

CHAPTER 36

**BODY-WORN CAMERA
POLICY**

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CHAPTER 36

BODY-WORN CAMERA POLICY

SECTION 1. PURPOSE.

The primary purposes of using body-worn-cameras (BWCs) is to capture evidence arising from police-citizen encounters, accountability, and to build trust with the community. This policy sets forth guidelines governing the use of BWCs and administering the data that is created.

Compliance with these guidelines is required, 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.

SECTION 2. POLICY.

It is the policy of this department to authorize and require the use of department-issued BWCs as set forth below.

SECTION 3. 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. The Chief of Police or his or her 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 of Police or his or her 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.

SECTION 4. DEFINITIONS.

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

MGDPA or Data Practices Act: Refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et seq.

Records Retention Schedule: Refers to the General Records Retention Schedule for Minnesota Cities.

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.

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.

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 or her neighborhood.

Adversarial: Means a law enforcement encounter with a person 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.

Unintentionally Recorded: 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.

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.

Traffic/Pedestrian Stop: For the purposes of this policy, means that the Officer is on-duty and is performing authorized law enforcement services, and has initiated a stop of this nature.

Activate: Any process that causes the BWC system to transmit or store audio/visual data.

Evidence.com: The web-based Cloud digital media storage facility. The virtual warehouse stores digitally-encrypted data in a highly secure environment. The digital recordings are accessible to authorized personnel based upon a security clearance and maintains an audit trail of user activity.

Body-Worn Cameras (BWC): Any system that captures audio and video data that is individually worn by Officers.

BWC Administrator: Designated personnel trained in the operational use of BWC's storage and retrieval methods and procedures, 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 to the vendor.

SECTION 5. 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 department.
- B.** Officers who have been issued BWCs shall operate and use them consistent with this policy. Officers shall conduct a test of their issued BWCs at the beginning of each shift to make sure the devices are operating properly. If a malfunction is found during

testing or at any other time, the Officer shall promptly report the malfunction to the Officer's supervisor. Supervisors shall take prompt action to address malfunctions and document the steps taken in writing.

- C. All licensed uniformed Officer's shall use BWCs in the course of their duties unless otherwise authorized by the Chief of Police or his or her designee.
- D. Officers should wear their issued BWCs at the location on their body and in the manner specified in training.
- E. Officers must document BWC use and non-use as follows:
 - 1. 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 CAD. Supervisors shall review these reports and initiate any corrective action deemed necessary.
 - 2. Officers shall note in their report or CAD when recordings were made during the incident in question. However, BWC recordings are not a replacement for written reports.
- F. 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.
 - 4. This policy, together with the Records Retention Schedule.

SECTION 6. GENERAL GUIDELINES FOR RECORDING.

- A. Officers shall activate their BWCs when responding to all calls for service and during all law enforcement-related encounters and activities, including but not limited to pursuits, *Terry* stops of motorists or pedestrians, arrests, searches, suspect interviews and interrogations, and during any police/citizen contacts that becomes adversarial. 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 (E) (above). Officer will try to avoid recording videos of persons who are nude or when sensitive human areas are involved.
- B. Officers have discretion to record or not record general citizen contacts.

- 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 shall state the reasons for ceasing the recording on camera before deactivating their BWC. 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. Officer's may, when deemed necessary, mute the audio for the purposes of sensitive conversations with other Officers.
- 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.
- G. Officer's shall not intentionally edit, alter, copy, share, or erase any BWC recording unless expressly authorized by the Chief of Police or his or her designee.
- H. The BWC and all data, images, and video captured, recorded, or otherwise produced by this equipment is the sole property of the Winsted Police Department.
- I. Requests for deletion of portions of the recordings (inadvertent personal recordings) must be submitted in writing and approved by the Chief of Police or his or her designee in accordance with the state record retention schedule. Records of such requests and decisions will be kept on file.

SECTION 7. SPECIAL GUIDELINES FOR RECORDING.

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

- A. 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.
- B. Officers should use their BWCs and or squad-based audio/video systems to record their transportation and the physical transfer of persons in their custody. Officers should not use their BWCs to record in hospitals, detox and mental health care facilities, juvenile

detention centers, and jails, unless the officer anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use-of-force incident.

SECTION 8. 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 by docking the unit by the end of that officer's shift. 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.

- 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. Evidentiary Value:** The information has evidentiary value with respect to an actual or suspected criminal incident or charging decision or has other potential evidentiary value for reasons identified by the Officer at the time of labeling or when an officer seized property from an individual or directed an individual to dispossess property, or whether or not enforcement was taken or an arrest resulted.

 - 2. Use of Force:** Events that involved the application of force by a law enforcement officer of this or another agency regardless of whether or not enforcement action was taken or an arrest resulted.

 - 3. Pursuit:** Incidents in which an Officer was involved in a vehicle or foot pursuit acting as the pursuing Officer or secondary Officer.

 - 4. Adversarial:** The incident involved an adversarial encounter or may result in a complaint against the officer.

 - 5. Training:** The event was such that it may have value for training.

 - 6. Unintentional Recording:** Footage captured through unintentional activation.

 - 7. General:** 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.

 - 8. Traffic:** The recording documents traffic stops, motorist assists, and other activities initiated by the Officer during patrol and these contacts do not result in criminal charges or citations. These recordings do not contain information having evidentiary value.

 - 9. Pedestrian:** The recording documents the undertaking of a pedestrian stop resulting in no charges and there is no evidentiary value to the recording.

10. **Medical:** The recording documents an Officer's response to medical related emergencies.
11. **Uncategorized:** The recording has not been previously assigned to another data label.
12. **Officer Injury:** The recording documents the injury of a police officer in the course of duty.
13. **Public Data Per State Statute:** The recording is deemed to be public data per MN Statute 13.825.

C. Labeling and flagging designations may be corrected or amended based on additional information.

SECTION 9. 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).
4. Nothing in this policy shall be interpreted as changing the underlying classification of data collected by the BWCs. The classification of data collected by BWCs will need to be determined on a case-by-case basis upon application and interpretation of the MGDPA and other laws.

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. 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 the Chief of Police or his or her designee 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 him- or herself, 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. 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. 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. Critical Incident: Officer involved in a critical incident may view or listen to the BWC data of the incident only after:
 - a. The Officer has met with their legal counsel, if requested and
 - b. The Officer and legal counsel have met with the investigative entity or designee regarding the investigative process to ensure the integrity of the investigative entity's Critical Incident investigation: including but not limited to incidents where serious injury or death results during police custody or involvement.
 - c. Please see Chapter 40 (Critical Incident Response Policy) for specific guidelines.
3. Agency personnel shall document their reasons for accessing stored BWC data at the time of each access. 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.
4. 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.
5. Pursuit Review: BWC data showing a vehicle pursuit may be accessed by supervisors and department personnel who have the responsibility to review the incident. BWC data showing an accident may be disclosed to the Accident Review Committee.

G. 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. This disclosure may only occur with authorization from the Chief of Police or his or her designee. 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.
3. BWC data may be made available to the City Administrator and/or City Attorney, with authorization from the Chief of Police or his or her designee, to aid in investigating officer complaints, etc. In the event of a critical incident, consultation must be had with the investigating agency in charge of the critical incident prior to review by the City Administrator and/or City Attorney.

SECTION 10. DATA SECURITY SAFEGUARDS.

- A. All safeguards in place by Evidence.com will meet or exceed required security parameters. In addition:
- B. Access to BWC data from city or personally owned and approved devices shall be managed in accordance with established city policy.
- C. Officers shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the Chief of Police or his or her designee.
- D. 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.

SECTION 11. AGENCY USE OF DATA.

- A. Supervisors will randomly review BWC usage by each officer to ensure compliance with this policy.
- 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. Field training officers may utilize BWC data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

SECTION 12. DATA RETENTION.

- A. All BWC data shall be retained for a minimum period of 90 days.
- 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 shall maintain an inventory of BWC recordings having evidentiary value.
- H. The department will post this policy on its website.

SECTION 13. 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.