

Potential Liability for Recording Devices

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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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.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

Source URL (retrieved on 09/16/2019 - 4:14pm): <https://www.mtas.tennessee.edu/reference/potential-liability-recording-devices>