

Buffalo Police Department

Body-Worn Camera Policy

I. Purpose

The Buffalo Police Department (“BPD”) is undertaking a Body-Worn Camera (“BWC”) Program. The intent of this program is to equip our officers with video and audio recording devices to: (1) document police interactions with the public; (2) to capture and maintain records of crimes in progress for evidence in court; (3) to document police response during the discovery of evidence, investigation into crimes, or calls for service by the public; (4) to improve community relations and transparency; (5) to mitigate potentially confrontational interactions between the police and public through presence of the BWC; (6) to prevent and better resolve complaints made against officers; and (7) to serve in training.

Through this program the BPD hopes to foster a relationship of mutual respect between our officers and the communities in which we serve. The BPD understands that this technology does not solve all challenges that law enforcement and the community face, but it is our hope that this program continues to build on the trust we have worked to build within our community.

This policy covers recording, storing, retaining, releasing, and maintaining data from BWCs.

II. Definitions

A. Agency Administrator – A person chosen from the rank of Lieutenant or higher who is appointed by the Commissioner of Police and has full access to and user rights within the data storage system. He or she can assign and track equipment, control passwords, oversee needed repairs, delete non-evidentiary recordings, conduct audits and quality control reviews and act as a liaison with BWC representatives.

B. Body-Worn Cameras (BWCs) – Small video cameras, typically attached to an officer’s clothing or helmet that maximizes the camera’s ability to capture video and audio data.

C. Footage/Video/Recording – All-encompassing terms to include audio, video, images, data, and metadata recorded by BWCs.

III. Policy and Procedures

A. Use of Devices by Officers

1. All uniformed police officers assigned to the "Patrol Division," "SWAT Division," "Traffic Division," and any other unit with significant interaction with the public, and any other unit that the Commissioner of Police believes is necessary, shall be equipped with BWCs above the midline of their torso, and in a position designed to produce an effective recording. The BWC manufacturer should recommend where the optimal location for the BWC is on an officer's uniform.

2. BPD officers shall only use BWCs issued by the department, and shall not use any home recording devices during their shift.

3. All BPD officers shall be trained on the use of BWCs before being issued or using a device. This training shall be conducted and developed by the Agency Administrator, with the help of representatives from the company that the BWCs are purchased from.

4. BWCs should be used with reasonable care to ensure functionality. Equipment malfunctions or missing equipment should be brought to the officer's supervisor as soon as possible. Officers shall inspect and test the BWC's functionality prior to the beginning of each shift.

5. Officers shall ensure that their assigned BWC is put into a charging unit at the end of their shift.

6. When the BWC is inoperable, it shall be exchanged for an operable unit as soon as possible. If there is no staff working who is able to do this, then the malfunction shall be noted on form P-1375 and transmitted to the Agency Administrator prior to the end of that officer's shift.

B. Recording Procedures

1. Activation – BPD officers who are issued BWCs shall activate the device during the following situations: any call for service; any traffic stop; during the execution of a search or arrest warrant; during any other arrest or custodial stop; while conducting investigatory activities including any search of a person, vehicle, or real property; during a pursuit whether they are on foot or in a vehicle; while

conducting traffic control duties; while assigned to a protest or crowd control; during a confrontational or adversarial contact with a citizen; at the request of any civilian; or any other situation as determined necessary by the Commissioner or the Agency Administrator.

2. Deactivation – Once the BWC is turned on, it should not be turned off until the initial incident that caused the device to be turned on, which can be seen in Section III(B)(1) of this policy, has been stabilized, upon the request of a victim, or as ordered by a supervisor. The event is stabilized when the event has concluded, a victim or witness has left, all persons stopped were released, or when a person arrested has been transferred to the detention facility or police station and is completely in the custody of another officer.

a. When deactivating a BWC, the officer should state on the recording the reason the BWC is being turned off, when it is safe to do so.

3. Officers should make an effort to inform citizens and suspects that they are recording the interaction.

4. Officers should ask for on-camera consent to record from crime victims, .

Non-recording

a. During any of the situations outlined in Sec. III(B)(1) of this policy, an officer is not required to turn on the BWC if (1) the officer or another person is in immediate danger and turning the BWC on is impractical, (2) turning the BWC on would be impractical and create a tactical disadvantage to the officer, (3) when activating would delay an officer's response to the safety needs of a citizen or a fellow officer, (4) or if a BWC malfunctions. In any of these situations, an officer shall activate the BWC at the first reasonably safe opportunity to do so and explain why there was a delay in activation.

b. Certain situations should not be recorded due to their sensitive or confidential nature. This includes the following:

1. Conversations with confidential informants or undercover officers.

2. Conversations with all law enforcement personnel discussing tactics or strategy.

3. Areas where special privacy concern exists, such as rest rooms, locker rooms, places of worship, hospitals, detoxification facilities, or other medical facilities.

4. In police buildings, or the non-enforcement activities of other officers.

5. Conversations with potential witnesses who ask to remain anonymous or confidential.

6. Conversations with a victim or witness that requests to not be recorded.

7. When explosives may be present.

8. Working with sexual assault survivors.

9. Working with juvenile victims or witnesses.

c. Reporting

1. If an officer fails to activate a BWC, chooses to terminate the BWC recording, or the BWC malfunctions, the officer must fill out a P-1375 form articulating why the officer failed to activate the BWC, why the recording was interrupted, why the recording was terminated, or explaining the malfunction.

2. The P-1375 must be filled out at the end of the officer's shift and given to their supervisor. The supervisor will review all P-1375 forms and forward the information to the Agency Administrator.

C. Download Procedures

1. Every officer assigned a BWC will follow the downloading procedures created and published by the Agency Administrator at the end of every shift. If the data is not downloaded, an officer must explain why on a P-1375 form.

2. All BWC data relating to a criminal incident shall be treated as evidence and will be handled through procedures created and published by the Agency Administrator.

3. An officer may request records of an incident to be retained for a longer period of time, by filing out a request on the P-1375 form, and can be approved by the Agency Administrator.

4. All data recorded by a BWC is property of the BPD. Officers may not copy, publish, share, or disseminate any audio, video, image, data, or Meta data to anyone.

5. Officers shall not have access to edit, delete, or alter any video or audio captured by the BWC. Logs of any attempt to view, edit, delete, or alter any recording shall be kept.

IV. BWC Video Retention

A. BWC recordings should be retained by the Department or an authorized agent thereof on conditions and terms as set forth by the department, for a minimum of six months.

B. If a recording is determined to be evidentiary by the Agency Administrator, Commissioner, or a BPD officer and is needed beyond the six month period, that file should be held until the District Attorney's office authorizes the removal of the video from our storage system.

C. Any recording that is subject to an Internal Affairs, District Attorney, or Attorney General Investigation, or has the potential to be the subject of future litigation, a copy shall be retained indefinitely. At the conclusion of the investigation or litigation, the video may be removed from the server by the Agency Administrator.

D. Any video which is the subject of a civilian complaint shall be kept until the resolution of the complaint or for at least 5 years, whichever is longer.

E. Any video requested to be kept by an officer shall be kept for 5 years from the date of the incident.

F. Any video associated with a Blue Team Report shall be kept for up to 5 years from the incident.

V. BWC Access

A. Permitted Review of Footage

1. Officers will be permitted to review only footage of an incident in which they were involved for the purposes of:

a. Conducting a criminal investigation.

b. Preparing for courtroom testimony or a meeting with the Corporation Counsel's Office or the District Attorney.

c. Providing testimony pursuant to an administrative inquiry.

d. Providing testimony pursuant to an internal affairs investigation.

e. Assisting the officer in professional development as determined by the officer's supervisor.

2. In addition to the permitted access listed above, supervisors may also review recordings as they pertain to:

a. Investigating reports of alleged misconduct or meritorious conduct.

b. Whenever such recording would be beneficial in reviewing an officer's performance.

c. Prior to completing Blue Team Reports.

d. When the recording has value as a training tool for officers.

3. The District Attorney's Office and Corporation Counsel's Office or his designee shall be permitted to review video footage as it pertains to an investigation, or potential litigation.

B. Non-Permitted Use

1. No officer shall review or receive an accounting of any BWC footage before completing the required initial reports, statements, or interviews about the event. After any required initial reports, statements and interviews are completed, a supervisor and the officer may review footage when necessary to evaluate the merits of a complaint by a subject of the video footage, or a specific allegation of misconduct.

2. Officers are prohibited from accessing, copying, or releasing body camera footage unless given express, written consent to do so by the Commissioner or the Agency Administrator. All accessing and copying of video footage must be logged.

C. Public Disclosure of Data

1. Any and all disclosure of BWC data must be consistent with existing record release policies and applicable statutes. All requests for data must be sent to the department's FOIL Officer.

2. When BWC data is disseminated outside the agency, the reason and identity of the authorized requesting person or agency and the rationale used for determining why the data is, or is not released shall be documented.

3. Civilians shall not be allowed to review any recordings without following appropriate FOIL request procedures.

4. Civilians, or civilians accompanied by their legal representative that are the subject of a recording will have the right to review the footage unless it is part of an ongoing criminal proceeding or other legal investigation.

D. Private Business Disclosure

1. BPD agrees not to share videos recorded by the BWC with any private business for the purpose of data mining.

2. If BPD decides to utilize facial recognition or other biometric software on stored video, a policy must be written in advance of its use. This policy should include comment from the public.

VI. Agency Administrator Responsibilities

A. The Agency Administrator shall ensure that all officers are trained in the use of the BWC system and equipment prior to issuance. They shall, with the help of the company who creates the BWCs, develop mandatory training for all officers in accordance with this policy. The Agency Administrator shall also create periodic additional training when necessary.

B. The Agency Administrator shall ensure that the BWC equipment is functional and properly utilized by the officers.

C. The Agency Administrator shall provide administrative support with regard to the BWC system, and shall be the contact person for any communication with external companies or services that relate to the BWC program.

D. The Agency Administrator shall create a system to deal with requests for recordings by the District Attorney's Office or the Corporation Counsel's Office.

E. The Agency Administrator shall provide technical support for malfunctioning BWC equipment and facilitate all repairs with the vendor.

F. The Agency Administrator shall ensure compliance with and enforce all aspects of this policy.

VII. Enforcement

A. If any BPD officer, employee, or agent fails to comply with the requirements of Sections III, IV, or V, or interferes with a body camera's ability to accurately capture video footage, then the following enforcement mechanisms shall apply unless exigent circumstances made compliance impossible:

1. Appropriate disciplinary action shall be taken against the officer, employee, or agent in accordance with BPD guidelines and disciplinary procedures.

B. Body camera footage recorded in contravention of this Policy or any other applicable law shall be immediately destroyed. The Department and its officers shall not seek to introduce improperly recorded video footage as evidence in any legal, or administrative proceeding against a civilian.

C. Nothing in this Policy should be read to contravene any laws governing the maintenance and destruction of evidence in criminal investigations, prosecutions, civil proceedings or administrative proceedings.