

Winona Police Department

Draft Policy Manual
Body Worn Camera (BWC) Policy

1 PURPOSE AND SCOPE

This policy provides guidelines for the use, management, access, storage, retrieval and retention of audio-visual media recorded by Body Worn Camera(s) (BWC) systems as prescribed by law. Compliance with these guidelines is mandatory, but it is recognized that officers must also attend to other primary duties and the safety of all concerned, sometimes in circumstances that are tense, uncertain and rapidly evolving. This policy applies to all Winona Police Department (WPD) personnel. This policy governs the use of BWC in the course of official duties. It does not apply to the use of squad-based (dash camera) recording systems, see Mobile Video Recorders Policy 420. The Chief or designee may supersede this policy to individual officers by providing specific instructions or standard operating procedures for BWC use in official duties other than patrol.

This policy does not apply to audio/video recordings of interviews or interrogations conducting at any WPD facilities, jail, undercover operations, wiretaps, or eavesdropping (concealed listening devices) unless captured by a BWC device.

1.1 DEFINITIONS

Definitions related to this policy include:

Body Worn Camera (BWC) - A device worn by a licensed officer that is capable of both video and audio recording of the officer's activities and interactions with others or collecting digital multimedia evidence as part of an investigation. This does not include a WPD issued phone.

Body Worn Camera ("BWC") Administrator - the administrator designated by the Chief to carry out the duties contained in this policy and the statutory responsibilities governing BWC.

City - the City of Winona.

Department - means the Winona Police Department, Winona, MN.

MGDPA or Data Practices Act - refers to the Minnesota Government Data Practices Act, Minnesota Statute 13.01, et seq.

Officer - a licensed peace officer employed by the WPD.

Official duties - for purposes of this policy, official duties means that the officer is on duty and performing authorized law enforcement services on behalf of the WPD.

General citizen contact - means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples include, but are not limited to, assisting a motorist with directions, summoning a wrecker, or receiving generalized citizen concerns from a citizen about crime trends in his or her neighborhood.

Adversarial - means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or

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

Critical Incident - means an incident involving: the use of deadly force by a peace officer; the discharge of a firearm by a peace officer in the course of duty, if a notice is required under section 626.553, subdivision 2; an in-custody death; and/or the use of force by a peace officer that resulted or was likely to result in substantial bodily harm, great bodily harm, or death.

2 POLICY

The WPD may provide officers with access to BWC for use during the performance of their official duties. The use of BWC is intended to enhance the mission of the WPD by accurately capturing contacts between WPD officers and the public. Officer safety is the primary consideration for the use and activation of the BWC. The Winona Police Department is committed to honorably and impartially protecting our community and keeping it a safe place for everyone.

2.1 BWC OBJECTIVES

The WPD has adopted the use of BWC to accomplish the following objectives:

- (a) To enhance officer safety;
- (b) To document statements and events during the course of an incident, in addition to using an audio recorder;
- (c) To enhance the officer's ability to document and review statements and actions for both internal reporting requirements and for courtroom preparation and presentation;
- (d) To preserve visual and audio information for use in current and future investigations;
- (e) To provide a tool for self-critique and field evaluation during officer training and to assist with on-going training and evaluation;
- (f) To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of recorded media; and
- (g) To assist with the defense of civil actions against the officers and the City.

3 BWC ADMINISTRATOR RESPONSIBILITIES

The BWC Administrator, or designee, is responsible for:

- (a) Ordering, issuing, retrieving, and storing all BWC;
- (b) Deleting BWC data when required pursuant to a court order or in accordance with the WPD records retentions schedule or applicable laws;
- (c) Keeping logs reflecting BWC assignments, including each BWC's serial number, dates used, officers assigned, and history of malfunction or system failure;
- (d) Working with the assigned data practices liaison to coordinate the use, access, and release of information to ensure that procedures comply with requirements of the Minnesota Government Data Practices Act (MGDPA) (Minn. Stat. Ch. 13), this policy, City policies and procedures, and other applicable data retention and privacy laws (see Records Maintenance and Release Policy and Protected Information Policy);

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- (e) Maintaining an inventory including:
 - 1. Total number of BWC devices owned or maintained by the WPD;
 - 2. Daily record of the total number of BWC devices deployed and used by officers and, if applicable, the locale in which the BWC devices were used;
 - 3. Total amount of recorded audio and video data collected by the BWC devices and maintained by the WPD; and
 - 4. The procedures for destruction of the data;
- (f) Notifying the Bureau of Criminal Apprehension (BCA) within ten days when the WPD obtains new equipment that expands the type or scope of surveillance capabilities (beyond video or audio recording) of the WPD's BWC system, along with a description of the technology and its surveillance capability and intended uses; and
- (g) Implementing secure storage and backup of the BWC data.

4 SUPERVISOR RESPONSIBILITIES

Supervisors are responsible for:

- (a) Ensuring that officers are properly trained and supervised in the use of BWC per this policy, written procedures, and governing law;
- (b) Determining the corrective action and documenting steps taken in writing when an officer reports a malfunctioning BWC or system failure;
- (c) Reporting the malfunction or system failure to the BWC Administrator;
- (d) Authorizing deactivation of the BWC in situations covered under Section 422.9;
- (e) Ensuring that BWC recorded media is properly uploaded when an incident arises that requires the immediate retrieval of the BWC's recorded media (e.g., serious crime scenes, department-involved collisions) and prompt notification of the upload to the BWC Administrator;
- (f) If an officer is involved in a critical incident, the supervisor shall subsequently take custody of any involved officer's BWC, treat it as evidence, and assume responsibility for assuring the transfer of data from it.
- (g) Randomly reviewing and documenting BWC usage and access at least once per month to ensure compliance with this policy and to identify any performance areas in which additional training or guidance is required.
- (h) Reviewing reports/incidents by officers and initiating any corrective action deemed necessary when an officer fails to record an activity that is required to be recorded under this policy, fails to record for the entire duration of the activity, or when an officer manually deactivates the BWC.

5 OFFICER RESPONSIBILITIES

Officers issued BWC devices are responsible for knowing and complying with this policy and any governing written procedures and training including, but not limited to:

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- (a) Use of BWC only in the performance of official duties for the WPD or when otherwise performing authorized law enforcement services as an employee of the WPD and authorized by this policy;
- (b) Performing a function test of the BWC prior to going into service (at the beginning of each shift) to ensure it is operating properly;
- (c) Reporting of any BWC malfunctioning or system failure to the supervisor verbally and in writing and obtaining a functioning BWC as soon as reasonably possible. "In writing" can and may include an email;
- (d) Recording his/her name, badge number, and the current date and time at the beginning and end of a shift, regardless of whether any activity is recorded (this is required if the system does not automate this function);
- (e) Placement of the BWC at the location on the body as specified in training;
- (f) Proper activation, deactivation, termination, cessation and pausing of the BWC;
- (g) Ensuring the proper transfer of BWC data by the end of his or her shift (unless the officer is involved in a critical incident at which point a supervisor shall take custody of the officer's BWC and assume responsibility for transferring data from it);
- (h) Whenever an officer fails to record an activity that is required to be recorded under this policy or fails to record for the entire duration of the activity, the officer must document the circumstances and reasons for not recording in an incident report or incident notes and notify his/her supervisor;
- (i) Documenting the existence of a recording in a written report or other official record of the contact;
- (j) Appropriately label all BWC data files according to department procedures and training;
- (k) When using a spare BWC, or one that is not assigned to the officer, notifying the BWC Administrator of the reason the officer is unable to use his/her issued BWC to ensure that the evidence that was recorded on the spare device can be reassigned to the officer in the recording database; and
- (l) Officers shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy.
- (m) Officers whose normal work assignment requires them to be uniformed will have the BWC in the "on-duty" function while conducting their work assignment with the exception of engaging in private personal affairs such as using the restroom, discussing work performance with a supervisor, or taking a break at the officer's residence.
- (n) Licensed officers that are not assigned to the Patrol Division and their daily work clothing is non-uniformed, need not have the BWC on their person during their normal working shift. The BWC, however, must be readily accessible to the member in case the need arises to take immediate enforcement action. Additionally, the member is still required under this policy to use the BWC for the purposes of capturing law

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enforcement related information, information that contains evidentiary value, and/or when engaged in an adversarial encounter.

- (o) In circumstances where the donning of a high-visibility vest (e.g. traffic related event) or Personal Protective Equipment (PPE) (e.g. communicable disease likely present) exists, the officer shall don the vest or PPE knowing that their BWC video may be diminished or not at all present. If possible, the officer should articulate to the BWC and audience that the donning of the equipment will cover or interfere with the BWC video.

6 GENERAL USE GUIDELINES

- (a) All recordings made by officers on the BWC at any time are the property of the WPD.
- (b) Officers have no expectation of privacy or ownership interest in the content of the BWC recordings.
- (c) If applicable, any "Live Streaming" feature of the BWC system will only be utilized by authorized individuals when the officer is actively assigned to a call for service or in circumstances related to officer safety. Authorized individuals using "Live Streaming" shall, at the first reasonable and safe opportunity, notify the officer or officers that had their "Live Streaming" capability activated. This notification may be made orally or in writing. "In writing" can include an email, instant message, or text message to the officer.
- (d) Officers have no affirmative duty to inform people that a BWC is being operated or that they are being recorded. However, if the BWC is activated, officers have an affirmative duty to acknowledge that it is activated if asked, and in the event of this disclosure, the encounter must continue to be recorded until the encounter has concluded. During the encounter, the officer may deactivate the BWC under those circumstances outlined in section 422.9. Officers may not inform people that the BWC is activated, if it is not. Nothing in this policy prevents an officer from informing an individual that the encounter is being recorded. Officers may find it useful to inform an individual that the encounter is being recorded in order to have a civilizing effect during an incident.
- (e) At no time is an officer expected to jeopardize his/her safety or the safety of others in order to activate a BWC. However, the BWC should be activated in accordance with this policy and any department procedures and training, as soon as reasonably practicable.

7 PROHIBITED USE

WPD personnel are prohibited from:

- (a) Programming personally owned devices, including but not limited to computers and mobile devices, to access or view BWC data;
- (b) Using personally owned devices for audio or video recording purposes while on-duty without the express consent of a supervisor. Any officer who uses a personally owned recorder for WPD-related activities, after express permission from a supervisor, must comply with the provisions of this policy, including retention and release requirements;

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- (c) Using the BWC and recording media for personal use;
- (d) Making personal copies of recordings created while on-duty or while acting in their official capacity;
- (e) Using their BWC to record other WPD personnel during non-law enforcement related activities, such as during pre and post shift time in locker rooms, during meal breaks, or during other private conversations, unless such recording is authorized as part of an administrative or criminal investigation;
- (f) Accessing, duplicating, or distributing BWC recordings for non-business reasons including, but not limited to, uploading BWC data recorded or maintained by the WPD to public and social media websites; and
- (g) Using the BWC for the purpose of embarrassment or ridicule.

8 ACTIVATION

8.1 MANDATORY ACTIVATION

Officers who are issued a BWC must activate the BWC:

- (a) During all law enforcement-related encounters and activities with the public including, but not limited to, responding to calls for service or assistance, pursuits, Terry stops of motorists or pedestrians, interviews, arrests, and searches pursuant to a lawful arrest;
- (b) During entry in the execution of a search warrant;
- (c) During any police-citizen contact that becomes adversarial or requires the use of force;
- (d) During the transportation and physical transfer of persons in an officer's custody to hospitals, detox and mental health care facilities, juvenile detention centers, and jails (officers shall activate their BWC and the squad-based audio/video system); and
- (e) When dealing with individuals believed to be experiencing a mental health crisis or event - to document any use of force and the basis for that use of force and any other information having evidentiary value.

Officers need not activate the BWC when it is unsafe, impossible, or impracticable to do so, but such instances must be documented as specified in this policy.

8.2 DISCRETIONARY ACTIVATION

Officers may, in exercise of sound discretion, activate the BWC:

- (a) During any police-public encounter not governed by Section 422.8.1(a) if there is reason to believe the recording would potentially yield information having evidentiary value, unless such recording is otherwise expressly prohibited;
- (b) During general citizen contacts;
- (c) When officers are conducting search warrants of people or places the BWC shall be activated. However, if searching places once all non law enforcement personnel have left the scene or area of the search, the BWC may be muted. The BWC may be muted during the search to prevent any operational security breaches of on-going investigations. The recording of any evidence that is located during the search should

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still be video recorded on the BWC and the BWC should not be shut off until the search is complete and officers have left the scene of the search; and

- (d) At any time the officer believes it would be appropriate or valuable to activate the BWC in accordance with this policy.

9 DEACTIVATION GUIDELINES

- (a) Once the BWC system is activated it should remain on until the incident has concluded. For these purposes, conclusion of an incident has occurred when all arrests have been made or when the officer reasonably believes that additional recording will no longer provide data of evidentiary value.
- (b) The BWC may be deactivated if the incident or event is of such duration that the BWC is deactivated to conserve recording times and/or battery life.
- (c) The BWC may be deactivated whenever it reasonably appears to the officers that an individual's privacy may outweigh any legitimate law enforcement interest in recording. Requests from the public to stop recording based on privacy concerns should be considered using this same criteria. Recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.
- (d) Officers may temporarily pause the recording or mute the audio to exchange information with other law enforcement officers or legal counsel. Officers may obstruct the BWC lens to avoid capturing images of undercover officers, informants, or citizens when 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 the audio or obstruct the lens) will be noted by the officer verbally on the BWC.

When an officer deactivates their BWC in any of the circumstances described above, they should articulate into the BWC a brief reason for the deactivation.

In an officer-involved shooting or use of force incident that results in substantial bodily harm, the BWC will remain activated until the supervisor on scene authorizes deactivation.

10 DATA SECURITY SAFEGUARDS AND MISCELLANEOUS COMPLIANCE

- (a) The WPD employs data security safeguards that, at a minimum, meet the requirements of the MGDPA and other applicable law. The WPD will maintain more detailed security and storage safeguards in procedures that are specific to the selected BWC system.
- (b) The WPD will maintain backups of BWC data.
- (c) The WPD will require audit and logging capabilities for its selected BWC system,
- (d) The WPD will maintain logs that include, at a minimum, the following information: the date and time BWC data was collected and the applicable classification of the data.
- (e) WPD personnel must not intentionally edit, alter, or erase any BWC recordings unless otherwise expressly authorized by the Chief, the Chief's designee, or this policy.

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- (f) The WPD will establish procedures for accessing data and recordings. These procedures must include the process to obtain written authorization by the Chief or the Chief's designee for access to non-public data by WPD personnel and members of other governmental entities and agencies for a legitimate, specified law enforcement purpose.
- (g) The WPD will establish procedures for transferring, downloading, tagging or marking events.
- (h) The WPD will prepare an independent biennial audit as required in Minn. Stat. § 13.825, subd. 9.

11 RETENTION OF RECORDS

- (a) All BWC data shall be retained for a minimum period of 90 days.
- (b) Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.
- (c) Certain kinds of BWC data must be retained for a minimum period of 7 years:
 - Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree to require a narrative report or supervisory review.
 - Data documenting circumstances that have given rise to a formal complaint against an officer.
- (d) Other data having evidentiary value shall be retained for a period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable retention period.
- (e) Subject to below (f), all other BWC footage that is classified as non-evidentiary, becomes classified as non-evidentiary, or is not maintained for training, shall be destroyed after 90 days.
- (f) Upon written request by a BWC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed unless a new written request is received.
- (g) The department shall maintain an inventory of BWC recordings having evidentiary value.

12 BWC DATA CLASSIFICATION AND ACCESS

12.1 BWC CLASSIFICATION

- (a) **Data subjects.** Under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data;
 1. Any person or entity whose image or voice is documented in the data;
 2. The officer who collected the data; and

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3. Any other officer whose voice or image is documented in the data, regardless of whether that officer can be identified by the recording.
- (b) **BWC data are presumptively private or nonpublic.** BWC recordings are classified as private or nonpublic data, unless there is a specific law that provides otherwise. As a result:
1. BWC data pertaining to individuals as defined in Minn. Stat. § 13.02, subd. 8 (i.e. natural person, but not a business) are presumed to be private data;
 2. BWC data not on individuals (e.g. a business, agency) are presumed to be nonpublic data;
 3. Some BWC data are classified as confidential (see, (c) below); and
 4. 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, subd. 7 and are classified as "confidential" or "protected nonpublic data." This classification takes precedence over the "private" classification listed above and "public" classification listed below.
- (d) **Public data.** The following BWC data are public:
1. Data that document the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous;
 2. Data that document the use of force by a peace officer that results in substantial bodily harm;
 3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any subject (other than a peace officer) who has not consented to the public release must be redacted. In addition, any data on undercover officers must be redacted; and
 4. Data that are public personnel data under Minn. Stat. § 13.43, subd. 2(5).

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

Exception: Notwithstanding any provisions of this policy, any inactive investigative data that is clearly offensive to common sensibilities shall be classified as private or nonpublic data in the discretion of the WPD's responsible authority and shall be administered pursuant to the provision of Minn. Stat. 13.82, subd. 7.

12.2 ACCESS TO BWC DATA

- (a) **Access to BWC data by data subjects and the public.** WPD personnel must refer members of the media or public seeking access to BWC data to the data practices

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liaison, who will process the request in accordance with the MGDPA, this policy, City policies and procedures, and other applicable laws. In particular:

1. An individual must be allowed to view (inspection only, no copying) recorded BWC data about him or herself and other data subjects in the recording, but access must not be granted:
 - (a) if the data were collected or created as part of an active investigation; or
 - (b) to portions of the data that the WPD would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by Minn. Stat. § 13.82, subd. 17.
 2. Unless the data are part of an active investigation, an individual data subject may obtain 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 be redacted; and
 - (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.
- (b) **Access to BWC data by WPD personnel.** WPD personnel may access and view stored BWC recordings only when there is a legitimate business need for doing so. Compliance with this paragraph satisfies the requirement for the Chief or designee to authorize such access in writing. For purposes of this section, a legitimate business need includes the following:
1. For use when preparing reports or statements or providing testimony;
 2. For use to defend against an allegation of misconduct or substandard performance;
 3. By an officer or supervisor to assess proper functioning of the BWC system;
 4. By WPD investigators assigned to a related criminal investigation, or after approval of a supervisor, for official investigations;
 5. By a supervisor investigating a specific complaint or report of officer misconduct;
 6. By a supervisor to assess officer performance and BWC policy compliance;
 7. As permitted in the Officer-Involved Shootings and Deaths Policy 305;
 8. By a Field Training Officer to assess officer performance;
 9. For training purposes as approved by the Chief or designee. (Officer objections to preserving or using certain footage for training will be considered on a case by case basis.); or
 10. For data administration purposes, including responding to a request for data under the MGDPA.

WPD personnel must document their reasons for accessing stored BWC data in the manner provided within the database at the time of each access.

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WPD personnel seeking access to BWC data when there is not a legitimate business need must make a request for the BWC data in the same manner as any member of the public.

- (c) **Other authorized access to BWC data.** Officers may display portions of BWC footage to witnesses as necessary for purposes of investigation. Officers should generally limit these displays in order to protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing audio but not displaying video.

BWC recordings may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented at the time of the disclosure and authorized by the Chief or his/her designee in writing, and are in accordance with written procedures.

BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

BWC data that are classified as confidential or protected nonpublic pursuant to Minn. Stat. § 13.82, subd.7 or as private or nonpublic under Minn. Stat. § 13.825 may be 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. (Minn. Stat. § 13.82, subd. 15.)

13 COMPLIANCE

Violations of this policy may constitute misconduct and subject WPD personnel to disciplinary action up to and including termination. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject WPD personnel to disciplinary action up to and including termination, and criminal penalties, pursuant to Minn. Stat. § 13.09. Any WPD personnel who accesses, releases, or uses BWC recordings not in accordance with this policy will be subject to disciplinary action (see Standards of Conduct and Protected Information policies). Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline. Supervisors and the BWC Administrator must monitor compliance with this policy.