording systems, which are classified as public data:
 - 1) Total number of devices owned or maintained by the Lakeville Police Department.

- 2) Daily record of the total number deployed and used by LEOs 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 Lakeville Police Department.
 - 4) This policy, together with the Records Retention Schedule.
- C) The Police Records Analyst is responsible for obtaining and preparing for independent biennial audits required by Minn. Stat. § 13.825, Subd. 9.
 - D) The Police Records Analyst will notify the Bureau of Criminal Apprehension (BCA) within ten days when new equipment is obtained by the Lakeville Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders beyond video or audio recording.
 - E) Administrative Services, typically the Police Records Technicians, should coordinate the 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.) It is important to recognize data practices are very different for mobile video recordings versus portable audio/video recordings. Portable audio/video recordings are presumptively private.

314.7 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. LEOs should activate the recorder any time the LEO 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 LEO would normally notify Dakota Communications Center
- D) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

LEOs 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 LEO 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 LEO 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.

314.7.1 CESSATION OF RECORDING

Once activated, the portable recorder should usually remain on continuously until the LEO 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 temporarily ceased or the audio muted to exchange information with other officers, legal counsel, or the lens obstructed in order to avoid capturing images of undercover officers, informants, or citizens where based on training and experience, in the judgement of the officer a recording would not be appropriate or consistent with this policy. The reason to cease and resume recording (or to mute audio or obstruct the lens) will be noted by the officer either verbally on the portable audio/video recorder or in a written report.

Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Formal statements recorded on portable audio/video recorders shall be recorded as separate recordings.

Recordings shall be categorized, titled and identified in accordance with established policies and procedures.

SEE CRITICAL INCIDENT POLICY FOR CESSATION OF RECORDINGS
POST INCIDENT

314.7.2 WHEN ACTIVATION IS NOT REQUIRED

Activation of the portable audio/video recorder system is not required:

- A) During encounters with undercover officers or informants.
- B) When a LEO is on break or is otherwise engaged in personal activities.
- C) In any location where individuals have a reasonable expectation of privacy, such as a restroom, locker room or break room.
- D) When not in service or actively on patrol.

314.7.3 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).

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

LEOs shall not surreptitiously record another department member using any device without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

314.8 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, LEOs are permitted to review their recordings as a resource (See the Critical Incident policy for Officer-Involved Vehicle Crashes, Shootings and Deaths Policy for guidance in those cases). However, LEOs shall not retain personal copies of recordings, in any format. LEOs 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 LEO's performance.

Recorded files may also be reviewed:

- A) Upon approval by a supervisor, by any LEO 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) 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, officers may display portions of recordings to witnesses or others as necessary for purposes of investigation, to aid in the law enforcement process, promote public safety, or dispel widespread rumor or unrest. Officers should generally limit, when possible, 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.
- D) All recordings should be reviewed by Administrative Services prior to public or private release, typically by the Police Records Technicians. It is important to recognize data practices are very different for mobile video recordings versus portable audio/video recordings. Portable audio/video recordings are presumptively private. Additionally, 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).

314.9 RECORDING MEDIA STORAGE AND INTEGRITY

At the end of their shift, LEOs are responsible for transferring or assuring the proper transfer of their data from their personal audio/video recording devices. The portable audio/video recorder battery should also be fully recharged. Refer to the SUPERVISOR RESPONSIBILITIES portion of this policy when an incident arises that requires the immediate retrieval of the recorded media.

314.9.1 COPIES OF RECORDING MEDIA

Evidentiary copies of digital recordings will be accessed and copied from the video storage system for official law enforcement purposes only. Access rights may be given to the Dakota County Attorney, the Lakeville City Attorney, or other prosecutorial agencies associated with any future prosecution arising from an incident in which digital recordings exist. LEOs shall ensure relevant recordings are preserved. LEOs or Administrative Services may prevent automatic deletion by changing the category of the media at any time prior to deletion.

314.10 SYSTEM OPERATIONAL STANDARDS

- A) Portable audio/video recorder and MVR systems use should be based on LEO safety requirements and device manufacturer recommendations.
- B) The portable audio/video/MVR recorder systems should be configured to minimally buffer for 30 seconds prior to activation. The audio may or may not be buffered depending on manufacturer specifications.
- C) For each digital recording, LEOs shall select the proper category. LEOs shall enter the 8-digit case file number, if there is not a case file number, the LEO shall enter the full CAD record or full citation number, and descriptive title. The title should clearly describe the nature of the recording. For example:
 - 1) Use of Force
 - 2) DWI
 - 3) Pursuit
 - 4) Booking
 - 5) Transport
 - 6) IC Jane Doe (implied consent)
 - 7) Suspect John Doe (suspect statement)
 - 8) Victim Jane Doe (victim statement)
 - 9) Witness Jane Doe (witness statement)
 - 10) Test
 - 11) Training
 - 12) Impound
- D) LEOs shall not attempt to delete, alter, reuse, modify or tamper with MVR or portable audio/video recorder systems or recordings.

314.11 DATA CLASSIFICATION OF MVR/PORTABLE RECORDER DATA

Nothing in this policy shall be interpreted as changing the underlying classification of data collected by portable audio/video recorder systems. The classification of data collected by portable audio/video recorder systems will need to be determined on a case-by-case basis upon application and interpretation of the MGDPA and other laws, refer to especially, Minn. Stat 13.82, 13.825, other MGDPA statutes, and related laws.

314.12 PROHIBITED USE OF MVR AND AUDIO/VIDEO RECORDERS

LEOs 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.

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

LEOs are prohibited from using personally owned recording devices while on-duty without the express consent of the Watch Commander. Any LEO 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 internally or externally by any LEO for the purpose of embarrassment, harassment or ridicule.

314.13 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.

Audio/Video recordings shall be retained according to the General Records Retention Schedule for Minnesota Cities at a minimum or as required by the rules of evidence, unless a specific request is made to store them for a longer period of time by an authorized person. (The stated retention in the General Records Retention Schedule does not include the year the record originates. For example:

If a Use of Force incident was recorded in 2014, it has a retention of 7 years, the disposable date for the 2014 record is January 2022.) When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.

Upon written request by a data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 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.

314.13.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed by Administrative Services, typically the Police Records Technicians, in accordance with the MGDPA, related statutes and this policy.

314.13.2 ACCESS TO RECORDINGS

Except as provided by Minn. Stat. § 13.825, Subd. 2, portable recording system 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 audio distorted 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.

314.14 ACCOUNTABILITY

Any LEO who accesses or releases recordings without authorization may be subject to discipline (see related policies) (Minn. Stat. § 626.8473).

314.15 SANCTIONS FOR MISUSE OF RECORDED MEDIA

Any LEO misusing recorded media for other than official law enforcement purposes will be subject to disciplinary action.

314.16 TRAINING

Users of the MVR and portable recording systems and supervisors shall successfully complete an approved course of instruction prior to being deployed. This training shall be documented by the Training Lieutenant or designee.

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