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## Body Worn Cameras

### 424.1 PURPOSE AND SCOPE

The Moorhead Police Department has equipped law enforcement operators with Body Worn Camera (BWC) systems. the purpose of this policy is to provide guidelines for the use, management, access, storage, retrieval and retention of audio-visual media recorded by BWC systems as prescribed by law.

#### 424.1.1 DEFINITIONS

Definitions related to this policy include:

**Activate** - Any process that causes the BWC system to transmit or store audio-visual signals.

**Body Worn Camera (BWC)** - A device worn by an LEO that is capable of both video and audio recordings of the LEO's activities and interactions with others or collecting digital multimedia evidence as part of an investigation as provided in Minn. Stat. 13.825.

**Law Enforcement Operator (LEO)** - Primarily a licensed peace officer but on occasion may be a non-licensed representative of the Moorhead Police Department who is authorized and assigned to operate BWC equipment.

**MGDPA** - The Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.

**PODPA** – The Peace Officer Discipline Procedures Act, Minnesota Statutes Section 626.89.

**BWC Administrator** - Command Staff who oversee's BWC program with the assistance of the BWC Technician.

**Property and Evidence Technician** - Personnel certified or trained in receiving and storing evidence and property, maintaining property inventory reports with proper "chain of custody" notations and any and all actions associated with the property or evidence.

**BWC Technician** - Personnel certified or trained in the operational use and repair of BWCs, duplicating methods, storage and retrieval methods and procedures, and who possess a working knowledge of video forensics and evidentiary procedures. BWC Technician assigns, tracks and maintains BWC equipment, oversees needed repairs or replacement equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor.

**Recorded media** – Audio-visual signals that are recorded or stored.

**Records Retention Schedule** - Refers to the General Records Retention Schedule for Minnesota Cities.

### 424.2 POLICY

It is the goal of the Moorhead Police Department to use mobile video recording (BWC) technology to more effectively fulfill the department's mission and to ensure these systems are used securely, efficiently and in compliance with the law.

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#### **424.3 BWC OPERATIONAL OBJECTIVES**

The Moorhead Police Department has adopted the use of Body Worn Cameras to accomplish the following objectives:

- To enhance LEO safety.
- To document statements and events during the course of an incident.
- To enhance the LEO's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation/presentation.
- To preserve visual and audio information for use in current and future investigations.
- To provide a tool for self-critique and field evaluation during LEO training.
- To enhance the public trust by preserving factual representations of LEO-citizen interactions in the form of recorded media.
- To assist with the defense of civil actions against LEO's and the City of Moorhead.
- To assist with the training and evaluation of officers.

#### **424.4 LEO RESPONSIBILITIES**

Law Enforcement Officer safety shall be the primary consideration for the use and activation of the BWC system. LEOs that are issued a body-worn BWC will wear the BWC as part of their uniform and operate and use them consistent with this policy. LEO's may use only Department-issued BWC's in the performance of official duties for the Moorhead Police Department or when otherwise performing authorized law enforcement services as an employee of this Department.

Inspection and general maintenance of BWC equipment shall be the responsibility of the LEO to whom the BWC is assigned and performed at the beginning of each shift. If the body worn BWC system is malfunctioning, damaged or stolen, the LEO shall, as soon as reasonably possible, notify a supervisor. Further, the LEO shall obtain a functioning BWC as soon as reasonably practicable. Supervisors shall, as soon as reasonably possible, take action to address malfunctions and document the steps taken.

#### **424.5 DOCUMENTING BWC USE**

LEO's must document BWC use and non-use as follows:

- Whenever an LEO makes a recording, the existence of the recording shall be documented in the LEO's report or CAD record/other documentation of the incident.
- Whenever an LEO fails to record an incident that should be recorded under this policy or captures only a part of the activity, the LEO must document the circumstances and reasons for not recording in the LEO's report or CAD record/other documentation of the incident.

A LEO engaged in extra duty employment is not required to activate the BWC for every contact made. However, such officer shall be expected to activate the BWC if a situation or incident occurs which would otherwise require activation, when safe to do so.

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The Department will maintain the following records and documents relating to BWC use, which are classified as public data:

- The total number of BWC's owned or maintained by an agency.
- A daily record of the total number of BWC's actually deployed and used by officers.
- The total amount of recorded BWC data collected and maintained; and
- This policy, together with the Records Retention Schedule.

#### 424.5.1 REQUIRED ACTIVATION OF THE BWC

This policy is not intended to describe every possible situation in which the recorder should be used, although there are many situations where its use is appropriate. Members should activate the recorder any time the member believes it would be appropriate or valuable to record an incident.

The recorder should be activated in any of the following situations:

- All enforcement and investigative contacts including stops and field interview (FI) situations
- Traffic stops including, but not limited to, traffic violations, stranded motorist assistance and all crime interdiction stops
- Self-initiated activity in which a member would normally notify the Dispatch Center
- Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

Members should remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Requests by members of the public to stop recording should be considered using this same criterion. Department members have discretion in whether or not to record potentially sensitive events or circumstances (e.g. victims of sexual assault, child victim statements/interviews, nude persons who are not the target of enforcement action, or a citizen victim, witness who requests they not be recorded while giving a statement, or where otherwise authorized in this policy.) Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

Department members shall record their transportation and physical transfer of persons if their custody to/from hospitals, detox, mental health care facilities, juvenile detention centers, and jails, but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or has been involved in or witnessing an adversarial encounter or use of force incident.

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At no time is a member expected to jeopardize his/her safety in order to activate a portable recorder or change the recording media. However, the recorder should be activated in situations described above as soon as reasonably practicable.

LEOs have no affirmative duty to inform people that a BWC system is being operated or that the individual is being recorded.

For all NON-UNIFORMED employees assigned a body camera, its use shall be at the employee's discretion, with the exception of any planned enforcement. For any planned enforcement investigators should follow the direction given within this policy.

Department members assigned to or temporarily working on a federal or state task force shall comply with this policy unless superseded by law or approved memorandum of understanding.

#### 424.5.2 CESSATION OF RECORDING

Once activated, the BWC system should remain on until the incident has concluded unless:

- the incident or event is of such duration that the BWC is deactivated to conserve power or storage capacity;
- the officer does not reasonably believe that deactivation will result in the loss of critical evidence;
- deactivation is reasonable and necessary to protect the safety of the officer or others; or
- deactivation is approved or ordered by a supervisor; or;
- deactivation is necessary to protect the identity of persons or other data entitled to protection under the law.

For purposes of this section, conclusion of an incident has occurred when all arrests have been made, arrestees have been transported and witnesses and victims have been interviewed. Recording may be temporarily paused or the audio muted to exchange information with other LEOs, legal counsel, or the lens obstructed to avoid capturing images of undercover officers, informants, or citizens where based on the training, experience and judgment of the officer, a recording would not be appropriate or consistent with this policy. The intention to pause and resume the recording (or to mute audio or obstruct the lens) will be noted by the LEO either verbally on the BWC or in a written report. Recording may cease during non-enforcement activities such as waiting for a tow truck or a family member to arrive, protecting accident scenes or in other non-enforcement situations.

#### 424.5.3 WHEN ACTIVATION IS NOT REQUIRED

Activation of the BWC system is not required when exchanging information with other officers or during breaks, lunch periods, when not in service or actively on patrol.

No member of this department may surreptitiously use City equipment to record a conversation of any other member of this department except with a court order or when lawfully authorized

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by the Chief of Police or the authorized designee for the purpose of conducting a criminal or administrative investigation.

#### 424.5.4 PROHIBITED RECORDING

A BWC shall not be activated with regard to interactions solely among other employees.

The BWC shall not be used to record non-work related activity.

LEOs shall not use any external device to record media that has been captured by the BWC.

#### 424.5.5 SUPERVISOR RESPONSIBILITIES

Supervisors should assess that:

- LEOs are using their BWCs in accordance with Department policies and procedures.
- Logs reflect the proper chain of custody, including:
  1. The tracking number of the BWC system media.
  2. The date it was issued.
  3. The LEO to whom it was issued.
  4. The date it was submitted.
  5. LEO submitting the media.
  6. Holds for evidence indication and tagging as required.
- It is recommended that the operation of BWC systems by new employees is assessed and reviewed no less than biweekly or until the new employee demonstrates a working knowledge of the BWC system and the applicable policies and procedures.

When an incident arises that requires the immediate retrieval of the recorded media (e.g., serious crime scenes, officer involved shootings, Department-involved collisions), a supervisor should respond to the scene and ensure recorded media is secured in accordance with Department policy. The media shall be processed and retained in accordance with current policy and procedures.

#### **424.6 DOWNLOADING AND LABELING BWC AND IN CAR CAMERA DATA**

Each LEO using a BWC is responsible for transferring or assuring the proper transfer of the data from his or her BWC. However, if the LEO 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 LEO's BWC and assume the responsibility for transferring the data from it.

LEOs should 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. LEOs should assign as many of the following labels as are applicable to each file:

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- Arrest/Investigations - The video involves the physical arrest of an individual and/or the transport of an individual to jail. The video is part of an investigation that the LEO believes is necessary to retain.
- Citation - The recording is of an event surrounding the issuance of a citation.
- Department - The recording is sensitive in nature or the officer believes it is important to save for future use, such as Internal Investigations and potential complaints against an officer or the Department. This label is also used when the event involved the application of force by an LEO or the discharge of a firearm. An officer may use this category in addition to another category.
- Interview - The recording is of an interview of a suspect, witness or victim by an officer.
- Use of Force - This label is used by the LEO when the event involved the application of force or the discharge of a firearm that also requires use of force reporting as defined by policy. This label should be used in combination with Arrest/Investigations or Citation if the aforementioned force situation occurred during the apprehension of the individual.
- Pending Review - Manufacturer's label for a video which may have technical issues regarding the recording.
- Not Evidence - The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value.
- Unintentional - Video recordings which result from an officer's inadvertence or neglect in operating the officer's BWC, providing no portion of the resulting recording has evidentiary value. Examples include, but not limited to: recordings made in the locker room, restrooms, and recordings made while officers are engaged in conversations of non-business, personal nature with the expectations that the conversation was not being recorded.

Labeling may be corrected or amended based on additional information.

#### **424.7 ACCESS TO BWC DATA**

All recorded media, recorded images and audio recordings are the property of the Department and are government data subject to the provisions of the MGDPA. Dissemination outside of the Department is strictly prohibited except to the extent per remitted or required under the MGDPA, PODPA or other applicable law.

- A. **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:
- Any person or entity whose image or voice is documented in the data
  - The officer who collected the data
  - 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

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- B. **BWC data are presumptively private.** BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
- BWC data pertaining to people, businesses or other entities are presumed to be private or nonpublic data
  - Some BWC data are classified as confidential (see C. below)
  - Some BWC data are classified as public (see D. below)
- C. **Confidential data.** BWC data that are collected or created as part of an active criminal investigation are governed by Minn. Stat. 13.82 and are classified as confidential or protected nonpublic data. This classification takes precedence over the "private" classification listed above and "public" classifications listed below.
- D. **Public data.** The following BWC data are public:
- Data that document the discharge of a firearm by an officer in the course of duty, other than for training or the killing of an animal that is sick, injured or dangerous.
  - Data that document the use of force by an officer that results in substantial bodily harm.
  - Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any subject (other than an officer) who has not consented to the public release must be redacted. In addition, any data on undercover officers must be redacted.
  - Data that are public personnel data under Minn. Stat. 13.43 subdivision 2(5).
  - However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveal protected identities under Minn. Stat. 13.82 (e.g., certain victims, witnesses and others) or other applicable law 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 data practices designee, who shall process the request in accordance with the MGDPA and other governing laws. In particular:
- An individual who is the subject of the data has access to the data, including data on other individuals who are the subject of the recording, but access shall not be granted: (a) if the data were collected or created as part of an active investigation (b) 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 subdivision 17.
  - Unless the data are part of an active investigation, an individual data subject may request a copy of the recording, 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

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by 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. Officers may access and view stored BWC video only when there is a business need for doing so, which includes the following:
- for use when preparing reports or statements or providing testimony;
  - to assess proper functioning of BWC systems;
  - by Department investigators assigned to a related criminal investigation, or after approval of a supervisor, for official investigations;
  - by an LEO who is captured on or referenced in the video or audio data and reviews and uses the data for any purpose relating to his/her employment;
  - when reasonable and necessary for the officer to perform the essential functions of his/her job or to defend against allegations of substandard performance or misconduct. To prevent damage to, or alteration of, the original recorded media, it shall not be copied, viewed or otherwise inserted into any device not approved by the Department BWC technician or forensic media staff. When reasonably possible, a copy of the original media should be used for viewing to preserve the original media. LEOs shall not make a copy of any BWC data except in compliance with this policy. The Department shall restrict by password protection access to all BWC data and shall maintain an electronic record of the date, time, and name of each employee who accesses the data. In no event shall any BWC data be used or shown for the purpose of ridiculing or embarrassing any employee.
- G. **Other authorized disclosures of data.** LEOs may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. 13.82. LEOs 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 audio but not displaying video. In addition:
- BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.
  - BWC data shall be made available to prosecutors, courts and other criminal justice entities as provided by law.
  - with the approval of the Chief of Police, the Department may make any data classified as confidential or protected nonpublic pursuant to Minn. Stat. 13.82 subdivision 7 accessible to any person, agency or the public if the Department determines that the access will aid the law enforcement process, promote public safety or dispel widespread rumor or unrest, consistent with Minn. Stat. 13.82 subdivision 15.



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#### **424.8 AGENCY USE OF DATA**

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 LEO misconduct or performance. Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline. The BWC is not intended to be used for the purpose of surveillance of officers or initiating disciplinary action against an officer.

LEOs should contact their supervisors to discuss retaining and using BWC data for training purposes. LEO objections to preserving or using certain data for such purposes 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 trainees' performance.

##### **424.8.1 COPIES OF ORIGINAL RECORDING MEDIA**

Original recording media shall not be used for any purpose other than for initial review by a supervisor. Upon proper request a copy of the original recording media will be made for use as authorized in this policy.

Original recording media may only be released in response to a court order or upon approval by the Chief of Police or the authorized designee. In the event an original recording is released to a court a copy shall be made and placed in storage until the original is returned.

##### **424.8.2 BWC RECORDINGS AS EVIDENCE**

Officers who reasonably believe that an BWC recording is likely to contain evidence relevant to a criminal offense, potential claim against the officer or against the Moorhead Police Department should indicate this in an appropriate report. Officers should ensure relevant recordings are preserved.

#### **424.9 BWC DATA RETENTION**

All BWC data shall be retained for a minimum period of 90 days.

BWC data must be maintained for at least one year and destroyed according to the Records Retention Schedule if:

- the data document the discharge of a firearm by an officer in the course of duty, other than for training or the killing of an animal that is sick, injured or dangerous;
- the data document the use of force by a peace officer that results in substantial bodily harm; or
- the data document circumstances giving rise to a formal complaint against the officer.

Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule.

Subject to the next item 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.

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Upon written request by a BWC data subject, the Department shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The Department will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.

Unintentional Recordings will be locked and reviewed for destruction after 90 days by the BWC Coordinator, or designee.

The Department will post this policy, together with a link to its Record Retention Schedule, on its website.

#### **424.10 BWC TECHNICIAN RESPONSIBILITIES**

The Property and Evidence Technician is responsible for:

- Retrieving, storing, erasing and duplicating of all recorded media.
- Collecting all completed media for oversight. Once collected the Property and Evidence Technician:
  1. Ensures it is stored in a secured location with authorized controlled access.
  2. Makes appropriate entries in the chain of custody log.
- Erasing of media:
  1. Pursuant to a court order.
  2. In accordance with established records retention policies.
- Ensuring that an adequate supply of recording media is available.
- Managing the long-term storage of media that has been deemed to be of evidentiary value in accordance with the department evidence storage protocols and the Records Retention Schedule.

#### **424.11 SYSTEM OPERATIONS STANDARDS**

BWC system use should be based on LEO safety requirements and device manufacturer recommendations.

The BWC system should be configured to record no more than 60 seconds prior to an activation.

The BWC system should not be configured to record audio data occurring prior to activation.

LEOs using digital transmitters that are individually synchronized to their individual BWC should activate both audio and video recording when responding in a support capacity in order to obtain additional perspectives of the incident scene.

With the exception of law enforcement radios or other emergency equipment, other electronic devices should not be used within the law enforcement vehicle in order to intentionally interfere with the capability of the BWC system.

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LEOs shall not intentionally erase, alter, modify or tamper with BWC data. Only a supervisor, BWC administrator, BWC technician or other approve designee may erase media in accordance with this policy.

As required by Minn. Stat. 13.825 subdivision 9, as may be amended from time to time, this Department shall obtain an independent biennial audit of its BWC program.

#### **424.12 TRAINING**

Users of the BWC system and supervisors shall successfully complete an approved course of instruction prior to being deployed with BWC systems in operational settings.

#### **424.13 USE OF PERSONAL DIGITAL RECORDING DEVICES**

LEOs are prohibited from using personal video recording equipment in lieu of their Department-issued BWCs while on-duty. However, the Department recognizes that, in rare or unforeseen situations, it may be necessary for LEOs to use their personal video recording equipment to record or collect evidence. In such an event, the LEO must upload that media into LaserFiche or save to a DVD and place into evidence in accordance with Department policy and procedure.

#### **424.14 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.