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Olmsted County Sheriff's Office

Body Worn Camera Policy

Purpose:

The primary purpose of using a Body Worn Camera (BWC) is to capture evidence arising from peace officer-citizen encounters. This policy reflects a balance between the desire to establish exacting and detailed requirements and the reality that deputies must attend to their primary duties and the safety of all concerned, often in circumstances that are tense, uncertain, and rapidly evolving. This policy also sets forth rules governing access to and retention of BWC data.

Policy:

It is the policy of the Olmsted County Sheriff's Office (Office) to authorize and require the use of Office-issued BWC's as set forth below, and to administer access to BWC data as provided by law.

Scope:

This policy governs the use of BWC's in the course of official duties. It does not apply to the use of squad-based recording systems (MSS 13.825 Sub. 1(b)). The Sheriff or the Sheriff's designee may supersede this policy by providing specific instructions for the use of BWC's to individual deputies or providing specific instructions for the use of BWC's pertaining to certain events or classes of events, including but not limited to political rallies and demonstrations. The Sheriff or the Sheriff's designee may also provide specific instructions or standard operating procedures for BWC use to deputies assigned to specialized details, such as carrying out duties in courts or guarding prisoners in hospitals and mental health facilities.

The Sheriff or the Sheriff's designee may provide specific instructions for BWC use to deputies that are *Brady-Giglio* impaired. The Sheriff or the Sheriff's designee also may provide specific instructions for BWC use to deputies assigned to conduct daily courthouse functions such as providing security during court proceedings.

DRAFT

Definitions:

Body Worn Camera (BWC) means a device worn by a deputy that is capable of both video and audio recording of the deputy's activities and interactions with others or collecting digital multimedia evidence as part of an investigation.

BWC Administrator means designated Office personnel certified or trained in the operational use of BWC's, data storage and retrieval methods, and procedures that assign, track, and maintain BWC equipment. BWC Administrator(s) may also oversee needed repairs or replacement through the BWC vendor, control rights and access, and act as a liaison with the vendor. BWC Administrator(s) may also be responsible for the training of deputies on the BWC operation.

MGDPA or Data Practices Act refers to the Minnesota Government Data Practices Act, MSS 13.01 et seq.

Records Retention Schedule refers to the General Records Retention Schedule provided in Minnesota Statutes and Records Division Policy.

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. A "related civil or administrative proceeding" can and may include an Implied Consent hearing or forfeiture actions arising from an arrest or prosecution.

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 did not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a tow truck, or receiving generalized concerns from a citizen about crime trends in the community.

DRAFT

Adversarial means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward another, 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 Footage is a BWC recording that results from a deputy's inadvertence or neglect in operating the deputy's BWC provided that no portion of the resulting recording has evidentiary or administrative value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in locker rooms, restrooms, and recordings made while deputies 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 deputy is on duty and performing authorized law enforcement services on behalf of the Olmsted County Sheriff's Office.

Use and Documentation:

Deputies may use only agency issued BWC's in the performance of their official duties for the agency or when otherwise performing authorized law enforcement services as an employee of the Olmsted County Sheriff's Office (MSS #13.825 Sub. 6)).

Deputies who have been issued BWC's shall operate and use them consistent with this policy and the manufacturer's instructions. Deputies shall check their issued BWC's at the beginning of each shift to make sure the devices are functioning properly. Deputies noting a malfunction during the testing or at any other time shall report the malfunction to the deputy's supervisor and shall document the report in writing (MSS # 626.8473, Sub. 3 (b)(3)). "In Writing" can and may include an email to the BWC Administrator, a note to the BWC Administrator, or other writing that the agency maintains to show compliance with the above listed statute.

Deputies should wear their issued BWC's at the location on their body and in the manner specified in training.

Deputies must document BWC use and non-use as follows:

DRAFT

Whenever a deputy makes a recording, the existence of the recording shall be documented in the deputy's written narrative report or incident notes in the *Aegis Mobile* software.

Whenever a deputy fails to record an activity that is required to be recorded under this policy or captures only part of the activity, the deputy must document the circumstances and reasons for not recording in a written narrative report or incident notes in the *Aegis Mobile* software. Deputies shall inform their immediate supervisor of the failure to record. Supervisors shall inform the BWC Administrators of the failure to record and review the narrative report or incident notes. Supervisors shall initiate any corrective action deemed necessary as soon as practicable. Corrective action may be initiated and imposed consistently with the current collective bargaining agreement and the Minnesota Peace Officer Discipline Procedure Act (MSS #626.89)

The Olmsted County Sheriff's Office will maintain the following records and documents relating to BWC use, which are classified as public data (MSS #13.825 Sub. 5):

The total number of BWC's owned by the Sheriff's Office.

A daily record of the total number of BWC's actually deployed and used by deputies in their assigned patrol areas.

The total amount of recorded BWC data collected and maintained.

This policy, together with the Records Retention Schedule.

General Guidelines for Recording:

Deputies shall activate their BWC when anticipating that they will be involved in, become involved in, or witness other deputies of this agency involved in a pursuit, *Terry* stop of a motorist or pedestrian, search, seizure, arrest, use of force, adversarial contact, and during other activities likely to yield information having evidentiary value. However, deputies need not activate their BWC when it would be unsafe, impossible, or impractical to do so. Such instances of not recording when otherwise required must be documented as specified above in the section entitled, "Use and Documentation". (MSS #626.8473 Sub. 3(b)(4)).

Deputies have the discretion to record or not to record general citizen contacts. (MSS #626.8473 Sub. 3(b)(4)).

DRAFT

Deputies have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded (MSS #626.8473 Sub. 3(b)(4)).

Nothing in this policy or guidelines prevents a deputy from informing an individual that the encounter is being recorded. Deputies may find it useful to inform an individual that the encounter is being recorded in order to have a civilizing effect during an incident.

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 deputy having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. Deputies shall state the reasons for ceasing the recording on camera before deactivating their BWC's. If circumstances change, deputies shall reactivate their BWC's as required by this policy to capture information having evidentiary value. (MSS #626.8473 Sub. 3(b)(6)).

As an example, a deputy may state a phrase similar to the following to announce they will no longer be recording: "Everything has settled down and the action appears to be over."

Deputies shall not intentionally block the BWC audio or visual recording functionality to defeat the purpose of this policy. (MSS #626.8473 Sub. (3)(b)(6)).

Intentional interference with the recording functionality of the BWC without sufficient justification to do so may constitute grounds for corrective action.

This policy does allow for momentary blocking of the BWC in the following circumstances: undressed bystander within a private residence, images of a mobile computer screen displaying private or confidential data, audio of deputies conferring about an arrest decision or tactical situation.

Notwithstanding any other provision in this policy, deputies shall not use their BWC's to record other agency personnel during non-law enforcement related activities, such as during pre-and post-shift briefings, during meal breaks, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation. (MSS #626.8473 Sub. 3(b)(4)).

DRAFT

Special Guidelines for Recording:

Deputies may, in the exercise of sound discretion, determine (MSS #626.8473 Sub. 3(b)(4)):

To use their BWC's to record any police-citizen encounter if there is a reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.

To use their BWC's to take recorded statements from persons believed to be victims of and witnesses to a crime, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.

In addition,

Deputies need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value.

Deputies shall activate their BWC's when dealing with individuals believed to be experiencing a mental health crisis or event. BWC's shall be activated as necessary to document any use of force and the basis for that use of force and any other information having evidentiary value.

Deputies shall use their BWC and squad-based audio-visual systems to record their transportation and the physical transfer of persons in their custody to hospitals, detoxification facilities, mental health facilities, juvenile detention facilities, and adult detention facilities, but otherwise should not record in these facilities unless the deputy anticipates witnessing a criminal event or being involved in or witnessing an adversarial encounter or use of force incident.

Deputies assigned to the Transport Division of the Olmsted County Sheriff's Office shall be mindful of discovery issues when transporting detainees who are currently involved in criminal proceedings. Transport Deputies shall advise the detainees that the detainees are not to discuss their current or pending criminal proceedings while in transport. Transport Deputies are not required to activate their BWC's unless they foresee an adversarial

DRAFT

encounter, use of force incident, or witness criminal activity during the transport.

Downloading and Labeling Data:

Each deputy using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her BWC to Evidence.com by the end of his or her shift. However, if the deputy 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 deputy's BWC and assume responsibility for transferring the data from it. Deputies shall not go on scheduled days off without transferring the BWC data.

Deputies shall label the BWC data files at the time of the video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Labeling and transferring BWC data shall be done in accordance with the BWC manufacturer's instructions and the Records Retention Schedule.

Labeling and flagging of files TBD

Administering Access to BWC Data:

Data Subjects. Under Minnesota law, the following are considered data subjects for the purposes of administering access to BWC data:

Any person or entity whose image or voice is documented in the data (MSS #13.825 Sub. 4(a)).

The deputy who collected the data. (MSS #13.825 Sub. 4(a)).

Any other deputy or peace officer whose voice or image is documented in the data, regardless of whether that deputy or peace officer is or can be identified in the recording. (MSS #13.825 Sub. 4(a)).

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:

BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities. (MSS #13.825 Sub. 2(a)).

However,

DRAFT

Some BWC data is classified as confidential (see below) and;

Some BWC data is classified as public (see below).

Confidential Data:

BWC data that is collected or created as part of an active criminal investigation is confidential while the investigation remains active. (MSS #13.82 Sub. 7) This classification takes precedence over the “private” classification listed above and the “public” data classification listed below (MSS #13.82 Sub. (2)(a)(3)).

Public Data:

The following BWC data is public:

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. (MSS #13.825 Sub. 2(a)(1)).

Data that documents the use of force by a peace officer that results in substantial bodily harm. (MSS #13.825 Sub. 2(a)(1). “Substantial bodily harm” means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily member or organ, or which causes the fracture of any bodily member. (MSS #609.02 Sub. 7).

Data that a data subject requests to be made accessible to the public, is 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 deputies or other undercover peace officers must also be redacted. (MSS 13.825 Sub. 2(a)(2); MSS #13.82 Sub. 17(a))

Data that documents the final disposition of a disciplinary action against a public employee. (MSS #13.825 Sub. 2(a)(4); MSS #13.43 Sub. 2(5))

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. (MSS #13.825 Sub. 2(a)(5) For instance, data that reveals protected

DRAFT

identities under MSS #13.82 Sub. 17 should not be released even if it would otherwise fit into one of the public categories listed above.

Access to BWC Data by Non-Employees:

Deputies shall refer members of the media or public seeking access to BWC data to the Records Division, who shall process the request in accordance with the MGDPA and other governing laws. In particular:

An individual shall be allowed to review recorded BWC data about that person and other data subjects in the recording. (MSS #13.825 Sub. 4(b)),

Except when,

The data was collected or created, and is being maintained as part of an ongoing, active criminal investigation, (MSS #13.82 Sub. 7)

And,

Access shall not be granted to portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as the identities of informants, certain witnesses, juvenile offenders, and victims of criminal sexual conduct or sex trafficking. (MSS #13.82 Sub. 17)

An individual data subject shall be provided with a copy of the recording upon request but subject to the following guidelines on redaction before the copy is provided: (MSS #13.825 Sub. 4(b))

Data on other individuals in the recording that do not consent to the release must be redacted.

Data that would identify undercover deputies or other undercover peace officers must be redacted.

Data on other deputies or other peace officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.

Access By Peace Officers and Law Enforcement Employees:

DRAFT

No employee may have access to the agency's BWC data except for legitimate law enforcement or data administration purposes. (MSS #13.825 Sub. 7(b))

In addition,

Deputies may access and view stored BWC data only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Deputies 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.

Agency personnel shall document their reasons for accessing stored BWC data at the time of each access according to the manufacturer's instructions. Agency personnel are prohibited from accessing BWC data for non-business reasons. Agency personnel also are prohibited 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.

Agency personnel 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.

Other Authorized Disclosers of Data:

Deputies may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by MN Statute #13.82 Sub. 15, as may be amended from time to time. Deputies 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 the video.

In addition,

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 disclosure. (MSS #13.825 Sub. 8 (a))

BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

DRAFT

BWC data that are classified as confidential or protected nonpublic pursuant to MSS #13.82 Sub. 7 or as private or nonpublic under MSS #13.825 may be accessible to any person, agency, or the public if the agency determines that the access will aid the law enforcement process, promote public safety, or dispel widespread rumor or unrest. (MSS #13.82 Sub. 15)

Data Safety Safeguards:

Personally owned devices, including but not limited to, computers and mobile devices, shall not be programmed or used to access or view BWC data.

Access to BWC data from county owned or personally owned and approved devices shall be managed according to established Sheriff's Office and Olmsted County ITS policies.

Deputies shall not intentionally edit, alter, or delete any BWC recording unless otherwise expressly authorized by the Sheriff and the Sheriff's designee.

As required by MN Statute #13.825 Sub. 9, as may be amended from time to time, the Olmsted County Sheriff's Office shall obtain an independent biennial audit of its BWC program.

Agency Use of Data:

At least once per month, supervisors shall randomly review BWC recordings made by each deputy to ensure the equipment is operating properly and deputies are using the devices appropriately and in accordance with this policy, as well as to identify any performance areas in which additional training or guidance is required. (MSS #626.8437 Sub. 3(b)(8))

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 deputy misconduct or performance.

Nothing in this policy limits or prohibits the use of the BWC data as evidence of misconduct or as a basis for discipline.

Deputies should contact their respective supervisor to discuss retaining and using BWC footage for training purposes. Deputy objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field Training Deputies may utilize BWC data with trainees for the purpose of providing coaching, mentoring, and feedback on the trainee's performance.

DRAFT

Data Retention (MSS #626.8473 Sub. 3(b)(1):

All BWC data shall be retained for a minimum period of 90 days. (MSS #13.825 Sub. 3)

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. (MSS #13.825 Sub. 3(b)(1)(i))

Certain kinds of BWC data must be retained for a minimum period of 7 years:

Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a narrative report or supervisory review. (MSS #13.825 Sub. 3 (b)(1)(ii))

Data documenting circumstances that have given rise to a formal complaint against a deputy. (MSS #13.825 Sub. 3 (b)(2))

Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule or Records Division Policy. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable retention period.

Subject to 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. (MSS #13.825 Sub. 3 (a))

The Olmsted County Sheriff's Office shall maintain an inventory of BWC data having evidentiary value. The inventory shall be maintained in accordance with the manufacturer's instructions or at the direction of the BWC Administrator.

Compliance:

Supervisors and the BWC Administrator 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 MSS #13.09, MSS #626.8473 Sub. (b)(8).

MN Statute #13.09 reads as follows:

DRAFT

- (a) Any person who willfully violates the provisions of this chapter or any rules adopted under this chapter or whose conduct constitutes the knowing unauthorized acquisition of not public data, as defined in section #13.05 Sub. 1, is guilty of a misdemeanor
- (b) Willful violation of this chapter, including any action subject to a criminal penalty under paragraph (A), by any public employee constitutes just cause for suspension without pay or dismissal of the public employee.