

## OWATONNA POLICE DEPARTMENT MANUAL

### PATROL PROCEDURE: 336

EFFECTIVE DATE: September 1, 2021

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#### SUBJECT: PORTABLE RECORDING SYSTEMS

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##### **Purpose and Scope**

The primary purpose of a portable recording system is to capture evidence arising from police-citizen encounters. The use of a portable recording device is intended to enhance the mission of the department by accurately capturing contacts between members of the department and the public. This policy sets forth guidelines governing the use of portable recording systems and the management, access, storage, retrieval, retention and the administering of the data that results. Compliance with these guidelines is mandatory, but it is recognized that officers must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving.

##### **Authority**

The provisions of this policy are subject to all applicable federal, state, and local laws.

##### **Policy**

It is the policy of the Owatonna Police Department (the "Agency") to authorize and require the use of Agency-issued portable recording devices as set forth below, and to administer portable recording system data as provided by law.

##### **Definitions**

- A. **Portable Recording System:** Is a portable recording device as defined in §13.825 subdivision 1(b)(1) as a device that is worn on an individual officer's person that is capable of both video and audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation. Because the body-worn camera and mobile video recorder work congruently to capture both audio and video data from the officer's activity, the MVR is also part of and defined as a portable recording system.
- B. **Activate:** Any process that causes the portable recording system to transmit or store video or audio data in an active mode.
- C. **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, shouting or body posturing. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

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- D. **Evidentiary Value:** means that the information may be useful as proof in a criminal prosecution, or that tends to show a suspect or the accused did not commit a criminal offense, 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.
- 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 not limited to, assisting a motorist with directions, summoning a tow service, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.
- F. **Law Enforcement-Related Information:** 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, seizure, citation, or charging decision.
- G. **MGDPA or Data Practices Act:** The Minnesota Government Data Practices Act, Minnesota State Statute Chapter 13.
- H. **Official Duties:** For purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this Agency.
- I. **Records Retention Schedule:** The General Records Retention Schedule for Minnesota Cities and retention schedules set forth in this policy.
- J. **Redact:** means to blur video or mask audio so that the identity of the subject in a recording is obscured sufficiently to render the subject unidentifiable.
- K. **System Administrator:** A Captain or other department designated supervisor, who assigns, tracks and maintains portable recording equipment, oversees needed repairs or replacement equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor.
- L. **System Technician:** Personnel certified or trained in the operational use and repair of portable recording devices, duplicating methods, storage and retrieval methods and procedures, and who possess a working knowledge of audio forensics and evidentiary procedures.
- M. **Unintentionally Recorded Footage:** A video recording that results from an officer's inadvertence in operating the portable recording device, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to, audio or video recordings while the officer(s) were engaged in conversations of unofficial, personal nature with the expectation that the conversation was not being recorded.



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### Training

Users and supervisors of the portable recording systems shall complete a course of instruction prior to being deployed. This training shall be documented by the Agency.

### Use and Documentation

- A. Officers shall operate and use portable recording devices consistent with this policy. Officers may use only Agency-issued portable recording devices in the performance of official duties for this Agency or when otherwise performing authorized law enforcement services as an employee of this Agency.
- B. The MVR and BWC must be used together to capture both audio and video evidence. These two portable recording devices may be linked together for device activation as a user preference.
- C. Upon going into service, each officer must login to each respective portable recording system, the BWC and MVR, under the assigned operator/user profile, conduct a function test, and when prompted, apply any necessary software updates.
- D. The Mobile Video Recorder (MVR) is mounted inside the police vehicle and designed to record whenever one of the following programmed triggers occur;
  1. When emergency lights are activated, or
  2. When the gun lock switch is activated, or
  3. When police vehicle speeds exceed 90 MPH, or
  4. When manually activated by the user
- E. It is the officer's responsibility to charge the BWC after each shift, and as necessary to maintain adequate battery power to sustain a shift. Officers noting a malfunction of the BWC or MVR shall promptly report the malfunction to their immediate supervisor and complete any necessary Fleet Maintenance or Information Technology Support requests. A spare or replacement BWC will be issued by the System Administrator as soon as practical.
- F. Officers must wear the BWC above the belt line of the torso, facing forward, in a location that will facilitate an optimum recording field of view. Officer may have to adjust mounting locations so that the BWC is not obstructed by other garments.
- G. Officers must document portable recording system use and non-use as follows:
  1. Whenever an officer makes a video recording, the existence of the recording shall be documented in an Incident report. Absent an Incident report, the officer shall make a notation on a Citation. Absent a Citation, the officer shall make note on the CAD Event disposition.
  2. A video or audio statement is not a replacement for a written report.
  3. Whenever an officer fails to record an activity that is required under this policy or captures only a part of the activity, the officer must document the circumstances and reasons for not

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recording in an Incident report. Supervisors shall review these reports and initiate any corrective action deemed necessary.

### Required Use of the Portable Recording System

- A. Officers shall initiate portable recording system recordings before engaging in the following law enforcement activities, but not limited to:
  1. Motor vehicle and pedestrian stops, emergency response, high-risk calls, vehicle pursuits, arrests, searches, suspect interviews and interrogations, and during any police/citizen contact that becomes adversarial.
    - a. However, officers are not required to activate their cameras when it would be unsafe, impossible, or impractical to do so that may cause harm to themselves or the public, but shall activate the BWC and MVR as soon as possible. Such instances of not recording or delayed recording when otherwise required must be documented as specified in the Use and Documentation guidelines, part (G)(3) above.
  2. The officer shall record all transports (custodial and non-custodial) by manually activating the second seat camera of the MVR. If the MVR is non-functioning, the officer shall record all transports with the BWC.
  3. Once activated, the portable recording system 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.
- B. Except as otherwise directed, officers have discretion to record or not record incidental citizen contacts.
- C. Officers have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded. However, if asked, officers shall clearly advise the citizens that he or she is or is not being recorded.
- D. Officers shall not intentionally obstruct the BWC or MVR audio or visual recording functionality to defeat the purposes of this policy.
- E. It is understood that video recordings captured by the portable recording device do not necessarily reflect the experience or state of mind of the individual employee(s). Moreover, the video recording has limitations and may depict events differently than the events recalled by the involved officer(s). It is also understood that portable recording systems may capture information that may not have been heard and/or observed by the involved employee(s).
- F. BWC recording perspectives must be considered with all other available evidence, such as officer statements, witness/suspect and other involved party statements, forensic information from the BWC and all other information when evaluating the recorded event.



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### Other Guidelines For Recording

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

- A. To use their portable recording device(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.

### Cessation of Recording

- A. If the recording is discontinued while an investigation, response, or incident is ongoing, officers shall state the reasons for ceasing the recording on camera before deactivating their portable recording device(s).
- B. Recording may be temporarily paused or muted to exchange information with other officers or during non-enforcement activities.
- C. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.

### Prohibited use of BWC

- A. Notwithstanding any other provision in this policy, officers shall not intentionally use their portable recording device(s) to record other Agency personnel during non-enforcement related activities, such as during shift briefing, break rooms, changing rooms, during supervisor-employee meetings, or other private conversations, unless a recording is authorized by the Chief of Police as part of an administrative or criminal investigation. Surreptitious recordings are governed under Special Order 02-1 of the policy and procedure manual.
- B. Officers are prohibited from using Agency-issued portable recording devices for personal use and are prohibited from making and/or disseminating personal copies of recordings created while on-duty or while acting in their official capacity.
- C. There shall be no audio or video recordings made in any court of law, unless authorized by a judge (Minn. Court Rule 4, General Rules of Practice).
- D. Officers shall not record encounters with undercover officers or confidential informants, or during tactical briefings and debriefings.
- E. Officers shall not record patients during medical or psychological evaluations by a clinician or similar professional during treatment, unless required for evidentiary purposes, or during adversarial encounters. When recording in hospitals and other medical facilities, officers shall be careful to avoid recording persons other than the suspect. If recordings are necessary, it is a best practice to use the voice recorder feature of the BWC.

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- F. Officers shall not record while in a facility whose primary purpose is to provide psychiatric services unless responding to a call for service and the subject is still present and an adversarial encounter is likely.
- G. Officers shall use discretion when recording while inside jail facilities based on the subject's actions. If recordings are necessary, it is a best practice to use the voice recorder feature of the BWC.
- H. Officers shall try to avoid recording videos of persons who are nude or when sensitive human areas are exposed; however, to protect the officer's integrity, officers may continue recording.

### Uploading Labeling Data

- A. Portable recording system data will automatically upload to the department approved storage location/cloud. Officer's shall immediately report any data transfer problems to the System Technician or System Administrator. If the officer is involved in a critical incident or other law enforcement activity resulting in death or great bodily harm, a supervisor or other commanding officer shall take custody of the officer's BWC and assume responsibility for safeguarding the device and any digital evidence.
- B. Officer's shall label the portable recording system data files with Tags and Captions at the time of video capture or transfer to storage and should consult with a supervisor if in doubt as to the appropriate labeling category. Retention schedules are based on event types (Tags), therefore it is critical for each User to apply the proper event Tags; otherwise risk data being expired and purged. If more than one Tag applies, User's shall select the greater of the data classification retention periods.
- C. Labeling may be corrected or amended based on additional information by a ranking officer or their designee.

### Retention Schedule

- A. All Users collecting, uploading portable recording system data, or uploading other data as evidence into the departments storage/cloud, are solely responsible to preserve and protect the duration of their respective evidentiary data by setting the retention period pursuant to the Records Retention Schedule listed in this policy.
- B. All portable recording system data, including general citizen contacts and erroneously recorded or non-evidentiary data, shall be retained for a minimum period of 90 days.
- C. 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, must be maintained for a minimum period of one year.
- D. Certain kinds of portable recording data must be retained for seven years:



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1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review regardless of the disposition of any related criminal case.
  2. Data documenting an incident that resulted in a potential adversarial encounter, complaint against an officer or triggering an internal investigation shall be retained for six years. A shorter retention period may be utilized if no complaint or investigation arises.
- E. 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.
- F. Subject to Part F (below), all other portable recording footage that is classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.
- G. Upon written request by a portable recording data subject, the Agency shall retain a recording pertaining to that data 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.
- H. The Agency shall maintain an inventory of portable recording data having evidentiary value.
- H. The Records Retention Schedule provides that retention periods for cases that have been charged are based on the status of court proceedings. For uncharged offenses, retention is seven years or permanent in the case of homicides and criminal sexual conduct.
- I. The Agency will post this policy and the Records Retention Schedule on its website.

Event Type - Tags	Retention Period
1. Alarm	90 Days
2. Arrest	7 Years
3. Citation	3 Years
4. Crash Investigation	3 Years
5. Citizen Contact – Evidentiary	7 Years
6. Citizen Contact – Non-Evidentiary	90 Days
7. Confidential (UC/CRI/Mandated Reporter)	1 Year
8. CSC	Permanent
9. Death Investigation	Permanent
10. Medical	90 Days
11. Test Recording	90 Days
12. Training	1 Year
13. Use of Force	7 Years
14. Warning	90 Days

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### Management of Portable Recording System Data:

The System Administrator is responsible for:

- A. Logs reflecting BWC assignments, serial numbers/phone numbers, dates of issuance, and the officers to which each BWC was issued;
- B. Ensuring that portable recording system policies and procedures are current with best practices and current laws;
- C. Ordering of all BWC and MVR equipment; and
- D. Corrective action for non-functioning portable recording equipment.

The System Technician, or its designee, is responsible for:

- A. Retrieving, storing, and duplicating of all recorded media.
- B. Collecting all completed media for oversight. Once collected, the System Technician, or its designee, shall:
  1. Ensure it is stored in a secured location with authorized controlled access; and
  2. Make appropriate entries in the chain of custody log.
- C. Erasing of media:
  1. Pursuant to a court order; and/or
  2. In accordance with established records retention policies.
- E. Ensuring that an adequate supply storage space is available.

It may be necessary from time to time or upon the termination of the portable recording system vendor to move BWC and MVR media from cloud storage to a physical storage device and location to maintain the Records Retention Schedule. If such were to occur, the recorded media shall be treated as digital evidence and submitted in accordance with this department's property and evidence procedures. All recorded media hosted in cloud storage will be retained in compliance with the Records Retention Schedule, unless a specific request is made to retain the data for a longer period of time.

### Administering Access to Portable Recording System Data:

- A. **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC and MVR 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.



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- B. Portable Recording System Data is presumptively private.** Portable recording data are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
1. Portable recording data pertaining to people is presumed private, as is portable recording data pertaining to businesses or other entities.
  2. Some portable recording data is classified as confidential (see C. below).
  3. Some portable recording data is classified as public (see D. below).
- C. Confidential data.** Portable recording data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the “private” and “public” classifications listed herein.
- D. Public data.** The following portable recording 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. 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.
  5. The Agency will maintain the following records and documents relating to portable recording system use, which are classified as public data, §13.825 subdivision 5:
    - a. The total number of BWCs owned or maintained by the Agency;
    - b. A daily record of the total number of BWCs actually deployed and used by officers;
    - c. The total amount of recorded BWC data collected and maintained; and
    - d. This policy, together with the Records Retention Schedule.
  6. However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains the classification with the greatest data protection. 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 recording system data by non-employees.** Officers shall refer members of the media or public seeking access to portable recording data to the Records Division, who shall process the request in accordance with the MGDPA and other governing laws (see Addendum A of this policy). In particular:
1. An individual shall be allowed to review recorded portable recording 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.

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- b. 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.
- c. A supervisor may show a data subject BWC and/or MVR data, and only limited to data involving the data subject, if such viewing will dispel a complaint against an officer. Any copy of the data must be processed by the Records Division.

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 officers must be redacted.
  - c. 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.

- F. **Access by peace officers and law enforcement employees.** No employee may have access to the Agency's portable recording data except for legitimate law enforcement or administration purposes:
1. Officers may access and view stored BWC and MVR video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.

If an officer is involved in a critical incident involving the use of deadly force or any incident that has caused or likely to cause serious bodily harm or death to any person, the following shall apply pursuant to General Order 227 (9):

- a. Based on current best practices, any officer or their attorney will not be permitted to view the video prior to providing a voluntary statement. However, the officer may view the video following the voluntary statement if they request to do so to assist in clarifying any portion of the voluntary statement.
  - b. The viewing of the video will be limited to the incident captured on the officer's own BWC and MVR.
2. Except when authorized by law or within ones work assignment, Agency personnel are prohibited from accessing portable recording data for non-business reasons and shall not copy, save, transfer, share, post, transfer or disseminate in any form or manner outside the requirements of this policy.
  3. Employees seeking access to portable recording data for non-business reasons may make a request for it in the same manner as any member of the public.
  4. The "Remote Activation" feature may be used with supervisor approval. This feature allows authorized personnel to remotely activate the BWC and/or MVR in emergency or intelligence



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gathering situations where the remote activation would benefit officer safety or for crisis management events.

5. Personal computer equipment and software programs shall not be utilized when making copies of portable recording data. Using a secondary recording device such as a video camera, cell phone or other electronic device to record or capture portable recording data is strictly prohibited.

- G. Other authorized disclosures of data.** Officers may display portions of portable recording 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. Officers 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 recording 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. As our agencies best practice, the Records Division should manage and record all data requests and releases.
  2. Portable recording data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

### Data Security Safeguards

- A. Data security safeguards are to be used by the Agency in connection with the particular portable recording system technologies being employed through the portable recording vendor.
- B. Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view Agency BWC data unless specifically approved by the Chief of Police.
- C. Officers shall not intentionally edit, alter, or erase any portable recording data.
  1. After preserving any portable recording data of evidentiary value, officers are permitted to delete phone call logs and text messages imported into the BWC system.
- 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 recording system program.

### Agency Use of Data

- A. To ensure compliant to federal and state law and this policy, supervisors shall randomly audit portable recording data of each officer during each trimester review period to make recommendations for policy and/or procedures, to ensure compliance with this policy and to

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identify any performance areas in which additional training or coaching is required. This random audit must be documented and provided to the System Administrator who shall retain the audit pursuant to law.

- B. In addition, supervisors and other assigned personnel may access portable recording data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.
- C. Nothing in this policy limits or prohibits the use of portable recording data as evidence of misconduct or as a basis for discipline subsequent to a signed complaint.
- D. Officers should contact a division commander to request using portable recording footage for department training purposes. Subject officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training officers may utilize portable recording data with trainees for the purpose of providing coaching and feedback on the trainees' performance.
- E. Infractions (non-criminal) discovered during a routine review of recorded data should be viewed as training opportunities and not disciplinary actions. Recorded material may be used for disciplinary action in the event of a citizen complaint or concern of officer misconduct.

### **Compliance**

Supervisors and the System Administrators shall monitor for compliance with this policy. The unauthorized access to or disclosure of portable recording data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. § 13.09.