

Portable Audio/Video Recorders

424.1 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. 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 Bethlehem Police Department facility, authorized undercover operations, wiretaps or eavesdropping (concealed listening devices).

424.2 POLICY

The Bethlehem Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their duties. The use of recorders is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

The Bethlehem Police Department is committed to the belief that the use of recording devices are a valuable tool for law enforcement, and are expected to result in greater transparency, more effective prosecution, and improved protection against false allegations of excessive use of force, misconduct, or racial profiling. The use of recording devices may also enhance officer performance by using recordings for training purposes.

424.3 LIMITATIONS

While Portable Audio/Video Recorders provide a unique perspective on police encounters, they also have limitations that need to be understood and considered when evaluating such recordings.

- (a) The Portable Video Recorders do not follow an officer's eyes or see as an officer sees. An officer also has the benefit of utilizing all of their senses during an encounter which may allow them to perceive an event differently than how it is depicted on a recording.
- (b) Portable Video Recorders speed differs from the speed of actual events and/or an officer's reaction time. Factors that may influence a recording are an Officer's recognition, decision-making, and timing of the physical activation of the device. These factors all take time and may influence a recording.
- (c) Portable Video Recorders may also see things better than officers do in low light conditions.
- (d) An officer's positioning may influence the view of the Portable Video Recorder.

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- (e) Portable Video Recorders only record in two dimensions. They do not record depth of field that is perceived by the human eye.

424.4 COORDINATOR

The Chief of Police or the authorized designee should designate a coordinator responsible for:

- (a) Establishing procedures for the security, storage and maintenance of data and recordings.
- (b) Establishing procedures for accessing data and recordings.
- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging or marking events.
- (e) Coordinating maintenance and repairs for Portable Audio/Video Recorders.
- (f) Conduct periodic audits of retained video data to ensure it has not been tampered with or inappropriately accessed.
- (g) Ensure that recordings are appropriately tagged and categorized in the storage system.
- (h) Review recordings that are scheduled to be purged.
- (i) Ensure all recordings go through a redaction process before being released.

424.5 MEMBER PRIVACY EXPECTATION

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

424.6 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that they are equipped with a portable recorder, issued by the Department, and that the recorder is powered on at the beginning of their shift and is in good working order by conducting a visual and operational inspection. When conducting the operational inspection, the member shall activate the portable recorder to verify functionality. This recording should be categorized as Test/Training. If the recorder is not in working order or if 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 or otherwise notify persons that they are being recorded, whenever reasonably practicable.

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Members are encouraged to notify their supervisors of any recordings that may be of value for training purposes.

Members shall operate Portable Audio/Video Recorders in accordance with the manufacturer's recommended guidelines, department training, and department policies and procedures.

Any member assigned to a non-uniformed position should carry an approved portable recorder with them, unless conducting an authorized undercover operation and the Chief of Police or authorized designee has granted permission to not utilize recording devices. Other than previously outlined, non-uniformed members should wear the recorder in a conspicuous manner and the use of such device should be in accordance with this policy.

Members acting in an SRO capacity at an assigned school facility during regular school hours are exempt from the requirement to wear a portable audio/video recorder but should have one available to them while on-duty. SROs working after school events should wear a portable audio/video recorder in a conspicuous manner and should activate it should a major incident occur.

When using a recorder, the assigned member shall record his/her name, BPD identification 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 de-activated the recording. Members should include the reason for de-activation.

Members will dock their portable recorder in the docking/charging station upon the completion of their shift and/or as soon as reasonably possible should their battery die. All recordings should be ID tagged and categorized at this time, if not already previously done so.

Members assigned a portable audio/video recorder shall take reasonable steps so that the portable audio/video recorder remains mounted in a position as to allow the recording of an encounter or incident and that it is in good working order.

Personnel will be issued a mount or mounts depending on the circumstances in which they will wear the portable audio/video recorder.

424.7 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. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

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The recorder should be activated in any of the following situations:

- (a) All enforcement and investigative contacts including stops, field interview situations, arrests, custodial transports, and search warrants.
- (b) Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- (c) Self-initiated activity in which an officer would normally notify the Communication Center.
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder, however, the recorder should then be activated as soon as reasonably practicable.

424.7.1 CESSATION OF RECORDING, DEACTIVATION AND MUTING OF THE PORTABLE AUDIO/VIDEO RECORDER

Once activated, the portable recorder should remain on continuously until the member reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing, other breaks from direct participation in the incident and in instances where there is no evidentiary value.

Members shall verbally articulate the reason on the recording before muting or de-activating the recording device during an active call.

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.

424.7.2 DEACTIVATION - ARRESTS

During arrest situations members shall de-activate their recording devices when they arrive at and enter the interior of the Bethlehem Police Department, unless they believe it would be beneficial to the agency to continue recording. As soon as practicable the member will advise a supervisor of the continued recording inside the Bethlehem Police Department.

424.7.3 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

New York law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission. Members may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation.

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424.7.4 EXPLOSIVE DEVICE

Many portable recorders, including body-worn cameras and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices should not be used where an explosive device may be present.

424.8 PROHIBITED USE OF PORTABLE 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 an 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 the Shift 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.

424.9 IDENTIFICATION AND PRESERVATION OF RECORDINGS

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

A member should transfer, tag or mark recordings when the member reasonably believes:

- (a) The recording contains evidence relevant to potential criminal, civil or administrative matters.
- (b) A complainant, victim or witness has requested non-disclosure.
- (c) A complainant, victim or witness has not requested non-disclosure but the disclosure of the recording may endanger the person.
- (d) Disclosure may be an unreasonable violation of someone's privacy.
- (e) Medical or mental health information is contained.
- (f) Disclosure may compromise an undercover officer or confidential informant.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

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424.10 ACCIDENTAL RECORDINGS

Members must notify the on-duty supervisor of the accidental recording. They will categorize the recording accordingly and notify the Coordinator.

424.11 SUPERVISORY RESPONSIBILITIES

Supervisors will ensure that members equipped with portable recording devices will utilize them in accordance with this policy.

Supervisors shall periodically inspect issued recording equipment that has been assigned to officers to ensure proper operability.

In the event of a damaged or malfunctioning device, the supervisor shall re-issue the officer another device. The supervisor is responsible for notifying the Coordinator of the damage and/or malfunction.

Supervisory review of recordings is described in the section REVIEW OF RECORDED MEDIA FILES.

424.12 RETENTION OF RECORDINGS

All recordings shall be retained for a period consistent with the requirements of the established records retention schedule but in no event for a period less than 180 days.

If a determination is made that a recording has evidentiary value in an on-going investigation, court proceeding, or appeals process, the recorded images shall be retained through the pendency of the case.

Recordings, whether, photo/audio/video, will be retained on the vendor's cloud-based server, based upon incident type for the following periods:

- (a) Arrest, minimum of five (5) years
- (b) CFS (Call for Service), minimum of six (6) months
- (c) DWI, minimum of three (3) years
- (d) Pending Review, until purged pursuant to retention guidelines
- (e) Pursuit, until purged pursuant to retention guidelines
- (f) Test/Training, minimum of six (6) months
- (g) Traffic Crash, minimum of six (6) months
- (h) Traffic Stop, minimum of six (6) months
- (i) Use of Force, until purged pursuant to retention guidelines

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424.13 REVIEW OF RECORDED MEDIA FILES

When preparing written reports, members should review their recordings as a resource (see the Officer-Involved Shootings and Deaths Policy for guidance in those cases). However, members shall not retain personal copies of recordings. Members should not use the fact that a recording was made as a reason to write a less detailed report.

The following applies to the review of recordings:

- (a) Members may review recordings of a specific incident to prepare for a legal proceeding.
- (b) Members should not typically allow citizens to review records however, officer discretion is allowed to replay the recording for citizens at the scene in order to mitigate possible complaints.
- (c) Supervisors are authorized to review relevant recordings any time they are investigating complaints of misconduct or reports of meritorious conduct.
- (d) Supervisors may review a specific incident for the purpose of training, critique, civil claims, administrative investigations, or other articulated reasons that would be beneficial to the department.
- (e) Supervisors shall review all recordings when there is a use of force incident.
- (f) The Chief of Police may institute a procedure for a randomized audit of recordings to ensure that the recording devices are operating properly and that members are using the devices in accordance with policy
- (g) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- (h) By media personnel with permission of the Chief of Police or the authorized designee.
- (i) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.
- (j) By officers for incidents which they were involved.
- (k) Upon approval of a supervisor, by training officers for the purpose of identifying training materials/needs.
 - 1. Training materials will be compiled based on agency needs and the materials may be edited to protect the identity of the actors involved.
 - 2. Training materials will not be chosen on any discriminatory basis such as race, color, religion, gender, sex, sexual orientation, national origin, age, disability, marital status or political affiliation.

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All recordings should be reviewed by the Records Access Officer prior to public release (see the Records Maintenance and Release Policy). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court (Public Officers Law § 89).

424.14 RELEASE OF AUDIO/VIDEO RECORDINGS

All audio/video files that have been preserved shall not be released to any person or agency without prior approval from the Chief of Police or her/his designee. All FOIL requests will be processed according to current departmental procedures and applicable laws and ordinances.

424.15 RELEASE OF BODY WORN VIDEO RECORDINGS

Whenever body worn video recordings are released in accordance with this policy the attached advisory will be given:

Video Advisory:

You are about to view a recording of a police body worn camera. Understand that while this recording depicts visual information from the scene, the human eye and brain are highly likely to perceive some things in stressful situations differently than a camera records them, so this photographic record may not reflect how the involved officer actually perceived the event.

The recording may depict things that the officer did not see or hear. The officer may have seen or heard things that were not recorded by the camera. Depending on the speed of the camera, some action elements may not have been recorded or may have happened faster than the officer could perceive and absorb them. The camera has captured a 2-dimensional image, which may be different from an officer's 3-dimensional observations. Lighting and angles may also have contributed to different perceptions. And, of course, the camera did not view the scene with the officer's unique experience and training.

Hopefully, this recording will enhance your understanding of the incident. Keep in mind, though, that these video images are only one piece of evidence to be considered in reconstructing and evaluating the totality of the circumstances. Some elements may require further exploration and explanation before the investigation is concluded.

A copy of this warning can be accessed here: [*attached*]

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424.16 TRAINING AND MAINTENANCE

All members will be trained on the proper care and use of the device in accordance with department policy. This training shall be documented and a record of such will be kept in the members training file and will include but not be limited to:

- (a) Usage;
- (b) Limitation;
- (c) Activation;
- (d) Deactivation;
- (e) Functions;
- (f) Downloading, Reviewing and Tagging;
- (g) Docking;
- (h) Placement;
- (i) Retention/request periods;
- (j) An overview of relevant laws governing consent, evidence, privacy and public disclosure;
- (k) Scenario-based exercises that replicate situations that officers might encounter in the field;
- (l) Procedures for preparing and presenting digital evidence for court; and
- (m) Procedures for documenting and reporting any malfunctioning device or supporting system.

424.16.1 MAINTENANCE

Use a soft, damp cloth to clean the surface.

Do not use harsh cleaners, chemicals or solvents and do not use Windex or similar cleaners on the camera lens.

Do not immerse the portable recorder in water or place the lens under running water. Portable recorders are water resistant, not waterproof.

424.17 SUPPLEMENTAL OPERATING GUIDELINES

A supplemental operating guideline for the usage of BWC's can be found here: [PORTABLE AUDIO/VIDEO RECORDERS OPERATING GUIDELINES](#)