



Fire Helmet Camera Policy

CAUTION

The following generic policy template has been prepared for users of Fire Helmet Cameras™ subject to the REQUIREMENT that it be reviewed and approved by a competent attorney in the applicable jurisdiction before being adopted. Users who fail to comply with this requirement do so at their own peril.

Adopting this policy without the prior review and approval of a competent attorney familiar with your state's laws could result in the violation of civil and/or criminal laws in your jurisdiction. It may also result in unnecessary civil liability for individuals and the organization.

SEEK COMPETENT LEGAL ADVICE BEFORE ADOPTING THIS POLICY

The use of any imaging device by on-duty firefighters, police officers and emergency personnel raises a number of important legal implications. These legal issues include:

- Patient medical confidentiality
- Personal privacy and invasion of privacy
- Public records laws
- Evidentiary concerns
- Laws limiting the locations where photos may be taken
- Laws requiring consent of all parties to audio recording and eavesdropping

The legal implications of these matters vary greatly from state to state and even jurisdiction to jurisdiction. Each of the above items must be thoroughly researched at the state and local level and incorporated into the policy BEFORE a digital imagery policy is adopted. This research can only be done by a licensed and competent attorney.

Fire Helmet Cameras™ and the drafters of this policy make no warranty that this policy is suitable for use by your fire department, nor any representation that it complies with the laws applicable to your jurisdiction. That determination can only be made by the fire chief and local officials responsible for managing a particular department after consultation with competent local legal counsel.

WARNING

Users are expressly warned not to rely upon or use this sample policy template without consulting with competent local legal counsel beforehand.

Note: The DECISION POINT information is provided for informational purposes only and should not be included in the actual policy, except where optional language is indicated.

Fire Helmet Camera

PURPOSE: The purpose of this policy is to manage the use of Fire Helmet Cameras™ by fire department personnel in accordance with state law in such a way that the privacy rights of department personnel, patients, fire victims, and the public are respected; that evidentiary concerns related to such images are protected; that the state's public records law is complied with; and the professional image of the department is maintained.

POLICY: It is the policy of the fire department to respect of privacy interests of department personnel, patients, fire victims, and the public; to meet all evidentiary requirements that may arise in the course of business; and to comply with the state's [Public Record Law].

DEFINITIONS

Images – digital photographs, digital images, video recordings, or electronic files containing a graphic image or series of images created by a Fire Helmet Camera™, as well as any digital reproductions or copies of such images. This definition shall extend to derivations of the term images, including image, imagery and imaging.

DECISION POINT: Volunteer or combination departments that do not have a clear definition of "on-duty" in their rules and regulations, should add a definition of *on-duty* that describes *when* their personnel are considered to be engaged in fire department activities. Considerations should be given to the workers compensation and liability implications of this definition.

PROCEDURE

A. On-Duty Photography

1. Fire department personnel are prohibited from using non-department owned Fire Helmet Cameras™ while on-duty. The Fire Chief may grant an exception to this rule on an individual basis. Any permission granted by the Fire Chief shall be in writing and shall indicate any conditions or limitations upon the member. A basic condition of any member using a non-department owned Fire Helmet Camera™

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while on-duty is that the Fire Chief or his/her designee may inspect the device at any time.

2. Except as provided in Paragraph 1 above, all images taken by department personnel while on-duty shall be taken using department owned equipment.

DECISION POINT: Fire departments need to consider whether they will allow personnel to use personally owned devices. If the use of personally owned Fire Helmet Cameras™ will routinely be permitted, paragraphs 1 and 2 above may be deleted. In such a case personnel must understand that they have an obligation to treat all images taken while on-duty as public records even though they are using a personal device. Personnel also need to understand that if they come to work with a personally owned device that already has images on it (even if personal and non-work related) they may have to disclose those images to a court, police investigator, or public records official performing an audit. For that reason personnel using a personally owned Fire Helmet Cameras™ should be advised to start each shift with a blank memory card.

3. Only personnel who have been trained on compliance with this policy and who have been approved by the Fire Chief shall be permitted to use Fire Helmet Cameras™ pursuant to this policy.
4. On-duty personnel shall only take images that are of business related matters of the department and events for purposes of incident documentation, evidence, training, investigation, and/or public relations. All images taken shall be considered public records and shall be managed in accordance with standard department practices for the retention and preservation of public records.
5. The Fire Chief or his/her designee may inspect any Fire Helmet Cameras™ in the possession of an on-duty member at any time. Members are advised that they have no expectation of privacy in the contents of any Fire Helmet Camera™ in their possession while on duty.

6. All images taken with a Fire Helmet Camera™ by on-duty personnel taken shall be preserved and shall not be deleted without the written permission of the Fire Chief or his/her designee, except as permitted by the department's record retention policy. This includes accidentally taken imagery, imagery which is blurred, imagery that is whited out or blacked out, or imagery that otherwise cannot be viewed.

7. All images taken by on-duty personnel are the sole property of the department, and are under the control of the Fire Chief or his/her designee. For purposes of copyright law such images are considered to be a work for hire owned solely and exclusively by the fire department.

8. Personnel are expressly prohibited from taking any images of another person in any location where a person has a reasonable expectation of privacy, including a bathroom, bedroom, locker room, changing area, or any other location where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed, filmed, or videotaped by another; or a place where one would reasonably expect to be safe from hostile intrusion or surveillance.

DECISION POINT: Departments should ensure that legal counsel reviews paragraph 7 closely and researches state privacy law that may define where a person has an expectation of privacy from being filmed. Some states make it a criminal offense to record (video or audio) someone in an area such as a bedroom or bathroom without their prior consent. Some states allow an exception for police and firefighters for certain types of recordings. Nevertheless, this must be researched at the state level and the proper language incorporated into this paragraph.

DECISION POINT: The use of the audio recording capability of Fire Helmet Camera™ must be researched on a state-by-state basis and fully considered before a policy is implemented. There are twelve states that require the consent of all persons to a conversation before anyone can record that conversation. In such states, the recording of such a conversation without the consent of all parties can be a criminal offense. While some of these states recognize an exception for recordings by on-duty police and firefighters, and some allow recordings that are done in an open and notorious manner, it is important that fire departments review the advisability of prohibiting all audio recording with legal counsel. Prohibiting all audio recording is the safest option liability-

wise, although it comes at the sacrifice of valuable audio recording information. Departments choosing to prohibit audio recording may consider the following language:

Members are prohibited from utilizing the audio recording capability of Fire Helmet Camera™ while on-duty.

Thirty-eight states allow any party to a conversation to record the conversation, but consider the recording of a conversation to which a person is not a party to be a criminal offense commonly known as eavesdropping. In such states, the following provision may be considered after review by legal counsel:

Fire Helmet Cameras™ shall only be used with the audio capture feature on when in the immediate physical presence of the member who is recording. Members shall not leave a Fire Helmet Camera™ with audio recording capability in the recording mode unattended at any time, under any circumstances. The only exception to this requirement shall be permanently installed dashcams or video cams mounted in vehicles where appropriate signage is clearly visible to put people in the area on notice that an audio recording is being made.

It is vital that local legal counsel research this issue and assist the department in adopting the appropriate language to regulate use of the audio recording feature of Fire Helmet Cameras™.

B. Responding to, operating at, and returning from, incident scenes

1. Imagery taken by on-duty personnel while responding to, operating at, and returning from incident scenes shall be for incident documentation, evidentiary, training, investigation, and/or public relations purposes only, and shall be subject to any limitations or restrictions imposed by the incident commander.

DECISION POINT: Departments need to decide if personnel should be allowed to use Fire Helmet Cameras™ subject to the IC restricting them, or if members should only be allowed to film if/when the IC permits. The above provision allows filming unless the IC limits. The following provision prohibits filming without the ICs permission.

Alternative to 1. On-scene imagery taken by on-duty personnel shall be for incident documentation, evidentiary, training, investigation, and/or public relations purposes only, and may only be taken with the prior permission of the incident commander.

2. The taking of imagery shall not interfere with nor delay operational activities.

3. All imagery containing individually identifiable patient information shall be presumed to be covered by HIPAA and state medical privacy laws and shall be protected in the same manner as patient care reports and medical documentation.

C. Handling and Preservation of Images

1. Fire department owned images shall not be used, printed, copied, scanned, e-mailed, texted, forwarded, posted, uploaded, shared, reproduced or distributed in any manner, except as provided herein in this policy. This prohibition specifically includes the posting of any images on personal Web sites such as, but not limited to: Face Book, MySpace, or YouTube; posting to public safety Websites; or e-mailing to friends, relatives, colleagues, or other third parties unless and until formally released as a public record.
2. All fire department owned images as described in this policy shall be downloaded from the Fire Helmet Camera™ as soon as possible after they are taken, and will be cataloged and stored in a secure archive with controlled access. After being downloaded and verifying that the downloading is successful, the images on the Fire Helmet Camera™ memory card shall be erased.

DECISION POINT: Departments may choose to have a more detailed procedure on image handling specific to their organization. Among the issues to be considered:

- How often should the images be removed from the Fire Helmet Camera™ and archived. Options include after each run, at shift change, daily, weekly, monthly, when the memory card is ½ full, ¾ full, etc.
- Where should the images be archived to: place the memory card in archive; transfer images to CDRom or DVD; transfer images to the fire department computer system; etc.
- Adoption of folder and file naming protocols so that images can be found when needed (eg. Folder by company, sub folder by date, files downloaded to sub-folder)

- Use of imagery software to catalogue and track downloaded images
3. Imagery that has known evidentiary value, including vehicular accidents involving department vehicles, fire scenes showing evidence of cause and origin, incident scenes showing the locations of victims, fire code violations, etc., require that a Chain of Custody form be initiated by the photographer and forwarded with the imagery.
 4. Images in the secured archive shall not be accessed by any party, or altered via any software product or utility such as Photoshop, unless express permission is granted in writing by the Fire Chief or his/her designee. If permission to alter an image is granted, the original image shall not be altered in any way, and any copies that are altered shall be appropriately identified and documented as to being an altered copy. The details of the alteration including what was done (cropped, lightened, darkened, etc.), the name and rank of the member performing the alteration, and the time and date of the alteration, shall be noted and preserved.
 5. The use of fire department owned images by any member, and the release of any images by the department as public records, shall be subject to the approval of the Fire Chief or his/her designee. Prior to the release of any image, the image shall be evaluated by the Fire Chief or his/her designee to ensure that the release will not result in a breach of patient confidentiality or breach of privacy, and that the release will, in all other respects, be lawful.

DECISION POINT: Fire service leaders need to understand that images taken pursuant to this policy will likely constitute public records under state law. As such all images must be preserved for the applicable record retention period. Fire departments should appoint an officer to be responsible to review all requests (internal requests from firefighters and public records requests from others) for imagery. Guidelines should be developed to help this officer evaluate what types of images may be released and what types may be withheld pursuant to state public records laws. It is recommended that a simplified/expedited procedure be adopted for firefighters to obtain permission to use images so as to minimize the risk that members will choose to secretly take prohibited images rather than comply with an overly burdensome policy. Departments should place whatever

restrictions on the use of approved images they feel is necessary. Typically, departments will limit the use of approved imagery to training and/or personal non-commercial use. However, ***it must be understood that department owned images constitute public records. As such the ability of the department to restrict the use of public records by its members is limited.***

6. The use of unauthorized helmet cams, dash cams, digital cameras, video recorders, camera features of cellular telephones, and other imaging devices is strictly prohibited, and shall be considered a serious disciplinary breach for the member involved and any officer who permits such use.
7. Use of department owned Fire Helmet Cameras™ to take images for personal purposes is strictly prohibited.
8. Violation of this policy or failure to permit inspection of any device covered in this policy may result in disciplinary action.

DECISION POINT: Some fire departments may choose to add a provision to allow personal images to be taken by on-duty personnel using personally owned devices. Section D is provided for that purpose.

D. Personal Images Exception

1. This policy shall not apply to images taken by on-duty personnel with a personally owned Fire Helmet Camera™ for purely personal and non-business purposes. This exception is intended to include non-work related images of friends and family members during a fire station visit, and personal images of co-workers such as coworkers posing for a group photo, birthday celebration of an on-duty member, etc.
2. This exception shall not apply to imagery taken at emergency scenes, training events, or during other official activities of the department, nor shall any such imagery be taken with a personally owned Fire Helmet Camera™ if it may have any training, operational, documentation, fire department business, public business, or evidentiary value, except as otherwise permitted by Section A above.

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3. Imagery taken pursuant to this exception shall not contain profanity, nudity or partial nudity, horseplay, hazing, harassment, be offensive, or depict vulgar or sexually suggestive images.
4. Imagery taken pursuant to this exception shall not be used or sold for profit.
5. Any image taken pursuant to this exception that captures public or business related matters of the department that make it subject to the public records law, shall be considered to be a department owned photo and must comply with the procedures required for department owned photos, including the need to archive and the need to obtain formal permission to use.

For questions, please go to the contact page at FireVideo.net



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