

## PROSPECT PARK POLICE DEPARTMENT POLICY

<b>Effective Date</b> 01/11/2022			<b>Number</b> 22-01		
<b>Subject</b> Body Worn Cameras					
<b>Reference:</b>				<b>Special Instructions</b>	
<b>Issuing Authority/Chief Executive Officer</b>			<b>Distribution</b> All Personnel		<b>No. Pages</b> 23
<b>Revision Date</b>	<b>Page #</b>	<b>Approved</b>	<b>Revision Date</b>	<b>Page #</b>	<b>Approved</b>

**PURPOSE** The purpose of this policy is to maintain uniform guidelines for the lawful use and operation of the agency-authorized body worn camera recording system (BWC). The goals and objectives in deploying BWCs are the accurate documentation of interactions between law enforcement and members of the public, arrests, and other critical incidents. Further, this policy maintains protocols for the maintenance, storage, retrieval, and preservation of recordings to maintain the lawful chain of custody.

**POLICY** It is the policy of the Prospect Park Police Department to utilize body worn video/audio cameras (BWC) to assist agency personnel in the performance of their duties by providing an accurate and unbiased recorded account of an incident.

All personnel shall use this equipment (including accessing and replicating recordings) consistent with manufacturer’s guidelines, applicable laws and statutes, this policy, and those policies or guidelines issued by the New Jersey Attorney General and the Passaic County Prosecutor’s Office. Failure to use this technology in accordance with this policy, applicable laws and statutes, and those policies or guidelines issued by the New Jersey Attorney General and Passaic County Prosecutor’s Office can result in disciplinary action. Any willful or repetitive violations of this policy and/or *Attorney General Law Enforcement Directive 2021-5* shall be promptly reported to the Passaic County Prosecutor’s Office. The Passaic County Prosecutor may take such actions as are reasonable and necessary to ensure compliance with *New Jersey Attorney General Directive 2021-5* and to prevent future violations.

The Prospect Park Police Department website/webpage shall contain a clear statement that this department utilizes body worn cameras. The website/webpage posting shall include an image showing of what the device looks like and how it is to be worn by uniformed officers so that citizens will be able to determine whether an officer is equipped with the device.

## PROCEDURES

### I. DEFINITIONS

- A. For purposes of this policy, the following terms are defined:
1. Activate – means to actuate (put into operation) the recording mode/function of a BWC.
  2. Advisement – a statement made by an officer at the outset of using a BWC camera to record a communication, conversation, or interaction with a citizen for the specific purpose of informing the citizen that the communication or conversation is being recorded.
  3. Attorney General (AG) – means the Attorney General of the State of New Jersey.
  4. Body worn camera (BWC) – is an officer worn device that makes an electronic audio/video recording of activities that take place during any law enforcement action. The term does not include any form of electronic recording device worn by a law enforcement officer while acting in an undercover capacity nor does the term include an electronic recording device when used to comply with the requirements of Court Rule R. 3:17 (electronic recording of station house custodial interrogations).
  5. Constructive authority – involves the use of an officer's authority to exert control over a subject (see this department's policy on *Use of Force*), except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest (e.g., "...*show me your hands*," "...*get out of the vehicle*", etc.), or directed against any person if the officer has unholstered a firearm or CED (e.g., "...*move out of the way*", "...*get down*", etc.).
  6. Deactivate – means to shut off the recording mode of a BWC.
  7. Digital evidence – includes photographs, images, audio, and video recordings that are stored digitally.
  8. Evidence.com – A secure, cloud-based storage system, which is externally hosted and available to users. Evidence.com is used to organize, classify, manage, view, and archive digital evidence. Evidence.com tracks and provides an audit of all activity to protect the chain of custody.
  9. Evidence-transfer-manager (ETM) – a docking station for the AXON BWC and battery. When the BWC is docked, video/audio data stored on the camera is automatically downloaded to Evidence.com. The ETM also charges the battery and camera.
  10. Force – has the same meanings as defined in this department's policy on *Use of Force*.

11. Investigation of a criminal offense – means any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, driving while intoxicated, including but, not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense; or canvassing an area, neighborhood, or premises for potential witnesses to a criminal offense.
12. Law enforcement officer or officer means a sworn officer employed by the Prospect Park Police Department, except when referring to officers of another law enforcement agency.
13. Proactive enforcement team – includes officers who are typically assigned to target vice, drugs, organized street crime, violent crime and/or any other targeted enforcement. Unlike officers who are responsible for responding to traditional calls for service, these officers are typically assigned the singular responsibility of addressing these activities (e.g., street crime unit, crime suppression unit, etc.). The nature of their work may include being dressed in traditional uniform, modified uniform, or plain clothes. These officers may work alongside undercover officers, conduct surreptitious surveillance, engage in high intensity enforcement via motor vehicle/pedestrian stops and/or interact with confidential informants or witnesses who wish to remain anonymous.
14. School – means a public or nonpublic elementary or secondary school within this State offering education in grades kindergarten through 12, or any combination of grades, at which a child may legally fulfill compulsory school attendance requirements.
15. Subject of the video footage – means any law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body worn camera recording and shall not include a person who only incidentally appears on the recording.
16. Tactical team – is a group of officers who are specially selected, trained, and equipped to handle high-risk incidents including, but not limited to, those involving snipers, barricaded persons, warrant services, apprehensions, acts of terrorism, and other situations or activities as deemed necessary by command leadership
17. Tagging – is an electronic labeling of an electronic file captured by a BWC.
18. Undercover officer – is a law enforcement officer operating with an assumed identity and/or disguise for the purposes of gaining the trust of an individual or organization to learn or confirm confidential information or to gain the trust of targeted individuals to gather information or evidence. Plain-clothed officers and detectives are not considered undercover officers unless working with an assumed identity and/or disguise.
19. Youth facility – means a facility where children assemble under adult supervision for educational or recreational purposes, such as day-care centers, youth camps, residential facilities, etc.

## II. GENERAL ADMINISTRATION

- A. While visual and audio evidence may be captured on the recordings, the use of BWC is not intended to document all evidentiary material relevant to court or administrative proceedings, but it can serve to supplement an officer's senses and eyewitness account.
  - 1. There is no intent to utilize the BWC as a management tool to punish officers for minor departmental rule infractions.
  - 2. Officers shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters.
  - 3. The use of BWCs does not eliminate or minimize the requirement to provide thorough written documentation of an incident.
  - 4. Persons reviewing BWC recordings must also consider that the video captured by a BWC is merely one piece of evidence that provides only one perspective regarding the situation that has been recorded.
- B. Adequate safeguards are necessary to ensure that this technology is used in a non-discriminating way and used to properly document evidence.
- C. These recordings will serve the following purposes:
  - 1. Recordings serve as protection for police officers when there are complaints about their conduct or professionalism during encounters with the public.
  - 2. The recordings can be introduced into evidence in criminal and motor vehicle prosecutions as well as in civil litigation.
  - 3. The recordings can resolve disputes concerning what occurred during incidents, thereby protecting both the public and the officers involved.
  - 4. When complete recall is not possible, such as when multiple events are happening simultaneously or out of an officer's line of sight, an audio/visual recording can provide an accurate record of events.
  - 5. Subject to the restrictions in this policy, supervisors will be able to view the recordings and select portions to use to train officers in safety, field training, interpersonal skills, proper police procedures, and legal doctrines.
  - 6. Recordings can permit supervisors to undertake more meaningful performance evaluations.
  - 7. Recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the public.
  - 8. Recordings enhance management's ability to train personnel in proper police procedures.
- D. Repairs to any BWC equipment shall only be performed under the direction of the BWC administrator or his/her designee.

- E. The Chief of Police or his/her designee shall maintain a training program on the lawful and proper use of BWC equipment. Only officers who have received training in the use of BWC are permitted to use this system and must demonstrate a satisfactory degree of familiarity and efficiency in the use of this system. The proper use of a BWC is considered an essential job function.
1. The BWC administrator is responsible for conducting or scheduling:
    - a. Initial training of all newly hired officers or to officers who have not been previously trained; and
    - b. Periodic refresher training will be provided to ensure continued effective use and operation of the equipment, and to incorporate changes, updates, or other policy revisions as necessary or required; and
    - c. Supplemental training as a component of the performance improvement or progressive disciplinary process.
    - d. New officers can be trained during their field training and evaluation period.
- F. BWC is intended for official police department use only and are not to be used for frivolous or personal activities. Intentional misuse or abuse of the units will result in disciplinary action.
- G. All BWC equipment, recording media, images, audio, and related metadata are the sole property and intellectual property of the Prospect Park Police Department and will not be copied, released, or disseminated in any form or manner outside the parameters of this policy without the expressed written consent of the Chief of Police.
- H. Under no circumstances will any employee of the Prospect Park Police Department make a personal copy of any recorded event without the permission of the Chief of Police or in accordance with section V of this policy. This restriction also applies to any employee who entice/uses another to make a personal copy of any recorded event.
- I. Officers will use only those devices approved and issued by the Chief of Police. Wearing any personally owned video/audio recorder is not authorized without the expressed permission of the Chief of Police, the Passaic County Prosecutor's Office, or the New Jersey Division of Criminal Justice. The use of BWCs with electronically enhanced audio / visual capabilities, such as infrared vision features, is not authorized.
- J. BWCs shall be used only in conjunction with official law enforcement duties.
1. Officers engaged in undercover operations or surveillance activities are not required to utilize BWCs.
  2. BWCs shall not be used to record:
    - a. Encounters with undercover officers or confidential informants.

- b. Hostage negotiations by hostage negotiators.
- c. Crime scene processing by crime scene technicians, detectives, or officers trained in crime scene processing.
- d. Strip and body cavity searches.
- e. When on break or otherwise engaged in personal activities.
- f. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.
- g. When engaged in police union business.
- h. When involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interaction (except for internal affairs interviews).
- i. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording; see section III.A of this policy.
- j. While discussing criminal investigation strategies.

### **III. INCIDENTS TO RECORD**

- A. BWCs allow for a clearly documented, first-hand, and completely objective account of an incident and will produce the maximum amount of information regarding the incident to be captured. Therefore, all personnel assigned to or assisting in that event shall activate their BWC immediately upon acknowledging dispatch to a call for service or in the performance of a proactive event as soon as is safely possible. This will allow the maximum amount of information regarding the incident to be captured, such as events that transpire while on the way to a call for service and violations committed by a motorist during a motor vehicle stop.
- B. Except when otherwise restricted in this policy, officers shall video and audio record all law enforcement activity including any interaction with a civilian. However, if an immediate threat to the officer's life or safety makes activating the BWC impossible or dangerous, the officer shall activate the body worn camera at the first reasonable opportunity to do so. Examples of such required recordings include, but are not limited to:
  - 1. All traffic stops from the initiation of the stop until the stop is concluded, including sobriety testing.
  - 2. Investigation of any kind of motor vehicle offense.
  - 3. Investigative detentions/field interviews.
  - 4. Any call for service related to a violation or suspected violation of possessing or consuming marijuana, hashish, or cannabis item.
  - 5. An officer is responding to a call for service and is at or near the location to which the officer has been dispatched.

6. The officer is conducting a motorist aid or community caretaking check.
7. Stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints, etc.
8. Criminal investigations (not to include crime scene processing).
9. Arrests.
10. Drug recognition expert (DRE) evaluations.
11. Overdose and suspected overdose investigations.
12. Motor vehicle and foot pursuits.
13. Interviews of witnesses when conducting investigations of criminal or motor vehicle violations/offenses (not to include undercover investigations or related surveillance activities).
14. When conducting a custodial interrogation of a suspect unless the interrogation is otherwise being recorded in accordance with Rule 3:17 (electronic recordation of stationhouse interrogations).
15. Warrantless searches (all types, including frisks, vehicle searches, and consent searches, etc., but not strip or body cavity searches).
16. Out-of-court identifications (i.e., show ups, lineups, etc.).
17. Search warrant execution.
18. Arrestee/prisoner transportation, whether to a law enforcement facility, county jail or other place of confinement, or to a hospital or other medical care or mental health facility.
19. When an officer uses constructive authority or force, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution (must be documented by narration on the recording and/or in any investigation report).
20. Domestic violence investigations.
21. Special events or projects, including but not limited to crowd control, unruly crowds, or any incident requiring activation of the all-hazards or emergency operations plan.
22. Strikes, picket lines.
23. When an officer is engaged in a police response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or any other officer on the scene may be required to employ constructive authority or force.

24. When an officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing police actions/activities.
  25. Any contact that becomes adversarial when the BWC has not already been activated.
- C. BWC shall be activated when an officer receives a dispatched assignment to any incident listed in subsection II.B (above) or when engaged in any self-initiated activity involving any incident listed in subsection II.B (above).
1. At no time is an officer expected to jeopardize his/her safety or the safety of another person to immediately activate his/her issued BWC into event mode.
  2. Any BWC not immediately activated into event mode due to the safety of an officer or another person being presently jeopardized, shall be placed into event mode as soon as possible.
- D. Notwithstanding any other provision of this policy, when an officer equipped with a BWC is dispatched to or otherwise goes to the scene of an incident knowing or reasonably believing that police deadly force has been or is being employed, or to a scene where an officer has requested emergency assistance (e.g., an officer in distress, shots fired, etc.), the officer shall activate his/her BWC before arriving at the scene unless impracticable.
- E. BWC shall remain activated for the entire duration of a civilian contact required in section III.B above until the officer has departed the scene and the officer has notified dispatch that the event is closed.
- F. Notwithstanding any other provision of this policy, an officer while at the scene of a police deadly-force event, pursuit resulting in a death or serious bodily injury, in-custody death, or the on-scene investigation of such events shall not deactivate his/her BWC unless instructed to do so by the assistant prosecutor or deputy attorney general supervising the investigation of the deadly force incident pursuant to *Attorney General Law Enforcement Directive 2019-4*. The assistant prosecutor, deputy attorney general, or his/her designee supervising the investigation may provide such instruction telephonically.
- G. When a BWC is activated to transport an arrestee/prisoner, it shall always remain activated while the BWC-equipped officer is in the presence of the arrestee and until the arrestee is secured in the processing room or a cell, or until custody of the arrestee has been transferred to county jail personnel, or until the arrestee is with hospital/medical/mental health personnel and the officer is no longer in the presence of the arrestee.
- H. When wearing a BWC, officers shall notify the subject of the recording that they are being recorded unless it is unsafe or unfeasible to provide such notification. Such notification shall be made as close to the inception of the encounter as is reasonably possible.
1. If the officer decides not to provide notification of BWC activation because it is unsafe or unfeasible to do so, the officer shall document the reasons for that decision in the incident/supplemental report of the incident and/or by narrating the reasons on the BWC recording.



2. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
  - I. Prior to entering a private residence, officers shall notify the occupant that the occupant is being recorded and, if the occupant requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that the officer will be required to use constructive authority or force.
  - J. When interacting with an apparent crime victim, officers shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded and, if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the body worn camera.
  - K. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, if the person requests that the officer discontinue use of the body worn camera, officers shall evaluate the circumstances and, if appropriate, discontinue use of the body worn camera.
  - L. If a civilian inquires of an officer whether the officer is equipped with a BWC or inquires whether the device is activated, the officer shall answer truthfully unless the Passaic County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, has expressly authorized the officer to make a covert electronic recording.
    1. Officers may deactivate/mute a BWC when a civilian conversing with the officer requests that the device be turned off under circumstances where it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected.
      - a. Officers shall not suggest to the person that the BWC should be deactivated/muted; nor shall the officer ask the person whether he or she would prefer that the BWC be deactivated/muted. Rather, the request for deactivation/muting must be self-initiated by the civilian. The officer may explain the consequences of deactivation (e.g., evidence relevant to a criminal investigation will not be recorded).
      - b. In deciding whether to deactivate/mute the BWC, the officer shall consider the privacy and safety interests of the person requesting deactivation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide is important to the investigation yet, is not critical to require recording.
    2. Officers may deactivate/mute a BWC when a person, other than an arrestee, is seeking emergency medical services for him or herself or another and requests that the BWC be deactivated.
    3. When an officer deactivates/mutes a BWC:
      - a. The conversation between the officer and the civilian concerning the request for deactivation should be electronically recorded; and

- b. The officer, before deactivating/muting the BWC shall narrate the circumstances of the deactivation (e.g., "...I am now turning off (muting) my BWC as per the victim's request."); and
  - c. The officer shall report the circumstances concerning the deactivation/muting to his/her supervisor as soon as is practicable; and
  - d. The officer shall document the circumstances of the deactivation/muting in any investigation report concerning the incident under investigation, including the time of activation and/or deactivation.
- 4. If an officer declines a request to deactivate/mute a BWC, the reasons for declining the request must be memorialized on the recording and documented and shall be reported to his/her supervisor as soon as it is safe and practicable to do so.
  - a. If the officer declines a deactivation/mute request, the officer immediately shall inform the person making the request of that decision.
  - b. Officers are prohibited from misleading the person making the deactivation/mute request into believing that the BWC has been turned off when in fact it is operating unless the Passaic County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, expressly has authorized covert recording.
- 5. Officers can deactivate/mute a BWC when specifically authorized to do so by an assistant prosecutor for good and sufficient cause as determined by the assistant prosecutor. When an officer deactivates/mutes a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation/muting indicating the assistant prosecutor who authorized the deactivation (e.g., "...I am now turning off (muting) my BWC as per the instruction of assistant prosecutor (insert name).").
- 6. Officers may deactivate/mute a BWC while participating in a discussion pertaining to criminal investigation strategy and planning (e.g., to consider what investigative techniques to pursue, such as what questions to pose to a suspect or witness, whether to summon a drug/explosives detection canine, whether to apply for a search warrant, whether to request permission to conduct a consent search, or to conduct another type of warrantless search, etc.), provided that the strategy/planning discussion is not conducted in the immediate presence of a civilian and further provided that the BWC-equipped officer is not actively engaged in the collection of physical evidence (i.e., conducting a search).
- 7. If an officer is required to deactivate the BWC when entering a school, house of worship, health care facility, substance abuse treatment center, etc., the officer shall narrate the reason for deactivation (e.g., "...I am entering a school building where children are present."). The BWC shall be reactivated as soon as it is safe and practicable to do so when the circumstances requiring deactivation no longer exist (e.g., the officer is conversing with an

adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC). Officers assigned to a school (e.g., school resource officer) should not activate their BWC unless involved in any incident listed in section III.B of this policy.

8. If a BWC captures the image of a patient in a substance abuse treatment facility, the Chief of Police or his/her designee shall notify the Passaic County Prosecutor or his/her designee to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information (42 USC § 290dd-2, 42 CFR §23.1 to 23.41). The recording shall not be accessed without the permission of the Passaic County Prosecutor or his/her designee. (Note that destruction of the recording would be inappropriate until it has been determined that it had not captured exculpatory information that must be provided to a defendant in discovery.)
  9. In any instance when a BWC was deactivated/muted pursuant to this section, the device shall be reactivated as soon as it is safe and practicable to do so when the circumstances justifying deactivation/muting no longer exist (e.g., the interview of the person requesting deactivation/muting is completed, etc.) and the officer would otherwise be required to activate/unmute the BWC.
- M. Officers shall not activate a BWC, and shall deactivate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would capture the image of an undercover officer or confidential informant or otherwise would pose a risk to the safety of an undercover officer or confidential informant, unless such activation is expressly authorized by a supervisor, or unless the exigency of the situation and danger posed to an officer require that the encounter/incident be recorded, in which event the officer shall inform their supervisor that the image of an undercover officer or confidential informant was recorded. The BWC shall be activated/reactivated as soon as it is safe and practicable to do so when the risk of capturing the image of an undercover officer or confidential informant no longer exists.
- N. In the event that a BWC worn during the execution of tactical operations (e.g., SWAT/ERT/ESU operations, execution of arrest and/or search warrant, etc.) records confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms, techniques to convince persons to open doors, etc.), the recording shall be tagged accordingly to prevent its unauthorized release.
- O. BWC shall be deactivated and removed while in the ALCOTEST area when the ALCOTEST device is being used. Nothing herein shall be construed to preclude the use of a BWC to record the behavior of a person arrested for driving while intoxicated other than while the person is in the ALCOTEST area while the ALCOTEST device is being operated. If this provision requires deactivation of a BWC, the officer shall narrate the reasons for deactivation (e.g., "*...I am deactivating the BWC because the suspect is about to take a breath test*"), and the BWC shall be reactivated when safe and practicable to do so following the completion of the breath testing operation.

- P. Officers shall not activate a BWC while in a courtroom during court proceedings, unless the officer is responding to a call for service or is authorized to use constructive force or authority, or unless the presiding judge expressly authorizes such activation.
- Q. When a BWC is activated, officers are encouraged to provide narration where practical and appropriate to augment the value of the recording and to provide clarity for the viewer.
  - 1. If possible, narrate the circumstances at the start of the encounter audibly so that the recordings on the BWC will be easier to locate if review of the recording is necessary at a later time (e.g. an officer arriving upon the scene of a serious motor vehicle collision may narrate the recording by stating as the BWC is activated "...Officer Doe coming upon the scene of a serious motor vehicle crash at the corner North 8<sup>th</sup> St and Brown Ave").
  - 2. Officers can also audibly narrate or mark significant events while recording and provide details of the marked segments.
- R. Non-law enforcement personnel shall not be allowed to review the recordings at the scene of contact. Officer complaints shall be handled in accordance with the policies set forth in this department's policy on *Internal Affairs*. All other requests to view and/or obtain footage by the public shall be handled in accordance with section V of this policy.
- S. If an officer fails to activate the BWC, fails to record the entire event contact, or interrupts the recording, the officer shall document in the applicable incident report the reason why a recording was not made, was interrupted, or was terminated.

#### **IV. OFFICER AND SUPERVISORY RESPONSIBILITIES**

- A. BWCs will be assigned to each officer. When on duty, the device shall be worn as an authorized component of the uniform of the day and utilized daily consistent with the requirements and restrictions in this policy. Officers shall not utilize the BWC of another without the expressed permission of a supervisor.
  - 1. Officers are not required to activate their BWCs in police headquarters unless they are investigating a walk-in complaint, processing an arrestee, or other similar related functions.
  - 2. Detectives and staff officers shall wear BWCs when conducting arrests and while engaged in field duties (e.g., road coverage, search warrant executions, raids, etc.) consistent with the requirements and restrictions in this policy.
  - 3. BWCs shall be worn and used on all extra duty assignments except for traffic direction/control extra duty jobs.
  - 4. Officers shall also wear and use a BWC consistent with this policy when:
    - a. On aggressive driving, DWI interdiction assignments, or other proactive enforcement team.

- b. When assigned to front desk assignments and interacting with the public on a law enforcement matter.
  - c. When assigned to or assisting any tactical team in the field.
5. Officers/detectives on loan to any outside agency, tactical team, proactive enforcement team, or task force shall use the agency issued BWC consistent with this policy, including restrictions, and any guidelines issued by the outside agency or task force. Such officers/detectives shall report any potential conflicts between this policy and the outside agency/task force's directives to the Chief of Police or his/her designee as soon as practicable.
6. BWC equipment is the responsibility of the assigned officer and shall be used with reasonable care to ensure proper functioning.
7. When not in use, BWCs shall be stored in their charging stations.
8. Officers shall take their assigned BWCs at the beginning of their shift and shall return their assigned BWC to its charging sleeve at the end of the shift.
9. Officers shall inspect their BWC at the commencement of each shift or tour of duty to ensure both video and audio recording readiness of the system. The inspection shall include, but is limited to:
  - a. Ensuring that the battery is fully charged; and
  - b. Ensuring that the BWC has sufficient memory to complete the tour of duty; and
  - c. Ensuring the proper positioning of the BWC on his/her uniform or outermost garment facing forward or other approved area in accordance with training.
  - d. To the extent possible, officers are responsible for ensuring the BWC remains in a position to allow the recording of an encounter or incident.
1. When conducting the pre-shift inspection, the officer shall activate the BWC and verbally state the date, time, and that a pre-shift inspection is being conducted.
  - a. Malfunctions shall be brought to the immediate attention of a supervisor.
  - b. If available, procure a replacement BWC.
  - c. Units that are not functioning properly will not be deployed until repaired.
  - d. Report all malfunctions and damage to the BWC administrator as soon as practicable.

2. BWCs SHALL NOT be brought home, left in a vehicle, or turned over to another officer. Supervisors shall ensure that all BWCs are turned in at the end of the tour of duty.
- B. No later than the end of each shift, officers shall download the contents of their assigned BWC. Each file downloaded shall contain information related to the date, BWC identifier, and assigned officer. Prior to download, the officer shall tag the recordings in accordance with training and this policy (see subsection IV.D below).
  - C. Officers assigned a BWC are responsible for its use and maintenance during their tour of duty.
  - D. When video/audio footage is captured involving any event, officers will tag the recording with the case number and incident category.
    1. If more than one officer captures a recording of any event, that recording shall also be downloaded and tagged and/or stored as evidence.
    2. Supervisor shall ensure that all recordings of such event are tagged properly and uniformly.
  - E. To identify BWC recordings that may raise special privacy or safety issues, officers shall appropriately tag recordings that:
    1. Captures a law enforcement incident, as defined in *New Jersey Attorney General Directive 2019-4*:
      - a. Any use of force by a law enforcement officer resulting in death or serious bodily injury.
      - b. Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.
      - c. The death of any civilian during an encounter with a law enforcement officer; and
      - d. The death of any civilian while in the custody of law enforcement.
    2. Captures the image of a victim of a criminal offense; or
    3. Captures the image of a juvenile; or
    4. Were made in a residential premise (e.g., a home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, a healthcare facility or medical office, a substance abuse or mental health treatment facility, or a place of worship; or
    5. Captures a conversation with a person whose request to deactivate the BWC was declined; or
    6. Captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded; or

7. Captures the image of an undercover officer or confidential informant; or
  8. Captures the screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.
- F. Supervisors are responsible for ensuring that officers are equipped with functioning BWCs at the beginning of each shift and use them in compliance with this policy.
1. Supervisors shall formally review all instances when a BWC is deactivated/muted prior to the conclusion of a recorded incident and forward the documented review through the chain of command to the Chief of Police or his/her designee.
  2. Subject to the restrictions in this policy and as part of the meaningful review process, supervisors shall review all BWC footage involving the below, unless restricted in section V of this policy:
    - a. Use of force; and
    - b. Motor vehicle and foot pursuits; and
    - c. Officer involved collisions; and
    - d. Officer involved injuries.
  3. If an internal affairs complaint is associated with a recorded event, or an officer believes an incident may generate an internal affairs complaint, the shift commander will tag the video/audio for indefinite retention.
  4. As determined by the Chief of Police or his/her designee, Supervisors shall periodically and randomly review non-evidential BWC events to ensure that the BWC equipment is operating properly and to assess officers' performance and adherence to policies, procedures, and established professional standards.
    - a. Upon completion of the periodic or random review, sergeant/OICs shall prepare a *BWC/MVR Supervisory Review Report* documenting the officer involved, date and time, and any positive or negative activities observed. This report shall include recommendations for training and / or discipline resulting from the observations.
    - b. The BWC administrator shall retain all *BWC/MVR Supervisory Review Reports* and CAD records generated in accordance with this policy. Copies of the reports and CAD records shall be forwarded to the Chief of Police for review. These reports are considered consultative, advisory, and confidential.
    - c. The Chief of Police or internal affairs commander may review specific BWC footage if circumstances arise that require an investigation to commence.

## V. RECORDS RETENTION AND REVIEW

- A. Viewing of BWC events is strictly limited to sworn officers of this department. Viewing by any other person is prohibited unless authorized by the Chief of Police, his/her designee, or consistent with the provisions of this policy.
- B. BWC recordings shall not be divulged or used for any commercial or other non-law enforcement purpose.
- C. All personnel shall submit a written report any time they access stored BWC recordings. All such reports will be forwarded to the BWC administrator, which will maintain a file of BWC access reports. The BWC administrator is authorized to compare such reports to the evidence.com records to reconcile any discrepancies.
- D. No law enforcement officer or civilian employee of this department shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose. Access to and use of a stored BWC recording is permitted only:
  - 1. When relevant to and in furtherance of a criminal investigation or prosecution.
  - 2. When relevant to and in furtherance of an internal affairs investigation.
  - 3. When relevant to and in furtherance of a management review process to identify circumstances indicating possible police misconduct or to determine the existence of a pattern or practice of possible misconduct.
  - 4. To assist the officer whose BWC made the recording in preparing his/her **own** police report, except:
    - a. In officer involved use of force incidents; or
    - b. In motor vehicle pursuits resulting in death or serious bodily injury; or
    - c. In any in-custody death investigations; or
    - d. When it captures images involving an encounter about which a complaint has been registered by the subject of the recording; or
    - e. When it pertains to a criminal investigation or otherwise records information that may have evidentiary or exculpatory value subject to discovery in a prosecution; or
    - f. When it records an arrest that did not result in an ongoing prosecution; or
    - g. When it records an incident that is the subject of an internal affairs complaint.
    - h. NOTE: nothing in this subsection is intended to prevent officers from considering, reviewing, or receiving an accounting of such BWC recording after the creation of any required initial reports, statements, and interviews regarding the recorded event. The events noted above in subsections V.D.4(b)(c) cannot be accessed or viewed



without the expressed permission of the assistant prosecutor or deputy attorney general supervising the investigation. Force incidents that are under investigation in accordance with *Attorney General Law Enforcement Directive 2019-4* require permission from the assistant prosecutor or deputy attorney general supervising the investigation.

- i. Officers reviewing a recording after completion of their initial report and wishing to add any additional information to the initial report can submit a supplemental report detailing their renewed recollection after supervisory approval. UNDER NO CIRCUMSTANCES, shall officers or supervisors change or modify the initial report
5. When relevant to a supervisor's review of an officer's actions as part of the supervisory process.
  6. To show to a civilian who intends to file a complaint against an officer to demonstrate what occurred during the encounter so that the person can make an informed decision whether to file the complaint.
  7. To comply with the state's discovery obligations in prosecutions pursuant to the Rules of Court:
    - a. Such request must be specific and on the proper instrument, i.e., subpoena, discovery request, etc.
    - b. Only those portions of the recording pertinent to the request shall be forwarded.
    - c. The Prospect ParkPolice Department reserves the right to redact video/audio as applicable by law.
      - 1) NOTE: when providing discovery in a domestic violence matter, ensure that the recording is reviewed prior to release to verify that there is no confidential information that should be redacted.
      - 2) This confidential information includes, but is not limited to, the location where the victim is being sheltered or contact phone numbers for those assisting the victim, etc.
    - d. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing ordinance.
    - e. Advise the attending assistant prosecutor at the Passaic County Prosecutor's Office when releasing any BWC recordings for discovery in a criminal matter under its jurisdiction. Ensure that the PCPO receives a copy.
    - f. Advise the municipal prosecutor when releasing any BWC recordings in matters under the jurisdiction of the municipal court. Ensure that the municipal prosecutor receives a copy.

- g. Contact the borough attorney/solicitor before releasing any BWC recordings in civil matters when this township, police department, or any officer/agent of the township is the subject of a tort/civil claim. If authorized for release under discovery, ensure that the township attorney/solicitor receives a copy.
8. To comply with any other legal obligation to turn over the recording to a person or entity.
  9. Solely and exclusively for internal training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video, unless the depicted individuals have consented to the recording being used for training purposes:
    - a. Note: consent is not required from Prospect Parkpolice officers appearing in the recording.
    - b. Recordings retained beyond 180 days solely and exclusively for training purposes shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.
  10. To show or disseminate the recording to a civilian or a non-law enforcement entity or to disseminate it to the public, where the Passaic County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, determines that disclosure to that person entity or the public is warranted because the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.
  11. To enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution (e.g., by providing information about the layout of a premises to be searched), when such use is approved by the Passaic County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee.
  12. To conduct an audit to ensure compliance with this policy.
  13. Any other specified official purpose where the Passaic County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.
- E. Officers/employees shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. Officers/employees shall not instruct another to alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. If an officer, employee, or agent fails to adhere to the recording or retention requirements contained in this general order or N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a body worn camera's ability to accurately capture audio or video recordings.
1. The officer, employee, or agent shall be subject to appropriate disciplinary action; and

2. There shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured; and
  3. There shall be a rebuttable presumption that evidence supporting a plaintiff's claim was destroyed or not captured in favor of a civil plaintiff suing the government, a law enforcement agency, or a law enforcement officer for damages based on police misconduct if the plaintiff reasonably asserts that evidence supporting the plaintiff's claim was destroyed or not captured.
  4. Any recordings from a BWC recorded in contravention of N.J.S.A. 40A:14-118.5 et seq. or any other applicable law shall be immediately destroyed and shall not be admissible as evidence in any criminal, civil, or administrative proceeding.
- F. Recordings are considered investigatory records of this police department and shall be maintained on evidence.com and disposed of in accordance with New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.
1. Except for recordings being stored for criminal, civil administrative proceedings, or evidentiary purposes, recordings shall be retained for a period of at least 180 days.
  2. Recordings being stored for criminal, civil, or administrative purposes must be retained until the conclusion of the case plus any retention period.
  3. Recordings of an arrest that did not result in an ongoing prosecution, or records the use of police force, shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer or the employing law enforcement agency (2 years).
  4. BWC recordings shall automatically be retained for not less than three years if it captures images involving an encounter about which a complaint has been registered by a subject of the BWC recording.
  5. BWC recordings shall be retained for not less than three years if requested by:
    - a. The officer whose BWC made the recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
    - b. The officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
    - c. Any immediate supervisor of an officer whose BWC made the recording or who is a subject of the BWC recording, if that immediate supervisor reasonably asserts the recording has evidentiary or exculpatory value; or
    - d. Any officer, if the BWC recording is being retained solely and exclusively for police training purposes; or

- e. Any member of the public who is a subject of the BWC recording; or
  - f. Any parent or legal guardian of a minor who is a subject of the BWC recording; or
  - g. A deceased subject's next of kin or legally authorized designee.
  - h. NOTE: the member of the public, parent, or legal guardian, or next of kin or their designee (subsections V.E.5 (e)(f)(g)) shall be permitted to review the body worn camera recording in accordance with N.J.S.A. 47:1A-1 et seq. to determine whether to request a three-year retention period
6. When a BWC records an incident that is the subject of an administrative internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation, any resulting administrative action and required retention.
- G. Open public record requests. Only the following BWC recordings shall be exempt from public inspection:
- 1. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.F.5 of this policy if the subject of the BWC recording making the complaint requests the body worn camera recording not be made available to the public.
  - 2. BWC recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection V.F.5 of this policy.
  - 3. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.F of this policy.
  - 4. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection V.F.5 if an officer, parent, or legal guardian, or next of kin or designee requests the body worn camera recording not be made available to the public.
- H. The Chief of Police or his/her designee shall notify the Passaic County Prosecutor's Office within one business day upon receiving any subpoena, court order or OPRA request for a BWC recording before complying with it.
- 1. The notification must contain the date the request was received, the deadline by which a response must be made, whether the agency intends to release or deny the request, and the justification for that decision.
  - 2. Provide the type of police action or activity depicted in the recording, including, but not limited to, whether the officer was involved in an investigative detention, an arrest, an interrogation of a suspect, a witness interview, a search, a protective frisk for weapons, or was using constructive or actual force.
  - 3. Indicate whether the recording is part of an ongoing criminal or internal affairs investigation or whether release of the recording potentially infringes upon a victim and/or juvenile privacy rights.

4. The Chief of Police or his/her designee will receive an acknowledgement. If no further communication is received within 72 hours, the BWC administrator or his/her designee should respond to the request as deemed appropriate.
  5. Pursuant to the *Open Public Records Act* (N.J.S.A. 47:1A-5c and N.J.S.A. 47:1A-5d), the department will apply service fees for any extraordinary expenditure of time and effort to accommodate a request. The service fees will be based upon the actual direct cost of providing the service or extraordinary time. If the requester objects to the fee, the request is closed and access to the records is not granted.
  6. BWC footage requests, requiring a substantial amount of manipulation or programming of information technology, will be assessed a special service fee that shall be reasonable and shall be based on the cost for the labor cost of personnel providing the service, that is actually incurred for the programming, clerical, and supervisory assistance required, or both, if a request is for a copy of a record.
  7. The fee will be based at the lowest hourly rate of the personnel authorized to review/redact/approve the request.
  8. The Chief of Police or his/her designee will provide the requestor an estimate before any copy is made.
- I. A BWC recording of an event or encounter that involves an investigation of a criminal offense or tagged in accordance with subsection IV.E shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, or by a court order, or unless the Chief of Police in consultation with the Passaic County Prosecutor or his/her designee determines that the person's/entity's/non-law enforcement agency's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.
1. All BWC recordings capturing the image of an undercover officer or confidential informant shall not be accessed or viewed without the permission of the Chief of Police or his/her designee and shall not be copied, disseminated, or otherwise used without first obtaining the permission of the Passaic County Prosecutor or his/her designee.
  2. If disclosure of a BWC recording as part of the state's discovery obligations in a prosecution might present a danger to any officer or civilian (e.g., reveal an undercover officer, confidential informant, surveillance site, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms during execution of warrant, techniques for convincing persons to open doors during warrant execution, etc.), the Passaic County Prosecutor or his/her designee shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and/or court rule to protect the information from disclosure, such as by seeking a protective court order.

3. A BWC recording tagged pursuant to section IV.E of this policy or capturing a deadly force, pursuit resulting in death or serious bodily injury, or in-custody death incident subject to *Attorney General Law Enforcement Directive 2019-4* shall not be accessed, viewed, copied, disseminated, or otherwise used by anyone (including the Chief of Police and his/her designees) without first obtaining the permission of the Passaic County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee. The Passaic County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee may authorize the Chief of Police and one or more supervisory officers to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to section IV.E.
4. The assistant prosecutor, deputy attorney general, or his/her designee overseeing a law enforcement use of force investigation, pursuit resulting in death or serious bodily injury, or in-custody death incident pursuant to *Attorney General Law Enforcement Directive 2019-4*, , may in the exercise of sound discretion authorize a civilian or law enforcement witness to be given access to or view a BWC recording of the incident under investigation. To ensure the integrity of investigations of police-involved shootings and other use of force incidents and to avoid possible contamination of a witness's personal recollection of events that could undermine his or her credibility as a witness, notwithstanding any other provision of this policy, no civilian or law enforcement witness, (including the principals) of the investigation, shall be given access to or view a BWC recording of the incident, or a BWC recording of the response or on-scene investigation of the incident, without the expressed prior approval of the assistant prosecutor, assistant or deputy attorney general, or designee.
- J. The BWC administrator or his/her designee shall maintain a record of all BWC recordings that are accessed, viewed, copied, disseminated, or deleted. This record may be maintained electronically by evidence.com. The Chief of Police shall cause a periodic audit of these records to ensure compliance with this policy. Minimally, the record keeping system shall document the following information:
  1. The date and time of access; and
  2. The specific recording(s) that was/were accessed; and
  3. The officer or civilian employee who accessed the stored recording; and
  4. The person who approved access, where applicable; and
  5. The reason(s) for access, specifying the purpose or purposes for access and specifying the relevant case/investigation number, where applicable.
- K. If an original recording is required for use in court or by another law enforcement agency, that recording shall not be released without the prior approval of the Chief of Police or designee and only if a duplicate copy is retained by the department.
  1. Duplicate copies shall be maintained as evidence in accordance with this department's property and evidence guidelines.

2. The property/evidence custodian shall ensure that any media used for duplicate recordings is properly stored away from magnetic fields (speakers, etc.) or other areas that may facilitate corruption in the property room.
- L. Officers and civilian employees shall not reproduce or store any recordings to any device or storage medium. This shall include, but not limited to, cell phones, electronic notebooks, etc.