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# Portable Recording System

## 450.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of portable recording devices by members of this department while in the performance of their duties (Minn. Stat. § 626.8473). Portable recording devices include all recording systems that are body-worn and are integrated into portable equipment and software system.

This policy does not apply to mobile audio/video recordings (in-car camera systems), interviews or interrogations conducted at any Alexandria Police Department facility, undercover operations, wiretaps or eavesdropping (concealed listening devices) unless captured by a portable recording system.

### 450.1.1 DEFINITIONS

Definitions related to this policy include:

**Portable recording system (PRS)**- A portable recording device (PRD) 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. Devices such as cell phones, mic packs (for use with in-car camera systems), digital audio recorders, and tablets assigned to patrol cars are not covered under this policy.

**Adversarial Contact**- A law enforcement encounter involving or characterized by conflict or opposition.

**MGDP or Data Practices Act**- The Minnesota Government Data Practices Act, Minn Stat 13.01, et seq.

**Records Retention Schedule**- The General Records Retention Schedule from the League of Minnesota Cities.

**Member**- An employee of the City of Alexandria and assigned to work for the Police Department.

**Data Subjects**. Under Minnesota Law, the following are considered data subjects for the purpose of administrating access to the PRD:

- a. Any person or entity whose image or voice is documented in the data.
- b. The member 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.

**Law Enforcement related information**- Information captured or available for capture by the use of a portable recording device that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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**Evidentiary Value**-Information that may be used 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 member.

**General Citizen contact**- An informal encounter with a citizen that is not and does not become law enforcement related or an adversarial contact, and a recording of the event would not yield information relevant to an ongoing investigation.

**Official duties**- A member is on duty and performing authorized law enforcement services on behalf of this agency.

### 450.1.2 PORTABLE RECORDING SYSTEM OBJECTIVES

The Alexandria Police Department has adopted the use of portable recording devices to accomplish the following objectives:

- a. To enhance officer safety.
- b. To document statements and events during the course of an incident.
- c. To enhance officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.
- d. To preserve audio and visual information for use in current and future investigations.
- e. To provide a tool for self-critique and field evaluation during officer training.
- f. To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of audio-video recordings.
- g. To assist with the defense of civil actions against law enforcement officers and the City of Alexandria.
- h. To assist with the training and evaluation of officers.

### 450.2 POLICY

The Alexandria Police Department may provide members with access to portable recorders for use during the performance of their official 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.

### 450.3 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.

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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### **450.4 MEMBER RESPONSIBILITIES**

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recording device issued by the Department, and that the PRD is in good working order. 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 his/her supervisor and obtain a functioning device as soon as reasonably practicable. Members that have a PRD that is not functioning correctly shall describe in a detailed work order what the nature of malfunction is and submit the PRD to his/her supervisor for repair. Uniformed members should wear the recorder in a conspicuous manner.

Any member assigned to a non-uniformed position may carry an approved portable recording device 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 using a portable recording device, the assigned member shall record his/her name, employee number and the current date and time at the beginning and the end of the shift or other periods 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 shall document the existence of a recording in any report or other official records of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members shall include the reason for deactivation.

#### **450.4.1 RECORDING OF COMMUNICATIONS**

Officers may use an audio recorder to record wire or oral communications at any time. Recorded communications shall be maintained in their entirety, without editing or alterations.

### **450.5 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 shall be activated in any of the following situations:

- a. All enforcement and investigative encounters including but not limited to pursuits, Terry stops of motorists or pedestrians, arrests, searches, suspect interviews and interrogations, and during any general citizen contacts that become adversarial.
- 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 Douglas County Communications Center commonly referred to as, "Douglas".

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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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 these same criteria. Recording should resume if law enforcement interests outweigh privacy unless recording no longer is necessary under circumstances.

At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. A member shall document in the narrative report as to the reason the PRD was not activated. However, the recorder should be activated in situations described above as soon as reasonably practicable.

### 450.5.1 NON-CRIMINAL MATTER

At any time that an officer reasonably believes a recorded contact may be of benefit in a non-criminal matter (e.g., adversarial contact), the officer shall log the recording media into evidence or download the file in accordance with current procedure for storing digital files.

a. Under such circumstances, the officer shall notify a supervisor of the existence of the recording as soon as reasonably practicable.

b. Recording media that has been placed into evidence shall be retained for a period of time no less than required by this department's records retention schedule.

Once any portable recording device has been filled, the officer shall download the file in accordance with current procedure for storing digital files, where it shall be retained for a period of no less than 180 days or the period dictated by this department's records retention schedule, whichever is longer.

### 450.5.2 CESSATION OF RECORDING

Once activated, the portable recording device shall 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 or other breaks from direct participation in the incident. Officers shall state the reason for ending the recording prior to turning the PRD off.

### 450.5.3 SURREPTITIOUS RECORDINGS

Minnesota law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02).

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes will be lawful and beneficial to the investigation.

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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Members shall not surreptitiously record another department member during non-enforcement related activities without a court order unless lawfully authorized by the Chief of Police or the authorized designee assigned by the Chief of Police.

### 450.5.4 EXPLOSIVE DEVICE / EXPLOSIVE ENVIRONMENT

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

### **450.6 IDENTIFICATION AND PRESERVATION OF RECORDINGS**

To assist with identifying and preserving data and recordings, members shall download and label the recordings in accordance with procedure, and document the existence of the recording, in any related case report. Attached to this policy will be a procedural document that will provide a step by step process for downloading and labeling recorded media. The procedures will contain required labels to include: Evidence, criminal, force, property, administrative, other and not evidence. The procedural document may be subject to change based on vendor, software, upgrades, and efficiency of the portable recording system. All procedures must meet requirements of 13.825 or other MN law.

A member shall appropriately label a recording 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.
- g. The recording or portions of the recording may be protected under the Minnesota Data Practices Act.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., an adversarial contact), the member should promptly notify a supervisor of the existence of the recording. When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, police officer-involved shooting, department involved collisions), a supervisor shall ensure that the portable recording devices are properly uploaded.

### **450.7 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

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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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.

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

Recorded files may also be reviewed:

- a. Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- b. Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- c. In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to Minn. Stat. § 13.82, Subd. 15, and in accordance with the Records Maintenance and Release Policy.

All recordings should be reviewed by the Custodian of Records prior to public release (See the Records Maintenance and Release Policy). Recordings that are clearly offensive to common sensibilities should not be publicly released unless disclosure is required by law or order of the court (Minn. Stat. § 13.82, Subd. 7; Minn. Stat. § 13.825, Subd. 2).

### **450.8 COORDINATOR**

The Chief of Police should designate a coordinator responsible for developing a procedural document addressing issues unique to the PRD equipment implemented.

Members and the coordinator shall refer to the attached procedural document for reference for all of the requirements indicated in 450.8 of this policy. These responsibilities include:

- a. The coordinator shall establish procedures for the security, storage, and maintenance of data and recordings. The coordinator shall 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).
- b. The coordinator shall establish procedures for accessing data and recordings. These procedures should include the process to obtain written authorization for access to non-public data by APD members and members of other governmental entities and agencies.
- c. The coordinator shall establish procedures for logging or auditing access.
- d. The coordinator shall establish procedures for transferring, downloading, tagging or marking events.
- f. The coordinator shall prepare the biennial audit required by Minn. Stat. § 13.825, Subd. 9.

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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g. The coordinator shall notify the Bureau of Criminal Apprehension (BCA) within 10 days when new equipment is obtained by the Alexandria Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders.

### **450.9 PROHIBITED USE OF PORTABLE RECORDING DEVICES**

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 the Shift Sergeant. 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. Accessing recordings on any device for anything other than official duties is strictly prohibited.

### **450.10 RETENTION OF RECORDINGS**

a. All recordings shall be retained for a minimum of 180 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 one year.

c. The following must be maintained for 6 years:

(1) Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require 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 recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.

e. Subject to f. (below), all other recordings that are classified non-evidentiary or becomes classified as non-evidentiary, or is not maintained for training purposes shall be destroyed after 180 days.

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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f. If a data subject submits a written request, the agency shall retain a recording pertaining to the subject for an additional time period requested by the subject 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.

### 450.10.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Requests for the release of audio/video recordings shall be processed in accordance with the Records Maintenance and Release Policy.

### 450.10.2 ACCESS TO RECORDING DATA

**1. PRD data is presumptively private.** PRD recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:

- a. PRD data pertaining to people is presumed private, as is PRD data pertaining to businesses or other entities.
- b. Some PRD data is classified as confidential.
- c. Some PRD data is classified as public.

**2. Confidential data.** PRD 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.

**3. Public data.** The following PRD 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 request to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted. In addition, any data on undercover peace 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 a 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 (certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories.

**4. Access to PRD data by non-employees.** Members shall refer members of the media or public seeking access to PRD data to the responsible authority, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

a. An individual shall be allowed to review the recorded PRD 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.

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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(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 peace 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.

**5. Access by Law Enforcement.** No member may have access to the department's PRD data except for legitimate law enforcement or data administration purposes:

a. Members may access and view stored PRD video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance, except as provided in the Critical Incident Response policy/Officer Involved Shooting policy, members 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 shall document their reasons for accessing stored PRD data at the time of each access. Agency personnel are prohibited from accessing PRD data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading PRD data recorded or maintained by this agency to public and social media websites.

c. Employees seeking access to PRD data for non-business reason may make a request for it in the same manner as any member of the public.

**6. Other authorized disclosures of data.** Members may display portions of PRD 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. Members 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 screenshots, muting the audio, or playing the audio but not displaying video. In addition,

a. PRD 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. PRD data shall be made available to prosecutor, courts, and other criminal justice entities as provided by law.

# Alexandria Police Department

Alexandria PD Policy Manual

## *Portable Recording System*

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### **450.11 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).

### **450.12 SUPERVISOR RESPONSIBILITIES**

Supervisors shall ensure officers are using their portable recording devices per policy, which at a minimum shall include at annual performance reviews.

Supervisors should determine corrective action for non-functioning portable recording devices.

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 ensure that the portable recording devices are properly uploaded.

### **450.13 ADMINISTRATOR RESPONSIBILITIES**

The portable recording system administrator (designated personnel authorized by the Chief of Police) is responsible for accessing, deleting or redacting recordings:

- a. Pursuant to a court order.
- b. In accordance with established records retention policies, including all other media deemed to be of no evidentiary value.
- c. In instances where privacy issues require redaction or deletion.
- d. When ordering, issuing, retrieving and storing all portable audio/video recorders.

The administrator also has the following duties:

- a. To maintain logs reflecting portable recording device assignments, serial number, the date it was issued, and the officer to which it was issued.
- b. Document and maintain the following PRD data, which are classified as public:
  - (1) Total number of devices owned or maintained by the Alexandria Police Department.
  - (2) A record of the total number deployed and used by members.
  - (3) The total amount of recorded audio and video data collected by the devices and maintained by the Alexandria Police Department.
  - (4) A copy of this policy, together with the records retention schedule. Policy 450 "*Portable Recording System*" shall be publicly accessible on the Alexandria Police Department webpage.

### **450.14 TRAINING**

Users of the portable recording systems and supervisors shall successfully complete an approved course of instruction prior to being deployed. This training shall be documented by a designated Sergeant.