

## **Fort Bend County Policy for Body-Worn Cameras**

### **A. POLICY**

This policy applies to all Fort Bend County law enforcement officers, excluding undercover officers, that receive funding for Body-Worn Cameras from Fort Bend County. This policy does not supersede or remove the duty of officers to comply with other departmental procedures and obligations. This policy also does not supersede or remove the legal sphere of authority that an elected official of a law enforcement agency in Fort Bend County has to either accept or reject Body Worn Cameras and this policy. In addition, this policy does not create a financial or budgetary obligation for the department of an elected law enforcement official who rejects the Body-Worn Cameras and the implementation of the Body-Worn Camera policy within his/her department. Further, the Body-Worn Cameras will be funded from non-departmental contingency funds and/or grants and not a fiscal obligation of any specific department. The acceptance of the Body-Worn Cameras and this policy is also an acceptance to be subject to such other regulations including federal regulations as a result of possible grant funding of the Body-Worn Cameras.

### **B. PURPOSE**

The purpose of this procedure is to establish guidelines for the operation of Body-Worn Camera equipment assigned to peace officers for capturing audio/video evidence of police interactions including, but not limited to, traffic violations, field interviews, field sobriety testing and other official police activity. However, it should not, per se, be substituted for the appropriate standard of care to be determined in accordance with acceptable police practices in light of the circumstances on a case by case basis.

This policy aims to address the needs of law enforcement officials in Fort Bend County and the concerns of the community and citizens they police, including but not limited to:

1. Enhancing officer safety,
2. Enhancing public transparency,
3. Enhancing evidence collection and accuracy in reporting,
4. Enhancing officer training,
5. Reducing false claims of officer misconduct, and
6. Increasing accountability.

### **C. DEFINITIONS**

**Body-Worn Camera (BWC):** A recording device affixed to the person of a peace officer, capable of recording, or transmitting to be recorded remotely, that may include both video and audio.

**Law Enforcement Activity:** Any event during which an officer in the course of their employment (public or private) exercises their police authority or conducts any type of investigation, whether consensual or otherwise, including but not limited to traffic stops, pedestrian stops, calls for service, follow up investigations, interviews, searches, crowd incidents, protests, and arrests.

**Private Space:** A private space is defined as a location in which a person has a reasonable expectation of privacy, including a person's home.

### **D. GENERAL**

1. All video and/or audio captured during the scope of an officer's duties are the property of Fort Bend County and are subject to departmental policies and applicable laws regarding viewing, release, retention, and destruction.

2. Officers will not edit, alter, erase, duplicate, copy, or otherwise distribute in any manner body-worn camera recordings without proper authorization.
3. Audio/video recordings shall not be converted for personal use. Accessing, copying, editing or releasing recordings or depictions of recordings without proper approval is strictly prohibited.
4. This policy must be publicly posted on the Fort Bend County website.

**E. CAMERA AND DATA SYSTEM<sup>1</sup>**

1. Any electronic record<sup>2 3</sup> created while on or off duty that is directly related to official agency operations or investigations, whether created on personal or agency-owned equipment, is considered a government record. As such, it is subject to public record laws, and shall be preserved accordingly.
2. Any electronic record created on agency-owned equipment, whether it is directly related to official department operations or investigations or not, may be considered a government record and subject to possible review. Therefore, all electronic records created on agency-owned equipment shall be preserved as required by state law or agency or county policy.
3. All agency-owned equipment and use of agency-owned equipment are subject to routine or specific review and/or investigation by agency supervisors when requested to ensure appropriate use.

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<sup>1</sup> Adopted from the Fort Bend County Fire Marshal policy

<sup>2</sup> An electronic record includes a report, audio, or video recording, image, email, voice communication, or any other form of electronic data

## **F. TRAINING & DISCIPLINE**<sup>4</sup>

1. *Prior to using a BWC, officers and supervisors shall receive training through an agency approved training program*<sup>5</sup> in camera operation, data security and agency policy. Additional training shall be provided at an agency's discretion to ensure the continued effective use of the equipment and to incorporate changes, updates, or other revisions in policies and equipment.
2. *Agency personnel that will handle BWCs or records produced by BWCs shall receive training*<sup>6</sup> in proper maintenance of care of cameras and records in accordance with this policy.
3. Fort Bend County law enforcement agencies will utilize the "OSS Academy for Law Enforcement & Corrections Training" curriculum from the Texas Commission on Law Enforcement to provide comprehensive BWC training to its officers.
4. Personnel will not remove, dismantle or tamper with any hardware and/or software component or part of a body-worn camera.
5. Officers will be responsible for the following, but not limited to:
  - a. Complying with the provisions of this policy while in the course of their duties.
  - b. Exercising proper care and use of their assigned BWC and associated equipment.
  - c. Officers shall inspect the device at the beginning of each shift to ensure proper operation, including sufficient battery life and recording medium.
  - d. Ensuring digital evidence is properly categorized for retention purposes.

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<sup>4</sup> Contributed to by Fort Bend County Fire Marshal, Fort Bend County Sheriff's Office, and other draft policies.

<sup>5</sup> Required by Tex. Occ. Code Ann. § 1701.656(a)(1)

<sup>6</sup> Required by Tex. Occ. Code Ann. § 1701.656(a)(2)

- e. Any data, information, or event recorded on a BWC will be downloaded or copied to the appropriate agency's storage location before the end of shift.
  - f. Ensure their offense reports, arrest reports, and citations reference captured video.
  - g. *Immediately notifying his or her supervisor if a body worn camera is lost or malfunctions.*<sup>7</sup>
  - h. Any data an officer believes might be evidence or is likely needed for any other purpose, such as a potential employee complaint, should be noted in official reports. If the recording may be needed and no report is made, the officer should contact the BWC manager so the data may be flagged and secured as needed; however, all recorded data will be held in accordance with applicable laws.
6. *Supervisors will be responsible for the following, but not limited to:*<sup>8</sup>
- a. Ensuring officers assigned a body-worn camera use them according to program training and policy.
  - b. Ensuring measures are available to officers to facilitate the upload and categorization of data.
  - c. Ensuring data related to critical incidents is uploaded and tagged for the appropriate digital file as soon as practical by taking custody of all BWCs involved in critical incidents.
  - d. Resolving citizen complaints by reviewing captured videos and documenting their review.

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<sup>7</sup> Required by Tex. Occ. Code Ann. § 1701.655(b)(7), there must be some form of documenting equipment and malfunctions.

<sup>8</sup> Required by Tex. Occ. Code Ann. § 1701.655(b)(6), each guideline can be customized to agency preference, but there must be guidelines for supervisory or internal review.

- e. Ensuring additional training or disciplinary action as needed in accordance with this policy.
  - f. Coordinating the repair or replacement of BWCs that malfunction or are lost.
7. A willful and unjustified violation of this policy can result in additional training or disciplinary action up to, and including, indefinite suspension.

#### **G. ACTIVATION GUIDELINES**<sup>9</sup>

A BWC may be off or in standby mode when an officer is interviewing a witness, victim, or confidential informant that may elicit confidential information<sup>10</sup>, or when not involved in a law enforcement activity.<sup>11</sup> *Officers will not be required to record the entirety of their shift.*<sup>12</sup>

A BWC must be activated and recording during all law enforcement activities until the activity is completed, or a reason to deactivate the BWC under this policy is present, including but not limited to:

1. Immediately before being dispatched or prior to exiting his or her vehicle when responding to any call for service.
2. Immediately before a stop or being flagged down, prior to engaging in any law enforcement activity.
3. Immediately before any non-vehicular pursuit or vehicular pursuit in vehicles without in-car recording systems.
4. Immediately before initiating arrests (not intended to compromise operational security).

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<sup>9</sup> Required by Tex. Occ. Code Ann. § 1701.655, but each guideline can be customized to agency preference.

<sup>10</sup> Such as interviews with juveniles, sexual assault investigations, and similar matters including those in Section J.

<sup>11</sup> Permissible under Tex. Occ. Code Ann. § 1701.657(b)

<sup>12</sup> Prohibited by Tex. Occ. Code Ann. § 1701.655(c)

5. During the execution of an arrest warrant.
6. Immediately before prisoner or passenger transports.
7. Immediately before the execution of a search warrant and inventory of any seized property.
8. Immediately before requesting and conducting a consensual search.
9. Immediately before conducting Standard Field Sobriety tests or Drug Recognition Expert tests.
10. Immediately before any incident or contact that may result in a law enforcement action being taken or an official report being generated.
11. Immediately before any situation where the officer's training and experience causes him or her to believe the incident needs to be recorded to enhance reports, ensure the preservation of evidence, and aid court testimony.
12. Any time an officer deems necessary.

When practical, officers deactivating their BWC will state the reason for doing so.

Officers will not be required to immediately activate their BWC when he or she reasonably believes it would be unsafe to do so.<sup>13</sup> *The officer will activate the BWC as soon as is practical, record their reason for not activating the BWC, and indicate in their incident report his or her reason for not activating the BWC.*<sup>14</sup>

If a BWC fails to activate due to damage or malfunction, the officer will immediately notify a supervisor as soon as practical and note the reason why, as well as in any following report.

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<sup>13</sup> Permissible under Tex. Occ. Code Ann. § 1701.657(d)

<sup>14</sup> Required by Tex. Occ. Code Ann. § 1701.657(c) (at least one method of recording justification must be used)

Failure to activate the BWC in compliance with this section, absent reasonable justification, may result in disciplinary action up to, and including, indefinite suspension.

#### **H. DEACTIVATION GUIDELINES**<sup>15</sup>

1. Unless otherwise permitted by this procedure, once the BWC is activated it shall remain on until the law enforcement activity has concluded.
2. For the purpose of this section, conclusion of the law enforcement activity has occurred when:
  - a. All arrests have been made and arrestees transported and released from the officer's immediate custody.
  - b. All witnesses and victims have been interviewed.
3. Recording may cease:
  - a. If/when no further law enforcement action is required.
4. Whenever the BWC equipment is deactivated during an incident the officer will provide a brief verbal explanation for the deactivation prior to turning off or stopping the recording and will document it via report.
5. Failure to record activities as denoted in this policy will not be considered a policy violation as long as reasonable justification is documented via a report

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<sup>15</sup> Required by Tex. Occ. Code Ann. § 1701.655

and articulated to the officer's supervisor. After being notified, the supervisor will document their finding of reasonableness if it exists.

6. Unjustified deactivation of a BWC shall be subject to review and may result in disciplinary action up to, and including, indefinite suspension.
  - a. The lack of disciplinary action is not intended to limit a trial court's consideration of the matter.

## **I. PRIVACY CONCERNS**<sup>16</sup>

1. Officers are not required to stop recording an event, situation, or circumstance solely at the demand of a citizen. Consent to record is not required from a citizen if there is no reasonable expectation of privacy. It is the officer's discretion whether to inform a citizen they are being recorded, but they must inform the citizen if asked while in a public area.
2. BWC cannot be used with facial recognition technologies to gather intelligence on a specific person(s).
3. Officers are not required to inform an occupant they are recording when in a private residence in their official capacity. It is encouraged if doing so would better serve the handling of the incident.
4. Officers shall not have BWCs recording while inside restrooms, dressing rooms, locker rooms, or other settings where there is an expectation of privacy unless entering in response into an ongoing emergency, a crime that is still in progress, there is reason to believe that a suspect is still inside the location, or other exigent circumstances exist.

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<sup>16</sup> Required by Tex. Occ. Code Ann. § 1701.655(b)(1), but each guideline can be customized to agency preference.

5. BWC usage in hospital or doctor's office settings will be limited to investigative uses only. Officers will not record a patient's medical interaction and procedures with hospital or medical personnel unless all parties are aware that a recording is taking place and it is needed as evidence.
6. Officers will not record a student's records unless all parties are aware that a recording is taking place and it is needed as evidence.

## **J. PROHIBITED USAGE**

1. *Officers will only use cameras provided by the agency and only for law enforcement activities.*<sup>17</sup>
2. Officers will not use BWCs when on break or engaged in personal activities.<sup>18</sup>
3. Officers shall not knowingly record undercover officers or informants unless requested by the undercover officer or their supervisor.
4. Officers shall not intentionally create recordings of other employees in areas where a reasonable expectation of privacy exists.
5. Officers shall not intentionally create recordings of citizens' activities in areas where a reasonable expectation of privacy exists, unless the recording is made while the officer is legally present in exigent circumstances or permitted situations previously mentioned. Officers should be aware that under certain circumstances, e.g. victims or suspects in various stages of undress, the officer may consider stopping the recording and will explain the stopped recording in the report.

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<sup>17</sup> Required by Tex. Occ. Code Ann. § 1701.655(b); personal cameras allowed at agency discretion under 658.

<sup>18</sup> Implied by Tex. Occ. Code Ann. § 1701.655(b)

6. Officers shall not allow any non-sworn personnel to view the BWC or any other recorded data without the permission of the officer's supervisor.
7. Uploading of any BWC data to any social media site is prohibited.
8. *It is a Class A misdemeanor for an officer or employee to release a recording created with a BWC without permission of the agency.*<sup>19</sup>
9. To the extent possible, officers will attempt to prevent the recording of individuals not involved with the law enforcement activity.
10. No recording device will be used in a manner that violates any person's rights (including but not limited to privacy) under established statutory law, common-law, and/or case law.

**K. DATA RETENTION, STORAGE, AND HANDLING**<sup>20</sup>

1. BWC recordings shall be classified by the officer capturing the footage as required by the BWC policy.
2. *All BWC recordings will be retained for at least 90 calendar days.*<sup>21</sup>
3. Records that no longer provide evidentiary value will be deleted at the end of their retention schedule.
4. *Any recording created with a BWC documenting an incident that involves the use of deadly force by a peace officer or that is otherwise related to an administrative or criminal investigation of an officer may not be deleted, destroyed, or released to the public until all*

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<sup>19</sup> Tex. Occ. Code Ann. § 1701.659

<sup>20</sup> Required by Tex. Occ. Code Ann. § 1701.655(3)

<sup>21</sup> 90 day minimum required by Tex. Occ. Code Ann. § 1701.655(b)(2)

*criminal matters have been finally adjudicated and all related administrative investigations have concluded.*<sup>22</sup>

5. The FBCSO has adopted the following retention schedules as promulgated by the Texas State Library and Archives Commission
  - a. Local Schedule GR (Records common to all local governments)
  - b. Local Schedule PS (Records of public safety agencies)
6. All video and/or audio captured by an agency will not be disposed of prior to the expiration of its retention period as defined in the preceding schedules in this section. Additionally, no record will be destroyed if such destruction would violate a Law, is subject to any pending legal action or notice of legal action (this includes use as evidence in a criminal case), or is the subject of a pending public information request.

**L. RECORDING VIEWING AND RELEASE**<sup>23</sup>

1. *An officer may have access and review any recording of an incident involving the officer before he or she is required to make a statement about the incident.*<sup>24</sup>
2. *A member of the public requesting a BWC recording must make a written request including the following:*
  - a. *The date and approximate time where the recording occurred;*
  - b. *The specific location where the recording occurred; and*
  - c. *The name of one or more persons known to be a subject of the recording.*<sup>25</sup>

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<sup>22</sup> Required by Tex. Occ. Code Ann. § 1701.660(a)

<sup>23</sup> Required by Tex. Occ. Code Ann. § 1701.655(b)(4)

<sup>24</sup> Required by Tex. Occ. Code Ann. § 1701.655(b)(5)

<sup>25</sup> Required by Tex. Occ. Code Ann. § 1701661(a)(1)-(3); see also 655(4)

3. *Any release of a recording or refusal to do so will be in accordance with Chapter 552, Texas Government Code.*<sup>26</sup>
4. *No recording made in a private space may be released without written authorization of the subject of the recording or their authorized representative if the subject is deceased.*<sup>27</sup>
5. *No recording involving the investigation of conduct that constitutes a misdemeanor punishable by fine only, and does not result in arrest, may be released without written authorization of the subject of the recording or their authorized representative if the subject is deceased.*<sup>28</sup>
6. The agency may waive any fees associated with the release of a recording if it determines that it is in the public interest.<sup>29</sup>
7. *Any recording that was not required to be made and does not relate to a law enforcement purpose is confidential.*<sup>30</sup>
8. *An officer or employee handling public information requests will have 20 days to respond to voluminous requests: requests for recordings from more than five separate incidents, more than five separate requests from the same requester in a 24-hour period, or a request or multiple requests from the same requester in a 24-hour period for recordings that constitute five total hours of footage.*<sup>31</sup>
9. Under the Texas Public Information Act (TPIA), recordings captured during the scope of an officer's duties may be subject to release to the public under applicable laws. All requests from persons for BWC video copies or viewing shall be referred to either the Fort Bend

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<sup>26</sup> Required by Tex. Occ. Code Ann. § 1701.661(c)-(e); see also Chapter 552, Government Code.

<sup>27</sup> Required by Tex. Occ. Code Ann. § 1701.661(f)

<sup>28</sup> Id.

<sup>29</sup> Permitted by Tex. Occ. Code Ann. § 1701.661(g)

<sup>30</sup> Required by Tex. Occ. Code Ann. § 1701.661(h)(1)-(2)

<sup>31</sup> Tex. Occ. Code Ann. § 1701.663

County Attorney's Office or the Fort Bend County District Attorney's Office. These requests shall be handled in accordance with Chapter 552 of the Texas Government Code (Texas Public Information Act), Chapter 1701 of the Texas Occupations Code, and an agency's procedures.<sup>32</sup>

10. The United States Attorney's Office, the District and County Attorney Offices, Municipal Prosecutors, City Attorney Offices, and the City of Houston Municipal Prosecutors shall not be required to make requests in writing to the Agency Chief for copies of or access to BWC recordings. The department shall require that any other requests for BWC videos from other law enforcement agencies be made in writing to the Agency Chief.<sup>33</sup>

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<sup>32</sup> Contributed by the Policy Draft

<sup>33</sup> Id.