



Video Recording Devices in Fire Service

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Video Recording Devices in Fire Service

Reference Number: MTAS-1906

There are many brands and types of inexpensive, waterproof, and rugged video and digital cameras on the market with storage capacities exceeding 32 gigabytes and pixel resolutions ranging from a lower quality 640x480 to high definition 1280x720. Many firefighters have purchased such cameras and mounted them on their fire helmet. These "helmet cams" record images and sounds from all types of fire department activities including but limited to training exercises, EMS responses, vehicle extrications, and fires. One can search the Internet and find many examples of videos taken by a firefighter using a helmet cam of training exercises, emergency responses, and activities inside the fire station. Whether firefighters are using these helmet cams or other types of video, photographic, and/or audio recording devices, such as glasses and pocket recorders, with or without the permission of the fire chief or city administration, helmet cams and similar video, photographic, and audio recording devices pose a potential liability to the person using the camera, the fire department, and the municipality.

As an example, on July 6, 2013, Asiana Flight 214 crashed at San Francisco International Airport. A battalion chief's helmet mounted video recording device filmed the fire department working at the crash site, including when a crash truck ran over a 16-year-old girl from the plane. The video and still images from the video were shown in both TV and print media, and the use of the camera raised privacy issues.

The use of video recording devices continues to be debated in the media, and some fire chiefs have banned the use of helmet cams and other recording devices (i.e. iPhones, etc.). Video and/or audio recordings and photographs have benefits for training and documentation, but they also raise issues such as privacy concerns, ownership of the recording or image, access to the material as a public record, and long-term storage requirements. Fire departments should consider the costs and benefits of video, audio, and photographic records and create a policy to manage their use. Furthermore, municipalities must develop administrative controls (policy) to consistently answer the questions of privacy, ownership, records retention, and etc.

Recordings are Public Records

Reference Number: MTAS-1907

Fire departments have photographed and videoed fire training exercises and emergency responses for decades, and there is no doubt that photographs, videos, and audio files are useful tools for evaluating performance, training, and improving emergency response techniques and operations. Typically, in these instances, the photographer or videographer was a person who was there to record the event and was not involved in the emergency response or training exercise itself. The difference with a helmet cam or similar "person mounted" video recording device is that the person using the camera is most likely involved in the actual response and can perform duties and tasks without having to hold or think about using the camera. Since this person is involved in the emergency response, they are "right there" and the camera may record faces and sounds that would be missed by a bystander. Though not "person mounted," a cell phone or digital camera is very easy to use and is included when discussing the recording of fire department activities.

Tennessee Code Annotated § 10-7-503(a)(1)(A) states:

As used in this part and title 8, chapter 4, part 6, "public record or records" or "state record or records" means all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency.

Key Provisions for Recording Devices

Reference Number: MTAS-1908

There are two key provisions of this act concerning video and photographic recording devices. First, the audio/visual electronic data files produced by the camera are included in the definition of public record. Second, if a firefighter uses the video or photographic recording device while on duty or engaged in fire department activities, which includes activities inside the fire station, on the training ground, or on an emergency response, under Tennessee Code Annotated (T.C.A.) all such video and/or photographs would have been made “in connection with the transaction of official business.” Since the audio/visual file is a public record, the video or photograph is open to inspection under T.C.A. § 10-7-503(a)(2)(A). In addition, T.C.A. § 10-7-505(d) directs the courts to interpret the provisions of the Tennessee Public Records Act “broadly...so as to give the fullest possible public access to public records.” Finally, Tennessee courts have found that even in the face of serious countervailing considerations, unless there is an express exemption within the law, a record and/or information must be released.

The open records act is not limited to video and sound recorded by helmet cameras. There are eyeglasses that record video and sound, pocket recorders that record video and sound, cell phone cameras that record video, photographs, and sound, etc. No matter what device is used, any video, photograph, and sound recorded by fire department personnel “in connection with the transaction of official business” is subject to the Tennessee open records act. This being said, the firefighter's personal device with a public record on it could be confiscated as evidence for extended periods of time.

Potential Liability for Recording Devices

Reference Number: MTAS-1909

The potential liability for the use of a video recording device such as a helmet cam is significant, especially on emergency responses where a person may be injured and the camera may record information protected by HIPAA. Individuals should consider the potential liability, possible violation of privacy laws, and implications of making these “up close and personal” videos, as the mere existence of the video opens the door to public record requests under the Tennessee Public Records Act. Municipalities and fire departments must control what happens in the fire department and should adopt policies that regulate and/or prohibit the use of personally owned video and still photography cameras, including those on cell phones, and the use of these cameras on municipal property, in the fire station, on training exercises, and on emergency responses.

It is imperative that municipalities capture images and video of their staff serving diligently and professionally to build strong community relations. The entities must lead this effort by proactively capturing these images/videos, vetting the images/videos, and then pushing the images/videos act to the public rather than just taking what they get from whoever posts. Most images recorded as a public entity are public record but there are some images/videos that are not public record.

The following is an example enacted into state law May 2017. Chapter No. 255: HB0732/SB0442-Certain body camera (BWC) footage made confidential-Effective May 2, 2017. Amends T.C.A. § 10-7-504 by making BWC footage taken of a minor, taken within a school that serves grades K-12, the interior of a facility licensed as a healthcare, rehabilitation or mental health facility, or the interior of a private residence that is not being investigated as a crime, confidential. Provides that this provision will be deleted on July 1, 2022.

Sample Video/Photo Recording Devices Standard Operating Policy

Reference Number: MTAS-1910

Purpose

This Standard Operating Procedure (SOP) provides guidelines for the prudent and consistent use of video, photographic, and audio recording devices such as, but not limited to, fire helmet cameras,

pocket cameras, cell phone cameras, eyeglasses cameras, digital audio recorders, and similar recording devices by fire department personnel in connection with the transaction of official business or in the scope of employment. The purpose of this policy is to protect the confidentiality of fire department members, patients, and the public, the careers of fire department members, the reputation of the fire department, and the operations of the fire department.

Scope

This SOP discusses the benefits, operation, use, function, maintenance, permission, and consent aspects of the video, photographic, and audio recording devices. For the purpose of the policy, the term video recording devices is all inclusive of helmet-mounted cameras pocket video cameras, pen video cameras, eyeglasses cameras, cell phone cameras, digital audio recorders, and similar portable devices that record video, photographic, and/or sound files. The Fire Chief has the final authority to determine if a video recording device is subject to this policy.

Benefits

The benefits of a video recording device such as a helmet camera include documentation of events so the fire department may use the video and sound files for evaluation of current practices and procedures for efficiency and effectiveness, for determining if firefighter have mastered firefighting skills and evolution, for determining if fire personnel use all personal protective equipment as required, for training purposes, for fire investigation purposes, for documentation of events on fire and emergency scenes, for quality assurance/quality improvement review, and for "hot wash" critiques of the fire department's operations on emergency responses. The fire department has a duty to weigh the potential benefits against the potential risk and liability should the files be misused.

Ownership of the Video, Photographic, and Sound Data Files

- Any video, photographic, and/or sound files gathered on scene of an incident, on the training ground, in and around the fire station, and in connection with the transaction of official business or in the scope of employment are and remain the property of the fire department.
- All video, photographic, and/or sound files gathered on scene of an incident, on the training ground, in and around the fire station, and connection with the transaction of official business or in the scope of employment are reviewable by the fire department administration and may be sequestered if they are likely to be used as evidence.
- Video, photographic, and/or sound files may not be distributed or shared in any manner without prior approval for the Fire Chief.
- Video, photographic, and/or sound files may not be posted, uploaded, emailed, distributed, or shared on such as but not limited to Facebook, YouTube, or etc.

Compliance with the Open Records Act

Any video, photographic, or audio recordings made in connection with the transaction of official business or in the scope of employment are public records under Tennessee Code Annotated § 10-7-503(a)(1)(A) with the exceptions identified under Tennessee Code Annotated § 10.7.504(29)(u) Confidential Records Exception;. Retention of all images and recording files shall be governed by the department's records retention policy and the Tennessee Open Records Act.

Prior Approval Required Before Use

Prior approval from the Fire Chief is required before a fire department member may use any video, photographic, and/or digital audio recording device such as, but not limited to, a helmet camera.

Use of the Recording Device

If approved for use, the use of the video, photographic, and/or digital audio recording device shall not delay any fire suppression or rescue activities. If time permits, the video, photographic, and/or digital audio recording device may be used on responses except for Emergency Medical only calls and direct patient care.

Limited Use of the Recorded Images and Files

If approved for use, the use of the video, photographic, and/or digital audio recording files shall be limited to normal fire department and law enforcement investigations and documentation, training and public relations, and not-for-profit use. Recorded images and files may not be used for profit, commercial use, nor to endorse any product or service.

HIPAA Compliance and Privacy Requirements

- The video, photographic, and/or digital audio recording device may not be used to video or record private medical information or records
- The video, photographic, and/or digital audio recording device may not be used to record direct patient care.
- The video, photographic, and/or digital audio recording device may be used on rescue incidents. If the video, photographic, and/or digital audio recording device inadvertently records a patient care event, the fire chief will have the final authority in the use or purpose of the video, photograph, or audio files.

Eavesdropping and Illegal Activities

The video, photographic, and/or digital audio recording device shall not be used for any illegal activities such as eavesdropping, listening to, or recording private conversations, or making secret or hidden photographs. Members found guilty of violating this policy will be terminated immediately.

Voluntary Consent to Use Video and Sound Files

An individual may give consent to use their name, photographic or audio/visual likeness, voice, and oral statements obtained in a video of a rescue, other emergency event, training exercise, etc. for use in training, education, or any other usage desired by the fire department. The consent shall be voluntary on the part of the individual. The individual must complete and sign the proper consent form. The person giving the consent must be over the age of 18: a minor may never consent to the use of their name and photographic likeness.

_____ **Fire Department**
Video, Photo, and Sound Files Usage Consent Form

I, _____ (print name) give consent to the _____ Fire Department to use my name, photographic and/or audio/visual likeness, voice, and oral statements in all forms and media in the video and sound files obtained on ____/____/____ for training, education, recruitment, uploading, downloading, and any other lawful purposes. This authorization is continuous and I can withdraw this authorization in writing at any time.

I understand and agree that I will not be compensated in any way for the use of my name and photographic or audio/visual likeness.

By signing this form, I waive and release the _____ Fire Department and his/her/its officers, agents, employees, and heirs from any claim or liability relating to the use of my name, likeness, identity, voice, photographic image, audio/visual image and oral or recorded statements.

I am an adult, 18 years or older, and I have read and understand this agreement and I freely and knowingly give my consent to the _____ Fire Department as described herein.

Name (print): _____

Address: _____

City: _____ State: _____ ZIP: _____

Phone: _____

Signature: _____

Date: _____

Fire department rep: _____

Date: _____

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Source URL (retrieved on 10/25/2020 - 9:18pm): <https://www.mtas.tennessee.edu/reference/video-recording-devices-fire-service-0>

