

# FULLERTON POLICE DEPARTMENT

## **CRITICAL ISSUES TRAINING**

Robert Dunn, Interim Chief of Police



S:\Common\CRITICAL ISSUES\CI#19 Use of Body Worn Cameras 2016

January 2016 - C.I. No. 19

## **USE OF BODY WORN CAMERAS**

### **PURPOSE AND SCOPE (Policy Manual Section 469.1)**

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

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

Definitions related to this policy include:

**Activate** - Any process that causes the BWC recorder to transmit or store video or audio data in an active mode.

**Recorded media** - Audio-video signals recorded or digitally stored on a storage device or portable media.

### **TRAINING AND EQUIPMENT**

The PSB Training officer will provide initial training and issue of the BWC. If a BWC user experiences or suspects any type of malfunction, the BWC user should contact their immediate supervisor and return the BWC to the PSB Training officer. The BWC user should then obtain a "loaner" unit until a replacement BWC can be issued or is returned after repair. All "loaner" BWC's should be programmed by the on-duty Watch Commander prior to being used.

### **UNIFORMED AND NON-UNIFORMED SWORN OFFICER RESPONSIBILITIES (Policy Manual Section 469.3)**

Each person assigned a body worn camera will maintain the equipment while in his or her possession. The body worn camera will be carried upon the person in a manner that will allow for easy operation without impairing the capabilities of the equipment. Prior to going into service, each body worn camera user will check the equipment to ensure it is working properly. The body worn camera user shall record a test sample at the beginning of their duty day by recording their name and the date and time of the recording. Uniformed personnel assigned to field and enforcement duties during regular and extra duty assignments shall wear the BWC on their person in a forward facing position that facilitates comprehensive recording of the contact and/or incident. The body worn camera user **shall** upload their digital audio/video files at the end of each work shift. On rare occasions it may be necessary to delete files from the original storage media prior to them being uploaded to the archival storage media at the end of the shift. Prior

approval shall be obtained from the Watch Commander prior to deleting any files from the original storage prior to it being uploaded to the archival storage media.

Any detective/officer/investigator assigned to a non-uniformed position may carry and activate a department BWC at any time the employee believes such a device may be beneficial to the situation. All non-uniformed personnel who are executing pre-planned enforcement activities such as serving a search or arrest warrant or parole/probation searches shall wear and operate a BWC.

Non-uniformed employees shall be responsible for uploading their digital recordings in the same manner as described above for uniformed employees. Field Training Officers who are wearing civilian clothing during the "shadow phase" are not required to wear a BWC, but may do so if they wish. However, they are still responsible for ensuring their assigned trainee is recording all contacts.

#### **ACTIVATION OF THE AUDIO RECORDER (Policy Manual Section 469.4)**

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

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

(b) Any member of this department may surreptitiously record any conversation during the course of a criminal investigation in which the officer reasonably believes that such recording will be beneficial to the investigation.

1. For the purpose of this policy, any officer contacting an individual suspected of violating any law or during the course of any official law enforcement related activity shall be presumed to be engaged in a criminal investigation. This presumption shall not apply to contacts with other employees conducted solely for administrative purposes.

2. For the purpose of this policy, it shall further be presumed that any individual contacted by a uniformed officer wearing a conspicuously mounted body camera recorder will have knowledge that such a contact is being recorded.

(c) Members of the Department are encouraged to activate their body camera recorders at any time that the officer reasonably believes that a recording of an on-duty contact with a member of the public may be of future benefit.

1. At no time should an officer jeopardize his/her safety in order to activate a body camera recorder.

2. Officers are prohibited from utilizing department body worn camera recorders and recording media for personal use.

#### **REQUIRED ACTIVATION OF BODY WORN CAMERAS (Policy Manual Section 469.4.1)**

There are many situations where the use of the body worn camera is appropriate. This policy is not intended to describe every possible situation where use of the equipment may be

appropriate. Officers and plainclothes officers clearly identifiable as police officers, shall activate the body worn camera any time they feel its use would be appropriate and/or valuable to document an incident. In the event an officer is unable to activate his / her BWC as directed above, or in any instance during which an employee determines a BWC cannot or should not be used, the employee shall report the circumstance to a supervisor as soon as practicable, and document the reason the BWC was not used in a report.

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

(a) All field contacts and calls for service. Recordings shall remain in the record position throughout the entire contact or until otherwise directed by a supervisor.

(b) All self-initiated activity in which an officer would normally notify dispatch.

(c) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording.

(d) Officers shall activate their body worn camera immediately upon being dispatched Code Three or being dispatched to any call for service that may be perceived as a Major Event. Once the body worn camera is activated, it shall remain on and shall not be turned off until the incident has concluded. For purposes of this section, conclusion of an incident has occurred when all citations have been issued, all arrests have been made, arrestees have been removed from the scene or situation, and all witnesses, victims, etc. have been interviewed. The body worn camera shall be activated when transporting all persons, including prisoners, and shall remain on until the transportation is completed. Recording may cease if an officer is simply waiting for a tow truck or a family member to arrive or other similar situations.

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

Members shall cease audio recording whenever necessary to ensure conversations are not recorded between a person in custody and the person's attorney, religious advisor or physician, unless there is explicit consent from all parties to the conversation (Penal Code 636).

#### **WHEN ACTIVATION IS NOT REQUIRED (Policy Manual Section 469.4.2)**

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

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

(a) Officer safety would be compromised due to unexpected or sudden altercation.

(b) An informant or community member requests the BWC be turned off before giving information.

(c) A health care provider is discussing medical issues with a patient.

(d) While in the hospital for the sole purpose of waiting for an arrestee to be medically cleared. However, the BWC should be turned on in the hospital if a situation arises which requires police action.

(e) While conferring with other officers regarding the specifics or tactics of a call.

(f) When interviewing victims of sexual assaults or child abuse.

(1) The operating officer needs to evaluate the value of the video recorded statement versus the privacy concerns for the victim. In such cases where the officer believes it would be best for the victim not to be video recorded, the officer should consider maintaining the recorder in the "on" position, but to adjust the BWC so it does not video the victim.

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

#### **RETENTION OF RECORDING MEDIA ( Policy Manual 469.6.1)**

All employees utilizing the Evidence Transfer Manager to upload audio/video files into the Evidence.com database **SHALL** include metadata information for any recording which has the likelihood of resulting in a civil, criminal or internal action. These incidents **shall** include those in which an employee may only be a secondary or peripheral responder. All associated recordings for these events, whether evidence or not, **shall, at minimum**, include the following basic information:

(a) General Offense (G.O.) or Incident number in the following format: ##-##### (i.e., 15-001234, 15-123456, etc.)

(b) Type of incident

(c) Most applicable "category" file of the recorded event (i.e. Arrest, Start/End of shift, Citations, etc...)

#### **REVIEW OF RECORDED MEDIA FILES (Policy Manual Section 469.5)**

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

(a) By Department personnel who wish to review their own recordings

(b) By a Department or District Attorney Investigator, or supervisor who is participating in an official investigation, such as a personnel complaint, administrative inquiry or a criminal investigation.

(c) By random audits, a supervisor may monitor an officer's performance as part of a routine evaluation process to identify negative and positive performance or potential training issues that may have been captured by audio and/or video recordings.

(d) By court personnel through the subpoena process.

(e) By media personnel, with authorization of the Chief of Police or in his/her absence, a Division Commander.

(f) Video and/or audio recordings may be played for the purposes of training value. If an involved officer objects to the playing of an audio recording, his/her objection will be submitted to Staff to determine if the training value outweighs the officer's objection to have others review the video

and/or audio file. In no event shall any recording be used or reviewed for the purpose of officer ridicule or embarrassing an employee.

(g) By City of Fullerton Risk Management for purposes of claims investigations.

(h) Specific, targeted audits "for cause" are allowed if there is well-founded suspicion that an officer is violating performance expectations of the Department.

(i) The Chief of Police has the discretion to allow viewing or release of recorded files if the Chief determines it is in the best interest of the Police Department or the City of Fullerton. When appropriate, every effort will be made to notify involved employees prior to release.

(j) In incidents deemed "critical or significant" by the Chief of Police, or Division Commander in the Chief's absence, officers shall not review the recorded files until an initial interview has been conducted. Once the initial interview has been conducted, the officer may view the recording and provide clarifying information if desired. Examples of "critical or significant" incidents include but are not limited to officer involved shootings and major injuries or death of community members while in custody or during officer involved contact and where there is an allegation of misconduct against an officer.

(k) The Chief of Police has the discretion to prohibit or grant the review of any recordings by Department employees if it is determined it is in the best interest of the Police Department or the City of Fullerton.

#### **DOCUMENTING BWC USE**

Any incident that was recorded by BWC **shall** be documented in the officer's report. If a citation was issued or a field interview card was completed, a notation **shall** be placed on the back of the records copy that the incident was recorded.

#### **BODY CAMERA RECORDINGS STORAGE & INTEGRITY (Policy Manual Section 469.6)**

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

#### **REPORT PREPARATION (Policy Manual Section 344.1.)**

When an Officer's conduct may be reviewed, that officer shall be interviewed or complete their written report prior to reviewing any audio or video recordings. When any audio or video recording is reviewed by an officer prior to preparing a required report, that fact shall be documented in the report. That documentation shall include the circumstances that led to the review, who authorized the viewing and under what conditions the review took place. Group access of recorded evidence by involved or witnessing officers is prohibited. Generally, the reporting employee's opinions should not be included in reports unless specifically identified as such.

#### **PRIVACY (Police Manual 469.7)**

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

*Sources: Lexipol, LLC, Fullerton Police Department, Policy Manual,*

This Critical Issue can also be accessed through the Police Department Network.

- Go to & click on Common on Svcofpd02 from *"My Computer or Explorer"*
- Click on the *"Critical Issues" folder*
- Click on *"CI#19 Use of Body Worn Cameras 2016.doc"*