

To: Mayor Jerry Faust, City Council Members  
City Manager Mark Casey

From: Jon Mangseth, Police Chief

Subject: Body Worn Camera (BWC) Policy

Date: October 24<sup>th</sup>, 2017

In front of you this evening is a staff report and appendixes for a Body Worn Camera policy. Per state statute, the law adds a new public comment provision in Minnesota Statutes, section 626.8473. It states that a law enforcement agency has to provide an opportunity for public comment before written policy adoption.

The legislation and draft policy that applies to BWC's can be found in the attached Appendix labelled:

- A. Policy 30-0 Portable Audio/Video Recorders
- B. Policy 9-28 (Officer-Involved Shootings and Deaths), placing limitations on an officer's ability to view recordings prior to offering a statement or writing a report.
- C. M.S.S. 626.8473 PORTABLE RECORDING SYSTEMS ADOPTION; WRITTEN POLICY REQUIRED
- D. M.S.S. 13.825 PORTABLE RECORDING SYSTEMS
- E. Sample Data Retention Schedule

The St. Anthony Police Department has put together a final draft of its Body Worn Camera Policy. The Police Department engaged in a comprehensive review and public input process for the development of this policy.

The policy development process included input, discussion, and consultation with the following:

1. St. Anthony Police Department staff
2. Minnesota Bureau of Criminal Apprehension staff
3. Roseville, New Brighton and Burnsville Police Departments
4. Tri-City Body Cam Workgroup
5. St. Anthony City Attorney
6. Lauderdale/Falcon Heights City Attorney
7. Ramsey County Attorney's Office
8. Hennepin County Attorney's Office
9. League of Minnesota Cities
10. International Association of Chiefs of Police (IACP) model policy
11. Harriet Tubman Center
12. National Alliance on Mental Illness (NAMI)
13. MN Coalition for battered Women
14. City of Roseville IT division
15. St. Anthony-New Brighton School District

## Why Body Worn Cameras?

- Due to recent national events, the use of body worn cameras (BWC) has quickly emerged as a topic of discussion in many communities and police departments.
- The expectation of video footage in police related incidents has become a new reality.
- BWC Legislation, enacted August 1<sup>st</sup>, 2016, requires agencies implementing a BWC Program to adhere to strict policy requirements, when adopting and implementing them.
- Used in conjunction with our Panasonic “in squad cameras” and Panasonic system cameras, to be installed in booking and processing areas, we will have full system compatibility and continuity with regard to officer/citizen contacts.
- St. Anthony Police Officer philosophy has been, “We want cameras, and we don’t want to work without them.” This has been true for in squad cameras (since 2011) and has been echoed by officers in regard to BWC.
- The BWC policy, much like other policies, will be a living document. Due to changes in technology, case law and identified need, the police department will have to continually strive to ensure we are following best practices.
- BWC’s can:
  1. Help to strengthen and enhance transparency and accountability.
  2. Provide an audio and visual record of interactions that can capture evidence, during stressful, tense, rapidly developing situations.
  3. Potentially reduce public complaints and use of force reports.
    - IACP study reports 93% decrease in complaints nationwide.

## The Benefits of BWC’s include:

- Cameras are an unbiased witness to capture the event and behavior of an officer (s), individual/suspect/witness.
- Increases transparency and accountability of officers.
- May help provide valuable evidence in obtaining accurate witness and victim statements.
- Video footage captured may help speed up court proceedings by providing indisputable proof of situations. This may lead to a reduction in court expenses due to an increase in pre-trial plea bargains or possibly an increased rate of convictions.
- Video footage captured will aid in officer training and after action review of calls for service.

## Concerns with BWC’s (Items to consider):

- According to early versions of policies governing their use, law enforcement officers must physically activate the camera when they exit their patrol car. The recording equipment must be manually activated when interacting with civilians or recording statements during investigations. However, officers decide when to activate the camera, and for how long the footage is stored, and if and when it should be made accessible to public. For example, the camera can be

deactivated when interviewing a victim of sexual assault or during a medical emergency, to maintain the victim's privacy.

- Privacy issues are of concern for both police and civilians. How to deal with those concerns was taken care of with the passing of recent legislation effective August 1<sup>st</sup>, 2016. (MN S.S. 626.8473).
- Use of body cameras may prevent people from coming forward as credible witnesses to help assist with investigations, due to fear of retaliation or fear of public exposure.
- Camera limitations - technological issues related to the cameras may prevent proper functioning at times. This could be due to a dead battery, damaged components, obstructed lens, and other problems. This could result in personnel missing important witness statements or crucial behavior by officers or citizens.
- Camera position, clothing and weather related issues.
- The equipment has decreased in price. Potential costs involved in their use include the cost of ongoing maintenance, and costs associated with storing and maintaining the video footage and recorded data that is collected. In addition, costs would be associated with cataloging and retrieving footage in response to subpoenas, investigations and public information requests.
- Time spent to investigate cases increases (viewing of all video).
- The cost and time associated with redaction of video.

### **Minnesota State Statute**

Minnesota State Statute provides clear direction for law enforcement agencies who adopt and implement a BWC program. Please reference Appendix C and D, in the council packet, regarding Minnesota State Statutes:

- M.S.S. 626.8473 – Portable Recording Systems Adoption; Written Policy Required. (Appendix C)
- M.S.S. 13.825 – Portable Recording Systems. (Appendix D)

Minnesota Statutes, section 626.8473 requires cities to adopt written policies before implementation of portable recording systems. These policies must be posted on the police department's website. At a minimum, the agency must accept public comments submitted electronically or by mail, and the governing body with jurisdiction over the budget of the law enforcement agency must provide an opportunity for public comment at a regularly scheduled meeting.

- At a minimum, written policies must incorporate the following:
  - (1) the requirements of section 13.825 (Appendix D) and other data classifications, access procedures, retention policies, and data security safeguards that, at a minimum, meet the requirements of chapter 13 and other applicable law; [Appendix E, Retention of Data](#).
  - (2) procedures for testing the portable recording system to ensure adequate functioning; [Appendix A, SAPD Policy 30-3 Member Responsibilities](#).
  - 3) procedures to address a system malfunction or failure, including requirements for documentation by the officer using the system at the time of a malfunction or failure; [Appendix A, SAPD Policy 30-3 Member Responsibilities](#).

4) circumstances under which recording is mandatory, prohibited, or at the discretion of the officer using the system; [Appendix A, 30-7 Activation of the audio/video recorder](#). [30-7-1 Cessation of recording](#). [30-7-2 When activation is not required](#).

(5) circumstances under which a data subject must be given notice of a recording; [Appendix A, 30-7-3 Surreptitious recordings](#).

(6) circumstances under which a recording may be ended while an investigation, response, or incident is ongoing; [Appendix A, 30-7 Activation of the audio/video recorder](#). [30-7-1 Cessation of recording](#). [30-7-2, When activation is not required](#).

(7) procedures for the secure storage of portable recording system data and the creation of backup copies of the data; and [Appendix A, 30-9 Recording media storage and integrity](#). [30-9-1 Copies of recording media](#).

(8) procedures to ensure compliance and address violations of the policy, which must include, at a minimum, supervisory or internal audits and reviews, and the employee discipline standards for unauthorized access to data contained in section [13.09](#). [Appendix A, 30-4 Supervisor responsibilities](#). [30-5 Administrator responsibilities](#). [30-6 Coordinator](#). [30-14 Accountability](#). [30-15 Sanctions for misuse of recorded media](#). [30-16 Training](#).

The law adds a new public comment provision to Minnesota Statutes (Appendix C). The law enforcement agency and city council must provide an opportunity for public comment before purchasing or implementing a system. The law enforcement agency also has to provide an opportunity for public comment before written policy adoption. (Why we are here today). In addition, adopted policies must be posted on the law enforcement agency's website.

Data classifications, access procedures, retention policies, and data security safeguards must be included in policy. At a minimum, written policies must meet the requirements of chapter 13 and other applicable law. Minnesota Statute 13.825 PORTABLE RECORDING SYSTEMS, Appendix D, establishes data classifications, access procedures, retention policies, and data security safeguards that must be included in policy.

- This comprehensive package of legislation on law enforcement use of BWC's consists of:

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| <b>Subd. 1.</b> | <b>Application; definition.</b>   |
| <b>Subd. 2.</b> | <b>Data classification.</b>   |
| <b>Subd. 3.</b> | <b>Retention of data.</b>   |
| <b>Subd. 4.</b> | <b>Access by data subjects.</b>   |
| <b>Subd. 5.</b> | <b>Inventory of portable recording system technology. Labelled, categorized and stored.</b> |
| <b>Subd. 6.</b> | <b>Use of agency-issued portable recording systems.</b>                                     |
| <b>Subd. 7.</b> | <b>Authorization to access data.</b>  |
| <b>Subd. 8.</b> | <b>Sharing among agencies.</b>  |
| <b>Subd. 9.</b> | <b>Biennial audit.</b>  |

<b>Subd. 10.</b>	<b>Notification to BCA.</b>
<b>Subd. 11.</b>	<b>Portable recording system vendor.</b>
<b>Subd. 12.</b>	<b>Penalties for violation.</b>

Noteworthy references among this comprehensive package of legislation on law enforcement use of BWC's includes: classification of data, retention of data, access by data subjects, authorization to access data and Biennial Audit.

Per state statute, body camera audio and video is private data on individuals or nonpublic data. Private data on individuals or nonpublic data is accessible to the data subject and those whose job responsibilities reasonably require access, but it is not generally accessible to the public. Body camera data that is part of an active criminal investigation is generally confidential and not available to the public or the data subject.

Body camera data is generally public in the following situations (Appendix D):

- When a peace officer discharges a firearm in the course of duty (but not a discharge for training purposes or killing of animals).
- When use of force by a peace officer results in "substantial bodily harm."
- When a data subject requests that the data be made accessible to the public - after redacting by blurring video or distorting audio - of:
  1. those who have not consented to the release and
  2. undercover officers.
- When body camera data documenting the basis for discipline is part of personnel data after final disposition of discipline.
- When made public by order of the court.

In situations beyond those stated above, law Enforcement agencies have discretion to make body camera video public. A law enforcement agency may make body camera video that is classified as confidential, protected nonpublic, private or nonpublic data accessible to the public if they have determined that it will aid in the law enforcement process, promote public safety, or dispel widespread rumor or unrest.

A law enforcement agency may redact or withhold access to portions of data that are public when the data is "clearly offensive to common sensibilities." A best practice would be to review the data with the county and/or city attorney and determine what portions, if any, can be released to the public.

Any individual or entity whose image or voice is on portable system recording data is a subject of the data. This includes on-duty peace officers engaged in an investigation or response to an emergency, incident, or request for service. While subjects of the data generally have the right to be redacted from any data released, an on-duty officer may not be redacted from such data. Outside of criminal investigative data, body camera video is private data, which means the subject of the data may view the recording. If the subject requests a copy of the data, the law enforcement agency must redact the data on other individuals who do not consent to its release. The identity of an undercover law enforcement officer must also be redacted for their protection.

## Retention

Cities must maintain body camera data for a minimum of 90 days for non-active or inactive criminal investigative data and one year for data related to:

- Discharge of a firearm by a peace officer in the course of duty (but not for discharge for training purposes or killing animals).
- Use of force by a peace officer resulting in substantial bodily harm.
- Formal complaint made against an officer related to an incident.

See Appendix E which depicts a non-inclusive list of SAPD retention periods that are reflective of the requirements found in chapter 13.

The retention periods listed will provide department personnel the opportunity to retain the data according to guidelines outlined by Minnesota Data Practices. If any video or audio recordings are obtained in the body worn camera DVR system that is related to death or homicide; those recordings must be saved on a DVD and placed in the case file to be retained permanently in accordance with Minnesota Data Practices. These retention periods are consistent with regard to BWC's and our current in car Mobile Video Recording systems (MVR), which are already established in policy.

Subjects of the data may submit a written request to retain a body camera recording beyond the applicable retention period for possible evidentiary or exculpatory use. When received, the law enforcement agency must retain the recording for an additional period of time, up to 180 days. After that extended retention period, the law enforcement agency must notify the requester that the recording will be destroyed unless a new request is made. Individual cities can decide to retain body camera recordings for as long as reasonably necessary for possible evidentiary or exculpatory use related to the incident.

### **Circumstances under which recording is Mandatory, Prohibited, or Discretionary**

Policy pertaining to the activation of the BWC 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 should be activated in any of the following situations:

- All enforcement and investigative contacts including stops and field interview (FI) situations. These may include, but are not limited to pedestrian stops, suspicious persons, curfew violations, people suspected of committing crimes.
- Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops.
- Self-initiated activity in which a member would normally notify the Hennepin County or Ramsey County Communications Dispatch Centers.
- Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Police Officer's 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.

At no time is an officer expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations, described above, as soon as reasonably practicable.

### **Access to Data**

Per state statute, when providing authorization to access data, the responsible authority for a law enforcement agency must establish written procedures to ensure that law enforcement personnel have access to the portable recording system data that are not public, only if authorized in writing by the chief of police, sheriff, or head of the law enforcement agency, or their designee, to obtain access to the data for a legitimate, specified law enforcement purpose.

Officers shall document in the Post Note field of the Back End Client software the purpose for accessing any recorded file. This documentation is to clarify the reason for viewing the recording when developing the audit trail.

SAPD Policy 30-8 covers officer review of recorded media files (Appendix A). The policy notes that when preparing written reports, members are permitted to review their recordings as a resource when writing reports.

SAPD Policy 9-28 Officer-Involved Shootings and Deaths (Appendix B) places limitations on an officer's ability to view recordings prior to offering a statement or writing a report in situations where officers have used or attempted to use deadly force. The policy falls in line with MN BCA Policy regarding the investigation of an Officer Involved Shooting (OIS) and indicates that when an Investigative Agent is taking a statement from a St. Anthony Police Officer, who used or attempted to use deadly force in a critical incident and the incident is captured on video or audio recordings, the officer will be requested to provide a voluntary interview of the facts and circumstances surrounding the incident. Neither the officer nor their attorney will be permitted to view the video prior to providing a voluntary statement. However, a peace officer may view the video following the voluntary interview, if they request to do so, to assist in clarifying any portion of their statement. The viewing of the video will be limited to the incident captured on the officer's own dash camera or BWC.

If, upon discussing the incident with legal counsel, the officer chooses not to provide a statement or write a report, neither the officer nor their attorney will be permitted to view the video. The decision to allow the officer and their attorney to view video will rest with the independent investigative authority, i.e., MN BCA and/or the authority given by law to a court to try cases and rule on legal matters.

### **Audit**

Law enforcement agencies are required to conduct an independent biennial audit of portable recording system data. The results are public, unless otherwise classified under the Minnesota Government Data Practices Act (MGDPA). In cities, the city council determines whether the law enforcement agency is

complying with the law. If not, the city council can order additional independent audits. A summary report must be provided to the Legislative Committee on Data Practices and Personal Data Privacy within 60 days following completion of the audit. If the city council finds that there is a pattern of substantial noncompliance, it must suspend the use of portable recording systems until the city council reinstates their use. Suspension can only happen after providing the law enforcement agency and the public a reasonable opportunity to respond to the audit findings in a public meeting. State statute does not specify what makes the audit “independent.” This is a similar auditing requirement that is in the automated license plate reader (ALPR) statute, so we could rely on their ALPR auditing practices. For further guidance, we will consult with our city attorney.

### **Tri-City Body Cam Workgroup**

A Tri-City Body Camera Workgroup was convened to review current police policies and protocols, best practices and trends, and policy development in order to present recommendations to the Chief of Police for the drafting of a BWC policy. The group was made up of appointed residents and City Council liaisons from St. Anthony, Falcon Heights, and Lauderdale. The group met on a monthly basis from January through April, during which a BWC draft policy was reviewed and considered. The meetings were facilitated by Burnsville Police Chief Eric Gieseke, who was able to provide his vast base of knowledge and experience, as his police department was one of the first police agencies to bring BWC technology to Minnesota back in 2010.

The group received information presented by outside subject matter experts:

- *Current MN State Statutes regarding BWCs (Chief Gieseke/Chief Mangseth)*
- *BWC demonstration (Chief Gieseke and Burnsville PD staff)*
- *MN Data Practices and how MN State Statute deals with information recorded by portable video recording devices (Don Gemberling – MN Data Practices Author)*
- *How outside agencies assist in investigating police critical incidents, including policy considerations reference BWCs (Jeff Hanson – Deputy Superintendent of Investigations, MN BCA)*
- *Technology considerations concerning BWCs, data storage, and redaction (Burnsville PD staff)*
- *IT and back end client considerations pertaining to operating hardware, software, media/data storage and technical support (Terre Heiser – IT Manager, City of Roseville/Metro I-Net)*

The draft policy was presented to the League of MN Cities legal division, by the St. Anthony Police Chief, for review by a League Attorney, assigned by the League of MN Cities. No changes were recommended.

### **Funding**

In February, 2017, the St. Anthony Police Department applied for funding under the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance Body-Worn Camera Policy and Implementation Program. The grant holds a matched funding requirement to assist in purchasing equipment, policy development, training, and other needs related to implementing a BWC program. We were recently notified that we will be awarded funding under this DOJ grant. We will be working through the process of accepting this grant and remain encouraged to begin the implementation process.

### **Stakeholders Review**

There are various organizations that were considered stakeholders in the implementation of a BWC Policy and Implementation Program. All of the identified stakeholder groups were consulted and made



aware of our intention to implement a BWC program and our plan to fund such plan. These groups included the St. Anthony-New Brighton School District, Law Enforcement Labor Services, The Tri-City Body Camera Workgroup, The Ramsey and Hennepin County Attorney's Office, The Harriet Tubman Center, the Minnesota Coalition for Battered Women, Hedback, Arendt & Carlson PLLC – (St. Anthony City Attorney), Hughes & Joseph Attorneys at Law – (Falcon Heights/Lauderdale City Attorney), and the National Alliance on Mental Illness. They provided letters of support for the program and offered the following interests and concerns:

- St. Anthony-New Brighton School District: "We think body-cameras help reduce officer misconduct complaints and instill trust in our officers."
- Law Enforcement Labor Services: "We believe that body-worn cameras have the potential to significantly increase trust between law enforcement agencies and the communities they serve. St. Anthony is no exception."
- Tri-City Body Camera Workgroup: "We are aware that recent studies have shown that body-worn cameras have led to an increase in community trust and transparency, have reduced the number of officer complaints, increased the credibility and ease of evidence collection, and we expect these same types of results in our communities as well."
- Ramsey County Attorney's Office: "...our office is...anticipating them to be a significant tool in our duties as prosecuting attorneys. We see them as a vital resource in our office's charging and prosecuting decision-making process, including value as a potential evidence source for trial." They also spoke about the reduction in officer complaints and an increase in community trust that BWCs will bring.
- Harriet Tubman Center: They recognize the trust and transparency that a BWC program brings. However, they stated, "We have some concerns about the use of body-cameras in particular as it relates to officers wearing body-cameras when entering one of our domestic abuse shelters. Maintaining the confidentiality and safety of victims and bystanders is a core value of ours that cannot be compromised."
- Minnesota Coalition for Battered Women: "MCBW believes that law enforcement's use of body cameras can be a helpful tool in increasing law enforcement's transparency with the public. We also have concerns about how individual department's policies can impact the privacy of victims in their homes and in public."
- Hedback, Arendt & Carlson PLLC: Similar to the Ramsey County Attorney's statement.
- Hughes & Joseph: Trust and transparency, reduction of officer misconduct complaints, and as an evidence collection tool.
- National Alliance on Mental Illness: "Their [body-worn camera] use is beneficial in terms of transparency and accountability by police, but can be problematic in terms of personal privacy. NAMI Minnesota advocates policies that protect the privacy of someone experiencing a mental illness crisis."

## Training

All users of the BWC and MVR systems, along with supervisors, will all receive instruction prior to the approved technology being deployed in the field. This training shall be documented by the Supervisor in charge of training. Two members of the department will be identified to receive additional instruction,

by the technology manufacturer, to become staff trainers for the BWC technology that is adopted by the police department.

## **Conclusion**

The officers and staff of the St. Anthony Police Department are excited to begin the process of implementing BWC technology. Used in conjunction with our Panasonic “in squad cameras” and system cameras, installed in booking and processing areas, we will have full system compatibility and continuity with regard to officer/citizen contacts. Due to inevitable improvements in technology, along with additional changes due to case law, the police department will continually strive to ensure we are following best practices

Upon adoption of BWC policy, we will offer the final draft to mentioned stakeholder groups in an effort to find the best balance in meeting the varying needs of the community we serve, while holding to the spirit of the legislation that became effective August 1<sup>st</sup>, 2016.