

## Portable Audio/Video Recorders

### 424.1 POLICY

The purpose of this policy is to provide Cheektowaga Police Department (CPD) Officers (hereinafter, “Members(s)” or “Officer(s)”) with instructions on when and how to use body-worn cameras (BWCs) so that Officers may reliably record their contacts with the public in accordance with applicable law.

This policy was developed by the Cheektowaga Police Department after reviewing materials provided by the Bureau of Justice Assistance and reviewing other police departments’ policies related to body worn cameras. Various internal perspectives were involved in this policy’s development.

Local stakeholders were made aware of the development of the Cheektowaga Police Department’s development of a body worn camera program, including the Town Board of the Town of Cheektowaga, the Erie County District Attorney’s Office and neighborhood community groups.

Of note, New York State does not mandate a specific BWC policy or elements of a BWC policy.

### 424.2 DEFINITIONS

**Body Worn Camera (BWC)** – Overt mobile audio and video-capture device issued by CPD designed to be worn by CPD Members in the course of their duties.

**B. BWC Program Manager** – A sworn supervisory Member who is responsible for the supervision and coordination of the administrative duties within the Division of Technology & Program Management relating to the BWC program.

**C. BWC Recording** – Audio and video recordings and associated metadata from BWCs.

**D. BWC System** – The body-worn camera and all associated equipment and software installed on CPD workstations and/or laptops.

**E. BWC System Administrator** – A sworn Member of who has been granted full access and data management rights within the BWC data storage system. He/she can assign and track equipment, control passwords, oversee needed repairs, delete non-evidentiary recordings, conduct audits and quality control reviews, and act as a liaison with BWC representatives.

**F. Critical Incident** – An unusual occurrence or event that requires a coordinated law enforcement response to protect identified potential victims, general public safety, and police. This includes barricaded armed subjects, active killers or snipers, hostage situations, violent protests, demonstrations or other civil disturbances, transportation disasters (e.g., plane crash, train derailment, etc.), weather disasters, and major HAZ MAT situations.

**G. Digital Media Evidence (DME)** – BWC recordings and associated metadata that may be utilized as evidence.

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H. **Docking Station** – Hardware connected to CPD’s network that is designed to offload recordings contained on the BWC.

I. **Enforcement Related Activities** - Situations during an Officer’s official duties that include, but are not limited to:

- (a) Calls for service;
- (b) Detentions/Stops of Persons & Vehicles (includes street stops, traffic stops, persons on bicycles, and field interviews);
- (c) Search Warrants;
- (d) Arrests & Prisoner Transports (including the issuance of appearance tickets and mental hygiene arrests);
- (e) Pursuits (both vehicle and foot);
- (f) Investigatory activities;
- (g) Confrontational/adversarial citizen contacts;
- (h) Use of Force (use of physical force or deadly physical force);
- (i) At an Officer’s discretion, if they feel the situation could result in an issue where recording would be beneficial.

J. **Metadata** – Data entered into or generated by the BWC that provides context or additional information about BWC recordings.

K. **Serious Incident** – Any incident or event which involves use of deadly physical force by a police Officer or results in serious physical injury or death to any person as a result of police action or involvement, including use of force or deadly physical force, vehicle or foot pursuits, motor vehicle accidents, other accidental injury or death, or any death or serious physical injury occurring while in police custody.

L. **Prohibited Recording** – An event or incident for which BWC recording is prohibited.

M. **Tag** – The process used to label an individual BWC recording using Evidence.com software and issued equipment in accordance with retention categories established by CPD, and with the assigned CD#.

#### **424.3 USE OF BWCS**

.A. CPD will utilize BWCs in accordance with law, this policy, and other applicable Department policies and procedures.

B. BWCs, all associated equipment and software, and all recordings and other data produced by the BWC system are the sole property of CPD and exist for the sole use of CPD.

C. Members who are issued BWCs will use them in accordance with this policy and other applicable Department policies and procedures.

D. Members may not use BWCs for personal reasons. Members assigned a BWC will use a BWC when working any off duty security related details.

E. BWC recordings will not replace required reports or the required documentation.

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F. No video or audio recording produced by a BWC will be copied, duplicated, downloaded, converted, or retained except as authorized for official CPD purposes.

G. Members will not post BWC recordings to the Internet, social media sites, or the media, or otherwise disseminate BWC recordings in any way unless specifically authorized to do so by Department policy.

H. CPD will review and retain BWC recordings in accordance with the retention schedule established in Appendix A of this policy.

I. No CPD employee will change the settings and functions of a BWC or alter the operation of any BWC or attempt to do the same unless assigned as a System Administrator and specifically authorized to do so by Department policy. An exception to this rule would be that employees may change the sound level and status light feature on the BWC issued to them.

J. No CPD employee will use an electronic device or any other means in order to intentionally interfere with or alter the capability or operation of a BWC or any component of the BWC system.

K. No CPD employee will alter, tamper with, delete, damage, or destroy any BWC or BWC recording or attempt to do the same unless assigned as a System Administrator and specifically authorized to do so by Department policy.

L. No CPD personnel will wear or use a privately owned BWC, or any other BWC not issued by the Department, while performing any duties on behalf of CPD.

M. Members will receive training in the proper use and policy of the BWC's prior to being assigned a BWC. Training will consist of instruction to ensure continued effective use of equipment and reviews of changes and revisions in policy and equipment. Refresher training will occur annually.

#### **424.4 ASSIGNMENT OF BWCS**

A. The following personnel will be assigned BWCs as available:

- (a) Police Officers assigned to the Patrol Division and primarily engaged in enforcement activities as designated by the Chief of Police or his/her designee.
- (b) Other personnel as directed by the Chief of Police or his/her designee.

B. Members not assigned a BWC, but wishing to voluntarily use one, may request voluntary assignment of a BWC by submitting an email request to Chief of Police through their chain of command. The Chief of Police will determine whether to issue the BWC in consultation with the Member's Commanding Officer, and taking into account the availability of BWCs.

C. The BWC Program Manager will determine if a Member who is assigned a BWC and is expected to be absent from full duty for a period exceeding one month (e.g. injury, illness, limited duty, military leave, leave of absence, etc.) should be collected and returned to the pool of spare BWCs.

#### **424.5 RECORDING REQUIREMENTS & RESTRICTIONS**

A. Members assigned a BWC will activate it and record all activities and all contact with persons in the course of performing police duties as soon as it is safe and practical to do so, as set forth in this policy.

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- (a) Members will activate recording on the BWC preferably upon being dispatched and prior to exiting their police vehicle, or prior to commencing any activity if on foot patrol.
- (b) Members will immediately activate the BWC when required unless it is not safe and practical (e.g. the Member cannot immediately activate the BWC due to an imminent threat to the Member's safety, physical resistance, flight, or factors rendering immediate activation impractical.) In such cases, the Member will activate the BWC as soon as possible.
- (c) Members will place BWC's into the camera docking station at the end of each shift for charging and downloading of videos.

#### **B. Exceptions to Recording Requirements.**

- (a) Sensitive Locations. Members will not record with BWCs in the following locations **unless Members anticipate or are engaging in a law enforcement activity** as defined in this policy:
  - a. Victim support or advocacy agencies;
  - b. In any courtroom or grand jury room;
  - c. Locker rooms, bathrooms, or other locations where persons are expected to be disrobed or in a state of undress.

**C. Prohibited BWC Recording.** Members will not activate or record with a BWC under the following circumstances and will deactivate and stop recording if any of these circumstances arise.

- (a) Members **shall not** record a child or adult victim of a sex offense;
- (b) Members **shall not** record with BWCs, internal police conversations either openly or surreptitiously, including conversations among Members or other CPD employees, conversations between supervisors and subordinates, conversations relating to personnel matters including, but not limited to performance evaluations, selection interviews, discipline, or counseling.
- (c) Members **shall not** record with BWCs conversations with representatives of the Cheektowaga Police Unions that are related to the Union's duty to represent its Members or any official union meeting;
- (d) Members **shall not** record with BWCs interviews relating to Department investigations.;
- (e) Members **shall not** record with BWCs while in a locker room or bathroom in a CPD facility or while using any bathroom at any location;
- (f) Members **shall not** record with BWCs personal non-police conversations with other Members or other Town employees that do not occur in the course of an official police duty (e.g. conversations during personal breaks);
- (g) Members **shall not** utilize BWCs in lieu of using the designated recording facilities in an approved interview room while recording custodial interviews or interrogations. However, in the event of a malfunction or other unavailability of a designated recording facility, a supervisor may authorize the use of a BWC if necessary to comply with established recording requirements. In such cases the Member will note the circumstances in his/her report, including the identity of the approving supervisor;

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- (h) Members **shall not** record with a BWC while attending internal CPD meetings, other law enforcement meetings with Members of the Erie County District Attorney's Office.

**D. Civilian Requests to Record or Stop Recording.** If a civilian requests that their interaction be recorded, Members will do so unless it is prohibited under this policy. Officers have the discretion to honor a request from a civilian to stop recording but are not required to stop recording unless the event fits one of the circumstances listed under the prohibited BWC recording section of this policy.

### **E. Special Circumstances**

- (a) Members are not required to record meetings or conversations with **compensated confidential informants, street sources, or non-compensated informants.**
- (b) Members are not required to wear or use BWCs while engaged in **undercover activities, decoy operations, plainclothes surveillances, or other non-uniform and covert police activities.**
- (c) Members will not record with BWCs roll calls or operational briefings unless directed by a supervisor. If BWC recording is authorized the supervisor will clearly inform Members that the BWC(s) are recording.
- (d) Members responding or assigned to a Critical Incident will follow the BWC recording requirements in this policy to the extent feasible under the circumstances or follow supervisory directives regarding the use of BWCs.
- (e) Members assigned to the SWAT team will record when conducting SWAT operations, however, those performing command duties or assigned to the command post will not record unless specifically directed to do so by the Incident Commander or the Chief of Police or his/her designee. SWAT Members will not record during planning, preparations or briefings of operations. Members assigned to the SWAT team that are assigned a BWC will follow BWC policy during normal patrol functions
  - a. Members assigned to the SWAT team that are assigned a BWC will follow BWC policy during normal patrol functions.
- (f) Personnel assigned to crowd control situations, including protests, demonstrations, and civil disorder situations, will record with assigned BWCs unless otherwise directed by a Commanding Officer or the Chief of Police or his/her designee.
- (g) Members may use the BWC to record Department training activities if authorized by the Commanding Officer of the Training Division, or the Commanding Officer of a Specialized Unit during that Unit's training activities, or the Chief of Police or his/her designee.
- (h) Members assigned a BWC that are present during raids and warrant executions will activate the BWC and record during raids, search warrant executions, and arrest warrant executions, and continue to record in accordance with standard policy (e.g. guarding prisoners and transports).
  - a. Members will check their assigned BWCs prior to the operation to ensure they are working properly; if not, the Member will replace the BWC before the operation commences.
  - b. Operational plans will note which participating Members are assigned BWCs.

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- c. During pre-operation briefings, supervisors will remind Members assigned BWCs to activate and record during the operation.
- (i) Members assigned a BWC will record while guarding prisoners (e.g. at a hospital, or a police facility) subject to the following guidelines:
  - a. Members will record whenever in the direct presence of the prisoner, and during all conversations or interactions with the prisoner;
  - b. Members will adhere to the following procedures for long-term prisoner guard details (e.g. in excess of one (1) hour at a hospital or medical facility):
    - (1) Members are not required to record when not in the direct presence of the prisoner, and not otherwise conversing with or interacting with the prisoner (e.g. prisoner is sleeping in the hospital).
    - (2) Prior to having direct contact or interaction with the prisoner, the Member will activate the BWC and record the contact or interaction..
    - (3) Members will monitor the charge level and remaining storage capacity of the assigned BWC during the prisoner guard detail. If the charge becomes low, the BWC is nearing its storage capacity, or any other problems arise with the proper operation of the BWC, the Member will notify a supervisor, who will make appropriate arrangements (e.g. arrange a switch to another BWC) as soon as possible to ensure the Member has a functioning BWC for the duration of the prisoner guard assignment.
  - c. In all situations, if the Member stops recording during a prisoner guard assignment in accordance with this policy, the Member must resume recording as soon as possible if he/she anticipates or commences an enforcement activity.
- (j) Officers have discretion to temporarily activate the mute button on the BWC, while continuing recording, in order to discuss concerns related to the incident with another officer, supervisor, doctor, nurse, EMS personnel or other involved parties in private. Cameras should be unmuted as soon as the conversation is complete.

#### **F. Recording Notice Guidelines**

- (a) Members are encouraged to inform the person they are recording with a BWC (e.g. “Ma’am / Sir, I am advising you that our interaction is being recorded.”), unless they encounter physical resistance, flight, or other factors rendering such notice unsafe or impractical.
- (b) If an individual asks a Member if he/she is being recorded by a BWC the Member will answer truthfully unless factors exist that would render such notice unsafe or impractical.
- (c) Members should inform personnel from other law enforcement agencies and other first responders (e.g. firefighters, emergency medical personnel, etc.) they are recording with a BWC.

#### **424.6 RECORDING STATEMENTS**

A. Proper documentation shall be made anytime the BWC captures a video statement from a suspect. The video statement shall not take the place of a written statement where applicable. Proper documentation shall include all required reports.

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B. If an Officer is in an approved interview room with audio-visual recording, that is functioning properly, the BWC shall be turned off.

#### 424.7 EMPLOYEE ACCESS TO BWC RECORDINGS

Employees may review and use BWC recordings only for official CPD duties to include:

- (a) Members may view BWC recordings from their assigned BWC if available to assist in accurate report writing. **Note: The purpose of using BWC recordings in writing reports is to maximize the accuracy of the report – not to replace the Member’s independent recollection and perception of an event.**
- (b) Conducting criminal investigations.
- (c) Conducting supervisory duties, including the completion of use of force reports and reviews of use force incidents
- (d) Preparing for testimony relating to their official police duties.
- (e) Managing the BWC recordings (e.g. tagging).
- (f) Training upon approval of the Commanding Officer of the Training Division, the Commanding Officer of a Specialized Unit, or the Chief of Police or his/her designee.
- (g) Assist with training and evaluation in the Department’s Field Training and Personnel Evaluation Programs.
- (h) Performing other official CPD duties as authorized by Department policy or by the Chief of Police or his/her designee.
- (i) Anytime an employee accesses any BWC video, an entry will be made explaining the reason for accessing the video, i.e. court preparation, policy compliance, training, review.

#### B. Department Investigations of Members:

- (a) Personnel assigned to complete Internal Affairs investigations will be given direct access to the BWC System and are authorized to access and copy BWC recordings as needed to perform their duties.
- (b) Prior to being disciplined for performance issues or misconduct, Officers will be permitted to view any BWC footage that was used by the Department in its investigation of the conduct, as well as specific BWC footage that the Officer believes is reasonably related to his/her performance issue or misconduct that is the subject of the Department investigation.

#### 424.8 PROCEDURES FOR USE OF BWC’S

A. Members will adhere to the following procedures for use of the BWC unless stated otherwise in this policy:

- (a) Only Officers who have received mandatory training as established by the Department and have been issued BWCs will use them. Members will use only the BWC assigned to them or BWC assigned to them by a supervisor or System Administrator;

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- a. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, and to incorporate changes, updates, or other revisions in policy and equipment.
- (b) In operating the BWC, Members will follow the procedures outlined in this policy and training they have received;
- (c) Upon reporting for duty, Members will retrieve their BWC from the assigned docking station and check its operation to ensure it is charged, working properly, and the clip is not damaged. If there is any problem with the BWC the Member will notify a supervisor. The supervisor will replace or arrange for a replacement if available in accordance with current procedures;
- (d) Members will affix the BWC to the outermost garment of uniforms in the center of their torso, in accordance with training. Members who wear an outer carrier will use the molle mount clip system. An exception to the outermost garment rule applies if the officer is temporarily wearing a traffic safety vest. The camera will not need to be moved to the vest.
- (e) Members will continue to record with the BWC until the completion of the event or incident in question or deciding to end recording in accordance with this policy. If a member decided to end a recording prior to the end of the incident,, the Member will make a recorded verbal statement noting the recording is ending and the reason that it is ending, unless unsafe or impractical to do so;
- (f) Immediately following the deactivation of the BWC, members will classify each video with the most appropriate category tag listed in appendix A.
- (g) **Request to View BWC Recording.** Members are prohibited from allowing civilians to view BWC recordings. An Officer who receives a civilian request to view footage should refer the citizen to the Police Records Division;
- (h) If the BWC malfunctions or other problems arise during the tour of duty, the Member will notify a supervisor as soon as possible. The supervisor will replace the BWC or arrange for a replacement if a spare is available.
- (i) During the tour of duty, Members will monitor the charge level on the BWC to ensure that the BWC is charged and operational;
- (j) In the event a Member becomes ill or injured during the tour of duty a supervisor will retrieve the BWC and arrange to return it to the docking station. The supervisor will notify a BWC System Administrator and assist in providing information needed by the System Administrator to categorize any untagged recordings;
- (k) Members will turn in their BWCs prior to, or at the end of, their tour of duty and will not remove BWCs from the police facility while off duty (unless working an off duty detail).
  - 1. Working an off duty detail does not relieve the officer of the requirement to make sure the BWC is charged and videos are downloaded.

#### B. Members will adhere to the following procedures for BWC replacement:

- (a) Whenever a Member determines an assigned BWC is malfunctioning or inoperable, or if a BWC is lost, damaged, or stolen, the Member will notify a supervisor. If spare



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BWCs are available, the supervisor will ensure the Member obtains a replacement BWC. The BWC will be replaced with an operable BWC immediately unless, due to exigent circumstances, the Member cannot be immediately released to obtain a replacement. In such cases, the supervisor is responsible to ensure the Member obtains a replacement BWC as soon as possible;

- a. Members will follow standard policies and procedures for Department issued equipment that is lost, damaged, or stolen if applicable.
- (b) During normal business hours (Monday – Friday, 0700hrs - 1500hrs), Members will contact the BWC Program Manager or System Administrator to arrange for a replacement if spare BWCs are available. The malfunctioning, inoperable, or damaged BWC (provided it was not damaged as a result of a criminal action), shall be brought to the BWC Program Manager;
- (c) If spare BWCs are available, Patrol Supervision personnel shall arrange to replace the Member's BWC as soon as practical; a. Members shall place the malfunctioning, inoperable, or damaged BWC (provided that it was not damaged as a result of a criminal action) in the docking station and BWC Program Manager shall collect the BWC as soon as practical. b. If necessary, BWC Program Manager will ensure that any footage on the BWC is properly tagged and uploaded to Evidence.com.

#### **424.9 DOCUMENTATION OF BWC RECORDINGS & MALFUNCTIONS**

A. Members will document the existence of pertinent BWC recordings in various Department reports and forms in accordance with training. BWC recordings are not a replacement for written reports.

B. In the event a Member cannot access or retrieve a recording due to a camera or system malfunction (e.g., "corrupt file" or other malfunction) the following steps will be taken:

- (a) The Member shall notify an on-duty supervisor of the malfunction and document the circumstances in the appropriate report, if any (e.g., Incident Reports, Arrest Reports etc.);
- (b) During normal business hours the Member or supervisor will notify a BWC System Administrator of the malfunction and seek assistance to resolve the problem;

#### **424.10 EVIDENTIARY BWC FOOTAGE**

A. All BWC footage uploaded to the cloud storage is considered evidence.

- (a) BWC footage is uploaded to cloud storage through the following method:
  - a. When the BWC is docked at docking station;

B. Only personnel who have completed the Department's approved training course are allowed to access the cloud storage to view or download BWC footage.

C. When BWC footage is needed for evidence in a criminal case or investigation, authorized users will follow the following procedures:

- (a) Determine the identity of all involved Officers;

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- (b) Search the cloud storage program for any associated BWC media using multiple search parameters to verify that they have located all relevant files;
  - a. If any of the BWC footage is improperly labeled (e.g. category etc.) the user will immediately notify a Patrol Supervisor who will ensure that the correction is made.
- (c) Create a digital media file “case folder” within the cloud storage software and then add all relevant/associated BWC media into the folder;
- (d) View all of the applicable BWC media.
  - a. In all cases where authorized CPD personnel viewed BWC footage as part of a criminal case or investigation, a reason for such viewing should be noted within the comment section of the cloud storage program and if necessary, supplemental reports shall be completed noting that the footage exists, that it was viewed, and the purpose for the viewing.

D. BWC footage may be used in filing criminal charges against those that file a false report.

#### **424.11 SUPERVISOR RESPONSIBILITIES**

A. Through periodic inspections, supervisory personnel shall ensure that Officers equipped with BWCs utilize them in accordance with Department policy and the procedures set forth in this policy.

- (a) If any deviation from policy is discovered, the supervisor’s findings will be documented and forwarded up the chain of command.

B. Supervisors may review BWC recordings:

- (a) To review an Officer’s performance, to complete administrative investigations and/or professional development;
- (b) To facilitate training of an Officer;
- (c) To Investigate meritorious conduct or reports of misconduct.

C. There will be no arbitrary review of any video footage by a supervisor unless specifically addressed in this policy.

#### **424.12 BWC PROCEDURES FOR SERIOUS INCIDENTS**

A. In the event of a Serious Incident as defined in this policy personnel will adhere to the following procedures::

- (a) As soon as the scene is rendered safe and under control, an uninvolved responding supervisor will:
  - a. Identify which, if any, of the involved and witness Members have an assigned BWC;
  - b. Take possession of the BWCs as soon as possible and ensure that it is no longer recording. The supervisor will maintain possession of the BWCs until directed by the Incident Commander or ranking Commanding Officer on scene to turn them over to a designated person;
  - c. Document, in a supplementary report the following information:
    - (1) Identity of the Member(s) from whom a BWC was taken;
    - (2) Serial number(s) of the BWC(s) taken;
    - (3) Date, time, and location the supervisor took possession of the BWC(s);

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(4) Identity of the Incident Commander or ranking Commanding Officer who directed the supervisor to turn over the BWCs;

(5) Person who took possession of the BWCs from the supervisor, to include the date, time, and location this occurred.

- (b) The Incident Commander or Ranking Commanding Officer will ensure that a supervisor responds to the hospital to retrieve any BWC assigned to an injured Member who has been removed from the scene for medical treatment.

B. Members assigned a BWC who respond to the scene of a Serious Incident will activate and record with the BWC in accordance with this policy. Also, such Members may utilize their assigned BWCs to record the scene as they deem appropriate or as directed by higher authority. Members will document use of their BWCs in accordance with this policy and training.

C. The Incident Commander or Ranking Commanding Officer will determine the urgency of retrieving BWC recordings from the BWC(s). If deemed urgent, he/she will arrange for a BWC System Administrator to respond immediately to assist. For example, if an unknown subject injures an Officer or a potentially dangerous subject is at large, it may be imperative to retrieve BWC recordings as soon as possible to:

- (a) Identify the perpetrator and/or accomplices;
- (b) Determine the type of weapon(s) involved;
- (c) Identify witnesses;
- (d) Identify other crucial information (e.g., description of suspect vehicle, direction of escape, etc.).

#### **424.13 ADMINISTRATION OF THE BWC PROGRAM**

A. The Chief of Police will designate a Member to administer CPD's BWC Program. The duties and responsibilities of the BWC system administrator in performing this function include but are not limited to:

- (a) Liaison with BWC vendor(s) including return, repair, and replacement of BWCs;
- (b) Maintaining an accurate and up-to-date inventory of BWCs to include personnel and location assigned;
- (c) Providing access or copies of BWC recordings to CPD personnel and components as authorized by Department policy or the Chief of Police or his/her designee;
- (d) Coordinating with the Town Attorney, the response within CPD to subpoenas, court orders, Freedom of Information Law (FOIL) requests and other requests for copies of BWC recordings in accordance with established procedures;
- (e) Re-categorizing, assigning secondary categories, and assigning security levels to BWC recordings;
- (f) Redacting sensitive, confidential, privileged, or otherwise protected portions of BWC recordings as needed;

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- (g) Responding as directed to serious incidents or other events to assist with access to and/or copies of BWC recordings;
- (h) Ensuring that audits to assess compliance with established policies and procedures relating to the BWC Program are conducted and coordinating additional audits by designated CPD personnel;
- (i) Compiling reports and documentation relating to the BWC Program;
- (j) Coordinating the review of stored BWC recordings in accordance with established policies and procedures;
- (k) Reviewing the BWC program, technology, systems, policies, and procedures and recommending improvements;
- (l) Managing the Department's cloud based storage account.
- (m) Liaison and communication with individuals and organizations in the community on the BWC program;
- (n) Other duties related to the BWC Program as assigned by the Chief of Police or his/her designee.

#### **424.14 REVIEW, RETENTION, COPYING, AND DELETION OF THE BWC RECORDINGS**

A. BWC recordings will be reviewed and retained in accordance with Appendix A, *BWC Categories and Retention Schedule*.

B. The retention periods set forth in Paragraph A above may be extended in the event of an active criminal investigation or prosecution or threatened or active civil litigation or legal matter. In the event the BWC System Administrator is put on notice by the Erie County District Attorney's Office, a District Attorney of another jurisdiction, or the Town Attorney, it will take steps to suspend the document retention schedule for the video(s) identified in the request.

C. Deletion of Recordings "Recorded in Error."

- (a) In the event a Member mistakenly or inadvertently records an activity or event that should not have been recorded under Department policy (e.g., the Member inadvertently activates the BWC during a bathroom break), the Member will tag the recording as "Recorded in Error."
- (b) Members requesting immediate deletion of the erroneous recording will forward an email to BWC System Administrator as soon as possible. The Member should identify the recording in question by date, time, location, and CD# (if any) and explain the circumstances for the immediate deletion.
- (c) The BWC System Administrator will:
  - a. Determine whether the recording was done in error;
  - b. If recorded in error, and there is no reason to retain the recording (see below) delete the video from the BWC System;
  - c. If not recorded in error (e.g., recorded in accordance with policy), re-categorize the recording to the appropriate category or arrange for a Patrol Supervisor to do so.
  - d. Notify the requesting Member by email of the disposition of the request;

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- e. Ensure the BWC System Administrator maintains a file of all documentation relating to deletion requests.
- (d) Circumstances may arise in which an event or activity may be recorded in error under Department policy, but cannot be deleted because it may constitute evidence or may trigger a legal disclosure or retention requirement. Accordingly, if a deletion request involves a recording that may need to be retained for legal reasons, the BWC System Administrator will:
  - a. Consult such other persons as needed (e.g., Town Attorney, the District Attorney, other CPD personnel, etc.).
  - b. If determined that the recording cannot be deleted for legal reasons, re-categorize the recording to the appropriate category or arrange for a Patrol Supervisor to do so..
  - c. Limit access to the recording in the BWC System, or arrange for a Patrol Supervisor to do so.
  - d. Notify the requesting Member by email of the disposition of the request.

#### **424.15 INTERNAL CPD COPIES OF BWC RECORDINGS**

A. Copies of BWC recordings will be provided to CPD Members **only for official CPD functions as needed**. CPD Members who receive copies of BWC recordings will not disseminate or display them unless authorized by the Chief of Police or his/her designee.

B. Members may make or request copies of BWC recordings as follows for operational Department use (e.g., criminal investigations, crime analysis, etc.). If the Member is not authorized to make a copy of the recording in question, a supervisor or a System Administrator may provide a copy of the recording. Any questions or concerns whether the copy should be provided will be referred to the BWC Program Manager.

C. Members who want a copy of a BWC recording for non-operational Department use (e.g., training) will submit an email to his/her supervisor who shall submit the request through the chain of command explaining the intended use of the copy. The request shall be forwarded to the Office of the Chief of Police for review. If the Chief of Police or his/her designee determines that there is a valid non- operational use for the BWC recording, the Chief of Police or his/her designee will authorize a System Administrator to provide a copy.

#### **424.16 DISCLOSURE OF BWC RECORDINGS IN LEGAL PROCEEDINGS**

##### **A. Criminal Cases Prosecuted by the Erie County District Attorney's Office (ECDAO).**

- (a) The Records Division shall coordinate with ECDAO to access and/or obtain BWC recordings on the cloud storage program needed for criminal prosecutions undertaken by ECDAO.
- (b) ECDAO will directly provide defendants with copies of BWC recordings in criminal cases as it deems necessary.
- (c) ECDAO will be responsible for any required redactions in BWC recordings it provides to defendants.

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- (d) In the event ECDAO needs assistance in obtaining BWC recordings needed for criminal prosecutions, Records Division personnel will assist as needed to ensure necessary BWC recordings are obtained by ECDAO.

#### **B. Other Criminal Cases.**

- (a) Requests by other prosecuting offices (e.g., U.S. Attorney's Office, New York State Attorney General's Office, etc.), will be referred to the Chief of Police or his/her designee for review.
- (b) If approved by the Office of the Chief of Police, the Records Division will identify BWC recordings that may be responsive to the request, and provide copies of the requested recordings to the ECDAO.
- (c) The Records Division will be responsible for any necessary redactions, as requested by the ECDAO.

#### **C. Defense Subpoenas or Demands in Criminal Cases.**

- (a) Defense subpoenas or demands for BWC recordings will be referred to the Records Division.
- (b) The Records Division will consult with the Town Attorney and the ECDAO.
- (c) The Records Division will identify BWC recordings that may be responsive to the defense subpoena or demand.
- (d) The Records Division will provide copies as advised by the Town Attorney and/or the ECDAO.
- (e) Prior to providing any copies, the Records Division will review the BWC recording and determine if any redactions may be required. The Records Division will consult with the Town Attorney and the ECDAO and follow legal guidance regarding any required redactions.

#### **424.17 CIVIL, ADMINISTRATIVE, & PUBLIC REQUESTS FOR ACCESS TO BWC RECORDINGS**

A. BWC recordings may be subject to requests for release under New York's Freedom of Information Law (FOIL) (Public Officers Law, Article 6; §§ 84 -90). FOIL is based upon a presumption of access that requires agencies to make all records available, except to the extent that records or portions thereof fall within one or more grounds for denial appearing in the statute. BWC recordings may also be the subject to subpoenas, court orders, or other demands for BWC recordings in civil, administrative, or other non-criminal proceedings. All FOIL and other requests related to civil, administrative, or other non-criminal proceedings will be referred to the Lieutenant in charge of the Records Division.

B. The Records Division will identify BWC recordings that may be responsive to the request.

C. Prior to providing any copies, the Records Division will review the BWC recording, determine if any redactions may be required.

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#### **424.18 BWC RECORDING REVIEWS**

A. At least on a monthly basis, each patrol sergeant will randomly review one BWC recording for each officer under their command to ensure that the equipment is operating properly, that the Officers are using the devices appropriately and in accordance with policy, and identify any areas in which additional training or guidance is required.

B. The system will not be utilized to routinely inspect or review officer behavior except as directed in this policy. Random review cannot be the sole basis for commencing disciplinary action unless a crime is committed by the officer or a gross deviation from policy has occurred.

#### **424.19**

Officers will manually classify incidents in accordance with standard operation procedures according to the following criteria:

Classification 1: Non Event

Classification 2: Traffic stop with or without citation

Classification 3: Misdemeanor Arrest

Classification 4: DWI

Classification 5: Investigations

Classification 6: Motor Vehicle Accident

Classification 7: Felony Arrest/Critical Incident

Classification 8: Pursuit

Classification 9: Use of Force

Classification 10: Police Car Accident

Classification 11: Officer Injury

Classification 12: Pending Review

Classification 13: Training Demo

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All recordings will be retained by Central Records according to the following retention schedule. The minimum retention for each classification will be as follows:

(Uncategorized) 26 weeks

Classification 1: (Non Event) 26 weeks

Classification 2: (Traffic stop with or without citation) 1 year

Classification 3: (Misdemeanor Arrest) 2 years

Classification 4: (DWI) 1 year

Classification 5: (Investigations) 2 years

Classification 6: (Motor Vehicle Accident) 2 years

Classification 7: (Felony Arrest/Critical Incident) 5 years

Classification 8: (Pursuit) 2 years

Classification 9: (Use of Force) 2 years

Classification 10: (Police Car Accident) 5 years

Classification 11: (Officer Injury) Until manually deleted

Classification 12: (Pending Review) Until manually deleted

Classification 13: (Training Demo) Until manually deleted