


<b>RUTHERFORD POLICE DEPARTMENT</b>			
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<b>SUBJECT: BODY WORN CAMERAS (BWCs)</b>			
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<b>BY THE ORDER OF:</b> Chief John R. Russo		8/8/2016 3/23/2017 5/1/2019	All 1 IV. Procedures; I General; N; 2
<b>SUPERSEDES ORDER #:</b>		6/1/2021 1/21/2022 5/20/2022	All All All

**I. POLICY**

It is the policy of the Rutherford Police Department to utilize body worn cameras 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 consistent with manufacturer’s guidelines, this general order, and those directives or guidelines issued by the Attorney General’s Office, and the Bergen County Prosecutor’s Office.

**II. PURPOSE**

The purpose of this general order is to set forth guidelines for the use, management, storage, and retrieval of audio-visual media recorded by body worn cameras (BWCs).

### **Recognizing the Multitude of Reasons for Deploying BWCs.**

It is widely recognized that BWCs can play an important role in addressing public concerns about police use of force. A BWC recording of a police-involved shooting or other use-of-force event provides objective evidence of what occurred. The practical utility of BWCs, however, lies not only in their ability to record objectively the circumstances of a police-civilian confrontation, but also in their capacity to discourage both officers and civilians from engaging in inappropriate conduct. Thus, for example, a BWC operating during a police-civilian encounter can deter the officer from using force inappropriately; while at the same time deter a civilian from engaging in provocative conduct that might prompt the officer to use force. These devices also can serve to discourage both law enforcement and civilian witnesses from providing false information about the circumstances of the encounter; a BWC recording not only can vindicate an officer who is falsely accused of misconduct, and do so very quickly, but also will discourage a person from making false allegations against the officer in the first place.

The foregoing benefits provide ample reason for police departments to consider deploying BWCs. The practical utility of these recording devices, however, is not limited to those rare occasions when police employ force, or are accused by civilians of misconduct. BWC recordings will be used far more routinely to document visual and aural evidence learned in the course of conducting police investigations. Not only will BWC recordings preserve accurate visual depictions of physical evidence, such as weapons and illicit drugs and paraphernalia, but also will document where and how physical evidence was found, thereby helping to establish the facts that must be presented in Fourth Amendment suppression hearings. BWCs also will record the physical appearance of suspects and crime victims, preserving evidence of any apparent injuries. The audio portion of BWC recordings, meanwhile, will document witness and suspect statements, preserving not only the substantive content of those statements, but also showing whether officers had complied with Miranda and other legal requirements.

Although BWCs record events accurately and objectively, they do not replace the need for complete and accurate police reports and testimony. The fact that a BWC is not activated to record an encounter or event does not, of course, preclude an officer from testifying as to the circumstances of the encounter or event, or affect the admissibility of evidence. Nor does it suggest that the officer's written report or testimony is inaccurate or incomplete. However, a BWC recording can supplement and corroborate the accuracy of written reports and testimony, which is one of the significant benefits of deploying these devices.

### III. DEFINITIONS

For purpose of this General Order

- a. **"Activate"** means to actuate the recording mode/function of a body worn camera.<sup>1</sup>
  - 1) Some BWC models may be turned on and remain in a standby or buffering mode, during which the device does not make a permanent record of images/sounds unless the officer activates the recording mode/function. With respect to these models, when the officer activates the recording mode/function, the device automatically preserves an electronic recording of the events that transpired a fixed period of time: 30 seconds) before the recording mode/function was activated. This time-delay or "buffering" feature allows the device to capture data concerning the event/circumstances that prompted the officer to activate the BWC. When an officer does not activate the recording mode/function, data captured while the device is in standby/buffering mode is overwritten automatically.
- b. **"Bodily Injury"** means physical pain, illness or any impairment of physical condition.
- c. **"Body worn camera" ("BWC")** means a device worn by a law enforcement officer that makes an electronic audio/video recording of activities that take place during any law enforcement action. The term does not include a mobile video recording device when mounted inside a police vehicle (i.e., a dash cam). The term also 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 Rule 3:17 (electronic recording of station house custodial interrogations).
- d. **"Constructive authority"** shall have the same meaning as defined in the Attorney General's Use of Force Policy, except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest, or directed against any person if the officer has un-holstered a firearm or a conducted energy device.
- e. **"Equipped with a BWC"** shall refer to an officer wearing a BWC at the time in question, as opposed to simply receiving the BWC equipment from the agency.
- f. **"Force"** shall have the same meaning as defined in the Attorney General's Use of Force Policy. The term "force" shall include physical, mechanical, enhanced mechanical and deadly force.
- g. **"Investigation of a criminal offense"** means any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, 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.

- h. **"Law enforcement agency," "agency," or "department"** means a law enforcement agency operating under the authority of the laws of the State of New Jersey.
- i. **"Law enforcement officer" or "officer"** means a sworn officer employed by a law enforcement agency.
- j. **"School"** means an elementary or secondary school.
- k. **"Youth facility"** means a facility where children assemble under adult supervision for educational or recreational purposes, such as day-care centers, youth camps, etc.
- l. **"Mobile Video Recording System"** A device or system installed or used in a police vehicle or worn or otherwise used by an officer that electronically records visual images depicting activities that take place during a motor vehicle stop or other law enforcement action.
- m. **"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 the aforementioned activities, and they are sometimes referred to as crime suppression units. The nature of their work is varied and 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.
- n. **"Serious Bodily Injury"** means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.
- o. **"Significant Bodily Injury"** means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.

- p. **“Subject of the Video Footage”** Any law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the BWC recording, and shall not include a person who only incidentally appears on the recording.
- q. **“Substantive Report”** is a police report that includes a detailed accounting of an incident,
- r. **“Tactical Team”** 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.

#### IV. PROCEDURES

##### i. GENERAL

- A. BWC recordings are invaluable to law enforcement for evidential purposes. A BWC has consistently demonstrated its value in the prosecution of criminal, traffic, and other related offenses and to protect personnel from false claims of misconduct. Additionally, this equipment will provide valuable instructional material that can be utilized for in-service training programs.
- B. While visual and audio evidence may be captured on the recordings, the use of a 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. There is no intent to utilize the BWC as a management tool to punish officers for minor departmental rule infractions.
  - 1. Personnel shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters.
  - 2. BWCs shall only be utilized for legitimate law enforcement purposes.
- C. Adequate safeguards are necessary to ensure that this technology is:
  - 1. Used in a non-discriminating way

2. Used to properly preserve evidence
  3. Used to safeguard against potential violations of the New Jersey State Wiretap Laws, NJSA 2A:156A-1, et seq.
- D. When properly used, this equipment will have the following capabilities:
1. Creation of accurate documentation of motorist contacts and other patrol related activities.
  2. Preservation of an audio and video record of events, actions and conditions during arrests, critical incidents, and prisoner transports.
- E. 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 particular 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. The recording can provide a record of police/citizen interaction within the police vehicle itself when an officer's attention is on driving. For example, the recorder will record events during transportation of arrested persons, escape risks, mentally disturbed individuals, intoxicated persons, people who are physically injured and members of the opposite sex. The recording can provide accurate documentation of highly detailed and/or fast-moving incidents, such as roadside sobriety testing, violent encounters, and pursuits.
  6. Supervisors will be able to view the recordings with the permission of the Chief of Police or designee and select portions can be used to train officers in safety, FTO training, interpersonal skills, proper police procedures, and legal doctrines once initial reports pertaining to those recordings are submitted.

7. Recordings can permit supervisors to undertake more meaningful performance evaluations.
  8. Recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the general public.
  9. Recordings enhance management's ability to train personnel in proper police procedures.
- F. The official BWC of the Rutherford Police Department shall be the **AXON Body 3**.
- G. Only officers who have received training in the use of BWCs are permitted to use the system and must demonstrate a satisfactory degree of familiarity and efficiency in the use of the system.
- H. Repairs to any of the BWC equipment shall only be performed under the direction of the Department Administration or designee.
- I. All recording media, images, and audio are intellectual property of the Rutherford Police Department and will not be copied, released or disseminated in any form or manner outside the parameters of this General Order without the expressed written consent of the Chief of Police.
- J. Under no circumstances will any member of the Rutherford Police Department make a personal copy of any recorded event without the permission of the Chief of Police.
- K. BWC are 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.
- L. Officers will use only those BWCs approved and issued by the Chief of Police. Wearing any personally owned video/audio recorder is not authorized without the expressed written permission of the Chief of Police, the Bergen County Prosecutor's Office, or the New Jersey Division of Criminal Justice. Violations will be subject to disciplinary action up to and including termination.
- M. BWCs shall be used only in conjunction with official law enforcement duties. The BWCs shall not be used to record:
1. Encounters with undercover officers or confidential informants.
  2. Communications with other police personnel without the advanced permission of the Chief of Police, Internal Affairs, the Bergen County Prosecutor's Office or the New Jersey Division of Criminal Justice.

3. A BWC shall not be activated or used by an officer for personal purposes, or when engaged in police union business. Nor shall a BWC be used to record conversations involving counseling, guidance sessions, personnel evaluations, or any similar supervisory interaction.
  4. When on a break or otherwise engaged in personal activities.
  5. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.
  6. BWCs shall remain powered **ON** at all times when assigned to personnel excluding the follow:
    1. When taking a personal break within a private residence.
    2. When entering Headquarters, BWCs shall be powered **OFF** unless interacting with a citizen or handling an arrestee.
    3. BWCs shall be powered **OFF** when entering a bathroom or locker room for personal breaks.
- N. All Rutherford Police Department officers assigned to a Uniformed Patrol function shall be equipped with a BWC during the course of his/her shift and shall include:
1. Traffic Bureau, including SLEO I, II, & III personnel when in uniform and performing Patrol functions.
  2. All officers assigned to tactical teams as defined in this policy. Tactical Teams shall include S.W.A.T. (Special Weapons and Tactics), S.R.T. (Special Response Teams), T.E.A.M.S. (Technical Emergency and Mission Specialists), Entry Teams, Rapid Deployment, Fugitive or similar units.
  3. All officers assigned to proactive enforcement teams as defined in this Policy.
  4. All officers assigned to K-9.
  5. All officers whose assigned duties include regular interaction with members of the public, which reasonably may give rise to an arrest situation or use of force.
  6. All officers assigned to "dispatch desk" duty whose duties include interaction with members of the public who enter police stations to report incidents or request assistance or information.



7. All officers assigned to pre-planned search warrant executions or a pre-planned arrests performed pursuant to statutory authority, such as parole searches.
8. All uniformed officers assigned to duties at demonstrations or potential civil disturbances.
9. All road details/uniformed outside overtime (BWCs need not be activated for the entire length of the detail, but shall be activated when necessary and consistent with this order).
10. Patrol Tour Commanders and Shift Supervisors shall be equipped with BWCs when outside of Police Headquarters during the shift.
11. Plain-clothes personnel shall equip themselves with a BWC when responding from Headquarters to assist Patrol with a prisoner transport.
12. The Chief of Police or his/her designee will assign BWCs to other individual officers as deemed appropriate.
  1. Special Circumstances: Exemptions from the requirements of who must wear a BWC are permitted only when approved by the Director of the Division of the Criminal Justice or the County Prosecutor, and only under such special circumstances that warrant an exemption. The reasons for the exemption shall be made in advance and approved in writing. The reasons for the exemption must be documented and demonstrate a special need.

O. Officers not required to wear BWCs.

1. Officers engaged in undercover assignments.
2. Officers acting as hostage negotiators or crisis negotiators working in conjunction with tactical teams.
3. Officers in administrative duties and not in uniform.
4. Officers meeting with confidential sources or recruiting potential confidential sources.
5. Officers engaged in union representation or a member of the collective bargaining unit.
6. Officers assigned to duties within schools or youth facilities as part of the normal daily educational environment, such as school

resource officers and SLEOs I, II, & III. Officers assigned to duties at schools or youth facilities working security or crowd-control functions at events such as athletic competitions, graduations or similar public events shall be equipped with BWCs.

7. Non-uniformed officers assigned to investigate non-enforcement duties, when authorized by the agency's law enforcement executive.
  8. Officers (1) engaged in duties as bomb or explosives technicians; (2) conducting searches of cellphones, tablets, computers or other electronic devices pursuant to a search warrant, when such items have already been seized and the search is performed at a location other than the premises of the initial search and seizure; or (3) when conducting searches of cellphones, tablets, computers or other electronic devices that are suspected to contain images of child sexual exploitation.
- P. An officer equipped with a BWC must comply at all times with the requirements established in this General Order and in any other Department policy, standing operating procedure, directive, or General Order.
- Q. A BWC shall be placed so that it maximizes the camera's ability to capture video footage of the officer's activities. This may include placement on helmets, vests, or other such location so long as the device is secured properly and will maximize the device's recordation function.
- R. Each Shift's Tour Commander shall assure that all BWCs are accounted for at the start of each shift, and shall document the issuance of BWCs accordingly in LawSoft.
- S. BWCs will remain the responsibility of each assigned officer unless otherwise directed by a Supervisor. Each issued BWC shall be returned to the docking station at shift completion by the assigned officer only.
- T. Any sworn officer or civilian employee of the agency who knowingly violates the requirements of this Directive or the agency's policy, standing operating procedure, directive, or order shall be subject to discipline.
- U. The Rutherford Police Department shall designate one or more training officers and shall establish a training program to ensure that officers equipped with BWCs and officers and civilian employees who access or handle BWC recordings are familiar with the provisions of this General Order.

**ii. INCIDENTS TO RECORD**

- A. The BWC equipment used by the Department has a pre-record function. Once the recording begins, the system maintains a thirty second video-only buffer that is recorded to memory when the unit is activated.
1. Officers will activate their BWC when:
    1. Commencing response to a call for service
    2. Observing a violation or incident for which the officer intends to take action.
    3. The BWC will be activated by all officers responding to the scene of an incident, whether acting as the primary investigator or in the back-up officer capacity.
- B. The following incidents shall be recorded:
1. All traffic stops from the time the violation is observed until the stop is concluded, including sobriety testing;
  2. All calls for service
  3. Stationary police details, such as DWI sobriety checkpoints, car/truck inspections, seatbelt use checkpoints, etc.
  4. Crash scenes, including interviews on the scene;
  5. Major crime scenes;
  6. Motor vehicle pursuits;
  7. Investigations of criminal violations;
  8. Searches;
  9. During the entire execution of a search warrant, absent an applicable exemption.
  10. 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;
  11. Domestic violence investigations;
  12. Investigative detentions/field interviews;

13. Strikes, picket lines, demonstrations;
  14. Officer initiated pedestrian stops
  15. Officers will activate the BWC before transporting prisoners, suspects, victims, or witnesses.
  16. All other situations that an officer's training and experience believes should be recorded or when instructed to do so by a supervisor.
  17. It should be recognized that the above is not an exhaustive or all-inclusive list and that officers should activate BWC during any situation or encounter they feel would be beneficial in the performance of their duties. Use of the BWC during operations conducted by members of the Rutherford Police Department Detective Bureau will be done so at the discretion of the Detective Bureau Supervisor so long as those operations that are mentioned above are recorded.
  18. Notwithstanding any other provision of this General Order, 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 (, an officer in distress, shots fired, etc.), the officer shall activate the BWC before arriving at the scene when feasible. Notwithstanding any other provision of this General Order and consistent with Attorney General Law Enforcement Directive 2019-4, an officer while at the scene of a police deadly-force event or the on-scene investigation of that event shall not deactivate the BWC unless instructed to do so by the assistant prosecutor or assistant or deputy attorney general supervising the investigation of the deadly-force incident pursuant to Attorney General Use of Force Policy (December 2020 Version) or his or her designee. Such instruction may be given telephonically by the assistant prosecutor, assistant or deputy attorney general, or designee supervising the investigation.
- C. A BWC shall remain activated for the entire duration of citizen contact until either the officer or citizen has departed the scene.

- D. Any officers providing assistance or back up to another officer on a citizen contact is required to have their BWC activated until the citizen has departed the scene or their assistance is no longer needed.
- E. When a BWC is activated, officers are encouraged to provide narration where practical and appropriate in an effort to augment the value of the recording and to provide clarity for the viewer.
- F. Manual deactivation of a BWC is permissible in non-enforcement situations where prolonged recording from a stationary position is unlikely to result in any citizen contact or capture information that may be useful in any prosecution or civil proceeding.
  - 1 Prior to deactivating a BWC, officers shall record their intention to deactivate along with the reason for such action.
  - 2. In the event that citizen contact is established, the BWC shall be manually reactivated.
  - 3. Officers may cease recording when they are not in direct contact with a victim, witness, suspect, or bystander AND they are conferring on a tactical or investigative strategy. While the BWC is deactivated, the BWC on another officer not involved in the strategy meeting must continue recording to ensure the entire incident is documented. All officers involved in the strategy meeting will reactivate their BWC at the conclusion of the meeting.
- G. If an officer fails to activate the BWC, fails to record the entire contact event, or interrupts the recording, the officer shall document in the applicable incident or case report why a recording was not made, was interrupted, or was terminated.
- H. Officers shall note in incident and case reports when BWC recordings were made during the incident in question. However, BWC recordings are not a replacement for written reports.
- I. 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 Rutherford Police Department Internal Affairs Policy, V1/C9. All other requests to view and/or obtain footage by the public shall be handled in accordance with section vii of this General Order.

**iii. Notice that BWCs are Deployed and Activated**

- A. Public Notice: Every department or agency shall take reasonable steps to inform the citizenry of the agency's use of this technology. The department shall publish a statement that it deploys BWCs on its webpage. The posting shall have picture showing what the BWC looks like and how it will

usually be worn. Notwithstanding the above general public notice requirement, officers wearing BWCs must comply with all relevant laws regarding notice to ant subject of a BBWC recording, pursuant to P.L. 2020, c.129, section 1d-e, discussed in section 4.2, *infra*.

- B. Special notice to individuals during encounters. A law enforcement officer who is wearing a BWC shall notify the subject of the recording that the subject is being recorded by the BWC, unless it is unsafe or infeasible to provide such notification. Such notification shall be made as close to the inception of the encounter as is reasonably possible. If the officer does not provide the required notification because it is unsafe or infeasible to do so, the officer shall document the reasons for that decision in a report or by narrating the reasons on the BWC recording or both. The Failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
- C. Truthful response to specific Inquires: 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 County Prosecutor or designee or Director of the Division of Criminal Justice or designee, has expressly authorized the offer to make a covert electronic recording. (This does not apply to undercover officers while operating in undercover capacities). Nothing in this section shall be construed to establish a basis for suppressing a statement or other evidence.
- D. Notice When Using BWCs Inside a Private Residence: Prior to entering a private residence, a law enforcement officer shall notify the occupant that the occupant is being recorded by the BWC and if the occupant requests the officer to discontinue use of the officers' BWC the officer shall immediately discontinue the 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. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this section and the response to the request shall be recorded by the recording system prior to discontinuing use of the recording system.
- E. Notice When Using BWCs with an Apparent Crime Victim: When interacting with an apparent crime victim, a law enforcement officer shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded by the BWC and, if the apparent crime victim requests the officer to discontinue use of the BWC, the law enforcement officer shall immediately terminate the recording. A request to discontinue the use of a BWC made to a law enforcement officer pursuant to this Section and the response to the request shall be recorded by the recoding system prior to discontinuing use of the recording system.
- F. Notice When Using BWCs with a Person Seeking to Remain Anonymous: When interacting with a person seeking to anonymously report a crime or

assist in an ongoing law enforcement investigation, a law enforcement officer shall notify the person that they are wearing a BWC and, if the person requests that officer discontinue use of the BWC, the officer shall evaluate the circumstances and, if appropriate, discontinue use of the BWC. A request to discontinue use of the BWC made to a law enforcement officer pursuant to the Section and the response to the request shall be recorded by the recording system prior to discontinuing use of the recording system.

**iv. CIRCUMSTANCES WHEN BWC ACTIVATION/USE IS SUBJECT TO SPECIAL CONDITIONS/RESTRICTION**

Special Restrictions When Recording in Schools, Healthcare/Treatment Facilities, and Places of Worship.

- A. Notwithstanding sections of this General Order, unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that he or she will be required to use constructive authority or force, the officer shall not activate a BWC, or shall de-activate a BWC that has been activated, while the officer: **1)** is in a school or youth facility or on school or youth facility property under circumstances where minor children would be in view of the BWC; **2)** is in a patient care area of a healthcare facility, medical office, or substance abuse treatment facility under circumstances where patients would be in view of the BWC; or **3)** is in a place of worship under circumstances where worshipers would be in view of the BWC. See also section vi (notation (i.e., "categorizing") of certain events/encounters raising privacy or other special issues).
- B. If an officer is required to de-activate the BWC in accordance with the provisions of this section, the officer shall narrate the reason for de-activation ("I am entering a school building where children are present."). The BWC shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances requiring de-activation no longer exist (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).
- C. In the event that a BWC captures the image of a patient in a substance abuse treatment facility, the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, shall be notified to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information. See 42 U.S.C. § 290dd-2, 42 C.F.R. §23.1 to 23.41. The recording shall not be accessed without the permission of the County Prosecutor or designee, or Director or 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.)

Special Restrictions When Undercover Officers or Confidential Informants May Be Recorded.

- A. Notwithstanding sections of this General Order, an officer shall not activate a BWC, or shall de-activate 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 (active shooter, actual use of police force, officer in distress, etc.) require that the encounter/incident be recorded, in which event the officer shall inform his or her supervisor that the image of an undercover officer or confidential informant was recorded. See also section vi (notation or "categorizing" to indicate a BWC recording that raises special issues), and section vii (prosecutor's authority to seek protective order when complying with discovery obligations). Notwithstanding the foregoing general rule prohibiting the recording of an undercover officer or confidential informant, in the event of a planned arrest/search warrant execution where it is expected that an undercover officer or confidential informant would be present (a raid where the undercover operative will be arrested to preserve his or her cover), the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, may provide specific instruction to any BWC-equipped officers participating in the operation on whether to activate their devices. The BWC shall be activated/re-activated as soon as it is safe and practicable to do so if and when the risk of capturing the image of an undercover officer or confidential informant no longer exists.

Special Precautions When a BWC Recording May Reveal Tactical Operations Information.

- A. In the event that a BWC worn during the execution of tactical operations (Special Operations" or "SWAT" operations, execution of arrest and/or search warrant, etc.) records confidential tactical information the disclosure of which might jeopardize future operations or officer safety (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 "categorized" in accordance with section vi. See N.J.S.A. 47:IA-1.1 (exempting from disclosure under the Open Public Records Act "security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons"); N.J.A.C. 13:IE-3.2 (2) (exempting records that may reveal "surveillance, security, tactical, investigative, or operational techniques"); see also section vii (prosecutor's authority to seek protective orders when complying with discovery obligations).

Special Restrictions on Recording in Courtrooms.



- A. An officer 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 such activation is expressly authorized by the judge.

De-Activation/Removal of BWC from Alcohol Breath Testing Area.

- A. Officers equipped with a BWC shall not bring the BWC into the Breath Test Room during the course of a D.W.I. investigation. Prior to the de-activation of a BWC, the officer shall narrate the reasons for de-activation, ("I am de-activating the BWC because the suspect is about to take a breath test."), and the BWC shall be re-activated when safe and practicable to do so following the completion of the breath testing operation.

Restrictions on Using BWCs with Enhanced Audio Visual Capabilities.

- A. Subject to the provisions of this General Order, if a BWC with enhanced audio/video capabilities that allow it to record an image or conversation that could not be seen or heard by the officer wearing the device (infrared night vision or thermal imaging, sound amplification that would record conversations occurring at a remote distance), that feature/capability shall not be used without the express approval of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, in accordance with any applicable legal requirements.

**v. STANDARDS GOVERNING THE DE-ACTIVATION OF BWCs UPON THE REQUEST OF A CIVILIAN, WHEN DISCUSSING INVESTIGATION STRATEGY/PLANNING, OR BY INSTRUCTION OF A PROSECUTOR**

- A. Notwithstanding this General Order, and unless the agency adopts a policy that prohibits or restricts de-activation as may be authorized by this section, an officer may de-activate 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.<sup>2</sup> The officer shall not suggest to the person that the BWC should be de-activated; nor shall the officer ask the person whether he or she would prefer that the BWC be de-activated. Rather, the request for de-activation must be self-initiated by the civilian. The officer may explain the consequences of de-activation (evidence relevant to a criminal investigation will not be recorded). In deciding whether to de-activate the BWC, the officer shall consider the privacy and safety interests of the person requesting de-activation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide only if the de-activation request is honored.

- B. Notwithstanding this General Order, and unless the agency adopts a policy that prohibits or restricts de-activation as may be authorized by this section, an officer may de-activate 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 de-activated. In deciding whether to de-activate the BWC, the officer shall consider the privacy interests of the person requesting de-activation and the person in need of medical assistance.
- C. When an officer de-activates a BWC pursuant to this General Order, the following procedures shall be followed: **1)** the discussion between the officer and the civilian concerning the request for de- activation shall be electronically recorded; **2)** the officer before de-activating the BWC shall narrate the circumstances of the de- activation ("I am now turning off my BWC as per the victim's request."); **3)** the officer shall report the circumstances concerning the de-activation to his or her superior as soon as is practicable; and **4)** the officer shall document the circumstances of the de- activation in any investigation or incident report concerning the incident under investigation. See also section vi (notations (i.e., "categorizing") to indicate BWC recordings that raise special privacy or other issues).
- D. If an officer declines a request to de-activate a BWC pursuant to this General Order, the reasons for declining the request (the officer believes that there is a reasonable possibility that it may be necessary to use constructive authority or force during the encounter) must be documented and shall be reported to the officer's superior as soon as it is safe and practicable to do so, unless the agency's policy prohibits de-activation authorized.

In the event that the officer declines a de-activation request, the officer immediately shall inform the person making the request of that decision. An officer shall be prohibited from misleading the person making the de-activation request into believing that the BWC has been turned off when in fact it is operating unless the County Prosecutor or designee or the Director of the Division of Criminal Justice or designee expressly has authorized covert recording.

- E. Notwithstanding this General Order, unless the Department adopts a policy that prohibits or restricts de-activation as may be authorized by this section, a BWC-equipped officer may de-activate a BWC while participating in a discussion pertaining to criminal investigation strategy and planning (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 i.e., under circumstances where a civilian might overhear the strategy

discussion), and further provided that the BWC-equipped officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an officer de-activates a BWC pursuant to this section, the officer shall narrate the circumstances of the de-activation ( "I am now turning off my BWC to discuss investigative strategy with my supervisor.")

- F. Notwithstanding this General Order, an officer may de-activate a BWC when specifically authorized to do so by an assistant prosecutor or assistant or deputy attorney general for good and sufficient cause as determined by the assistant prosecutor or assistant or deputy attorney general. When an officer de-activates a BWC pursuant to this section, the officer shall narrate the circumstances of the de-activation indicating the assistant prosecutor or assistant or deputy attorney general who authorized the de-activation ("I am now turning off my BWC as per the instruction of assistant prosecutor insert name").
- G. In any instance where a BWC was de-activated pursuant to this General Order, the device shall be re-activated as soon as it is safe and practicable to do so if and when the circumstances justifying de-activation no longer exists (the interview of the person requesting de-activation is completed), and the officer would otherwise be required to activate the BWC (where the officer proceeds to other investigative activities that are required to be recorded pursuant to this Directive).
- H. Notwithstanding any other provision of this General Order, in any instance where a BWC was de- activated, or de-activated pursuant to any policy, standing operating procedure, directive, or order issued by this Department, if the circumstances develop so that an officer is authorized to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.
- I. De-activated BWCs should be re-activated in situations where an officer reasonably believes that the officer or another person is likely to use force, and that this requirement applies in a hospital/medical/mental health care facility setting.

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\_ Cf. R. 3: 17(b) (iv) (explaining that station house custodial interrogations must be electronically recorded unless "a statement is made during a custodial interrogation by a suspect who indicated, prior to making the statement, that he/she would participate in the interrogation only if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded").

**vi. OFFICER AND SUPERVISORY RESPONSIBILITIES**

- A. When not in use, BWCs shall be stored in the designated docking stations located at the front desk dispatch area. The docking stations allow for the units to be charged and for the download of events to the secure storage site provided by AXON. BWCs must be powered **ON** when placed in the docking station.
- B. Prior to beginning a shift, officers assigned a BWC will ensure its readiness by conducting an operational inspection. Officers shall also inspect BWCs at the conclusion of each shift to ensure system integrity.
  - 1. When conducting the pre and post shift inspection, the officer shall activate the BWC and verbally state the date, time, whether a pre or post-shift inspection is being conducted, and that a test is being performed on the unit.
  - 2. The officer shall advise the Tour Commander via radio of the camera they are utilizing during the shift if the BWC is other than his/her department issued BWC.
  - 3. The officer can then log into their AXON account through the mobile data app. This will allow the officer to categorize events recorded accordingly. Officers can also log into their AXON account via departmental desktop terminals.
  - 4. The BWC identification number and the results of the inspection, including any malfunctions or deficiencies, shall be noted in the comment area on the Vehicle Inspection form in Lawsoft
  - 5. Any problems preventing the use of the unit during the shift will be reported to the Shift Supervisor or Tour Commander.
  - 6. Problems that cannot be remedied will be reported to Administration by the Tour Commander
  - 7. Another BWC will be assigned by the Shift Supervisor or Tour Commander.
- C. Officers will dock their own assigned BWC for download to AXON system upon completion of their shift or during the shift when downloading/charging is required.
- D. When necessary, the Property/Evidence Officer, Records Clerk, or any other personnel assigned by the Department Administration will transfer recordings to a CD or DVD and secure them as evidence in accordance with Rutherford Police Department Policy V7, C10; Property and Evidence.
- E. Supervisory Responsibility.

1. Supervisors shall ensure that officers utilize BWCs in accordance with this directive.
2. Supervisors shall ensure each BWC that is deployed is assigned to the officer in the AXON system according to the serial# on the BWC.
3. Supervisors will conduct random reviews of selected recordings in order to assess officer performance as well as to flag video/audio that may be appropriate for training purposes. Permission shall be obtained from the Captain in charge of Training. Notification will be made by email. These reviews must be of recordings where initial reports have already been submitted.
4. If an internal affairs complaint is associated with a recorded event, or an officer believes an incident may generate an internal affairs complaint, the supervisor will flag the video/audio for indefinite retention.
5. When a BWC is activated during part of an officer's daily patrol functions, the officer shall be responsible for proper "categorizing" of the video consistent with the AXON system. Personnel assigned a BWC will have proper training from the BWC Training Officer pertaining to "categorizing" prior to official issuance of a BWC.

**vii. STANDARDS TO ENSURE STORAGE AND ACCESSIBILITY OF BWC RECORDINGS**

- A. The AXON system shall be utilized in compliance with the New Jersey Attorney General Law Enforcement Directive NO. 2021-5 in regards to:
  1. Procedures to protect integrity of BWC recordings.
  2. Capacity to locate specific BWC recordings
  3. Allow personnel to identify (categorize) recordings that raise a special privacy issue or safety concern.
    1. Victims of criminal offenses
    2. Subject child
    3. Generated within a residential premises, school or youth facility, healthcare facility, medical office, or place of worship.

4. Conversations with persons who's request to de-activate was declined
  5. Special operation or confidential tactical movements
  6. Undercover officers or confidential informants.
  7. Police computer screens.
  8. Any other circumstance the Department Administration deems appropriate.
4. Approval for access to "Categorized" recordings.
    1. A BWC recording categorized pursuant to this General Order shall not be accessed, viewed, copied, disseminated, or otherwise used without compliance with section vii below, or without first obtaining the permission of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee.
  5. Compliance with discovery obligations relating to BWC recordings that might expose officers or other persons to danger.

**viii. RESTRICTIONS ON ACCESS TO, USE OF, AND DISSEMINATION OF BWC RECORDINGS**

- A. No law enforcement officer or civilian employee of a law enforcement agency shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose as specified in this section. Access to and use of a stored BWC recording is permitted only:
  - a. when relevant to and in furtherance of a criminal investigation or prosecution;
  - b. when relevant to and in furtherance of an internal affairs investigation;
  - c. 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;

- d. to assist the officer whose BWC made the recording in preparing his or her own supplemental or other subsequent police report, subject to the restrictions established in section vii,B1;
- e. when relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency;
- f. to show to a civilian who intends to file a complaint against an officer to demonstrate what actually occurred during the encounter so that the person can make an informed decision whether to file the complaint;
- g. to comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court;
- h. to comply with any other legal obligation to turn over the recording to a person or entity;
- i. To show or disseminate the recording to a civilian or a non-law enforcement entity, or to disseminate it to the public, where the Bergen County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, determines that disclosure to that particular 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.
- j. for 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;
- k. to conduct an audit to ensure compliance with this Directive and a department's policy, standing operating procedure, directive, or order promulgated pursuant to this Directive;
- l. to enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution (by providing information about the layout of a premises to be searched), when such use is approved by the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee; or
- m. any other specified official purpose where the County Prosecutor or designee, or Director of the Division of Criminal Justice or designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording.

- B. Restriction on Access to BWC Recordings Related to Investigations Conducted Pursuant to AG Directive 2019-4.** To ensure the integrity of the investigation of “Law Enforcement Incidents” conducted pursuant to AG Directive 2019-4, 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, view, or receive an accounting of a BWC recording of the incident, or a BWC recording of the response or on-scene investigation of the incident, without the express prior approval of the “Independent Investigator,” as that term is defined in AG Directive 2019-4.
- C. Law Enforcement officers shall be permitted to review a BWC recording prior to creating any required substantive initial reports, providing a statement, or submitting to an interview regarding the recorded event, except in certain enumerated circumstances. These circumstances include any use of force by the officer resulting in significant or serious bodily injury or death; the discharge of a firearm or any use of deadly force by the officer; the death of a person while in law enforcement custody or during an encounter with law enforcement; or an incident the officer knows or has been advised is or will be the subject of an internal affairs or citizen complaint relating to the officer’s use of force, bias, or dishonesty.
- D. As noted above (C), when an officer is prohibited from reviewing or receiving an accounting of a BWC recording in certain scenarios prior to the officer documenting or otherwise memorializing the officer’s recollection of the incident, namely, by creating any required substantive initial report, providing a statement, or submitting to an interview regarding the recorded event (“the specified incident memorialization”). Whenever an officer participates in a specified scenario, then the officer shall only be permitted to review or receive an accounting of a BWC recording once the investigating entity concludes that (a) the officer has in fact completed the specified incident memorialization and (b) the officer’s review or receipt of an accounting of the BWC recording will not otherwise interfere with the ongoing investigation. In cases subject to Attorney General Directive 2019-4, the investigating entity
- E. While information culled from the BWC recording may not be considered in creating an initial required report, statement or interview, after the creation of such initial report, statement or interview, in a case not subject to the provisions of this policy, the officer may review the BWC recording and, if appropriate, create additional reports or make additional statements or documentation that revise or supplement the initial report, statement or interview that incorporate or reflect any information adduced from a review or accounting of the BWC recording.



- F. Documenting Access to Stored BWC Recordings: Each department shall maintain a record of all access to stored BWC recordings pursuant to this policy. The AXON record keeping system (audit capabilities) shall document the following information:
1. The date and time of access
  2. The specific BWC recording(s) that was/were accessed
  3. The officer or civilian employee who accessed the stored BWC recording
  4. The person approved access, where applicable; and
  5. The for access, specifying the purpose or purposes for access authorized pursuant to this policy, and specifying the relevant case/investigation number, where applicable.
- G. BWC footage recorded in contravention of this Policy or any other applicable law shall not be admissible as evidence in any criminal, civil, or administrative proceeding, except as evidence in any proceeding related to the unauthorized use of a BWC.

3. When responding to a subpoena or court order, or a request pursuant to the Open Public Records Act or common law right to know, disclosure of a BWC recording under this paragraph is permitted only after providing notice to the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee, pursuant to section 11 of this Directive.

#### **ix. RECORDS RETENTION AND REVIEW**

- A. Minimum 180-Day retention Period: A BWC recording shall be retained by the law enforcement agency that employs the officer for a retention period consistent with the provisions of this policy, after which time the recording shall be permanently deleted. A BWC recording shall be retained for not less than 180 days from the date it was recorded, but shall be subject to additional retention period as required by this policy.
- B. Automatic Three-Year Retention Period: A BWC recording 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.

- C. Three-Year Retention Period Upon Request: Subject to any applicable retention periods established un this policy to the extent such retention period is longer, a BWC recording shall be retained for not less than three years if voluntarily requested by:
1. A law enforcement officer whose BWC made the video recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
  2. A law enforcement officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value;
  3. Any immediate supervisor of a law enforcement 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;
  4. Any law enforcement officer, if the BWC recording is being retained solely and exclusively for police training purposes;
  5. Ant member of the public who is a subject of the BWC recording;
  6. Any parent or legal guardian of a minor who is a subject of the BWC recording; or
  7. A deceased subject's next of kin or legally authorized designee.
  8. To effectuate previous paragraphs (5), (6), and (7), the member of the public, parent or legal guardian, or next of kin or designee shall be permitted to review the BWC recording to determine whether to request a three-year retention period, in accordance with the provisions of the Open Public Records Act, N.J.S.A. 47:1A-1 et seq., to determine whether to request a three-year retention period.
- D. Additional Retention requirements: Notwithstanding the provisions of this policy, a BWC recording shall be subject to the following additional retention requirements:
1. When a BWC recording pertains to a criminal investigation or otherwise records information that may be subject to discovery in a prosecution, the recording shall be treated as evidence and shall be kept in accordance with the retention period for evidence in a criminal prosecution;
  2. When a BWC records an arrest that did not result in an ongoing prosecution, or records the use of police force, the recording 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;

3. When a BWC records an incident that is the subject of an internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation and any resulting administrative action.
- E. Recordings are considered routine business records of this police department and shall be maintained and disposed of in accordance with New Jersey Division of Archives and Records Management (NJDRAM) 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 one hundred and eighty days (180) in the AXON system.
  2. Recordings that are being stored for criminal, civil, or administrative purposes are to be transferred to a DVD/CD and submitted as evidence.
  3. Recordings being stored for criminal, civil, or administrative purposes must be maintained until the conclusion of the case. Recordings maintained for these purposes can only be erased or destroyed in accordance with New Jersey Bureau of Archives, Record Retention Schedule.
- E. BWC recordings shall be provided in discovery to defendants and their attorneys, in accordance with *R. 3:13-3*, *R. 7:4.2*, and *R. 7:7-7*. BWC recordings shall also be provided in accordance with NJSA 47: 1A-1 et seq., Open Public Records Act (OPRA).
1. Such request must be specific and on the proper instrument, i.e., subpoena, OPRA request, discovery request, etc.
  2. Only those portions of the recording pertinent to the request shall be forwarded.
  3. The Rutherford Police Department reserves the right to redact video as applicable by law.
- F. In the event that a 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 Officer 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.
- G. Recordings will not be released to any other agency or individual without the permission of the Chief of Police or designee. Officers 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.
- J. All requests by the media or general public to view video/hear audio related to a crime must be referred to the Bergen County Prosecutor's Office.
- K. Recorded video of unusual or significant incidents, deemed to be beneficial for departmental training, may be utilized for departmental in-service training purposes with the approval of the Chief of Police.

**x. Standards to Ensure Secure Storage and Accessibility of BWC Recordings**

- A. Procedures to Protect Integrity of BWC Recordings. The Rutherford Police Department shall establish and maintain a system and procedures to ensure the integrity and proper handling and storage of all BWC recordings. This system shall include provisions to:
  - a. Ensure that all recordings are uploaded to a secure data storage system in a timely fashion;
  - b. Prevent tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system;
  - c. Document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted; and
  - d. Permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.
- B. Capacity to locate specific BWC recordings. RPD shall establish and implement a system that permits the agency to locate and retrieve all recordings associated with a specific incident/event, investigation, case, or criminal charge. Accordingly, it shall be required to develop and maintain a BWC control ledger or log, which may be computerized.
- C. RPD shall establish and implement a system to ensure that relevant BWC recordings are provided in discovery in a timely fashion. The system established by the agency should include a provision to ensure that police arrest/incident/continuation reports indicate whether the incident or investigation activity describe in the report was electronically recorded by a BWC. Police reports should, when feasible, indicate the corresponding BWC control ledger/log number, and the BWC control ledger/log should cross-reference the incident case number. Copies of the BWC recordings made for the

purpose of complying with the State's discovery obligations shall be provided to the prosecutor in a readily available media format.

- D. Provisions to Identify ("categorize") Recordings that Raise Special Privacy or Safety Issues. To identify BWC recordings that may raise special privacy or safety issues, RPD shall establish and implement a system that permits a notation (i.e., "categorizing") to be made when the recording:
- a. Captures the image of a victim of a criminal case;
  - b. Captures the image of a child;
  - c. Was 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;
  - d. Captures a conversation with a person whose request to de-activate the BWC was declined;
  - e. Captures a special operations event of an arrest and/or search warrant where confidential tactical information (e.g., verbal codes and hand signals used to give direction to officers, techniques for interior movements and clearing rooms during execution of a warrant, techniques for convincing persons to open doors during warrant execution, etc.) may have been recorded;
  - f. Captures the image of an undercover officer or confidential informant; or
  - g. Captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information. (requiring notice to the prosecutor when a BWC captures the image of a patient at a substance abuse treatment facility).
  - h. Subject to the provisions of this policy, RPD may specify additional circumstances when a BWC recording will be "categorized".
- E. Approval for Access to "Categorized" BWC recordings: A BWC recording categorized pursuant to the policy shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the County Prosecutor or designee, or the Director of the Division of Criminal Justice or designee. The County Prosecutor or Director may authorize the law enforcement executive, and one or more superior officers or duty positions (e.g., head of the detective bureau) identified by the law enforcement executive, to grant permission pursuant to this policy to access, view, copy, disseminate, or otherwise use BWC recordings categorized pursuant to this policy.
- F. Compliance with Discovery Obligations Relating to BWC Recordings that Might Expose Officers or Other Persons to Danger: 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 of 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 County Prosecutor or designee, or Director of the Division of Criminal Justice or designee in cases prosecuted by the Division, shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and/or Court Rules to protect the information from disclosure, such as by seeking a protective order from the court.

- G. Third Party Storage and Management: If a law enforcement agency authorizes a third-party to act as its agent in maintaining recordings from a BWC, the agent shall be prohibited from independently accessing, viewing, or altering any recordings, except to delete recordings as required by law or agency retention policies.

#### **xi Public Disclosure of BWC Recordings**

Any agency receiving a subpoena, court order, or request pursuant to the Open Public Records Act, or the common law right to know, for a BWC recording shall, within one business day of receipt of such subpoena, court order, or request, and before complying with it, provide notice to the County Prosecutor, or to the Division of Criminal Justice where the recording was made by a state-level law enforcement agency. Such notice shall state clearly the deadline by which a response must be made.

#### **Xii Authority of County Prosecutor to Impose Additional Requirements**

Nothing in this policy shall be construed to in any way limit the authority of a County Prosecutor to issue directives or guidelines to the law enforcement agencies subject to his or her supervisory authority, setting forth additional procedural or substantive requirements or restrictions concerning BWCs and BWC recordings, provided that such directives or guidelines do not conflict with any explicit provisions of this policy. For example, a County Prosecutor may: specify additional circumstances when a municipal police department BWC must be activated; impose limits on the authority of a municipal police department to specify additional circumstances when a BWC must be activated; categorically prohibit the use of BWCs with enhanced audio/visual capabilities such as infrared night vision and specify additional circumstances when a BWC recording will be “categorized”, etc.

#### **Xiii Violations**

If a law enforcement officer, employee, or agent fails to adhere to the recording or retention requirements contained in this policy, intentionally interferes with a BWC’s ability to accurately capture audio or video recordings, or violates any other provision of this policy, the officer, employee, or agent shall be subject to appropriate disciplinary actions, in addition to any judicial consequences outlined in the law.