

**MORRIS TOWNSHIP POLICE DEPARTMENT**  
**GENERAL ORDER # 2021-012**

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**TO: ALL PERSONNEL**

**DATE: June 7, 2021**

**SUBJECT:**  
**REVISION TO SOP: 156 BODY WORN CAMERAS**

**SOP: 156 BODY WORN CAMERAS** policy and procedure has been revised. The revisions in this policy are highlighted in yellow for your review.

Once you have had an opportunity to review the policy in the Power DMS system, you are directed to electronically sign this General Order by entering your user identification and password.

By signing this General Order you acknowledge receipt of this directive, at a minimum you have read ALL the highlighted sections, and understand the contents of the General Order. It is your responsibility to direct any questions to your supervisor's attention, prior to signing off on the General Order.

A hard copy of all Department policy and Procedures are maintained in the Chiefs of Police Conference Room.

ISSUED BY: *MARK DICARLO*  
Chief of Police

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MTPD 38 (REV 1.18)

# MORRIS TOWNSHIP POLICE DEPARTMENT

## STANDARD OPERATION PROCEDURE 156 BODY WORN CAMERAS



EFFECTIVE REVISION	DATE	AUTHORITY	GENERAL ORDER #	ACCREDITATION STANDARDS:
Effective	March 2019	97	19-002	
Revised:	February 2021	97	21-006	
Revised:	June 2021	97	21-012	
Revised				
Revised:				
Revised:				
Comments: New Policy February 2019				
NJ Attorney General Directive NO. 2015-1, revised to comply with 2C:33-15, Revised to comply with NJ AG Directive 2021-5				

### 156.1 PURPOSE

#### 156.1.1

**PURPOSE:** The purpose of this policy and procedure is to maintain guidelines for the use, management, storage, and release of audio-visual media recorded by body worn video/audio camera recorders (BWC). BWC is intended to enhance public trust and transparency, officer safety, produce effective materials for training and to produce an additional method of collecting evidence to prosecute those who violate the law. A further purpose is to define the media storage and retention system for the events recorded by these devices.

### 156.2 POLICY

#### 156.2.1

**POLICY:** It is the policy of the Morris Township Police Department to utilize body worn video/audio recorders (BWC) 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 policy and procedure and those policies or guidelines issued by the New Jersey Attorney General and Morris

County Prosecutor's Office. Failure to use this technology in accordance with this general order and those policies or guidelines issued by the New Jersey Attorney General and Morris County Prosecutor's Office can result in discipline.

The use of body worn recorders with electronically enhanced audio/visual capabilities, such as infrared vision features, is not authorized.

A law enforcement officer employed by the agency may only use a BWC system that has been issued and approved by this Agency.

The Morris Township Police Department website/webpage shall contain a clear statement that this department utilizes body worn video/audio recorders. The website posting shall include an image showing what the device looks like and how it is to be worn by uniformed officers so that citizens will be able to determine whether an officer is equipped with the device.

Any willful or repetitive violations of this policy shall be reported to the internal affairs supervisor who shall report such directly to the Chief of Police and Morris County Prosecutor's Office. The Morris County Prosecutor's Office is authorized to take such actions as are reasonable and necessary to ensure compliance with this policy and to prevent future violations.

## DEFINITIONS

### 156.3

#### 156.3.1

##### DEFINITIONS:

A. For purposes of this Policy & Procedure, the following terms are defined:

1. **Activate-** To actuate the recording mode/function of a body worn camera.
2. **Body worn camera ("BWC")-** A device worn by a law enforcement officer that makes an electronic audio and 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).
3. **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 (*e.g.*, "show me your hands," "get out of the vehicle," etc.), or directed against a person if the officer has un-holstered a firearm or a conducted energy device (*e.g.*, "move out of the way," "get down," etc.).
4. **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.

- 5. Investigation of a criminal offense-** 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.
- 6. Law enforcement agency, agency, or department-** A law enforcement agency operating under the authority of the laws of the State of New Jersey.
- 7. Law enforcement officer-** A person whose public duties include the power to act as an officer for the detection, apprehension, arrest, and conviction of offenders against the laws of this State.
- 8. 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.
- 9. 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.
- 10. School-** A public or nonpublic elementary or secondary school within this State offering education in grades kindergarten through 12, or any combination of grades, at which a child may legally fulfill compulsory school attendance requirements.
- 11. 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.
- 12. 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.

**13. Youth facility-** A facility where children assemble under adult supervision for educational or recreational purposes, such as group homes, residential facilities, day-care centers, day treatment centers, etc.

- B. All references to BWC include the body worn devices and where appropriate, the wireless transmitter, microphone, removable media (if any) recordings, metadata server and other accessories necessary to operate this system.

## **156.4 GENERAL**

### **156.4.1 GENERAL**

- A. BWC recordings are invaluable to law enforcement for evidential purposes. BWC have 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 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. BWC 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-discriminatory 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. Supervisors will be able to view the recordings and select portions to use to train officers in safety, field training, interpersonal skills, proper police procedures, and legal doctrines.
  6. Recordings can permit supervisors to undertake more meaningful performance evaluations.
  7. Recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the general public.
  8. Recordings enhance management's ability to train personnel in proper police procedures.

F. The Chief of Police shall establish a training program on the lawful and proper use of BWC equipment. The Chief of Police may designate one or more persons to coordinate and/or conduct such training.

1. Only officers who have received training in the use of BWC are permitted to use this system and must demonstrate a satisfactory degree of familiarity and efficiency in the use of this system.
2. Proper use of a BWC is considered an essential job requirement.

G. The Chief of Police shall appoint a BWC coordinator, who is responsible for:

1. Providing initial training to all newly hired officers or to officers who were not previously trained;
2. Providing periodic refresher training, as required, to ensure the continued effective use and operation of the equipment;
3. Providing initial and refresher training to non-sworn personnel whose responsibilities include accessing, copying, or distributing BWC records;
4. Ensuring proper calibration and performance of the BWC equipment;

5. Incorporating changes, updates, or other revisions in policy and equipment;
  6. Providing supplemental training as part of this department's progressive disciplinary processes;
  7. Ensure that all recordings are uploaded to a secure data storage system in a timely fashion;
  8. Prevent tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system;
  9. Prevent unauthorized access to stored BWC recordings;
  10. Document all instances when BWC recordings are accessed, viewed, copied, disseminated, or deleted; Permit auditing of all instances when BWC recordings are accessed, viewed, copied, or deleted; and
  11. Authorize access to downloaded BWC files
- H. The Chief of Police shall appoint a system administrator to manage the BWC equipment whose duties shall include maintaining the system and procedures to ensure the integrity and proper handling and storage of all BWC recordings.
- I. Repairs to any BWC equipment shall only be performed by the manufacturer or under the direction of the designated BWC Coordinator and/or his/her designee.
- J. BWC is 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.
- K. All recording media, images and audio are intellectual property of the Morris Township 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 or the Morris County Prosecutor.
- L. BWCs shall not be capable of recording images or conversations that cannot be seen or heard by the officer wearing the device without the expressed approval of the Morris County Prosecutor or his/her designee.
- M. Under no circumstances will any member of the Morris Township Police Department make a personal copy of any recorded event.
- N. Officers will use only those BWCs approved and issued by the Chief of Police.
1. Wearing any personally owned video/audio recorder is not authorized without the expressed permission of the Chief of Police, the Morris County Prosecutor's Office or the New Jersey Division of Criminal Justice. Violations will be subject to disciplinary action, up to and including termination.

- O. BWCs shall be used only in conjunction with official law enforcement duties.
  - 1. Officers engaged in undercover operations or surveillance activities are not required to utilize BWC.
  - 2. BWC shall be used only in conjunction with official law enforcement duties. The BWC shall not be used to record:
    - a. Encounters with undercover officers or confidential informants;
    - b. Communications with other police personnel without the advanced permission of the Chief of Police, the Morris County Prosecutor's Office or the New Jersey Division of Criminal Justice;
    - c. When the officer is on break or otherwise engaged in personal activities;
    - d. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room;
    - e. When the officer is engaged in police union business;
    - f. When the officer is involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interaction;
    - g. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording, see section 156.5.1; or
    - h. While discussing criminal investigation strategies.
    - i. A BWC shall not be used surreptitiously to gather intelligence information on First Amendment protected activity, associations, religions or record activity unrelated to a response to a call for service or investigative encounter between law enforcement and a member of the public.
- P. The provisions above shall be interpreted to include all sworn and civilian employees of the Morris Township Police Department.

**156.5  
REQUIRED RECORDING AND USE**

**156.5.1 REQUIRED RECORDING AND USE**

- A. When assigned to an officer for duty, the BWC will remain in standby mode ready to be activated at any time. When an officer activates the recording mode / function, the device will record from the moment the record start / stop button is pressed (the recording will capture video only, no audio, 15 seconds prior to activating the record mode). **The "After the fact record" feature shall be disabled in the**



**administrative settings of the WatchGuard BWC Program.** The BWC will be utilized to record under the following circumstances.

1. All traffic stops to include all Field Sobriety Testing;
2. All calls for service;
3. Stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints.
4. Crash scenes, including interviews on the scene;
5. Crime scenes;
6. Motor vehicle pursuits;
7. Investigations of criminal violations;
8. Investigative detentions/field interviews;
9. The officer is conducting any kind of search, consensual or otherwise and or while conducting a protective frisk for weapons.
10. Arrests;
11. Arrestee booking process;
12. Arrestee/prisoner transportations;
13. All use of force or potential use of force situation(s)/incident(s).
14. Special events or projects, including but not limited to crowd control, unruly crowds, or incidents requiring activation of the all hazards or emergency operations plan;
15. Domestic violence investigations;
16. Strikes, picket lines, demonstrations;
17. Officer initiated pedestrian stops;
18. Welfare checks of residents and motorists/**Community Caretaking Check**;
19. Any investigation (responding to and/or handling) involving the underage use of marijuana, alcohol, cannabis, or hashish (revised N.J.S.A 2C:33-15) (under 21 years of age). **The BWC may not be deactivated for any reason during the entirety of the investigation.**

20. The officer is conducting a custodial interrogation of a suspect unless the interrogation is being recorded by other appropriate devices (station house confessions)
  21. When an officer reasonably believes that any other officer at the scene is Engaged in any of the foregoing police actions/activities.
  22. When an officer is working a "third party" detail, other than a road construction or traffic directing detail; they are to have their body camera equipped, and shall activate consistent with the other parameters outlined in this policy. The officer may elect to wear and utilize the BWC on road construction or traffic directing details if they wish to do so.
- B. When an officer equipped with a BWC is dispatched to a call for service, upon acknowledging dispatch, the officer shall immediately begin to record the response.
  - C. When an officer equipped with a BWC volunteers for a call for service or assistance, upon advising dispatch, the officer shall immediately begin to record the response unless impracticable. In a situation where it is impractical to record the situation, the officer must notify their immediate supervisor, as soon as it is safe to do so. Reasons for not recording the incident shall be documented in the operations or incident report.
  - D. 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.
  - E. Notwithstanding any other provision of this policy/procedure, 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 goes to a scene where an officer has requested emergency assistance (e.g., an officer in distress, shots fired, etc.), the officer shall activate his/her BWC before arriving at the scene unless impracticable to do so.
  - F. Notwithstanding any other provision of this policy/procedure, an officer while at the scene of a police deadly-force event or the on-scene investigation of that event shall not deactivate his/her BWC unless instructed to do so by the New Jersey Attorney General or his/her designee supervising the investigation of the deadly force incident pursuant to *Attorney General Law Enforcement Directive 2006-5*. The New Jersey Attorney General or his/her designee supervising the investigation may provide such instruction telephonically.
  - G. BWCs shall remain activated for the entire duration of citizen contacts (calls for service, pedestrian/MV stop, etc.) until either the officer or citizen has departed the scene and the officer has notified communications that the event is closed.

- H. When a BWC is activated to transport an arrestee/prisoner, it shall remain activated at all times while the BWC-equipped officer is in the presence of the arrestee and until the arrestee is secured in a holding cell or until custody of the arrestee has been transferred to county jail personnel or until the arrestee is with hospital/medical/mental health personnel and the officer is no longer in the presence of the arrestee.
  - 1. The BWC shall be re-activated when the prisoner is removed from the holding cell until custody of the arrestee has been transferred to his/her final location.
- I. When wearing a BWC, officers shall notify crime victims and civilians inside of their homes or place of abode (e.g., hotel/motel rooms, boarding houses, etc.) that they are being recorded unless it is unsafe or unfeasible to provide such notification.
  - 1. If the officer decides not to provide notification of BWC activation because it is unsafe or unfeasible to do so, the officer shall document the reasons for that decision in the incident report of the incident and/or by narrating the reasons on the BWC recording.
  - 2. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
  - 3. If an officer fails to activate the BWC, fails to record the entire event contact, or interrupts the recording, the officer shall document in the applicable incident report why a recording was not made, was interrupted, or was terminated.
- J. 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 Morris County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, has expressly authorized the officer to make a covert electronic recording.

## **156.6 DEPLOYMENT AND USE OF THE BWC**

### **156.6.1 DEPLOYMENT AND USE OF THE BWC**

- A. Uniformed officers, to include patrol officers and road supervisors will be assigned an individual BWC.
- B. Uniformed officers, to include patrol officers and road supervisors shall wear (and utilize when necessary) the BWC prior to engaging in field activities listed above in 156.5.1A.
- C. Investigative (Detective Bureau) shall wear (and utilize when necessary) the BWC prior to engaging in field activities listed above in 156.5.1A.

- D. Administrative officers (Captain and Chief) are not required to wear a BWC unless engaging in pre-planned field activities, when applicable.
- E. BWCs shall be worn on the outer-most garment.
1. The camera will be secured to the garment using the mount/clip supplied by the manufacturer that is part of the BWC equipment.
  2. Officers are responsible to ensure that the BWC remains in a position to allow the recording of an encounter or incident to the greatest extent possible.
- E. All officers are responsible for their assigned BWC, its use and maintenance.
- F. Prior to beginning a patrol shift, officers assigned a BWC will ensure its readiness by conducting an operational inspection.
1. The officer shall activate the BWC during the daily patrol vehicle check and verbally state the date, time, shift and assigned vehicle number.
  2. The officer shall keep the BWC activated during the vehicle check and inspection of the rear prisoner compartment. The officer will narrate that the “prisoner compartment checks clear of weapons and contraband”.
  3. Any problems preventing the use of the officer’s assigned BWC during the shift/assignment will be reported immediately to the patrol supervisor and documented on the officer’s Daily Activity Sheet.
    - a. The patrol supervisor will assign a spare BWC and report the problem to the BWC Coordinator.
    - b. If a temporary BWC is utilized, the shift supervisor issuing the BWC must assure to log the proper police officer utilizing the BWC.
- G. If an officer fails to activate the BWC, fails to record the entire event contact, or interrupts the recording, the officer shall document in the applicable operations/incident report why a recording was not made, was interrupted, or was terminated.
1. BWC recordings are not a replacement for written reports. Under no circumstances shall officers simply refer to a BWC recording on an investigation report instead of detailing the facts and circumstances of their investigation/observations.
- H. Officers shall tag all recordings that correspond to their name.
1. Tagging of recordings shall not be used as a means to generate overtime.

- I. Categories for tagging will automatically set retention purposes:
  - a. General – Day to Day activities such as: vehicle checks, service call responses non-arrest incidents, “routine MV stops, etc.
  - b. Critical – arrests, Use of Force, criminal investigations, internal affairs complaints, officer injury, etc.
  - c. Special Privacy
    - 1. At the conclusion of each shift, the officer shall return his/her BWC to the charging dock.

J. Special Privacy

- 1. Officers shall categorize recordings that capture any of the following circumstances that the New Jersey Attorney General has deemed ‘special privacy’ issues.
  - a. Captures the image of a victim of a criminal offense;
  - b. Captures the image of a child;
  - c. Were 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 deactivate the BWC was declined;
  - e. Captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded;
  - f. Captures the image of an undercover officer or confidential informant; or
  - g. Captures the screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.
  - h. Captures something that is private or inappropriate,

- K. Supervisors are responsible for ensuring that on-duty officers assigned a BWC unit are equipped with functioning BWC's at the beginning of each shift.
1. Patrol supervisors will conduct a periodic review of BWC recordings in order to assess officer performance as well as to flag video/audio that may be appropriate for training purposes. Each officer shall have a minimum of three recordings reviewed within each six-week cycle.
  2. Patrol supervisors shall formally review all instances when a BWC is deactivated prior to the conclusion of an incident.
  3. If an internal affairs complaint is associated with a recorded event, or an officer believes an incident may generate an internal affairs complaint, the reviewing supervisor will tag the recording "critical"

#### **156.7 Notice that BWCs are Deployed and Activated**

- A. Specific Notice to Certain Individuals During an Encounter. 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. *See AG Directive 2021-5, Section II.A (non-enforceability by third parties).*
- B. Truthful Response to Specific Inquiries. 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 officer to make a covert electronic recording. *Cf. Section 3.3 (Policy does not apply to officers while operating in an undercover capacity, or while conducting/participating in a station house custodial interrogation electronically recorded in accordance with Rule 3:17).* Nothing in this Section shall be construed to establish a basis for suppressing a statement or other evidence. *See AG Directive 2021-5, Section II.A (non-enforceability by third parties).*
- C. 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 officer's BWC the officer shall immediately discontinue 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.

- D. **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 officer shall immediately discontinue use of the BWC. 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 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 the officer discontinue use of the BWC, the officer shall evaluate the circumstances and, if appropriate, discontinue use of the BWC. 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.

## 156.8 DEACTIVATION

- A. **ROUTINE**: Deactivation for routine incidents/situations will occur after the officer clears the incident via the radio with dispatch.
- B. **WITNESS NOT PROVIDING INFORMATION**: Officers may deactivate 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, provided however that the agreement to participate under that condition is itself recorded.
1. Officers shall not suggest to the person being recorded that the BWC should be deactivated; nor shall the officer ask the person whether he or she would prefer that the BWC be deactivated. Rather, the request for deactivation must be self-initiated by the civilian. The officer may explain the consequences of deactivation (e.g., evidence relevant to a criminal investigation will not be recorded).
  2. In deciding whether to deactivate the BWC, the officer shall consider the privacy and safety interests of the person requesting deactivation, 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 deactivation request is honored.

C. VICTIM OF MEDICAL CALL: Officers may deactivate a BWC when a person, other than an arrestee, is seeking emergency medical services for him/herself or another person and requests that the BWC be deactivated. In deciding whether to deactivate the BWC, the officer shall consider the privacy interests of the person requesting deactivation and the person in need of medical assistance.

1. If an officer declines a request to deactivate a BWC, the reasons for declining the request (e.g., 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 memorialized on the recording and documented and shall be reported to an immediate supervisor as soon as it is safe and practicable to do so.

a. In the event that the officer declines a deactivation request, the officer shall immediately inform the person making the request of that decision.

b. Officers are prohibited from misleading the person making the deactivation request into believing that the BWC has been turned off when in fact it is operating unless the Morris County Prosecutor or his/her designee or the Director of the Division of Criminal Justice or his/her designee expressly has authorized covert recording.

D. ASSISTANT PROSECUTOR: Officers may deactivate a BWC when specifically authorized to do so by an assistant prosecutor/deputy attorney general for good and sufficient cause as determined by the assistant prosecutor/deputy attorney general or the like. When an officer deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation indicating the assistant prosecutor who authorized the deactivation (e.g., "...I am now turning off my BWC as per the instruction of assistant prosecutor (insert name)").

E. INVESTIGATION STRATEGY/PLANNING: Officers may deactivate a BWC while participating in a discussion pertaining to criminal investigation strategy and planning (e.g., 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 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 deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation (e.g., "...I am now turning off my BWC to discuss an investigative strategy with my supervisor").

F. SCHOOL / HOUSE OF WORSHIP: If an officer is required to deactivate the BWC when entering a school, house of worship, health care facility, substance abuse treatment center, etc., the officer shall narrate the reason for deactivation (e.g., "...I am entering a school building where children are present."). The BWC shall be reactivated as soon as it is safe and practicable to do so if and when the circumstances requiring



deactivation no longer exist (e.g., 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).

G. SUBSTANCE ABUSE TREATMENT FACILITY: In the event that a BWC captures the image of a patient in a substance abuse treatment facility, the Chief of Police or his/her designee shall notify the Morris County Prosecutor or his/her designee to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information (42 USC § 290dd-2, 42 CFR §23.1 to 23.41). The recording shall not be accessed without the permission of the Morris County Prosecutor or his/her 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.)

H. UNDERCOVER OFFICER/CONFIDENTIAL INFORMANT: Officers shall not activate a BWC, and shall deactivate 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 (e.g., 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 their supervisor that the image of an undercover officer or confidential informant was recorded.

I. COURTROOM TESTIMONY: Officers 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 the presiding judge expressly authorizes such activation.

J. ALCOTEST: The BWC shall be deactivated, turned off and removed while in the ALCOTEST area when the ALCOTEST device is being used (this includes the 20 minute observation period). The officer shall narrate the reasons for deactivation (e.g., "...I am deactivating the BWC because the suspect is about to take a breath test"), and the BWC shall be reactivated when safe and practicable to do so following the completion of the breath testing operation. This shall be documented in the Alcotest operator's supplemental report.

K. RE-ACTIVATION: In any instance where a BWC was deactivated, the device shall be reactivated as soon as it is safe and practicable to do so if and when the circumstances justifying deactivation no longer exist (e.g., the interview of the person requesting deactivation is completed, etc.) and the officer would otherwise be required to activate the BWC.

L. When an officer deactivates a BWC:

1 The conversation between the officer and the civilian concerning the

request for deactivation shall be electronically recorded;

2. The officer before deactivating the BWC shall narrate the circumstances of the deactivation (e.g. "...I am now turning off my BWC as per the victim's request".);
3. The officer shall report the circumstances concerning the deactivation to their supervisor as soon as is practicable; and
4. The officer shall document the circumstances of the deactivation in any incident report concerning the incident under investigation.
5. The officer shall tag the recording as "Special Privacy".

### 156.9 RECORDS RETENTION

- 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 Section, 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 periods as required in Sections 156.9B, 156.9C, and 156.9D.
- 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 in Section 156.9D 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. 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. any 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.

To effectuate subparagraphs (5), (6), and (7) of this Section, 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 Sections 156.9A, 156.9B, or 156.9C 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.

#### **156.10 SECURE STORAGE AND ACCESSIBILITY OF BWC RECORDINGS**

A. **Procedures to Protect Integrity of BWC Recordings.** The Chief of Police or his designee shall maintain a system and procedures to ensure the integrity and proper handling and storage of all BWC recordings. The Chief of Police shall cause a periodic audit of these records to ensure compliance with this general order. Minimally this system shall include provisions to:

1. ensure that all recordings are uploaded to a secure data storage system in a timely fashion;
2. prevent tampering with or deletion of recorded data both before and after downloading from the BWC and uploading to the storage system;
3. prevent unauthorized access to stored BWC recordings;
4. document all instances where BWC recordings are accessed, viewed, copied, disseminated, or deleted; and

5. permit auditing of all instances where BWC recordings are accessed, viewed, copied, or deleted.

**B. Capacity to Locate Specific BWC Recordings.** The Chief of Police or his designee 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, the Chief of Police or his designee shall be required to develop and maintain a BWC control ledger or log, which may be computerized.

1. This department shall establish and implement a system to ensure that relevant BWC recordings are provided in discovery in a timely fashion. The officer shall ensure that police arrest/incident/continuation reports, etc. indicate whether the incident or investigative activity described in the report was electronically recorded by a BWC. Copies of 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.

**C. Provisions to Identify ("Tag") Recordings That Raise Special Privacy or Safety Issues.** To identify BWC recordings that may raise special privacy or safety issues, a notation (*i.e.*, "tagging") will be made when the recording:

1. captures the image of a victim of a criminal offense;
2. captures the image of a child;
3. 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;
4. captures a conversation with a person whose request to de-activate the BWC was declined;
5. captures a special operations event or execution 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;
6. captures the image of an undercover officer or confidential informant; or
7. captures the screen of a police computer monitor that is displaying confidential personal or law enforcement sensitive information.

**D. Approval for Access to "Tagged" BWC Recordings.** A BWC recording tagged pursuant to above 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 Section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to above.

- E. 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 or 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 Rule to protect the information from disclosure, such as by seeking a protective order from the court.
- F. Third-Party Storage and Maintenance.** This agency authorizes Watchguard, 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.

### **156.11 RESTRICTIONS ON ACCESS TO USE AND DISSEMINATION OF BWC RECORDINGS**

- A. Specified Authorized Purposes for Accessing/Using Stored BWC Recordings.** 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 and the law. BWC recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose. Access to and use of a stored BWC recording is permitted only:
1. when relevant to and in furtherance of a criminal investigation or prosecution;
  2. when relevant to and in furtherance of an internal affairs investigation;
  3. 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;
  4. when relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency;

5. 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;
6. to comply with the State's discovery obligations in prosecutions pursuant to the Rules of Court;
7. to comply with any other legal obligation to turn over the recording to a person or entity; Open Public Records Act (OPRA)
  - a. The Chief of Police or his/her designee shall notify the Morris County Prosecutor's Office within one business day upon receiving any subpoena, court order or OPRA request for a BWC recording before complying with the request. Such notice shall clearly state the deadline by which a response must be made.
  - b. 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
8. to show or disseminate the recording to a civilian or a non-law enforcement entity, or to disseminate it to the public, where the 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;
9. 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;
10. to conduct an audit to ensure compliance with this Policy and a department's policy, standing operating procedure, directive, or order promulgated pursuant to this Policy;
11. to enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution (e.g., 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
12. 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.
13. Officers and employees 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.

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 or view 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. Restriction on Access to BWC Recordings Prior to Creating Reports, Statements, Interviews. A law enforcement officer shall not review or receive an accounting of a BWC recording that is subject to a minimum three-year retention period pursuant to Sections 156.9B or 156.9D prior to creating any required initial reports, statements, and interviews regarding the recorded event. Subject to the provisions of Section 156.9B of this Policy, nothing in this paragraph is intended to prevent the officer from considering, reviewing or receiving an accounting of such a BWC recording subsequent to the creation of any required initial reports, statements, and interviews regarding the recorded event.

D. 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 Section 156.9B of this Policy, the officer may review the BWC recording and, if appropriate, create additional reports or make additional statements or documentation that revises or supplement the initial report, statement or interview that incorporate or reflect any information adduced from a review or accounting of the BWC recording. **The officer shall obtain the permission of the next level supervisor prior to accessing their video for the purpose of creating a supplemental report. That permission is to be documented in the incident supplemental report, indicating the supervisor's identity, date, time and reason for accessing.**

E. Documenting Access to Stored BWC Recordings. Each department shall maintain a record of all access to stored BWC recordings pursuant to this Policy. The department's record keeping system 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 who approved access, where applicable; and
5. the reason(s) for access, specifying the purpose or purposes for access authorized pursuant to Section 156.9A, and specifying the relevant case/investigation number, where applicable.

#### **156.12 DELETION REQUESTS**

- A. Only the Internal Affairs Unit can delete BWC recordings with the expressed consent of the Chief of Police or the Morris County Prosecutor's Office.
- B. BWC footage from cases involving an arrest shall not be deleted without the expressed authorization of the Morris County Prosecutor's Office.
- C. If an officer has inadvertently recorded data that is private or inappropriate, a request to delete the recording should be made to their immediate supervisor as soon as possible.
  1. The recording shall not be viewed, but the officer shall tag the recording as "Special Privacy" and submit a memorandum to his/her immediate supervisor, the system administrator and the internal affairs bureau commander. The actual BWC shall be taken out of service and turned over to the internal affairs bureau for downloading. The officer shall be issued a spare unit as a replacement.
  2. If necessary, the internal affairs commander shall assign an investigator to the incident.
  3. Internal Affairs shall conduct an investigation, respecting all rights to personal privacy, having the BWC recording viewed only by an officer of the same sex, if necessary.
  4. Upon completion of the investigation, the Internal Affairs commander shall notify the Chief of Police and request permission to delete the recording if warranted.