

SECTION SMP

SMP-R PORTABLE RECORDING SYSTEMS POLICY

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Section SMP-R.10 Policy

The Avon Police Department may provide Avon 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.

Section SMP-R.11 Purpose and Scope

Purpose: The primary purpose of using Avon Police Department-issued portable recording system, worn by Avon 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 Avon 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.

Scope: This policy governs the use of portable recording systems by department peace officers while in the performance of their duties consistent with (Minn. Stat. § 626.8473). This policy does not apply to mobile audio or video recordings made by devices not worn by Avon Police Department peace officers such as in-squad cameras, wiretaps, or concealed listening devices unless captured by a portable recording system. The Chief of Police or a Chief of Police designee may supersede this policy by providing specific instructions for portable recording system's use to individual Avon Police Department peace officers or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The Chief of Police or designee may also provide specific instructions or standard operating procedures for portable recording system's use to Avon Police Department peace officers assigned to specialized details, such as carrying out duties in courts or guarding 2 prisoners or patients in hospitals or mental health facilities.

Section SMP-R.12 Definitions

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

1) **Portable recording system** means a device issued by the Avon Police Department worn by an Avon Police Department peace officer that is capable of both video and audio recording of the Avon 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.

2) **MGDPA or Data Practices Act** means the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

3) **Records Retention Schedule** means the General Records Retention Schedule for Minnesota Cities.

4) **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.

5) **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 Avon Police Department or officer.

6) **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.

7) **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. 3

8) **Unintentionally recorded footage** means a video recording that results from a Avon 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 Avon Police Department were engaged in conversations of a non-business or personal nature with the expectation that the conversation was not being recorded.

9) **Official duties** mean authorized law enforcement services performed by a Avon Police Department peace officer on behalf of the Avon Police Department while the peace officer is on duty for the Avon Police Department.

Section SMP-R.13 Coordinator

The Chief of Police or the authorized designee should designate a coordinator responsible for complying with the following certain legal requirements of portable recording systems under Minn. Stat. § 626.8473 and Minn. Stat. § 13.825):

- 1) Establishing an inventory of portable recording systems including:
 - a. Total number of devices owned or maintained by the Avon Police Department peace officers and if applicable, the precinct or district in which the devices were used.
 - b. Daily record of the total number deployed and used by members and, if applicable, the precinct or district in which the devices were used.

c. Total amount of recorded audio and video data collected by the devices and maintained by the Avon Police Department.

2) Preparing the biennial audit required by Minn. Stat. § 13.825, Subd. 9.

3) Notifying the Bureau of Criminal Apprehension (BCA) in a timely manner when new equipment is obtained by the Avon Police Department that expands the type or scope of surveillance capabilities of the Avon Police Department's portable recording systems.

4) Retaining this policy, together with the Records Retention Schedule.

Section SMP-R.14 No Privacy Expectation

All recordings made by Avon Police Department peace officers on any portable recording system at any time or while acting in an official capacity shall remain the property of the Department. Avon Police Department and Avon Police Department peace officers shall have no expectation of privacy or ownership interest in the content of these recordings.

Section SMP-R.15 Use and Documentation

- 1) Avon Police Department peace officers may use only department-issued portable recording systems in the performance of official duties for the Avon Police Department or when otherwise performing authorized law enforcement services as an employee of Avon.
- 2) Avon Police Department peace officers who have been issued portable recording systems shall operate and use them consistent with this policy. Avon Police Department officers shall conduct a function test of their issued portable recording system at the beginning of each shift to make sure the devices are operating properly. Avon Police Department peace officers noting a malfunction during testing or at any other time shall promptly report the malfunction to the Avon Police Department peace officer's supervisor, and document any system malfunction or failure. Supervisors shall take prompt action to address malfunctions.
- 3) Avon Police Department peace officers should wear their issued portable recording systems at the location on their body and in the manner specified in training.
- 4) Avon Police Department peace officers must document portable recording system use and non-use as follows:
 - a. Whenever an officer makes a recording, the existence of the recording shall be documented in an incident report or in CAD comments.
 - b. 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 or in CAD comments. Supervisors shall review these reports and initiate any corrective action deemed necessary.

Section SMP-R.16 Recording

This policy is not intended to describe every possible situation in which the recording system should be used, although there are many situations where its use is appropriate. Avon Police Department peace officers should activate the recording system any time the member believes it would be appropriate or valuable to record an incident. Avon 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.

1. **MANDATORY RECORDING:** The recording system must be activated when an Avon Police Department peace officer anticipates that they will be involved in, become involved in, or witness other Avon 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, Avon 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.
2. **DISCRETIONARY RECORDING:** Avon 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, Avon Police Department peace officers should give substantial consideration to requests by citizens to stop recording.
 - a. Avon 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.
 - b. 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 so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.
3. **CESSATION OF RECORDING:** Once activated, the portable recording system should remain on continuously until the Avon 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.
 - a. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.
 - b. 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.

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

- 4. PROHIBITED USE OF RECORDING SYSTEMS:** Avon 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.
- a. Avon 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 Avon Police Department.
 - b. Recordings shall not be used by any Avon Police Department peace officer for the purpose of embarrassment, harassment or ridicule.
 - c. The portable recording system should not be activated in:
 - i. 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.

Section SMP-R.17 Downloading and labeling data

- 1. Each Avon Police Department 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.
 - a. 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.
- 2. Avon 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.
 - a. Avon Police Department peace officers should assign as many of the following labels as are applicable to each file:
 - i. 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.
 - ii. 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 Avon Police Department or another agency.
 - iii. Adversarial: The incident involved an adversarial encounter.

- iv. Training Value: The event was such that it may have value for training.
 - v. Test/Unintentional Recording: Footage captured through routine function testing or unintentional recording.
 - vi. 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.
 - vii. Traffic Citation: The recording documents the issuance of Misdemeanor or Petty Misdemeanor traffic citation with the except of DUI which would consider criminal.
3. Labeling and flagging designations may be corrected or amended based on additional information.

Section SMP-R.18 Data Administration

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:
 - i. 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.
 - ii. 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), 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 365days.
- f. Upon written request by a portable recording system data subject, the Avon 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 Avon Police Department will notify the requester 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.

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.
- c. Avon Police Department officers shall not intentionally edit, alter, or erase any portable recording system recording 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 Avon Police Department shall obtain an independent biennial audit of its portable recording system program.

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:
 - i. Any person or entity whose image or voice is documented in the data.
 - ii. The officer who collected the data.
 - iii. 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:
 - i. Portable recording system data pertaining to the people is presumed private, as is portable recording system data pertaining to businesses or other entities.
 - ii. Some portable recording system data is classified as confidential (see (c) below).
 - iii. 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:
 - i. 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.
 - ii. Data that documents the use of force by an Avon Police Department peace officer that results in substantial bodily harm.
 - iii. 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 Avon Police Department peace officers must be redacted.
 - iv. 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 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. Avon 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:

- i. 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:
 - 1. If the data was collected or created as part of an active investigation.
 - 2. To portions of the data that the Avon 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.
- ii. 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 Avon Police Department peace officers must be redacted.
 - 3. Data on other Avon 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 Avon 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:
 - i. Avon 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. Avon 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.
 - ii. Avon 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. Avon 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 recording system data recorded or maintained by the Avon Police Department onto public and social media websites.
 - iii. 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. Avon 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. Avon 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,
 - i. 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.
 - ii. Portable recording system data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

4. **Police Department Use of Data**

- a. Supervisors shall ensure Avon Police Department peace officers are using their portable recording system equipment per policy.
 - i. 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 Avon 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.
 - ii. 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.
 - iii. Nothing in this policy limits or prohibits the use of portable recording system data as evidence of misconduct or as a basis for discipline.
 - iv. Avon 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.
 - v. Field training Avon Police Department officers may utilize portable recording system data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

5. **Supervisor Responsibilities**

- a. In addition to other responsibilities specified in other provisions of this policy, supervisors must do the following:
 - i. Supervisors should determine corrective action for nonfunctioning portable recording system equipment.
 - ii. 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.
 - iii. Supervisors shall monitor for compliance with this policy.

6. **Compliance**

- a. The unauthorized access to or disclosure of portable recording system data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. 13.09.

ADOPTED AND CITY COUNCIL APPROVED: [update]