
Law Enforcement Recordings



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1. Introduction

The North Carolina General Assembly enacted legislation, effective October 1, 2016, to address when, and under what circumstances, recordings made from body-worn and dashboard cameras could be shown or released. This law, House Bill 972, Law Enforcement Recordings/No Public Record, and subsequent amendments are the subject of this publication. These General Statutes are contained in our Public Records Laws, G.S. § 132-1.4A.

2. Definitions

Body-worn camera: An operational video or digital camera or other electronic device, including a microphone or other mechanism for allowing audio capture, affixed to the uniform or person of law enforcement agency personnel and positioned in a way that allows the camera or device to capture interactions the law enforcement agency personnel has with others.

Custodial law enforcement agency: The law enforcement agency that owns or leases or whose personnel operates the equipment that created the recording at the time the recording was made.

Dashboard camera: A device or system installed or used in a law enforcement agency vehicle that electronically records images or audio depicting interaction with others by law enforcement agency personnel. This term does not include body-worn cameras.

Disclose or Disclosure: To make a recording available for viewing or listening to by the person requesting disclosure, at a time and location chosen by the custodial law enforcement agency. This term does not include the release of a recording.

Personal Representative: A parent, court-appointed guardian, spouse, or attorney licensed in North Carolina of a person whose image or voice is in the recording. If a person whose image or voice is in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney licensed in North Carolina; or the parent or guardian of a surviving minor child of the deceased.

Recording: A visual, audio, or visual and audio recording captured by a body-worn camera, a dashboard camera, or any other video or audio recording device operated by or on behalf of a law enforcement agency or law enforcement agency personnel when carrying out law enforcement responsibilities. This term does not include any video or audio recordings of interviews regarding agency internal investigations or interviews or interrogations of suspects or witnesses.

Release: To provide a copy of a recording.

Serious bodily injury: A bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

3. The Law That Governs the Disclosure and Release of Law Enforcement Recordings

G.S. § 132-1.4A, et. seq. exclusively governs the disclosure and release of all law enforcement recordings as defined above. Recordings are not public record as defined in G.S. § 132-1 and recordings also are not personnel records as defined in G.S. §§153A-98, 160A-168 and 126-24. G.S. § 132-1.4A(b).

4. Disclosure of Law Enforcement Recordings Not Depicting Death or Serious Bodily Injury

A person who wants disclosure (viewing) of a law enforcement recording that does not depict death or serious bodily injury will first have to make a written request for disclosure to the head of the custodial law enforcement agency. This request must give the date and approximate time of the activity captured in the recording or otherwise reasonably describe the activity in the recording so that the custodial law enforcement agency can locate the requested material. G.S. § 132-1.4A(c).

Without a court order, the head of a custodial law enforcement agency can only show a recording to the following people:

1. a person whose image or voice is in the recording;
2. a personal representative of an adult person whose image or voice is in the recording, if the adult person has consented to the disclosure;
3. a personal representative of a minor or of an adult person under lawful guardianship whose image or voice is in the recording;
4. a personal representative of a deceased person whose image or voice is in the recording; or
5. a personal representative of an adult person who is incapacitated and unable to provide consent to disclosure.

If a custodial law enforcement agency decides to disclose (show) a recording to one of these named individuals, the law enforcement agency can only show those portions of the recording that are relevant to the person's request. It may be necessary for the recording to be edited or portions of the recording blurred to protect images in the recording that are not relevant to the person's request. Any person who receives permission to view a recording cannot copy or record the recording. G.S. § 132-1.4A(c).

4.1 Standards for Disclosure

Once a custodial law enforcement agency receives a written request for disclosure of a recording, the custodial law enforcement agency "as promptly as possible" must either disclose the portion of the recording relevant to the person's request or notify the person that the recording will not be shown to them.

The custodial law enforcement agency may consider any of the following factors in determining if a recording must be disclosed:

1. if the person requesting disclosure of the recording is a person authorized to receive disclosure. An authorized person would be one of the five named individuals above;
2. if the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law;
3. if disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
4. if disclosure may harm the reputation or jeopardize the safety of a person;
5. if disclosure would create a serious threat to the fair, impartial, and orderly administration of justice; or
6. if confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

G.S. § 132-1.4A(d). This list of factors that a law enforcement agency may consider in deciding to show a recording to an individual is not an exclusive list. Other factors may be considered by the head of the law enforcement agency when making this determination. For example, if a particular recording would jeopardize security plans within a law enforcement facility by disclosing "blind areas" in the video coverage, this would be a relevant factor for the head of the agency to consider in disclosing (showing) or not disclosing the recording.

4.2 Appeal of a Disclosure Denial

If a request to view a recording is denied by a law enforcement agency or if the agency has not disclosed the recording more than three business days after the request for disclosure, the person seeking disclosure can apply to the superior court in any county where any portion of the recording was made so that the court can review the denial by the law enforcement agency. The court may conduct an in-chambers review of the recording.

The court can order the disclosure of the recording only if the court finds that the law enforcement agency "abused its discretion" in denying the request for disclosure. Generally speaking, abuse of discretion has been defined by our courts as a test that requires a reviewing court to determine if a decision is "manifestly unsupported by reason, or so arbitrary that it could not have been the result of a reasoned decision." State v. Locklear, 331 N.C. 239 (1992).

If a court does overturn a law enforcement agency's decision to not disclose a recording, the court would only be able to disclose those portions of the recording that are relevant to the person's request. G.S. § 132-1.4A(e). Again, the person would not be able to record or copy the recording. Additionally, a court in this appeal would not have the authority to order the release of the recording. A separate court action would be required before the recording could be released. A discussion of that process is below.

If a petition is filed in Superior Court to appeal the denial of a disclosure request the following people must be notified and given an opportunity to be heard at the proceeding:

1. the head of the custodial law enforcement agency;
2. any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency; and
3. the district attorney.

5. Disclosure of Law Enforcement Recordings Depicting Death or Serious Bodily Injury

Recordings depicting a death or serious bodily injury can only be disclosed (viewed) by order of court. G.S. § 132-1.4A(b1). A person requesting disclosure must submit a signed and notarized form provided by the law enforcement agency. The form (AOC-CV-275) has been developed by the North Carolina Administrative Office of the Courts (NCAOC) and is attached to this publication. This form is the exclusive method to request disclosure of a law enforcement recording depicting death or serious bodily injury. G.S. § 132-1.4A(b2). It includes a notice that, if disclosed, the recording may not be recorded or copied, or if unlawfully recorded or copied may not be knowingly disseminated and provides notice of the criminal penalties for a violation.

Any person who willfully records, copies, or attempts to record or copy a recording depicting death or serious bodily injury is guilty of a Class 1 misdemeanor. Any person who knowingly disseminates a recording or a copy of a recording depicting death or serious bodily injury is guilty of a Class I felony. G.S. § 132-1.4A(b4).

No later than three business days from receipt of the notarized form requesting disclosure, the law enforcement agency shall file a petition in the superior court in any county where any portion of the recording was made for issuance of a court order regarding disclosure of the recording requested and shall also deliver a copy of the petition and a copy of the recording, which shall remain confidential unless the court issues an order of disclosure pursuant to this section, to the senior resident superior court judge for that superior court district or their designee. There shall be no fee for filing the petition. G.S. § 132-1.4A(b3).

5.1 Conduct of Hearing

The court shall conduct an in-camera review of the recording. In any proceeding to consider disclosure of a law enforcement recording depicting death or serious bodily injury, the following persons shall be notified and those persons, or their designated representative, shall be given an opportunity to be heard at any proceeding:

1. the head of the custodial law enforcement agency;
2. any law enforcement agency personnel whose image or voice is in the portion of the recording requested to be disclosed and the head of that person's employing law enforcement agency;
3. the District Attorney;

4. the investigating law enforcement agency; and
5. the party requesting the disclosure.

Hearings on the petition are to be scheduled for hearing as soon as possible. G.S. § 132-1.4A(b3).

5.2 Standards for Disclosure

In determining whether the recording may be disclosed, the court shall consider the following factors:

1. if the person requesting disclosure of the recording is a person authorized to receive disclosure;
2. if the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law;
3. if disclosure would reveal information regarding a person that is of a highly sensitive and personal nature;
4. if disclosure may harm the reputation or jeopardize the safety of a person;
5. if disclosure would create a serious threat to the fair, impartial, and orderly administration of justice; and
6. if confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation.

The court shall then enter an order within seven business days of the filing of the petition instructing that the recording be:

1. immediately disclosed without editing or redaction;
2. immediately disclosed with editing or redaction;
3. disclosed at a later date, with or without editing or redaction; or
4. not disclosed to the person or persons seeking disclosure.

Upon order of the court that the recording be disclosed, it shall be disclosed only to:

1. a personal representative of the deceased;
2. the injured individual; or
3. a personal representative on behalf of the injured individual

Any disclosure must be done by the agency in a private setting. The court may order any conditions or restrictions on the disclosure that the court deems appropriate. Except as provided by order of court, the portion of the recording relevant to the death or serious bodily injury cannot be edited or redacted. G.S. § 132-1.4A(b1). A person who receives disclosure as ordered by the court cannot record or copy the recording.

If disclosure of a recording is denied because disclosure may jeopardize an internal or criminal investigation, the court shall schedule a subsequent hearing, to be held no more than 20 business days after the issuance of the order, to reconsider whether the recording should be disclosed. G.S. § 132-1.4A(b3).

6. General Release of Recordings

Anyone, including the people authorized to request disclosure of a recording or a custodial law enforcement agency can file an action in a superior court in any county where any portion of the recording was made for an order releasing the recording. G.S. § 132-1.4A(g).

The request for release must state the date and approximate time of the activity on the recording that the person wants released. The court may conduct an in-chambers review of the recording before making its decision. In determining whether to release all, or a portion of the recording, the court must consider the applicability of the following standards:

1. release is necessary to advance a compelling public interest;
2. the recording contains information that is otherwise confidential or exempt from disclosure or release under State or federal law;
3. the person requesting release is seeking to obtain evidence to determine legal issues in a current or potential court proceeding;
4. release would reveal information regarding a person that is of a highly sensitive personal nature;
5. release may harm the reputation or jeopardize the safety of a person;
6. release would create a serious threat to the fair, impartial, and orderly administration of justice;
7. confidentiality is necessary to protect either an active or inactive internal or criminal investigation or potential internal or criminal investigation; and
8. there is good cause shown to release all portions of a recording.

Anytime the court holds a hearing on the release of a recording under this process the following people have to be notified of the proceedings and given an opportunity to be heard:

1. the head of the custodial law enforcement agency;
2. any law enforcement agency personnel whose image or voice is in the recording and the head of that person's employing law enforcement agency; and
3. the district attorney.

If the court decides to release the recording, it shall release only those portions of the recording that are relevant to the person's request and it may place any conditions or restrictions on the release of the recordings it deems appropriate. G.S. § 132-1.4A(g).

7. Expedited Hearing Process for the Release of Recordings

Any of the five named individuals listed above in Section 4 or the custodial law enforcement agency can petition a superior court in any county where any portion of the recording was made for an order releasing the recording. There is no fee for filing this petition and the petition must be filed using NCAOC form AOC-CV-270 (attached to this publication).

The petition must state the approximate date and time of the activity captured in the recording or otherwise identify the activity with reasonable particularity sufficient to identify the recording.

If the person filing the petition to obtain release of the recording is one of the five individuals authorized to request disclosure of a recording, notice of the hearing and an opportunity to be heard will be given to the head of the custodial law enforcement agency. Any petitions for release of a recording filed by one of these individuals or the custodial agency will be set for hearing as soon as practicable and will be given priority by the court.

The court must first find that the person requesting release of the recording is one of the five individuals listed above in Section 4. In making this determination, the court may conduct an in-chambers review of the recording and may allow the person requesting disclosure to be present to assist in identification. If the court finds the person requesting release is not one of the individuals listed above, there is no entitlement to expedited release, no right of appeal and, instead, the person may file an action for general release of the recording, paying a filing fee. G.S. § 132-1.4A(f).

If the court finds that the person requesting the release of the recording is one of the individuals authorized to request disclosure, the court must consider all of the same factors listed above in Section 6 and may consider any other standards the court deems relevant.

If the court decides to release a recording, the court has the authority to place any conditions or restrictions on the release of the recording that the court deems appropriate.

8. Disclosure or Release of Recordings for Law Enforcement Purposes

Pursuant to G.S. § 132-1.4A(h), a custodial law enforcement agency is required to disclose or release a recording to a district attorney upon request without a court order for the following purposes:

1. for review of potential criminal charges;
2. in order to comply with discovery requirements in a criminal prosecution;
3. for use in criminal proceedings in district court; or
4. for any other law enforcement purpose.

A custodial law enforcement agency may disclose or release a recording for any of the following purposes:

1. for law enforcement training purposes;

2. within the custodial law enforcement agency for any administrative; training, or law enforcement purpose;
3. to another law enforcement agency for law enforcement purposes;
4. for suspect identification or apprehension; or
5. to locate a missing or abducted person

9. Standards and Requirements Related to Law Enforcement Recordings

Any recording made by a law enforcement agency must be retained for at least the period of time required by the applicable records retention and disposition schedule developed by the Department of Natural and Cultural Resources, Division of Archives and Records (DNCR). G.S. § 132-1.4A(i). The current period of retention specified by DNCR depends on whether the recording is made part of a case file for a felony or misdemeanor, citizen complaint, or internal investigation. *See* 2015 County Sheriff's Office Records Retention and Disposition Schedule, Item #10. If not made part of any of the above listed case files the recording must be kept for a minimum of 30 days.

Additionally, every law enforcement agency that uses body-worn cameras or dashboard cameras is required to adopt a policy applicable to the use of those cameras. G.S. § 132-1.4A(j).

Law enforcement agencies that act in good faith in following this law concerning the disclosure or release of recordings are immune from civil liability so long as the law enforcement agency's actions do not constitute gross negligence, willful or wanton misconduct, or intentional wrongdoing. G.S. § 132-1.4A(k)

Law enforcement agencies may charge a reasonable fee, not to exceed the actual cost of making a copy, of any recording that is released. Additionally, a court cannot award attorney's fees to any party in any action brought in superior court to disclose or release a recording. G.S. § 132-1.4A(l).

If a State or local law enforcement agency uses the services of the State Bureau of Investigation (SBI) or the North Carolina State Crime Laboratory (Crime Lab) to analyze a recording, and if the SBI or Crime Lab requests it, the State or local agency must provide the SBI or Crime Lab access to a method to review and analyze the recording. G.S. § 153A-436.1.

Public bodies (city councils, county commissioners, etc.) have specific authority to go into a closed session to view any recording made by a law enforcement agency that has been released by a superior court judge's order. G.S. § 143-318.11(a)(10).

10. Conclusion

While the courts and the General Assembly will undoubtedly interpret and perhaps adjust this legislation in the future, this law hopefully adds clarity to when and under what circumstances law enforcement recordings may be disclosed (viewed) and released.