

143. DIGITAL BODY RECORDERS



RICHFIELD POLICE DEPARTMENT POLICY

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Authority: Chief Jay Henthorne

NOTE: This policy is for internal use only and does not enlarge an employee's civil or criminal liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this policy, if proven, can only form the basis of a complaint by this Department, and then only in a non-judicial administrative setting.

I. PURPOSE

The primary purpose of using body-worn-cameras (BWCs) is to capture evidence arising from police-citizen encounters. This policy sets forth guidelines governing the use of BWCs and administering the data that results. Compliance with these guidelines is mandatory, but it is recognized that officers must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain, and rapidly evolving.

II. POLICY

It is the policy of this department to authorize and require the use of department-issued BWCs as set forth below, and to administer BWC data as provided by law

III. SCOPE

This policy governs the use of BWCs in the course of official duties. It does not apply to the use of squad-based recording systems. The chief or chief's designee may supersede this policy by providing specific instructions for BWC use to individual officers, or providing specific instructions pertaining to particular events or classes of events, including but not limited to political rallies and demonstrations. The chief or designee may also provide specific instructions or standard operating procedurals for BWC use to officers assigned to specialized details, such as carrying out duties in courts or guarding prisoners or patients in hospitals and mental health facilities, or to officers deemed to be Brady Giglio-impaired.

IV. DEFINITIONS

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

- A. **MGDPA or Data Practices Act** refers to the Minnesota Government Data Practices Act, Minn. Stat. § 13.01, et.seq.
- B. **Records Retention Schedule** refers to the General Records Retention Schedule for Minnesota Cities.
- C. **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.
- D. **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.
- E. **General Citizen Contact** means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation.
- F. **Adversarial** means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at

least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.

- G. **Unintentionally Recorded Footage** is a video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to, recordings made in station house locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business, personal nature with the expectation that the conversation was not being recorded.
- H. **Official Duties**, for purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this agency.

V. USE AND DOCUMENTATION

- A. Officers must wear their BWC as part of the uniform when working on-duty (regular or overtime) and wearing the uniform of the day.
- B. The supervisor of a plain clothes or undercover officer may dictate whether an on-duty officer will use a BWC when working in plain clothes. An officer in a plain clothes or undercover assignment must use an issued BWC when wearing the uniform of the day, raid gear, or temporary tactical gear.
- C. BWC recordings generated are the exclusive property of the Richfield Police Department and shall be governed by the policy and law regarding government data and its collection and retention.
- D. Officers may use only department issued BWCs in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department.
- E. Officers who have been issued BWCs shall operate and use them consistent with this policy. Officers shall conduct a function test of their issued BWCs at the beginning of each shift to make sure the devices are operating properly. Officers noting a malfunction during testing or at any other time shall promptly report the malfunction to the officer's supervisor and shall document the report in writing. Supervisors shall take prompt action to address malfunctions and document the steps taken in writing.
- F. Officers should wear their issued BWCs at the location on their body and in the manner specified in training.
- G. Officers must document BWC use and non-use as follows:
 - 1. Whenever an officer makes a recording, the existence of the recording shall be documented in an incident report, citation, computer aided dispatch (CAD) records or other documented record of the event.
 - 2. Whenever an officer fails to record an activity that is required to be recorded under this policy or captures only a part of the activity, the officer must document the circumstances and reasons for not recording in an incident report, CAD record, or other documented record of the event. Supervisors shall review these reports and initiate any corrective action deemed necessary.
- H. The department will maintain the following records and documents relating to BWC use, which are classified as public data:
 - a. The total number of BWCs owned or maintained by the agency;
 - b. A daily record of the total number of BWCs actually deployed and used by officers;
 - c. The total amount of recorded BWC data collected and maintained;
 - d. This policy, together with the Records Retention Schedule.

General Guidelines for Recording

- A. Mandatory Recording - Understanding that officers encounter tense, uncertain, and rapidly evolving situations, officers must activate their BWC at their earliest opportunity and before arriving on scene when recording is required by this policy.

Activating a BWC early, before an officer arrives on scene, allows an officer to safely turn on the BWC before reacting to or dealing with the circumstances of a particular call, incident, investigation or event. This also helps document important information from a view closer to that of the officer's perspective. Officers must activate their BWCs when preparing for or initiating any law enforcement action including but not limited to:

- When an officer is dispatched to or investigating any call or incident.
- When an officer is assisting another officer at a call or incident.
- Any vehicle stop, including traffic and investigative stops.
- Vehicle pursuits.
- Investigative stops of individuals.
- Initiating any arrest.
- All frisks and searches (e.g., suspect, vehicle, structure, physical area).
- The entirety of a prisoner's booking process.
- When encountering or responding to resistance or aggression. See Use of Force Policy #201.
- When any situation becomes adversarial, including situations which are either verbally or physically adversarial
- In-custody transports.
- Suspect interviews in the field, including in-custody interviews occurring in the field when the Miranda warning is required.
- When directed by a supervisor.
- While operating a police vehicle in response to an emergency assignment.

Activated BWCs shall record the duration of the entire law enforcement action and shall only be deactivated at the conclusion of the encounter and/or to comply with prohibited recording.

If an officer is at a location or in any situation where an event occurs or develops where this policy mandates recording and their BWC is not already activated, the officer must activate the BWC as soon as activation is possible and safe.

- B. Discretionary Recording
This policy does not describe every possible situation where the BWC may be activated. Beyond the mandated scenarios described above, an officer may activate the BWC when they believe it should be activated based on their training, experience, and judgement, except when recording is prohibited under this policy. If an officer is involved in a situation and they are unsure if the activation is mandatory, discretionary or prohibited, they should activate the BWC.
- C. Prohibited Recording
- Interactions solely among other department employees when not actively investigating or assigned to a call or incident.
 - Non-work related activity.
 - Within areas of a police facility restricted to personnel-only access, including roll call rooms, locker rooms, break rooms, and report rooms. BWCs should only record citizen contacts inside a police facility if relevant to an investigation or to comply with the Mandatory Recording situations described in this policy.
 - When interacting with undercover officers or confidential informants, or persons providing information based on confidentiality, unless necessary for a law enforcement investigation or to comply with the Mandatory Recording situations described in this policy.

- During a work break.
- At any location where a reasonable expectation of privacy exists, such as a bathroom or locker room, unless necessary for a law enforcement investigation or to comply with the Mandatory Recording situations described in this policy.
- In patient care areas of a hospital, sexual assault treatment center, or other healthcare facility unless necessary for a law enforcement investigation or to comply with the Mandatory Recording situations described in this policy.
- This policy also recognizes that officers encounter tense, uncertain, and rapidly evolving situations regardless of location. Given this fact, officers may unintentionally create a prohibited recording or may intentionally record to comply with the Mandatory Recording requirements of this policy.

Officers who are aware they may have created a prohibited recording must report that recording to their supervisor. The video management personnel will manage data recorded in violation of policy.

Victim or witness interviews must also be recorded, unless the officer becomes aware of the following:

- Officers may be aware that the identity of a victim or witness is protected by the Minn. Stat. § 13.82. Individuals whose identities are protected under the Minn. Stat. § 13.82 include victims or alleged victims of criminal sexual conduct or sex trafficking. An officer may deactivate recording to protect the identity of someone afforded protection under the Minn. Stat. § 13.82, provided the request does not conflict with any other Mandatory Recording requirement under this policy.
- An officer may deactivate recording upon the request of a victim or witness, provided the request does not conflict with any other Mandatory Recording requirement under this policy.
- Officers should consider the totality of the circumstances before deactivating recording and determine the best approach for a particular circumstance. For example, deactivation may be the best option if the situation is not adversarial and a BWC inhibits a victim or witness from providing information. Nothing precludes an officer who has deactivated recording under these circumstances from reactivating it should mandatory recording circumstances emerge or the officer choose to reactivate recording in their discretion.
- Deactivation under these circumstances must be documented in an incident report, or if no incident report is otherwise required it must be documented in CAD comments.
- This policy recognizes officers cannot or will not always know of or have time or opportunity to account for protections afforded under the Minn. Stat. § 13.82. An officer may also intentionally record an individual with Minn. Stat. § 13.82 protections, or any witness or victim who has requested recording be deactivated, in order to comply with other sections of this policy. Compliance with the other Mandatory Recording requirements under this policy is the higher priority.
- The Police Data & Media Specialist will provide the final review to ensure appropriate management of data and compliance with the Minn. Stat. § 13.82.

Special Guidelines for Recording Officers may, in the exercise of sound discretion, determine:

- A. To use their BWC's to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited.
- B. To use their BWC's to take recorded statements from persons believed to be victims of and witnesses to crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.
- C. Officers need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWC's shall be activated as

necessary to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors believed to be attributable to the mental health issue.

Downloading and Labeling Data

- A. Each officer using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her camera to the WatchGuard storage location by the end of that officer's shift. However, if the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor or investigator shall take custody of the officer's BWC and assume responsibility for transferring the data from it.
- B. Officers shall label the BWC data files at the time of video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Officers should assign as many of the following labels as are applicable to each file:
1. **Arrest:** The recording was made during an event which resulted in an arrest.
 2. **Traffic Warning:** The recording was made in relation to a traffic enforcement encounter which resulted in a warning.
 3. **Traffic Citation:** The recording was made in relation to a traffic enforcement encounter which resulted in a citation.
 4. **Domestic:** The recording was made in relation to a domestic violence-related incident.
 5. **Motorist Assist:** The recording was made in relation to a motorist assist incident.
 6. **Suspicious Vehicle/Behavior:** The recording was made in relation to a suspicious vehicle/behavior incident.
 7. **Transport:** The recording was made in relation to a transport.
 8. **Other:** The recording was made in relation to an incident/encounter that does not fall under other categories.
 9. **Accidental:** The recording was made in mistake/error
 10. **Test:** The recording was made to test the functionality of the device.
 11. **Traffic Accident:** The recording was made in relation to a traffic accident.
 12. **Interview:** The recording was made in relation to an interview.
- C. In addition, officers shall flag each file as appropriate to indicate that it contains information about data subjects who may have rights under the MGDPA limiting disclosure of information about them. These individuals include:
1. Victims and alleged victims of criminal sexual conduct and sex trafficking.
 2. Victims of child abuse or neglect.
 3. Vulnerable adults who are victims of maltreatment.
 4. Undercover officers.
 5. Informants.
 6. When the video is clearly offensive to common sensitivities.
 7. Victims of and witnesses to crimes, if the victim or witness has requested not to be identified publicly.
 8. Individuals who called 911, and services subscribers whose lines were used to place a call to the 911 system.
 9. Mandated reporters.
 10. Juvenile witnesses, if the nature of the event or activity justifies protecting the identity of the witness.
 11. Juveniles who are or may be delinquent or engaged in criminal acts.
 12. Individuals who make complaints about violations with respect to the use of real property.
 13. Officers and employees who are the subject of a complaint related to the events captured on video.
 14. Other individuals whose identities the officer believes may be legally protected from public disclosure.

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

Administering Access to BWC Data

- A. **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:
1. Any person or entity whose image or voice is documented in the data.
 2. The officer who collected the data.
 3. Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording.
- B. **BWC data is presumptively private** BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.
 2. Some BWC data is classified as confidential (see C. below).
 3. Some BWC data is classified as public (see D. below).
- C. **Confidential data** BWC data that is collected or created as part of an active criminal investigation is confidential. This classification takes precedence over the “private” classification listed above and the “public” classifications listed below.
- D. **Public data** The following BWC data is public:
1. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.
 2. Data that documents the use of force by a peace officer that results in substantial bodily harm.
 3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted if practicable. In addition, any data on undercover officers must be redacted.
 4. Data that documents the final disposition of a disciplinary action against a public employee.

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under Minn. Stat. § 13.82, subd. 17 (e.g., certain victims, witnesses, and others) should not be released even if it would otherwise fit into one of the public categories listed above.

- E. **Access to BWC data by non-employees** Officers shall refer members of the media or public seeking access to BWC data to the Police Data & Media Specialist or Chief of Police, who shall process the request in accordance with the MGDPA and other governing laws. In particular:
1. An individual shall be allowed to review recorded BWC data about him or herself and other data subjects in the recording, but access shall not be granted:
 - a. If the data was collected or created as part of an active investigation.
 - b. To portions of the data that the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by Minn. Stat. § 13.82, subd. 17.
 2. Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:

- a. Data on other individuals in the recording who do not consent to the release must be redacted.
- b. Data that would identify undercover officers must be redacted.
- c. Data on other officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.

F. **Access by peace officers and law enforcement employees** No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes:

1. Officers may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance.
2. Officers involved in a Critical Incident may view or listen to video technology of the incident only after:
 - a. Officer(s) involved in a Critical Incident may view and/or listen to BWC and Squad Camera Data of the incident only after:
 - The Officer has met with legal counsel, if that entity is requested by the officer, and
 - The officer and legal counsel have met with the investigative entity or designee regarding the process for Critical Incident set out in Policy #213.
3. Agency personnel shall document their reasons for accessing stored BWC data at the time of each access. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites.
4. Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.

G. **Other authorized disclosures of data.** Officers may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Officers should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video. In addition

1. BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.
2. BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

Data Security Safeguards

- A. Access to electronically archived BWC data shall be controlled by secure and individualized login credentials. BWC data storage is self-contained within the WatchGuard system. Once data is captured, it migrates through multiple secure hard drives, making backup copies of the data. BWC data is also automatically stored to a secondary external server, making it accessible in the event data cannot be retrieved from the primary server for some reason.
- B. Access to BWC data from city or personally owned and approved devices shall be managed in accordance with established city policy.
- C. Officers shall not intentionally edit, alter, or erase any BWC recording unless otherwise expressly authorized by the chief or the chief's designee.
- D. As required by Minn. Stat. § 13.825, subd. 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program.

Agency Use of Data

- A. At least twice a month, supervisors will randomly review BWC usage by each officer to ensure compliance with this policy, and to identify any performance areas in which additional training or guidance is required.

- B. In addition, supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.
- C. Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline.
- D. Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field training officers may utilize BWC data with trainees for the purpose of providing coaching and feedback on the trainees' performance.


Data Retention

- A. All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.
- B. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.
- C. Certain kinds of BWC data must be retained for six years:
 - 1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a use of force report or supervisory review.
 - 2. Data documenting circumstances that have given rise to a formal complaint against an officer.
- D. Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.
- E. Subject to Part F (below), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training shall be destroyed after 90 days.
- F. Upon written request by a BWC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.
- G. The department shall maintain an inventory of BWC recordings having evidentiary value.
- H. The department will post this policy, together with its Records Retention Schedule, on its website.

Compliance

Supervisors shall monitor for compliance with this policy. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and criminal penalties pursuant to Minn. Stat. § 13.09.

By Order Of:



Chief of Police