

## Digital Recording Devices

**DRAFT**  
**07/09/15**

### I. Purpose:

The use of Body Worn Cameras (BWC) is an effective tool a law enforcement agency can use to demonstrate its commitment to transparency, ensure the accountability of its members, increase the public's trust in officers, and protect its members from unjustified complaints of misconduct. As such, the San Francisco Police Department is committed to establishing a BWC program that reinforces its responsibility to protecting public and officer safety. The purpose of this Order is to establish the policies and procedures governing that program and ensure effective and rigorous use and adherence.

**Commented [rk1]:** Goals taken from PERF/US DOJ Report: Implementing a Body-Worn Camera Program

**Commented [S2]:** Suggested by the Public Defenders' Office

The BWC is a small audio-video recorder with the singular purpose of recording audio/visual files, specifically designed to be mounted on a person. ~~It~~ The BWC is designed to record audio and video activity to preserve evidence for use in criminal and administrative investigations (including disciplinary cases), civil litigation, officer performance evaluations, administrative inquires and disciplinary cases and to review police procedures and tactics, as appropriate.

**Commented [S3]:** Public Defenders Office suggestion is to use the word "peace officer."

### II. Policy:

- A. USE OF EQUIPMENT. The Department-issued BWC is authorized for use in the course and scope of official police duties as set forth in this Order. Only members authorized by the Chief of Police and trained in the use of BWCs are allowed to wear Department-issued BWCs. The use of non-Department issued personally owned BWCs while on-duty is prohibited.
- B. TRAINING. The Department will train all members assigned BWCs prior to deployment. Members assigned BWCs shall use the devices in accordance with their training and the provisions outlined in this order.
- C. PROGRAM ADMINISTRATOR. The Risk Management Office (RMO) is the BWC's program administrator. The duties of the RMO include, but are not limited to:
1. Tracking and maintaining PDRDBWC inventory
  2. Issuing and replacing PDRDBWCs to authorized members
  3. Granting security access to the computer server
  4. Monitoring retention timeframes as required by policy and law
  5. Complying with Public Record Act requests and all other court record requests
  6. Conducting periodic and random audits of PDRDBWC equipment and the computer server

### III. Definitions:

BODY WORN CAMERAS. XXX

HEALTH FACILITY. XXX

#### **IVH. Procedures:**

##### **A. Set Up and Maintenance.**

Members shall be responsible for the proper care and use of their assigned **BWC** and associated equipment.

1. Members shall test the equipment at the beginning of their shift and prior to deploying the **BWC** equipment to ensure it is working properly and is fully charged.
2. If the member discovers a defect or that the equipment is malfunctioning, the member shall cease its use and shall promptly report the problem to his/her Platoon Commander or Officer in Charge.
3. If the member discovers that the **BWC** is lost or stolen, the member shall submit a memorandum through the chain of command memorializing the circumstances, in accordance with Department General Order 2.01, Rule 24, Loss or Damage to Department Property.
4. If the member's **BWC** is damaged, defective, lost or stolen, the member's supervisor shall facilitate a replacement **BWC** as soon as practical.
5. Members shall attach the **BWC** in such a way to provide an unobstructed view of officer/citizen contacts. The **BWCs** shall be considered mounted correctly if it is mounted in one of the Department-approved mounting positions.

**Commented [rk4]:** There was discussion about developing a form to report the malfunction/defect.

**Commented [rk5]:** Oakland PD

**Commented [rk6]:** Oakland PD

##### **B. Consent Not Required.**

~~Private persons do not have an expectation of privacy when dealing with police officers performing their normal scope of lawful duties. Members are This policy does not required a member to activate or deactivate a BWC upon the request of a citizen. Members are not required to initiate or cease recording an event, situation or circumstance solely at the demand of a citizen.~~

**Commented [S7]:** Looking for the Supreme Court case to cite.

##### **C. Authorized Use.**

All members equipped with a **BWC** shall activate their **BWC** equipment to record in the following circumstances:

1. Detentions and arrests
2. Consensual encounters where the member suspects that the citizen may be involved in criminal activity as a suspect, victim or witness, except as noted in Section III, D.
3. 5150 evaluations
4. Traffic and pedestrian stops
5. When serving a search or arrest warrant
6. Conducting any of the following searches on one's person and/or property:
  - a. Incident to an arrest
  - b. Cursory
  - c. Probable cause
  - d. Probation/parole

**Commented [rk8]:** Oakland PD

**Commented [rk9]:** The working group did discuss that some agencies recommend that officers have the BWCs on all the time; the working group is not making that recommendation

**Commented [S10]:** Suggestion from Public Defenders Office to add the tem "pat search in parenthesis.

- e. Consent
- f. Vehicles
- 7. Transportation of arrestees and detainees
- 8. During any citizen encounter that becomes hostile
- 9. ~~In any situation when other situations when the assigned member believes that the recording would be valuable for evidentiary purposes~~
- 10. ~~Only in situations that serve a law enforcement purpose.~~  
Members shall not activate their BWCs in situations that serve no law enforcement purpose.

Commented [rk11]: Suggested by Officer Booth

Commented [S12]: Group suggestion after lengthy discussion.

#### D. Prohibited Recordings

Commented [rk13]: The group wanted to add a title to this section

Members shall not ~~intentionally use activate, or if already activated, shall deactivate the BWCs to record when encountering:~~

Commented [S14]: As suggested by DC Ali.

Commented [rk15]: Additional language was going to be developed by a member of the group, but to date, not received

- 1. Sexual assault and child abuse victims during a preliminary investigation
- 2. Situations that could compromise the identity of confidential informants and undercover operatives
- 3. Strip searches

However, a member may record in these circumstances if the member can articulate an exigent circumstance that required deviation from the normal rule in these situations.

- 4. ~~Surreptitious recording of Department members as defined in DGO 2.01, Rule 56, Surreptitious Recordings~~
- 5. ~~First Amendment Activities as defined in DGO 8.10, Guidelines for First Amendment Activities~~

Commented [rk16]: DGO 2.01

Commented [rk17]: DGO 8.10

Members shall not activate the BWC in a manner that is specifically prohibited by DGO 2.01, General Rules of Conduct, Rule 56 – Surreptitious Recordings - and DGO 8.10, Guidelines for First Amendment Activities.

Commented [S18]: As suggested by Commander Moser.

#### E. Permissible Terminations of Recordings

Once the BWC has been activated, members shall continue using the BWC until their involvement in the event has concluded to ensure the integrity of the recording, unless the contact moves into an area restricted by this policy. Members ~~shall may terminate deactivate the BWC a recording~~ in the following circumstances:

- 1. When discussing sensitive tactical or law enforcement information away from the citizen
- 2. After receiving an order from a higher ranking member
- 3. After arriving safely at the booking facility
- 4. When recording at a hospital would compromise patient confidentiality
- 5. When gathering intelligence information from witnesses or community members, and there is concern that a BWC would inhibit intelligence information gathering efforts, ~~as some witnesses and community members may be hesitant to report information if they know their statement will be recorded. They may fear~~

Commented [rk19]: Oakland PD

retaliation, worry about their own privacy, or not feel comfortable sharing sensitive information on camera. Officers should have the discretion to keep their cameras turned off in these situations.

Commented [rk20]: PERF

#### F. Viewing BWC Recordings.

Commented [rk21]: The working group acknowledges that there are two opposing views on this issue: 1) allow officers to view the recording prior to writing an incident report, and 2) not allowing the officers to view prior to writing an incident report.

1. The accuracy of police reports, officer statements and other official documentation is essential for the proper administration of justice and complying with the Department's obligation to maintain full and complete records of enforcement and investigative activities, investigators, supervisors, prosecutors and other officials rely on complete and accurate records to perform their essential duties and responsibilities. Officers are therefore required to review body worn video recordings on their assigned device or authorized computer prior to documenting an incident, arrest, search, interview, use of force, or other enforcement or investigative activity to ensure that their reports, statements, and documentation are accurate and complete.

Commented [rk22]: From LAPD policy

A member's recollection and perception of an incident may vary from what he/she may later recall and/or from what a recording captures. A review of a recording is intended to aid in recollection. However, members should remember to focus on their own perspective and specific recollection of the event.

2. Recordings may be reviewed by a member for any legitimate investigatory purpose, including but not limited to, preparing an incident report, preparing statements, or providing testimony, except when the member is the subject of the investigation in any of the following that were captured by the BWC:
  - a. An officer-involved shooting or in-custody death,
  - b. A member is the subject of a criminal investigation, or an immediate administrative investigation, or an immediate investigation
  - c. At the discretion of the Chief of Police or their designee.

For the above listed circumstances, the Department's administrative or criminal investigator will coordinate with the member or the member's legal representative to arrange the viewing of the BWC recording prior to the member's interview.

Commented [rk23]: Director Hicks feels that the OCC investigators should be included as one of the entities that will coordinate with the member or the member's legal representative for the above listed "carve outs"

Commented [rk24]: Similar to LAPD

3. Members with no legitimate law enforcement purpose shall not access or view BWC recordings.

#### G. Documentation.

Officers submitting an incident report or completing a written statement shall indicate whether the BWC was activated and whether it captured footage related to the incident.

If a member deactivates a BWC recording prior to the conclusion of an event, the member shall document the reasons for terminating the recording in CAD, the incident report, a written statement or a memorandum.

If a member reactivates the BWC after turning the equipment off, the member shall document the reasons for restarting the recording in CAD, the incident report, a written statement or a memorandum.

If a member determines that officer or public safety would be compromised if a BWC were activated during an incident requiring its use, the member shall document in CAD, an incident report, a written statement or a memorandum the reasons for not using the BWC.

~~If a member terminates the prior to the conclusion of an event, the member shall document the reasons for terminating the recording in an incident report, written statement or CAD entry or a memorandum. If the member restarts the after turning the equipment off, the member shall document the reason for restarting the recording in the incident report, written statement or CAD or a memorandum.~~

#### ~~FH.~~ Storage and Use of Recordings.

1. A member who has recorded an event shall upload the footage prior to the end of his or her watch unless instructed to do so sooner by an assigned investigator or a superior officer
2. When uploading recordings to the computer server, members shall identify each BWC recording with the incident report number, CAD number or citation number and the appropriate incident category title to ensure the recording is accurately retained and to comply with local, state and federal laws.

~~3.~~

~~Note: A member's recollection and perception of an incident may vary from what he/she may later recall and/or from what a recording captures. A review of a recording is intended to aid in recollection. However, members should remember to focus on their own perspective and specific recollection of the event.~~

~~4. Members with no legitimate law enforcement purpose shall not access recordings.~~

#### ~~GI.~~ Duplication and Distribution.

1. Departmental Requests

The officer-in-charge or commanding officer of the unit assigned the investigation recorded by the BWC, or the officer-in-charge or commanding officer of the

Legal Division shall have the authority to permit the duplication and distribution of the **BWC** files. Other than routine discovery request stemming from the rebooking process or court proceedings, any member requesting to duplicate or distribute a **BWC** recording shall obtain prior approval from the officer-in-charge or the commanding officer of the unit assigned the investigation, or the officer-in-charge or commanding officer of the Legal Division. Duplication and distribution of **BWC** recordings are limited to those who have a “need to know” and a “right to know” and are for law enforcement purposes only.

## 2. Non-Departmental Requests

- a. Members shall accept and process public records requests in accordance with the provisions of federal, state and local statutes and Department policy.
- b. Members shall provide discovery requests related to the rebooking process or other court proceedings by transferring the **BWC** recording to the requesting agency by using the computer server where the **BWC** recording is stored.

Commented [rk25]: Oakland PD

### ~~HJ~~. Retention.

The Department shall retain all **BWC** recordings for a minimum of one year in adherence with local, state, federal statutes and Department policy.

A **BWC** recording may be saved for a longer or indefinite period of time as part of a specific case if deemed relevant to a criminal, civil or administrative matter.

Except for members of the RMO, a member may not delete any **BWC** recording without prior authorization. The member seeking to delete a recording shall submit a memorandum to his/her Commanding Officer requesting to delete footage from a **BWC** file and shall make an entry of the request in the appropriate case file, if applicable.

The Commanding Officer shall then forward the memorandum to the Commanding Officer of the Risk Management Office for evaluation and appropriate action.

Members of the RMO are authorized to delete **BWC** recordings in accordance with the Department’s established retention policies on **BWC** recordings and when directed by the Commanding Officer of the Risk Management Division.

### ~~IK~~. Accidental or Unintentional Recordings.

If a **BWC** accidentally or inadvertently captures an unintended recording, the member may submit a memorandum through the chain of command specifying the date, time, location and a summary of the unintentionally recorded event. This memorandum shall be forwarded to the Commanding Officer of the Risk Management Office for evaluation and appropriate action.

~~KL~~ Discovery of Potential Misconduct during Authorized Review.

Commented [rk26]: From San Diego PD

Members reviewing recordings should remain focused on the incident captured in the BWC and should review only those recordings relevant to the investigative scope. If potential misconduct is discovered during any review of the BWC, a superior officer shall conduct an administrative investigation pursuant to Department General Order 1.06, Duties of Superior Officers, Section I.A.4. Nothing in this procedure prohibits addressing Department policy violations.

**References:**

**Los Angeles Police Department's Body Camera Policy**

**Oakland Police Department's Body Camera Policy**

**Bart Police Department's Body Camera Policy**

**San Diego Police Department's Body Camera Policy**

**PERF/US DOJ Report: Implementing a Body-Worn Camera Program**

**DGO 1.06, Duties of Superior Officers**

**DGO 2.01, Rules 23 and 24, Use of Department Property and Loss or Damage to Department Property**

**DGO 2.01, Rule 56, Surreptitious Recordings**

**~~DGO 2.04, XXXX~~**

**DGO 8.10, Guidelines for First Amendment Activities**