



# CITY OF FAIRFAX POLICE DEPARTMENT

## GENERAL ORDER

Subject <b>BODY WORN CAMERA PROGRAM</b>		Number 4-31
Effective Date October 28, 2016	Rescinds N/A-New policy	
Accreditation Standards	Authority Colonel Carl R. Pardiny Chief of Police	

**PURPOSE:** To establish policy regarding the use of Body Worn Cameras (BWC) by members of the police department and to establish a policy regarding the storage, release and retention of BWC audio/video (A/V) files maintained by the department.

**DISCUSSION:** The City of Fairfax Police Department is committed to protecting the constitutional rights of all people. We recognize the need to continuously improve our knowledge and application of the law as it pertains to our members in their capacity as law enforcement officers, and collectively as a law enforcement agency. In pursuit of our obligations to the community we serve, we recognize the value of employing technology that will assist us in our ethical, legal, and moral duties. The implementation of a Body Worn Camera program will significantly increase officer safety, enhance our ability to successfully accomplish our mission, bolster our trust relationship and increase accountability to the community.

**DEFINITIONS:** Body Worn Camera- as used in this general order, the term body worn camera refers only to those video recording devices issued by the department for the distinct purpose of overtly recording police and citizen interactions. Other video and audio recording devices used as part of covert police operations are not subject to the provisions of this General Order.

### PROCEDURE:

#### I. GENERAL REQUIREMENTS:

- A. The maintenance, inspection and care of BWC equipment is the responsibility of the officer to which it has been issued. Members shall not manipulate/touch unattended equipment that is not assigned to them, particularly when the BWC systems are charging or downloading. BWC equipment will be operated according to manufacturer's recommendations, department regulations, and training. Members are prohibited from altering BWC hardware or its related software and such action may be cause for disciplinary action.
- B. Lost, stolen or damaged BWC equipment shall be reported immediately to either the employee's direct supervisor or the shift supervisor. In applicable cases of lost or damaged city property, members and supervisors must follow all procedures outlined in General Order 9-2, Department Owned Property and General Order 1-9, Discipline. (See Disciplinary Reimbursement)
- C. Officers shall not intentionally interfere with the recording capability of the BWC system. EXCEPTION: See Section IV, D. regarding privacy considerations.

- D. Officers will only use department-issued body worn cameras to record official department activities. The use of a privately owned BWC is prohibited while on duty. When a BWC is not being worn by the assigned officer, it must be stored/docked at police headquarters. A department-owned BWC shall not be operated while in an off-duty status. All duty-related recordings of any police department activity shall be considered official department records.
- E. Any officer, who has been issued a BWC and trained on its use, is required to wear and use the equipment each work day in accordance with this policy. Those officers who are placed on a limited duty status are exempt from this mandatory wear provision until such time that they return to a regular duty status. Officers working uniformed special duty and overtime assignments are required to wear their issued BWC. Officers that are performing duties associated with any part-time, non-standing unit are not required to wear their assigned BWC unless directed to do so by the Unit Commander.
- F. During the deployment of BWC equipment officers shall be in uniform or otherwise clearly identifiable as a law enforcement officer. The BWC will be worn in a position that permits recording as closely as practical to the officer's field of vision. Depending on the technology used, these locations may include the chest, head area using headsets and eye glass mounts, or shoulder and collar area using supplied mounting devices.
- G. In situations where a recording was made and a case report is required, the existence of the recording shall be documented in the narrative of the case report. In situations where a case report is not required and the officer chooses to write an incident report, the existence of the recording shall be documented in the incident report. At a minimum, officer should add the existence of a video into the Computer Aided Dispatch (CAD) note section.
- H. Officers should not omit relevant facts from report narratives by making reference to captured video. Substituting portions of the report by using phrases such as, "refer to video" are not permitted. Officers are also required to continue to take complete field notes and should not become overly dependent on the availability of BWC video in documenting the facts required for department reports.
- I. If the BWC is worn but not activated in a situation that is required by department policy, the officer will immediately report the circumstances to their supervisor at the conclusion of the related event, incident, or contact. The officer will also document the reason why the event was not recorded in the case or incident report, depending on which is applicable. (Example: If a crime victim or witness requests that the video be discontinued prior to providing a statement the officer will document the request in the case report.)
- J. Consistent with department policy that governs the use of force resulting in prisoner injury, complaint of injury, use of less-lethal weapon systems, or employee injury, all available BWC video will be reviewed while conducting the administrative investigations mandated by department policy.
- K. Available BWC video will be reviewed and used to investigate the circumstances of any non-custodial injury caused by any sworn member of the department.

## II. TRAINING

- A. Only those officers who have been issued a BWC and trained in its proper use may operate/wear a BWC. Training will consist of the proper use of all BWC hardware, video review, tagging protocols, video download, policy and report requirements, procedures to access and use video evidence, and coordination with the City and Commonwealth's Attorney's Offices.
- B. All BWC training will be documented using department training forms and forwarded to the PSD Lieutenant for inclusion in the member's training file.

### III. PRE-SHIFT INSPECTION

- A. BWC's are individually assigned equipment. Officers are not permitted to wear a BWC that has not been assigned to them unless approved by a supervisor.
- B. Officers are required to check their BWC for proper functioning at the beginning their shift. Should a malfunction or other problem with the camera be identified, the officer shall immediately report the issue to their supervisor. The supervisor will determine if the BWC needs to be taken out of service, and/or if an available spare unit needs to be temporarily assigned.
- C. Officers are required to wear the BWC during their entire tour of duty. Should a malfunction occur during their tour, a supervisor shall be notified immediately.

### IV. RECORDING PROTOCOLS

- A. Officers must activate their BWC during the following situations unless doing so would be impractical or unsafe:
  - 1. Traffic stops and accident investigations
  - 2. Foot Pursuits, Response or Pursuit driving
  - 3. Terry stops and pat downs
  - 4. All vehicle and subject searches (including vehicle inventories)
  - 5. All law-enforcement-related interactions where criminal activity is being actively investigated
  - 6. Obtaining consent to search and conducting a search incident to arrest
  - 7. When transporting a prisoner if the cruiser is not equipped with in car video
  - 8. When handling disturbance or crisis related incidents
  - 9. When confronted by any member of the general public where the situation may become confrontational, antagonistic or hostile
  - 10. During any other incident the officer deems necessary
- B. Officers should activate their cameras as soon as they begin their active response to a call for service.
- C. Officers have discretion in whether or not to record informal, non-law enforcement related interactions with members of the community, however; officers should remain mindful that indiscriminate recording may inadvertently create an atmosphere of apprehension and uncertainty.
- D. Under normal circumstances, once a decision has been made to record an event, an officer may not stop the recording prior to the completion of the event/citizen encounter, unless directed to do so by a supervisor. In cases that are not deemed to be critical or dangerous, circumstances may dictate that an officer stop the recording for modesty/privacy concerns. If practical, and only when safety permits, an officer faced with such a situation may temporarily shield the video camera and continue to record only the audio portion of the incident/event. If an officer makes such a decision, he/she should verbally narrate the reason for temporarily shielding the camera. If officer safety does not permit such an action, the officer is not required to terminate the recording.
- E. Officers involved in prolonged incidents where continued recording is impractical may seek approval from a supervisor to terminate recording with their BWC. In making their decision, supervisors should consider the continued necessity to capture video footage and the individual officer's assignment. If the officer's assignment changes, it is the responsibility of the officer to re-activate his/her BWC consistent with the guidelines of this policy.

- F. As soon as it is feasible, officers should inform subjects that they are being recorded unless doing so would be unsafe or impractical. Example: Officers engaged in foot pursuits are not required to make such notifications. This provision will be satisfied even if another individual becomes a party to the communication after the initial notice has been provided.
- G. As the circumstances of a case investigation permit, officers should seek concurrence from victims and/or witnesses prior to recording a statement. Officers are not required to discontinue a BWC recording while they are attempting to sort out the details of a complex or rapidly evolving incident scene. Once it has been determined that a victim or witness is a juvenile, an officer should consult with their supervisor prior to initiating a recording of an interview or statement. A parent or guardian should be contacted prior to recording, if at all possible. At scenes where there is a mixture of adults and juveniles, officers are NOT required to deactivate their BWC simply because a juvenile is present. While on school grounds during school-related activities, routine recording of students and school administrators is not permitted and should be limited to only those instances where there is a substantial likelihood that an officer will be required to use force.
- H. Unless engaged in an active criminal investigation, officers should not record inside a private residence. Example: Officers should not record inside a private residence simply when entering to obtain routine information for department reports. Officers may activate a recording inside a private residence at any time if a situation becomes confrontational or potentially violent. If/when officers decide to record inside a private residence, the officer(s) should inform at least one primary, adult occupant of the residence (if present) and document their decision on camera, when it is safe and practical to do so.
- I. Officers shall not use their BWC's to record detailed victim statements in cases of rape, sexual assault, or domestic violence.
- J. Once an incident scene is stabilized, officers should request consent from victims or witnesses prior to taking a detailed statement. Should a victim or witness requests that a BWC recording be terminated, the officer MUST announce their intention to terminate and comply with the request.
- K. Officers are NOT required, nor should they terminate a recorded interaction with a suspect in a criminal investigation or investigatory detention.
- L. If asked whether they are recording an event, officers are required to be truthful.
- M. Officers ARE NOT permitted to intentionally record:
  - 1. Other agency personnel during routine, non-law enforcement related activities
  - 2. In restrooms or locker rooms, unless activation is required during the official performance of an officer's duties
  - 3. When speaking to a confidential informant
  - 4. Discussions that involve pre-planned operational strategies or police tactics
  - 5. Inside a medical or mental health facility unless a use of force is anticipated or required
  - 6. During any strip searches
  - 7. Any internal employee conversation unless all participants in the conversation are aware the recording is being made
  - 8. Inside the confinement area of the Fairfax County Adult Detention Center (Note: Officers ARE permitted to record while in the sally port)
  - 9. During the execution of a search warrant where undercover officers are present

10. During First Amendment protected activities if the activity is unrelated to a call for service, a specific threat, or an on-going police investigation.

## V. TAGGING VIDEO RECORDINGS

- A. Officers are encouraged to tag their videos throughout their shift. Officers are required to tag all videos with the applicable retention category by the end of their shift, unless approved by a supervisor.
- B. In the event of an unintentional activation of the BWC during non-enforcement or non-investigative activities or in other areas where a reasonable expectation of privacy exists, officers may request a deletion of a BWC recording. In such cases, a memorandum detailing the circumstances of the unintentional activation should be forwarded through the member's chain of command. Only the Chief of Police or his designee may authorize the deletion of a video recording. If the request is approved, the member's memorandum and the Chief's decision will be kept in a file in the Office of the Chief of Police to document the circumstances surrounding the deletion of a video.
- C. If a recorded event involves a use of force (regardless of injury), a hostile/confrontational citizen interaction, or any incident that may logically lead to a complaint against the officer or department policy and procedure, the officer capturing the footage should inform their supervisor as soon as practical. If not otherwise tagged as part of an arrest or criminal investigation, the video should be tagged using the Administrative Review tag. (See section VII, B.)
- D. BWC footage related to criminal investigations, including Driving While Intoxicated and traffic related stops, are tagged according to the event tagging categories listed in Section VII., B. of this order. The event tagging categories are arranged and correspond to the Library of Virginia Records and Retention schedule.
- E. Any officer may tag video for official work-related or training purposes using the miscellaneous/training tagging category. Officers should notify their supervisor if they tag a video for training purposes. The video may be used for squad-level training at the discretion of the supervisor. If the first line supervisor believes that the video could have benefit on a department-wide level, he/she should contact the PSD Lieutenant with a brief description of the video and the perceived benefits as a training tool. The PSD Lieutenant will then access the video and consult with his/her Commander to make an assessment regarding if/how the video will be used.

## VI. VIDEO TRANSFER AND STORAGE

- A. Members will download all BWC video files to CJIS compliant off-site storage (cloud storage) using the approved department docking equipment. Videos will automatically upload once the BWC is placed in the approved docking/charging station. In an effort to reduce the possibility that a video is inadvertently overlooked from a retention standpoint, ALL video must be tagged using one of the provided tagging categories. (See Section VII, B.)
- B. Some video tagged for evidence retention may be downloaded from off-site storage (cloud storage) and stored on designated CJIS compliant department storage devices. These department storage devices will be secure and will not be accessible from the department network. The devices will also be housed in a separate location from department servers and other network storage equipment. Access to internal BWC network storage devices will be approved by the Administrative Services Division Commander.
- C. All data and recordings collected by the BWC equipment are official department records and will be subject to department policies regarding viewing, release, retention and destruction.
- D. Upon completion of an assigned shift all officers shall ensure their BWC is placed in a docking station.

## VII. MANDATORY RETENTION

- A. All BWC video shall be retained in accordance with the guidelines listed in the Library of Virginia, Records and Retention Schedule, GS-17, Law Enforcement.
- B. Video Tagging Categories and Retention schedule
  - 1. Investigative Case Files – Non-Serious Offenses – Unresolved – 5 Years after case closed
  - 2. Investigative Case Files – Non-Serious Offenses – Resolved – 10 Years after case closed
  - 3. Investigative Case Files – Less Serious Offenses – Resolved – 30 Years after case closed
  - 4. Investigative Case Files – Less Serious Offenses – Unresolved – 50 Years after case closed
  - 5. Investigative Case Files – Serious Offenses – Resolved – 75 Years after case closed
  - 6. Investigative Case Files – Serious Offenses – Unresolved – 100 Years after case closed
  - 7. Administrative Review- One year
  - 8. Traffic Stops- Summons Issued-One year
  - 9. No Retention Required (NRR)-30 Days
  - 10. Training- One year
- C. Traffic Stop Video
  - 1. All BWC video related to traffic stops, where a summons has been issued, shall be tagged accordingly. If the traffic stop results in an arrest, the video should be tagged using the appropriate Investigative Case File tagging category.
  - 2. Traffic Stops that result in a warning may be tagged as “No Retention Required.” Officers also have the option for tagging the traffic stop using the “Administrative Review” category if they believe it would be wise to retain the video longer than 30 days.
- D. Video files that could be tagged using more than one retention category will be tagged with the applicable category that has the longest retention period.

## VIII. COURT PROCEDURES

- A. Officers intending to use any BWC recording in court should advise either the City Prosecutor’s Office or the Office of the Commonwealth’s Attorney prior to the initial court date.
- B. Officers attending City Court may access BWC video directly via the internet from our cloud-base storage site, Evidence.com. Officers are reminded that if they choose this option, they must prepare prior to court so they can access video files quickly and efficiently. Officers also have the option of downloading the video to a DVD/CD. NOTE: Thumb drives or any other type of portable storage devices are NOT approved download options. Once court is complete, the DVD/CD can be placed into the lockable shredder bin and logged in for destruction. Should the defendant in the case lodge an appeal, the officer can simply download another court copy. Officers should not keep a copy of video evidence with their working case files. Officers are responsible and accountable for the proper destruction of all copied video files.
- C. Officers attending County Court will be required to download a hard copy of the video to DVD/CD until such time that internet access becomes available to officers for use in court.
- D. Should the officer need the BWC evidence for an upcoming court date (the matter is continued, scheduled for trial, etc.), the DVD/CD shall be entered into the Property and Evidence Section for chain of custody purposes. Once the video is no longer needed for court, the video can be marked for destruction.

## IX. VIDEO ACCESS, REVIEW, AND RELEASE

- A. Officers will retain access to their recorded BWC video files. Officers will not have access to independently view video files created by another officer. Officers may view another officer's video with his/her consent. Such viewing shall only be for legitimate law enforcement purposes.
- B. If deemed necessary, officers who have been assigned a BWC should review video footage prior to writing case reports or providing courtroom testimony.
- C. Supervisors shall ensure videos of critical incidents (Officer involved shootings, in-custody deaths, police action resulting in serious injury or death, etc.) are properly uploaded and when practical, retrieve all BWC units from all officers involved at a critical incident scene.
- D. To preserve the integrity of the Administrative Investigation process, once an administrative investigation is initiated, the PSD Commander will coordinate with the ASD Commander and access to all applicable video will become restricted. The ASD Commander will determine if any copies of the video exist and retrieve all copies. Generally, officers will be provided an opportunity to review BWC footage prior to giving a statement related to an administrative investigation. Such viewing will occur in the presence of the Professional Standards Division Commander or their designee. EXCEPTION: In rare cases, the Chief of Police may restrict access to any video at any time if he/she determines such restricted viewing is in the best interest of the department.
- E. Freedom of Information Act (FOIA) requests for BWC video will be addressed by the ASD Commander or his designee. BWC video that contains footage of serious injury or death will only be released with the approval of the Chief of Police or his designee. Because a companion criminal investigation is completed in many critical incidents and during all cases involving the use of deadly force, such release will usually only occur after consultation with the Office of the Commonwealth's Attorney.
- F. Consistent with our goal of increased transparency, BWC video depicting routine officer interactions of a non-criminal nature will be released according to the provisions of FOIA. All such video will be reviewed critically to ensure that the privacy rights of all citizens are protected. BWC program administrators and FOIA compliance personnel will ensure that all appropriate video redactions take place prior to releasing any BWC video.
- G. Supervisors may access and review BWC video of officers directly under their command, however, this should not be done on a routine basis to simply review employee performance. Any such review is permitted as follow-up to a complaint investigation or any other on-going training or performance-related issue.
- H. Supervisors and BWC Program administrators will conduct audits to ensure employees are in compliance with department policy and recording/tagging protocols. During any review, supervisors should remain watchful of outstanding or noteworthy performance and issue Memorandums of Noteworthy Performance as they deem appropriate.
- I. Supervisors may be designated to review BWC video as directed by the Chief of Police or his designee.
- J. All data created by the BWC equipment are official department records. Officers shall not duplicate or otherwise possess any data or recordings for any personal reason to include uploading/distributing onto public and social media websites.
- K. Officers shall not allow unauthorized persons to view BWC digital recordings and viewing of BWC video files is restricted to legitimate law enforcement purposes.
- L. Release of video data to external law enforcement entities will be handled on a case by case basis. Such requests shall be made on official departmental letterhead and signed by the head of the requesting agency. Approved release of BWC video will be coordinated by the ASD Commander and the Property and Evidence

Section. BWC video that is released in response to a court-ordered Subpoena Duces Tecum will be coordinated by the ASD Commander or his/her designee.

- M. Video files shall not be altered unless it is done under the direction of the Administrative Division Commanders for purposes of redaction for Freedom of Information requests (FOIA) or court mandated editing.
- N. Citizens will not be permitted to review BWC recording in the field. Citizens requesting to view BWC recording should be referred to the Administrative Services Division Lieutenant and the provisions under FOIA.

#### X. SYSTEM ADMINISTRATION

- A. The Administrative Services Division Commander will administer the BWC program for the department.
- B. BWC cameras will be assigned to the Patrol and Support Operations Divisions. Cameras may also be assigned to other members in operational positions with approval of the Chief of Police or his/her designee.
- C. Supervisors will ensure officers utilize all BWC equipment according to policy.

#### XI. JURISDICTIONAL CONSIDERATIONS

- A. In accordance with this General Order, officers are authorized to use their BWC in other jurisdictions during requests for mutual aid or during such times that they have authority to be present for work-related purposes.
- B. Officers or Detectives assigned to work assignments outside the limits of the city may be authorized by the Chief of Police to wear and utilize a BWC.
- C. Within the city limits, officers actively participating in the execution of a search warrant shall utilize their issued BWC. EXCEPTION: No BWC recordings shall be made during any police operation involving officers acting in an undercover capacity. (Section IV, M, 9.)
- D. In cases of vehicle pursuits that leave Commonwealth of Virginia, officers shall abide by Section IV., F. of this general order as it applies to making notifications regarding the existence of an active BWC recording.

#### XII. POLICY AND PROGRAM EVALUATION:

- A. At the end of each calendar year, the ASD Commander will conduct a written evaluation to analyze the effectiveness of hardware, software and retention applications used to support the BWC program. The evaluation will also include:
  - 1. A recommendation on any policy issues and issues related to FOIA.
  - 2. An evaluation of the program's effectiveness with regard to officer compliance with policy.
  - 3. Fiscal considerations of continuing or making modifications to the BWC Program.
- B. The PSD Commander will also complete a year-end review and analysis of whether or not the BWC program has positively or negatively impacted the Internal Affairs Process. The review should also include:
  - 1. An analysis of any impact the BWC program is having on police use of force, suspect resistance, officer and suspect injuries, and use of less-lethal weapon systems.
  - 2. An assessment of the BWC program and policy as it applies to General Order 4-11, Use of Force.



- C. The Patrol Division Commander will provide a written evaluation on how the BWC program has impacted the prosecution of criminal and traffic-related cases. The evaluation will also include feedback from officers and supervisors.

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Colonel Carl R. Pardiny / Chief of Police

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