

Portable Audio/Video Recorders

424.1 PURPOSE AND SCOPE

Best Practice

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties (S.C. Code § 23-1-240). Portable audio/video recording devices include all recording systems whether body-worn, hand-held or integrated into portable equipment.

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

424.2 POLICY

Best Practice

The Atlantic Beach Police Department may provide members with access to portable recorders, either audio or video or both, for use during the performance of their 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.

424.3 COORDINATOR

Best Practice

The Chief of Police or the authorized designee should designate a coordinator responsible for:

- (a) Establishing procedures for the security, storage, and maintenance of data and recordings.
- (b) Establishing procedures for accessing data and recordings.
- (c) Establishing procedures for logging or auditing access.
- (d) Establishing procedures for transferring, downloading, tagging, or marking events.

424.4 MEMBER PRIVACY EXPECTATION

Best Practice

All recordings made by members on any department-issued device at any time, and any recording made while acting in an official capacity of this department, regardless of ownership of the device it was made on, shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

424.5 MEMBER RESPONSIBILITIES

State **MODIFIED**

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a portable recorder, issued by the Department, and that the recorder is in good working order (S.C. Code § 23-1-240). If the recorder is not in working order or the member

Atlantic Beach Police Department

Atlantic Beach Police Department Policy Manual

Portable Audio/Video Recorders

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. Uniformed members should wear the recorder in a conspicuous manner or otherwise notify persons that they are being recorded, whenever reasonably practicable.

Any member assigned to a non-uniformed position may carry an approved portable recorder at any time the member believes that such a device may be useful. Non-uniformed members who reasonably anticipate that they will answer calls for service and interact with the public shall be equipped with a portable recorder (S.C. Code § 23-1-240). Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed members should wear the recorder in a conspicuous manner when in use or otherwise notify persons that they are being recorded, whenever reasonably practicable.

When using a recorder, the assigned member shall record his/her name, ABPD identification number and the current date and time at the beginning and the end of the shift or other period 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 record of the contact, including any instance where the recorder malfunctioned or the member deactivated the recording. Members shall include the reason for deactivation.

Officers will not have the ability to erase or edit any BWC recordings unless specifically approved by the agency head.

424.6 ACTIVATION OF THE AUDIO/VIDEO RECORDER

State **MODIFIED**

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 (S.C. Code 23-1-240):

- (a) All enforcement and investigative contacts, including stops and field interview situations
- (b) Traffic stops, including but not limited to traffic violations, stranded motorist assistance, and all crime interdiction stops
- (c) Self-initiated activity in which an officer would normally notify the Dispatch Center
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- (e) The Body Worn Camera shall be utilized when a uniformed officer arrives at a call for service or initiates any other law enforcement or investigative encounter between an officer and a member of the public, including, but not limited to: on the scene of

Atlantic Beach Police Department

Atlantic Beach Police Department Policy Manual

Portable Audio/Video Recorders

all violent crimes; traffic stops; motor vehicle accident investigation when the parties to the motor vehicle accident are present; suspicious persons; public drunk; public disorderly conduct; field contacts; arrests; emotionally disturbed persons; weapons are present or alleged to be present; use of force; and an adversarial contact or potentially adversarial contact.

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 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 a member 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.

424.6.1 CESSATION OF RECORDING

Best Practice **MODIFIED**

Once activated, the portable recorder 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.

424.6.2 SURREPTITIOUS USE OF THE AUDIO/VIDEO RECORDER

State **MODIFIED**

South Carolina law permits an individual to surreptitiously record any conversation in which one party to the conversation has given his/her permission (S.C. Code § 17-30-30).

Members may surreptitiously record any conversation they are a party of, during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (S.C. Code § 17-30-30).

Nothing in this section is intended to interfere with an officer's right to openly record any interrogation.

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

Body Worn Cameras shall be used only in conjunction with official law enforcement duties. The BWC shall not generally be used to record communications with other police personnel without the permission of the chief executive officer (CEO), encounters with undercover officers or confidential informants, when on break or otherwise engaged in personal activities, unless for a direct law enforcement purpose such as a crime in progress or the recording of the location is material to a criminal investigation.

Atlantic Beach Police Department

Atlantic Beach Police Department Policy Manual

Portable Audio/Video Recorders

Officers should use discretion where there is a victim of rape or sexual assault. Additionally, to respect the dignity of others, unless articulable exigent circumstances exist, officers will try to avoid recording persons who are nude or when sensitive human areas are exposed.

Audio or video recording devices shall not be used in locker rooms, restrooms or any place within the agency where there would be a reasonable expectation of privacy.

Whenever an officer believes that a recorded contact may lead to a citizen complaint, he/she shall bring the recording to the attention of his/her supervisor as soon as possible. If no crime report or supplementary report is being prepared, details of the contact may be documented via information report or memorandum.

424.6.3 EXPLOSIVE DEVICE

Best Practice **MODIFIED**

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

424.7 PROHIBITED USE OF PORTABLE RECORDERS

Best Practice **MODIFIED**

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 an 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 Watch Commander and/or the Chief of Police. 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.

424.8 IDENTIFICATION AND PRESERVATION OF RECORDINGS

Best Practice **MODIFIED**

To assist with identifying and preserving data and recordings, members shall download, tag, or mark these in accordance with procedure and document the existence of the recording in any related case report.

A member shall transfer, tag, or mark recordings when the member reasonably believes:

Atlantic Beach Police Department

Atlantic Beach Police Department Policy Manual

Portable Audio/Video Recorders

- (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) Designated employee(s) are responsible for downloading recorded information from the BWC and safeguarding against data tampering and deletion
- (h) Recordings shall be downloaded in a timely manner, not to exceed 48 hours
- (i) The data from the camera recordings will be stored in the Chief of Police office

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the member should promptly notify a supervisor of the existence of the recording.

424.9 RETENTION OF RECORDINGS

State MODIFIED

All recordings shall be retained for a period consistent with the requirements of the established records retention schedule but in no event for a period less than 180 days.

Recordings of any arrests or violations of offenses listed in the S.C. Preservation of Evidence Act, S.C. Code 17-28-320, the expungement statute of S.C. Code 17-1-40, or any other statute, regulation, or case law will follow the retention requirements outlined therein

424.9.1 RELEASE OF AUDIO/VIDEO RECORDINGS

Best Practice MODIFIED

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

Data recorded by a body-worn camera is not a public record subject to disclosure under the Freedom of Information Act:

- i. The State Law Enforcement Division, the Attorney General, and a circuit solicitor may request and must receive data recorded by a body-worn camera for any legitimate criminal justice purpose;
- ii. A law enforcement agency, the State Law Enforcement Division, the Attorney General, or a circuit solicitor may release data recorded by a body-worn camera in its discretion
- iii. A law enforcement agency may request and must receive data recorded by a body-worn camera if the recording is relevant to an internal investigation regarding misconduct or disciplinary action of a law enforcement officer;

Atlantic Beach Police Department

Atlantic Beach Police Department Policy Manual

Portable Audio/Video Recorders

- iv. In addition to the persons who may request and must receive data recorded by a body-worn camera provided in item (2), the following are also entitled to request and receive such data pursuant to the South Carolina Rules of Criminal Procedure, the South Carolina Rules of Civil Procedure, or a court order:
 - a person who is the subject of the recording;
 - a criminal defendant if the recording is relevant to a pending criminal action;
 - a civil litigant if the recording is relevant to a pending civil action;
 - a person whose property has been seized or damaged in relation to, or is otherwise involved with, a crime to which the recording is related;
 - a parent or legal guardian of a minor or incapacitated person described in sub item (1) or (2); and
 - An attorney for a person described in sub items (1) through (5).

424.10 REVIEW OF RECORDED MEDIA FILES

State **MODIFIED**

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 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 a member's performance.

Recorded files may also be reviewed (S.C. Code § 23-1-240):

- (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) By media personnel with permission of the Chief of Police or the authorized designee.
- (d) In compliance with a public records request, if permitted, and in accordance with the Records Maintenance and Release Policy.

All recordings shall be reviewed by the Custodian of Records prior to public release (see the Records Maintenance and Release Policy).

Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

424.11 TRAINING

Agency Content

Atlantic Beach Police Department

Atlantic Beach Police Department Policy Manual

Portable Audio/Video Recorders

Officers shall receive training on this policy and the use of Body Worn Cameras prior to operating a Body Worn Camera in the field. This training should include but not be limited to: wearing the Body Worn Camera, usage, limitations, activation, deactivation, retention request periods and chain of custody.

Supervisors shall additionally receive training in relation to the usage of reviewing capabilities for administrative and training purposes.

Officers are encouraged to inform their supervisor of any recordings that may be of value for training purposes. The supervisor should then forward that information through the appropriate chain of command for approval. Officers should be notified that they are on a video being used for training.