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Frequently Asked Questions on Portable Recording Systems (Police Body Worn Cameras)

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The following are frequently asked questions about 2016 Minn. Law Chapter 171, §§ 5-7, the law on portable recording systems (police body worn cameras). The effective date of this law is Aug. 1, 2016.

What audio and video data is covered by the new law?
It is data captured by a device worn by a peace officer that is capable of both audio and video recording. Accordingly, in most cases it will not be "dash cam" video or data generated from audio or video recordings by other city staff. In this FAQ, such data is informally known as 'body camera' data.

Data practices implications

What is the data classification for body camera audio and video?
Generally, with several notable exceptions it 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 investigative data is generally confidential and not available to the public or the data subject.

When is body camera data public?
Body camera data is public in the following situations:

- When a peace officer discharges a firearm in the course of duty (but not discharge for training purposes or killing 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 in final disposition of discipline.
- When made public by order of the court.

Do the law enforcement agencies have discretion to make body camera video public?
Yes, 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. Minn. Stat. § 13.82, subd. 15.

We have video that is public but very graphic. Do we have to release it?
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." Minn. Stat. § 13.825, subd. 2(5) (b). A best practice would be to review the data with the city attorney and determine what portions, if any, can be released to the public.

Who are considered subjects of the data?
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. Minn. Stat. § 13.825, subd. 4.

Can the individual who interacted with a peace officer view the body camera video?
Yes, 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. Minn. Stat. § 13.825, subd. 4.

Can an officer review body camera video before writing their report of the incident?
State statute doesn't mandate or prohibit officer review before writing reports. Therefore, a law enforcement agency may determine by policy when the officer has access to body camera data.

Can a peace officer, or law enforcement personnel, review body camera data from another officer?
With written approval by the police chief, sheriff, or head of the law enforcement agency, or their designee, law enforcement personnel may have access to the data for a legitimate, specified law enforcement purpose. The responsible authority for a law enforcement agency must establish written procedures for how to obtain access. Minn. Stat. § 13.825, subd. 7(b).

Is there a way for the public to challenge the data classification of a particular piece of body camera data?
Yes, this law establishes a procedure allowing a person to bring an action in district court to authorize the disclosure of the data classified as private or nonpublic. A person may also bring an action in district court challenging the redaction or withholding of data because of a "clearly offensive to common sensibilities" determination. Minn. Stat. § 13.825, subd. 2(5) (d).

Are the body camera policies and procedures public?
Yes, the policies and procedures are public. The law also makes the following information public
- the total number of devices owned or maintained
- the daily record of devices deployed by officers
- if applicable, the specific precincts where the devices are used

• the total amount of recorded audio and video data collected
• the records retention schedule for the data, and
• The procedures for destruction of the data.
Minn. Stat. § 13.825, subd. 5.

Can our agency share body camera data with another law enforcement agency?
Yes, if there is a legitimate, specified law enforcement purpose to do so. Minn. Stat. § 13.825, subd. 8.

Must a Tennessen warning be given to data subjects prior to recording?
No. Data collected by a portable recording system is expressly not subject to Minn. Stat. § 13.04, subd. 2, which requires a Tennessen warning.

Retention

What are the retention periods for body camera video?
Cities must maintain body camera data for a minimum of 90 days for not 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.

Can the subject of the data request that the city retain the data longer?
Yes, 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. Then, 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.

Can the city hold the data beyond the record retention schedule?
Yes, cities can retain body camera recordings for as long as reasonably necessary for possible evidentiary or exculpatory use related to the incident.

Public input and written policies

What kind of public input is required before purchasing or implementing a body camera system?
Before a law enforcement agency purchases or implements the use of body cameras, it must provide an opportunity for public comment, minimally allowing for electronic or mailed comments. And, the city council, or governing body with authority over the law enforcement agency's budget, must also provide an opportunity for public comment at a regularly scheduled meeting.

Are written policies required to use body cameras?
Yes, the use of portable recording systems without a written policy that meets the requirements of state statute is prohibited. The chief officer of every state and local law enforcement agency that

uses or plans to use a portable recording system must establish and enforce a written policy governing its use. Minn. Stat. § 626.8473, subd. 3.

What are the requirements for written policies?
Written policies must address eight topics:

1. Data classifications, access procedures, retention policies, and data security safeguards.
2. Testing of the portable recording systems.
3. System malfunction or failure, including documentation requirements.
4. Circumstances when recording is mandatory, prohibited, or at officer discretion when using the system.
5. Circumstances when a subject of the data must be given notice of a recording.
6. Circumstances under which a recording may be ended while an investigation, response, or incident is ongoing.
7. Secure storage and creation of backup copies of the data.
8. Compliance and violations of policy, which must include supervisory or internal audits and reviews, and employee discipline standards for unauthorized access.

The law enforcement agency has discretion on how to address each topic.

Is public comment required before adopting written policies?
Yes, law enforcement agencies also have to provide an opportunity for public comment on written policies, minimally allowing for electronic or mailed comments.

If a police department has already purchased and implemented a body camera system prior to the effective date of the law, is it still required to have a public comment period as required by the new law?
Probably not unless the city is adopting a new policy or amending an old one to be compliant with the new law. There is nothing in the law to suggest that the public comment provisions are required of cities that have already implemented body cameras and adopted compliant written policies. The city should review the existing policy and procedures to make sure it has addressed all of the minimum requirements in statute, Minn. Stat. § 626.8473, subd. 3.

Are there any posting requirements for body camera policies?
Yes, adopted policies must be posted on the law enforcement agency's website, if it has one.

Audit responsibilities

What are the city's audit responsibilities?
The statute requires a biennial (every two years) "independent audit" to be presented to the city council to determine if the law enforcement agency is in compliance. Minn. Stat. § 13.825, subd. 9. If not, the city council can order additional independent audits. 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.

Who can conduct an independent review for the biennial audit?
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 cities could rely on their ALPR auditing practices. For further guidance, consult with the city attorney.

Other questions

Our department does not have body cameras. Can an officer purchase his own and wear it while on duty?
No, while on duty, a peace officer may only use a portable recording system issued and maintained by the officer's agency in documenting the officer's activities. Minn. Stat. § 13.825, subd. 6.

Do we need to tell the state if new, expanded technology is added to our body cameras?
Yes, a law enforcement agency needs to notify the Bureau of Criminal Apprehension within ten days of obtaining new surveillance technology that expands type or scope of surveillance capability beyond video or audio recording. The notice must include a description of the technology, its surveillance capability, and intended use. Minn. Stat. § 13.825, subd. 10.

Are there specific provisions that we need to include in our contract with a vendor for the equipment and software service?
Yes, the contract must acknowledge that the vendor is subject to all of the same requirements under the Minnesota Government Data Practices Act as if it were also a government entity. The vendor is responsible for penalties for violations, including damages and attorney fees. Also, if the vendor stores data in the cloud, it must do so with the security requirements of the United States Federal Bureau of Investigation Criminal Justice Information Services Division Security Policy 5.4 or its successor version. Minn. Stat. § 13.825, subd. 11.

Are there penalties to the city if we improperly release body camera data?
Yes, in addition to other remedies provided by law, a city that willfully violates portable recording system data practices requirements is subject to damages of at least twice the minimum, but not more than twice the maximum allowable for exemplary damages of not less than $1,000, nor more than $15,000 for each violation under Minn. Stat. § 13.08, subd. 1. Minn. Stat. § 13.825, subd. 12.

Will the state be reviewing compliance with this law?
Yes, in 2019, the legislative auditor will be reviewing how law enforcement agencies are complying with the requirements of the law. The review will include the use of agencies' biennial audits. Minn. Stat. § 626.8473, subd. 7.

Where can I get more information?
The League has a *Focus on New Laws: Body Camera Law* and has updated the *Use of Body-Worn Cameras* Memo, a model *Use of Body-Worn Camera Policy*, and its comprehensive memo entitled *Data Practices: Analyze, Classify, and Respond*.

The Information Policy Analysis Division (IPAD) of the state's Department of Administration has also issued guidance on the new law in "Peace Officer Body-Worn Camera Data".