

## 9.33 BODY CAMERAS

### **PURPOSE AND SCOPE**

Body cameras are a valuable tool for promoting transparency in law enforcement by recording citizen contacts with police officers. The Everett Police Department (EPD) uses body cameras to contemporaneously document citizen contacts. While it does not provide a complete account of a police contact, video does provide additional perspective to be considered along with other information. Video footage produced by body cameras may be used as evidence in civil or criminal investigations, reviewed administratively as described below, used as a tool in law enforcement training and utilized as a reference in incident documentation.

### **POLICY**

It is the policy of the Everett Police Department that all commissioned personnel working in a uniformed capacity, which would readily identify themselves as a law enforcement officer, and they are assigned body cameras, shall wear the cameras to record their encounters on duty. This does not apply to personnel in a class A uniform while attending court or personnel in a dress uniform.

### **REVIEW**

The Chief of Police, or designee, will conduct a periodic review of the body worn camera program, to include a review of this policy.

### **DEFINITIONS**

- A. Advisement – Statement made by an officer that a communication, conversation or interaction with a citizen is being recorded.
- B. Activation – The process that turns on the body camera and causes it to record or to store audio and video data.
- C. Body Camera – Camera system that captures audio and video signals, capable of being worn on an officer's person that includes at minimum a camera, microphone, and recorder.
- D. Body Camera Videos - Recorded media consisting of audio-video signals, recorded and digitally stored on a storage device or portable media.
- E. Labeling of Video – Marking a video with the case number and category.
- F. Secure Video Server – A cloud-based data warehouse where body camera video footage is stored and retained.
- G. Retention of Video – Retention of video refers to how long a video captured on body camera is kept or retained by the Everett Police Department. A video is retained according to its category.

- H. Surreptitious Recording – A surreptitious recording is a recording made without the knowledge of one or more of the parties to a conversation or communication and is a violation of the Washington Privacy Act, Chapter 9.73 RCW
- I. FIU – Forensic Imaging Unit (FIU), a unit within the Everett Police Department with commissioned officers who have a working knowledge of the methods and procedures related to the duplication, storage and retrieval of body camera videos as well as video forensics and evidentiary procedures.

## OFFICER RESPONSIBILITIES

- A. Training – Prior to wearing and operating a body camera, officers are required to successfully complete department authorized body camera training. Body worn camera training will cover topics including, but not limited to hardware, software and policy and procedure considerations. Officers may receive refresher training as deemed necessary.
- B. Requirement to Wear the Body Camera – All officers assigned a body camera are required to wear the camera while on duty. Personnel working an off-duty assignment in a uniformed capacity where they are readily identifiable as law enforcement, provided a body camera is available, are required to wear a body camera. Officers shall affix their cameras to the chest area of the outermost garment or layer of their uniforms. Privately owned body cameras are not permitted.
- C. Requirement to Use the Body Camera – Officers assigned a body camera are required to wear their body camera and to activate the camera prior to engaging in law enforcement activity, in accordance with department policy.

## ACTIVATION OF THE BODY CAMERA

- A. Starting and Ending the Recording
  - 1. Officers shall activate the body camera prior to exiting the vehicle on any dispatched or self-initiated law enforcement activity. Nothing in this policy prohibits the officers from activating the camera earlier.
  - 2. If unable to activate the body camera upon making the decision to engage in dispatched or self-initiated law enforcement activity, the officer shall safely activate the camera as soon as practical.
  - 3. Officers shall activate the body camera when involved in any manner in a police pursuit, fleeing vehicle, or fail to yield situation.
  - 4. Once the camera is activated, the officer shall leave it on until the incident has concluded. Officers who walk away from a citizen during the law enforcement activity shall leave the cameras on even while not actively engaged with the citizen, but while still involved in investigating in the incident.

5. In an officer involved shooting, officers shall turn their cameras off prior to giving any public safety statements.
6. Officers should record on the body camera or in a police report the reasons for intentionally turning off the body camera if the recording is stopped by the officer prior to the conclusion of the law enforcement activity.

#### B. Decision to Not Record

1. Officers are required to record as much of the law enforcement activity as possible, but the sensitivity or exigency of a situation may warrant turning off, or not activating, the body camera. The decision to not record law enforcement activity shall be made by the officer wearing the camera and shall be determined by facts and circumstances which must be justified. Facts supporting such a decision may include the following:
  - (a) When unsafe or impractical – Law enforcement activity requiring a response that physically prevents an officer from activating the camera. Officers are advised to put safety ahead of the requirement to record the encounter. The amount of time driving to the call shall be a factor considered in determining if this section applies.
  - (b) Places where a heightened expectation of privacy exists - such as restrooms, jails, or hospitals, unless for a direct law enforcement purpose such as a crime in progress or the recording of the location is material to a criminal investigation.
  - (c) Sensitive communications – Law enforcement activity involving sensitive communications, matters of law enforcement intelligence or where recording the encounter could hinder a criminal investigation.

As it relates to SWAT operations, sensitive communication involves matters of law enforcement intelligence that occur during a pre-briefing, in the tactical operations center, and debriefing of a critical incident or planned operation.
  - (d) When a Citizen Objects to Being Recorded – If a citizen objects to being recorded, the officer may record despite the objection. Since conversations with police officers are not considered private under Washington law, there is no requirement that an officer turn off the camera for a citizen who objects to having the interaction recorded.
  - (e) Officers may exercise discretion in recording conversations with crime witnesses and members of the community who wish to report or discuss criminal activity in the neighborhood. In these instances, officers should consider continuing to record the

conversation, but angle the camera away from the person being contacted.

- (f) Privacy and dignity – There may be limited circumstances when the respect for an individual’s privacy or dignity outweighs the need to record an event. Such circumstances may include natural death scenes or death notifications.
2. If an officer has exercised discretion to not record a contact as described above, the officers shall immediately activate the body worn camera if the encounter turns adversarial or confrontational.
  3. Officers shall document by written report, CAD, or in a confidential informant’s file, any decision to not activate the camera or to turn off the body camera prior to the conclusion of the law enforcement activity, and their reasons for doing so.
  4. Officers reasonably exercising discretion under Section B will not be subject to discipline for the decision to record or not record, unless the officer has been previously counseled for failing to exercise reasonable discretion.
  5. Officers recording law enforcement activity who inadvertently turn off their body camera shall not be subject to discipline, unless the officer has been previously counseled for turning off or failing to activate their body camera.

### **ADVISEMENT – WHEN REQUIRED**

While most interactions between police officers and the public are not considered private and police officers have no legal obligation to provide an advisement, as a matter of practice, Everett Police officers recording with body worn cameras will provide an advisement to the parties present informing them that they are being audio and video recorded.

Officers conducting traffic stops while equipped with a body camera shall notify the occupants that there is an audio and video recording occurring. This warning should be given at the beginning of the contact, absent an emergent situation, and captured on the recording. The advisement should also be noted in the officer's report if enforcement action is taken.

Prior to a custodial interrogation, officers shall inform arrested persons that they are being audio and video recorded with a body camera. This statement, along with the Miranda advisement, shall be included in the recording.

Officers will make reasonable efforts to communicate to non-English speakers, those with limited English proficiency, deaf persons or persons hard of hearing that they are being recorded.

Officer safety is of paramount importance and officers should prioritize officer safety over the need to provide an advisement. If a situation requires immediate action prior to an advisement being given, the officer should provide the advisement as soon as practicable.

## END OF SHIFT RESPONSIBILITIES

Prior to the end of their shifts or as soon as practical, officers will follow the protocol to label, categorize, and upload videos to the department's secure video server.

- Officers will audit their evidence on the secure video server at least once per working set to ensure that all videos have been assigned a retention category and are labeled correctly.
- At the end of shift, Officers will dock their body-worn camera in a docking station at their assigned precinct to begin uploading videos to the secure video server.

Document Use of the Body Camera - Officers shall document in their police reports that they operated a body camera.

Video Not a Substitute for Report – An incident captured on the body camera is not a substitute for a complete and thorough written police report. Officers must write a police report, if the situation requires, and may not use the body camera video as a substitute for, or basis to abbreviate, their documentation of the incident.

Report Problems - Officers shall promptly report any problems they may encounter with the body camera or its operation to their supervisor, who will forward the information to the body worn camera administrator.

## UNAUTHORIZED USE OF BODY CAMERAS AND VIDEO

All employees of the Everett Police Department, including commissioned officers and civilian personnel, shall abide by the policies and procedures related to body cameras and body camera videos as set forth in this policy.

Employees of the police department are prohibited from surreptitiously recording any other employee of the department or any other person.

- A. Employees may not use body cameras for non-work-related purposes or otherwise operate the body camera outside their legitimate law enforcement duties.
- B. All body camera videos are the property of the Everett Police Department. Dissemination outside of the agency is strictly prohibited, except as required by law and pursuant to the provisions of Everett Police Department policy.
- C. Employees are prohibited from accessing the secure video server except for legitimate law enforcement purposes, including authorized review of body camera video as described below, or otherwise for work related to their job assignment.
- D. Requirement to utilize MDC privacy screen. To limit the transmission of CJIS protected information, officers are required to ensure that the provided MDC privacy

screen is installed on their MDC prior to beginning their shift. If a privacy screen is not installed on the MDC, officers shall obtain one from the body-worn camera program administrator, or their designee, and ensure that it is installed on the MDC prior to use

## **DOWNLOADING OF VIDEOS**

The only personnel allowed to download videos will be the FIU, Body Camera Administrators, Major Crimes Unit, Office of Professional Standards and specially trained employees of the Police Department. Video downloads will be done for law enforcement purposes and/or public records requests only. Downloading of videos refers to the transfer of a file from a secure video server to a local hard drive or memory storage device.

If any downloads are needed from anyone not listed above, a request will be sent to the Deputy Chief of Services.

## **OPERATION AND OVERSIGHT OF THE BODY CAMERA PROGRAM**

Operation and oversight of the body camera program is the responsibility of the Body Camera Administrator and/or Forensic Imaging Unit (FIU).

## **REVIEW OF BODY CAMERA VIDEO**

- A. Officers may view their own body camera video at any time in accordance with this policy. There may be situations where an officer has not reviewed relevant body camera video prior to preparing a written police report, providing a statement, or answering questions as part of a formal interview, or informal questioning. The City recognizes that in those situations, the potential for accuracy may be diminished. As such, an officer may not receive any discipline based solely upon a difference or discrepancy between the officer's written report, statement, or interview, and the video evidence, unless the City can demonstrate that the employee knew the information was discrepant at the time the report was written, statement provided or interview.
- B. Recordings may be reviewed by individuals other than the recording officer in any of the following situations:
  1. By officers prior to completing their police reports or providing a statement pursuant to an internal affairs investigation or SMART investigation, subject to the following:
    - a) Officers in an internal affairs investigation will be allowed to view their footage of the incident prior to any interview or answering questions related to an internal affairs investigation.
    - b) Once authorized by the lead SMART investigator per (d) below, subject or witness officers in a SMART investigation will be allowed to view relevant body camera footage. The body camera footage viewed by the individual officer(s)

should show actions, items or other relevant factors the officer could have seen from their vantage point and that could have been used in making a determination to use deadly force against an individual or individuals.

- c) In the event there is a dispute over which or how much body camera footage should be viewed by the officer(s) during the SMART investigation, the legal representative of the officer, the lead SMART team investigator, and the prosecutor or their designee can consult prior to the officer making a determination about providing a statement.
  - d) Subject and witness officers in a critical incident resulting in the activation of SMART will not be authorized to view their body camera video unless and until authorized by the SMART lead investigator. In addition, FIU will immediately restrict the body camera video of these incidents pending notification from an authorized investigative supervisor.
2. By any supervisor conducting a Blue Team (early warning system alert) administrative review. Review of video shall be related to the specific alert and not used as the basis to randomly search for other possible policy or procedure violations. Other violations noted during this review shall be addressed at the lowest reasonable level unless the history of the officer or the nature of the policy or procedure violation necessitates a higher level of corrective action or discipline
  3. By a supervisor completing a citizen complaint review. Review of video shall be related to the specific complaint(s) and not used as the basis to randomly search for other possible policy or procedure violations. Any inadvertent minor policy or procedure violations discovered during this review but not mentioned in the complaint shall be addressed at the lowest reasonable level unless the history of the officer necessitates a higher level of corrective action or discipline.
  4. For use of force, collision or pursuit review. Review of video shall be related to the use of force, collision or pursuit, and not used as the basis to randomly search for employee misconduct.
  5. By a supervisor investigating a specific act of officer conduct alleged in a complaint of misconduct. Review of video shall be related to the specific complaint(s) and not used as the basis to randomly search for other possible policy or procedure violations. Supervisors are authorized to review recordings to investigate the merits of a specific complaint prior to a formal complaint being filed. If appropriate, the supervisor may allow the complaining party to review the footage with the supervisor as a means of addressing the concerns without a formal complaint being taken.
  6. By technical support for purposes of assessing proper functioning of body cameras.

7. By the County prosecutor in conjunction with his or her role after an officer involved shooting, or other critical incident associated with a SMART investigation or other criminal review of an incident.
  8. By an Internal Affairs investigators participating in an official IA investigation authorized by the Chief of Police to investigate a specific act of officer conduct alleged in a complaint of misconduct. Review of video shall be related to the specific complaint(s) and not used as the basis to randomly search for other possible policy or procedure violations.
  9. By a department detective who is participating in a criminal investigation.
  10. By legal counsel and/or union representation representing an officer in a critical incident associated with a SMART investigation, prior to the officer providing a statement pursuant to an administrative inquiry.
  11. Training – Recordings may be viewed for training purposes. Prior to any recordings being used for training purposes, all officers will be notified. If an involved officer objects to showing a recording, the recording will not be used for training purposes.
  12. By an employee's legal representative and/or bargaining representative who is involved in representing the employee in an administrative investigation or criminal investigation.
  13. By the City's legal representative involved in representing the City in an official matter, such as an administrative investigation, a lawsuit, or a criminal investigation.
  14. Pursuant to a subpoena or public records request.
  15. By a supervisor that has been made aware of a specific act(s) showcasing the actions of an officer or citizen that reflect positively on the Everett Police Department or that may be of interest to the public.
- C. Upon request, non-law enforcement witnesses who are able to verify their presence and their ability to contemporaneously perceive events at the scene of an incident may also be permitted to review available body worn video with the approval of assigned investigators or a supervisor.
- E. If, in the course of viewing a body camera video, inadvertent minor policy or procedure violations are discovered, they will be addressed at the lowest reasonable level unless the history of the officer necessitates a higher level of corrective action or discipline.

## RETENTION OF BODY CAMERA VIDEOS

General – Videos related to officer-involved shootings, critical incidents, homicides, serious sexual assaults, and cases in which EPD has received a notice to preserve evidence shall be retained on the secure video server until all trial and appellate litigation has been completed. The EPD Investigations Bureau shall be responsible for notification to FIU under these circumstances. Videos related to unsolved homicides and sexual assaults shall be kept consistent with the department policy for records retention.

- A. Videos related to internal affairs investigations shall be transferred to a format compatible with Blue Team and made part of the file. The videos will be retained in accordance with the Washington State Records Retention Schedule.
- B. Videos labelled as evidentiary shall be retained on the secure video server in compliance with state law and until all trial and appellate litigation has been completed.
- C. Videos labelled as non-evidentiary shall be retained on the secure video server for 90 days and thereafter may be destroyed in accordance with the applicable records retention schedule (RCW 42.56.240)
- D. Videos redacted for a public records request shall be retained for 24 months after the request and then deleted.
- E. Accidental Activation - In the event of an accidental activation of the body camera where the resulting recording is of no perceived investigative or evidentiary value, the recording employee may request that the body camera video in question be deleted forthwith by submitting a written request to the Deputy Chief of Services. The Deputy Chief shall approve or deny the request and forward the decision to the FIU for action.
- F. Employees shall not tamper with, alter, or delete video.

Exception: This does not apply to personnel tasked with system maintenance who purge videos under established guidelines.

## RELEASE OF BODY CAMERA VIDEOS

- A. For Criminal Justice Purposes - Body camera videos may be accessed for criminal discovery purposes directly by prosecutors, whose offices shall have an account for the secure video server. Prosecutors will be able to locate the existence of a body camera video by its reference in the police report and/or CAD report and may search for videos related to pending cases by inputting the law enforcement incident report number into the secure video server. Discovery of body camera videos released to the defense bar shall be made through the prosecutor and will include notification to EPD.

- B. To the Public/media - Body camera videos will be made available to the public/media through public records requests pursuant to RCW Chapter 42.56. Public records requests for body camera videos may be directed to the City Clerk's Office or the Everett Police Department and will be processed by the Public Disclosure Unit. Prior to release, videos from body cameras will be reviewed and redacted. Redactions will be consistent with statutory exemptions under Washington law RCW 42.56.240. The Chief of Police may release body camera video footage absent a public disclosure request if he/she determines that there is significant public interest to release said video, when the video provides information related to the apprehension/prosecution of offenders or when the video highlights positive work performed by the Everett Police Department.
- C. The Public Disclosure Unit may provide third party notification to allow any person whose privacy may be impacted by the release of a body camera video time to file a petition for injunctive relief.