

Carlsbad Police Department

Policy Manual Special Order 2016-08

Pursuant to Carlsbad Police Department Policy 204, this Special Order becomes effective August 1, 2016.

New policy 449 reads as follows:

449.1 PURPOSE AND SCOPE

This policy provides guidelines for the use of Department issued body worn cameras (BWC's) by members of this Department while in the performance of their duties. This policy does not apply to lawful surreptitious audio/video recording or interception of communications for authorized investigative purposes. This policy is not intended to supplant sound officer safety practices in an emergency situation, such as self-defense.

449.2 POLICY

The Carlsbad Police Department may provide sworn members with access to BWC's for use during the performance of their duties. The use of BWC's is intended to enhance the mission of the Department by accurately capturing contacts between members of the Department and the public.

449.3 MEMBER PRIVACY EXPECTATION

All recordings made by members acting in their official capacity shall remain the property of the Department. Members shall have no expectation of privacy or ownership interest in the content of these recordings.

449.4 MEMBER RESPONSIBILITIES

Prior to going into service, each uniformed member will be responsible for making sure that he/she is equipped with a BWC, issued by the Department, and that the BWC is in good working order. Uniformed members shall wear the BWC in a conspicuous manner. Any member assigned to a non-uniformed position may carry a BWC at any time the member believes that such a device may be useful.

When using a BWC, the assigned member shall record his/her name, ARJIS number, and the current date and time at the beginning and the end of the shift or other period of use, regardless of whether any activity was recorded. This procedure is not required when the BWC and related software captures the user's unique identification and the date and time of each recording.

Members should activate BWC's in accordance with Section 449.5 in a reasonable effort to comply with this policy. Members shall document the existence of a recording in all reports or other official records of the contact, including an instance where the BWC

malfunctioned or the member deactivated the recording. In such instances, members shall indicate the reason for the deactivation.

449.5 ACTIVATION OF THE BWC

This policy is not intended to describe every possible situation in which the BWC should be used, although there are many situations where its use is appropriate. Members should activate the BWC any time the member believes it would be appropriate or valuable to record an incident. Department members are encouraged to advise members of the public of the recording. However, the Department member must consider who is being recorded and any facts that would indicate that such notice would interfere or otherwise be contrary to the mission of the Department. In the event that the Department member believes such notice would interfere or otherwise be contrary to the mission of the Department, the member may elect not to advise the public of the recording.

It is suggested that members make the advisement in a language the recorded person(s) can understand, to the extent that members are able to communicate in that language.

The BWC shall be activated in any of the following situations:

- (a) All anticipated enforcement actions and investigative contacts to include field interviews and traffic stops. Generally, members do not need to record routine report calls where there is no anticipated enforcement action.
- (b) When practical, all suspect statements. Victim and witness statements when deemed appropriate or useful by the member of the Department.
- (c) When transporting a prisoner or providing transportation for a member of the public.
- (d) Any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require recording or in the event the member believes the recording would protect the interests of the member or the Department.
- (e) As soon as practical and safe, upon initiation of a vehicle pursuit.

Members may encounter special circumstances which should not be recorded:

- (a) Members should not record other public safety personnel without their consent or notification. However, members should notify other public safety personnel, such as firefighters, paramedics, or other law enforcement officers as soon as practical when they are being recorded during an incident.

(b) Members are not required to record non-enforcement contacts such as citizen flags for directions or non-enforcement related contacts with the public.

(c) Victims of child abuse or molest generally should not be video recorded.

(d) Victims of sexual assault generally should not be video recorded without consent.

(e) Victims who are partially unclothed or nude should generally not be video recorded unless a recording would serve a legitimate law enforcement interest. Regardless, the victim shall be covered as soon as reasonably possible to protect their personal privacy and dignity.

(f) Members should generally not record victims or suspects in hospital or emergency room settings. In the event a member elects to make a recording, whether audio or video under this section, the member shall take all reasonable steps in consideration of the HIPPA rights of patients and the privacy of hospital staff. Members may video or audio record a suspect if the suspect's conduct is violent or threatening to staff or to members.

(g) Members should use care when recording pre-planned tactical operations such as search warrants to avoid unnecessary public disclosure of current law enforcement tactics. Members should not record tactical briefings or tactical decision making conversations. Incident Commanders shall have the discretion to advise tactical team members regarding when recording is not required.

Members shall remain sensitive to the dignity of all individuals being recorded and exercise sound discretion to respect privacy by discontinuing recording whenever it reasonably appears to the member that such privacy may outweigh any legitimate law enforcement interest in recording. Suspects who are nude or partially unclothed shall be covered as soon as reasonably possible to protect their personal privacy and dignity.

However, private citizens do not have a reasonable expectation of privacy when talking with police officers during the scope of an officer's official duties, even when the contact is in a private residence. When officers are lawfully present in a home (warrant, consent, or exigent circumstances) in the course of official duties, there is no reasonable expectation of privacy. Therefore, officers are not required to give notice they are recording. However, if asked, officers shall advise citizens they are being recorded.

Officers are not required to initiate or cease recording an event, situation or circumstance solely at the demand of a citizen.

Requests by members of the public to stop recording shall be evaluated balancing the request for privacy with legitimate law enforcement interest in recording. In the event that recording is ceased, recording should resume when privacy is no longer at issue unless the circumstances no longer fit the criteria for recording.

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

449.5.1 CAMERA POSITION

During the regular course of wear, officers shall wear the BWC above the midline of their torso. Officers should utilize their viewers to ensure the BWC is in a position where the field of view provides for effective recording. Officers shall not intentionally obscure the view of their BWC.

This section does not prohibit an officer from removing the BWC from their torso if the BWC would better be positioned differently for a specific purpose.

449.5.2 SURREPTITIOUS USE OF THE BWC

Members of the Department may surreptitiously record any conversation during the course of a criminal investigation in which the member reasonably believes that such a recording will be lawful and beneficial to the investigation (Penal Code § 633).

Members shall not surreptitiously record another department member without a court order unless lawfully authorized by the Chief of Police or the authorized designee.

449.5.3 CESSATION OF RECORDING

Once activated, the BWC shall not be purposely deactivated until the member's direct participation in the incident is complete or the situation no longer fits the criteria for activation. Recording may be stopped during significant periods of inactivity such as report writing or other breaks from direct participation in the incident, such as side-bar discussions with other members or a supervisor about strategies, tactics or how to handle the contact.

449.5.4 EXPLOSIVE DEVICE

Many portable recorders, including BWC's and audio/video transmitters, emit radio waves that could trigger an explosive device. Therefore, these devices shall not be used where an explosive device may be present.

449.6 PROHIBITED USE OF BWC

Members are prohibited from using Department-issued BWC's and recording media for personal use and are prohibited from making personal copies of recordings created while on duty or while acting in their official capacity. Members are also prohibited from

retaining recordings of activities or information obtained while on-duty. Members shall not duplicate or distribute such recordings, except for authorized legitimate Department business purposes. All such recordings shall be retained at the Department.

Members are prohibited from using personally owned video recording devices while on-duty without the express consent of the Watch Commander. Any member who uses a personally owned video BWC for department-related activities shall comply with the provisions of this policy, including retention and release requirements.

Recordings shall not be used by any member for the purpose of embarrassment, intimidation or ridicule. As part of the investigative record, recordings shall not be shared with others without a legitimate professional interest in the case, and should be considered "need to know" content.

Members without the "need to know" about the investigation shall be prohibited from viewing the video without the express permission of the division commander.

449.7 RETENTION OF RECORDINGS

Any time a member records any portion of a contact that is required per the categorization schedule, the member shall categorize the video, record the related case number (in the following format 16-12345), if one is assigned, and transfer the file in accordance with current procedures for storing digital files. If there is no case number assigned, the officer shall categorize the video, record the related incident number (in the following format 160012345) and transfer the file in accordance with current procedures for storing digital files. The member shall also document the existence of the recording in the related case report. If the incident is documented by another Department member and there is no other requirement for the recording officer to write a report to document the incident, the existence of the recording may be documented only by the reporting employee. Transfers shall occur at the end of the member's shift, or any time the storage capacity is nearing its limit or as otherwise directed by a supervisor.

While using BWC's in conjunction with Evidence.com, members shall use the categorization and notation functions of Evidence.com to make notes within the system on cases where enforcement action was taken or for videos which should be retained. Notes such as suspect names and citation numbers will facilitate flagging videos for review, discovery and retention.

Members must categorize and note the assigned case number or incident number for each video file prior to the end of their shift unless further delay is approved by the Watch Commander.

Members need not make notes on every recording, only recordings which should be retained according to the categorization schedule. Members using Taser Axon in conjunction with Evidence.com shall designate retention of their videos in Evidence.com according to the nature of the incident (felony, misdemeanor, detention, etc.) by using the categorization feature. Uncategorized videos will be deleted after 90 days, therefore it is critical that videos are appropriately categorized.

Any time a member reasonably believes a recorded contact may be beneficial in a non-criminal matter (e.g., a hostile contact or citizen complaint), the member should promptly notify a supervisor of the existence of the recording. Supervisors, managers or evidence administrators may re-categorize recordings as they deem necessary.

The Department shall take all reasonable measures to ensure the security of stored recordings, whether audio or video, in an effort to prevent unauthorized access to said stored recordings.

449.7.1 RETENTION REQUIREMENTS

It is the responsibility of the member making the recording to affirmatively categorize recordings in Evidence.com based upon the circumstances of the incident. All recordings shall be retained for a period consistent with the requirements of the organization's records retention schedule but in no event for a period less than 90 days.

While it is critical to retain recordings of evidentiary value, it is almost as important that files of insignificant incidents are deleted in a timely fashion according to schedule. The following retention schedule should serve as a guide; however, the camera program supervisor or any other supervisor or manager may extend the retention schedule of a recording based upon the significance of a case:

- (a) Accidental recording- 90-day retention.
- (b) Case where a Member reasonably believes that there is a high probability of civil liability to the City –three-year retention.
- (c) Detention- two-year retention.
- (d) Felony- three-year retention.
- (e) Felony with Use of Force- three-year retention.
- (f) Homicides -permanent retention in Evidence.com AND all videos shall be recorded to a backup media, such as DVDs and logged into evidence.
- (g) Major injury traffic collision- three-year retention

- (h) Minor injury traffic collision- two-year retention
- (i) Misc. case- two-year retention
- (j) Misc. case with Use of Force- three-year retention
- (k) Misdemeanor (including traffic related misdemeanors)– two-year retention.
- (l) Misdemeanor with Use of Force- three-year retention
- (m) Pending review- permanent retention
- (n) Restricted Professional Standards- two-year retention
- (h) Routine incident with no apparent investigative value -90-day retention.
- (i) Training- two-year retention.

449.8 REVIEW OF RECORDINGS

Audio and video recordings are designated by the Department as investigative records and are not subject to routine release through requests via the California Public Records Requests Act (CPRA), the Freedom of Information Act (FOIA), or other non-court ordered requests for audio or video records.

When preparing written reports, members should review their recordings as a resource and shall be granted access to review them. However, members should not use the fact that a recording was made as a reason to write a less detailed report. With the exception of a timely public safety statement, members who are involved in a critical incident shall be allowed to review their own recording of the incident prior to giving a voluntary or compelled statement.

Officers may review digital evidence prior to providing testimony at hearings, trial, or depositions as appropriate and necessary.

In the event that the recording of a member involved in a critical incident is damaged, destroyed, of poor quality or in the event that other members' recordings offer a better perspective of the critical incident than that of the subject member(s), members may be allowed to review the recordings of other members involved in said critical incident prior to giving a voluntary or compelled statement. At the discretion of the Chief of police or designee, members may be allowed to review another member's recording if the other member was in the approximate vicinity of the subject member and their recording offered a similar scene orientation and perspective of the incident. Members shall also be allowed to review other member's videos prior to being questioned about the content of the other member's video recording.

It is not the intent of the Department to review digital evidence for the purpose of general performance review, for normal preparation of performance reports, or to discover policy violations.

Supervisors are authorized to review relevant recordings any time they are investigating alleged misconduct or reports of meritorious conduct.

Recorded files may also be reviewed:

(a) Upon approval by a supervisor, by any member of the Department who is participating in an official investigation, such as a personnel complaint, administrative investigation or criminal investigation.

(b) Pursuant to lawful process or by court personnel who are otherwise authorized to review evidence in a related case.

(c) By media personnel with permission of the Chief of Police when the Chief determines such release is in the public's interest and the release will not compromise the integrity of an ongoing investigation. In the event of a release of a recording to the public or media, involved Department members should be notified as soon as reasonably possible of the release.

(d) For purposes of training law enforcement personnel once the case has been adjudicated. Such training use shall not be disparaging or demeaning to members of the Department or the subjects of the recording. Examples of useful recordings may include contact and cover, pursuits, tactics or de-escalation techniques. Permission from involved members should be obtained prior to the use of the recording for training purposes.

(e) Any incident in which a member of the Department is injured or killed during the performance of their duties.

(f) Any incident involving the use of force by a member of the Department, including canines, which results in injury or death.

(g) Any in-custody death.

(h) Any police pursuit.

(i) When any member of the Department intentionally or unintentionally discharges a firearm at a person regardless of whether an individual is struck.

(j) When any member of the Department not involved in training intentionally or unintentionally discharges a Taser at a person, including the application of a drive stun.

(k) Department member involved traffic collisions.

(l) Prior to the release of recordings in response to a proper legal request (e.g., in response to a subpoena or other court order).

(m) In preparation for a civil deposition or responding to an interrogatory where the incident arises from the employee's official duties.

(n) When preparing to testify in a criminal, civil, or administrative proceeding arising from the employee's official duties.

(o) For investigations undertaken by the Department for the purpose of proving or disproving specific allegations of misconduct.

(p) For administrative proceedings, when digital evidence is used by the Department for the purpose of proving or disproving allegations of misconduct, only digital evidence relevant to the investigative scope shall be viewed and retained by investigators. Information relevant to the recordings viewed and seized as evidence shall be documented as part of the report of any investigation undertaken by the Department.

(q) Supervisors should review BWC recordings to assist in assessing and investigating citizen's complaints. Supervisors have discretion to show BWC recordings to a complainant when it relates to their complaint, to assist in clarifying the complaint, resolving the complaint, or having the complaint withdrawn.

(r) In situations where there is a need to review digital evidence not covered by this procedure, a Division Commander or higher must approve the request. Each situation will be evaluated on a case by case basis.

The Chief of Police shall have final Departmental authority in determining the release of recordings where not otherwise required by court order, statutory authority or other lawful authority.

All recordings shall be reviewed by the Department Records Manager prior to public release. Recordings that unreasonably violate a person's privacy or sense of dignity should not be publicly released unless disclosure is required by law or order of the court.

449.9 EDITING, TAMPERING OR COPYING

All audio and video recordings are part of the investigative record and shall be preserved in their original format without deletion, editing or tampering according to the retention schedule.

Members may not delete, photograph, video record, or otherwise tamper with Department recordings without the express permission of the BWC Administrator. If a copy of a digital recording is needed for a legitimate law enforcement purpose (e.g., court demonstration, sharing with the District Attorney's Office) a member may make a copy of the related recording. Unauthorized tampering, editing or deletion of a video may result in discipline, up to and including termination.

Evidence.com has editing features which may be used to redact or obscure portions of recordings which may be sensitive. The editing features do not modify or alter the original recording; rather they create a second edited version for special circumstances. Only designated program personnel will have access to editing features.

Video files may be deleted if, upon review by a designated BWC Administrator, they are deemed to constitute a breach of officer(s) privacy, and are not pertinent to an incident previously recorded. At no time will video deemed evidence be deleted.

449.10 SUPERVISORS RESPONSIBILITIES-AUDIT


A. Sergeant's Responsibilities

1. Sergeants who have personnel assigned to them who wear a BWC are required to conduct quarterly inspections. The inspections will insure that the BWC is being used to record enforcement related contacts and other incidents set forth in this procedure. Inspection results will be forwarded to the respective Lieutenant of the division for review and approval.
2. Sergeants will randomly select at least two dates every quarter, that their employees were working, to inspect the proper use of the officer's BWC. The supervisor will confirm that the number of enforcement contacts match up to the number of videos submitted. If the supervisor identifies a discrepancy, they will follow-up with the officer to determine the reason the videos submitted did not match up with the officer's number of contacts. If the supervisor is satisfied with the reason then no further action is required. If the supervisor feels a violation of this procedure occurred, appropriate action will be taken. Sergeants will make sure that the randomly selected BWC videos were uploaded and categorized properly.
3. If during the inspection, the sergeant determines that the officer's BWC is not functioning properly, the BWC will be immediately taken out of service for repair and/or replacement.

This policy does not limit the Sergeants' ability to inspect BWC recordings if there is reason to believe that an officer is not properly recording, uploading or categorizing incidents.

B. Lieutenant's Responsibilities

1. Lieutenants will ensure the Sergeants' inspections are completed correctly. If a supervisor identifies a discrepancy, the lieutenant will follow up with the supervisor to ensure the discrepancy is corrected.



Neil Gallucci, Chief of Police

7-12-16
Date