

TO: Mayor Montgomery and City Council

FROM: Jeffrey L. McCormick, Chief of Police

SUBJECT: Revised Body Camera Policy

DATE: February 2, 2023

BACKGROUND

The Cannon Falls Police Department has been utilizing Body Worn Cameras (BWC) since 2011 and they have been a valuable addition to the tools we have available. In 2016 the Minnesota Legislature passed a law that covers law enforcement use of body cameras. That law requires any law enforcement agency that uses BWC to have a policy. While the Cannon Falls Police Department had a policy regarding video camera utilization even before we added BWC, we separated BWC into its own policy in keeping with the spirit of the new law. The current policy was approved and adopted in December of 2016 following the requirements of the law.

The way the BWC law is written it addresses the implementation of a BWC program by a law enforcement agency, not necessarily the revisions of that policy. So I consulted with the City Attorney and we agreed that while that is what seemed a process for implementation, we would follow that same process for the revision of the policy.

A red-line revision of the BWC Policy has been posted to the Police Department web page since January 19, 2023 and no input from the public has been received as of this date. The primary changes to the policy addressed the shift from the Gen 2 BWC to the Gen 3 BWC. After the Independent Audit of our Gen 2 BWC, it was recommended that we move to a system that utilizes a management software program like was being used with the squad car video. We have since moved to our Gen 3 BWC system which are intergraded into the same management software program utilized by the squad car video.

The changes to the attached policy reflect revisions needed to reflect the way the Gen 3 BWCs are utilized, clarification of language and formatting. This policy will be revised when needed due to changes in law or technology utilized.

The Police Department will finish the period of accepting public input on February 5, 2023, as of today no input has been received. There will be an opportunity for public input during this Council Meeting, before the City Council considers approval of the policy.

REQUESTED COUNCIL ACTION

I request that the Council have a period for public input before making a Motion and approval the revised Police Body Worn Camera Policy 3-18.

CANNON FALLS POLICE DEPARTMENT

SECTION 3-18
SUBJECT POLICE BODY WORN CAMERA

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POLICY

This agency recognizes that Police Body Worn Cameras (BWC) is an effective law enforcement tool. Therefore, the policy of this agency will be to utilize BWC technology in a manner that enhances accountability and transparency for all involved in a police and citizen interaction. This policy does not apply to other police video recording equipment, which is covered by policy 3-5. BWC is only a slice of what was occurring at a given time and is a two-dimensional representation of a three-dimensional event. The BWC may not record all the information that was seen or heard by those involved in the event and is only one part of the documentation of an event where a full understanding of what occurred is needed.

PURPOSE

The purpose of this policy is to clearly establish for agency personnel the proper use of BWC technology to achieve the following:

- The primary purpose is to provide evidence collection of events, actions, conditions, and statements made during arrests, critical incidents, and other law enforcement activities.
- To enhance the agency's ability to provide accountability and transparency of officer and citizen interactions.

- To evaluate the performance of officers and to assist in training.

SCOPE

This policy applies to all sworn personnel and those civilian personnel assigned the responsibility of handling digital evidence or information releases.

STANDARDS

3-18.1 DEFINITIONS

Body Worn Camera (BWC) – A camera system that is worn on an individual officer's person that records and stores audio and video data.

Confidential data – BWC data that is collected or created as part of an active criminal investigation.

Data Subject – The image or voice of any person recorded by a BWC, except of the officer wearing the BWC that captured the data.

Data Transfer – The movement of digital data from a BWC device to the agency digital evidence storage location.

Digital Evidence – Digital data files from PVRE including BV, ICV, BWC or any other agency device capable of capturing audio, video, photographs and stored in a digital format that have an evidentiary value.

Evidentiary Value – Information that may be useful as proof in a criminal prosecution and 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.

General Citizen Contact – A formal or informal encounter between an officer and person(s) that does not have an evidentiary value. Examples including, but not limited to: assisting a motorist with directions, answering general questions or receiving generalized concerns from a citizen about crime trends in his or her neighborhood.

Minnesota Government Data Practices Act (MGDPA) – Refers to Minnesota Statute 13.01, et seq.

Non-general Citizen Contact – Means an officers' encounter with a person(s) 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.

Police Video Recording Equipment (PVRE) – Equipment used to record video with or without audio.

Unintentionally recorded footage – Is a video recording that result from an officer's test activation, inadvertence or neglect in operating the officer's BWC, provided that no portion of the resulting recording has evidentiary or administrative value. Examples include, but are not limited to, recordings made in agency locker rooms, restrooms, and recordings made while officers were engaged in conversations of a non-business or personal nature with the expectation that the conversation was not being recorded.

3-18.2 TRAINING

The agency shall provide all employees responsible for the operation, handling and management of the BWC equipment and data files with training to ensure compliance with this policy.

3-18.3 USAGE

Officers shall only use department approved/issued BWC in the performance of official duties for this agency or when otherwise performing authorized law enforcement services as an employee of this department.

Officers assigned to a patrol shift will utilize a BWC during their work shift by checking out a camera from the BWC dock, unless none are available. If none are available or an officer forgets to remove a BWC before going on a call for service, the officer will advise Dispatch they do not have a BWC. Officers should ensure the BWC is working correctly and sync the BWC to the squad car they will be using during their shift.

If a BWC is found to not be working correctly it shall be placed out of service and notification sent to the department as to which BWC is out of service, as well as placing a note on the BWC.

Officers should ensure the BWC is worn in one of the approved locations.

- A. Approved BWC wear locations:
 - 1. On the vertical button edge of a uniform shirt or outer jacket.
 - 2. On a dedicated tab of a uniform shirt or outer jacket.
 - 3. On a dedicated tab located on outer body armor carrier.
 - 4. On the pocket of an outer body armor carrier.
 - 5. Other location submitted in writing based on specific circumstances to the Chief of Police or Designee with a written approval.

3-18.4 ACTIVATION/DEACTIVATION

- A. Officers should activate their BWCs when anticipating that they will be involved in or witness other officers of this agency involved in a pursuit, Terry stop of a motorist or pedestrian, search, seizure, arrest, use of force, non-general contact, and during other activities likely to yield information having evidentiary value. However, officers need not activate their BWC when it would be unsafe, impossible, or impractical to do so, but such instances of not recording must be documented in the ICR and report, if a report is created. If the BWC fails during use, it must be documented in the ICR and report, if a report is created to include the reason for failure.
- B. Officers have discretion to record any police-citizen encounter regardless if the recording would yield information having evidentiary value, unless such recording is otherwise expressly prohibited.
- C. Officers have no affirmative duty to inform people that a BWC is being operated or that they are being recorded.
- D. Once activated, the BWC should continue recording until the conclusion of the event, or until it becomes apparent that additional recording is unlikely to capture information having evidentiary value or if the event would be recorded by another department PVRE system. The officer having charge of a scene shall likewise direct the discontinuance of recording when further recording is unlikely to capture additional information having evidentiary value. If circumstances change, officers will reactivate their cameras as required by this policy to capture information having evidentiary value.
- E. Officers shall not intentionally block the BWC's audio or visual recording functionality to defeat the purposes of this policy. However intentional blocking is acceptable if utilized to comply with section 3-18.5 B, Special Guidelines for Recording, where a temporary blocking would be more appropriate than stopping and starting the BWC.
- F. Officers shall not activate the BWC during events where undercover officers are known to be present without prior approval from the undercover officers or a department supervisor.
- G. Notwithstanding any other provision in this policy, officers shall not use their BWCs to record agency personnel during non-enforcement related activities, such as during pre- and post-shift time in locker rooms, during meal breaks, briefings, meetings or during other private conversations, unless recording is authorized by the Chief or Designee as part of an administrative or criminal investigation.

3-18.5 SPECIAL GUIDELINES OF RECORDING

Officers may, in the exercise of discretion, determine:

- A. To use their BWC to take recorded statements from persons believed to be victims and witnesses of crimes, and persons suspected of committing crimes, considering the needs of the investigation and the circumstances pertaining to the victim, witness, or suspect.
- B. To use their BWC to record persons being provided medical care if the subject is aggressive towards others or force may be necessary to allow for providing medical care.
- C. To use their BWCs when dealing with individuals believed to be experiencing a mental health crisis or event. BWCs shall be activated as necessary to document any use of force, or anticipated need for use of force.
- D. If officers respond to a health care facility, mental health care facility, detox, juvenile detention center, or adult detention center for a call of assistance, they may record the event as covered under 3-18.5 A., but otherwise should not record in these facilities unless the officer anticipates witnessing a criminal event or being involved in or witnessing aggression or a use-of-force incident.
- E. Officers should avoid recording law enforcement restricted data on a BWC that may be in a verbal, written or electronic format. Examples including, but not limited to: computer screen or Driver's Licenses, school or medical information.

3-18.6 DOWNLOADING / LABELING RECORDINGS

- A. BWCs will be downloaded in the manner and to location specified during training.
- B. Recordings of known evidentiary value or use of force event or an event the officer believes should be retained longer will be labeled and stored as directed during training. These recordings should be listed in the officer's written report.
- C. All BWC recordings shall be stored as designated by agency configuration. BWC recordings will be labeled as designated during training.

3-18.7 DATA STORAGE MEDIA CONTROL AND MANAGEMENT

- A. Data Retention
 - 1. All BWC data shall be retained for a minimum period of 90 days. There are no exceptions for unintentionally recorded or non-evidentiary data. BWC data not listed in provisions below is subject to destruction after 90 days from date of recording.

2. BWC 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. BWC data will no longer be considered as evidentiary data if the charges are dismissed or 90 days after being sentenced for charges.
3. 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.
4. Certain kinds of BWC data must be retained for six years:
 - a. Data that documents the use of deadly force or force of a sufficient type or degree by a peace officer, to requires supervisory review.
 - b. Data documenting circumstances that have given rise to a formal complaint against an officer.
5. 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 unless a new written request is received.
6. BWC data that has a value for training purposes; may be reclassified as training data and subject to section 3-18.9. BWC data that are retained for training purposes, which no longer have evidentiary value, may be stored outside of the regularly used server. Such data is considered department data and may not be disseminated outside the department without prior approval.

B. Digital Data Storage

1. Officers shall only use agency designated digital data storage, as approved by the Chief of Police or designee.
2. The City's Information Technology will determine the best method for backing up the data. If that method is an off-site, cloud-based system, they will ensure the data is encrypted and meets the requirements of the Criminal Justice Information Services, Policy 5.4 or successor version.

C. Security/Control of Digital Data

1. Officers shall not intentionally edit, destroy, erase or in any manner alter BWC data unless otherwise expressly authorized by the Chief or the chief's designee.
2. Upon download from the BWC, data will be subject to the same security restrictions and chain of evidence safeguards as any other piece of evidence/property.
3. A copy of any BWC data will not be released to a person or agency, other than another criminal justice agency, without prior approval of the Chief of Police or his/her designee.
4. Personally owned devices, including but not limited to computers and mobile devices, shall not be programmed or used to access, view or record BWC data, without prior approval from the Chief of Police.
5. Access to BWC data from city approved devices shall be managed in accordance with established agency and/or city policy.
6. Agency personnel may access and view stored BWC data 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 BWC data of an incident which they recorded, only for the purpose of preparing a report, giving a statement, or providing testimony about the incident.
7. Agency personnel are prohibited from accessing BWC data for non-business reasons and from sharing the data for non-law enforcement related purposes, including but not limited to uploading BWC data recorded or maintained by this agency onto public and social media websites.
8. Officers may display portions of BWC data to witnesses as necessary for purposes of investigation as allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time. Officers should limit these displays, including but not limited to: showing only a portion of the video, showing only screen shots, muting the audio, or playing the audio but not displaying video, to protect against the incidental disclosure of individuals whose identities are not public.
9. Officers shall refer members of the media or public seeking access to BWC data to the responsible authority/data practices designee, who will process the request in accordance with the MGDPA and other governing laws. 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.

10. BWC digital data shall be made available to prosecutors, courts, and other criminal justice entities as provided by law.

3-18.8 DATA RELEASE REQUESTS

Minnesota State Statutes 13.825 classifies BWC recorded data as private data on individuals or nonpublic data. This agency may redact or withhold access to portions of data that are public under this subdivision if those portions of data are clearly offensive to common sensibilities. BWC data is considered public under the following provisions of 13.825:

- A. Data that document the discharge of a firearm by a peace officer in the course of duty, if a notice is required under section 626.553, subdivision 2, or the use of force by a peace officer that results in substantial bodily harm, as defined in section 609.02, subdivision 7a.
- B. If a subject of the data requests it be made accessible to the public, but subject to redaction if the data contains:
 - a. Other data subjects that have not consented to the release.
 - b. Data contains images of a peace officer whose identity is protected under section 13.82, subdivision 17, clause (a).
- C. Data that are public personnel data under section 13.43, subdivision 2, clause (5).
- D. Data made public by an order of the Court.
- E. BWC data that is part of an active criminal investigation is confidential. This classification takes precedence over the “private” or “public” classifications listed within this policy.

3-18.9 AGENCY USE OF DATA

The following purposes are approved by the Chief of Police as having a legitimate and specified law enforcement purpose, for the access to the BWC recorded data as provided by Minnesota Statute 13.825, subd 7(b).

- A. Supervisors or other personnel as assigned by the Chief of Police or designee 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.
- B. Supervisors may randomly review BWC recordings made by officers to ensure the equipment is operating properly and officers are using the devices appropriately in accordance with this policy, and to identify any performance areas in which additional training or guidance is required.

- C. Officers should contact their supervisor to discuss retaining and using BWC data for training purposes. Officer objections to preserving or using certain BWC data for training will be considered on a case-by-case basis.
- D. Field training officers may review BWC data, recorded by them or their trainee, with trainees for the purpose of training, coaching and feedback on the trainee's performance.
- E. Nothing in this policy limits or prohibits the use of BWC recorded data as evidence of misconduct or as a basis for discipline.
- F. May display portions of BWC footage to any person, agency, or the public if the agency determines that the access is allowed by Minn. Stat. § 13.82, subd. 15, as may be amended from time to time.

3-18.10 AUDITS

This agency will conduct an independent audit on a biennial basis as required by Minnesota Statute 13.825, subd. 9, results of the independent audit will be reported to the city council.

3-18.11 VIOLATION OF POLICY

If an employee misuses the data covered by this policy or intentionally fails to comply with or violates this policy, it will be considered misconduct as covered by section 1-6.07 and such behavior may be grounds for disciplinary action up to and including discharge.