

TO: Kate Thunstrom, City Administrator
FROM: Todd Schwieger, Police Chief
SUBJECT: Policy Amendment
DATE: January 2, 2024

OVERVIEW:

The St. Francis Police Department has amended department policy 421, Portable Audio/Video Recorders. The policy amendment includes added mandatory language from recent legislative updates.

ACTION TO BE CONSIDERED:

St. Francis City Council to review and approve St. Francis Police Department Policy 421, Portable Audio/Video Recorders. New language is indicated in the policy by underlined blue wording.

BUDGET IMPLICATION:

No direct budget impact as a result of the policy updates.

Attachments:

- St. Francis Police Department Policy 421, Portable Audio/Video Recorders.

Portable Audio/Video Recorders

421.1 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 St. Francis Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

421.1.1 DEFINITIONS

Definitions related to this policy include:

MGDPA or Data Practices Act - refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

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

General citizen contacts - 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 a citizen asking for directions, receiving generalized concerns from a citizen about crime trends in his or her neighborhood, casual conversation with a citizen.

Adversarial - 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.

Evidentiary value - 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 a law enforcement agency or officer.

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.

Records retention schedule - Refers to the retention schedule adopted by the St. Francis Police Department.

Unintentionally recorded footage - is a video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, 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 officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

421.2 POLICY

It is the policy of this department to authorize and require the use of department issued portable recording devices as set forth below, and to administer portable recording device data as provided by law.

421.3 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 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 SFPD 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 St. Francis Police Department.
 - 2. Daily record of the total number of portable recording devices actually deployed and used by members and, if applicable, the precinct or district in which the devices were used.
 - 3. Total amount of recorded portable recording device data collected by the devices and maintained by the St. Francis Police Department.
 - 4. This policy, together with the Records Retention Schedule.
- (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 St. Francis 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.

421.4 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.

421.5 MEMBER RESPONSIBILITIES

[Officers shall wear and operate the portable recording device in compliance with this policy. This requirement includes situations where the officer is under the command and control of another chief law enforcement officer or federal law enforcement official while performing official duties for this agency.](#)

Prior to going into service, uniformed members will be responsible for making sure that they are equipped with a portable recorder issued by the Department, and that the recorder is in good working order (Minn. Stat. § 13.825). If the recorder is not in working order or the member becomes aware of a malfunction at any time, the member shall promptly report the failure to their supervisor and obtain a functioning device as soon as reasonably practicable.

[Uniformed members should wear the recorder in a conspicuous manner at or above the mid-line of the waist.](#)

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

Members should document the existence of a recording in any report or other official record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording (Minn. Stat. § 626.8473). Members should include the reason for deactivation.

421.6 GENERAL GUIDELINES FOR RECORDING

Officers shall activate their portable recording devices when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, investigative stops of motorists or pedestrians, arrests, searches, suspect interviews and interrogations, and during any police/citizen contacts that become adversarial. However, officers need not activate their cameras 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 Member Responsibilities guidelines,

Officers have discretion to record or not record general citizen contacts.

Officers have no affirmative duty to inform people that a portable recording device is being operated or that the individuals are being recorded. Officers may elect to notify people they encounter that a portable recording device is being operated if it's felt that doing so may aid the law enforcement process, reduce fear on the part of

a person subjected to a law enforcement contact, result in improved behavior of a person, or if it serves to de-escalate an encounter.

Once activated, the portable recording device 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. 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 camera before deactivating their device. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.

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

Notwithstanding any other provision in this policy, officers shall not use their portable recording devices to record other agency personnel during non-enforcement related activities, such as during pre- and post- shift time in locker rooms, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

Officers assigned to a plain clothes assignment shall not be required to wear a portable recording device during their day to day work unless working in a uniformed call response capacity or are otherwise required by this policy or as directed by a supervisor. Non-uniformed officers may carry an approved portable recording device at any time the member feels the device may be useful. Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner and in accordance with department training.

421.7 SPECIAL GUIDELINES FOR RECORDING

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

To use the portable recording devices 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.

Officers shall use their portable recording devices and squad-based audio/video systems to record their transportation and the physical transfer of person in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident.

421.8 DOWNLOADING AND LABELING DATA

Each officer using a portable recording device is responsible for transferring or assuring the proper transfer of the data from his or her camera to the Back End Client 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 device and assume responsibility for transferring the data from it.

Officers shall classify the portable recording device data files at the time of capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate classification.

Officers should assign as many of the following labels as are applicable to each file:

- a. **Criminal/Arrest:** The information has evidentiary value with respect to an actual or suspected criminal incident or charging decision and/or whenever a custodial arrest is made.
 1. Retention periods for cases that have been charged are based on the status of court proceedings. For uncharged offenses, retention is seven years or permanently in the case of death investigations.
- b. **Use of Force:** Whether or not enforcement action was taken, or an arrest resulted, the event involved the application of force by a law enforcement officer of this or another agency.
 1. These recordings must be maintained for seven years regardless of the disposition of any related criminal case.
- c. **Evidence/Property:** 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.
 1. Collects, processes, or inventories evidence.
 2. Collects, processes, or inventories property.
 3. Inventories or searches of a vehicle that is subject to tow, regardless of the reason for the tow.Evidence/property logs are subject to a one-year minimal retention period.
- d. **Complaint:** The incident involved an adversarial encounter or resulted in a complaint against the officer.

Video that turns out to have evidentiary value in any internal investigation is subject to a six year retention period. A shorter retention period may be utilized if no complaint or investigation arises.
- e. **Traffic Citation (Non-DWI):** To be used for traffic citations not involving a custodial arrest.
- f. **Assist other agency/Advise/Warn:** To be used in response to incidents (i.e. traffic stop, agency assists).
- g. **Training:** The event was such that it may have value for training.

No minimal retention period exists.
- h. **Emergency Vehicle Response:** The incident required an emergency response.
- i. **Other/Miscellaneous:** The recording does not contain any of the foregoing categories of information but may have potential evidentiary value or may have other value in being retained. Examples could include investigative or interview footage.
- j. **Not evidence:** The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recording of general citizen contacts and unintentionally recorded footage are not evidence.
- k. **Confidential:** In addition, officers shall flag each file as appropriate to indicate that it contains information about data subjects who may have rights under the MGDPA limiting disclosure of information about them. These individuals include:
 1. Victims and alleged victims of criminal sexual conduct and sex trafficking.
 2. Victims of child abuse or neglect.

3. Vulnerable adults who are victims of maltreatment.
4. Undercover officers.
5. Informants.
6. When the video is clearly offensive to common sensitivities.
7. Victims of and witnesses to crimes, if the victims or witness has requested not to be identified publicly.
8. Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
9. Mandated reporters.
10. Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
11. Juveniles who are or may be delinquent or engaged in criminal acts.
12. Individuals who make complaints about violations with respect to the use of real property.
13. Officers and employees who are the subject of a complaint related to the events captured on video.
14. Other individuals whose identities the officer believes may be legally protected from public disclosure.

Labeling and flagging designations may be corrected or amended based on additional information.

421.9 ACCESS TO PORTABLE RECORDING SYSTEM DATA

[Access to data by survivors and legal counsel.](#) Notwithstanding section Minn. Stat. § 13.82, subdivision 7 , when an individual dies as a result of a use of force by an officer of this agency, all portable recording system data documenting the incident, redacted only as required by law, must be made available for inspection by any of the following individuals within five days of their request:

- [a. the deceased individual's next of kin;](#)
- [b. the legal representative of the deceased individual's next of kin; and](#)
- [c. the other parent of the deceased individual's child.](#)

[The request may be denied if there is a compelling reason that inspection would interfere with an active investigation. If access is denied, the chief of police must provide a prompt, written denial to the requestor with a short description of the compelling reason access was denied. The written denial must also provide notice that relief may be sought from the district court pursuant to Minn. Stat. § section 13.82, subdivision 7 .](#)

[Death resulting from force - release of data to public.](#) When an individual dies as a result of force used by an officer of this agency, all portable recording system data documenting the incident, redacted only as required by law, must be released and classified as public within 14 days after the incident, unless the chief of police asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by Minn. Stat. § section 13.82, subdivision 7 .

Data subjects. Under Minnesota law, the following are considered data subjects for purposes of administering access to portable recording device data:

- a. Any person or entity whose image or voice is documented in the data.
- b. The officer who collected the data.
- c. 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.

Portable recording device data is presumptively private. Recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:

- a. Portable recording device data pertaining to people is presumed private, as is portable recording device data pertaining to businesses or other entities.
- b. Some portable recording device data is classified as confidential (see below).
- c. Some portable recording device data is classified as public (see below).

Confidential data. Portable recording device 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.

Public data. The following portable recording device data is public:

- a. 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.
- b. Data that documents the use of force by a peace officer that results in substantial bodily harm.
- c. 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 officers must be redacted.
- d. 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. 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.

Access to portable recording device data by non-employees. Officers shall refer members of the media or public seeking access to portable recording device data to a member of the department administration or designee who shall process the request in accordance with the MGDPA and other governing laws. In particular:

- a. An individual shall be provided with access and allowed to review recorded portable recording device data about him or herself and other data subjects in the recording, but access shall not be granted:
 1. If the data was collected or created as part of an active investigation.

2. 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.

b. 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:

1. Data on other individuals in the recording who do not consent to the release must be redacted.
2. Data that would identify undercover officers must be redacted.
3. 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.

Access by peace officers and law enforcement employees. No employee may have access to the department's portable recording device data except for legitimate law enforcement or data administration purposes:

- a. Officers may access and view stored portable recording device 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.
- b. Agency personnel are prohibited from accessing portable recording device data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading portable recording device data recorded or maintained by this agency to public and social media websites.
- c. Employees seeking access to portable recording device data for non-business reasons may make a request for it in the same manner as any member of the public.

Other authorized disclosures of data. Officers may display portions of the portable recording device 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 individual identities that 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,

- a. Portable recording device 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.
- b. Portable recording device data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

421.10 DATA SECURITY SAFEGUARDS

Officers shall safeguard their username and password for the portable recording device system. The sharing of a user's access to the system is prohibited.

Personally owned devices, including but not limited to computers and mobile devices, shall not be programed or used to access or view agency portable recording device data.

Officers shall not intentionally edit, alter, erase, or destroy any recording made with a peace officer's portable recording device prior to the expiration of the applicable retention period under Minn. Stat. 13.825, subd. 3.

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.

421.11 AGENCY USE OF DATA

At least once a month, supervisors will randomly review portable recording device usage by each officer to whom a device is issued or available for use, to ensure compliance with this policy and to identify any performance areas in which additional training or guidance is required.

Supervisors and other assigned personnel may access portable recording device 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.

Nothing in this policy limits or prohibits the use of portable recording devices data as evidence of misconduct or as a basis for discipline.

Officers should contact their supervisors to discuss retaining and using portable recording device footage for training purposes. Field training officers may utilize portable recording device data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

421.12 DATA RETENTION

All portable recording device data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.

Data documenting the discharge of 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 of one year.

[Data documenting deadly force by a peace officer must be maintained indefinitely.](#)

Certain kinds of portable recording device data must be retained for six 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.

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.

All other portable recording device footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.

Upon written request by a data subject, the agency shall retain a recording pertaining to that subject for an additional 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.

The department shall maintain an inventory of the portable recording device recordings having evidentiary value.

The department will post this policy, together with a link to its Records Retention Schedule, on its website.

421.13 PROHIBITED USE OF AUDIO/VIDEO RECORDERS

Members 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.

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

Members are prohibited from using personally owned recording devices while on-duty without the express consent of a supervisor. Any member who uses a personally owned recorder for department-related activities shall comply with the provisions of this policy, including retention and release requirements and should notify the on-duty supervisor of such use as soon as reasonably practicable.

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

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).

421.15 COMPLIANCE

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