

LOCATION  B-9	REFERENCE  Monmouth County Policy Attorney General Policy		SPECIAL INSTRUCTIONS	
SUBJECT  Body Worn Cameras / Mobile Video Recorders	NUMBER  General Order	DISTRIBUTION  All Personnel		
EFFECTIVE  10/10/2022	REVISED	REVISED	REVISED	PAGES  38

**PURPOSE:** The purpose of this General Order is to establish and maintain guidelines for the use, management, storage, and release of audio-visual media recorded by body worn cameras (BWCs) and mobile video recorders (MVRs). BWCs and MVRs are intended to enhance officer safety and produce effective materials for training. BWC and MVR footage provides objective evidence of what occurred and plays a crucial role in the public discourse around law enforcement accountability. BWCs and MVRs serve as a valuable deterrent to misconduct by both law enforcement and members of the public interacting with law enforcement.

**POLICY:** It is the policy of the Red Bank Police Department to utilize body worn 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. Proper use of BWCs and MVRs will promote officer accountability and transparency and discourage both law enforcement and civilian witnesses from providing false information about the circumstances of an encounter. BWCs and MVRs are valuable assets intended to assist law enforcement officers in the prosecution of offenders by supplementing an officer's testimony with a video/audio record of the incident. Additionally, this equipment will aid in the investigation of civilian complaints and in conducting reviews of officer-citizen contacts for quality control purposes.

All personnel shall demonstrate the use of their BWCs and utilization of MVR equipment (including accessing recordings) consistent with manufacturer's guidelines, this General Order, and those policies or guidelines issued by the New Jersey Attorney General and Monmouth County Prosecutor's Office. Failure to use this technology in accordance with this General Order and those policies or

guidelines issued by the New Jersey Attorney General and Monmouth County Prosecutor's Office can result in discipline.

The Red Bank Police Department website/webpage shall contain a clear statement that this agency utilizes BWCs. The website posting shall include an image showing what a BWC 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 is equipped with the device.

## **DEFINITIONS:**

- A. Activate.** To actuate (put into operation) the recording mode/function of a BWC or MVR.
- B. Advisement.** A statement made by an officer at the onset of using a BWC/MVR to record a communication, conversation, or interaction with a civilian for the specific purpose of informing the civilian that the communication or conversation is being recorded.
- C. Watchguard System.** Mobile recording system installed in Red Bank Police vehicles used to record both audio and video encounters during an officer's shift or assignment. Audio is automatically synced from Watchguard Body Camera (BWC) recordings.
- D. Watchguard Front Facing Camera.** Camera installed in front of Red Bank Police vehicle, facing forward, includes a digital zoom camera to make license plates readable at distance.
- E. Watchguard Rear Facing Camera.** Rear-mounted camera used to record suspects seated in the backseat of Red Bank Police vehicles.
- F. Body worn audio/video recorder (BWC).** A device worn by a law enforcement officer 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).
- G. Constructive authority.** Involves the use of an officer's authority to exert control over a subject (see General Order 97-5, 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., "...get down", etc.).
- H. Deactivate.** To shut off the recording mode of a BWC/MVR.
- I. Digital evidence.** Photographs, images, audio, and video recordings that are stored digitally.
- J. Equipped with a BWC.** Indicates an officer is wearing a BWC at the time in question, as opposed to simply receiving BWC equipment from the agency.

- K. **Evidence Library.** A secure, cloud-based storage system through Watchguard, which is externally hosted and available to BWC/MVR users and administrators to organize, classify, manage, view, and archive digital evidence.
- L. **Transfer Station II** A docking station for the WATCHGUARD BWC and battery. When the BWC is docked, video/audio data stored on the camera is automatically downloaded to Evidence Library. The Transfer Station also charges the battery and camera.
- M. **Force.** Shall include the same meanings of physical, mechanical, enhanced mechanical, and deadly force as defined in General Order U-1, Use of Force.
- N. **Investigation of a Criminal Offense.** Any police activity pertaining to the investigation of an indictable crime, disorderly persons offense, or petty disorderly persons 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.
- O. **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.
- P. **Mobile video recorder (MVR).** A mobile video / audio recording equipment installed in a Red Bank Police vehicle. All references to MVR shall include the equipment installed in Red Bank Police vehicles, removeable components and media devices, and where appropriate, other accessories necessary to operate the system.
- Q. **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 surveillance, engage in high intensity enforcement via motor vehicle/pedestrian stops, and/or interact with confidential informants or witnesses who wish to remain anonymous.
- R. **School.** 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.
- S. **Serious bodily injury.** 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 General Order, serious bodily injury and serious bodily harm have the same meaning.

- T. **Significant bodily injury.** 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.
- U. **Subject of the Video Footage.** 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.
- V. **Substantive report.** 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.
- W. **Tactical team.** 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.
- X. **Tagging.** The electronic labeling of a video/audio file captured by a BWC or MVR that may raise special privacy or safety issues.
- Y. **Youth Facility.** A facility where children assemble under adult supervision for educational or recreational purposes, such as day care centers, youth camps, group homes, day treatment centers, residential facilities, etc.

## **PROCEDURES:**

### **I. GENERAL ADMINISTRATION OF BOTH BWCs AND MVRs**

- A. BWC/MVR recordings are invaluable to law enforcement for evidentiary purposes. BWC/MVR recordings have demonstrated their value in the prosecution of criminal, traffic, and other related offenses and have protected officers from false claims of misconduct. Additionally, these technologies can provide valuable instructional material that can be utilized for in-service training programs.
- B. While visual and audio evidence may 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 it can serve to supplement an officer's senses and eyewitness account. There is no intent to utilize the BWC/MVR as a management tool to punish officers for minor departmental rule infractions.
  - 1. BWCs/MVRs shall only be utilized for legitimate law enforcement purposes.
  - 2. Officers shall not be subject to criticism for the proper exercise of lawful discretion in enforcement matters.

- C. Adequate safeguards are necessary to ensure that this technology is:
  - 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. BWC/MVR recordings will serve the following purposes:
  - 1. Protection for officers when there are complaints about their conduct or professionalism during encounters with the public.
  - 2. Introduced into evidence in criminal and motor vehicle prosecutions as well as in civil litigation.
  - 3. May resolve disputes concerning what occurred during incidents, thereby protecting both the public and the officer(s) involved.
  - 4. May provide an accurate record of events when complete recall is not possible, such as when multiple events are happening simultaneously or out of an officer's line of sight.
  - 5. Supervisors will be able to view the recordings and select portions to use to train officers in safety, field training, interpersonal skills, proper law enforcement procedures, and legal doctrines subject to the viewing restrictions in this General Order.
  - 6. Supervisors can undertake more meaningful performance evaluations subject to the viewing restrictions in this General Order.
  - 7. Enhance the Police Department's ability to evaluate its basic law enforcement practices and interactions between its personnel and the public subject to the viewing restrictions in this General Order.
- E. The Patrol Commander or his/her designee shall register all BWCs, MVRs, and docking stations through Evidence Library prior to use.
- F. The Patrol Commander or his/her designee shall issue officers a login to Evidence Library. Officers shall not share their login or password with any other person.
- G. BWCs/MVRs shall only be used in performance of official law enforcement duties and for the purpose of recording incidents, investigations and law

enforcement-civilian encounters involving those law enforcement activities specified in this policy.

- H. Officers are required to wear and use their BWC and MVR during all recordable incidents (see section V of this General Order).
- I. Attorney General Directive 2005-1 strictly prohibits any form of racially influenced policing when deciding to activate or deactivate a BWC. The Red Bank Police Department will not tolerate the reliance by any officer on race, ethnicity, gender, gender identity, gender expression, 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 or an MVR.
- J. Under no circumstances will any officer or employee of the Red Bank 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 Monmouth County Prosecutor's Office, or the New Jersey Division of Criminal Justice.
- K. Non-law enforcement personnel shall not be allowed to review BWC or MVR recordings at the scene of contact. Officer complaints shall be handled in accordance with the procedures in this agency's Internal Affairs procedure. All other requests to view and/or obtain footage by the public shall be handled in accordance with section VII of this General Order.
- L. Any willful or repetitive violations of this General Order shall be reported to the Internal Affairs Supervisor who shall report such directly to the Chief of Police.

## **II. TRAINING**

- A. The Training Officer, along with assistance from IT, shall maintain a training program on the lawful and proper use of BWC/MVR equipment. Only officers who have received training in the use of the BWC/MVR, as well as this General Order, are permitted to operate these systems and must demonstrate a satisfactory degree of familiarity and efficiency in their use. The proper use of a BWC and an MVR is considered an essential job function.
  - 1. The Training Officer or his/her designee is responsible for conducting or scheduling:
    - a. Initial training of all newly hired officers or to officers who have not been previously trained. Training for new officers can be completed as a component of their initial field training and evaluation.

- b. Periodic refresher training to ensure continued effective use and operation of the equipment, and to incorporate changes, updates, or other policy revisions as necessary or required; and
  - c. Supplemental training as a component of the disciplinary process.
2. Manufacturer's manuals shall be made assessable on Power DMS. Officers may also review and reference the BWC and MVR manuals online at [Watchguardvideo.com](http://Watchguardvideo.com). Officers shall remain familiar with these manuals.
3. 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 or his/her designee.

### **III. EQUIPMENT – BODY WORN CAMERAS**

- A. Each BWC has a unique serial number and an internal tracking identification number.
- B. Officers shall only use the Watchguard BWC system that has been issued and approved by the Red Bank Police Department. The use of BWCs with electronically enhanced audio/visual capabilities, such as infrared/night vision features, is not authorized.
  1. The Chief of Police or his/her designee shall determine which officers will be equipped with BWCs and shall determine the type(s) of duty assignments that will require BWCs to be worn. Officers shall not wear a BWC unless he/she has been authorized to do so by the Chief of Police or his/her designee and has received training on the proper use and care of the device.
    - a. All uniformed officers, to include K9 officers, while acting in the performance of official duties, as required by N.J.S.A. 40A:14-118.3.
    - b. Officers are required to wear BWCs on extra-duty employment and any traffic details and record all activity required in section V of this General Order.
    - c. Administration, Criminal Investigation Bureau, and plain clothes officers are required to use BWCs when engaged in proactive enforcement and pre-planned enforcement operations.
    - d. Officers shall wear their BWCs when assigned to duties that include regular interaction with members of the public to report

incidents or request assistance or information (e.g., 'front desk'), or in interactions with members of the public which reasonably may give rise to an arrest situation or use of force.

- e. Officers assigned to proactive enforcement teams or tactical units shall wear and use their assigned BWC.
- f. Officers assigned to duties at demonstrations or potential civil disturbances shall wear and use their assigned BWC.

2. In the case of a task force composed of officers from more than one law enforcement agency, the chief law enforcement officer of the agency overseeing the task force shall determine whether and in what circumstances officers assigned to the task force will wear BWCs.

- C. Officers shall wear BWC units in accordance with the equipment's operational guidelines. To reduce audio and/or video interference with the unit, the officer's portable radio microphone shall not be positioned near the BWC. BWCs shall be worn as an authorized component of the uniform of the day. Officers assigned BWCs shall use the equipment unless otherwise authorized by a supervisor.
- D. For uniformed officers, the BWC units are equipped with an Watchguard Body Camera outerwear magnet mount and shall be affixed to the shirt pocket area opposite the officer's dominant or shooting hand side when wearing Class A Winter uniform. For all other uniforms, the BWC shall be affixed to the buttoned placket on the officer's uniform shirt in the chest/sternum area.
- E. Officers authorized to wear exterior vest covers shall affix the BWC to the vest cover so that it is worn center of mass on the officer's body in the chest/sternum area, with a Watchguard Body Camera molle mount or a Watchguard Body Camera outerwear magnet mount.
- F. Officers wearing a jacket or other outer garment shall not cover or obstruct the view of their BWC. Officers are ONLY authorized to cover the unit with an outer garment if inclement weather conditions involving precipitation make it likely that exposure to the elements will damage the unit. If this action is necessary, the BWC shall remain activated to capture audio of the incident.
- G. Officers are to confirm their designated BWCs are assigned to themselves in Evidence Library.
- H. When not in use, BWCs shall be stored in the designated docking stations to allow for the units to be charged and for the download of events to the secure data storage site.

- I. BWC equipment is the responsibility of the officer using the equipment and shall be used with reasonable care to ensure proper functioning.
- J. Officers shall conduct an inspection to determine that their BWC is fully functional and that its battery is adequately charged at the start of their shift.
  - 1. Any malfunctions or deficiencies found during the inspection shall be noted and immediately brought to the attention of the officer's supervisor so that a replacement unit may be procured. The BWC shall be taken out of service.
- K. If a BWC malfunctions while out in the field, the officer shall report the malfunction to his/her supervisor as soon as it is safe and practicable to do so.
- L. BWC equipment and all data, images, video, and metadata captured, recorded, or otherwise produced by the equipment is the sole property of the Red Bank Police Department.
- M. Employees are prohibited from tampering with BWCs including, but not limited to, attempting to take the unit apart, disabling, altering, or repairing a component in any way.
- N. BWC's shall not be powered off at any time during a shift, with the exception of battery changes when necessary

#### **IV. EQUIPMENT – 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. Every officer operating an agency vehicle equipped with an MVR shall carry and utilize a BWC.
- C. The MVR specifications allow for several recording features useful to officers:
  - 1. The record function of the Watchguard System is automatically activated when the vehicle's emergency lights are activated. Video recording may not completely document the events as they occur. Officers are encouraged to provide appropriate narration of events as they occur.
  - 2. An officer may manually activate the system by double pressing the Record Start/Stop Button). This feature allows for recordings to be made without alerting a violator by activation of the emergency lights.

3. If an officer wearing a Watchguard Body Camera, with the camera on or in standby mode and is synched to an MVR, and the vehicle emergency lights are activated in position number one, their body worn camera will be activated
4. When the recording function has been activated to document an incident, it shall not be deactivated prior to the completion of the incident in its entirety. A justification for halting a recording shall be verbally recorded prior to turning the system off.

D. The system will also activate automatically under the following circumstances:

1. When the vehicle is involved in a motor vehicle accident severe enough to trigger the sensors on the digital video camera system.

E. Upon activation of the digital video camera system, the AM/FM radio shall be turned off completely so as not to affect the quality of the audio recording.

F. If the vehicle has lost all power and is unable to upload to the server, the Patrol Commander or his/her designee will decide whether to immediately remove the media or wait until the next working day.

G. At the start of their shift or assignment, officers shall conduct an audio and visual check of the system by completing the following:

1. Activate the digital video camera to ensure that the unit is working properly.
2. Officers shall immediately review the test to determine whether the video and audio are working properly.
3. Operational problems and/or damage to the equipment, to include during the officer(s) tour of duty, shall be promptly reported to the officer's supervisor for corrective action and documented in an Incident Report with the problem(s) listed. The same shall also be noted on a Vehicle Inspection Form/Checklist. The supervisor shall reassign the officer to a car with a working MVR if one is available.
4. In the event the officer needs to quickly depart headquarters for a call, the check shall be completed at the completion of the call.

H. MVR equipment shall only be adjusted or repaired by authorized and trained personnel.

I. MVR equipment shall be maintained pursuant to the manufacturer's specifications.

- J. At no time shall officers operate an MVR-equipped agency vehicle while not being signed into the system.
  - 1. Officers shall log into the MVR system at the beginning of their shift
  - 2. Officers shall log out at the end of their shift.
- K. Officers can adjust their vehicle position or rotate the forward-facing camera to provide a better view of any incident. The camera shall be placed back into the forward-facing position as soon as practicable.
- L. While it is recognized that not every event takes place in the street, and that people may move off camera, officers are encouraged to park their vehicle in the best position to allow the camera to record the pertinent event. If necessary, an officer may reposition a camera to capture the event when possible.
- M. To prevent allegations of arbitrary and capricious utilization of the system, the following procedural guidelines shall be followed:
  - 1. Recordable incidents shall be both video and audio recorded from beginning to end.
    - a. Officers shall ensure that the MVR is always in the ON position. This will ensure that recording begins once emergency systems are activated.
    - b. This procedure applies to primary as well as secondary/back-up units on these incidents.
    - c. Video recordings may not completely document events as they occur. Therefore, officers are encouraged to provide narration as the events are occurring.
    - d. Officers can manually activate the MVR by depressing the 'Record' button located in the vehicle or by activating their BWC.
    - e. 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 General Order.
    - f. The audio recording feature must be on continuously during all field interviews and/or field interrogations.

- g. During any of the mandatory recordable incidents (see subsection V.B of this General Order), the MVR must be activated and left on until the investigation/detention is complete, except for circumstances specifically described within this General Order.
  - h. At the completion of the event, the recording shall be tagged, or labeled in the system as to the nature of the recording.
  - i. If during an incident that should be recorded, an officer is aware that the incident was not recorded, the officer will notify their immediate supervisor without delay.
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.
  - a. If an MVR recording is ceased prior to the conclusion of an incident, the officer shall provide justification by recording the reason verbally on the system (e.g., "*MVR will be turned off, at scene of down utility pole, MVR not needed*").
  - b. Only the assigned officer or his/her supervisor is authorized to manually turn off the recording system.
3. Officers shall not cease recording an event at the request of any person or entity other than a supervisor. If a civilian makes an inquiry whether he/she is being recorded, officers shall inform him/her that there is an MVR in use.
4. When transporting an arrestee, prisoner, emotionally disturbed person, or civilian, the rear seat camera shall be activated to record the rear compartment for the duration of the person's stay in the vehicle. Any front seat passenger transport should be recorded at the officer's discretion.

N. **The Back Seat Microphone.** The use of MVR equipment, including audio recording equipment, does not fall within the purview of the *New Jersey Wiretap and Electronic Surveillance Control Act* as set forth in N.J.S.A. 2A: 156A-1 et seq.

1. The courts have found that there is no expectation of privacy in the back of a law enforcement vehicle. Therefore, an audio recording of a subject (adult or juvenile) speaking in the back of a law enforcement vehicle is not considered an oral communication under the Act

regardless of where the officer is standing or located at the time the recording is made.

2. The back seat MVR should not be turned off or deactivated at any time there is a civilian being held in a patrol vehicle regardless of whether an officer is in, or near, the vehicle. That includes subjects under arrest, being held for investigative purposes, or being transported for any reason in an agency vehicle (adult or juvenile).
3. Audio and video recordings from a back seat microphone can be used for various purposes including, but not limited to, a criminal prosecution, an administrative investigation of an officer, an investigation of an officer, an investigation of an in-custody death, and/or civil lawsuits filed in State or Federal Court.

## **V. ACTIVATION AND DEACTIVATION REQUIREMENTS**

- A. When on Duty and assigned to an MVR equipped vehicle the officer's BWC shall Be synchronized to the MVR. The officer's BWC will remain in standby mode ready to be activated at any time. When an officer activates the recording mode/function, the device will record audio and video from the moment the record start/stop button is pressed. The MVR will include an additional thirty seconds of video recording (no audio) prior to the activation. Activation of the system should occur before arriving at the scene, when feasible.
- B. Except as otherwise restricted in this General Order, an officer equipped with a BWC shall be required to activate the device whenever the officer is responding to a call for service or at the initiation of any other law enforcement or investigative encounter between an officer and a member of the public, to include any of the following circumstances, unless there exists an immediate threat to the officer's life or safety that makes such activation impossible or dangerous. In such situations, the officer must activate the BWC at the first reasonable opportunity to do so and it shall remain activated until the encounter has fully concluded, and the officer leaves the scene:
  1. The officer initiates an investigative detention (e.g., a Delaware v. Prouse traffic stop, a Terry v. Ohio criminal suspicion stop, or a checkpoint or roadblock stop).
  2. The officer is responding to a call for service and is at or near the location to which the officer has been dispatched.
  3. The officer is conducting a motor aid or community caretaking check.
4. The officer is interviewing a witness while investigating a criminal offense.

5. The officer is conducting a custodial interrogation of a suspect unless the interrogation is otherwise being recorded in accordance with Rule 3:17 (electronic recordation of station house interrogations).
6. The officer is making an arrest.
7. The officer is conducting a protective frisk for weapons.
8. The officer is conducting any kind of search (consensual or otherwise), including the execution of a search warrant.
9. The officer is engaged in a law enforcement response to any type of civil disorder in circumstances where the officer is engaged with or in the presence of civilians and the officer or any officer on the scene may be required to employ constructive authority or force.
10. The 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 that are documented by narration on the recording and/or in any investigation or Incident Report.
11. When processing an arrestee, prisoner, or detainee when the person is unruly, uncooperative, or causes a disturbance
12. Any civil disturbance or civil dispute
13. The officer is transporting an arrestee to county jail, or other place of confinement, or hospital or other medical care or mental health facility.
  - a. When a BWC is activated to transport an arrestee/prisoner, it shall remain activated at all times while the BWC-equipped officer is in the presence of the arrestee/prisoner and until the arrestee/prisoner is subjected to an Alcotest, secured in a cell, 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. However, in situations where an officer reasonably believes that the officer or another person is likely to use force, the BWC shall be reactivated as soon as it is safe and practicable to do so.
14. The officer reasonably believes that any other officer on the scene has undertaken or is engaged in any of the foregoing law enforcement

actions/activities.

- C. Consistent with the provisions of N.J.S.A. 2C:33-15a(4), the video and audio functions of an officer's BWC shall be activated whenever the officer is responding to a call for service related to an underage person who is suspected of violating the law with respect to possessing or consuming an alcoholic beverage, marijuana, hashish, or a cannabis item, or at the initiation of any other law enforcement or investigative encounter between an officer and a person related to a violation or suspected violation of that provision. The BWC shall remain activated until the encounter has fully concluded, and the officer leaves the scene and shall not be deactivated based on a request by a person who is the subject of the call for service related to a violation of N.J.S.A. 2C:33-15, or for any other reason.
- D. Notwithstanding any other provision of this General Order, when an officer equipped with a BWC is dispatched to or otherwise goes to the scene of an incident knowing or reasonably believing that 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 before arriving at the scene when feasible.
- E. Notwithstanding any other provision of this General Order, an officer while at the scene of a law enforcement 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 or Deputy Attorney General or his/her designee supervising the investigation can 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, they shall surrender their BWCs to a supervisor, who shall submit them as evidence in accordance with this agency's General Order 98-3, Property and Evidence Control.
- F. The following is a list of activities which shall be recorded by any Red Bank Police vehicle which has MVR equipment:
  - 1. All motor vehicle stops:

- b. Normal traffic violations should be recorded from the point where the light and/or sirens are activated continuously throughout the entire stop concluding when the violator drives away or is placed in the officer's vehicle. If taken into custody and transported, the backseat camera shall be utilized in accordance with this General Order.
  - c. On all vehicle stops, center the license plate in the center of the screen to allow the camera to adjust to the current lighting conditions.
- 2. In cases of suspected D.W.I., recordings should begin when the officer first suspects erratic driving and should continue through the stop, field sobriety tests, and the arrest, if applicable.
- 3. All vehicular pursuits, regardless of duration.
- 4. All transports of arrestees, prisoners, and other civilians, including emotionally disturbed persons, persons under the influence of drugs or alcohol, and juveniles.
- 5. All officer responses when using emergency lights and/or siren.
- 6. All outdoor crime scenes.
- 7. All domestic violence calls.
- 8. Special events including, but not limited to, crowd control, strikes, picket lines, demonstrations, or riots.
- 9. All arrests.
- 10. Any events likely to be evidential in a criminal case (this includes, but is not limited to, any crime in progress, any crime scene or portion thereof, any arrest or activity leading to arrest, any field interviews, and any evidence recovered).
- 11. Any law enforcement activities when a contact with a civilian becomes adversarial in nature or at any time an officer feels that creating an audio and/or visual record of a contact with a civilian is appropriate.
- 12. Other situations where an officer's best judgment, based on training and experience, is to record a situation, event, object, or activity.
- 13. When directed to by a supervisor.

G. BWCs and MVRs shall remain activated in record mode for the entire duration of the event until either the officer has departed the scene, or the incident is

concluded.

- H. If for some reason the recording must be terminated, the justification for its termination shall be verbally recorded prior to deactivation and appropriately document in an Incident Report.
- I. In some instances, an officer may wish to deactivate the audio portion of the digital video camera to discuss strategy with another officer or share intelligence. This is an acceptable practice so long as the subject(s) of the activity remain visible on the camera. The officer should verbally record the reason for deactivating prior to the deactivation and should reactivate the audio portion as quickly as possible. The fact that the audio was deactivated, and the reason, must be documented in the Incident Report.
- J. At no time should the BWC/MVR be deactivated while an officer is interacting verbally or physically with a subject.
- K. Any officer who is found to have purposely deactivated the BWC/MVR (video or audio) without justification in violation of this policy shall be the subject of an Internal Affairs investigation and potential discipline.
- L. Officers shall note in their Incident Report the fact that audio/video recordings were made and indicate the unit number of the vehicle that was used.
- M. 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 beginning of the encounter as is reasonably possible.
  - 1 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 Incident Report and by narrating the reason on the BWC recording when practicable.
  - 2. The failure to verbally notify a person pursuant to this section shall not affect the admissibility of any statement or evidence.
- N. Prior to entering a private residence, 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, is responding to an emergency, or reasonably believes that the officer will be required to use constructive authority or force.
- O. 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. An officer cannot decline a request from an apparent crime victim to discontinue recording of the encounter via the BWC.

- P. 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 BWC, the officer shall evaluate the circumstances and, if appropriate, discontinue use of the BWC.
- Q. 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 Monmouth 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. The officer 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 he/she is not recorded; provided, however, that the agreement to participate under that condition is itself recorded).
  - 2. The officer 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.
  - 3. 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 not critical to require recording.
  - 4. The officer may explain the consequences of deactivation (e.g., evidence relevant to a criminal investigation will not be recorded).
- R. An officer 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 deactivate 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 reactivated as soon as it is safe and practicable to do so.

- S. When an officer deactivates a BWC:
  - 1. The conversation between the officer and the civilian concerning the request for deactivation shall be electronically recorded.
  - 2. 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.").
  - 3. The officer shall report the circumstances concerning the deactivation to their supervisor as soon as is practicable; and
  - 4. The officer shall document the circumstances of the deactivation in their Incident Report.
- T. If an officer declines a request to deactivate a BWC, the reason 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 his/her Incident Report and shall be reported to his/her supervisor as soon as it is safe and practicable to do so.
  - 1. If the officer declines a deactivation request, the officer shall immediately inform the person making the request of that decision.
  - 2. The officer is 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 Monmouth County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee expressly has authorized covert recording.
- U. An officer can deactivate a BWC when specifically authorized to do so by an Assistant Prosecutor or his/her designee or Deputy Attorney General or his/her designee for good and sufficient cause as determined by the Assistant Prosecutor or his/her designee or Deputy Attorney General or his/her designee. 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 or his/her designee or Deputy Attorney General or his/her designee who authorized the deactivation.
- V. Officers should mute 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 discussion is not conducted in the immediate presence of a civilian and further provided that the BWC-equipped officers are not

actively engaged in the collection of physical evidence (i.e., conducting a search). When the officers deactivate BWCs pursuant to this section, the officers shall narrate the circumstances of the deactivation and state the same in their Incident Report.

- W. 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 (e.g., "*I am entering a school building where children are present.*"). 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). The above shall be stated in their Incident Report.
- X. 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. The above shall be stated in their Incident Report.

## **VI. RESTRICTIONS ON BWC RECORDINGS**

BWCs shall be used only in conjunction with official law enforcement duties.

- 1. BWC's shall not be activated when not worn by an officer or otherwise used surreptitiously.
- 2. Officers engaged in undercover operations or surveillance activities are not required to utilize BWCs.
- 3. BWCs shall not be used to record:
- 4. Encounters with undercover officers or confidential informants.
- 5. When on break or otherwise engaged in personal activities.
- 6. In any location where individuals have a reasonable expectation of privacy, such as a restroom or locker room unless officers have responded to such a location for an incident requiring recording.
  - a. When engaged law enforcement union business or for personal purposes.
  - b. When involved in counseling sessions, guidance sessions, personnel evaluation interviews, or other supervisory interactions. The use of a BWC is authorized to record Internal

affairs interviews (e.g., principal, witness, complainant, etc.) provided the interviewee is fully aware that the interview is being audio/video recorded.

- c. While discussing criminal investigation strategies.
- d. Inside of schools, youth facilities, hospitals, medical facilities, or places of worship, unless directly related to an incident that warrants recording (e.g., officer is actively engaged in investigating the commission of a criminal offense, is responding to an emergency, or reasonably believes that he or she will be required to use constructive authority or force). If activation and recording must occur, officers shall be cognizant of tagging such videos of certain events/encounters that raise privacy or other special issues. (NOTE: This section does not apply to recording arrestees/prisoners in a medical facility, see subsection V.B.11).

1. 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.
2. BWCs shall not be used to gather intelligence information based on First 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 issued by the New Jersey Attorney General.
3. If a BWC captures the image of a patient in a substance abuse treatment facility, the Division Commander or his/her designee shall notify the Monmouth 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 Monmouth County Prosecutor or his/her designee. (Destruction of the recording shall be inappropriate until it has been determined that the recording did not capture exculpatory information that must be provided to a defendant in discovery.)

- A. Officers shall not activate a BWC while in a courtroom during court proceedings unless the following occurs:
  - 1. The officer is responding to or engaged in a call for service requiring activation (see subsection V.B); or
  - 2. The officer is authorized to use constructive force or authority; or
  - 3. The presiding judge expressly authorizes such activation.
- B. BWCs shall be deactivated or removed while in the ALCOTEST area and stored in another room when the ALCOTEST device is being used. 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.
- C. 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 law enforcement force, officer in distress, etc.) requires that the encounter/incident be recorded, in which event the officer shall inform his/her 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. Such incidents require tagging of the videos.

## **VII. OFFICER RESPONSIBILITIES**

- A. Officers shall perform all necessary pre- and post-shift inspections of both their BWCs and MVR equipment as prescribed above.

B. Officers shall download the contents of their BWCs by placing the device in one of the designated docking stations. Each file downloaded shall contain information related to the date, BWC identifier, and assigned officer for the incident. MVR recordings will download automatically upon reaching headquarters. Recordings shall be labeled in accordance with agency policy to include, but not limited, to:

1. Type of incident (e.g., MV stop, crime scene, arrest, etc.).

C. When officers are involved in any stop, incident, or situation when BWCs/MVRs are activated, the officer shall, if possible, tag the circumstances at the start of the encounter audibly so that the recordings on the BWCs/MVRs will be easier to locate if review of the videos are necessary later. For instance, an officer coming upon the scene of a serious motor vehicle crash can tag the recording by stating as the BWC/MVR is activated, *“Officer Smith coming upon the scene of a serious MVA at the corner of Main and North Streets.”*

D. When the BWCs/MVRs are activated, officers are encouraged to provide narration where practical and appropriate to augment the value of the recording and to provide clarity for the viewer. If available, officers may also audibly tag or mark significant events while recording and provide details of the marked segments.

E. To identify BWC/MVR recordings that may raise special privacy or safety concerns, officers and administrative users reviewing video in Evidence Library shall tag a recording as a “Protected Video” software when the recording:

1. Captures a law enforcement incident, as defined by New Jersey Attorney General Directive 2019-4:
  - a. Any use of force by a law enforcement officer resulting in death or serious bodily injury.
  - b. Any use of deadly force (including the discharge of a firearm) by a law enforcement officer, regardless of whether such force resulted in injury.
  - c. The death of any civilian during an encounter with a law enforcement officer; and
  - d. The death of any civilian while in the custody of law enforcement.
2. Captures the image of a patient in a substance abuse treatment facility.

3. Captures the image of a victim of a criminal offense.
4. Captures the image of a juvenile.
5. Were made in a residence/dwelling (e.g., a home, apartment, college dormitory room, hotel/motel room, etc.), a school or youth facility, a healthcare facility, medical office, a mental health treatment facility, or a place of worship.
6. Captures a conversation with a person whose request to deactivate the BWC was declined.
7. Captures the screen of a law enforcement computer monitor that displays confidential personal or law enforcement sensitive information.
8. Captures the image of an undercover officer or confidential informant.
9. Were made during the execution of tactical operations (e.g., MOCERT operations, execution of arrest and/or search warrant, etc.), and records confidential tactical information of which the disclosure may jeopardize future operations or officer safety (e.g., verbal codes or hand signals used to communicate information or instructions, techniques for interior movements and clearing rooms, techniques to convince persons to open doors, etc.).

F. Officers shall note in their Incident Report when BWC recordings are made during the incident in question. However, BWC recordings are not a replacement for Incident Reports.

G. At the end of each shift or assignment, officers who capture evidence or critical incidents on a recording shall bring it to the attention of their supervisor. Officers are responsible for tagging such events so that the recording can be placed in the case file and stored in accordance with agency policy.

H. If an officer fails to activate the BWC, fails to record the entire event contact, or interrupts the recording, the officer shall document in their Incident Report the reason why a recording was not made, was interrupted, or was terminated.

## **VIII. SUPERVISOR RESPONSIBILITIES**

A. Supervisors shall ensure that officers under their command equipped with BWCs and utilizing MVR-equipped vehicles follow established procedures in accordance with this General Order.

- B. Supervisors are responsible for reviewing non-evidentiary BWC and MVR events periodically to ensure the equipment is operating properly, to assess officer's performance and adherence to General Orders and established professional standards, assist with performance evaluations, and to identify other training needs.
- C. In addition to this supervisory review, the Division Commander or his/her designee or internal affairs investigators may review specific BWC footage if circumstances arise that require an investigative effort to commence.
- D. Supervisors shall formally review all instances when a BWC is deactivated prior to the conclusion of an incident and forward the documented review through the chain of command to the Division Commander or his/her designee.
- E. Subject to the viewing restrictions in this General Order and as part of the administrative review process, supervisors shall review all BWC/MVR footage involving the below, unless restricted in section X of this General Order:
  - 1. Use of force; and
  - 2. Motor vehicle and foot pursuits; and
  - 3. Officer involved collisions; and
  - 4. Officer involved injuries.
- F. The Division Commander or his/her designee shall be notified of requests for repairs and replacement of damaged or non-functional MVR equipment.
- G. Supervisors must ensure that officers document the fact that an MVR was in operation at the time of an event, and ensure the MVR recording was downloaded, properly stored and placed in evidence.

## **IX. EVIDENCE CONTROL / MANAGEMENT OF RECORDINGS AND DISCOVERY**

- A. The Watchguard System will automatically upload data from the MVR system's memory cloud-based storage when near headquarters. It is not necessary for the officer to initiate an upload.
- B. Designated personnel will manage and maintain all data from the in-car cameras on the Evidence Library portal.
- C. All MVR data shall be retained in accordance with the New Jersey Records Management Retention Schedule.

- D. Any request for an MVR video for prosecution or defense purposes shall be made through normal discovery channels. The video in question shall be handled according to standard operating procedure
- E. Any reproduction, discovery, or any other release of any MVR video must have the prior approval of the Chief of Police or his designee.
- F. Recordings are considered investigatory records of the agency and shall be maintained and disposed of in accordance with law and New Jersey Division of Revenue and Enterprise Services – Record Management Services Records Retention Schedules and the New Jersey Attorney General’s Guidelines for the Retention of Evidence, Directive 2011-1.
- G. Contents downloaded from an MVR will be stored on the secure agency server or other designated storage device.
  - 1. Recordings that are being stored for criminal, civil, or administrative purposes are to be processed and submitted as evidence, with a copy placed in the appropriate case file.
- H. MVR recordings that are being stored for criminal, civil, or administrative purposes may only be erased or destroyed in accordance with New Jersey Division of Revenue and Enterprise Services - Records Management Services Records Retention Schedules, and the New Jersey Attorney General’s Guidelines for the Retention of Evidence, Directive 2011-1.
  - 1. When an MVR records an officer’s use of force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint against the officer and/or the agency.
  - 2. When an MVR records an event that is the subject of an internal affairs investigation, the recording shall be kept through the final resolution of the internal affairs investigation including any discipline and appeal.
- I. MVR recordings shall be provided in discovery to defendants and their attorneys in accordance with New Jersey Court Rules.
  - 1. For indictable crimes, it is the responsibility of the Monmouth County Prosecutor’s Office to provide the MVR recovery in discovery.
  - 2. For civil litigation, no MVR recording shall be released without a subpoena and authorization

- J. When responding to an OPRA request for a MVR recording, the OPRA custodian must review all recent case law regarding MVR recordings and review the request with the Chief of Police and/ or prosecutor
  - 1. The OPRA custodian may consult with the Monmouth County Prosecutor's Office about recent case law and a particular OPRA request for an MVR recording.
  - 2. Requests by the media or the public to view an MVR recording related to a crime shall be referred to the Monmouth County Prosecutor's Office.
- K. Officers may review MVR recordings upon permission of a supervisor.
  - 1. Officers may review recordings depicting their own activity to evaluate their own performance or to assist in writing a law enforcement report.
  - 2. Officers may be directed to review recordings depicting their own activity by a supervisor for training purposes.
  - 3. Officers may not review a recording depicting an officer-involved shooting unless authorized by the Monmouth County Prosecutor's Office.
- M. No employee of the Red Bank Police Department is authorized to copy or disseminate an MVR recording without authorization by the Chief of Police or his/her designee except as provided for in this General Order.
- L. The Patrol Commander shall oversee the BWC program and shall set permissions, authorization levels, tagging/retention categories in the BWC software, and coordinate the maintenance and repairs of the BWC units. Only the Chief of Police shall have access to edit and/or delete video/audio segments. The Chief of Police shall be immediately notified if the system or footage is compromised or accessed without proper authorization.
- M. Viewing of BWC/MVR events is strictly limited to sworn officers of this agency. Viewing by any other person is prohibited unless authorized by the Chief of Police, his/her designee, or consistent with the provisions of this General Order.
- N. Non-law enforcement personnel shall not be permitted to review the recordings at the scene of contact. Officer complaints shall be handled in accordance with the procedures in this agency's General Order I 2, Internal affairs.
- O. BWC recordings shall not be released or used for any commercial or other non-law enforcement purpose.

P. NOTE: This subsection (X.Q) applies to BWC recordings 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 possible officer 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 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 General Order U 1, 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 Office of Professional Responsibilities or civilian complaint relating to the officer's use of force, bias, or dishonesty.
  - b. Whenever an officer reviews or receives an account of a BWC recording prior to the creation of any report, statement, or interview, the officer shall acknowledge that prior review or receipt of the account 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 account of a BWC recording, the officer shall document the name of each person who provided an account of the BWC recording, the date of the account, and the specific BWC recording for which an account was provided.

c. Nothing in subsection X.Q.4. shall be construed to require an officer to review a BWC recording prior to creating any required initial reports, statements, and interviews regarding the recorded event, nor to prevent an officer from reviewing or receiving an accounting of such a BWC recording subsequent to the creation of any required initial report, statement, or interview regarding the recorded event.

d. Officers shall only be permitted to review or receive an account 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 account 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, Division Commander, or their designees are the investigating entity.
- 3) The appropriate investigating entity shall document the authorization to review or receive an account of a BWC of a specified incident.
- 4) Relevant to a supervisor's review of an officer's actions as part of the supervisory process authorized by the agency.
- 5) To show to a civilian who intends to file a complaint against an officer what occurred during the encounter so that the civilian can make an informed decision whether to file the complaint.
- 6) To comply with the state's discovery obligations in prosecutions pursuant to the Rules of Court:

a. Such requests 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/audio as applicable by law.
  - 1) 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 law.

5. To comply with any other legal obligation to turn over the recording to a person or entity.

6. 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. This section does not apply to Red Bank Police Officers appearing in the recording.
- b. Recordings retained beyond 180 days solely and exclusively for training purposes shall not be admissible as evidence in any criminal, civil, or administrative proceeding.

7. To show or disseminate the recording to a civilian or a non-law enforcement entity, or to disseminate it to the public, when the Monmouth 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 their need for access outweighs the law enforcement interest in maintaining confidentiality.

8. To conduct an audit to ensure compliance with this General Order.

9. To enhance officer and public safety by providing intelligence information in preparation for a raid/warrant execution when such use

is approved by the Monmouth County Prosecutor or his/her designee, or the Director of the Division of Criminal Justice or his/her designee.

10. Any other specified official purpose when the Monmouth 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.

Q. Officers shall not erase or in any other manner alter, tamper with, destroy, or conceal BWC/MVR 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. If any employee fails to adhere to the recording or retention requirements contained in this General Order, N.J.S.A. 2C: 28-7, N.J.S.A. 40A:14-118.5 et seq., or intentionally interferes with a BWCs/MVRs ability to accurately capture audio or video recordings:

1. The officer or employee shall be subject to appropriate disciplinary action and potential criminal sanctions; 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 law enforcement 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 violation of this General Order 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 Monmouth 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.

R. Recordings are considered criminal investigatory records of the Red Bank Police Department and shall be maintained on a secure server and disposed in accordance with law, administrative code, and New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) Records Retention Schedules.

1. MVR recordings:

- a. Recordings that are being stored for criminal, civil, or administrative purposes are to be transferred to a DVD/CD and submitted as evidence and maintained with the case file.
- b. Recordings being stored for criminal, civil, or administrative purposes must be maintained until the conclusion of the case. Recordings maintained for these purposes can only be erased or destroyed in accordance with New Jersey Division of Revenue and Enterprise Services, Bureau of Records Management (BRM) Records Retention Schedules. Examples of retention periods after the conclusion of the case include, but are not limited to:
  - 1) Any death investigation (at least seven years).
  - 2) Criminal arrest - 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> degree crime (at least five years after adjudication).
  - 3) Non-criminal arrest, excluding DWI (at least two years after adjudication).
  - 4) DWI arrest (at least ten years following adjudication of the case).
  - 5) Use of force incidents (at least two years).
  - 6) Internal Affairs Investigations, (six years after separation from employment or following any discipline or appeal, whichever is later).
  - 7) Normally, recordings of warrant arrests or violation of TRO arrests without any other criminal charges need not be preserved as evidence, except when law enforcement force is used.
- c. When an MVR records an arrest that did not result in an ongoing prosecution, or records the use of law enforcement force, the recording shall be kept until the expiration of the statute of limitations for filing a civil complaint.
- d. When an MVR records an incident that is the subject of an Internal Affairs complaint, the recording shall be kept pending final resolution of the Internal Affairs Unit investigation and any resulting administrative action.

2. BWC recordings:

- a. Recordings shall be retained for a period of at least 180 days except for recordings being stored for criminal, civil administrative proceedings, or evidentiary purposes.
- b. Recordings being stored for criminal, civil, or administrative purposes must be retained until the conclusion of the case plus any retention period.
- c. Recordings of an arrest that did not result in an ongoing prosecution, or records the use of law enforcement 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.
- d. 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 recording.
- e. Recordings shall be retained for not less than three years if requested by:
  - 1) The officer whose BWC made the recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
  - 2) The officer who is a subject of the BWC recording, if that officer reasonably asserts the recording has evidentiary or exculpatory value; or
  - 3) Any immediate supervisor of an officer whose BWC made the recording or who is a subject of the BWC recording, if that immediate supervisor reasonably asserts the recording has evidentiary or exculpatory value; or
  - 4) Any officer, if the BWC recording is being retained solely and exclusively for law enforcement training purposes; or
  - 5) Any member of the public who is a subject of the BWC recording; or
  - 6) Any parent or legal guardian of a minor who is a subject of the BWC recording; or
  - 7) A deceased subject's next of kin or legally authorized designee.

- 8) The member of the public, parent, or legal guardian, or next of kin or their designee (subsections X.S.2(e)) 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.
  - f. 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 Unit investigation, any resulting administrative action and required retention.
  - g. When seeking authorization to purge/erase BWC recordings being held for evidence in criminal matters, the Criminal Investigations Bureau Supervisor or his/her designee must submit a destruction request to the Monmouth County Prosecutor's Office before purging/erasing any recordings. In DWI cases, consult with the municipal prosecutor before purging/destroying any DWI-related BWC recordings.
- S. Only the following BWC recordings shall be exempt from public inspection:
  1. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection X.S.2(d) of this General Order if the subject of the BWC recording making the complaint requests the recording not be made available to the public.
  2. Recordings not subject to a minimum three-year retention period or additional retention requirements pursuant to subsection X.S.2(e) of this General Order.
  3. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection X.S.2(e)(1)(2)(3)(4) of this General Order.
  4. Recordings subject to a minimum three-year retention period solely and exclusively pursuant to subsection X.S.2(e)(5)(6)(7) if an officer, parent, or legal guardian, or next of kin or designee requests the recording not be made available to the public.
- T. The Records Management Analyst or his/her designee shall notify the Monmouth County Prosecutor's Office OPRA records custodian within one business day upon receiving any subpoena, court order or OPRA request for a BWC/MVR recording before complying with it.
  1. The Records Management Analyst or his/her designee shall utilize a Monmouth County Prosecutor's Office Body Worn Camera OPRA

Notification Form (Appendix A) and email the form to [opra@mcponj.org](mailto:opra@mcponj.org).

2. The form 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.
3. Provide the type of law enforcement 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.
4. Indicate whether the recording is part of an ongoing criminal or Office of Professional Responsibilities investigation or whether release of the recording potentially infringes upon a victim's and/or juvenile's privacy rights.
5. The Records Management Analyst or his/her designee will receive an email acknowledgement. If no further communication is received within 72 hours, the Records Management Analyst or his/her designee should respond to the request as deemed appropriate.

U. 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 Division Commander or his/her designee in consultation with the Monmouth County Prosecutor or his/her designee determines that their need for access outweighs law enforcement's 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 Monmouth 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.
2. A BWC/MVR recording tagged as special privacy (subsections VII.F.2 through VII.F.9) shall not be accessed, viewed, copied, disseminated, or otherwise used without first obtaining the permission of the Monmouth County Prosecutor or his/her designee or the Director of the Division of Criminal Justice or his/her designee. The Monmouth County

Prosecutor or his/her designee or the Director of the Division of Criminal Justice or his/her designee may authorize the Division Commander or his/her designee and one or more supervisory officers to grant permission pursuant to this section to access, view, copy, disseminate, or otherwise use BWC recordings tagged pursuant to subsections VII.E.2 through VII.E.9.

3. The independent investigator or his/her designee overseeing a law enforcement incident 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/MVR recording of the incident under investigation (subsection VII.F.1 of this General Order).

V. The Patrol Commander or his/her designee shall maintain a record of all BWC/MVR recordings that are accessed, viewed, copied, disseminated, or deleted.

W. The Chief of Police or Division Commander or his/her designee shall cause a periodic audit of these records to ensure compliance with this General Order. Minimally, the record keeping system shall document the following information:

1. The date and time of access.
2. The specific recording(s) that was/were accessed.
3. The officer or civilian employee who accessed the stored recording.
4. The person who approved access, where applicable.
5. The reason(s) for access, specifying the purpose(s) for access and specifying the relevant case/investigation number, where applicable.

X. If an original recording is required for use in court or by another law enforcement agency, that recording shall not be released without the prior approval of the Chief of Police or his/her designee and only if a duplicate copy is retained by this agency.

1. Duplicate copies shall be maintained as evidence in accordance with this agency's property and evidence guidelines.
2. Property and evidence control officers shall ensure that any media used for duplicate recordings is properly stored away from magnetic fields (speakers, etc.) or other areas that may facilitate corruption in the property room.

- Y. Officers shall not reproduce or store any recordings to any device or storage medium. This shall include, but is not limited to, cell phones, electronic notebooks, etc.

## APPENDIX A



### MONMOUTH COUNTY PROSECUTOR'S OFFICE

#### Municipal Police Department Body-Worn Camera OPRA Notification Form

Police Department: \_\_\_\_\_ Officer Recording: \_\_\_\_\_

Date of Recording: \_\_\_\_\_ Time Begun: \_\_\_\_\_ Length of Recording: \_\_\_\_\_

Recording Depicts (please explain):  
\_\_\_\_\_  
Criminal Investigation?

Ongoing criminal investigation  Completed criminal investigation

Complaints signed?  Yes  No For  Crime(s)  DP  PDP  Ordinance

Name(s) of anyone charged: \_\_\_\_\_

Police action depicted (check all that apply):  Witness Interview  Search  Investigative Detention

Arrest  Interrogation of Suspect  Use of Force  Motor Vehicle Stop  Show Up

Protective Frisk for Weapon Other: \_\_\_\_\_

Person(s) being recorded (check all that apply):  Arrestee  Driver  Passenger  Victim

Juvenile  Witness  Informant  Other: \_\_\_\_\_

Place being recorded (check all that apply):  Residence  Outside  Motor Vehicle  Hospital

School  Business  Police Department  Other: \_\_\_\_\_

Are there any privacy interest concerns that need to be addressed before releasing BWC? (please explain):  
\_\_\_\_\_  
\_\_\_\_\_

Name of OPRA Requestor: \_\_\_\_\_ Organization: \_\_\_\_\_

Date Received: \_\_\_\_\_ Deadline to Respond: \_\_\_\_\_

Submitted by: \_\_\_\_\_ Date: \_\_\_\_\_ Contact #: \_\_\_\_\_

Intended Response:  Approved for Release  Denied Reason: \_\_\_\_\_

#### For Use by the Monmouth County Prosecutor's Office Only

Request reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

Notes: \_\_\_\_\_  
\_\_\_\_\_

Submit by email to [opra@mcponj.org](mailto:opra@mcponj.org)