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| City of Virginia Police Department Policy Manual | Date: 12/19/2019 | Number 133 |
| | Retention | Approval |
| | To: All Licensed Officers | |
| | Subject: Use of Department Audio and Video Recording Devices | |

Body Worn Cameras

PURPOSE AND SCOPE

The primary purpose of using body-worn cameras (BWC'S) in law enforcement is to capture evidence arising from police-citizen encounters. The Virginia Police Department has equipped uniformed officers with BWC systems to document events during the course of their patrol duties.

Use of recorders is intended to enhance the Department's mission by accurately documenting contacts between officers of the Department and the public. This policy provides guidance on the use and management of the systems and the recorded media.

POLICY

It is the policy of this department to authorize and/or require the use of department issued BWC'S as set forth in this policy as required by Minnesota State Statute 626.8473, subd. 3.

DEFINITIONS

- (a) **Activate** - Any process that causes the MVR system to transmit or store audio-visual signals.
- (b) **MGDPA/ Data Practices Act** – Refers to the Minnesota Government Data Practices Act, Minnesota Statute 13.01.
- (c) **PODPA**- The Peace Officer Discipline Procedures Act, Minnesota Statutes Chapter 13.
- (d) **Body Worn Camera (BWC)** – Refers to a portable recording system as defined in Minnesota Statute 13.825, subd. 1(b)(1) as a device worn by a peace officer that is capable of video and audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation.
- (e) **Law Enforcement-related information**- Information captured or available for capture using a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.

(f) **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 law enforcement department or officer. Note: "Related civil or administrative proceeding" refers, for example, to implied consent or forfeiture actions arising from an arrest or prosecution. Nothing in this policy obligates the department to collect or maintain BWC data solely for use in third-party litigation.

(g) **Records Retention Schedule**- refers to the General Records Retention Schedule for City of Virginia.

(h) **Incidental 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. Example: assisting a motorist.

(i) **Adversarial**- means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility towards the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounter in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

(j) **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 or administrative value. Example: Recordings in a restroom or a personal conversation not expected to be recorded.

(k) **Record-After-The-Fact Function**- Body Camera and MVR events that are captured while the unit is inactive, or if the officer failed to activate the record mode. After-the-fact recordings have a limited time (0-16 hours) they are saved or stored on the device before they are automatically re-written over by the device.

(l) **Official duties/capacity**- for the purposes of this policy, means that the officer is on duty and/or performing authorized law enforcement services on behalf of this department or while in uniform.

(m) **BWC Administrator**- A designee who assigns, tracks, and maintains BWC equipment, oversees needed repairs or replacement equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor. duplicating methods, storage and retrieval methods and procedures, and who possess a working knowledge of video forensics and evidentiary procedures.

OBJECTIVES

The Virginia Police Department has adopted the use of BWCs to accomplish the following objectives:

(a) To enhance officer safety.

(b) To document statements and events during the course of incidents.

(c) To enhance the officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.

- (d) To preserve audio and visual information for use in current and future investigations.
- (e) To provide a tool for self-critique and field evaluation during officer training.
- (f) To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of audio-video recordings.
- (g) To assist with the defense of civil actions against law enforcement officers and the City of Virginia.
- (h) To assist with the training and evaluation of officers.

OFFICER RESPONSIBILITIES

Officers will use the BWC, as part of their uniform, wear and activate the BWC consistent with this policy. Prior to going into service each officer will properly equip him/herself to record audio and video in the field. The exception is if the officer's BWC system is not functioning and the on-duty supervisor has been notified.

At the start of each shift, officers will confirm the BWC system is operational in accordance with manufacturer specifications and department operating procedures and training. During their shift, officers will follow the established policies and procedures for documenting, categorizing and retaining any recorded media. Any time an officer reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact), the officer should promptly notify a supervisor of the existence of the recording.

Malfunctions, damage, loss, or theft of BWC equipment shall immediately be reported to the on-duty supervisor.

This provision prohibits officers from using personally owned BWC, or those provided by private entities that may be contracting for services, while performing department-authorized law enforcement activities. The use of non-department equipment is inconsistent with the department's obligation to administer resulting video footage as government data.

SUPERVISOR RESPONSIBILITIES

Supervisors shall ensure officers are using their BWC equipment per policy and determine corrective action for non-functioning BWC equipment.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, peace officer-involved shootings, department-involved collisions), a supervisor shall respond to the scene and ensure that the BWC is properly uploaded.

ACTIVATION OF THE BWC AND DOCUMENTATION

The BWC system will be used to document events and the media recordings are to be preserved on the Virginia Police Department storage facility. If no recording is made, the officer will write a supplemental police report under the case number explaining why their BWC was not activated.

Whenever an Officer makes a recording, the existence of the recording shall be documented in an incident report or Computer- Aided Dispatch (CAD) record of the event. 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. Supervisors, shall review these reports, initiate any corrective action deemed necessary, and notify their command-level supervisor.

GENERAL GUIDELINE FOR BWC RECORDING

This policy is not intended to describe every possible situation in which the BWC system may be used, although there are many situations where its use is appropriate. An officer may activate the system any time the officer believes its use would be appropriate and/or valuable to document an incident.

In some circumstances, it is not possible to capture images of the incident due to conditions or the location of the camera. However, even when the incident may be outside the video range, the LEO is encouraged to activate the BWC to capture the audio portion of the incident.

Officers have no affirmative duty to inform people that a BWC is being operated or that they are being recorded.

At no time is an officer expected to jeopardize his/her safety in order to activate the BWC or when it is impossible or impractical to do so, but such instances of not recording when otherwise required must be documented as specified in this policy.

However, the BWC should (a generally required or expected action) be activated in the following situations as soon as practicable:

All field contacts involving actual or potential criminal conduct, including but not limited to:

1. Traffic stops (to include, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops).
2. Priority responses.
3. Vehicle pursuits.
4. Suspicious Vehicles.
5. Arrests.
6. Vehicle searches.
7. Physical or verbal confrontations or use of force.
8. Prisoner transports.
9. Non- custody transports.
10. Pedestrian checks.
11. DWI investigations including field sobriety tests.
12. Taking a statement or interview from a suspect or witness.
13. Medical incidents attended to by members of the Department.
14. All self-initiated activity in which an officer would normally notify the Saint Louis County Dispatch Center.

15. Any call for service involving a crime where the BWC may aid in the apprehension and/or prosecution of a suspect, including but not limited to:
- a.) Family violence calls.
 - b.) Disturbance of peace calls.
 - c.) Offenses involving violence or weapons.
 - d.) Any other contact that becomes adversarial after the initial contact, in a situation that would not otherwise require recording.
 - (e) Any other circumstance where the officer, through training and experience, believes that a recording of an incident would be appropriate.

CESSATION OF RECORDING

Once activated the BWC system should remain on continuously until the officer's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be temporarily ceased to exchange information with other officers. The reason to cease and resume recording will be noted by the officer either verbally on the BWC or in a written report. Recording may cease during non-enforcement activities such as waiting for a tow truck or a family member to arrive, or in other similar situations.

Formal statements recorded on the BWC shall be recorded as separate recordings. Recordings shall be categorized, titled, and Identified in accordance with established policies and procedures.

WHEN ACTIVATION IS NOT REQUIRED

Activation of the MVR system is not required:

- (a) During encounters with undercover officers or informants.
- (b) When an officer is on break or is otherwise engaged in personal activities.
- (c) In any location where individuals have a reasonable expectation of privacy, such as a restroom, locker room or break room.
- (d) When not in service or actively on patrol.
- (e) Officers will try to avoid recording videos of persons who are nude or when sensitive human areas are exposed.
- (f) LEOs will cease recording once they have entered the sally port at the Saint Louis County Jail.

USE OF RECORDERS

Minnesota law permits an individual to record any conversation in which one party to the conversation has given his/her permission (Minn. Stat. § 626A.02).

Officers of the Department may record any conversation during the course of a criminal investigation in which the officer reasonably believes that such a recording will be lawful and beneficial to the investigation.

Members shall not record another department member without a court order unless lawfully authorized by the Chief of Police, or authorized designee, for the purpose of conducting a criminal investigation.

PROHIBITED USE OF RECORDERS

Intentional interference with the BWC system is strictly prohibited. Officers are prohibited from using department-issued BWC equipment for personal use and are prohibited from making personal copies of recordings created while on-duty or while acting in their official capacity.

The BWC will not be intentionally activated to record conversations of fellow employees without their knowledge during routine, non-enforcement related activities.

No member of the department shall intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the Chief or Deputy Chief.

There shall be no audio or video recordings made in any court of law, unless authorized by a judge. (Minn. Court Rule 4, General Rules of Practice)

REVIEW OF RECORDINGS

All recordings are the property of the agency and subject to the provisions of the MGDPA. Dissemination outside of the agency is strictly prohibited except to the extent permitted or required under the MGDPA, Peace Office Discipline Procedures Act (Minn. Stat. § 626.89), or other applicable law.

Supervisors are authorized to review recordings whenever such recordings would be beneficial in reviewing the officer's performance or actions.

Recorded files may also be reviewed:

- (a) For use when preparing reports or statements.
- (b) To review for court preparation.
- (c) By an Officer who is captured on or referenced in the video or audio data and reviews and uses the data for any purpose relating to any legitimate law enforcement purpose
- (d) To assess proper functioning of BWC systems.
- (e) If a peace 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 peace officer's BWC and other BWC's which may have recorded the incident and assume the responsibility for transferring the data from it. All recorded incidents will not be viewed or played until the Minnesota Bureau of Criminal Apprehension arrives on scene to investigate the incident. The supervisor will immediately notify the Chief of Police and/or Deputy Chief of Police of the incident.

The Minnesota Bureau of Criminal Apprehension will investigate the police department's critical incidents and the Virginia Police Department will adhere to their policy guidelines which state:

- If the peace officer requests to view the video, they will be afforded an opportunity to do so at the conclusion of the voluntary statement. The agent should make arrangements to show the video as soon as feasible following the statement. BCA personnel should be present for the viewing of the video and the officer's legal representation may be present as well. No other persons other than people needed for technical assistance should be present for the viewing of this video.
- If multiple cameras from other sources captured the incident, the agent shall determine if additional video should be shown to the involved officer on a case-by-case basis.
- At the conclusion of the viewing of this video the peace officer shall be afforded an opportunity to consult privately with their attorney.
- Once such consultation of the viewing has occurred, the agent shall provide an opportunity to the involved peace officer to clarify any portions of their statement after viewing the video.

(f) By department personnel who are participating in an official investigation such as a personnel complaint, administrative inquiry, a criminal or civil investigation.

(g) To determine applicable City Ordinance violations for subsequent actions.

(h) By court and prosecutorial personnel through proper process or with permission of the Chief of Police or Deputy Chief.

(i) By the media through a valid MGDPA request (Minn. Stat. § 13.01 et seq.).

(j) To assess possible training value.

(k) Officers will be notified if their recordings may be shown for staff or public safety training purposes. If an involved officer objects to showing a recording, his/her objection will be submitted to the Chief of Police to determine if the training value outweighs the officer's objection.

(l) Officers will typically not allow citizens to review the recordings; however, officer discretion is allowed to replay the video recording to citizens at the scene in order to mitigate possible complaints or as part of an investigation.

(m) Members shall document the purpose for accessing any recorded file. This documentation is to clarify the reason for viewing the recording when developing the

audit trail. In no event shall any recording be used or shown for the purposes of ridiculing, embarrassing, or intimidating any employee; this includes submission of any portion of a video recording to a media organization.

RECORDING MEDIA STORAGE AND INTEGRITY

At the end of their shift, officers are responsible for transferring or assuring the proper transfer of the data from his or her BWC by placing it into the docking station. This will allow the data to be transferred from the BWC through the docking station to the department's server storage. The data is considered impounded at this point and the BWC is cleared of existing data. The BWC should not be removed from the docking station until the data has been uploaded and the battery has been fully recharged.

COPIES OF RECORDING MEDIA

Evidentiary copies of digital recordings will be accessed and copied from the department's server for official law enforcement purposes only. Access rights may be given to the Saint Louis County Attorney's Office or Virginia City Attorney, or other prosecutorial agencies associated with any future prosecution arising from an incident in which the BWC was utilized. Officers shall ensure relevant recordings are preserved. Officers or BWC administrators may prevent automatic deletion by changing the category of the media at any time prior to deletion.

SYSTEM OPERATIONAL STANDARDS

The BWC system use should be based on officer safety requirements and device manufacturer recommendations.

- **Arrest**
- **Traffic Citation** (non-DWI)
- **Use of Force**- No arrest
- **Officer Injury**
- **Reports call**- no arrest- to be used for all calls for service resulting in the preparation of a police report.
- **Assist/Advise/Warn**
- **Administrative**- to be used when officer believes a participant in the call may make a complaint regarding the involved officer.
- **Demonstration Only**- training demonstration.

- **Training-** to be used with supervisor's approval when captured video will be of value to the department training efforts.
- **Unintentional recording-**
- **Not evidence-** the recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recordings of incidental citizen contacts are not evidence.
- **Restricted-** Command Level access only. Reserved for possible use as part of or during an internal investigation.
- **Retention reclassification- permanent:** The recording was initially classified in a manner that would result in automatic destruction in accordance with the City's Retention Policy, however based on the case type and extended statutes of limitation, the data should be permanently retained (example, homicide)
- **Transport**
- **Statement /Interview**

For recordings where a category or case file, citation, internal affairs or permanent has been selected, officers shall enter an ID number and descriptive title.

Digital recordings shall be retained according to the Department's retention schedule or as required by the rules of evidence, unless a specific request is made to store them for a longer period of time by an authorized person.

Officers shall not attempt to delete, alter, reuse, modify or tamper with BWC recordings.

DATA RETENTION

Evidentiary data shall be retained for the period specified in the General Records Retention Schedule for the City of Virginia. When a recording is subject to multiple retention periods, it shall be maintained for the longest applicable retention period.

Unintentionally recorded footage shall not be retained and is to be purged by the Chief of Police or Deputy Chief. Any data manually deleted from the system, excluding demonstration data, shall be communicated to the Chief of Police, including the type of data and reason for deletion. A log shall be maintained of all administratively deleted video.

BWC footage that is classified as non-evidentiary, or becomes classified as non-evidentiary, shall be retained for a minimum of 90 days following the date of capture. If information comes to light indicating that non-evidentiary value or value for training, it may be reclassified and retained for a longer period.

The department will maintain the following records and documents relating to BWC use:

- (a) The total number of BWC's owned or maintained by an agency.
- (b) A daily record of the total number of BWC's deployed and used by officers.
- (c) The total amount of recorded BWC data collected and maintained.
- (d) Password protection access to all BWC data and maintain an electronic record of the date, time and name of each employee who accesses the data.
- (e) This policy, together with the City of Virginia Records Retention Schedule will be used to maintain the records and data.

DATA CLASSIFICATION

- A. BWC data is private or nonpublic data. Private data is accessible to the data subject:
 - Any person or entity whose image or voice is documented in the data.
 - The officer who collected the data.
 - 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. In accordance with Minnesota State Statute 13.825, subd. 2(2), BWC data are public in four situations:
 1. When a peace officer discharges a firearm in the course of duty (but not when discharged for training purposes or killing animals.)
 2. When use of force by a peace officer results in "substantial bodily harm" as defined in Minnesota State Statute 609.02, subd. 7a, "great bodily harm" as defined in Minnesota State Statute 609.02, subd. 8, or death.
 3. When a data subject requests that the data be made accessible to the public, after redacting undercover officers and those who have not consented to the release.
 4. When body camera data documenting the basis for discipline is part of personnel data in final disposition of discipline.
- C. With the approval of the Chief of Police, this department may make otherwise non-public data public data if that could aid the law enforcement process, promote public

safety, or dispel widespread rumor or unset, consistent with Minnesota Statutes section 13.82, subdivision 15.

- D. BWC data that are collected or created as part of an active criminal investigation are governed by Minnesota Statute 13.82 and are classified as confidential or protected nonpublic data. This classification takes precedence over the “private and public” classification listed above.

RECORD AFTER THE FACT FUNCTION-

This feature will be primarily accessed only during critical incident types situations such as officer involved shooting, bodily injuries involving but not limited to death, life threatening, permanent disfigurement to officer or suspect or gross negligence. If this occurs, the recording officer shall immediately notify his/her supervisor and the Chief or Deputy Chief of Police will either approve or disapprove the accessing of the recording by the certified IT technician based on the aforementioned criteria. If the Chief or Deputy Chief approves the retrieval, the computer IT technician will retrieve the body camera and collect the requested data. These after-the fact recordings have a limited time saved or storage on the device ranging from 0 to 16 hours before it is automatically re-written over by the device.

SANCTIONS FOR MISUSE OF RECORDED MEDIA

Any member misusing recorded media for other than official law enforcement purposes will be subject to disciplinary action. The Chief of Police, or designee, shall meet with the person who is alleged to have violated the policy and determine appropriate sanctions, which may include any or all of the standard discipline policies currently in place at the Virginia Police Department including verbal reprimand, written reprimand, suspension or termination. Intentional misuse of recorded media is a serious violation. If criminal behavior is believed to have occurred, appropriate agencies will be notified for further investigation. The specific situation in each case of misuse of recorded media will be looked at with all circumstances considered when determining disciplinary actions. Consideration will be given to the extent of the loss or injury to the system, agency, or other person upon release or disclosure of sensitive or classified information to an unauthorized individual.

SANCTIONS OF BODY WORN CAMERA POLICY VIOLATIONS

Any violations of this policy shall be investigated by the Chief or Deputy Police Chief in accordance with Virginia Police Department Policy 114, Allegations of Misconduct, II, K & L.