

DEEPHAVEN POLICE DEPARTMENT

POLICY: Body Worn Cameras

POLICY # B-5

EFFECTIVE DATE: 6/11/2024

REVIEW DATE:

APPROVED BY: Chief

Distribution: Sworn Officers

1) PURPOSE AND SCOPE

This policy provides guidelines for the use of portable audio/video recording devices by members of this department while in the performance of their duties (Minn. Stat. § 626.8473). Portable audio/video recording devices include all recording systems whether body-worn, hand-held, or integrated into portable equipment.

This policy does not apply to mobile audio/video recordings, interviews, or interrogations conducted at any Deephaven Police Department facility, undercover operations, wiretaps, or eavesdropping (concealed listening devices).

2) PURPOSE

The primary purpose of using body-worn cameras is to capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of body-worn cameras and administering the collected data. 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.

The use of this technology will add a higher level of transparency of the professional services provided by the Deephaven Police Department. This device will also aid in the documentation of events to be used in an evidentiary manner. There needs to be an understanding that the camera view will not capture the entire incident or event, thus it cannot be construed that images are a complete representation of actions by officers and citizens.

3) DEFINITIONS

Definitions related to this policy include:

Activate - any process which causes the BWC system to transmit or store video or audio data outside of the buffering feature.

Adversarial - means a law enforcement or department member 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.

Auto-tagging - the ability for the BWC data management system to automatically associated computer aided dispatch events (CAD) to BWC events.

Body-worn camera (BWC) - means a device worn by an officer that is capable of both video and/or audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation and is provided in Minn. Stat. 13.825

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.

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 truck, or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

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.

Minnesota Government Data Practices Act (MGDPA) - refers to the Minnesota Government Data Practices Act, Minn. Stat. 13.01, et seq.

Official duties - for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this department.

Operator - means an officer assigned as a member of the department's Emergency Response Unit (ERU).

Records retention schedule - refers to the General Records Retention Schedule for Minnesota Cities.

Respond - A BWC feature that allows users of the system to view the real-time locations and status of the BWC on a map. The feature also allows authorized users to view a real-time stream of the video.

Unintentional recorded footage - is a video and/or audio 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 police department 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.

4) 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. 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 of Police or their designee may supersede this policy by providing specific instructions for BWC use to individual officers and department members, or providing specific instructions pertaining to particular events or specialized details.

5) USE AND DOCUMENTATION

- a) Officers and department members will use only department-issued BWCs in the performance of official duties for this department or when otherwise performing authorized law enforcement services as an employee of this department (e.g., Contracted Police Services).
- b) Officers and department members who have been issued BWCs shall operate and use them in accordance with this policy.
- c) Officers and department members shall conduct a function test of their issued BWC at the beginning of each shift to make sure the devices are operating properly. Officers or department members noting a malfunction during testing or at any other time shall promptly report the malfunction to the officer's or department member's supervisor and obtain a functioning device as soon as reasonably practical.
- d) Officers and department members shall wear their issued BWC at or above the mid-line of the waist in a position that maximizes the recording system's capacity to record video footage of the officer's activities (Minn. Stat. § 626.8437). This does not apply to a lawful recording by an officer in an authorized undercover capacity.
- e) Officers and department members must document BWC use and non-use as follows:
 - i) Whenever an officer makes a recording, the existence of the recording shall be documented.
 - ii) If an event that is required to be recorded under this policy is not captured or only a part of the activity is captured, the officer must document the circumstances and reasons for not recording in an incident report. Supervisors shall review these reports and may 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:
 - i) The total number of BWCs owned or maintained by the agency.
 - ii) A daily record of the total number of BWCs actually deployed and used by officers.
 - iii) The total amount of recorded BWC data collected and maintained.
 - iv) This policy, together with the records retention schedule.

- v) An accounting of when the Chief of Police or their designee allows for any deviation of the policy, as described in section 4.

6) GENERAL GUIDELINES FOR WEARING AND RECORDING

WEARING AND RECORDING

- a) Uniformed officers and uniformed department members shall wear a BWC. Uniformed officers and uniformed department members wearing a BWC shall activate their BWC when anticipating that they will be involved in, become involved in, or a witness to other officers of this agency or any other agency in the following incidents or circumstances:
 - i) A pursuit, motor vehicle stops, stop of a motorist or pedestrian, search, seizure, arrest, or use of force.
 - ii) Adversarial contacts or during other activities likely to yield information having evidentiary value.
- b) Officers and department members assigned to a non-uniformed position who wear plain clothes or civilian attire who may hold assignment such as investigators, shall wear a BWC as described below. Officers and department members in this section wearing a BWC shall activate a BWC as required below and may wear an approved BWC at any time a supervisor or member believes the device may be useful.
 - i) When involved in events described under 6(a)(i-ii) and there is adequate time to safely retrieve and don the BWC.
 - ii) When involved in events described under 6(a)(i-ii) and clearly identifiable as a police officer or department member and wearing attire that would lead a reasonable person to believe they are an officer or department member. Examples include wearing a uniform or a jacket or vest with police markings or insignia.
- c) Non-uniformed and uniformed officers assigned to school resource officer (SRO) and Counter Act duties shall wear a BWC. SRO and Counter Act officers shall activate a BWC in accordance with 6(a)(i-ii).
- d) Operators shall wear a BWC. Operators shall activate a BWC in accordance with 6(a)(i-ii) with exceptions as specified in 7(f).
- e) Officers assigned to a task force or under command and control of another law enforcement agency must follow this policy.

7. WEARING AND RECORDING EXCEPTIONS

- a) Officers of this department working in an undercover capacity are not required to wear or activate a BWC unless directed by a supervisor. Interactions with confidential informants should generally not be recorded.
- b) Officers assigned to command level or administrative duties as designated by the Chief of Police are generally not required to wear a BWC.
- c) Department members assigned as crime prevention, community outreach, community engagement officer, CSO Coordinator, or Investigative Support Specialist are generally not required to wear a BWC.

- d) Officers or department members wearing a uniform for ceremonies, funerals, awards presentation or other similar events are not required to wear a BWC.
- e) Officers and department members attending training, meetings, presentations, or court proceedings are not required to wear a BWC.
- f) Operators are not required to wear a BWC if they are assigned to perform plain-clothes duties. Operators are not required to activate their BWC while on a perimeter position or inside a transport vehicle unless the recording could reasonably capture a use of force incident or provide any information of evidentiary value. The ERU Commander may authorize that operators not activate BWCs if the recording could jeopardize officer safety or tactics.
- g) Volunteer Reserve Officers are not required to wear a BWC.
- h) All officers and department members 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, section 5(f)(2). Officers and department members shall activate their BWC once it is safe and practical to do so if a portion of the events may still be captured on their BWC.

8) RECORDING

- a) Officers and department members have discretion to record or not record general citizen contacts.
- b) Officers and department members have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded. If asked, officers and department members should inform those inquiring that audio-video recording equipment (BWC) is in use, unless doing so would be unsafe for the officer, department member or members of the public.
- c) 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. The officer or department member having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value.
- d) If the recording is discontinued while an investigation, response, or incident is ongoing, officers or department members 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 and department members 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 and department members shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as 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.
- g) Officers or department members shall notify their immediate supervisor of any recorded event to be of value for administrative review

9) RESPOND

- a) The use of real-time location data is available to all authorized users of the BWC system. The real-time data shall only be used for business or law enforcement purposes.
- b) Access to BWC live stream is only available to individuals authorized by the Chief of Police. The viewing of BWC live stream should only be done to monitor developing emergency situations, check an officer's safety or welfare, or to obtain information to assist in managing an event. The authorized live stream user should attempt to notify the BWC user that they will be activating the feature if it is safe and practical to do so..
- c) The BWC live steam feature may be used to enhance safety when not mounted to an authorized user's uniform. This may involve attaching the BWC to robots, poles, or other fixed or mobile objects.

10) SPECIAL GUIDELINES FOR RECORDING

Officers or department members 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) To use or not use their BWCs to take recorded statements from persons believed to be victims of or witnesses to crimes. Officers must consider the needs of the investigation and the individual. Officers may chose alternative methods to recording or documenting these statements if they believe a BWC may inhibit the investigation. This should include the following types of incidents
 - i) Criminal Sexual Conduct
 - ii) Human Trafficking
 - iii) Juveniles who are the victim or witness to a violent crime or abuse
- c) To use or not use their BWC to take recorded statements from persons believed to suspects in a crime if the presence of a BWC could inhibit the person providing a voluntary statement. Alternative recording methods should be considered. Nothing in this section exempts officers from recording statements as required by law.
- d) For plain clothes officers, such as investigators to not utilize a BWC for recording statements from suspects, victims, or witnesses when the officer or department member feels the presence of the BWC is not the best method for documenting the statement. Alternative recording methods should be considered. Nothing in this section exempts officers from recording statements as required by law.
- e) To not record in hospitals, detox or mental health care facilities, juvenile detention centers, and jails unless the officer anticipates witnessing a criminal event, being involved in or witnessing an adversarial encounter, or use-of-force incident.
- f) To not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs shall be activated as necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.

- g) To deactivate their BWC during the transport of an arrestee or other individual if the person is secured in the rear seat of the squad car and the squad-based audio/video system is recording.
- h) To deactivate their BWC while on a perimeter position until such time an officer or department member anticipates witnessing a criminal event, being involved in or witnessing an adversarial encounter, use-of-force incident, or anything of evidentiary value.
- i) Many portable recorders, including BWCs and audio/video transmitters, emit radio waves that could detonate an explosive device. Therefore, these devices should not be used where an explosive device may be present.

11) DOWNLOADING AND LABELING DATA

- a) Each officer or department member using a BWC is responsible for transferring or assuring the proper transfer of the data from his/her BWC by the end of their shift. However, if the officer or department member is involved in an officer-involved shooting, critical incident, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the BWC and assume responsibility for transferring the data from it.
- b) If the event contains any of the following types of information within an event, the officer or department member shall change the event label to accurately reflect the required retention:
 - i) **Evidentiary/Arrest/Criminal** - An event where 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, arrest or in considering an allegation against a law enforcement agency or officer.
 - ii) **Non-evidentiary** - The event did not contain information of evidentiary value and does not meet any other categories.
 - iii) **Critical Incident** - An event where law enforcement action causes substantial injury, great bodily harm, or death. This also includes the discharge of a firearm by a law enforcement towards another person.
 - iv) **Traffic – Warning** - An event where the officer or department member provides a written or verbal warning for a violation of traffic or parking laws.
 - v) **Traffic – Citation** - An event where an officer or department member issues a citation for a petty misdemeanor violation of traffic or parking laws.
 - vi) **Squad Crash** - A motor vehicle crash involving a vehicle owned or operated by the police department.
 - vii) **Pending Review** - The event requires further review by a supervisor or records for proper categorization.
 - viii) **Test/Demo/Accidental** - The event was recorded to test the functionality of the BWC, to demonstrate the device, or was inadvertently activated and a recording was not required.
 - ix) **Uncategorized** - The event has not been categorized.
 - x) **Use of Force** - An event where a department member applies force as defined in Policy F-1 and F-5.

- c) Officers and department members should consult with a supervisor if in doubt as to the appropriate labeling.
- d) Labeling and flagging designations may be corrected or amended based on additional information.

12) 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:
 - i) Any person or entity whose image or voice is documented in the data
 - ii) The officer who collected the data
 - iii) 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:
 - i) BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities
 - ii) Some BWC data is classified as confidential (see c below)
 - iii) 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” classification listed above and the “public” classifications listed below.
- d) **Public data:** The following BWC data is public:
 - i) 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.
 - ii) Data that documents the use of force by a peace officer that results in substantial bodily harm.
 - iii) 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 if practicable. In addition, any data on undercover officers must be redacted.
 - iv) Data that documents the final disposition of a disciplinary action against a public employee.
 - v) However, if another provision of the MGDPA 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 and department members shall refer members of the media or public seeking access to BWC data to the city’s responsible authority, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

- i) 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:
 - (1) If the data was collected or created as part of an active investigation.
 - (2) 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.
- ii) 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:
 - (1) Data on other individuals in the recording who do not consent to the release must be redacted.
 - (2) Data that would identify undercover officers must be redacted.
 - (3) 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 Department's BWC data except for legitimate law enforcement or data administration purposes.
 - i) 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. Additionally, Officers may review video footage of a typical law enforcement incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident. The exception will be officer involved-shootings or other critical incidents. The Department will abide by the investigative protocols established by the Minnesota Bureau of Criminal Apprehension that officers will not typically be allowed to view BWC or in-squad camera footage prior to giving their statement. There may be isolated situations where this will be allowed. This decision will be made on a case by case basis.
 - ii) Agency personnel shall document their access to stored BWC data 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.
 - iii) 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
 - i) 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.

- ii) BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.
- h) Notwithstanding any law to the contrary, when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency must allow the following individuals, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident within five days of the request, except as otherwise provided in this clause and clause (i) below:
 - i) The deceased individual's next of kin;
 - ii) The legal representative of the deceased individual's next of kin; and
 - iii) The other parent of the deceased individual's child.

A law enforcement agency may deny a request if the agency determines that there is a compelling reason that inspection would interfere with an active investigation. If the agency denies access, the chief law enforcement officer must provide a prompt, written denial to the individual who requested the data with a short description of the compelling reason access was denied and must provide notice that relief may be sought from the district court pursuant to section 13.82, subdivision 7.

- i) when an individual dies as a result of a use of force by a peace officer, an involved officer's law enforcement agency shall release all portable recording system data, redacted no more than what is required by law, documenting the incident no later than 14 days after the incident, unless the chief law enforcement officer asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remain classified by section 13.82, subdivision 7.

13) DATA SECURITY SAFEGUARDS

- a) Officers or department members shall not use the BWC for personal use or for any other reason inconsistent with this policy.
- b) Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to capture, access, or view audio, video, or photographic data to include agency BWC data while on duty. Only devices authorized by the Department shall be used.
- c) Officers or department members 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.
- e) As required by Minn. Stat. § 13.825, subd. 10, within ten days of obtaining new surveillance technology that expands the type or scope of surveillance capability of a portable recording system device beyond video or audio recording, the Chief of Police must notify the Bureau of Criminal Apprehension that the agency has obtained the new surveillance technology. The notice must include a description of the technology and its surveillance capability and intended uses. The notices are accessible to the public and must be available on the bureau's website.

14) AGENCY USE OF DATA

- a) Supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to an inquiry or concern about officer misconduct or performance.
- b) Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.
- c) 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 with trainees for the purpose of providing coaching and feedback on the trainees' performance.

15) DATA RETENTION

- a) All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.
- 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) 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 must be retained according to the department's record retention schedule.
- d) Data documenting circumstances that have given rise to a formal inquiry against an officer must be retained according to the department's record retention schedule.
- e) 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.
- f) Subject to Part g (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.
- g) Upon written request by a BWC data subject, the Department shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The Department will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received
- h) The Department shall maintain an inventory of BWC recordings having evidentiary value.
- i) The Department will post this policy, together with its Records Retention Schedule, on its website.

16) COMPLIANCE

Supervisors shall monitor for compliance with this policy. Any member who accesses or releases recordings without authorization may be subject to discipline or criminal penalties (Minn. Stat. § 626.8473 / Minn Stat §13.09(a))

The Chief of Police, or his/her designee, shall review usage of the BWC and compliance with this policy for initial implementation of the BWC and on an annual basis.

17) TRAINING

Officers and supervisors that use the BWC shall successfully complete an instruction and training session on this policy and the use and care of the equipment and media prior to being able to deploy the BWC. There shall be periodic training to ensure continued and effective use of the equipment and established policy and procedure.