

# USE OF BODY WORN CAMERAS DRAFT POLICY

## ARTICLE #42

---

### **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 the Blue Earth Police Department to authorize and require the use of department-issued body-worn-cameras (BWCs) as set forth below, and to administer BWC data as provided by law.

### **SCOPE**

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 noted in Article #21. The Chief or 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, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities.

### **DEFINITIONS**

**Body Worn Camera (BWC)** – A camera system that is worn on an individual officer's person that records and stores audio and video data.

**Data Subject** – The image or voice of any person recorded by a BWC, except of the officer wearing the BWC that captured the data.

**Data Transfer** – The movement of digital data from a BWC device to the agency digital evidence storage location.

**Digital Evidence** – Digital data files from PVRE including BV, ICV, BWC or any other agency device capable of capturing audio, video, photographs and stored in a digital format that have an evidentiary value.

**Evidentiary Value** – Information that may be useful as proof in a criminal prosecution and 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** – A formal or informal encounter between an officer and person(s) that does not have an evidentiary value. Examples including, but not limited to: assisting a motorist with directions, answering general questions or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

**Adversarial** – Means an officer's encounter with a person(s) 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.

**Minnesota Government Data Practices Act (MGDPA)** – Refers to Minnesota Statute 13.01, et seq.

**Police Video Recording Equipment (PVRE)** – Equipment used to record video with or without audio.

**Unintentionally recorded footage** - 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.

**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.

## **TRAINING**

The Blue Earth Police Department shall provide all employees responsible for the operation, handling, and management of the BWC equipment and data files with training to ensure compliance with this policy.

## **USE AND DOCUMENTATION**

Officers shall only use department approved/issued BWC in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department.

Officers assigned a patrol shift will utilize a BWC during their work shift. Officers at the beginning of their shift, shall determine if the BWC equipment issued to them is working correctly. Problems shall be reported to the Chief of Police. A BWC not working correctly should be placed out of service and a spare BWC or a BWC from another officer should be utilized. The officer using a different BWC shall create a Miscellaneous ICR and include in the blotter which camera is being used and the shift the officer is working. Officers should ensure the BWC is worn in one of the approved locations to record events.

- A. Approved BWC wear locations:
  1. On the vertical button edge of a uniform shirt or outer jacket.
  2. On a dedicated tab of a uniform shirt or outer jacket.
  3. On a dedicated tab located on outer body armor carrier.
  4. On the pocket of an outer body armor carrier.
  5. Other location submitted in writing based on specific circumstances to the Chief of Police or Designee with a written approval

## **GENERAL GUIDELINES FOR RECORDING**

- A. Officers should activate their BWCs when anticipating that they will be 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 must be documented in the ICR and report, if a report is created.
- B. Officers have discretion to record any police-citizen encounter regardless if the recording would yield information having evidentiary value, unless such recording is otherwise expressly prohibited.
- C. Officers have no affirmative duty to inform people that a BWC is being operated or that they are being recorded.
- D. Once activated, the BWC should continue recording until the conclusion of the event, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value or if the event would be recorded by another department PVRE system. 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 shall state the reasons for ceasing the recording on camera before deactivating their BWC. If circumstances change, officers will 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 squad room, during meal breaks, briefings, meetings or during other private conversations, unless recording is authorized by the Chief or designee as part of an administrative or criminal investigation.

## **SPECIAL GUIDELINES FOR RECORDING**

Officers may, in the exercise of sound discretion, determine:

- A. To use their BWC to take recorded statements from persons believed to be victims and witnesses of crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.
- B. 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.
- C. To use their BWC to record persons being provided medical care if the subject is aggressive towards others or force may be necessary to allow for providing medical care.
- D. 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.
- E. Officers should use 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.

- F. Officers should avoid recording law enforcement restricted data on a BWC that may be in a verbal, written or electronic format. Examples including, but not limited to: computer screen or Driver's Licenses, school or medical information.

## **DOWNLOADING AND LABELING DATA**

- A. Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her camera to the evidence library. However, if the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, the Chief of Police or an investigator shall take custody of the officer's BWC and assume responsibility for transferring the data from it.
- B. Officers shall label the BWC data files at the time of capture or transfer to storage and should consult with the Chief of Police 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 an officer of the Blue Earth Police Department of sufficient degree or under circumstances triggering a requirement for supervisory review.
  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.

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. **Access to BWC data by non-employees.** Officers shall refer members of the media or public seeking access to BWC data to Blue Earth City Attorney’s office

who shall process the request in accordance with the MGDPA and other governing laws. In particular:

1. An individual shall be provided with access and allowed to review recorded BWC data about him- or 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.

- 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:
1. Agency personnel may access and view stored BWC data only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review BWC recorded data of an incident which they recorded, only for the purpose of 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 digital data recorded or maintained by this agency onto public and social media websites. Agency personnel shall document their reasons for accessing stored BWC data at the time of each access.
  3. Agency personnel shall refer members of the media or public seeking access to BWC recorded data to the responsible authority/data practices



designee, who will process the request in accordance with the MGDPA and other governing laws. Employees seeking access to BWC recorded data for non-business reasons may make a request for it in the same manner as any member of the public.

4. Officers may display portions of BWC data 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 limit these displays, including but not limited to: showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video, to protect against the incidental disclosure of individuals whose identities are not public.
5. BWC digital data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.
6. 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.

## **DATA SECURITY SAFEGUARDS**

- A. The City's Information Technology will determine the best method for backing up the data. If that method is an off-site, cloud-based system, they will ensure the data is encrypted and meets the requirements of the Criminal Justice Information Services.
- B. Officers shall only use agency designated digital data storage, as approved by the Chief of Police or designee.
- C. Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view or record agency BWC digital data, without prior approval from the Chief of Police.
- D. Officers shall not intentionally edit, destroy, erase or in any manner alter BWC digital data unless otherwise expressly authorized by the chief or the chief's designee.
- E. 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.

## **AGENCY USE OF DATA**

The following purposes are approved by the Chief of Police as having a legitimate and specified law enforcement purpose, for the access to the BWC recorded data as provided by Minnesota Statute 13.825, subd 7(b).

- A. The Chief of Police or Designee may randomly review BWC usage by each officer to whom a BWC is issued or available for use, to ensure compliance with this policy, ensure equipment is operating properly and to identify any performance areas in which additional training or guidance is required.
- B. In addition, the Chief of Police 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. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis.
- E. Field training officers may review BWC recorded data, recorded by them or their trainee, 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 of a sufficient type or degree to require a use of force report or supervisory review.
  - 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. The department will post this policy, together with *[a link to]* its Records Retention Schedule, on its website.

### **VIOLATION OF POLICY**

If an employee misuses the data covered by this policy or intentionally fails to comply with or violates this policy, it will be considered misconduct and such behavior may be grounds for disciplinary action up to and including discharge.