



# CITY OF FAIRFAX POLICE DEPARTMENT

## GENERAL ORDER

Subject <b>BODY WORN CAMERA PROGRAM</b>	Number 4-37
Effective Date June 10, 2017	Rescinds Rescinds G.O 4-37 dated 12/15/2016
Accreditation Standards Sixth Edition 41.3.8	Authority Colonel Carl R. Pardiny Chief of Police

### PURPOSE:

To establish policy regarding the use of Body Worn Cameras (BWC) by members of the police department and to establish a policy regarding the storage, release and retention of BWC audio/video (A/V) files maintained by the department.

### DISCUSSION:

The City of Fairfax Police Department is committed to protecting the constitutional rights of all people. We recognize the need to continuously improve our knowledge and application of the law as it pertains to our members in their capacity as law enforcement officers, and collectively as a law enforcement agency. In pursuit of our obligations to the community we serve, we recognize the value of employing technology that will assist us in our ethical, legal, and moral duties. The implementation of a Body Worn Camera program will significantly increase officer safety, enhance our ability to successfully accomplish our mission, bolster our trust relationship and increase accountability to the community.

### DEFINITIONS:

Body Worn Camera- as used in this general order, the term body worn camera refers only to those video recording devices issued by the department for the distinct purpose of overtly recording police and citizen interactions. Other video and audio recording devices used as part of covert police operations are not subject to the provisions of this General Order.

### PROCEDURE:

#### I. GENERAL REQUIREMENTS:

- A. The maintenance, inspection and care of BWC equipment is the responsibility of the officer to which it has been issued. Members shall not manipulate/touch unattended equipment that is not assigned to them, particularly when the BWC systems are charging or downloading. BWC equipment will be operated according to manufacturer's recommendations, department regulations, and training. Members are prohibited from altering BWC hardware or its related software and such action may be cause for disciplinary action.
- B. Lost, stolen or damaged BWC equipment shall be reported immediately to either the employee's direct supervisor or the shift supervisor. In applicable cases of lost or damaged city property, members and supervisors must follow all procedures outlined in General Order 9-2, Department Owned Property and General Order 1-9, Discipline. (See Disciplinary Reimbursement)
- C. Officers shall not intentionally interfere with the recording capability of the BWC system. EXCEPTION: See Section IV for permissible exclusions to this provision.

- D. Officers will only use department-issued body worn cameras to record official department activities. The use of a privately owned BWC is prohibited while on duty. When a BWC is not being worn by the assigned officer, it must be stored / docked at police headquarters. A department-owned BWC shall not be operated while in an off-duty status. All duty-related recordings of any police department activity shall be considered official department records.
- E. Any officer, who has been issued a BWC and trained on its use, is required to wear and use the equipment each work day in accordance with this policy. Officers working uniformed special duty and overtime assignments are required to wear their issued BWC. Those officers who are placed on a limited duty status are exempt from this mandatory wear provision until such time that they return to a regular duty status. Officers that are performing duties associated with any part-time, non-standing unit are not required to wear their assigned BWC unless directed to do so by the Unit Commander.
- F. Officers shall be in uniform or otherwise clearly identifiable as a law enforcement officer during any deployment of a BWC. The BWC will be worn in a position that permits recording as closely as practical to the officer's field of vision. Depending on the technology used, these locations may include the chest, head area using headsets and eye glass mounts, or shoulder and collar area using supplied mounting devices.
- G. In situations where a BWC recording was made and a case report is required, the existence of the recording shall be documented in the narrative of the case report. Whenever practical, the reporting officer should also document the name of each assisting officer who generated BWC video. In situations where a case report is not required and the officer chooses to write an incident report, the existence of the recording(s) shall be documented in the incident report. At a minimum, all officers who generated BWC video should document that fact in the Computer Aided Dispatch (CAD) note section for the call.
- H. Officers should not omit relevant facts from report narratives by making reference to captured video. Substituting portions of the report by using phrases such as, "refer to video" are not permitted. Officers are also required to continue to take complete field notes and should not become overly dependent on the availability of BWC video in documenting the facts required for department reports.
- I. If the BWC is worn but not activated in a situation that is required by department policy, the officer will immediately report the circumstances to their supervisor at the conclusion of the related event, incident, or contact. The officer will also document the reason why the event was not recorded in the case or incident report, depending on which is applicable. (Example: If a crime victim or witness requests that the video be discontinued prior to providing a statement the officer will document the request in the case report.)
- J. Consistent with department policy that governs the use of force resulting in prisoner injury, complaint of injury, use of less-lethal weapon systems, or employee injury, all available BWC video will be reviewed while conducting the administrative investigations mandated by department policy.
- K. Available BWC video will be reviewed and used to investigate the circumstances of any non-custodial injury caused by any sworn member of the department.

## II. TRAINING

- A. Only those officers who have been issued a BWC and trained in its proper use may operate/wear a BWC. Training will consist of the proper use of all BWC hardware, video review, categorizing protocols, video download, policy and report requirements, procedures to access and use video evidence, and coordination with the City and Commonwealth's Attorney's Offices.

- B. All BWC training will be documented using department training forms and forwarded to the PSD Lieutenant for inclusion in the member's training file.

### III. PRE-SHIFT INSPECTION

- A. BWC's are individually assigned equipment. Officers are not permitted to wear a BWC that has not been assigned to them unless approved by a supervisor.
- B. Officers are required to check their BWC for proper functioning at the beginning their shift. Should a malfunction or other problem with the camera be identified, the officer shall immediately report the issue to their supervisor. The supervisor will determine if the BWC needs to be taken out of service, and/or if an available spare unit needs to be temporarily assigned.
- C. Officers are required to wear the BWC during their entire tour of duty. Should a malfunction occur during their tour, a supervisor shall be notified immediately.

### IV. RECORDING PROTOCOLS

- A. No set list of recording protocols could cover every recording decision officers must make, often under rapidly unfolding circumstances. As such, any review of an officer's recording decision will only include the totality of circumstances known to the officer at the time his or her decision was made.
- B. Officers will activate their BWC prior to arriving at the scene of any call for service where there is at least a reasonable belief that they will have direct law enforcement interaction with or exercise police authority over a member of the public unless doing so would be impractical or unsafe. Examples of when BWC will be activated include but not limited to:
  - 1. Traffic stops and accident investigations
  - 2. Foot Pursuits, Response or Pursuit driving
  - 3. Terry stops and pat downs
  - 4. All vehicle and subject searches (including vehicle inventories)
  - 5. All law-enforcement-related interactions where criminal activity is being actively investigated
  - 6. Obtaining consent to search and conducting a search incident to arrest
  - 7. When transporting a prisoner if the cruiser is not equipped with in car video
  - 8. When handling disturbance or crisis related incidents
  - 9. When confronted by any member of the general public where the situation may become confrontational, antagonistic or hostile
  - 10. During any other incident the officer deems necessary

NOTE: Officers responding to service calls where they are required to direct traffic, perform peripheral duties during non-criminal investigations, or complete other duties or assignments which do not require face-to-face interaction with a member of the public, are not required to activate their BWC.

- C. Officers have discretion in whether or not to record informal, non-law enforcement related interactions with members of the community, however; officers should remain mindful that indiscriminate recording may inadvertently create an atmosphere of apprehension and uncertainty.
- D. Unless required or permitted by paragraphs F and G of this section, once a decision has been made to record an event, an officer may not stop a BWC recording prior to the completion of an unfolding or unresolved event/citizen encounter, unless directed to do so by a supervisor. In cases that are not deemed to be critical or dangerous, circumstances may dictate that an officer shields the video portion of the recording for

modesty/privacy concerns. If practical, and only when safety permits, an officer faced with such a situation may temporarily shield the video camera and continue to record only the audio portion of the incident/event. If an officer makes such a decision, he/she should verbally narrate the reason for temporarily shielding the camera. If officer safety does not permit such an action, the officer is not required to shield the recording.

- E. As soon as it is feasible, officers should inform subjects that they are wearing a BWC unless doing so would be unsafe or impractical. Example: Officers engaged in foot pursuits are not required to make such notifications. Officers are not required to provide each individual with affirmative notice regarding the existence of their BWC and a general notice is deemed to be sufficient for all who are present.
- F. The following guidelines apply to recording victims and/or witnesses of crime:
  - 1. Officers are not required to discontinue a BWC recording while they are attempting to sort out the details of a complex or rapidly evolving incident or scene where suspects, victims or witnesses may be comingled.
  - 2. Once a scene has been stabilized and victims or witnesses are clearly separated from suspects, the interviewing officer may record a detailed statement from a victim or witness, unless the victim or witness requests that the recording be stopped. At that point, the officer will comply.
    - a. If necessary, the Officer will reactive his or her BWC after the interview is completed.
    - b. Officers should remain mindful of the 30 second buffering cache programmed into the BWC.
  - 3. Officers are not required to ask permission prior to recording a statement from a victim or witness.
- G. Officers shall not use their BWC's to record:
  - 1. A detailed victim statement in cases of rape, sexual assault, or domestic violence
  - 2. A detailed victim or witness statement from a juvenile
- H. Officers involved in prolonged incidents may terminate a BWC recording whenever they determine that continued recording is impractical. In making their decision, officers should consider the continued necessity to capture video footage relative to the importance of their individual assignment. If there is any doubt, officers are encouraged to consult their supervisor prior to terminating their recording. Officers should verbally document their reason prior to terminating a BWC recording for any reason. Officers must be prepared to justify any decision to stop a BWC recording and the specific reason should be documented in any required written report. If a written report is not otherwise required, at a minimum, the officer shall document their reason for terminating their BWC in the CAD notes for the call. If circumstances at the scene change, it is the responsibility of the officer to re-activate his/her BWC consistent with the guidelines of this policy.
- I. At scenes where there is a mixture of adults and juveniles, officers are NOT required to deactivate their BWC simply because a juvenile is present. While on school grounds during school-related activities, routine recording of students and school administrators is not permitted and should be limited to only those instances where there is a substantial likelihood that an officer will be required to use force.
- J. Unless engaged in an active criminal investigation, officers should not record inside a private residence. Example: Officers should not record inside a private residence simply when entering to obtain routine information for department reports. Officers may activate a recording inside a private residence at any time if a situation becomes confrontational or potentially violent. If/when officers decide to record inside a private

residence, the officer(s) should inform at least one primary, adult occupant of the residence (if present) and document their decision on camera, when it is safe and practical to do so.

NOTE: Although all death scenes are treated as potential criminal investigations, for sensitivity reasons, officers are not required or encouraged to inform those who happen to be on scene that they are wearing a BWC.

- K. Officers are NOT required, nor should they terminate a recorded interaction with a suspect in a criminal investigation or investigatory detention.
- L. If asked whether they are recording an event, officers are required to be truthful.
- M. Officers ARE NOT permitted to intentionally record:
  - 1. Other agency personnel during routine, non-law enforcement related activities
  - 2. In restrooms or locker rooms, unless activation is required during the official performance of an officer's duties
  - 3. When speaking to a confidential informant
  - 4. Discussions that involve pre-planned operational strategies or police tactics
  - 5. Inside a medical or mental health facility unless a use of force is anticipated or required
  - 6. During any strip searches
  - 7. Any internal employee conversation unless all participants in the conversation are aware the recording is being made
  - 8. Inside the confinement area of the Fairfax County Adult Detention Center (Note: Officers ARE permitted to record while in the sally port)
  - 9. During the execution of a search warrant where undercover officers are present
  - 10. During First Amendment protected activities if the activity is unrelated to a call for service, a specific threat, or an on-going police investigation.

## V. CATEGORIZING VIDEO RECORDINGS

- A. Officers are encouraged to categorize their videos throughout their shift. The use of personal cell phones to view or categorize BWC video is not condoned by the department. Officers are required to categorize all videos with the applicable retention category by the end of their shift, unless approved by a supervisor.
- B. In the event of an unintentional activation of the BWC during non-enforcement or non-investigative activities or in other areas where a reasonable expectation of privacy exists, officers may request a deletion of a BWC recording. In such cases, a memorandum detailing the circumstances of the unintentional activation should be forwarded through the member's chain of command. Only the Chief of Police or his designee may authorize the deletion of a video recording. If the request is approved, the member's memorandum and the Chief's decision will be kept in a file in the Office of the Chief of Police to document the circumstances surrounding the deletion of a video.
- C. If a recorded event involves a use of force (regardless of injury), a hostile/confrontational citizen interaction, or any incident that may logically lead to a complaint against the officer or department policy and procedure, the officer capturing the footage should inform their supervisor as soon as practical. If not otherwise categorized as part of an arrest or criminal investigation, the video should be categorized using the Administrative Review category. If the incident will be investigated by the Professional Standards Division Commander (or other command staff personnel) the video should be categorized using the I.A. Review Restricted category. (See section VII, B.)
- D. BWC footage related to criminal investigations, including Driving While Intoxicated and traffic related stops, are categorized according to the event categories listed in Section VII., B. of this order. The event categories are arranged and correspond to the Library of Virginia Records and Retention schedule.

- E. Any officer may categorize video for official work-related or training purposes using the miscellaneous/training category. Officers should notify their supervisor if they categorize a video for training purposes. The video may be used for squad-level training at the discretion of the supervisor. If the first line supervisor believes that the video could have benefit on a department-wide level, he/she should contact the PSD Lieutenant with a brief description of the video and the perceived benefits as a training tool. The PSD Lieutenant will then access the video and consult with his/her Commander to make an assessment regarding if/how the video will be used.

## VI. VIDEO TRANSFER AND STORAGE

- A. Members will download all BWC video files to CJIS compliant off-site storage (cloud storage) using the approved department docking equipment. Videos will automatically upload once the BWC is placed in the approved docking/charging station. In an effort to reduce the possibility that a video is inadvertently overlooked from a retention standpoint, ALL video must be categorized using one of the provided categories. (See Section VII, B.)
- B. Some video categorized for evidence retention may be downloaded from off-site storage (cloud storage) and stored on designated CJIS compliant department storage devices. These department storage devices will be secure and will not be accessible from the department network. The devices will also be housed in a separate location from department servers and other network storage equipment. Access to internal BWC network storage devices will be approved by the Administrative Services Division Commander.
- C. All data and recordings collected by the BWC equipment are official department records and will be subject to department policies regarding viewing, release, retention and destruction.
- D. Upon completion of an assigned shift, all officers shall ensure their BWC is placed in a docking station.
- E. In cases where a supervisor is aware that there are multiple BWC videos of a single incident or case investigation, he/she should create a case within Evidence.com to combine all videos into one location to better organize video evidence.

## VII. MANDATORY RETENTION

- A. All BWC video shall be retained in accordance with the guidelines listed in the Library of Virginia, Records and Retention Schedule, GS-17, Law Enforcement.
- B. Video Categories and Retention schedule
  - 1. Misdemeanor–Unresolved – 5 Years after case closed
  - 2. Misdemeanor–Resolved – 10 Years after case closed
  - 3. Felony–Resolved – 30 Years after case closed
  - 4. Felony–Unresolved – 50 Years after case closed
  - 5. Serious Crimes against People–Resolved – 75 Years after case closed
  - 6. Serious Crimes against People–Unresolved – 100 Years after case closed
  - 7. Administrative Review - One year
  - 8. Traffic Stops - Summons Issued - One year
  - 9. No Retention Required (NRR) - 30 Days
  - 10. Training - One year
  - 11. I.A. Review (Restricted Access) – One Year
  - 12. Uncategorized - 30 Days
  - 13. Pending Review (Taser default category not used)

### C. Traffic Stop Video

1. All BWC video related to traffic stops, where a summons has been issued, shall be categorized accordingly. Summonses issued as a result of a non-reportable accident will be categorized under the traffic stop category. If a traffic stop results in an arrest, the video should be categorized using the appropriate Investigative Case File category.
  2. Traffic Stops that result in a warning may be categorized as “No Retention Required.” Officers also have the option of categorizing the traffic stop using the “Administrative Review” category if they believe it would be wise to retain the video longer than 30 days.
- D. Video files that could be categorized using more than one retention category will be categorized with the applicable category that has the longest retention period.

## VIII. COURT PROCEDURES

- A. Officers intending to use any BWC recording in court should advise either the City Prosecutor’s Office or the Office of the Commonwealth’s Attorney prior to the initial court date.
- B. Officers attending City Court may access BWC video directly via the internet from our cloud-base storage site, Evidence.com. Officers are reminded that if they choose this option, they must prepare prior to court so they can access video files quickly and efficiently. Officers also have the option of downloading the video to a DVD/CD. NOTE: Thumb drives or any other type of portable storage devices are NOT approved download options. Once court is complete, the DVD/CD can be placed into the lockable shredder bin and logged in for destruction. Should the defendant in the case lodge an appeal, the officer can download another court copy. Officers should not keep a copy of video evidence with their working case files. Officers are responsible and accountable for the proper destruction of all copied video files.
- C. Officers attending County Court will be required to download a hard copy of the video to DVD/CD until such time that internet access becomes available to officers for use in court.
- D. Should the officer need the BWC evidence for an upcoming court date (the matter is continued, scheduled for trial, etc.), the DVD/CD shall be entered into the Property and Evidence Section for chain of custody purposes. Once the video is no longer needed for court, the video can be marked for destruction.

## IX. VIDEO ACCESS, REVIEW, AND RELEASE

- A. Officers will retain access to their recorded BWC video files. Officers will not have access to independently view video files created by another officer. Officers may view another officer’s video with his/her consent. Such viewing shall only be for legitimate law enforcement purposes.
- B. If deemed necessary, officers who have been assigned a BWC should review video footage prior to writing case reports or providing courtroom testimony.
- C. Supervisors shall ensure videos of critical incidents (Officer involved shootings, in-custody deaths, police action resulting in serious injury or death, etc.) are properly uploaded and when practical, retrieve all BWC units from all officers involved at a critical incident scene.
- D. To preserve the integrity of the Administrative Investigation process, once an administrative investigation is initiated, the PSD Commander will coordinate with the ASD Commander and access to all applicable video will become restricted. The ASD Commander will determine if any copies of the video exist and retrieve all copies. Generally, officers will be provided an opportunity to review BWC footage prior to giving a statement related to an administrative investigation. Such viewing will occur in the presence of the Professional Standards Division

Commander or their designee. EXCEPTION: In rare cases, the Chief of Police may restrict access to any video at any time if he/she determines such restricted viewing is in the best interest of the department.

- E. Freedom of Information Act (FOIA) requests for BWC video will be addressed by the ASD Commander or his designee. BWC video that contains footage of serious injury or death will only be released with the approval of the Chief of Police or his designee. Because a companion criminal investigation is completed in many critical incidents and during all cases involving the use of deadly force, such release will usually only occur after consultation with the Office of the Commonwealth's Attorney.
- F. Consistent with our goal of increased transparency, BWC video depicting routine officer interactions of a non-criminal nature will be released according to the provisions of FOIA. All such video will be reviewed critically to ensure that the privacy rights of all citizens are protected. BWC program administrators and FOIA compliance personnel will ensure that all appropriate video redactions take place prior to releasing any BWC video.
- G. Supervisors may access and review BWC video of officers directly under their command, however, this should not be done on a routine basis to simply review employee performance. Any such review is permitted as follow-up to a complaint investigation or any other on-going training or performance-related issue.
- H. Supervisors and BWC Program administrators will conduct audits to ensure employees are in compliance with department policy and recording/categorizing protocols. During any review, supervisors should remain watchful of outstanding or noteworthy performance and issue Memorandums of Noteworthy Performance as they deem appropriate.
- I. Supervisors may be designated to review BWC video as directed by the Chief of Police or his/her designee.
- J. All data created by the BWC equipment are official department records. Officers shall not duplicate or otherwise possess any data or recordings for any personal reason to include uploading/distributing onto public and social media websites.
- K. Officers shall not allow unauthorized persons to view BWC digital recordings and viewing of BWC video files is restricted to legitimate law enforcement purposes.
- L. Release of video data to external law enforcement entities will be handled on a case by case basis. Such requests shall be made on official departmental letterhead and signed by the head of the requesting agency. Approved release of BWC video will be coordinated by the ASD Commander and the Property and Evidence Section. BWC video that is released in response to a court-ordered Subpoena Duces Tecum will be coordinated by the ASD Commander or his/her designee.
- M. Video files shall not be altered unless it is done under the direction of the Administrative Services Division Commander for purposes of redaction for Freedom of Information requests (FOIA) or court mandated editing.
- N. Citizens will not be permitted to review BWC recordings in the field. Citizens requesting to view a BWC recording should be referred to the Administrative Services Division Lieutenant and the provisions under FOIA.

#### X. SYSTEM ADMINISTRATION

- A. The Administrative Services Division Commander will administer the BWC program for the department.
- B. BWCs will be assigned to the Field Operations Division. Cameras may also be assigned to other members in operational positions with approval of the Chief of Police or his/her designee.
- C. Supervisors will ensure officers utilize all BWC equipment according to policy.



XI. JURISDICTIONAL CONSIDERATIONS

- A. In accordance with this General Order, officers are authorized to use their BWC in other jurisdictions during requests for mutual aid or during such times that they have authority to be present for work-related purposes.
- B. Officers or Detectives assigned to work assignments outside the limits of the city may be authorized by the Chief of Police to wear and utilize a BWC.
- C. Within the city limits and if so issued, officers who are actively participating in the evidentiary search process associated with the execution of a search warrant shall utilize their BWC. EXCEPTION: No officer will record using a BWC during the execution of a search warrant during operations involving officers acting in an undercover capacity. (Section IV, M, 9.)
- D. In cases of vehicle pursuits that leave Commonwealth of Virginia, officers shall abide by Section IV., E. of this general order as it applies to making notifications regarding the existence of an active BWC recording.

XII. POLICY AND PROGRAM EVALUATION:

- A. At the end of each calendar year, the ASD Commander will conduct a written evaluation to analyze the effectiveness of hardware, software and retention applications used to support the BWC program. The evaluation will also include:
  - 1. A recommendation on any policy issues and issues related to FOIA.
  - 2. An evaluation of the program's effectiveness with regard to officer compliance with policy.
  - 3. Fiscal considerations of continuing or making modifications to the BWC Program.
- A. The PSD Commander will also complete a year-end review and analysis of whether or not the BWC program has positively or negatively impacted the Internal Affairs Process. The review should also include:
  - 1. An analysis of any impact the BWC program is having on police use of force, suspect resistance, officer and suspect injuries, and use of less-lethal weapon systems.
  - 2. An assessment of the BWC program and policy as it applies to General Order 4-11, Use of Force.
- B. The Field Operations Division Commander will provide a written evaluation on how the BWC program has impacted the prosecution of criminal and traffic-related cases. The evaluation will also include feedback from officers and supervisors.

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Colonel Carl R. Pardiny / Chief of Police

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