

CITY OF FAIRMONT
POLICE DEPARTMENT

DATE: January 2, 2018	"TO PROMOTE AND PRESERVE THE PUBLIC'S SAFETY"	NUMBER: 3.39
REVISION:		PAGE 1 OF 8
SECTION: Operations		APPLICATION: All Members
TITLE: Body Worn Cameras (BWC)		
REFERENCES: Minnesota 626.8473 and 13.825		

PURPOSE: The Fairmont Police Department has made available to its uniformed officers the use of Body Worn Cameras (BWCs) to document events during the course of an incident. This policy provides guidelines on the use and management of the systems and the recorded media. We also recognize and understand that not every aspect of an incident will be shown on the media generated by a BWC, but it is another form of supporting documentation of an incident.

POLICY: The Fairmont Police Department may equip officers with access to BWCs for use during the performance of their duties. There is no requirement for officers to use BWCs during their shift unless they have been deemed a Brady-Giglio Impaired officer by the Martin County Attorney's Office in which case that officer will be required to utilize a BWC during their shift. It is however strongly encouraged for officers to employ the use of BWCs during their shift and service to our community. Use of BWCs is intended to enhance the Department's mission by accurately documenting contacts between officers of the Department and the public.

SCOPE: This policy governs the use of BWCs in the course of official duties. It does not apply to the use of squad car-based (dash-cam) recording systems noted in Fairmont 6.06. The Chief or designee may provide for specific instruction to an officer assigned to a specialty unit or assignment including but not limited to operation of a BWC in a health care or mental health facility.

DEFINITIONS: The following phrases have special meanings as used in this policy:

- A. **MGDPA or Data Practices Act** refers to the Minnesota Government Data Practices Act, Minnesota Statute 13.01, et seq. Minnesota 13.825 is specific to BWCs.
- B. **Records Retention Schedule** refers to the General Records Retention Schedule for Minnesota Cities.
- C. **Law Enforcement-Related Information** means information captured or available for capture by use of a BWC that has evidentiary value because it documents events with respect to a stop, arrest, search, citation, or charging decision.
- D. **Evidentiary Value** means that the information may be useful as proof in a criminal prosecution, related civil or administrative proceeding, further investigation of an actual or suspected criminal act, or in considering an allegation against a law enforcement agency or officer. This

- E. does not obligate the officer to collect BWC data solely for use in third-party tort and civil litigation.
- F. **General Citizen Contact** means an informal encounter with a citizen that is not and does not become law enforcement-related or adversarial, and a recording of the event would not yield information relevant to an ongoing investigation. Examples would include, but are not limited to assisting a motorist, routine report and non-enforcement contacts, general discussion from citizens about a community concern, or general non-adversarial/non-enforcement contacts.
- G. **Adversarial** means a law enforcement encounter with a person that becomes confrontational, during which at least one person expresses anger, resentment, or hostility toward the other, or at least one person directs toward the other verbal conduct consisting of arguing, threatening, challenging, swearing, yelling, or shouting. Encounters in which a citizen demands to be recorded or initiates recording on his or her own are deemed adversarial.
- H. **Unintentionally Recorded Footage** is a video recording that results from an officer's inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary value. Examples of unintentionally recorded footage include, but are not limited to recordings made in the squad room, locker rooms, restrooms, and recordings made while officers were engaged in conversations of non-business, personal nature with the expectation that the conversation was not being recorded.
- I. **Official Duties**, for the purposes of this policy, means that the officer is on duty and performing authorized law enforcement services on behalf of this agency.
- J. **Evidence Library** refers to the web-accessed digital media storage environment where data from the BWCs are stored and accessed.
- K. **BWC Administrator** refers to designated personnel trained in the operational use of BWCs, storage and retrieval methods and procedures, who assigns, tracks, and maintains BWC equipment, oversees needed repairs or replacement equipment through the vendor, controls user rights and access, and acts as a liaison with the vendor. Also responsible for the training of law enforcement operators on the use of BWCs.

Body Worn Cameras Objectives:

The Fairmont Police department has adopted the use of BWCs to accomplish the following objectives:

- A. To enhance officer safety.
- B. To document statements and events during the course of an incident.
- C. To enhance the officer's ability to document and review statements for both internal reporting requirements and for courtroom preparation and presentation.
- D. To preserve audio and visual information for use in current and future investigations.
- E. To provide a tool for self-critique and field evaluation during officer training.
- F. To enhance the public trust by preserving factual representations of officer-citizen interactions in the form of audio-video recordings.
- G. To assist with the defense of complaints and defense of civil actions against law enforcement officers and the City of Fairmont.
- H. To assist with the training and evaluations of officers.

Body Worn Cameras Use and Documentation:

- A. Officers may use only department-issued BWCs in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department.
- B. Officers who elect to utilize a BWC or have been assigned to utilize a BWC shall operate and use them consistent with this policy. Officers shall power on the BWC and conduct a function test of their BWCs at the beginning of each shift to make sure the device is operating properly. The initial powering on of the device as well as a successful activation of the BWC shall constitute a successful test of the device. Officers noting a malfunction during the testing or any other time shall promptly report the malfunction to the supervisor or OIC and forward written notification via email to the BWC Administrator. The malfunctioning BWC shall be taken out of use until the malfunction is reviewed and corrected. Supervisor, OIC, and/or BWC Administrator shall take prompt action to address malfunctions and document the steps taken in writing.
- C. Officers should wear their BWC in a location that is consistent with a location recommended by the manufacturer.
- D. Officers electing to utilize a BWC during their shift shall document the use and non-use as follows:
 1. Whenever an officer makes a BWC recording, the existence of the recording shall be documented in the CFS in either the written narrative or the CFS blotter report.
 2. When an officer is utilizing a BWC and an officer fails to record an activity that should have been recorded or the officer should have reasonably known to activate the BWC, the officer shall document the circumstances and reason for not recording an incident. A supervisor shall review any circumstances where a recording reasonably should have been made or documented on a BWC. It will not require a review if the incident was documented on a squad car camera.
- E. The Department will maintain the following records and documents relating to BWC use which are classified as public data:
 1. The total number of BWCs owned or maintained by the Department.
 2. The total amount of recorded BWC data collected and maintained.
 3. This policy along with the Records Retention Schedule.

General Guidelines for Recording:

- A. Officers utilizing a BWC should activate the device when they reasonably believe they will be involved in an incident that will result in an arrest, or other incident that may include but is not limited to, use of force, adversarial contact, search of person or vehicle, response to crimes in progress, or other activities likely to yield information having evidentiary value. However, officers need not activate the BWC when it would be unsafe, impossible, or impractical to do so, but such incidences of not recording when an officer has elected to utilize a BWC during their shift shall be documented as specified in this policy under Body Worn Cameras Use and Documentation D (2).

- B. Officers will have final discretion as to when a BWC shall be activated in accordance with section A listed above. Officers will not be required to record general citizen contacts or incidents that the officer reasonably believes will not yield any evidentiary value.
- C. Officers opting to utilize a BWC camera during their shift will have no affirmative duty to inform people that a BWC is being operated or that the individuals are being recorded.
- D. Once activated, the BWC should continue recording until the conclusion of the incident or encounter, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value. A supervisor or OIC may also direct officers employing a BWC to discontinue recording when further recording is unlikely to capture additional information having evidentiary value. If the recording is discontinued while an investigation, response, or incident is ongoing, officers shall state the reason for ceasing the recording on camera before deactivating their BWC or note it in a written format on the CFS narrative or blotter. If circumstances change, officers shall reactivate their BWC consistent with this section of this policy.
- E. Officers shall not intentionally block the BWC's audio or visual recording functionality.
- F. Notwithstanding any other provision of this policy, officers shall not use their BWCs to record other agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meals or breaks, during shift briefing or other meetings, or during other private conversations, unless recording is authorized as part of an administrative or criminal investigation.

Special Guidelines for Recording:

Officers may, in the exercise of sound discretion, determine:

- A. To use their BWCs to record any police-citizen encounter if there is reason to believe the recording would potentially yield information having evidentiary value or may assist with accurate documentation of the contact, unless such recording is otherwise expressly prohibited.
- B. To use their BWCs to take recorded statements from persons believed to be victims of or witnesses to crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.
- C. Officers need not record persons being provided medical care unless there is reason to believe the recording would document information having evidentiary value. When responding to an apparent mental health crisis or event, BWCs are recommended to be activated to document any use of force and the basis for it, and any other information having evidentiary value, but need not be activated when doing so would serve only to record symptoms or behaviors to be attributable to the mental health issue.
- D. Officers should as a matter of practice use either their BWC or in-squad camera to record transportations and the physical transfer of persons in their custody to hospitals, detox, mental health care facilities, juvenile detention centers, and jails. Officers will not be required to record in these previously stated facilities unless the officer anticipates witnessing a criminal event, witnessing an adversarial encounter, a use of force incident, or other incident the officer believes may have evidentiary value.

Downloading and Labeling Data:

- A. Each officer who elects or is directed to employ a BWC during their shift is responsible for transferring or assuring the proper transfer of the data from their camera to the Evidence Library at the end of their shift. However, if the officer is involved in a shooting, in-custody death, or other law enforcement activity resulting in death or great bodily harm, a supervisor, OIC, or other assigned personnel shall take custody of the officer's BWC and assume the responsibility of transferring the data from it.
- B. Whenever possible, officers shall label the BWC data files at the time of the video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Officer should assign one of the following labels applicable to each file:
1. **Evidence-criminal:** The information has evidentiary value with respect to an actual or suspected criminal incident or charging decision. (Seven years, permanent for homicides)
 2. **Evidence-force:** Whether or not enforcement action was taken or an arrest resulted, the event involved the application of force by a law enforcement officer of this or another agency. (Six years)
 3. **Evidence-property:** Whether or not enforcement action was taken or an arrest resulted, an officer seized property from an individual or directed an individual to dispossess property. (One year)
 4. **Evidence-administrative:** The incident involved an adversarial encounter or resulted in a complaint against the officer. (6 years if involved in Administrative Complaint Against Officer, 180 days if no complaint.)
 5. **Evidence-other:** The recording has potential evidentiary value for reasons determined by the officer at the time of labeling. (180 days)
 6. **Training:** The event was such that it may have value for training. (180 days)
 7. **Not Evidence:** The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recordings of general citizen contacts and unintentionally recorded footage are not evidence. (180 days)
- C. If necessary, officers shall flag each file as appropriate to indicate that it contains information about data subjects who may have rights under the MGDPA limiting disclosure of information about them when the video is labeled or noted in writing in the CFS. These individuals may include:
1. Victims and alleged victims of criminal sexual conduct and sex trafficking.
 2. Victims of child abuse or neglect.
 3. Vulnerable adults who are victims of maltreatment.
 4. Undercover officers.
 5. Informants.
 6. When the video is clearly offensive to common sensitivities.
 7. Victims of and witnesses to crimes if the victim or witness has requested not to be identified publicly.
 8. Individuals who called 911, and service subscribers whose lines were used to place a call to the 911 system.
 9. Mandated reporters.
 10. Juvenile witnesses, if the nature of the event or activity justifies protecting the identity

of the witness.

11. Juveniles who are or may be delinquent or engaged in criminal acts.
 12. Individuals who make complaints about violations with respect to the use of real property.
 13. Officers and employees who are the subject of a complaint related to the events captured on video.
 14. Other individuals whose identities the officer believes may be legally protected from public disclosure.
- D. Labeling and flagging designations may be corrected or amended based on additional information and may be done by the original officer, supervisor or records personnel.

Administering Access to BWC Data:

- A. Data Subjects: under Minnesota law, the following are considered data subjects for purposes of administering access to BWC data:
1. Any person or entity whose image or voice is documented in the data.
 2. The officer who collected the data.
 3. Any other officer whose voice or image is documented in the data, regardless of whether that officer is or can be identified by the recording.
- B. BWC data is presumptively private. BWC recordings are classified as private data about the data subjects unless there is a specific law that provides differently. As a result:
1. BWC data pertaining to people is presumed private, as is BWC data pertaining to businesses or other entities.
 2. Some BWC data is classified as confidential. (See C. below)
 3. Some BWC data is classified as public. (See D. below)
- C. Confidential data: BWC data that is collected or created as part of an active criminal investigation is confidential. The classification takes precedence over the "private" classification listed above and the "public" classifications listed below.
- D. Public data: The following BWC data is public.
1. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous.
 2. Data that documents the use of force by a police officer that results in substantial bodily harm.
 3. Data that a data subject requests to be made accessible to the public, subject to redaction. Data on any data subject (other than a peace officer) who has not consented to the public release must be redacted if practical. In addition, any data on undercover officers must be redacted.
 4. Data that documents the final disposition of a disciplinary action against a public employee.
 5. Any data directed to be released to the public as stated in a court order.

However, if another provision of the Data Practices Act classifies data as private or otherwise not public, the data retains that other classification. For instance, data that reveals protected identities under MN 13.82 sub 17 (e.g., certain victims, witnesses,) and

otherwise fits into one of the public categories listed above.

- E. Access to BWC data by non-employees. Officers shall refer to members of the media or public seeking access to BWC data to the Fairmont Police Records Division, who shall process the request in accordance with the MGDPA and other governing laws.
1. Any individual shall be allowed to review recorded BWC data about him-or herself and other data subjects in the recording, but access shall not be granted:
 - a. If the data was collected or created as part of an active investigation.
 - b. To portions of the data the agency would otherwise be prohibited by law from disclosing to the person seeking access, such as portions that would reveal identities protected by MN 18.82 Sub 17.
 2. Unless the data is part of an active investigation, an individual data subject shall be provided with a copy of the recording upon request, but subject to the following guidelines on redaction:
 - a. Data on other individuals in the recording who do not consent to the release must be redacted.
 - b. Data that would identify undercover officers must be redacted.
 - c. Data on other officers who are not undercover, and who are on duty and engaged in the performance of official duties, may not be redacted.
- F. Access by peace officers and law enforcement employees. No employee may have access to the department's BWC data except for legitimate law enforcement or data administration purposes:
1. Offices may access and view stored BWC video only when there is a business need for doing so, including the need to defend against an allegation of misconduct or substandard performance. Officers may review video footage of an incident in which they were involved prior to preparing a report, giving a statement, or providing testimony about the incident. As stated in Fairmont 4.04 Post Critical Incident Procedures, officers shall have the right to review any and all video available on an incident including any BWC video, prior to giving a statement on an incident.
 2. Agency personnel shall document their reasons for accessing stored BWC data in the blotter of the CFS with their badge number, date of review, and reason if they were not an officer or supervisor on the incident reviewed. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing data for non-law enforcement related purposes including but not limited to uploading BWC data recorded or maintained by this agency to public and social media websites. If it has been determined that certain BWC data shall be released to the public, it may be posted on the department social media site or website at the direction of the Chief of Police. BWC data may be used by an officer to conduct training and that data used for such purposes shall be approved by the Chief of Police.
 3. Employees seeking access to BWC data for non-business reasons may make a request for it in the same manner as any member of the public.
- G. Other authorized disclosures of data: Officers may display portions of BWC footage to witnesses as necessary for purposes of investigation as allowed by MN Statute 13.82 Sub 15, as may be amended from time to time. Officers should generally limit these displays in order to

protect against the incidental disclosure of individuals whose identities are not public. Protecting against incidental disclosure could involve, for instance, showing only a portion of the video, showing only screen shots, muting the audio, or playing audio but not displaying the video. In addition,

1. BWC data may be shared with other law enforcement agencies only for legitimate law enforcement purposes that are documented in writing at the time of the disclosure.
2. BWC data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

Data Security Safeguards:

- A. BWC data shall be stored on the approved in-house server. Data stored on the server shall be based upon LEO safety requirements as well as manufacturer recommendations.
- B. Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access or view agency BWC data.
- C. As required by MN Statute 13.825 Sub 9, as may be amended from time to time, this agency shall obtain an independent biennial audit of its BWC program.

Agency Use of Data:

- A. Supervisors will randomly review BWC usage by officers to ensure compliance with this policy.
- B. In addition, supervisors and other assigned personnel may access BWC data for the purposes of reviewing or investigating a specific incident that has given rise to a complaint or concern about officer misconduct or performance.
- C. Nothing in this policy limits or prohibits the use of BWC data as evidence of misconduct or as a basis for discipline. (MN 626.89 Sub 10)
- D. Officers should contact their supervisors to discuss retaining and using BWC footage for training purposes. Officer objections to preserving or using certain footage for training will be considered on a case-by-case basis. Field Training Officers may utilize BWC data with trainees for the purpose of providing coaching and feedback on the trainees' performance.

Data Retention:

- A. All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for erroneously recorded or non-evidentiary data.
- B. Data documenting the discharge of a firearm by a peace officer in the course of duty, other than for training or the killing of an animal that is sick, injured, or dangerous, must be maintained for a minimum period of one year.
- C. Certain kinds of BWC data must be retained for six years:
 1. Data that documents the use of deadly force by a peace officer, or force of a sufficient type or degree that results in substantial bodily harm or requires a supervisory review.
 2. Data documenting circumstances that have given rise to a formal complaint against an officer.
- D. Other data having evidentiary value shall be retained for the period specified in the Records Retention Schedule. When a particular recording is subject to multiple retention periods, it shall be maintained for the longest applicable period.

- E. Subject to Part F below, all other BWC footage that is classified as non-evidentiary or becomes classified as non-evidentiary, or is not maintained for training, shall be destroyed/purged after 90 days.
- F. Upon written request by a BWC data subject, the agency shall retain a recording pertaining to that subject for an additional time period requested by the subject of up to 180 days. The agency will notify the requestor at the time of the request that the data will then be destroyed/purged unless a new written request is received.
- G. The department shall maintain an inventory of recordings in the Evidence Library of BWC recordings that have evidentiary value.
- H. The department will post a copy of this policy on their website www.fairmontpolice.org

Accountability:

All members of the Department are responsible for insuring that this and all policies of the Department are followed. Deviations from this or any other policy are permitted within the scope of authority granted Policy 1.02. The unauthorized access to or disclosure of BWC data may constitute misconduct and subject individuals to disciplinary action and/or criminal penalties pursuant to MN Statute 13.09.

By: _____


Chief of Police

01-02-2018

Date

**BWC Retention Schedule
Addendum to Fairmont 3.39**

Video Retention Schedule

Retention Schedule will be applicable to both BWC and In Squad Video (6.06)

Category	Retain/Days	Action
1. Evidence-Criminal	730 days	archive (7 years total)
2. Evidence-Force	365 days	archive (6 years total)
3. Evidence-Property	365 days	archive
4. Evidence-Admin	180 days	archive (6 years if complaint)
5. Evidence-Other	180 days	purge
6. Training	180 days	purge
7. Not Evidence	180 days	purge
8. Uncategorized Event	180 days	purge

Body Camera policy 3.39

- E. Whenever possible, officers shall label the BWC data files at the time of the video capture or transfer to storage, and should consult with a supervisor if in doubt as to the appropriate labeling. Officer should assign one of the following labels applicable to each file:
8. **Evidence-criminal:** The information has evidentiary value with respect to an actual or suspected criminal incident or charging decision. (Seven years, permanent for homicides)
 9. **Evidence-force:** Whether or not enforcement action was taken or an arrest resulted, the event involved the application of force by a law enforcement officer of this or another agency. (Six years)
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 11. **Evidence-administrative:** The incident involved an adversarial encounter or resulted in a complaint against the officer. (6 years if involved in Administrative Complaint Against Officer, 180 days if no complaint.)
 12. **Evidence-other:** The recording has potential evidentiary value for reasons determined by the officer at the time of labeling. (180 days)
 13. **Training:** The event was such that it may have value for training. (180 days)
 14. **Not Evidence:** The recording does not contain any of the foregoing categories of information and has no apparent evidentiary value. Recordings of general citizen contacts and unintentionally recorded footage are not evidence. (180 days)