

## Chapter 68: Portable Audio/Video Recorders

### 68.1 PURPOSE:

This policy provides guidelines for the use of portable audio/video recording devices by officers 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 (Wis. Stat. 165.87).

This policy does not apply to mobile audio/video recordings (Chapter 57), interviews, or interrogations conducted at any Everest Metropolitan Police Department facility, authorized undercover operations, wiretaps, or eavesdropping (concealed listening devices).

### 68.2 POLICY:

The Everest Metro Police Department will provide designated officers with access to portable audio/video recording devices, including Body Worn Cameras (BWC), for use during the performance of their duties. In this policy, "BWC" refers to the particular BWC model provided for personnel (as of 2021: Panasonic Arbitrator BWC4000). The use of recording devices, including BWC's, is intended to enhance the mission of the Department by accurately capturing contacts between officers and the public.

### 68.3 OFFICER PRIVACY EXPECTATION

All recordings made by officers 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 property of the Department. The BWC equipment, data, images, video, and metadata captured, recorded, or produced by the equipment is the sole property of the Department. Officers shall have no expectation of privacy or ownership interest in the content of these recordings.

### 68.4 OFFICER RESPONSIBILITIES

BWC equipment is issued primarily to uniformed personnel working patrol or as authorized by this agency. Officers who are assigned BWC equipment must use the equipment unless otherwise authorized by supervisory personnel. Officers shall only use BWC's issued by this Department.

Prior to going into service each uniformed officer, whose primary duties involve working patrol, will be responsible for making sure they are equipped with a BWC issued by the Department, and that the device is in good working order.

Any officer assigned to a non-uniformed position or whose primary duties are not patrol (SRO, CSO, Detective) will be responsible for making sure they are equipped with a BWC issued by the Department, and that the device is in good working order before they have contact with the public in an official capacity. If they are unable to do so (no

available BWC, lack of time due to an immediate emergency), the reason shall be documented in a report.

Officers shall promptly report to a supervisor any malfunctions, failures, or if a BWC is not in working order. The officer shall also promptly report any failures to a supervisor if the officer becomes aware of a malfunction during use. All officers should wear their BWC in a conspicuous manner (or otherwise notify persons they are being recorded whenever reasonable practicable), unless they are conducting a lawful recording in an authorized undercover capacity.

When using a BWC, the officer shall make sure they are signed into the device properly (at the beginning and end of their shift/use). This includes their identification and squad (if applicable). This shall be done regardless of whether any activity was recorded.

Officers should document the existence of BWC recordings in their report or other official contact record, including any instance where the device malfunctioned or was deactivated. Officers should include the reason for deactivation.

Officers shall not edit, delete, alter, erase, duplicate, copy, share, or otherwise distribute BWC recordings in any manner without prior written authorization and approval from the Chief of Police or their designee, with the exception of copying recordings to be added to RMS.

Officers are encouraged to inform their supervisor of any recordings that may be of value for training purposes.

#### **68.5 ACTIVATION OF PORTABLE AUDIO/VIDEO RECORDERS**

This policy is not intended to describe every possible situation in which a BWC should be used, although there are many situations where its use is appropriate. Officers shall activate their recorders in any of the following situations:

- All enforcement and investigative contacts including stops and field interview (FI) situations.
- When in official contact with the public.
- Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- Self-initiated activity in which a officer would normally notify Dispatch.
- Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
- Any other time the officer believes it would be appropriate or valuable to record an incident.

At no time is an officer expected to jeopardize their safety in order to activate a recorder or change the recording media. However, the recorder should be activated in required situations as soon as practical.

### **SURREPTITIOUS USE OF THE PORTABLE RECORDER**

Wisconsin law permits an individual to surreptitiously record any conversation in which one party of the conversation has given their consent [Wis. Stat. 968.31(2)(b)].

Officers may record any conversation during the course of a criminal investigation in which the officer reasonable believes that such a recording is lawful and beneficial to the investigation.

Officers shall not record another Department officer without a court order or unless lawfully authorized by the Chief of Police or their authorized designee.

### **CESSATION OF RECORDING**

Except as provided below, once portable recording devices are activated, the recordings should continue without interruption until the contact ends.

Officers 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 officer that such privacy may outweigh any legitimate law enforcement interest in recording.

Requests by officers 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.

Body Worn Cameras (BWC), once activated, shall remain on continuously until the uniformed officer's 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 within a call/incident; the following are examples:

- Report writing.
- While in a medical facility, waiting for a person in custody to be medically cleared; however, the BWC should be re-activated if/when the need for contact with the person again arises.
- Other extended breaks from direct participation in the incident or contact with involved persons.

Other instances where an officer may cease a recording include:

- While conferring with other officers/supervisors regarding strategies or tactics of a call.

- When an informant or citizen requests the recording device be turned off before providing information.

When a BWC recording is stopped or muted prior to completion of the incident, the officer shall document the reason for doing so.

### **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.

#### **68.6 PROHIBITED USE OF RECORDERS**

Officers are prohibited from using Department-issued portable recorders and recording media for personal use. Officers are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

Officers are prohibited from retaining recordings of activities or information obtained while on duty, whether the recording was created with Department-issued or personally owned recorders. Officers shall not duplicate or distribute such recordings, except for authorized legitimate Department business purposes. All such recordings shall be retained at the Department.

Officers are prohibited from using personally owned recording devices while on-duty without the express consent of a supervisor. Any officer who uses a personally owned recording device 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 officer for the purpose of embarrassment, harassment, or ridicule.

#### **68.7 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, officers should download, tag, or mark all audio/video recordings in accordance with Department procedure. These recordings should be documented in any related case report. Tags and retention shall follow the guidelines in Chapter 13, Electronic Recordings.

#### **68.8 REVIEW AND RELEASE OF RECORDED MEDIA FILES**

When preparing written reports, officers should review their recordings as a resource (see Chapter 22, Use of Force, for guidance in critical incidents). Officers shall not retain personal copies of recordings. Officers should not use the fact that a recording was made as a reason to complete less detailed reports.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct, reports of meritorious conduct, or whenever such recordings would be beneficial in reviewing the officer's performance or for training purposes.

Recorded files may also be reviewed:

- Upon approval by a supervisor, by any officer of the Department who is participating in an official investigation (such as a personnel complaint, administrative investigation, or criminal investigation).
- By Field Training Officers in review of personnel being trained under the Department's Field Training program.
- Pursuant to a lawful process or by court personnel who are otherwise authorized to review evidence in related cases.
- By media personnel with the permission of the Chief of Police or their authorized designee.
- In compliance with a public records request, if permitted, and in accordance with Chapter 26, Public Records.

Media control person includes: the Chief of Police or their designee, command staff, or a member of clerical with proper training in open records law, who is/are responsible for receiving the recorded media and ensuring permanent, secure storage and release in compliance with open records Law.

All recordings should be reviewed by a media control person prior to release (Chapter 26, Public Records). Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or court order [Wis. Stat. 165.87(3)].

Requests for the release of audio/video recordings shall be processed in accordance with Chapter 26, Public Records.

## **68.9 RETENTION REQUIREMENTS**

All recordings shall be tagged and retained for a period of time consistent with the guidelines in Chapter 13, Electronic recordings, but in no event for a period less than 120 days (Wis. Stat. 165.87).

### **SECURE STORAGE OF RECORDINGS**

Recordings are stored securely, following the guidelines in Chapter 13, Electronic Recordings.

### **EXCEPTIONS TO RETENTION REQUIREMENTS FOR BODY-WORN CAMERAS**

Exceptions to the 120 day retention period for body-worn cameras are as follows (Wis. Stat. 165.87)

- Recordings should be retained until the final disposition of any investigation, case, or complaint, to which any of the following apply:
  1. Death or actual/alleged physical injury to any person in the recording.
  2. An encounter resulting in custodial arrest.
  3. A search during a temporary detention pursuant to Wis. Stat. 968.25.
  4. An encounter resulting in the use of force, except when the only use of force involves use of a firearm to euthanize an injured wild animal.
- Recordings used in any criminal, civil, or administrative proceeding may not be destroyed except upon a final court disposition, by an order from the court, or it is determined the recordings are no longer needed after hearing the officer.
- Recordings may be retained for a period beyond 120 days if a request or directive to preserve the recordings is made before the expiration of that time period by an officer from this Department or another law enforcement agency, officer of a police commission, prosecutor, defendant, or court.