

Portable Audio/Video Recorders

421.1 PURPOSE

The primary purpose of using Waite Park Police Department-issued portable recording system, worn by Waite Park Police Department peace officers, is to capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of portable recording systems and administering the data that results. Compliance with these guidelines is mandatory, but it is recognized that Waite Park Police Department peace officers must also attend to other primary duties and the safety of all concerned and are often forced to make split-second judgments, sometimes in circumstances that are tense, uncertain and rapidly evolving. As indicated, this policy governs the use of portable recording systems in the course of official duties.

421.2 POLICY

The Waite Park Police Department may provide Waite Park Police Department peace officers with portable recording systems for use during the performance of their duties. The use of portable recording systems is intended to enhance the mission of the Department by accurately capturing contacts between Department peace officers and the public. It is the policy to authorize and require the use of department-issued portable recording systems as set forth below, and to administer portable recording systems data as provided by law. The authority to establish this policy is created by Waite Park Code of Ordinances, 26.2 (D).

421.3 PURPOSE AND SCOPE

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

421.4 DEFINITIONS

The following phrases have special meanings as used in this policy:

- (a) Portable recording system means a device issued by the Waite Park Police Department worn by a Waite Park Police Department peace officer that is capable of both video and audio recording of the Waite Park Police Department peace officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and as provided in Minn. Stat. 13.825.
- (b) MGDPA or Data Practices Act means the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

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- (c) Records Retention Schedule means the General Records Retention Schedule for Minnesota Cities.
- (d) Law enforcement related information means information captured or available for capture by use of a portable recording system that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.
- (e) Evidentiary value means information that 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 the Waite Park Police Department or officer.
- (f) 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 wrecker, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.
- (g) 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.
- (h) Unintentionally recorded footage means a video recording that results from a Waite Park Police Department officer's inadvertence or neglect in operating the officer's portable recording system, 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 Waite Park Police Department were engaged in conversations of a non-business or personal nature with the expectation that the conversation was not being recorded.
- (i) Official duties means authorized law enforcement services performed by a Waite Park Police Department peace officer on behalf of the Waite Park Police Department while the peace officer is on duty for the Waite Park Police Department.

421.5 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 member assigned to coordinate the use, access, and release of protected information to ensure that procedures comply with requirements of the Minnesota Government

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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 WPPD members and members 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 Waite Park Police Department.
 2. Daily record of the total number deployed and used by members 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 Waite Park 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 Waite Park Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders.
- (h) Ensuring that this Portable Audio/Video Recorders Policy is posted on the Department website.

421.6 MEMBER PRIVACY EXPECTATION

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

421.7 USE AND DOCUMENTATION

- (a) Waite Park Police Department peace officers may use only department-issued portable recording systems in the performance of official duties for the Waite Park Police Department or when otherwise performing authorized law enforcement services as an employee of Waite Park.
- (b) Waite Park Police Department peace officers who have been issued portable recording systems shall operate and use them consistent with this policy. Waite Park Police Department officers shall conduct a function test of their issued portable

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recording system at the beginning of each shift to make sure the devices are operating properly. Waite Park Police Department peace officers noting a malfunction during testing or at any other time shall promptly report the malfunction to the Waite Park Police Department peace officers supervisor and shall document the report in writing. Supervisors shall take prompt action to address malfunctions and document the steps taken in writing.

- (c) Waite Park Police Department peace officers should wear their issued portable recording systems at the location at or above the mid-line of the waist in a position that maximizes the recording system's capacity to record video footage of the officer's activities.
- (d) Waite Park Police Department peace officers must document portable recording system use and non-use as follows:
 - 1. Whenever an officer makes a recording, the existence of the recording shall be documented in an incident report, in CAD comments or other documentation of the event.
 - 2. Whenever an officer fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the officer must document the circumstances and reasons for not recording in an incident report, in CAD comments or other documentation of the event. Supervisors shall review these reports and initiate any corrective action deemed necessary.

421.8 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. Members should activate the recorder any time the member 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 member would normally notify Dispatch
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording

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.

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At no time is a member 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.

421.8.1 MANDATORY RECORDING

The recording system must be activated when a Waite Park Police Department peace officer anticipates that they will be involved in, become involved in, or witness other Waite Park Police Department peace officers involved in:

- (a) A pursuit
- (b) Terry Stop of a motorist or pedestrian
- (c) Search
- (d) Seizure
- (e) Arrest
- (f) Use of force
- (g) Adversarial contact
- (h) The transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers and jails
- (i) Other activities likely to yield information having evidentiary value. However, Waite Park Police Department peace officers need not activate the recording system 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, as outlined in this policy.

Waite Park Police Department peace officers have no affirmative duty to inform people that a portable recording system is being operated or that the individuals are being recorded.

The mandatory recording criteria applies to Waite Park Police Department Officers while performing law enforcement activities under the command and control of another Chief Law Enforcement Officer or Federal Enforcement Official.

421.8.2 DISCRETIONARY RECORDING

Waite Park Police Department peace officers have discretion to record or not record general citizen contacts which are not otherwise mandatory as specified above. In exercising this discretion, Waite Park Police Department peace officers should give substantial consideration to requests by citizens to stop recording.

Waite Park Police Department peace officers 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, the portable recording system 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

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so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.

421.8.3 CESSATION OF RECORDING

Once activated, the portable recording system should remain on continuously until the Waite Park Police Department peace officer reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for mandatory recording.

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

The officer 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 officers shall state the reasons for ceasing the recording on the portable recording system before deactivating their portable recording system. If circumstances change, officers shall reactivate their portable recording systems as required by this policy to capture information having evidentiary value.

Officers shall not intentionally block the portable recording system's audio or visual recording functionality to defeat the purposes of this policy.

421.8.4 EXPLOSIVE DEVICE

Many portable recording systems, including body-worn portable recording systems 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.

421.9 PROHIBITED USE OF RECORDING SYSTEMS

Waite Park Police Department peace officers are prohibited from using department-issued portable recording systems for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Waite Park Police Department peace officers shall not duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Waite Park Police Department.

Recordings shall not be used by any Waite Park Police Department peace officer for the purpose of embarrassment, harassment or ridicule.

The portable recording system should not be activated in:

- (a) any court of law, unless authorized by a judge or the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident consistent with Minn. Gen. R.P.

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- (b) Hospitals, detox and mental health care facilities, juvenile detention centers, and jails unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident.

421.10 DOWNLOADING AND LABELING DATA

- (a) Each officer using a portable recording system is responsible for transferring or assuring the proper transfer of the data from his or her portable recording system to the storage server used by the department by the end of that officer's shift. However, if the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the officer's portable recording system and assume responsibility for transferring the data from it.
- (b) Waite Park Police Department peace officers shall label the portable recording system data files at the time of video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Waite Park Police Department peace officers should assign as many of the following labels as are applicable to each file:
 - (a) 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 officer at the time of labeling. Whether or not enforcement action was taken or an arrest resulted, an officer seized property from an individual or directed an individual to dispossess property.
 - (b) 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 officer of the Waite Park Police Department or another agency.
 - (c) Adversarial: The incident involved an adversarial encounter.
 - (d) Training Value: The event was such that it may have value for training.
 - (e) Test/Unintentional Recording: Footage captured through routine function testing or unintentional recording.
 - (f) 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.
 - (g) Traffic Citation: The recording documents the issuance of Misdemeanor or Petty Misdemeanor traffic citation with the exception of DUI which would be considered criminal.
- (c) Labeling and flagging designations may be corrected or amended based on additional information.

421.11 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 180 days.

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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).

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

421.11.1 DATA RETENTION

- (a) Portable recording system data shall be retained for a minimum period of one year or 365 days. There are no exceptions for erroneously recorded or non-evidentiary data.
- (b) 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 seven years.
- (c) Certain kinds of portable recording system data must be retained for seven years:
 - 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.
 - 2. Data documenting circumstances that have given rise to a formal complaint against an officer.
- (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 (f) (below), all other portable recording system footage that is classified as non-evidentiary becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after one year or 365 days.
- (f) Upon written request by a portable recording system data subject, the Waite Police Department shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The Waite Park Police Department will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.
- (g) The department shall maintain an inventory of portable recording system recordings having evidentiary value.
- (h) The department will post this policy, together with a link to its Records Retention Schedule, on its website.

421.11.2 DATA SECURITY SAFEGUARDS

- (a) Any technology vendor that supports the department portable recording system program must be successfully screened by the Minnesota Bureau of Criminal Apprehension (BCA) and be in compliance with the FBI's Criminal Justice Information System (CJIS) security policy program and the BCA security policy.
- (b) Access to portable recording system data from city or personally owned and approved devices shall be managed in accordance with established city policy.

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- (c) Waite Park Police Department officers shall not intentionally edit, alter, or erase any portable recording system recording, to include data or metadata, unless otherwise expressly authorized by the Chief of Police or the Chief of Police's designee.
- (d) As required by Minn. Stat. 13.825, subd. 9 as may be amended from time to time, the Waite Park Police Department shall obtain an independent biennial audit of its portable recording system program.

421.11.3 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 portable recording system 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.
- (b) Portable recording system data is presumptively private. Portable recording system recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
 - 1. Portable recording system data pertaining to the people is presumed private, as is portable recording system data pertaining to businesses or other entities.
 - 2. Some portable recording system data is classified as confidential (see (c) below).
 - 3. Some portable recording system data is classified as public (See (d) below).
- (c) Confidential data. Portable recording system 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 recording system data is public:
 - 1. Data documenting the discharge of a firearm by a peace officer in 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 Waite Park Police Department peace officers 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 Waite Park Police Department peace officers must be redacted.
 - 4. Data that documents the final disposition of a disciplinary action against a public employee. However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that

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other classification. For instance, data that reveals protected identities under Minn. State. 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. Waite Park Police Department peace officers shall refer members of the media or public seeking access to portable recording system data to the Chief of Police or data practice designee, 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 recording system data about him- or herself and other data subjects in the recording, but 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 Waite Park Police Department 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 Waite Park Police Department peace officers must be redacted.
 - (c) Data on other Waite Park Police Department peace 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 Waite Park Police Department peace officers and law enforcement employees. No employee may have access to the department's portable recording system data except for legitimate law enforcement or data administration purposes:
 - (a) Waite Park Police Department peace officers may access and view stored portable recording system video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Waite Park Police Department peace 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.
 - (b) Waite Park Police Department personnel shall document their reasons for accessing stored portable recording system data in the manner provided within the database at the time of each access. Waite Park Police Department personnel are prohibited from accessing portable recording system data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading portable

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recording system data recorded or maintained by the Waite Park Police Department onto public and social media websites.

- (c) Employees seeking access to portable recording system data for non-business reasons may make a request for it in the same manner as any member of the public.
- (g) Other authorized disclosures of data. Waite Park Police Department peace officers may display portions of portable recording system 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. Waite Park Police Department peace 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 system data may be shared with other law enforcement agencies only for legitimate law enforcement purposes and that are documented in writing at the time of the disclosure.
 - 2. Portable recording system data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

421.12 WAITE PARK POLICE DEPARTMENT USE OF DATA

- (a) Supervisors shall ensure Waite Park Police Department peace officers are using their portable recording system equipment per policy.
- (b) At least once a month, supervisors will randomly review portable recording system recordings made by each officer to ensure the equipment is operating properly and Waite Park Police Department peace officers are using the devices appropriately in accordance with policy, and to identify any performance areas in which additional training or guidance is required.
- (c) In addition, supervisors and other assigned personnel may access portable recording system data for purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.
- (d) Nothing in this policy limits or prohibits the use of portable recording system data as evidence of misconduct or as a basis for discipline.
- (e) Waite Park Police Department peace officers should contact their supervisors to discuss retaining and using portable recording system footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training Waite Park Police Department officers may utilize portable recording system data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

421.13 SUPERVISOR RESPONSIBILITIES

In addition to other responsibilities specified in other provisions of this policy, supervisors must do the following:

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- (a) Supervisors should determine corrective action for nonfunctioning portable recording system equipment.
- (b) 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 respond to the scene and ensure that the portable recording system properly uploaded.
- (c) Supervisors shall monitor for compliance with this policy.

421.14 ACCOUNTABILITY

Any member 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).