



Policy 314: AXON Body Worn Camera and AXON Fleet Camera Recording

NOTE: This policy is mandated by MN Statute 626.8473. This policy should be reviewed annually for compliance.

POLICY

Our policy is to document all relevant law enforcement activities via audio and video recording whenever possible/practical.

The Lakeville Police Department may provide officers with access to AXON BWC for use during the performance of their duties. If provided with an AXON BWC, officers shall use the system as directed by this policy for on and off-duty work assignment purposes.

Vehicles may be equipped with AXON FC.

Order 314.1 Purpose and Scope

This policy provides guidelines for the use of AXON Fleet Camera and AXON Body Worn Camera recording devices by law enforcement operators of this department while in the performance of their duties.

This policy does not apply to audio/video recordings, interviews or interrogations conducted at any Lakeville Police Department facility, undercover operations, crime scene documentation video, wiretaps or eavesdropping (concealed listening devices) unless captured by an AXON Fleet Camera or AXON Body Worn Camera.

Order 314.2 Definitions

MGDPA or Data Practices Act: Refers to the Minnesota Government Data Practices Act, MSS 13.01, et seq.

Records Retention Schedule: Refers to the General Records Retention Schedule for Minnesota Cities.

Law enforcement-related information: Means information captured or available for capture by use of an AXON FC and/or AXON BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

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Evidentiary value: Means that the information 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 a law enforcement agency or officer.

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.

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.

Unintentionally recorded footage: Is a video recording that results from an officer's inadvertence or neglect in operating the officer's AXON FC and/or AXON BWC, 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 officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.

Official duties: For purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this agency.

AXON Fleet Camera (AXON FC): An in-car device that is capable of both audio and video recording of law enforcement operator activities, but camera equipment is affixed to the vehicle.

AXON Body Worn Camera (AXON BWC): A device worn by a law enforcement operator of this department that is capable of both video and audio recording of the law enforcement operator's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and as provided in MSS 13.825.

Officer: Primarily a licensed peace officer but may also be a non-licensed representative such as a Community Service Officer (CSO), Reserve Officer who are trained, authorized, and assigned to operate AXON Fleet Camera (AXON FC) and/or AXON Body Worn Camera (AXON BWC).

Order 314.2.1: Axon Fleet Camera and AXON Body Worn Camera objectives

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

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- To promote and enhance safe vehicle operation.

Order 314.3: Officer Responsibilities

Prior to going into service, each officer will be responsible for making sure that he/she is equipped with a department issued AXON BWC and that the AXON BWC is in good working order.

Uniformed officers should wear the portable recorder in a conspicuous manner. The portable recorder should be worn at or above the mid-line of waist to maximize recording.

Officers should ensure both AXON FC and AXON BWC systems are operational at the start of shift. If the AXON FC or AXON BWC is not in working order or the officer becomes aware of a malfunction at any time, the officer shall promptly report the failure to his/her supervisor and obtain a functioning device as soon as reasonably practicable.

- Officers shall document the malfunction report in writing by emailing the IT Helpdesk and copying their supervisor.
- It is the officer's responsibility to notify Administrative Services to ensure the evidence that was recorded on that device can be reassigned to the recording officer in the video storage system.
- Supervisors shall take prompt action to address malfunctions and document the steps taken in writing.

Officers may operate squad cars with non-functioning AXON FC systems if no other squad car is reasonably available. If an AXON FC fails during the course of a shift, the officer may continue to use that vehicle until the end of the shift.

Any officer assigned to a non-uniformed position may carry an AXON BWC at any time the officer believes that such a device may be useful.

- Unless conducting a lawful recording in an authorized undercover capacity, non-uniformed officers should wear the AXON BWC in a conspicuous manner.
- Non-Uniformed officers should wear the AXON BWC while conducting search warrants except when operating in a covert or undercover capacity.

Officers should document the existence of a recording in any report or other official record of the contact, including:

- Any instance where the AXON FC and/or AXON BWC failed.
- The officer deactivated the recording (MSS 626.8473).
 - Officers should include the reason for deactivation.
- 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. Supervisors shall review these reports and initiate any corrective action deemed necessary.

Officers are not required to activate or wear AXON FC and/or AXON BWC while testifying in court proceedings, travelling to and from department training, meetings, or using a department vehicle for transportation purposes only.

Order 314.4: Supervisor Responsibilities

Supervisors shall ensure officers are using their AXON FC and AXON BWC per policy.

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Supervisors should issue and log the officer into a spare device when made aware of a malfunctioning device.

Patrol Sergeants should audit 15 minutes of AXON FC and/or AXON BWC data quarterly.

- Audits should be conducted by a team sergeant from another team.
- The sergeant shall notify the officer via E-mail of the audit and any training deficiencies relayed to the appropriate team sergeant.
- The Operations Commander shall also receive a copy of the audit and properly record the audit.

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 AXON FC and/or AXON BWC are properly uploaded.

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of AXON FC and/or AXON BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to MSS 13.09.

Order 314.5: Activation of the AXON FC and AXON BWC

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. Officers should activate the recorder any time the officer believes it would be appropriate or valuable to record an incident.

The AXON FC and AXON BWC should be activated in any of the following situations:

- All enforcement and investigative contacts including stops and field interview (FI) situations and calls for service. When practicable and applicable AXON FC / AXON BWC should be activated when the officer begins travel to the call or when acknowledging the call once dispatched.
- Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- Self-initiated activity in which an officer would normally notify Dakota Communications Center
- Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording
- Officers have no affirmative duty to inform people that an AXON FC AXON BWC / is being operated or that they are being recorded.
- Officers should recognize that informing individuals they are being recorded may reduce hostile or otherwise threatening behavior.
- Officers may communicate the use of the recording device to reduce the chances of improper behavior.

At no time is an officer expected to jeopardize his/her safety in order to activate an AXON FC or AXON BWC or change the recording media.

However, the AXON FC and AXON BWC should be activated in situations described above as soon as reasonably practicable but such instances of not recording when otherwise required must be documented as specified in the officer Responsibilities, (as mentioned above).

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Order 314.6: Cessation of Recording

Once activated, the AXON FC and AXON BWC should usually remain on continuously until the officer reasonably believes that his/her direct participation in the incident is complete or the situation no longer fits the criteria for activation, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value.

- 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 camera before deactivating their AXON FC or AXON BWC.
- If circumstances change, officers shall reactivate their AXON FC and/or AXON BWC as required by this policy to capture information having evidentiary value.

Recording may be temporarily ceased, or the audio muted to exchange information with other officers, legal counsel, or the lens obstructed in order to avoid capturing images of undercover officers, informants, or citizens, where based on training and experience, in the judgement of the officer a recording would not be appropriate or consistent with this policy.

- The reason to cease and resume recording (or to mute audio or obstruct the lens) will be noted by the officer either verbally on the portable audio/video recorder or in a written report.

Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident.

Users should record formal statements on AXON Capture Audio Recorder app. The AXON BWC should remain activated during the formal statement.

Recordings shall be categorized, titled and identified in accordance with established policies and procedures.

Officers shall not intentionally block the AXON FC or AXON BWC audio or visual recording functionality to defeat the purposes of this policy.

SEE CRITICAL INCIDENT POLICY FOR CESSATION OF RECORDINGS POST INCIDENT 307.5(6)

Order 314.7: When Activation is Not Required

Activation of the AXON FC or AXON BWC system is not required:

- During encounters with undercover officers or informants.
- When an officer is on break or is otherwise engaged in personal activities.
- In any location where individuals have a reasonable expectation of privacy, such as a restroom, locker room or break room.
- When not in service or actively on patrol.
- Officers have discretion to record or not record general citizen contacts.

Order 314.8: Recording Media Storage and Integrity

- At the end of their shift, officers are responsible for transferring or assuring the proper transfer of their data from their personal AXON BWC.
- The AXON BWC battery should also be fully recharged.

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- Refer to the SUPERVISOR RESPONSIBILITIES portion of this policy when an incident arises that requires the immediate retrieval of the recorded media.

Order 314.9: Surreptitious Recordings

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

Officers of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be lawful and beneficial to the investigation.

Notwithstanding any other provision in this policy, officers shall not use their AXON FC and/or AXON BWC to record other agency personnel during non-enforcement related activities, unless recording is authorized as part of an administrative or criminal investigation.

Further, officers shall not surreptitiously record another department member using any device without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

Order 314.10: Prohibited Use of and Sanctions for Misuse of AXON FC/ AXON BWC and Data

Officers are prohibited from using department-issued AXON FC and AXON BWC 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.

Officers 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.

Officers shall not view, duplicate or distribute such recordings, except for authorized legitimate department business purposes. All such recordings shall be retained at the Department.

- Any employee who accesses or releases recordings without authorization or misuses recorded media for other than official law enforcement purposes may be subject to discipline (see related policies) (MSS 626.8473).

Officers are prohibited from using personally owned recording devices while on-duty except in case of emergency.

- Any officer 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 internally or externally by any officer for the purpose of embarrassment, harassment or ridicule.

Order 314.11: Review and Release of Recorded Media Files

When preparing written reports, officers are permitted to review their recordings as a resource (See the Critical Incident Policy for Officer-Involved Vehicle Crashes, Shootings and Deaths Policy for guidance in those cases).

- However, officers shall not retain personal copies of recordings, in any format.

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- Officers should not use the fact that a recording was made as a reason to write a less detailed report.

Officers shall not review recordings made by other officers for the purpose of preparing reports. The Critical incident policy addresses review of recordings and they pertain to a Critical Incident.

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 officer's performance.

Recorded files may be reviewed:

- Upon approval by a supervisor, by any officer of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.
- Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.
- In compliance with the Minnesota Data Practices Act request, if permitted or required by the Act, including pursuant to MSS 13.82, Subd. 15, officers may display portions of recordings to witnesses or others as necessary for purposes of investigation, to aid in the law enforcement process, promote public safety, or dispel widespread rumor or unrest.
- Officers should generally limit, when possible, 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.
- All recordings should be reviewed by Administrative Services prior to public or private release, typically by the Police Records Technicians. It is important to recognize data practices are very different for mobile video recordings versus portable audio/video recordings.
 - Portable audio/video recordings are presumptively private.
 - Recordings that are clearly offensive to common sensibilities should not be publicly released unless disclosure is required by law or order of the court (MSS 13.82, Subd. 7).
- With the exception listed in MSS 13.82 (15), Requests for the release of audio/video recordings shall be processed by Administrative Services, typically the Police Records Technicians, in accordance with the MGDPA, related statutes and this policy.

Order 314.12: Copies of Recording Media

Evidentiary copies of digital recordings will be accessed and copied from the video storage system for official law enforcement purposes only.

- Access rights may be given to the Dakota County Attorney, the Lakeville City Attorney, or other prosecutorial agencies associated with any future prosecution arising from an incident in which digital recordings exist.
- Officers shall ensure relevant recordings are preserved.
- Officers or Administrative Services may prevent automatic deletion by changing the category of the media at any time prior to deletion.

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Order 314.13: System Operational Standards

AXON FC and AXON BWC systems use should be based on officer safety requirements and device manufacturer recommendations.

- The AXON FC and AXON BWC recorder systems shall be configured to minimally buffer for 30 seconds prior to activation.
- The audio may or may not be buffered depending on manufacturer specifications.
- For each digital recording, officers shall select the proper category.
- Officers shall enter the 8-digit case file number, if there is not a case file number, the officer shall enter the full CAD record or full citation number, and descriptive title.
 - The title should clearly describe the nature of the recording.

For example:

- Use of Force
- DWI
- Pursuit
- Booking
- Transport
- IC Jane Doe (implied consent)
- Suspect John Doe (suspect statement)
- Victim Jane Doe (victim statement)
- Witness Jane Doe (witness statement)
- Test
- Training
- Impound

This policy prohibits altering, erasing, or destroying any recording made or data and metadata related to the recording prior to the expiration of the applicable retention period, except that the full, unedited, and unredacted recording of a peace officer using deadly force must be maintained indefinitely.

Order 314.14: Data Classification of AXON FC/ AXON BWC

Nothing in this policy shall be interpreted as changing the underlying classification of data collected by AXON FC or AXON BWC systems.

The classification of data collected by AXON FC or AXON BWC systems will need to be determined on a case-by-case basis upon application and interpretation of the MGDPA and other laws, refer to especially, MSS 13.82, 13.825, other MGDPA statutes, and related laws.

Order 314.15: Use and Documentation

The Chief of Police or the authorized designee should designate related responsibilities (MSS 626.8473; MSS 13.825):

The Police Records Analyst should coordinate the use and access for:

- Establishing procedures for the security, storage and maintenance of data and recordings.
- Establishing procedures for accessing data and recordings.
- Establishing procedures for logging or auditing access.

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- Establishing procedures for transferring, downloading, tagging or marking events.

The Police Records Analyst will ensure the department maintains the following records and documents relating to portable recording systems, which are classified as public data:

- Total number of devices owned or maintained by the Lakeville Police Department.
- Daily record of the total number deployed and used by officers and, if applicable, the precinct or district in which the devices were used.
- Total amount of recorded audio and video data collected by the devices and maintained by the Lakeville Police Department.
- This policy, together with the Records Retention Schedule.

The Police Records Analyst is responsible for obtaining and preparing for independent biennial audits required by MSS 13.825, Subd. 9.

The Police Records Analyst will notify the Bureau of Criminal Apprehension (BCA) within ten days when new equipment is obtained by the Lakeville Police Department that expands the type or scope of surveillance capabilities of the department's portable recorders beyond video or audio recording.

Administrative Services, typically the Police Records Technicians, should coordinate the release of protected information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) and other applicable laws (MSS 13.01 et seq.)

- It is important to recognize data practices are very different for mobile video recordings versus portable audio/video recordings.
- Portable audio/video recordings are presumptively private.

Supervisors and other assigned personnel may access AXON FC and/or AXON BWC data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.

Nothing in this policy limits or prohibits the use of AXON FC and/or AXON BWC data as evidence of misconduct or as a basis for discipline.

Order 314.16: Retention of Recordings

All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.

Audio/Video recordings shall be retained according to the General Records Retention Schedule for Minnesota Cities at a minimum or as required by the rules of evidence, unless a specific request is made to store them for a longer period of time by an authorized person.

- The stated retention in the General Records Retention Schedule does not include the year the record originates.
 - For example: If a Use of Force incident was recorded in 2014, it has a retention of 7 years, the disposable date for the 2014 record is January 2022.
 - When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.

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The department will post this policy, together with a link to its Records Retention Schedule, on its website.

Upon written request by a data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of 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.

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.

Certain kinds of AXON FC and/or AXON BWC data must be retained for additional time include:

- 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.
- Data documenting circumstances that have given rise to a formal complaint against an officer.

Order 314.17: Access to Recordings

Except as provided by MSS 13.825, Subd. 2, AXON FC and AXON BWC recordings are considered private or nonpublic data.

- Any person captured in a recording may have access to the recording. If the individual requests a copy of the recording and does not have the consent of other non-law enforcement individuals captured on the recording, the identity of those individuals must be blurred or audio distorted sufficiently to render the subject unidentifiable prior to release (See additional information below).
- The identity of on-duty peace officers may not be obscured unless their identity is protected under MSS 13.82, Subd. 17.
- Data subjects. Under Minnesota law, the following are considered data subjects for purposes of administering access to AXON FC and/or AXON BWC data:
 - Any person or entity whose image or voice is documented in the data.
 - The officer who collected the data.
 - 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.

Some AXON FC and/or AXON BWC data is classified as confidential. Some AXON FC and/or AXON BWC is classified as public (see below).

Confidential data- AXON FC and/or AXON BWC 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.

Public data- The following AXON FC and/or AXON BWC data is public:

- 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.
- Data that documents the use of force by a peace officer that results in substantial bodily harm.
- 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 officers must be redacted.

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Data that documents the final disposition of a disciplinary action against a public employee.

NOTE: 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 MSS 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.

Access to AXON FC and/or AXON BWC data by non-employees. Officers shall refer members of the media or public seeking access to AXON FC and/or AXON BWC data to appropriate City data practices designee, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

- An individual shall be allowed to review recorded AXON FC and/or AXON BWC data about him - or herself and other data subjects in the recording, but access shall not be granted:
 - If the data was collected or created as part of an active investigation.
 - 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 MSS 13.82, subd. 17.
- 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:
 - Data on other individuals in the recording who do not consent to the release must be redacted.
 - Data that would identify undercover officers must be redacted.
 - 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.

Deadly Force Incidents

As stated in MSS 13.82 subd. 2 and 3, the next of kin of individual who is killed in a deadly use-of-force incident, and their legal representative are allowed to inspect body camera data documenting incident within five days of request.

- Access may be denied if there's a compelling reason why inspection would interfere with active investigation.
- The department must provide a prompt, written denial with a short description of the compelling reason access was denied and provide notice that relief may be sought from district court under section 13.82, subd. 7.
- The department must disclose body camera data (with applicable redactions) to the public within 14 days after a deadly use-of-force incident.
- Access may be withheld if disclosure would interfere with active investigation (data then remain confidential).
- Body camera data documenting a deadly use-of-force incident must be maintained indefinitely.

Other authorized disclosures of data.

- Officers may display portions of AXON FC and/or AXON BWC footage to witnesses as necessary for purposes of investigation as allowed by MSS 13.82, subd. 15, as may be amended from time to time.
- 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.

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- In addition, AXON FC and/or AXON BWC 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.
- AXON FC and/or AXON BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

Order 314.18: Training

Users of the AXON FC and AXON BWC systems and supervisors shall successfully complete an approved course of instruction prior to being deployed. This training shall be documented by the Training Lieutenant or designee.

Before using the cameras in the field, the department shall train members on all devices and will include a curriculum of the following:

- Functions
- Policy overview
- Pre-Shift function tests
- How to classify recordings
- When to record
- When to stop recording
- Who may view video after a critical incident
- MSS 13.825
- Penalties for violating policy or violation of data privacy laws pertaining to release of data.

Order 314.19: In-Service, Briefings, Post Event Debriefing, Use of Force Reviews

AXON FC and AXON BWC video may be used to conduct training at In-Service, Briefings, and Post Event Debriefings.

- Videos should provide the ability of officers to review their performance and be used to improve tactics, communication and use of force.
- Before using a recording for training purposes, a supervisor should notify and consult with the officer that created the video.
- Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis.
- Field training officers may utilize AXON FC and/or AXON BWC data with trainees for the purpose of providing coaching and feedback on the trainees' performance.