

FREDERICK POLICE DEPARTMENT GENERAL ORDER

Section 3: General Patrol Procedures
Topic: BODY WORN CAMERA (BWC)
Approved: 07/11/16
Review: Annually in August by the Patrol Commander.
Supersedes: N/A

Order Number: 385
Issued by: Chief of Police

.01 PURPOSE:

To address the acquisition, operation, and control of the Department's Body Worn Camera (BWC) Program.

.02 CROSS-REF:

G.O. 720, "Deadly Force Guidelines and Investigations"
G.O. 1650, "Standards of Employee Conduct"
G.O. 1655 "Police Officer Conduct"
G.O. 833, "Evidence and Property Control"
SOP RS-085, "Property Evidence Disposal Guidelines"
CALEA STANDARDS: 41.3.8

.03 DISCUSSION:

The Body Worn Camera provides an independent witness to incidents and the interactions of officers with the public. It is important to remember that the recording is the perspective of the camera and not that of the officer or other witnesses.

The Frederick Police Department has adopted the use of Body Worn Cameras:

1. To enhance officer safety during citizen contacts;
2. To record vehicle and/or investigative stops within the physical limitations imposed by the equipment;
3. To record citizen contacts and interactions when no expectation of privacy is present;
3. To enable an officer, whenever practical and possible, to record the commission of a violation or crime;
4. To enhance an officer's ability to report the circumstances leading to an incident in a factual, graphic manner;
5. To provide a supplement to personal testimony in court;
6. To enable the Department to review the performance of its personnel during incidents to include a review of:
 - A. Legal basis used to conduct a stop if captured on video;
 - B. Officer/citizen - violator interaction;
 - C. Arrest procedures, if applicable; and,
 - D. Adherence to established procedures and officer safety training.

.04 POLICY:

It is the policy of the Frederick Police Department that personnel equipped with a functional BWC will utilize the equipment for the purpose of collecting evidence that will be used in the prosecution of those who violate the law, and to enhance officer safety. In this policy the Department provides guidelines for the use of BWC equipment and the retention and disposition of recordings. The equipment can be used for any lawful police purposes, such as investigations, traffic stops, field inquiries, interviews, and pursuits. The Department also authorizes its personnel to video record, at their discretion, any other incident which occurs in a public place that would be beneficial to the public interest. The use of BWC is for official law enforcement purposes only. Only departmental equipment will be used for BWC. Violations of the content of this order may result in discipline.

.05 DEFINITIONS:

PRIVATE CONVERSATION- A conversation in which at least one of the parties to the conversation has a reasonable expectation of privacy.

.10 STATUTORY AUTHORITY:

1. While the use of digital video recorders to record events which occur in public places is not regulated by law, the recording of any conversation which takes place during the video taping of an event is covered by Maryland's "Wiretapping and Electronics Surveillance" law.
2. As a matter of law, a conversation between a law enforcement officer performing his or her duties and a member of the public is protected under the Act where the circumstance does not fall within a statutory exception to the prohibition against intercepting the conversation and when a party to the conversation has a reasonable expectation of privacy in the communication.
3. The Annotated Code of Maryland, "Courts and Judicial Proceedings," Section 10-402(c)(4) provides a statutory exception from the general prohibition to record oral communication as follows:

It is lawful under this subtitle for a law enforcement officer in the course of the officer's regular duty to intercept an oral communication, if:

- (i) The law enforcement officer initially detained a vehicle for a traffic violation;*
- (ii) The law enforcement officer is a party to the oral communication;*
- (iii) The law enforcement officer has been identified as a law enforcement officer to the other parties to the oral communication prior to any interception;*
- (iv) The law enforcement officer informs all other parties to the communication of the interception at the beginning of the communication; and*
- (v) The oral interception is being made as part of a video tape recording.*

4. Section 10-402(c)(2) also provides exceptions to the interception of oral communications outside the parameters of a vehicle stop. Because BWC is equipped with audio recording capabilities, the pertinent parts of Section 10-402(c)(2) which list the circumstances/conditions under which an audio recording can be made are listed in this order:

It is lawful under this subtitle for an investigative or law enforcement officer acting in a criminal investigation. . . . to intercept a wire, oral or electronic communication in order to provide evidence of the commission of the offenses of:

- i) murder,*
- ii) kidnapping,*

- iii) *rape,*
- iv) *a sexual offense in the first or second degree,*
- v) *child abuse,*
- vi) *child pornography as defined in the Criminal Law Article Section 11-207 of the Code,*
- vii) *gambling,*
- viii) *robbery,*
- ix) *any felony punishable under the "Arson and Burning" subtitle of Article 6 of the Criminal Law Article.,*
- x) *bribery,*
- xi) *extortion,*
- xii) *or dealing in controlled dangerous substances including violations of Title 5 of the Criminal Law Article.,*
- xiii) *fraudulent insurance acts as defined in Title 1, Subtitle 2 of the Insurance Article,*
- xiv) *offenses relating to destructive devices under Section 4-501 of the Criminal Law Article, or*
- xv) *any conspiracy or solicitation to commit any of these offenses, or*
- xvi) *where any person has created a barricade situation and probable cause exists for the investigative or law enforcement officer to believe a hostage or hostages may be involved.*
- xvii) *where the person is a party to the communication or one of the parties to the communication has given prior consent to the interception.*

5. A law enforcement officer may intercept "a conversation concerning an emergency," Section 10-402(c)(5).

6. In all cases the interception of the conversation is authorized with the consent of the individual Section 10-402(c)(3).

NOTE: Nothing in this Order precludes an officer from VIDEO RECORDING any incident, encounter, contact or activity that occurs in a public place using BWC without using the audio option.

.15 PROCUREMENT OF BWC AND TRAINING:

1. The Commander, Patrol Division in consultation with Technical Services Division Commander will be responsible for procuring and purchasing BWC equipment. No other video/audio equipment shall be used in place of or in conjunction with BWC equipment without the prior knowledge and approval of the Commander, Patrol Division.
2. Personnel issued BWC will receive training on this policy, operation of the camera and its capabilities and alternate methods to notify persons of recordings with special needs or limited English capabilities prior to use.
3. Supervisors will receive training this policy and evidence.com use.

.20 PRE-USE INSPECTION AND SET-UP:

At the beginning of each shift an officer equipped with a BWC will:

1. Determine if BWC is functioning as designed. Any problem with BWC is to be brought to the IMMEDIATE attention of the on-duty supervisor as soon as it is discovered prior to or during the shift;
2. Ensure that the video camera is positioned and adjusted to record all events occurring in the officer's vision area as limited by the range of the camera lens;

3. The Axon camera app should be used on a smart phone to view the cameras perspective when mounted on the officer. Use of personal smart phones is discouraged.
4. The supervisor will initiate a help desk repair request and remove the camera from service.
5. The Commander TS will ensure the camera is repaired or replaced.

.25 OPERATION OF BWC

1. Video Camera Activation: BWC will be activated during lawful citizen contacts and investigations. Whenever BWC is deactivated during a contact, the reason for the deactivation will be audio recorded on the tape immediately prior to turning off BWC.

2. Therefore, when utilizing BWC during a citizen contact all personnel will:

- A. As soon as practicable, prior to any conversation with any individuals involved in an incident or stop, inform the parties that they are being both audio and video recorded (CJP Section 10-402(c)(2)(iii and iv);

NOTE: The Department teaches the following greeting as an officer's initial salutation: *I'm Officer _____ of the Frederick Police Department. For your safety as well as my own this encounter is being video and audio recorded.*

- B. Conduct the activity as appropriate and not deactivate the camera until the contact is complete.

- C. When a person is reporting a crime, providing information regarding a crime or ongoing police investigation, or claiming to be the victim of a crime and indicates they are uncomfortable being recorded:

- (1) The officer may offer the person with the option to have the sound or camera turned off. A request to turn off the Body Worn Camera should be recorded on the camera prior to turning it off,

- (2) If the person is being belligerent and uncooperative the officer may consider continuing the recording until the person is calm and cooperative or contact a supervisor for guidance.

- D. Officers may manually deactivate BWC at the scene of an accident or under other circumstances in which no enforcement action is intended and where the officer believes that video/audio recording serves no useful purpose. If BWC is deactivated under these circumstances the officer will record his reasons for deactivating BWC.

3. Officers will not surreptitiously or openly record private conversations or conversations that are not part of official business or investigations CJP Section 10-401(13)(i). This includes but is not limited to:

- A. Conversations between individuals not including the officer;
- B. Administrative or general discussions with other employees or supervisors;
- C. Personal activities;
- D. Privileged conversations (spouses, lawyers, FOP representative or supervisor)

4. Officers shall not activate the BWC in places where a reasonable expectation of privacy exists, such as hospital rooms, locker rooms, dressing rooms or restrooms.
6. Officers will not tamper with or modify recordings. If a prohibited activity has been recorded in error the officer will contact his supervisor.
7. The supervisor will ensure the video is tagged and notify IT Commander to have the video deleted after confirming the video was recorded in error.

.30 BWC EVIDENCE:

1. In the event that an officer makes an arrest, or believes that an incident which has been recorded using BWC possesses evidentiary value, the recording officer will:
 - A. Note the existence of the recording as evidence as appropriate in the report or arrest documentation of the incident and note the timestamps in the report of critical points in the video.
 - B. The Officer will tag the video prior to docking the camera for download.
 - (1) The video ID will be changed to the CR number in this format: complete year and 6 digit number 2016-000000;
 - (2) Select the appropriate category from the drop down menu;
 - (3) Rename the Title to the incident classification;
 - (4) See example below:

ID	CATEGORY	TITLE	FILE TYPE	OWNER	UPLOADED BY	UPLOAD DATE	RECORDED DATE	STATUS	DURATION
<input type="checkbox"/> 2015-057348	None	Assault/Resisting Arrest	Video	Dudley, Dennis	Dudley, Dennis	16 Jul 2015 - 17:27:39	16 Jul 2015 - 15:14:28	Active	0:45

2. The recording of the arrest of an individual(s) using a Body Worn Camera is subject to the same “rules of discovery” by the defense as any other physical evidence.
3. The State’s Attorney Office will have access to the recordings that have been tagged as evidence directly through Evidence.com.
4. In addition, officers should tag Use of Force, potential complaints or other incidents that may require supervisory review.

.35 REPRODUCTION OF BWC DIGITAL RECORDINGS:

1. ALL BWC DIGITAL RECORDINGS ARE THE PROPERTY OF THE FREDERICK POLICE DEPARTMENT AND ARE SUBJECT TO ALL RULES WHICH GOVERN THE USE AND DISPOSAL OF ANY DEPARTMENTAL PROPERTY. IN ADDITION, BWC DIGITAL RECORDINGS ARE OFFICIAL DEPARTMENTAL DOCUMENTS SUBJECT TO THE SAME RESTRICTIONS PLACED ON OTHER OFFICIAL DEPARTMENTAL RECORDS/REPORTS.
2. No copies or reproductions of recordings, pictures, audio, or any media recorded on a BWC can be produced by any method without the express permission of the Chief of Police.

3. In the event any departmental member requires a copy of a digital recording for any official law enforcement related reason other than as evidence in a traffic or criminal proceeding, such as for training purposes or performance evaluation, administrative investigations; they shall request a copy in writing via official channels through the Chain of command to the Division Commander. The request will state the specific incident to be “dubbed” and the specific reason for the copy of the digital recording.
4. In the event any non-departmental person requests a copy of a digital recording the request shall go through the Records Section as would any other request for copies of records. Upon the request’s approval it shall be forwarded to the TS Commander’s Office where a copy of the recording in question will be made and turned over to Records for appropriate distribution.
5. Because BWC digital recordings are official departmental records/documents, they are regulated by the same restrictions placed on other official law enforcement reports or records. Copies of BWC digital recordings shall only be released upon written authorization from the Chief of Police. The TS Commander, or his designee, shall be responsible for duplicating and distributing any copy of a BWC digital recording and shall handle all requests as outlined in this Order.
6. The Commander /TS Division shall charge the appropriate fee set by the Mayor and Board of Alderman for duplication of any BWC digital recording.

.40 REVIEW OF BWC DIGITAL RECORDINGS:

1. Authorization to view any BWC digital recording by any individual outside the Department shall only be granted by the Chief of Police except as officially ordered by the Court. Prosecutors and/or other official representatives of the criminal justice system who are acting in their official capacity may view BWC digital recordings.
2. Requests from the public to view or to obtain a copy of any BWC digital recording shall be handled in accordance with requests for public information. When deemed necessary and prior to the showing or distribution of a BWC digital recording, the Legal Advisor will review the request for public information and advise the Chief of Police as to its validity. In the event a vehicle stop or other incident recorded on BWC is to be released to the public, the officer(s) involved in the incident/vehicle stop will be notified that the digital recording is being released or viewed by the public (BWC digital recordings viewed in court or as part of a public hearing are excluded).
3. Supervisors and the Chain of Command may review any BWC digital recording as part of quality control management, Use of Force Evaluation, to answer citizen inquiries about an incident, to critique a recorded incident with personnel, as part of an administrative investigation or use a BWC digital recording as a training tool for roll call/in-service/specialized training.
4. Officers may review videos prior to completing reports or statement of charges. Officers should note items that are from the video that is included in the report.
5. Officer’s will not review videos after an Officer involved shooting until after making an initial statement (GO 720 .60 D). This is to protect the officer from influence on his original perceptions that lead to his decision process in using deadly force. The officer will then be allowed to review the video before making a detailed statement.

.45 RETENTION AND STORAGE BWC DIGITAL RECORDINGS:

BWC recordings will be retained on Evidence.com for a period of Ninety (90) days prior to erasure unless tagged for evidence or administrative retention.

1. Evidence.com:
 - A. Can only be accessed by officers who have been authorized by the Patrol Commander and been issued login credentials from Technical Services Division;
 - B. Officers will only be able to access their own video recordings;
 - C. Commanders and supervisors will have permissions to view all video recordings;
 - D. Maintains an audit trail of access, sharing and editing of video; and,
 - E. Maintains an original unedited video.
2. Videos maintained for evidence will be retained per guidelines in G.O. 833 and Records SOP-085.
3. Once a month, the Commander, TSD, or his designee will conduct a documented check of the Evidence.com software for proper functioning. This check will consist of a review of five (5) video files to ensure:
 - A. proper and timely uploading;
 - B. acceptable audio and video quality; and
 - C. automatic deletion of files over sixty (60) days old.
4. Administrative videos will be maintained per the guidelines of PSD or training.

.50 DEMONSTRATION OF BWC:

With the approval of the on-duty supervisor, personnel may “stage” an event and demonstrate BWC to interested parties. If an event is “staged” for demonstration purposes, personnel shall indicate on the recording the fact that the incident is being staged for demonstration purposes.

.60 PUBLIC RELEASE

This policy will be available for public release and will be shared and reviewed at Neighborhood Advisor Council meetings and other community forums when implemented and when significant changes are made.