

WILLMAR POLICE DEPARTMENT

GENERAL DIRECTIVE: **0012**

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Application: **All Personnel**

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SUBJECT: BODY-WORN CAMERAS

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 administering 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 this office to authorize and require the use of office-issued BWCs as set forth below, and to administer BWC data as provided by law.

PROCEDURE

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 or chief's designee may supersede this policy by providing specific instructions for BWC use to individual officers, or providing specific instructions pertaining to particular events or classes of events including, but not limited to, political rallies and demonstrations. The chief or designee may also provide specific instructions or standard operating procedures for BWC use to officers assigned to specialized details, for instance carrying out duties such as guarding prisoners or patients in hospitals and mental health facilities, SRO duties and detective duties.

DEFINITIONS

The following phrases have special meanings as used in this policy:

- A. **MGDPA or Data Practices Act** refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.
- B. **Records Retention Schedule** refers to the General Records Retention Schedule for the Willmar Police Department.

- C. **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.
- D. **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.
- E. **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 wrecker, or receiving generalized concerns from a citizen about crime trends in his/her neighborhood.
- F. **Adversarial** means a law enforcement encounter with a person who 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/her own are deemed adversarial.
- G. **Unintentionally recorded footage** is a video 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 station house 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.
- H. **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.

Use and Documentation

- A. Officers may use only department-issued BWCs in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this office.
- 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 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 the on-duty supervisor and shall document the report. Supervisors and the reporting officer shall take prompt action to address malfunctions.

- C. Officers should wear their issued BWCs at the location on their body and in the manner specified in training, and that will best serve the purpose of the BWC.
- 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 or in the current Records Management System.
 - 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 or the current Records Management System. Supervisors shall review these reports and initiate any corrective action deemed necessary.
- E. The department 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.

Guidelines for Recording

- A. Officers shall activate their BWCs when an officer activates their emergency overhead lights, responding to a call requiring an emergency response. Also, if an officer anticipates they will be involved in, become involved in, or witness other officers of this agency involved in a pursuit, *Terry* stop of a motorist or pedestrian, search, seizure, arrest, use of force, adversarial contact, and during other activities likely to yield information having evidentiary value. However, officers 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, part (D)(2) above.
- B. Officers are not required to record general citizen contacts; however, they have the discretion to do so if deemed necessary.
- C. Officers have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.
- D. 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 having charge of a scene 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 should state the reasons for ceasing the recording on camera before deactivating their BWC and document in a written report. If circumstances change, officers shall reactivate their cameras, as required by this policy, to capture information having evidentiary value.

- E. Officers 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 shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as during 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.

Guidelines for Recording Medical Issues

- A. Officers need 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.
- B. Officers should consider using their BWCs and squad-based audio/video systems 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.

Downloading and Labeling Data

- A. Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his/her camera to designated location at the Willmar Police Department by the end of that officer's shift, with the discretion of the on-duty supervisor. However, if the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the officer's BWC and assume responsibility for transferring the data from it. Officers involved in those critical incidents shall not review the BWC video unless cleared to by the Chief of Police or his/her designee.

- 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. Officers should assign as many of the following labels, as are applicable, to each file:
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. In addition, officers shall flag each file as appropriate to indicate that it contains information about data subjects who may have rights under the MGDPA, limiting disclosure of information about them. These individuals include:
1. Victims and alleged victims of criminal sexual conduct and sex trafficking.
 2. Victims of child abuse or neglect.
 3. Vulnerable adults who are victims of maltreatment.
 4. Undercover officers.
 5. Informants.
 6. When the video is clearly offensive to common sensitivities.
 7. Victims of and witnesses to crimes, if the victim or witness has requested not to be identified publicly.

8. Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
 9. Mandated reporters.
 10. Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
 11. Juveniles who are or may be delinquent or engaged in criminal acts.
 12. Individuals who make complaints about violations with respect to the use of real property.
 13. Officers and employees who are the subject of a complaint related to the events captured on video.
 14. Other individuals whose identities the officer believes may be legally protected from public disclosure.
- D. Labeling and flagging designations may be corrected or amended based on additional information.

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” classification listed above and the “public” classifications listed below. However, special classifications and access rights are applicable to BWC data documenting incidents where an officer’s use of force results in death (see parts E and F below).

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 [*if practicable*]. 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. Death resulting from force – access to data by survivors and legal counsel.

Notwithstanding any other law or policy to the contrary, when an individual dies as a result of force used by an officer of this agency, all BWC data documenting the incident, redacted only as required by law, must be made available for inspection by any of the following individuals within five days of their request:

1. The deceased individual’s next of kin.
2. The legal representative of the deceased individual’s next of kin.
3. The other parent of the deceased individual’s child.

The request may be denied if there is a compelling reason that inspection would interfere with an active investigation. If access is denied, the Chief of Police must provide a prompt, written denial to the requestor with a short description of the compelling reason that access was denied. The written denial must also provide notice that relief may be sought from the district court pursuant to Minnesota Statutes section 13.82, subdivision 7.

- F. **Death resulting from force – release of data to the public.** When an individual dies as a result of force used by an officer of this agency, all BWC data documenting the incident, redacted only as required by law, must be released and classified as public within 14 days after the incident, unless the Chief of Police asserts in writing that the public classification would interfere with an ongoing investigation, in which case the data remains classified by Minnesota Statutes section 13.82, subdivision 7.

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.

- G. **Access to BWC data by non-employees.** Officers shall refer members of the media or public seeking access to BWC data to the Chief or Captain, 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 himself/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.

- H. **Access by peace officer and law enforcement employees.** No employee may have access to the department'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. Except as provided in the critical incident response policy, 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.

2. 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.
- I. **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. Password protected hard drive. The agency is unable to make backup copies of data.
- 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.
- C. Officers shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the Chief or Captain.
- D. As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this office shall obtain an independent biennial audit of its BWC program.

Agency Use of Data

- A. Supervisors will randomly review BWC usage to ensure compliance with this policy and to identify any performance areas in which additional training or guidance 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.
- D. Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officers' 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 trainee's performance.

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. 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 that causes great or substantial bodily harm.
 - 2. Data documenting circumstances that have given rise to a formal complaint against an officer.
- 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. Officers are prohibited from altering, erasing, or destroying any recording made with a peace officer's BWC or data and metadata related to the recording prior to the expiration of the applicable retention period.
- H. This office shall maintain an inventory of BWC recordings having evidentiary value.
- I. This office will post this policy, together with a link to its Records Retention Schedule, on its website.

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.

All persons requiring access to Non-Public data retained on the Willmar Police Department Body Camera System will need approval from the Chief of Police. All City of Willmar Sworn Officers and Civilian Staff who access the Willmar Police Department Body Camera System will need to fill out an Authorization Form in order to access the Body Camera System. This form will be approved or disapproved by the Chief of Police.

ACCOUNTABILITY

It is the responsibility of each employee to be familiar with and adhere to this directive. It is the responsibility of all supervisors to ensure this directive is followed. Failure to adhere to this directive may result in disciplinary action up to and including termination.

BY ORDER OF THE CHIEF OF POLICE

James E. Felt

MJA/lms