

Use of Body Worn Camera Recorders (BWC)

434.1 PURPOSE AND SCOPE

The Oakley Police Department has provided each of its sworn members with access to body worn camera recorders (BWC) for use while on-duty. These recorders are intended to assist officers in the performance of their duties by providing an unbiased video and audio record of a contact.

While recordings obtained from BWC provide an objective record of these events, it is understood video recordings captured by a BWC (or any other recording device) do not necessarily reflect the experience or state of mind of the individual employee(s) in a given incident. Moreover, the video recording has limitations and may depict events differently than the events recalled by the involved employee. Specifically, it is understood the BWC may capture information that may not have been heard and/or observed by the involved employee and may not capture information observed by the employee.

434.2 **UNIFORMED OFFICER RESPONSIBILITIES**

Each person assigned a body worn camera will maintain the equipment while in his or her possession. The body worn camera will be carried upon the person in a manner that will allow for easy operation without impairing the capabilities of the equipment. Prior to going into service, each body worn camera user will check the equipment to ensure it is working properly. The body worn camera user should record a test sample at the beginning of their duty day by recording their name and the date and time of the recording.

Uniformed personnel assigned to field and enforcement duties during regular and extra duty assignments shall wear the BWC on their person in a forward facing position that facilitates comprehensive recording of the contact and/or incident. The body worn camera user shall upload their digital audio/video files at the end of each work shift.

434.3 PRIVACY

All recordings made by personnel acting in their official capacity as members of this department shall remain the property of the Department and should not be considered private, regardless of whether those recordings were made with department-issued or personally owned recorders.

434.4 **ACTIVATION OF THE BODY WORN CAMERA RECORDER**

Penal Code § 632 prohibits any individual from surreptitiously recording any conversation in which any party to the conversation has a reasonable belief that the conversation was private or confidential, however Penal Code § 633 expressly exempts law enforcement from this prohibition during the course of a criminal investigation.

- (a) No member of this department may surreptitiously record a conversation of any other member of this department without the expressed knowledge and consent of all parties. Nothing in this section is intended to interfere with an officer's right to openly record any interrogation pursuant to Government Code § 3303(g).

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- (b) Any member of this department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such recording will be beneficial to the investigation.
 - 1. For the purpose of this policy, any officer contacting an individual suspected of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.
 - 2. For the purpose of this policy, it shall further be presumed that any individual contacted by a uniformed officer wearing a conspicuously mounted body camera recorder will have knowledge that such a contact is being recorded.
- (c) Members of the Department should activate their body camera recorders at any time that the officer reasonably believes that a recording of an on-duty contact with a member of the public may be of future benefit.
 - 1. At no time should an officer jeopardize his/her safety in order to activate a body camera recorder.
 - 2. Officers are prohibited from utilizing department body worn camera recorders and recording media for personal use.
 - 3. Officers shall only use Department authorized BWC.
 - 4. Employees shall not remove, dismantle, or tamper with any hardware and/or component or part of the BWC.

434.5 REQUIRED ACTIVATION OF BODY WORN CAMERA RECORDERS

There are many situations where the use of the body worn camera is appropriate. This policy is not intended to describe every possible situation where use of the equipment may be appropriate. Officers and plainclothes officers clearly identifiable as police officers, shall activate the body worn camera any time they feel its use would be appropriate and/or valuable to document an incident. In the event an officer is unable to activate his/her BWC as directed above, or in any instance during which an employee determines a BWC cannot or should not be used, the employee shall report the circumstance to a supervisor as soon as practicable, and document the reason the BWC was not used in a memorandum.

The following are situations that require the use of the body camera to obtain a recording:

- (a) All field contacts and calls for service. Recordings shall remain in the record position throughout the entire contact or until otherwise directed by a supervisor.
- (b) All self-initiated activity in which an officer would normally notify dispatch.
- (c) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.
- (d) Officers shall activate their body worn camera immediately upon being dispatched Code Three or being dispatched to any call for service that may be perceived as a Major Event.

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- (e) Officers operating Department Motorcycles and Police Canines will dock their camera at the end of their shift and will not have a unit for any police contact that may occur while traveling to/from their residence. It will be the responsibility of the officer to pick up their camera as soon as the beginning of their next shift.

Once the body worn camera is activated, it shall remain on and shall not be turned off until the incident has concluded. For purposes of this section, conclusion of an incident has occurred when all citations have been issued, all arrests have been made, arrestees have been removed from the scene or situation, and all witnesses, victims, etc. have been interviewed. The body worn camera shall be activated when transporting all persons, including prisoners, and shall remain on until the transportation is completed. Recording may cease if an officer is simply waiting for a tow truck or other similar situation.

Communication between Law Enforcement Personnel outside the presence of any member of the public need not be recorded; provided, however, the body camera shall be immediately reactivated upon any public contact.

434.6 NON-UNIFORMED SWORN PERSONNEL RESPONSIBILITIES

Any detective/officer/investigator assigned to a non-uniformed position may carry and activate a department BWC at any time the employee believes such a device may be beneficial to the situation.

All non-uniformed personnel who are executing pre-planned enforcement activities such as serving a search or arrest warrant or parole/probation searches should wear and operate a BWC.

Non-uniformed employees shall be responsible for uploading their digital recordings in the same manner as described above for uniformed employees.

Field Training Officers who are wearing civilian clothing during the "shadow phase" are not required to wear a BWC, but may do so if they wish. However, they are still responsible for ensuring their assigned trainee is recording all contacts.

434.7 WHEN ACTIVATION IS NOT REQUIRED

Activation of the body camera is not required when exchanging information with other officers when not in the immediate presence of a potential public contact or during breaks, lunch periods, when not in service, or when in service but not in contact with other people. As an example, there is no expectation of activation where the officer is approached by a citizen requesting directions, etc.

There may be times when Officers should be sensitive to a situation and use discretion on their decision to record contacts while handling certain calls for service. Some examples would include but are not limited to:

- (a) Officer safety would be compromised due to unexpected or sudden altercation.
- (b) An informant or community member requests the BWC be turned off before giving information.
- (c) A health care provider is discussing medical issues with a patient.

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- (d) While in the hospital for the sole purpose of waiting for an arrestee to be medically cleared. However, the BWC should be turned on in the hospital if a situation arises which requires police action.
- (e) While conferring with other officers regarding the specifics or tactics of a call.
- (f) When interviewing victims of sexual assaults or child abuse.
 - 1. The operating officer needs to evaluate the value of the video recorded statement versus the privacy concerns for the victim. In such cases where the officer believes it would be best for the victim not to be video recorded, the officer should consider maintaining the recorder in the “on” position, but to adjust the BWC so it does not video the victim.

Officers working undercover or Detectives conducting follow up interviews may use discretion as when to record conversations with the use of a BWC or Digital Audio Recorder (DAR).

434.8 RETENTION OF RECORDING MEDIA

All employees utilizing the Evidence Transfer Manager to upload audio/video files into the Evidence.com database or approved Police Department Digital Storage shall include metadata information for any recording which has the likelihood of resulting in a civil, criminal or internal action. Employees shall upload all video, even that which appears to have no evidentiary or administrative value. These incidents shall include those in which an employee may only be a secondary or peripheral responder. All associated recordings for these events, whether evidence or not, shall, at minimum, include the following basic information:

- (a) Police Report (DR) or Incident number in the following format: 1. ##-##### (i.e. 20-001234, 20-123456, etc.)
- (b) Type of Incident

The officer shall further note in any related report that the body worn camera recording has been placed into evidence.

Retention periods for video obtained via BWC will be one year for anything not classified as evidence unless it becomes evidence in an investigation within the one year period. If the video is linked to an ongoing criminal and/or administrative investigation the retention of the video for evidentiary purposes will fall under Oakley Police Policy §802, Property and Evidence and Penal Code §832.18.

Per Penal Code §832.18, the following incidents require a minimum two-year retention:

- (a) Incident involving the use of force by an officer
- (b) Officer-involved shootings
- (c) Incidents that lead to the detention or arrest of an individual
- (d) Recordings relevant to a formal or informal complaint against an officer or the Oakley Police Department

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434.9 REVIEW OF RECORDED MEDIA FILES

Recorded files may be reviewed in any of the following situations:

- (a) By Department personnel who wish to review their own recordings
- (b) By a Department or District Attorney Investigator, or supervisor who is participating in an official investigation, such as a personnel complaint, administrative inquiry or a criminal investigation.
- (c) By random audits, a supervisor may monitor an officer's performance as part of a routine evaluation process to identify negative and positive performance or potential training issues that may have been captured by audio and/or video recordings.
- (d) By court personnel through the subpoena process.
- (e) Video and/or audio recordings may be played for the purposes of training value with prior approval from the Chief of Police. If an involved officer objects to the playing of an audio/video recording, his/her objection will be submitted to Staff to determine if the training value outweighs the officer's objection to have others review the video and/or audio file. In no event shall any recording be used or reviewed for the purpose of officer ridicule or embarrassing an employee.
- (f) By City of Oakley Risk Management for purposes of claims investigations.
- (g) Specific, targeted audits "for cause" are allowed if there is well-founded suspicion that an officer is violating performance expectations of the Department.
- (h) The Chief of Police has the discretion to allow viewing or release of recorded files if the Chief determines it is in the best interest of the Police Department or the City of Oakley. When appropriate, every effort will be made to notify involved employees prior to release.
- (i) In incidents deemed "critical or significant" by the Chief of Police, or Division Commander in the Chief's absence, officers shall not review the recorded files until an initial interview has been conducted. Once the initial interview has been conducted, the officer may view the recording and provide clarifying information if desired. Examples of "critical or significant" incidents include but are not limited to officer involved shootings and major injuries or death of community members while in custody or during officer involved contact.
- (j) For incidents not deemed "critical or significant," an employee may share a BWC recording with other employees as it relates to their involvement in an incident or to continue their investigation. This requires written authorization from their sergeant prior to sharing the BWC recording.
- (k) The Chief of Police has the discretion to prohibit or grant the review of any recordings by Department employees if it is determined it is in the best interest of the Police Department or the City of Oakley.

In the event that an employee is allowed to review video after an initial interview has been conducted, the following admonishment can be given:

"In this case, there is video evidence you have not had an opportunity to view prior to giving your initial statement. Video evidence has limitations and may depict the events differently than you

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recall, and may not depict all of the events as seen or heard by you. Video has a limited field of view and may not capture events normally seen by the human eye. The 'frame rate' of video may limit the camera's ability to capture movements normally seen by the human eye. Lighting as seen on video may be different than what is seen in the human eye. Videos are a two-dimensional medium and may not capture depth, distance or positional orientation as well as the human eye. Remember, the video evidence is intended to assist your memory and ensure that your initial statement explains your state of mind at the time of the incident."

434.10 BODY WORN CAMERA RECORDINGS STORAGE & INTEGRITY

After body camera recordings have been uploaded to the designated Evidence.com or approved Police Department Digital Storage by the body camera user, files shall not be transferred from the archival storage media onto any third party media storage device without prior approval from the Watch Commander. Examples of a third party media storage device include but are not limited to: Compact Disc; floppy disk; portable hard drives; or any other electronic media device.

434.11 SYSTEM ADMINISTRATOR RESPONSIBILITIES

The System Administrator(s) are designated by the Chief of Police and have oversight responsibilities to include, but not limited to, the following:

- (a) Operation and user administration of the system.
- (b) System evaluation.
- (c) Training.
- (d) Policy and procedure review and evaluation.
- (e) Coordination with IT regarding system related issues.
- (f) Ensure BWV files of evidentiary value are secure and retained per this policy.
- (g) Ensure BWV files are reviewed and released in accordance with federal, state, local statutes and City of Oakley/Oakley Police Department retention policy.

434.12 BODY WORN CAMERA VIDEO FILES REQUEST

- (a) Departmental Requests
 1. Any request shall be completed by the System Administrator with the approval of the Chief of Police.
- (b) Non-Department Requests
 1. All other requests for a BWC file shall be accepted and processed in accordance with federal, state, local statutes and Departmental policy (public records act, etc.) as set forth in Oakley Police Policy §805, Records Maintenance and Release.
 2. Media inquiries and/or requests shall be received and processed in accordance with Oakley Police Policy § 324.2.1 Media Request.

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434.13 SUPERVISOR RESPONSIBILITIES

Oakley Police Department supervisors' responsibilities are as follows:

- (a) Supervisors will ensure officers utilize the BWC according to policy guidelines.
- (b) Supervisors are to review recordings only as directed by the Chief of Police and/or his/her designee.
- (c) Supervisors shall ensure videos related to critical incidents are uploaded to EVIDENCE.COM.
- (d) Supervisors may have the ability to immediately resolve citizen complaints by reviewing video captured by the BWC. In those circumstances where a complaint is resolved with no further action needed, supervisors shall add an additional category of citizen complaint to the video and make appropriate notes in the notes section of EVIDENCE.COM. This will allow the department to capture complaint incidents that are resolved by this camera system.
- (e) It shall be deemed a violation of this policy for a supervisor to review recordings for the sole purpose of searching for violations of department policy or law not related to a specific complaint or incident.
- (f) The supervisor shall contact the System Administrator or designee upon learning of any reported problems or malfunctions of issued BWC equipment.