

## **Body Worn Cameras**

### **10.11.01 PURPOSE**

The use of Body Worn Cameras (BWC) is an effective tool a law enforcement agency can use to demonstrate its commitment to transparency, ensure the accountability of its members, increase the public's trust in officers, and protect its members from unjustified complaints of misconduct. As such, the San Francisco Police Department is committed to establishing a BWC program that reinforces its responsibility for protecting public and officer safety. The purpose of this Department General Order is to establish the policies and procedures governing the Department's BWC program and to ensure members' effective and rigorous use of BWC and adherence to the program.

The BWC is a small audio-video recorder with the singular purpose of recording audio/visual files, specifically designed to be mounted on a person. The BWC is designed to record audio and video activity to preserve evidence for use in criminal and administrative investigations (including disciplinary cases), civil litigation, officer performance evaluations, and to review police procedures and tactics, as appropriate. While recordings obtained from a BWC provide an objective record of the recorded events, it is understood that video recordings captured by a BWC (or any other recording device) provide a limited perspective and do not necessarily reflect the experience or state of mind of the individual member wearing the BWC in a given incident.

### **10.11.02 POLICY**

- A. Use of Equipment** - The Department-issued BWC is authorized for use in the course and scope of official police duties as set forth in this Order. Only members authorized by the Chief of Police and trained in the use of BWCs are allowed to wear Department-issued BWCs. The BWC and all recorded data from the BWC are the property of the Department. The use of non-Department issued BWCs while on-duty is prohibited.
- B. Training** - Prior to the issuance of BWCs, officers will be trained on the operation and care of the BWCs. This training will include mandatory, permissible and prohibited uses, significant legal developments, and use of BWCs in medical facilities.
- C. Program Administrator** - The Risk Management Office (RMO) is the BWC's program administrator. The duties of the RMO include, but are not limited to:
  - 1. Tracking and maintaining BWC inventory
  - 2. Issuing and replacing BWCs to authorized members
  - 3. Granting security access to the computer server
  - 4. Monitoring retention timeframes as required by policy and law
  - 5. Complying with Public Record Act (PRA) requests and all court record requests
  - 6. Conducting periodic and random audits of BWC equipment and the computer server
  - 7. Conducting periodic and random audits of BWC recordings for members' compliance with the policy

### 10.11.03 PROCEDURES

- A. Set Up and Maintenance.** Members shall be responsible for the proper care and use of their assigned BWC and associated equipment.
1. Members shall test the equipment at the beginning of their shift and prior to deploying the BWC equipment to ensure it is working properly and is fully charged.
  2. Activate(s) or activated, means to initiate both the audio and visual recording function of the BWC. Operating the BWC in buffering mode or with the mute function is not activating the BWC. Members shall not utilize the BWC mute function. The Department reserves the right to disable the BWC mute function.
  3. Deactivate, deactivated, or deactivation means to disable the audio or visual function of the BWC. Turning off the lights/LEDs display on the BWC or adjusting the volume on the audio prompts is not considered a deactivation.
  4. If the member discovers a defect or that the equipment is malfunctioning, the member shall cease its use and shall promptly report the problem to their Platoon Commander or Officer-in-Charge.
  5. If the member discovers that the BWC is lost or stolen, the member shall submit a memorandum through the chain of command memorializing the circumstances, in accordance with Department General Order 2.01, Rule 24, Loss or Damage to Department Property.
  6. If the member's BWC is damaged, defective, lost or stolen, the member's supervisor shall facilitate a replacement BWC as soon as practical.
  7. Members shall attach the BWC in such a way to provide an unobstructed view of officer/members of the public contact. The BWCs shall be considered mounted correctly if it is mounted in one of the Department-approved mounting positions.
- B. Notification and Consent.** When feasible, members should inform individuals that they are being recorded.

However, state law allows members to record communications that the member could lawfully hear or record. Penal Code § 633 *see also People v. Lucero 190 Cal. App. 3d 1065, 1069*. Members are not required to obtain consent from members of the public prior to recording when the member is lawfully in the area where the recording takes place.

Members are not required to activate or deactivate a BWC upon the request of a member of the public. In addition, members are not required to play back BWC recordings to allow members of the public to review the video footage.

- C. Authorized Use.** All on-scene members equipped with a BWC shall activate their BWC equipment to record in the following circumstances:
1. Detentions and arrests
  2. Consensual encounters where the member suspects that the member of the public may have knowledge of criminal activity as a suspect, witness, or victim, except as noted in Section 10.11.03, D.
  3. 5150 evaluations
  4. Traffic and pedestrian stops
  5. Vehicle pursuits
  6. Foot pursuits
  7. Uses of force

8. When serving a search or arrest warrant
9. Conducting any of the following searches on one's person and/or property:
  - a. Incident to an arrest
  - b. Cursory
  - c. Probable cause
  - d. Probation/parole
  - e. Consent
  - f. Vehicles
10. Transportation of arrestees and detainees
11. During any encounter with a member of the public that becomes hostile
12. In any situation when the recording would be valuable for evidentiary purposes
13. Only in situations that serve a law enforcement purpose

Failure to activate a BWC as outlined in this order shall subject a member to an administrative investigation and, if warranted, appropriate discipline.

- D. Prohibited Recordings.** Members shall not activate the BWC when encountering:
1. Sexual assault and child abuse victims during a preliminary investigation
  2. Situations that could compromise the identity of confidential informants and undercover operatives
  3. Strip searches

However, a member may record in these circumstances if the member can articulate an exigent circumstance that required deviation from the normal rule in these situations.

Members shall not activate the BWC in a manner that is specifically prohibited by DGO 2.01, General Rules of Conduct, Rule 56 – Surreptitious Recordings – and DGO 8.10, Guidelines for First Amendment Activities.

**E. Terminations of Recordings.** Once the BWC has been activated, members shall continue using the BWC until their involvement in the event has concluded to ensure the integrity of the recording, unless the contact moves into an area restricted by this policy. Members shall deactivate the BWC in the following circumstances:

1. When discussing sensitive tactical or law enforcement information away from the member of the public
2. After receiving an order from a higher ranking member
3. When recording at a hospital would compromise patient confidentiality
4. When gathering information from witnesses or community members, and the officer has a reasonable and articulable concern that a BWC would inhibit information gathering efforts

In cases when a member deactivates a BWC, the member shall document the reason(s) for deactivation as outlined in Section 10.11.03, G, Documentation.

- F. Viewing BWC Recordings.** Members may not review a BWC recording unless one of two following situations applies:
1. Legitimate Investigatory Purpose. A member may review a BWC recording on their assigned device or on an authorized computer for any legitimate criminal or administrative investigatory purpose, including but not limited to, preparing an incident report, preparing statements, conducting a follow-up investigation, or

providing testimony. Members shall not access or view a BWC unless doing so involves a legitimate law enforcement purpose

2. Officer-Involved Shooting and In-Custody Death. Following any (1) officer-involved shooting; or (2) in-custody death; any subject officer shall be required to provide an initial statement before the member reviews their own BWC recording(s). Officers may not view any other member's BWC recording(s) or any other video(s) that may capture an officer-involved shooting or in-custody death.
  - a) Initial Statement. The initial statement by the subject officer shall briefly summarize the actions that the officer was engaged in, the actions that required the use of force, and the officer's response. The statement shall be distinct from the "public safety statement."
  - b) Viewing the BWC after the Initial Statement. After providing an initial statement, the subject officer shall have an opportunity to review their own BWC recording(s) depicting the incident (with their representative or attorney) prior to being subject to an interview.
3. Nothing in this section is intended to limit the Department of Police Accountability's (DPA) role in these investigations.

**G. Documentation.** Members submitting an incident report or completing a written statement shall indicate whether the BWC was activated and whether it captured footage related to the incident.

If a member deactivates a BWC recording prior to the conclusion of an event, the member shall document the reason(s) for terminating the recording in CAD, an incident report, a written statement or a memorandum.

If a higher ranking member orders a subordinate member to deactivate the BWC, the higher ranking officer shall document the reason(s) for the order in CAD, an incident report, a written statement or a memorandum.

If a member reactivates the BWC after turning the equipment off, the member shall document the reason(s) for restarting the recording in CAD, an incident report, a written statement or a memorandum.

If a member determines that officer or public safety would be compromised if a BWC were activated during an incident requiring its use, the member shall document in CAD, an incident report, a written statement or a memorandum the reason(s) for not using the BWC.

#### **H. Storage and Use of Recordings**

1. A member who has recorded an event shall upload the footage prior to the end of their watch unless instructed to do so sooner by an assigned investigator or a superior officer. If the member is 1) the subject of the investigation in an officer-involved shooting or in-custody death; 2) the subject of a criminal investigation; or 3) at the discretion of the Chief of Police or the Chief's designee, the senior ranking on-scene supervisor shall take immediate physical custody of the camera and take responsibility for uploading the data.
2. When uploading recordings to the computer server, members shall identify each BWC recording with the incident report number, CAD number or citation number

and the appropriate incident category title to ensure the recording is accurately retained and to comply with local, state and federal laws.

3. Members are prohibited from tampering with BWC recordings, accessing BWC recordings for personal use, and from uploading BWC recordings onto public or social media internet websites without written approval from the commanding officer of the RMO.

#### **I. Duplication and Distribution**

1. The San Francisco Police Department's goal is to release BWC recordings to the greatest extent possible unless disclosure would:
  - a. endanger the safety of a witness or another person involved in the investigation,
  - b. jeopardize the successful completion of an investigation, or
  - c. violate local, state and/or federal laws, including but not limited to, the right of privacy.
2. Departmental Requests
  - a. The officer-in-charge or commanding officer of the investigative unit assigned the incident recorded by the BWC, or the commanding officer of the RMO shall have the authority to permit the duplication and distribution of the BWC files.
  - b. Any member requesting to duplicate or distribute a BWC recording shall obtain prior written approval from the officer-in-charge or the commanding officer of the unit assigned the investigation, or the commanding officer of the RMO.
  - c. Duplication and distribution of BWC recordings are limited to those who have a "need to know" and a "right to know" and are for law enforcement purposes only. The Department shall maintain a log of access, duplication and distribution.
  - d. When releasing BWC recordings, members shall comply with federal, state and local statutes and Department policy.
3. Non-Departmental Requests:
  - a. The Department shall accept and process PRA requests in accordance with the provisions of federal, state and local statutes and Department policy.
  - b. Members shall provide discovery requests related to the rebooking process or other court proceedings by transferring the BWC recording to the requesting agency by using the computer server where the BWC recording is stored.
  - c. When requested by the DPA, members of the Legal Division shall provide the BWC recordings consistent with the Police Commission's document protocol policy on DPA routine requests.

#### **J. Retention**

1. Consistent with state law, the Department shall retain all BWC recordings for a minimum of sixty (60) days, after which recordings may be erased, destroyed or recycled.

Notwithstanding any other provision of this policy, the Department shall retain BWC recordings for a minimum of two (2) years if:

- a. The recording is of an incident involving a member's use of force or officer-involved shooting; or
- b. The recording is of an incident that leads to the detention or arrest of an individual; or
- c. The recording is relevant to a formal or informal complaint against a member or the Department.

2. Notwithstanding any other provision of this policy, a BWC recording may be saved for a longer or indefinite period of time as part of a specific case if deemed relevant to a criminal, civil or administrative matter.
3. A member may not delete any BWC recording without prior authorization. The member seeking to delete a recording shall submit a memorandum to their Commanding Officer requesting to delete footage from a BWC file and shall make an entry of the request in the appropriate case file, if applicable. The Commanding Officer shall then forward the memorandum to the Commanding Officer of the RMO for evaluation and appropriate action.
4. Subject to the above limitations, members of the RMO are authorized to delete BWC recordings in accordance with the Department's established retention policies on BWC recordings or when directed by the Commanding Officer of the RMO.
5. The Department shall retain permanently all records of logs of access as set forth in I.2.C and deletion of data including memorandums as set forth in J.3 and J.4 from the BWC.

**K. Accidental or Unintentional Recordings.** If a BWC accidentally or inadvertently captures an unintended recording, the member may submit a memorandum through the chain of command specifying the date, time, location and a summary of the unintentionally recorded event. This memorandum shall be forwarded to the Commanding Officer of the RMO for evaluation and appropriate action.

**L. Discovery of Potential Misconduct during Authorized Review.** Members reviewing recordings should remain focused on the incident captured in the BWC and should review only those recordings relevant to the investigative scope. If a member discovers potential misconduct during any review of the BWC, the member shall report the potential misconduct to a superior officer. The superior officer shall adhere to the provisions of Department General Order 1.06, Duties of Superior Officers, Section 10.11.03.I.A.4. Nothing in this procedure prohibits addressing Department policy violations.

**M. Targeting Prohibited.** Department supervisors may access BWC footage for purposes consistent with the policy. Supervisors may not review an officer's BWC footage to search for violations of Department policy without cause.

#### References

DGO 1.06, Duties of Superior Officers

DGO 2.01, Rules 23 and 24, Use of Department Property and Loss or Damage to Department Property

DGO 2.01, Rule 56, Surreptitious Recordings

DGO 8.10, Guidelines for First Amendment Activities