


<b>UPPER SADDLE RIVER POLICE DEPARTMENT</b>				
<b>VOLUME: 5</b>	<b>CHAPTER: 13</b>	<b># OF PAGES: 27</b>		
<b>SUBJECT: BODY WORN CAMERAS / MOBILE VIDEO RECORDERS</b>				
<b>EFFECTIVE DATE: 03/08/2022</b>	<b>ACCREDITATION STANDARDS: 3.5.5</b>	<b>REVISION DATE</b>	<b>PAGE #</b>	
<b>BY THE ORDER OF: Chief Patrick Rotella</b>		<b>01/30/2024</b>	<b>17</b>	
<b>SUPERSEDES ORDER #:</b>				

**PURPOSE** The purpose of this directive is to maintain guidelines for the use, management, storage, and release of audio-visual media recorded by body worn video/audio cameras (BWCs) and mobile video recorders (MVRs). BWCs and MVRs are intended to enhance officer safety, produce effective materials for training and to produce an additional method of collecting evidence to prosecute those who violate the law.

**POLICY** It is the policy of the Upper Saddle River Police Department to utilize body worn video/audio cameras (BWC) and mobile video recorders (MVRs) to assist agency personnel in the performance of their duties by providing an accurate and unbiased recorded account of an incident.

All agency personnel shall use this equipment (including accessing recordings) consistent with manufacturer’s guidelines, this directive, and those policies, directives, or guidelines issued by the New Jersey Attorney General and Bergen County Prosecutor’s Office. Failure to use this technology in accordance with this directive and those policies, directives, or guidelines issued by the New Jersey Attorney General and Bergen County Prosecutor’s Office can result in discipline.

The use of BWCs/MVRs with electronically enhanced audio/visual capabilities such as infrared/night vision features is not authorized.

The Upper Saddle River Police Department website/webpage shall contain a clear statement that this agency utilizes body worn video/audio cameras. The website posting shall include an image showing what the device looks like and how it is to be worn by uniformed officers or plainclothes detectives so that the public will be able to determine whether an officer or detective is equipped with the device.

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

## PROCEDURES

### I. DEFINITIONS

A. For purposes of this directive, the following terms are defined:

1. Activate – means to actuate (put into operation) the recording mode/function of a BWC or MVR.
2. Advisement – a statement made by an officer at the outset of using a BWC camera to record a communication, conversation, or interaction with the public for the specific purpose of informing the public that the communication or conversation is being recorded.
3. Body worn audio/video recorder camera (BWC) – is an officer worn device that makes an electronic audio/video recording of activities that take place during any law enforcement action. The term does not include any form of electronic recording device worn by a law enforcement officer while acting in an undercover capacity nor does the term include an electronic recording device when used to comply with the requirements of Court Rule R. 3:17 (electronic recording of station house custodial interrogations).
4. Constructive authority – involves the use of an officer's authority to exert control over a subject (see policy on *Use of Force*), except that the term shall apply only to constructive authority directed against a person who is subject to an investigative detention or arrest (e.g., "...show me your hands," "...get out of the vehicle", etc.), or directed against any person if the officer has unholstered a firearm or CED (e.g., "...move out of the way", "...get down", etc.).
5. Digital evidence – includes photographs, audio and video recordings that are stored electronically.
6. Equipped with a BWC – means that an officer is wearing a BWC at the time in question, as opposed to simply receiving BWC equipment from the agency.
7. Force – has the same meanings as defined in this department's policy on *Use of Force*.
8. Investigation of a criminal offense – means any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly offense, including but, not limited to responding to a report of a possible criminal offense; an investigative detention based on or leading to reasonable and articulable suspicion to believe that a criminal offense has been or is being committed; an arrest for a criminal offense; an interview of a potential witness to a criminal offense; or canvassing an area, neighborhood, or premises for potential witnesses to a criminal offense.
9. Metadata – A created digital image may include metadata that describes how large the picture is, the color depth, the image resolution, when the image was created, and other data.

10. Mobile video recorder – is a vehicle mounted device that makes an electronic audio/video recording of activities that take place during any law enforcement action.
11. Proactive enforcement team – includes officers who are typically assigned to target vice, drugs, organized street crime, violent crime and/or any other targeted enforcement. Unlike officers who are responsible for responding to traditional calls for service, these officers are typically assigned the singular responsibility of addressing these activities (e.g., street crime unit, crime suppression unit, etc.). The nature of their work may include being dressed in traditional uniform, modified uniform, or plain clothes. These officers may work alongside undercover officers, conduct surreptitious surveillance, engage in high intensity enforcement via motor vehicle/pedestrian stops and/or interact with confidential informants or witnesses who wish to remain.
12. School – means a public or nonpublic elementary or secondary school within this State offering education in grades kindergarten through 12, or any combination of grades, at which a child may legally fulfill compulsory school attendance requirements.
13. Serious bodily injury – means bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. for purposes of this directive, serious bodily injury and serious bodily harm have the same meaning.
14. Significant bodily injury – means bodily injury which creates a temporary loss of the function of any bodily member or organ or temporary loss of any one of the five senses.
15. Subject of the video footage – means any law enforcement officer, suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body worn camera recording and shall not include a person who only incidentally appears on the recording.
16. Substantive report – means a report that includes a detailed accounting of the incident. It does not include a report which simply refers to other reports or to the existence of BWC or other camera recordings.
17. Tactical team – is a group of officers who are specially selected, trained, and equipped to handle high-risk incidents including, but not limited to, those involving snipers, barricaded persons, warrant services, apprehensions, acts of terrorism, and other situations or activities as deemed necessary by command leadership.
18. Tagging – is the electronic labeling of a video/audio file captured by a BWC.
19. Youth facility – means a facility where children assemble under adult supervision for educational or recreational purposes, such as group homes, residential facilities, day care centers, and day treatment centers.

- B. All references to BWCs and MVRs include the body worn devices, mobile video recorders and, when appropriate, the wireless transmitter, microphone, removable media, server, metadata, chargers, and other accessories necessary to operate this system.

## II. GENERAL ADMINISTRATION

- A. BWC/MVR recordings are invaluable to law enforcement for evidential purposes. BWCs and MVRs have demonstrated their value in the prosecution of criminal, traffic, and other related offenses and to protect officers from false claims of misconduct. Additionally, this equipment will provide valuable instructional material that can be utilized for in-service training programs.
- B. While visual and audio evidence can be captured on the recordings, the use of BWCs/MVRs is not intended to document all evidentiary material relevant to court or administrative proceedings but can serve to supplement an officer's senses and eyewitness account. There is no intent to utilize BWCs/MVRs as a management tool to punish officers for minor departmental rule infractions.
  - 1. Officers shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters.
  - 2. BWC shall only be utilized for legitimate law enforcement purposes.
- C. Adequate safeguards are necessary to ensure that these technologies are:
  - 1. Used in a non-discriminating way; and
  - 2. Used to document visual evidence; and
  - 3. Used to safeguard against potential violations of N.J.S.A. 2A: 156A-1, et seq., *New Jersey Wiretapping and Electronic Surveillance Control Act* (MVR).
- D. These recordings will serve the following purposes:
  - 1. Recordings serve as protection for police officers when there are complaints about their conduct or professionalism during encounters with the public.
  - 2. The recordings can be introduced into evidence in criminal and motor vehicle prosecutions as well as in civil litigation.
  - 3. The recordings can resolve disputes concerning what occurred during incidents, thereby protecting both the public and the officers involved.
  - 4. When complete recall is not possible, such as when multiple events are happening simultaneously or out of an officer's line of sight, an audio/visual recording can provide an accurate record of events.
  - 5. Subject to the restrictions in this directive, supervisors will be able to view the recordings and select portions to use to train officers in safety, field training, interpersonal skills, proper police procedures, and legal doctrines.

6. Recordings can permit supervisors to undertake more meaningful performance evaluations.
  7. Recordings augment management's ability to evaluate its basic police practices and interactions between its personnel and the general public.
  8. Recordings enhance management's ability to train personnel in proper police procedures.
- E. The Chief of Police shall maintain a training program on the lawful and proper use of BWC/MVR equipment. The Chief of Police can designate one or more persons to coordinate and/or conduct such training.
1. Only officers who have received training in the use of BWCs/MVRs are permitted to use these systems and must demonstrate a satisfactory degree of familiarity and efficiency in the use of this system. For new officers, such training shall be conducted during the FTO program.
  2. Additional training may be required at periodic intervals to ensure the continued effective use and operation of the equipment, proper calibration and performance, a disciplinary matter, and to incorporate changes, updates, or other revisions in procedures and equipment.
  3. Proper use of BWCs/MVRs is considered an essential job requirement.
  4. Officers shall review and reference the BWC and MVR manuals on DMS. Officers shall remain familiar with these manuals.
- F. BWCs/MVRs are intended for official police department use only and are not to be used for frivolous or personal activities. Intentional misuse or abuse of the units will result in disciplinary action.
- G. All recording media, video, images, metadata, and audio are the sole intellectual property of the Upper Saddle River Police Department and will not be copied, released, or disseminated in any form or manner outside the parameters of this directive without the expressed written consent of the Chief of Police, the Bergen County Prosecutor's Office, or the New Jersey Division of Criminal Justice.
- H. Under no circumstances will any officer or employee of the Upper Saddle River Police Department make a personal copy of any recorded event or get another person to make a personal copy without the expressed permission of the Chief of Police, the Bergen County Prosecutor's Office, or the New Jersey Division of Criminal Justice.
- I. Non-law enforcement personnel shall not be allowed to review BWC or MVR recordings at the scene of a contact. Officer complaints shall be handled in accordance with the policies set forth in this department's directive on *Internal Affairs*. All other requests to view and/or obtain footage by the public shall be handled in accordance with section V of this directive.

### III. MOBILE VIDEO RECORDERS

- A. The MVR system consists of a rotatable front view and rear seat/view digital cameras, display monitor with controls, hard drive, and system server.
- B. The MVR is preprogrammed to automatically begin recording when:
  - 1. The vehicle's emergency lights are activated; or
  - 2. When the wireless transmitter is activated.
  - 3. NOTE: MVRs are programmed to have a 10 second pre-record feature of only video (no audio).
- C. If a police vehicle is disabled due to a crash or major mechanical problem, notify an BWC/MVR maintenance officer. He/she will decide whether to direct a supervisor to immediately remove the hard drive/portable media or wait until the next business day.
- D. Officers cannot use MVR equipment to make audio recordings of other officers or staff without notice. MVR operators are not authorized to erase, reuse, or record over in any manner or alter in any manner any MVR files.
- E. Every officer operating a departmental police vehicle equipped with an MVR shall carry and utilize a BWC.
- F. At the beginning of each shift, officers shall determine whether their MVR equipment is working satisfactorily. An audio/video check shall be conducted at the beginning and end of the officer's tour of duty. Normally, this will be done during the exterior check of the vehicle at the beginning of the officer's tour. In the event the officer needs to quickly depart headquarters for a call, this exterior check shall be completed as soon as practicable at the completion of the call.
  - 1. The unit shall be turned on at the beginning of the officer's tour of duty and shall not be turned off until the end of his/her tour of duty.
  - 2. Officers shall log into the MVR system. Officers shall not share their login/password credentials with any other person except when directed by the Chief of Police or the BWC/MVR maintenance officers.
  - 3. Officers shall log out at the end of the tour.
  - 4. All malfunctions and/or damaged or missing parts to the system shall be immediately reported to the duty shift supervisor and then documented in a CAD/RMS record. MVR equipment shall only be repaired or adjusted at the direction of the BWC/MVR maintenance officers. In the BWC/MVR maintenance officer's absence, the Chief of Police, administrative lieutenant, or patrol lieutenant are responsible for the repairs.

5. Vehicles with an inoperable or damaged MVR system will not result in the automatic non-use of the vehicle pending repair. The duty shift supervisor shall first determine if another MVR equipped vehicle is available. If another vehicle is available, the duty shift supervisor or his/her designee should assign the officer to this other MVR equipped vehicle. If not, the vehicle with the non-operating MVR can still be used for patrol purposes.
- G. Officers can adjust their vehicle position or rotate the lower forward-facing camera to provide a better view of any incident, but officers shall not compromise their safety or the safety of others to do so. The camera shall be placed back into the forward-facing position as soon as practicable.
- H. To prevent allegations of arbitrary and capricious utilization of the system, the following procedural guidelines shall be strictly followed:
  1. Recordable incidents shall be both video and audio recorded from beginning to end.
    - a. This procedure applies to primary as well as secondary/back-up units on these incidents.
    - b. Officers can manually activate the MVR by depressing the 'Record' button located in the police vehicle or by activating their BWC.
    - c. Once an MVR is activated, it must continue in the record mode until the completion of the incident or law enforcement action except for the circumstances described within this policy (see subsections III.G.2 and III.G.3 below).
    - d. During any of the mandatory recordable incidents the MVR must be activated and left on until the investigation/detention is complete except for circumstances specifically described within this directive.
    - e. Officers are required to wear and use their BWC during all MVR recordable incidents (see section V of this directive).
  2. Officers shall not deactivate the MVR when responding to calls for service with a multiple unit response. All units shall record the incident and shall follow the same guidelines in this section.
  3. If the primary officer operating a vehicle with MVR equipment participates in a motor vehicle stop and is aware that the motor vehicle stop was not recorded using MVR equipment, the officer shall record the reason in CAD.
  4. MVRs must not be deactivated until the vehicle stop or other enforcement action is completed. The BWC must always be turned on to provide audio recordings as well as video recording during MVR activation.
  5. When transporting an arrestee, prisoner, emotionally disturbed person, or civilian, officers shall activate the rear seat camera to record the rear compartment for the duration of the person's stay in the vehicle. Any non-custodial transport should be recorded at the officer's discretion, based upon any special situation that they deem important to record (e.g., intoxicated persons, disabled motorist, etc.).

- a. NOTE: In accordance with N.J.S.A. 2A: 156A-1 et seq. (N.J. Wiretapping and Electronic Surveillance Control Act), any recorded conversation or comment made by any person seated in the police vehicle, while an officer is not present in that vehicle, cannot be used for police investigation or in a court of law.
- b. Additionally, any recordings of conversations in the police vehicle that are beyond the human hearing range of an officer sitting in the front seat are impermissible and cannot be used in court.
- I. Officers shall not cease recording an event at the request of any person or entity other than a police supervisor, which will be documented in the applicable investigation report. If a civilian makes an inquiry whether they are being recorded, officers shall inform him/her that there is an MVR in use.
- J. All recordings are automatically uploaded from the MVR to the server in headquarters.
- K. Except for police radios, officers shall ensure that the volume from other electronic devices within the patrol vehicle, do not interfere with the MVR video and audio recording.

#### **IV. BODY WORN CAMERAS**

- A. Officers will use only those BWCs approved and issued by the Chief of Police. Such BWCs shall not be capable of recording images or conversations that cannot be seen or heard by the officer wearing the device without the expressed approval of the Bergen County Prosecutor or his/her designee.
  - 1. Wearing any personally owned video/audio recorder is not authorized without the expressed permission of the Chief of Police, the Bergen County Prosecutor's Office, or the New Jersey Division of Criminal Justice.
  - 2. Violations will be subject to disciplinary action, up to and including termination.
- B. The BWC/MVR maintenance officer shall register all BWCs through the BWC server prior to use.
  - 1. BWCs will be assigned a unit number for ease of reference in officers' reports and other communications.
  - 2. Each unit number will correspond to the electronic and physical serial number assigned to each BWC.
  - 3. BWC unit numbers will not be reused and will count upwards sequentially each time the agency purchases new devices.
- C. BWCs shall be used only in conjunction with official law enforcement duties.
  - 1. Officers engaged in undercover operations or surveillance activities are not required to utilize BWC.



2. BWCs shall be used only in conjunction with official law enforcement duties. BWCs shall not be used to record:
  - a. Encounters with undercover officers or confidential informants.
  - b. Strip and body cavity searches.
  - c. When on break or otherwise engaged in personal activities.
  - d. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room.
  - e. When engaged in police union business.
  - f. When involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisor-subordinate interaction. NOTE: the use of a BWC is authorized to record internal affairs interviews (e.g., principal, witness, complainant, etc.) if the interviewee is fully aware that the interview is being audio/video recorded.
  - g. While discussing criminal investigation strategies; or
  - h. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording, see section V of this directive.
3. Officers are not required to wear and use a BWC:
  - a. When engaged in hostage negotiations.
  - b. When processing crime scenes.
  - c. When conducting searches of cellphones, tablets, computers, or other electronic devices pursuant to a search warrant, when such items have already been seized and the search is performed at a location other than the premises of the initial search and seizure.
  - d. When conducting searches of cellphones, tablets, computers, or other electronic devices that are suspected to contain images of child sexual exploitation.
4. BWCs shall not be used surreptitiously.
5. BWCs shall not be used to gather intelligence information based on 1<sup>st</sup> Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between a law enforcement officer and a member of the public, except in accordance with any applicable guidelines or directives promulgated by the New Jersey Attorney General.

6. This agency will not tolerate the reliance by any officer on race, ethnicity, gender, gender identify, gender expression, transgender status, sexual orientation, religion, economic status, age, culture, or any other immutable characteristic of a group or class of persons, in determining whether to activate or deactivate a BWC.
- D. BWCs shall be activated when transporting an arrestee/prisoner regardless of whether the MVR is also activated. The BWC shall always remain activated while the BWC-equipped officer is in the presence of the arrestee/prisoner until the arrestee is placed in the cell, or until custody of the arrestee has been transferred to county jail personnel, or until the arrestee is with hospital/medical/mental health personnel and the officer is no longer in the presence of the arrestee/prisoner.
  - E. When wearing a BWC, officers shall notify the subject of the recording that they are being recorded unless it is unsafe or unfeasible to provide such notification. Such notification shall be made as close to the inception of the encounter as is reasonably possible.
    1. Prior to entering a private residence or place of abode (e.g., hotel/motel rooms, boarding houses, etc.), officers shall notify the occupant that the occupant is being recorded and, if the occupant requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC unless the officer is actively engaged in investigating the commission of a criminal offense, or is responding to an emergency, or reasonably believes that the officer will be required to use constructive authority or force
    2. When interacting with an apparent crime victim, officers shall, as soon as practicable, notify the apparent crime victim that he or she is being recorded and, if the apparent crime victim requests the officer to discontinue use of the BWC, the officer shall immediately discontinue use of the BWC.
    3. When interacting with a person seeking to anonymously report a crime or assist in an ongoing law enforcement investigation, if the person requests that the officer discontinue use of the body worn camera, officers shall evaluate the circumstances and, if appropriate, discontinue use of the BWC.
    4. If the officer decides not to provide notification of BWC activation because it is unsafe or unfeasible to do so, the officer shall document the reasons for that decision in the investigation report of the incident and/or by narrating the reasons on the BWC recording.
    5. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
    6. If an officer fails to activate the BWC, fails to record the entire event contact, or interrupts the recording, the officer shall document in the applicable investigation report the reason why a recording was not made, was interrupted, or was terminated.

- F. If a civilian inquires of an officer whether the officer is equipped with a BWC, or inquires whether the device is activated, the officer shall answer truthfully unless the Bergen County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, has expressly authorized the officer to make a covert electronic recording.
1. Officers can deactivate a BWC when a civilian conversing with the officer requests that the device be turned off under circumstances when it reasonably appears that the person will not provide information or otherwise cooperate with the officer unless that request is respected (e.g., prior to providing such information, the person indicates that he/she will only provide such information if it were not recorded; provided however, that the agreement to participate under that condition is itself recorded).
    - a. Officers shall not suggest to the person that the BWC should be deactivated, nor shall the officer ask or indicate to the person whether he or she would prefer that the BWC be deactivated. Rather, the request for deactivation must be self-initiated by the civilian.
    - b. In deciding whether to deactivate the BWC, the officer shall consider the privacy and safety interests of the person requesting deactivation, whether the encounter is occurring in the person's residence, and the need for the information or assistance that the person will provide is important to the investigation yet, is not critical to require recording.
    - c. The officer may explain the consequences of deactivation (e.g., evidence relevant to a criminal investigation will not be recorded).
  2. Officers may deactivate a BWC when a person, other than an arrestee/prisoner, is seeking emergency medical services for him or herself or another and requests that the BWC be deactivated. In deciding whether to de-activate the BWC, the officer shall consider the privacy interests of the person requesting deactivation and the person in need of medical assistance (e.g., a victim of an assault during a fight does not want to be recorded, etc.). However, in situations when an officer reasonably believes that the officer or another person is likely to use force, the BWC shall be re-activated as soon as it is safe and practicable to do so.
  3. When an officer deactivates a BWC:
    - a. The conversation between the officer and the civilian concerning the request for deactivation shall be electronically recorded.
    - b. Before deactivating the BWC, the officer shall narrate the circumstances of the deactivation (e.g., "*...I am now turning off my BWC as per the victim's request.*").
    - c. The officer shall report the circumstances concerning the deactivation to their supervisor as soon as is practicable; and
    - d. The officer shall document the circumstances of the deactivation in the applicable report concerning the incident under investigation, including the approximate time of activation and/or deactivation.

4. If an officer declines a request to deactivate a BWC, the reasons for declining the request (e.g., the officer believes that there is a reasonable possibility that it may be necessary to use constructive authority or force during the encounter) must be memorialized on the recording and documented in the applicable report and shall be reported to a supervisor as soon as it is safe and practicable to do so.
  - a. If an officer declines a deactivation request, the officer shall immediately inform the person making the request of that decision.
  - b. Officers are prohibited from misleading the person making the deactivation request into believing that the BWC has been turned off when in fact it is operating unless the Bergen County Prosecutor or his/her designee or the Director of the Division of Criminal Justice or his/her designee expressly has authorized covert recording.
5. Officers can deactivate a BWC when specifically authorized to do so by an assistant prosecutor or deputy attorney general for good and sufficient cause as determined by the assistant prosecutor/deputy attorney general. When an officer deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation indicating the name of the assistant prosecutor/deputy attorney general who authorized the deactivation.
6. Officers shall deactivate a BWC while participating in a discussion pertaining to criminal investigation strategy and planning (e.g., to consider what investigative techniques to pursue, such as what questions to pose to a suspect or witness, whether to summon a drug/explosives detection canine, whether to apply for a search warrant, whether to request permission to conduct a consent search, or to conduct another type of warrantless search, etc.), provided that the strategy/planning discussion is not conducted in the immediate presence of a civilian and further provided that the BWC-equipped officer is not actively engaged in the collection of physical evidence (i.e., conducting a search). When an officer deactivates a BWC pursuant to this section, the officer shall narrate the circumstances of the deactivation.
7. If an officer is required to deactivate the BWC when entering a school, house of worship, health care facility, substance abuse treatment center, etc., the officer shall narrate the reason for deactivation. The BWC shall be reactivated as soon as it is safe and practicable to do so when the circumstances requiring deactivation no longer exist (e.g., the officer is conversing with an adult as part of a criminal investigation while in a place within the school where children would not be in view of the BWC).
8. If a BWC captures the image of a patient in a substance abuse treatment facility, the Chief of Police or his/her designee shall notify the Bergen County Prosecutor or his/her designee to ensure compliance with all applicable federal laws and regulations providing for the confidentiality of substance abuse treatment information (42 USC § 290dd-2, 42 CFR §23.1 to 23.41). The recording shall not be accessed without the permission of the Bergen County Prosecutor or his/her designee. (Note that destruction of the recording would be inappropriate until it has been determined that it had not captured exculpatory information that must be provided to a defendant in discovery.)

9. In any instance when a BWC was deactivated pursuant to this section, the device shall be reactivated as soon as it is safe and practicable to do so when the circumstances justifying deactivation no longer exist (e.g., the interview of the person requesting deactivation is completed, etc.) and the officer would otherwise be required to activate the BWC.
- G. Officers shall not activate a BWC while in a courtroom during court proceedings, unless the officer is responding to a call for service or is authorized to use constructive force or authority, or unless the presiding judge expressly authorizes such activation.
  - H. Officers shall not activate a BWC while performing the security function at borough council meetings, unless the officer is responding to a call for service or is authorized to use constructive force or authority, or unless the mayor or council president authorizes such activation.
  - I. BWC shall be deactivated and removed while in the ALCOTEST area and stored in another room when the ALCOTEST device is being used prior to the 20-minute observation period. Nothing herein shall be construed to preclude the use of a BWC to record the behavior of a person arrested for driving while intoxicated other than while the person is in the ALCOTEST area while the ALCOTEST device is being operated. If this provision requires deactivation of a BWC, the officer shall narrate the reasons for deactivation (e.g., "*...I am deactivating the BWC because the suspect is about to take a breath test*"), and the BWC shall be reactivated when safe and practicable to do so following the completion of the breath testing operation.
  - J. Officers shall not activate a BWC, and shall deactivate a BWC that has been activated, if the officer knows or reasonably believes that the BWC would capture the image of an undercover officer or confidential informant or otherwise would pose a risk to the safety of an undercover officer or confidential informant, unless such activation is expressly authorized by a supervisor, or unless the exigency of the situation and danger posed to an officer (e.g., active shooter, use of police force, officer in distress, etc.) require that the encounter/incident be recorded, in which event the officer shall inform the duty shift supervisor that the image of an undercover officer or confidential informant was recorded. The BWC shall be activated/reactivated as soon as it is safe and practicable to do so when the risk of capturing the image of an undercover officer or confidential informant no longer exists.
  - K. When a BWC is activated, officers are encouraged to provide narration when practical and appropriate to augment the value of the recording and to provide clarity for the viewer.
  - L. If an officer fails to activate the BWC, fails to record the entire event contact, or interrupts the recording, the officer shall document in the appropriate report the reason why a recording was not made, was interrupted, or was terminated.
  - M. Uniformed officers assigned to the patrol division shall wear and use BWCs consistent with the requirements and restrictions in this directive daily as part of the uniform of the day.
    1. Officers are not required to activate their BWCs in police headquarters unless they are investigating a walk-in complaint, processing an arrestee, or other similar related functions.

2. Detectives and administrative officers shall wear BWCs when conducting arrests and while engaged in field duties (e.g., road coverage, search warrant executions, raids, etc.) consistent with the requirements and restrictions in this SOP.
  3. BWCs shall be worn and used on all extra duty assignments.
  4. Officers shall also wear and use a BWC consistent with this SOP when:
    - a. On aggressive driving, DWI interdiction assignments, or other proactive enforcement team.
    - b. When assigned to front desk assignments and interacting with the public on a law enforcement matter.
    - c. When assigned to or assisting any tactical team in the field.
    - d. When assigned to duties at demonstrations or potential civil disturbances.
  5. Officers/detectives on loan to any outside agency, tactical team, proactive enforcement team, or task force shall use the agency issued BWC consistent with this policy, including restrictions, and any guidelines issued by the outside agency or task force. Such officers/detectives shall report any potential conflicts between this policy and the outside agency/task force's directives to the Chief of Police or his/her designee as soon as practicable.
  6. Each BWC has a unique serial number and has been assigned an internal tracking identification number. Officers shall use the equipment specifically assigned to them unless otherwise authorized by supervisory personnel.
  7. If an officer, who has not officially reported for duty and has not yet obtained a BWC for his/her shift comes upon an incident, the officer can tend to the incident even if he/she does not have his/her BWC. In that instance, the officer should tend to the incident in accordance with applicable directives and report the absence of the BWC to their supervisor, and note the encounter in the formal applicable report, or have communications make a note in CAD/RMS if a formal report is not required. Officers shall obtain their assigned BWC at the earliest time.
- N. When not in use, BWCs shall be stored in the designated multi-charger docking stations. The docking stations allow for the units to be charged and for the download of events to the BWC server.
1. Only those BWCs believed to be in full working order will be stored in the docking station to ensure that all data is transferred, the battery is fully charged, and the unit is ready to be issued for service.
  2. Prior to beginning a shift, officers will ensure his/her BWC's readiness by conducting an operational inspection/test. All malfunctions or deficiencies shall be reported to the tour commander and to the BWC/MVR maintenance officer.

3. BWCs that are not in full working order shall be taken out of service, removed from the charging station, and forward to the BWC/MVR maintenance officer pending repair. The BWC/MVR maintenance officer shall contact the BWC service provider to schedule repair or replacement based on the problem as soon as practicable.
  4. Any problems preventing the use of the unit during the shift will be immediately reported to the duty tour commander and the BWC/MVR maintenance officer.
  5. Officers shall also inspect BWCs at the conclusion of each shift to ensure system integrity.
  6. Officers will dock their BWC for download to the BWC docking station upon completion of their shift. BWCs must be docked for a long enough period for the data to upload to the BWC server (and preferably to completely recharge) before they are re-assigned to another officer.
- O. Officers will wear the BWC mounted to the front of the uniform using the mounting equipment provided by the manufacturer.
1. BWC units shall be affixed on center of the buttoned jacket or the officer's uniform shirt in the center chest/sternum area. Plain clothes officers have the option of wearing the BWC either on the shirt, jacket, or belt.
  2. Officers authorized to wear exterior vest covers shall clip the BWC to their sternum area utilizing the department issued clip.
  3. Officers are responsible for ensuring that the BWC remains in a position to allow them to record an encounter or incident.
  4. While in attendance at ceremonial functions, officers can be relieved of this requirement.
- P. BWCs will always remain powered on while officers are outside of headquarters to ensure the 10-second 'buffer' is active. NOTE: After hearing the tone sounds upon BWC activation, both the lens and microphone are active. During the 'buffer' period, only the video is active, and no audio will be captured.
- Q. All officers assigned a BWC are responsible for its use and proper care during their tour of duty.

## **V. INCIDENTS TO RECORD**

- A. When on duty, BWCs will remain in standby mode ready to be activated at any time. When an officer activates the recording mode / function, the device will record from the moment the record start / stop button is pressed. Activation should occur before arriving at the scene, when feasible. Likewise, the vehicle's MVR shall be activated when the officer is assigned to an MVR-equipped vehicle.

- B. Except when otherwise restricted in this directive, officers shall video and audio record all law enforcement activity including any interaction with a civilian. However, if an immediate threat to the officer's life or safety makes activating the BWC impossible or dangerous, the officer shall activate the body worn camera at the first reasonable opportunity to do so. Examples of such required recordings include, but are not limited to:
1. All traffic stops from the initiation of the stop until the stop is concluded, including sobriety testing.
  2. An officer is responding to a call for service and is at or near the location to which the officer has been dispatched.
  3. Stationary police details, such as DWI checkpoints, car/truck inspections, seatbelt use checkpoints, etc.
  4. Motorist aid or community caretaking checks.
  5. Crime scenes to the extent possible, except for crime scene processing.
  6. Motor vehicle and foot pursuits.
  7. Officer interviews in the field of witnesses when conducting investigations of criminal violations (not to include undercover investigations, related surveillance activities, or stationhouse recordings of custodial interrogations/interviews).
  8. Custodial interrogation of a subject unless the interrogation is otherwise being recorded in accordance with Court Rule R. 3:17.
  9. Investigative detentions/field interviews.
  10. Any call for service related to a violation or suspected violation of possessing or consuming marijuana, hashish, or cannabis item.
  11. Out-of-court identifications (i.e., show ups, lineups).
  12. Warrantless searches (all types, including protective frisks, but not strip or body cavity searches).
  13. Search or arrest warrant service (entire service).
  14. Arrests.
  15. Drug recognition expert evaluations.
  16. Overdose and suspected overdose investigations.
  17. Emotionally disturbed person investigations / encounters.
  18. Arrestee, prisoner, detainee, emotionally disturbed person, and civilian transportation.



19. When an officer uses constructive authority or force, or reasonably believes that constructive authority or force may be used in any encounter or situation not otherwise listed in this subsection based on specific and articulable facts warranting heightened caution (must be documented by narration on the recording and/or in any applicable report).
  20. Crowd control, unruly crowds, or any incident requiring activation of the all-hazards or emergency operations plan.
  21. Domestic violence investigations.
  22. Strikes, picket lines, demonstrations, civil disorders.
  23. Any public contact that becomes adversarial.
- C. BWCs/MVRs shall remain activated for the entire duration of a civilian contact required in section V.B above until the officer has departed the scene and the officer has notified communications that the event is completed.
- D. Notwithstanding any other provision of this directive, when an officer equipped with a BWC or MVR is dispatched to or otherwise goes to the scene of an incident knowing or reasonably believing that law enforcement deadly force has been or is being employed, or to a scene where an officer has requested emergency assistance (e.g., an officer in distress, shots fired, etc.), the officer shall activate his/her BWC and MVR before arriving at the scene when feasible.
- E. Notwithstanding any other provision of this directive, an officer while at the scene of a police deadly-force event, pursuit resulting in death or serious bodily injury, in-custody death incident, or the on-scene investigation of such events shall not deactivate his/her BWC unless instructed to do so by the assistant prosecutor or deputy attorney general supervising the investigation of the deadly force incident pursuant to *Attorney General Law Enforcement Directive 2019-4*. The assistant prosecutor/deputy attorney general or his/her designee supervising the investigation may provide such instruction telephonically.
1. Officers can deactivate their BWCs once they leave the scene of the incident.
  2. BWCs do not need to remain activated while officers are receiving medical evaluation, medical treatment, or have returned to headquarters.
  3. Once officers deactivate their BWCs in these instances and when practicable, they should surrender their BWCs to a supervisor, who shall submit them as evidence in accordance with this agency's directive on *Evidence and Property*.

## **VI. OFFICER AND SUPERVISORY RESPONSIBILITIES**

- A. Officers shall complete a comprehensive report related to an incident that qualifies for such a report as determined by a supervisor. Under no circumstances shall officers simply refer to a BWC/MVR recording in any report instead of detailing the facts and circumstances of their investigation/observations.

- B. Officers shall tag their BWC/MVR recordings following completion of an event by the end of their respective shifts. If an officer is not able to tag a recording in the field using his/her MDC, they may do so in headquarters from a BWC/MVR workstation.
- C. The BWC/MVR maintenance officer will provide all officers with limited electronic access to the server-based upon the need of their individual assignments or classification as determined by the Chief of Police or his/her designee.
- D. BWC/MVR recordings shall be securely stored on the BWC/MVR server.
  - 1. The BWC/MVR server maintains an audit trail of recordings stored, accessed, reviewed, and downloaded.
  - 2. To identify BWC/MVR recordings that may raise special privacy or safety issues, officers shall appropriately tag recordings that:
    - a. Images of a law enforcement incident, as defined by *New Jersey Attorney General Directive 2019-4*:
      - 1) Any use of force by a law enforcement officer resulting in death or serious bodily injury.
      - 2) Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.
      - 3) The death of any civilian during an encounter with a law enforcement officer.
      - 4) The death of any civilian while in the custody of law enforcement.
    - b. Captures the image of a victim of a criminal offense; or
    - c. Captures the image of a juvenile; or
    - d. Were made in a residence (e.g., a home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, a healthcare facility or medical office, a substance abuse or mental health treatment facility, or a place of worship; or
    - e. Were made during a domestic violence investigation; or
    - f. Captures a conversation with a person whose request to deactivate the BWC was declined; or
    - g. Captures a special operations event or execution of an arrest and/or search warrant where confidential tactical information may have been recorded; or
    - h. Captures the image of an undercover officer or confidential informant; or

- i. Captures the screen of a law enforcement computer monitor that is displaying confidential personal or law enforcement sensitive information.
- E. Officers can request extended retention of their own recordings by emailing the BWC/MVR maintenance officer for approval. A request for extended retention must include a justification, such as a recorded traffic offense or other non-indictable criminal matter. BWC/MVR maintenance officers may need to export and make an electronic copy of recordings being held for extended retention in the event of a lack of system space, and/or if the referenced matter has not been adjudicated within the retention period.
- F. Supervisors shall ensure that patrol officers are assigned to MVR equipped vehicles, unless no such vehicles are available.
- G. Supervisors are responsible for ensuring that on-duty officers are equipped with functioning BWCs at the beginning of each shift.
  1. Supervisors shall notify or ensure that officers have notified the BWC/MVR maintenance officer when a BWC or MVR is non-functional or damaged. The BWC/MVR maintenance officer shall assign a spare BWC (or direct the supervisor to assign a spare BWC) to the officer and log such reassignment.
  2. Supervisors will conduct random formal reviews of selected recordings at the rate of at least one segment per subordinate per calendar month to assess officer performance as well as to flag video/audio that may be appropriate for training purposes. Such reviews shall be documented on a *Supervisory Review of Digital Video/Audio Recordings Form*.
  3. If an internal affairs complaint is associated with a recorded event, or an officer believes an incident may generate an internal affairs complaint, the supervisor will tag the video/audio for indefinite retention.
  4. When identifying any areas when additional training or guidance is needed, supervisors shall take the appropriate corrective action and communicate this information to the command staff through the chain of command for any additional action or remediation
  5. Supervisors may request extended retention of any recording made by an officer reporting to them for the purposes of administrative review of action by emailing the internal affairs supervisor. A justification must be provided, and this request will result in the review of the recording by the internal affairs supervisor and/or the command staff.
  6. Supervisors shall formally review all instances when a BWC/MVR is deactivated prior to the conclusion of an incident. The supervisor shall forward instances of potential misconduct to the internal affairs supervisor.
- H. The BWC/MVR maintenance officer or the command staff may recategorize any BWC/MVR recording for permanent retention until manually deleted on for the purposes of a criminal investigation, internal affairs investigation, documentation of an officer injury, use of force, or for training.

## VII. RECORDS RETENTION AND REVIEW

- A. Viewing of BWC/MVR events is limited to sworn officers of this department. Viewing by any other person is prohibited unless authorized by the Chief of Police, his/her designee, or consistent with the provisions of this directive.
- B. BWC recordings shall not be divulged or used for any commercial or other non-law enforcement purpose.
- C. NOTE: this subsection (VII.C) applies to BWCs only. No law enforcement officer or civilian employee of this department shall access, view, copy, disseminate, or otherwise use a BWC recording except for an official purpose. Access to, use of, and receiving an account of a stored BWC recording is permitted only:
  - 1. When relevant to and in furtherance of a criminal investigation or prosecution.
  - 2. When relevant to and in furtherance of an internal affairs investigation.
  - 3. When relevant to and in furtherance of a management review process to identify circumstances indicating police misconduct or to determine the existence of a pattern or practice of possible misconduct.
  - 4. To assist the officer whose BWC made the recording in preparing his/her own substantive police report, providing a statement, or submitting to an interview.
    - a. Except when:
      - 1) The incident involves the use of force by the officer, when the officer knows or should know that the use of force resulted in significant or serious bodily injury or death; or
      - 2) The incident involved the discharge of a firearm or any use of deadly force by the officer (see this agency's directive on *Use of Force*); or
      - 3) The incident involved the death of a person while in law enforcement custody; or
      - 4) The incident involved the death of a person during an encounter with a law enforcement officer; or
      - 5) An incident the officer knows or has been advised is or will be the subject of an internal affairs or civilian complaint relating to the officer's use of force, bias, or dishonesty.
    - b. Whenever an officer reviews or receives an accounting of a BWC recording prior to the creation of any report, statement, or interview, the officer shall acknowledge that prior review or receipt of an accounting of the BWC recording either verbally or in writing within each such report, statement, or interview.

- 1) The officer shall document each BWC recording that was reviewed and the date of the review.
    - 2) If the officer received an accounting of a BWC recording, the officer shall document the name of each person who provided an accounting of the BWC recording, the date of the accounting, and the specific BWC recording for which an accounting was provided.
  - c. Officers shall only be permitted to review or receive an accounting of such BWC recordings once the investigating entity concludes that (a) the officer has in fact completed the specified incident memorialization and (b) the officer's review or receipt of an accounting of the BWC recording will not otherwise interfere with the ongoing investigation.
    - 1) In cases subject to *Attorney General Directive 2019-4*, the independent investigator is the investigating entity.
    - 2) In all other cases, the Chief of Police or his/her designee is the investigating entity.
    - 3) The appropriate investigating entity shall document the authorization to review or receive an accounting of a BWC of a specified incident.
5. When relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency.
6. To show to a civilian who intends to file a complaint against an officer to demonstrate what occurred during the encounter so that the person can make an informed decision whether to file the complaint. Only the internal affairs supervisor or his/her designee can show such a recording to a civilian.
7. To comply with the state's discovery obligations in prosecutions pursuant to the Rules of Court:
  - a. Such request must be specific and on the proper instrument, i.e., subpoena, discovery request, etc.
  - b. Only those portions of the recording pertinent to the request shall be forwarded.
  - c. This agency reserves the right to redact video and audio as applicable by law with software approved by the BWC vendor or the Bergen County Prosecutor's Office. The BWC/MVR maintenance officer or his/her designee can also forward recordings to the Bergen County Prosecutor's Office for redaction.
    - 1) NOTE: when providing discovery in a domestic violence matter, ensure that the recording is reviewed prior to release to verify that there is no confidential information that should be redacted.

- 2) This confidential information includes, but is not limited to, the location where the victim is being sheltered or contact phone numbers for those assisting the victim, etc.
  - d. All requests for copies or review of BWC recordings are subject to the fee requirements of the prevailing ordinance.
  8. To comply with any other legal obligation to turn over the recording to a person or entity.
  9. Solely and exclusively for internal training purposes, provided that the recording is edited so that the identity of individuals depicted in the recording cannot be determined by persons viewing the training video unless the depicted individuals have consented to the recording being used for training purposes.
    - a. Note: consent is not required from Upper Saddle River police officers appearing in the recording.
    - b. BWC recordings retained beyond 180 days solely and exclusively for training purposes shall not be admissible as evidence in any criminal or civil legal or administrative proceeding.
  10. To enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution (e.g., by providing information about the layout of a premises to be searched), when such use is approved by the Bergen County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee.
  11. To show or disseminate the recording to a civilian or a non-law enforcement entity or to disseminate it to the public, when the Bergen County Prosecutor or his/her designee, or Director of the Division of Criminal Justice or his/her designee, determines that disclosure to that person entity or the public is warranted because the person's/entity's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.
  12. To conduct an audit to ensure compliance with this directive.
  13. Any other specified official purpose where the Bergen County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee, finds in writing that good and sufficient cause exists to authorize access to a particular BWC recording
- D. Officers shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC recordings or remove or disable any camera. Officers shall not instruct another to alter, tamper with, destroy, or conceal BWC/MVR recordings or remove or disable any camera. Any such tampering to an MVR is a violation of N.J.S.A. 2C: 28-7 and is a 4<sup>th</sup> degree crime. If an officer, employee, or agent fails to adhere to the recording or retention requirements contained in this directive or N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a BWC's ability to accurately capture audio or video recordings:
1. The officer, employee, or agent shall be subject to appropriate disciplinary action; and

2. There shall be a rebuttable presumption that exculpatory evidence was destroyed or not captured in favor of a criminal defendant who reasonably asserts that exculpatory evidence was destroyed or not captured; and
  3. There shall be a rebuttable presumption that evidence supporting a plaintiff's claim was destroyed or not captured in favor of a civil plaintiff suing the government, a law enforcement agency, or a law enforcement officer for damages based on police misconduct if the plaintiff reasonably asserts that evidence supporting the plaintiff's claim was destroyed or not captured.
  4. Any recordings from a BWC recorded in contravention of this directive, N.J.S.A. 40A:14-118.5 et seq., or any other applicable law shall be immediately brought to the attention of the command staff and immediately destroyed by the command staff following consultation and approval by the Bergen County Prosecutor or Director of the Office of Public Integrity and Accountability. Such recordings shall not be admissible as evidence in any criminal, civil, or administrative proceeding, except as evidence in any proceeding related to the unauthorized use of a BWC.
    - a. All requests for the destruction of BWC recordings made in contravention of this directive must be forwarded to the Bergen County Prosecutor's Office through the BWC applet of the BCPO Intranet.
    - b. Complete all fields including the narrative section which must recount the circumstances of the recording, the status of any case to which the recording is related, and of any investigation or criminal or administrative action related to violation of this directive.
    - c. BWC footage should not be sent with the request. If review of BWC footage is necessary, it will be requested.
    - d. Footage may only be destroyed after approval through Intranet notification
- E. Recordings are considered investigatory records of this police department and shall be maintained and disposed of in accordance with New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) records retention schedules.
1. Contents downloaded from BWCs/MVRs will be stored on a secure server or other designated storage media. Such storage media shall be maintained as evidence or with the appropriate case file. If maintained as evidence, all directives regarding evidence handling and retention shall be followed.
  2. Except for recordings being stored for criminal, civil administrative proceedings, or evidentiary purposes, recordings shall be retained for a period of:
    - a. BWC, at least 180 days.
    - b. MVR, at least 90 days.

3. Recordings being stored for criminal, civil, or administrative purposes must be retained until the conclusion of the case plus any retention period.
4. Recordings of an arrest that did not result in an ongoing prosecution, or records the use of police force, shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer or the employing law enforcement agency.
5. BWC/MVR recordings shall automatically be retained for not less than three years if it captures images involving an encounter about which a complaint has been registered by a subject of the BWC/MVR recording.
6. BWC/MVR recordings shall be retained for not less than three years if voluntarily requested by:
  - a. The officer whose BWC/MVR made the recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
  - b. The officer who is a subject of the BWC/MVR recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
  - c. Any immediate supervisor of an officer whose BWC/MVR made the recording or who is a subject of the BWC/MVR recording, if that immediate supervisor reasonably asserts the recording has evidentiary or exculpatory value; or
  - d. Any officer, if the BWC/MVR recording is being retained solely and exclusively for police training purposes; or
  - e. Any member of the public who is a subject of the BWC/MVR recording; or
  - f. Any parent or legal guardian of a minor who is a subject of the BWC/MVR recording; or
  - g. A deceased subject's next of kin or legally authorized designee.
  - h. NOTE: the member of the public, parent, or legal guardian, or next of kin or their designee shall be permitted to review the body worn camera recording in accordance with N.J.S.A. 47:1A-1 et seq. to determine whether to request a three-year retention period
7. When a BWC records an incident that is the subject of an administrative internal affairs complaint, the recording shall be kept pending final resolution of the internal affairs investigation, any resulting administrative action and required retention.



8. In accordance with *BCPO Directive 2017-8*, when seeking authorization to purge/erase BWC/MVR recordings being held for evidence in criminal matters the Chief of Police or his/her designee must submit a destruction request to the Bergen County Prosecutor's Office before purging/erasing any recordings. In DWI cases, consult with the municipal prosecutor before purging/destroying any DWI-related BWC/MVR recordings.
- F. Open public record requests. Only the following BWC recordings shall be exempt from public inspection:
1. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.5 (page 23) of this directive if the subject of the BWC recording making the complaint requests the body worn camera recording not be made available to the public.
  2. BWC recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection VII.E.6 (page 23-24) of this directive.
  3. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.6(a)(b)(c)(d) (page 23-24) of this directive.
  4. BWC recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection VII.E.6(e)(f)(g) (page 23-24) if an officer, parent, or legal guardian, or next of kin or designee requests the BWC/MVR recording not be made available to the public.
- G. The records custodian or his/her designee shall notify the Bergen County Prosecutor's Office OPRA records custodian within one business day upon receiving any subpoena, court order or OPRA or common law right to access request for a BWC/MVR recording before complying with it.
1. The notification must contain the date the request was received, the deadline by which a response must be made, whether the agency intends to release or deny the request, and the justification for that decision.
  2. Provide the type of police action or activity depicted in the recording, including, but not limited to, whether the officer was involved in an investigative detention, an arrest, an interrogation of a suspect, a witness interview, a search, a protective frisk for weapons, or was using constructive or actual force.
  3. Indicate whether the recording is part of an ongoing criminal or internal affairs investigation or whether release of the recording potentially infringes upon a victim and/or juvenile privacy rights.
  4. The records custodian or his/her designee will receive an acknowledgement. If no further communication is received within 72 hours, the record custodian or his/her designee should respond to the request as deemed appropriate.

5. Pursuant to the *Open Public Records Act* (N.J.S.A. 47:1A-5c and N.J.S.A. 47:1A-5d), the department can apply service fees for any extraordinary expenditure of time and effort to accommodate a request. The service fees will be based upon the actual direct cost of providing the service or extraordinary time. If the requester objects to the fee, the request is closed and access to the records is not granted.
  6. BWC/MVR footage requests requiring a substantial amount of manipulation or programming of information technology will be assessed a special service fee that shall be reasonable and shall be based on the cost for the labor cost of personnel providing the service, that is actually incurred for the programming, clerical, and supervisory assistance required, or both, if a request is for a copy of a record.
  7. The fee will be based at the lowest hourly rate of the personnel authorized to review/redact/approve the request.
  8. The records custodian or his/her designee will provide the requestor an estimate before any action is taken.
- H. A BWC/MVR recording of an event or encounter that involves an investigation of a criminal offense shall not be shared with or provided or shown to any person, entity, or government agency, other than a law enforcement agency or officer or authorized civilian employee of such agency, unless such disclosure is required by the Rules of Court governing discovery in prosecutions, or by a court order, or unless the Chief of Police in consultation with the Bergen County Prosecutor or his/her designee determines that the person's/entity's/non-law enforcement agency's/public's need for access outweighs the law enforcement interest in maintaining confidentiality.
1. If disclosure of a BWC/MVR recording as part of the state's discovery obligations in a prosecution might present a danger to any officer or civilian (e.g., reveal an undercover officer, confidential informant, surveillance site, etc.), or might reveal confidential tactical information the disclosure of which might jeopardize future operations or officer safety, the Bergen County Prosecutor or his/her designee shall, in the exercise of sound prosecutorial discretion, take such steps as are appropriate and authorized by law and/or court rule to protect the information from disclosure, such as by seeking a protective order from the court.
  2. A BWC/MVR recording tagged pursuant to subsection VI.D.2 of this directive shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Bergen County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee except supervisors (i.e., sergeant and above) can access and view such recordings. Under no circumstances shall such supervisors disseminate the contents of any recording (VI.D.2.a) subject to an investigation pursuant to *Attorney General Law Enforcement Directive 2019-4* prior to any initial reports being created.

3. The assistant prosecutor, deputy attorney general or their designees overseeing a law enforcement use of force investigation or death investigation pursuant to *Attorney General Law Enforcement Directive 2019-4* may, in the exercise of sound discretion, authorize a civilian or law enforcement witness to be given access to or view a BWC recording of the incident under investigation. To ensure the integrity of investigations of police-involved shootings, other use of force incidents, pursuits, and in-custody death investigations and to avoid possible contamination of a witness's personal recollection of events that could undermine his or her credibility as a witness, notwithstanding any other provision of this directive, no civilian or law enforcement witness, (including the principals) of the investigation, shall be given access to or view a BWC/MVR recording of the incident, or a BWC/MVR recording of the response or on-scene investigation of the incident, without the expressed prior approval of the assistant prosecutor, assistant or deputy attorney general, or their designees.
  - I. The BWC/MVR maintenance officer shall maintain a record of all BWC recordings that are accessed, viewed, copied, disseminated, or deleted.
  - J. The Chief of Police shall cause a periodic audit of records to ensure compliance with this policy.
  - K. Officers shall not reproduce or store any BWC/MVR recordings to any device or storage medium except as noted in this directive. This shall include, but not limited to, cell phones, electronic notebooks, etc.
  - L. Recorded video of unusual or significant incidents, deemed to be beneficial for departmental training, may be utilized for departmental in-service training purposes only with the approval of the Chief of Police.