

# TEMPORARY POLICY DURING TESTING PHASE

## OWATONNA POLICE DEPARTMENT MANUAL

### PATROL PROCEDURE: 335

EFFECTIVE DATE: January 23, 2019

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SUBJECT: BODY-WORN CAMERA

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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 the management, access, storage, retrieval, retention and the administering of 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 the Owatonna Police Department (the “Agency”) to authorize and require the use of Agency-issued BWCs as set forth below, and to administer BWC data as provided by law. This policy does not apply to mobile video recording (MVR) systems.

#### **Definitions**

- A. **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, shouting or body posturing. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.
- B. **Body-Worn-Camera (BWC):** A camera worn on an individual officer’s person that records and stores audio and video.
- C. **BWC Administrator:** A Captain or other department designated supervisor, who assigns, tracks and maintains BWC equipment, oversees needed repairs or replacement equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor.
- D. **BWC Technician:** Personnel certified or trained in the operational use and repair of BWCs, duplicating methods, storage and retrieval methods and procedures, and who possess a working knowledge of audio forensics and evidentiary procedures.

- E. ***Evidentiary Value:*** means that the information may be useful as proof in a criminal prosecution, or that tends to show a suspect or the accused did not commit a criminal offense, 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.
- F. ***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 tow service, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.
- G. ***Law Enforcement-Related Information:*** 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, seizure, citation, or charging decision.
- H. ***MGDPA or Data Practices Act:*** The Minnesota Government Data Practices Act, Minnesota State Statute Chapter 13.
- I. ***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.
- J. ***Records Retention Schedule:*** The General Records Retention Schedule for Minnesota Cities.
- K. ***Unintentionally Recorded Footage:*** A video recording that results from an officer's inadvertence 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 at the LEC locker rooms, restrooms, at the officers' own residence, and recordings made while officers were engaged in conversations of a unofficial business, personal nature with the expectation that the conversation was not being recorded.

## **Training**

Users and supervisors of the BWC systems shall successfully complete an approved course of instruction prior to being deployed. This training shall be documented by the Agency.

## **Use and Documentation**

- A. Officers may use only Agency-issued BWCs in the performance of official duties for this Agency or when otherwise performing authorized law enforcement services as an employee of this Agency.

- B. Officers who have been issued BWCs shall operate and use them consistent with this policy. Officers shall conduct a function test of their issued BWCs at the beginning of each shift, in accordance with manufacturer specifications, to make sure the devices are operating properly. Officers noting a malfunction during testing or at any other time shall promptly report the malfunction to their immediate supervisor. The officer shall then use a spare BWC that has been tested and is operating properly. All supervisors shall then advise the BWC Administrator of any malfunction, and the BWC Administrator shall take prompt action to correct the matters.
- C. Officers should wear their issued BWCs at the location on their body and in the manner specified in training.
- D. 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. Absent an incident report, the officer shall make a notation on a citation. Absent a citation, the officer shall make note on the incident event disposition.
  - 2. Whenever an officer fails to record an activity that is required to be recorded under this policy or captures only a part 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.
- E. The Agency 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;
  - 3. The total amount of recorded BWC data collected and maintained; and
  - 4. This policy, together with the 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 contact that becomes adversarial. However, officers are not required to activate their cameras when it would be unsafe, impossible, or impractical to do so or may cause harm to

themselves or the public, but such instances of not recording when otherwise required must be documented as specified in the Use and Documentation guidelines, part (D)(2) above.

- B. Except as otherwise directed, officers have discretion to record or not record incidental citizen contacts.
- C. Officers have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded. However, if asked, officers shall clearly advise the citizens that he/she is/is not being recorded.
- D. Officers shall not intentionally obstruct the BWC's audio or visual recording functionality to defeat the purposes of this policy.

### **Special Guidelines for Recording**

Officers may, in the exercise of sound discretion, determine:

- A. To use their BWCs 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 shall use their BWCs or Mobile Video Recorder 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.

### **Documenting BWC Use**

If any incident or video statements are recorded with the BWC system, the existence of that recording shall be documented in the officer's report. A video statement is not a replacement for a written or audio recorded statement.

### **Cessation of Recording**

- A. Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. A sergeant or other commanding officer shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, officers shall state the reasons for ceasing the recording on camera before deactivating their BWC. A statement on camera such as, "I am deactivating my body-worn camera since the situation appears to be over" should often suffice as a statement of reasons for stopping the BWC.

- B. Recording may be temporarily paused to exchange information with other officers or during non-enforcement activities such as waiting for a tow truck or a family member to arrive, or in other similar situations.
- C. If circumstances change, officers shall reactivate their cameras as required by this policy to capture information having evidentiary value.

**Prohibited use of BWC**

- A. 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 shift briefing, break rooms, changing rooms, during supervisor-employee meetings, or other private conversations, unless a recording is authorized by the Chief of Police as part of an administrative or criminal investigation.
- B. Officers are prohibited from using Agency-issued BWC equipment for personal use and are prohibited from making and/or disseminating personal copies of recordings created while on-duty or while acting in their official capacity.
- C. There shall be no audio or video recordings made in any court of law, unless authorized by a judge (Minn. Court Rule 4, General Rules of Practice).
- D. Officers shall not record encounters with undercover officers or confidential informants or during administrative investigations in which the applicable oversight board has expressly prohibited such recordings.
- E. Officers shall not record patients during medical or psychological evaluations by a clinician or similar professional during treatment, unless required for evidentiary purposes, or during adversarial encounters. Officers shall be aware of patients' rights to privacy when in hospital/clinic settings. When recording in hospitals and other medical facilities, officers shall be careful to avoid recording persons other than the suspect.
- F. Officers shall not record while in a facility whose primary purpose is to provide psychiatric services unless responding to a call for service and the suspect is still present.
- G. Officers shall use discretion when recording while inside jail facilities based on the subject and subject's actions.
- H. Officers shall try to avoid recording videos of persons who are nude or when sensitive human areas are exposed.

**Uploading 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 designated storage location by the end of that officer's shift. However, if the officer is involved in a critical incident or other law enforcement activity resulting in death or great bodily harm, a supervisor or other commanding officer 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 video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling category. Officers should assign as many of the following labels as are applicable to each file: (These are subject to change based on OPD's BWC vendor)
  - 1. **Evidence—criminal:** The information has evidentiary value with respect to an actual or suspected criminal incident or charging decision.
  
  - 2. **Evidence—force:** Whether or not enforcement action was taken or an arrest resulted, the event involved the application of force by a law enforcement officer of this or another agency.
  
  - 3. **Evidence—property:** Whether or not enforcement action was taken or an arrest resulted, an officer seized property from an individual or directed an individual to dispossess property.
  
  - 4. **Evidence—administrative:** The incident involved an adversarial encounter or resulted in a complaint against the officer.
  
  - 5. **Evidence—other:** The recording has potential evidentiary value for reasons identified by the officer at the time of labeling.
  
  - 6. **Training:** The event was such that it may have value for training.
  
  - 7. **Not evidence:** The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recordings of general citizen contacts and unintentionally recorded footage are not evidence.
  
- C. An officer shall flag BWC files which they believe contain the likely presence of information about individuals whose identities may be legally protected under the MGDPA, which protects them from being disclosed to others, or any unintentionally recorded footage. Examples of such include, without limitation, undercover operations, special victims and videos which are clearly offensive to common sensitivities.
  
- D. Labeling and flagging designations may be corrected or amended based on additional information by a ranking officer or their designee.

**Retention Schedule**

- A. All BWC data, including general citizen contacts and erroneously recorded or non-evidentiary data, shall be retained for a minimum period of 90 days.
- B. Data documenting 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, must be maintained for a minimum period of one year.
- C. Certain kinds of BWC data must be retained for six years:
  - 1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review regardless of the disposition of any related criminal case.
  - 2. Data documenting an incident that resulted in a potential adversarial encounter, complaint against an officer or triggering an internal investigation shall be retained for six years. A shorter retention period may be utilized if no complaint or investigation arises.
- D. Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.
- E. Subject to Part F (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.
- F. 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.
- G. The Agency shall maintain an inventory of BWC recordings having evidentiary value.
- H. The Records Retention Schedule provides that retention periods for cases that have been charged are based on the status of court proceedings. For uncharged offenses, retention is seven years or permanent in the case of homicides.
- I. The Agency will post this policy, together with a link to its Records Retention Schedule, on its website.

Once submitted for storage all recorded media will be labeled and stored in a designated secure area. All recorded media that is not protected in a case file, will be retained in

compliance with the Records Retention Schedule, unless a specific request is made to store them for a longer period of time.

**Management of BWC Data:**

The BWC Administrator is responsible for:

- A. Logs reflecting BWC equipment assignments, serial numbers, dates of issuance, and the officers to which each BWC was issued;
- B. Ensuring that BWC policies and procedures are current with best practices;
- C. Ordering of all BWC equipment; and
- D. Corrective action for non-functioning BWC equipment.

The BWC Technician, or its designee, is responsible for:

- A. Retrieving, storing, erasing and duplicating of all recorded media.
- B. Collecting all completed media for oversight. Once collected, the BWC Technician, or its designee, shall:
  - a. Ensure it is stored in a secured location with authorized controlled access; and
  - b. Make appropriate entries in the chain of custody log.
- C. Erasing of media:
  - a. Pursuant to a court order; and/or
  - b. In accordance with established records retention policies.
- E. Ensuring that an adequate supply of recording media is available.
- F. Managing the long-term storage of media that has been deemed to be of evidentiary value in accordance with the Agency's evidence storage protocols and the records retention schedule.

**Administering Access to BWC Data:**

- A. **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.

**B. 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.
2. Some BWC data is classified as confidential (see C. below).
3. Some BWC data is classified as public (see D. below).

**C. 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” and “public” classifications listed herein.

**D. Public data.** The following BWC data is public:

1. Data documenting 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.
2. Data that documents the use of force by a peace officer that results in substantial bodily harm.
3. 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.
4. Data that documents the final disposition of a disciplinary action against a public employee.

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under Minn. Stat. § 13.82, subd. 17 (e.g., certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.

**E. Access to BWC data by non-employees.** Officers shall refer members of the media or public seeking access to BWC data to the Agencies Public Information

Officer (PIO) or the City's responsible authority, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

1. An individual shall be allowed to review recorded BWC data about him or herself and other data subjects in the recording, but access shall not be granted:
  - 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.
2. 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.

**F. Access by peace officers and law enforcement employees.** No employee may have access to the Agency's BWC data except for legitimate law enforcement or data administration purposes:

1. Officers may 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. 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.

If an officer is involved in a critical incident involving the use of deadly force or any incident that has caused or likely to cause serious bodily harm or death to any person, the following shall apply pursuant to General Order 227 (9):

- a. Based on current best practices, any officer or their attorney will not be permitted to view the video prior to providing a voluntary statement. However, the officer may view the video following the voluntary statement if they request to do so to assist in clarifying any portion of the voluntary statement.
- b. The viewing of the video will be limited to the incident captured on the officer's own body worn camera.

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.

**G. 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 individuals whose identities 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 the particular BWC technologies being employed through the BWC vendor.
- 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 unless specifically approved by the Chief of Police.
- C. Officers shall not intentionally edit, alter, or erase any BWC recording.
- 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. Supervisors may randomly review BWC usage by each officer to make recommendations for revisions to policy and/or procedures, to ensure compliance with this policy and to identify any performance areas in which additional training or coaching is required.

- 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 subsequent to a signed complaint.
- D. Officers should contact a division commander to request using BWC footage for department 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 with trainees for the purpose of providing coaching and feedback on the trainees' performance.

**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.