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Policy Manual

Policy#4900

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Subject: Body Worn Cameras

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Rescinds: All other in Conflict

Approved by: Chief Steve Hansen

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### **Purpose**

The primary purpose of using body-worn-cameras (BWCs) is to capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of BWCs and administering the data that results. Compliance with these guidelines is mandatory, but it is recognized that officers must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving.

### **Policy**

It is the policy of this department to authorize and require the use of department-issued BWCs as set forth below, and to administer BWC data as provided by law.

### **Scope**

This policy governs the use of BWCs in the course of official duties. It does not apply to the use of squad-based (dash-cam) recording systems. The chief or chief's designee may supersede this policy by providing specific instructions for BWC use to individual officers, or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The chief or designee may also provide specific instructions or standard operating procedures for BWC use to officers assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.

### **Definitions**

The following phrases and words have special meanings as used in this policy:

- A. **MGDPA or Data Practices Act** refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.
- B. **Records Retention Schedule** refers to the General Records Retention Schedule for Minnesota Cities.
- C. **Law enforcement-related information** means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

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- D. **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.
- E. **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.
- F. **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.
- G. **Unintentionally recorded footage** is a video recording that results from an officer's inadvertence or neglect in operating the officer's 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.
- H. **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.

## Use and Documentation

- A. Officers may use only department issued BWCs while engaged in the performance of official duties.
- B. Officers who are engaged in the performance of official duties and have been issued BWCs shall use and operate them in compliance with this policy. This requirement includes situations where the officer is under the command and control of another chief law enforcement officer or federal law enforcement official while performing official duties for this agency.
- C. Officers shall conduct a function test of their issued BWCs at the beginning of each shift. Officers noting a malfunction during testing or at any other time shall promptly report it to the officer's supervisor and shall document the report in writing. Supervisors shall take prompt action to address malfunctions and document the steps taken in writing.

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- D. Officers shall wear their issued BWC at or above the midline of the waist in a position that maximizes the capacity of the device to record video footage of the officer's activities.
  
- E. Officers must document BWC use and non-use as follows:
  - 1. Whenever an officer makes a recording, the existence of the recording shall be documented in an incident report.
  - 2. Whenever an officer fails to record an activity that is required to be recorded under this policy, or fails to record for the entire duration 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.
  
- F. The department will maintain the following records and documents relating to BWC use, which are classified as public data:
  - 1. The total number of BWCs owned or maintained by the agency;
  - 2. A daily record of the total number of BWCs actually deployed and used by officers and, if applicable, the precincts in which they were used;
  - 3. The total amount of recorded BWC data collected and maintained; and
  - 4. This policy, together with the applicable Records Retention Schedule.

**General Guidelines for Recording**

- A. Officers shall activate their BWCs when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, *Terry* stops of motorists or pedestrians, arrests, searches, suspect interviews and interrogations, and during any police/citizen contacts that becomes adversarial. However, officers need not activate their cameras when it would be unsafe, impossible, or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in the Use and Documentation guidelines, part (E)(2) (above).
  
- B. Officers have discretion to record or not record general citizen contacts.
  
- C. Officers have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.

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- D. Once activated, officers should continue recording with their BWCs until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. The officer having charge of a scene shall direct that recording be discontinued when additional recording is unlikely to capture information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, the officer shall state the reasons for ceasing the recording on camera before deactivating their BWC. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.
- E. Officers shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy.
- F. Notwithstanding any other provision in this policy, officers shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

### **Special Guidelines for Recording**

Officers may, in the exercise of sound discretion, use their BWCs:

- A. To record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value unless such recording is otherwise expressly prohibited.
- B. Officers should use their BWCs and squad-based audio/video systems to record their transportation and the physical transfer of persons in their custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident.
- C. Additionally, for the purposes of evidentiary value, officers shall record in the jail intake area for DUI processing and, in the hospitals, clinic or medical facilities for the purposes of gathering legal blood draw. When recording in hospitals and other medical facilities, officers shall be careful to avoid recording persons other than the suspect. Officers shall not record patients during medical or psychological evaluations by a clinician or similar professional during treatment.

## Downloading and Labeling Data

- A. Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her camera to the dedicated BWC evidence storage server located in the tech room by the end of that officer's shift. However, if the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the officer's BWC and assume responsibility for transferring the data from it.
- B. Officers shall label the BWC data files at the time of capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Officers shall select the proper category(s) either on the body cam itself or back at their work station on the BWC software program. Additionally, officers shall further create a case on the BWC software evidence library if the event is for evidentiary purposes including case number along with descriptive note of the event which describes the nature of the incident. Officers should assign as many of the following labels as are applicable to each file:
1. **Alarm**-The recording has potential evidentiary value for reasons identified by the officer at the time of labeling, but typically these are false alarms with no value
  2. **Arrest**-Evidence-value for any arrest made, may include adversarial encounter, force used
  3. **Assault**-Evidence, investigative value
  4. **Citation/Arrest**-Evidence, value for any citation issued, may include adversarial encounter
  5. **DUI (driving under influence)**-Evidence, value for any traffic related DUI offense
  6. **DOC (disorderly conduct)**-Evidence value for arrest or citation or verbal
  7. **Domestic**-Evidence value for investigation, arrest or citation or verbal
  8. **Drug Charge/Seizure**-Evidence value for investigation and processing
  9. **Medical**-The recording has potential evidentiary value for reasons identified by the officer at the time of labeling for death investigations, but typically have no value
  10. **Officer Info**- The recording has potential evidentiary value for reasons identified by the officer at the time of labeling, may include adversarial encounter
  11. **Public Assist**-Non-evidence, typically involves general citizen contacts
  12. **Test**-Non evidence, usually consists of tests activation at the beginning of shifts
  13. **Theft**-Evidence, the data has evidentiary value from information gathered from complainant to the overall investigation possible suspects involved
  14. **Traffic Accident**-The recording has potential evidentiary value for reasons identified by the officer at the time of labeling
  15. **Traffic Warning**-Typically will have no evidentiary value, include citizen contacts
  16. **Unknown**-Non-evidence, typically will not have evidentiary value but may include training specific related events, unintentional recordings

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- C. In addition, officers shall flag each file as appropriate to indicate that it contains information about data subjects who may have rights under the MGDPA limiting disclosure of information about them. This will be accomplished by creating or using the existing case file in the BWC software evidence library and putting the word LIMITED in the note section. These individuals include:
1. Victims and alleged victims of criminal sexual conduct and sex trafficking.
  2. Victims of child abuse or neglect.
  3. Vulnerable adults who are victims of maltreatment.
  4. Undercover officers.
  5. Informants.
  6. When the video is clearly offensive to common sensitivities.
  7. Victims of and witnesses to crimes, if the victim or witness has requested not to be identified publicly.
  8. Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
  9. Mandated reporters.
  10. Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
  11. Juveniles who are or may be delinquent or engaged in criminal acts.
  12. Individuals who make complaints about violations with respect to the use of real property.
  13. Officers and employees who are the subject of a complaint related to the events captured on video.
  14. Other individuals whose identities the officer believes may be legally protected from public disclosure.
- D. Labeling and flagging designations may be corrected or amended based on additional information.

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**Administering Access to BWC Data:**

**A. Death resulting from force—access to data by survivors and legal counsel.**

Notwithstanding any other law or policy to the contrary, when an individual dies as a result of force used by an officer of this agency, all BWC data documenting the incident, redacted only as required by law, must be made available for inspection by any of the following individuals within five days of their request:

1. The deceased individual's next of kin.
2. The legal representative of the deceased individual's next of kin.
3. The other parent of the deceased individual's child.

The request may be denied if there is a compelling reason that inspection would interfere with an active investigation. If access is denied, the Chief of Police must provide a prompt, written denial to the requestor with a short description of the compelling reason that access was denied. The written denial must also provide notice that relief may be sought from the district court pursuant to Minnesota Statutes section 13.82, subdivision 7.

**B. Death resulting from force—release of data to the public.** When an individual dies as a result of force used by an officer of this agency, all BWC data documenting the incident, redacted only as required by law, must be released and classified as public within 14 days after the incident, unless the Chief of Police asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by Minnesota Statutes section 13.82, subdivision 7.

**C. Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:

1. Any person or entity whose image or voice is documented in the data.
2. The officer who collected the data.
3. 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.

**D. BWC data is presumptively private.** BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:

1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.

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2. Some BWC data is classified as confidential (see E. below).
  3. Some BWC data is classified as public (see F. below).
- E. **Confidential data.** 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 in part D, and the “public” classifications listed below in parts F(2)(a) and (b). However, special classifications and access rights are applicable to BWC data documenting incidents where an officer’s use of force results in death (*see* parts A and B, above).
- F. **Public data.** The following BWC data is public:
1. Data that documents the final disposition of a disciplinary action against a public employee is classified as public without regard to any ongoing criminal investigation.
  2. The following data is public unless it is part of an active criminal investigation or is subject to a more restrictive classification. For instance, data that reveals protected identities under Minnesota Statutes section 13.82, subdivision 17 (e.g., certain victims, witnesses, and others), should not be released even if it would otherwise fit into a category of data classified as public.
    - a. Data that record, describe, or otherwise document actions and circumstances surrounding the use of force by a peace officer that results in substantial bodily harm, or 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.
    - b. 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. In addition, any data on undercover officers must be redacted.
- G. **Access to BWC data by non-employees.** Officers shall refer members of the media or public seeking access to BWC data to the Chief of Police, or their designee, who shall process the request in accordance with the MGDPA and other governing laws. In particular:
2. An individual shall be provided with access and allowed to review recorded BWC data about him- or herself and other data subjects in the recording, but access shall not be granted:



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- a. If the data was collected or created as part of an active investigation.
  - b. 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 Minn. Stat. § 13.82, subd. 17.
3. 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:
- a. Data on other individuals in the recording who do not consent to the release must be redacted.
  - b. Data that would identify undercover officers must be redacted.
  - c. 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.
- H. **Access by peace officers and law enforcement employees.** No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes:
1. The Chief of Police Authorizes Police Department Members to access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Except as provided in the critical incident response policy, officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident.
  2. Agency personnel shall document their reasons for accessing stored BWC data in the manner provided within the database at the time of each access. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.
  3. Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.
- I. **Other authorized disclosures of data.** Officers may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 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 individual identities that

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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. In addition,

1. 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.
2. BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

### **Data Security Safeguards**

- A. Data security safeguards are to be used by the Agency in connection with particular BWC technologies being employed by the vendor Motorola Solutions-Watchguard.
- B. Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view agency BWC data.
- C. Officers shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the chief or the chief's designee.
- D. As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program.

### **Agency Use of Data**

- A. At least once a month, supervisors will randomly review BWC usage by each officer to whom a BWC is issued or available for use, to ensure compliance with this policy and to identify any performance areas in which additional training or guidance is required. Those monthly reviews by supervisors will be forwarded to the Chief of Police.
- B. In addition, supervisors and other assigned personnel may access 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.
- C. Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.
- D. Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training officers may utilize BWC data

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with trainees for the purpose of providing coaching and feedback on the trainees' performance.

### Data Retention

- A. Retention periods for BWC data are established by law and the Records Retention Schedule. When a particular recording is subject to more than one retention period, it shall be maintained for the longest applicable period.
- B. All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.
- C. Certain kinds of BWC data must be maintained for a minimum period of one year. These are:
  - 1. Data that document the accidental discharge of a firearm by a peace officer in the course of duty.
  - 2. Data that document an incident resulting in a formal complaint against an officer. However, a longer retention period applies if the recording is relevant to an internal affairs investigation.
- D. Data documenting the use of force by a peace officer that results in substantial bodily harm, or force that is of a sufficient type or degree to require supervisory review under the agency's policy, must be retained for a minimum period of seven years.
- E. Data determined to have evidentiary value in any internal affairs investigation must be retained for five years after termination or separation of the employee who is the subject of the investigation.
- F. Other data having evidentiary value shall be retained for the period specified by law or the records retention schedule.
- G. Subject to Part H (below), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.
- H. Upon written request by a BWC 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.

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- I. The department shall maintain an inventory of BWC recordings having evidentiary value.
- J. The department will post this policy, together with <https://www.cityof oakparkheights.com> its Records Retention Schedule, on its website.

### **Compliance**

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